



Liberalism, Loose or Strict

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There is a built-in mechanism in democracy for the state to buy support from some by abusing the rule of submission and exploiting others.

Political doctrines can be understood and interpreted in many ways, but in order to survive and prosper, each doctrine needs some irreducible, constant element that represents its distinct identity and that cannot change without the doctrine losing its essential character. Nationalism must hold out sovereignty, the safeguarding and if possible the expansion of a territory, a language and a race as the chief goals of policy. If it did not, it would no longer be nationalism but something else. Socialism appears in many guises, but all its versions have at least one common, inalterable feature, namely the insistence that all wealth is created by society, not by individual members of it. Society is entitled to distribute wealth in whatever way fits its conception of justice. Common ownership of the means of production and equality of wellbeing are derivatives of this basic thesis. It is my contention that liberalism has never had such an irreducible and unalterable core element. As a doctrine, it has always been rather loose, tolerant of heterogenous components, easy to influence, easy to infiltrate by alien ideas that are in fact inconsistent with any coherent version of it. One is tempted to say that liberalism cannot protect itself because its "immune system" is too weak.

Current usage of the words "liberal" and "liberalism" is symptomatic of the Protean character of what the names are meant to signify. "Classical" liberalism is about the desirability of limited government and what goes by the name of laissez faire combined with a broad streak of utilitarianism that calls not for limited, but for active government. American liberalism is mainly concerned with race, homosexuality, abortion, victimless crimes and in general with "rights". In mid-Atlantic English, a liberal is what most Europeans would call a social democrat, while in French "liberal" is a pejorative word, often meant as an insult, and "liberalism" is a farrago of obsolete fallacies that only the stupid or the dishonest have the audacity to profess. These disparate usage do not have much in common. It should not surprise us that they do not.

Loose doctrine on loose foundation

Much of its lack of a firm identity is explained by liberalism's foundations. At its deepest, the doctrine seems to spring from the love of liberty. In more philosophical language, liberty is a value, final or instrumental, that we hold dear. All the superstructure of liberalism is made to rest on this easily acceptable value judgment. However, liberty is not the sole value - not even the sole political value. It has many rivals; security of person and property, security of subsistence, equality of all kinds, protection for the weak against the strong, the progress of knowledge and the arts, glory and greatness spring to mind, and the list could be virtually endless. Many if not most of these values can only be realised at the cost of curtailing freedom. It is contrary to the liberal spirit of tolerance and love of liberty to try and reject these values and to dispute anyone's freedom to cherish some of them even at the expense of freedom. The love of liberty allows tradeoffs between it and other things. How much freedom should be given up for how much security or equality or any other worthy objective that at least some people want to achieve, is obviously a subjective matter, my value against your value, my argument against yours. Disagreement is legitimate. From this foundation, therefore, the evolution of the doctrine tends towards allowing rival values more and more Lebensraum, to incorporate and cooperate with them. What surfaces is a variable mish-mash, all things to all men.

Utilitarianism and the Harm Principle

Utilitarianism and the Harm Principle This evolution, almost predestined by the dependence of the doctrine on value judgments, was pushed further forward by the teachings of the three most influential theorists of classical liberalism, Bentham, James Mill and John Stuart Mill.

They made one-man-one-vote and the good of the greatest number into an imperative of political morality, establishing a wholly arbitrary, if not downright self-contradictory, linkage between democracy and liberalism. This linkage has since achieved the status of a self-evident truth. It is being repeated with parrot-like docility in modern political discourse, and is doing much to empty liberalism of any firm identity.

They also bear much of the responsibility for endowing liberalism with an utilitarian agenda. Liberal politics became politics of betterment in all directions. There is always an inexhaustible fund of good ideas for improving things by reforming and changing institutions, making new laws, new regulations and perhaps above all by constantly adjusting the distribution of wealth and income so as to make it yield more "total utility". John Stuart Mill has quite explicitly laid down that while the production of wealth was governed by economic laws, its distribution was for society to decide. Utilitarianism made this not only legitimate, but actually mandatory, for failing to increase total utility by redistributing incomes is to fail doing the good that you could do. A mandate for overall betterment is, of course, a sure recipe for unlimited government.

Many defenders of classical liberalism interpret Mill's famous Harm Principle as the safeguard against precisely this tendency of utilitarian thought. The principle looks like a barrier to the state's boundless growth. "...the only purpose for which power can be rightfully exercised over any member of a civilised community against his will" — states Mill — "is to prevent harm to others".(1) However, what constitutes harm and how much harm justifies the use of state power, are inherently subjective matters of judgment. There is a vast area of putative or real externalities which some regard as grounds for government interference while others consider that they are simply facts of life, to be left to sort themselves out. The harm principle, being wide open to interpretation, is progressively expanding its domain. Today, omission is amalgamated with commission. "Not helping someone is to harm him"; the harm principle is invoked by certain modern political philosophers to make it mandatory for the state to force the well off to assist those who would be harmed by the lack of assistance. There may well be strong arguments for forcing some people to help others, but it is surprising to find one that is supposed to be quintessentially liberal.

Observing the effects of good intentions is often a matter for bitter irony. Locke tried with his innocent-looking proviso to prove the

legitimacy of ownership and succeeded in undermining its moral basis. J.S. Mill thought that he was defending liberty, but what he achieved was to shackle it in strands of confusion.

Strict Liberalism

In order to prevent it from becoming indistinguishable from socialism, unprincipled pragmatism or just plain ad-hockery, liberalism must become more strict. It needs different foundations, and its structure must be made minimal and simple, so as better to resist the penetration of alien elements.

I suggest that two basic propositions, one logical and one moral, suffice to construct a new, stricter liberal doctrine capable of defending its identity. One is the presumption of freedom, the other the rejection of the rules of submission that imply the obligation of political obedience.

The Presumption of Freedom

The presumption of freedom should be understood to mean that any act a person wishes to perform is deemed to be free — not to be interfered with, regulated, taxed or punished — unless sufficient reason is shown why it should not be free.

Some deny that there is, or ought to be, such a presumption(2). However, the presumption is not a matter of opinion or evaluation that can be debated and denied. It is a strict logical consequence of the difference between two meanings of testing the validity of a statement, namely falsification and verification.

There may be an indefinite number of potential reasons that speak against an act you wish to perform. Some may be sufficient, valid, others (perhaps all) insufficient, false. You may falsify them one by one. But no matter how many you succeed in falsifying, there may still be some left and you can never prove that there are none left. In other words, the statement that this act would be harmful is unfalsifiable. Since you cannot falsify it putting on you the burden of proving that it would be harmless is nonsensical, a violation of elementary logic. On the other hand, any specific reason objectors may advance against the act in question is verifiable. If they have such reasons, the burden of proof is on them to verify that some or all of them are in fact sufficient to justify interference with the act.

All this seems trivially simple. In fact, it is simple, but not trivial. On the contrary, it is of decisive importance in conditioning the intellectual climate, the “culture” of a political community. The presumption of liberty must be vigorously affirmed, if only to serve as an antidote against the spread of “rightsism” that would contradict and undermine it, and that has done so much to distort and emasculate liberalism in recent decades. “Rightsism” purports solemnly to recognise that people have “rights” to do certain specific things and that certain other things ought not to be done to them. On closer analysis, these “rights” turn out to be the exceptions to a tacitly understood general rule that everything else is forbidden; for if it were not, announcing “rights” to engage in free acts would be redundant and pointless. The silliness that underlies “rightsism”, and the appalling effect it exerts upon the political climate, illustrates how far the looseness of current liberal thought can drift away from a more strict structure that would serve the cause of liberty instead of stifling it in pomposity and confusion.

The Rule of Submission

“The king in his council has expressed his will, and his will shall be obeyed by all” is a rule of submission. So are the rules that required the citizens of Venice to obey the Signoria, that gave the power to make laws to a majority of a legislature and the power to elect legislators to a majority of voters. The latter of these rules are more “democratic” than the former, but they all share the same essential feature, the obligation of all in a community to submit to the decisions of only some of them. Moreover, every such rule imposes the obligation to submit to decisions reached by certain persons in certain ways so to speak in advance, before knowing what those decisions are in fact going to be.

Reasons of practical expediency can be found why this must be so if the business of government is to be transacted. The reasons may be good ones, but the rule they call for is no less outrageous for all that. Submission can be morally acceptable if it is voluntary, and voluntary submission by rational individuals is conceivable on a case-by-case basis, on the merits of particular propositions. As a general rule, that amounts to signing a blank cheque, however, it can hardly be both voluntary and rational. If a general rule of submission is necessary for governing — which it might well be — then the legitimacy of government, any type of government, turns out to be morally indefensible.

Does this mean that strict liberals cannot loyally accept the government of their country as legitimate, and are in effect advocating anarchy? Logically, the answer to both questions must be “yes”, but it is a “yes” whose practical consequences are necessarily constrained by the realities of our social condition.

Orderly social practices that coordinate individual behaviour so as to produce reasonably efficient and peaceful cooperation, can be imposed by law and regulation. Today, many of our practices are in fact so imposed, many, but not all. Some important and many less vital yet useful ones are matters of convention.

Unlike a law that must rely on the rule of submission, a convention is voluntary. It is a spontaneously emerging equilibrium in which everybody adopts a behaviour that will produce the best result for him given the behaviour that he anticipates everybody else to adopt. In this reciprocal adjustment to each other, nobody can depart from the equilibrium and expect to profit from it, because he will expect to be punished for it by others also departing from the equilibrium. Unlike a law that depends on enforcement, a convention is thus self-enforcing. Its moral standing is assured because it preserves voluntariness.

David Hume was the first major philosopher systematically to identify conventions in general, and two particularly vital conventions, that of property and of promising in particular. Hayek's fundamental idea of the “spontaneous order” can best be understood in terms of conventions. We owe the rigorous explanation of the self-enforcing nature of conventions to John Nash, and more recent developments in game theory show that conflict-ridden social cooperation problems formerly believed to be “dilemmas” requiring state intervention, in fact have potential solutions in conventions.

The Strictly Liberal Agenda

It is easy to describe plausible scenarios in which spontaneous conventions emerge to suppress torts and protect life and limb, property and contract(3). However, such scenarios are written on a blank page, whilst in reality the page is already covered with what the past has written on it. In the West, at least two centuries of ever more elaborate legislation, regulation, taxation and public services - in short, recourse to the rule of submission — have bred a reliance on the state for securing social cooperation. Society has therefore less need for the old conventions, and its muscles for maintaining old conventions and generating new ones have atrophied.

In the face of this reality, it is probably vain to expect the collapse of a state to be followed by the emergence of ordered anarchy. The likeliest scenario is perhaps the emergence of another state, possibly nastier than its predecessor.

This limits the practical agenda of strict liberalism. Despite the logic of the thesis that the state is intrinsically unnecessary, and the attractiveness of ordered anarchy, it is hardly worth the effort to advocate the abolition of the state. But it is worth the effort constantly to challenge its legitimacy. The pious lie of a social contract must not be allowed to let the state complacently take the obedience of its subjects too much for granted. There is a built-in mechanism in democracy for the state to buy support from some by abusing the rule of submission and exploiting others. Loose liberalism has come to call this social justice. The best strict liberalism can do is to combat this intrusion of the state step by step, at the margin where some private ground may yet be preserved and where some public ground may perhaps even be regained.

Remarks:

(1) J.S.Mill, "On Liberty", ch.I., para 9.

(2) J.S.Mill, "On Liberty", ch.I., para 9. Notably Joseph Raz, "The Morality of Freedom", Oxford 1986, The Clarendon Press, pp.8—12.

(3) Cf. Jasay, Against Politics, London 1997, Routledge, Ch.9, "Conventions: Some Thoughts on the Economics of Ordered Anarchy".

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