

MAKING SENSE OF THE ACLU'S COVID-19 RESPONSE

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Many critics of the ACLU have been saying that its response to coronavirus, which has generally been to support the shutdown of the U.S. economy in the name of public health, is inconsistent with its founding principles. Where they err is assuming they were founded on principle. They were not. After writing a Ph.D. dissertation and two books on the organization, it is clear that its current political stand is consistent with its lack of principles from the beginning.

The ACLU's first response to COVID-19, issued March 2, stated that "individual rights must sometimes give way to the greater good." It argued that "people can sometimes be deprived of their liberty through quarantine," noting "this is how it should be."

This is not an indefensible position. But it is strange coming from an organization that has consistently rejected the need to balance individual rights with the common good. Roger Baldwin, the founder of the ACLU, said he would not serve on a jury because he did not want to be part of convicting anyone. When I asked him how society could function without punishing offenders, he answered, "That's your problem."

The ACLU's interest in protecting the public health is also new. In the 1980s, it passed a policy against state laws that criminalized the intentional transmission of AIDS to an innocent unsuspecting person. When I asked one of its officials, Gara LaMarche, to explain, all he could say was "homosexuals have rights."

If the public health is now a concern for the ACLU, it should have called for an independent investigation of New York Gov.

Andrew Cuomo's March 25 order sending hospitalized nursing home patients with the virus back to their residence; AP estimates that his edict resulted in the deaths of 4,500 patients. The ACLU has said nothing. Indeed, its New York affiliate commended him for leading a "valiant effort to protect New Yorkers from the coronavirus. His actions have undoubtedly saved lives." It was referring to his release of prisoners, not his treatment of nursing home patients.

One might expect that the health-conscious ACLU would support President Trump's ban on travel from China, but instead it opposed it. "These measures are extraordinary incursions on liberty and fly in the face of considerable evidence that travel bans and quarantines can do more harm than good." Yet when it came to the internment of 110,000 Japanese Americans during World War II—that surely represented "extraordinary incursions on liberty"—the national office supported it (the Northern California affiliate did not).

The ACLU's professed interest in public health came to a screeching halt once protesters took to the streets following the death of George Floyd by a Minneapolis police officer. This showed the political colors of the ACLU more than anything.

How can thousands of people gather together—making social distancing virtually impossible—without endangering the public? According to the health gurus at the ACLU, this is impossible. No matter, gone was the quaint idea of balancing public health concerns with civil liberties.

There was, however, one exception: it blamed the police for arresting protesters, accusing them of allowing the demonstrators to be "exposed to COVID-19 risk." That is how the ACLU chapter in Ohio put it. It expressed no interest in addressing how the protesters, jammed together, were endangering the health of innocents: it was only when they were in police custody that the alarms went off.

In Milwaukee, the ACLU complained when those arrested for violating the law—they would be the violent ones—were taken in buses and vans in crowded quarters. The looters had no masks, the defenders of freedom said. In Washington, D.C., the ACLU was angry with the police for using tear gas or pepper spray, making it “difficult to breathe.” It did not comment on why the police were forced to resort to such actions in the first place, and never once condemned the violence. It saved its contempt for the cops.

Prior to the riots, the ACLU supported the stay-at-home orders issued by governors. The ACLU of Minnesota said that “measures like this have overwhelming support from public health experts trying to protect our collective well-being during this unparalleled crisis.” When the Wisconsin Supreme Court struck down the governor’s extension of a stay-at-home order, the Wisconsin affiliate condemned the court for ignoring health warnings, thus “jeopardizing the health of all Wisconsinites.”

“Snitch patrols” in New York City and Los Angeles have been authorized by their mayors: they urge residents to turn in anyone who violates social distancing rules by calling a government hotline. The New York mayor even ordered the police to arrest swimmers. “Anyone tries to get in the water,” said Bill de Blasio, “they’ll be taken right out of the water.” The ACLU has said not a word.

Illegal aliens and prisoners have occupied much of the ACLU’s resources during this time. Its second statement on the virus called on the Trump administration not to enforce immigration laws. This was quickly followed with a call to release “vulnerable people from immigrant detention, jails, and prisons.” It sued California Gov. Gavin Newsom for not reducing the population in all of these facilities. In states throughout the nation, it based its position on social distancing needs—not public safety—and even developed its own epidemiological model to project the death toll in jails.

While some of these measures are novel, at bottom they are consistent with the ACLU's policies on prisons. In 1972, it launched the National Prison Project, dedicated to strengthening the rights of prisoners. This initiative was sparked by University of Virginia professor and ACLU operative Philip Hirschkop. Three years earlier he co-authored an article, "The Unconstitutionality of Prison Life"; the title accurately conveyed his goal and that of the ACLU as well.

In the 1980s, the ACLU made its first foray into economic rights. It stunned traditional civil libertarians who considered this an egalitarian social justice matter, not a civil liberties issue. So it was hardly surprising that its response to coronavirus would include a demand for paid leave, singling out McDonald's workers as a victimized group.

The ACLU's egalitarian agenda is so strong that when it was faced with the coronavirus pandemic, the march for equality eclipsed traditional civil liberties concerns. It asked California state officials for disaggregated zip codes so it could determine "the impact of the coronavirus on traditionally marginalized groups." Who might they be? It named "LGBTQ" people. Government officials pushed back, invoking the privacy rights of its citizens, but the ACLU—which used to prize privacy rights—was unimpressed.

On moral issues, the ACLU sued Arkansas to keep abortion services ongoing during the pandemic. Paradoxically, it said that incarcerated pregnant women should not only be released from prisons and jails, they should be "prioritized for release." It never explained why these women were entitled to preferential treatment.

When the ACLU was founded in 1920, it listed among its ten objectives every right encoded in the First Amendment except for the free exercise of religion. So it was only fitting to learn that executive director Anthony Romero told a reporter that he rejected every request to open up churches. Governors

across the nation opened liquor stores before churches, and the civil libertarians had no problem with that.

Interestingly, when the New York affiliate learned that Cuomo allowed for gatherings of up to 10 people for religious services and Memorial Day celebrations, it sued on behalf of a protester, citing preference for people of faith and veterans. Religious liberty was conveniently used as leverage, not as a right worth defending.

The ACLU's selective departure from traditional civil libertarian policies is a reflection of its origins. The popular notion that the ACLU was founded as a non-partisan defender of individual rights is pure myth.

When the *American Mercury* published a critical article on the ACLU in 1936, it threatened a libel suit. After an initial dustup, both sides agreed to have H.L. Mencken render a judgment. He decided there was nothing libelous about it. The free speech champions instantly branded him a fascist.

The ACLU was founded to defend the rights of labor, not free speech. It was so far left that it supported Stalin's totalitarian regime. Baldwin even admitted that "Communism is the goal." Big government was never a problem.

This is important to note now, especially when we recently suffered through the virus and the violence that dominated the spring. It matters because the ACLU, from the beginning, was never the force for freedom that many people believe today, including its critics. No organization that purports to advance the cause of freedom can simultaneously work to promote the cause of totalitarianism. It simply cannot be done.

In 1928, Baldwin wrote a book, *Liberty Under the Soviets*, that celebrated Stalinism, and he did so knowing of the oppression that was ensuing there. Emma Goldman, a noted champion of radicalism, went to Russia to see how the revolution was

going, but was distressed by what she saw. She told Baldwin of the absence of liberty, yet he persisted in his defense of Stalin's tactics.

In 1934, Baldwin wrote an article for a communist publication, *Soviet Russia Today*, that explained his true interest. "I champion civil liberties as the best non-violent means of building the power on which workers' rule must be based...When that power of the working class is once achieved, as it has been only in the Soviet Union, I am for maintaining it by any means whatever."

That is not the voice of a champion of civil liberties, but it is the voice of the ACLU's founder. So when the ACLU today defends stay-at-home orders, making an exception for protesters whose cause it supports, it is acting the way it began. It is a highly politicized organization that seeks to transform an America it has long found wanting.

After moving to the center in the 1940s and 1950s, the ACLU turned left again. More recently, under Romero, it has condemned the free speech rights of board members who publicly disagree with its policies and has kept files on contrarian officials, seeking to purge dissidents. Principled civil libertarians such as Alan Dershowitz, Michael Myers and Wendy Kaminer have thrown in the towel. The late Nat Hentoff was also incensed.

In other words, the ACLU, which began by defending a totalitarian government against the rights of individuals, has forced the few principled board members it had to resign. This clears the way for Romero to remake the organization in the mold of its founding: The ACLU is a far-left entity whose goal it is to disable America.

To further this end, Romero decided to do something that was not consistent with its founding. Two years ago the ACLU decided, for the first time, to formally dive into electoral

politics. Look for it to become a leading voice in the presidential campaign.

If we add to the ACLU's far-left agenda its almost hysterical hatred of President Trump, its COVID-19 policies make a great deal of sense.