



IN THE NAME OF PROTECTION

LIBERTY falters by reason of the cumulative effect of myriad little follies, each in itself relatively insignificant but in concert producing a resounding crescendo of slavery. Tiny assaults on voluntary action tend to lull us to sleep or at least inaction. No one wishes to deal with the insubstantial or the inconsequential. Nevertheless, each inroad into our freedom fuels and serves to justify succeeding constraints as mankind becomes mesmerized into acquiescence to tyranny.

Consider a case in point: An impending attack upon a proposal to return the sale of airline tickets and the conduct of the travel agency business to the marketplace. The *Oregon Motorist* (January-February,

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1984; p. 2), a bimonthly newsletter of the Oregon Section of the American Automobile Association (a cooperative of motor vehicle drivers designed to provide emergency service and tour planning) devoted three columns to the perceived "confusion and irritation" sure to follow if the Civil Aeronautics Board proceeds "with this disastrous plan" to "decontrol" the sale of airplane tickets. Under a banner headline entitled "AAA Opposes Deregulation Plan Threatening Air Travel Convenience," the Oregon AAA staff warned that "this order will mean that virtually anyone can operate a travel agency or dispense airline tickets . . . without the current safeguards" provided by protective law.

The astonishment displayed in the article at the very thought of an unplanned and uncontrolled market

enterprise sadly reminds the reader of the depths of our descent into the miasma of socialism. What, pray tell, is so perturbing about the belief that any individual—even a person uncertified or unaccredited (whatever that entails) by the state—might provide a service of planning travel adventures and selling tickets to the general public? The article parades additional horrors, such as “more complicated air travel,” “higher fares,” and “more complex ticketing procedures.”

Had the writer studied history in place of polemics, he might have discovered that just the opposite results will occur: Free market entry produces more numerous competitors, each striving to offer the most favorable and efficient services at the lowest possible cost consistent with profitability; the providers who best serve the subjective requirements of the user survive, only to be challenged by other, more innovative men and women who create yet better, more expeditious, less costly service. In place of the perceived complexity and high price, removal of regulatory bars will mandate simpler service at a cheaper cost.

Frederic Bastiat taught us of “the seen and the unseen” effects of governmental slavery; unfortunately, those who pen and publish the *Oregon Motorist* have failed to learn these lessons of history; the tragedy is not so much that they are thus

condemned to repeat the mistakes of the past, but that we who are unwilling bystanders must be swept along with the tide of collectivism.

Voluntarism versus Coercive Regulation and Control

History contains countless examples of private, voluntary response in solution of surmised complexities of commercial interaction. Shipping in the late Middle Ages proffered the prospects of great reward and cataclysmic loss; a gaggle of young creative entrepreneurs who gathered for morning discussion and sustenance at Lloyd’s Coffee House happened upon the method of taking shares of the possibilities of cargo gain or loss in order to diffuse these extensive risks; from this unsculpted beginning arose Lloyd’s of London and its many imitators in the marine insurance field. Similar examples abound, private and voluntary bank clearing houses for the rapid conduct of commercial practice premised upon negotiable instruments and private guaranteed delivery/courier systems, to name but two of many.

Unseen results of compulsion probe more deeply into the fabric of human freedom. Regulation proves to be a useless, fruitless, and worthless pursuit. It shuts out new ideas while consuming countless hours and endless energy, all for naught. The oppressor loses almost as much

liberty as the serf. Regulation presupposes regulators, those who decree, those who police, and those who adjudicate controls. Each person in the dictatorship thus created devotes substantial time to destructive, noncreative endeavors.

More pertinently, the regulator not only loses his opportunity to exercise his force creatively (and perhaps some measure of his self-respect) but also forgoes the chance to benefit from the creative results of human action which he and his fellow social planners have delayed, denied, or destroyed. In addition, few barriers effectively stymie determined citizens who wish to avoid them. Free men and women are risk-takers, and mankind blessed with an idea may very well escape the monitors by fitting into the interstices of the law or by dwelling in grey or black markets, although at the cost of the waste of vital energy, creativity and morality on the part of both producer and traducer.

Another curious factor perturbs one dedicated to liberty when a clamor arises for government protection. Presumably, unaccredited vendors of airline tickets will occasion excessive charges and great complications in the travel industry. Why? Presumably, because mankind lacks the capability of self-control, decent conduct and effective action. If so, how choose we the regulators? Does some feature of char-

acter set them apart from those to be regimented?

I have looked in vain for lo these many years for particular indicia or noteworthy traits enabling me to discover the ideal social planner or assumed public benefactor. I find none. Were I unkind, I might remark that certain tendencies do characterize persons who seek and secure employment in government and that I do not find these hallmarks particularly laudatory. In all fairness, however, one must submit that state servants, by and large, resemble the rest of the citizenry—marked by wens and blemishes, flavored and flawed by mottled qualities of intelligence, ability and integrity—what Leonard Read might have termed “the mill run” of us all.

The Wisdom of Governors

In simple terms, the guardians or saviors who emerge to govern our business affairs are persons much like each of us, blessed with no special ability to forecast, to plan, or to decree. If confusion and complexity will result in the unregulated travel agency business, I fail to comprehend how the appointment of an overseer lacking in any particular ability will improve our lot.

Moreover, the AAA plea for member petition for Congressional action on the premise of disorderly markets ignores the very real existence

of Dr. F. A. Hayek's seminal concept of spontaneous order developed by the unconstrained market. Adam Smith long ago noted that spontaneity of order follows from the works of the "invisible hand" which harmonizes the multitude of subjective values in a marketplace not partial to the poor nor deferential to the mighty (Leviticus 19:15). Order will transcend from removal of regulatory bindings, an order bereft of little dynasties necessarily conducted with the advent of control.

A further matter deserves attention. Many illiberal intrusions develop from a benevolent but inaccurate motivation that purchasers of goods or services must be "protected" against an array of posited evils. Ofttimes, these dire results are not delineated at all or, at best, are garbed with confusing and ambiguous dress. I suggest that most if not all of these imagined consequences fall under one of the three great heads of Anglo-American equity jurisprudence: Fraud, duress, and mistake. Traditionally, if the common law did not afford relief from some action arising in one of these categories, the chancellor at equity would do so, in order to prevent injustice. Apparently, in muddled form, that quaint jurisprudential theory undergirds the interventionism of our age.

Sound analysis renders it imperative to engage in two interrelated

differentiations: (1) Between fraud and duress on the one hand, and mistake on the other; and (2) between prior restraint and post-conduct sanctions. cursory consideration reveals the defects of reasoning which plague us today in the vast array of regulations contorting our conduct.

First, few will dispute that man should not be permitted to prey upon another by initiating aggression. Coercive action—state or individual—remains anathema to most moral creatures. Society cannot long tolerate unrestricted fraud and duress because tradition and sensible rules of consensus morality, if nothing more, apprise us of the inherent evil. However, the state should be chary of intrusion to prevent or "right" a mistake (unless induced by misrepresentation) because the very concept of mistake arises from a subjective value judgment both on the part of the actor and on the part of the observer.

Self-Responsibility

Conventional wisdom often proves unwise; an apparent error may induce a desirable result. In any case, an individual should not be allowed to shunt the consequences of his voluntary choice onto the shoulders of another person (or society) merely because he forecast poorly and failed to achieve his desired result. If regulation alleviates

fraud and duress, it merits acceptance (subject to my second *caveat*); if it seeks to correct individual mistakes, however, it should be expunged from the books.

Second, ponder and differentiate between prior restraint and post-conduct sanction. I have treated the subject at length elsewhere (*The Freeman*, October 1981, "Prior Restraint") and thus pause only to observe that prior restraint—a common tool of traditional courts of equity (e.g., specific performance and injunctive relief)—deserves but a limited place in our world of action. In the absence of serious and unquestionably malevolent consequences, it works far better to permit creative human action to flow freely, allowing one actually damaged by improper conduct after the fact to seek legal redress. Human beings, being finite and fallible, possess analytic abilities better suited to assess causality and harm *after the fact* than with prescience. Prior restraint contains too great a chance of forever annihilating conduct and results of positive merit.

As the magnificent historian Richard Weaver chronicled, ideas do have consequences. Man is a moral creature, ultimately responsible for

his actions and for the results of his behavior. Thus, each individual must bear the ethical burden both for the idea he espouses and for the consequences which ensue: The adoption of those ideas into hardened law or practice and the effect of those ideas upon subsequent deportment of other men and women. Like it or not, we are accountable, now and hereafter, for our handiwork, and we cannot ameliorate our responsibility by acting as a voluntary or cooperating adjunct to a team, a staff, a mob, or an electorate.

The state consists of those who partake of the power and of the beneficiaries of that coercive body. The state cannot create rights, but it can destroy them. The state cannot create wealth, but it can destroy it. The state cannot create life, but it can destroy it. The state cannot create moral conduct, but it can destroy it. All of these untoward events can occur only if the individuals within the state permit it to pervert the law. We who allow petty little irrationalities—restriction of market entry to purveyors of airplane tickets—with applause or without a whimper in the name of protection, stand accused. ⊕

Italian Lemonade



THE TASTE of Italian lemonade. . . . How can one describe it? Can't be done! For Italian lemonade to be at its best, it takes more than the right blend of ice, sugars and fruit chunks. And I don't agree with the so-called experts who say it has something to do with perfecting the right ice crystallization techniques.

Surely, these are relevant technical factors, but I think there is more to it than meets the eye or, for that matter, the taste buds. It has something to do with the environment. That's right—slurping on Italian lemonade is an aesthetic experience. I think that is the reason why Italian lemonade in California never tasted as good to me as the Chicago variety.

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There is something about the late afternoon on a particularly hot and muggy summer day in Chicago. Just when your body feels most ravaged by the effects of the humidity and your legs feel like they are ready to buckle, the humidity lets up and a faint balmy breeze begins to blow in from Lake Michigan. It was at that moment, I found, that Italian lemonade tasted the best. As the cooling flavors of the lemonade invaded the senses, the body's natural rhythm and flow seemed to be restored. It even seemed to help release the grip of the malaise that typically affected Chicagoans during the most severe of summer "scorchers."

No better lemonade could be found than that made by Bella Ciozia in that part of Chicago known as Little Italy. Not only did all technical aspects of her lemonade rate a