

Between Natural Law and Evolutionism.
Political Philosophy and Classical Liberal Theory after WWII. *

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*God created the universe,
lets it run according to natural law,
and just sits back with a box
of popcorn and watch the show.*
(Joey Green)

The death of political philosophy

It is a commonplace that political philosophy (and political theory in general) was in a deep crisis from the interwar period to 1971, when finally it was reborn with Rawls' *Theory of Justice*. Before Rawls, scepticism about the possibility of political philosophy inhibited asks fundamental questions. Among the majors critics of the crisis of political philosophy is Peter Laslet. In 1956 he exclaimed: may be one day the tradition will restart, but today don't exist political philosophers, "political philosophy is dead".

Political philosophy appears dead because many political thinkers refuse questions and speculation about the origins of political phenomenon, about why one political regime is fair or it isn't, about the nature and character of the political obligation (why a man has to obey another man). None try to respond to the fundamental problem of political philosophy: which form of political society (and not which form of state) is best?

In political studies there was only the observation that authority exists. There are laws, and that they have to be respected. Thus there can only be "exercises" in the analysis of concepts. Therefore political philosophers are substituted by logical positivists and by political scientists, or rather by those who think that it is only possible describe a limited reality. In contrasts it is thought impossible to have a prescriptive political theory. The questions about politics have to be questions about the working, the functioning of the political systems, rather then questions about their foundation. Thought from a different perspective the famous book by Daniel Bell, *The End of Ideology*, the conclusion here is complementary: after WWII there is a strong consent around some values in the Western societies (his analysis is specific about USA). In the future,

* Mises Institute, Auburn (AL) July, 18, 2007.

Bell consider, the clash between ideologies will disappear. The focus will be only on the well functioning democracies and empirical questions about their performance.

Who is the murderer? The critics to the liberal theory

Many authors trace the causes of political philosophy's decadence to the liberal political theory, this critique is particularly deep in two of them.

Sheldon Wolin (*Politics and Vision*, 1960) argues that with Locke's philosophy started a "non political model of society" which is the characteristic of modern liberalism. While the classics (Plato) aim to improve human nature, Locke put the human being in "a state of mediocrity" and adapts the task of political philosophy to these limited capacities. So, the liberal political philosophy became the philosophy of the limits of human capacity: the task is not the pursuit of *summum bonum* (highest good), or of the good life, but only the acquisition of a practical knowledge to improve our day live. Beginning from Locke, political philosophy became, gradually, a kind of practice science. Consequently his liberal theory holds responsibility if in modern times economic and political science replaces totally political philosophy. Consequently, the current question is not how to build the best political society, but only how to find the best way to satisfy material needs and passions of imperfect creatures. It is not only a lowering of the task of political philosophy but a lowering of human life's horizon.

Leo Strauss, on several occasions, contest liberalism has not been able to resolve the human problem "par excellence", the problem of life in common, problems symbolized by the "Jewish question". During the Weimar republic there was an attempt to resolve the problem of the discrimination of Jews following the liberal doctrine, by the granter's of full civil and political rights. Putting the religious belonging in the "private sphere", the Jews will be citizens like others, only with a different faith. It wasn't a solution, because nothing changes in the sentiments of non-Jews, and for Strauss it is a demonstration that the liberal theory is unable to resolve the "political problem":

Liberalism stands and falls by the distinction between state and society or by the recognition of a private sphere, protected by the law but impervious to the law, with

the understanding that, above all, religion as particular religion belongs to the private sphere. As certainly as the liberal state will not “discriminate” against its Jewish citizens, as certainly is it constitutionally enable to an even unwilling to prevent “discrimination” against Jews on the part of individuals or groups. To recognize a private sphere in the sense indicated means to permit a private “discrimination”, to protect it, and thus in fact to foster it. The liberal state can not provide a solution to the Jewish problem, for such a solution would require the legal prohibition against every kind of “discrimination”, that is, the abolition of private sphere, the denial of the difference between state and society, the destruction of liberal state. (*Liberalism Ancient and Modern*, 1968, pp. 230-31)

In the straussian theory the good rules, universals and abstract, are not enough to guarantee a good political order, for which we need to individualize the content of the rules, and we need to realize the virtue in the nature of the individuals like in the law. If we don't do it, every political regime, also the most liberal, can fall down in totalitarianism. In fact the fault of the contemporary liberalism is to have abandoned the defence of the natural right and the research of a “supreme criterion” to distinguish between right and wrong, between just and unjust. The rejection of natural right leads to nihilism, to an “uninhibited cultivation of individuality” and so “intolerance appeared as a value equal in dignity to tolerance” (*Natural Right and History*, 1953).

Therefore relativism is the main problem of liberal thinkers. They try to defend the liberal system not with reference to values but because it is more efficient than others. So, also in the Strauss's analysis, the contemporary liberal theory is not so much a political philosophy, with reference to value, but “degenerate” in political science or economic analysis. In the stiff Straussian assertion, contemporary liberalism is the last part of a course of decadence, that starts with Machiavelli and is arrived at today to propose “the solution of political problem by economic means” (*What is Political Philosophy?* 1959, p. 49). The liberal doctrine is today tie with the “social science positivism”, which, with a process of “emancipation” or “abstraction” by moral judgment, support that “moral deafness” is a necessary condition for a scientific analysis. An attitude incomprehensible for Strauss, especially now, because “the biggest event of 1933 would rather seem to have proved, if such proof was necessary, that man cannot free himself from the responsibility for answering it by deferring to History or to any other power different from his own reason”. (*What is Political Philosophy?* 1959, p. 27).

The liberal theory has to be placed in conversation with this severe critique, useful to understand if is possible (or not) to defend human freedom without refer to any natural law.

Natural law, relativism, libertarianism.

It's difficult to say that Strauss, and Wolin as well, are wrong when they say that it's impossible to solve the political problem by economic means. He also clearly put forward a central question for liberal theory: if we don't have absolute principles to found human freedom, how can we defend it? And if we try to do it without ethical principles, are we still giving an answer to the classical questions of political philosophy or not?

This question was tackled by Rothbard, and his philosophy is probably the greatest attempt in the 20th century to found a new conception of freedom and liberalism by a rational natural law. The relation between Rothbard and Strauss's ideas is interesting for several aspects. Rothbard totally disagrees with the content of Strauss's philosophy and judges it "inconsistent" and dangerous. Strauss is wrong when he says that the right natural law would be found looking to the doctrines of classics and Christians authors, whom prefer virtue to the freedom, and refuse the modern philosophy which, with Locke, looks to freedom and individual rights. But Rothbard totally agree with Strauss when he said that an absolute ethic exists, which will be discovered by the reason, in conversation with the natural law of human nature. So they have the same enemy, moral relativism, and they agree about the method but disagree about the content of rational natural law; the possibility of this kind of disagreement has, as we shall see, a series of practical consequences that can't be ignored.

Watching Rothbard we can make two considerations about Strauss' critique of liberalism. The first is that the Lockean's theory of natural law (which places as the foundation of social order not virtue but satisfaction of human expectations) is not necessarily leading to contemporary relativism. Actually it can also lead to the rothbardian's social order, which sees a society without collective choices. Second, Strauss may be right to view the classical liberal theory as a relativistic theory, and when he attribute it the end of political philosophy, this worries Rothbard as well. Actually, Rothbard keep a distance from Mises, probably for the first time, when the Austrian had a dispute with Strauss about relativism. During a symposium in 1960 (the essays were published by Schoeck and Wiggins, *Relativism and the Study of Man*, 1961) there was a clash between Mises and Leoni on one side and Strauss on the other side; Rothbard, which of course agree with Mises and Leoni's preference for human freedom, was with Strauss and against them defending the possibility of founding an absolute ethic by human reason. Yet, looking to the task and the use of reason, is possible to understand the main

criticism of Rothbard by considering Hayek and his concept of evolution. From this methodological disagreement, the original “conflict” inside the Austrian School (see Rothbard *The present school of Austrian School*, 1992), we can see the original split between classical liberalism and libertarianism (anarchocapitalism) into two different doctrines, irreconcilable by method if appearing similar in aims.

It is contemporary classical liberalism really a relativistic doctrine, without relation to the concept of natural law and unable to defend freedom? The perspective that it is weak in the “utilitarian” sense, suggest this “story” need more investigation. Let’s look at it again.

Liberal theory and models of order: between Mandeville e Hobbes

To better understand classical liberalism’s answer to the problem of social order and how it proposes to defend freedom, it would be useful to distinguish two outlooks the traditional political philosophy.

One comes from Hobbes, and finds the possibility of order only in an “external power”. The Hobbes’s problem has to be taken seriously. It is called the problem of an “exasperated individualism”, that he saw as contingent like the political consequences of Lutheran theory. If every person has the right to behave following his conscience, by the free interpretation of holy bible, everyone is the non checkable judge of what is right and what is wrong, and also what is rational or not. In this situation the people can’t mutually understand each other. Communication between people becomes impossible. So, for Hobbes it is impossible realize a social order beginnings with individuals, and the only way out is not to be found in human nature but in the “artifice”. By this he means the politics of “objective reason”, based on the fear of violence and death.

What are the consequences of Hobbes’s theory? Simplifying, if order is generated by man, it is possible to modify it as we want. The tradition of constitutionalism is not in contrast with the hobbesian’s point of view, it’s only a perfecting of this tradition. It is possible to find shortcomings in Hobbes. Hobbes didn’t foresee it was possible for a separation of powers in society. (Montesquieu would come later.) But also utilitarianism and democratic theory accept the hobbesian theory of order, even though changing it radically in the form and realization.

There is a sovereign able to identify what is the common wealth, it is the democratic sovereign (it means the people selves), whom governs and produce rules by the will of the people and in the interest of them. The wealth of the people is not, like in Hobbes, a power who prevent the clash between different ideas of right and wrong, but is the attempt to realize a “fairness”. There are different ideas about what is “fair”, but the idea that it is possible to reach this aim by politics is accepted.

Following this theory of rational order and assuming is produced by man, it is also possible to have “libertarian feelings” (like, for instance, J. S. Mill) but there are no good argumentations against redistribution and socialism as well.

The second outlook comes from Mandeville and is improved by Menger; it proposes the idea that the best social order can't be created by man, but it's possible for them to discover it when they are free to search for it. By majority decision and by collective choices we can't fix which the best social order is and what a good society is, because the order is not rationally created by the man. So, this theory is something different from democratic theory, and not necessary compatible with it.

In Mandeville's theory, the cooperation between men are not imposed by a rational choice, but is a natural fact, that emerges when man sees the utility (for himself) to stay with others and acquire the capacity to do previsions about the conduct of other people. The order comes out starting by the limits of reason, by an evolution which save “universalizable” rules (the rules which make us capable to understand and foresee the behaviour of the other people) and eliminate the others. In this process freedom is necessary, not incidental. Only when the process remain open is it possible find the best social order, because it is not found by the man but discovered by free people. In this sense classical liberalism is not relativist, because if the freedom is limited is not more possible recognize the best social order.

Are evolutionism and natural law two non communicating worlds?

What is the relation between the evolutionistic theory of order (which starts with Mandeville, passes through Menger and arrives to Hayek) and the idea of natural law? Usually the Austrian School, in particular Hayek, is considered “allergic” to the possibility that natural law could be synonymous with reason. But is he also to be against every kind of natural law?

When Hayek, considering the rule of law and in general the evolution of law and institutions, criticizes “reason” and “natural law”, he does it because they

completely changed their meaning. “Reason”, which had included the capacity of the mind to distinguish between good and evil, that is between what was and what was not in accordance with established rule, came to mean a capacity to construct such rules by deduction from explicit premises. The conception of natural law was thereby turned into that of a “law of reason” and thus almost into the opposite of what it had meant. This new rationalistic law of nature of Grotius and his successors, indeed, shared with its positivist antagonists the conception that all law was made by reason or could at least be fully justified by it, and differed from it only in the assumption that law could be logically derived from *a priori* premises, while positivism regarded it as a deliberate construction based on empirical knowledge of the effects it would have on the achievement of desirable human purposes. (*Law, Legislation and Liberty*, vol. I, p. 21).

Hayek was not against reason. Rather he thought that we use our reason to select the best rules which are necessary for the social order. He also was not against natural law, because he saw the (correct) idea of nature strictly related with his idea of evolution. In his last book he wrote:

The original meaning of the Latin root of “natural”, as well as the Greek root of its equivalent “physical”, derive from verbs describing kinds of growth [...], so that it would be legitimate to describe as “natural” anything that has grown spontaneously and not been deliberately designed by a mind. In this sense our traditional, spontaneously evolved morals are perfectly natural rather than artificial, and it would seem fitting to call such traditional rules “natural law” (*The Fatal Conceit*, p. 143).

In this way we can read Hayek as defending a kind of natural law, frames possibly as a result of human evolution. The “hayekian natural law” is what the common law was for Edward Coke and William Blackstone, whom saw as a result of the use of human reason in the historical process, in which the natural law is carried out. Only history can tell us the human

reason is right recognizing the natural law and when it was wrong. Human reason can always fail, and we can't shape the reality only by using the reason.

Same points to develop.

Rothbard was right when he said that we don't found freedom with an absolute value, for its defence will be in vain. He was also right when he observed that evolution is not always in the direction of freedom.

But the problem with natural law is the same problem with Hobbes. What happens if men, using their reason, arrive at different conclusions about what is human nature and what is natural law? If absolute values exist, for whom do these values have to be absolutes? Also for the people whom, using their reason, don't recognize these values? Why do I have to accept the idea that some don't live in accordance with the absolute values that I have "scientifically" discover? It is the same problem between Strauss and Rothbard: both "discover" a kind of natural law, but one found in virtue, the other one in the freedom and property. Who is right? Who decide who is right?

In classical liberalism, from Hume to Hayek, there is opposition to the use of reason in the Rothbardian sense, because individuals are no abstracted from social processes. Reason is never the only judge, and order is the result of evolution and of a process of discovery. So, the only "absolute" is: never close the evolution process of discovery, and to do it let the people be free. In this sense, and only in this sense (here is the weakness of classical liberalism), classical liberalism is not relativistic and is also an attempt to give a solution to the hobbesian political problem.

Returning to the crisis of political philosophy, it is not possible to say that classical liberalism is only "the solution of political problem by economic means". It is an answer to how it is possible to achieve the best social order; it is an answer in a totally different fashion from the democratic solution which, in the hobbesian and enlightenment view, which asserts that the best social order can be totally built by man in accordance with some rational "theory of justice".

If that's how things are, political philosophy wasn't dead, as erroneously claimed by those who thought that liberalism and democratic theory are always compatible and that the second was the coronation of the first. This claim has been audacious for so long (and still is today) it has been possible to hold that political philosophy was only reborn with John Rawls.

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