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### Liberty and the challenge of diversity

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# Liberty and the Challenge of Diversity

CHANDRAN KUKATHAS\*

## ABSTRACT

*Those who favor liberty face a dilemma arising out of human diversity. While some groups of people will place a high value on liberty, others may consider it a lesser good or may value it scarcely at all. Preserving a free society by forcing everyone to value liberty runs against the spirit of freedom; but leaving those groups who do not care for liberty to live in that way also diminishes liberty, if in a different way. In the end the dilemma has to be resolved in favor of tolerating even those who do not care for liberty and threaten to undermine it.*

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If it were only that people have diversities of taste, that is reason enough for not attempting to shape them all after one model. But different persons also require different conditions for their spiritual development; and can no more exist healthily in the same moral, than all the variety of plants can in the same physical, atmosphere and climate. The same things which are helps to one person towards the cultivation of his higher nature, are hindrances to another. The same mode of life is a healthy excitement to one, keeping all his faculties of action and enjoyment in their best order, while to another it is a distracting burthen [sic], which suspends or crushes all internal life. Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable.

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John Stuart Mill, *On Liberty*.<sup>1</sup>

We may consider, then, as one criterion of the goodness of a government, the degree in which it tends to increase the sum of good qualities in the governed, collectively and individually; since, besides that their well-being is the sole object of government, their good qualities supply the moving force which works the machinery.

John Stuart Mill, *Considerations on Representative Government*.<sup>2</sup>

### I. CONCEPTUAL PRELIMINARIES

If freedom is valuable, it is so at least partly because it leaves us to determine for ourselves what we value, and how to pursue our various ends. As a political principle, freedom is important because it recognizes that human purposes and aspirations are diverse and accepts that people should live the lives they wish to lead, not the lives that others deem good, best, or somehow fit for them.

A person is free to the extent that he is able to pursue his ends unimpeded by others: he is more free the greater the range of opportunities he has to act and the greater the value attached to the opportunities he has, and his freedom is of value to him to the extent that he feels free. A person is also more free the more secure he is in the possession of his freedom—if he is not uncertain as to whether his freedom is about to be lost. To be free a person must also feel free. A person who does not *feel* free at all attaches no value to the opportunities he has to act and is unfree.

A society is free to the extent that those who live within it (members and non-members alike) are able to pursue their ends unimpeded by others. It is more free the greater the range of opportunities they have to act and the greater the value attached to the opportunities they have; their freedom is of value to them to the extent that they feel free. The less secure they are in the possession of their freedom, and the more unsure they are of whether their freedom is about to be lost, the less free is their society. A society is unfree if those who live within it attach no value to the opportunities they have and do not feel free.

A person, whether or not he is free, may value freedom highly, value it little, or value it scarcely at all. Even if he values it considerably, he may rank it less highly than other things he considers more important. He might therefore be willing to forsake some (or possibly all) of his freedom for some other end. Few consider freedom to be a value whose worth is absolute or think that freedom ought never to be traded away. Many hold freedom even less dear and gladly give much of it up in the service of other goals: soldiers forsake a good deal of freedom on

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1. JOHN STUART MILL, ON LIBERTY (1859), *reprinted in* ON LIBERTY AND OTHER ESSAYS 75–76 (John Gray ed. 1998) [hereinafter MILL, ON LIBERTY].

2. JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT (1861), *reprinted in* ON LIBERTY AND OTHER ESSAYS 227 (John Gray ed. 1998) [hereinafter MILL, REPRESENTATIVE GOVERNMENT].

joining the army, priests forsake it on taking their vows. Individuals give up a little of it from time to time for many reasons—to do their duty, to please others, to improve themselves, to set an example, or because they think it will make them happier. To the extent that they forsake freedom willingly they forsake less freedom since they give up some opportunities in order to gain others they value more.

A society, composed as it is of individuals who themselves value freedom to varying degrees, may value freedom highly, or value it lightly, or value it scarcely at all. Even societies that value it greatly may value it less than other goods to the extent that its laws and institutions allow for or require that freedom be traded from time to time in favor of other goods, such as security, welfare, equality, piety, or some combination of such goods. They will require individuals to forsake some of their freedom to ensure that some of these other goals, collectively deemed desirable, might be met. Forsaking freedom, willingly or unwillingly, is commonplace. But one important factor that distinguishes a more-free society from a less-free one is the extent of freedom *not* forsaken unwillingly.

Freedom according to this view has four dimensions: scope, value, sense, and resilience. *Scope* refers to the range or number of opportunities an individual has to act unimpeded. *Value* refers to the worth of those opportunities, which can vary from the trivial (wiggling one's fingers) to the substantial (traveling where one wishes).<sup>3</sup> *Sense* refers to the individual's subjective appreciation or perception of his freedom (that is, to whether he *feels* free). *Resilience* refers to the likelihood that the freedom defined along the other dimensions will continue to exist (which means that people living in fear, or with yet-to-be-fulfilled threats to their freedom, or under arbitrary rule, are less free if there is a low probability of their freedom remaining as extensive as before).

A society is made up of a diversity of individuals who have a variety of ends, as well as different levels of appreciation of freedom. A society is also made up of groups of people who relate to one another within collectivities and in many cases with others as members of collectivities. An individual in one society, we might say, is a part of many other societies, some of which he might identify with strongly enough to consider himself to be a member. Some memberships are sufficiently important to those who hold them that they consider their very identities to be substantially formed by their belonging to that society. Individuals may thus belong to or identify with their localities, their provinces, their countries, and their states; they may identify with their cultures, their ethnicities, their religions, their linguistic groups, and their nations; or, they may identify with groups that are comprised of some subset of one of these entities or comprised of people related by sharing some combination of characteristics—ethnicity, language, and

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3. What counts as an opportunity to act depends on the description of the act and its meaning. A movement of one's fingers might, in one context, amount to nothing more than idle wiggling, but in another be a gesture of defiance, an attempt to communicate in signs, or an act of worship. Having an opportunity to act is not merely a matter of having the capacity for physical movement.

religion, for example. Since all kinds of combinations are possible, societies can be made up of all kinds of societies. Since people relate to one another not only within their groups, but also across groups, the composition of groups will change over time. With the passing of time, all societies, be they as large as empires or as small as villages, will be transformed to some degree. While stability along any one dimension is not impossible, it is nonetheless rare in the long-term.

The extent to which individuals identify with the societies they have joined or (more likely) find themselves in will also vary, as will the extent to which they accept the authority that society attempts to exercise over them. The exercise of authority constrains individual freedom by determining the scope of freedom and by affecting the resilience of freedom. An individual is less free when those who have authority over him prescribe a reduction in the scope of his freedom, though he loses less freedom if he forsakes that freedom willingly. He can forsake that freedom *directly* by willingly accepting the loss of freedom those in authority prescribe, or *indirectly* by accepting the authority of those who are directing him to so direct him. In this case, when the individual willingly forsakes some of his freedom it is the scope of his freedom that is most markedly reduced. The value of his freedom might not, however, be negatively affected since he forsakes the opportunity to perform some actions in favor of the opportunity to perform others (including the act of abiding by the directions of those who have authority over him) that he values more.

In any complex society—one that is itself made up of many societies—individuals will find themselves subject to many authorities that are able to limit their freedom. Some of these may be authorities that an individual has deliberately *authorized* to limit some of his freedom. The individual might do this by joining a club or an organization or by pledging his allegiance to some persons or group. Others might be authorities whose power to limit his freedom he has accepted only to the extent that he has never repudiated it, whether because he has been persuaded or conditioned to think it warranted, or because he has simply never found reason to regard it as unjustified. Yet others might be authorities he accepts willingly, but grudgingly, because he considers the alternatives to acceptance unpalatable. And of course there are authorities whose power to limit freedom the individual must accept whether he wishes to or not because that authority can and will exercise force to ensure his compliance. All four of these types of authorities have the capacity to reduce the scope of the individual's freedom, but only the fourth must always also reduce the value of the individual's freedom when it determines the scope of his opportunities to act.

A complex society is one in which there are many individuals who value freedom to varying degrees, and in which there are many different societies that also value freedom to varying degrees and exercise power over individuals, thereby constraining their freedom to varying degrees. The question is, how does one judge how free a society might be when understandings of the worth of freedom vary so considerably? It is sometimes alleged that human diversity poses a challenge to the idea or the possibility of freedom. This also raises the question of

whether diversity is compatible with, or can be reconciled with, freedom. Can a diverse society be a free society? I propose to consider these general questions here by tackling the problem of how a free society would deal with the fact that individuals, both severally and collectively, value freedom so differently.

## II. LIBERTARIAN DILEMMA

A libertarian, at least for our purposes here, is someone who values liberty and thinks a society is better for being more free. In political life, libertarians come in many varieties, from anarcho-capitalists to Hayekian classical liberals to so-called left libertarians; but for the argument that is to follow here the term libertarian also encompasses those who give great weight to liberty without wishing to adopt the libertarian badge: Rawlsian and Millian liberals, for example, and many liberal egalitarians more generally. All of these people consider liberty to be an important good, and view freedom as an essential aspect of the good society.

The issue all libertarians confront is the question of how to deal with those who do not value liberty as much as they do. In every society, we have already noted, there are those who would forsake at least some of, and possibly a good deal of, of their liberty in the pursuit of other ends. These people will, by their conduct, shape not only their own lives, but also shape the others' lives and society more generally.

Most immediately, they will shape the lives of their children and their families since they will, like all parents, play a crucial role in socializing their offspring and others who come into their care. Though children are never perfect replicas of their parents, their attitudes and sense of what is valuable or important can be profoundly shaped by their upbringing.

Less directly, those who value liberty less than libertarians will influence others, including the next generation, through their association with others who are like-minded. People associate in neighborhoods, in clans, in tribes, in religious communities, and in cultural groups of all kinds. In many of these forms of community or association, those who care relatively little for freedom will foster among those in their care similar attitudes toward freedom. While in some cases freedom will be taught to be prized, perhaps above all things, in many cases it will pale in significance beside other goods that are valorized (perhaps community, piety, or conformity to particular traditions).

In one other important way, those who value liberty less than libertarians will shape society's attitudes toward liberty through their political activity. Particularly in a free society, everyone enjoys significant opportunities to participate in the making of laws and the designing or redesigning of social institutions. Those who value liberty less than other goods will have the opportunity to press for institutional changes that reduce liberty in favor of some other goods deemed more worthy of protection or advancement.

The question for libertarians is whether upholding freedom requires leaving people to bring up their children as they see fit, associate as they wish, and participate in politics as they choose, or whether it demands that individual freedom in

all of these respects be limited in order to establish or perpetuate freedom more securely. The dilemma is that limiting freedom to secure it offends the very principle of freedom; but refusing to limit freedom runs the risk of allowing those who do not value freedom to undermine it. The issue here is not the more straightforward one of whether restrictions on liberty can ever be justified. As we noted earlier, people frequently opt to forsake liberty for other ends they value more. Laws and social institutions also limit freedom by determining the scope of individual opportunities to act. Rather, the issue is whether, in a free society, restrictions on freedom should reach deeper to try to ensure that freedom is preserved and perpetuated. Here liberty and diversity come into conflict to the extent that the principle of diversity condones (and thereby gives succor to) those who would, whether by accident or design, undermine liberty.

That this issue reveals a genuine dilemma for libertarians, rather than a verbal puzzle to be resolved by a more careful use of language, is perhaps evident in the tension we find between two tendencies in the thought of modern liberalism's most distinguished libertarian: John Stuart Mill. He began his essay, *On Liberty*, with an epigraph quoting Wilhelm von Humboldt: "The grand, leading principle, towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity."<sup>4</sup> In Mill's reading, Humboldt's insight was to see the importance of freedom and a variety of situations, for these two things were "necessary conditions of human development, because necessary to render people unlike one another."<sup>5</sup> What had saved Europe from the stagnation now endured by China, he argued, was its diversity; though when he wrote *On Liberty*, he feared that that might soon change:

What is it that has hitherto preserved Europe from this lot? What has made the European family of nations an improving, instead of a stationary portion of mankind? Not any superior excellence in them, which, when it exists, exists as the effect, not as the cause; but their remarkable diversity of character and culture. Individuals, classes, nations, have been extremely unlike one another: they have struck out a great variety of paths, each leading to something valuable; and although at every period those who travelled in different paths have been intolerant of one another, and each would have thought it an excellent thing if all the rest could have been compelled to travel his road, their attempts to thwart each other's development have rarely had any permanent success, and each has in time endured to receive the good which the others have offered. Europe is, in my judgment, wholly indebted to this plurality of paths for its progressive and many-sided development. But it already begins to possess this benefit in a considerably less degree. It is decidedly advancing towards the Chinese ideal of making all people alike.<sup>6</sup>

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4. MILL, ON LIBERTY, *supra* note 1, at xxxvi (quoting Wilhelm Von Humboldt, SPHERE AND DUTIES OF GOVERNMENT (1792)).

5. *Id.* at 81.

6. *Id.* at 80–81.

Yet if we turn to Mill's *Considerations on Representative Government* we find a very different concern. The diversity of nationalities under a single regime he now finds to be a problem rather than an advantage.<sup>7</sup> And one of the purposes of government, if it is to govern well, he now thinks, is to attend to the character of the population.

We have now, therefore, obtained a foundation for a twofold division of the merit which any set of political institutions can possess. It consists partly of the degree in which they promote the general mental advancement of the community, including under that phrase advancement in intellect, in virtue, and in practical activity and efficiency; and partly of the degree of perfection with which they organize the moral, intellectual, and active worth already existing, so as to operate with the greatest effect on public affairs. A government is to be judged by its action upon men, and by its action upon things; by what it makes of the citizens, and what it does with them; its tendency to improve or deteriorate the people themselves, and the goodness or badness of the work it performs for them, and by means of them. Government is at once a great influence acting on the human mind, and a set of organized arrangements for public business: in the first capacity its beneficial action is chiefly indirect, but not therefore less vital, while its mischievous action may be direct.<sup>8</sup>

The Mill of *On Liberty* is convinced that diversity, far from being a threat to liberty, gives liberty its point. What could matter more than human development in its richest diversity, and how better to promote it than by a regime of liberty that leaves people to pursue their own goals as they see fit? But the Mill of the *Considerations* worries that, left to their own devices and desires, people will not become sufficiently alike to be governed as a single collectivity, nor develop sufficient virtue to be governed at all. Libertarian though he is, Mill cannot help think that the government of a free society must take upon itself the task of fostering the qualities necessary for all individuals to possess for the society to prosper.

If freedom matters, and matters above all, should we seek to ensure that a free society is populated by people who appreciate its importance, or at least who possess the qualities and attitudes needed to sustain it? Or, if freedom matters, and matters above all, should we let freedom find expression in the great diversity of human attitudes toward all things, including freedom? Should people be forced to be free? Or if not forced, at least induced—threatened, tricked, cajoled, bribed, manipulated, or generally educated—into that condition?

#### A. *The First Answer*

The first answer is that a free society does not leave the liberty of its members to chance or its future as a society to the fates but takes active steps to ensure that freedom will prevail. This means taking an interest in the lives its members lead.

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7. MILL, REPRESENTATIVE GOVERNMENT, *supra* note 2, at 205.

8. *Id.* at 229.



But it also means taking an interest in the kinds of individuals its institutions create and sustain, in the kinds of societies it fosters in its midst, and in the political activity it will permit.

The reason for taking an interest in the lives of society's members is first to ensure that they do in fact enjoy liberty. Their liberty might otherwise be limited by a number of factors. First, they might be ignorant of the possibility of freedom and lead lives that are less free than they might otherwise be. Unaware of the possibilities open to them, they might pursue only a narrow range of goods when greater knowledge would lead them to consider other ways of leading satisfying lives. The scope of their freedom might be restricted by this lack of understanding and the value of their freedom might also be reduced accordingly as they pursue ends that have little merit. Second, their liberty might be limited by their subjection to the power of others who are able to coerce them into actions they do not wish to take or to prevent them from pursuing opportunities they might otherwise consider. Third, their liberty might be limited by the influence of those who exercise authority over them, whether as parents, community leaders, or members of a group to which the individual is loyal.

The reason for taking steps to ensure that liberty is actually enjoyed may be all the more acute when many groups of people in society put less store in liberty than in other values or ideals. If such groups limit the education of all children or reserve opportunities to boys but not girls, there is reason to act to expand the liberty of those denied it. If parents insist on mutilating their children in accordance with their own particular traditions or on denying their children medical treatments because of their customs or beliefs, there is reason to act to defend the liberty of those denied it. If groups try to compel their members to marry against their will, or to take up a profession they do not care for, or simply to conform to the thinking and practices of the group, there is reason to act in defense of those whose freedom is thereby reduced.

If the first reason for taking an interest in the lives of society's members is to uphold their liberty for its own sake, the second reason for doing so is to protect the long-term interests of the free society itself. If a society is to remain free it will not be enough for it to exercise power to try to preserve freedom by force. Individuals must themselves take an interest in that freedom. A free society must be made up of people who hold the right attitudes and preferences. It cannot be sustained unless its members hold freedom to be important and are not inclined to trade it away for other goods. If this is the case, then a free society cannot help but take some interest in the identities people come to have. It will not do simply to leave the formation of people's attitudes and preferences to chance or the predilections of parents and groups. A free society is a non-excludable good, and one that cannot be secured unless the great majority of people play their part by sustaining the ethos of freedom. And this means that, at least to some degree, people must be taught—convinced—to be free.

This line of reasoning is not unusual in political philosophy, which has been preoccupied with the problem of how the good society, once conceived and

instituted, can be preserved. Hobbes certainly appreciated the problem when he addressed the question of the education of subjects by the sovereign power that was properly concerned to ensure the preservation of the Commonwealth. In Chapter 30 of *Leviathan*, he dwells on the importance of teaching the right doctrine so that people become inclined to obey the sovereign not merely out of fear but out of an appreciation of the importance of obedience.<sup>9</sup> Above all, they must be taught that it is a mistake to think that they ought to be governed by conscience or private judgment when considering the laws of the commonwealth. Indeed Hobbes ends the second part of his treatise by commending his work to any sovereign who cares for his help, since his own teaching could profitably be “converted into the utility of practice” by being used to guide the education of the public.<sup>10</sup>

More recently, John Rawls, in his defense of his *Theory of Justice*, and of a *Political Liberalism* more generally, has dwelt at length on the problem of how to ensure the stability of the just society described by his work.<sup>11</sup> A part of that task is to be achieved by the articulation of a conception of justice that might draw the allegiance of an overlapping consensus of people with a diverse array of political and ethical commitments. But no less importantly, a measure of public education would be needed to prepare children to become fully cooperating members of society. Though this public education might well have the effect of turning some children into persons whose identities their parents will not welcome, for Rawls this is a consequence that must be accepted, even if regretfully. The state must, after all, raise the citizens of the future, and this means raising people who understand the public culture of their society.

Rawls is not so far from Mill’s concern. A free society must be built on free citizens. While the point of freedom might be to encourage the development of human capacities in all their diversity, that diversity cannot be allowed to stand in the way of freedom.

One further implication of this first answer to the question of whether diversity should be suppressed in the interest of freedom is that political activity cannot be tolerated when it poses a serious challenge to the free society. Many people and groups, even if they do care some for freedom, wish to overturn the established political order to recreate or transform society. Revolutionary movements are often dedicated entirely to such tasks. If political organizations (or parties or movements, etc.) are likely to endanger freedom, there is reason to act in defense of the free society by taking measures necessary to suppress the threat. It might be warranted to ban some political organizations, monitor the activities of others, and incarcerate those individuals who are responsible—if these measures would be effective. The suppression of freedom of some would be justified by the need to

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9. THOMAS HOBBS, *LEVIATHAN* 219–233 (Edwin Curley ed., Hackett Pub. Co. 1994) (1651).

10. *Id.* at 244.

11. See JOHN RAWLS, *A THEORY OF JUSTICE* (1971); JOHN RAWLS, *POLITICAL LIBERALISM* (revised ed. 1996).

protect freedom for all. Political diversity cannot be tolerated if it poses a risk to political liberty.

### *B. Second Answer*

A different response to the fact of diversity, and to the diversity of attitudes to freedom in particular, is to regard diversity as something to be tolerated. This means tolerating persons, groups, and political organizations whose conduct might threaten liberty, whether immediately or in the long-term.

The first reason for taking this stance is that honoring or adhering to a commitment to freedom is inconsistent with the exercise of force to compel people to live their lives contrary to their own wishes or preferences. People's preferences vary, and this includes their preference for freedom, which they might trade off for other possibilities they value more. To exercise force to prevent them making the trade-offs they prefer is inconsistent with respect for freedom.

It is, of course, possible that people will use their freedom to restrict others in the exercise of their freedom. Here it may be defensible to interfere with one person's freedom if the purpose is to prevent him from interfering with another's freedom. Thus, if Alf is interfering with Bob's freedom, it would be justified to act to prevent Alf from doing so. However, it is vital that Bob regards Alf's actions as an unwarranted interference and prefers that Alf not interfere. If Bob does not object to Alf's interference, there is no warrant for anyone else to restrict Alf's actions. Bob's wishes are decisive, and there is no warrant for intervening on Bob's behalf unless there is some good reason to think he would want it.

In this view, the question of how people come to acquire their preferences or desires is not a matter that needs to be considered. If some people do not value freedom enough to wish to uphold it, or are willing to let others direct them, that must simply be accepted. The fact that some people might be socialized into thinking that their freedom is not as valuable a commodity as other goods also has to be accepted. Respect for freedom does not mean second-guessing people's attitudes or giving less weight to the preferences of those who seem to have traded away more of their freedom than one might think sensible, prudent, or rational.

The fact that it is possible under such a regime for large numbers of people to be socialized into having a very limited appreciation of freedom makes no difference to the principle of non-interference with freedom. There is no warrant here for educating people to appreciate or value freedom. The education of individuals is a matter that is to be left to others willing to instruct them, whether as adults or as children. If this means running the risk that the society will underappreciate the principle of freedom—even to the point of significantly increasing the chance of the principle being overturned—the risk must be run. If diversity threatens to undermine freedom, then the free society must live with that threat rather than interfere with the decisions made by individuals exercising their freedom.

This answer to the question of whether to tolerate a diversity of attitudes toward freedom extends also to the issue of how to deal with political diversity—particularly those political outlooks that look to undermine freedom. Tempting though it might be to outlaw political organizations or political activity whose purpose is to turn the free society into one that trades away a good deal of freedom in the service of other ends, there is no warrant for it. Those who preach revolution must be allowed to do so; those who try to persuade others to abandon freedom in the name of the class struggle, or social justice, or piety, or conservative morality, or racial purity, and or for any other reason, must be permitted to do so. The reason for this is not that such persons and their organizations pose no danger—they might. The reason is rather that this is a risk a free society must take if it is to adhere to a commitment not to interfere with freedom. Living in a free society means living dangerously, at least in some circumstances.

The only occasion on which interference with freedom is warranted is to prevent an *immediate* interference with another's freedom when the subject of this interference does not wish to accept it. The justification for interference on such occasions is as follows: any individual whose freedom is threatened may rightfully resist the threat to his freedom. If that individual, the principal, wishes to appoint an agent to assist him in resisting that threat, or to act on his behalf, then the agent so appointed is warranted in acting to prevent those threatening the freedom of the principal. What exactly an agent may legitimately do to uphold the freedom of the principal is, of course, subject to many other considerations. The fact that an agent is authorized to pursue some end does not mean that he has the right to use any means to achieve it. Authorization is necessary, but is not sufficient, for acting in defense of another's freedom.<sup>12</sup>

If this answer is correct, the implications are significant. A free society could turn out to be one that is made up of a number of societies which are themselves not all equally free. Indeed, some of them might be societies in which the principle of freedom was scarcely honored at all. The only freedom all individuals could seek to uphold by force is the freedom not to be interfered with by those whose authority or power over them they repudiate. Since no one has any claim to have enforced his own preferences about how others behave when they are not interfering with him, the only freedom he can seek to enforce is the freedom to dissociate from others whose behavior he finds restrictive of his own freedom. If he is not willing to dissociate from them, he may simply have to accept the only terms of association they are prepared to offer, and if necessary a reduction of his own freedom. He cannot appeal to others to enforce better terms, any more than they can. On this account, many different kinds of societies might have to count as free societies, including some in which the smaller societies which are scarcely free at all.

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12. That authorization might come after the fact since an agent might anticipate a principal's desire for assistance; but the act of assistance to defend freedom would only be justified if that authorization were eventually granted.

### III. WHAT IS TO BE DONE?

These answers offer two very different responses to the challenge to freedom posed by diversity. The depth of the challenge lies in the fact that either response to the fact of diversity might be viewed as consistent or inconsistent with freedom. What should a libertarian do? Which is the libertarian answer?

The first answer looks plausible because it asserts the importance of maximizing freedom and ensuring its resilience. It tries to maximize freedom, first, by restricting the opportunity of some to interfere with the actions of others. It limits the control that some people have over others: parents over children, employers over employees, groups over members, and communities generally over individuals. “Unfreedom” will not be tolerated. Freedom will be enforced.

It tries to maximize freedom, secondly, by attempting to ensure that the practice of freedom does not deteriorate with the erosion of the traditions, attitudes, and beliefs that sustain it. It takes seriously the task of social reproduction—in this case, the social reproduction of the free society. Interference with freedom can be justified if the goal is the preservation or extension of freedom.<sup>13</sup>

The first answer tries to maximize freedom, generally, by ensuring freedom’s resilience across space and over time. This may mean establishing institutions with the power to preserve liberty, and perhaps even with the power to extend it. While it might be necessary to design such institutions so as to ensure that they do not themselves become a threat to liberty, this is no reason not to create them in the first place.

In spite of the immediate plausibility of the first answer, however, I think the second is the one a libertarian should adopt. Before considering why, it is important to be clear about what the second answer amounts to. It involves conceding that, from the point of view of freedom, it is better that a society tolerate the interference by some with the freedom of others, that it accept that the influence or control that some have over others might lead to a greater willingness of majority of society to trade away their freedom for other goods, and that it refrain from suppressing those who might be dedicated to the destruction of the free society in the name of some other ideal. How could this possibly be defended?

There are both practical and principled reasons for preferring the second answer to the first. The practical reasons rest on a skepticism about the wisdom of trying to preserve liberty by establishing or increasing the power of some agent or agents. If liberty is to be preserved, power must be checked. The best way to check power is by dispersing it. The problem with dispersing power among a diversity of agents is that they themselves do not face the sanction that might be imposed upon them by a more powerful agent. They will be checked by the competition they face from other powerful agents, and by the fact that those who are

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13. It would be too strong to say that *only* the preservation of freedom can justify interference with freedom. A defender of freedom need not say that *nothing else* can justify trading away some freedom. Valuing freedom means putting a high price on freedom, not placing it beyond any price. Extremism in the pursuit of liberty is indeed a vice, Senator Goldwater to the contrary notwithstanding.

under their control might abandon them in favor of associating with others. The problem with not dispersing power is that the most powerful agent will not be checked by anyone. The issue here is how to control the abuse of power. Those who are skeptical about the idea of establishing power to preserve liberty doubt that power can be controlled by mechanisms other than dispersal: legal or constitutional devices may have their place, but ultimately will not suffice unless power is effectively dispersed in fact and not just in law. The constitutional power is no substitute for the social separation of power.

The problem with giving anyone power is that there is always a risk that such power will be abused. Giving great power to one in order to protect the many from the power of the few does not ensure that the many will be protected. A variety of outcomes are possible. The one may suppress the few without benefiting the many. Some of the few may collude with the one to mutual advantage and the exclusion of all others. The one may benefit some of the many in return for gain. The possibility that the one will disinterestedly check the power of the few for the good of all is no more than one among numerous possibilities.

Even when those in power are not self-interested or self-serving, however, there remains the problem that there is still no capacity to check power. Mill thought in *Considerations on Representative Government* that good government required the creation and reproduction of the right kinds of citizens.<sup>14</sup> But creating the right kind of being is no easy matter. The thinker who devoted more attention to this problem than any other was Rousseau, who recognized that the problem was fundamentally intractable. The best kind of education, whether private or public, “tries to establish a harmony between the self and the environment.”<sup>15</sup> The difficulty, however, as Judith Shklar observes, is that the citizen, “however much denatured, however conscious of his civic self, has still an individual self, an inner life of his own, and it is bound to assert itself as soon as the vigilant eye of the Legislator is removed.”<sup>16</sup>

No less of a problem is any form of education that seeks to cultivate what is particular about the individual, for that would run counter to the aims of the kind of civic education thinkers like Mill envisaged as a means of creating the right kind of social beings. A cohesive community cannot be built on those who cherish the *moi humain*. But if left to their own devices, individuals are more likely to be shaped and influenced by the particular communities from which they come. The power of a greater agency or institution, such as the state, to try to create the right kinds of citizens will undoubtedly have some effect; but there is little reason to think the effect will be entirely consistent with the original intention.

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14. See MILL, ON LIBERTY, *supra* note 1 *passim*.

15. JUDITH SHKLAR, MEN AND CITIZENS: A STUDY OF ROUSSEAU'S SOCIAL THEORY 159 (2nd ed. 1985).

16. *Id.* at 160. This task is beyond any actual legislator, which is why in *The Social Contract* Rousseau makes the ideal legislator superhuman. *Id.*

Still, if we leave aside the practical considerations, there remain some important reasons of principle for preferring the second answer to the question of how to deal with the challenge of diversity. The first appeals to one of the reasons Mill offered for valuing and trying to uphold liberty. Individuals are diverse in nature, and their spiritual development requires different “moral climates”. This in itself tells against the wisdom and justifiability of trying to “shape them all after one model,” even if we think that one particular way of conceiving of free persons and the free society is best. This is perhaps the Mill of *On Liberty* (particularly the first half) rather than the Mill of *On Representative Government*. But that is Mill at his most libertarian.

The second reason for preferring the second answer is that in making judgments about freedom we should worry less about the *scope* and the *resilience* of freedom and more about its *value* and the individual’s *sense* of it. The range of opportunities an individual has to act is an important aspect of his freedom, but the scope does not matter nearly as much as the value of the opportunities he has. The value of those opportunities is determined to a very significant extent by the individual’s desire for them. Increasing greatly the number of opportunities an individual has to act while at the same time reducing the number of options he most values may well mean reducing the individual’s overall freedom. Of course a trade-off may have to be made between enjoying more opportunities to act and enjoying the opportunities one values most. But respect for liberty means leaving that trade-off in the hands of the individual. Very great weight has to be given in all this to the individual’s sense of freedom. An individual must feel free to some degree if he is to be regarded as a free person. Leaving him to make the trade-off himself is vital for this. Merely expanding the set of options available to him, no matter how valuable we might think these options to be, will neither make him more free nor leave him feeling free. For these reasons, forcing people to be free is inconsistent with freedom.

This also means that, while the resilience of freedom is not something to be discounted, neither is it something to be overrated. To be sure, a person is more free if he is more secure in his freedom and assured that the freedom he enjoys today will still be enjoyed tomorrow. He is more free if he is not subject to the exercise of arbitrary power that leaves him uncertain about whether his freedom will be taken away. But the question is: how much resilience is necessary? The answer is: not so necessary that it is worth being subject to greater non-arbitrary power, and not so necessary that it is worth being forced into trading away some freedom today in return for an assurance of no greater loss of freedom tomorrow.

The final reason for preferring the second answer to the libertarian dilemma is that the proper attitude to take to freedom—if one truly values it—is one of respect for how it manifests itself in human activity. Like many important values, it is something that should be honored—and honored not in the breach—rather than maximized. If we attach great value to community, we respect it when we encounter it rather than ask whether we might get a little more of it by undermining some communities. If we attach great importance to justice, we try to be just,

and do not ask whether we might increase the amount of justice in the world by occasionally acting unjustly. And if we value liberty, we respect people's freedom to act without asking whether we might increase overall liberty by reducing the liberty of those whose exercise of their liberty will not maximize the amount of liberty in the world. Not everyone will find this final reason compelling since it is far from obvious that morality requires that we try to respect certain values rather than increase their presence in the world. But those who accept this attitude are more likely to find the second libertarian response to the dilemma posed by diversity congenial.