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Welfare and the Liberal Conscience

Among critics of state intervention in the economy and public provision for the needs of the poor, it is commonly asserted that classical liberals would have been utterly hostile to measures designed to attenuate the relative disadvantage engendered by free-market systems. Indeed, adversaries of the welfare state often try to make us feel derelict for having abandoned our noble libertarian heritage. Classical liberalism was antistatist, it is assumed, hostile to social planning, fond of liberty above equality, unwilling to engage in redistribution, assured of the spontaneous harmony of interests, trustful of the market, hopeful that the public sector would shrink and that the private sector would expand. Where this account of the liberal tradition prevails, welfare-state liberalism is seen as "radically revisionist," and the normative foundations of the welfare state are said to constitute a fundamental breach with the classical liberal tradition.

My purpose here is to contest these assumptions, and to highlight some neglected similarities and interconnections between eighteenth-century liberal rights and twentieth-century welfare rights. The implications of this exercise, however, must not be overstated. A similarity or correspondence of beliefs, which is all I shall attempt to document, does not constitute proof of historical continuity; evidence of transmission and reception would be required to support any kind of stronger claim. Moreover, even if we could definitively trace the conveyance of a system of liberal values from the Enlightenment to the present, this would not con-

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stitute a *causal explanation* of the emergence and stabilization of contemporary welfare regimes. Too many other factors — general affluence, a dramatic increase in state revenues during wartime, socially accepted obligations toward veterans, the need to secure political stability in the face of boom-and-slump cycles in the economy, the growing bargaining power of previously disenfranchised groups — played a decisive role in the emergence of contemporary economic rights.

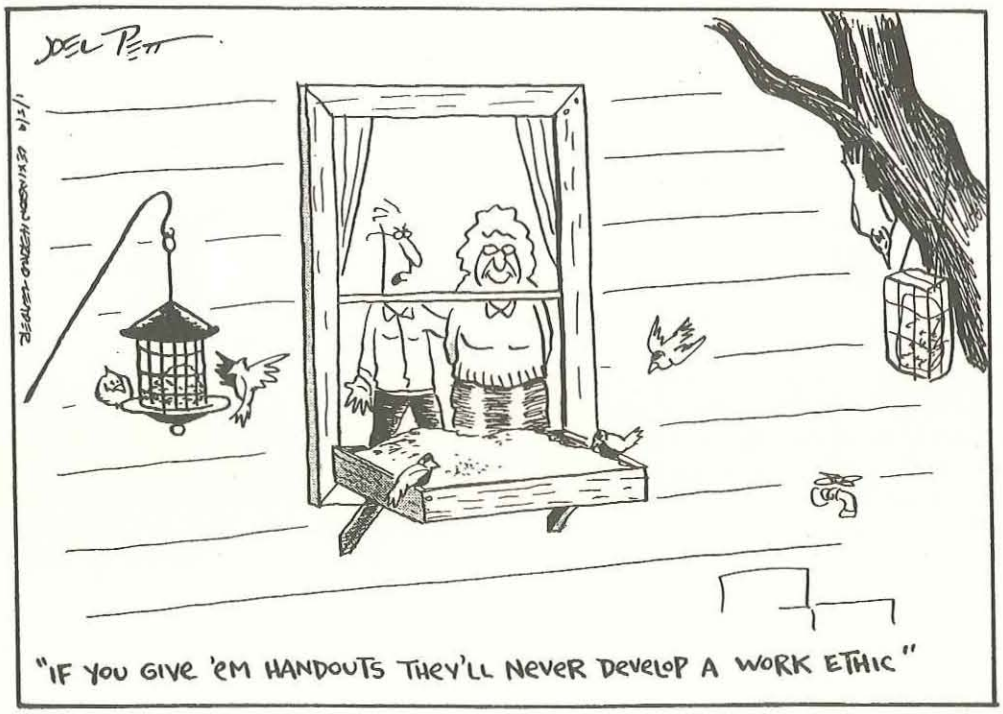
Finally, even if one could announce that public assistance represented a consummation of classical liberal principles, no political consequences would necessarily follow, one way or the other. The perpetuation of traditional orientations and commitments may be a sign of heroic tenacity, but "fidelity to the sources" may also be a symptom of mental rigidity and moral sclerosis. Depending on one's perspective, historical continuity can deserve praise *or* blame. For just this reason, policy debates cannot be sensibly conducted as legacy disputes.

In one sense, then, this demonstration of compatibility between classical liberalism and modern welfare politics is "merely" historical. It explodes the libertarian claim to be the true heir of classical liberalism; but it does not, in itself, refute the more important libertarian claim to be, morally and economically, the more attractive political philosophy. It should therefore be read as a first step or opening bid, by no means as a final word, in response to a widespread but erroneous view of the liberal past.

Latitudes and Entitlements

In speaking of classical liberalism, I take as my benchmark the cluster of views advanced and defended by, among others, Locke, Montesquieu, Hume, Smith, Madison, Kant, and Mill. This list allows us to register skepticism, at the very outset, about the assumption that classical liberals were fiercely hostile to social planning. One of the theorists mentioned actually wrote a constitution; all the others recognized the benefits of shrewd constitutional design; and a constitution, although it does not involve a central allocation of most goods and services, *is* a plan with significant allocative implications.

In the American constitutional system, for example, all liberal rights, including those enshrined in the first ten Amendments, are exercised on the basis of resources furnished by political agencies. The most obvious example of such state provision is physical and psychological security. But private property itself (an institution, not a material object) exists only as defined by the state and protected by legal coercion. Similarly, every citizen's right to litigate is made possible by legal institutions established and rendered accessible by the state. The jury system is costly, but federal and state governments in the United States *must* provide it in certain cases. Public financing of compulsory primary education is a further example of affirmative state action, especially important to those whose inherited resources are meager or nonexistent.



Joel Pett/Lexington Herald-Leader
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Publicly financed education is a redistributive investment in otherwise underdeveloped human capacities, a form of state help designed to prepare *all* citizens for *individual* achievement.

One reason why political theorists may have neglected the possibility of a substantive continuity between classical liberalism and the moral foundations of the welfare state is their commitment to a distinction between two kinds of rights: between rights as liberties from government interference and rights as entitlements to government support. In fact, the superficially alluring contrast between latitudes and entitlements is inadequate and misleading. Liberal citizens are entitled to a fair trial and to a high school education, for example. *Every known liberal state regularly extracts taxes from its citizens to provide resources as a basis upon, or a means by which, individuals can exercise their basic rights.* To the extent that libertarians doubt this, they fall so far outside the liberal consensus as to become politically irrelevant.

The widely endorsed plan to give tuition vouchers to every school-age child is illuminating in this regard. In the public discussion about vouchers, at least, all parties on the ideological spectrum, including the libertarian right, plainly accept the liberal state's duty to provide a minimum level of resources to all citizens. Entitlements to affirmative state action, then, are a staple of the liberal tradition. The controversy begins only when we ask, What sort of help, and how much, should the government provide? This is a proper topic for partisan debate among rival liberal schools. But it is not a debate that can be peremptorily closed by the assertion that "our" liberal Constitution forbids the government to provide individuals with resources of any kind.

Freedom and Justice

As our list of representative liberal theorists suggests, liberalism should not be considered principally as an antistatist philosophy of limited government. There is, to be sure, a vital anti-tyrannical strand within liberal thought; classical liberals were justifiably afraid of political tyranny, and one of their driving concerns was to prevent hypertrophic or whimsical government from oppressing individuals and groups. But this is not the whole story. Liberals were as wary of anarchy as of tyranny; they advocated not merely freedom from government, but also order through government. Security is impossible, for example, without a state monopoly on the legitimate use of violence. Even a theorist such as Montesquieu conceived sovereign power, organized along liberal lines, as an indispensable instrument of freedom.

The order that liberals admired, moreover, was not just any kind of order, not simply the suppression of random violence and civil war. Instead, it was a certain kind of order, an order qualified in a specific way: *a just order*. The primacy of justice in liberal thought, alas, is often underestimated. In his fanciful and historically inaccurate redescriptions of classical liberal thought, Milton Friedman routinely slights the importance of state power not only for the establishment of security but also for the enforcement of the norms of fairness and impartiality: "the intellectual movement that went under the name of liberalism," he writes, "emphasized freedom as the ultimate goal and the individual as the ultimate entity in the society. It supported laissez-faire at home as a means of reducing the role of the state in economic affairs and thereby enlarging the role of the individual." Reading such a passage, one is forced to ask: Who precisely is "the" individual? Is there more than one? Do some ever suffer while, or even because, others prosper? By discussing *the* individual, Friedman manages to repress any worries about impartiality *among* individuals or about the illegitimate uses of private power.

Committed to a norm of fairness, classical liberals do not share this happy insouciance. The greatest threat to freedom, they all agree, is the concentration of power. But *this is true whether power is concentrated in the public or in the private realm.* What makes liberalism unique as a political doctrine, arguably, is its simultaneous concern with both public and private abuses of concentrated power. This is just as true now as it was in the seventeenth and eighteenth centuries. The liberal democratic societies that exist today do not sacralize the private sphere; they are not based on a wholly favorable or unqualifiedly protective attitude toward private action. Without effectual state power, private power-wielders would terrorize ordinary people and engross collective resources. Thus, laws designed to protect consumers or the environment from injurious private action, while condemned by some libertarians, cannot be labeled, in principle, as illiberal. And though liberals favor strong protections for private property, they also distrust forms of ownership that translate easily into political influence or authority.

Milton Friedman associates redistributionist policies with an illiberal egalitarian impulse: "the egalitarian . . . will defend taking from some to give to others . . . on grounds of 'justice.' At this point, equality comes sharply into conflict with freedom; one must choose. One cannot be both an egalitarian, in this sense, and a liberal." But why should a conflict between freedom and equality, even assuming that one exists, require an either/or choice? There is nothing so melodramatic about normative dissonance, after all. To put Friedman's liberty-equality conflict into perspective, let us consider the conflict, say, between liberty of the press and the right to privacy. This is a *conflict between freedom and freedom.* It requires not an either/or decision but rather a rough balancing of important but

rival interests. The conflict between freedom and equality, which Friedman and other libertarians magnify into a final showdown between the forces of good and evil (where one will emerge triumphant while the other is extinguished), is no different. It is just another example of the everyday moral conflict characterizing all liberal societies and requiring pragmatic compromise.

Classical liberals, it should be said, never placed *justice* in disdainful quotation marks; they never sacrificed or subordinated justice to freedom, as Friedman's litmus test would require. On the contrary, Hume urges us "to look upon all the vast apparatus of our government, as having ultimately no other object or purpose but the distribution of justice." According to Adam Smith, too, justice was the "main pillar" of society. He was committed not simply to the natural system of liberty but to the "natural system of perfect liberty and justice." Every man should be free to follow his own interests in his own way, Smith argued, but only "as long as he does not violate the laws of justice." Interest-governed behavior can enhance social stability and security, by an invisible hand, but only if the interests propelling action are just.

Among claimants to the mantle of Adam Smith, this principle is typically overlooked in the effort to paint welfare measures as illiberal. "The central defect of these measures," Friedman writes, "is that they seek through government to force people to act against their own immediate interests in order to promote a supposedly general interest." But is there anything particularly illiberal about the realization that, in the absence of coercion, self-love will induce individuals to exempt themselves from generally useful rules? Liberal constitutions, it is worth recalling, are designed to do precisely what Friedman apparently deplores: to *force* officeholders, at least, to act against their own immediate interests in order to promote the general interest. And what does Friedman think is the purpose of criminal law?

True, Smith sometimes made statements that seem to rule out a "taking" from the rich to give to the poor: "To hurt in any degree the interest of any one order of citizens, for no other purpose but to promote that of some other, is evidently contrary to that justice and equality of treatment which the sovereign owes to all the different orders of his subjects." But it is unwise to infer any blanket hostility to redistribution from this claim alone. Would Smith, for example, have opposed the use of state power to break up growth-stifling private monopolies? Privileged groups certainly cannot be expected to relinquish their monopolies voluntarily. Interests, as Locke had already made clear, can be legitimate or illegitimate, proper or improper, just or unjust. And despite his disclaimer, cited above, Smith emphatically believed that natural justice *required* the state to hurt the (sinister) interests of one order of citizens for no other purpose than to promote the (acceptable) interests of most others. In plain language, he thought that the interests of the grasping few must be forcibly sacrificed to the interests of the great majority of the people. And he chose the majority's welfare as the criterion to guide public policy because of a prior commitment to distributive justice. His underlying concern for fairness is made explicit in his famous defense of higher wages for laborers:

> Our merchants and master-manufacturers complain much of the bad effects of high wages in raising the price, and thereby lessening the sale of their goods both at home and abroad. They say nothing concerning the bad effects of high profits. They are silent with regard to the pernicious effects of their own gains. They complain only of those of other people.

The merchants under attack here had violated the norm of impartiality and fair shares: the self-exemption taboo. They subjected others to a principle to which they had refused to subject themselves. Impartiality demanded the abandonment of the mer-

Passions and Constraint: On the Theory of Liberal Democracy

Stephen Holmes

In this volume, Stephen Holmes brings together his most important essays on the core liberal values, revising and interconnecting them to create a subtly conceived historical reconstruction of classical liberalism. By placing liberalism in its original historical context, *Passions and Constraint* compels the reader to assess what that tradition really has meant and what it can mean today.

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cantile system, which was nothing other than an expression of the unjust and unjustifiable partiality of merchants.

The Facilitative State

Classical liberals never attacked the principles underlying traditional poor relief. Spinoza's assertion that "the care of the poor is incumbent on the whole of society" was echoed by every major liberal theorist. John Stuart Mill, moreover, rejected any suggestion that the task of relieving poverty should be left to "voluntary charity." The state must use tax-derived revenue to provide public assistance because "charity almost always does too much or too little: it lavishes its bounty in one place, and leaves people to starve in another."

At the center of many right-wing attacks on welfare rights, we find a stylized distinction between the state and civil society, between the grim domain of bureaucratic compulsion and the jaunty realm of economic voluntariness. Freedom is at end, we are told, when, ominously and imperialistically, "government interferes in society." The autonomy of civil society, the "prepolitical" nature of extrapolitical life, the utter absence of power relations within the market sphere — these remain potent myths. There is no denying that they were initially promulgated by some classical liberals — think only of Tom Paine. Originally, however, these myths were intended as political programs, not as empirical generalizations. They were exasperated attacks on the temporarily most annoying source of social insecurity, the state, not sociological claims about the capacity of nonpolitical sectors of society to function effectively without any governmental regulation or support. In any case, none of our representative liberals dreamed about a politics-free realm or the pristine autonomy of civil society. Indeed, they all conceived "civil society" as society "civilized" by state action.

For classical liberals, alleviation of poverty is a public good that cannot be provided by the market. Even if most Americans wished to help the poor, they might do so only if they believed with some certainty that most of their fellow citizens would pitch in. In this area, as in many others, coercive government intervention can be essential for individuals to overcome collective-action problems and achieve their goals. "It is in the interest of each to do what is good for all, " Mill explains, "but only if others will do likewise."

Opponents of the facilitative state also denounce its "paternalism" in the name of citizen self-reliance. But this may well be a false alternative. In the first place, self-reliance must be organized. When individuals walk into court and sue on the basis of a democratically approved statute, they are no less self-reliant than when they establish a labor union. In a complex society, all self-reliance requires social dependency and cooperation, indirect techniques, and institutional strategies. (To "do it yourself," as is well known, you must go to a do-it-yourself store and buy a do-it-yourself kit.) As a result, we cannot use the idea of self-reliance to justify a blanket rejection of redistributionist legislation.

In the course of his argument, finally, Mill explicitly challenged the conventional wisdom that poverty is a spur to effort, correcting the one-sided theory that public assistance creates a crippling disincentive to work. "Energy and self-dependence," he wrote, are "liable to be impaired by the absence of help as well as by its excess." Smith had been even more direct in asserting that public provision can foster private initiative. This idea was nowhere more apparent than in his proposal for a publicly financed (though not necessarily publicly operated) system of compulsory elementary education, aimed to improve the condition of the indigent. His bold argument in favor of high wages was also based on a denial of the poverty-as-a-spur-to-effort thesis: "that men in general should work better when they are ill fed than when they are well fed, when they are disheartened than when they are in good spirits, when they are frequently sick than when they are generally in good health, seems not very probable."

Conclusion

The historical relation between eighteenth-century rights and modern welfare entitlements is, and will always remain, somewhat obscure. But the case for some sort of continuity between the two is stronger than most libertarians, at least, have led us to believe. Contrary to what they claim, we have no particular reason to think that classical liberals would have been hostile to a social safety net. Modest redistributions that support, say, health care for the indigent are not "tyrannical." They are not even remotely reminiscent of the cruel and oppressive acts in response to which the ideal of limited government first arose. How can constitutional principles originally designed to outlaw judicial torture and religious persecution plausibly be invoked to forbid the provision of prenatal care to the impoverished?

On many counts, the widely accepted picture of classical liberalism is flawed. As a result, the fundamental continuity between liberal rights and welfare rights is stronger than has ordinarily been realized. It is perfectly plausible to interpret social provision as a faithful application of traditional liberal principles to a new situation. Such considerations do not provide a moral or political justification of the redistributionist state, as I have said. They alone cannot compel us to support

any specific public policy, without examination of costs and alternatives. All that the historian of ideas can plausibly demonstrate is that redistributive policies should not be rejected on the grounds that they are inherently illiberal or represent a betrayal of the great liberal legacy. Without justifying the welfare state, we can nevertheless revoke the bragging license of its enemies.

— Stephen Holmes

Stephen Holmes is professor in the Department of Political Science and the Law School at the University of Chicago. Excerpted from *Passions and Constraint: On the Theory of Liberal Democracy*, by Stephen Holmes, to be published this spring by the University of Chicago Press. By arrangement with the University of Chicago Press © by The University of Chicago.

Valuing Nature: Assessing Damages for Oil Spills

Six years ago the *Exxon Valdez*, an oil supertanker, ran aground on Bligh Reef in Alaska's Prince William Sound. Eleven million gallons of oil poured through its cracked hull, fouling the Sound, contaminating thousands of miles of coastline, and destroying fish and wildlife. As noted in a draft restoration plan prepared in 1993, the oiled areas included "a National Forest, four National Wildlife Refuges, three National Parks, five State Parks, four State Critical Habitat Areas, and a State Game Sanctuary."

The courts have held Exxon liable for the harm it caused in Prince William Sound. In a 1991 civil settlement, for example, the corporation agreed to pay $900 million in damages to the federal government and the state of Alaska. A criminal plea agreement required additional restitution. More recently, a federal jury in Anchorage, having found that Exxon and the tanker captain had acted recklessly, ordered the company to pay $5 billion in punitive damages. This award went to thousands of fishermen and other Alaskans who claimed to have suffered losses from the spill. In an earlier phase of the trial, the same jury awarded the plaintiffs $286 million in compensatory damages.

In press accounts of the trial, evidence that Exxon and its agents engaged in morally wrongful conduct received considerable attention. Without minimizing the significance of Exxon's wrongs, however, it is important to be clear that if we require Exxon to take responsibility for the oil that leaks from its tankers, we need not rely on the idea that the company deserves to be punished. There may be reasons for holding Exxon liable apart from its moral wrongs. This is important because, unfortunately, we can expect oil spills to continue occurring, and they may not occur only in connection with morally wrongful conduct. An oil spill will sometimes happen as a mere accident, the outcome of comparatively innocent sloppiness — behavior which may not deserve punishment. If we set aside, for purposes of this discussion, the wrongful aspect of Exxon's conduct, we may then focus on the important policy issue of how we, as a society, should respond when environmental disasters are merely accidental. We may, that is, consider the grounds for imposing liability. In this discussion, the relevant moral ideas will be those underlying the law of tort rather than those underlying the law of crime.

Principles of Tort Law

Tort law requires those who in certain circumstances harm others to provide compensation to those who are harmed. Tort suits may arise from comparatively innocent incidents of a sort common in modern life: one motorist nods off and accidentally collides into another; a customer slips and falls on a poorly main-