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Real Liberalism and the Law of Nature

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resume them at pleasure; and hence he never classes the executions and wholesale slaughters, he continually commands, with murder — nor the forcible appropriation of property he sanctions, under the name of taxes, tithes, amp;c., with larceny or high-way robbery. [Sir Robert] Filmer's doctrine of the divine right of kings was rational benevolence, compared to the monstrous assertion that [quoting Mill] all right is factitious, and only exists by the will of the law-maker. But though this may be comfortable doctrine for legislators, it will not satisfy the people; and in spite of false theories and unreasonable practices, events are now teaching mankind to place a just value on law-making. Day does not follow day, without increasing our knowledge of the consequences of actions; and it is fast becoming apparent, that the wise men, such as Cicero and Seneca, as Bacon and Locke, and as Burke and Smith, who have advocated a totally different system from that of Messrs. Bentham and Mill and their arrogant disciples, have not cast the seeds of their faith in nature, on a barren and ungrateful soil.

Where are those such as Thomas Hodgskin when we really need them?

and intellectual improvement; — that the rights and duties of men grow out of the great scheme of creation, which is sometimes misinterpreted, and rarely understood, by human sagacity, — sometimes marred, and never mended, by human wisdom. But, now, in compliment to political power, and to Mr. Bentham’s theory, that we may find an apology for our own infirm and base submission, we must believe that men had naturally no right to pick up cockles on the beach or gather berries from the hedge — no right to cultivate the earth, to invent and make comfortable clothing, to use instruments to provide more easily for their enjoyments — no right to improve and adorn their habitations — nay, no right to have habitations — no right to buy or sell, or move from place to place — till the benevolent and wise law-giver conferred all these rights on them.

If this be the basis of the political system, Hodgkin wanted no part of it.

To me, this system appears as mischievous as it is absurd. The doctrines accord too well with the practice of law-givers, they cut too securely all the Gordian knots of legislation, not to be readily adopted by all those who, however discontented they may be with a distribution of power, in which no share falls to them, are anxious to become the tutelary guardians of the happiness of mankind. They lift legislation beyond our reach, and secure it from censure. Man, having naturally no rights, may be experimented on, imprisoned, expatriated or even exterminated, as the legislator pleases. Life and property being his gift, he may

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exist. Either principle lies at the very foundation of the whole political edifice. Mr. Locke's view is, in my opinion, more correct than Mr. [Jeremy] Bentham's, though at present among legislators, and those who aspire to be legislators, the latter is by far the most prevalent. Practical men universally adopt it; for they always decree, and never inquire into the laws of nature. The prevalence of Mr. Bentham's opinion, makes it necessary to illustrate and enforce that of Mr. Locke, in so far as it is limited to asserting that a right of property is not the offspring of legislation.

Natural-law liberals, such as Thomas Paine, saw government, at best, as a necessary evil. Not so the utilitarians, Hodgskin says.

...Messrs. Bentham and Mill, both being eager to exercise the power of legislation, represent it as a beneficent deity which curbs our naturally evil passions and desires (they adopting the doctrine of the priests, that the desires and passions of man are naturally evil) – which checks ambition, sees justice done, and encourages virtue. Delightful characteristics! which have the single fault of being contradicted by every page of history. Hitherto, it has been generally supposed that the whole world was given to the human race, with dominion over all other created things, for them to use and enjoy in every way, abstaining from nothing – restricted in nothing consistent with their own happiness – bound mutually to share the blessings provided for them, because mutual assistance begets mutual love – supplies physical wants easier and better, and promotes moral

or creation of the legislator, or the law. This difference of opinion is pregnant with momentous consequences. If a right of property be a natural right, not created by legislation, if it be a principle of society, derived immediately and directly from the laws of the universe, all its results will be determined, at all times, by those laws; and the legislator ought to ascertain these results, before he dreams of making decrees, to enforce them. Before he takes any steps to protect the right of property, he must, on Mr. Locke's principles, find out in what it consists.

That would seem to be mere common sense. Since natural law operates whether we acknowledge it or not, social engineering that contravenes natural law must come to grief.

If, on the other hand, a right of property be altogether the creature and work of laws, as the legislator seems to suppose, he may at all times determine all its consequences. He will have no occasion to inquire into any circumstances foreign to his own enactments; he will only have to frame his decrees with logical accuracy from the principles he lays down.

The two approaches are mutually exclusive and mutually exhaustive. There's no middle way.

One system looks on the legislator as an ally, in enforcing the laws of nature, to do which he must know them; the other denies that there are any such laws, which in fact its authors do in express terms, and they look on enactments as determining the welfare and destiny of mankind. A more important difference of opinion cannot

“Our leaders invent nothing but new taxes, and conquer nothing but the pockets of their subjects.”
— Thomas Hodgskin

Is government the source of our rights? I fear that today many people would say yes. Not infrequently it is said that the government or the Constitution *grants us* freedom of speech or press or the right to own property. This offends the natural-law tradition that was essential to the genesis of classical liberalism (“liberalism”) and the vital institutions it spawned. While some prominent early liberals sought to overthrow natural law in favor of the seemingly more-scientific utilitarianism, the heart and soul of liberalism is — and remains — the natural law. The philosophy would be impoverished without it.

Thomas Hodgskin (1787–1869) well understood this. He deserves to be better known than he is. Hodgskin was an early editor of *The Economist* and an important influence on Herbert Spencer, who also worked at that publication. Hodgskin is something of a puzzle for many people. He is often described as a Ricardian socialist, but in his case the label is misleading. Having lived before the marginal revolution, in which Carl Menger, founder of the Austrian school, and other economists provided an alternative to the Adam Smith/David Ricardo labor theory of value, Hodgskin did regard labor, rather than utility, as the source of economic value. [UPDATE: There are indications in Hodgskin's writings that he regarded utility as a fundamental economic phenomenon. He writes in *Labour Defended against the Claims of Capital*: “But it is quite plain that the sum the weaver will be disposed to give for the thread will depend on his view of its utility.” Nevertheless, he thought that what people found useful had to be created by labor.]

But calling him a socialist is bound to confuse. He was indeed a critic of “capitalism,” by which he and others back then meant government intervention on behalf of capital to the prejudice of labor. But he was no advocate of state control of the

means of production. On the contrary, he was influenced by the radical market economist J. B. Say and believed violations of laissez faire, such as tariffs, are what exploited workers by depriving them of their full, market-derived product. Only in a fully free and openly competitive environment void of privilege (“Middle English, from Old French, from Latin, a law affecting one person”) could laborers achieve justice. (Hodgskin developed his sympathy for labor while in the navy, where he observed the cruelty toward sailors. He himself was disciplined and eventually court-martialed and discharged.) As David Hart and Walter Grinder write, “The radical individualist Thomas Hodgskin ... gives a clear example of the application of the libertarian nonaggression principle to the acquisition and exchange of property. He also implies that those who benefit from ‘artificial’ property rights, that is, by force and state privilege, comprise a class antagonistic to the producing class.”

How unfortunate that siding with workers against government intervention on behalf of business has come to be considered anti-libertarian! There was a time when one could write a book, as Hodgskin did, titled *Labour Defended against the Claims of Capital* without being thought a communist. (A modern example is here.)

The work of Hodgskin that Hart and Grinder were referring to is *The Natural and Artificial Right of Property Contrasted* (1832), which he signed “A Labourer.” The book is a series of letters to Lord Brougham on the moral and legal status of property. This book will be worth revisiting in the future, so I will confine today’s report to the introductory letter. It is a good indication of Hodgskin’s natural-law approach to liberty and government, an approach that ought to be emphasized in the liberal expression. (This is not to slight the concern with consequences. But it is to reject the notion that *only* consequences in the narrow sense matter. For some pregnant thoughts on this subject, see Roderick Long’s blog post here.)

Hodgskin cuts to the chase now, raising the issue at the center of his attention: property rights. See if he sounds like a socialist, as we commonly apply that label.

Political organization depends very much on the mode in which property is distributed. Wherever the right of property is placed on a proper foundation, slavery, with all its hateful consequences, is unknown: — wherever this foundation is rotten, freedom cannot exist, nor justice be administered....

But though the Westminster philosophers, and you also, agree with Mr. Locke, in attributing to the right of property the utmost importance, making it the basis of the political edifice, they differ from him, fundamentally and totally, as to the origin of this right. Mr. Locke lays it down, that the preservation of property is the object for which men unite into a commonwealth. For this purpose, they put themselves under government. Property therefore, according to Mr. Locke, existed *antecedently to government*, and government was established for the protection of an antecedently existing right of property. [Emphasis added.]

But this conception of property as a natural right is not what holds sway, Hodgskin goes on:

On the contrary, both Mr. [John Stuart] Mill and M. [Etienne] Dumont, describe the right of property to be the offspring of law. Mr. Mill says, “the end of government is to *make* a distribution of wealth,” or create such a right. M. Dumont expressly says, that the right of property is altogether the work

obedience, no longer than he guides his conduct by the natural principles to which society owes its rise, progress, and continued existence.

The Knowledge Problem

Our author had a sense of the “knowledge problem” that F. A. Hayek did so much to call attention to. Unfortunately, our legislators haven’t yet caught up with either thinker. They still believe, for example, that they can construct a proper immigration policy that will let in only the right kind of people, i.e., those who fit the future needs of the economy — as though politicians could predict the future needs of an economy.

The progress of the past may cast its shadow before, so that you may have a rough notion that society is to go on increasing in people, in wealth, and in knowledge, as it has increased in past time; but what shape that increase is to take, how rapid is to be the progress, and what are to be the new relations, both among individuals and among nations, it will call into existence — what new trades, what new arts, may arise — what new habits, manners, customs, and opinions, will be formed — *what is the precise outline society will assume*, with all the fillings-in of the picture to the most minute touches; — *all these things*, to which laws ought to be adapted, *cannot possibly be known*: and inquiry into them, with a view of making laws to accord with them, must necessarily make the whole business of legislation appear in its true character to mankind — a mockery of their interests, and a fraud on their understandings. [Emphasis added.]

Natural Phenomenon

Hodgskin was alarmed that few among the general public or in Parliament understood that society is a natural phenomenon, rather than an artificial product of government. It was too commonly thought that without a constant stream of new legislation, society would run down and turn chaotic. (Have we heard anything like this lately?) He wanted to set Lord Brougham straight on this point.

With one or two exceptions, they [members of Parliament] are so ignorant that they have yet to learn the existence of any natural laws regulating society. They believe that it is held together by the statutes at large; and they know no other laws which influence its destiny than those decreed by themselves and interpreted by the judges.

But if no one understands the true nature of society, i.e., that it is essentially self-regulating, then how can a legislator know that he must keep from interfering with it? It’s a question we could put to almost any member of Congress.

Rapidly therefore as the gentlemen at Westminster work, making three or four hundred laws per year, repeating their tasks session after session—actively as they multiply restraints, or add patch after patch, they invariably find that the call for their labours is continually renewed. The more they botch and mend, the more numerous are the holes. *Knowing nothing of natural principles, they seem to fancy that society—the most glorious part of creation, if individual man be the noblest of animals—derives its life and strength only from them.* They regard it as a baby, whom they must dandle and foster into healthy existence; but

while they are scheming how to breed and clothe their pretty foundling—lo! it has become a giant, whom they can only control as far as he consents to wear their fetters. [Emphasis added.]

How little basic attitudes have changed in 175 years.

Because we have continually altered our laws piecemeal, paying no regard to principles, or setting out from an erroneous one, that has never since been revised, we are now lost in a vast wilderness of fictions and absurdities. The law, instead of being [quoting Brougham himself] “the staff of honesty and the shield of innocence, is a two-edged sword of craft and oppression,” which, but for the large shield of the public press which the law has in vain endeavoured to break, would hack society asunder.

Then Hodgskin approaches the heart of the issue.

To remedy these monstrous evils, vitiating the whole social compact we must begin at first principles. To stop the flowing of the volcanic and sulphureous stream, which, though shining and sparkling with promise, like the fertilizing waters of the earth, withers the heart of the land, we must go to the fountain head. Convinced, by the every day practices of our legislators, that they never study first principles, though they continually and vainly try to modify results, and convinced by the present state of the law that they cannot begin the study too soon, I propose to call your attent on to one of those principles, THE RIGHT OF PROPERTY — some of the consequences of

which are now undergoing investigation by two sets of commissioners.

He doesn't show much confidence in members of Parliament. I note that Congress's rating in public-opinion polls is at historically low levels, although I suspect that unlike Hodgskin, Americans probably think Congress is not doing *enough*. Hodgskin, on the other hand, operates from something like a Public Choice, as opposed to the textbook public-interest, perspective.

I am aware, indeed, that nothing is more irksome to legislators than to stop them short in their career, by any demands for previous investigation. — It is so much easier and shorter to decree than inquire, and so much more flattering to self-love to dictate than examine, that both indolence and vanity combine to make the law-giver act before he understands. He takes no comprehensive view of society; he grubs forward under the influence of his passions and animal instincts, like the mole, and is quite as blind. If any of those instincts had for their object the welfare of society, I should join the crowd and huzza him on. Unfortunately for his pretensions, his instincts, his passions, his desires — like those of all animals — have no other object than the preservation and welfare of the individual. Till, therefore, some incarnation of social instincts be made manifest, I, for one, must insist that the legislator is bound to inquire into the natural laws which regulate society, before he tries to bind society down to his own short-sighted views. Self-interest, too, should now dictate inquiry: for mankind are every where becoming the critics of his actions; and he will command their respect and