

# RESTRICTING FREEDOMS

Limitations on the Individual  
in Contemporary America



**Vladimir Shlapentokh**  
**Eric Beasley**

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# **RESTRICTING FREEDOMS**



for Lubov and Meaghan

# Preface

For many readers, especially those who are patriotic and smitten with their country, the subtitle *Limitations on the Individual in Contemporary America* will seem downright weird. It is difficult for most Americans to imagine that they, like Gulliver waking up in Lilliput to find himself bound by a lattice of slender ligatures, are constrained by ordinances and rules that are so far-reaching that they can mandate that a person must use an obligatory color when painting his or her home or specify how a person can treat a cat. Restrictions are generally expressed in two ways: (1) direct bans on taking certain actions (e.g., a ban stipulating that you cannot cross the street on a red light), and (2) semi-structured rules that allow some discretion within set parameters (e.g., a rule that stipulates that you can send your children to any given school in a school district as long as you are a permanent resident in the district).

Contrary to the intentions of the restrictive circumstances in which Gulliver finds himself in Lilliput, American laws and rules are aimed at providing a structure that will generally, although not necessarily, benefit individuals as well as the country as a whole. In actuality, however, while some Americans undoubtedly benefit from specific rules and regulations, others end up suffering from such restrictions. Indeed, the tendency for those in power to create rules and regulations that benefit themselves, often at the expense of others, is one of the major points of social scientists who align themselves with the conflict perspective, and a great deal of convincing research has been carried out in support of this notion.<sup>1</sup> Still, the summative societal benefit accrued from the existence of rules is hard to deny. To illustrate, consider what would become of traffic if our roads had no signs, lights, or lines to guide motorists. Even though it is easy to see how rules and restrictions hold together the fabric of societies by providing,

on average, a more pleasant social world for people to inhabit than could exist given a moratorium on rules and restrictions altogether, it is difficult for many Americans—many of whom see any restriction as a direct challenge to American democracy and freedom—to recognize this. After all, this is “the land of the free,” and mantras proclaiming freedom as a central tenet of the American experience are neither few nor far between.

The idea that American society should be based on people enjoying unadulterated freedom in all spheres of life is unrealistic and simplistic. Somewhat ironically, even Libertarian views point to this; they recognize, albeit reluctantly, the necessity of some governmental interventions aimed at promoting the public good (e.g., control over the quality of water). Still, in general, Libertarians fear the superiority of the free market being hampered by “nanny government” regulations addressing other livelihood concerns (e.g., regulations on food quality and medical services), although there is certainly a considerable amount of variations in the beliefs among self-identified Libertarians about the degree to which free-market principles should trump forms of top-down regulation.

In this book, we pragmatically define freedom as the ability of people to choose one of many alternatives available in a certain sphere of life. In elucidating this concept of freedom, it is important for us to note the occasional occurrence of the somewhat paradoxical phenomenon that occurs when freedoms can be expanded by restrictions because the restrictions provide people with more alternatives. Thus, being “free” or “restricted” is not an all-or-nothing proposition but rather a question of degrees. Consider many of the most heralded constitutional amendments: the First Amendment, which promised freedom of religion, press, and expression; the Second Amendment, which gave Americans the right to bear arms; the Thirteenth Amendment, which made slavery illegal; the Fourteenth Amendment which gave these former slaves and others the right to be citizens; and the Nineteenth Amendment, which allowed women to vote. All of these amendments restricted the intentions of certain elements within society while simultaneously providing more freedom to many individuals by expanding the number of alternatives available to them.

Other amendments expanded the freedoms of everyday people in a slightly different fashion. These laws increased the people’s choices by restricting the government’s legal authority to interfere with the freedoms of private citizens. For instance, the Fourth Amendment officially protects citizens from unreasonable searches. And the Fifth

Amendment protects the property of citizens from arbitrary government seizures without just compensation.

This history surrounding the expansion of alternatives available to people in their everyday lives has been one of the magisterial developments defining the American way of life. Indeed, no other country in the world has had such a cult-like fascination with freedom as the Yankees, a devotion that can be traced all the way back to the American Revolution. Today, freedom is so closely associated with the United States that, despite the rabid anti-Americanism that has spread across the globe, most people still view America as the ultimate symbol of freedom (Shlapentokh, Shiraev, and Woods 2005). This is one of the reasons why the desire to immigrate to the United States from almost anywhere in the world has not waned for more than a century (Prescott 2008; Pile 2005).

The rise of fascism in the early Twentieth century and its ultimate defeat in World War II helped to secure freedom's position as a central principle that societies strived for in the latter part of the century. Even many authoritarian regimes have had to reluctantly recognize people's desire for freedom in the late twentieth century. Contrary to the absolute monarchies that ruled in the nineteenth and early twentieth centuries, almost none of the despotic and cruel post-World War II regimes dared to openly challenge freedoms within society. Soviet ideology, for example, paid tribute to freedom by asserting that Soviet people enjoyed "real" freedom, in comparison with the denizens of capitalist societies and their formal freedoms that were incompatible with social equality.

Although a solid case can be made that freedom's expansion has been occurring since the inception of the United States, the civil rights movement helped to spark a major spurt in its growth. What began when Rosa Parks defiantly refused to observe restrictions that did not allow her to sit at the front of the bus ultimately resulted in the removal of a variety of formal and informal restrictions (formal restrictions are expressed as laws and regulations, while informal restrictions are embedded within norms of behavior and not codified into law) that had been imposed on women, and racial and ethnic minorities. In similar ways, the various feminist movements that took root during this time period also helped to stimulate and foster the trend of increasing freedoms for everyday people (the ordinary people without large political, social, or economic power), even if some of these freedoms came with commensurate restrictions on other people's freedom to

discriminate against women in terms of compensation, admittance, hiring and firing, and so forth.

Indeed, even as it gradually expanded the freedoms and alternatives available, American society has also been concerned with regularly introducing restrictions on its people. In fact, most rules in society are restrictive, while very few serve as guarantors of freedom. American society, with all of its Lockean respect for human beings, has always rejected the romantic idea that people could simply rely on rationality and learned virtues to achieve a kind and prosperous society. Instead, at least to a degree, Americans have always recognized the need for restricting people's actions. Of course, any restriction may be beneficial for one group while reducing the freedom of others. What is more, some restrictions serve to create conditions that preserve freedom for many people. For example, the US Constitution restricts the members of the political elite in their behavior, in the hopes of averting any danger to the freedoms of the majority of Americans or the efficiency of the American state, which is so important to the wealth of the nation.<sup>2</sup> Most of these restrictions are so ubiquitous that we comply, often failing to consider the rhyme or reason for their presence in the first place, thus reinforcing the normality of the sort of blind acceptance in which they are obeyed. Although both freedoms and restrictions exist in the United States, the passive acceptance of restrictions by the American people stands in stark contrast to their active and, at times, worship-like proclamations of freedom. Now, with the general retelling of the relationships between Americans and freedom stated, we move to a more specific look at the many causes of increased restrictions.

### **Impetuses toward Increased Restrictions**

Many of the newest restrictions were inspired by the social and technological developments of the last several decades. These impetuses toward increased restrictions can be divided into six categories.

First, numerous restrictions have been adopted during the last few decades that are aimed at accommodating "others." For example, language that derides or offends any one of many particular groups can be prosecuted. Even more prevalent are restrictions which curtail an individual's freedom to discriminate against historically maligned groups, for instance, in processes of hiring or college admittance. In addition, a number of similar restrictions have been introduced by local authorities in the interest of their residents. These limitations of freedom include, but are by no means limited to, special building codes—enacted to

protect the health and safety of residents, as well as the value of homes in a community<sup>3</sup>—and various noise ordinances, like those created to help assuage the physical discomfort that some people experience as a result of their neighbor's dog's incessant barking (Stop Dog Barking 2006).

A special case of this type of restriction occurs within organizations that people have joined of their own free will. Naturally, it can be argued that since an individual voluntarily enters these associations, any restriction that is levied upon him or her due to membership in such a community is not a true limitation of freedom. This issue will be discussed, in detail, in a forthcoming section of this book. Included in the discussion will be a consideration of the person's ability to exit the organization if he or she desires (which is not always an option, or which comes at a considerable cost).

The second reason for the increase in restrictions is that society has become more involved in protecting human beings against their own dangerous habits like smoking, consuming fatty foods, imbibing alcohol, using recreational drugs, or driving recklessly, and careless behavior while participating in activities like climbing mountains or boating. Even tanning has drawn public attention. More than thirty states regulate whether minors can use tanning salons (e.g., by banning children younger than fourteen, requiring parental permission, etc.). Many states have gone so far as to consider bills that would bar anyone who is under eighteen from going to tanning salons (Mohajer 2011), and there is federal legislation being discussed that could prohibit anyone under eighteen from using tanning salons.

Restrictions on abortion are aimed at protecting women's health as well as the life of the fetus. Restrictions on euthanasia are seen as necessary to protect human life against the wishes of the individual himself, as well as against those who, for whatever reason, want to terminate the life of a relative. Some restrictions even defy the freedom of speech mandate, if it is found that such expression is harmful to society (e.g., violence and sex on television, viewing of pornographic material in libraries, etc.) The proposed ban on circumcision in California, which has generated a heated debate, was justified by concern for the pain felt by newborn boys who are exposed to this procedure without their own consent (Medina 2011).

The third factor driving the increase of restrictions within American society is a deep concern about the functioning of democracy in the United States. Many people see democratic institutions as being so important to promoting freedoms that restrictions are enacted in

order to protect them. For example, there are restrictions limiting the size of donations and contributions for election campaigns (even if the specific rules about the restrictions on donations are in permanent flux). Other restrictions focus on the number of terms elected officials can serve in a given office and even limit the degree to which public officials can keep portions of their lives private.

The fourth impetus for the increasing number of restrictions in American society is from newly discovered scientific findings that link certain manufactured goods to adverse health effects. For example, scientists have found a variety of harmful elements in our food chain (e.g., mercury). They have also uncovered hazardous materials used in the construction industry (e.g., asbestos). Genetically modified crops, which are often the result of relatively new technology, are currently being tested for potential adverse health effects. The risks that substances can pose to human health, whether man-made or natural, have led to restrictions on the way we produce and use goods.

The fifth cause of increased restrictions is the growing salient concern about how natural resources are used. In response to rising environmental degradation, many restrictions have been placed on human behavior in the hopes of protecting the Earth's vast ecology (e.g., bans on dumping garbage in rivers). Society is also preoccupied with sustaining economic growth or, at the very least, with sustaining current standards of living. Thus, special attention has been paid to conserving natural resources (e.g., recycling, energy conservation, etc.). When combined, ecological and economic restrictions on the use of natural resources aim to prevent disastrous levels of eco-degradation to secure a sustainable future for society.

Finally, the increasing threat of terrorist attacks has led to restrictions on individual privacy. For example, while airline passengers have been required to have their bags scanned, pass through metal detectors and x-rays, and be ready for further screening if authorities have deemed it necessary (e.g., pat downs, questioning, etc.) for several decades, passengers must now, in the post-9/11 United States, also pay heed to limitations regarding the types and number of items that can be carried on a flight. These restrictions are aimed at stymieing potential attacks before they can be carried out.

While these six developments have contributed to the rising trend in restrictions, technological innovations have expanded freedoms, even as they have stimulated a need for restrictions regarding their use. For instance, the advent of the cell phone has significantly expanded



communication options. However, society has quickly and vehemently discussed how the use of such technology should be restricted since cell phones can distract users, cause sound pollution, and pose health risks. Indeed, their use can lead to dangerous driving conditions (e.g., texting while driving) and unwelcome noise (e.g., in theaters, concert halls, and conferences) as well as pose potential health risks (e.g., potential brain tumors). Thus, the implementation of new technology often triggers restrictions on how much freedom a person should be granted in using it.<sup>4</sup>

In general, there is serious reason to believe that humankind will face a gradual increase in the trend toward more and more restrictions within the next few decades. In particular, new restrictions will be aimed at preserving nature while conserving natural resources that are vital to the economy. Unfortunately for many everyday people, powerful people and groups often co-opt restrictions to consolidate their power. This is a particularly acute problem in authoritarian societies because their leaders—and the political elite who help to secure their power—often expand restrictions in a vacuum (i.e., in the absence of opposition).

The experience of Soviet society, and its lack of a multiparty structure, has inspired the defenders of freedom in the United States and other democratic countries to be very sensitive to any new restrictions that surface, even those that can be regarded as relatively benign (e.g., those concerning the consumption of food, regulation of noise, saving energy, nature conservation, etc.). Arising out of this pervasive sensitivity to restrictions is the presence of several democratic “watchdog” institutions that scrutinize the implementation of restrictions. The American Civil Liberties Union (ACLU), for instance, routinely monitors the introduction of restrictions aimed at fighting terrorism; they are suspicious that these laws mostly benefit the government’s pursuit of increasing its own power. In addition, feminist groups monitor restrictions on abortion because they believe these limitations cater to the interests of religious groups at the expense of the freedom of women to control their own bodies and health.

In our pursuit to flush out and detail how restrictions affect the lives of Americans, we will focus on the freedoms available to a person as a consumer, as a participant in various personal relationships, and as a citizen. How a person is limited in his or her work life will be the subject matter of a future book (e.g., as workers, professionals, politicians, etc.). In short, a major goal of this book is to illuminate the presence of restrictions on freedom within people’s everyday lives.

A second aim of the book is to elucidate and critically analyze the major discourses regarding the appropriate use of restrictions in society. No doubt, the restrictions mentioned in this book will fuel many contentious debates. For instance, fervent discussions persist around whether or not people should be allowed to have guns, get abortions, use marijuana, or practice euthanasia. Restrictions related to emigration and immigration are also hotly debated, and the process is deeply polarizing to American society. Those who are against restrictions on immigration and argue that it is utterly important to preserve freedom of movement as an international value. In contrast, those who support the restrictions insist that full freedom for immigrants hurts the interests of US citizens by restricting their freedom to find a job and preserve their national culture.

While there are several contemporary books that provide insights into the legal and moral issues related to the behavior of the individual, these texts avoid detailing how the roles of society and its agents define rules and restrictions. In fact, the authors of these books do not even directly use the concepts of restrictions, constraints, or prohibitions. In addition, they do not theoretically detail the relationship between the freedom of choice and the manifestation of restrictions. In short, no one book has been published in the last two decades that situates and analyzes restrictions within the wider social relations in which they play out.

*How to Do Things with Rules* (2010), by British authors William Twining and David Miers, discusses restrictions in a narrow legal way, focusing mostly on the various interpretations of rules. Their work, which is clearly addressed to law school students, does not analyze the broader social debates surrounding the role of restrictions in society. Alan Goldman's *Practical Rules* (2002) offers a somewhat wider perspective than the work by Twining and Miers, but it still does not enter the zone of sociological analysis; it mostly focuses on the moral issues involved with rules.

Francis Fukuyama's *The Origins of Political Order* (2011) comes close to addressing our issue. However, because the author focuses on the role of law in society, he simplifies the relationship between law and freedom. Along with several other contemporary authors, many of whom have Libertarian views, he supposes that law is always an ally of freedom because it helps to increase the number of alternatives people have in society. He does not, however, consider how laws that limit freedoms can also create conditions that foster the existence of freedom. The same lacunae can be found in Joseph Nye's *Future of Power* (2011). Again, the

dialectics of the relationship between law and freedom failed to attract the interest of this famous author. Instead, he preferred to focus on the high correlation between law and freedom, while putting aside cases where laws restrict freedom. Unfortunately, this trend to overlook restrictions can also be seen in recent publications on the sociology of law, such as Kitty Calavita's *Invitation to Law and Society: An Introduction to the Study of Real Law* (2010), as well as Javier Trevisto's *The Sociology of Law: Classical and Contemporary Perspectives* (2008).

In addition to works that simplify the role of restrictions in society, dozens of books characterize complete freedom of choice as the ultimate goal of human civilization. This pedestal-placing denounces any limitation of freedom as a backwards step. Unfortunately, the treatment of freedom in these books—both as it is and how they feel it should be—is too simple to be considered useful. Even those books that condemn the government's violation of civil rights largely ignore the complexity of the relationship between freedoms and restrictions. Such examples include David Shipler's *The Rights of the People: How Our Search for Safety Invades Our Liberties* (2011), as well as Tugba Basaran's *Security, Law, and Borders: At the Limits of Liberties* (2010).

Works that discuss restrictions in relation to a particular area of life, while informative, fail to explore the magnitude of how restrictions, individually and writ large, shape people's everyday lives. Thus, these texts only reinforce the simple tunnel vision that has been promoted so far. Similarly, works focusing solely on how people are allowed to interact with the environment inherently omit the ability to explore the multiple restrictions people encounter every day. We circumvent this dilemma by providing case studies that illustrate a wide variety of social contexts (e.g., in relation to religious activity, noisemaking, sexual activities, etc.). In addition, by illuminating the overarching principles that lead to restrictions of freedom along with highlighting specific cases, we offer a fuller picture of the role of restrictions in American life. In this sense, the picture we paint features not only a sum that is more analytically useful than each of its constituent parts, but also the factors, laws, perceptions, rationalities, and trajectories, among other things, that ultimately create and uphold such restrictions.

## Notes

1. For a broad analysis of this tendency, see Reasons, C. E., and R. M. Rich. 1978. *The Sociology of Law: A Conflict Perspective*. Butterworths. More general information is available in the "Deviance" section of most Sociology textbooks.

2. For instance, Article 1, Section 9 states: "no Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State." And Article 1, Section 6 states: "no Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States." And Article 1, Section 2 states: "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."
3. See, for instance, the International Code Council and the Michigan Department of Consumer and Industry Services.
4. But these restrictions often take time to be developed and are not implemented at the same time that the new technology becomes widely used. See W.F. Ogburn. 1964. *Cultural Lag as Theory*. Bobbs-Merrill.

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