
Intrusions Great and Small

BY RIDGWAY K. FOLEY, JR.

Individuals must always choose between alternatives. Indeed, man cannot avoid this ineluctable natural rule: a refusal to choose constitutes a choice. Whether a blessing or a curse, this fundamental law of human action helps differentiate mankind from all other species.

Believers in a truly free society fully recognize and deeply value the right and the power of human choice. We believe that the individual makes better choices in most instances than an outsider and, even when his decision seems overtly poor, the chooser may learn from the consequences; in any event he deserves this untrammelled right as a component of his elemental dignity and very being. We also believe that each of us ought to bear the burden as well as the good fortune of our selections and not shunt our disappointments and unanticipated results onto the shoulders of another person or aggregate. Hence, for us choosing becomes a moral act with moral consequences.

Unfortunately, mankind never has encountered and experienced a truly and completely free society. Today, as in all times past, intrusions invade the human selection process whereby one or more outside individuals choose for the actor by compelling him to select as they decree or suffer the unpleasant consequences they impose. Leonard Read aptly called these intruders “dictocrats,” elitist little dictators who employ force, fraud, or threats to order the lives of perfectly able human beings as the dictator thinks best.

Intrusions abound today. They assail us from all sides and in all aspects of our daily life. Some are monumental, others minor. Intrusions great and small pervade our lives to such an extent that we often fail to notice them, let alone assign them the odious consequences they

cause. When we overlook these evils and their untoward results we cede a part of our essential human nature, our individualism, without a whimper. Consider some seemingly minor, often unseen, examples and the greater evil they breed.

Few observers—even those obsessed with genealogy as a hobby—know that nations often limit the first, or Christian, names given a child. Portugal forbids naming a child Lolita or Maradona, Guevara or Marx. Norway recently replaced its name list with a general standard that forbids naming a child with a swear word or with a word the naming police consider negative. Denmark expanded its approved list last April, while Sweden, Spain, and Argentina maintain, but are considering ameliorating, their naming laws.

Try to imagine something more inherently personal than an individual’s name. Names not only identify us but also form a basis for our control and disposition of the property we create and enhance. Our names enable conversation and correspondence with specificity, alacrity, and clarity, but they do more: they become one with us and comprise a segment of our very being. They mark us as individuals, discrete and unique creatures possessed of dignity and worth by virtue of our very being.

Why should a state or society constrain individual names? Sociologists and psychologists apparently posit that different or difficult names handicap a human being and detract from his or her attractiveness, acceptance, and ability. One wonders if any scientific study purports to support this lamebrain thesis and, if so, what were the general methodology used and the parameters of inclu-

Ridgway K. (Dick) Foley, Jr. (ridgway.foley@greenemarkley.com) practices law in Oregon and is a former FEE officer and trustee.

sion and exclusion employed. Of course, if one dislikes his given name, he can officially change it inexpensively under most legal systems. More saliently, before the time of the constables of political correctness, common nicknames supplanted the more cumbersome or unusual formal appellations. One supposes that “Pudge” or “Baldy” are out of the question today, although Ivan Rodriguez has received many honors for his baseball skills and market adherents remember Floyd A. Harper with fondness and appreciation.

Perhaps some think name limitation amounts to a small intrusion. I differ. Discard the supporting sociological pap and ignore the seemingly minimal intrusion. I see something more insidious and downright dangerous: name limitation squares perfectly with an always-increasing de-individualization of Western society. As we trudge ever deeper into Jean Jacques Rousseau’s swamp of enforced orthodoxy, the mandate state cannot indulge individualism in any form. Instead, it requires and compels fungible little soldiers-voters-workers regimented not to think or act critically but, rather, to do as they are told by their controllers. Limiting Christian names to an approved few enhances the statist hegemony over all individuals under its sway: it would not do to differentiate one Boris or José from another person bearing the same moniker, and if the individual is truly of no separate inherent worth it is only seemly to stamp an approved common name on each assembly-line human item.

Historical fact and rational insight converge to demonstrate that such small intrusions spawn and justify more invasive assaults on the person. For example, the governor of Texas recently tried to decree that all female children within a specified age range must receive a new vaccine theoretically protecting the recipient from certain sexually transmitted diseases. Thankfully, the state legislature stopped him. Apparently, dissenting children would have had this foreign substance injected in them whether they liked it or not, whether they engaged in sexual activity or not, whether their moral or religious precepts were violated or not, without any concern for the likelihood that a given number of the victims would have suffered adverse allergic reactions from the medication leading to transitory or permanent injury or, in some instances, a fatal seizure.

One supposes that dissenting parents would have been imprisoned since the all-knowing state acts *in loco parentis* (in the place of the parents); after all, individual freedom must succumb to any limits prescribed by a state that enforces compulsory attendance in government institutions of indoctrination and harasses outliers who attempt to afford alternative learning for their offspring.

No Betting on Elections

Another nominal intrusion demonstrates the humor and inherent inanity of the modern mandate state, as well as the open door to the voracious world of victimless crime. Arizona prohibits men and women from wagering on the outcome of an election. Successful selective prosecution carries with it four months in the county lockup and a \$750 fine. Two men from the tiny town of Camp Verde engaged in a friendly wager and, hoping to improve voter participation, paid for newspaper advertising announcing their bet. Seeking to sanitize and sanctify participatory democracy, the county attorney filed criminal charges. The trial judge dismissed the case, holding the law to be “patently unconstitutional,” but the Arizona Court of Appeals reversed, saying that the state has the power “to maintain the integrity of the electoral process.” Ultimately the prosecutor dismissed the charges, but the law remains.

Let me get this straight. Arizona creates and maintains a complex and lucrative lottery. Lotto games are gambling games. Arizona engages in abundant and repetitive publicity to induce folks to participate in its gambling game, a game that, like most other gambling enterprises, has odds stacked heavily in favor of the house. In this case, the state of Arizona plays the role of the house, collecting and consuming substantial profits. In addition, like many other states, Arizona is home to a plethora of gambling casinos owned and operated by Indian tribes, the state protecting their existence and presumably receiving benefits from these operations. Further, as in every other state, games of chance operate openly there and wagering on sporting events is rampant. I suspect that office pools and fantasy leagues thrive in the statehouse, in county and city offices, perhaps even in offices manned by county prosecutors and their minions. Despite all this, two harmless and well-inten-

tioned chaps in rural Arizona had to spend \$30,000 in legal fees and expenses to avoid incarceration because they bet \$100 on a council race.

Gambling falls into the category of “victimless crimes.” In law school we learned the distinction between acts that were *mala in se* (bad because most of the world recognizes them as inherently evil) and those that are merely *mala prohibita* (bad because a state says so). The state punishes perpetrators of victimless crimes because the dictocrats intrude into private lives for no good reason. Simultaneously, the state procreates new and varied victimless crimes more quickly than randy rabbits produce offspring. Consensual prostitution, personal drug use, and attempted suicide represent three common, customary varieties of victimless crimes, as did Sunday sales in violation of the “Blue Laws” of another age and violations of the liquor regulations still existent. Modern tyrants, petty and gargantuan, concoct more serious and intrusive phony crimes, such as recently established financial felonies limiting the amount of money one may carry while traveling on public transportation or may deposit in a bank or brokerage account without disclosure of private information and justification satisfactory to the meddling dictocrats.

Most needlessly intrusive laws rest on sappy ideas, such as the pseudo-sociological notion that different or difficult names cause harm to children. Only the terminally addlebrained or the congenitally oblivious would conjoin “integrity” with “electoral process” in any coherent paragraph, let alone employ such a linked phrase as a juridical foundation for depriving a human being of his liberty or property. Elections merely permit voters to choose which band of bandits will rape and pillage them in the coming term. Office-seekers spend millions of dollars on silly little races. Pressure groups and powerful elitists pay handsomely to choose judges and legislators in the sure and certain knowledge that, once elected, the recipient of their largess will not forget his friendly supporters.

Of course, most successful candidates in any election

prevail by promising to use “legally” stolen property to help some individuals or groups at the expense of others; if that is not tantamount to buying a vote, we should return to our early American practice and permit candidates to treat us sheep to a good stiff drink as we waltz to the polls. In the context of reality, a bet on the outcome of a minor race could never adversely affect the electoral process and, if it did, so what?

The objective observer asks why intrusions great and small pockmark our lives. Insight and experience reveal several reasons. First, as Agatha Christie repeatedly commented, this world contains some very evil people. Truly wicked folks put barriers in place to better themselves at the expense of others, as well as for the sociopathic thrill

Two harmless and well-intentioned chaps in rural Arizona had to spend \$30,000 in legal fees and expenses to avoid incarceration because they bet \$100 on a council race.

of command and dominance. Second, some intrusions arise from born or bred elitists, persons who believe that they possess the God-given right and duty to direct us peons else we lose our way. This superiority mindset resembles the feudal attitude in many ways, and unfortunately a number of our present rules resemble analogical intrusions in the England of the Middle Ages; for example, note the uncanny resemblance of the modern bar association to the medieval guild. However, one should not overlook a pervasive third category, the myriad intrusions that come about because

some well-meaning individual or cabal makes two erroneous decisions: first, that a problem exists; and second, that they know best how to solve this presupposed problem and therefore they should implement the solution.

Fifty years ago my father described “The Age of the Busybody” to members of a regional business organization beset by the dictates both trivial and significant of small-minded elitists. Busybodies, he observed, are people who “mean well,” but they cause more damage to individual freedom by far than do the wicked and the elite. The courteous person in the mid-twentieth century offered the commonplace excuse, “Oh, but she means well.” As a long-gone friend would retort, “She *does* mean well. God save me from people who *mean well!*” Indeed.

