We Can Oppose Bigotry without the Politicians

Should the government coercively sanction business owners who, out of apparent religious conviction, refuse to serve particular customers?

While such behavior is repugnant, the refusal to serve someone because of his or her race, ethnicity, or sexual orientation is nevertheless an exercise of self-ownership and freedom of nonassociation. It is both nonviolent and nonviolative of other people's rights. If we are truly to embrace freedom of association, logically we must also embrace freedom of nonassociation. The test of one's commitment to freedom of association, like freedom of speech, is whether one sticks by it even when the content repulses.

But does this mean that *private individuals* may not peacefully sanction businesses that invidiously discriminate against would-be customers?

No! They may, and they should. Boycotts, publicity, ostracism, and other noncoercive measures are also constituents of freedom of association.

So why do many people assume that the only remedy for anything bad — including bads that involve no physical force — is state action, which always entails the threat of violence? Are we really so powerless to deal with repulsive but nonviolent conduct unless politicians act on our behalf?

As everyone knows, the Arizona legislature passed — and now the governor has vetoed — a bill that would have amended the state's Religious Freedom Restoration Act (RFRA), which holds that even a seemingly religiously neutral law may not "substantially burden" the exercise of religion in the absence of a "compelling government interest" and a less-restrictive method of advancing that interest.

SB 1062 (PDF) was reportedly prompted by a New Mexico Supreme Court ruling in the case of a commercial photographer who, apparently on religious grounds, refused to take pictures at a same-sex civil-commitment ceremony. The court held that the state's RFRA does not apply in cases involving private individuals, that is, cases in which the government is not a party. Thus a private person or business owner accused of violating the prohibition on discrimination against designated protected group in public accommodations cannot invoke a religious exemption. ("Public accommodations" generally refers to businesses and government offices open to the general public.) Similar cases have arisen elsewhere.

The Arizona bill would have extended the RFRA to any "individual, association, partnership, corporation, church, religious assembly or institution, estate, trust, foundation or other legal entity." This was interpreted as legislation intended to permit anti-gay discrimination

in public accommodations — and maybe it was — but the bill made no reference to sexual preference or gender identity. (Arizona law bans discrimination on the basis of race and sex, but not sexual orientation.) As the *New York Times* noted, "A range of critics — who included business leaders and figures in both national political parties — said it was broadly discriminatory and would have permitted all sorts of denials of service, allowing, say, a Muslim taxi driver to refuse to pick up a woman traveling solo."

What's an advocate of individual freedom, peaceful social cooperation, and tolerance to make of all this?

Right off, I'd ask how a "compelling state interest" — whatever that may be — could license government to impose burdens, substantial or otherwise, on anyone's peaceful exercise of religion. The state is an organization of mere mortals who, by one dubious method or another, have been allowed to don the mantle of political legitimacy and to command obedience on pain of imprisonment even of those who never consented to the preposterous arrangement.

Next I'd ask why religion is the only consideration to be taken into account. Shouldn't the state also be restrained from burdening the exercise of secular convictions?

As Mario Rizzo of New York University wrote on Facebook,

> *The difficulty is that the law singled out an approved reason — religious — why someone could refuse his or her services to another person. The default used to be freedom of association and contract unless there was some very good countervailing reason. Now it seems that the default is you must behave according to "progressive" values or else. No one in Arizona would have been in danger of being deprived of vital services — the environment is competitive and people want to make money. It is totally unlike the old south. But, hey, no one has the interest in subtle distinctions about liberty.*

When Rizzo says that "No one in Arizona would have been in danger of being deprived of vital services — the environment is competitive and people want to make money," he's referring to the fact that, unless government intervention protects bigoted business interests (as it did in the old South), markets will punish them and reward inclusive establishments.

Now the moment anyone says that government should have no power to prohibit business

owners from discriminating in public accommodations, a progressive interlocutor will respond, “So a business should be allowed to refuse service to someone because the person is black or gay?”

To which I would say, No, the business *should not be allowed* to do that. But by “not be allowed,” I mean that *the rest of us should nonviolently impose costs on those who offend decency by humiliating persons by the refusal of service*. As noted, this would include boycotts, publicity, and ostracism. The state should not be seen as a remedy, and considering that its essence is violence, it certainly should not punish nonviolent conduct, however objectionable.

State prohibitions drive bigotry into the shadows, making private response more difficult. Would a Jewish couple want an anti-Semite photographing their wedding? Would a gay couple want a homophobe baking their cake? Moreover, legal prohibitions may cut both ways. Should a black photographer have to work the wedding of a white-supremacist couple? Shouldn’t the thought of forced labor make us squirm?

Let intolerance be exposed to the daylight, where it can be shamed and ridiculed.

As I wrote in connection with the public-accommodations provision (Title II) of the 1964 Civil Rights Act, private action is not only morally superior to government action, it is also more effective. Direct nonviolent social action

> *had been working several years before Title II was enacted. Beginning in 1960 sit-ins and other Gandhi-style confrontations were desegregating department-store lunch counters throughout the South. No laws had to be passed or repealed. Social pressure — the public shaming of bigots — was working.*
>
> *Even earlier, during the 1950s, David Beito and Linda Royster Beito report in Black Maverick, black entrepreneur T.R.M. Howard led a boycott of national gasoline companies that forced their franchisees to allow blacks to use the restrooms from which they had long been barred.*
>
> *It is sometimes argued that Title II was an efficient remedy because it affected all businesses in one fell swoop. But the social movement was also efficient: whole groups of offenders would relent at one time*

> *after an intense sit-in campaign. There was no need to win over one lunch counter at a time.*
>
> *Title II, in other words, was unnecessary. But worse, it was detrimental. History's greatest victories for liberty were achieved not through lobbying, legislation, and litigation — not through legal briefs and philosophical treatises — but through the sort of direct "people's" struggle that marked the Middle Ages and beyond. [See also Thaddeus Russell's A Renegade History of the United States.] As a mentor of mine says, what is given like a gift can be more easily taken away, while what one secures for oneself by facing down power is less easily lost.*
>
> *The social campaign for equality that was desegregating the South was transmogrified when it was diverted to Washington. Focus then shifted from the grassroots to a patronizing white political elite in Washington that had scurried to the front of the march and claimed leadership.…*
>
> *We will never know how the original movement would have evolved — what independent mutual-aid institutions would have emerged — had that diversion not occurred.*

In other words,

> *Libertarians need not shy away from the question, "Do you mean that whites should have been allowed to exclude blacks from their lunch counters?" Libertarians can answer proudly, "No. They should not have been allowed to do that. They should have been stopped — not by the State, which can't be trusted, but by nonviolent social action on behalf of equality."*

The libertarian answer to bigotry is community organizing.