

1: Private Rights And Public Illusions by Tibor R. Machan

Private Rights, Public Illusions focuses on the proper scope of government authority, especially in regard to people's economic or commercial affairs. The public realm is one wherein we must act collectively and subordinate individual will to a common purpose.

Philosophies of Public Policy in Contact Detailed Summary Highlights Government today is routinely involved in matters which were viewed as strictly private just a few decades ago. While the expansion of government may be motivated by concerns for justice and human well-being, it instead institutionalizes the use of invasive force against the liberties and privacy of the innocent, the very people it allegedly exists to protect. When those guiding principles are abandoned, to what principle can citizens appeal to defend themselves from government itself? Without subjecting government to the Rule of Law, there is no Rule of Law! Furthermore, the civil liberties of free speech, press, religion, assembly, etc. Today it is seen as the grantor of rights. The view that utilitarian policies produce morally superior results is deeply mistaken. The regulatory-welfare state of collectivist utilitarianism leads to abuse of the politically weak by favored groups who routinely advocate the use of force to achieve desired ends. The free-for-all of the jungle describes life under the regulatory-welfare state, not the peaceful cooperation and competition of the market system, in which the initiation of force by private or government agents is banned. Government paternalism also destroys the private, voluntary institutions that allow individuals to express genuine benevolence toward those in need. Consumer protection laws are unjustified and constitute prior restraint of persons who have committed no wrong. Health and safety standards have been far more effectively maintained when implemented by private covenants, private insurance and free market competition, than by government regulation. Government licensing requirements for barbers, lawyers, nurses, family counselors, engineers, and other trades and professions through fees, mandated schooling and other entry barriers also constitute prior restraint of persons innocent of any wrongful acts, and shield current practitioners from the competition of minorities, women, and others seeking entry into the field. Free markets and contract law encourage service providers to earn good reputations, and do so without imposing the high prices and limited service of governmentally protected cartels. Criminal and civil law are far more effective in dealing with workplace standards and harms arising from fraud or misrepresentation. If firms cannot operate without polluting physically harming the property of others persons who have not consented to bear such harm then such activity should be terminated. The right to freely associate also entails the right not to associate. Today, the public sector effectively comprises virtually every concern of every group large or vocal enough to attract attention. Politicians evaluate the various proposals according to whether supporting them will advance their interests and elicit approval by the electorate, and policy analysts evaluate such programs according to calculations of aggregate costs and benefits. Machan Professor of Philosophy, Chapman University rejects both types of appraisal, because neither recognizes the need for moral values in the treatment of individuals in society. Machan brilliantly demonstrates that our political and legal institutions must rest upon an unshakable moral foundation rooted in the Jeffersonian tradition of individual human rights. Any other approach necessarily produces a society of predation by some against others, where moral values are sacrificed for the benefit of a special governing class and their constituents. But much more than a philosophical inquiry, *Private Rights and Public Illusions* is a searching examination of the welfare state, business regulation and deregulation, professional ethics, occupational health and safety codes, pollution controls, advertising, labor policy, and other aspects of modern political economy. Especially pernicious, for example, is preventive legislation that restricts the liberty of innocent citizens in order to prevent some possible harm. Because the precautions are forcibly imposed on citizens, human dignity and public morality are undermined. By imposing prior restraint, governmental paternalism supplants self-responsibility. Citizens are controlled by the state as if they were incapable of leading successful moral lives. A good legal system, says Machan, prevents all unjustified violence or coercion aggression against non-aggressive persons. The ethical foundation that underlies such a legal system is individualism, or ethical egoism. Constitution and the Declaration of Independence, with its parallels to the

phrases of John Locke, stress individual rights. Thus, our legal heritage contains conflicting elements. To our detriment, the paternalistic, morally indefensible aspects of this tradition are becoming increasingly embodied in government bureaucracy at the expense of the morally defensible, classical liberal tradition. Machan examines three contemporary arguments favoring government paternalism and regulation. The first, associated with the philosopher Gregory Vlastos, denies the existence of any absolute or natural human rights to liberty and maintains that there exist competing rights to happiness that in special circumstances may take precedence. Relying on this idea, one may urge, for example, that wealth be redistributed from the affluent to the needy. The theory offers no clear answer. A third argument, popularized by the philosopher John Rawls, holds that one has a right only if the exercise of that right improves the lot of the worst off in society. This argument places great weight on mere happenstance, supposing that both the successful and the unsuccessful have little control over their conditions. It denies that differences of outcome may result from meritorious differences of effort and acquired skill. Yet, having denied that we can earn moral credit through successful efforts, it then exhorts us to earn moral credit by achieving the Rawlsian conception of justice. None of the theories employed to justify the coercive redistribution of wealth can withstand criticism. In our time, the deprivation of natural rights often receives approval because it has been allegedly validated through democratic processes. But since no public election has been contracted for, no such election can justify the denial of basic human rights. In contrast, elections of members in an organization or shareholders or partners in a firm is contracted among the parties involved and hence binding. Although an election may, directly or indirectly, appear to sanction the destruction of such rights, all persons continue to possess them equally. Natural rights are not granted, and hence are not revocable by society or polity. Each person therefore retains his natural rights even when the legal authorities disregard them. The legality of slavery in eighteenth-century America, for example, in no way effaced its immorality, that is, its violation of natural rights. Having clearly expounded and defended the foundations for natural rights, Machan then examines a variety of contemporary public policies in the light of such ideas. Firstly, Machan maintains that one cannot easily distinguish civil liberties and economic liberties, and he defends the concept of substantive due process. Noting how the Commerce Clause of the Constitution has been employed to justify virtually all sorts of economic intervention, he indicates that repeal of this clause ought to be considered. While economists and policy makers generally base their judgments on calculations of or guesses about overall public welfare, defenses of business regulation always have a normative as well as a positive aspect. Usually the value of liberty and the moral rights of individuals receive little or no weight. Consequently, public policies routinely result in the violation of the natural rights of the citizens. Although many have claimed that a laissez-faire society results in a harsh outcome for all but the captains of industry, this supposition does not accord well with either philosophical necessity or historical experience. Clearly, the record of the political coercion of welfare statism is dubious at best. People do not fall into widely separated classes of winners and losers; rather, they occupy a long continuum of outcomes, with most in the great middle, and many individuals are constantly changing their places in the array. Machan disputes not only the philosophical arguments in favor of the welfare state but also the attempts to base it on aggregate cost-benefit calculations. The concepts of morality and justice must always trump those of imposed utility. Virtually all government regulation of business violates the natural rights of citizens. Not even popular regulations such as those of the Food and Drug Administration can be justified. He further shows that commercial speech deserves as much civil liberties and property rights protection as any other speech. Anyone who recognizes the unavoidable moral aspect of policy-making should carefully read and ponder the arguments of this powerful and provocative new book. In this book, Machan argues that liberty is itself a moral value and that the perceived disjunction in political theory therefore does not exist. The book will be received with great interest in conservative and liberal circles alike. He shows convincingly that individual dignity, liberty and personal responsibility have all been compromised by a range of politics that hide their coerciveness under anodyne slogans such as the public interest, the common good and the general welfare. Moral issues and theories are not of theoretical interest alone, but embedded in the bowels of our social, political, and economic institutions.

2: Private Rights and Public Illusions

Private Rights and Public Illusions reveals that few problems concern most members of society in any uniform way, and contrary to conventional belief, both 'public' and 'private' realms are driven by the self-interests of those involved.

Highlights Synopsis About the Author Highlights Government today is routinely involved in matters which were viewed as strictly private just a few decades ago. While the expansion of government may be motivated by concerns for justice and human well-being, it instead institutionalizes the use of invasive force against the liberties and privacy of the innocent, the very people it allegedly exists to protect. When those guiding principles are abandoned, to what principle can citizens appeal to defend themselves from government itself? Without subjecting government to the Rule of Law, there is no Rule of Law! Furthermore, the civil liberties of free speech, press, religion, assembly, etc. Today it is seen as the grantor of rights. The view that utilitarian policies produce morally superior results is deeply mistaken. The regulatory-welfare state of collectivist utilitarianism leads to abuse of the politically weak by favored groups who routinely advocate the use of force to achieve desired ends. The free-for-all of the jungle describes life under the regulatory-welfare state, not the peaceful cooperation and competition of the market system, in which the initiation of force by private or government agents is banned. Government paternalism also destroys the private, voluntary institutions that allow individuals to express genuine benevolence toward those in need. Consumer protection laws are unjustified and constitute prior restraint of persons who have committed no wrong. Health and safety standards have been far more effectively maintained when implemented by private covenants, private insurance and free market competition, than by government regulation. Government licensing requirements for barbers, lawyers, nurses, family counselors, engineers, and other trades and professions through fees, mandated schooling and other entry barriers also constitute prior restraint of persons innocent of any wrongful acts, and shield current practitioners from the competition of minorities, women, and others seeking entry into the field. Free markets and contract law encourage service providers to earn good reputations, and do so without imposing the high prices and limited service of governmentally protected cartels. Criminal and civil law are far more effective in dealing with workplace standards and harms arising from fraud or misrepresentation. If firms cannot operate without polluting physically harming the property of others persons who have not consented to bear such harm then such activity should be terminated. The right to freely associate also entails the right not to associate. Today, the public sector effectively comprises virtually every concern of every group large or vocal enough to attract attention. Politicians evaluate the various proposals according to whether supporting them will advance their interests and elicit approval by the electorate, and policy analysts evaluate such programs according to calculations of aggregate costs and benefits. Machan Professor of Philosophy, Chapman University rejects both types of appraisal, because neither recognizes the need for moral values in the treatment of individuals in society. Machan brilliantly demonstrates that our political and legal institutions must rest upon an unshakable moral foundation rooted in the Jeffersonian tradition of individual human rights. Any other approach necessarily produces a society of predation by some against others, where moral values are sacrificed for the benefit of a special governing class and their constituents. But much more than a philosophical inquiry, *Private Rights and Public Illusions* is a searching examination of the welfare state, business regulation and deregulation, professional ethics, occupational health and safety codes, pollution controls, advertising, labor policy, and other aspects of modern political economy. Especially pernicious, for example, is preventive legislation that restricts the liberty of innocent citizens in order to prevent some possible harm. Because the precautions are forcibly imposed on citizens, human dignity and public morality are undermined. By imposing prior restraint, governmental paternalism supplants self-responsibility. Citizens are controlled by the state as if they were incapable of leading successful moral lives. A good legal system, says Machan, prevents all unjustified violence or coercion aggression against non-aggressive persons. The ethical foundation that underlies such a legal system is individualism, or ethical egoism. Constitution and the Declaration of Independence, with its parallels to the phrases of John Locke, stress individual rights. Thus, our legal heritage contains conflicting elements. To our detriment, the

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Private Rights and Public Illusions clearly charts what the "public" realms should be, not only to redefine government's proper purview and distinguish it from the private realm, but to protect the productivity, spontaneity, and civility uniquely present in private human life.

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