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The Separation of Economy and State

by Jacob G. Hornberger

Hardly a week goes by without some free-market think tank or foundation's publishing an analysis of some government program, pointing out its inevitable "waste, fraud, and abuse" and then issuing what has become a standard bromide: "The system needs reform." This game is, of course, endless because all government programs involve some level of "waste, fraud, and abuse," even when the program has been "reformed" in accordance with prior calls to "reform the system."

Rather than debate whether or how government programs should be reformed, I propose much more fundamental questions: Why not simply separate the economy and the state? Why not free economic enterprise from all government control and regulation? Why not adopt a system in which people are free from government restrictions on entering into any business activity, entering into mutually beneficial transactions with others, accumulating unlimited amounts of wealth, and doing whatever they want with their own money?

In other words, we ought to rise above the standard, everyday studies and reports pointing out the "waste, fraud, and abuse" of government programs and the correlative bromides calling for "reform," and instead adopt the following amendment to the U.S. Constitution: "No law shall be enacted by either the federal or state governments respecting the regulation of commerce or abridging the free exercise thereof."

Licenses and permits

Let's begin with occupational-licensure laws. These are laws that require people to secure the permission of the government before they can engage in certain occupations or trades. Such laws are nothing more than protection rackets by which people in those businesses use the government to protect themselves from competition.

People who fall into this privileged category include doctors, lawyers, shoeshiners, hairdressers, real-estate agents, and restaurant owners. Let me address the group with which I am most familiar — lawyers, given that I practiced law for several years.

The system of law licensure is an anti-competitive racket par excellence. Its supposed justification is to protect the public from incompetent or unethical lawyers. Now, take my word for it: the system doesn't work. The law profession is rife with incompetent and unethical lawyers, every one of whom was issued a license to practice law by the state in which he is practicing law. In other words, the system doesn't work to achieve its own supposed end.

So why have it? Because it protects lawyers from unbridled, free, and open competition from people who would be willing to provide lower-cost legal services to consumers. The licensure system limits the supply of lawyers, which, under the laws of supply and demand, tends to increase the prices of legal services. That's one major reason that people have to pay exorbitant legal fees. The state has ensured higher prices with its licensing system.

Unfortunately, given the faith that people place in the state, the licensing system also tends to lull people into a fall sense of security. They think that simply because a lawyer has been issued a license he must be competent and ethical. Some years later, when they discover that their lawyer has botched their case out of neglect or incompetence or stolen their money, they discover the hard way that the state's licensing system is just a sham.

Moreover, the licensing system tends to produce lawyers who are conformity-minded — the type of “good little citizen” whose mindset is to work within the system but never to challenge its underlying premises. One reason for this conformity-mindset is the very process by which lawyers are licensed. In order to get a law license in most states, a person must graduate from a government-approved law school, most of which are state institutions. In order to get into law school, a person must get good grades in college, most of which are state institutions. In order to get into college, a person must do well in high school, most of which are state institutions.

Everyone knows what happens to nonconformist types in the public schools — they are either drugged with Ritalin or their nonconformity is slowly ground out of them by the wheels of the government school system, especially after 12 years of being forced to participate in such a system. Can anyone imagine, say, a Henry David Thoreau doing well in a public high school, a state-supported university or college, and then passing his law board examinations?

Sure, there are exceptions. There are brilliant, competent, ethical lawyers who are unafraid to question and challenge things at a fundamental level, but they are a rarity. The law profession is filled not with Thoreau-type thinkers but instead with conformity-minded practitioners who make their money dealing with all the regulatory and welfare-state laws that have come into existence in the past several decades.

The racket is no different in other occupations and trades that require state licenses and permits. The most difficult profession for people to imagine being free of occupational licensure is the medical profession. For a discussion of that issue, I refer people to the chapter “[Occupation Licensure](#)” in Milton Friedman's book *Capitalism and Freedom*.

What would life be like without the state's providing permission for people to enter into occupations and trade? Every person would be free to pursue any occupation or business enterprise without a state license or permit. Consumers would be free to patronize them or not. The consumers would be sovereign in the sense that if someone wasn't competent or ethical, consumers would tend to shift their business elsewhere, ultimately driving that particular supplier out of business.

How would people protect themselves against charlatans? In the same way they are increasingly doing so today: word of mouth, recommendations from people they trust, or simply relying on private certifying agencies, such as Consumer Reports or the Good Housekeeping Seal of Approval.

Underlying an unhampered market economy would be the recognition that sustaining one's life by engaging in the occupation or trade of his choice is a fundamental right with which no government can legitimately interfere.

Freedom of trade

Another part of the regulated society is the power of government to regulate — interfere with — the ability of people to enter into mutually beneficial trades with one another.

We begin with an important assumption that underlies all trade: In every exchange, both sides benefit, from their own perspective. That is, in every trade each side gives up something he values less for something he values more. Thus, people's standard of living can rise through the simple act of exchange.

Government regulations frustrate people's ability to do what they would do in the absence of the regulations.

Suppose I have 10 apples and you have 10 oranges. I give you 7 apples in exchange for 3 oranges. Who has won and who has lost? A government regulator might be tempted to say that I have lost because it wasn't an equal trade. That is, to be fair the trade should entail trading 5 apples for 5 oranges. That's nonsense. The fact is that we are both winners because we have traded something we value less for something we value more. I am better off, from my own personal subjective valuation, to have 3 apples and 3 oranges than 10 apples and 0 oranges.

Therefore, the freer people are to trade with others, including people all over the world, the more easily they can improve their own personal economic situations.

A corollary to this free-market principle of freedom of trade then becomes obvious: To the extent that government regulations interfere with people's ability to trade freely, the government is obstructing their ability to increase their own economic well-being. Government regulations frustrate people's ability to do what they would do in the absence of the regulations.

I would be remiss if I were to fail to mention the important subject of bribery in this context. One of the major reasons that some of the Third World governments maintain economic

regulations is that they provide a source of bribery funds for government personnel, from the cop on the beat to the highest officials in the land. A bribe serves as the grease that enables people to enter into the exchanges that they would have freely entered into in the absence of the regulation. While it serves to nullify the effect of the regulation, however, it also imposes an unnecessary and wasteful cost on the traders.

Let's consider a real-world example of how government regulations interfere with people's freedom and well-being: minimum-wage laws. Some people argue that it is incumbent on employers to pay a "fair" or a "just" wage. But what is "fair" or "just" ? Ultimately, that is a subjective determination made by each person, employer and employee alike. There is no way for one person to objectively determine a "fair" or "just" wage for another, given the myriad of such constantly changing factors in the marketplace as the personal competence of the prospective worker, consumer demand, employer resources, market conditions, and competitive conditions. Therefore, the only concept of "fairness" or "justice" that makes any real sense is the wage rate that both an employer and employee agree on.

Let's say that they agree to \$1 an hour. Would that be "fair" or "just" ? Absolutely, assuming that they have both agreed to the deal. It means that each of them has given up less for something he values more. No one, including a pointy-head, know-it-all government bureaucrat, can legitimately argue that a "fair" or "just" wage is not being paid.

A minimum-wage law, while purporting to assist the employee, does nothing of the sort. Instead, it prohibits him from working at the wage rate he would have agreed to — in our example, \$1 an hour. After all, keep in mind that no employer is required to hire anyone. (In fact, people aren't even required to open businesses.) All a minimum-wage law says is that *if* you hire a person, you must pay him not less than, say, \$5 an hour. So, with a \$5-an-hour minimum-wage law, the employee whose labor is valued at 50¢ an hour is not hired.

In the absence of the regulation, the employee could start at the bottom of the economic ladder at 50¢ an hour, learn the trade, and slowly move up as he develops his skills, perhaps ultimately even opening his own business, where he could hire many others. With the minimum-wage regulation, however, he is prevented from stepping on the first rung of the economic ladder and is instead likely to be doomed to a life of government welfare (and control).

An unhampered economy

What would life look like without economic regulations? There would be millions and millions more transactions, trades, and exchanges than there are today. Economic well-being and standards of living would soar. No longer would government bureaucrats have the power to frustrate people's economic desires and plans. No longer would bribes have to be paid to bureaucrats to avoid the consequences of economic regulations.

People would become more wary, cautious, and astute in their economic transactions because they would know that the government wouldn't be there to protect them or bail them out if they made a mistake. There would be a greater sense of self-reliance and individual responsibility.

Now consider the combination of these two features of an unhampered market economy: the ability of people to freely enter into occupations and trades without government permission and the ability of people to freely enter into economic transactions with others without government interference. (In fact, imagine combining those two features with repeal of the federal income-tax amendment and all socialist welfare-state programs.) It is impossible to imagine the level of economic dynamism that such a free-enterprise environment would produce, especially for those at the bottom of the economic ladder.

People would then be free to open businesses and enter into occupations and trades to which the state currently blocks access. Countless new job markets for employees would open up as a result of all the new businesses that would be established in the absence of the regulatory barriers that currently exist. Those at the bottom of the economic ladder would benefit most, not only from the increased opportunity to open their own businesses but also by virtue of all the new businesses competing for workers through the payment of higher wages.

Imagine that our ancestors had bequeathed to us a religion system in which the government had the power to license and regulate religious activity. Today, we would have think tanks and educational foundations publishing countless reports and analyses about the "waste, fraud, and abuse" in the churches and issuing the standard bromide, "The system needs reform." Instead, we have a free-market system in religion, one in which the state is prohibited from licensing preachers or regulating church activity.

What better gift to bequeath to our successors than to extend the free-market, no-government-regulation principle in religious activity to all other professions and economic activities?

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