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## REFLECTIONS

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# Liberalism, Loose or Strict



ANTHONY DE JASAY

Political doctrines can be understood and interpreted in many ways, but in order to survive and prosper, each doctrine needs an irreducible, constant element that represents its distinct identity and that cannot change without loss of the doctrine's 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 does not, it will be no longer nationalism but something else. Socialism appears in many guises, but all its versions have at least one common, unalterable feature: the insistence that all wealth is created by society, not by its individual members. Therefore, society is entitled to distribute wealth in whatever way fits its conception of justice. Common ownership of the means of production and equality of well-being are derivatives of this basic thesis. Liberalism, I maintain, has never had such an irreducible and unalterable core element. As a doctrine, it has always been rather loose, tolerant of heterogeneous components, easy to influence, open to infiltration 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 usages of the words *liberal* and *liberalism* are 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 government, but for active government. American liberalism now is mainly concerned with race, homosexuality, abortion, victimless crimes, and in general "rights." In mid-Atlantic

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*The Independent Review*, v. IX, n. 3, Winter 2005, ISSN 1086-1653, Copyright © 2005, pp. 427–432.

English, a liberal is what most Europeans would call a Social Democrat, and 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 usages do not have much in common. It should not surprise us that they do not.

## Loose Doctrine on Loose Foundations

Much of liberalism's lack of a firm identity is explained by its 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. 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 many kinds, protection for the weak against the strong, the progress of knowledge and the arts, glory and greatness; the list might be virtually endless. Many if not most of these values can be realized only by curtailing freedom. It is contrary to the liberal spirit of tolerance and love of liberty to 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 trade-offs between itself and other things. The amount of freedom that should be given up for a certain amount of security or equality or any other worthy objective that at least some people want to achieve is obviously a subjective matter, my values against yours, my argument against yours. Disagreement is legitimate. From this foundation, therefore, the evolution of the doctrine tends toward allowing rival values more and more lebensraum, to incorporate and cooperate with them. What results is a variable mishmash, all things to all men.

## Utilitarianism and the Harm Principle

This evolution, almost predestined by the doctrine's dependence on value judgments, was pushed further forward by the teachings of the three most influential theorists of classical liberalism, Jeremy Bentham, James Mill, and John Stuart Mill. They made one-man-one-vote and the good of the greatest number into imperatives 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 parrotlike docility in modern political discourse, and it is doing much to empty liberalism of any firm identity.

These three theorists also bear much of the responsibility for endowing liberalism with a utilitarian agenda. Liberal politics became the politics of betterment in all directions. There is always an inexhaustible fund of good ideas for improving things by reforming and changing institutions, by making new laws and 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 explicitly laid down that whereas the production of wealth is governed by economic laws, its distribution is for society to decide. Utilitarianism made such redistribution not only legitimate but mandatory because by failing to increase total utility by redistributing incomes, we fail to do the good that we can 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. “[T]he 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” (*On Liberty*, chap. 1, para. 9). 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 that some people regard as grounds for government interference, whereas others regard them as simply facts of life, best 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”; certain modern political philosophers invoke the harm principle to make it mandatory for the state to force the well-off to assist those who would be harmed by the lack of assistance. Strong arguments may exist 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. John Stuart Mill thought that he was defending liberty, but he ended up shackling it in strands of confusion.

## Strict Liberalism

To prevent liberalism from becoming indistinguishable from socialism, unprincipled pragmatism, or just plain ad hockery, it must become stricter. It needs different foundations, and its structure must be made minimal and simple, so as to resist better 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 permissible—not to be interfered with, regulated, taxed, or punished—unless sufficient reason is shown why it should not be permissible.

Some deny that there is, or ought to be, such a presumption (notably Raz 1986, 8–12). 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.

An indefinite number of potential reasons may speak against an act you wish to perform. Some may be sufficient or valid, others (perhaps all) insufficient or false. You may falsify them one by one. No matter how many you succeed in falsifying, however, some may still be left, and you can never prove that none are left. In other words, the statement that a particular act would be harmful is not falsifiable. Because you cannot falsify the statement, putting on you the burden of proving that the act would be harmless is nonsensical, a violation of elementary logic. In contrast, any specific reason that objectors may advance against the act in question is verifiable. If they have such reasons, the burden of proof rests on them to verify that some or all of those reasons 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 affirmed vigorously, if only to serve as an antidote against the spread of “rightsism” that contradicts and undermines liberalism and that has done so much to distort and emasculate liberalism in recent decades. “Rightsism” purports solemnly to recognize 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 such were not the case, announcing “rights” to engage freely in certain acts would be redundant and pointless. The silliness that underlies “rightsism” and the appalling effect it has on the political climate illustrate how far current liberal thought has drifted away from a stricter 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, which 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 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 in advance to decisions that certain persons reach in certain ways, before a community knows what those decisions are in fact going to be.

Reasons of practical expediency can be found why such submission must prevail 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 check, however, submission can hardly be both voluntary and rational. If a general rule of submission is necessary for governing—and it may well be—then the legitimacy of government, any type of government, turns out to be morally indefensible.

Does this inference mean that strict liberals cannot loyally accept the government of their country as legitimate and that in effect they should advocate anarchy? Logically, the answer to both parts of the question 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 behavior 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 practices 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 behavior that will produce the best result for him, given the behavior that he anticipates everybody else will adopt. In this reciprocal adjustment, nobody can depart from the equilibrium and expect to profit by doing so because he will expect to be punished for it by others’ departure 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, including two especially vital conventions, of property and of promises, in particular. F. A. Hayek’s fundamental idea of the “spontaneous order” can be understood best 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 to protect life and limb, property and contract (Jasay 1997, 192–212). However, such scenarios are written on a blank page, whereas 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, repeated recourse to the rule of submission—have bred a reliance on the state for securing social cooperation. Society therefore has less need for the old conventions, and its muscles for maintaining old conventions and for 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. Perhaps the likeliest scenario is the emergence of another state, possibly nastier than its predecessor.

This reality limits strict liberalism's practical agenda. 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. It is worth the effort, however, constantly to challenge the state's legitimacy. The pious lie of a social contract must not be allowed to let the state complacently take its subjects' obedience too much for granted. Democracy has a built-in mechanism for the state to buy support from some by abusing the rule of submission and exploiting others. Loose liberalism has come to call this practice "social justice." The best that strict liberalism can do is to combat this state intrusion step by step at the margins, where some private ground may yet be preserved and where perhaps some ground may even be regained.

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