

Hang Together

"We must indeed all hang together, or most assuredly we shall all hang separately." Benjamin Franklin

How To Noisily Concede Your Liberty

Posted on **May 23, 2015** by **Daniel Kelly**



I'm not advocating this, mind you. Just observing how it's done. And there's plenty to observe.

For many decades now we have been renegotiating the fundamental terms of how we are to live together in society. It's been a difficult, and oftentimes harsh, negotiation. But the big issues, the issues that govern the details of living in society, are even now being conceded. And that's the thing of which I want to give you a sense here.

A battler of wits knows that his opponent's most jealously-guarded territory consists of the basic principles that inform his argument. Everything else is buffer. If you can make it through the buffer to that core territory, you win.

So it is a matter of the gravest concern that conservatives, amongst whom I count myself, are habitually conceding core territory, while making a big show of contesting buffer zones. Because

of this, I was delighted to no end when I saw a dazzling ray of light go lancing through the dispiriting grey fugue that passes as conservatism's front-line arguments.

Daniel Hannan, one of the West's best friends, unapologetically reminded us just the other day of what makes us the West. Well, "unapologetically" doesn't really capture it – he *celebrated* it, and in doing so shows us how to conduct ourselves in this negotiation, should we wish to do better than we are:

If there's one thing that distinguishes English-speaking civilization from all the rival models, it's this: that the individual is lifted above the collective. The citizen is exalted over the state; the state is seen as his servant, not his master. If you wanted to encapsulate Anglosphere exceptionalism in a single phrase, you could do a lot worse than what John Adams said about the Massachusetts state constitution: "A government of laws, and not of men." Except that those words were not John Adams's; he was quoting a seventeenth-century English Whig, James Harrington—neat proof of the shared inheritance that binds us together.

This is core-territory stuff. More than core, really. It's the West's animating life-blood. Give this up, and you're just fiddling with the terms of surrender. But we *are* giving it up, almost every time we open our mouths. Here's why.

We have devolved to a fractious bunch of blokes (to carry on the English theme) when we talk about liberty. We speak of speech liberties, religious liberties, economic liberties (if we're *really* committed), and many other adjectivalized liberties. We marshal our arguments, our historical reference points, our anecdotes, and we set out to convince society at large that our chosen liberty is sufficiently important that we ought to be given space in which to exercise it. And so it is that we lose before we even begin.

Currently, one of the high-profile points of negotiation that has everyone in a bunch is the relationship between same-sex couples and those who disapprove of the activity they represent. The religious-liberty folks say their commitment to Jesus means they must not be dragooned into associating with activities offensive to Biblical norms. That is, they aren't challenging the dragooning, *per se*, they are asking for an exemption for the purpose of accommodating their religious sensitivities. Let's leave for another day how this might compare to Jesus's decision to associate with the woman at the well, and concentrate instead on how utterly upside down, and self-defeating, this is.

Everything we say is freighted with sub-text, and history, and context, and relationship. Most of it remains *sotto voce* because conversations would be too ungainly if we said all of it out loud. But sometimes it's helpful to pull the unsaid into the foreground so we can get a better grasp on what we are doing. Regardless of what they think they are saying, here is what the religious liberty crowd is *actually* saying to the State:

We understand that same-sex couples have the right to compel people to serve them, and that – generally speaking – they may choose whom they wish to compel. But as Christians we believe we should have the privilege of violating those rights when we conclude our

religious tenets require it. You know Christianity – it's that religion you reject as a backwards superstition to which the unsophisticated and ignorant bitterly cling. So you'll grant our request, yes?

Not only is this unlikely to persuade anyone on its own terms, it presents the request as a concession of fundamental principles. It assumes the State has the authority to compel you to serve someone against your will. It concedes pride of place to the collective. It comprehends a sea of collective authority in the midst of which we must raise and maintain individual islands of adjectival liberties against the sea's acknowledged power to reclaim.

But if Hannan is right (and he is), then the defenders of adjectival liberties have confused the land for the water. Our birthright is a sea of liberty in which we construct a few islands of collective authority to safeguard the sea. And we always – *always* – retain the right to reclaim those islands should they fail to serve their purpose. This is what it means to exalt the individual above the collective.

So if we are to have our liberty, we must stop defending adjectives. As far as how we live together in society, religious liberties are not defensible because they are religious, but because they are part of the sea of liberty. The same is true of free speech. And economic liberty, freedom of association, and all the innumerable other ways in which we might conduct our affairs while recognizing the moral equality of our fellow man.

James Madison understood this when he initially resisted inclusion of a bill of rights in our Constitution. He knew that the Constitution existed as an island, a tool of compulsion that was legitimate only to the extent it preserved the integrity of the sea's uncircumscribed expanses. He was afraid that, eventually, people would come to believe that the island was the source of liberty instead of merely its protector.

He was prescient. Today, liberals and conservatives alike try to squeeze every claimed exercise of liberty into some nook or cranny in the Constitution's text. Or a penumbra of the text. Or an intent of this or that Framers. While the sides will take turns criticizing each other over how they pin the claimed liberty to the Constitution, most agree there is no liberty unless the island provides it. And so it is that we transform the island into a sea of authority with isolated, and finite, promontories of adjectival freedom.

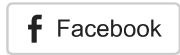
Because law follows culture, we can't expect the State to resume its proper place until we, the people, demand that it does. That won't happen until we start asking the right questions. So, for example, the correct question is not whether it is important to grant Christians an exemption from having to bake a cake for a same-sex wedding. In terms of how we live together in society, you will always come out on the losing side of that inquiry.

The correct question is to ask where the State obtains the authority to tell the baker to bake a cake for *anyone*. If someone wishes to engage the compulsive levers of the State, the burden is on that person to explain the source of its authority to act. The burden is not on the rest of us to construct, maintain, and justify an island of adjectival liberty.

How about we take a cue from our English friends (both Hannan and Harrington) and have at that conversation?

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ONE THOUGHT ON "HOW TO NOISILY CONCEDE YOUR LIBERTY"

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