

give an affirmative answer to my question it looks as if we should recognise a class of duties which are not, I think, usually mentioned in the text-books, *viz.* duties to bring it about that we *shall have* acted from better motives rather than from worse ones.

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## SINGER'S CRITIQUE OF THE MARKET

By TOM REGAN

IN his 'Rights and the Market'<sup>1</sup> Peter Singer launches a series of objections against those he calls 'defenders of the market' (p. 215), persons who oppose government intervention in the free exchange of goods and services. One of Singer's criticisms in particular deserves attention since, if it happened to be sound, it would show that defenders of the market are confused about the very thing they claim to prize most highly—namely, individual liberty.

Singer's criticism takes the following form. Defenders of the market, he writes (*ibid.*), 'regard every law extending the range of choices formally open to people as an increase in their freedom, and every law diminishing this range of choice as a decrease in freedom.' Serious questions must arise concerning the accuracy of Singer's attributing this view to all defenders of the market; for example, a law which increases the range of choices formally open to *some* people may violate the rights of others and thus would not be sanctioned by a defender of the market such as Nozick.<sup>2</sup> But setting these matters to one side, Singer disputes the view just characterized by arguing that situations can arise where a law can 'in one sense' diminish our range of choices without at the same time decreasing our freedom. The general type of case Singer has in mind is one in which the choices of an individual, considered in isolation from the choices other individuals might make, may be rational, but, when considered in conjunction with the choices of others, 'the cumulative effects may be disastrous for everyone' (*ibid.*) An individual's use of his/her private car may be like this. Considered in isolation, John's and Jane's use of their cars seems quite harmless; when considered in conjunction with the transportation choices of others, however, long

<sup>1</sup> In *Justice and Economic Distribution*. John Arthur and William H. Shaw (eds.) Prentice Hall, Inc. (Englewood Cliffs, New Jersey) 1978, pp. 207–221. Page references henceforth are included in the body of my essay.

<sup>2</sup> *Anarchy, State, and Utopia*. Basic Books (New York) 1974.

delays, serious problems of pollution, etc. might result. In such a case, Singer contends, legislation prohibiting the use of private vehicles in a given urban area, together with the development of a cheap, reliable and speedy mass transit system, might be in everyone's interest. 'In one sense,' Singer writes (p. 216), 'the range of choice of transport has been reduced'—that is, a choice previously left to the individual's discretion, free of coercion (to drive or not to drive in the specified urban area), has been eliminated—'but on the other hand,' he continues, 'a new choice now opens up to us—the choice of using a fast and frequent public transport system at a moderate cost.' Thus, here we have a law which, though it diminishes our 'range of choice' 'in one sense,' does not represent a 'decrease in freedom' all considered. A previously existing choice may be lost, but a new one is gained.

The general point of Singer's criticism, then, seems to be this. Defenders of the market fail to see that legislation can decrease the range of our choices without thereby decreasing our freedom. Accordingly, the market's defenders are confused when they oppose coercive legislation on the grounds that it decreases individual freedom. Such legislation can create 'new choices' and thus foster rather than decrease our liberty.

This criticism of Singer's seems to rest on a failure on his part to distinguish clearly between (a) having a choice and (b) having the freedom to choose. Consider the case of the mugger and the muggee. Following Singer, one could say that, though 'in one sense' the range of choice open to the muggee has been decreased by the presence in his face of the mugger's pistol, 'on the other hand a new choice now opens up to him (i.e., the muggee)'—namely, to hand over his wallet or resist. Thus, again following Singer, we could say that, though the muggee has lost a previous choice, a new choice has been gained, and the scales of freedom remain in equipoise.

Now, it is clear that the mugger opens the eyes of the muggee to a 'new choice'. But it is equally clear that the muggee is not thereby the beneficiary of a new freedom, let alone one that nicely cancels out the lost freedom symbolized by the pistol in his face. In general, people placed in circumstances where they are coerced to choose between alternatives none of which they would choose if left to their own desires or preferences, where previously coercion was absent, *do* have 'a new choice'—namely, to choose one or the other of the unwanted alternatives. But the coming into being of this 'new choice' is not the birth of a 'new freedom'. People are not at liberty to choose (do not have the freedom to choose) when they are made to choose what they do not want. To think otherwise is to suppose that freedom of choice increases proportionately to the amount of coercion, which is absurd.

Possibly it will be objected that the mugger-muggee example beclouds the issue. After all, the muggee hardly stands to gain from his

transaction with the mugger, whereas, according to Singer, each owner of a private vehicle can view legislation restricting its use as in his/her interest.

At least three replies come to mind. First, a lot of issues go begging in Singer's own example. Some people *would* rather sit in traffic jams, etc. instead of using quick, cheap and efficient public transportation. *Some* people would *rather* travel alone. To tell them that restrictive legislation making the private use of their car illegal in certain areas 'does not diminish their freedom' and 'is in their self interest' is not likely to set well. Such talk has the ring of the language of the bureaucrat who masks the abrogation of individual freedom by calling it by another name. Like the muggee, the man who *wants* to use his car even if it means long delays, etc. gets a 'new choice,' when the law takes effect, but he does not thereby get a 'new freedom' in the bargain.

Second, even if it were true that the growth of coercive legislation benefited everyone (had what Singer might term 'attractive' consequences, p. 215), that would not guarantee that individual liberty was not a casualty. Certainly it is possible that a mass transit system, to stay with Singer's example, might in some sense be in everyone's self-interest, might in some sense make everyone's life happier. Nevertheless, it does not follow that it would make anyone's life freer. Whether it does or not is an open question, one that is not answered at all by noting that, with the arrival of the buses or whatever, everyone will have 'new choices.'

But third, even if the consequences of a piece of coercive legislation were 'attractive' for everyone and, indeed, actually did bring about an end-state where individuals enjoyed an increase in personal freedom, that would not satisfy Nozick for one, or at least Nozick as he is interpreted by Singer. (And it is Nozick who, as a 'defender of the market,' is Singer's principal target). Nozick, according to Singer (p. 208), 'rejects altogether the idea that institutions . . . are ultimately to be judged by the ends they promote,' including the end of 'the maximization of freedom'. So, *either* Singer's speculation about the mass transit example (and similar cases) fails to illuminate how a decrease in the range of our choices does not represent a decrease in our freedom (the general point of my first two replies) *or*, conceding that it does, it fails seriously to engage in debate with the particular 'defender of the market' at whom the argument is principally aimed.