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Balancing justice and liberty

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"Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man" (Genesis 9:6).

I am a "Christian libertarian." I believe in maximum individual liberty under God's law. As a result of this, I am a "liberal conservative." I support constitutional democracy (a "republic"), democratic processes hedged in by constitutions that protect minorities and peaceful dissent.

I place the highest value on human liberty – and just as much value on liberty for peaceful human institutions like the family, the church and businesses as I do on individual liberty. I execrate the illegitimate deprivation of liberty, whether spearheaded by kings, oligarchs, presidents, petty thieves, militarists – or Islamic terrorists.

Libertarians of whatever stripe deplore war ("Son, war is hell," my liberty-loving father taught me). More accurately, we deplore the initiation of force and coercion. A few recent conservative-libertarian columns have stated or implied that the horrific bombing in New York and Washington, D. C., last Tuesday is a sort of comeuppance for an imperialistic United States. What is sometimes lost (or obscured) in this wholly understandable charge of U. S. culpability in its messianic globe-trotting is that *justice is a prerequisite of liberty*. Let's not get so lathered up in anti-war sentiment that we succumb to anti-justice sentiment. We need to be anti-war *and* pro-justice.

You must be both if you really believe in liberty.

No libertarian supports absolute liberty. We do not advocate the liberty to deprive liberty (or life, or property, for that matter, and all three were forfeited in spades last Tuesday): murder, mayhem, madness. Just because we hold liberty in the highest regard, we cannot grant the liberty to deprive it. There was no liberty for the thousands who died within – or at the base of – the World Trade Center towers. There was no liberty for the hundreds who perished in the other plane-bomb explosion at the Pentagon. There was no liberty for the over two hundred passengers that unwillingly rode those plane-bombs to fiery graves, including the brave passengers who apparently brought their hijacked plane down in western Pennsylvania. There is no joy of liberty for the bereaved families and friends of the victims scarred by this murderous depravity.

It is tempting for some libertarians to argue that America should take its medicinal comeuppance "like a man," learn its anti-imperialistic lesson, and henceforth stay the heck out of everybody else's business. There's only one minor but irritating detail that belies the full validity of this theory.

Justice.

What is justice? Justice is *giving somebody what he deserves*. If you promise an employee \$5,000 and then give him \$4,000, you are treating him unjustly. If a college threatens expulsion for cheating and then reneges on its threat when it discovers the offender is the daughter of a prominent donor, it is acting unjustly. (Acting properly on what you threatened in the latter case is called *retributive justice*.) The same people who pine for leniency when proper threats are about to be carried out often oddly stage an uproar when promises are not fulfilled. But justice is a two-sided coin, and you must have it both ways. In a just society, people get what they deserve.

Liberty, justice and the founding

Some libertarians are not entirely comfortable with this language as it relates to the events of last week. But retributive justice is an essential component of liberty, the very thing we all are supposed to be endorsing. You can't have liberty without the security for liberty. In fact, Jefferson wrote in the Declaration of Independence that "[civil] governments are instituted among men" to secure liberty. This was a dramatic new experiment in theoretical politics. Governments do not exist to "maintain law and order" as ends in themselves, but to secure liberty for their citizens. If they don't do this, we don't need them anymore; and we need to get rid of them (or so taught Jefferson).

Most libertarians see the U. S. Constitution as a basically sound document, despite our sympathy for the cause of the antifederalists, whose liberty-loving clamor gave us the Bill of Rights. The genius of the Constitution in the preservation of liberty is, of course, the separation of powers. There are, in addition, several great objectives the framers explicitly offered for creating this Union. Three especially pertinent to us in September of 2001 are to "establish justice," "provide for the common defense" and "secure the blessings of liberty."

We believe in "liberty and justice for all," and the Constitution provides for a "common defense" to secure this liberty and justice. That common defense (however funded and assembled) executes justice against those who deprive liberty within its borders. Those liberty-deprivers are not less subject to retributive justice who deprive liberty and who come from afar than those who commit their depraved deeds while residing here in the good old U.S. of A. The latter are ordinarily called criminals; the former are called either foreign invaders or terrorists. There is no justice – and ultimately no liberty – as long as they are allowed to roam around unmolested.

Now one may make a plausible argument that the Constitution is itself a deprivation of liberty (I mostly disagree with this), or that it has been perverted into a deprivation of liberty by politicians and judges (I agree wholly with this). The fact is, however, that this country is a *legal* confederation of territorial states bound together by a Constitution designed to, among other things, "provide for the common defense." It could possibly have been more wisely otherwise, but the fact is that, it was not. If we want retributive justice for a foreign invasion threatening all the states collectively, we'll have to get it from the United States; and this is precisely one reason the United States was (were!) created in the first place.

'Common defense' entails justice

I hold that 95 percent of what the federal government does today is gratuitous and unwarranted – and often a deprivation of liberty. Among the remaining 5 percent, "provid[ing] for the common defense" is (in my view) a legitimate task of the United States. The founders – liberty-lovers all – thought so too. This was part of the rationale for scrapping the Articles of Confederation (see the Federalist Papers). Part of this defense is making sure that murderers from abroad don't murder over here; and if they do, they are punished for their murder. It is not simply a matter of deterrence, though this too is valid (no lawfully executed murderer has ever murdered again).

More importantly, it is a matter of justice. *You give people what they deserve.* The civil government has about one legitimate role – to protect life, liberty and property. It protects life, liberty and property when it executes vengeance (Romans 13:4) on those who deprive the innocent of life, liberty and property. Now, maybe some other arrangement can do a better job of providing a "common defense" for life, liberty and property (privatizing the police department, for example). But until we adopt a new Constitution, the United States itself will just have to furnish that "common defense."

The Bible makes clear what is justly required of those who shed man's (innocent) blood – death. The Bible is pro-capital punishment. Nobody who takes human life seriously could support anything less for premeditated murder – and whatever last Tuesday's attacks were, they were certainly premeditated. If human life is precious, it is worth protecting; and if it is worth protecting, it is worth executing justice against those who violate it. Thus the Bible teaches, and thus the founders believed.

The war wagon

Hitching up the War Wagon, George W. Bush and the Congress called the despicable murders of last Tuesday "an act of war." Wrong. This is to dignify these acts. No matter how much we may hate war (and we should), we must acknowledge that true warriors fight soldiers, not civilians. These terrorists intentionally murdered civilians. There is a just penalty for premeditated murders. It is death.

I cringed last Friday when I heard Bush declare during his National Day of Prayer and Remembrance that he intended to "rid the world of evil." This sounds as though the War Wagon (to which both conservatives and liberals have hitched their votes) will soon be rolling its way into the Middle East. This is deplorable, because it is not the prerogative of the United States to "rid the world of evil," an objective as arrogant as it is impossible.

Justice is a beautiful thing

But it is the prerogative (no, the *obligation*) of the United States to assure justice within its borders, as this pertains to foreign invasion or attacks on citizens travelling abroad. The terrorists did not attack New Yorkers and Washingtonians. They attacked Americans. The response does not call for a federalization of law enforcement (our highly polished FBI and CIA to the rescue!). It calls for an execution of justice. Well-trained state militias as authorized avengers would be a more constitutional means of executing justice, but execute it the nation must.

We don't execute it mainly because we want to deter terrorism; we execute it because *liberty demands justice*. If we are willing to abandon justice, we may as well abandon liberty.

It will not suffice to argue that the United States in the past has unjustly killed (i.e., murdered) civilians and to execute justice on the Islamic terrorists is an act of hypocrisy. The solution to hypocrisy is justice, not injustice and a depraved consistency. The United States needs to quit policing the world, and it also needs to execute justice on people who come over here and murder our innocent civilians. To say that our imperialism is an excuse for our miscarriage of justice is akin to the judge who pardons a murderer because the man he murdered happened to be his wife's illicit lover.

Freedom isn't free. It costs the pains of justice, and justice is often painful indeed. If you love liberty, fight for justice and vengeance is a component of justice. We should not be bloodthirsty. But we should be *justice*-thirsty. Don't talk about loving liberty if you refuse to talk about preserving justice.

Justice in defense of liberty is a beautiful thing.

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