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THE PRESERVATION OF LIBERTY

Alan Keyes†

My introductory remarks in this discussion begin with reference to natural law and Madison's famous phrase in *The Federalist Papers*; my initial point being that "[i]ustice is the end of government [and] the end of civil society. It has been and ever will be pursued until it [is] obtained or until liberty be lost in the pursuit."¹ Throughout my career dealing with public policy I have often recalled this phrase because it aptly summarizes the challenge our society faces when confronted with questions involving principles of right and justice. This challenge requires us to understand that though justice, as a goal, has a substantive relevance to any regime, in our regime it is related to, and possibly may threaten, the "real" motivating goal of society's existence: the preservation of liberty.

In our society, liberty is understood to be a part of justice. It is the first, and perhaps most, fundamental entitlement of our political structure. As we discuss questions of justice, liberty becomes a kind of limiting concept that we must always be mindful of as we progress further down the road—especially in discussions of distributive justice—and are reminded that, for us, justice has not only a distributive, but also a substantive meaning. You cannot do justice without a respect for the essential dignity of the human beings with whom you deal. Understanding this concept, however, requires reconciling the pursuit of justice with the perpetuation of self-government. Obviously one can imagine a regime in which one or several all wise beings order things in a way that everyone gets what they deserve—a regime whose only requirement in return would be that all the individuals surrender their capacity and opportunity to make decisions, even bad ones, for themselves. I have always assumed that if someone offered me that bargain, I would reject it because I would rather make bad decisions and suffer the consequences than be enslaved to good masters—the goodness of mastery never being the question for me, but rather its existence and implication for my person of slavery.

I go through this illustration because it is the best way to remind us about the limits we, as citizens of a regime concerned with freedom and self-government, should place on our more abstract

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discussion. We are not simply concerned with how well individuals may fare in the distribution of society’s goods, resources, services, opportunities, and so forth. For us there must be, along with those kinds of concerns which can exist in any regime, a profound and fundamental concern for the maintenance of freedom and self-government—two peculiar and particular characteristics of this regime.

This is very important because it settles a lot of issues (or at least provides a clue as to how to deal with them) that we discuss at great length in this society. It means that no matter how much good we may wish to achieve, we do not have the right to achieve that good at the expense of others’ freedom.

When I use the word freedom, I do not mean it in the licentious sense of people out there doing whatever they please. Rather, I use freedom in the sense of creating, preparing, and maintaining a society in which individuals capable of freedom can develop that capacity and exercise it in a way which is consonant with the perpetuation of the society’s existence. Freedom has direct implications for all kinds of entitlement programs and I will just talk about a couple as examples.

We understand liberty to be an entitlement, but only with reference to some principle which transcends human choice, government fiat, and even the Constitution. Despite contrary belief, the Constitution is positive law, and the founders of our regime quite clearly indicated to us that when positive law goes wrong, you have the right to do various things, up to and including rebellion, in order to rectify it. The founders never understood that Constitution with a big “C” would ever be god. What they understood was that our Creator, not the Constitution, endowed us with certain inalienable rights and that those rights, those entitlements, transcend positive law and positively established human governmental institutions.

You can refer to the source of the inalienable rights as whatever you like. You can attribute their existence to whatever mystical source you may wish to conjure up, but at the end of the day, the form of words that you use to justify human entitlement to freedom will always have some reference to natural law. Even the statement, “you shouldn’t treat human beings that way” is a reference to human nature, to what accords with human nature, and to what accords with that mode of being which governs our human nature, which you can refer to as a law. All of our common ways of speech imply this way of thinking though we do not like to admit it. A lot of people are too ignorant even to know that they are talking in this language, but our founders determined us in such a way that we cannot help but talk in this language.
Talking in this language puts us in an odd position when thinking in terms of affirmative action. Those who are in favor of affirmative action but against quotas have a sound basis for their position because the one can be pursued with respect for the dignity of the individuals that we are dealing with while the other cannot. Quotas reduce individuals to an abstract statistic and takes no account of their intrinsic worth or intrinsic capacity to take responsibility for themselves. That is why desire to do good must be limited by an understanding that any good which contravenes an individual's capacity to take personal responsibility is not good at all.

Quotas in fact do justice in a way that incurs the most profound injustice, if I am a black person. Quotas set me in a position in life without regard to my individual merit, worth, and qualities. You will be able to achieve what you abstractly understand to be a socially desirable goal or balance in society. But you have achieved your understanding of justice at the expense of my individual worth. And your desire to do good has stood the goals of the civil rights movement on their head.

For some people this is hard to understand, particularly those who have what I call the apartheid approach to affirmative action; that is the group rights approach to affirmative action. It is not widely known in our society that apartheid was not just a racist instinct. It was actually a fairly well developed ideology at one point. And that ideology was, and still is in the minds of its strongest proponents, based on the idea that rights inhere not in individuals but in groups of people. Blacks have rights as blacks; Indians have rights as indians; Whites have rights as whites; Women have rights as women. We figure out what they are, delineate them according to some sort of system, and everybody gets their due, based upon belonging to that group or class.

This is all well and good if you are going to impose an external understanding of justice on every individual and distribute goods in society according to that external understanding. But such an imposition eradicates the existence of the individual's worth and in doing so you have done what all tyrannies do: you have treated human beings as if they are mere instruments of societal and governmental power in the pursuit of some good. Now if you are a real tyrant, that good is going to be your own narrow little good; the good that is defined by your appetites. If you are a more benign ideological tyrant, then the good will be defined in a more abstract way. But you will still treat human beings instrumentally, violating not only what we understand, but even what such abstract thinkers as Kant understood to be one of the prerequisites for decent human relations: that you must never treat human beings as if they were simply in-
struments to your ends. Unhappily, the statistical understanding of affirmative action treats human beings precisely in this way.

Sadly speaking, some of the other well-motivated, but misguided approaches to dealing with human problems in our society do the same thing. In fact, this same mentality is at the heart of a very common approach to welfare—to dealing with what we view as the problems of poverty, economic advancement, and development in this society. Look at the statistics. We have a lot of poor people. We feel compelled to find some way to rectify that poverty through the manipulation of external things, such as the flow of money. We do not, however, take account of the impact that our action will have on the internal, intrinsic, and subjective situation of the individuals we deal with. We treat them as if they were numbers—classed according to income or lack of income. In doing so, once again we treat human beings as if they were instruments, not ends. Admittedly, their internal worth is sacrificed as a misguided means to achieving a noble purpose; that of producing a just society. But even if it means waiting a little longer for that kind of a just society, it is important to understand that human beings have an internal worth which must be respected as we go about our purposes.

For this reason, the empowerment philosophy, as it is called, is a necessary alternative in our society to the more abstract pursuits of justice that, until recently, were common. Empowerment by its very nature requires that we ask ourselves about the human being's capacity to do for him or herself and that we understand each of our actions have a relation to the development of that capacity. If we simply rectify an injustice in an external sense but do not develop that capacity, then we have done the individual wrong. To avoid this wrong, we must examine every program and we must especially examine everything we do with respect to a simple question: What does it do to the individual's sense of responsibility?

Empowerment does not mean just the capacity to do for oneself; rather it means the motive and the will to take the responsibility for one's own destiny. This is the essence of self-government. That which promotes this will is good. That which destroys it, however laudable the results might be, is bad. It is better to have a poor person who is capable of freedom than to have a person not poor whose soul has been bereft of that capacity. Systems that destroy this will in the name of justice, even if they produce good results, have in the name of distributive justice bred passivity, dependency, a lack of motivation, and a sense that someone else was responsible for one's conditions. Such a system, regardless of its results, is intrinsically unjust. That is where the issue has to be engaged in principle. I am not arguing with people, though I could, over whether
or not certain approaches produce more or less poverty. That is not, in this case, the only question. I am arguing about whether certain approaches to producing more or less poverty, produce more or less capable individuals in terms of their capacity for freedom.

That leads me to a final point which, in light of the discussion I have tried to present, would lead one to redefine victimization. I know that we often understand victimization to mean that I make a victim of you on account of my negative and nasty passions, hatred, resentment, prejudice, or racism. That in pursuit of those passions, I victimize you, take your life, deprive you of some good, deny you opportunities and advancement in society. This definition is helpful when we look at individuals and try to rectify the injustices done to them.

At the same time, however, when we look at groups within society, victimization takes on another meaning. It means defining a whole class of people as victims, treating them with remedies that, in the name of improving their situation, lead this class of people to understand themselves as victims. This kind of victimization, though it serves the purposes of sociologists and social engineers, constitutes a fundamental act of injustice. If we define individuals as victims and then treat them with remedies that perpetuate this self-concept, we deprive them of the most important motive for securing their freedom as individuals: the sense that they are responsible for and to themselves. Without this feeling, the peasant never revolts, the slave never lifts his eyes to look upon the brutality of the master, and the oppressed never strike a blow toward liberation. Frederick Douglas once said that those who would be free themselves must strike the blow. If we take away the will that lifts the arm which strikes the blow for freedom, we have destroyed the free citizen's most important good.