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978-0-521-70959-0 - The Liberal Project and Human Rights: The Theory and Practice of a New World Order

John Charvet and Elisa Kaczynska-Nay

Excerpt

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Introduction: what is liberalism?

Liberalism and free individual choice

We take a wide rather than a narrow view of what liberalism is. As we see it, liberalism is a disputatious family of doctrines, which nevertheless share some core principles. These principles are by now – at least in the West – hardly new. But they constitute a radically different way of understanding and organizing the best scheme of human association from the many other understandings that have been produced in the course of human history in Western and other civilizations. While liberal doctrines and practices are at present well established in the West, it should not be forgotten how recently they were threatened with extinction in their heartlands. They are still constantly under attack and are often not well understood, in part because of the tendency to identify liberalism with one or other member of the family only – a tendency that in America makes liberalism out to be a politically leftist doctrine of state welfare and state intervention, while in contemporary France it has become associated with the supposedly *laissez-faire* policies of recent Anglo-Saxon governments. Part of what we mean by the liberal project, then, is that from a broad historical perspective liberalism is a fairly new and certainly radically different conception of social and political order from its predecessors and subsequent rivals. But the main significance of our idea of liberalism as a project for a new world order refers to the application of liberal ideas and practices to the organization of international relations principally through the human rights documents and instruments produced by, or under the patronage of, the United Nations after World War Two (WWII). The attempt to promote the general acceptance of these declarations and covenants on human rights constitutes a project for a new order both for the internal organization of the many states of the world and for the way these states relate to each other internationally.

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In order to understand the idea of human rights in these documents as the expression of liberal principles, we need first to get a grasp of what liberalism is about. Liberalism in both theory and practice is concerned to promote social outcomes that are, as far as possible, the result of free individual choices. However, the choice of one person that does not respect the equal freedom and rights of others is invalid. Thus, economic liberalism in the economic sphere upholds the rights of individuals to make any choices they please in the exercise of their labour and the use of their wealth and income so long as they respect the liberty, property and contractual rights of others. Social liberalism, in general, extends this idea to all aspects of life except the political and requires freedom of thought and expression, of religion, of movement and association, of sexual orientation and ways of life,¹ all subject to the condition that the exercise of any particular freedom is to be respected only insofar as it does not violate the equal freedom of others. Equal freedom could mean, of course, everyone's unrestricted freedom to do as he or she pleases, including the 'right' to kill or injure another. However, the result would be a freedom that was constantly open to the invasion of others. The freedom of everyone can, then, be increased by the mutual acceptance of equal limits on what anyone is entitled to do. The basic content of these limits is the exclusion of force and fraud, so that interactions among human beings can take place with the free consent of each party. Coercion is justified only against someone who violates those limits.

Political liberalism cannot be understood in quite the same way, since decisions in the political sphere must, *ex hypothesi*, be collective and binding on all members of the polity. However, its foundations in respect for individual liberty remain the same. Political liberalism affirms the rights of individuals to choose their governors in periodic elections through the exercise of individual and equal votes, the right to stand for election and to associate politically as they please in order to promote the policies and parties of their choice. Political liberalism also involves the design of institutions that will provide some guarantee of government accountability to the people and will limit the government's power to attack or erode individual liberty. The standard devices for this purpose have been the institutions of representative government and the separation of the legislative, executive and judicial powers.

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Liberalism and human rights

Liberalism, then, consists in the structuring of individual interactions in society on the basis of a set of rights that require human beings to respect each other's liberty and equality. These rights do not have to be expressed as natural or human rights. There are liberal theories that defend the adoption of such rights on the grounds that societies so organized will achieve a greater sum of utility or happiness than any alternative social scheme. British thinkers, such as Jeremy Bentham and John Stuart Mill in the eighteenth and nineteenth centuries, have been very influential liberal theorists in the utilitarian tradition. The other major source of theoretical support for the liberal organization of society has been the belief in natural rights as developed by innovative theorists of the seventeenth century, such as Hugo Grotius in the Netherlands, Samuel Pufendorf in Germany and Thomas Hobbes and John Locke in England. Human beings, on this view, have a fundamental natural right to liberty consisting in the right to do whatever they think fit to preserve themselves, provided they do not violate the equal liberty of others unless their own preservation is threatened. This tradition may be said to have been transformed and rationalized by the immensely influential liberal theory of Immanuel Kant at the end of the eighteenth and beginning of the nineteenth centuries.

Nevertheless, the theories that came to dominate the nineteenth century were utilitarian and historicist. The weaknesses of these theories in upholding basic liberal rights together with a developing scepticism in the twentieth century as to the feasibility of adequately grounding justificatory theories of ethics and politics at all, led to the situation that liberal societies have faced since the rise in the 1930s of various forms of totalitarian terror. There was a strongly felt need to reaffirm the overriding importance of basic liberal rights and indeed to develop legal instruments whereby these rights could be given special protection. At the same time there was little agreement on how or even whether the belief in such rights could be theoretically justified. The result has been the flowering of a theoretically ungrounded language and practice of human rights since the end of WWII. Talk about such rights has become the dominant form of liberal practice in Western societies and the United Nations has committed itself to the attempt to spread this practice around the world.

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These rights are believed, like natural rights, to be the inherent rights of human beings. This means that individuals are entitled to enjoy such rights by virtue of their nature and dignity as human beings. Thus, the 1948 United Nations Universal Declaration of Human Rights, which has acquired iconic status for the contemporary Human Rights movement, affirms in its Article 1 that ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.’² In this sense, human beings possess these rights whether or not the rights are recognized in the politico-legal system of which they are members and to which they are subject. A politico-legal system that does not respect such rights is in violation of fundamental ethical requirements.

A standard criticism of the natural/human rights view of inherent rights that a human being is born with consists in asking where these rights come from if they are not recognized in any actual legal system. The traditional answer of natural rights theorists was that they are aspects of a natural law that is binding on all human beings everywhere. There are two crucial features of this answer. The first involves the claim that there are universally applicable general rules or principles of conduct for human beings and the second that such rules or principles have overriding moral authority. They command human beings to respect the rights arising from these rules in all their practices and associations. With regard to the first, we will have much to say in due course but the fundamental rule is one of equal liberty, the rationality and utility of which each human being can grasp for him or herself. In respect of the second, the answer given by the natural rights theorists was that the rules’ authority came ultimately from being commanded by God.

As we have already indicated, contemporary supporters of the human rights regimes of the United Nations, the European Convention, and so on, tend to put aside the question of ethical justification and appeal to the fact that these rights have been recognized by the international community and are embedded in international legal instruments. Thus, they are said to be grounded in actual practices.³ However, the consensus presupposed is to some degree illusory. While all states pay lip service to human rights, some engage in massive violations of them without compunction and others claim to interpret the human rights in the light of their own prior ethical or religious

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commitments, such as Islamic Law or so-called Asian values. This has the effect of severely constraining the liberal force of the UN programme by subordinating the principle of maximal equal liberty to the hierarchical values of traditional Islam and Asian Community. Furthermore, even if there existed at the present time a genuine consensus on the liberal meaning of human rights, the absence of any ethical justification of the practice leaves it vulnerable to shifts in opinion. Such shifts have occurred in the recent past in Western societies with near catastrophic consequences and the spirit of anti-liberalism continues to exist as a strong undercurrent in them. It is for this reason that an essential part of our object in this work is to defend as well as explain the liberal character of the human rights regimes.

The liberal project, as we understand it then, has as its aim the transformation of the basic structure of the separate modern societies and of the international society they together constitute, so that they all come to express liberal values. It should be stressed from the outset that this is not to say that the goal is to be achieved by any means, including military ones, nor is it to say that the substantive character of the different societies is to be made the same. We will raise the question of the appropriate policies for promoting the general acceptance of liberal values in due course, and also the issue of humanitarian intervention, but we do not think that a policy of getting peoples to accept liberal-democracy by bombing them into submission is justifiable from either an ethical or a pragmatic point of view. With regard to the question of the uniformity of the different societies, there is no reason why the general acceptance of a liberal basic structure should prevent some societies being predominantly Muslim, others Christian, Buddhist, secular or whatever, so long as the adherents of these different ways of believing and living accept the fundamental principles of liberalism by treating their own members as well as outsiders as entitled to an equal liberty.

The range of liberal rights and values

The principle of equal liberty promotes social outcomes that are, as far as possible, the result of individual choice under circumstances in which all individuals can respect each other as equals. This principle makes no sense without the supporting belief that every normal adult human being has the capacity to decide for herself how she can best

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live her life and ought to have the right so to decide without being subject to the coercive authority of others. This belief is perfectly compatible with the recognition that some people are more intelligent than others and may make wiser or better informed choices. It is, however, to claim that such inequalities are irrelevant to the fundamental equality that all enjoy, which is to possess the capacity for self-direction to a sufficient degree that it would be wrong to coerce them to live their lives contrary to their own wishes.

We have been putting the stress, in the above remarks, on an equal liberty as the core value of liberalism. However, both the older natural rights theories and even more so the contemporary human rights documents affirm other rights besides liberty rights. For John Locke, the basic rights were to life, liberty, health and possessions, while our stress on liberty seems to leave out the whole category of welfare, or social and economic, rights that are generally considered now to be an integral part of an adequate understanding of human rights. Of direct relevance to this issue is a widely made distinction between classical liberalism and revisionist or new liberalism. On this distinction, classical liberalism upheld the *laissez-faire* economy and the night watchman state, while the new liberalism became concerned with ensuring that everyone enjoyed a sufficient level of social and economic rights in order to be able to exercise their liberty effectively as an equal member of society. In effect, the assumption the new liberalism makes is that the adequate development in each person of their capacity for self-direction standardly requires a certain level of educational opportunity and social welfare, so that access to such levels constitutes a crucial aspect of their rights to be recognized as an equally valuable self-directing being.

In this way, the fundamental values of the new liberalism remained the same as those of classical liberalism: namely liberty and equality. Hence, we can still affirm the foundation of liberalism in an equal freedom while embracing welfare rights as the necessary condition of their adequate realization. What about the Lockean conception of basic rights as those of life, health and possessions as well as liberty? This suggests that life, health and possessions are to be treated as valuable in themselves independently of their relation to liberty. Nevertheless, we think that it is clear enough in Locke's scheme that it is not just life and health as such that are valuable in themselves but the life and health of human beings who are understood as rational,

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self-directing beings and hence entitled to an equal liberty. Otherwise, animal life and health would be seen as equally valuable as human life and health. Furthermore, the right to possessions is justified explicitly by Locke in terms of the right to self-preservation and is to be exercised through acts of individual liberty in appropriating parts of the earth's surface. In other words, rights to life, liberty, health and possessions can all be seen as implications of the fundamental value of humans as rational, self-directing beings. This shows, we believe, that the primary liberal values in the classical liberalism of Locke, at least, were indeed liberty and equality, where liberty is to be understood both in positive terms as the realized capacity for self-government and in negative terms as not being prevented by other human beings from doing what one chooses; but that there was space, also, even in the thought of classical liberalism for considerations of welfare.

One can, nevertheless, identify a very broad family of liberal doctrines that ranges from an anarchical libertarianism at one extreme through *laissez-faire* and the minimal state to the big bureaucratic state of welfare liberalism and on to the other extreme of liberal socialism. The first departs from more mainstream liberal theories by rejecting the standard argument for the state, namely that it is necessary to elaborate and effectively enforce through a legal order a coherent system of rights based on natural rights. The liberal anarchist believes that such state functions are better left to voluntary agencies or self-help. The socialist form of liberalism, at the other extreme, rejects the economic liberalism of market society altogether on the grounds of its incompatibility with equality but otherwise affirms liberal values regarding opinion, religion, movement, association, sexual orientation, and so on. Both extremes can reasonably claim to be versions of liberalism since even their deviations from more mainstream positions are based on appeals to the core liberal values. The view we shall argue for is a form of liberalism that recognizes the necessity of the state on the one hand, and the need for a substantial degree of economic liberty together with social and economic rights on the other.

The distinctiveness and originality of liberalism

Liberalism is a theory and set of practices regarding what is a just social and political order. As such, it is concerned with the right to coerce persons to act in accordance with the requirements of just

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order. The mainstream liberal believes that this right is possessed by the state. A crucial function of the just state is to guarantee to the citizens that, if they act justly by complying with the rules of the just state, they will not expose themselves without reasonable protection to exploitation by the unjust. The liberal anarchist believes that the right to coerce the unjust is possessed by each individual and that to transfer that right to the state is to put oneself foolishly into the hands of a potential monster. Most liberals, however, believe that they have found a method of taming the monster and making it serve the liberal idea.

The distinctiveness and originality of liberalism, then, can be understood as an attempt to restrict the area of human life that is subject to justified state coercion to a much greater extent than alternative conceptions of the just state. This is expressed in the liberal idea of maximal equal liberty. It allows individuals to decide for themselves or in voluntary association with others, to the greatest extent possible, how they will live compatibly with everyone else enjoying an equal right. The most obvious way in which the liberal and the variety of anti-liberals are opposed is in the sphere of freedom of religion and of thought and expression more generally. The liberal holds that the belief in and practice of one religion is perfectly compatible with the freedom of all others, provided that none requires its adherents to forcibly convert, subordinate or kill the followers of other religions. Such requirements clearly violate the principle of equal freedom and cannot be permitted within a liberal scheme.

The partisan of the aggressive religion will, naturally, seek to act on what he believes is part of the true religion and hence to coerce non-believers. But even without such explicitly domineering elements in a religion, its illiberal practitioners may believe that it should be enforced on others as the common faith of a political community. This may be because it is held to be the true faith and because it is believed that it is wrong to allow people the liberty to live in error. As the early Christian philosopher, St Augustine, said: ‘There is no worse death for the soul than the liberty to err.’⁴ An alternative justification for coercion in matters of religion is that agreement on religious values and practices is essential to the unity and identity of a political community. This view doesn’t involve the belief that the religion is true but that it is the necessary cement to hold people together in a common political life without which they would not form a coherent body at

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all. In addition, such an enforced scheme provides a hierarchy of values and authorities through which the members of the community can learn to subordinate their selfish interests to the good of the whole.

The liberal rejects these claims. Truth in these matters is too uncertain to justify coercing others and in any case the unbeliever is not as such harming the faithful unless unity of religious belief and practice is essential to a community's existence. However, the liberal denies that political unity depends on the maintenance of a consensus on such disputed issues. It is not that the liberal believes that consensus is altogether unnecessary, but rather that a consensus on liberal values is possible and that this consensus allows everyone to practice their religion within the limits of an equal liberty.

What is true of religious disagreement applies also for the liberal to disagreement over other substantive values and ways of life. The liberal demands agreement on certain higher order or 'thin' values, namely the scheme of equal liberty, but this permits disagreement on substantive values such as different conceptions of the religious life, of non-religious or secular lives directed at pleasure or achievement, art or play, self-assertion or serving others, knowledge or wealth. The liberal is a pluralist in respect of such values. There are many different human goods and ways of life and there is no objectively determined hierarchy of values that subordinates some to others. So, it is wrong to base the state's coercive order on the superiority of one of these substantive conceptions of the good life for human beings. Liberalism is the idea that people should be free to choose what values to pursue in their lives provided that they pursue them within the limits of an equal liberty.

On this view, there will always be a bedrock of liberal values in a liberal community that underlies and constrains the choices that its individual members make. These are liberty and equality and the fundamental respect for human beings as autonomous choosers that grounds their entitlement to an equal freedom. This agreement on a scheme of co-operation that permits people to live together in peace while disagreeing over substantive questions of religion and other values is indeed the essential point of liberalism as a distinctive form of social and political order. Liberalism holds, first, that human beings do not need to construct the necessary socio-political consensus for community on such divisive bases as religion. This leads to devastating conflicts and unnecessarily high levels of coercion and suffering.

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Liberalism holds, second, that it is in any case wrong to coerce people in these matters because such coercion does not respect their nature as free choosers. The value of each as a free chooser is an integral part of whatever value is chosen insofar as what is chosen is due respect.

Liberalism and the subjectivity of value

It may look as though liberalism, as we have been presenting it, involves a subjectivist conception of value. What is valuable is whatever is chosen by individuals in the exercise of their lawful freedom. This apparent subjectivism may be repugnant to some people. However, in the first place, what is chosen in violation of lawful freedom is not valuable. Liberals should hence not think that their own fundamental principles are a matter of subjective choice. They should believe in the objective superiority of their conception of the realm of higher order or 'thin' values on which legitimate political coercion is based. If they did not believe this, they could not justify liberal coercion with a good conscience. They could at most say that, as liberalism is the dominant belief in our community and community has to be based on some kind of coercive order, then we can impose it on everyone. But, this provides no ground for defending liberalism should the community move towards anti-liberalism or even should the anti-liberal minority seek to win power and impose its conception of order. For the appeal to the majority is only an invocation of superior power, unless backed by some set of reasons, that the minority could prove wrong.

In the second place, liberals should not be subjectivists even in respect of substantive values. What they should be is pluralists in respect of values. A pluralist believes that there exists a range of objective or natural goods for human beings. These are the goods through the enjoyment of which human beings can lead flourishing lives. This enables us to be confident in asserting, for instance, the worthlessness of a life of compulsive gambling. Nevertheless, there are many different valuable lives that human beings can lead and there is no unique ranking or combination of values that individuals must choose if they are to live well. On the contrary, it is up to the individual to choose which of the range of human goods to pursue or to what extent to pursue them. The list of such goods standardly includes love, beauty, art, friendship, family, knowledge, play, pleasure, achievement, wealth, health, and so on. Liberty, equality and autonomy are