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Coalition of law-abiding sporting shooters



Private Encroachments

The assumption that the government is entitled to own all the guns while the people have none is consistent with the concept of the unaccountable sovereign.

Private Encroachments, by David Leyonhjelm, reproduced here with the author's permission originally appeared in the December 2009 issue of the IPA Review under the title "Navigating the Nanny State".

Most people accept that some things are legitimately the responsibility of the government while others are private matters. Indeed, this distinction was well known to the ancient Greeks. Aristotle described the public realm of the polis, state, city or republic as the site where people consent to or contest the laws, contracts, covenants, or principles of community that govern personal and social conduct.

The private realm was defined by the hearth and home, remaining the place of family, comfort and individual identity. He viewed the family as the primary and immediate unit of society, forming the training ground for conduct, nature, and morality.

There has always been debate about where the border lies and the overlap between the two, but serious encroachments into the private realm by the government have

traditionally been associated with authoritarian regimes. Russia's state run holiday camps, East Germany's network of community spies and China's one child policy are obvious examples, among many. In George Orwell's novel Nineteen Eighty-Four, party members were monitored via cameras in the walls of their homes as the regime sought to abolish the family, orgasms and the sex instinct so there was nothing to detract from love of Big Brother.

In non-authoritarian countries the encroachments take a more benign character, frequently motivated by the same sense of superior knowledge and desire to protect that we associate with mothers and their children, or at least child carers. Hence they are commonly referred to as signs of the "nanny state".

The care of a mother for a child is based on reality. A mother does in fact have superior knowledge and naturally seeks to protect her child while it is too immature to make rational choices. The ability to make such choices and take responsibility for the consequences is what distinguishes adulthood from childhood. Parents recognise this by tailoring the protection they provide to children, for example by applying warm clothing to small children when it is cold but allowing older children to decide for themselves.

Governments are not super parents with superior knowledge, but public servants and politicians acting with legal authority. Moreover, citizens are not children who are incapable of making rational choices and accepting responsibility. Yet there has been a vast expansion by the government into the private realm with the government assuming it has superior knowledge and that adults are unable or unwilling to make the right rational choices.

There are many views on the appropriate relationship between governments and the governed, but two that have particular relevance to this subject are those of the English philosophers Thomas Hobbes and John Locke.

Hobbes believed the natural state between people was conflict, with life being 'solitary, poor, nasty, brutish and short'. He considered people were needy and vulnerable, easily led astray, with fragile capacity to reason. The only way to avoid a perpetual state of war of 'all against all', in his view, was to agree to relinquish all rights to a sovereign who could not be questioned. The sovereign dispensed justice and allowed such freedoms as it considered appropriate while maintaining civil society.

Locke's view was that people generally got along quite well when left alone, and in the natural state were equal and independent with a right to defend "life, health, liberty, or possessions". However, he assumed this was not enough, so they agreed to establish a civil society to resolve conflicts in a civil way with help from government. Rights were only relinquished to the extent necessary for this to occur, and if the government ever retained more than necessary he favoured a revolution to restore the balance. His views were quite influential to the authors of the American Declaration of Independence.

Hobbes' idea of an unaccountable sovereign has been replaced by what now passes for democracy, but the idea that all rights derive from the government remains relatively common. Widespread encroachments on the private realm by governments are a result.

A good example of this is assisted suicide. Even though suicide is no longer illegal (attempted suicide remains a crime in the Northern Territory), it is a serious criminal offence to provide assistance or practical advice to someone else to take their own life.

From Hobbes' perspective the government has every right to allow able-bodied individuals the freedom to die while denying the same freedom to those who are physically frail. Those who believe the government knows best describe this as protecting vulnerable people.

From Locke's perspective the government is intruding into a deeply private matter in which it has neither the right nor the expertise. To the extent that the government has a role in preventing exploitation of the elderly and frail, there are options for achieving this that do not treat rational adults as dependent children.

In many cases the government seeks to protect individuals from what it regards as poor choices, notwithstanding the fact that those choices are made in full knowledge of the risks and consequences. Thus we are subjected to prohibition or heavy-handed regulation of activities such as skydiving, bungee jumping and the martial arts. Women's boxing remained illegal in NSW right up until it was adopted as an Olympic event. Compulsory helmets for bicyclists and motorcyclists and mandatory seatbelt laws are other examples.

The government seeks to protect us from moral danger as well, with many prohibitions and limitations based on particular moral values. Homosexual acts might be no longer illegal but homosexual marriage and adoption of children remain off limits. Prostitution may be legal but is heavily regulated, as is pornography. Australia is contemplating imposing a general internet filter, purportedly to protect children from accessing pornographic sites but coincidentally depriving adults of choice while intruding into the private realm of parental care.

Limits on smoking, drinking, gambling and recreational drugs are often justified as protecting people from moral danger as well as preventing poor choices.

The government also attempts to prevent us from making poor choices about what we eat. It bans the advertising of 'unhealthy' food and drink to children, inferring it knows better than parents, and spends millions itself on advertising to encourage us to eat more fruit and vegetables, less salt, fat and fast foods, and to get more exercise.

There are indications we will see more of this. A government taskforce has recommended far-reaching measures to increase our physical activity and consumption of "healthy" food, among them prohibiting 'junk' food, plain packaging of cigarettes, tax breaks for exercising, increasing obligatory exercise at school, reducing alcohol availability, and restricting alcohol advertising and sponsorship.

The government also doubts that people will 'do the right thing'. Thus it restricts access to vast areas of National Parks, prohibits fishing in ever expanding areas, and prevents the removal of trees or the clearing of scrub on private land, all on the assumption that it knows best. It even compels us to vote, perhaps concerned that we might prefer to go fishing or cut down a tree instead.

Through all this, the notion that rights belong to individuals and can only be taken away with good cause does not apply. Instead, there is an assumption that rights derive from the government and can be limited at any time. Treating people as if they are incapable of looking after themselves, including making the right decisions for themselves and their families, is an inevitable consequence.

It is perhaps in the area of self defence and the related subject of gun control that the implications of this become acutely apparent.

Following the Port Arthur shooting in Tasmania in 1996, Prime Minister John Howard forced all State governments to adopt a regime of strict gun laws. Howard explained his views in a Sydney radio interview, in which he said:

“We will find any means we can to further restrict them because I hate guns. I don’t think people should have guns, unless they are police, or in the military or security industry. Ordinary citizens should not have weapons. We do not want the American disease imported into Australia.”

The assumption that the government is entitled to own all the guns while the people have none is consistent with the concept of the unaccountable sovereign. In contemporary terms it has been interpreted as meaning that a democratically elected government will never need to be physically removed because it can always be voted out through the electoral process. Hence there is no need for the people to maintain the means to overthrow it.

The alternative view is that democratically elected governments do not always remain democratic or willing to be voted out. Indeed, Hitler’s National Socialist government was democratically elected before it declared martial law. From this perspective it is prudent for the people to retain the means of resistance, if only to discourage excessive authoritarianism.

However, it is in the more immediate area of personal self defence that Howard’s sentiments assume most relevance. The gun laws that he instigated removed any remaining rights to own a gun for self-defence. For all practical purposes, and there are no exceptions in NSW, it is now impossible to own any kind of gun for protection anywhere, including in the home.

Most people have never felt the need to arm themselves for self-defence, but it was at least an option. The police would often recommend that people faced with a realistic threat of violence consider obtaining a permit to own a pistol. Examples included wives pursued by violent ex-husbands, celebrities hounded by crazed fans, and of course jewellers and owners of gun shops.

These days, politicians are protected by armed guards at taxpayers’ expense and the well-heeled hire armed security guards. Everyone else takes his or her chances. Even non-lethal alternatives like pepper sprays and mace are banned.

If a woman’s ex-husband has bashed her half a dozen times, breached repeated restraining orders, made threats to come and finish her off and knows where she lives, she still cannot arm herself. If she does, she will be the one who is arrested. Her vulnerability is the same at home except for the fact that she is still permitted to use whatever is at hand, and kitchen knives and screwdrivers are so far still legal.

In theory, the right of self-defence has not been lost. Self-defence remains available as a defence and juries consistently refuse to convict whenever it is established. For most people it is simply not a practical option.

Being reliant on the government for your safety, the safety of your family and the protection of your property is consistent with the relationship between a child and its mother. Given that level of dependency it is little wonder that other encroachments seem minor, or that some people feel entitled to transfer responsibility for their actions and losses to the government. Being treated like a child will inevitably lead some people to behaving like one.

But it is also true that most people do not regard the government as wise, or agree it is entitled to intrude into the private domain unchallenged. Public servants are often seen as incapable of achievement in the private sector and politicians are held in contempt. Many would also like to think the government was answerable to them rather than vice versa.

The problem is that individual intrusions are not normally identified as part of a pattern. Those who object to internet censorship, for example, will often fail to identify with control issues facing smokers, gays or four wheel drivers. The overweight may resent the government hectoring them to lose weight but do not relate to restrictions on recreational fishing. Those who are appalled at government prohibition on assisted suicide may approve of “tough gun laws” without recognising that they both arise from an assumption by the government that individuals should not have too much responsibility.

A common response by those who object to government intrusion in a particular field is to seek to modify the intrusion, perhaps by replacing one set of values with another, without recognising that this is simply a variation on the same problem. A good example is those who argue that the law should be changed to prescribe gay marriage. In the broader context of government control, a better question would be to ask why the government needs to prescribe conditions for marriage at all.

If all those who resent the intrusive expansion of the nanny-state in a particular area were to ever join forces with those who resent it in another, the potential would be enormous. The private realm would once again be private, the government subordinate to the people and adults left to choose their own course and accept the consequences. John Locke would approve.

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