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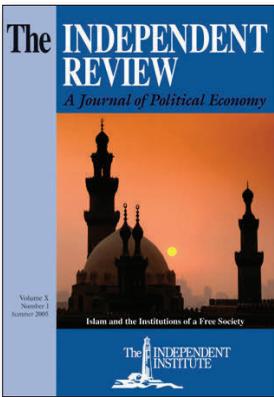


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Spontaneous Order and Liberalism's Complex Relation to Democracy

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GUS DIZEREGA

In this article, I argue that spontaneous orders are natural outgrowths of liberal principles and that a better understanding of them sheds light on a fateful split between nineteenth-century American and European liberal traditions that remains relevant today.

What Is Liberalism?

Liberalism's core insight is that the individual is the fundamental moral and social unit and that in this regard all persons are equal. As Rabbi Hillel said in a different context, "Everything else is commentary."

Liberalism arose in seventeenth-century England, beginning primarily with the work of John Locke (1632–1704), but spreading rapidly among the intellectual elite of the future United States and western Europe. Two other origins are sometimes identified: classical civilization and the work of Thomas Hobbes (1588–1679). Because the reasons why these sources ultimately did not serve as successful foundations of liberalism play an important role in my analysis, I begin by briefly discussing them.

The Greek ideal closest to liberalism was exemplified most memorably in Thucydides's (2007) account of Pericles's funeral oration. Aristotle's defense of free

Gus diZerega is an independent scholar and writer living in Sebastopol, California.

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government similarly rested on our powers of speech and capacity for uncoerced rational persuasion (diZerega 2000, 13–56). However, in both cases the focus is on the individual in community, not on the individual as a distinct unit. Thus, their emphasis differs from liberalism’s.

Classical societies were rooted in slavery, which depended on the denial that individuals are equal moral units. Most classical conceptions of human equality refer to our common relationship to the cosmos and take slavery largely for granted. We know that Greek critiques of slavery existed because Aristotle refers to them, but no such writings have come down to us (Cambiano 2003).

Thomas Hobbes is also sometimes identified as liberalism’s principle founder, especially by its detractors (Strauss 1999; MacPherson 2011). Hobbes was an individualist and modern in his outlook, but he was no liberal. His argument for natural right refers simply to our power to act. The stronger can act with impunity on the weaker. The weak can band together, making even the position of the strongest vulnerable. Therefore, all benefit from the creation of a “Leviathan” able to subdue anyone. The resulting peace enables most to benefit more than they would in its absence. Hobbes never makes the case that individuals have moral standing or that they deserve legal respect.

Today Hobbes’s approach provides a powerful alternative to liberalism, substituting self-interest for moral principles and providing only a weak defense against aggression and exploitation. This perspective is in keeping with the Athenian statement to the Melians during the Peloponnesian War: “The right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must” (Thucydides n.d.).

John Locke was the first major liberal thinker. His argument for equal rights and government by the consent of the governed ignited a vision that would transform the world, coming first to major fruition in 1776. The opening arguments of the Declaration of Independence read as if Locke might have written them, which is not surprising because by that time Lockean liberalism had penetrated elite American culture. Thomas Jefferson (1743–1826) explained years later that the document’s Lockeanism “was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion” (1944, 719).

To get a sense of how unusual the liberal insight about individual equality was, we may contrast Locke’s vision with that of Sir Francis Bacon (1561–1626), who also was closely associated with the rise of the modern world. Bacon (2009) envisioned an elite of scientific experts ruling over everyone else. He had difficulty even conceiving relationships among equals as desirable: “There is little friendship in the world and least between equals” (Bacon qtd. by Edith Howe as cited in Hardwick 2008, 127). Hobbes served as Bacon’s secretary and apparently shared many of his views.

Since Locke’s time, liberalism has grown and diversified, with liberals frequently disagreeing among themselves on important issues. But liberals have always retained the fundamental insight that individuals have equal ethical standing and are society’s

fundamental ethical unit. From the most fervent free-market libertarian to the most committed “big-government” member of the American Civil Liberties Union, this commitment continues to be the case.

Liberalism and Science

Science set the stage for liberalism. Michael Polanyi observes that “in the free cooperation of independent scientists we . . . find a highly simplified model of a free society” (1967, 49). Although geniuses have always been among us, science took off only when relatively easy communication among equals arose, with all persons’ theories subject to common criteria of judgment. Beginning during the Renaissance, most notably after the printing press came to Europe, networks of correspondence arose. Within these networks, individuals could communicate largely as equals obliged to explain and defend their scientific explanations and discoveries, thereby propelling the rise of modern science. The success of science added credibility to early liberals’ efforts to expand liberal principles to broader areas of social life.

It is no more accidental that Locke knew Sir Isaac Newton (1643–1727) than that Hobbes was associated with Bacon. All of these men were deeply involved in the intellectual debates and explorations that fueling the rise of science. In Bacon’s time, however, most of science’s early achievements were in the future, whereas Locke wrote when science was bearing increasingly powerful fruits. Bacon had an eye to the hierarchical worldview of medieval Europe, but Locke did not.

In principle, all scientists are subject to the same rules, with voluntary persuasion of other scientists being the ultimate standard of success. Over time, scientists became increasingly specialized, with overlaps between them creating a field of scientific knowledge able to expand well beyond what any one of them could hope to attain (Ziman 1968, 37–38). The community’s collective judgment became what scientists relied on when accepting or rejecting others’ claims about matters they themselves had neither time nor expertise to evaluate.

Science’s success underscored two important points. First, a person’s social or political status was ideally less significant than the persuasive power of his (and occasionally her) work. Second, the scientific standards that arose—such as measurement, experiment, and prediction—emerged out of doing science itself, not because some philosophical authority demanded them. To predict something unexpected was especially convincing. So was a successful, repeatable experiment. Although we might disagree with one another religiously or philosophically, it was more difficult to disagree with a precise measurement. Science rose through people’s seeking convincing arguments about the physical world.

To put this process more abstractly, a community of equals pursuing a broad common interest whose details are unknown developed gradually a culture of procedural rules ideally applying equally to all, thereby facilitating the efforts of each to

discover those details. These rules were shaped by the projects they were devised to facilitate, but, whatever their other traits, they included strong ethical injunctions in favor of honesty, equal standing, and the importance of voluntary agreement because the entire enterprise rested on persuasion. The result was something new in human experience.

Spontaneous Order

Centuries later Michael Polanyi and F. A. Hayek would call this new form of order a “spontaneous order” arising from the activities of independent equals, mediated through feedback that signaled what kinds of future projects might most likely succeed (Polanyi 1967; Hayek 1978). This coordinating framework enabled people who were pursuing independently conceived and even contradictory plans to contribute to a dynamic pattern rather than to generate a chaos of incompatible projects.¹ Spontaneous orders are processes of continual discovery in which independent equals generate systemwide coordination through a process of mutual adjustment.

Any broad value whose details must be discovered is open to pursuit by equal people with different insights. A spontaneous order develops when this pursuit is coordinated by impersonal feedback generated by previous actions. For this feedback to occur, people must follow procedural rules, with success being validated by systemic feedback, not by any authority. In this sense, spontaneous orders serve free and equal individuals.

Modern scientific progress was the unintended consequence of applying what later became known as liberal principles to the study of the physical world. Scientific knowledge existed within networks of scientists, each one understanding a small part of the whole. Yet this network collectively constituted the most effective means of discovery humanity has ever developed. What science initiated in the realm of knowledge, an increasingly free market, rooted in similar foundational principles but otherwise embodying different values, developed within material production. Both science and the market constitute discovery processes in which a coherent pattern arises from the pursuit of an indefinite number of independently chosen projects (Hayek 1978). These projects together enable people to assess their environment better for future choices.

Spontaneous orders manifest themselves differently in science and the market because they facilitate the pursuit of different values; by developing different procedural rules, they generate different patterns of coordination. But neither science nor the market pursues concrete goals. In this sense, neither is a teleological process, like the process research teams or businesses might follow.

1. Some might argue that the market preceded science, and in the sense that people have always traded with one another, it did. Yet it was in science that freedom of cooperation among equals first became a central dimension of a widespread cooperative activity and in the process generated impersonal mutual adjustment across the entire field of action.

To function as coordinating signals, the feedback generated by a spontaneous order must prove accurate enough to serve as a good guide for people who are strangers to one another to make future plans. Each new discovery and successful or unsuccessful project generates positive and negative feedback, reflecting the lowest common denominator of values pursued by participants within an order. For example, changing prices and scientific reputations indicate which possibilities are more likely to be successfully attained and which carry more risk in the market and science. People can then effectively integrate their local knowledge with otherwise unknown information made useful through these signals.

Civil Society and Spontaneous Order

Within liberal civil society, individuals are free to enter into cooperative relations with others. Some of these projects are of universal concern, such as economic production. Others, such as science, appeal to large but limited populations. Still others, such as the community of jazz musicians and those who support them or the community of rose gardeners, are the domains of relatively small numbers of participants. Insofar as impersonal feedback divorced from personal knowledge emerges from these activities, a spontaneous order tends to develop.

Spontaneous orders that emerge from civil society as feedback processes detach themselves from the complexity of individual motivations. When feedback attains relative independence from deliberate modifications, systems of coordination become independent parts of the environments in which individuals act. As specialized spontaneous orders emerge, their coordinating rules reflect a narrower range of values, though still within a context that favors equality, honesty, and voluntary agreement. Modern science and the free market emerged in this way.

The more focused values reflect the kinds of projects people usually attempt in these subsidiary orders. For example, the rules of science facilitate discovery and agreement about the physical universe, evaluating competing theories by common standards of measurement, experiment, and prediction. The rules of the market facilitate agreement about exchanges of property rights made through the medium of money, values in this context being expressed as their money prices.

Of course, investigating physical reality and making voluntary exchanges can occur without spontaneous orders by means of systems of subsidiary rules beyond voluntary agreement. But an economy of face-to-face barter would necessarily be very simple. People have likewise long sought knowledge about physical reality, but until the rise of science this knowledge was only a shadow of what it is today.

Participants will often be motivated by more complex values than are reflected in these rules and the feedback they make possible. Neither buyers nor sellers need be motivated primarily by prices for prices to assist them in better attaining their goals. Whether a scientist does his research as a contribution to human well-being or as an attempt to win fame or fortune is disconnected from the value of his findings. Actions

must be in harmony with systemically defined rules if the person is to act successfully within it, but those acting do so from many motives (diZerega 2004, 2009).

The foregoing general observations about spontaneous orders as expressions of liberal principles set the stage for a consideration of liberal democracy, which is also a spontaneous order. Equality of the vote, freedom of speech and organization, and freedom of the press do not direct the goals for which they are employed any more than do freedom of contract and freedom to do research. As in science and the market, mutually contradictory projects can be legitimately pursued within a framework of common rules.

Democracy, I maintain, is the third spontaneous order most directly implicit in liberal principles. Defense of my claim requires successfully answering two queries. First, if spontaneous orders serve different values, what values does liberal democracy promote? Second, given that the state has been understood historically as a hierarchical organization, how can a democracy, which is usually considered a form of the state, be a spontaneous order?

Public Values

Liberal democracies exist primarily to discover and establish *public values*. A public value is one that people believe should apply in their society as a whole. It differs from a private value because its advocates believe it should manifest itself more broadly than it would if left to individuals' independent decisions. Like scientific theories and entrepreneurial projects, proposals for public values can be contradictory. Consider the contemporary contradictory claims that gays should be able to marry and receive the legal privileges currently afforded married couples and that marriage of gay people should be constitutionally banned. Every society has public values, and what they are and how they might be changed are issues in every community. *Finding, preserving, and modifying public values as determined by the community is the core of a liberal conception of politics.*

A functioning market requires the prior determination of important public values. Property rights do not define themselves. The world is not made up of perfectly discrete objects whose boundaries are obvious to everyone. Virtually any definition of a property right's boundary might reasonably have been drawn differently. No matter how property rights are defined, some people benefit from them more than others. For example, should patents and copyrights exist, and if so, how should they be defined, and how long should they last? To take another example, private property in land is basic to all market economies, but in much of Europe people can walk across private land, whereas in the United States it is often illegal to "trespass."

These examples point to the dilemma that Locke described as leading people to want to create a government. We are unable *reliably* to judge fairly when we know we will personally benefit or lose from a decision. Some people may become

rich, but others will not, depending on how a patent or copyright is defined. I may manage my land differently depending on whether others can walk across it freely.

People are better able to agree on procedural rules for settling unknown future cases than to settle a concrete controversy in the absence of preexisting rules. When all who are potentially affected have a voice, the inevitable losers have a chance to be heard. Although they may lose on some issues, they will probably not lose on all of them and so will be more likely to accept the decisions with which they disagree as having been made fairly. At liberalism's very inception, Locke recognized the need for fair rules for public decision making, viewing them as essential for the rise of any complex free society. In this respect, nothing has changed.

Spontaneous Orders and Democracy

In *Law, Legislation, and Liberty*, Hayek discusses a fateful ambiguity in the word *economy*:

An economy, in the strict sense of the word . . . consists of activities by which a given set of means is allocated in accordance with a unitary plan among the competing ends, according to their relative importance. The market order serves no such single order of ends. What is commonly called a social or national economy is in this sense not a single economy but a network of many interrelated economies. Its order shares . . . with the order of an economy proper some formal characteristics but not the most important one: its activities are not governed by a single scale or hierarchy of ends. (1976, 107–8)

Classical liberals' error in confusing democracy with the sovereign state is analogous to the Marxists' error in confusing the tasks accomplished by a market economy with those pursued by an instrumental organization—an error from which the Marxists wrongly infer that the economy is amenable to central planning. They assume a greater objectivity of public values than in fact exists. To elaborate on this point, I begin by discussing the circumstances in which a democracy appears least like a spontaneous order.

During World War II, when the democratic countries were fighting against Nazi Germany, the national economies and scientific research of the various warring powers were devoted largely to winning the war. For most citizens, this public value took uncontested precedence over others. Civilian production took a back seat to military production. The same priorities held for the resources available for scientific research. The U.S. government became the single largest purchaser of scientific and economic work and shaped both in accordance with its priorities. By controlling resources and

seeing that they served the ends of military production, the government subordinated spontaneous-order processes to organizational ones, exercising near-monopsonistic clout.

Democratic nations achieved this subordination because their citizens overwhelmingly favored winning the war. Their governments used the law and the purse to shape society to serve this goal. They did the same for the democratic process itself. In peacetime, freedom of political speech is a basic component of the democratic world. In wartime, however, it is limited. In peacetime, freedom of the press is vital to a democratic polity; in wartime, it is not. In peacetime, any political position may be sought through the electoral system, but in wartime some positions are forbidden. Political freedoms that inhibited or were even imagined possibly to inhibit the war effort were proscribed. No Nazis or Nazi sympathizers ran for office in the United States. Great Britain postponed elections yet remained a democracy. Speaking and organizing freely in regard to political matters mean acting as a good citizen during peacetime, but they might mean acting as a disloyal citizen during wartime. Yet World War II was correctly described as a war of democracies allied with the Soviet Union against other undemocratic powers.

Like the word *economy*, the word *democracy* may describe a system in which nearly all citizens are united in attaining an overarching goal, and it may describe a political system with no overarching goal and with many parties and citizens advocating shifting and contradictory sets of policies. Both systems may encompass the same individuals. A democracy at war is akin to a business firm or a scientist's research project. It can be understood in organizational terms as pursuing a concrete goal. A democracy in peacetime, however, is more like the network of all scientists or all individual economies. *The very freedoms that democracies limit during wartime are defining elements of what makes these societies democratic during peacetime.*

This ambiguity characterizes all governments considered basically democratic. On the one hand, citizens are free to discuss and debate various proposals as to what the political community should do. On the other hand, citizens sometimes become convinced to ignore day-to-day issues in order to organize themselves to deal with a challenge common to all of them, usually war.

During times of war, when democratic processes are subordinated to a hierarchy of goals, the system lives on cultural capital and depends on its leadership to return the system to democratic processes when the crisis is over. Too prolonged a crisis, too venal a leadership, or an insufficiency of social capital may tip the system into an undemocratic one.

In *The Federalist*, Alexander Hamilton (1755–1804) wrote that when war is frequent, popular governments must “strengthen the executive arm of government, in doing which their constitutions would acquire a progressive direction towards monarchy. It is of the nature of war to increase the executive at the expense of the legislative authority” (Publius 1961, 68).

In my terminology, when public values exist in a clear hierarchy, there is little need for the legislature. The legislature's only job is to support the executive in implementing efforts to attain the highest-priority values.

If such conditions are prolonged, Hamilton wrote, "we should, in a little time, see established in every part of this country the same engines of despotism which have been the scourge of the old world" (Publius 1961, 68). In democracies, constitutional procedures trump concrete organizational goals; when this relationship is reversed, democracies tend to disappear.

In wartime and during other severe emergencies, political decisions are made within a largely accepted hierarchy of priorities. In such circumstances, democracies seek efficiency in using resources to attain the national goal. In peacetime, no such hierarchy exists, and any decision is subject to legitimate challenge and later retraction. Mutually contradictory policies are advocated and sometimes even adopted. Many classical liberals denounce this "inefficiency," but in doing so they make the same kind of error in a different context that state socialists make in complaining about "inefficiency" in the market.

The other side of not being efficient is that democracies, like science and the market, are discovery processes in which individuals are free to pursue an indefinitely wide variety of political projects. Democracies permit the discovery of policies regarded as legitimate by the community as a whole, although they remain perpetually open to challenge (Kingdon 1995). By their very nature, discovery processes explore false leads, which is why they appear inefficient to those who assume that all goals are known.

Unlike science, however, democracies must make choices in a time frame so narrow that making no choice is often itself a choice. "Doing nothing" is a choice advocated by beneficiaries of the status quo. Science, in contrast, is under no pressure to resolve a question. An open issue remains open.

Because everyone's vote counts equally within complex polities, time constraints and our unreliability in judging our own cases prevent the use of unanimity rules, or decision-making rules that range from majority rule to various qualified majorities intended to increase the level of agreement without sacrificing the ability to make decisions that must be made. General decisions typically require simple majorities, and constitutional decisions, which modify basic procedural rules, require super majorities. James Madison's opposition to a requirement of super majorities for most issues is instructive. In *The Federalist No. 58*, he wrote: "That some advantages might have resulted from such a precaution cannot be denied. . . . But these considerations are outweighed by . . . all cases where justice or the general good might require new laws to be passed, or active measures to be pursued. . . . It would be no longer the majority that would rule: the power would be transferred to the minority" (Publius 1961, 361).

Some readers may remain uncomfortable with my claim that democracies are spontaneous orders. Even peacetime democracies make decisions binding on

everyone, whereas neither science nor the market order does so. In addition, “majority rule” seems to suggest the hierarchical subjection of a minority to a majority. This unease often comes from equating the final vote with democracy. In reality, however, democracy encompasses the total process of discussion, debate, and voting. The final vote is a crucial portion, but it is nevertheless only one portion of the democratic process.

Democracies were initially small communities where most citizens (most males, at least) had formally equal votes. New England’s democracies had annual town meetings, but the political process did not begin and end with the meeting, although it might have seemed so to outsiders. Politics was ongoing, and meetings often ratified issues that had been discussed throughout the previous year. The public good had plenty of time to be explored, and meetings were unlikely to be torn apart by factional discord. If agreement proved impossible on enough issues, a town sometimes would split apart (Zuckerman 2008).

Equating democracy with the final vote is akin to equating the market with a consumer’s final purchase. This error comes from importing habits of thought suitable for understanding many undemocratic states into a consideration of democratic governments.

Empirical Implications

My theoretical distinction between democracies and states is practically important for at least three reasons. First, there has never been a war between two liberal democracies. For example, during the Cold War no democratic nation attacked another, but *every* Leninist state that bordered another, where in both the ruling party had come to power largely on its own, fought a war or serious border battle with its neighbor: China/Russia, China/Vietnam, Vietnam/Kampuchea. R. J. Rummel (2002) rigorously demonstrates that this claim is statistically significant. In additional research, Rummel (1997) discovered an equally strong correlation between whether a government is democratic and its use of political violence against its own citizens. In short, democratic and undemocratic countries differ enormously in their internal and external levels of violence.

Second, even though some democracies have governmental budgets that dwarf the U.S. budget as a percentage of gross national product, and they involve themselves far more extensively in their citizens’ lives, they have shown no discernable trend toward despotic or authoritarian rule. We need only consider the Scandinavian democracies to see the truth of this claim. Sweden has had a powerful “welfare state” since the 1930s, yet it has not been on a “road to serfdom” (Steinmo 2010). Sweden is not alone in this regard.

Third, progressive liberals have advocated regulatory bureaucracies based on European models that arose under monarchies to manage public resources and regulate private business. Because the boundaries between democracies and civil society

are nonexistent, these bureaucracies have over time been “captured” by the interests they were supposed to regulate or guard against (for example, the U.S. Forest Service and the Food and Drug Administration).

Why have liberals not recognized democracies as different from states? Why have they not understood them as spontaneous orders?

Liberalism and Democracy: The American Founding

In revolutionary America, political debaters at the national level largely agreed that government rightfully exists only with the consent of the governed. This Lockean liberal attitude spread across the country over time. During the debates following the rebellion, a truly liberal understanding of practical politics arose.

James Madison (1751–1836) was probably American liberalism’s most sophisticated exponent, and he appreciated more than most the new direction in political thinking that the revolutionaries’ triumph had opened up. It is no coincidence that Madison was powerfully influenced by the Scottish Enlightenment, which first grasped how order can arise independently of anyone’s intention or direction (Adair 1974). Madison was predisposed toward thinking outside a world of eternal hierarchy.

In his essays in *The Federalist*, Madison developed most consistently the argument for a government both liberal at its core and able to deal with the practical problems of governing a complex and by no means entirely liberal society. In the process, he broke new ground both theoretically and practically.

Madison rejected the long-established republican argument that societies tend to have antagonistic social orders and that the common good comes from either promoting a homogenous society or creating a political stalemate between these basic orders.² Republicans generally valued as much cultural homogeneity as possible and favored small polities, preferably city-states. Small, homogeneous governments can be quite powerful without setting order against order, as Sparta proved (if you were not a Helot).

Because political power was considered primarily coercive, in larger and more complex polities republicanism’s emphasis on balance required the different orders to check one another. The English system of Parliament, lords, and Crown was often said to exhibit such balance. But small size and homogeneity were considered the best guarantees of republican vigor.

City-states’ small size, however, made them vulnerable to larger political entities, and theorists therefore generally described republican virtues in martial terms. Defense against outside threats and internal decay were eternal motifs. Sparta was more admired than Athens because of its military prowess and great stability. The polity’s basic tasks and priorities were defined mostly in advance, and the maintenance

2. We see this older perspective in an American context in Adams 1954, esp. 139. See also the discussion in diZerega 2000, 61–74.

of republican virtue and balance was central to accomplishing them. In this perspective, freedom was located in the republic far more than in the individual citizens. Citizens were free insofar as they participated in governing their polity. Private life was little esteemed (Constant [1819] 2007).

Madison reasoned quite differently. Most crucially, he abandoned the traditional emphasis on small size and homogeneity of interests as necessary for a republic of active citizens. He did not argue for balancing social orders but instead asserted that having many “factions” was preferable to having only a few and that agreement among different majorities elected by different means would result in the adoption of policies that on balance would benefit all.

To foster an accord in society, the new constitution needed to integrate complex social realities with the universalistic principles that support free government. By relying on agreement between majorities elected by different means, a rough approximation to unanimity might arise without any organized minority’s having a veto power. Calling this outcome “majority rule” misses Madison’s point, but denying that in some crucial sense the majority makes the final decision also misses the point. When agreement among many different kinds of majorities is needed, the outcome will be good for the whole more often than not. A constitution’s purpose is to serve as a framework conducive to institutionalizing political equality in a particular society. Two related tasks had to be carried out: first, avoiding the destructive divisions that had weakened or destroyed previous democracies and, second, shaping constitutional provisions to fit the society at hand.

Within such a system, the public good will normally not be obvious, will arise out of political bargaining, and can never be considered truly permanent because it will always remain open to challenge. In other words, Madison described the proposed government in terms suited to the creation of a spontaneous order.

Defense was an issue for the newly independent American states, but it was not the defining one. The primary focus was on “development,” a project with strongly economic tones. A complex, self-governing community of internally diverse states focused on clearing land, building roads and canals, promoting foreign trade, fostering reliable and inexpensive communication, and creating a larger internal market. These projects stood in no obvious rank order. Any single example might help one section of the country more than another, or it might even hurt some sections. Therefore, for the new union to last, the overall pattern of decisions had on balance to benefit most Americans and not consistently hurt any significant group of them. Achieving this end was a never-ending *discovery* process.

Popular Sovereignty

In a widely ignored passage, Madison argued that if people’s loyalty to the national government ever exceeds their loyalty to their state governments, the national government *should* grow relative to the states: “If . . . the people should in [the] future

become more partial to the federal than to the state governments, the change can only result from such manifest and irresistible proofs of a better administration as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due” (1961, 295).

This passage is a key to understanding a liberal view of politics. As Madison wrote in *The Federalist No. 45* in criticizing the doctrine of state sovereignty,

We have heard of the impious doctrine in the old world, that the people were made for kings, not kings for the people. Is the same doctrine to be revived in the new, in another shape—that the solid happiness of the people is to be sacrificed to the views of political institutions of a different form? It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever has any other value than as it may be fitted for the attainment of this object. (Publius 1961, 289)

Madison was aware that traditional terms such as *republic*, *federation*, and *federal* did not adequately describe the proposed American system. He sometimes simply redefined old terms in new ways, as he did the term *republic* in *The Federalist No. 10*. At other times, he cautioned his readers about the problem, admitting that no existing word quite worked.

Throughout his life, Madison argued that the fundamental departure from traditional political thought was that *the location of sovereignty had shifted*. He wrote in 1819:

Much of the error in expounding the Constitution has its origin in the use made of the species of sovereignty implied in the nature of Government. The specified powers vested in Congress, it is said, are sovereign powers, and that as such they carry with them an unlimited discretion as to the means of executing them. It may surely be remarked that a limited government may be limited in its sovereignty as well with respect to the means as to the objects of its powers; and that to give an extent to the former, superseding the limits of the latter, is in effect to convert a limited into an unlimited Government. (1981, 361–62)

Government is not sovereign, the people are, and so the government *may or may not* exercise traditional government functions, depending on popular decisions. This claim was in keeping with the Declaration of Independence and constituted a far more radical change than usually appreciated, then or now. As the organization of administration and enforcement, the state was *subordinated* to civil society and so *lost its*

sovereignty. This transformation was achieved in a manner analogous to the loss of monopoly status by long-established businesses and guilds in the growing market economy, when the dominant organizations at any time were subordinated to processes that were beyond their control, reflecting the outcome of free individuals acting within a spontaneous order.

For a while, it seemed as if the American example would inspire liberals everywhere. With great optimism, Thomas Jefferson had edited and translated two of A. V. C. Destutt de Tracy's (1745–1836) works in political theory (Destutt de Tracy [1811] 1969, [1817] 1970). Jefferson urged that Destutt de Tracy's *Treatise on Political Economy* be required reading for American students, the better to understand their new system, writing in his preface, "By diffusing sound principles of Political Economy, it will protect the public industry from the parasite institutions now consuming it" (Jefferson [1817] 2009, xv). It was in Jefferson's English translation that the term *representative democracy* likely first appeared in print to describe the new country.³

American liberalism made the clearest case for liberal principles at all levels of society. Its vision was not one of simple utopianism. Liberal principles could transform American society further because its universal tenets were in harmony with the existing culture. In the North, smallholders, with a long tradition of local self-governance and a high level of literacy, were already compatible with elaborating liberal principles. Many of these factors also existed significantly in the South (Tocqueville 1961, 78–80). The revolution's success added to their appeal. When primogeniture and entail were ended, the chief institutional supports of societies based on inherited status were abolished. Slavery, the strongest possible denial of liberal principles, increasingly became a pressing issue. As John Jay (1745–1829) of New York explained, "Prior to the great Revolution . . . our people had been so long accustomed to the convenience and practice of having slaves, that very few among them even doubted the propriety and rectitude of it. Some liberal and conscientious men had indeed by their conduct and writings, drawn the lawfulness of slavery into question. . . . Their doctrines prevailed by almost insensible degrees, and was like the little lump of leaven which was put into three measures of meal" (qtd. in West 1997, 6; see also Jefferson 1944, 641). Most of the original thirteen states ultimately abolished slavery peacefully.

Additional questions arose about the subordinate status of women and Indians and about restrictive immigration. Unmarried or widowed women received the vote in many northern states, and New Jersey gave all women the vote, for the first time in Western history. Free blacks often received the vote in the North. In time, the high tide of liberal enthusiasm receded, but not to its former shores. Liberalism had proved

3. The many scholars, on the right and the left alike, who claim the Founders created a "republic," not a democracy, and who often quote *The Federalist No. 10* to that effect need to read their source. Madison in effect *defines* a republic as a representative democracy, but he does not use the term *representative democracy* because it did not exist then.

itself able to transform a society, and when its impetus weakened for a while, as when women's right to vote was rescinded, its seeds remained behind, awaiting more beneficial conditions to sprout and grow again.

There was one tragic exception. With the rise of "King Cotton," slavery became increasingly profitable. Although most Southern leaders were liberal at the time of the founding, Southern elites, caught between their pocketbooks and their fathers' principles, ultimately rejected the principles of the Declaration of Independence as subversive to their rank and prosperity and instead embraced Hobbesian (and, at a popular level, literalistic Christian) legitimations for their rule. Southerners shifted away from liberalism, and at a popular level they even left the Enlightenment (Ekirch 1967, 106–13; Philips 2006, 99–170).

John C. Calhoun (1782–1850) had been a senator from South Carolina and vice president of the United States. If the South had a generally acknowledged political leader and thinker during this period, Calhoun was arguably that man. In 1838, he contended: "This [antislavery] agitation has produced one happy effect at least; it has compelled us to the South to look into the nature and character of this great institution [slavery], and to correct many false impressions that even we had entertained in relation to it. Many in the South once believed that it was a moral and political evil; that folly and delusion are gone, we see it now in its true light, and regard it as the most safe and stable basis for free institutions in the world" ([1838] 1963, 18).

Alexander Stephens (1812–83), the Confederacy's vice president, echoed Calhoun in 1861:

The prevailing view entertained by [Thomas Jefferson] and most of the leading statesmen of the time of the formation of the old constitution, were that the enslavement of the African was in violation of the laws of nature, that it was wrong in *principle*, socially, morally, and politically. . . . These ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. That was an error. . . .

Our new government is founded upon exactly the opposite idea; its corner-stone rests upon the great truth, that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition. (qtd. in West 1997, 34)

The debate between Northerners and Southerners increasingly adopted a European understanding of government liberal principles instead of a liberal understanding.

Liberalism and Democracy: The European Experience

European society had inherited centuries of illiberal practice, and it was dominated by institutions rooted in and dependent on those practices. A deeply entrenched rural

aristocracy, monarchs, large permanent armies (outside England), and huge numbers of the landless poor led to social tensions far more deeply defined than those in the United States. Liberalism's political support was more narrowly confined to intellectual elites and the small emerging middle class. Even so, events might have proceeded much differently had the French Revolution turned out to be more like America's. Of course, it did not do so.

The French Revolution's failure shattered the optimism that liberalism's triumph might be achieved quickly. With that bloody example always in mind, many European liberals developed a deep distrust of the poor and landless masses, and they largely conceived of the wealthier bourgeoisie as a natural ruling class of the sagacious and able. The rising European middle classes shared important liberal values more deeply than did other politically consequential groups, particularly in their concern with law over will, the protection of property, support for a freer market, and a robust private sphere free from government intrusion. European liberals embraced, as liberalism's defining principles, concrete values rooted in class and status instead of abstract rules for cooperation applicable to everyone without distinction.

Men such as Benjamin Constant (1767–1830), Francois Guizot (1787–1874), Stephen Fitzjames Stephen (1829–1894), John Dalberg-Acton (Lord Acton, 1834–1902), and William Lecky (1838–1903) were skeptical of democracy's harmony with bourgeois interests because they feared majority tyranny and the poor's seizure of others' property. Socialism and social disorder would ensue, they felt, and peaceful civilization would come to an end. As a consequence, they drew the line short of supporting the principle that government requires the consent of the governed. Democracy's connection with liberal principles was trumped to safeguard a particular class. Liberalism was increasingly equated with *bourgeois* liberalism.

Moreover, existing European states were based on centuries of conquest and had long histories of serving either monarchical or aristocratic tyranny. Political power was always over individuals. There was little place for the idea that popular consent upholds a political body. Societies had also been conceived for millennia as composed of basic "orders" defined by their legal standing. Finally, religious war was a recent memory, and politically enforced religious domination a reality almost everywhere.

In short, whereas in America (outside the South) liberalism had very congenial soil in which to put down deep political roots, in Europe the soil was thin and rocky. The United States showed that political equality can work under favorable conditions, but many feared that it was impossible under less-than-ideal conditions.

The U.S. Civil War arose primarily from the South's becoming steadily less liberal and culturally less suited to the Founders' vision. This divergence confirmed in a particularly disturbing way the insight that liberalism requires preconditions. Cultures that once were relatively hospitable to free institutions could become progressively less so (Ekirch 1967, 106–9). A "people" could gradually cease to be a people. But European liberals often saw the matter differently. In their eyes, the Civil War was evidence of the *failure* of America's democratic principles.

Lord Acton's Critique of American Democracy

This European attitude is illustrated by a lecture Lord Acton delivered in 1866 and published in 1907. In it, Acton analyzed the U.S. Civil War and what it had to teach liberals about democracy (Dalberg-Acton 1907). He claimed that democratic passions broke down the principle of representational government in America, destroying its federal system. The weaker South had to choose secession or subjugation. The resulting war ended American freedom and established a "spurious liberty" of democratic tyranny.

Acton admitted that the United States had held hope at one time because by adopting political representation, it established a democracy "combining a very advanced civilization with a very extensive territory." No democracy had previously "even attempted to adopt the system of representative government which is the supreme and characteristic invention of the British monarchy." That the Americans seemed to have succeeded meant that "America exercised a power of attraction over Europe of which the great migration is only a subordinate sign."

Europe's institutions survived because they had stood the test of time proving either "necessary or conducive to the general advantage." If America's success persisted, it would "destroy the validity of that defense [and] then the only inducement by which the masses of mankind will be made to tolerate the evils and injustice incident to our system of society will be the short-lived argument of force." The Civil War, Acton believed, had proved that "these judgments were premature."

Ignoring Madison's argument in *The Federalist No. 10* for why size and complexity can solve the problems historically associated with democracies, Acton instead quoted Hamilton's opinion that democracy must be resisted by a "permanent will." In arguing that government needed an independent will, Acton applied to democracy reasoning that is appropriate for instrumental organizations.

Acton argued that over time England perfected a complex system not based on any single principle, but rather as the outcome of politically powerful interests' being able to gain protection for themselves from arbitrary will. As he put it, "Of all conceivable things that which is most alien to their (English) spirit is to sacrifice any distinct interest or particular right to the requirements of some vague abstraction." Acton's Burkean perspective strongly suggests that free governments arise from purely internal processes.

To this English pragmatism, Acton contrasted Thomas Jefferson's belief in the sovereignty of the people. These two doctrines stand in "an irreconcilable antagonism." Yet Acton failed to understand Jefferson's point of view.

Jefferson could be utopian, and Acton justly tweaked him about his view that the Constitution and laws should be reaffirmed or rewritten every generation. But to stop there was misleading. Jefferson was well aware that a free society requires a good foundation in order to become established. Evaluating the revolutions taking place against Spanish rule in South America, Jefferson wrote to John Adams: "I enter into

all your doubts as to the event of the revolutions of South America. They will succeed against Spain. But the dangerous enemy is within their own breasts. Ignorance and superstition will chain their minds and bodies under religious and military despotism. I do believe it would be better for them to obtain freedom by degrees only” (Jefferson 1984, 1477).

But according to Acton, Jefferson and other American democrats advanced a theory that identifies liberty “with a single right, the right of doing all that you have the actual power to do.” People who give all power to majority rule, like people who argue the same for monarchy, “create an idol to which they are ready to sacrifice the safeguards of property, the protection of virtue, and the sanctity of private life.”

Acton contrasted this allegedly Jeffersonian view with a theory that “secures liberty by certain inalterable rights, and founds it on truths which men did not invent and may not abjure.” Acton held that such was Hamilton’s view and that it is fundamentally incompatible with the Jeffersonian view, arguing “if slavery had never existed, a community divided by principles so opposite as those of Jefferson and Hamilton will be distracted by their antagonism until one of them shall prevail.”

Acton explained: “All governments in which one principle dominates degenerate by its exaggeration. . . . In pure democracies the same course is followed, and the dominion of majority asserts itself more and more extensively and irresistibly.” In the United States, where democracy had triumphed, liberty had come to mean “the right to exercise control.” The only thing that would prevent America’s degeneration, he claimed, is confederacy because in that arrangement political centralization faces an intrinsic barrier. State and central governments protect against one another’s encroachment on the citizens’ rights. The Northern states unfortunately had adopted the “aggressive, absolute spirit which is the bane of pure democracies.” When they did so and the South made itself the champion of other values, “the Union was in jeopardy.”

The democratic principle Acton attacked flows from the European conception of the state as sovereign, in which the critical question is who should rule. Ideologues argue for one identifiable group to rule, and Acton argued that it is better if rule arises through a long historical process of compromise and adjustment between existing groups. Given that choice, I agree with Acton, but the Constitution was not intended to reflect *either side* of such a choice.

The U.S. Constitution

In Madison’s words, the Constitutional Convention’s creation was not “the offspring of a single brain,” but “the work of many heads and many hands” (qtd. in Wood 1972, 593). From a European perspective, this observation supports Acton’s Hamilton against Acton’s Jefferson, somewhat resembling the idea that England’s system arose from a long process of compromise and accommodation of different interests.

But this description reflects a misunderstanding of how the Constitution was formed because it ignores its context.

Acton granted that the United States did not possess different social orders. The revolution had been fought on liberal principles, and any national government had to receive the active consent of the people it would govern. Americans, however, were not asked to consent simply as citizens of the nation, but also as citizens of their states.

This necessity had important practical implications. A majority in every state that joined the union had to be convinced that on balance it would benefit thereby. With the exception of slavery, the major focus of the Constitution was therefore not on protecting specific interests, but on adopting decision-making rules that every state would regard as fair for choosing among an unknown variety of future possibilities.

This practical requirement marked a decisive shift from the English model, which in other ways influenced the Founders' thinking. The evolution of English government gradually transformed an instrument of rule as ever more English subjects gained a voice in determining the country's governance. In the system created under the U.S. Constitution, there was no instrument of rule into which groups entered upon becoming sufficiently influential. Instead, people who were *not* ruled sought to devise rules by which they could manage their common concerns in a way that would prevent their being ruled by others.

The people were sovereign, and no governing institution, state or national, enjoyed that status. Americans were equal in voice, could not be coerced, and wanted fair rules for determining which public values they wished to enhance. Such circumstances can generate a spontaneous order.

Acton quoted Madison's warning that in a democracy the minority is at risk when the majority is united, but he ignored Madison's argument that this outcome would be rare in America because a majority would be difficult to create except on terms largely beneficial to all. Acton wrote of the American majority as a unified thing that would not be at all difficult to organize and make powerful. For example, he stated: "After having been taught for years that its will ought to be law, it [a majority] cannot learn the lesson of self-denial." But from the perspective of *The Federalist*, there is no "it." A "people" exists, but not a simple and identifiable "majority."

The Civil War arose from Americans' increasing internal division, combined with the triumph of a European understanding of the state as sovereign. To understand this point, we must grasp that from a liberal perspective "a people" is both real and derivative. As noted previously, Jefferson thought that the people of Latin America would have a difficult time in creating durable liberal institutions, and he recommended a more evolutionary approach, more like the English example. This recommendation did not imply that he believed Latin Americans did not have rights, but rather indicated that he believed that their customs made the institutionalization of those rights difficult.

A people is a historical and cultural entity. As it can arise through growing identification in people's hearts and minds, so it can dissolve. Jefferson saw the always

provisional nature of any collective identification, that it might be dissolved and that when it was, the impetus for preserving the union would fade. He grasped that the Missouri Compromise would ultimately dissolve the American people into two peoples. But he did not foresee civil war. American liberalism's failure to keep its foundations in a universal recognition of rights helped to justify that war.

European conceptions of government as sovereign had come to dominate the thinking of both Northerners and Southerners. Both thought of politics in terms of sovereignty, but no longer in a liberal sense. Northerners had become increasingly captivated by an idea of "the people" as a great entity that transcends individuals. The "American people" were now invoked by whoever won an election and hence claimed to speak for it. As this confident nationalism was triumphing in the North, many people in the South were dissolving their identification with it.⁴

Secession and the Constitution

Secession looks different when viewed from the perspective of America's founding principles. The U.S. system rests on a strong sense of the consent of the governed, both as Americans and as citizens of their states. Given this logic, when the population of a state decides to leave the nation, the principle of government "by consent of the governed" requires that they be allowed to leave.

After the Louisiana Purchase, the question arose as to whether the nation had grown so big that secession would inevitably happen. Because the "Burr Conspiracy" may have been organized with exactly that object in mind, the question was more than academic. Further, Jefferson had prosecuted Aaron Burr for treason. Yet in regard to the question of possible eventual secession by the West, Jefferson's views were consistent with the Founders' liberal principles:

I confess I look to this duplication of area for the extending a government so free and economical as ours, as a great achievement to the mass of happiness which is to ensue. Whether we remain in one confederacy, or form into Atlantic and Mississippi confederacies, I believe is not very important to the happiness of either part. Those of the western confederacy will be as much our children & descendants as those of the eastern, and I feel myself as much identified with that country in future time as with this. (qtd. in Wallace 1999, 262–63; also see Jefferson 1977, 494–97)

Despite democracies' tending to become instrumental organizations that resemble traditional states during wartime, as was the case during the Civil War, the Constitution's provisions mean that *once war ends*, a different kind of politics

4. This holistic conception of "the people" is far more in keeping with Edmund Burke's sense of a people than it is with a liberal conception.

emerges. It does so because democratic freedom comes not so much from a shared ideology as from a shared belief that adherence to neutral procedural rules, which give political equality to each citizen, constitutes the proper way to determine public values. After 1865, the Constitution still worked to prevent genuine tyranny. The rules it established were far more powerful than the increasingly flawed theoretical understanding that people had of them.

Slavery in the South

After Acton made his case against Northern democracy, he turned to Southern slavery. Jefferson had seen the growing controversy over slavery as “the knell of the Union.” The Missouri Compromise established, as he expressed it, “a geographical line coinciding with a marked principle, moral and political, and conceived and held up by the angry passions of men,” a line that “will never be obliterated, and every new irritation will make it deeper and deeper” (1944, 698). Acton disagreed.

Acton argued that the South had the better case against the North on two essential points, although for less than admirable reasons. The slave owner “denied the essential equality of men in civil rights; and he denied the justice of the doctrine that the majority possesses nothing which is exempt from the control of the majority” because it was incompatible with slavery. “Therefore the very defect of their social system preserved them from those political errors which were transforming the original characters of the Northern republics.”

Acton granted that until the rise of the Republican Party, the national government had been dominated by Southern-oriented politicians. He also emphasized that the South “sought to restrain the central power” and so directly confronted the problem of how to prevent democracy’s “decomposition.” This last claim, however, is not true.

With Northern juries consistently ruling in favor of accused slaves, the U.S. Supreme Court ruled that the alleged owner could recapture a runaway in any state, without regard to legal processes. Enforcement was nationalized in 1850, providing for the appointment of national commissioners to hear cases, requiring that marshals arrest fugitives, and imposing severe penalties if one escaped after arrest. Under this bill, there was little to prevent a free black’s being kidnapped and taken South as a slave. Local courts were overridden, local law enforcement commandeered, and free people enslaved on a Southerner’s say so.

War is the single biggest cause of the growth of state power, as Hamilton clearly saw in his own time (Publius 1961, 66–71). The U.S. war against Mexico solidified slavery’s extension into Texas, where Mexico had banned it, while stirring up the centralizing emotions that always initially accompany a war as democracy’s diversity becomes channeled into a common project. Then as now, Southern leaders supported centralization when it served their interests and opposed it when it did not.

U.S. aggression against Mexico elicited the opposition of many Northerners, particularly Republicans and abolitionists. Many Northern workingmen clearly opposed annexation as an attempt to expand slavery (Zinn 1995, 147–66). Needless to say, however, all Americans had to pay taxes to support the war, which prompted Henry David Thoreau to write his essay *On Civil Disobedience* after spending time in jail for refusing to pay such a tax. Yet Acton criticized the *North* for engaging in projects that supported part of the country at the expense of other parts.

Acton ignored these inconsistencies in order to contrast Calhoun’s argument for a concurrent majority with Daniel Webster’s majoritarian nationalism. But neither Webster’s nationalism nor Calhoun’s doctrines were in keeping with the logic of the U.S. Constitution. Both were in keeping with European conceptions of sovereignty.

Acton claimed that many Confederates considered arming and freeing slaves to fight against the Union. This claim misreads what happened.

The Southerners originally seceded over slavery, but as the war ground on, people became increasingly committed to an us-against-them point of view. As in other wars, the Confederacy’s war for independence strengthened its defenders’ identity as a people by substituting a common purpose for the diversity characteristic of civil society. For some, achieving independence eventually took precedence over the grievances that led to secession.

But not for all. The idea’s critics show why the South’s elite seceded (“A Confederate Plan” 1901). Brigadier General Clement H. Stevens responded, “If slavery is to be abolished then I take no more interest in our fight.” Governor Zebulon Vance of North Carolina added, “Our independence is chiefly desirable for the preservation of our political institutions, the principal of which is slavery” (Levine 2005, 57–58).

Misreading “Democratic Tyranny”

Acton’s hostility to liberal democracy comes out most strongly in his final paragraph:

The spurious liberty of the United States is twice cursed, for it deceives those whom it attracts and those whom it repels. By exhibiting the spectacle of a people claiming to be free, but whose love of freedom means hatred for inequality, jealousy of limitations to power, and reliance on the state as an instrument to mould as well as to control society, it calls on its admirers to hate aristocracy and teaches its adversaries to fear the people. The North has used the doctrines of democracy to destroy self-government. The South applied the principle of constitutional federation to cure the evils and to correct the errors of a false interpretation of democracy.

The North’s supposed democratic despotism was a figment of both Acton’s imagination and Confederate propaganda. Consider Sam Houston’s plea to his fellow

Texans not to leave the Union. Houston (1793–1836) had led Texas’s revolt against Mexico, became its first president, later served as a U.S. senator, and was governor when the issue of secession arose. He opposed it: “What is there that is free that we have not got? Are our rights invaded and no government ready to protect us? No! Are our institutions wrested from us and others foreign to our taste forced upon us? No! Is the right of free speech, a free press, or free suffrage taken from us? Has our property been taken from us and the government failed to interpose? No, none of these! The rights of the States and the rights of individuals are still maintained” (1860).

The subsequent century demonstrated Acton’s misdiagnosis. The violations of freedom he correctly saw in Northern prosecution of the war occurred because the North was at war and acted like a state. With the return of peace, those abuses rapidly diminished. The Bill of Rights survived and was strengthened. Neither privacy nor the right to hold property suffered.

Acton’s error arose primarily because he treated American democracy as an organization with a unified majority. He did not understand how fundamentally different a democratic dynamic was to an undemocratic one. Once the unifying goal of victory disappeared, U.S. politics quickly reverted to the pattern Madison had first described.

Conclusion

European liberals’ rejection of democracy did more than dissolve the universal principles that had made liberalism a powerful force for change and justice. America’s intellectual leaders also failed to build on Madison’s insights and similar ones, looking instead to Europe for instruction. As European liberals increasingly defined liberalism in legal and economic terms, and as the illiberal Left captured the democratic movement, the deeper implications expressed in Hayek and Polanyi’s writings became hidden even from many of Hayek and Polanyi’s supporters.

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