

Chapter 4

Freedom and Progress

The best road to progress is freedom's road.

John F. Kennedy

The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impeded their efforts to obtain it.

John Stuart Mill

To cull the inestimable benefits assured by freedom of the press, it is necessary to put up with the inevitable evils springing therefrom.

Alexis de Tocqueville

Freedom is necessary to generate progress; people also value freedom as an important component of progress. This chapter will contend that both propositions are correct. Without liberty, there will be little or no progress; most people will consider an expansion in freedom as progress. Neither proposition would win universal acceptance. Some would argue that a totalitarian state can marshal the resources to generate economic growth. Many will contend that too much liberty induces libertine behavior and is destructive of society, peace, and the family.

For better or worse, the record shows that freedom has increased throughout the world over the last few centuries and especially over the last few decades. There are of course many examples of non-free, totalitarian, ruthless government on the globe, but their number has decreased and now represents a smaller proportion of the world's population. Perhaps this growth of freedom is partially responsible for the breakdown of the family and the rise in crime, described in the previous chapter. Dictators do tolerate less crime and are often very repressive of deviant sexual behavior, but, as the previous chapter reported, divorce and illegitimacy are more connected with improved income of women than with a permissive society. Moreover, the ability to rid oneself of a objectionable mate improves the well-being of the adults involved and may leave the children no worse than if they had been raised by two antagonistic parents.

A police state can also repress much crime, although no government can totally rid society of lawlessness. Democracies can also take vigorous action against crime, but protecting the innocent from government intrusion hampers the effectiveness of law enforcement. The state can make two types of errors: they can arrest, prosecute and convict an innocent individual or they can fail to arrest, prosecute or convict a guilty one. Repressive dictators typically are more willing to make the first type of error and allow the innocent to be caught up with the guilty. Elected

governments choose a legal system that weighs the rights of individuals to be free of arbitrary and unwarranted government supervision with the rights of the public to be free of fear of criminal actions. Living in a free nation does carry with it a higher level of street crime than would be permitted in most totalitarian states — although these governments often perpetuate violence against their own people.

A free society should be distinguished from a “free” or independent country, since independence means simply that the leaders of the “free” state are not subject to control by another nation. Too often in recent decades indigenous people have traded a relatively liberal, that is, a free society, but one controlled by another state, for an independent country under the control of a local tyrant, albeit a native of the territory. A dictatorial regime can govern a so called free, that is independent, country. There is nothing inherently good about independent nation states. If there were, we should all support self-determination even for the smallest political enclave. An independent nation that enslaves and impoverishes its own people may be less desirable than a colony, such as Hong Kong, whose people enjoy personal freedom and economic prosperity. Ironically, in the near future Hong Kong will be freed of colonial status but may well lose its personal freedoms in the process.

Over the last 200 years, mankind has made remarkable progress in extending personal freedoms. According to Milton Friedman (1991: 16), two centuries ago only about 1 in 23 people lived in liberal societies; today one third of the world enjoys freedom. In the years following the Second World War, political freedom has grown significantly throughout the world. Raymond Gastil, who has been compiling indices on political and civil liberties over that period for most of the countries of the world, shows (1988: 54-65) that political freedom for the period 1973 to 1987 increased in 66 countries and decreased in 36; civil liberties grew in only 45 states but declined in 54. Since that time, communism has died in the old Soviet Union and virtually all of what used to be called the East Bloc has introduced democracy and varying degrees of personal freedom. Of the communist block only Cuba, North Korea, China and parts of Indochina are still enslaved. Moreover, of those countries that are not free politically, fewer are ruthless tyrannies. Except for North Korea, Iraq, Syria, Cuba, and a few parts of Africa, even dictatorial regimes have become less repressive.

Around the world, people act as if they value liberty. The Berlin Wall symbolized the necessity for communist states to imprison their citizens and the willingness of people to give up their families, their friends, and their places of birth to flee to a free society. The public in Central and Eastern Europe welcomed the demise of communist restrictions on free speech, free press, and their own freedom to travel and to learn about the rest of the world.

Democracy and freedom are far from synonymous, but democracy requires political liberty to be effective. Chapter 5 goes into more detail about the relationship of freedom and democracy,

but typically the desire for democracy also reflects a yearning for liberty. In country after country, in Africa, Latin America, and Asia the pressure for democracy is strong. Revolutions are being carried out in virtually all continents to bring freely elected governments to lands long suffering from tyranny. As mentioned in an earlier chapter even tyrannical regimes often describe themselves as “The People’s Democratic Republic of...”, suggesting that the term “democracy” has a strong appeal for many people.

Freedom is correlated, not only with democracy, but with human satisfaction. In a major study, Ruut Veenhoven (1984: 159-163) found that the less coercion by governments, the happier the people. He also found a strong relationship between freedom of the press and happiness. Although free societies tend to be richer and therefore more satisfied with life, he reports a correlation between happiness and liberty even confining the examination to only the more affluent countries. He summarizes the relationship as follows (162): “Insofar as they are not spurious, the correlation’s must hence be interpreted as meaning that political freedom tends to add to the appreciation of life in contemporary societies.”

What is Freedom?

The freedom to speak one’s mind, to travel, to seek a better life, to own property, to employ one’s talents as one wishes are all important aspects of a better life. Liberty signifies the absence of state coercion: that is a person is legally permitted to criticize his or her government, to agitate for change in policies, to live one’s life as one wishes, or to enter any legal occupation.

Although the division is somewhat arbitrary, one can conceptually divide freedom into three types: political, social, and economic. All are important although the emphasis in recent years has been on the political and the social. Milton Friedman (1991: 5) calls the second type of freedom, human freedom, yet all of these types involve human intercourse.

Political Freedom

Political freedom concerns the rights of people to control and influence their government. Do they have the opportunity to choose their leaders? Does the law protect the rights of individuals to express their opinions freely, to petition the government, to gather together to protest or to influence officials, and to promulgate unorthodox and, perhaps to many, objectionable ideas? How responsive is the system to the views of the electorate?

Political liberty includes the basic rights of free speech, freedom of press, freedom of association. Without these rights, democratic government cannot claim to represent the views of the electorate. In most of the world these prerogatives are somewhat limited. Even in the United States, which prides itself on its freedoms embodied in the *Bill of Rights*, there have been efforts to limit both free speech and freedom of the press in the name of promoting multiculturalism and eliminating racism. Fortunately the courts and a widespread respect for liberty have struck down

most efforts. A free press may be the single most important bulwark of political freedom and democracy. As Alexis de Tocqueville wrote (1988: 191):

The more I observe the main effects of a free press, the more convinced am I that, in the modern world, freedom of the press is the principal and, so to say, the constitutive element in freedom.

Freedom of the press, properly understood, should include freedom of the electronics media. The American constitution's prohibition on government abridging the rights of the press should be applied to television and radio, including any rules that control broadcasting content. Other countries should enact such self-denying ordinances. In the United States, the Federal Communications Commission (FCC) prohibits broadcasting what the Commission deems offensive language and restricts the sexual content of television and radio shows. That broadcasters must periodically renew their licenses make them extra sensitive to the views of Congress and the FCC. Congress has often been willing to regulate what radio and television stations can or must air. The House, for example, has recently been considering bills that would require television stations and networks to limit advertising on children's shows.

In much of the rest of the developed world, there is less censorship of sexual material but more of political views. Until recently, the only television and the only radio stations in most countries, including a number of Western European states, were government outlets. Typically the stations did or still do parrot the government's position on controversial matters. Outside of the advanced industrial countries, governments often use state-owned broadcasters to propagandize their people. Even where official policy attempts to separate the administration in power from state-owned broadcasters, the knowledge that their funding derives from the legislature limits the freedom of these broadcasters. Milton Friedman cites a striking example (1962: 19):

From 1933 to the outbreak of World War II, [Winston] Churchill was not permitted to talk over the British radio, which was, of course, a government monopoly administered by the British Broadcasting Corporation. Here was a leading citizen of his country, a Member of Parliament, a former cabinet minister, a man who was desperately trying by every device possible to persuade his countrymen to take steps to ward off the menace of Hitler's Germany. He was not permitted to talk over the radio to the British people because the BBC was a government monopoly and his position was too "controversial."

As Raymond Gastil points out (1990: 37), the British in recent years have largely insulated the BBC from government pressure. Unfortunately in both France and Greece broadcasting content changes with the outcome of elections. In France, for example, at the time of vote on the Maastricht treaty, the government stations gave strong support and coverage to pro-treaty

spokesmen and only token coverage to the opposition. The growing worldwide movement towards licensing independent stations and networks should provide more balance in broadcasting.

Freedom involves more than the liberties enumerated in America's *Bill of Rights*. To enjoy the legal right to petition the government for redress, for example, requires being able to print and deliver the demands to the authorities. This necessitates having both the financial ability to cover the costs of exercising these prerogatives and the liberty to use one's property as desired. In other words, *political freedom is predicated on substantial economic liberty*. Without private property rights, no meaningful political freedoms are possible. If the government owns all of the publishing facilities, for example, a dissident may have difficulty in preparing a petition. If the state requires owners of newspapers to publish only the government's views or the state will not provide the journal with newsprint, freedom of press is obviously a mockery.

Less obvious than state ownership of property is the constraints imposed by government regulation. If a permit is necessary to build on a parcel of land, the owner and would-be builder may find it desirable to refrain from criticizing the current permit issuers and even to contribute to their re-election campaign. If the Securities and Exchange Commission (SEC) must approve a forthcoming capital flotation, questioning the veracity of the current chairman may be less than helpful. Drug companies rarely campaign against the Food and Drug Administration (FDA), which must approve the sale of all new chemical substances.

In other words, the more regulation, the less freedom of speech and press. Pious declamations on constitutional rights may be hollow mockeries of reality if regulators are in a position to exercise discretion over economic activities. Is the broadcast media in the United State really free to criticize the Federal Communications Commission, which can revoke their licenses?

Undoubtedly, assured rights to own and control property are the single most important ingredient in protecting freedom. Property rights, that is, the patent to use one's property free of state control are essential to all types of liberty. Without the independence that private property provides, no one can stand up to the state, its bureaucrats or to public opinion. Where the government owns everything and there are no private assets, there can be no freedom. Leon Trotsky undoubtedly drawing on first hand experience phrased it well (cited in Hayek 1960: 137):

In a country where the sole employer is the state, opposition means death by slow starvation. The old principle, who does not work shall not eat, has been replaced by a new one: who does not obey shall not eat."

Social Freedom

Virtually all states restrict social freedom even more than political freedom. What I call social freedom is the absence of constraints on how one conducts one's life. Can the government require a person to attend church on Sunday, as was the law in some American colonies, or imprison an individual for smoking an illegal substance? True social freedom implies that as long

as a person's actions affect only themselves or their families, government should leave them alone. As some have said, "My freedom ends at your nose." Others object that such liberty, nay license, leads to a society which is degenerate, unproductive, and morally objectionable.

Social freedom includes the right to one's own life style: homosexual, lesbian, bisexual, polygamous as well as monogamous. Such liberties, if accepted, would require the repeal of laws prohibiting sodomy and voluntary contractual relations among consenting adults. To fully implement social freedoms would necessitate the repeal of statutes making such activities as prostitution and gambling — in fact all victimless crimes — criminal. Social freedom, which implies the right to act as one sees fit as long as the action harms no one else, would, therefore, include the right to smoke marijuana, take heroin, or even inhale "crack." This freedom would not extend to the right to drive while under the influence of any of these drugs, since this would endanger others. The law would still prohibit the sale of harmful substances to children and those who are incompetent. Society has a legitimate interest in limiting the freedom of those who are too young to know their own interest or who are mentally deficient in order to protect them from self-harm.

John Stuart Mill penned (1859) the earliest and clearest statement of the libertarian position that the state should refrain from interfering with private activity that harmed no one but the actor. Only if an action imposed costs on others did the government have the right to prohibit or regulate. Even if all people knew that the practice would be harmful to the practitioner such as drinking alcohol to excess the state still should avoid interfering.

In criticizing John Stuart Mill's *On Liberty*, Gertrude Himmelfarb asks rhetorically whether Mill's great work (1990: 320) "provides any effective limits" on actions such as public display of sexual intercourse. She asserts that Mill considered only the positive side of freedom, failing to recognize the negative. Given such license (321) "men would also be free to explore the depths of depravity." She emphasizes that great philosophers have "dwelt upon the need to check the human passions" and that there was no room in *On Liberty* for (321) "other ends that might temper the passion for liberty — virtue, justice, obedience to natural or divine law."

Himmelfarb criticism is hollow and imprecise. The difficulty arises in defining "virtue" or "justice" or "natural or divine law." Virtue to a primitive tribesman may necessitate murdering another tribesman who has killed his kin. Virtue to a strict Moslem may require the stoning to death of a woman accused of adultery. To a nineteenth century Polynesian, copulation between unmarried teenagers was blameless and not immoral or non-virtuous.

Justice is nebulous, but it plays an important role in government. Its relationship to freedom would seem to lie in supporting the concept of liberty over constraints that people like Himmelfarb want to impose because they feel offended. Why justice should lead to prohibiting actions not harmful to others, she fails to make clear.

Divine law obviously has various meanings for adherents of different faiths. Natural law apparently is a secularization of divine law and subject to as many diverse interpretations. Within a homogeneous society, agreement might be found on a concept of natural or divine law, but the multicultural population of world would not accept any single specification. Since there can be no agreement on divine or natural law, the state should not prohibit harmless activities. Natural law, if it implies anything, would uphold Mill's dictum that the state has no right to control activities which hurt no one but the actor. The libertarian response to Himmelfarb's extreme example is that although most may find public displays of sodomy offensive, people can avoid places where such actions are being performed.

Economic Freedom

Social or political freedom should not be confused with economic freedom. The right to choose your government, normally through a democratic vote, differs from the other aspects of personal freedom. Social freedom involves the right for an individual to behave as he or she wishes. Economic freedom on the other hand, is related to the absence of constraints on voluntary arrangements between two or more people — typically buyers and sellers. Restrictions on one type of freedom do not necessarily imply limitations on the others. Some societies such as Hong Kong have a wide amount of economic freedom but have no say in their government. On the other hand, democratic governments can and have restricted many social and economic freedoms.

Economic freedom is the absence of controls on ways one makes a living or spends one's earnings. The liberty of employers, employees, sellers, and buyers to contract and deal with each other is the essence of economic freedom. The less the government restricts wages, working hours, the qualities of a good or service, the price at which it may be sold, rented or leased, the terms under which a transaction may take place, or the freedom to sell or buy any service or good, the more economic freedom.

As discussed above, political freedom requires a minimum of economic freedom, although economic liberty may not guarantee democracy. Markets in and of themselves do much to protect political and social rights. No one cares whether the car he/she purchases is made by gays, communists, capitalists, Moslems, atheists, whites, blacks or grays. Although employment in the government may depend on holding the "correct" political views, employment in the private sector largely depends on talents and training. Milton Friedman in *Capitalism and Freedom* spells out the relationship clearly (9):

I know of no example in time or place of a society that has been marked by a large measure of political freedom, and that has not also used something comparable to a free market to organize the bulk of economic activity.

Free economic transactions have a significant advantage over government mandated arrangements: both parties gain. As economists like to put it: voluntary trade is a positive sum game; both buyers and sellers are better off. On the other hand, for economic freedom to work well, all parties must be equally well informed about the transaction. When information is asymmetric the result may be that one party is able to mislead the other; in that situation, it may be desirable for the state to restrict behavior, preferably by requiring full disclosure. When both parties are well informed, no constraints are desirable.

Economic freedom requires the right to contract: the government's role is simply to provide an enforcement mechanism. The latter role is important in defining contracts. For example, can they be verbal? Are all contracts valid, even if they require the performance of illegal acts?

Economic freedom has come under serious attack in recent years. Even Mill in *On Liberty* contended (1859, ch. V: 132) that what we call economic freedom was different from individual liberty:

As the principle of individual liberty is not involved in the doctrine of [economic freedom], so neither is it in most of the questions which arise respecting the limits of that doctrine; as, for example, what amount of public control is admissible for the prevention of fraud by adulteration; how far sanitary precautions, or arrangements to protect workpeople employed in dangerous occupations, should be enforced on employers.

Since the 1930s at least, the United States Supreme Court has given economic freedom less support than it has political freedom and it has failed to recognize the nexus between the two. The government and the courts have limited the use of private property, and in some cases, government regulations have virtually eliminated the economic employment of certain land. Moderating this trend, the Supreme Court in recent years has limited some of the more egregious restraints e.g., *First English Evangelical Lutheran of Glendale vs. County of Los Angeles*, *Nollan vs. California Coastal Commission*, *Lucas vs. South Carolina Coastal Council*. In the main, however, local, state and federal governments have been free to impose restrictions on the use of property, even though these regulations may severely erode the value of the land.

Limits on economic freedom have a long history. Republican Rome fixed interest rates on loans and, at times, even prohibited the payment of interest, although the laws were widely ignored (Frank 1933: 30-31). Prohibitions on charging interest, on speculation, and on arbitrage were common in Europe during the Middle Ages. Adam Smith in the *Wealth of Nations* criticized long standing government controls on economic activity, such as laws prohibiting imports of goods, exports of machinery or trained artisans, or what we would call speculation and arbitrage, mainly on the grounds that without such regulations consumers would be better off.

In the United States, state regulation of transportation tariffs date back to colonial days. The federal government first imposed regulations on any industry in the Interstate Commerce Act of

1887, which established regulation of the railroads. Food and Drug regulation and prohibitions on child labor date from early in this century. With the advent of the Great Depression, the federal government began to impose a wide variety of additional restrictions on private activities and contracts. Dating from that period are the Federal government's controls on minimum wages, which limited the freedom of individuals to contract and which also reduced employment opportunities for those with few skills; the agricultural department's minimum prices for many agricultural goods and its marketing orders, which prohibited or restricted the sale of certain produce; government controls on entry and exit, prices and routes for airlines, motor carriers, and water carriers; regulation of the airwaves, including the licensing of broadcasters; limits on securities markets including fixing of margin requirements, interest on bank deposits, and short selling.

The erosion of economic freedom and the effect of government regulations on progress and economic growth are discussed in greater detail in the eighth chapter. Nevertheless, the reader should know now that in virtually all industries or occupations, federal or state law, and often both, limits what can be sold, or how it must be sold, or what can be said about it, or what information must be provided, or who can buy it. Environmental and safety controls are ubiquitous. The Federal Trade Commission (FTC) has prohibited selling practices that it claims are misleading or reduce competition. The FTC has prosecuted firms for charging too little, conspiring to charge too much, and from being too competitive. Holding that the Constitution protects commercial speech less than political rhetoric, the Supreme Court, following John Stuart Mill's lead, has upheld restrictions on advertising.

The Court's position has had deleterious effects. Restrictions on commercial speech not only prevent companies from possibly misleading advertising but reduce information for consumers. For example, while wine and liquor makers must print the alcohol content on their labels, prior to 1992, beer producers have been prohibited from offering similar information on the strength of their brews. James Bovard reports (1992) that the counsel for the House of Representatives claimed that the "rationale" for this absurd contradiction is "to shield the public ... from unhealthy blandishments to select beers on the basis of their efficacy as intoxicants." Apparently wine and liquor consumers are not subject to such blandishments nor might any consumer be interested in purchasing the low alcohol beer.

In the 1950s, when health concerns developed over cigarettes, some tobacco companies began to advertise the low nicotine content of their brands. The Federal Trade Commission prohibited this advertising as misleading since nicotine content at the time had not been shown to be related to health effects. Now, under law, cigarette companies must indicate nicotine content. "What is not required, is prohibited."

Even though most people spend more of their life in economic activities than in political, the public has accepted a significant erosion of economic rights. Since men and women are only occasionally involved with political matters, whereas they are constantly involved in earning a living or spending their income, the disparity of emphasis is particularly striking. Although we should safeguard zealously freedom of the press and of speech, including commercial expression, we should pay much more attention to creeping controls on economic liberty. Without strong property rights and economic liberty, neither political nor social freedom is likely to flourish.

Limits of Liberty

In *The Constitution of Liberty*, Friedrich Hayek maintains that liberty is the absence of coercion. A person, compelled to do something he prefers not to do or restrained from pursuing something that he wishes to perform, loses his freedom. Coercion, however, is not a simple binary event; there are degrees of compulsion. If the state requires young men to serve in the military or pay a fine of \$10, young men are being coerced; but the cost is lower than if the state required service or death. The loss of freedom in the first instance is small; in the second young men have little choice but to obey. In other words, to judge the deprivation of liberty, one must evaluate the compulsion involved.

Increases in freedom, therefore, reduce the cost of an activity. A person who takes an unpopular stand may face a toll in terms of job opportunities, friendships, or verbal attacks. The price may be positive; yet if the state refrains from imposing sanctions, most of us would assert that the individual is free — even though the person may feel constrained. If the government forbids an action, however, the cost will increase depending on whether the state levies a small fine, bars the person from certain occupations or employment with the government, imprisons the offender, or, in the ultimate, executes the heretic.

If we conceptualizes freedom in terms of costs, then reducing the toll increases freedom. If my action imposes a loss on someone else, I will have diminish that person's liberty. In societal terms, whether freedom is enhanced or attenuated depends on the expense of restraining me versus the cost to others of allowing me to proceed. Thus, if I build a rendering plant in my back yard that produces foul odors and reduces the value of my neighbor's property, I have imposed a loss on him. Assuming a universe free from bureaucratic constraints, such as zoning or health permits, whether I would do so depends on my gain from its construction versus his sacrifice. An agreement on property rights would solve the issue. Provided that I have the right to build the plant and the facility imposes a larger expense, say \$20,000 on my neighbor than my profit, say \$10,000, he can and will, as a rational economic being, purchase my license to build such a facility. On the other hand, if I have no legal authority to construct the works without my neighbors authorization, I would need to pay him more than the earnings from its construction. Since I would be unwilling to offer \$20,000, no plant will be installed. Voluntary transactions

under established property rights will produce solutions that minimize costs without the state's interference.

Discrimination

In a free society, the government cannot countenance certain costs. Unless an action adversely affects a second party's property — including his or her body — the injury from simply feeling aggrieved or offended by the act should carry no weight. If society accepted my distress at your absence from church, for example, then the government could restrain almost all activities, and a free society would be impossible. In the same vein, should a person object to acquiring a neighbor of a different race, religion, sex, or sex orientation the emotional charge to the individual protesting should be excluded from the calculus. The government has no right to prohibit or interfere with any person of whatever ethnic background from purchasing or renting any establishment. "Jim Crow" and apartheid are inconsistent with a free society.

Some have justified housing discrimination on the grounds that if a black buys a house in a white neighborhood, housing prices will fall. Neither good statistical data nor logic substantiate this belief. Neither an African-American, a Hispanic, nor a liberal is likely to buy a house that will promptly fall in price. Moreover, the most likely reason a non-white selects a house in that neighborhood is that he or she obtains more house or a better neighborhood for the money than elsewhere. Consequently, others must think the same, and housing prices in that area should rise, not fall.

In today's world, public opinion probably imposes more constraints on social freedoms than on other types of freedom. Despite popular objection, however, to a particular style-of-life, the government possesses no legitimate basis to intervene as long as the behavior neither hurts other people physically nor detracts from their property values. Private discrimination may, however, impose employment or housing costs on a person embracing an unorthodox life style.

In recent decades, the federal government as well as many states have enacted laws prohibiting private discrimination and in some cases requiring "affirmative action." A few states and localities have also passed laws prohibiting discrimination on the basis of sexual preference (life-styles). In *Forbidden Grounds*, Richard Epstein questions anti-discrimination laws on the grounds that they impinge on the freedom of landlords or business owners. In discussing anti-discriminatory legislation, Epstein asserts that (4): "the principle rests on the collective social judgment ... that some grounds for private decision are so improper that it is both immoral and illegal for the government to allow employers to use them in deciding whether to hire, retain, or promote workers." He establishes, however, that potent economic grounds may oblige employers to hire on the basis of certain racial or ethnic criteria and that provided "Jim Crow" laws are absent minorities will find employment and housing. As Gary Becker showed in a seminal work (1971),

discrimination is inefficient; consequently for employers or landlords to enforce their preferences will be costly.

Assume that a large majority of the population hates heavy-metal rock music. Those who dislike such sounds have a right to avoid them, but have no right to require the government to prohibit heavy-metal. Nor does the minority, those who relish such compositions, have a right to force all radio stations to devote time to this musical fad. A few stations will offer a format that satisfies the minority, while the majority of broadcasters will serve other tastes. A free society allows men and women to indulge their proclivities even if a majority finds those biases irrational or objectionable.

Anti-discrimination laws dealing with race, religion, and sex reflect the view that the cost imposed by forcing people to associate with those whom they find objectionable is illegitimate and, therefore, uncountable. It is absolutely illegitimate for the government to reflect those preferences for discrimination. Although the state should neither prohibit integration nor require segregation, even if a majority desires it, private individuals should be free to make any contracts.

Changing Objectives

As cultural viewpoints metamorphose, the objective and interpretation of social legislation changes all too rapidly and enforcement of the law varies. In the case of anti-discrimination legislation, the purpose of leveling the playing field has mutated into favoring approved minorities. In the years before any federal civil rights enactments, local statutes, at least in the South, favored the white majority. Now, at least as the courts interpret it, the law tilts towards certain minorities. Depending on the fashion of the day, anti-discrimination statutes can be interpreted to require discrimination against some to benefit the “minority” candidate. Whether blacks will receive preferential treatment in promotions over whites in police forces, fire departments, and government agencies, for example, is an ongoing battle.

Probably even more worrisome is varying enforcement. Hayek asserts (1960: 143): “The interference of the coercive power of government with our lives is most disturbing when it is neither avoidable nor predictable.” Although Hayek is generally correct, coercion can be both predictable and objectionable. In communist countries as well as in other dictatorships, for example, it is “predictable” that a person who publicly criticizes the state will go to prison, a labor camp, or to a “mental hospital.” Hayek underlines the point that government authority, exercised arbitrarily, subjects people to the whims of the enforcers. If a bureaucrat is feeling mean because of a family dispute, for example, he or she can take it out on a hapless petitioner or citizen.

Hayek maintains (1960: 155) that “it is the law that makes us free” and that a general law applying to everyone, including those administering the law, cannot be very restrictive. However, he admits that laws based on religion can circumscribe non-believers. Moreover, notwithstanding its general applicability, a rule that prohibits speaking against the government, demonstrating in

opposition to the state, or publishing material critical of national leaders would abridge freedom significantly.

The Limits on Government

A free society requires that government be limited even if the regime is chosen by popular vote. Without bounds on what the majority can impose on the minority, liberty is in danger and ultimately will be destroyed. Writing in the 1830s, Tocqueville in *Democracy in America* feared that unbridled democracy would eventually erode freedom by fostering unrestrained government growth. As we have seen since, the state has ballooned to gargantuan size and now impinges on almost every activity with a concomitant loss of individual rights. Can one build a house? Not without permission from the state. Can one ingest a medicine? For many potent remedies, not without consent of the bureaucracy. Can one leave the country? Not unless the government has authorized it — a passport can be withheld for those deemed to be risks by the administration. Can one carry arms? Not without a permit from the police. Can one educate one's child at home? Not without meeting the requirements imposed by the legislature.

Allowing a democratic majority to decide policy issues with no limits creates a basic problem: a majority can deprive a minority of its rights. After the United States' Civil War, for example, the states were required by constitutional amendment to permit all citizens, including blacks, to vote. That did not prevent the majority in the South from enacting laws that effectively disenfranchised most or all African-Americans and that also imposed severe restrictions on their rights to equal treatment. The duly elected Southern governments passed laws prohibiting blacks from employment in certain occupations, restricting their access to public facilities, and mandating separate school systems.

In much of the world today, as Tom Sowell has argued (1990), the government's strong role in the economy inflames ethnic quarrels. Ethnic majorities in a number of states, such as Malaysia, have imposed severe restrictions on more prosperous minority groups. It is no accident that the most vicious ethnic fighting has broken out in former communist countries where the state still controls most of the economy and doles out government jobs, housing, and social benefits to the *deserving*. The group in power in such a situation can garner the profits from monopoly enterprises and special government programs and can discriminate against other ethnic blocs in the allocation of state favors. When the state controls housing, jobs, and education the potential for internecine conflict is horrendous.

Ethnic disputes are exacerbated where the government is deeply involved in religious issues. Too often devout majorities have attempted to impose their dogmas and practices on non-believers. At a minimum, a state supported faith will force heathens and heretics to pay taxes to subsidize the religious inclinations of those in power. In much of Europe, for example, the state spends tax money to aid the clergy of the official religion. In Greece, until recently, Jews were

effectively prohibited from marrying; they had to go to Italy to have the ceremony performed. The cleric dominated government of Iran has fostered a brutal purge of the Bahais.

Another pitfall with unrestrained government activity is the flightiness of public opinion. Hysteria, fashions — such as political correctness — or national mood swings can lead majorities to favor policies that, with more deliberation or reflection, would fail to win support. Voters are usually unaware of the subtleties of many issues. The electorate is busy with day-to-day chores and needs and possess little time or inclination to study the ramifications of policy proposals. Representative democracy, with legislators who could become informed on a variety of programs, developed to mitigate this difficulty. Nevertheless, these legislators reflect public opinion quickly — or they lose office. Thus, if the general public decides that a particular policy is desirable, even if the more knowledgeable people disagree, the legislature may in haste enact it.

The Rule of Law

The rule of law is absolutely necessary to a free society. Only a community with general rules applicable to all can be truly free. The scope of these statutes must be limited and government officials should not have discretion over how or on whom they are enforced. Too often in our country today, Congress passes general statements of purpose and grants wide ranging rule-making authority to an appointed government agency. Such a procedure leads to arbitrariness and a loss of freedom. People cannot know what they may and may not do. The public is prohibited from acting freely and must petition officials for permission, which can be withheld, to carry out their aims. This is a prescription for corruption and a recipe for deprivation of liberty. Government regulation of zoning and building permits, for example, are notoriously subject to arbitrariness and consequently ripe for bribery and unethical conduct.

Aristotle, the early Roman Republic, and seventeenth century England all understood that a government by law rather than by the whim of the ruler was the foundation of freedom. People must know their rights and the rules of their community. In the Soviet Union, the police use to arrest people and then determine what crimes they had committed. No one can be free when subject to arbitrary rule.

An essential feature of a rule of law is the existence of an independent court system that can ensure a fair and impartially interpretation of government legislation. A separate judiciary, absent from Russia for the last 70 years, is necessary to protect an individual from the state. In that benighted country, the authorities determined the law after they had incarcerated or executed their victim. In the United States, courts have overturned the efforts of the government to restrain the publication of such embarrassing documents as the *Pentagon Papers*, thus preserving freedom of the press. The American courts are often the only bulwark from an overweening bureaucracy and a spiteful or hysterical public.

The Role of Government

These limitations notwithstanding, the government plays an important role in defending its citizens from others, in facilitating economic activity, and in aiding those unable to help themselves. National defense and police protection are fundamental governmental tasks. The state must also protect those who cannot care for themselves — children, the handicapped, the aged, and the incompetent.

To ensure the prosperity of its citizens, the government must establish the rules of the game, enforce those regulations in an impartial manner, and provide laws that foster private economic activity. Although the laws should minimize coercion by the state, their primary objective should be to eliminate compulsion of some members of society by other members. As Friedrich Hayek wrote (1960: 229) the principal goal of governmental regulations in cultivating the market should be the “prevention of violence and fraud, the protection of property and the enforcement of contracts, and recognition of equal rights of all individuals to produce in whatever quantities and sell at whatever prices they choose.”

Freedom’s Role in Promoting Progress

Freedom is essential to progress. Without the liberty to make modifications, progress cannot occur. In a slave community, only the rulers can exercise the option to alter behaviors, organizations, or society. Those in authority are rarely interested in change, for innovation may endanger their well-being or the stability of their power. Should they initiate a new policy, they often do it abruptly without adequately considering its implications. In China for, example, the communist government decided that cats were spreading disease and eating valuable food. It ordered the extermination of all felines, which resulted in a proliferation of rats. Eventually the government reversed its policy and began to encourage the raising of cats. In a freer society, politicians, newspapers, radio and television commentators would have debated the issue and the government would probably never have implemented the original death sentence.

Progress can only develop through the struggles of men and women to improve their condition or to create something new. People striving to better themselves, to ease their conditions, to enrich their families are a driving force of progress. Progress cannot be forced from above; a single leader may have one concept for improving human well-being, millions of men and women will have millions. As Mao Tse-Tung pronounced in one of his more lucid moments (MacFarquhar 1974: 51): “Letting a hundred flowers bloom and a hundred schools of thought contend.”

Mankind’s progress has stemmed from individual men and women thinking, creating, experimenting, and innovating. Advances comes from a man or a woman attempting something new. A hunter trying a new way to make an arrowhead, a gatherer noticing that animals liked a strange plant and tasting it, an artist creating a new way to portray perspective, a thinker imagining a new political process, theory, or concept are steps leading to improvement in the human

condition. A single individual's passion to paint, to write new music, a play, novel, or poem can produce progress. All of these requires the freedom or independence to innovate. The less liberty, the slower progress will be. Rigid dictatorial or tradition ridden societies are unlikely to produce much innovation or advancement.

No one can plan progress for the future is inherently unknowable. The result of any experiment is chancy — in fact, most experiments fail. Edison could never have conceived of a world tied together electronically; Marconi could not have dreamed that his work would lead to 100 channels of television bringing a range of programming from idiotic game shows to documentaries on historical events or scientific issues. The first farmers to domesticate wheat had no idea that planting and harvesting grains would lead ultimately to an explosion of the population, the development of cities, and the invention of writing.

Much is unknown as well about current conditions on which the future is based, but even if we possessed perfect knowledge of the present, the future would still be hidden. Chaos theory tells us that infinitely small deviations in current conditions will, over a short period, lead to totally unpredictable results. The flapping of a butterfly's wings in Brazil may affect the weather in North Dakota six months later. As M.I.T. mathematics professor Henry B. Phillips wrote (1945: 254):

All human affairs are thus subject to an in-determination principle. What will happen five minutes from now is pretty well determined, but as that period is gradually lengthened a larger and larger number of purely accidental occurrences are included. Ultimately a point is reached beyond which events are more than half determined by accidents which have not yet happened. Present planning loses significance when that point is reached.

Governments can neither know the future nor the effects of their policies, yet they operate as if they could. Their very structure militates against their making the "right" decisions, those that will lead to progress. Bureaucrats prefer the safe and the secure to innovation, so "correct" or "useful" decisions are likely to be made by accident rather than design. In fact, it is more likely that a wrongheaded decision will place obstacles in the way of progress. If only governments could innovate, progress would be slow or virtually nonexistent. This fact probably explains why so many dictatorial societies have failed to advance. Progress stems from the trial and error of many individuals. The more entities free to experiment, the more successful innovations will result. Beneficial experiments will lead to imitation and more innovations to improve on the original effort. Thus a free society, in which millions of people enjoy the right to attempt to improve their lot or the condition of their families, friends or society at large, will evince much more progress than a slave state. True, most individual's experiments will fail, as will governments', but since so many more entities will be innovating, progress will be much quicker. Nathan Rosenberg and L. E. Birdzell attribute the economic rise of the West to the greater freedom and independence of its people compared to most other societies in history. They conclude (1986: 34):

[T]he West's achievement of autonomy stemmed from a relaxation or a weakening, of political and religious controls, giving other departments of social life the opportunity to experiment with change. Growth is, of course, a form of change, and growth is impossible when change is not permitted. And successful change requires a large measure of freedom to experiment. A grant of that kind of freedom costs a society's rulers their feeling of control, as if they were conceding to others the power to determine the society's future. The great majority of societies, past and present, have not allowed it. Nor have they escaped from poverty.

Progress the world over illustrates this view, for it has been fastest in terms of technology and the arts and slowest in civil and governmental arrangements. This phenomenon comes from having millions or billions experimenting with technology and the arts, while states alone can experiment with governmental forms or civil arrangements. Not only are there fewer nations to innovate, but experiments in political form tend to be slow, cumbersome, and expensive — in both human and material terms. Consequently the movement towards democracy and freedom has been slower than the movement towards space travel.

Policy Implications

Progress, therefore, requires the liberty to experiment and to fail. Individuals must be free to innovate — the more experimentation, the more progress. Freedom then will contribute strongly to the betterment of humans. Moreover, the inverse is also true, increases in freedom constitute progress. People feel themselves better off if they can make their own decisions about how they are going to live their lives. Although they will make mistakes and sometimes be unhappy with the necessity of choice among several options, few people wish to live under the control of others. The importance of freedom is not only that it is good for people to be free of coercion but it facilitates economic growth and progress. As Hayek wrote (1960: 29):

...the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends.

A progressive society will sanction a wide range of freedoms: the right to speak one's mind, publish one's thoughts, agitate for change, practice the religion of one's choice, travel, and compete in the market place. People will disagree, of course, over the rights the public should enjoy. Libertarians believe that the state should minimize involvement in its citizen's lives, that is, as long as someone is not hurting another, the government should avoid imposing constraints. As some have quipped: the law should stay out of a person's pocket and out of his or hers bedroom. Richard Posner, a libertarian, a federal appeals court judge, and a lecturer at the University of Chicago Law School, has made a compelling case in *Sex and Reason*, at least for sexual offenses, that victimless crimes should be ignored by the legal system. Moreover, since the consumption of

illegal drugs harms only the user, libertarians argue the law should permit individuals to purchase and gorge on narcotics. Prostitution and gambling should both be legal.

Most non-libertarians on the other hand believe the government must restrain certain behavior in the interests of a better or safer society. These people would moralize that legalizing drugs such as cocaine and heroin would multiply addiction, crime, and poverty, leading to a less productive economy and a reprehensible world. They would contend that people need and want to be protected against themselves and that temptation should be limited. If society legalizes drugs, prostitution, homosexuality, gambling or pornography, the cost of these practices, services, or products will decline and the amount of “immoral” activity will increase.

As the reader knows, views about the benefits of freedom to society differ. Some will consider anything less than a libertarian society unjust and undesirable. Others would view with horror such a minimal state with no constraints on individual behavior or would opt for a slower rate of social disruption. Delaying change even with all its dislocations, however, retards progress and will worsen our children’s future. Moreover, if the state restricts human behavior in the name of what is moral or desirable, where should the line to be drawn?

The fundamentalist Moslem states of the Middle East, such as Iran, rest on the notion that restrictions are essential to constitute what the clerics hold to be a virtuous society. Most Westerners would argue, however, that the rules imposed on women by Islamic theocracies are unjust and unwarranted. If one accepts the North American and European concept of equal rights for women, then we must reject prohibitions on females driving, voting, or wearing fashionable clothing. To the devout Mohammedan, drinking alcohol is a sin but enjoying a second wife is a permitted pleasure. To many Christians enjoying a glass of wine is a permitted pleasure but to indulge in bigamy is a sin. How can a secular state decide on whether to prohibit alcohol or bigamy? A major advantage of the libertarian position is that the government leaves decisions on morality to individuals.

When James Stuart Mill wrote *On Liberty*, it was easier than it is today to propose that government should impose no restrictions on actions which harm only the perpetrator. Even if a person were stupid, careless, or imprudent provided that he endangered only himself, the state, Mill argued, should refrain from action. If the harm to himself adversely affected his family, as well, he could be held responsible for the detrimental consequences to his wife or children. Since government, that is the taxpayer, in the modern world will provide or pay for medical care of those unable to afford treatment, the question has become more complicated. Laws requiring motorcyclists to wear helmets, for example, restrict the riders’ freedom. Helmets, however, reduce fatalities and serious injuries. Since only the motorcyclist is affected, on Mill’s principles, the state should lay down no taboos. If an uninsured cyclist is injured and without funds, however, he or she will be given medical care, paid for either by taxpayers, other patients, or subscribers to

medical insurance. If the rider becomes a paraplegic, the taxpayer may have to support the individual for the rest of his or her life. Does this provide a justification for restrictions on personal freedom — for helmet laws — in order to protect the taxpayer? If so, is there any limit to state intervention in personal freedoms?

I would argue that this dilemma could be resolved if the law required motorcyclists to either carry adequate medical insurance, post a large bond, or wear a helmet. As long as they hold the rest of society free from financial responsibility, the state should impose no requirement to wear a helmet. Similar safeguards may be necessary in other areas where the taxpayer now may bear the cost of inappropriate actions.

In virtually all countries, governments prohibit at least a few “victimless crimes” because the actions offend a significant portion of the citizenry. As pointed out earlier, if the regime can limit behavior simply because some people find a given deed objectionable, the state can prohibit anything. Although it is no doubt true that some people are disquieted, that is, they bear a cost, in knowing that others are indulging in activities of which they disapprove, but such costs should have no weight in determining government policies. As the author (1969) concluded, certain psychological costs should be excluded from the calculus. To quote from Hayek (1960: 145):

In particular, the pleasure or pain that may be caused by the knowledge of other people’s action should never be regarded as a legitimate cause for coercion. ... But where private practices cannot affect anybody but the voluntary adult actors, the mere dislike of what is being done by others, or even the knowledge that others harm themselves by what they do, provides no legitimate ground for coercion.

Many find some aspects of freedom burdensome. Consumers frequently adopt plans limiting their options, such as “Christmas Clubs” that require saving a fixed amount each month. Consumers apparently find making choices costly — too many options are confusing and require too much attention. For some but not all items, shoppers find it worthwhile to invest in more information. Buyers of expensive items often calculate that spending time and effort to acquire additional knowledge on alternatives is worth the sacrifice. If they fail to research the choices, people often feel that they will be “taken.” Because of the cost of decision making, many individuals regretted the demise of AT&T as the sole supplier of telephone service. Regulators forced consumers to choose between long distance suppliers, telephone equipment, and levels of service.

This attitude helps to explain why consumers may wish the government to limit their choices of products, especially those which might be harmful. Since voters believe that no one wishes to purchase “unsafe” or ineffective drugs and that the government enjoys a comparative advantage — economies of scale and objectivity — in judging safety and effectiveness, the public supports these restrictions. Because of the perceived advantage the state has in proscribing unsafe

goods, the government regulates the safety of virtually all new commodities. In the United States, the Food and Drug Administration oversees products that are ingested, the National Highway Traffic Safety Administration controls automobile safety, and the Consumer Product Safety Commission supervises the risk from most other consumer merchandise.

Those government mandated safety rules come with a significant but often hidden cost. To air on the prudent side, the government withholds approval of many products with desirable properties or grants its consent only after a long time lag. This deprives many consumers of benefits that they might receive from innovative products, such as new pharmaceuticals that could relieve suffering or prevent deaths. Government bureaucrats are natural conservative and tend to avoid controversial decisions: officials are rarely criticized for delay, but if approval is granted for a new substance and adverse consequences later result, the policy maker may become a scapegoat. As a result the government approves innovations only slowly and reluctantly. Those products or drugs with official certification face reduced competition and are consequently more highly priced. Bureaucrats are also prone to prescribe safety requirements for commodities without considering the expense to the manufacturer and ultimately to buyers. The cost of *protecting* the consumer thus includes higher prices for those drugs approved, more expensive new automobiles which must include specific safety equipment, as well as increased costs for virtually all regulated products.

Notwithstanding the caveat that people are willing to impose restraints on themselves so that they can minimize the cost of making decisions, few people believe they are incompetent to control their own lives. While many want to constrain others, few want the state to limit themselves. The typical justification for government certification of articles of merchandise is that many purchasers are ignorant and would make poor choices. If the public is unable to select soundly the products or services they spend their own funds for, can such incompetents be trusted to vote intelligently for a legislative representative who generally will have little impact on their lives? The choice of a new car or a potent drug is a more important decision to the average citizen than the choice of the next president or senator.

Most controls that limit the public's choices are a bad idea. They raise costs to the consumer; they restrict freedom and reduce innovation; they retard progress. Even if some segment of the citizenry wish to avoid the costs of decision making, the burden on the rest is too high to enforce such rules.

By this time the reader probably has gathered that my sympathies lie with the libertarian view. Only a minimalist state can be defended intellectually. As I have already said, if the government is to enforce strictures on behavior that affects no one but the actor simply because some persons think the action unwise, immoral, or offensive, the state can prohibit any deed. Freedom becomes a chimera.

Even in a truly free society, the government would have an important role to play. It must defend its citizens from others, whether they are external enemies or internal criminals. A vital state function is to provide a court system for the resolution of conflicts. The legislature must enact a commercial code; the executive and the judiciary should define and enforce property rights. In summary, the government ought to perform those actions that one central body can carry out much more cheaply than individuals. The administration, for example, can certify that certain drugs are safe and effective for specific problems, without prohibiting consumers from purchasing non-approved alternatives. Providing information is one of the more useful governments actions. Virtually all safety issues can be handled appropriately by furnishing data on the risks involved and letting consumers or workers make their own decisions.

Certain environmental problems can also be dealt with more effectively on a collective basis. The exhaust from millions of automobiles, for example, can degrade the air and lead to harmful pollution in a given locale. Government regulation or taxation of the exhausts may be the only practical methods of reducing this environmental threat. More generally the difficulty has been described as the tragedy of the commons. If many people are using an unowned resource, such as the air, the oceans or waterways, as a place to dispose of wastes, significant pollution can be the outcome.

Many other environmental issues also reflect the absence of property rights. The problem with endangered species, for example, often lies with the lack of ownership of the plant or animal. Once people have a financial stake in its survival, individual property owners will take the appropriate steps to preserve it. Private property will preserve the plant or animal in those cases in which the species has an economic value, such as salmon, fur seals, and elephants. For those animals without any current market worth, government restrictions may be necessary to prevent their loss or the state can pay people to maintain and preserve them. Usually, if the species has no economic importance, hunters will make no effort to kill or capture it, thus allowing it to survive. On the other hand, if it is considered a nuisance or a threat by farmers, ranchers or fishermen, but society still believes its preservation is important, government action may be necessary.

Another important role for government is to furnish a safety net for those unable to compete in the world. It can also ensure that children are able to attend school irrespective of their families' financial status. The state can distribute for all children school vouchers providing a minimum amount towards tuition. Since government provision of services tend to be costly and inefficient as we shall see in Chapter 8, the government need not and probably should not offer the education itself.

Summary

Freedom, defined as the absence of coercion by the state, promotes progress and thus ameliorates the human condition. Liberty furthers progress both directly by enhancing peoples'

well-being and indirectly by advancing the possibilities of change that ultimately leads to more progress in other dimensions. In recent years, governments both here and abroad have seriously restricted economic and social freedoms. These controls retard economic growth and progress while in themselves directly lowering their citizens' welfare. Government should avoid prohibiting any behavior that harms no second party. A victimless crime is not a crime.

By providing a free society in which men and women can experiment with ways to improve their lives or the world in which they live, the state can make the maximum contribution to progress. The more restrictive the government, the less fast progress will be.

Not only is freedom a requisite to progress because it encourages the innovation out of which progress springs, but it is also important because it fosters a "better" quality of life. One of the most important measures of human advancement is the degree to which the inhabitants of a country enjoy the liberty to live as they wish, to learn what they find useful, to say what they like, to earn a living the best way they can, and to promote causes in which they believe. The absence of freedom is tyranny. As the communist world taught us, such a void was a prison for their people. That their government espoused egalitarianism was little comfort to those deprived of their basic rights.

As the above discussion indicates, the degree of freedom people enjoy can vary from virtually none up to a true libertarian regime. A true libertarian or minimalist state has never existed, but some societies have been quite liberal. Even among Western democratic countries the amount of freedom that citizens have varies considerably. Most people living in most societies in recorded history have enjoyed only limited rights. The world today, however, contains more states that offer greater liberty to their people than has ever existed in the world.

In my opinion, there has never been a country with "too much" freedom, although the United States has probably enjoyed the most political freedom of any nation in history. Because of the Bill of Rights and a profound faith in political liberties, the U.S. government has restricted speech, the press and religion less here than anywhere else. On the other hand, government restraints on social freedoms such as drugs and alternative life styles have been more common in America than in parts of Europe. Most people in America, for example, seem to feel that the Dutch are overly liberal with drugs and sex while the Swedish society encourages licentiousness. Europeans, however, have imposed major restraints on economic freedoms, often prescribing a wide variety of mandated benefits businesses must provide and specifications that products must contain. Hong Kong may have enjoyed more economic freedom than any other place on the earth — at least, in recent years. Other free ports, as liberal as Hong Kong, may have flourished in the past, but Hong Kong's economy has certainly enjoyed the fewest governmental regulations of economic activity in the post Second World War period. At the same time, that city state has been

run as a colony from London without any semblance of democracy, although the British colonial ministers have allowed a largely free press to flourish.

Different cultures permit more or less social freedom. I think few people would argue that the United States has too much political freedom, but many non-Westerners would claim that Europe or even North America have too few social restrictions. To a devout Moslem, the West with its open alcohol, its mini-skirts, and its permissive sexual mores is “too free” and should impose constraints on its citizens.

Social freedom is important to people. While many may simply find it comfortable to follow the herd, others may wish to experiment with different modes of living. To prohibit individuals from living as they prefer, as long as their actions have no adverse effects on others, is to deny humans a fundamental right. Progress, as an improvement in individuals’ well-being, must be viewed subjectively. If someone prefers an unorthodox life-style, to impose restrictions on that person, that is to make his choice unnecessarily costly, is to make him or her, in that person’s own eyes, worse off. Although conservative men and women may object to the sight or knowledge of people living in ways they consider inappropriate, this disapproval can never justify the state’s forbidding the unorthodox behavior. If the government can prohibit behavior simply because a majority disapproves of it, then, on the same grounds, the government can restrain speech. Once speech is abridged, all freedoms and democracy itself are in significant danger.

Although the government of a free society should not prohibit as person’s behavior as long as such action does not harm anyone else, the government need not aid or benefit unorthodox life-styles. Homosexuals, for example, want the state to recognize marriages between people of the same sex, but society may gain nothing by doing so. The state need not validate a particular way of life. The government now provides legal sanctions to heterosexual marriages in order to facilitate a relationship that typically results in children. Because society has a strong long-run interest in the well-being of its children, the government has established certain privileges and legal norms to favor families. To promote the interests of children and to regularize any dissolution of a marriage, the community possess a strong interest in formalizing the rights and responsibilities of husbands, wives and children. If a marriage dissolves, the state has prescribed a set of rules for allocating property and the maintenance of offspring. Homosexual couples will typically be childless, although in rare cases children from previous marriages or liaisons may be involved.* Since the state need not in general be concerned about children of same sex partners, there is no necessity for the law to provide any privileges for such arrangements.

In spite of the expansion in political and social freedoms at least in the Western world, economic freedom in most industrialized countries is being seriously eroded. Without economic

* For a more detailed discussion of homosexuality see Richard Posner’s book *Sex and Reason* .

freedom, however, social or personal freedom and ultimately political freedom cannot continue. To campaign against a ruling party takes economic resources uncontrolled by the government. The more the government regulates the economy, the more it restrains political freedom and ultimately social liberties. If political rights and democracy are to be preserved in the West, the tendency of governments to multiply regulations and encroach on the economic prerogatives of their citizens must be stopped.

As chapter 6 will argue in greater detail, freedom, especially economic freedom will promote economic growth. All the evidence suggests that the more liberty people enjoy to better their own well-being, the more the economy will grow. The decline of economic freedom in the West has held down economic growth, which maybe significantly below its potential. The next chapter will examine the connection between freedom and democracy and how the type of government is related to progress.