

Life, Liberty, and the Pursuit of Happiness

Today, a Canadian lawyer friend of mine sent me a link to the news report from Edmonton of a judge dismissing a local pastor's legal challenge of COVID-19 public health measures on grounds of the Canadian Charter of Rights and Freedoms. Here was my reply. I share it to potentially stimulate conversation.

Absolutely the right decision!

As for the American context, I have argued – not before a court, of course – that the freedoms embraced in the Declaration of Independence, i.e., the rights of "life, liberty, and the pursuit of happiness," and the similarly privileged protections of "life, liberty, and property" in the 5th and 14th Amendments to the Constitution are not rights of equal weight even though they are to apply equally to all persons. I argue that these rights are hierarchical and linear. Not only is the right to life obviously more important than the right to pursue happiness or own property, but also the right to life (and everything that promotes and preserves it) is more important than the right to liberty.

The freedoms enunciated in the so-called American Bill of Rights (Amendments 1-10) define and develop only the "liberty" element in the tri-part identification of rights expressed in the Declaration of independence and the 5th and 14th Amendments. If the threefold statement of rights is, as I argue, hierarchical, none of the "liberty" or "pursuit of happiness"/"property" rights or freedoms guaranteed in the Bill of Rights can trump (no pun intended) the right to life. Therefore, the American founding and governing documents cannot legitimately be invoked to support the notion that freedoms of speech, assembly, worship, etc. can override the right to life. Societal health regulations like those that seek to universally manage a pandemic can never legitimately be thwarted by appeals to individual liberties.

This same understanding must apply also to the comparative importance of the 2nd Amendment. Because the right to life – the most basic and important right--outweighs the right to liberty (in this case the freedom to bear arms) and the right to pursue happiness or hold property (here in the sense of taking pleasure in weapons or of owning them), the freedom to bear arms must be subordinated to the common good that preserves and supports life. Therefore, any application or implementation of the freedoms guaranteed under the 2nd Amendment must, at best, be secondary to the primary objective of enhancing life. If specific types of arms, weapons, or their accessories or particular applications of such are inherently alien to the common good in general or specifically to securing lives on our streets and in our homes, places of work and worship, sites of entertainment and recreation, and schools, they must be either eliminated entirely or limited sufficiently to assure the sanctity of life.

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