

Can a Liberal Society Tolerate Illiberal Elements?

Chandran Kukathas

The libertarian first principle—a belief in individual freedom—can lead to two different and not necessarily acceptable societies from the standpoint of liberty.

Libertarians believe that all individuals are entitled to live as they choose, free from interference by other persons or by the state. They also believe that in the absence of such interference, whether by government or other agents of the state intent on designing or planning for society as a whole, order will nonetheless prevail. Given the freedom to contract and exchange, markets will coordinate the production and distribution of goods — and indeed do so better than any other institution can.

It is the first belief that is theoretically distinctive, and distinguishes libertarians from others, such as free-market utilitarians like Jeremy Bentham. For libertarians think that what is most important is to defend the freedom of individuals to live without being victims of aggression by others—against their persons, or against the property they have rightly acquired. Fundamental to this belief is the idea that all individuals are self-owners, and that self-ownership carries with it the freedom to own property.

All individuals must therefore have liberty, but only that liberty that is consistent with a respect for the liberty and property of others. This is the basis of the libertarian account of the justification for, and role of, the state. If individuals own themselves, and have a right not be aggressed against by others, no government is legitimate unless it has the consent of the people. (For some libertarians, it is then simply a matter of logic to show by inference that no government is legitimate.)

For those libertarians who think there is a role for government, its purpose cannot be to improve people, or attend to their welfare, or satisfy their needs, or give

them what they deserve. At most, its purpose is to protect individual liberty against invasion by others, whether at home or from abroad. Otherwise, it should leave people alone. What could be simpler?

Yet matters may not be quite so straightforward. For there are at least two very different societies which might be constructed out of such libertarian first principles. Which of these is the one that libertarians ought to prefer? And is either of them wholly acceptable from a libertarian point of view? To be a libertarian is to attach especial importance—if not overriding value—to liberty. Which, if either, of the societies produced by libertarian principles is acceptable from the standpoint of liberty?

The Federation of Liberty

Let us begin by imagining the first society, called the Federation of Liberty. In this society it is recognised that aggression is fundamentally wrong, for 'no man or group of men have the right to aggress against the person or property of anyone else.' Aggression is recognised to mean 'the initiation of the use or threat of physical violence against the person or property of someone else.' This society recognises 'the absolute right to private property of every man; first, in his own body, and second, in the previously unused natural resources which he first transforms by his labour.' In other words,

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it recognises two central axioms: the right to self-ownership and the right to 'homestead'.

Now the world is a diverse place, and people have different ideas about what is good and about what is right. The intuition libertarianism as a moral doctrine seeks to capture is the thought that when people differ in their ideas about what is good or right it is wrong to try to force people to accept one version or another, particularly if they are prepared to go their separate ways. Aggression—the initiation of the use or threat of physical violence—is never defensible. The use of force is permissible only in defence of one's person or property.

But the world being a diverse place, it will include not only people who accept the principles of libertarianism but also those who do not. What should be libertarianism's attitude to those who disagree with libertarian principles? In the Federation of Liberty the answer is that the principle of libertarianism should be extended to cover not simply the treatment of those who believe in it but the treatment of all persons. That is to say, it would tolerate in its midst even those who do not accept the principles of libertarianism. Such persons are free to go about their business unimpeded, provided they do not aggress against others. If they are numerous enough, they might form their own communities or groups, and live by their own lights. If they will not aggress against libertarians, then libertarians will not aggress against them.

The consequence of this attitude in the Federation of Liberty might well be that there are quite a few groups or communities that not only disregard but also directly repudiate libertarian principles. These may be communities in which the right to hold private property is not recognised, or in which the freedom of the individual to dissent from the community's powerful authorities is not respected—or even conceded. Indeed, the freedom of the individual to leave the community or group may not be accepted, so that many people are effectively held within the community against their will. And this is not to mention those who are kept within these communities in ignorance of any possibility of leaving for a society in which they might make use of freedoms they do not enjoy here.

Libertarians, however, can do very little about those who repudiate libertarianism and work to perpetuate ways of living that do not respect or value liberty. They may, for example, attempt to inform or educate those who are ignorant of their libertarian rights that they do not have

to remain among people who have no regard for them. But if those who control the communities in which libertarian rights are dishonoured do not permit this, libertarians are not at liberty to march in and force them to allow everyone to listen to the outsiders. Libertarians might be free to broadcast messages—on Radio Liberty or on the Libertarian News Network—but cannot demand that their signals not be blocked or, for that matter, that the targets of their transmissions be allowed to watch and listen.

The dilemmas of diversity

If the account so far is right, there could be a great deal of unfreedom in the Federation of Liberty. The principle of non-aggression produces a society characterised by a non-

aggression pact among people, some of whom do, and others of whom do not, accept the principles of libertarianism. But such a society might exhibit even less liberty still. For under this understanding of libertarianism it is quite possible, in principle, for the Federation of Liberty to be made up of only a minority of persons who accept the principle of non-aggression, if a majority of persons live in groups where aggression within the group is

condoned or unchecked. Indeed it is possible, in principle, that *no one* accepts the principles of libertarianism. The principle of non-aggression operates only between groups or communities, since no one will use force to intervene in the activities of those whose actions do not aggress against them or their property.

But can this really be a libertarian society? One reason it might be alleged that it is not is that this is a society that does not so much respect individual rights as uphold group rights. Yet in the Federation of Liberty there are no group rights. No community may claim anything from others on the basis of any group status or collective identity. Groups have no right even to keep their members within their borders; and if those who escape from groups they find oppressive find sanctuary among others outside, no one is under any obligation to force them to return and no one has any right that they be returned. Though, equally, no one may use force to extricate them from communities, which deprive those persons of liberty, or of the knowledge that they have rights. Only individuals have rights; groups do not. Evidently this does not stop groups from having power; or prevent individuals from becoming powerless.

What should be libertarianism's attitude to those who disagree with libertarian principles?



In such a society individuals might not enjoy liberty for either of two reasons. First, they might not enjoy freedom because they have no longing for it, having been raised in their associations or communities with no knowledge that this is something desirable.¹ Some forms of religious education do this quite well. And we know that in many societies particular classes of people are raised to understand that social roles are given by nature. Women, for example, have in many places been raised to accept that they were not free to choose the path their lives must take.

The second reason individuals might not enjoy freedom in the Federation of Liberty is that they are prevented from doing so. In such cases, individuals might long for freedom but might not be able to attain it because they are forcibly prevented from doing so. Some might be indentured labourers working to pay off a debt of which they will never be rid because they have accepted punitive terms when borrowing.² Others might have inherited debts because custom requires that debts be passed on to children. At the extreme case, people might be unfree because they are literally enslaved and slavery is acceptable in the community—which is a community that does not believe in libertarian principles. These people might want to leave—it is almost certain that they would — but they are prevented from doing so.

Such unfreedom is possible in the Federation of Liberty because the practice of non-aggression is understood to require that people not intervene in the activities of others except in defence of their own rights and property. Thus while those whose liberty has been infringed may be entitled to resist those who are trying to impede them, no one else may aggress against those who are violating the rights of others. In any case, most people are reluctant to get involved with those parts of the society where liberty is less than completely enjoyed: free trade with all, but entanglements with none is the catch-cry that would be heard—except that people minding their own business usually have no catch-cries.

Now, one way around this problem for the defenders of the Federation of Liberty as a genuinely libertarian society would be to point out that an individual deprived of his liberty or aggressed against can appoint agents to act on his behalf to protect his rights. These agents would not be aggressing against a third party without cause, for they are agents of the principal acting in self-defence. If this were the case, it would be justified in the Federation of Liberty for many of those whose rights

have been violated to be rescued from communities or persons guilty of aggression against others.

This does not resolve the problem of what happens to those who are unable to appoint agents to act for them. Even in a world of entrepreneurial would-be agents looking for principals needing to be freed, such potential agents have no right to demand that those they suspect of violating rights allow them to inspect their premises or records. Nor can they use force to gain access to knowledge of rights violations, or the wishes of people who might want to employ their services. Or at least, not in a society like the Federation of Liberty. For it does not condone the initiation of the use or threat of physical force against the person or property of anyone. Yet, perversely, this turns out to be a society in which many people end up being *free to use force*.

The Federation of Liberty might end up being a federation of not much liberty at all. And from a libertarian point of view this might be a good reason to reject its understanding of the principle of non-aggression. Perhaps

the principle of non-aggression properly understood will give us a society libertarians can commend; but that may require a very different understanding or construction of that principle.

The Union of Liberty

So let us imagine a second society, this one going by the name the Union

of Liberty. In this society it is recognised that aggression is fundamentally wrong, for ‘no man or group of men have the right to aggress against the person or property of anyone else.’

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Now the world is a diverse place, and people have different ideas about what is good and about what is right. The intuition libertarianism as a moral doctrine seeks to capture is the thought that when people differ in their ideas about what is good or right it is wrong to try to force people to accept one version or another, particularly if they are prepared simply to go their separate ways.

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But the world being a diverse place, it will include not only people who accept the principles of libertarianism but also those who do not. What should be libertarianism's attitude to those who disagree with libertarian principles? In the Union of Liberty the answer is that the principle of libertarianism is not one that people may choose not to adopt. The principle holds for all persons, in their dealings with all persons. What is the point, after all, of a moral principle that does not apply to all?

But what is the implication of this for the kind of society that will emerge out of such a construction of libertarianism? It ought to be noted at the outset that it may not mean that no non-libertarian communities or associations will exist in such a society. A crucial dimension to the rights libertarianism prescribes is the freedom of persons to waive their rights—or at least, some of their rights.³ Some persons might therefore agree with one another to form associations in which they live, voluntarily, by non-libertarian principles. They might agree to hold their property in common and limit private ownership; and they might place restrictions on speech, or require all to abide by strict rules limiting what each may do and authorising some to hold considerable power over others. What is different about the Union of Liberty, however, is that, unlike the Federation of Liberty, no one is permitted to live without liberty unless he has explicitly relinquished those particular liberties he lacks.

The difference this makes is a substantial one—more so than it might at first appear. For in the Union of Liberty, associations not founded on the consent of the governed may not operate. This means that certain kinds of associations or communities cannot exist, for the only legitimate associations are *voluntary* associations. In the Federation of Liberty such communities or associations had a place insofar as the principle of liberty meant a prohibition on intervention which allowed such communities to operate. But in the Union of Liberty the principle of liberty prohibits the operation of communities that do not respect the principle of liberty.

In this society, then, it would not be possible, say, for certain religious groups to operate, since they effectively repudiate the principle of liberty by denying their members any right to acquire or hold property,

restricting their freedom to worship, denying them freedom to move about, and failing to make these members aware that they have rights to reject their membership of such a society.

In fact, in the Union of Liberty there could not be any states or provinces that restricted liberty, say by imposing tariffs, or prohibiting the use of certain drugs, or mandating particular educational requirements. The standard of liberty is a standard that has to hold not only for society as a whole, but for all the societies within that society. People may not be deprived of their liberty without their consent. No authority can take it upon itself to deny people their freedom; and any authority that tried would be subject to censure.

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The problem is that there are a great many communities and associations which operate without respecting the principle of liberty, or which violate the requirement of consent. Most obviously, parents routinely deprive their children

of liberty, either by requiring some actions or proscribing others. The younger the children, the greater the interference with their liberty, and less often their consent is sought. Some religious or cultural traditions, moreover, require that children be physically transformed, whether through forms of genital mutilation or in ritual scarring. Children are thus subject to a variety of physical treatments, from footbinding to circumcision, in the interests of their future welfare.

Similarly, women might be denied the freedom to seek an education, or non-natives might be forbidden to own land, or those with particular sexual orientations might be prohibited from some forms of employment or from entering into certain contracts. Liberty may be restricted in many ways and for a great variety of reasons.

In the Union of Liberty, however, such restrictions cannot be tolerated, for they run counter to the spirit of liberty which must govern the society as a whole. Liberty can be given up by those consenting to the actions of those who choose to deprive them of it. But it cannot be taken away. And if a free society is to be preserved, those who would deprive others of liberty must not be permitted to do so. Liberty must be enforced if a libertarian society is to prevail.

The dangers of uniformity

The implications of this outlook need to be recognised. The first, and fundamental, implication is that there can be only one authoritative understanding of liberty.



While people may in fact have different views about liberty, only one view of what liberty means and what liberty demands can provide the standard by which conduct is judged. Second, and following from this, there cannot be a multiplicity of authorities with the right to set standards of conduct. If there were more than one authority, there could in principle be more than one understanding of liberty. In the Union of Liberty, since all societies within that society must uphold liberty, there must be a single authoritative understanding of liberty or else the variation in interpretation of freedom's meaning could leave liberty in many places honoured only in name.

A further implication follows from this. The Union of Liberty is a society in which the principle of non-aggression—prohibiting the initiation of the use of physical violence—does not rule out but endorses intervention by third parties to end, or avert, aggression by others. This means it is permissible to intervene in the workings of communities or associations which do not respect libertarian principles, and whose members have not waived their libertarian rights. It will not matter if the community in question asserts, through its authorities, that outsiders have no jurisdiction within its borders or over its members, or that it is improper for outsiders to aggress against them when they have not themselves been aggressed against. For it is enough that the community is held, by the outsiders, to be not a voluntary association but rather one in which some members are deprived of their libertarian rights without their consent.

The implication of this is quite serious. If intervention in the affairs of people who have not aggressed against us is permissible—to stop aggression within their own community—this must be either because anyone may determine whether or not intervention is justifiable, or only when it is authorised as lawful to intervene. In the Union of Liberty, it must be the case that intervention is permissible only when it is lawful—and authorised as such—assuming that a libertarian society is a society under law.

The law in question here cannot be the minimal rules of confederation that describes the Federation of Liberty, which permit each community to run its own affairs—even if in violation of the principles of libertarianism. For these minimal rules do not permit

intervention—aggression, or the initiation of force—except in cases of self-defence. But the Union of Liberty condones, or even mandates, intervention—precisely to stop aggression, or the initiation of force. Its laws must therefore reach further, specifying not simply how communities with different laws must relate to one another, but what laws every community must have. It must prescribe, in other words, what standards every community must meet if it is to pass the libertarian test, for no non-libertarian community may operate.

Now the implication of this is that there will be a central judicial body with final authority. For it cannot be left up to each community to determine whether it meets the libertarian test—or we would be back to the situation in which some communities fail to meet the standards of libertarianism (but simply claim to have done so). This

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judicial body will have the authority to determine when intervention is permitted to stop or avert aggression. It will also have the authority, since there is no other superior judicial power, to determine who may rightly intervene—to stop or avert aggression.

The problem we face now, however, is that there is in existence in the Union of Liberty a strong central authority. This judicial power will quite possibly—indeed, is more than likely to—be captured by the most powerful groups or communities, who will try to influence its understanding of what libertarian law prescribes, and its determination of where or with whom the power to intervene should lie.

The Union of Liberty might turn out, then, to be a union of not much liberty at all. For it could end up a union in which a great power ends up being established—one capable of depriving people of their wish to live by dissenting moral standards, even if they are dissenting *libertarian* moral standards. A libertarian orthodoxy is still an orthodoxy. And it must be asked whether any orthodoxy in power is really an ideal of libertarian construction.

Conclusion

If the reasoning behind these two constructions of libertarianism is sound, the choice confronting libertarians is an invidious one. For neither interpretation of the libertarian first principle produces an outcome which seems particularly hospitable to liberty. The Federation of Liberty



can, in theory, turn out to contain no communities that actually value or respect liberty; and even slavery might have a lawful place within it. The Union of Liberty, on the other hand, can, in principle turn out to be society ruled by a strong authority with little respect for dissenting moral traditions, including some self-styled libertarian moral traditions. Unless some more promising construction of libertarianism can be found to come out of its first principles, it looks as if a choice is going to have to be made.

Alas, no other construction of libertarianism is possible. The two alternatives described here occupy all the available conceptual space; and there is no third way, theoretically speaking. Libertarians must bite one bullet or another.

Given this necessity, the Federation of Liberty is arguably preferable to the Union of Liberty. What reasons might be advanced in defence of this choice?

The strongest argument available to the Unionist is that the Federation of Liberty fails to respect liberty because it will tolerate unfreedom, or even slavery, in its midst. Such a society can, in principle, be a society of communities *none* of which endorses or honours libertarian principles. For this reason a libertarian Unionist would argue that a genuinely libertarian society is one in which libertarian principles are upheld—or enforced—everywhere. This at least will ensure that liberty is not extinguished, for aggression will always be capable of being met by a superior power with the capacity to protect freedom. Slavery, or other institutions limiting or dishonouring freedom, would be prohibited without equivocation.

A Federalist, however, cannot help but look upon the Unionist's claims with a measure of scepticism. The case for the Federalist position is grounded in a conviction that power ought not to be entrenched. While authority may be necessary in human arrangements since disagreements have to be settled, no power should be established as the final court of appeal from which no dissent is possible. Indeed, if anything is fundamental to libertarianism it is the conviction that dissenters are tolerated or allowed to go their own way—free to exit from arrangements they find intolerable themselves. Disagreements should be addressed through persuasion rather than force. A federation of societies is a society that respects this outlook, for while it may contain within it many

authorities, none is pre-eminent, and none may subordinate the others, or claim a right to control its members—even if some may exercise enormous power in fact. What such a society refuses to do is bow to the temptation to control the abuse of power by creating—or condoning the creation of—a greater power to enforce right.

In the end, the establishment of power, even the power to do good, does not guarantee that good will be done. For that matter, there is no guarantee that the Union of Liberty will protect liberty, or even prohibit slavery. It is worth remarking that the most libertarian constitution the world has known tried to pretend that slavery for some was not inconsistent with the ideal of freedom for all. And the most notable defender of the idea of a Union of Liberty was prepared to place the principle of Union above the principle of liberty since it would rather preserve slavery than see the Union fall.

The choice is not a happy one. But philosophical choices often are of this nature, since theory frequently leads us to reductios that are, if not absurd, unhappy or repugnant. One can only hope that in the real world such dilemmas will be dissolved in good measure by civility and good will, even if they cannot be resolved purely by the power of reason.

Endnotes

- ¹ Of course, many may naturally seek liberty. I do not wish to deny this. But for the purposes of my argument it is sufficient to point out that some will not be possessed of a natural longing for freedom powerful enough to overcome the effects of socialisation to the contrary.
- ² In a sense they might have been forced to do so, since the monopoly powers granted to lenders in the community leaves borrowers no option of choosing among competitive interest rates.
- ³ As an aside, let me note that some rights may not be waivable. One may not be entitled to alienate one's right to liberty such that one can sell oneself into slavery. The principle of non-aggression means that no performance of an action can be compelled, even if performance has been contracted. Though, of course, the party injured by non-performance may have a just claim to compensation. This means that anyone selling himself into slavery cannot alienate his right to break the contract by refusing to perform as directed, even though he would have then to compensate the person with whom he made the contract of 'slavery'. In effect, this means that slavery contracts cannot have any force.