Laissez Partir
The Borders of Freedom

Charles Fried

THE SOVIET UNION has treated us recently to several lectures about the sanctity of its borders. You never would have guessed that the focus of the communist bloc's particular effort is keeping people *in;* it is the United States that has a problem about keeping people out. This touchiness of tyrannical governments about people and things leaving was first noticed by Benjamin Constant, the author of *Adolphe* and lover of Madame de Staël, who lived through the Enlightenment, the French Revolution, Napoleon, and into the Bourbon Restoration. He got it just right in his distinction between the liberty of the ancients and the liberty of the moderns. For the ancients, liberty meant a political community not subject to external domination; but the liberty of the moderns is the liberty of an individual to make a life for himself free from the control of *any* political community. Constant's experiences led him to conclude that a man is not necessarily freer if he is tyrannized by one of his own compatriots or even by the mass of them.

Constant's description of tyranny and its pretensions—particularly its pretensions to speak in the name of the people—is remarkably fresh. So is his observation that the liberty of the moderns—true liberty—has become possible by the substitution of wealth in money for wealth in land. He knew whereof he spoke when he pointed out how a modern dissident can more easily escape the tyrant's grasp by slipping over a border with a nest egg in his pocket. This observation was not merely historical; the very portability of wealth was at once a guarantor of individual liberty and a limit of a tyrant's reach.

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Constant was a shrewd man. Experience has shown that exit has always been the last resort of the individual against tyranny—collective and noncollective. And the degree of rage with which authority reacts to those who would escape its grasp is a particularly sensitive barometer of the liberality of a regime. That point is made in its most extreme form at the Berlin Wall. Why is it that East Germany, Czechoslovakia, and the Soviet Union are so fiercely determined to bar the exits of their societies, while even such miserable regimes as those of South Africa and Chile could not care less who leaves, though both put severe restrictions on the flight of capital, thus giving a measure of their lack of confidence in their own futures? There is something about communist ideology that is peculiarly threatened by the thought that individuals might escape its authority. Is it their nightmare that maybe everybody would leave? There is something about the turned back, the retreating footstep that is a profound denial of the claim to control, the claim that makes tyranny possible. (In this respect, as others, Castro is a bit of a maverick.)

THOUGH THE CINDER-BLOCK WALL, double barbed wire fence with the strip of land, plowed and mined in between, are extreme cases, more attenuated but still recognizable versions of the mentality behind them can be discerned among bureaucrats, social planners, and collectivists on the other side of the Iron Curtain as well. The manifestations are more subtle, the justifications more plausible. Consider President Mitterrand's action forbidding Frenchmen to take more than $350 a year out of their country. There are, I suppose, many things to be said for and against such a move, but through the tangle of the technical controversy I discern the frustrated planner's reflex: to bar the exits to those who show their backs to the great socialist experiment.

Surely I am exaggerating. After all, the only thing at stake is a holiday on the Costa Brava. Students, scholars, businessmen, and anyone with a friend abroad to put him up can still leave. But exchange controls are a way of locking the exits. They are a way of discouraging people from voting with their feet—in this case voting with their pockets. It is, of course, a far greater offense to make the very person the prisoner of someone's dream for the community. But as Constant noted, for most people who do not have a unique and transportable talent, money represents the concrete expression of their effort, talent, and good luck. To hold a man's money in while letting his person out seems liberal principally to the intellectual who imagines that he carries his fortune in his head. For most people, however, what they have earned is in some sense the precipitate of who they are and have been.

This same door-closing reflex has been at work in the United States as well. Remember it was a desperate Lyndon Johnson who sought to trick the economy as he had tricked the Congress by hiding the costs of his war; it was he who brought the first shadow of exchange controls to postwar America, the first attempt to discourage the export of capital—to lock the exits. It is striking that the same political motivations that led to closing the economic door were also the cause of perhaps the only set of political refugees to flee America in our recent history—those seeking to avoid fighting in the Vietnam War.

Our own political scene displays other exit-locking reflexes, clearly the response by dismayed politicians to the flight response of those who do not like what the welfare state has accomplished. Several years ago the Episcopal Bishop of New York inveighed in tones of moral outrage against corporations' removing their corporate headquarters across the border to Connecticut or New Jersey in order to escape to lower levels of taxation and higher levels of amenity. And proposals have been floated in a number of states to postpone or bar plant closings. You know the arguments—they all have to do with refusing to share the burdens now that the advantages had diminished; they talk about the subsidies that the "runaway" firm has enjoyed, the debt that it refuses to pay. Arguments, like people, can in part be judged by the company they keep. And it is just these arguments that are used by the Soviets to prevent emigration, and by the Rumanians, who levy an impossibly high fee on those seeking to emigrate.

The point is that neither individuals nor businesses leave their homes lightly. It is a decision that involves disruption, but also the hope for a new start, a new way of doing things. And it expresses exasperation—exasperation with a community hostile to the realization of one's plans. The exit option is a way of bringing in novelty, fresh starts, adventure, and the unexpected. It is also the ultimate rejection of collective authority, the ultimate gesture of a free man. (For Seneca the exit option of suicide represented the last available assertion of individuality.)

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This is why the exit option infuriates the authorities it flouts. It is infuriating symbolically; but it is dangerous practically as well. It demonstrates that there is, after all, always a judgment on authority, that even collectivities are not ultimate, and that if everyone leaves there is no longer anyone whom they collect. To be sure, it is often the more adventurous, the better endowed, the healthier, the more talented, the more spirited who leave. There is, indeed, something callous and selfish in this.

But it is also the ultimate response to an excessive egalitarianism. It is the response which shows that enforced egalitarianism is a prescription for misery. And just because it is the sharpest weapon against egalitarianism, it is the one that invokes the greatest fury.

Last year the Supreme Court had before it the constitutionality of the so-called unitary tax. The Constitution forbids states from taxing interstate commerce. They may only tax that portion of a business and those assets within their boundaries. Firms have responded by deploying their subdivisions so as to have as few assets and as little profit as possible in states with high levels of taxation. There are important limits to such a strategy. If one does a lot of business just in California and New York because that is where the customers are, then obviously it is not worth trying to do business somewhere else in order to avoid high levels of taxation in those states. And if Massachusetts is a splendid place to locate a factory, then this may outweigh the very high levels of property taxation in that state—although New Hampshire is very close by. The unitary tax (which the Court found constitutional) alters these calculations by giving the state a chunk of worldwide profits measured by the relative presence of the business in that state. Thus a business with one big, fat, money-losing division in state x must pay taxes to state x on the profits it makes all over the world, as measured by its payroll and assets in that state. The issue is impossibly technical, and it is hard to see any absolute right or wrong in it. It is the reflex that counts. And the reflex is one that seeks to deprive enterprise of the advantages of mobility and to extend the reach and cost of social schemes to those who do not consider them worthwhile, and are willing to vote with their feet to prove it. [For further details, see "State Taxes and Federal Dilemmas," Perspectives, *Regulation,* May/June 1982.]

FAR MORE down-to-earth is President Reagan's proposal for private school tuition tax credits. Unlike Great Britain, private schools in this country are by no means engines of social stratification. The overwhelming proportion of private education in this country takes place in church-related, particularly Roman Catholic, primary and secondary schools. There is no great social difference between the children who go to those schools and those who go to public schools. Nor have Catholic schools shown any disposition to serve as a cover-up for segregationist impulses. The vast majority of those who make a very great sacrifice to send their children to private schools do so because they seek an alternative to what seems to them the indiscipline and lack of concern for basics which have become the hallmark of so many urban public school systems. Chronic troublemakers can be expelled from private schools. Teachers' unions have no power at all to prevent hiring, assignment, and promotion on the basis of merit. The unholy alliance of third-rate local politicians, powerful unions, and organized pressure groups holds no sway.

It is the exit option par excellence, and it infuriates politicians and collectivists more than any other manifestation of that option on our national scene. For nothing shows more palpably the failure of those who have taken charge of public education than the eagerness of so many parents of modest means to make large sacrifices to escape the clutches of their schemes, programs, and tawdry political deals.

Tuition tax credits would make the exit option easier, and that is why they are so controversial. This has nothing to do with rich and poor, black and white, and the issue would still be there if the credits were denied to families above some income threshold. Saint Grottlesex and Suburban Country Day School are not the issue. It is purely a question of individual versus collective control. The fact is that many individuals are deeply dissatisfied with the public education system and with the network of union and political alliances that make it particularly hard to change. Those who would take advantage of tuition tax credits would not be escaping their fair share of community burdens, they would be escaping a bankrupt vision—a bankruptcy that its perpetrators cannot bear to admit. If large numbers of ordinary people abandoned the public schools, politicians and teachers finally might face reality and make needed improvements. And if you are inclined to say that all these parents should be forced to keep their children in the public school system and improve it from within, then remember the Rumanian Exit Tax. ■