Viewpoint

Jeane Kirkpatrick

Regulation, Liberty, and Equality

LIKE MOST human activities, government regulation is usually prompted by the best of motives. Perhaps the commonest of these is the desire to aid the weak, the poor, and the downtrodden by providing a more equal distribution of money, influence, education, leisure, health care, and other values. To this end, the power of government is used to distribute the good things of life more evenly than unregulated interactions could. But because regulation uses the coercive power of government to alter outcomes, it diminishes the liberty of persons who are persuaded by the threat of sanctions to act differently than they would otherwise prefer.

The resulting tension between liberty and equality is not only a central feature of the welfare state but is a permanent characteristic of the values themselves, and of democratic government. Although it has become commonplace in our times to hold that equality can be achieved only at the expense of liberty and that liberty can be preserved without concern for equality, I argue that liberty and equality are compatible, mutually reinforcing values which can and, in fact, must exist and grow together. The existential relations between them hold important lessons for liberals and conservatives alike, and especially for policy makers who make the rules that endanger and/or enhance our freedom.

Should a discussion of liberty and equality seem remote from everyday concerns, it is only necessary to call to mind the myriad of rules—now abolishing a boys choir, now busing children across Boston, now raising the minimum wage, now calling for portable toilets in cornfields—which both limit and expand our alternatives. Since governments enforce their rules with severe sanctions (such as the loss of property, freedom, or even life), government involvement in an aspect of social life always introduces powerful constraints into whatever interactions it seeks to affect. Wherever government regulates, it supplants the judgment and preferences of private individuals with its own judgment, backed by its unique authority and coercive power.

Jeane Kirkpatrick, formerly a professor of government at Georgetown University, is a resident scholar at the American Enterprise Institute.

Constraints on Freedom. Believing that liberty and the public interest were better served by leaving decisions to private individuals, classical liberalism—a doctrine associated with the names of John Locke, Jeremy Bentham, David Ricardo, and James and John Stuart Mill—emphasized individual freedom, especially freedom from government. It stressed individual rights in the political sphere and individual initiative in economic activity. It was more concerned with the production than with the distribution of goods. It did not doubt that men and societies were happier and more productive when not constrained by the "dead hand of government."

The problem with this conception of the relation between liberty and government is, of course, that *government is not the only source of constraints on human freedom.* By the time he wrote his essays *On Liberty* and *On the Subjection of Women,* John Stuart Mill had come to believe that social pressure and prejudice could be a greater threat to liberty than government action. Marx, Proudhon, Godwin (to name just three critics of classical liberalism) disagreed about many things but were one in emphasizing economic constraints on human freedom. Wherein, they demanded, was the freedom of a worker forced by need and sub-

sistence wages to send his children into mines and factories, to work long hours at grueling labor until he died? A famous jingle made the point:

> The golf course is so near the mill
> That almost every day
> Little children at their work
> Can watch the men at play.

T. H. Green and his successors spelled out a notion of positive government that focused attention on the possibilities of using government to expand liberty. Government action, they argued, could increase the freedom of working children and their mothers and fathers by regulating wages, hours, and working conditions. The concomitant restrictions on employers' freedom of contract did not seem too high a price to pay. The result of this approach was welfare state liberalism, which augments the commitment to individual liberty with an emphasis on freedom from certain types of economic hardships. This orientation (which merges imperceptibly into social democracy) promises minimum levels of economic well-being for all, expects that these can be achieved by intelligent use of government's powers, and affirms that this can be accomplished without sacrificing individual civil liberties. Welfare state liberalism has very nearly preempted the politics of the Western European and Anglo-Saxon democracies since World War II.

The same type of argument that spawned the welfare state is now being used to support a new expansion of government's regulatory powers. This time, social rather than economic deprivation is the target: government is called on to offset disadvantages of sex, race, and age.

With only a bit of oversimplification, it can be said that in the United States (and elsewhere) eighteenth-century liberalism gave priority to political equality as well as political freedom; that the liberalism dominant from the late nineteenth century down to roughly 1965 sought a degree of economic equality in addition to political freedom and political equality; and that beginning some time in the late sixties American liberalism shifted its focus to incorporate a new emphasis on social equality. Universal suffrage is the most important institutional expression of political equality; social security is a typical programmatic expression of the search for greater economic equality; busing and affirmative action are quintessential expressions of the search for greater social equality.

Some commentators explain the evolution of liberalism as a reflection of the progressive triumph of equality over liberty. Proponents of this explanation frequently cite the classical liberals as the only ones *truly* committed to liberty and see that which has come after as the progressive adulteration of this commitment by notions of equality. In fact, however, a commitment to both liberty and equality is present in classical and welfare state liberalism and also in their characteristic institutional embodiment—the liberal or democratic state. The importance of equality to classical liberalism is often not adequately appreciated. Equality under the law—including guarantees of due process, equal protection, and a single system of courts—was an integral part of the classical liberal tradition. So was political equality. Though the utilitarians did not call for one man/one vote, they saw each man as the best judge of his own interests and called for an extended suffrage and popular sovereignty. And, of course, the principle of utility itself is thoroughly egalitarian. Policies are to be judged by their capacity to secure the greatest good for the greatest number. In this calculation, each person's happiness is equal to that of every other.

Welfare state liberalism and social democracy incorporated the classical liberal's emphasis on individual liberty and individual rights. They did not supplant it, but added to it a further egalitarian thrust. Freedom from severe economic and social deprivation was sought for all; providing the basic elements of the good life—hot lunches, old-age pensions, education, medical and dental care—became a major goal of public policy.

In classical and welfare state liberalism, and in the as yet unnamed contemporary counterpart, the concern for equality is identical with the commitment to the widest possible sharing of some freedom.

Equality, then, is present and important in the American (and Western) liberal tradition and in the liberal democratic state. But it is never all important, and it is never sought as an absolute. Contemporary democratic welfare states—Britain, France, the German Federal Republic, the Scandinavian countries, Canada,

Australia, New Zealand, the United States, and elsewhere—preserve free speech, press, religion, due process, and related limits on government's power to regulate the lives of citizens.

Because it insists on maintaining basic liberties for all at the same time that it extends the freedom of some (the hitherto disenfranchised, destitute, and despised), the contemporary democratic welfare state—sometimes known as "bourgeois democracy"—demonstrates that it is possible to use government's regulatory power to expand liberty as well as to serve egalitarian goals.

Equality versus Liberty? The democratic welfare state's continued emphasis on the liberty of the individual sharply distinguishes it from a related but very different ideology whose principal goal is the destruction of the capitalist system in favor of a state-owned and controlled economy. I call this *progressiste* liberalism because it is usually associated with a linear conception of history and its adherents see movement toward their goals not merely as desirable but as "progressive."

While liberty and equality coexist as irreducible values of classical and welfare state liberalism, *progressiste* liberalism gives clear priority to equality over liberty, economics over politics. Both classical and welfare state liberalism postulate a necessary link between the political and economic spheres—on grounds that political liberty is integrally connected with economic freedom and that popular control of government depends on wide dispersion of economic as well as social and political power. *Progressism* affirms in theory and practice not only that economic equality can be achieved in the absence of political liberty, but that liberty may be — and often is — an impediment to the achievement of equality which must be sacrificed or "postponed" for the sake of securing economic "democracy." This notion, that liberty and equality are or may be incompatible values, is widely held and is, of course, a familiar justification for tyranny in many new nations and so-called socialist states where the rhetoric of progress is invoked to justify the seizure of power by small groups of middle class revolutionaries.*

The belief that liberty and equality are ultimately incompatible is familiar enough. Long before busing, affirmative action, quotas, or ERA, long before Lenin and his colleagues had decided that a free press, free assembly, and free elections endangered "the revolution," Alexis de Tocqueville and J. S. Mill (among others) had expressed their concern lest the egalitarian passions of mass democracy overwhelm individual liberties. The conviction that any effort to neutralize natural inequalities would entail stifling the opportunity for individuals (especially gifted individuals) to develop their potential and exercise their powers was elaborated in the theory of mass society whose proponents see egalitarianism as one of a number of modern social and intellectual forces that tend to level distinctions, eliminate diversity, and produce a society which breeds and tolerates only mediocrity and conformity.

Reflection and experience confirm that pushed to their respective extremes, liberty and equality are indeed incompatible. But not only is the immoderate pursuit of liberty incompatible with preserving basic equalities, and the immoderate pursuit of equality incompatible with preserving individual liberties, the single minded pursuit of *either* of these values results in its negation. In a society that values only individual freedom, the weak are victimized by the strong, the less bright by the more bright, the poor by the rich, the ordinary by the talented. But that is not all. As Camus has argued, the "most extreme form of freedom" is "the freedom to kill." "Pure" freedom results only in a condition of Hobbesian anarchy in which all are slaves to insecurity. The same logic of extremism governs the pursuit of equality. Pushed zealously and exclusively enough, the effort to maximize equality—to neutralize the effects of natural inequalities of brains, beauty, talent, strength, and so forth—results in extreme inequality. The society in which a ruthlessly determined effort is made to control the effects of natural inequality will not only be an unfree society. It will also turn out to be one governed by a maximum tyrant—a Robespierre, a Mao, a Castro—who, in addition to having more power than anyone else, will also enjoy better housing, medical care, vacations, work-

* Other versions of *progressiste* politics simply redefine liberty so that, instead of denoting the capacity of individuals to make choices and act upon them, it becomes an attribute of a collectivity (for example, the proletariat) and is manifested in the power position of an elite, which acts in the name of that collectivity.

ing conditions, personal security, and so forth. As Orwell understood, when rulers are fully determined to make all animals equal, some animals turn out to be more equal than others.

The fact that liberty and equality can be maximized only through moderation explains the relationship between utopia and tyranny, between extremism and nihilism—and illuminates the irreducible importance of prudential judgment to politics and statecraft. This point may be summed up by noting that extremism in the pursuit of justice (or any other political value) *is* a vice; and moderation in the defense of liberty (or any other political value) *is* a virtue. The modern age has illustrated in blood and terror the priority of the "dull" virtues—moderation, prudence, restraint—to humane government, and confirmed thereby the insights of Aristotle, Polybius, and Montesquieu into the need for a "mixed" constitution in which no one principle or portion of society can prevail utterly.

Liberty and equality are no more incompatible, then, than liberty is incompatible with itself, or equality with itself. And the dynamics of extremism ensure that the same restraint and prudence required to pursue simultaneously the goals of liberty and equality are required to prevent the pursuit of either from ending in its own negation. Though these goals are incompatible in the abstract, in the real world it turns out that those countries which value both achieve the most of each, perhaps because their simultaneous pursuit works to ensure that neither will be pushed to its extreme. Those countries whose citizens have least liberty are most likely to have privileged classes who get the most of whatever there is to get, along with a closed system that effectively prevents the wider sharing of values; while in those countries where citizens enjoy the widest freedom, ordinary people use collective bargaining and politics to get an increasing share of income, education, leisure, health care, and other available goods. *However bothersome in the abstract, the tensions between liberty and equality prove salutary in practice.* The institutions of "liberal" or "bourgeois" democracy embody a commitment to both. Support for these institutions is a natural expression of classical and welfare state liberalism; *progressiste* hostility to them reflects the profound opposition between these perspectives.

The fact that liberty and equality are complementary and reinforcing values has several implications for preserving and extending them in the present context. The first and most important implication is that since liberty and equality are reinforcing values which are already embodied in our political institutions, it is reasonable for Americans to cling to both and to stubbornly refuse to choose between them. However, the delicate, sometimes subtle, interactions between liberty and equality make it important that programs seeking to maximize either value be neither automatically supported nor automatically opposed, but be scrutinized for their effects on the other. Court-ordered busing and HEW edicts against boys choirs, for example, might be rejected on grounds that their cost to individual liberty is unacceptable; and policies that allocate goods without regard to the cost in human suffering or the uneven advantages of those involved may be rejected on grounds that the affront to equality is too high a price to pay for the liberties involved.

Regulation versus Liberty? Government regulation can be used to extend liberty, but its capacity for stifling liberty is also ever present. Universal suffrage diminishes the liberty of traditional elites to pursue whatever policies they choose and extends the freedom of everyone else. Progressive taxation restricts the liberty of those with large incomes to dispose of their goods, but, through "welfare" and related payments, these funds free less prosperous citizens from extreme deprivation and insecurity. Affirmative action programs restrict the freedom of, say, contractors working for the government to hire whomever they please, but augment the freedom of others to find employment in otherwise inaccessible fields. Let us be clear, however, that government action does not necessarily enhance the liberty of the many at the expense of the few. In some cases —say, court-ordered busing—the reverse may occur.

A second implication of this analysis is that the pursuit of absolute liberty or equality must be entirely eschewed, less because it is doomed to fail than because the very effort endangers both values. Here again, the perfect is the enemy of the good, the expectation of perfection encourages the devaluation of imperfect but real goods.

The success of the liberal democracies in pursuing both liberty and equality is directly and necessarily related to the essential moderation of their goals. Political equality as conceived in liberal theory and practice did not require the destruction of leadership or the creation of a republic in which no one exercised more influence over political events than any other. It looked, instead, toward giving all adults at least a minimum "voice" in the decision about who should rule and to what ends. The egalitarian thrust in the economic sphere has aimed not at equal distribution of goods but at providing a minimum of income and security for all; and the current demand for wider sharing of social and cultural advantages does not aim at creating absolute equality, but at ensuring some minimum social and cultural advantages for all. The liberal egalitarian thrust, in sum, has been essentially and crucially moderate. Its goal has not been anarchism but political democracy, not communism but the welfare state, not a republic of equals but one in which all are accorded a minimum of well-being, status, income, and power.

Abandonment of pursuit of the absolute faces us squarely with the prospect not only of living in, but of choosing among, imperfect institutions and relative goods. This leads, I think, to heightened appreciation of the present. As Martin Diamond emphasized, "We must learn to face the truth no matter how pleasant it may be." The pleasant truth is that relatively high levels of individual freedom and a significant degree of social and political equality already exist in this society and that these can be both enjoyed and used in further political efforts. This gives liberals as well as conservatives a vested interest in the status quo which, like all vested interests, must be defended.

Two other aspects of the relations among liberty, equality, and government regulation should be noted. Both concern the cumulative effects of government action. Because each extension of government's activities carries with it government's coercive power, the cumulative impact of regulation may be to saturate a sphere of activity with coercion. By surrounding persons who are active in a given sphere with proscriptions, prescriptions, and threats of severe penalties, government regulation may so alter the possibilities for activity, and so diminish the freedom of participants, as to transform the character of the activity and the kind of person attracted to it. Another unintended consequence of government regulation is also important. Whatever its specific goal, regulation also has the effect of expanding the power of the public sector and the number of persons operating in it. The progressive transfer of power from the private to the public sector and the creation of an influential group of professionals who have a vested interest in the extension of the public sector entail risk to both liberty and equality. It is not just that power corrupts, but that bureaucrats as well as others are corruptible. The consequences for liberty and equality of a progressive concentration of power in government are very different than the consequences of any single act of regulation.

Because their effects cannot be factored into the consideration of any single policy, these cumulative risks remind us of the limits of prescience. The use of government to secure the ordered sharing of liberties is based on the belief that such wider sharing is desirable and, also, on the belief that it is possible to foresee and control the effects of government's policies. This assumption, that it is possible to achieve desired social goals through the deliberate manipulations of incentives (such as taxes, fines, imprisonment), is the intellectual cornerstone of contemporary government regulation. But our experience, and that of such other nations as Great Britain, is filled with cautionary tales reminding us that social forecasting, like social control, remains—yes—primitive.

The pursuit of liberty, equality, and most social values is not necessarily a zero-sum game that features a fixed quantity of some indivisible good of such nature that a larger share for one results in a smaller for another. The structure of medical education in the United States and abroad, for example, suggests that the Bakke case is an unnecessary kind of social conflict based on an artificial scarcity that drives qualified young Americans (black and white) abroad to study medicine and fills our hospitals with physicians who cannot speak English. However, that case also illustrates that, *in undertaking the use of power to enhance freedom or equality, modesty and caution are surely the appropriate posture*—because, as social engineers, we have a lot to be modest and cautious about. ■