Law Faculty Articles and Essays

1997

Liberty and the Good Life

David F. Forte
Cleveland-Marshall College of Law, Cleveland State University, d.forte@csuohio.edu

Follow this and additional works at: https://engagedscholarship.csuohio.edu/fac_articles

Part of the Law and Politics Commons

How does access to this work benefit you? Let us know!

Publisher's Statement
Acton Institute for the Study of Religion and Liberty http://www.acton.org/

Repository Citation
Liberty and the Good Life

BY DAVID F. FORTE

U-Turns may be prohibited on interstate highways, but it became the standard traffic pattern in the Republican Congress elected in 1996. Republicans did not contest President Clinton's plan to balance the budget. They just wanted to do it earlier. They did not object to Clinton's tax cuts. They just wanted more of them.

Republicans want to help families educate their children. But not as expensively or intrusively as do the Democrats.

The new Republican drift is an inheritance from the last dreadful Presidential campaign. As the 1996 session of Congress drew to a close, the Republicans in Congress capitulated to President Clinton's threat to shut down the government once more. Instead of cutting expenditures, instead of trimming regulations, the Republicans buckled. They no longer talked of eliminating departments but gave every department—particularly Labor, Education, Health and Human Services, as well as the EPA—hefty increases. In 1995, the Republicans reduced the budget for general government expenses from $508 to $488 billion. But in 1996, they pushed it back to $503 billion. They passed a health care bill that mandates coverage by private insurance companies for mental illness, a provision that will increase governmental intrusion and push up health care costs dramatically. As President Clinton accurately stated, the GOP's concession to his "incremental" approach will more likely gain him his health care scheme than his previous all-or-nothing approach.

We have come a long way from 1994. At that time, the ideological identity of the two parties was clear and understandable. Americans knew what the plan of government was for the Republicans and what it was for the Democrats. Today, party identity is much more muddled. The brilliant manipulations of President Clinton and of his sometime mentor, Richard Morris, and the exceptional political ineptitude of the Republicans leave the American people today with no clear picture of the ideological differences between the parties.

Yet the ideological divisions remain in the body politic, despite the miasma thrown about them by the "centrist" Clinton and the "get along" Republicans. The majority of Americans today still call themselves conservatives, but there is little consensus as to what "conservatism" means.

Four Faces of Conservatism, Three Faces of Liberalism

Today, conservatism wears four faces. There are rights conservatives (those we call libertarians); social conservatives (those with an image of what a good society should look like); traditional conservatives (those who are comfortable with the way things have been done); and status conservatives (those who wish to keep their positions of power). It is this last form of conservatism--status conservatism--that is the liberal caricature of what a "real" conservative is.

Status conservatives are everywhere. A liberal tenured member of a university faculty is a status conservative. Those who work in state and federal welfare agencies are often status conservatives when it comes to the programs they have become dependent upon. Some welfare recipients may be status conservatives in their own way.

Conservatism today, however, is settling into two major forms: rights conservatism and social conservatism. In the face of so much radical legal and social change, the traditionalists’ justification—stability requires consistency—no longer has much weight. For their part, status conservatives always defend their position by reference to some other value. Professor Smith needs his tenure because of the value we place on free speech. Businessman Jones needs his government monopoly because of the many workers he employs. In other words, status conservatives dress up their privilege in the language of either a rights conservative or a social conservative.
The division of conservatism into its rights champions and its social visionaries is not an innovation. Politically, whenever rights conservatives have joined with social conservatives—whenever the program of liberty promises a better, that is, a more virtuous society—that coalition can easily achieve dominant status. That’s what happened when the Americans won the Revolution. Where the coalition breaks down, or when it adopts, for expediency’s sake, the program of status conservatives, it loses its political force and legitimacy. That’s what happened during the New Deal.

What about liberals? What sorts of faces do they show to the country? I see three faces of contemporary liberalism.

In America today, the left offers us egalitarian liberalism, welfare liberalism, and autonomy liberalism. At bottom, I think the three are in contradiction to one another, but that does not stop the liberals from proclaiming all three at the same time. They have their coalition politics, too.

Egalitarian liberalism needs no explanation and has, in fact, always been the strongest political attraction of liberalism. All attacks on status conservatism gain credence whenever done from the stance of the value of equality. Along with liberty and morality on the conservative side, equality was also part of the trinity of values animating the Framers and the American Revolution.

In fact, however, modern liberalism has given up on equality in favor of its other two tenets: welfare liberalism and autonomy liberalism. Welfare liberalism ultimately derived from the statist philosophy of a progressivism articulated most particularly by Woodrow Wilson. Welfare liberalism is based on a materialist view of human nature. It holds that the happiness and dignity of each human is determined by his material environment. That is why welfare liberals truly believe they are assisting people when they create a regime of grinding dependency on the government. They think they are helping people because they have only one standard of who a person is: a material being in a material universe. In contrast, libertarians focus on the independent responsibility of the individual while social conservatism looks at the fundamental moral dignity of each individual.

What about autonomy liberalism? It claims to celebrate the individual, to provide the individual with as wide a range of “free choice” as possible without any moral constraint. But autonomy liberalism is not, as some think, merely the liberal analog of rights conservatism.

For a while, I used to think that there was not much difference between libertarianism and autonomy liberalism except that libertarians were more consistent: They believed in economic liberty as well as other kinds of liberty. But now I have come to realize that autonomy liberalism and genuine libertarianism are polar opposites, for they are based on antithetical notions of what the human person is.

A Moral Vision of Man

At bottom, a true libertarian philosophy harkening to its eighteenth-century roots is grounded in a moral vision of man. Libertarianism’s self-evident premises are reason and a natural order among men. It is the Benthamites of the nineteenth century and not true libertarians who regard society as made up of solitary individuals. Rather, a libertarian sensitive to history will see society as made up of individuals who have freely bound themselves to one another in a wide range of mutually dependent social groupings. Such libertarians champion contract because a contract is a promise by which one covenants to behave in a certain way to the benefit and reliance of another person. Promise, trust, and commitment are the essential moral qualities of that kind of libertarian view of society. Without it, the libertarian philosophy would be unworkable and would make no sense.

Autonomy liberalism, on the other hand, pictures the individual as solitary and autarkic. The individual is not ruled by the reason by which he can find common moral ground with other men. Rather, he is ruled by his own pursuit of his appetitive pleasure. Autonomy liberals regard the will, not reason, as the essential element of human nature. In fact, they deprecate reason and try to “deconstruct” it, as I see every day in the academy. Autonomy liberals see government not as the enforcer of the moral requirements of trust, promise, and reliance but as the umpire between clashing wills.

It is no coincidence that autonomy liberals are much more insistent on the so-called right of privacy than are libertarians. Clearly, one can only exercise one’s will without hindrance, without conflict with the wills of others, in a realm that is immune and private to one’s self. Libertarians are far less caught up in the notion of privacy. What they seek instead is the freedom and opportunity to make voluntary connections with others. Libertarians (as do social conservatives) move out from the self; autonomy liberals turn inward upon the self. One is other-regarding; the other self-regarding.

For their part, social conservatives offer a richer notion of humanity than any version of liberalism. Society is a nexus of mutual dependent souls, each of value in himself and each in need of nurturing from one another. Social conservatives have allied with rights conservatives because they see that with liberty, the individual becomes a morally responsible agent and is encouraged to commit himself to others and to his own moral development. Social conservatives and rights conservatives agree that not only should government protect the liberty of individuals, but it must also enforce those commitments the individual has made.

Social conservatives understand particularly the moral and social good that comes from stability of the freely
entered marriage covenant. Through them, we have come to realize that much more is dependent upon, and many more persons rely upon the commitment of husband and wife than just those two persons. Social conservatives have researched and demonstrated that a freely contracted relationship over time gathers so much more to it, that the mere mutual desire of the two parties to terminate it can create great harm to others. No-fault divorce laws, for example, have wreaked far more damage upon women and children than a pure contractarian could have ever envisioned.

Liberty, Virtue, Constitutional Order

Where libertarians see the freedom necessary to enter into moral relations, social conservatives see the moral good that emanates from those relations. That is why a limited government that both protects liberty and supports the social relations that derive from it is a logical necessity to both libertarians and social conservatives.

The Founders of the country had exactly the same vision. For Americans, arbitrary power from whatever source, be it governmental or individual, destroys liberty and corrupts the society. When Americans fought for self-government, they did so in both senses of the term. The American vision was of a self-governed people made up of self-governed individuals. Liberty was equally available to all, and all were equally responsible to fulfill their moral obligations. As John Dickenson wrote in his Letters of a Pennsylvania Farmer:

Benevolence towards mankind, excites wishes for their welfare, and such wishes endear the means of fulfilling them. These can be found in liberty only, and therefore her sacred cause ought to be espoused by every man, on every occasion, to the utmost of his power.

There were three things Americans fought for in seeking an independent state: the realization of an ancient constitutional order based on the rule of law and the traditional rights of Englishmen; liberty and a government that operated only with the consent of the people, and a republic of balanced powers, balanced social classes, and one in which a virtuous citizenry would thrive. All three principles were merged into one cause, and Americans found no contradiction between the rule of law (what a constitution preserves), liberty, and virtue.

For the Founders, a constitutional order is essential to liberty. Liberty is essential to virtue. And a virtuous people are essential to the maintenance of a constitutional order. In the minds of the American patriots, the three elements were indissolubly linked. The alliance between liberty and virtue, between libertarians and social conservatives, defeated the status conservatives and won the American Revolution.

Thus, the alliance between libertarians and social conservatives is both necessary and natural. It is necessary, for separately, they will be defeated by the statists and the champions of arbitrary power. But together as a coalition, they become a formidable force. In fact, such a coalition naturally attracts that other consistent value of American society: equality. For there is no equality between persons except in the dignity and worth in which each is regarded. There can be no greater worth than equal liberty for all. There can be no greater dignity than equal responsibility of all to grow in virtue.

The alliance between liberty and social conservatism is also natural because a liberty that fails to increase virtue is not worth it, and a virtuous person without freedom is a contradiction in terms. There are, however, temptations that bode to shatter that vital alliance. Many libertarians, for example, are bemused by the autonomy liberals’ insistence on amoral individualism. It is not the way to free community but to narcissism. If libertarians take that route, they will make themselves politically irrelevant to Americans. Americans are natural communitarians, and their communities have always been morally based. The limited role of government is to confirm and assist our naturally formed moral communities, particularly the family. It is not to supplant our private communities, or to be hostile to them in the name of materialist individualism.

Material in Subordination to the Moral

In recent years, the most probable chance for such a successful alliance politically has lain in the Republican Party. But the Republicans have muted that coalition so much in the last election that the American electorate no longer can sense what that party truly stands for. In my mind, the low point in the Republicans’ political fortunes at their national convention last year was General Colin Powell’s speech. There, you will recall, he stated that he was a Republican because that party was big enough to welcome someone who believes in the woman’s right to choose, and who believes in affirmative action, because despite those differences, the Republicans were united in “restoring the American dream.” But what kind of American dream is that accepts one and a half million abortions a year? What kind of American dream is it that denies a person educational and employment opportunities because of his race or gender? In one breath, General Powell made irrelevant both virtue and liberty.

Instead, he promised only greater material benefits for the individual. The only difference between that Republican message and the Democratic is that the Republicans promised us more money to spend on ourselves, while the Democrats promised more government to give us what we want. Both visions see the individual as self-regarding and egotistical.

The “American dream” has always been material as well as moral, but the framers of the country unmistakably
placed the material in subordination to the moral. Their praise of religion, their notion of natural law, their suspicion of the appetitive elements of the human personality combined to create a regime that was dedicated to liberty as the essential means to a virtuous society. Rights only made sense to the Framers when directed to the good. Liberty was not autonomous licentiousness but the capacity to govern oneself for the betterment of one’s moral life and the moral life of the community. Without a vision of objective good, liberty has nothing to measure itself against. That vision can only come to pass when libertarians and social conservatives see each other, not as competitors on the right, but as natural and essential allies.