

Must a Jewish Baker Make a Nazi Cake?

At the first-ever nationally televised debate between candidates for the Libertarian Party, the subject turned to a fundamental issue: the freedom not to associate. The subject concerned anti-discrimination law, particularly as it affects religion.

Gary Johnson was asked whether he, as president, would retain laws that prohibit discrimination based on religion. He said he would, especially given the current political climate in this country. There's so much anger out there, he said, that he would be concerned about Muslims being denied access to basic utilities, for example.

Opponent Austin Petersen immediately seized on this compromise of principle. People must have the freedom to associate or disassociate based on whatever criterion. If they do not, he said, a Jewish baker would be forced to bake a cake for Nazis. Johnson agreed that non-discrimination would imply exactly that.

It was the best moment of the debate, and it sparked a thousand Reddit and Facebook discussions.

Who is right?

One objection is that this hypothetical is wholly unlikely in any case. Why would a Nazi demand such a thing from a Jew? If the Jewish baker really refused a Nazi, could he actually expect to be prosecuted for doing so?

However unlikely this scenario would be in the United States today, it is not entirely ahistorical. In the early years of the rise of the Nazis, party members demanded boycotts of Jewish businesses. This was part of their propaganda to whip

up the public into scapegoating Jews for all the sufferings of the German people. Over time, public antagonism intensified to [more direct forms of attacks and exclusions](#), from lootings, pogroms, ghettoization, concentration camps, and finally gas chambers.

A Slippery Slope?

Supporters of anti-discrimination law cite this as a case in point. If you let people refuse service based on a religious criterion (or race, sex, disability, and so on) you create a slippery slope. What starts as a bigoted choice ends in more violent modes of exclusion. Yes, this can lead to weird results such as forbidding a black-owned hotel from barring a Klan member, and a Jewish baker forced to service to a Nazi based on religion. But this is small price to pay, they say, for a more generalized atmosphere of tolerance.

Let's consult the great economist Ludwig von Mises, a Jew himself, who was actually present in interwar Vienna and personally affected by the rise of anti-Semitism. It kept him from obtaining a position at the city's great university, and it eventually drove him out of his beloved Austria. Eventually arriving in the United States, he wrote what might be considered the most anti-Nazi book ever: *Omnipotent Government* (1944). It opposed Nazi racism and anti-Semitism but also the entire Nazi economic policy that itself was rooted in a form of legal discrimination of some producers over others.

Choice and Coercion

Where did Mises stand on the issue of discrimination? He distinguished two kinds: that extending from choice and that imposed by law. He favored the former and opposed the latter. He went even further. He said that a policy that forces people against their will creates the very conditions that lead to legal discrimination. In his view, even speaking as someone victimized by invidious discrimination, it is better to retain

freedom than build a bureaucracy that overrides human choice.

“In an unhampered market society there is no legal discrimination against anybody,” he wrote. “Everyone has the right to obtain the place within the social system in which he can successfully work and make a living. The consumer is free to discriminate, provided that he is ready to pay the cost.”

What might this principle imply?

A Czech or a Pole may prefer to buy at higher cost in a shop owned by a Slav instead of buying cheaper and better in a shop owned by a German. An anti-Semite may forego being cured of an ugly disease by the employment of the ‘Jewish’ drug Salvarsan and have recourse to a less efficacious remedy. In this arbitrary power consists what economists call consumer’s sovereignty.

These choices are up to the consumer, and, presumably, the producer too.

In a world in which people have grasped the meaning of a market society, and therefore advocate a consumer’s policy, there is no legal discrimination against Jews. Whoever dislikes the Jews may in such a world avoid patronizing Jewish shopkeepers, doctors, and lawyers.

And yet, if you have a social movement that is just dead-set against a certain group, and pushes a strategy of boycotts and exclusions, does it eventually end in harming people in devastating ways? So long as markets are working, Mises says the answer is no.

Many decades of intensive anti-Semitic propaganda did not succeed in preventing German “Aryans” from buying in shops owned by Jews, from consulting Jewish doctors and lawyers, and from reading books by Jewish authors. They did not patronize the Jews unawares—‘Aryan’ competitors were careful

to tell them again and again that these people were Jews. Whoever wanted to get rid of his Jewish competitors could not rely on an alleged hatred of Jews; he was under the necessity of asking for legal discrimination against them.

Mises is arguing, in other words, that voluntary discrimination tends not to create permanent disabilities for groups. It might be wrong. It might be ugly. It might be intended to create harm. But so long as the market is working, exclusion does not work over the long run. The benefits of the division of labor are too great, and the costs of pervasive discrimination are too high, to make it worth it.

As Mises wrote elsewhere:

The market does not directly prevent anybody from arbitrarily inflicting harm on his fellow citizens; it only puts a penalty upon such conduct. The shopkeeper is free to be rude to his customers provided he is ready to bear the consequences. The consumers are free to boycott a purveyor provided they are ready to pay the costs. What impels every man to the utmost exertion in the service of his fellow men and curbs innate tendencies toward arbitrariness and malice is, in the market, not compulsion and coercion on the part of gardeess, hangmen, and penal courts; it is self-interest.

Power Will Be Used

What's more, argues Mises, society needs a market society that includes a full range of freedom to choose precisely to prevent political violence against groups. Nazi economic policy punished importers against domestic producers, large stores against shopkeepers, large-scale industry against startups, and so on. The machinery was already in place legally to punish Jewish businesses against non-Jewish businesses.

Sacrificing principle for the sake of marginalized groups is short-sighted. If you accept the infringement of human rights as an acceptable political weapon, that weapon will eventually be turned on the very people you want to help. As Dan Sanchez has written, "Authoritarian restriction is a game much better suited for the mighty than for the marginalized."

Commerce has a tendency to break down barriers, not create them. In fact, this is why Jim Crow laws [came into existence](#), to interrupt the integrationist tendencies of the marketplace. Here is the hidden history of a range of government interventions, from zoning to labor laws to even the welfare state itself. The ruling class has always resented and resisted the market's tendency to break down entrenched status and gradually erode tribal bias.

Indeed, commerce is the greatest fighter against bigotry and hate that humankind has ever seen. And it is precisely for this reason that a movement rooted in hate must necessarily turn to politics to get its way.

The real danger is not human choice but a regime that overrides it. The market is rooted in choice, which also means the right to discriminate. But so long as the state stays out of it, the discriminatory intent can't last.

The freedom to choose implies the freedom to decline any particular choice on any grounds.

What about the Johnson scenario of a public utility that denies service to a Muslim community? One can easily imagine a private power generation company using that as an opportunity for profit.

As for the Nazis, they will just have to find someone else to bake their cakes.

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