



**SUPREME VALUES, TOLERANCE AND THE CONSTITUTION OF LIBERTY**

by

**Peter Bernholz**  
Institute for the Social Sciences  
University of Basel  
Basel, SWITZERLAND

The Nineteenth International Conference on the Unity of the Sciences  
Seoul, Korea August 19-26, 1992

© 1992, International Conference on the Unity of the Sciences

## Abstract

If different Supreme Values lexicographically preferred by several individuals or groups are present in a society, how can peace and rule of law be preserved? One solution is geographical separation of different groups of believers into several states. But then suppression of "heretics", persecution and forced emigration are often necessary. Tensions between states with different belief systems may arise. A second solution is mutual tolerance of different groups within one state safeguarded by the constitution. But this leads to problems concerning the ideology of children of parents belonging to different groups, of immigrants, etc. Thus only individual freedom to select any belief system and the respective group is a satisfactory solution. It is argued that the wish of European rulers to preserve peace and domestic order necessary for the strength of their states in international competition were important to promote tolerance and finally individual freedom.

Prof.Dr. Peter Bernholz  
WWZ, University of Basel  
Basel, Switzerland

## SUPREME VALUES, TOLERANCE AND THE CONSTITUTION

*Shall we say that freedom of conscience should be permitted? Not at all, if the freedom to worship God as everybody desires is at stake: for this is a devilish dogma.*

*Théodore de Bèze (1570)*

### 1. SUPREME VALUES AS ABSOLUTE TRUTH AND AS CONSTITUTIONAL RULES

On March 31, 1992, the International Herald Tribune reported that King Fahd had ruled out free elections in Saudia Arabia and said:

"The democratic system prevailing in the world does not suit us in the region. ...

Islam is our social and political law. It is a complete constitution of social and economic laws and a system of government and justice."

This view seems to be the dominant one in Islam. Thus Abu'l A'la Mawdudi wrote in [1939]:

"(1) No person, class or group, not even the entire population of the state as a whole, can lay claim to

sovereignty, God alone is the real sovereign; all others are merely his subjects;

(2) God is the real law-giver and the authority of absolute legislation rests in Him. The believers cannot resort to totally independent legislation nor can they modify any law which God has laid down, ...

(3) An Islamic state must, in all respects, be founded upon the law laid down by God through his prophet. ...  
"(Mawdudi [1976] p. 156).

"A state of this sort cannot evidently restrict the scope of its activities. ... Its sphere of activity is coextensive with the whole of human life. It seeks to mould every aspect of life and activity in consonance with its moral norms and programme of social reform. ... It is clear from a careful consideration of the Qur'an and the Sunnah that the state of Islam is based on an ideology and its objective is to establish that ideology. ... such a state should be run only by those who believe in the ideology on which it is based and in the Divine Law which it is assigned to administer. The administrators of the Islamic state must be those whose whole life is devoted to the observance and enforcement of this law ... Whoever accepts this programme [of Islam] ... can join the community that runs the Islamic state. But those who do not accept it are not entitled to have any hand in shaping the fundamental policy of the state. They can live within the confines of the State as non-Muslim citizens (Dhimmis). ... A Dhimmi's

life, property and honour will be fully protected, and if he is capable of any service, his services will also be made use of. He will not, however, be allowed to influence the basic policy of this ideological state" (pp. 166-167).

The world view or belief system expressed in these quotations does not lead to any problems as long as the following conditions are met:

1. The supreme values to which all people and(or) believers are supposed to subordinate their lives, are consistent;
2. All people are believers or
3. If non-believers exist, they willingly submit to the laws promulgated by the believers according to their ideology.
4. If different interpretations of the supreme values arise, there exists an authority whose interpretations are accepted by all believers or
5. Different interpretations by different people are tolerated by the different groups of believers adhering to them and none of them tries to turn them into generally binding rules or laws.

Now it is obvious that an ideology or religion like Islam leads to a constitution embodying its supreme values as general rules, as given in this case by the Qu'ran (Bernholz [1991]). Also, if all people are believers, they will agree by their own decision to the supreme values and thus to the constitution. In this sense, a state dominated by such supreme values would then be a free society. But what happens if there are non-believers within the bounds of the state who do not agree to the rules put into the constitution as binding them?

An Islamic state is, of course, just one example of a political-economic regime dominated by an ideology with supreme values. National Socialism in Germany and Communism in the Soviet Union have been other recent, though non-religious examples. Christianity, of course, showed similar forces in the long course of its history (Bernholz [1988]). An interesting example is provided by the city state of Geneva in the first half of the 16th century. Here the citizens assembled in public on May 21, 1536 and decided, by raising their hands, that they would live in the future solely according to the Bible and the word of God. This happened after the protestant revolution had taken place and after the Catholic church had been suppressed with the help of terror and force. The actual implementation of the supreme values was left to Jean Calvin especially from 1541 on, when he was recalled from a few years exile by the City

Council (Compare the well-written account by Zweig [1936/1983]). Calvin had already written earlier:

"The power with which the preachers should be endowed will here be clearly described. Since they are called as administrators and propagators of the word of God, they have to dare everything and to coerce all the great and mighty of this world, to bow to God and to serve him alone. They have to give orders to all, from the lowliest to the most elevated. They have to introduce the statute of God, to destroy the kingdom of Satan, to spare the lambs and to exterminate the wolves. They have to exhort and to instruct the obedient, to accuse the reluctant and opposing. They can bind and absolve, cast lightning and thunder, but all this according to the word of God" [1887].

If we compare the two quotations it is obvious that they both proclaim to know the absolute truth of the supreme values, and that these values are supposed to legitimate a constitution embodying them and a government implementing and executing their implied commandments. The empirical evidence shows that this is true for all supreme value movements which have tried successfully or in vain to grasp the powers of government. We can observe this for the late antique and medieval church, but also for Marxism and National Socialism (Bernholz [1988]).

In Pope Boniface's famous bull Unam Sanctam we read:

"Thus, concerning the Church and her power, is the prophecy of Jeremiah fulfilled, "See, I have this day set thee over the nations and over the kingdoms," etc. ... Whoever therefore resists this power thus ordained of God, resists the ordinance of God. ... Furthermore we declare, state, define and pronounce that it is altogether necessary for salvation for every human creature to be subject to the Roman pontiff (quoted from Weber [1972], p. 226 sq.).

Concerning Marxism, Lenin stated in *Three Sources and Three Essentials of Marxism* already in 1913:

"The teachings of Marx are almighty since they are true. They are complete and harmonious in themselves. His doctrine provides men with a unified world view, which is not consistent with any superstition, any reactionary attitude, any defense of bourgeois suppression. ... Only the philosophic materialism of Marx has shown to the proletariat the way out of the spiritual slavery under which all oppressed classes have suffered until now" (Lenin [1956] sq., pp. 1293-1294).

Let us finally quote Hitler:

"It is this for which we have to fight: to secure the existence and growth of our race and of our people, the



feeding of its children, and the purity of its blood, the freedom and independence of the fatherland, so that our people can mature to fulfill the mission which has also been assigned to it by the Creator of the Universe. Each thought and idea, each doctrine and all knowledge have to serve this purpose. Under this viewpoint everything has to be judged, too, and to be used or put aside according to its usefulness" ([1933], p. 234, my translation).

## 2. THE PROBLEM OF CONFLICTING VALUE SYSTEMS

It has been concluded in Section 1 that a state in which a supreme value movement is striving or has succeeded in grasping power and in introducing a constitution, need not experience domestic problems, if conditions 1-5 are fulfilled. If this is, however, not the case, a severe crisis may arise. Different interpretations of supreme values may split up the movement and lead to civil strife, civil war and(or) persecutions of "heretics" among the different sects, whenever conditions 4 and 5 are not met. This is especially true if some people strongly or fanatically believe in the absolute truth of their own interpretation and the wrongness of others.

Similar problems arise if non-believers are present and do not willingly submit to the rules introduced by a supreme value movement, i.e., if conditions 2 and 3 are not

fulfilled. The situation is worse if two or more movements with conflicting supreme value systems are trying to assert their goals in the same state.

What are the solutions to such problems? One is obviously given by the victory of one ideological movement or interpretation against all the others. The adherents of the latter are thus either converted by convincing or coercing them or they are obliterated, driven into exile or suppressed.

We are looking, however, for more humane solutions. The Western World has, as is well-known, developed solutions as an outflow of the bitter experiences resulting from the persecution of heretics and from religious civil and international wars ending in a stalemate, like the Thirty Years War. Two such solutions have been proposed and been enacted in international treaties or in constitutions: first the geographical separation of ideological movements into different states dominated or influenced by different supreme value systems: such a "religious peace treaty" was concluded as the Swiss "Landfrieden" in 1529 and 1531. The second treaty saved the Swiss Confederation and remained in force for over a century. It had been concluded very much against Calvin's will (Guggisberg [1983]). A similar treaty was reached in 1555 at the Augsburg Imperial Diet of the German Holy Empire. According to this treaty, the princes and the authorities of the Imperial Cities had the right to

determine the religion of their subjects (*eius regio, cuius religio*). The protestant principalities and cities received equal rights within the Empire. The death penalty for heretics was abolished and they were allowed to emigrate freely. This religious peace treaty was a compromise arising from the general wish for peace. Sects and even those belonging to the reformed church were not included.

It is important to realize that geographical separation as a solution still presupposes the removal, suppression or extirpation of the adherents of other ideologies within the separated territories or states. Also, such a solution can only hold if the different ideologies are prepared to respect the inviolability of the other states dominated by different creeds. It is thus not surprising that developments like the Augsburg Treaty also furthered the evolution of the law of nations. Historically, however, most ideological movements and thus the states dominated by them have shown imperialistic tendencies from time to time with the aim of spreading their ideology (Bernholz [1988]). As a consequence, this solution has not proved to be very stable in history. The Augsburg Treaty of 1555 was followed by the Thirty Years War of 1618-48.

The second solution, tolerance, seems to be more appealing, since it mitigates ideologies by taking away their right, to convert by coercion, to suppress or even to eliminate people. This solution thus allows adherents of

different Weltanschauungen to live peacefully with each other, for each ideological community can follow the rules implied by its supreme values, provided it grants the same right to other groups. The constitution and the legal system of the respective state have to contain the rule of tolerance but cannot embody provisions concerning the regulation of problems on which the different ideologies disagree. It is obvious that this solution implies that each of the supreme value systems in the state has to tolerate other ideologies and their adherents. The postulate of tolerance thus becomes a constituent part of the supreme values.

As stated, this second solution leaves still open several problems: should children of parents belonging to a certain ideological group become, by birth, members of this group? What happens if both parents belong to two different ideological groups? Or should marriages between members of different groups be forbidden? To which group should then illegitimate children belong? To those of the mother or the father? Should the member of an ideological group be allowed to change his allegiance to another? Should then ideological groups only be allowed to convert people not belonging to other ideological groups by peacefully convincing them of the superiority of their creed.

It seems that these problems can only be solved in two ways. First, it is possible that the constitution strictly

prohibits people from changing their ideological group; determines that children belong, by birth, to the same group as their parents; forbids intermarriages between partners belonging to different creeds and(or) prescribes that children join the group of their mother (or father); does not allow any ideological group to try to win members of other ideologies by missionary work.

A system of rules like that would be logically consistent. It would, however, probably lead to alienation, tensions and strife between the different ideological groups. The groups would be strongly isolated from each other, a fact which would make a common government difficult and might easily lead to prejudices. Also, if one group grew more rapidly than others because of greater fertility or because it were more successful in converting people not belonging to any Weltanschauung, the others might feel their long-term position to be threatened.

The second possible solution within the framework of tolerance seems thus to promise a better prospect for peacefully living together, provided that it can be introduced and is accepted by the ideological groups. This solution builds on the principle of freedom, i.e., on the autonomy of individuals. According to this principle, every adult and sane person has the right to determine for himself whether he wants to belong to an ideological group and to which one. The ideological groups are, in such a

system, free associations of individuals, whom they can try to convince by peaceful missionary work. It seems that this solution, which slowly evolved in Europe since the time of the reformation (Guggisberg [1984]), was a fruit of the bitter, hateful and bloody religious civil and international wars and of the persecution of heretics devastating the continent in the 16th and 17th centuries.

I would like to hypothesize that tolerance and individual freedom were not granted because of the benevolence, but because of the needs of rulers. In my other paper I argue that the need to strengthen the economy, as a base for political and military power in a world of competing states, worked to grant and to extend private property and political rights. Here I would like to assert that the aim to profit economically from talented and skilled adherents to different creeds as well as the wish to maintain religious legitimacy of rulers and to preserve domestic order and tranquility as a precondition for a strong state in the face of religious quarrels, led governments to ask for tolerance and freedom of conscience.

It is interesting to quote Georg Roellenbleck's [1991] essay on Bodin's position in his "Six livres de la Republique", in which he supported religious tolerance:

"The freedom of conscience, and freedom itself certainly belong to the central concepts of this political system (of Bodin). But they are, in the eyes of its author, not

last values; so that they have to stay subordinated to the search for truth and to the demands of the public good safeguarded by the state which represents the order of God" (p. 106).

Bodin therefore only defends "the principle of toleration as an absolute necessity for the survival not only of the French nation but for the whole world of his time" (Guggisberg [1983], p. 41).

Quite differently, Castiglio, who in his "De L'impunité des Hérétiques" ("De Haereticis non Puniendis") [1971/1555], severely criticized Calvin for persecuting "heretics" in Geneva, and especially for burning Servet, only proclaimed a limited tolerance among Christians because of the difficulties of interpreting the Bible correctly and the ensuing consequences for living together peacefully. He explains

"As far as open blasphemies are concerned, as when somebody denies the existence of God ... each magistrate has to punish them. ... But such blasphemy must be judged by a common feeling of all nations, not by a particular interpretation by theologians. Otherwise Luther would hold Zwingli and Zwingli Luther guilty of blasphemy, and so it would happen among all ..." (p. 392).

"Now if your church is right (as you certainly want it to be) all Lutherans are heretics to you, since they disagree so much on the last supper that Luther himself has been in great and terrible abomination. Also, several of yours must be heretics, since, as you know, they are not in accord with you on predestination; thus they break your peace, since they do not obey after having been admonished several times. ... Thus it follows that you, who are a small number, hold the greater part of yours, and all the rest of the world, to be heretics. If it were necessary to put to death all those you consider to be heretics, only those of the whole world and even of yours, would remain, who were in agreement with your interpretations. ..." (p. 240).

A third argument was developed which was based on the observation that certain religious minorities contributed substantially to the economic prosperity of a country. For instance, shortly before November 1566 the Antwerp Calvinists addressed a petition to the governess Margaretha of Parma, in which they stated their desire for religious liberty, "for if this liberty ... is established and secured, the commerce on which the whole welfare of the country depends, can take its course much more fully than if things remain so uncertain" (quoted from Guggisberg [1983], p. 425 sq.).



Also in

"1577 a group of Mennonite merchants of Middelberg (in the Netherlands), sent a petition to William of Orange in which they protested against the closing of their stores by the Calvinist city magistrate. This measure had been taken because the Mennonites had refused to take an oath of allegiance before the council. They now stated that it was not their wish to migrate, but they wanted to stay in Middelburg and to contribute to the general prosperity of the town" (Guggisberg [1983], p. 43).

It is perhaps not surprising that especially the first and the last argument became more and more influential in time, since it was in the rulers' interest to strengthen the international political and military position of their states by furthering domestic peace and order as well as their economic strength. Thus especially William of Orange and many Catholic nobles declared themselves against any religious persecution in the Dutch Provinces, since they realized that political independence from Spain could only be reached if the revolting Dutch provinces prevented religious strife at home. William of Orange made this quite clear in his *Mémoire sur l'état critique des Pays-Bas*, addressed to the Provincial States of Utrecht, in November 1566. He also pointed to the economic advantages of toleration (Guggisberg [1983], pp. 43).

In his remarkable paper on "The Defence of Religious Toleration and Religious Liberty in Early Modern Europe", Guggisberg [1983] mentions several other examples in which political and(or) economic reasons led to religious toleration. The Hutterites enjoyed religious freedom on the Liechtenstein estates in Moravia in 1529 and the

"Dutch Mennonites were encouraged to settle in the estuary of the Vistula by the Danzig council because they were experts in dam building and thus could help improve the agricultural productivity of the city's hinterland. This ... was only the beginning of a remarkable colonisation activity of Dutch Anabaptists in Poland, Prussia and Denmark, which lasted well into the seventeenth century" (p.41).

The case of Poland is especially interesting. In this country existed a kind of republic of aristocrats with a very weak position of the king. Thus the Warsaw Confederation of 1573

"gave the authority of 'cuius regio, eius religio' to the great landlords but practically established religious liberty. We observe the same situation, based on several laws, in the principality of Transylvania while it stood under the political supremacy of Osman rulers. In the Protestant Netherlands of the late sixteenth century such minorities as Roman Catholics, Lutherans, Mennonites and Jews were generally tolerated,

but binding legislation on this issue had never been enacted" (p. 45 sq.).

Also important is the example of Brandenburg. Here the Elector Johann Sigismund (1608-19) became a Calvinist in 1613, which was probably partly politically motivated, since he needed the support of the Netherlands to gain the succession to the Duchy of Jülich. Since the majority of his subjects were, however, not Calvinists, Johann Sigismund in 1615

"officially relinquished his 'ius reformandi'. In allowing his subjects to differ from him in their religion, he overcame the principle 'cuius regio, eius religio'.

The same policy was pursued by Frederick William, the Great Elector (1640-88). For him the acknowledgement of religious pluralism was definitely a political necessity if he wanted to keep his states together" (p. 46).

Thus religious tolerance entered and stayed in the important German state of Brandenburg/Prussia.

Not surprisingly, however, the forces in favor of spreading and maintaining different Supreme Values by coercion were fighting these tendencies and won many battles. "The early seventeenth century again brought about a general increase of intolerance and religious persecution. The French Protestants came under mounting

pressure, the (Catholic) Counter-Reformation wiped out the beginnings of religious pluralism in Poland, and the Thirty Years War was in its beginning phase still characterized by confessional strife" (p. 46). Even in the Netherlands religious freedom "was again severely threatened when in 1619 the national synod of Dordrecht decided that all remonstrant preachers (i.e., opponents of orthodox Calvinism) should be removed from the pulpits and many of them were banished from the Republic. Only in 1626 were they allowed to return, ..." (p.46). Similarly, confessional intolerance also played a role in England under the Stuarts and during the revolution and civil war of the 17th century. Only the Act of Tolerance of 1689 by William III of Orange granted freedom to all who dissented from the Anglican Church if they swore loyalty to the king and disclaimed the Pope. Catholics and nonbelievers in God and the Trinity were, however, still excluded.

### 3. FREEDOM AS A SUPREME VALUE

Our deliberations have led us to individual liberty as a possible solution to the problems which are bound to arise from the clash of inconsistent supreme value systems. But this implies that freedom is now itself postulated as the supreme value lexicographically preferred to all other values. But does the postulate of individual liberty not also imply a suppression of people who estimate other values higher than freedom? And is this postulate not self-

contradictory in the sense that it does not allow individuals to decide whether to be free or not?

These questions can be answered with a "no" and a "yes". As argued in an earlier paper (Bernholz [1988]), freedom as a postulate for all people is, in its very nature as a supreme value, different from other supreme values. For it is the only supreme value allowing everybody to pursue a life according to his own substantive values, provided he respects the same right for others. I have thus called it a formal supreme value, since it does, in contrast to other supreme values, not limit the choice of people among substantive values if these do not imply a violation of the same right of others.

It is true, on the other hand, that individual liberty as a postulate, does not allow people to disown freedom permanently. In this sense, the constitution of a free society for all cannot allow slavery or the freedom of a minority, majority or even of all citizens to remove or forego the freedom of single persons, of minorities or even of the whole of society.

This does, however, not mean that people cannot decide to limit their freedom of action by entering binding agreements. E.g., an employment or a futures contract restrict the freedom of action for a given period, the former even in a rather rigorous way. In practice, this may

lead to problems if, e.g., the employment contract extends to 10, 20 or even 30 years, without giving employees the right to quit before its termination. Here the borderline between a person selling himself into slavery and entering a long-term employment contract may not be easy to find.

Finally, does the postulate of liberty lead to contradiction if it is, e.g., expressed in the statement: "The postulate of freedom does not allow anybody to freely decide whether to abolish his freedom or not"? This question can perhaps be answered by noting its relationship to the logical paradoxes in sentences referring back to the concepts which are used in stating them. Such sentences like "A Cretan says that all Cretans are liars" have been known since antiquity and logicians have responded to the problem by excluding such self-referential statements as illegitimate.

#### 4. PRECONDITIONS FOR A FREE SOCIETY

Let us define as free, a society in which each adult and sane person has a domain of action as great as possible, in which he can make decisions without being hindered or bound by interference from others. It follows at once from this definition that a free society cannot be an anarchical one. For in the latter there is no way to prevent the strong and ruthless from suppressing the freedom of the weak for their own benefit. Thus rights must be established and protected.

At least under conditions of a complex society this implies a common authority with superior powers, namely the state. It is obvious that this very power may be misused by rulers to encroach on the freedom of citizens and to discriminate among them according to their whims or interests (Hobbes [1943]). We thus conclude that the rule of law is a necessary condition to prevent discretionary behaviour and to bind government agencies (Hayek [1973]). It is, however, not sufficient to exclude the misuse of government power.

Historically, constitutional thinkers and constitutions of different countries have tried to face this danger by introducing separation of power and the formulation of inalienable human rights (Aristotle, Locke [1955], Montesquieu [1955], The Federalist [1787]). The former tries to limit the discretion of government agencies by putting them into a system of countervailing power. The latter limits the domain of government, whatever its organization. Other devices to limit the discretionary powers of rulers have been federalism and democracy, i.e., mostly indirect majority voting by parliamentary representatives elected by all citizens according to the principles of relative or proportional majority voting. In some cases, elements of direct democracy have been established, often in the form of popular referenda and initiatives, as in Switzerland. But it has been early recognized that majorities are no sufficient guarantee against a limitation and erosion of the domain of

individual freedom (Montesquieu [1955], de Tocqueville [1945]). As de Tocqueville put it:

"If it be admitted that a man possessing absolute power may misuse that power by wronging his adversaries, why should not a majority be liable to the same reproach? Men do not change their characters by uniting with one another; ... the power to do everything, which I should refuse to one of my equals, I will never grant to any number of them" (pp. 269-70).

In fact, after decades of democratic rule in many countries, it seems clear that the jurisdiction of government has to be confined much more severely, as witnessed by growing state intervention and an increasing share of government expenditures in GNP (Bernholz [1990], Weede [1986]). For both of these tendencies restrict more and more the domain of free individual decisions. In this connection it should be stressed that apart from government intervention to promote special interests, which is possible because of rational ignorance of the majority of voters, supreme values again play a role even in this growing limitation of individual liberty in Western democracies. Of importance has been the call for more substantive equality, especially of disposable incomes. This supreme value is used unknowingly or clandestinely as a lever to subordinate freedom.



This importance of substantive equality as a supreme value is also witnessed by the quota system used in several countries to reach equality of women or of racial minority groups. But the quota system amounts to a violation of the principle of equality vis-à-vis the law, which is a precondition for a free society. More recently, ecological fundamentalism has arisen as a potential danger to liberty. For self-appointed "elites" claim that everything and everybody should be subordinated to the ecological aims set by themselves. In a free society, however, everybody should have the right to determine the degree of pollution as far as he himself is concerned and as it is consistent with the wishes of others. This does not deny that severe ecological problems exist. But to solve them without sacrificing liberty, requires that taxes and fees are introduced on pollution according to the principle of causation. Then everybody can freely decide within this framework how little or how much to pollute. The absolute level of pollution to be tolerated could be set by majority voting in parliament.

In a developed economy with a high degree of division of labor, the existence of free markets and private property is a necessary condition for freedom. For a primitive economy with self-sufficient peasants or hunters, markets may not be necessary, though with an existing scarcity of land or game to be hunted, even there, a kind of private property should be helpful for an extended domain of free

decision-making by individuals. For a developed economy it seems, however, not possible to envisage the necessary coordination of independent decisions by individuals, of firms and organizations freely formed by them without the help of markets and prices. But to make these decisions they must also be free from interference from others; so that private property rights are indispensable. Moreover, the institutions of private law in the form of contract law, tort law, etc. must be available to enable market coordination to work, especially if partners are not in a permanent business relationship with each other and if the contract calls for future delivery of goods or services and(or) future payment (Cooter and Ulen [1988]).

It follows that liberty in a complex society not only requires a developed system of free markets and of private property but also a strong but limited state. The state has to protect the safety of property rights and, if necessary, to judicate and enforce privately agreed contracts. It may also be helpful to maintain a stable money, which is a prerequisite for sophisticated market transactions (Bernholz [1987]). But government has to be limited to prevent excessive tax burdens, frequent and uncalculable changes in law, discretionary interventions in and far-reaching regulations of the economy. For they all restrict the liberty of individuals (Bernholz and Faber [1988]).

Government has, moreover, to provide public goods like internal order and safety and defence against foreign aggression. We have already seen that it has also to play a role in removing and preventing environmental pollution, but should do so by using, as far as possible, market-oriented instruments like pollution taxes or fees. Finally, it should be stressed that not democracy but limited government and rule of law is necessary to safeguard liberty and its preconditions, a free market economy, private property and stable money. As has been stressed, unlimited or total democracy shows a tendency of government expansion harmful to individual liberty. On the other hand, it has to be pointed out that in oligarchies or dictatorships the limitation of government powers and the rule of law may always be removed by the rulers.

##### 5. PROBLEMS OF CREATING AND MAINTAINING A FREE SOCIETY

Let me begin this concluding section with a blunt statement: Given individual preferences, as we know them empirically, it would be irrational for the individual to strive for his own liberty under all conditions, not to speak of that of others. In fact, we have postulated above for a free society that it should lexicographically "prefer" freedom to all other values. Now this postulate could be fulfilled if its members would themselves have such a lexicographic preference order and(or) if its institutions would always safeguard individual liberty. We

have already pointed out that the latter has never been attained in history and perhaps no perfect recipe will ever be found for such a solution, though some progress has been made in the past and will also be made in the future. But if this is true, then to maintain freedom in a certain country would require the lexicographic preference order mentioned, to be valid for most of its members.

This can, however, not be expected. The empirical evidence seems to support the conclusion of economic theory that all goods and services will be substituted if the relative price or the relative opportunity costs change sufficiently. There may be a few persons ready to die as martyrs of freedom. There may also be a few others prepared to die for other supreme values and who are thus easily ready to sacrifice liberty. But the big multitude of people would rather be inclined to forego freedom for say, an amount of money or an escape from danger, if the relative price were right. One could even consider a readiness to sacrifice one's life for freedom as being pathological, if one assumes egoistic utility maximization. For death would forever preclude the possibility of making use of one's freedom.

Free societies are thus always endangered. Also, we have seen how the power of the rulers together with the wishes of special interests and rationally uninformed voters tend to restrict individual liberty more and more, even in

democratic market economies. We have thus to ask ourselves whether there are enough countervailing forces to give liberty a chance in the future. Now we seem to learn that liberty has evolved as an innovation in Europe because of the international competition of states and the separation of church and states (North and Thomas [1973], Jones [1982]). The good luck of liberty has been that free societies are more efficient, productive and innovative in the long run. But this is not unimportant for the international military and political power of competing states. Also, especially with modern information processes, the inhabitants of different countries can compare their economic situation with those of others. Both factors, the international position and domestic unrest, may lead to political pressures on the government, which may engender perhaps successful reforms, and thus to the introduction of free markets, strong private property and the constitution of liberty.

## References

- Aristotle                    Politics.
- Bernholz, P. [1987] "The Implementation and Maintenance of a Monetary Constitution". In: James A. Dorn and Anna Schwartz (eds.): The Search for Stable Money. Chicago and London: University of Chicago Press, pp. 83-117.
- Bernholz, P. [1988] Necessary Conditions for Totalitarianism. Unpublished Manuscript presented at the Interlaken Symposium on Ideology and Analysis. To be published 1993. German Translation "Notwendige und hinreichende Bedingungen für Totalitarismus" in Radnitzky, G. and Bouillon, H. (eds.): Ordnungstheorie und Ordnungspolitik. Berlin, Heidelberg and New York: Springer 1991, pp. 241-284.
- Bernholz, P. [1990] "The Completion of the Internal Market: Opportunities and Dangers Seen from an Institutional Perspective". In CEPS (ed.): The Macroeconomics of 1992. Brussels: Centre for Economic Policy Studies, pp. 59-105.

- Bernholz, P. [1991] "The Constitution of Totalitarianism".  
Journal of Institutional and Theoretical Economics, 147, pp. 425-440.
- Bernholz, P. and Faber, M. [1988] "Reflections on a Normative Economic Theory of the Unification of Law". In: Gwartney, J.D. and Wagner, R.E. (eds.): Public Choice and Constitutional Economics. Greenwich (Conn.) and London: JAI Press.
- Calvin, J. [1887] Institutio religionis christianae.
- Cooter, R. and Ulen, T. [1988] Law and Economics. Harper Collins, without place.
- The Federalist* [1787] From the Original Text of Alexander Hamilton, John Jay, James Madison, with an Introduction by Edward Meade Earle. National Foundation for Education in American Citizenship. Indianapolis without date.

- Guggisberg, H.H. [1983] "The Defense of Religious Toleration and Religious Liberty in Early Modern Europe: Arguments Pressures and Some Consequences." History of European Ideas 4(1), pp. 35-50.
- Guggisberg, H.R. [1984] Religiöse Toleranz, Dokumente zur Geschichte einer Forderung. Stuttgart-Bad Camstatt.
- Hayek, F. A. [1973] Law, Legislation and Liberty. Chicago: University of Chicago Press.
- Hitler, A. [1933, 1925-27] Mein Kampf. München: Franz Eher Nachfolger.
- Hobbes, T. [1943] Leviathan. London: J.M. Dent, Everymans Library.
- Jones, E. L. [1981] The European Miracle. Cambridge: Cambridge University Press.
- Lenin, W. I. [1953 sq./1963] Gesamelte Werke. Ostberlin.
- Locke, J. [1955] Second Treatise of Civil Government. Chicago: Henry Reguerey, Gateway Edition.



- Montesquieu [1952] *The Spirit of Laws*. Vol. 38, Great Books of the Western World. Chicago: Encyclopaedia Britannica.
- Mawdudi, Abu'l A'la [1980/1939] "Political Theory of Islam". In: Khwshid A. (ed.): *Islam, its Meaning and Message*. London: The Islamic Foundation, pp. 147-171.
- North, D. C. and Thomas, R. [1973]. *The Rise of the Western World: A New Economic History*. Cambridge: Cambridge University Press.
- Tocqueville, A. de [1945] *Democracy in America*. New York: Random House, Vintage Books.
- Weber, E. [1972] *The Western Tradition*. 3rd ed. Lexington (Mass.) and Toronto: D.C. Heath & Co.
- Weede, E. [1986] "Catch-up, Distributional Coalitions and Government as Determinants of Economic Growth or Decline in Industrialized Democracies". *British Journal of Sociology* 37(2), pp. 194-220.

Zweig, S. [1922] Castellio gegen Calvin oder ein Gewissen  
gegen die Gewalt. Frankfurt/Main:  
Fischer.