

Liberty without License:

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There is a huge misunderstanding about the nature of freedom. In particular, this misunderstanding extends to the nature of economic freedom and the role of government to regulate mankind. These are the epic issues, not only of our time but of all time. These are the primordial struggles which man has faced since he emerged from the cave. These struggles have summoned our greatest ideas, our greatest thinking and our greatest contributions to the fundamental questions of why we are here. Sometimes we call this work philosophy, sometimes economics, and sometimes it is far broader than both of these. The truth is that we are always standing at the cross roads on these questions. The barons of thirteenth century England stood at the cross roads when they presented King John with Magna Carta. So did the American founding fathers when they wrote that man had the right to life, liberty and the pursuit of happiness.

Freedom is a difficult concept, one that is not only worth fighting for every day, but one that is so prone to being overcome by coercive government power that it must be defended with commitment, resolution and knowledge. It is a fragile and cherished thing then, this freedom - a wrong turn and it is easily lost. Liberty, a word that describes what freedom means so well is so often abused that we have all but lost a hold on how fundamental and important a concept it is.

You cannot have liberty, unless you restrain the powers that impinge on liberty. And you must understand that liberty is a uniquely individual concept. Liberty means nothing except when it is applied to the individual. The forces that curtail individual liberty are the collective power of other men. When these men abstract for themselves coercive police power in the form of a government, the exercise of that power contains an inherent danger. But man is a fallen creature, and with no government over him, it is inevitable that he will degenerate into a collection of sins, or violent actions. Hobbes, at least in respect of this aspect was correct. Government of some kind is needed. Thomas More's vision of Utopia is an illusion.

The question is what kind of government that should be. What is its role?

Government's role is strictly limited to the protection of 1) an individual's personal security. You have a right to expect that you will not be arbitrarily killed or wounded as you go about your daily pursuit of happiness. It is limited to 2) an individual's property's security. You have a right to expect that the property that you earn through your hard work will not be taken from you by other men, or by the government itself. This is fundamental to the pursuit of your own individualized happiness. Government's role is 3) finally designed to protect your economic freedom, i.e. your pursuit of happiness.

We can further unpick these three governmental protections, and given that you have a right to expect this, we can define further the scope of the rights of man. Right to life, right to property that you have earned, and right to economic freedom are those fundamental rights. All our rights

are cabined within these fundamental rights, and outside of these, we have at best privileges, not rights. Confusion of rights with privileges is one of the major problems that we face.

Right to Economic Freedom

Your right to economic freedom really depends on the exercise of the first two rights. We can further dissect this right as follows. In order to protect the first two rights, government clearly has a role in providing a police force, a judiciary, a place to incarcerate those who violate others' rights. Economic freedom requires the government to protect your right to do what you want to do to pursue your own happiness (assuming that what you are doing does not violate someone else's rights). Hence the government must protect the fruit of your work. It must protect your intellectual property. But economic freedom is undergirded by another principle which is an overarching organizing economic principle -- the right to free competition. In other words, if you can run the fastest, you should end up the winner of the race. The race should not be handicapped in any way. You have a right to expect to compete on the merits. And in order to allow that to happen, government must knock down barriers to trade in markets all over the world, and it must somehow deliver a domestic market where welfare is maximized.

Economic Freedom and the Market

In order to deliver the basic human right of economic freedom, it is essential that the free market be allowed to deliver the tremendous gains that its invisible hand can produce. The heart of the free market is competition. And competition should be the organizing economic and governing principle for the country and the world. Americans have an intuitive sense of the importance of competition. We know that competition elevates us to performances that we would never have imagined we could do. We know that it is competition on the merits that forces us to work that much harder, to make more sacrifices that ultimately leads to the greatest innovations that man has seen. And competition, by its very existence means that some will win and some will lose. It means that if you perform poorly or make bad decisions, you will be punished. While this may sound harsh or "unfair", it is emphatically not unfair to the millions of people who are lifted out of poverty by this system. For when we spare people from the punishment that their mistakes merit, we push the poor into poverty and push the whole cohort of people further down the economic ladder. Attempts to rein in what some call the "rapacious edges" of free market capitalism are really a kick in the teeth for those who are trying to scale the economic ladder. It is therefore immoral to promote this as a viable economic vision.

What does competition on the business merits mean? It means competition so overall consumer welfare in the economic sense is enhanced. This means that efficiency, both in terms of how resources are allocated, but also efficiency in terms of the drive to reduce costs are both maximized. When this occurs, then innovations burst forth like flowers in spring, ratcheting down cost and creating wealth in the non-zero sum world in which we live. But for this type of competition to deliver the enormous benefits that it can, people and firms must live in fear of failure, and that fear must be real. The runner sprinting down the home stretch with his heart bursting and his head pounding knows that what drives him on is fear that he will be overtaken. It is for this moment that he has trained through the cold and rain, run up countless hills and lifted weights without end, making sacrifices that lesser athletes cannot conceive

of. Remove that fear, and he will, inevitably slow down. And that is what will happen to our economy if fear is removed, either because government intervenes to remove the risks of capitalism, or because the competition is itself handicapped. We need our fastest runners to run as fast as they can, unlimited by government strictures in order to pull all of us up the economic ladder. And when they do, the lot of every runner in the race improves – everyone is pulled to a faster time. In economic terms, wealth is created, and pie grows bigger. Any handicapping leads to a shrinkage of the pie, as those who would train harder to run faster lose the will to work hard and make sacrifices.

But we do not compete in a vacuum. Where other countries distort their markets so competition on the merits is thwarted, then we must take affirmative steps to persuade, cajole and if necessary force them to adopt free market competition. To simply sit back, and assume that they will adopt a freely competitive market would be to fiddle while the free enterprise system itself burns. It is an unacceptable choice. That is why countries that engage in anti-competitive market distortions must be confronted in a more meaningful way using existing trade tools as well as newer tools that in some cases, tarifficate the level of distortion in the foreign market and thus restore the free competition costs base between competing firms. On such a basis, there is no question that American firms can win in the global market place. But we face an existential threat to the free market system in the form of state-led capitalism and economic development that will engulf our system if we do nothing to contain and confront it. The result will be an impoverishment of the world and a reversal of decades of progress on trade under the Bretton Woods system of the GATT and now WTO. But we must also confront the hard political reality that there are some countries who would willingly trade a lower global GDP for a higher percentage of it for their national champions. This is zero sum thinking at its worst.

Our own regulatory system, as well as that of other countries must be pro-competitive in nature. It must promote competition on the merits, not thwart or distort it. We can only do this by ensuring that we promote competition among global supply chains, and we ensure that we are vested into the expansion of global GDP. A free and competitive America will take more than its fair share of that expanded global GDP, and that increase will translate into more jobs, and lower our unemployment rate. To do anything else will ultimately lead to job loss and spiraling unemployment rates.

But ensuring a pro-competitive regulatory system does not mean that there is no governmental role. Clearly, in order to ensure that free market competition prevails, we need to have competition agencies, such as the Federal Trade Commission to rein in anti-competitive activities by both government and the private sector. We need sectoral regulators, as well as financial services regulators to ensure that competition is not distorted. These regulators themselves must conduct their business in accordance with the notion of competition policy as an organizing economic principle.

The Securities and Exchange Commission (SEC), for instance, plays a vital role in protecting individual and institutional investors, who rely on the accuracy of corporate financial disclosures when making investment decisions. By requiring public firms and firms that are about to go public to accurately disclose financial information, and by bringing enforcement actions against

violators, the SEC preserves the integrity of the financial markets, which are the arteries of our modern free enterprise system.

However, we must be vigilant to ensure that regulatory agencies like the SEC do not stray from their mission of promoting competition and free enterprise by imposing unnecessarily burdensome regulations, or worse, strengthening the forces that are hostile to the free market system. We have seen this of late with Sarbanes-Oxley and Dodd-Frank.

Many other regulators tend over-regulate inflicting welfare damage for no discernible benefit. For example, the Environmental Protection Agency (EPA) has recently enacted numerous regulations – such as the Endangerment Finding – that cost the U.S. economy billions of dollars, for little or no appreciable benefit, despite its obligation to justify its regulations by cost-benefit analysis. Although the EPA does have a useful role in protecting the U.S. from environmental externalities (which can have real consumer welfare costs), such agencies are often run by overzealous regulators with little or no conception of how their policies effect overall consumer welfare. More needs to be done to compel agencies like the EPA to view their mandate in the context of protecting the free enterprise system, rather than solely promoting environmentalism (or any other agency interest) as an end in itself. Every agency of government no matter what its regulatory function should consider competition as part of its overall mandate, and should refrain from regulating in ways that are more anti-competitive than necessary to achieve a regulatory goal. We need to bring competition and all its gains into the heart of the regulatory process.

Property Rights Protection

Government must use its power to protect the property rights of individuals. In the 21st century this means that it must also use its power to protect intellectual property rights. It is interesting that our founding fathers only used the word “right” once in the constitution. And that was in connection with intellectual property rights. They recognized the fundamental importance of protecting the expression of ideas and the hard work of inventors. They understood that this constituted property, just as real as if you could touch and feel it. Indeed in many ways this type of intangible property required even stronger protection as if it was stolen, it could not be returned as it was already out into the public domain.

Right to Life

The protection of a citizen’s life is one of the primordial tasks of government and it is in this area that government must be strong. And in order to ensure that its citizens’ lives are protected in this globalized world requires the government to take an active role in the national defense. National defense in turn means prosecuting actions in foreign jurisdictions in order to ensure safety in a way that was simply not the case when foreign threats were more easily contained. But now, when foreign threats can morph in to very real and present security risks for US citizens in a matter of minutes if not seconds, and where actors are transnational, there is simply no alternative if a government is to provide for the national defense but to take necessary actions in foreign jurisdictions.

Rights and Privileges

We have set out a narrow view of what constitutes rights. All else is in the realm of privilege. Generally private sector competition can satisfy the multitude of human needs that fall under this category. And that is the heart of the capitalist system, that the free market can best satisfy human needs. By allocating resources efficiently, we can ensure that more of these needs can be properly met. This is true for healthcare, food, and a whole variety of things that are essential for human survival but nevertheless do not constitute rights as laid out in the constitution. Indeed the best way of meeting human needs (which are distinct from rights) is to allow the free market to increase the supply as a result of increasing efficiency and innovation in production. Government distortion or restraints in these markets will lead to less innovation and less supply eroding the overall ability of producers to satisfy human needs. When rights are confused with needs, we risk distorting competition and the market, and hurting the very people we are trying to help. In assessing what government power is acceptable, we must be very careful to properly distinguish between rights, needs and privileges. Only in the former area is a government role necessary.

The Practical Application of the Concept of Economic Liberty

Applying these theoretical principles discussed above to the modern world, the following is a discussion of the present reality, providing several examples of the benefits economic liberty has conferred.

For example, the freedom to establish an Apple Computers or a Google or a Facebook has not only created thousands of jobs in the high tech sector, it has greatly expanded the scope of advertising, informing consumers of products and services that would otherwise have not been sold in such quantities – quantities which spur job creation in the industries that do the advertising. Prices have also fallen due to the economies of scale and scope enabled by the freedom to start up such firms. Productivity has risen. Centralized government does not work in this fashion. For example, the postal service monopoly, unlike the Smartphone industry, has been associated with rising prices, falling quality, and lack of productivity. This has been the case with all state monopolies throughout history.

There is a related problem when government overregulates. Innovation, which creates the new markets and services that benefit consumers and social welfare overall, suffers. Take the example of telephones. For decades the AT&T monopoly in the U.S. was tightly regulated by state and federal agencies and by an old Justice Department consent decree that precluded the company from entering any new markets. As a result, the industry stagnated. Regulation discouraged the introduction of new technologies and new services, and delayed the introduction and expansion of cellular technologies by decades, costing consumers hundreds of billions if not trillions of dollars. The procompetitive breakup of AT&T, followed in 1996 by regulatory reform legislation that opened up telecom markets and lightened the burden of regulation, led to the new products and services that have not only been a boon to consumers, but to related industries such as medical imaging, etc. Look at computers. Imagine if there had been a federal computers agency – the rate of introduction of new products and related services, e.g. PCs and laptops, would have been delayed if not totally stymied.

Certainly there is a legitimate role for regulation to ensure safety and soundness (finance) and to curb excessive external costs (pollution). But the federal (and some state governments also) government has gone well beyond that to a level of micromanagement that would have been unbelievable even a generation ago. The EPA's regulation of construction on dry patches of land that are wet one day a year (navigable waters wetlands authority), the Interior Department's refusal to approve oil pipelines that have been shown to be safe after a decade of studies, the National Labor Relations Board prohibition (subsequently reversed) on long planned factory investments in a "right to work" state, are only the tip of the regulatory iceberg. Labor, health, environmental, and tax rules impose such major impediments to small business job creation that fewer Americans are working that five years ago or 10 years ago, despite the increase in the population. The "hidden tax" of regulation has been estimated in various ways, but it is undoubtedly very high – a Heritage study puts it at \$1.4 trillion a year. The U.S. has fallen down the list of "most economically free" economies as the toll of regulation has risen.

What does this mean? Fewer jobs for average Americans. Smaller paychecks. And most fundamentally, less economic freedom – less freedom to choose an appropriate insurance policy, to build or modify a house on land that may be subject to EPA regulations, to start a new business. America grew and thrived under conditions of greater economic freedom. Until recent years, there was no question that America's economic freedom and growth potential was greater than Europe's, a continent with high levels of permanent unemployment and chronically high labor unrest.

Changing these bad policies would not mean a lack of compassion for the poor. Indeed, to the contrary, when economies stagnate due to increasing government burdens, job opportunities and tax rolls shrink and underemployment (including workers who are too discouraged to look for work) rises. In contrast, greater economic growth reduces poverty by creating new job opportunities and by encouraging charitable support. Notably, America historically has had far higher rates and total amounts of charitable giving than Europe. This too could change for the worse if government regulatory and tax burdens continue to rise. Competition with its inevitable winners and losers is at the heart of free market system and those who criticize it criticize the very fabric of the free enterprise system that has made America great. To do so is to criticize the American idea itself. That idea is not about fear, and resentment, but rather hope and opportunity. Simply put, it is the freedom to dream, and to have those dreams realized.

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