Peer-to-Peer Liberty: An Alternative to Legislation in the Government and Private Sectors

The accumulation of legislation.

When our government creates a new piece of legislation, little thought is given to the legislation that has previously accumulated and how that might impact our ability to function in society. At the time that new legislation is created, it is considered enlightened and progressive. The tradeoffs and negative aspects are considered minor. Then as decades pass, the legislation is canonized in court cases and extolled in our textbooks.

However, as time continues, priorities change. Urgent social issues appear that were not anticipated by the old, and now entrenched, legislation. Legislation that once seemed progressive and enlightened is now seen as an impediment to progress. What to do?

Legislative repeal is an obvious solution. But by now, repeal has become impractical. The accumulated legislation has become woven into the fabric of society. Livelihoods have been built upon it much as marine ecosystems have been built upon a barrier reef. Thus, the constituency for protecting the legislation is large, while the constituency for repealing it is small. It will be practically impossible to repeal or alter the legislation in time to address the pressing social issue at hand. This leaves two options: 1) abandon the attempt to address the issue, or 2) address the issue in a way that is prohibited by existing legislation.

Unilateral exemptions.

The attempt to address a pressing social issue in a way that is prohibited by existing legislation (i.e., illegally) entails an obvious tradeoff; it subjects one to possible criminal punishment. However, this possibility can be mitigated if the person(s) who would normally report the crime, or if the person(s) who would normally prosecute the crime, agree for political reasons not to do so. If a person doesn't report a crime or doesn't prosecute a crime because they are in agreement with the goals of the illegal activity, then the punishment for that crime is effectively nullified.

Consider a cooperative process entailing at least two parties: the party who commits the crime, and the party who chooses not to report or prosecute the crime. In this process, one party, in choosing not to report or prosecute the crime, unilaterally grants the lawbreaker an exemption from the punishment specified in the legislation. A unilateral exemption is granted to the lawbreaker in the sense that one of the steps leading to punishment for the crime (reporting the crime or prosecuting the crime) is unilaterally withheld by the cooperating party. Thus, punishment for the crime does not occur, and the pressing social issue may be safely addressed in a way that is expressly prohibited by legislation.

Peer-to-Peer Liberty.

Such instances of cooperation between parties that effectively bypass existing legislation may be referred to as "peer-to-peer" liberty. In peer-to-peer liberty, several parties cooperate to liberate themselves from legal prohibitions that would prevent them from achieving an important social objective. In cooperating to nullify a legislated penalty, the parties

achieve liberty not abstractly or in general, but rather, concretely and from one specific restriction. They achieve liberty from a specific restriction that still constrains everyone else in society.

Peer-to-Peer Liberty in Government.

When a government official, or government agency, or governmental body chooses not to prosecute conduct expressly prohibited by legislation, this is an instance of peer-to-peer liberty in government. Peer-to-peer liberty in government generally occurs when government officials who are legally obligated to prosecute a crime share the same political goals as those who commit the crime (or when the government officials are sympathetic to those political goals). In choosing not to prosecute the crime, the government officials grant the lawbreaker "liberty" from the specific legislation by effectively nullifying the penalty that the legislation prescribes. The lawbreaker and the government officials are "peers" in the sense that together, they form an extralegal cooperative association that bypasses existing legislation, enabling the lawbreaker to engage in conduct leading toward a shared social objective. Thus, peer-to-peer liberty is an alternative to the legislative process. It is a technique for attaining an important social objective when obtaining that objective through the legislative process is impractical or impossible.

When government officials practice peer-to-peer liberty, they act essentially as "libertarians." They face a situation in which legislative restrictions prohibit the attainment of their social objective. They then seek to *liberate* themselves from the legislative restrictions in order to attain their social objective.

Peer-to-Peer Liberty in the Private Sector.

Private actors do not have prosecutorial power. Therefore, in peer-to-peer liberty in the private sector, one party—one of the peers—chooses not to *report* conduct expressly prohibited by legislation. In choosing not to report a crime, one person or group grants a lawbreaker(s) "liberty" from specific legislation by effectively nullifying the penalty that the legislation prescribes. The lawbreaker and the party who chooses not to report the crime are "peers" in the sense that together, they form an extralegal cooperative association that bypasses existing legislation, enabling the lawbreaker to engage in conduct leading toward a shared social objective.

Asymmetry between government and private sector peer-to-peer liberty.

Important asymmetries exist between government and private sector peer-to-peer liberty. When private actors engage in peer-to-peer liberty, they do so with the fear that they may be prosecuted by those in government. Due to the fear of prosecution, private actors generally engage in "under the table" forms of peer-to-peer liberty. They drive faster than the posted speed limit when no police are around, or they don't report taxable income on small cash transactions, etc. As a rule, private actors limit their peer-to-peer liberty to those transactions that are undetectable and thus unprosecutable.

The limiting of private sector peer-to-peer liberty to those transactions that are undetectable has a second-order consequence. The attempt to form peer-to-peer cooperation over wide areas or over long distances would create a "paper trail" (electronic records, etc.). The paper trail would constitute evidence for prosecution, thus defeating the

undetectability that is required for private sector peer-to-peer liberty. Thus, the undetectability requirement for private sector peer-to-peer liberty keeps private sector peer-to-peer liberty both “under the table” and “localized.”

Things are different with government sector peer-to-peer liberty. Private actors do not have prosecutorial power. When government officials engage in peer-to-peer liberty, they do so without fear that they may be prosecuted by those in the private sector. In this regard, they do not have to worry if their activity is detectable. Though the private sector may observe that legislation is being bypassed, they lack prosecutorial power; there is “nothing they can do about it.” Thus, government officials may engage in a wider range of peer-to-peer liberty activities, because government officials have no fear of private sector prosecution.

Furthermore, government officials have geographic jurisdiction. Since government officials have geographic jurisdiction, they may choose not to prosecute a particular crime in an entire geographic region. Thus, government officials can effectively nullify legislation both “openly” and “globally” (for entire geographic regions).

The attainment of symmetry between government and private sector peer-to-peer liberty.

From what has been argued above, the attainment of symmetry between government and private sector peer-to-peer liberty would entail a change in which private sector peer-to-peer liberty becomes both open (not hidden from view) and global (not confined to small, localized cooperation). (1)(2) For example, consider a legal context in which speech is regulated, and in which a group of people, not

geographically confined, form an agreement among themselves such as "between us, we will have no speech regulations." The envisioned agreement would be both public and not confined to a particular geographic region. In this sense it would be "symmetrical" with (i.e., categorically equal to) government sector peer-to-peer liberty.

This change in private sector peer-to-peer liberty would alter the course of social evolution. Since legislation is continually accumulating, this means the government sector is continually expanding, while the private sector is continually contracting. This is a positive development for those who desire a government-run society, but a negative development for those who desire a free society. If private sector peer-to-peer liberty becomes open and global—the same as government sector peer-to-peer liberty—a pathway is opened for the expansion of the private sector. As legislative restrictions generated by the government sector continue to accrue, simultaneously, peer-to-peer freedoms generated by the private sector could also begin to accrue. A type of equilibrium could emerge in which the government sector generates restrictions while at the same time the private sector generates freedoms. The individual who desires a free society would then have a pathway to an expansion of their personal liberties.

Peer-to-Peer Liberty: An Alternative to Legislation in the Private Sector.

Peer-to-peer liberty is an alternative to the legislative process. It is employed when a group of people have an important social objective and they judge that they will not be able to attain it by legislative means. Since freedom is an important social objective to some, and since attaining freedom through the legislative process may be

impractical, peer-to-peer liberty exists as an alternative method of attaining freedom.

(1) Symmetry in the sense of categorical equality, as in “I may do the same kinds of things as you may do.” In this case, “I may engage in peer-to-peer liberty openly and globally, as you do.”

(2) Assuming that, (A) legislation will continue accumulating without meaningful repeal or alteration, necessitating peer-to-peer liberty as a bypass to the legislative process, and (B) government peer-to-peer liberty will not become clandestine and localized, the same as present-day private sector peer-to-peer liberty.