Liberal Freedoms, the Problem of Power, and the Priority of Moral Philosophy

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David Schmidtz's book *Living Together*[1] contains rich discussions of several important topics in political philosophy, political economy, legal philosophy, and moral philosophy. The overall theme tying these topics together is that our theories must be realistic, based on empirical evidence. Ideal theories ignore this. A famous example of such a theory is John Rawls's second principle of justice—the difference principle—in his *A Theory of Justice*. In spite of its counterintuitive nature, Rawls assumes that everyone will comply with it.[2]

Schmidtz argues that good moral and political theories must take into account lessons from the social sciences, hence the subtitle of his book: *Inventing Moral Science*. If human beings are not motivated to live by the difference principle, then the difference principle is not a good guide for our lives. In order to know that our morality, laws, regulations, and social norms will motivate us, we must have evidence that they are good for us. This emphasis on evidence that our principles are good for us and motivate us explains why Schmidtz adopts David Hume's view that the correct standard of the good and the right is the useful and the agreeable to others (p. 17).[3]

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[1] David Schmidtz, *Living Together: Inventing Moral Science* (New York: Oxford University Press, 2023). All subsequent references to *Living Together* will be cited by page number parenthetically in the text.

[2] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 301.

[3] Schmidtz adopts Hume's standard of usefulness or agreeableness to others, but Hume also includes usefulness or agreeableness to self in his standard of good character: "IT may justly appear surprising, that any man, in so late an age, should find it requisite to prove, by elaborate reasoning, that PERSONAL MERIT consists altogether in the possession of mental

The most important social principle, according to Schmidtz, is to leave people free to live their own lives, so long as they do not interfere with others' freedom to live their own lives. Just as good traffic rules manage traffic without concerning themselves with drivers' destinations, so good social rules coordinate our diverse preferences and actions without concerning themselves with our goals (Chapter 3).

With this striking analogy between good traffic rules and good social rules, which he also uses in his *Elements of Justice*,[4] Schmidtz captures the essence of a free and peaceful society, a society in which the law protects individuals' equal liberty to choose their own (peaceful) goals and people generally respect the law. To the extent that the law or government restricts this liberty, we have a society of unequals in which the lawgivers and government have the power to decide which peaceful goals we may peacefully pursue.

But why should we think that a liberal society—a free and peaceful society of equal liberty and equality under the law—is the best kind of society? Schmidtz would obviously answer: because its norms are the most useful and agreeable.

It might be objected, however, that those norms are useful and agreeable only to those of us who live in a liberal society, whereas to those who live in illiberal societies, it is the norms of their own society that are useful and agreeable. Many oppressed people believe that the social rules that oppress them are justified because they are endorsed by God, because they preserve their honor, or because they keep them safe. Such is the case with many oppressed women in Afghanistan and Iran. Many of their male oppressors believe that they are justified in oppressing them because their holy scriptures endorse such oppression.

This is where empirical evidence comes to the rescue. Although Schmidtz does not say so, he would agree that there is plenty of evidence that liberal societies rank high in happiness and prosperity and oppressive societies rank low.[5] As immigration patterns show, it is liberal societies that people want to live in and oppressive societies that they want to leave. So obviously, most people prefer life in liberal

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qualities, *useful* or *agreeable* to the *person himself* or to *others*." David Hume, *An Enquiry concerning the Principles of Morals* (1751, rev. 1777), IX.I.

[4] David Schmidtz, *Elements of Justice* (New York: Cambridge University Press, 2006).

[5] See Neera Badhwar, "There are Divinities Present in Liberal Free-Market Societies Too," *Social Philosophy & Policy* (forthcoming).

societies and find life in oppressive societies neither useful nor agreeable.

All this is compatible with the fact that not everyone who emigrates to a liberal society (or grows up in one) values all the liberal freedoms. Some people, such as the Hutterites, the Amish, and members of monastic orders, value living in a closed community that restricts their freedoms, preferring more community to more freedom. The Hutterites and Amish came to North America to escape persecution in Europe (which is not to deny that they were occasionally discriminated against in North America). But again, it is in liberal societies that they are most likely to be assured of their right to live as they choose. Thus, it is in liberal societies that even those who disagree with and eschew the freedom of liberal societies are most likely to live as they please.

One of the most original and important chapters in Schmidtz's book is the one on power and corruption: "The Political Economy of Corruption" (Chapter 14). There is a long history of concern among philosophers with the problem of governmental power. Plato advocates a system of checks and balances in the *Laws* (III.691b–692b) and Aristotle argues in the *Politics* (V.11) that the best way to preserve a monarchy is to lessen its power and domain of control.[6] Although Aristotle's concern here is with the monarchy rather than those it rules over, it is clear that he regards a very powerful monarchy as bad for the people. The Framers of the U.S. Constitution also used the devices of separation of powers and limited government—limited by individual rights—to deal with the problem of political power. Yet contemporary philosophers have spent little time on this issue, preoccupying themselves instead with distributive justice.

Schmidtz claims that instead of asking what the ideal way of slicing a pie is, we should ask a different question: "If power corrupts, then, ideally, how much power to slice the pie would there be?" (p. 118). This is a subtle way of saying that even too much power to redistribute is a power with the potential to corrupt. This is why we have so much redistribution from poor to rich instead of the other way around (p. 128). Schmidtz makes it clear, though, that he does not oppose a modest redistribution from rich to poor. I wonder, however, on what grounds he justifies this, given that even modest power to do so has the potential to expand into an immodest power. Perhaps he thinks that a modest redistribution is worth the risk because it is both useful as a way out of poverty for the very poor and agreeable to most

[6] Thanks to Thornton Lockwood for the references.

people. It may even be necessary. Besides, he could point out, even a minimal state has to provide defense and a system of justice, even though these can acquire—and in the United States have acquired—too much power.

What moral flaw is responsible for corruption? The paradigm of corruption is greed, which leads an official to demand extra payment in the form of a bribe for doing his job. But, Schmidtz observes, greed is only one of "several corrupting vices" (p. 118). Others include giving one's clients the run around instead of doing one's job efficiently (which is at least sometimes motivated, I suspect, by a malicious pleasure in one's power to make trouble for the helpless clients), nepotism, ignoring your party leader's crimes out of loyalty, refusing to make exceptions when it is obvious that exceptions ought to be made because the rules when first written did not foresee these particular circumstances, and so on. As Schmidtz puts the last point: "Pretending to lack discretionary power is a way of exercising discretionary power, which at some point becomes an abuse" (p. 120).

Schmidtz observes that concentration of power is an obvious invitation to corruption. Yet delegation of power is not an obvious remedy. When we delegate power, we multiply nodes of concentrated power (p. 127). What is needed is mutual accountability through dispersal of power. This is what Montesquieu and the Framers had in mind with the separation of powers and federalism.

Is there a power that can protect us from corrupt power, a power that is not itself subject to corruption? Schmidtz's answer is: "Powers defining liberal equal citizenship (a right to say no, a right to exit, constitutional limits on executive power) . . . . These powers [our rights] *limit* rather than extend the reach of those who would treat us as pawns" (p. 126). (Presumably, the right to say "yes" is also an important right.) The powers these rights give us are "dispersed" among individuals, not concentrated (p. 126).

It should be noted, however, that these powers to protect ourselves from corrupt power—that is, our rights against the state—tend to be on the defensive, whereas the power of the state and its bureaucracies tend to be on the offensive. We invoke our rights only when they are threatened by the state, and courts uphold them only when they decide that they have been violated. This last is itself a corruptible power. Another, more insidious reason why our rights are on the defensive is that too many people do not regard certain rights as important; they want a state that can prohibit this or mandate that according to their own values or preferences. "There should be a law

against that!" is a common refrain in earnest conversation. Moreover, too many people admire and are attracted to powerful rulers. They are proud of living in a country ruled—or once ruled—by someone powerful, even if that someone was evil. This came home to me with a shock during a conversation with a Russian neighbor some years ago. This neighbor remarked that his father had been imprisoned by Josef Stalin, but that Stalin was "not all bad." Why? Because he had made the Soviet Union a powerful country.

Schmidtz rightly points out that the corruption that power breeds has a cost not only for society, but also for corrupt officials and the agency they work in. The cost is "a loss of self-awareness" (p. 118). Just as self-deception divides the self, it divides an agency, where one part becomes unaware of the other part: "The left hand does not know what the right hand is doing, and the right hand wants it that way" (p. 123). An undivided agency, like an undivided self, requires habitual transparency (p. 123) and "it's the person who learns to have nothing to hide [from others or themselves] whose life is worth living" (p. 240).

This last seems too demanding. Only a perfect being has nothing to hide, but I doubt there is any such being. Not only with others, but even with ourselves, we lack complete transparency. Jean-Paul Sartre claims that we are constantly in a state of flux between transparency with ourselves and *mauvaise foi* (bad faith) or self-deception.[7] Immanuel Kant holds that we can never be sure that our motives are pure; for all we know, there is an element of self-interest in them that we refuse to acknowledge (he assumes that self-interest is always opposed to morality).[8] We do not have to agree fully with these philosophers in order to acknowledge that human beings do occasionally hide things from themselves or others. However, doing so is compatible with leading a decent life, a life worth living.

In another important chapter (Chapter 19), Schmidtz debunks the notion that rationality requires that we have "reasons for reasons" all the way down. His pithy counterargument against this infinite regress is: "If I have no reason to seek reasons, then, well, end of story. To say otherwise is not a way of being reasonable. If we insist on seeking reasons when we have no reason to seek reasons, we are not

[7] Jean-Paul Sartre, *Being and Nothingness*, trans. Hazel Barnes (1943; repr., London: Methuen & Co. Limited, 1957), chap. 2.

[8] Immanuel Kant, *Grounding for the Metaphysics of Morals*, 3rd ed., trans. James Ellington (1785; repr., Indianapolis, IN: Hackett, 1993), chap. 1.

being reasonable all the way down. Rather, by hypothesis, we are insisting on doing something *for no reason*" (p. 200).

Schmidtz then goes on to argue that we do not need reasons all the way down in order to have ends we can rationally endorse and not merely ends given by our desires or impulses. We all start as infants with desires and impulses, but somehow, by a natural process, we grow up to become capable of reflection and adopt ends that we can rationally endorse. In other words, in addition to instrumental rationality, we become capable of noninstrumental or "end" rationality: "Nature built us to give ourselves ends beyond those given by nature" (p. 189).

A person's end explains her behavior, but it does more than that; it shows that her action of trying to achieve her end is a token of agency (p. 193). To those who worry that if we start with ends given by nature, all our ends will be tainted by these nonrational ends, Schmidtz's insightful answer is that "[i]mmature ends are a launching pad for adulthood, not an architectural foundation. We achieve adult moral autonomy not by being permanently rooted in childhood's hypothetical imperatives, but by being boosted into self-sustaining orbit by them, then leaving them behind" (p. 202). We have instrumental reasons to embrace final ends, that is, ends we embrace for their own sake, and for no further purpose (pp. 203–4). Schmidtz gives the example of adopting the end of saving the whales as a means to relieving your loneliness, but realizing that you can relieve your loneliness only if you adopt whale-saving as an end in itself, that is, only if you come to have "a vibrant, shared passion . . . in uniting with fellow travelers to save whales" and "abandon the idea of saving whales as a relief from aimless loneliness" (p. 204).

I am not sure that we have to abandon the initial end in order to embrace the end of saving whales as an end in itself. Suppose all our friends in the cause drop out one by one, leaving us alone to soldier on. We might have the same passion for saving whales but feel lonely because we no longer have any co-workers. Our passion for the cause certainly makes us feel *less* lonely than if we did not have the passion, but it does not make up for the lack of human company. So we might decide to seek another worthwhile end that we can embrace wholeheartedly and that comes with co-workers who will relieve our loneliness. In other words, we can simultaneously adopt an end for its own sake as well as for the sake of a further end. This is a common phenomenon. We can love walking both for the pleasure of walking, that is, for its own sake, and as a means to health and fitness. Both the

pleasure of walking and health and fitness are ends in themselves or a part of the overall final end of well-being. But if, due to illness, walking becomes bad for our health and we give it up, it remains true that we will have given up something we valued for its own sake.

There is a larger point here. If doing something for its own sake, that is, as an end in itself, requires not having any allied instrumental motivation, then it is doubtful that we ever do anything for its own sake. Importantly, this "purity of motivation" doctrine implies that we cannot be motivated to do the right thing because it is right if we are also motivated by an instrumental reason. But there is no reason why the right action cannot be sufficient to motivate us, even if there is an additional instrumental motivation. Take the example of Jimmy Lai, the billionaire founder of Hong Kong's pro-liberty publication, the erstwhile *Apple Daily*. Lai was a leading voice in Hong Kong's freedom movement. After the Chinese government passed the National Security Law in 2020, he knew he risked life in prison if he stayed on in Hong Kong instead of fleeing abroad. But as he said, "even if they kill me, I will have defied them till the last day."[9] If Lai was also concerned that fleeing would lead those who admired him to look down on him, it does not follow that his noninstrumental motivation was not sufficient.

The final topic I want to comment on is the relationship of political philosophy to moral philosophy. Schmidtz starts his book with the provocative claim that political philosophy, which addresses the question of how to live together, is more fundamental than moral philosophy, which addresses the question of how to live. Schmidtz's reason for this view is that moral reasons depend on socially beneficial rules that tell us how to live together (p. 245). The basic question is thus not the oldest question in morality, "How should I live?" but rather, "How should I live with others?" and "Which social rules are the right ones?"

However, "How should I live?" has always implied "How should I live with others?" that is, with others inside the home, and it has always led to questions of how to live with others outside the home. For example, in his *Nicomachean Ethics* and *Politics*, Aristotle argues that the individual's own well-being (*eudaimonia*) requires happiness in a virtuous life with family and friends in a decent society, that is, a peaceful society held together by justice and civic friendship. The concern for one's own *eudaimonia* includes a concern for others

[9] *The Hong Konger: Jimmy Lai's Extraordinary Struggle for Freedom*, directed by Ron Holwerda (Acton Institute, 2022).

not just instrumentally, but constitutively. Unhappy friends or family impact one's own *eudaimonia*, as does an unjust or fractious society. Hence, theorizing about how to live—about how to achieve *eudaimonia*—leads Aristotle to theorize about how to live with others in the larger society. If Aristotle's view is still appealing, it is because it is based on common experience and sound reasoning. Our own well-being depends on good relations with those who are near and dear to us as well as on a society held together by both goodwill and justice.

But there is a more robust sense in which moral philosophy comes first. Insofar as moral education uses moral philosophy, and moral education teaches us how to treat family members and friends, moral philosophy comes temporally first and forms the foundation of political philosophy. We learn respect for others' property when we are taught not to take our sibling's toys without their permission. We learn generosity when we are encouraged to share. We learn kindness when our parents or older siblings comfort us and help us when we are hurt or sad. We learn these virtues both through instruction and through the examples set by our parents or other family members and we internalize them through practice. We also learn both at home and in school why cruelty and vengefulness are wrong. These and other moral norms are the foundation of many of the laws and social norms that make a peaceful and free society possible.

When we go out into the world, we learn that not taking our sibling's toys without permission generalizes to not taking toys from the toy store without "permission," which now translates into payment of money in exchange for the toy. Later, we learn that just taking stuff instead of paying for it is also against the law.

Schmidtz argues that as trading networks grew, it became important to know who could be trusted: "From there developed concepts of law and morality . . . the idea of a contract, and the closely related moral idea of a promise" (p. 231). Here, Schmidtz is not arguing that political concepts came first, but that political and moral concepts arose together as a result of certain social developments. But didn't people who traded and cooperated only within a band also need agreements and promises? Indeed, don't family members and friends make promises? It is difficult to imagine a group of people, whether a band, family, or friendship group, that can survive without agreements and promises. I have to conclude, then, that moral philosophy is more fundamental than political philosophy.

For all this, however, Schmidtz is right that, sometimes, "moral truth is not out there in such a way that it can be observably

tracked. Rather, it must to some extent be negotiated. It must be political before it can be moral" (p. 244). Schmidtz does not give an example of what he has in mind, but perhaps his earlier discussion of a property rights case called *Hinman vs. Pacific Air Transport* (1936) would fit the bill (pp. 150–51). In *Hinman,* a landowner sued an airline for flying over his property. The judge decided that the landowner did not own the space above his property right up to the heavens, but only up to 500 feet. This decision was both useful and agreeable to both parties and to the current and future airline industry in general. Because it was useful and agreeable, it counts as "objectively (even if only contingently)" true (p. 245).

But how can a decision be both objective and contingent? I take it that what makes the decision objective is the principle underlying it and what makes it contingent is the application of the principle to the situation. If the situation changed and planes became swifter and louder, 500 feet above would be too close for comfort for the landowner. Hence, it would violate the useful and agreeable standard.

In closing, I want to note that Schmidtz's prose is a pleasure to read. It is spare, yet filled with paradoxical formulations, such as this: "[W]aste treatment facilities will always be found in poorer neighborhoods. Not even putting them all in Beverly Hills could ever change that" (p. 173). In order to understand what he means by this, you will have to find out for yourself by reading Chapter 16.