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# What Is Living and What Is Dead in Classical Liberalism?

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**T**he momentous upheaval in Eastern Europe in 1989, followed by the complete disintegration of the USSR, did not usher in the “end of history” as claimed by overly enthusiastic Western commentators such as Fukuyama (1992) in the first wave of euphoria over the collapse of Marxist-Leninist dogma. However, as James Buchanan (1991) noted, it did end a vision of socioeconomic political reality based on collectivist-socialist ideas. It is now possible to analyze the complexities of social interaction among individuals without regard to the collectivist-socialist shadow that has been cast over such discussions for the better part of the twentieth century.

Especially important, in such circumstances, is that those who place a high value on individual freedom do not become complacent about their cause. On the one hand, the collapse of the Soviet Empire has provided unequivocal evidence that socialism cannot create wealth and cannot tolerate liberty. If the proposition is accepted that ideas have consequences, then the failure of the socialist idea should open up opportunities for halting and reversing the drift toward collectivization in advanced Western democracies. On the other hand, false complacency among pro-market scholars and advocates, based on unfounded notions that the philosophic and economic debate has ended in a decisive victory, may lower the vigilance that is con-

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tinuously necessary to protect liberty against the forces of mercantilism.

As Buchanan (1991) has observed, the demise of socialism has discredited, perhaps forever, the appeal of “politics in the large” in the sense of the centrally planned and controlled economy in which individuals must seek their own realization as integral components of a socialist community. However, the demise of socialism does not seem to have discredited the appeal of “politics in the small” in the sense of piece-by-piece interference with market processes. The electorate in its majority has not come to any robust acceptance of the notion that if politicization does not work when applied over all markets, then it will not work in the case of particular markets, taken one at a time.

In large part, this hesitancy is explained by pressures of public choice. In not inconsiderable measure, however, it is reinforced by a failure of conviction or of continuing resolve among classical liberal scholars, including those who once were the intellectual giants of the classical liberal movement.

### In Retreat from Utopia

In 1974, Robert Nozick challenged the most commonly held political and social positions of that time—liberal democrat, socialist, and conservative—by reasserting that individuals have rights and that there are things no person or group may do to them without violating their rights. So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do.

Nozick’s main conclusions were that a minimal state, limited to the narrow functions of protection against force, theft, and fraud, and concerned with the enforcement of contracts, is justified; that a more extensive state must violate individuals’ rights to do certain things, and is unjustified; and that the minimal state is inspiring as well as right. Two implications are that the state may not use its coercive apparatus to (1) require some citizens to aid others or (2) prohibit individuals from certain activities for their own good or protection.

In 1989, Nozick categorically repudiated this concept of utopia, denied the relevance of philosophy for matters of substantive policy, and opted for the “zigzag of politics” rather than for the principled position of his earlier political philosophy. This retreat from classical liberalism was driven by a judgment that any focus on individual rights detracts from communitarian impulses and fails to embrace humane considerations and joint cooperative activities: “There are some things we choose to do together through government in solemn marking of our human solidarity, served by the fact that we do them together in this official fashion and often also by the content of the action itself” (287).

In this view, democracy is a mechanism through which individuals seek symbolic self-expression as a means of intensifying the reality of social soli-

darity and humane concern for others. In contrast, the libertarian view, by looking exclusively at the purpose of government, fails to take account of the meaning of government.

More than this, joint political action does not merely express our ties of concern; it constitutes a relational tie itself. So important are these relational ties that individuals who are not included in such ties should be required to pay taxes to support the programs that such ties involve. If a democratic majority desires jointly and symbolically to express its most solemn ties of concern and solidarity, the minority who prefers differently will have to participate sufficiently to be spoken for.

Such bonds of concern, according to Nozick, may imply limitations on liberty concerning particular kinds of human action; for example, justification of antidiscrimination laws in employment, public accommodations rental, or sale of dwelling units, and so on. They may lead even to justified limits on the freedom of speech and assembly. No general principle draws the line on such limitations on liberty. All decisions depend on the extent and range of the general population's actual feelings of solidarity and concern, and their need to give these feelings symbolic political expression.

Let us suppose there are multiple competing values that can be fostered, encouraged, and realized in the political realm. Further suppose it impossible to include all such goals in some consistent manner. Despite this conflict, argues Nozick, many goals that cannot be pursued together at the same time can be reconciled over time by pursuing one for some years, then another some years later. This explains why the electorate zigzags between political parties over time. Given a choice between permanently institutionalizing the particular content of any group of political principles thus far articulated and the zigzag process of democratic politics, Nozick is clear which direction he will take: "I'll vote for the zigzag every time" (Nozick 1989, 296).

### In the Bunkers of Civil Society

John Gray's early writings on the philosophies of John Stuart Mill, Friedrich von Hayek, and Isaiah Berlin placed him forthrightly in the camp of classical liberal political philosophy. Surely, his writings never embraced the concept of the minimal or night-watchman state in the sense of Robert Nozick (1974). Yet throughout the period of 1976 to 1988, he embraced the notion that individual liberty represents a worthwhile ethical goal and that classical liberalism can be justified by reference to extant political philosophy.

In his 1976 paper on John Stuart Mill, Gray acknowledges that "[i]f there is a consensus on the value of Mill's political writings, it is that we may turn to them for the sort of moral uplift that sustains the liberal hope" (Gray 1989a, 1). He continues by noting that "Mill's writings contain an argument for an open society which has not yet been decisively refuted, and

of which every generation needs reminding” (1). He endorses the central argument of Mill’s *On Liberty*, “the claim that a liberal society is the only kind of society in which men confident of their own manifold possibilities but critical of their own powers and of each other, men who aspire to the status of autonomous agents and who cherish their own individuality, will consent to live” (2).

Following a detailed review of Mill’s utilitarian-driven political philosophy, Gray concludes that “[t]hough we must not expect from Mill’s writings a blueprint for the achievement of a liberal society in a world in many ways very different from Mill’s — radicals will be unreasonable if they neglect Mill’s thought on some of the principal dilemmas that perplex us today” (Gray 1989a, 8).

In his 1980 paper on negative and positive liberty, Gray extols the analysis of Isaiah Berlin, whose paper “Two Concepts of Liberty” (1968) argues that the concept of negative freedom (the absence of coercion of one individual by another) is to be favored over all other concepts of freedom. Gray endorses Berlin’s doctrine of value pluralism and his preference for a liberal society in which a wide diversity of ends is promoted.

In his 1981 essay on Friedrich von Hayek, Gray criticizes Hayek for blurring the boundaries of individual freedom and for assimilating it to other goods such as the rule of law and social stability. For this reason, Gray contends, “Hayek’s account of law and liberty runs the risk of losing the peculiar importance of individual freedom conceived as a virtue of political order” (Gray 1989a, 97). Gray concludes that a conception of individual rights can be defended only as abstraction from political experience.

Yet, in 1989, Gray pronounced that his twelve-year project to define classical liberalism and to give it a foundation had been a failure, and he condemned classical liberal ideology as an impossibility. The various projects of grounding liberalism as a set of universal principles in a comprehensive moral theory—rights-based, utilitarian, contractarian, or otherwise—had all turned out to be inadequate and essentially incoherent.

This failure was not to be lamented, he argued, “since liberal political philosophy expresses a conception of the task and limits of theorizing that is hubristic and defective” (Gray 1989a, vii). He also described the ruin of classical liberal political philosophy as “only the most spectacular instance of the debacle of the received tradition, modern as much as classical, of philosophy as a discipline” (vii).

In his 1993 book *Post-liberalism*, Gray pokes around among the rubble of classical liberal philosophy to determine what, if anything, is left. He concludes that none of the four constitutive elements of doctrinal liberalism—universalism, individualism, egalitarianism, and meliorism (or human flourishing)—can survive the ordeal by value pluralism, and that liberalism, as a political philosophy, therefore is dead. What is living in liberalism, he maintains, is the historic inheritance of a civil society whose institutions protect liberty and permit civil peace. He reasons that such a civil society is

the best one for all contemporary cultures, because they harbor a diversity of incommensurable conceptions of the good.

If civil society is all that is left—the living kernel—of classical liberalism, what then is its nature? Gray's response to this question is expansive. If there is an ultimate diversity of forms of human flourishing, embodied in ways of life only some of which can be accommodated within a classical regime, then classical liberal orders have no general superiority over orders that are not classically liberal. In short, value pluralism dictates pluralism in political regimes and undermines the claim that only classically liberal regimes are fully legitimate.

A civil society, for John Gray, is one tolerant of the diversity of views, religious and political, that it contains, one in which the state does not seek to impose on all any comprehensive doctrine. Thus Calvin's Geneva was not a civil society, and none of the twentieth-century species of totalitarianism encompassed civil societies.

A second feature of civil society is that both government and its subjects are restrained in their conduct by a rule of law. A state in which the will of the ruler is the law, and for whom, therefore, all things are permissible, cannot contain or shelter a civil society. One implication of this construct is that civil society presupposes a government that is limited, not omnipotent.

A third feature of civil society is the institution of private or several property. Societies in which property is vested in tribes, or in which most assets are owned or controlled by governments, cannot be civil societies.

In Gray's view, civil societies thus defined need not have the political and economic institutions of liberal democracy; in historical terms, most do not. Nor need they contain the moral culture of individualism. In his view, Czarist Russia was a civil society for the last fifty years of its existence, as was Bismarckian Prussia. According to this model, the authoritarian societies of modern East Asia—South Korea, Taiwan, and Hong Kong—are also all civil societies.

Nor, for John Gray, is civil society to be identified with market capitalism. Several or private property may come in a variety of forms, each of them artifacts of law. The institution of the capitalist corporation is only one species of the private or several property institution on which a civil society rests.

Considered in light of these ideas, Russia will go badly astray if it seeks to replicate the Western form of capitalism. What is needed in post-1991 Russia is a radical deconcentration of economic activity to municipal, village, and cooperative levels in which the Russian tradition of cooperation can be revived. In Japan, also, Westernization would only involve injury to valuable social systems, with few, if any, corresponding advantages.

Evidently, civil societies come in many varieties. They may be democratic or authoritarian, capitalist or noncapitalist, individualist or nonindividualist in nature. What they have in common is the practice of liberty—as evidenced in the rule of law and private, or several, property—and the civil

liberties of voluntary association, conscience, travel, and expression. They need not shelter democratic freedom.

This broad tent is put forward as the living kernel of classical liberalism—all that remains from several centuries of classical liberal philosophy. In my view, it is not a living kernel but an empty shell. In the remainder of this paper, I search for an explanation of what has prompted leading scholars to abandon classical liberal philosophy, and I attempt to set the record straight by outlining a consistent and coherent Lockean justification for the minimal state.

## Anarchy-versus-Order: The Political Philosophy of Thomas Hobbes

Two great dichotomies dominate the political thought of all times: oppression-versus-freedom, and anarchy-versus-order (Bobbio 1993, 29). Thomas Hobbes (1588–1679) belongs in the company of those whose political thought has been inspired by the latter dichotomy: the ideal he defends is not liberty against oppression, but order against anarchy. Hobbes is obsessed with the idea of the dissolution of authority, the disorder that results from the freedom to disagree about what is just and what is unjust, and with the disintegration of the unity of power, which he views as inevitable once individuals begin to contend that power must be limited. The ultimate goal that motivates individuals in his moral philosophy is pursuit of peace and not of liberty.

Hobbes’s fundamental obsession is the threat of anarchy, which he considers to be the return of mankind to the state of nature. The evil he fears most is not oppression, which derives from the excess of power, but insecurity, which derives from the lack of power. Hobbes feels called upon to erect a philosophical system as “the supreme and insuperable defense against insecurity” (Bobbio 1993, 29)—insecurity, first of all, about one’s life; second, about material goods; and last, about that small or great liberty an individual may enjoy while living in society.

Hobbes’s three main political works, *The Elements of Law Natural and Politic* (1650), *De Cive* (1651), and *Leviathan* (1651), provide descriptions of the state of nature that substantively are identical and meant to play the same role. The principal objective condition is that human beings, *de facto*, are equal. Being equal by nature, they are capable of inflicting the greatest of evils on one another: death. To this he adds the second objective condition, scarcity of goods, which causes individuals each to desire the same thing. This combination of equality and relative scarcity generates a permanent state of reciprocal lack of trust, which induces all to prepare for war, and to make war if necessary, rather than to seek peace.

One of the objective conditions emphasized in *Elements* and *De Cive* is the *ius de omnia*, the right to all things nature gives to anyone living

outside civil society. De facto equality, together with the scarcity of resources and the right to all things, inevitably generates a situation of merciless competition, which always threatens to turn into a violent struggle. This situation is made worse by the fact that nature has placed in this predicament individuals dominated by passions that incline them to unsociability.

Hobbes does not have a flattering opinion of his fellow human beings. While discussing freedom and necessity with Bishop Bramhall, Hobbes asserts that “human beings resist truth because they covet riches and privilege; they crave sensual pleasures, they cannot bear to mediate, and they mindlessly embrace erroneous principles” (Bobbio 1993, 40). In *Leviathan* he divides human beings into those devoted to covetousness and those devoted to sloth, then comments that these “two sorts of man take up the greatest part of mankind” (Hobbes 1946, chap. 30, para. 224). Furthermore, a description of the state of nature in *Elements* stresses vain-glory as the passion “which deriveth from the imagination of our own power above the power of him that contendeth with us” (Hobbes 1928, I,9,1,28).

In *Leviathan*, Hobbes links together three causes of conflict: competition, which makes individuals fight for gain; diffidence, which makes them fight for security; and vainglory, which makes them fight for reputation. These conflicts give rise to the problem of power, the fundamental problem of political science, which Hobbes clarifies in two lines: “So that in the first place, I put forward a general inclination of all mankind, a perpetual and restless desire for power after power, that ceaseth only in death” (1946, chap. 11, para. 24). The state of nature is terrifying because the desire for power generates a state of war. This is an intolerable condition, one that individuals sooner or later must abandon if they wish to save what is most precious to them: their lives.

Right reason suggests to human beings a set of rules in the form of laws of nature that aim at ensuring peaceful cohabitation. These rules are subordinated to a primary rule that prescribes the seeking of peace. Individuals have no interest in observing a rule if they are not certain that others will do the same. There is but one way to make the laws of nature effective and to make human beings act according to their reason and not their passions: the institution of the irresistible power of the state. To exit the state of nature and to establish civil society, reasoning individuals must enter into a universal and permanent “covenant of union.”

Because the state of nature is insecure, the principal aim of the agreement is to eliminate the causes of insecurity, greatest of which is the lack of a shared power. The aim of the contract that founds the state is to constitute a shared power. The only way to do so is for all individuals to consent to give up their own power and transfer it to one person, be it natural or artificial; for example, an assembly. This entity will have as much power as is necessary to prevent all individuals from harming others by the exercise of their own power.

Individuals acquire a fundamental obligation as a consequence of this pactum subjectionis (pact of subjection); namely, the obligation to obey all commands of the holder of shared power. Within this covenant of union, an agreement in which all parties agree to subject themselves to a third party who does not participate in the contract, the third party's power combines the supreme economic power (dominium) and the supreme coercive power (imperium). "There is no power on earth," says the verse from the Book of Job that describes the sea monster Leviathan, "which is equal to it" (Job 41:24).

By holding that the sovereign power is irrevocable, Hobbes opposes the theory of trust on which Locke later rests his social contract. By holding that the sovereign power is absolute, in the sense of *legibus salutus* (not bound by laws), he denies the various theories that favor limiting the power of the state. Since individuals give up the right to all things in the covenant in order to preserve their lives, they retain only the right to their own lives. Thus, human beings must consider themselves released from the obligation to obedience only if the sovereign endangers their lives.

Hobbes's justification of absolutism runs counter to a long-held principle of English constitutional doctrine, according to Bracton's classical formulation: "The king must not be under man, but under God and under the law, because law makes the king" (Bracton 1968, 33). Hobbes easily rejects the thesis according to which the sovereign is subject to civil law (thesis in the terminology of Hayek), with the argument that no one can oblige oneself. Since civil laws are issued by sovereigns, the sovereigns would impose an obligation on themselves, were they subject to obligations.

But a more serious question must be answered: how is this unlimited sovereign power to be reconciled with other laws; namely, the common law (*nomos* in the terminology of Hayek) and natural law? Not surprisingly, Hobbes is a declared enemy of common-law supporters, most notably hostile to Sir Edward Coke, the great protagonist of the common law. "Custom of itself maketh no law," Hobbes states in *Leviathan* (1946, chap. 26, para. 176).

As a proponent of natural law, Hobbes repeatedly affirms that the sovereign is subject to the laws of nature and of God. However, in his view, the laws of nature are rules of prudence, or technical norms, compliance with which depends on one's judgment about the feasibility of pursuing one's objectives in given circumstances. Only sovereigns can make this judgment in their relations with their subjects, toward whom they are not bound by any covenant; they have no external obligation to anyone to comply with the dictates of right reason.

Since the laws of nature oblige only in conscience, the dictates of right reason do not limit the sovereign's power. Once the state has been instituted, there exist for the subjects no criteria of just or unjust other than the civil laws. This view makes Hobbes's moral theory one of the most extreme expressions of ethical legalism: what is right is what the sovereign com-



mands. For example, Hobbes insists in *De Cive* that “though the law of nature forbids theft, adultery, etc. yet if the civil law commands us to invade anything, that invasion is not theft, adultery, etc.,” and “[n]o civil law whatsoever, which tends not to a reproach of the Deity—can possibly be against the law of nature” (1845, chap. 10, para. 190–91).

In this perspective, there can be no theory of the abuse of power, since abuse consists of going beyond established limits. On the contrary, what may prompt subjects to consider themselves released from the duty of obedience is not abuse, but defect of power. Sovereigns who prove incapable of preventing their subjects from relapsing into the state of nature do not perform their task. Subjects then, and only then, have the right to look for another protector.

Interpreted along these lines, Hobbes’s political philosophy conforms to only one version of modern natural-law theory: that natural law constitutes the foundation of validity of the positive legal order, taken as a whole (Bobbio 1993, 157). This version of natural-law theory serves his purpose of founding rationally the ideology of the absolute state. The distinct feature of this version of natural-law theory is its acknowledgment that once the state has been instituted, only one law of nature survives; namely, the law that imposes on human beings the obligation to obey civil laws.

Thus, if a conflict were possible between civil law and natural law, “the citizen who obeyed the latter rather than the former would violate the general law of nature which prescribes obedience to civil laws” (Bobbio 1993, 165). Civil law is based on the law of nature, but once civil law has been established, the norms of the system derive their validity from the authority of the sovereign and not from the particular laws of nature. Hobbes admits only two exceptions to this duty of obedience: (1) when sovereigns command subjects to offend God; (2) when sovereigns command subjects to honor them as if the sovereigns were God. In this way, Hobbes deploys the most sophisticated ingredients of natural law—the state of nature, individual rights, and the social contract—to develop a logically consistent theory of obedience to the state.

I shall attempt to demonstrate in this essay that classical liberal scholars who seek to justify limited government by reference to Hobbesian arguments logically must fail to do so and, almost inevitably, end up at some point on the anarchy-order spectrum with their original classical liberal principles in disarray.

## Oppression-versus-Freedom: The Political Philosophy of John Locke

In order to understand the political philosophy of John Locke (1632–1704) and to distinguish it from that of Hobbes, it is essential to return to the concept of the state of nature, which is the starting point in Locke’s genetic account of the rise of civil societies. For Locke’s concept of the state of

nature differs fundamentally from that of Hobbes in moral as well as in strictly positive characteristics.

Hobbes's social characterization of the state of nature in *Leviathan* is unambiguous. Life is portrayed as "solitary, poor, nasty, brutish and short," a condition of war with "every man against every man," in which there is no industry, no culture, and no real society (1946, chap. 13, para. 8–9). The moral condition of individuals in that state is less clear, although it is evident that they have no moral rights or obligations at all in the ordinary sense—"the notions of right and wrong, justice and injustice, have there no place" (chap. 13, para. 13).

Locke's social characterization of the state of nature is much less bleak than that of Hobbes. In *Two Treatises of Government*, first published in 1690, he asserts that "Want of a common judge with authority, puts all persons in the state of nature," (Bk. II, para. 19) and "Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature." Locke consistently claims that wherever no one is entitled to settle controversies between two persons, wherever there is no authorized referee to judge between them, those persons are in the state of nature. It is important to note that he considers this a sufficient and not a necessary condition.

Within this characterization, the presence or absence of effective government is not at issue. According to Locke, individuals may be living under effective, highly organized government and still be in the state of nature, if the government is illegitimate with respect to these individuals. At the very least, it is necessary to build into the definition the absence of legitimate government. To deal with this concept, one must take account of Locke's moral characterization of the state of nature, which also differs sharply from that of Hobbes.

Locke's definition of the state of nature clearly incorporates moral elements, making use of such notions as legitimacy and voluntary agreement. Individuals are endowed with full-blown moral rights and obligations defined by the eternal and immutable law of nature (Bk. II, para. 135). Although the particulars of the law of nature are not defined in any detail, their general form is clear. They consist of duties to preserve oneself and others by not harming persons in their lives, liberties, and properties. In the state of nature, persons enjoy their full complement of "natural rights," which correlate with the natural duties of others to respect those rights.

Each individual, Locke affirms, is born to inherit this set of rights and duties and receives them fully on reaching maturity (Bk. II, para. 55, 59). Natural rights are a "grant or gift from God" (Bk. I, para. 116), which individuals possess intact until they consent to enter a legitimate civil society, surrendering some of these rights in the process. However, private contracts between individuals are fully consistent with the state of nature. Such contracts may alter the existing structure of rights and duties among mature individuals, save only those rights and duties that in principle are inalien-

able. In this sense, consent “carves the boundaries of natural law” (Simmons 1993, 25).

What is the social characterization of the state of nature? Locke sets forth two contrasting situations. At one extreme, he describes the state of nature as “a state of peace, good will, mutual assistance and preservation” (Bk. II, para. 19). At the other extreme, he describes it as “a state of enmity, malice, violence and mutual destruction” (Bk. II, para. 19). Both descriptions are of possible states of nature, but neither is of the state of nature (Simmons 1993, 28). Where individuals almost always abide by the laws of nature, the state of nature will be one of peace, goodwill, and the like; where individuals typically disregard the law, the state of nature will be one of enmity, malice, and the like.

Since individual behavior almost always falls between these two extremes, the social characterization of the state of nature in the *Two Treatises* is a mixed account, or as Locke puts it, “one of mediocrity” (Journal entry, March 20, 1678). It is a state of limited safety and considerable uncertainty, of significant but not desperate inconveniences, and in which only certain limited forms of political society will be preferable. Locke, in contrast with Hobbes, focuses more on the moral than on the social characterization of the state of nature. For Locke, the only intelligible choice is between some limited form of government and anarchy. Along these lines, the absolute government favored by Hobbes is clearly worse than the worst consequences of anarchy.

In one respect, both Hobbes and Locke share the same view. They are fundamentally opposed to political naturalism, which holds that the natural condition of humans is a political condition; that individuals naturally are subject to political authority; that there can be no understanding of morality or social understanding except within the context of some form of political organization. Contemporary political naturalists take their inspiration from Aristotle or Hegel. Locke was more concerned with defenders of the divine right of kings, like Filmer (1680), whose patriarchal theories of authority defended the autocracy of the House of Stuart.

The Lockean assertion that each individual is born free in the state of nature correctly recognizes that we are not born into political communities, even if we are born into the territories of such communities. We are not naturally citizens and must do something to become citizens. The claim that our natural moral condition is nonpolitical “is a refusal to accept mere accidents of birth as the source of substantial moral differences among persons” (Simmons 1993, 38). It is from this strong foundation that Lockean political volunteerism begins and develops and from which Nozick’s (1989) retreat into communitarianism can be seen to be philosophically flawed.

Locke clearly depicts the state of nature as a state of “perfect freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the law of Nature, without asking leave, or depending upon the Will of any other Man” (Bk. II, para 4). In this sense,

his political philosophy clearly runs on the freedom-versus-oppression and not on the anarchy-versus-order spectrum. Locke's state of liberty, however, is not a state of license. The state of nature has a law of nature to govern it, which obliges every individual: no individual "ought to harm another in his Life, Health, Liberty, or Possessions" (Bk. II, para. 6).

The law of nature essentially reflects the moral claim of each individual to negative freedom and the duty of each individual to uphold the negative freedom of all others. To this end, each individual has an executive power to punish the transgressors of the law of nature "to such a Degree as may hinder its Violation" (Bk. II, para. 7). Indeed, those who transgress the law of nature to a sufficient degree may forfeit their own rights to life, liberty, and property. The constant danger of the state of nature degenerating into a state of war is the chief reason advanced by Locke for preferring a limited government (civil society) to the state of nature.

Locke was fully aware of the inconveniences of the state of nature, which he deemed "must certainly be great" because men may be judges of their own case. Yet, he considered this a much better situation than that in which individuals are bound to submit to the unjust will of others. At least, in the state of nature, if individuals judge wrongly in their own or any other case, they are answerable to the rest of mankind. By agreeing to leave the state of nature and to enter into civil society, individuals necessarily sacrifice their right to judge and to punish the breaches of natural law by others. This is no mean sacrifice, and it will not be countenanced unless the civil society is strictly limited with respect to the authority that it subsumes.

Civil societies and governments do not possess rights naturally; only individuals have that capacity. For Locke, there is only one possible process by which such political rights can be secured. Only voluntary alienation by the right holder—consent, contract, trust—can give another person or body political power over the right holder. "Men being—by nature, all free, equal, and independent, no one can be put out of his estate, and subjected to the political power of another, without his own consent" (Bk. II, para. 95). "No government," he adds, "can have a right to obedience from a people who have not freely consented to it" (Bk. II, para. 192).

Locke's wording makes it clear that by "consent" he means the actual personal consent of each individual. Hypothetical contractarianism plays no role in his political philosophy. Once actual consent is abandoned as the ground on which civil society is made to rest, we also abandon much of what is most compelling about classical consent theory—namely, the clear, uncontroversial ground of obligation on which it relies, and the high value of self-government with which it remains consistent (Simmons 1993, 78). Societies that refuse to permit or fail to facilitate free choice of political allegiance are simply illegitimate; however, many such societies might actually exist.

Locke's emphasis on personal consent does not imply any special commitment to democratic government. Consent, for Locke, is the source of a

just government authority and its citizens' obligations. It does not determine the form that the government will take. Democracies may be legitimized by consent, but so may oligarchies and monarchies, hereditary or elected. Individuals consent to membership in the society. The majority then determines the form of government to be entrusted with that society's political power. However, a separate, special consent (Bk. II, para. 138-40) is always required to resolve the issue of taxation under any form of government.

That all individuals possess certain natural, inalienable rights, a thesis closely associated with Locke, is seen as strictly limiting the proper sphere of government. The concept of inalienability should, however, receive close examination. One view, closely associated with resisting oppression, is that an inalienable right is a right that no person can take away. A different, and more extensive, view is that it is a right that cannot be lost in any way, whether voluntarily or involuntarily.

According to Simmons (1993, 103), neither of these interpretations of inalienability is true to the seventeenth- and eighteenth-century employments of the concept. Revolutionary authors typically viewed inalienable rights as rights that no citizen could be understood to have given away. This view conforms with Locke's rule that "[n]obody can give more power [rights] than he has himself" (Bk. II, para 23). We can alienate only rights not connected with the preservation of ourselves or others.

From this perspective, governments cannot have the power to take our lives (unless we commit an appropriate crime), to deprive us of property at will, to rule by arbitrary decrees, or to tax us without our consent, because all these actions amount to the exercise of arbitrary powers that might endanger our lives if exercised maliciously. Each such transfer of power would be contrary to the natural law of preservation, "which stands as an eternal rule to all men, legislators as well as others" (Bk. II, para 135). In this sense, Locke's limits on government power imply that we cannot transfer to government rights that we ourselves lack. Only in this sense does Locke construe the moral limits on government to be limits set by the citizens' inalienable rights.

Precisely because Locke's philosophy is focused on the freedom-versus-oppression spectrum, the Two Treatises may be viewed as a work designed "to assert a right of resistance to unjust authority, a right, in the last resort, of revolution" (Dunn 1969, 28). It is Locke's attempt to evaluate the moral consequences of governmental transgressions of its limited authority. Locke's use of strong-rights claims allows the revolutionary a moral high ground to stand on in resisting government (Simmons 1993, 152). When Locke's citizen defends his rights, those who oppose him also wrong him by breaching their duties to respect his rights. Crucial to this judgment is Locke's argument that rights can only be alienated by those who possess them and that certain rights are inalienable in the sense just defined.

Locke employs two distinct lines of argument in justifying a popular

right of resistance to oppressive government. In his first line of argument, he justifies such resistance on the ground that, under certain conditions, a state of war exists between the people and their government. Here Locke focuses, naturally, on the case of tyrannical executive power (James II). In such cases, the oppressors forfeit all rights under the law of nature and may themselves be lawfully killed or used at will by any other person.

In his second line of argument, Locke notes that when governments act contrary to the terms of trust “by this breach of trust they forfeit the power the people” have “put into their hands” (Bk. II, para. 222). Such a breach of trust need not involve either a basic breach of natural law or the forfeiture of all natural rights. Governors who breach their trust reduce themselves to the status of ordinary persons without authority (Bk. II, para 235).

Being thus deprived of their referee, the common judge over them all, the people might seem to be returned to the state of nature as a consequence of the misconduct of their government. Locke, perhaps incorrectly, rejects this inference: “The usual and almost only way” political societies themselves are dissolved “is the inroad of foreign force making a conquest upon them” (Bk. II, para. 211). Otherwise, political societies remain and the governments actually “dissolve themselves,” leaving the people morally free to seek new avenues for securing their rights (Simmons 1993, 163).

## The Shift to the Anarchy-versus-Order Spectrum

Having presented the foundations of the two political spectrums, I will now explain the apparent retreat from classical liberal philosophy evident in the writings of Robert Nozick and John Gray in the very year (1989) that witnessed the final collapse of classical liberalism’s archenemy, Marxist-Leninist philosophy. I shall attempt to explain that this inexplicable change of course occurred not as a retreat but as a shift of focus from the freedom-versus-oppression to the anarchy-versus-order dichotomy. It is entirely possible that this shift of focus occurred unconsciously rather than explicitly on the part of Nozick and of Gray. The consequences, in any event, are profound.

### Robert Nozick

In 1974, starting with a strong assumption of value pluralism, Nozick concluded that there was indeed a utopia, one best society for everyone to live in, even though there would not be one kind of community existing and one kind of life led in utopia. He conceived of this utopia as a framework for utopias: “a place where people are at liberty to join together voluntarily to attempt to realize their own vision of the good life” (309). Utopia in this sense is a society governed by the Lockean minimal state. This morally favored state, “the only morally legitimate state, the only morally tolerable one,” (333) is the one that best realizes the utopian aspirations of untold dreamers and visionaries:

The minimal state treats us as inviolate individuals, who may not be used in certain ways by others as means or tools or instruments or resources; it treats us as persons having individual rights with the dignity this constitutes—How dare any state or group of individuals do more. Or less. (334)

In 1989, this vision of utopia was denied by Nozick as “a book of political philosophy that marked out a distinctive view, one that now seems seriously inadequate to me” (17). A careful reading of *The Examined Life* suggests that in the act of denying his early scholarship, Nozick has shifted focus from the freedom-versus-oppression to the anarchy-versus-order dichotomy.

First, in his discussion of different stances, Nozick suggests that the very question, *How can I be free?* is rooted in excessive egoism. He suggests that the relative stance, in contrast, asks how one can be related to external reality and can prize determination of action. What would be regrettable, from the point of view of this stance, would be a determinism that was only partial, one that was not complete enough (Nozick 1989, 161). Second, in his discussion of authority, Nozick (1989, 175) notes that authority has legitimacy to the extent that those commanded feel obligated to obey. A leader functions to resolve the competition of goals. Only under special conditions can society avoid the need for leadership of some sort. Third, in his discussion of Plato’s degree of reality theory (Nozick 1989, 199), Nozick emphasizes such criteria as being invariant under certain transformations, being more permanent, specifying a goal toward which things move. In all these observations, a yearning for unity or order is apparent.

This yearning for unity takes shape fully in Nozick’s retreat from the minimal state with all the disorder that *laissez-faire* seems to imply. Democratic institutions now are viewed as vehicles through which we express the values that bind us together, the solemn marking of our human solidarity (Nozick 1989, 287). The zig zag of politics, that sorry Nozickean retreat from the inspiring vision of the moral minimal state, is the only alternative to Leviathan for a scholar who has abandoned freedom for order and unity as the supreme goal of mankind.

## John Gray

In a sequence of papers published over the period from 1976 to 1988, John Gray pursued the ambitious project of defining classical liberalism and giving it a foundation. Although he always reviewed the writings of the great classical liberal scholars—John Stuart Mill, Isaiah Berlin, Friedrich von Hayek, Herbert Spencer and James M. Buchanan—in an appropriately critical manner, Gray culled from their contributions ideas that clearly provided the moral foundations for the limited, if not for the minimal, state. There was no real hint in these papers that his project would end in 1989 with a condemnation of classical liberal ideology as an inevitable failure: “Our cir-

cumstance, then, is the paradoxical one of post-moderns, whose self-understanding is shaped by the liberal form of life, but without its legitimizing myths, which philosophic inquiry has dispelled” (Gray 1989a, 240).

A careful reading of Gray’s scholarship, in both his 1989 volume, *Liberalisms*, and his 1993 *Post-liberalism*, suggests that Gray also has shifted from the freedom-versus-oppression to the anarchy-versus-order dichotomy in his denial of his early scholarship. This shift of focus apparently has been driven by the influence of Thomas Hobbes and Michael Oakeshott and by a misunderstanding of the writings of James M. Buchanan.

In his paper on Hobbes (Gray 1989b), Gray comments that “there is an arresting contemporaneity about many of Hobbes’s insights that we can well profit from,” and in his 1993 volume he states that “[f]ar from being an anachronistic irrelevance, Hobbes’s thought is supremely relevant to us, who live at the end of the modern era whose ills he sought to diagnose” (3). In Gray’s view, “the modern state has failed in its task of delivering us from a condition of universal predation or war of all against all into the peace of civil society” (Gray 1993, 3). In its weakness, the modern state has recreated in a political form that very state of nature from which it is the task of the state to deliver us: “In this political state of nature, modern democratic states are driven by a legal and political war of all against all and the institutions of civil society are progressively enfeebled” (Gray 1993, 3).

According to Gray, the paradox of the Hobbesian state is that whereas its authority is unlimited, its duty, the maintenance of civil peace, is minimal. Civil peace encompasses that framework of civil institutions whereby men coexist in peace with one another, notwithstanding the diversity of their beliefs and enterprises and the scarcity of the means whereby these are promoted. In this Hobbesian perspective, the liberties of the subjects of a civil society “are not absolute or inalienable rights, since they may be circumscribed by the requirements of a civil peace in the absence of which they are altogether extinguished” (Gray 1993, 10). Liberties (such as they are) are intimated by the spirit of civil society itself, which is held together only by recognition of the sovereign. The Hobbesian state, according to Gray, is the classical solution of the prisoner’s dilemma “in that the Hobbesian contract, by providing for agreed-upon coercion to obey known rules, releases its covenanters from destructive conflict into the peace of civil life” (13).

In his 1992 paper on Michael Oakeshott, Gray notes approvingly that Oakeshott rejected, as a prime example of rationalism in politics, the attempts by Locke, Kant, and Mill to fix, once and for all, the proper scope and limits of the authority of government. This rejection is based on the belief that the proper tasks and limits of government cannot be determined by reasoning from first principles.

In Oakeshott’s view, political discourse is not an argument, but a conversation. Gray (1993) is especially enamored of Oakeshott’s “pluralist affirmation of the diversity of modes of discourse and experience, of moralities as vernacular languages whose nature it is to be many and divergent,



and of the miscellaneity of practice, which no theory can hope to capture, that embodies his most distinctive contribution to philosophy” (46).

Gray captures the spirit of Oakeshott’s thought in a single phrase: “critique of purposefulness.” The image of human life that Oakeshott conveys to him is not that of a problem to solve or a situation to master. It is, instead, our image of being lost in a world in which our vocation is to play earnestly and to be earnest playfully, living without thought of any final distinction. That image does contain freedom, but not the kind of freedom that requires eternal vigilance as characterized in classical scholarship. Rather, it is the freedom of the boat without the compass.

Gray is not content, however, to end his philosophical journey in some Oakeshottian skepticism of human action, viewing philosophical discourse as so much flotsam and jetsam, tossed here and there on the tides of political events. Gray instead seeks out an anchor, in the wake of classical liberal philosophy, in the form of civil society. He anchors the concept of civil society, at least in part, in the scholarship of James M. Buchanan, who, paradoxically, he recognizes as focusing a “profound moral concern for the fate of free man and free peoples” in his reconstitution of classical political economy (Gray 1993, 47).

Gray is particularly attracted to Buchanan’s indirect, proceduralist contractarianism based on methodological individualism but presupposing the cultural inheritance of Western individualism, with its roots in Christianity and Stoicism. In Gray’s view, it is this cultural context that enables Buchanan to make the hazardous passage from Hobbesian despair to Humean hope, from the Leviathan of unconstrained majoritarian democracy to the limited government of constitutional democracy.

In his 1990 paper, Gray places at the crux of his inquiry the question, What is the place of liberty in Buchanan’s contractarian approach? He notes that Buchanan does not privilege liberty from the outset, that his approach does not issue in a determinate list of basic liberties that are fixed and unalterable. This is not surprising, given the Hobbesian pedigree of Buchanan’s political philosophy (Buchanan 1975).

Buchanan is also clear, argues Gray, that in any plausible real-world situation, contractarian choice will not yield a Lockean, Nozickean, or Spencerian minimal state; nor will it necessarily issue in unencumbered Lockean rights. Indeed, limited government, according to Buchanan, would surely have some redistributive functions. According to Gray (1993), in Buchanan’s system “liberty is not given the apodictive priority it has been in Kantian-inspired contractarianism, nor is it the case that the role of the state is defined by the protection of Lockean rights” (60).

Nevertheless, suggests Gray, Buchanan’s contractarianism is bound to bring about, in most real-world contexts, the enhancement and protection of individual liberty. It does so by virtue of its exploitation of the classical insight that voluntary exchange is mutually beneficial. It does so again because it defends the market economy in terms of its contribution to human

autonomy rather than of any abstract conception of general well-being or collective welfare. And it does so finally in virtue of its insight that, provided there is a suitable framework of law, the undesigned coordination of the market is superior to any that can be generated by command or coercion.

Buchanan's contractarianism, Gray concludes, cannot give universal protection to the personal or civil liberties central to the Western individualist tradition. Gray finds this limitation to be both inevitable and even desirable: "It is far from self-evident, and sometimes plainly false, that the institutions and civil liberties of even limited democratic government are always and everywhere appropriate and defensible" (1993, 61). In Gray's judgment, if liberty has a future, it will have been fortified by Buchanan's work. For the final message of Buchanan's thought, as he interprets it, is that if we wish to preserve the precious heritage of Western individualism, we are bound to engage in the project of theorizing the world as it is, without illusion or groundless hope.

## Conclusion

In my view, the retreat from classical liberalism on the part of both Nozick and Gray is completely explained by their shift, in a troubled world, from a preoccupation with the goal of preserving liberty to that of preserving order; that is, from a commitment to the philosophy of Locke to that of Hobbes. In both cases, reliance is now placed on some broad-tent notion of civil society as a basis for preserving the political legacy of classical liberal philosophy from the ravages of totalitarian pressures.

I am far from optimistic about this pragmatic judgment for a number of reasons, some of which Buchanan (1975) himself shares. First, if Gray is truly correct about the Hobbesian nature of man, there really is no prospect of a social contract short of that which creates Leviathan. All potential parties to a Hobbesian contract, except for a contract in which they hand over all authority to a superior being, must surely anticipate that the parchment of that contract will be shredded by amoral individuals in the postcontractual environment. Civil society, in such circumstances, swiftly must collapse into Jasay's (1985) plantation state, whatever the status of the constitutional agreement.

In this respect, Gray simply misunderstands Buchanan's insight in *The Limits of Liberty* (1975). Surely, Buchanan employs the Hobbesian model when he rationalizes contractual consent for limited government as an alternative to anarchy. Like Locke, however, Buchanan employs Hobbes as the pessimistic scenario of the state of nature, the threat that leads free individuals into civil society. This does not imply that Buchanan believes Hobbesian man to be the norm. Far from it. All his scholarship on constitutional political economy is predicated on the notion that humans possess Lockean characteristics, search for release from the prisoner's dilemma of unlimited democracy, and wish to force themselves to be free. This grievous

misunderstanding leaves Gray with a concept of civil society that has little resemblance to the strictly limited state of Buchanan.

Second, Gray, far more than Buchanan, is willing to countenance redistributionist transfers as a legitimate function of civil society. In so doing, he denies the Lockean notion of the right to property that prevents the minimal state from being mutilated as a commons in which the rent-seeking dilemma leads to a war of each against all.

Third, once attention is diverted from the priority of preserving liberty to the priority of preserving order, the dike is opened for those who would invade individual rights to do so under the guise of avoiding anarchy. One has only to review the reactions in all branches of government to the tragedy of Oklahoma City to see how quickly opportunities to trample on liberties are seized upon by those who perceive economic or political gain.

Finally, and almost inevitably, those who embrace Hobbesian philosophy tend to focus either exclusively on analyzing what is or what conditionally might be (avoiding entirely all moral discourse) or to ignore Hume's naturalistic fallacy and seek to create an ought from an is. Ultimately, of course, such an endeavor is doomed to failure.

In this vale of tears, if one believes in a moral philosophy, one had better articulate it clearly and pursue it with a heart that pumps more than blood. In my view, classical liberal philosophy is far from dead. Indeed, it is alive and well and worthy of the most serious consideration in the post-communist world order.<sup>0</sup>

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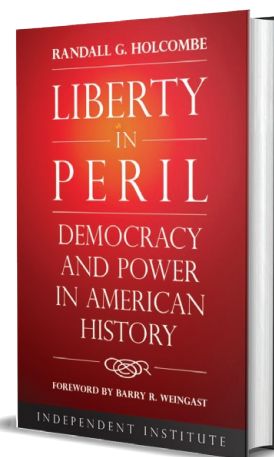
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