

## CAN WE GET PAST CLICHÉS IN CEDAR HILLS?

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**Reasonable people can certainly disagree** on specific applications of fundamental principles. However, certain often repeated **clichés usually contribute very little to serious public discourse and oversimplify the complexity of a community attempting to find the appropriate balance between individual and social rights.** Some of the more prominent clichés include: “You can’t legislate morality.” “People have the right to choose” or “free agency.” “We need to be tolerant and respect diversity.” “There should be separation of church and state.” Let’s consider these respectively.

### CLICHÉ #1: “YOU CAN’T LEGISLATE MORALITY”

This often repeated phrase perhaps reflects a misunderstanding as to what is in reality legislation or morality. A former Justice of the Utah Supreme Court, Dallin H. Oakes, speaking out on the issue of gambling stated:

“Don’t legislate morality.” **I suppose persons who mouth that familiar slogan think they are saying something profound. In fact, if that is an argument at all, it is so superficial that an educated person should be ashamed to use it.** As should be evident to every thinking person, **a high proportion of all legislation has a moral base.** That is true of all the criminal law, most of the laws regulating family relations, businesses and commercial transactions, many of the laws governing property, and a host of others.

So what does it mean when a person says, “don’t try to legislate morality?” There is ample room for debate on the wisdom of most legislation, whether it has a moral base or not. But the mere statement that we should not legislate morality contributes nothing to reasoned public discourse.<sup>i</sup>

In a subsequent statement, Oakes reaffirmed this position and posed what he believed was a fundamental and relevant question. He stated: **“Society continually legislates morality – the only question is whose morality and what legislation.”**<sup>ii</sup>

**The question has never really been *if* morals should be legislated but *whose* morals should be legislated.** Understanding this helps expose the irony **that those who claim “you can’t legislate morality” are in fact attempting to affect legislation based on their own moral assumptions.** Some of those moral assumptions are often conveyed in the remaining clichés below.

### CLICHÉ #2: “PEOPLE HAVE THE RIGHT TO CHOOSE” OR “FREE AGENCY”

Obviously, people have the freedom to make many choices. However, it doesn’t necessarily follow that they can do whatever they want or that they can determine individually what the consequences of those choices will be.

In the simple act of driving my car I could choose to drive as fast as I want, without an exhaust pipe, in an unregistered and uninsured car, without a seat belt, smoking marijuana or sipping alcohol through a school zone. I could do all the above, but the consequences implicit in social legislation remind me that I'm not an island and that my choices are necessarily limited by the interests and freedoms of others. Again, reasonable people can disagree as to the appropriate limitations on individual choices, but just saying "people have the freedom to choose" contributes little to finding that balance and usually ignores the notion that communities also should have some "freedom of choice" in determining their collective destiny.

Those who specifically cite "free agency" do so not only in hopes of appealing to the significant LDS portion of the local citizenry but often do so, it should be remembered, to affect legislation based on their moral assumptions concerning that principle – in an attempt to "legislate morality." Ironically, "free agency" is often cited in defense or opposition to public policy that contradicts the official positions of the Mormon Church.

Consider this example from Utah's legislative history. Senator Wilford R. Black, a Latter-day Saint, rose to argue against the passage of the Cable Content legislation which would provide communities with greater regulatory discretion regarding the distribution of pornographic material over cable. Senator Black's remarks from the records of the Senate conveyed his agency and expressed that he didn't "like what comes in on TV a lot better than anyone else."<sup>iii</sup>

After acknowledging that the "majority by far" of the Utah Senate "are LDS and have LDS roots" he reminds them of the "numerous talks by church leaders that have expounded on this great right of free agency." He then read an excerpt from a general conference talk by Mormon President David O. McKay. He says:

Next to the bestowal of life itself, the right to direct our lives is God's greatest gift to man. Freedom of choice is more to be treasured than any possession earth can give. It is inherent in the spirit of men, it is a divine gift to every normal being, whether born in abject poverty or shackled in work by inherent riches. Everyone has the most precious of all endowments, the gift of free agency. Man has inherited an inalienable right. It is the impelling source and the soul of progress. It is the purpose of the Lord that man becomes like him. In order for man to achieve this, it was necessary for the creative endowment not bestowed on any other living thing. God gave to him the power of choice. Only to the human being did the Creator say, "*thou mayest choose for thyself, for it is given unto thee.*" (You'll find that in Moses 3:17.) Without this divine power to choose, humanity cannot progress. [1965 semiannual conference]

Senator Black concludes: "Now I have great concern about this bill that then would say you can't. I think that freedom of choice is right there as to whether you invite it into your home to begin with. And whether you select to subscribe to the pay channels that carry the kind of shows that are there. And also I think that the right of choice is yours to get up and change that channel at any time that you want."<sup>iv</sup>

Obviously this legislator and thousands of other legislators at all levels of government have implicitly said through various bills that citizens “can’t” legally do all kinds of things. However, on this particular issue and others like it, Senator Black and others like him who see no reasonable justification for limiting this kind of **choice superficially cite the Mormon principal of “free agency” while ignoring the overwhelming evidence of how Mormon Church leadership apply the principal of agency to this and other similar public policy issues.**<sup>v</sup>

For example a few years prior to this debate on cable content, N. Eldon Tanner, a counselor in the Mormon Church First Presidency stated in general conference:

If there is pornography or obscenity in bookstores, on television or radio, or in places of entertainment, **if there are those who would make more easily available to the young and inexperienced alcohol and its attendant evils, including drunken driving, highway fatalities, broken homes,** and if we are threatened with the passage of laws which violate the commandments of God, **it is our duty and responsibility as individuals to speak out, to organize, and to protect ourselves and our community against such encroachments.**

**People who argue that they have constitutional rights and want to use what they call their free agency to accomplish unrighteous ends abuse the idea of free agency and deprive others of their constitutional rights.** While many of our problems are caused by those who are deliberately trying to further their own selfish and devilish interest, there is also a **vocal, misled minority which is responsible for other problems as they exist in our country and in our quality of our surroundings,** where we can enjoy family solidarity which is the strength of any nation.<sup>vi</sup>

During the same period, Mormon Church President Spencer W. Kimball reminded Mormons of the importance to personally avoid such activities [such as viewing pornography] and to teach [their] children accordingly. However, he believed that following this counsel could prove overwhelming in a social environment inundated with such material. Consequently, he urged members “as citizens” to “join in the fight against obscenity in [their] communities” and not to **“be lulled into inaction by [those] who say that to remove obscenity is to deny people the right of free choice.”**<sup>vii</sup>

Perhaps of particular interest, Senator Black’s citing of President David O. McKay’s articulation of free agency not only ignores the obvious reality that President McKay and the Church collectively supported rather strict limitations on pornography but **also officially supported Sunday closing laws and resisted easy accessibility to liquor by openly opposing liquor-by-the-drink legislation.**<sup>viii</sup> (8) Obviously, no American has to agree with the Mormon church’s positions on public policy, but to specifically cite “free agency” as the obvious reason Mormons should vote no on some of the issues under debate is a little disingenuous.

**Most Americans generally agree with the idea that individuals should be free to do as they wish as long as they don’t harm others. Americans are divided over the complexity of what**

**constitutes “harm.”** On the one side are those who want immediate hard evidence that someone has been physically or economically harmed by the choices of someone else before prohibitory restrictions on behavior are justified. It is the popularization of “victimless crimes” and goes something like this – “show me how someone is actually hurt by John and John getting a marriage license, by Mr. John Doe watching porno late at night or by Joe six pack buying beer at his local grocery store . . . otherwise leave them alone.” They put a rather high burden of proof as to the degree one must endanger others before his or her activity should be prohibited.

On the other side are those who view harm to others as not only including physical or economic harm to other individuals but also includes subtle harm to social institutions, such as marriage and family, and the overall community environment which eventually translates into more obvious physical or economic harm. This argument is more subtle and is not easily condensed into a single bumper sticker slogan. Those who subscribe to this view understand that **the moral fiber of a community**, and for that matter, freedom **itself is undermined incrementally with dramatic changes becoming increasingly evident years later.**

Consider the example of pornography. With each incremental move to make it more accessible, there is no noticeable change immediately, but a generation later, few question that something has happened to their community. Today, few question whether this supposed victimless activity is creating victims today and costing us all something significant: The objectifying of women, child sexual abuse, incest, date rapes, divorce and all the social pathologies these bring along. Similar scenario applies to the incremental move toward making alcohol more accessible with its own unique long-term consequences that don’t just affect those who actually drink.

It all kind of reminds you of a typical rebellious teenager who claims that he or she has the right to do whatever he or she wants but when something like a pregnancy results somebody else often has to take care of the consequences.

### **CLICHÉ #3: “WE NEED TO BE TOLERANT AND RESPECT DIVERSITY”**

Again, this is a moral assumption and applying one’s idea of tolerance and respect for diversity in the development of public policy is “legislative morality.”

**Those who proclaim the need for tolerance and respect for individual diversity are often very intolerant of diversity of local communities.** Decentralized self-government implies that each respective community has some flexibility in determining what they collectively consider the appropriate line between individual and social rights on a particular issue then living with the consequences of their chosen community standards. San Francisco (where I was born) has its approach with the resulting consequences and Cedar Hills has its own different approach with different resulting consequences. There’s no reason to be embarrassed because Cedar Hills doesn’t copy the community standards of most cities. **I chose to live in Cedar Hills because it was different.** Just because others have “kings” doesn’t mean we have to have “kings.”

I'm sometimes amused by those who have moved to Utah for something resembling a secure and sane social environment while simultaneously mocking our "antiquated" laws compared to those in their previous communities. **Maybe there's a correlation between the community standards we've chosen and the quality of life we enjoy.** Changing our community standards in the pursuit of respectable conformity will surely compromise our quality of life.

#### **CLICHÉ #4: "THERE SHOULD BE SEPARATION OF CHURCH AND STATE"**

This is an important principle but not a clause in the Constitution. A careful consideration of the First Amendment Establishment and Free Exercise clauses and the Article VI Religious Test clause are beyond the scope of this presentation. However, perhaps a few rhetorical questions are worth considering.

**Do those who proclaim tolerance and respecting diversity seriously question my right, as a person of faith, to speak out freely in the democratic process?** If I would have been an abolitionist for religious reasons, would that make the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> amendments illegitimate?

**If I had joined Martin Luther King in his marches against racial segregation for religious reasons would that have made the Civil Rights Act of 1964 unconstitutional?** If my religious faith drove me to promote legislation to increase funding for the poor would such legislation be justifiably struck down by the Court?

Can I try to maintain the existing restrictions on the accessibility of alcohol not only because I accept scientific empirical evidence that correlates increased accessibility of alcohol to various social pathologies, but also because I believe that alcohol can affect a person's soul? Finally, can I join with those who for purely secular health reasons want a day of collective mandated rest from the economic competitive pressure to be open every day even though my concern may also include how that pressure will increase the temptation for me and others who consider Sunday the Sabbath and want to keep it holy?

**One of the primary reasons for the institutional separation of church and state was so that people of faith could speak with integrity to their own conscience,** no longer corrupted by being on the state's payroll or on the receiving end of the states lash. **I for one am getting tired of the majority almost always being asked, or forced, to acquiesce to the wishes of the minority.** If there are supposedly so few Cedar Hills residents who drink beer and want to shop on Sunday, **is it really that difficult to drive a few miles (like we all do now during the week) to get what they want when they want it – tolerating the rest of us to continue with the community standards we've had from the beginning?**

**When each of us goes into the privacy of the voting booth, we can make our decisions on the basis of anything we want:** clichés, hearsay, common sense, reason, empirical data, philosophical perspective, religious beliefs, or even on the basis of our general perception of right or wrong – better known as morality. If legislating morality is unavoidable then why not

the morality of the majority? **Who are the ones who are really trying to impose their beliefs on others?**

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<sup>i</sup> Dallin H. Oakes, "Gambling – Morally Wrong and Politically Unwise," *Ensign* 17 (June 1987): 74.

<sup>ii</sup> Dallin H. Oakes, "Religious Values and Public Policy," *Ensign* 22 (October 1992): 61.

<sup>iii</sup> Utah Senate Bill No. 309: Distribution of Pornographic and Indecent Material Amendments, 1983 General Session, 2 March 1983.

<sup>iv</sup> *Ibid.*

<sup>v</sup> *Statements By Leaders of the Church of Jesus Christ of Latter-day Saints Concerning Pornography* (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1988).

<sup>vi</sup> N. Eldon Tanner, *Seek Ye First Kingdom of God* (Salt Lake City: Deseret Book Co., 1974), 88-89.

<sup>vii</sup> Spencer W. Kimball, *Church News*, 17 January 1976, 8.

<sup>viii</sup> See James B. Allen and Glenn M. Leonard, *The Story of the Latter-day Saints*, 2nd ed. (Salt Lake City: Deseret Book company, 1992), 620; *Encyclopedia of Mormonism*, Daniel H. Ludlow, ed. (New York: Macmillan, 1992), 645.