Everything Old is New Again: The Death and Rebirth of Classical Liberal Philosophy

I.

Something funny happened on the way to the Twenty-first century. The old-style liberalism of John Locke and Immanuel Kant, *Federalist Papers* and Thomas Jefferson, Adam Smith and J. S. Mill had wheezed into retirement sometime toward the close of the 1800s. Taking over for it was a new liberalism that supplemented the old-fashioned concern for *liberty* understood as noninterference with a more expansive program of social melioration. The new liberals acknowledged that, of course, individuals needed to be protected from incursions by other private parties or the state, but although liberty is a necessary condition for leading a decent life, it is far from sufficient. People need purchasing power to secure food, shelter, health care, and the various appurtenances of daily living. Education is needed not only as a ladder leading to remunerative employment but also because absent a decent education individuals will be oblivious of the vistas potentially open to them. Education also affords them awareness of the nature of the civil order and the place they occupy within it as active, engaged citizens. Moreover, people not only need these goods, but they also need the *assurance* that they will continue to have them should they lose their jobs because of an economic downturn, become ill, or grow old. Insurance for all is an answer to the problem of risk.

Many new theorists acknowledged that the old liberalism had done well in its day, but now that day was past. Previously when the state undertook activity beyond the limited scope of protecting individuals in their lives, liberty and property it was as likely as not to overstep. For example, attempts to promote the development of virtuous characters by instilling in people true doctrines of piety and obedience had the perverse effect of fueling religious conflicts in which the most vicious aspects of human malevolence came to the fore. Somewhat surprisingly, it turned out that not only was it feasible for individuals to follow their own consciences in deciding how or whom to worship, but that tolerance had the pleasing side effect of promoting respect, or at least peace, among groups whose official doctrines would confine the other to precincts of damnation. State attempts to promote civil accord by monitoring and constraining speech and the press had also shown themselves to be counterproductive, as factions maneuvered to take turns seizing for themselves authority to stifle their opponents. The idea that speech, like conscience could be left free so as to convey the numerous opinions of a diverse citizenry that nonetheless held together under an impartial rule of law was among the great political discoveries of the modern era. Another was the extension of decentralized economic liberty to employers and workers under a doctrine of free contract as opposed to protectionist direction from the top. Wealth burgeoned as constraints on enterprise were relaxed. Slowly at first and then with more conviction, the old liberalism also fought against human bondage, religious liabilities, and oppression of women. All and all, this was a rather good record.

By the middle of the 19th century, however, that program was seen by enlightened men (and now women) everywhere to be unduly conservative. A government limited in its
prerogatives was to be welcomed during an era of privilege when aristocrats ruled and the many followed their sway. But the new political technology of democracy opened up possibilities for civic improvement heretofore undreamed. First, extension of the franchise meant that government would no longer be the tool of the few used against the many but rather would afford people the privilege and dignity of self-rule. Second, instruments of communication such as the telegraph, high speed rail traffic, and proliferation of newspapers and magazines meant that barriers of distance and ignorance were steadily coming down. Third, the industrial revolution did, to be sure, generate social problems on a more massive level than had ever obtained before, but it also generated enormous quantities wealth that could be put toward relieving those maladies. Fourth, advanced social theories such as Utilitarianism and Neoclassical Economics provided a model of enhancing overall welfare by extracting large amounts of income from the wealthy to be redistributed to the less well-off. This would not only promote enhanced economic well-being but also a leveling of inequalities and the concomitant breakdown of barriers of class.

The argument for expanding the role of the state so as better to serve the humane interests of all was overwhelming. Indeed, it threatened to overwhelm those advanced liberals who propounded it. If the state could be an instrument not only for basic protective services but also to ensure the provision of other goods necessary for happy lives, then why should it not be afforded yet greater prerogatives to occupy the commanding heights of economic and social activity? Socialism presented itself as a liberalism without apologies, a democratic ethos no longer in thrall to superstitions of private property. It recognized that so-called free market competition squandered productive assets and ground the working class under the heels of its plutocratic masters. As the argument was joined between the new liberalism of the welfare state and new industrial socialism, where was the old liberalism? It was nowhere. For all practical purposes it had been confined to the museum of archaic doctrine. Now, though, it has come back to vibrant life. The question to be considered in this essay is: Why?

I contend that political philosophy has undergone a seismic shift, although there is some reluctance on the part of its practitioners to acknowledge the change. That is largely because the dominant school of thought 50 or even 100 years ago, welfare liberalism, remains dominant today. What has changed are both the identity of its challengers for intellectual supremacy and the reigning champ’s level of confidence that he can fend them off. The convention among liberal political philosophers used to involve advocacy of some position featuring moderately extended governmental paternalism or egalitarian redistribution followed by defense against the criticisms of the customary socialist foil, either in its Marxian or Social Democratic guise. What has changed is that now more and more the foil to be despatched is “the libertarian.”1 It is, of

1‘Libertarian’ is the term of choice in the literature, but it carries unwieldy baggage. First, it is a neologism and thereby disguises the extent to which what has taken place is the renewal of a venerable and honored tradition rather than the outbreak of a novel sectarianism. Second, the libertarianism set up as the foil is almost invariably depicted as a narrowly dogmatic account with regard to the nature of rights and permissible limits of state action. It is confined only to the professed views of Robert Nozick (discussed below), and even these are often tendentiously or
course, the nature of foils to be summoned into dialectical combat only to be duly routed, so casual observers may be forgiven for supposing that the landscape of political philosophy has changed only at its periphery. Rather, the shift is both remarkable and momentous. After an extended period in which the scope of state action has vastly expanded in practice, either following or in the lead of accompanying justificatory theory, why should the stripped-down state again be back, if not precisely in fashion, then as the most noteworthy critic of prevailing fashions? As with so many aspects of contemporary political philosophy, the answer goes back to Rawls.

II

The publication in 1971 of John Rawls’s *A Theory of Justice* represented the seeming triumph of welfare liberalism. No one had systematized and so deeply grounded the principles of liberal justice as did Rawls in that majestic tome. This is not the place to sketch out the progression of the book; that has been done hundreds (thousands?) of times in the literature. Let it suffice here to say that the massive theory of justice rests on no more than two principles (although the second of these bifurcates into two sub-principles. The first principle affirms the liberty interests of citizens and holds that interest superior (“lexically prior”) to all other considerations. The second principle affirms the importance of equality, both with regard to opportunity to fill positions in society and possession of economic goods. No inequality is licit unless it works to the benefit of the least well-off. In virtue of the first principle of justice Rawls’s theory is continuous with the centrality of liberty throughout the liberal tradition, but the second principle renders mandatory concern for all other goods that individuals have reason to value as components of their well-being. Rawls, we might say, has stitched together the two strands of liberal advocacy into a seamless garment. There can, however, be no doubt as to where his own sympathies lie. Classical liberalism, dubbed in these pages the “system of natural liberty” is dismissed in a page and a half of analysis, not to be spotted again in these pages. Instead “Justice as Fairness” develops to the outermost frontier a theory of egalitarian social solidarity in which

inaccurately stated. [Taxation as forced labor]. Again, this is to ignore the breadth and depth of a considerable tradition. Third, “Libertarian” has become the name of a minor political party complete with quadrennial nominating conventions, anointed candidates, and press releases. I am mostly willing to leave them that term. The designation I prefer is, simply, ‘liberalism’ but given the term’s meandering evolution, its deployment courts confusion. “Classical liberalism” is increasingly popular, but it carries the unfortunate connotation of a theory preserved in some ancient ideological amber rather than one capable of being deployed to address contemporary philosophical and policy concerns. I shall use the term ‘liberal’ without qualifier except when it is necessary explicitly to distinguish the liberalism that privileges liberty from later offshoots. In that case I use either ‘classical liberal’ or ‘libertarian’, depending on which seems least unsatisfactory in the context. For what it’s worth, the same problem of nomenclature besets Friedrich Hayek in “Why I am not a Conservative” in *Constitution of Liberty* [fill].

\(^2\)TJ [fill]
citizens willingly “share each others fate.” Samuel Freeman quite appropriately dubs the Rawlsian synthesis as “High Liberalism,” a label appropriate for two reasons. First, *A Theory of Justice* was, without much doubt, the most formidable and masterfully-constructed rendering of post-Millian liberalism. Second, like the Owl of Minerva, it takes flight only at dusk. In retrospect it can be seen the preconditions enabling the canonization of the Rawlsian synthesis were already disintegrating when the first edition of *A Theory of Justice* rolled off the presses. There are at least six reasons why the bird was on the move.

First, the Great Depression of the 1930s had guaranteed the triumph of the welfare state in public opinion. Capitalist organization had been tried and found wanting. The idea that in the face of economic reversal the state should sit back and wait for natural market forces to correct and recalibrate themselves became not only untenable but also risible, as antique and unfashionable as the somber visage of Calvin Coolidge. In every advanced economy the role of the state in overseeing production and distribution advanced. The theorist par excellence of the economics of the welfare state was J. M. Keynes who, in *The General Theory of Employment, Interest, and Money* (1936) explains how an economy can fall into a persistent slump of underconsumption and consequent underemployment, and how governmental programs designed to stimulate demand artificially can snap the economy out of its lethargy. In one way or another this became the bible of postwar recovery in capitalist countries, and the subsequent burgeoning of growth was taken to establish the superiority of Keynes’s vision to that of obsolete predecessors such as Adam Smith – not that the Smith typically presented in these set pieces as the apostle of laissez faire bore much resemblance to the author of *The Wealth of Nations*. The gospel of Keynes was supplemented by subsidiary texts, notably the Philips Curve. This simple bit of geometry was named for William Philips, a New Zealand economist who in a 1958 article posited a regular tradeoff between unemployment and inflation. To lower one, the other must be allowed to rise. With state-of-the-art financial machinery in the hands of fiscal policy planners and central bankers, it seemed that a new frontier had been crossed with regard to eliminating the disconcerting crashes of the business cycle.

Unfortunately for the economic planners, things started to go bad early in the 1970s, almost simultaneous with the appearance of *A Theory of Justice*. The theory of Keynes and Philips had explained why inflation and unemployment could not both soar, yet precisely that phenomenon was observed throughout the West. *Stagflation* was the initial thrust against the

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5The figure is from the Preface to Hegel’s *Philosophy of Right*.

6Not entirely coincidentally, “New Frontier” was the campaign slogan in 1960 of the young, vigorous and Keynesian Democratic candidate, John F. Kennedy.
pretensions of the planners’ to fine-tune the economy, followed up by the development of sophisticated theoretical constructions showing why the apparent successes of the Keynesians were too good to be true. One was the monetarism of Milton Friedman, another the Theory of Rational Expectations that confirmed, basically that fooling all the people all the time was a task too difficult even for technocrats with PhD after their names.

Rawls does not specify how his Difference Principle, the presumption on behalf of the least well-off segment of society, is to be turned into policy, but its applicability rested on a presumption that social engineers were indeed competent to apply theoretical blueprints of egalitarian development. If, however, this is a capacity that they lack, if the unintended consequence of efforts to improve the lot of the poor is, often as not, to make their situation worse, then the glorious conception of raising the status of the lower ranks of society one social program at a time is rendered dubious. Experience with the further consequences of Lyndon Johnson’s Great Society, technocratic planning in pre-Thatcherite Britain, and explorations in applied Keynesianism carried out all over the world cast into opprobrium the whole range of rationalist nostrums for which the Difference Principle is the Platonic form.

Second, Rawls adopts a stance of studied neutrality between private ownership of the means of production and socialism. As with other aspects of theory, the high level of abstraction is characteristic. (High liberalism = High abstraction?) Yet by the 1970s, this pose of standing above the fray had become increasingly indefensible. That socialism does not work had been argued in theoretical tracts much earlier by Ludwig von Mises and Friedrich Hayek. It was not until many years later that a full range of data revealing the full failure of the Soviet Union, Maoist China and other communist regimes became widely available, but already the ebullient triumphalism of Soviet Premier Khrushchev declaring “We will bury you!” and banging his shoe on the table at the United Nations in 1960 had been belied by the greater productivity of the West. Nor was the predicted convergence of communist and liberal institutions much in evidence. Early in 1968 Czechoslovakia’s reforming leader Alexander Dubček had promised his constituents “socialism with a human face.” Instead in August of that year they were faced down by Soviet tanks. Chinese communism’s Cultural Revolution was many times worse. Elsewhere, milder manifestations of socialism such as the nationalization of major industries were not showing themselves to be the equal of old capitalism, let alone its superior. But none of this makes an appearance in A Theory of Justice.

This is obliviousness, not misplaced sympathies; Rawls’s fundamental commitment to liberal values is beyond question. But absence of attention to the track record of socialism calls into question the entire surrounding theory. When in the mid-19th century J. S. Mill attempted to graft strands of socialism to a private property order, the thought experiments he conducted were entirely sensible. That was then, and this is now. Was it feasible in the 1970s to profess neutrality concerning what is arguably the most significant disputed issue of the 20th century? How credible is it to profess to provide a theory of justice for the basic structure of society while

[fill Mises and Hayek sources]
sidestepping foundational questions of ownership and control? Critics could well see this as a debilitating lacuna, and they would then have reason to turn to a theoretical alternative that places property rights at the center of its construction. The two theories that do so most forthrightly are Marxism and classical liberalism.

But third, Marxism – or perhaps we should say “High Marxism” – itself was on the way out. The crudity of the Brezhnev and late Mao years had made communism a harder act to sell, and then in the marvelous year 1989 it imploded all across Europe. The Soviet Union itself vanished into the history books a couple years later, and although the Chinese Communist Party retained political supremacy, the country over which it ruled became year by year more capitalistic (and therefore more prosperous). Although it remained possible for critics of Rawlsian liberalism to espouse against it a Marxian vision purer in its ideals than any that had ever been brought into being by an actual dictatorship of the proletariat, promulgation of this vision increasingly bore the onus most hated by all genuine followers of Marx: utopian. Other non-Marxian socialisms found favor in some quarters, but the gap between a chastened social democratic program and an ambitious welfare liberalism had become too narrow to sustain a lively philosophical debate. Other contenders for the position of foil occasionally came to the fore: communitarianism and one or another version of postmodernist critical theory, but these lacked the scope and sharpness of definition of the previous challenger. As unused to worrying about challenges from the right as the new liberalism had become during the preceding century, this now was becoming the only other game in town. That afforded an opening for reappearance of the old liberalism.

Fourth, much preparatory work for a revived classical liberalism had in fact been done, although outside the precincts of mainstream academic philosophy. Economists, of course, had always been devotees of market theory, and some had developed their results in a wider context that could variously be categorized under political economy or political philosophy. Friedrich Hayek’s Road to Serfdom, a polemic against the corrosive effects of command-and-control

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8 The late Oxford philosopher G. A. Cohen was the most noteworthy Marxian holdout. See his Why Not Socialism? (Princeton, 2009) and If You’re an Egalitarian, How Come You’re So Rich? (Harvard, 2001), books that appeal through their extraordinary cleverness apart from whatever substantive merits the arguments possess.

9 In principle this could have provided an opening for philosophical conservatism, but conservatism has an easier time expressing itself as a temperament or an inchoate set of affections and prejudices than as philosophy. In the United States what passes for conservatism is better understood as classical liberalism sprinkled with a Christian ethics of a mostly non-doctrinal cast. Philosophical conservatism grows out of more fertile soil in Great Britain, where it is represented most ably by Roger Scruton. The philosophy of Michael Oakeshott is of enduring importance, one of the great contributions of the 20th century. Although Oakeshott self-declares as conservative, his political reflections place him firmly in the classical liberal tradition.
government, became a surprise bestseller in 1944. Hayek followed this up in 1960 with the publication of *Constitution of Liberty*, a detailed and systematic statement of the case for a sharply limited state. Here and in several well-regarded essays Hayek develops a nuanced social epistemology that reveals the limits of centralized information-gathering agencies compared to decentralized communicative structures, especially the price mechanism of free markets. Hayek (and his teacher, Ludwig von Mises) had been early predictors of the demise of socialism; as its sclerosis in Eastern Europe became so advanced as to be deniable only by ideological true believers, Hayek’s prestige grew, culminating in his receipt of the 1974 award of the Nobel Prize for Economics. In one respect this recognition was overdue, in another misdirected. Hayek’s work in pure economic theory had taken place three or four decades previously; the later scholarship addressed the philosophical underpinnings of a society of free individuals.

Working parallel to Hayek was the monetarist economist, Milton Friedman. Like Hayek he became a Nobel laureate, but unlike Hayek he worked primarily in mainstream economics rather than social philosophy. However, in 1962 Friedman published *Capitalism and Freedom*, a short book that presented a pristinely liberal argument that individual freedom rests on a foundation of private property ownership under the rule of law. The philosophical novelty of the argument was small, but unique to *Capitalism and Freedom* was the wealth of applications to policy questions such as military conscription, welfare programs, schooling, and occupational licensure. Friedman’s prescriptions were bold, they were forthrightly argued, and they were (and remain) ahead of their time. The book could be and was criticized on many grounds but the one charge from which it was immune is that it was a tired recapitulation of the superannuated concerns of a previous century.10

A third Nobel prize winner, James Buchanan, coauthored in 1962 with Gordon Tullock *The Calculus of Consent*, a foundational work for what became the economic sub-discipline of Public Choice theory. Buchanan and Tullock analyze political choice under majoritarian and other voting rules from a rational choice economic perspective. Just as individuals in the market exchange dollars for valued commodities, so do voters exchange ballots for preferred candidates and policies. Similarly, candidates for office can be understood as adopting positions about contested issues so as to maximize their chance of attracting enough votes to attain victory at the polls. Although complex in various of its particulars, the theory is strikingly simple in its consistent depiction of political actors as motivated by the same kinds of concerns as held by ordinary economic actors. Ultimately, public choice undermines the conception of office holders as dedicated statesmen/benign despot who are uniformly moved by their conception of the common weal rather than their own various private interests. It also displays how the “market failures” that modern economics had revealed in great number (often employing the rubric negative externality) are accompanied by “government failures” of at least equal seriousness. To

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10 Milton and Rose Friedman’s *Free to Choose* (1980) covers similar ground. Although not as ingenious and radical in its prescriptions as its predecessor, because it was the vehicle for a PBS television series carrying the same name it enjoyed what may have been a greater effect on public opinion.
contrast frictionless political determinations by idealized agents with real-world voluntary transactions among private parties is to beg every interesting question of comparative institutional analysis. Hayek and Friedman had displayed strengths of markets that critics had underestimated; Buchanan reveals weaknesses of proposed governmental alternatives. Beginning with the publication in 1975 of *The Limits of Liberty: Between Anarchy and Leviathan* (1975) Buchanan supplements public choice theory’s negative critique of state action with a positive theory of constitutional choice under uncertainty. Despite striking dissimilarities in their conclusions, this book is methodologically akin to Rawls’s deployment of a veil of ignorance in the original position.  

By the mid-1970s, then, supporting results from allied disciplines were available to political philosophers of a mind to challenge the High Liberalism of the Rawlsian consensus. That is to introduce the fifth factor in the resuscitation of classical liberalism, the publication – *eruption* may be the better word – in 1974 of Robert Nozick’s *Anarchy, State, and Utopia*. This witty and brashly good-spirited book manages to combine the rigorous analytical philosophy appropriate to a Harvard colleague of John Rawls with animadversions that range from evolutionary biology to talmudic humor. From what seem to be innocuous premises of an allegedly Lockean provenance Nozick demonstrates first, against the anarchist, that the minimal state is justifiable and second, against almost every other political theorist extant or defunct, that no state more extensive than the minimal state can be justified. He then draws the volume to a close with a blueprint for a libertarian utopia, one suitably unlike any other proclaimed utopia in its rejection of a unitary social best.

Almost instantly, Nozick became the libertarian it was every right-minded political philosopher’s business to refute. And so it has remained. The Nozick literature, although extensive, is not as massive as the Rawls literature, but argumentative asides against “the libertarian” (i.e., the author of *Anarchy, State, and Utopia*) proliferated beyond numbering. The appearance of this brilliantly provocative book, more than any other single factor, elevated classical liberalism to the status of official foil.

To be a punching bag is, perhaps, better than being ignored, but what kept the tide of refutations from becoming fossilized was the emergence of a new generation of libertarian philosophers, most of whom were the ideological descendants of the novelist Ayn Rand. This is the sixth factor in the reemergence of classical liberalism. Rand had little formal training in philosophy and, as befits a self-educated, self-proclaimed genius, admitted to even less. This in no way prevented her from issuing pronouncements in her fiction and essays assessing the entire history of Western philosophy, most of which she found wanting. Response from the professional philosophy community was nil; except for occasional expressions of contemptuous...
derision, established philosophers ignored Rand’s and her theories. Not so the younger
generation. Teenagers devoured her books, which they saw not as light entertainments but as
manuals for living large. Two sorts of characters were magnified by Rand: entrepreneurial titans
and philosophers. Of course she did not mean the scurrilous sort that infested most universities
but rather those who maintained the Objectivism that she herself (with passing assistance from
Aristotle and John Locke) had developed. Objectivism combined a metaphysical realism and
complementary epistemology with an ethical egoism endorsing the virtue of selfishness and
minimal state politics. Thousands of young people bought this package, hundreds went on to do
advanced study, and dozens eventually brought their newly-minted Ph.Ds to university positions.
Not all emphasized in their own teaching and scholarly work distinctively political themes, but
they and their students made up the next wave of post-Rawlsian libertarianism. Those who
remained closest to Rand formed an enclave that talked mostly among themselves, with
occasional purges of perceived backsliders. Others used Rand as a springboard into the wider
world of liberal political philosophy, gathering ammunition from traditional figures such as
Aristotle and Kant along with contemporaries including Hayek and, especially Nozick. Although
libertarians still constitute a small minority of active political philosophers, they represent a
liberal counter-culture too active and visible to ignore.

That completes the count of factors promoting the resuscitation of classical liberalism. I
offer by way of a lagniappe a seventh that does not so much explain its regeneration but its
sustenance: the substantial and growing institutional base furthering libertarian scholarship.
Organizations such as Institute for Humane Studies support with fellowships and informational
seminars university students who possess an interest in liberal ideas, and Cato Institute generates
research and provides employment to young libertarians. The Liberty Fund is an educational
foundation that endorses no political stance of its own, but it sponsors conferences at which
participants along the entire ideological spectrum of liberalism share ideas. Occasional
disciplinary conferences also bring people together to discuss and debate. Throughout most of
the 20th century the remnant of classical liberals were dispersed and isolated. Something closer
to the reverse is now the case.

The preceding catalog is not exhaustive. To place the surging tide of classical liberalism
in context, it is useful to contrast the ebbing of High Liberalism.

III

As classical liberal was gathering steam, Rawlsian liberalism retrenched. In Political Liberalism,
(1993) the follow-up to A Theory of Justice, Rawls acknowledges that his theory of Justice as
Fairness is not, as previously claimed, derivable as a theorem of rational choice. The rational

12The conspicuous exception was John Hospers, later to become the first Libertarian Party
nominee for presidency of the United States.
must rather be supplemented by the *reasonable*\(^{13}\). By reasonability Rawls has in mind a willingness to agree to disagree over fundamental conceptions of how to live (called *comprehensive doctrines*) and to settle instead on an *overlapping consensus* of principles that individuals will take as establishing a framework within which they may pursue their various diverse modes of life\(^{14}\). Rawls admits that the Difference Principle represents only one of several conceptions of distributive justice on which reasonable people might settle; it is no longer the egalitarian linchpin at the center of *A Theory of Justice*. In addition, Rawls significantly weakens the status of the liberty principle that ostensibly carries lexical priority over all other normative considerations. If the liberalism of the first book was pitched throughout at a very high level of abstraction, the second packages it in a wrapping of indeterminacy. Readers of *Political Liberalism* found it easier to ascertain that the philosophy being conducted there is subtle and profound than to agree on what it amounts to.

Rawls’s final substantive work, *The Law of Peoples* appears in 1999. This small volume addresses issues of justice across borders. It was not the first occasion on which the Rawlsian theory was extrapolated to international justice; very soon after publication of *A Theory of Justice* scholars inspired by Rawls explained how contractors behind a veil of ignorance in a global original position would fix on institutions that radically equalize wealth across national divides. Rawls himself demurs. He explicitly rejects appropriateness of a global difference principle, and he basically requires no more of nations (in his coinage *peoples*) than to refrain from aggression against one another. There is little in the program to which classical liberals would object. Enthusiasts for the early Rawls were crestfallen.

It is not the case, of course, that the new liberalism lives or dies with the theories of John Rawls. During his career and subsequently it has enjoyed numerous other able champions. The welfarist considerations on which liberalism has batten will doubtless continue to support theories of a state that does more than defend against internal and external aggression – much more. In May, 2003 President George W. Bush announced on the deck of an aircraft carrier concerning the Iraq War “Mission accomplished”; that verdict proved to be decidedly premature. More premature still would be a declaration of victory by the old liberalism over the new liberalism or even a claim that the former is advancing on all fronts and the latter is everywhere in retreat. With a high degree of confidence, however, one can conclude that the era of the supremacy of High Liberalism is now past its peak.

IV

As indicated in a preceding footnote, I am not in love with the term ‘classical liberalism’

\(^{13}\) *Political Liberalism*, p. [fill]

\(^{14}\) Overlapping consensus functions for Rawls much as the notion of rights as *side constraints* does for Nozick, although there is no mention in *Political Liberalism* of any influence.
because it suggests a perfectly preserved doctrine that devotees reverently remove from the glass case at periodic intervals to venerate and peruse for guidance. No doubt there is much in the writings of the heroes of the old liberalism that ought indeed be studied and heeded, but there are also gaps and even errors for contemporary theorists to address. In this, the concluding section of the essay, I suggest six areas in which further inquiry is needed and then append another lagniappe.

1. **Public Goods**

The liberalism of *Anarchy, State, and Utopia* edges away from anarchy by offering a rationale for state provision of protective services. Protection, especially in the form of defense against foreign threats is the paradigm of a public good, one which if provided to some within a group is ipso facto provided to all. If your next door neighbor is guarded against missile attacks from the foe, it does not follow that there is less defense left for you. Another way of understand public goods is that they provide unique opportunities for freeriding. Because individuals will be better off by waiting for others to assume the cost of providing some public good, there will be much more waiting than providing. This is an unfortunate outcome when it means that something crucial for living well (or, perhaps, for living at all) ends up being in short supply. That is why classical liberals acknowledge the necessity of coercing potential freeriders to contribute a prorated share to the cost of maintaining the night watchman state.

Defense may be special in various respects, but being a public good is not one of them. Adam Smith observes that government is necessary for “erecting and maintaining those publick institutions and those publick works, which though they may be in the highest degree advantageous to a great society are, however, of such a nature that the profit could never repay the expence to any individual or small number of individuals, and which it, therefore, cannot be expected that any individual or small number of individuals should erect or maintain.”

Smith has in mind the sorts of projects we today would classify as infrastructure, but public goods go beyond physical structures to include such nonmaterial entities as information and coordinating institutions. Libertarians may, of course, hope that ingeniously devised market arrangements will eventually allow for replacement of state provision of public goods, but this is an act of faith. It is important to take seriously the possibility that Adam Smith was not only right then but remains so. In that case, an adequate liberalism will contain principles allowing provision of genuine public goods.

The qualifier genuine is key. It is hardly a secret that legislatures are wont to provide a stream of projects that enrich some of their constituents at the expense of the many who are taxed to pay for them. The generic name for these undertakings is *pork*, and they are antithetical to the liberal ideal of civil society for mutual benefit. Instead they embody systematic predation within the negative-sum game that is contemporary electoral politics. That it is to be opposed is obvious. How it is to be opposed is far from obvious. The difficulty is in devising rules for

\[15\textit{Wealth of Nations} \text{ V.i.c., p. 723}\]
filtering out pork while allowing public goods to pass through\textsuperscript{16}. I do not believe that libertarians have devoted sufficient effort to the task of constructing such a filter. Probably that is due to a general suspicion of the expansive state. However, a strategy of proceeding as if all governmental projects are equally disreputable is defective for the simple reason that public goods are, as Smith affirms, “advantageous to a great society” while pork merely bloats it. In this domain people’s solemnly professed declarations are not to be given much credence. Few things come more easily to partisan lips than to allege some general benefits from a measure that just happens to delight especially one’s own district. Rather, what is needed are applicable rules or principles that will mostly countenance positive sum transactions and veto those that are negative in overall impact. Only libertarians are apt to make much headway in devising these because only libertarians consistently reject the use of governmental coercion to advance some pet private interest at the expense of the general population. Exactitude is not to be expected in this area, but throwing up one’s hands in the face of its difficulty is unacceptably defeatist.

\subsection*{2. Finance and the Regulatory State.}

The failure of economies during the 1970s to respond to Keynesian prescriptions\textsuperscript{17} was, I argued above, one of the prime factors in undermining the credibility of High Liberalism. The sudden and dramatic failure of financial markets in 2008 arguably was a blow of equal if not indeed greater magnitude to the romance with free market capitalism that had been conducted during the two preceding decades. I say “arguably” because this was indeed argued by the usual cast of characters: French president Sarkozy, German chancellor Merkel, George Soros, Paul Krugman, and a host of other proponents of the regulatory state. Classical liberals have, expectedly, rejected their criticisms, typically by throwing back in their face governmental failures alleged to have created or exacerbated the crisis. These include central banks that held interest rates to artificially low levels and policies that had pressured homeowners to take out mortgages they could not afford and lenders to underwrite these unsound loans.

Just as debates about the causes of the Great Depression and the triumphs or failures of the New Deal persist some seventy years after the events, it is to be expected that 2008 and its aftermath will also occupy the attention of economists and historians well into the future. It also should prompt attention from political philosophers. Theirs is not the task of undertaking detailed post mortems but rather to identify the basic principles that should guide governments

\textsuperscript{16}An additional complication is that goods public in the requisite sense will also possess private aspects. For example, national defense is the paradigmatic public good, but a decision where to place a particular military base generates winners and losers.

\textsuperscript{17}The term \textit{bastard Keynesianism} is sometimes used to refer to the doctrines of policymakers who wrapped themselves in the mantel of Keynes yet offered recommendations that Keynes himself very likely would not have endorsed (mostly a sequence of ever-increased demand-side stimulation). My own estimation is that Keynes fared neither much better nor much worse than do most stunningly original thinkers at the hands of their would-be proteges.
and, perhaps, private parties with regard to avoiding financial panics and, should avoidance prove unattainable, cleaning up in their aftermath. The urgency is greatest for those of a fundamentally classical liberal orientation because they are more constrained than their peers with regard to what can be considered an acceptable level of governmental control. In particular, they need to lend close scrutiny to the mantra “Too big to fail.” Is it the case that in some circumstances, those of 2008 freshest in mind, the least bad thing for the state to do is provide bailouts to behemoths that give every indication of being in their death throes? If so, does that fatally compromise the doctrine of laissez faire? Are we then left with uninspiring debates between those who favor a modestly managed state and those who prefer intense management? If classical liberals reject state intervention, will it be because of an a priori faith that market outcomes will never be as disastrous as naysayers predict or because their principles rule out appeal to consequential reasoning though the heavens may fall? The former is a hard dogma to sell and the latter an even less palatable recommendation to swallow.

I believe that the libertarian model of the minimal state needs to incorporate principles to govern and constrain a minimal regulatory state. Indeed, damage-inhibiting regulatory structures are themselves public goods that confer general benefits. Stultifying regulation is, of course, a public bad. Liberalism needs not only a general theory of public goods but also particular application to regulation. Given the critical importance of well-functioning markets, finance within and across countries should be at the forefront of the exercise. It is not the only area of regulation that is apt to occasion pitched battles in the 21st century. Climate change prescriptions are another, and even more than finance this involves the creation of harms and benefits that are truly world-wide. Health care policy will also continue to generate regulatory conflict. For classical liberals simply to proclaim a pox on the regulatory state is inadequate. That will render them mostly irrelevant in debates concerning what might be the least bad measures to adopt with regard to these and other matters of public policy.

3. Intergenerational Justice

Vindicating rights of the defenseless against the depredations of the powerful lies at the heart of liberalism. There are none so defenseless as those who are not yet born. Therefore, concern for justice across generations ought to comprise a major plank of the liberal program. This is not, however, an area in which upholders of traditional liberalism have distinguished themselves. Instead, generational concerns have primarily been addressed by egalitarians who argue in one manner or another that the pace of current consumption cheats our posterity via ecological shocks or diminution of finite resources. Rarely do these critiques take cognizance of creation of resources through technological advance that opens up possibilities of use that did not heretofore exist. It is misguided, however, to reject out of hand the contention that this generation’s habits impermissibly compromise the legitimate interests of those who will follow. Classical liberals may not care for the state-enhancing uses to which prognostications of global

18That is not to say that all persons are similarly affected. A bit of warming in Greenland will have a different potential for creating winners and losers than warming in the Congo.
warming have been turned, but to the extent that consumption of materials and atmospheric change pose externalities for third parties, then these ought to be confronted, even if some implications are unpalatable.

More immediate and less speculative, however, are harms constituted by paying for current consumption with debts that will fall due on people who are now children or not yet in existence. There is, of course, nothing amiss with taking on debt to finance activities that generate a commensurate income flow: that is how the great vehicles of commerce were fueled. The West’s welfare states are also founded on debt, but their future prospects are very much in doubt. The drama of one Eurozone country after another falling into financial crisis displays a common thread of ill-judged debt undertakings. It is not only the Greeces and Portugals of the world that have assumed obligations that they are palpably unable to fulfill; the United States has promised the soon-to-be-elderly pension payouts and healthcare services that their progeny cannot realistically shoulder. No less temporally out of whack are the budgets of the several states where amassed promises to current and retired public employees exceed any prudent estimation of what can reasonably be borne by taxpayers. Much environmentalist discussion revolves around the concept of sustainability; much less sustainable than energy or agricultural consumption is the debt burden piled up over the past several decades by welfare states.

It’s not likely that a plausible response to problems of justice in transgenerational debt will emerge from welfare liberalism; that’s the theory that has proudly fathered the practices that have proved unaffordable. Libertarians, however, should have much to offer. Two kinds of analyses are needed. First, a political philosophy of public debt needs to offer criteria to distinguish permissible (or mandatory) creation of debt from that which is impermissible. Roughly, debts falling due on future citizen cohorts are justified when they promise returns that at least match the associated costs. For example, taking on debt to finance a defensive war will typically be justifiable; debt to finance welfare state emoluments is not. Second, and much more difficult, is development of principled strategies for addressing and ameliorating previous ill-conceived spending choices. Within limits of possibility, who should bear the burden for promises that ought never have been made? Unfortunately, the second type of problem has descended from the realm of high theory to urgent practice. Once it becomes apparent that someone’s ox inevitably will be gored, that various legitimate expectations will necessarily be quashed, moral analysis has to redirect its bearings from the good to the less bad. This has not been territory much favored by libertarians; that needs to be turned around,

4. Taxation

There is little to like about taxation. It is often inefficient and inequitable, and it is always coercive. Robert Nozick speaks for many libertarians when in Anarchy, State, & Utopia he declares [theft]. Elsewhere in that book, however, he reminds readers that goods do not come into the world as manna from heaven. Even if one rejects the contentions of this section that some measure of public good provision is appropriate for the liberal state, it nonetheless remains true that the basic defense functions of the night watchman state have to be funded. It is fanciful
to play with ideas of doing so from state-run lotteries or private philanthropy; some form of taxation in some amount is necessary.

The question of how much to tax is more or less answered by prior spending decisions, but the manner of taxation is an important independent question. One thing we know is that a progressive income tax has deleterious effects. But we also know that a flat income tax, sales tax, consumption tax, property tax, wealth tax, death tax, excise tax, head tax and all the rest also have deleterious effects. Here as in so many area of policy, the task is to settle on the least bad expedient (or the least bad package of expedients). Public finance economists have generated a large and important literature on tax policy, one that is partially relevant to and partially orthogonal to philosophical theories of the free society. Earlier generations of classical liberals – Adam Smith and John Stuart Mill especially come to mind – have integrated their views on proper and improper taxation with overarching theories of political philosophy. This does not seem to be a question that contemporary classical liberals are eager to take up. Perhaps that is because any endorsement of taxation is felt to be impure. Perhaps. But there are different degrees of impurity, and to absent oneself from this discussion is merely to leave it in other hands that are much less disinclined to dirty themselves.

5. Rectification and Repair

Nozick’s Entitlement Theory of justice maintains that property is justly held if it has been appropriated from a previously unowned condition or if justly transferred by its previous rightful owner. Added as something of an afterthought is a third condition of rectification for a prior injustice, but if that provision is taken seriously, it is apt to swallow up the rest of the theory. It is a commonplace to observe that the history of every people on every continent is a story of rapine and plunder with occasional sunshine breaking through the dark nights of carnage. There are no unbroken chains of clear title for any land holding on the planet. It follows that all items extracted from the land, anything manufactured from those items, and anything produced therefrom carries a blemished provenance. Nor do we possess any clear understanding of what rectification could possibly amount to for deeds performed centuries let alone millennia ago. If the Entitlement theory is interpreted as offering necessary conditions for justice in holdings, then no one legitimately owns anything. (This includes ownership of one’s own body because the production of new generations of human beings is also infected by prior injustices.) If, more plausibly, the theory is understood to be supplying sufficient conditions, then it may be acceptable in theory but essentially vacuous in practice.

To draw from the above a counsel of nihilism concerning justice in holdings would be an error. The Entitlement theory is a brilliant attempt at sketching out an alternative to what Nozick calls “patterned principles,” that is, principles mandating distribution according to some monolithic normative standard of worthiness. It no more affords a practical account of who

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19With the important proviso that taxation later can serve as a substitute for taxation now; see the preceding discussion of debt.
justly owns what than does a physics of frictionless surfaces purport to explain automobile movements along Interstate 95. What is needed to supplement Nozick’s idealized account are criteria for distinguishing among imperfect claims for ownership the ones that are least flawed. It seems likely that these criteria will not much indulge in speculations concerning how the world would present itself if no acts of injustice had ever occurred. Rather, they will take both individual liberty and friction seriously.

Addressing this family of issues in not only or primarily a desideratum of high theory. Several of the most pressing issues in the practice of justice in an imperfect world refer centrally to acts of dispossession committed in the recent and not-so-recent past. In the United States these include claimed reparations for the descendants of enslaved Africans and the country’s first – and failed – experiment with multiculturalism: recognition of semi-sovereign, semi-self-determining Indian tribes. Elsewhere, interminable competing claims and counterclaims for territory in and around Israel/Palestine or Kashmir could benefit by attention from a liberal perspective. What sort of contribution beyond the familiar slogans of partisans’ propaganda can be offered? That is precisely the question.

6. **Global Justice Issues**

All the great classics of liberal theory from Hobbes and Locke through J.S. Mill and Herbert Spencer take creation and maintenance of the rights-respecting state as the singularly momentous political task. Although mention is occasionally made of interactions across borders (as, for example, when Hobbes observes that all sovereign authorities are in a state of nature one with another20), no serious attempt is made to devise a globally synoptic view of justice. Rather, theorists devise modest extensions to traditional Just War theory21. That no longer suffices. In a world in which information is not constrained by distance and commerce little more so, it is imperative to arrive at a functional understanding of what constitutes proper state-to-state interaction and also the extent to which the obligations of individuals toward co-nationals differ from those owed to foreigners.

Egalitarians have jumped ahead in the enterprise of globalizing political philosophy. Unsurprisingly, their prescriptions have mostly focused on programs for coercively redistributing wealth from the prosperous citizens of the West to impoverished societies of the South. Either some version of a Rawlsian Difference principle or mordant reflections on imperialist exploitation underlie charges that global poverty is not merely a grave misfortune but an injustice demanding rectification (see IV.5). Perhaps because libertarians tend to give short shrift to the programmatic manifestos of so-called social justice, accounts of global justice that privilege liberty over distributivist desiderata have been scarce on the ground. That is unfortunate, because

20*Leviathan* [#]

21Of these, Immanuel Kant’s essay “Perpetual Peace” is probably the most significant.
in the absence of superior competing theories, inadequate ones will dominate. Nor need the libertarian program of global justice be essentially rejectionist. If individuals have a right to be free of interference, then they may permissibly trade or associate with willing others both domestically and across borders. Contemporary states throws up countless roadblocks to trade and personal mobility, thereby perpetrating global injustices independent from and, indeed, contrary to wealth transfer nostrums. Because classical theories of basic rights do not see their force abruptly terminating at national boundaries, there is much scope for development of a cosmopolitan libertarianism.

7. Non-Ideal Theory

This is not so much an independent area for liberal theorizing but rather a theme that pervades the previous six categories. Political philosophy from Plato’s Republic to John Rawls’s A Theory of Justice and Robert Nozick’s Anarchy, State, and Utopia have worked to spell out the design for a uniquely best society. The term ‘ideal theory’ is applied to these efforts. Without denying the utility of idealism, if for no other reason as a tool for sharpening our awareness of injustices, this is at most half of an adequate theoretical program. Aiming for the best is laudable, but so too is acting to secure the least bad available under the circumstances. It is a mistake to suppose that these are the same enterprise. Economists have done much better than philosophers in developing a theory of second best: prescriptions for adjustment to suboptimal conditions. The key insight of a theory of second best is that when the ideal isn’t achievable along one or more dimension, then it may be the case that other optimality conditions should be relaxed too. Although the terminology can be unfamiliar to philosophers, the core idea is well-explored. Consider a very simple case. Ideal principle: It is wrong to deprive people of their liberty. Suppose though that some individual does deprive others of their liberty. Then it seems reasonable to conclude Second-best principle: Liberty-deprivers are to be deprived of their own liberty.

The intellectual attractions of working out the fine points of a liberal utopia are undeniable. Debating whether only anarchism as opposed to the night watchman state can be fully respectful of individual rights, whether roads and the atmosphere can be fully privatized, and whether people may permissibly sell themselves into slavery are exercises that sharpen libertarians’ philosophical wits (although most people outside of that cohort tend to find these discussions somewhat less intelligible than those about the number of angels dancing on the head of a pin). But as has been claimed above, far less rigorously principled thought has been directed toward appropriately adjusting to (currently) unremovable unjust conditions. Perhaps this is because willingness to recognize such constraints is seen as complicity with evil. More likely, disinclination to step into the realm of second-best amounts to self-stultifying diffidence. Following Voltaire, Milton Friedman advised that the best often is the enemy of the good. His

Capitalism and Freedom is the great honorable exception to libertarian theory’s romance with the ideal. That book, although still penetrating and lively, is now half a century old and much stronger with regard to its policy prescriptions than its philosophical foundations. The 21st Century is in need of its own Friedmans. I hope that the previous few paragraphs have shown that there remains much for them to do.

Loren Lomasky