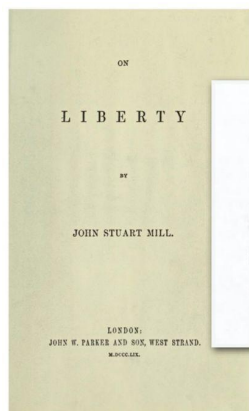


# A primer on Wilhelm von Humboldt's “The Sphere and Duties of Government”

What is a government, actually? What are its precise limits? On what basis are those limits to be prescribed, and for what precise reasons?

These were some of the core questions that the Prussian-German Wilhelm von Humboldt (1767-1835) sought to answer in his *The Sphere and Duties of Government*, and in doing so created a view of the government that is as clear cut as any mathematical theorem. This work had such an impact on the influential John Stuart Mill that he began his book, *On Liberty*, with a quote by Humboldt:



The grand, leading principle, towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity.—WILHELM VON HUMBOLDT: *Sphere and Duties of Government*.

Humboldt also had a tremendous influence on Friedrich Schiller and had many interactions with Goethe. But in spite of this, the work is not really well known today as much as one would expect. In the light of the emotional charge that surrounds the issue of the government nowadays, and all the talk of “limited government,” “libertarianism,” and “welfare,” and especially the experience of the world during 2020-2023 with regard to governmental restrictions, it appears to me that it is time to take another look at this work. Perhaps it will help elucidate the right course of action in the midst of the political conundrums facing us today.

I will be going through this work chapter-by-chapter, summarizing and commenting on each one of the 16 chapters.

## CHAPTER I: Introduction

Humboldt begins by noting that there is far more attention given to the process of how someone gets into government and how the government subsequently functions, than to the critical question of what the limits of government should be. Hence it is no wonder that the fascination is with the candidates, their allegiances, their campaigns, and their victories. But the fireworks end once they are *in* government and then only a few observe their subsequent voting process, and

almost no one wonders which issues should be voted on and what the limits of the government should even be, in spite of the fact that those limits *do* determine how much our day-to-day life is affected by the government. The power of a government may be legitimate, as is the case with protecting the people from acts of war or policing a neighborhood, or illegitimate in the case of oppressive governments, but the power itself garners far more interest than the question: what is the power based on? He hence points out that the actual exercise of power, or occurrence of political revolutions often involving the “drawn sword,” turn out to be far more fascinating and exciting than the slow and systematic development towards a system that values human freedom. This is where he provides one of his many moving metaphors:

The tiny seed, for example, which drops into the awaiting soil, unseen and unheeded, brings forth a far richer and more genial blessing in its growth and germination than the violent eruption of a volcano, which, however necessary, is always attended with destruction...

In order to create such an organic growth of a form of governance, he then turns his attention to what is *usually* seen as the purpose of a modern government. Modern governments tend to focus on man’s happiness, comfort, prosperity, productiveness – his *welfare*, in short. This is as true in 2023 as it was true in 1823 – for example, the phrase “pursuit of happiness” is an entrenched aspect of the American Constitution. This pursuit is in stark contrast to older states that tended to focus on *virtue* instead of *happiness*, and as a result had far more oppressive forms of control. And yet, because the basic focus was on the virtue of the individual member of the state, it also offered a far more energetic setting for challenging the individual man. We can look at Sparta for an example of this, where the entire state focused its energies on developing the ultimate warrior, which led to quite horrific practices. Yet, we still remember the echoes of Spartan heroism. Humboldt mentions that unlike the situation in such ancient states, individuals today seem to suffer from diminished energy and the old ideals appear as mere abstractions as the average human being seeks to reach virtue through happiness instead of the other way around.

He wishes to solve this problem for the modern condition, and it is at this point in the book that he zeroes in on the fundamental question: What is the state, or government, for? – Is it just for the purpose of security, or should the moral and physical well being of the nation also be part of its domain?

## **CHAPTER II: Of the Individual Man, and the Highest Ends of His Existence**

Here Humboldt tackles what should be the fundamental basis for deciding on the form of any government – the free and harmonious development of the individual human being. And it is not merely individual freedom, but an accompanying richness in the variety of situations that allows for the various faculties to be developed. Otherwise, a free person in a monotonous and rigid situation cannot exercise his freedom nor develop further. Under “situation” he also includes relationships with other members of society, who will have characters very distinct from the

individual in question. Hence by establishing deep and intimate ties with other members of society, one creates more possibilities for developing the latent and unexplored aspects of oneself. He gives two examples – the relation between man and woman and the relation between the old and the young. He says there is something hidden in these connections and relations that can contribute something essential to the free flowering of the individual.

Hence, with the free and variegated development of the human individual, each person can come closer to nature as well. He notes eloquently that:

... it is true, in the highest sense, that each still perceives the beauty and rich abundance of the outer world, in the exact measure in which he is conscious of their existence in his own soul. How much sweeter and closer must this correspondence become between ... internal feeling and outward perception – when man is not only passively open to external sensations and impressions, but is himself also an agent!

In successive stages, Humboldt builds a picture of human development that can occur in the same way as a blossom becomes a fruit, or a new branch bursts forth from the stem – as a grand series of metamorphoses (he references Goethe's *On the Metamorphosis of Plants*) – and that even reaches beyond the plant world in that *one can cultivate oneself* through one's own initiative. And this development suffers when the rich variety of natural circumstances are no longer as they were in an older age – as the forests are leveled and the world becomes more and more homogenized. We experience this in our own day as the differences in architecture and culture across the major cities tend towards a uniform type. Hence Humboldt declares that it is all the more important to cherish the individuality in harmony with a variety of social and natural relationships – and *this* is the foundation for even beginning to think of the role of government.

We can see that right here, at the get go, Humboldt takes a very different route from that of libertarians like von Mises, Hayek, and Ayn Rand. The libertarians pick up only one side of the coin – the individual – and pay little attention to the harmony of society. As a result, *practical self-interest* takes the place of self-development and self-education of the individual, and the gospel of selfishness is proclaimed as a result. Hence, even though libertarians refer to Humboldt often, and he is even included under the libertarian tag at Wikipedia, he goes in a totally different and much more wholesome direction – as the rose bedecks herself, she bedecks the garden.

### **CHAPTER III: On the Solicitude of the State for the Positive Welfare of the Citizen**

We now come to one of the critical chapters of his whole work, where he picks up the question of the government again, having established the primacy and centrality of the development of the individual in the previous chapter. He addresses the next logical question – is the function of the government to enable human development by warding off the trespasses into human freedom, or, in addition, to promote the positive welfare of the citizenry? And he is very clear what he includes under this umbrella of “positive welfare”:

- Providing for the subsistence of people
- Poor-laws i.e. removing poverty
- Encouraging agriculture, industry, and commerce
- Regulations of imports and exports, finance and currency, for the welfare of the citizens
- Prevention or mitigation of natural disasters

And then he throws in this sentence like a stroke of lightning:

Now all such institutions, I maintain, are positively hurtful in their consequences, and wholly irreconcilable with a true system of polity...

We have to pause a bit for that one to sink in, because these are all the functions that we are so used to expecting from the government. It reminds us of a statement by Ronald Reagan: “The nine most terrifying words in the English language are: I’m from the government and I’m here to help.” (It is another matter that, after saying this, he went on to outline how the government would help the farmers). For Humboldt, even the *prevention* of natural disasters by governmental means is said to be “*positively hurtful in its consequences*”! But he then goes on to explain why his conclusion is actually a logical consequence of certain realities of human nature.

In the first place, the vigorous development of a person requires a variety of conditions, but the state by its very nature tends towards uniformity, constraining and sapping the individuals of their vitality for varied creative action. This uniformity tends to make machines of humans, and we are all quite familiar with the Kafkaesque “bureaucratic machine” that has manifested in all the governmental institutions.

In the second place, this uniformity robs people of their initiative, where the actual care and concern for their fellow neighbor is now outsourced to this entity and it is now “their problem.” In doing that, it becomes a situation of shooting oneself in the foot, since a community devoid of a *feeling* of community becomes even more devoid of moral fiber and as a result generates even further social troubles that in turn require even more government intervention. Or put another way, when the governmental institution takes on the task of their positive welfare, instead of leaving it to the people’s spontaneous self organization, it ends up drying up that living force of sympathy between people and leads to cold indifference. It leads from “Love thy neighbor” to “Am I my brother’s keeper?”

In the third place, one of the healthy elements of a relation to one’s work in society is that of loving one’s work, which provides it the best kind of work ethic that there is. With the example of farmers, Humboldt describes how their life weaves together with the realities of sowing and reaping that gives them that characteristic love of the soil and has its effect on all of us. But if the occupation itself becomes a means to an end, and the work is not nurtured for its own sake, a pernicious effect spreads through society because of it. The great lethargy and actual corruption in many governmental departments around the world stand as testament to that fact within the government, and Humboldt notes that this effect spreads further into society as well.

He also picks up another quintessential example of human association, marriage, and between man and woman – to show the mutual sensitivity that is required to create a harmonious union. And then he provides another gem:

*WOMAN is, strictly speaking, nearer to the ideal of human nature than man; and whilst it is true that she more rarely reaches it, it may only be that it is more difficult to ascend by the steep, immediate path, than to approach slowly by the winding one... History would afford sufficient confirmation of the truth we would establish, and exhibit unmistakably the close and invariable connection that exists between national morality and respect for the female sex.*

In the light of this, Humboldt recommends that the government withdraw itself entirely from dealing with the institution of matrimony. It is instructive to see what happens when the state does set up definitions directly dealing with the matrimonial bond – the legal idea of matrimony has now become a raw and emotionally-charged battleground as people jostle about the definitions of “male,” “female,” and “marriage.”

Fourth, individual cases always suffer under a uniform order of the government. Fifth, the development of individuality is harmed. Just as, intellectually, truth is objective, morals can also be developed with the same objectivity through mutual cooperation of individuals, a development that stalls when any force is incorporated into it as it has to be in case of a government.

Now, if such a governmental institution is still established, then what happens? Well, it has a tendency to bloat – as the institution swells, personal liberty consequently diminishes. In other words, a parasitic tendency gets revealed due to the overreach of governance into the moral-human sphere. By removing the option of spontaneous activity, all the resulting processes – struggles, overcoming obstacles, joy in accomplishments, and subsequent satisfaction – get short-circuited. Hence there is now the pursuit of happiness without the possibility of joy – an impossible situation. And this situation gets multiplied in society, and it loses innumerable hands which can provide mutual aid and support to individual development.

At this junction, we can mention how the entry of sports in modern life seems to provide an avenue for precisely the same type of process that gets short-circuited under governmental interventions – the whole process of individual improvement and achievement. In the case of sports however, the thing achieved floats apart from the real, practical processes in the world – kicking a ball or running a mile does not *by itself* create an extra shoe, grow an extra tomato, or generate a new breakthrough in knowledge, though it still *may* stimulate this indirectly as people get inspired by the *idea* of achievement. This hollowness of direct achievement was why sports were even actively encouraged by many totalitarian governments during the 19th-20th centuries. The need for spontaneous activity could be safely discharged on the playing grounds, instead of being bottled up and then exploding in a way that destabilizes part of the government’s own structure.

In all, at the end of this chapter, Humboldt concludes that the domain of the government cannot enter any region where free individual initiative, free contracts and associations must provide the lifeblood of the activity, and must restrict itself only for the purpose of protecting the security of individuals. Since the state cannot but use the same means that it uses for protecting security – namely, *force* – in other domains as well, it has to be restricted to just that one domain. The other domains are now the responsibility of the people, or as he calls it – the “national institution.” And so he leaves us with another zinger towards the end:

Between a national and a governmental institution there is always a vast and important difference.

This is not something we are used to thinking about. When I say India, China, US, or Germany, I doubt whether the nation aspect and the state aspect of these names distinguish themselves in your mind – instead, there is generally one notion of the nation-state that includes people within that geographical boundary. But Humboldt, by securing a different foundation of free initiative for the nation, distinguishes it very clearly from the government or state that has to incorporate compulsion into its structure.

#### **CHAPTER IV: On the Solicitude of the State for the Negative Welfare of the Citizen – His Security**

In this short chapter, Humboldt shows how personal security is the only thing that the individual cannot obtain for himself. When his rights are overridden through any kind of force, then he is usually not in a position to redress that by himself, and even if he did, society as a whole will always have these recurring instances of rights-violations to the degree that those tendencies are still part of human nature. If he took personal revenge, that would evoke a chain reaction of vengeance, so the only way to stop this cascade is for the establishment of a state or government, whose exact job is to put a stop to this through compulsion. Through punishment to the violating party, the government is supposed to redress the balance of rights, and thus secure a domain of free activity once more for the individual.

A similar situation occurs in the case of an attack of war, in which case once again the state apparatus has to be activated. As a historical note, he says that in older forms of monarchical governance the kings were always those who were leaders in wars or resolvers of disputes during peacetime. Their domain was solely that of rights violations, foreign or domestic, and no free nation ever dreamt of handing over to the king any authority other than this. If a king sought dominion directly instead of allowing citizens their own free development, Humboldt says such a king is inwardly more attached to slavery, whether he knows it or not!

#### **CHAPTER V: On the Solicitude of the State for Security Against Foreign Enemies**

In this short chapter we come to the difficult question of war. We should remember that Humboldt had not seen the full rise of the Industrial Revolution and the methods of modern warfare, including the World Wars, drone attacks, and the humongous military and financial might of the modern military-industrial complex. He only focuses on the aspect of it in the same spirit as that of the personal violation – a way of redressing the balance of a rights-violation at a much larger scale. Since the survival of an entire community comes into question, it requires a protective impulse as well as inner courage (and *this* is the “war-like spirit” that he describes below).

And then he proceeds to show, once again, how any overreach of this military situation past the rebalancing of the scales is harmful. Which means: no standing armies, no national military development, no creation of machine-like soldiers whose free will is yoked to a machine or mechanical hierarchy, and definitely no deliberate triggering of wars through any means. He flatly declares:

Our standing armies carry war, so to speak, into the very bosom of peace ... Now, a warlike spirit is only honourable in union with the fairest virtues which bloom out from peace, and military discipline, only when allied with the highest feeling of freedom; if these are severed ... by the existence of marshalled armies in the midst of peace, – the former [war-like spirit] rapidly degenerates into wild and lawless ferocity, and the latter [military discipline] into the abject submission of slavery.

Almost the exact same situation has prevailed especially over the last century, with standing armies and permanent militaries being seen as *essential* for the protection of the “country” – the word we often use for the nation-state. And the poisons of permanent warfare of greater and greater ferocity along with military-economic enslavement of large masses of the population has been a harsh reality for us. The recent use of the military forces in the crisis of COVID involved all these aspects, ranging from the creation of the crisis and an “enemy” (the disease), to the supply of a devastating “remedy” for this crisis in terms of forced medical interventions (masks, vaccines, social isolation). In addition, just by its nature, since the military requirement is to deceive the enemy to gain victory, a standing military becomes a perpetual source of lies, which then spread through propaganda into all the corners of society regardless of war and peace.

#### **CHAPTER VI: On the Solitude of the State for the Mutual Security of the Citizens – Means for Attaining This End – Institutions for Reforming the Mind and Character of the Citizen – National Education.**

Having restricted the activity of a government to a narrow circle of “security,” Humboldt now proceeds to narrow that circle further by looking at different aspects of security. He mentions how this is absolutely necessary due to the value of the individual increasing in our times, as compared to ancient times. So we cannot simply transpose an older Greek or Roman Republic into modern life:

... men have now arrived at a far higher pitch of civilization, beyond which it seems they cannot aspire to still loftier heights save through the development of individuals; and hence it is to be inferred that all institutions which act in any way to obstruct or thwart this development, and compress men together into vast uniform masses, are now far more hurtful than in earlier ages of the world.

So, if a government seeks one way to actively *promote* security by trying to educate the community using its own powers, things become questionable. A “national education,” by its very definition and its character of forced uniformity, is antithetical to the act of education which is the *free* development of an individual towards individual *freedom* in a rich, diverse, variety of ways. If the state seeks to mould the “good citizen,” then it pulls the rug out from under itself, as it once again saps the lifeblood of the goodness of citizens – their respect for and cultivation of mutual freedom. The state can step in to facilitate a guardian in case of indigent children, but anything more than that tends to hurt the full flowering of the individual by its stamp of uniformity. This stamp of uniformity can also lead to the state cultivating one particular character trait more than the others, and since *every* character trait when developed to an extreme, degenerates and rots, all forms of national education ultimately degenerate.

If left to individual initiative, the sciences, the arts, and even industries thrive, and the effect reaches into the household and improves domestic relationships. When that is not done, the opposite happens. With the intervention of government in family structures, we have had such events as the Chinese One-Child policy, the sterilization policies of Eugenics, or the family-shattering effects of Lyndon B Johnson’s “Great Society” Welfare program in the African-American community. In science, there has been a distinct lack of scientific luminaries like Planck or Faraday ever since science was militarized into Big Science during the World Wars. The infamous red tape has likewise throttled many a small business across the globe. And due to state control of education in almost all of the economically-developed regions, individual initiative is nipped in the bud quite early on and replaced with a tendency to uniformity, such that people do not even *see* the effects of this uniformity in the above circumstances. This is why Humboldt called education the freest of all activities in society, as it is both the creator and nurturer of free individual activity.

## **CHAPTER VII: Religion**

What education is to the young – Humboldt says – religion is to the old. The adult individual chooses his values and inclinations and directs them in a certain direction, and that direction is Religion. We can see here that Humboldt’s idea of religion is broader than the “belief” criteria usually used, when people say that it is necessary to believe in God or spirit or any other supernatural presence in order to be called religious. He simply posits that the overall values that guide a man’s life is religion, allowing for all sorts of varieties in its expression.



If the government decides that religion is its domain, then it is inevitable that some form of influence will be brought to bear on it – whether by mandating a religion or by preferring one form of religion to another. In this we can also include instances of the religion of atheism being the preferred one for the government, as all references to God in any form are encouraged to be erased. This happened in Soviet Russia, Communist China, and is now prevalent in Capitalist America, while a state-mandated religion, mainly based in Islam, has taken root in many countries in the Middle East.

So he now focuses on his formulation of religion:

All religion – viewing it in its relation to morality and happiness, and as it has therefore become a matter of feeling – rests upon a want or necessity of the soul.

Hence, if humans have feelings and wants of soul, whatever they use to handle that desire to engage with the world is religion. And this religion has developed in a succession of waves, which we call the various religions today, beginning in the older cultures where the natural world itself led to reverence of specific entities, moving to the Greco-Roman gods of prowess and strength, and later incorporating the relations of beauty to generate religious art, and later incorporating reason into the striving and flowering as *philosophy*. And we might add, science and technology have their origin in what was called “natural philosophy,” and are hence, surprisingly, the fruits of a plant which has its roots in religion.

Humboldt notes that all things take on a new depth and value if they are seen as meaningful activities instead of being the result of capricious chance, and that view can be either provided by religion as an “external agency” or chosen by man himself. And upon these values, and connection to the world, it is possible to elevate the feelings to pursue truth, perfection, understanding, and finally, *love* of creation and all its beings. This leads to the capacity to withstand hardships and courageously sacrifice everything for that which is loved. The soul develops enough to become disposed to others rather than to dwell entirely in its own vicissitudes of feelings. And this disposition creates the moral fiber, the warp and woof of which creates the social fabric. Hence, religion through some form of submission to an external being is not the only way to the development of feelings, as man also has the path through himself to generate these moral refinements.

Hence, the only task of the legislator is to remove the obstacles that block people from coming to religious ideas as a whole, and to ensure a spirit of free enquiry. Just as in education, that is the only role for governance – to prevent any block of access. When the individual can take advantage of this spirit of free inquiry, through this process, she develops a better understanding as well as a capacity to transform her feelings towards a development of morality. A morally developed individual is inherently a smaller threat to security, which is in the government’s interest. Hence the freedom of thought and enquiry is the best way of promoting security.

We see the exact opposite today in the rise of military intelligence secrets and classified topics, that provide barriers to free enquiry, under the umbrella of “national security.”

## CHAPTER VIII: Amelioration of Morals

In this chapter, Humboldt takes on the other aspect of molding the morality of citizenry – that of enacting laws that prevent certain immoral behaviors and excesses that do not directly infringe on the rights of others. One type of this law is the “sumptuary law,” which has to do with blocking the consuming or ingesting of any substance. To deal with the question of moral and immoral behavior, and whether or not the state has any role here, Humboldt dives straight into the influence of carnal appetites on human life.

What follows is a thorough exposition of aesthetics, and it would be hard to do justice to Humboldt’s descriptions here as the delicacy with which he elaborates the subject is worthy of following through every nuance and turn of phrase. But in the interests of brevity, I will do my best to summarize it: He states that the original propulsive force that warms and energizes a human being lies in passions and desires, which are invariably evoked by the senses. Now there are various gradations in the development of the eye, the ear, and so on, but what is crucial is that there is a spectrum in the enjoyment obtained from these senses that ranges from the purely animal all the way up to the sublime. This spectrum of aesthetics is something that each person works on by himself or herself, and the greater the depth of the feeling of harmony and beauty, the greater the heights of sublimity and creativity experienced through it, the more moral is the behavior that results from this perception.

This being the case, the more an outside agency attempts to regulate activities that lie on this spectrum – for example, in order to prevent the dissolution of morals – the less does one have an incentive to develop it out of one’s own forces. And since all individuals are an end in themselves, as long as their pursuit of different activities does not directly violate another’s right, the effect of the state laws is baleful:

A State, in which the citizens were compelled or actuated by such means to obey even the best of law, might be a tranquil, peaceable, prosperous State; but it would always seem to me a multitude of well cared-for slaves, rather than a nation of free and independent men, with no restraint save such as was required to prevent any infringements on right.

Even extremes of immorality, just like that of morality, have something to teach us and guide us, as their existence is a necessary part of our genuine self-directed evolution. But if the state engages in moral policing, or enforces moral duties, then a large section of activities will inevitably be punished by law, and those individuals will not be taking a single step forward in their moral behavior as a result of it. A classic example is that of Prohibition (of alcoholic drinks) in the early 1920’s in the US. It not only did *not* reduce the consumption of alcohol, but also resulted in an increase of consumption, gave rise to a host of smugglers, and led to a general deterioration of the law and order. Other laws of the same kind exist to date across the world.

Hence, in total, Humboldt shows that all laws that control education, religion, or morals, have a negative effect on society and do not belong to the domain of the state.

## **CHAPTER IX: Further Development of the Idea of Security**

This is another short chapter. Since the maintenance of *security* is the sole purpose of the government, Humboldt now defines the term more precisely as the *assurance of legal freedom*. Since a violation of a right is the only activity which the individual is not able to redress by himself, all that involves redress of grievances, as well as punishment, belongs to the domain of the state. This involves criminal, civil, and police laws (which usually govern the process of policing itself – of patrolling, arresting etc.). The government also has the rights of asserting its own existence, but at the same time, it must allow an individual the freedom to withdraw himself from the state community if he or she so wishes. This is a very interesting consequence drawn by Humboldt, as he recognizes that the state exists for the individual, and not the individual for the state. In this sense, the sentiment usually expressed by “Ask not what your country can do for you, but what you can do for your country” does not apply to the state – because the only valid question is what the state can do for the individual, which is its sole reason for existing.

Since there are also special circumstances where people are not mature enough to take part in governmental relations – such as minors, special needs patients, or those who lack the ordinary cognitive faculties – the state has a responsibility to provide security for these people as well.

## **CHAPTER X: On the Solicitude of the State for Security With Respect to Actions which Directly Relate to the Agent Only. (Police Laws.)**

We now come to the source of policing. Humboldt states that when rights have not been violated, but situations are developing that *tend* towards an imminent violation of these rights, we have to do with policing laws. It is very important to determine in this case whether or not an actual violation of right is involved, and using the example of offensive speech, he describes how no actual rights are violated by the existence of such speech, and it rather challenges the citizenry to process the offense and challenge it freely in their turn.

Taking things a step further, he then asks what happens in the case of specialized knowledge – such as doctors and lawyers – where there is a tendency of taking advantage of the gullibility of the people? In these cases, the state can inform the public *which* among those doctors and lawyers have voluntarily agreed to verify themselves and their credentials with the state, through licenses and such, *but it should not do anything more!* For instance, it cannot prevent the doctors who have not received their licenses from practicing, nor block the public from accessing them. If a lot of people are led astray by mistaken advice, that itself would serve as an incentive for the public to “up their game” and become more knowledgeable in their turn, depending on each other for sifting out the genuine versus the fraudulent practitioners. Humboldt uses a beautiful phrase in this context:

... the very want of positive assistance invites men rather to enrich their own knowledge and experience, and knits the citizens together by a thousand intimate relations, inasmuch as they are left more exclusively dependent on each other.

He is actually describing the *social fabric*! We can contrast this with current day policies that seek to “protect public health,” and as a result cancel licenses (many times with dubious reasons) and block doctors and patients from finding each other based on the actual medical need. Hence medical policing becomes a destructive activity overall in practice. The only activity that is justified to the state is the prevention of physical harm from a non-specialist’s point of view. In this case too, we can have either extreme – where an action is restrained when it is still a long way from harming anyone, or when it is restrained too late when the harm has already begun. If too many trivial actions are restricted too early, freedom suffers, and if too many actions are allowed to build so much momentum that harm is inevitable, then security suffers. This is part and parcel of policing that is generally *preventative*, so in each individual case a balance has to be struck between the two extremes.

Good examples of this in modern times are speeding laws. When an individual is fined or arrested for driving recklessly, there is no actual harm yet, but the possibility of harm is very high. On the other hand, the slapping of fines for going a couple of miles an hour above the speed limit, especially if made automatic, chokes up the freedom of traveling. The actual boundary is mobile and fluctuating, and has to be figured out live for each community. The demands of the community play an essential role in determining this boundary. It may even happen, according to Humboldt, that the community itself freely contracts among itself to restrict dangerous practices or even prohibit them, quite independently of the state – he finds this a much more favorable situation, where the community makes the policing as superfluous as possible.

At the same time he reiterates that the state cannot force the individual to do some positive duty or other, even with compensation – since once again, the taproot of free human initiative is damaged by any such action. However, police laws are justified where property is owned or used in common, as is the case with roads and is also the case with public areas of the city, its rivers and resources.

#### **CHAPTER XI: On the Solicitude of the State for Security With Respect to Such of the Citizens’ Actions As Relate Directly to Others. (Civil Laws.)**

In this tricky chapter Humboldt works out the different spectra of relationships between people, and their bearing on individual rights. In the first place, anything that violates another’s freedom or possessions should automatically be forbidden by law. However, people also make contracts with each other, in which case the state may be called in to redress a grievance. In the case of debtors, laws can get complicated by the fact that the right redress of grievance, i.e. getting one’s money back, is also dependent on allowing the debtor to work to pay off the debt, and hence requires that freedom. In other cases, where part of the contract is to be fulfilled in the future, a

case-by-case situation arises since the contract may seem reasonable at one time, but become fully coercive due to a change of circumstances, in which case the state has to intervene.

There are also some extreme cases of contracts, such as where one person contracts another to be, in effect, a slave, or promises something intangible, or ends up violating the rights of people outside the contract. Humboldt says that the state can directly act only on the last case, but it cannot directly prevent the first two kinds of contracts. What it *can* do is allow an exit from such contracts, so that a momentary lapse does not imprison a person for a very long time. His value for individual freedom is such that he is willing to allow slavery, as well, if freely contracted!

Another range of contractual activity is where one has to give something to another, as happens in the case of buying and selling, and which require people to “keep their word.” But the more internal and intimate the relationship is – for example where the person has to connect with the other person out of their own will continuously and through mutual consent, as in the case of marriage – the more easily should the contract be able to be severed. In other words, divorce should be made easy as far as the state is concerned – a truly revolutionary conception for that time, I might add. In between the extremes of matrimonial contracts and those of exchange of goods, lie medium-level contracts that can be periodically renewed.

We next come to another aspect of Humboldt’s development that cuts across like a lightning bolt: the restrictions on testaments and wills. Humboldt states in no uncertain terms that the dead cannot reach past their limits into normal life to dictate the terms of how their estate is to be distributed through wills – the maximum the will-maker can do is to designate someone, *while he is still alive*, to dispose of the property as that person (or group of persons) sees fit. No further details or instructions can be passed on, because this is one of the primary means where one generation seeks to prescribe laws to the next, and therefore restricts its freedom. It can also lead to the situation where the will is used as a bargaining chip with potential heirs, leading to all sorts of aberrations. The heir cannot be someone who is “acting for” the dead in the old Roman way, but rather, is acting out of her own impulses. If the person fails to make a will, then the state can enter and distribute the possessions to the family, municipality etc. according to the rights established during that person’s life. He also states that similar care should be taken when the heirs take on relations that the person, while living, entered into – the oppressive force of the dead must not overwhelm the living, as it happens in the case of excessive inherited debt. In this case, the contracts themselves must incorporate that they are valid only while the person is living, and are either invalid or easily dissolved after death.

## **CHAPTER XII: On the Solicitude of the State for Security as Manifested in the Juridical Decision of Disputes among the Citizens.**

Here, Humboldt begins the description by stating that the government has no obligation to redress grievances *unless requested to*, and its only job is to make sure that the laws are not so opaque that citizens do not realize their rights clearly. Of course, this condition is rarely met

nowadays, when the law has grown so voluminous, and so entangled with laws regarding the welfare of society, that the disentangling of the citizen's rights precisely from the tangled web of laws is a monumental task. But assuming the aggrieved party wishes to bring suit, the state cannot go a single step beyond what the party wishes to seek redress for, nor should it agree to take part in prosecuting anything except where an actual violation of right is involved.

The judge is the one who places himself between two parties (in some countries, the jury as well), and his job is to not only come to an impartial conclusion, but also to make sure that the conflicting parties are kept under close supervision throughout the proceedings. Humboldt states that there is a whole spectrum where the judge can become an inquisitor and oppress the citizens on behalf of an entity, or the other extreme where the lawyers can create a long-drawn-out costly process that lines their pockets and creates a litigious spirit.

He next examines the necessity of sufficient proof of all transactions, and rules of evidence, that should dictate the process. Excessive proof requirement is a hallmark of undeveloped (or degrading) societies, while carelessness in this respect means a proliferation of forgeries.

## **CHAPTER XII: On the Solicitude for Security as Manifested in the Punishment of Transgressions of the State's Laws.**

Humboldt now tackles the essential core of redress of grievances – *the punishment*. And he offers a clear image of the just measure of punishment in this way:

... from the principles of right, that everyone must suffer the punishment so far to invade the province of his own right as the crime he has committed has penetrated into that of the other.

In other words, the extent to which you violated another's right is the extent that the state is allowed to violate your own rights as punishment. But if it relates to one person alone, or consent is involved, then the violation is removed, so the state cannot punish such things as attempted suicide, carnal (sexual or sensual) acts (except where there is a lack of consent, such as rape), and even the taking away of a man's life with his own consent. The state can also invalidate wills that seek to control how the property is to be disposed of through the heir. All in all, the state requires this coercive power, derived out of the fundamental reality that the violation of a right is also coercion.

Coming now to the question of punishments per se, what is the guideline to choose the right punishments? Punishments are evils that are supposed to deter the criminals, and can occur in a variety of degrees. There is a lot of variability depending on the conditions – a punishment that looks cruel in one case may be needed in another. But overall, the guideline should be to make punishments as mild as possible, as a general direction of progress.

The one punishment that Humboldt directly opposes is that of “loss of honor.” Today we might call that a “permanent record,” which is effective in the same way that a loss of honor was in Humboldt’s times – to effectively block an individual from participating in society due to lack of trust. It is acceptable if certain functions of the government are inaccessible to those with a record, and up to a certain point. For example, a thief who has finished his parole may not immediately find employment as a policeman, but he could perhaps apply several years later. But if we establish lifetime bans on activities, it causes irreparable harm to society. A punishment should also not pass to the family or relations of the guilty party.

It is important to restrict the punishment to the extent of the violation of rights that caused it, and not to allow it to increase based on other adjacent factors like frequency of occurrence (the crime is occurring too often) or moral outrage (the outrage factor demands more punishment). This is because such factors can grossly magnify the punishment in proportion to the crime, leading to a loss of the feeling of morality in the entire system which is supposed to safeguard security but now seems to be trying to do more than that. A crime that attacks the rights of the state itself, which is the safeguard of rights, is to deserve the highest punishment per Humboldt, as happens – for instance – when someone prevents the police from responding to a serious crime. Because there is a multiplicative effect when the state itself is crippled, the crime is also magnified accordingly.

The judge or jury must also have the freedom of tailoring the punishment to the specific case at hand and decide the punishment accordingly. At no point should the principle of “innocent until proven guilty” be violated by anyone in the justice system, and even the convicted criminal must still be allowed to have rights as a person and as a citizen, without any deceit and definitely without such means as torture. Crime prevention is also something that must be watched carefully, as the only thing that can be done is perhaps the altering of a few immediate circumstances that tend to increase crime. We can give examples like improving the lighting in a shady area, or increasing the beat of police in a certain area. But nothing that is supposed to directly change the morals of the populace can belong to crime prevention as far as the state is concerned. Even once the criminal is convicted, he must not be forcefully “reformed”:

... instruction is not to be thrust even on the criminal; and while, by the very fact of its being enforced, it loses its usefulness and efficiency, such enforcement is also contrary to the rights of the criminal, who never can be compelled to anything save suffering the legal punishment.

Of course, this is a very different outlook than the usual attempts at prisoner reform, and it rightfully prevents the state from attempting to morally uplift the criminal – which is a job for the national community or voluntary associations to offer freely to the criminal if they so wish. Once the criminal is released, as much as possible, the supervision of the citizens is preferable to state surveillance (as in the case of parole supervision) to prevent a relapse, if there is a need to keep an eye out in case of repeat offenders. In various different ways, Humboldt brings out the fact that the state’s role is to be restricted solely to the moment just leading to the crime and until the punishment is completed, and removed as much as possible both from efforts at active crime

prevention as well as post-conviction surveillance. We can say that he is valuing the privacy of the individual by making sure that the state only violates it if the individual is about to violate a right, and does not unduly overreach into the daily life of normal citizens or those who have finished their punishments. It is supposed to make sure that every crime is detected, and punished appropriately, and *that's it*.

As he states it:

For the conviction in the minds of the citizens – a conviction strengthened by unvarying experience – that it is impossible for them to infringe on the rights of others without suffering a proportionate loss of their own, seems to me at once the only bulwark of internal security, and the only infallible means of creating an inviolable regard for the rights of others.

And we could add that the easier it is for anyone to “get away with things,” the lesser the trust in the justice system. Reprieves or clemency from the sovereign, or the highest power in the land (for instance, pardons from the president) are similarly to be forbidden. We might add that any way of circumventing the justice system by the power of money would also come under this theme – whether it is through direct bribery of the officials, or through exorbitant lawyer fees and penalties as part of the functioning of the justice system. The opioid crisis is a recent example where the Sackler family completely undermined the justice system using their monetary and other powers, by succeeding in getting away with the minimum of penalties and no admission of guilt.

Even if the government makes it legally binding for citizens to provide assistance to resolve the nature of a crime (the subpoena process that is used by courts), it must excuse that in certain circumstances where the person's nearest relations would suffer if they provided the assistance. For example, spouses cannot be compelled to testify against their spouse, according to current day law.

After summarizing all these points, Humboldt offers another example at the end, to be very clear what he means by preventing crimes versus infringing on people's rights. We cannot make it illegal to conceal a pregnancy, according to him, by saying that the mother is seeking to do so in order to be able to commit infanticide. BUT, the action that threatens the life of the infant directly can be directly forbidden, since it leads to a crime. It is hence very clear that he considers abortion, or infanticide, a crime.

#### **CHAPTER XIV: On the Solicitude of the State for the Welfare of Minors, Lunatics, and Idiots**

When the person does not possess the full powers of understanding, it requires a different approach. For minors, the rights reside with the parents until the age of maturity, and the minors should never be compelled to take actions that have an impact over their whole life, such as



marriage or career choice. In addition, after legally fixing an age of maturity, the state will not interfere positively in the upbringing of children, but only make sure that the rights of the minors or parents are not infringed upon. Parents must be trusted to take care of their children, and only gross neglect can allow the state to interfere in such domestic affairs.

In the case of orphans, the state assigns the right guardians, and also determines the qualifications – with preference being given to the closest family. Children should be protected by the state in case of the use of their fortunes, and sexual relations with a minor must be punished as well. Similar considerations come to the fore with regard to those who have gone mad or have lost their reasoning capacities. So in all these cases, taking interest in the positive welfare is justified by the state.

Having finished with this topic, Humboldt summarizes three viewpoints from which to look at the whole topic of laws once again. One is the basic understanding of rights, which is at the core of the whole question. The second is the way in which the state or government is supposed to restrict itself to the safeguarding of these rights, and not overreach into anything else. The third is to make sure that the state survives as a system, and to ensure the legal and financial system necessary for this self-preservation. He warns that the legal and financial systems necessary for self-preservation can become quite rigid, which in turn may not allow the state to suitably modify itself in order to prevent an overreaching beyond its rightful limits, or also perhaps to extend its limits to the full extent necessary to preserve security, and as a result it could end up choking the free exercise of the rights of citizens. This third point of view is hence quite critical for overall health of the state, which is what Humboldt examines next.

## **CHAPTER XV: Means for the Preservation of the State Organism. Completion of the Theory.**

If a state is to exist, it should be able to have a means of obtaining revenue, without forgetting that man is the true end of the body politic, and not the other way around. Humboldt determines three ways that the state can get revenue:

1. Property that is either reserved for the state or acquired by it
2. Direct taxes
3. Indirect taxes

Humboldt shows how the state, if it acquires property, would bring the full coercive force to bear and hence gain far more power over the citizens than is justified, and it is best therefore for it to have no possibility of acquiring property. Indirect taxes like sales tax is also deemed harmful. He does not specify in what way it is hurtful, but we can understand that since every free activity, such as buying, selling, and other commercial transactions all require a “cut” to be sent to the government, the effect of indirect taxes is to chill the spirit of initiative in the populace.

Enormous man power would also be required to keep track of each of these transactions. Hence, the only option is a direct tax, which mostly depends on productivity – hence the taxes on

agriculture, on landowners and those who are commercially productive – up to and including individual productivity. In a sense, the exercise of obtaining an income without the violations of rights in the entire process is what is being paid for through the tax to the government.

Since the finances control the efficacy of the government, the relationship of the people to the government is a critical determinant in how the whole process runs. Humboldt notes that there have been various ways in which the people are bound to the government:

1. By physical power
2. By bringing opposing interests into action in the political process
3. By diffusing throughout the nation a spirit favorable to the government

Humboldt opposes all three of these. The first is most oppressive with regard to the freedom of the people, as seen in heavily militarized governments. The second involves the push and pull of political parties, while the last creates a myth-making process with respect to the government. He declares that the best way that the government can exhort the citizens for support is to simply do a good job of safeguarding the security of the community, and take no further steps to establish its validity. That itself will offer the best incentive for private individuals, and without private interest there is no public interest.

Having thus outlined the entirety of the working of the government, Humboldt points out that these ideas are worked out on the basis of what would offer the best opportunity for an individual to develop oneself. And to determine how a governmental system is working in reality, one should not simply use statistics of area, population, wealth and industry, but actually observe the situation of the political institution and how it interacts with that free association called the national community. And he leaves with another striking statement:

For the State constitution and the national union, however closely they may be interwoven with each other, should not be confounded together. While the State constitution, by the force of law, or custom, or its own preponderating power, imparts a definite relation to the citizens, there is still another which is wholly distinct from this – chosen of their own free-will, infinitely various, and in its nature ever-changing. And it is strictly this last, – the mutual freedom of activity among all the members of the nation, – which secures all those benefits for which men longed when they formed themselves into a society. The State constitution itself is strictly subordinate to this, as to the end for which it was chosen as a necessary means; and, since it is always attended with restrictions in freedom, as a necessary evil.

The separation of the nation and the state, and the subordination of the state to the nation, are hence the result of putting individual freedom at the center of the investigation.

## **CHAPTER XVI: Practical Application of the Theory Proposed**

Now that Humboldt has laid out what *ought* to be, how do we apply this in the light of what *is*, according to him? He notes that one should not simply jump straight into manifesting everything possible in a Utopian zeal, nor should one let the whole theory pass by coldly and indifferently. But as the truth of the theory sinks into the heart, it must hover in front of the individual as a possible reality in the way the ideal of an artist hovers in front of him even after each work of art. At the same time, he *can* indeed begin putting things into effect, subject to the individual participation that becomes possible:

Whoever, then, would attempt the difficult task of interweaving, artificially, a new condition of things with that which is already existing, should never lose sight of this all-important agency [free will]. He must wait, therefore, in the first place, for the full working out of the present in men's minds; should he rashly attempt to cut through the difficulty, he might succeed, perhaps, in creating anew the external aspect of things, but never the inner disposition of human nature, which would surely re-manifest itself in everything new that had been forcibly imposed on it.

This word of caution safeguards us from any revolutionary inclination. He further describes that if any change is sought, in the first place that change should be able to be applied in an uncorrupted way, and secondly, men's minds and thoughts must, as much as is possible, be the source of the change. It therefore becomes important to properly compare the ideal state to the actual state currently, and to see what the level of freedom is in the current system. Wherever the feelings of freedom in men have matured to the level of stretching and straining against a particular shackle, that is the time when the shackle must be removed, and not before. Acting when the time is ripe, when layer by layer through the exercise of freedom, a better valuing of freedom develops, progressive changes can be made. He says:

Only it is clear we cannot call it giving freedom, when fetters are unloosed which are not felt as such by him who wears them. But of no man on earth – however neglected by nature, and however degraded by circumstances – is this true of all the bonds which oppress and enthrall him. Let us undo them one by one, as the feeling of freedom awakens in men's hearts, and we shall hasten progress at every step.

Hence the legislator must first of all absorb the complete view of the state in all its functions and its relations to individual freedom, the different ways in which different parts act on each other and the full reality of the current conditions. By comparing the Ideal picture and the Real picture, he must then be able to determine the points at which forward progress can be made, where the tendencies of men can accept the change without turning it into something else. In such places the principles in this work should be applied, and made manifest, step by step. This exercise is not meant to say that, due to the inaccessibility of the final image, that the work is impractical. Rather, just as the idea of freedom helps us to overcome coercion, it acts as an intrinsically motivating force for positive change. The role of the state is that of the spectator that seeks to slowly and gradually relieve men's shackles based on the demands of necessity arising from the real human situation.

He re-emphasizes that the guiding principle should be the necessity of a situation, rather than the *usefulness* of changing a situation. This is because there can be many arguments back and forth about whether or not something is useful, but when something presses its necessity on us – as for a certain demand for freedom – then it can be simply and plainly addressed.

With that, Humboldt comes to the end of his essay, expressing a hope that his work is helpful for the future.

### **Relevance of Humboldt’s work for today**

Now that we have gone over the descriptions of the “limits of state action,” how do we compare that with what has evolved until today? Governments have changed a lot over the last century, and have repeatedly overreached past these limits. Let us take a look, for example, at what happened in the United States since the ratification of the Constitution in 1787. Other than the Judiciary and the Legislature, the government at the time consisted mainly of an Executive branch with departments of State, War, and Treasury. But in the 19<sup>th</sup> century, the Postal Department and Department of the Interior were added to that, along with the Department of Agriculture. We then see a massive expansion from *security* to *welfare* beginning with the 20<sup>th</sup> century, where the departments of Commerce, Labor, Health, Education, Welfare, Housing and Urban Development, Transportation, Energy, Veterans’ Affairs, and Homeland Security got added to the executive, bloating it up enormously by the beginning of the 21<sup>st</sup> century.

Governments in the eastern part of the world – such as Russia, China, and Japan – have had governments that dived even deeper into the task of remolding the national character, while South America and parts of Asia and Africa have even seen complete dictatorial systems. The strongest military in the world today – the United States – is accompanied by all the problems Humboldt described in a standing military, highly amplified. For instance, in order to justify the existence of the US military, there has been a perpetual waging of wars which have never stopped since the First World War, and pretexts are always either found or created (usually by intelligence agencies) to propagate these wars internationally, with the most recent war, the war against COVID, being biological when COVID and the vaccines were released internationally through the support of the Department of Defense.<sup>1</sup> Contrary to the warning issued by Humboldt that “the nation and the state must not be confounded together,” special efforts were made to establish a nation-state in the middle of the world – when Israel was created with the forces of Zionism, displacing and oppressing the local Arab communities. Contrary to his advice regarding separation of religious and governmental functions, religious divides have torn apart

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<sup>1</sup> See <https://capitolseila.substack.com/p/he-worked-with-wuhan-institute-but> and <https://capitolseila.substack.com/p/in-jan-2019-us-funded-coronavirus>

nation-states into more than one, as it happened with India and (East and West) Pakistan, or the Balkan upheavals.

Even at the internal social level, legislation was the route chosen to deal with questions of the relationship of Black people to White people, whether it was the forced segregation of South African Apartheid or the forced desegregation in the United States in the Civil Rights era. With the addition of welfare interventions like the Great Society and other measures in the US, the inner cohesion of the Black community was further destroyed leading to increasing waves of disillusionment and – hence – crime. Federal government influence has had a similar effect on the Native American community.

Humboldt warned that the social fabric and inner strength of citizens would suffer with the expansion of the welfare state, and that is precisely what has taken place over time. The security of citizens has also come under threat from a different direction – that of economic cartels – who have taken coordinated decisions to prey on the public destroying their security from the inside. Examples for this range from the enforcement of the opium trade in China to the opioid epidemic in the United States and Europe, and involve decisions that have harmed the health and wellbeing of the private citizen for private profit. The wealthy Sackler family, for example, has been able to strong arm the Department of Justice into looking the other way *for decades* as they sold extremely addictive opioids to the masses under false pretenses, leading to thousands of deaths. And this has been the pattern for a variety of wealthy industries such as oil, mining, and pharmaceuticals. Many of these special interests sponsor “libertarianism” in order to provide a philosophical justification for their greed and to reduce the already limited government oversight even further. More recently, data and digital identities have become the new “gold,” leading to a corresponding gold rush that completely erodes the privacy of citizens of all parts of the world, where the government has full access to surveillance with a minimum of oversight. The entire governmental apparatus is hence hijacked by financial interests from the back end, making the government a very different entity than the one described by Humboldt, and being barely concerned with protecting the rights of people.

Things have come very far indeed. But the beauty of Humboldt’s work is that no matter how far off the track we have come, there is always a path of redemption and a way forward, even if the effort required looks enormous. Something that Humboldt was not able to fully examine in detail was accomplished by Rudolf Steiner in the early 20<sup>th</sup> century by not only providing the limits of state action but also providing the limits of the action of economy, as well as the limits of the action of the community itself (the nation, or “We the People”) in order to clarify the threefold nature of society and the mutual interrelationships between these three aspects: culture – state – economy. Hence, from the turbulence of the French and American revolutions, we have a straight line leading through Humboldt’s and Steiner’s works in order to provide us with a clear picture of the goals towards which organizations must be steered, in order to achieve the maximum level of inner and outer freedom and self-development of communities. Following the guideline provided by Humboldt, it is a matter of finding the right “stress points” in the social fabric where there is an existing unrealized will to move in this healthy direction, and cultivating

the understanding required for the community to actually take that step to throw off that particular shackle, whatever it may be. Wherever there is awareness that the state is overreaching into a particular activity, that action of the state can be removed or abolished. Wherever there is awareness that the economy is unduly oppressing culture, or hijacking the government, those activities can be exposed. Wherever there is a situation where a group of people are in charge of a department that does not belong to the government but belongs somewhere else, then efforts can be made to place that department on a different basis. Perhaps influenced by the impact of the revolutions, Humboldt points out the quiet, organic way of creating change – something that is creative instead of destructive, and moves with the will of the community. This is the takeaway for me from his body of work – it not only provides an example of clear thinking that is needed for the right working of governmental organizations, but also provides a path to manifest it in real life. And that, if done, would be the work of highest art.