Disagreement without Conflict

I'll admit it: I'm a natural-rights guy. I think you can get to individual rights, including the right to property, from within the ancient Greek eudaimonist (virtue ethics) and Spinozist tradition.

But here's a separate point: rights-talk may not be the best way to bring unconvinced people over to the libertarian view of the good society. Heresy? I hope not.

This video interview with Chandran Kukathas, author of *The Liberal Archipelago*, got me thinking about this subject. Kukathas (whom I've written about here and here) starts with what ought to be obvious to everyone: people disagree about all kinds of things. As he writes in his book:

> In a world of moral and cultural diversity one of the subjects over which there is dispute, and even conflict, is the subject of justice. Different peoples, or groups, or communities, have different views or conceptions of justice. In these circumstances the question is: how can people live together freely when there is this sort of moral diversity?"

Even when they agree on ends, they often disagree about the means to those ends. Disagreement is here, has always been here, and ain't going anywhere.

So what, you ask? What does that have to do with winning adherents to the libertarian view of the good society? It has a lot to do with it. Much modern libertarian thinking has been shaped by theorists who at least implied that the way to a free society is to get widespread if not universal agreement about rights and hence justice — in other words, assent to a libertarian law code deduced from the nonaggression principle. (Some even think the agreement must extend to other philosophical matters like metaphysics, epistemology, ethics, aesthetics.) As a libertarian I came up (long ago) in that tradition. But now I wonder about its strategic, but not its truth, value.

If disagreement is and will be ubiquitous, how in hell can we hope for widespread agreement on a detailed code of law or rights theory? We can't hope for that, and we should stop acting as though we can because it looks to be a time-waster. It's been tried, so we must learn there are no magic words to do the trick.

Does that leave us in despair? Have we no hope for liberty? Maybe not. Chandran Kukathas gives us reason to hope.

Since broad disagreement is not going away, the most we can work for is an environment characterized as *disagreement without conflict*. I'm not a utopian. Conflict isn't going

anywhere either, but it can be minimized through liberal institutions based on freedom of association *within* the current national territories, the "live and let live" principle, which would not require territory-wide agreement to a detailed doctrine. In other words, if we can't get universal agreement to a code of justice, how about to the principle of "mutual toleration"?

In this age of extreme and acrimonious polarization, doesn't that sound like a strategic approach worth pursuing? If no monopoly state is available, Group A won't have to live in fear that Group B will seize it and impose its preferences, and thus Group A won't have to seize the state apparatus first in self-defense.

Some may object to putting rights-talk on the shelf in favor of something less "pure." They may insist that in America, home of the Declaration of Independence with its stirring lines about inalienable rights that predate government, rights talk resonates as it does nowhere else.

That was my first thought. But then I remembered how the list of things that Americans are said to have a right to has grown exponentially over the decades. No one has been able to find the right incantation to stop, much less, reverse that growth. Believe me, many people have tried. And once you give flight to even legitimate rights-talk, you have no control over where it goes and what form it takes. Once "counterfeit rights" gain currency, we enter the realm of rights-balancing. And guess who's in charge of that.

So, Kukathas writes in *The Liberal Archipelago*, "The primary question of *politics* is not about justice or rights but about power, who may have it, and what may be done with it. Views about rights or about justice may have a significant bearing on any answer to this question, but this remains the important question."

As a consequence, Kukathas continues, "The principles of a free society describe not a hierarchy of superior and subordinate authorities but an archipelago of competing and *overlapping* jurisdictions." (Emphasis added. That is an extremely important adjective because it indicates that the authorities do not have monopolies even within "their" territories, suggesting a polycentric approach to law and governance.)

Kukathas clearly does not buy James Madison's famous line in Federalist 51: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

Thus those who value liberty must cultivate a distrust of power of all kinds. Kukathas says in the interview that the government is always a *they that* "co-opts us on a regular basis," and never a *we*. "In a free society … only the freedom to associate is fundamental." The freedom of exit of course is the corollary.

As you might expect, Kukathas challenges the conventional view of what even constitutes the good society. He is “skeptical” about the need for “social unity,” suggesting it

> is not nearly as important as has been intimated. On the contrary, the good society is not something confined by the boundaries needed to make it one. Political authority is necessary in any good society; but political authority should be understood as something which has a place in the good society, rather than as something which circumscribes it.

In opposition to the body-politic metaphor, Kukathas offers a metaphor “of society as an archipelago of different communities operating in a sea of mutual toleration.… [T]he liberal archipelago is a society of societies which is neither the creation nor the object of control of any single authority, though it is a form of order in which authorities function under laws which are themselves beyond the reach of any singular power.

Importantly, he adds, “Implicit in this is a rejection of nationalism, and of the idea that we should start with the assumption that the nation-state is the ‘society’ which is properly the object of concern when we ask what is a free society.”

Summing up in the interview, Kukathas says,

> Having asked how can a diversity of peoples live together freely given their differences, [my theory] asserts that the answer lies in the way authority is allocated. More particularly, it argues that in a free society — which is to say, a liberal society — there will be a multiplicity of authorities, each independent of the others, and sustained by the acquiescence of its subjects. A liberal society is marked by respect for the independence of other authorities, and a reluctance to intervene in their affairs.

That reluctance would be reinforced by the fact that people who might like to control other people’s peaceful conduct would have to pay out of pocket for the pleasure. They would not be able to socialize the cost by imposing it on a large number of otherwise indifferent taxpayers. The more something costs, the less people tend to buy. Call it libertarianism by default.

That seems like a vision that could win wide assent.