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# Liberalism and the Discipline of Power

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THE CHARGE USED TO BE LEVELED BY FASCISTS AND COMMUNISTS; NOW it comes chiefly from conservatives. Liberalism, they say, is a kind of weakness. If the charge were true—if liberal institutions and political leaders were unequal to the demands of national defense and personal security—it would have been a catastrophe for liberal democracy during the great crises of the twentieth century, and the world would look altogether different today. But this has not been the historical experience: liberal government has repeatedly proved stronger and more durable than its adversaries expected. And therein lies a critical lesson about liberalism, at least liberalism rightly understood.

The core principles of liberalism provide not only a theory of freedom, equality, and the public good, but also a discipline of power—the means of creating power as well as controlling it. This discipline has been a singular achievement of constitutional liberalism, dating from the late seventeenth and eighteenth centuries, and of modern, democratic liberalism as it has evolved roughly since the late nineteenth century.

Liberal constitutions impose constraints on the power of any single public official or branch of government as well as the state as a whole. The constraints protect citizens from tyranny, but that is not all they do. They also serve to protect the state itself from capricious, impulsive, or overreaching decisions. A central insight of liberalism is that power

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arbitrarily exercised is destructive not only of individual liberty but also of the rule of law. Limiting arbitrary power encourages confidence that the law will be fair and thereby increases the state's ability to secure cooperation without the imposition of force. Limiting the scope of state power increases the likelihood of its effective use as well as the ability of society to generate wealth, knowledge, and other resources that a state may draw upon in an hour of need. That, at least, has been the theory of power—of freedom's power—implicit in constitutional liberalism. And the historic rise of liberal states to become the most powerful in the world suggests that the theory has worked astonishingly well in practice.

Constitutional liberalism is the common heritage of both modern conservatives and liberals, as those terms are understood in the Anglo-American world. In the eighteenth century, however, constitutional liberalism was far from fully democratic. Britain and the early American republic excluded the majority of people from the franchise and other rights, and even after working-class men gained the right to vote, liberal governments in Europe and North America continued to reject the claims of women and racial minorities. Modern democratic liberalism diverged from its conservative sibling, however, as it embraced the claims of historically excluded groups and a more comprehensive vision of equality. Even with the basic disputes over the franchise and civil rights long resolved, the line between liberalism and conservatism continues to be drawn partly on this basis.

In addition, modern liberals have split from conservatives on the role of the state in the face of depression, war, and economic insecurity. Liberals have insisted that government can take on broader functions without sacrificing individual freedom as long as the law provides strong safeguards against arbitrary power. Democratic liberalism, therefore, has called not just for broader social protections but also for stronger guarantees of civil liberties. Conservatives and liberals have also responded differently to a phenomenon that did not exist in the eighteenth century when constitutional liberalism took shape: the modern corporation. While conservatives have treated private corporations as analogous to individuals and deserving of the same liberties, liberals have regarded corporations as a phenomenon of power, needing control like government itself. The discipline of power that constitutional liberalism im-

poses upon the state modern liberalism attempts to impose on the corporation, albeit not in the same way.

Divisions between conservatives and liberals over foreign policy and national security also reflect different theories of power. In general, conservatives have put greater emphasis on military power, been quicker to resort to force, and regarded international institutions warily, whereas liberals have sought to create an international order that helps to safeguard national sovereignty, enlarges the sphere of liberal democracy, and minimizes the need for force. While conservatives have often regarded international law and institutions as subtracting from national power, liberals have seen them as adding to it. Just as liberalism has historically sought to protect individual rights through the rule of law and limits on unbridled power at home, so it has sought to project those same norms of respect for law, life, and liberty into the international arena—conscious, however, that force may ultimately be necessary for self-defense and that force spent unwisely may undermine security rather than ensure it.

In short, like constitutional liberalism, modern democratic liberalism seeks to promote the creation as well as the control of power. Rights for the unpropertied, racial minorities, and women are not simply a check on the powerful; full inclusion also promotes a more creative and productive society. The expanded sphere of state action has enabled liberal governments to contend successfully with war and other crises and to promote economic growth and stability. In disciplining the market as well as the state, the central liberal objective has been not just to circumscribe power in private hands, but also to make the market more productive within its appropriate scope. A liberal international order promises to conserve and augment national power as well as properly regulate it. Power disciplined is not necessarily power reduced. Discipline may impart greater legitimacy, a sharpened focus, and more judicious direction to power—to a kind of power, moreover, that supports freedom instead of destroying it.

## POWER AND LIBERTY

Power is essential to liberty, yet power is also inimical to liberty—it all depends on the kind of power and its use, and on our understanding of

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liberty. In a generic sense, power is the capacity of an individual, group, state, or some other agent to bring about effects. Power in this general sense—"power to"—encompasses whatever capacity a society or any other collectivity may have to realize common values or purposes. To say that an individual or some other agent is powerful, however, usually means that it can bring about one particular kind of result: It can prevail over others—it can get them to do something they do not want to do, defeat them in a conflict, or perhaps even shape their understanding and desires.<sup>1</sup>

Whether this kind of power—"power over"—is compatible with liberty depends on whether it is subject to law, norms of fairness, and public accountability. Liberal principles for the discipline of power have a threefold purpose: to constrain "power over" that is arbitrary, despotic, and overweening; to establish rules for the legitimate exercise of power; and to enlarge the overall capacities of both individuals and societies. The central liberal hypothesis about power is that constraints on despotic "power over" contribute to greater societal "power to." Or, as the political theorist Stephen Holmes has put it, limited power can be "more powerful than unlimited power."<sup>2</sup>

Liberal constitutions, for example, call for checks and balances, public deliberation, periodic elections, and other institutional mechanisms to prevent state power from becoming despotic. But constitutions are not purely negative in purpose or effect. They also provide a plan for the exercise of legitimate powers and a conceptual framework for politics. Indeed, constitutions may become the very basis of national identity and patriotism and thereby an instrument for building nations as well as their governments. Or to put it in other terms, some constitutions are constitutive of both a nation and its state, not merely regulative of a state's conduct.

If well designed, liberal constitutions create states with advantages in power and performance over their illiberal rivals. Public deliberation invites ideas and information that autocrats do not receive or are unlikely to heed. A state with checks and balances and public accountability for governmental performance will be more likely to correct its mistakes. And those who lose political conflicts after discussion and voting are

more likely to be reconciled to the outcome and to cooperate with the winners than if they are excluded from participation. To be sure, public deliberation may slow down decisionmaking in urgent situations, and elections may produce inconclusive results. The art of constitutional design lies partly in minimizing the chances of paralysis where decisions are imperative. The liberal premise is that although these risks are real, the advantages of constitutional government outweigh them.

Liberal principles also aim to bar private forms of despotic power by, for example, prohibiting slavery and regulating predatory and abusive aspects of commercial and even domestic relationships. Again, laws embodying liberal principles are not purely negative; to some extent, they also prescribe rules for legitimate transactions and relationships to ensure that they are entered into freely and observe minimum standards of fairness. Moreover, just as liberal principles call for checks and balances within government, so they call for a wide dispersion of power in both the private economy and civil society. Concentrations of private power undermine the effort to keep *political* power divided and limited; hence, even apart from concerns about economic efficiency, liberals from the eighteenth century to the present have often called for breaking up monopolies, broadening the ownership of land, and extending literacy and education.

These commitments follow from the recognition that liberty is most likely to be preserved when citizens themselves have the power to preserve it. When freedom does its work, it creates a self-reinforcing cycle. Free speech and freedom of association, for example, empower civil society, and the private organizations that grow up on that basis can then use their power to sustain their rights. Newspapers, for example, become jealous guardians of the freedom of the press. But monopoly turns this process on its head; if the press itself becomes monopolized, those who control it may become too great an arbiter of political life, inhibiting free discussion rather than enabling it. Modern democratic liberalism differs from its free-market rival partly in its support for stronger measures to decentralize private power and stronger guarantees against private forms of domination—for example, by calling for countervailing rights to private corporations, such as the rights of workers to collective

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bargaining and of consumers to information about corporate practices. In the same spirit, modern liberalism has also sought to extend to the private economy guarantees of equal treatment of racial and religious minorities, women, and other groups that have historically suffered from discrimination.

These measures to decentralize and limit private power and to combat discrimination require state intervention in the private decisions made in the market and civil society. But liberalism, according to some of its exponents and many of its critics, conceives of liberty only as non-interference by the state. This notion may suggest that liberals resist state power at every instant, despite the manifest fact that liberal states have been immensely powerful. The conception of liberty as non-interference does fit libertarian thought, but it does not express the full understanding of liberty and power even in the classical liberalism of the eighteenth century, much less in its modern democratic forms.

Liberty is a species of power—the power to make choices about what is rightfully yours, free of removable hindrances.<sup>3</sup> But while anxious to guard a sphere of individual choice and private life from state control, liberalism has never stood for the anarchist and romantic view that all state power is inherently repressive. Liberals have typically supported a state strong enough, at a minimum, to defend itself against external enemies, to enforce the rule of law, to provide for public goods inadequately produced in the marketplace, to control anticompetitive practices, and to uphold the rights of individuals against such internal threats to their liberty as private oligarchs, local overlords, and religious sects or clans capable of fanatical cruelty toward each other and their own members.

It is not only to the state that liberals are concerned liberty may be lost. Rights of free speech and free assembly also vanish where the fear of mobs or thugs prevents people from speaking freely or meeting together. Weak states undermine the foundations of liberty as much as the foundations of order; even “negative liberty” depends on the state’s active presence in society, not merely on the “silence” of the law. Rights have no meaning except within the context of a state capable of upholding them. No state, no rights. No law, no liberty.

But by the same token, modern liberalism holds that insofar as government acquires more power, it ought to be held accountable, checked internally, and balanced by a countervailing recognition of rights. Modern liberalism does not sacrifice liberty to power. It raises the equilibrium of power and liberty to a higher level.

### HOW LIBERALISM WORKS

Much political analysis assumes that if one group or individual has more power, others must have less, and that is true in certain contexts. In a war, greater military power on one side necessarily means less power on the other. But not all social life is war. Some social arrangements make it possible to expand the sum of social power, particularly over time. Liberal states have been precisely that—exceptionally productive systems of power creation.

Law lies at the base of this system, simultaneously constraining power and enlarging it. The rule of law—a first principle of liberalism, though not exclusive to it—demands, among other things, that laws be general, public, unalterable retroactively, and applied the same regardless of the individuals involved.<sup>4</sup> These requirements, insofar as they are realized in practice, give individuals leverage to resist arbitrary acts of state, but states also derive a benefit from them. By upholding the rule of law, including a commitment to apply the law to themselves, rulers may be better able to attract investment, obtain credit, and sustain popular loyalty and cooperation. They may also be able to reduce power-depleting rivalries among clans and factions by convincing them that the state represents an impartial arbiter of their claims and discouraging those who feel wronged from adopting private alternatives to law, such as by seeking revenge for crimes or personal affronts. Where private vengeance rules, some individuals or groups certainly have more power than others—they can prevail over them. But violent feuds deplete society of the power necessary to achieve collective ends. The rule of law offers an alternative to private justice that instead of consuming power increases it.

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The rule of law also offers a model of how states can advance individual liberty along with societal powers. For when the law is general, public, stable, and so on, individuals are not only less subject to arbitrary power but also at greater liberty to plan their lives. And insofar as their plans include long-term investments, the society may be more prosperous and the state capable of raising greater revenue. This is the virtuous cycle of power and liberty that the rule of law allows and that constitutional liberalism ideally extends.

In a different way, guarantees of religious toleration and freedom of conscience exemplify the logic of liberalism as a foundation for a stable polity. Internecine religious conflicts and wars of religion, like revenge feuds, deplete the powers of states and societies. Religious toleration serves not only to allow people to worship differently but also to reduce conflict, facilitate economic exchange, and create a wider pool of talent for productive work and the state itself. By dividing religion from law—that is, by excluding religion from any binding social consensus—states guaranteeing religious freedom allow people of different faiths to cooperate under a political order that does not threaten to extinguish any of the various theological doctrines they support.

Religious toleration has also served as a paradigm for the state's acceptance of pluralism in other cultural and moral controversies. Where divisions over the meaning of the good life are deep and irreconcilable, the state's neutrality among competing perspectives furthers mutual forbearance, cooperation, and the growth of societal powers. The neutrality of the liberal state, however, does not apply to all matters of moral judgment. Liberalism not only regards people as worthy of being treated equally but holds that each individual life has positive value, and the laws and policies of a liberal state ought to embody that principle, though citizens may well disagree about how to interpret it. As each life has value, so do the health and well-being of the community: liberal policies in support of public health and a salubrious and sustainable environment stem from commitments that are moral in their inspiration. And because education necessarily cultivates character as well as intelligence, a liberal society will properly use its schools to pass on to the young such moral qualities as integrity, perseverance, empathy, and personal and civic responsibility. But just as liberalism excludes religion



from a binding social consensus, so it accepts a diversity of cultural and moral practices that cause no harm to others. The framework of a liberal society is only a framework—that is, it provides space for free development, allowing for differences and promoting cooperation. We may justify religious freedom and cultural diversity on the grounds of individual rights and autonomy or the equal respect due people of different faiths and values. But the potential of liberty to promote stable cooperation and state power helps to explain why states that adopted religious toleration continued to maintain it and why they have expanded the scope of pluralism.

These kinds of effects on societal power are crucial in accounting for liberalism's historical rise. The liberal hypothesis is not that each and every constraint on power serves the utilitarian purpose of enlarging societal powers, much less that every rule should be tested solely on that criterion. Rather, the hypothesis is that liberal constraints on power, when taken as a whole, have created stronger self-corrective political mechanisms, a more innovative and productive economy, broader societal cooperation, and other formidable advantages. Mechanisms of this kind help to explain why liberal ideas became the basis of enduring liberal states.

#### THE ORIGINS OF CONSTITUTIONAL LIBERALISM

Constitutional liberalism emerged in the late seventeenth and eighteenth centuries, expounded in the writing of, among others, John Locke, Montesquieu, and the framers of the U.S. Constitution (particularly James Madison), and later in the work of such figures as Benjamin Constant, Alexis de Tocqueville, and John Stuart Mill. Government based on the rule of law, separation of powers, popular consent through representative assemblies, religious toleration and freedom of conscience, protection of the rights of property, and guarantees of freedom of the press and other liberties—these were the core ideas of constitutional liberalism. Each of the elements making up this cluster had a prior history, often extending back to the medieval or even the ancient

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world. But they came together as a coherent philosophy in the eighteenth century.

According to historical convention, England's Glorious Revolution of 1688—a victory, albeit qualified, for constitutional government, religious toleration, and property rights—marked the beginning of liberalism's influence on politics and government. "Early classical" or simply "early" liberalism is the term I use to describe the phase of liberal politics and philosophy running through the American Revolution and first stages of the French Revolution. In liberal thought, this is the century bracketed, at one end, by the publication of Locke's *Two Treatises on Government* and *Letter on Toleration* (1690) and at the other end by the American Declaration of Independence and Adam Smith's *The Wealth of Nations* (both 1776), the U.S. Constitution and the *Federalist Papers* (1787–88), and the French Declaration of the Rights of Man and of Citizens (1789).

The publication of Smith's work toward the end of this period marked the beginning of an important turn. Although early liberalism was vitally concerned with property rights and economic freedom, the idea of a self-regulating economy came later. Classical economics and the politics of laissez-faire were largely a nineteenth-century development, a branching off from the main trunk. The earlier tradition of constitutional liberalism was concerned with the creation as well as the control of legitimate and effective state power. And it is from those foundations that the strongest continuities may be found connecting liberalism throughout its history, down to the present.

Early liberalism overlapped with another set of political ideas in the early modern world: the neo-Roman, or civic republican, tradition revived in Florence and other cities of the Italian Renaissance and later taken up in Britain and its American colonies by forces resisting the claims and impositions of the British state. Although some historians of ideas set republicanism and early liberalism in stark opposition to one another, the two were intermingled in political thought. Both abhorred despotism and aimed to protect liberty through independent representative assemblies and other checks on executive discretion. The neo-Roman tradition portrayed political life as a contest of corruption and

virtue. The villains of the republican story were self-aggrandizing rulers and their servile courtiers; its heroes were landowning gentlemen who because of their property and civic-mindedness were able to act independently and courageously in defense of freedom against the ever-threatening encroachments of power. The neo-Roman tradition held that to be free a man had to live in a free state—individual liberty was bound up in civic liberty—but the republican conception of the political community was limited to an exclusive, landowning elite. During the seventeenth and eighteenth centuries, radical opponents of the absolutist state used republican arguments to call for strengthening parliamentary powers or doing away with monarchy altogether on the grounds that any submission to the arbitrary will of a king constituted enslavement.<sup>5</sup>

Although the neo-Roman tradition provided an influential frame for early-modern political thought, it was anchored to an agrarian past and hostile to emerging capitalism. Liberalism, in contrast, welcomed modernity, science, innovation, and commerce and by the late eighteenth century offered a theory of economic development and historical progress. Liberalism emerged during the Enlightenment and reflected its influence, and many of the leading figures of the Enlightenment figured prominently in the shaping of liberal ideas through their historical imagination, commitments to reason and skepticism, sense of expansive human possibility, desire to reduce cruelty, and practical interests in reform. But the Enlightenment and early liberalism were not identical, especially in regard to political philosophy. Much of the Enlightenment was conservative and illiberal, and some of the leading philosophes were apologists for hereditary privilege and “enlightened despotism,” an idea wholly antithetical to liberal constitutional principles.

Constitutionalism itself is older than liberalism, dating back to ancient Greece and Rome, but the most direct influences come from the medieval world. Under feudal charters such as the Magna Carta, rulers guaranteed rights and immunities to particular estates and corporations and agreed to abide by limitations on their powers exercised from time to time by the estates’ representatives. During the sixteenth and seventeenth centuries, however, “medieval constitutionalism” collapsed in

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much of continental Europe as monarchs increasingly governed by prerogative and effectively put the traditional consultative assemblies to sleep. England remained the great exception to this pattern. The liberal theory of constitutionalism, as developed by Locke, Montesquieu, and the American founders, drew on the English tradition but involved more than a reassertion of checks on executive power and demand for the rule of law. Constitutional liberalism called for generalizing and extending such principles as separation of powers and guarantees of life, liberty, and property far beyond their old boundaries.<sup>6</sup>

England, the United States, and France exemplified three different paths toward constitutional liberalism. The English acquired their liberties—the plural is important here—through a long process of accretion, without any single comprehensive or abstract formulation. By the late seventeenth century, they conceived of their unwritten constitution as a balance among king, lords, and commons that protected their liberties while maintaining harmony, hierarchy, and order. This constitution, however, existed only as an inference from the laws; it did not antedate or stand above them, and thus it could be changed through ordinary legislation. Working within this framework, English liberalism sought, one reform at a time, to eliminate the legal vestiges of feudalism, to extend the sphere of individual liberty, and, if not to limit the state, then to subject its expansion to a constitutional discipline.

The United States built its legal system on English foundations, incorporating English liberties into the Bill of Rights and adopting the common law, but Americans radically changed the idea of a constitution. They invented the practice of writing constitutions through specially convened assemblies and submitting them to public discussion and ratification. The U.S. Constitution, unlike England's, prospectively created the state, established the conceptual framework of politics, and became a regulative standard above ordinary legislation. In proposing and adopting a comprehensive structure of government created afresh, America's founding generation displayed a breathtaking confidence in the human capacity for rational design of the state that was utterly foreign to the English belief in the cumulative genius of political tradition. In the Declaration of Independence, the Americans of

the Revolutionary era also inscribed abstract ideals of liberty and equality into their national creed. In short, while English constitutionalism grew out of the historical and particular, American constitutionalism added to it elements that were rational and universal.

The French Revolution took that rationalism and universality one step further, repudiating the traditional liberties of the Old Regime as mere privileges and overthrowing them entirely in the name of abstract ideals of liberty and equality. In the same spirit, France's revolutionaries saw the Anglo-American devotion to separation of powers as a medieval vestige and placed full sovereignty in a single assembly. But the Revolution's uprooted abstractions and unified structure of the popular will proved no protection against terror and despotism. In the United States, constitutional liberalism was the legacy of a successful revolution that became the basis of a national creed (although it would take the Civil War to overcome the contradiction between slavery and freedom that had been left unresolved at the nation's founding). In France, constitutional liberals were merely a political faction during most of the nineteenth century, and constitutional liberalism remained the disputed lesson of a revolution that had failed to institutionalize itself.

The conservative reaction triggered by the French Revolution and its aftermath weighed heavily on liberalism in England and on the continent well into the nineteenth century. Liberal parties generally subscribed to the principles of religious toleration and constitutional government, but in the wake of the French Revolution they tended to be wary of democracy and to interpret political liberties such as free speech in narrow terms. The cause that became of greatest importance to them was economic freedom. With the rise of classical economics and laissez-faire came a conception of liberalism as being devoted to an ideal of negative liberty and a general hostility to the state. But this economic liberalism of the nineteenth century represented a shift from the more complex view of the state expressed in earlier liberal political thought. Constitutional liberalism sought both to create and to contain power—and nowhere was that dual interest more evident than when the foundations of the liberal state were built in seventeenth-century England and eighteenth-century America.