

ISI Lecture Program

Lecture Archive

Lecture Title: "Natural Law and Liberalism: Can this Marriage be Saved?" based on the following article: "Why We Should (and Should Not) Be Liberals."

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Location: Regent University

Date: November 1, 2001

Introduction

I want to ask in this paper whether "we" should be liberals. The "we" of the title has two dimensions. First, it refers to Americans generally. Should we Americans want to have liberalism as the foundation of our public philosophy? Second, it refers more specifically to Americans who believe in traditional (not Lockean) natural law. Should we think of ourselves as liberals, as advocates of a liberal public philosophy, or should we think of ourselves as opponents of liberalism and liberal public philosophy?

To each of these questions, I want to respond "yes" and "no." First, I want to show why, by and large, it is appropriate for us to consider ourselves liberals. Second, I want to show why we should not be willing to think of ourselves simply as liberals, without reservations about liberalism.

To accomplish these goals, I will have to 1) briefly examine current understandings of liberalism, 2) identify what I take to be the solid core of liberalism, 3) show the considerable truth in core liberal principles, and 4) show the parts of the truth that liberalism overlooks.

Understanding Liberalism

The term "liberal" today, as it always has, describes both a political philosophy and a political program. For the typical American, it implies, for example, particular political stances, or at least strong inclinations, on abortion and homosexual rights, on economic regulation, social welfare programs, gun control, censorship of pornography, and Church-

State separation. Why this particular constellation of policy views or orientations deserves the term "liberal" is not immediately clear, especially in light of the fact that, in the past, persons considered liberals had quite different views on some of these issues. In the nineteenth century, to take one instance, liberals would have had attitudes toward economic regulation virtually the opposite of those considered liberal today.

The best explanation for the use of the term at any given time comes from looking at liberalism as a tradition of political thought extending over centuries, and from examining the historical process by which liberals passed on to their successor-liberals a generally consistent set of political views, but with each generation modifying the received liberal wisdom in certain ways, as they confronted new circumstances and issues, or worked through older, unresolved problems of liberal theory. In such a process, the movement of thought from one generation to another might be limited, but over the course of a number of generations, the changes could be, and have been, quite substantial.

In general, liberalism refers to a family of political philosophies whose origins date to the 17th century. It has been a broad movement in politics and society, whose primary purpose has been the expansion of freedom through enlightenment. Liberals have sought to achieve their goals by displacing older hereditary and established hierarchies and authorities (political, social, and religious)—regarded as forms of despotism—with limited government based on equality before the law and broad personal freedoms, especially freedom of religion and thought and discussion.

But liberalism also refers, in a somewhat different way, to the specific, dominant late twentieth century expression of liberal political philosophy, represented most importantly in the thought of John Rawls. This version of liberalism, which claims to be the proper working out of the liberal political tradition broadly speaking, maintains that government should be neutral with respect to the question of the human good, embracing a notion of justice that prescind from the truth of "comprehensive" philosophical, theological, or moral views. This approach has been characterized by one of its critics, Michael Sandel, as "the procedural republic," that is, a nation that provides a broad framework or procedure for individuals to pursue their own goals, without attempting to influence the substance of those pursuits (except insofar as they interfere with the similar rights of others to pursue their own goals). It can also be referred to as "anti-perfectionist" liberalism, because it denies that political life should aim to perfect its citizens, according to some standard of human excellence. While this term is useful, however, it is important to note that many contemporary anti-perfectionist liberals do recognize that liberalism ultimately must be understood, and defended, as contributing to moral improvement in important ways.

What is the relationship between these two meanings of liberalism, between the broad tradition of liberal political theory and its dominant contemporary form? It seems to me that there are three main answers. One possible relationship is that contemporary liberal political theory is the logical fulfillment of the aspirations of the broad liberal tradition, one that has thought through and realized the implications of earlier liberal thought and achieved a more coherent political theory that is also properly adapted to the

circumstances of our time. This has involved winnowing out some elements of earlier expressions of liberalism that were unconsidered remnants of pre-liberal thought now understood to be inconsistent with liberalism.

(This position can be subdivided into those who reject contemporary liberalism—and therefore also the principles from which it ineluctably flowed—and those who embrace contemporary liberalism, and who therefore view earlier forms of liberalism somewhat critically, as incomplete liberalism, but also somewhat benignly, as the first steps toward a fuller form of it.)

A second position on the relation between liberalism old and new is that contemporary liberalism is merely one possible working out of broad liberal principles. It is not logically and necessarily implied by the most important principles of earlier forms of liberalism, but it is a defensible or plausible development of them. (And, again, people with this view can divide as to whether the development is a good one.)

A third position would be that contemporary liberalism is a departure from, or even a betrayal of, the broad liberal tradition. Its efforts to sort through elements of earlier liberal thought and to discard parts that are inconsistent with what it holds to be the central logical thrust of the tradition are actually destructive of a proper coherence or balance represented by that earlier liberalism. Those who hold this position can, of course, can vary on the question of which earlier strand of liberalism (or combination of parts of them) is considered to be a more adequate expression of liberalism.

Most of contemporary political thought can be viewed as representing variants of one of these three different positions—which is to say that contemporary political thought and discussion can be understood as competition among various forms of liberalism, all within the broad context established by the liberal tradition broadly understood. The "liberalism-communitarianism" debate, therefore, is not really a debate between liberals and non-liberals, but a debate within liberalism. Likewise with the "liberalism-republicanism" debate, and so too even with the "liberalism-postmodernism" debate. And, finally, I want to argue, the same framework may be adopted in examining the ongoing debate between liberalism and contemporary natural law theory.

A Brief History of Liberalism

We must begin a history of liberalism with a description of what it is *not*. That is, what was the form of political thought against which liberalism was born and developed?

One form of pre and anti-liberal thought was the theory of the "divine right" of kings. Rulers derived their power from some supernatural or divine authority, irrespective of whether the ruled consented to this authority. In the *First Treatise of Government*, Locke argued that this theory was a form of paternalism, a development of rule held by the hereditary patriarch of a kinship group, and thus "natural" in the same way that parental rule over children is natural. The object of his attack in this essay was the divine right claims of the Stuart dynasty in England.

Liberalism also from its inception was a response against a prevailing idea that the scope of legitimate government power extended to virtually all human affairs, and in particular to religion. While no one in medieval or early modern times—after the inception of Christianity—argued that government power was unlimited, there was no sharp demarcation between public and private that put whole areas of human concerns simply "off-limits" to government. Liberalism was born with an insistence that certain questions were beyond the scope of government. Most importantly, the political community was not the arbiter or enforcer of religious truth, and religious persecution was one of the chief evils which gave rise to liberal political philosophy.

The precursor of liberalism was Thomas Hobbes. His starting point, portraying man in "a state of nature," was the fundamental equality of all human beings, who share the same first "law of nature," namely, the desire for self-preservation. As men in the state of nature pursue this goal, what results is a "war of all against all," in which life is famously "solitary, poor, nasty, brutish, and short." With a view to pursuing more effectually their self-preservation, men eventually leave the state of nature, forming a social contract, and thereby establishing civil society on the basis of consent. The scope of legitimate civil power is limited, in principle, to the protection of the right of self-preservation. But Hobbes thought that the only effective way to attain this goal was by fear: the establishment of an absolute power that could compel men to respect each other's fundamental rights. The magnitude of this absolute power makes it difficult to describe Hobbes simply as a liberal. But the starting points he provided—equality in a state of nature, with the desire for self-preservation constituting the first law of nature, and government being established by a social contract for limited purposes—were the foundation for a later, more fully developed liberalism.

John Locke, writing at the end of the seventeenth century, is widely regarded as the central figure of classical liberalism. His starting points were similar to Hobbes, in that he described a state of nature in which all men are equal, above all in their desire for self-preservation, which eventually gives way to a social contract establishing civil society, with its limited purpose of protecting the rights of man. But there are important differences in Locke. The state of nature was not described in quite the stark terms of Hobbes, being characterized not so much as a war of all against all, as a situation in which there were many "inconveniences." Locke also presented the desire for self-preservation as being instilled in man by God, giving an ostensibly theistic foundation to the law of nature (in contrast to Hobbes' frank materialism). He developed a strong connection between the initial, fundamental right to life and other rights that are necessarily implied in it, especially liberty and property.

Most importantly, Locke argued that Hobbes' absolute power was as great a threat to life, liberty, and property as the anarchy of the state of nature was. Rather than establishing an absolute power, it is incumbent on men to establish a civil society in which government is limited. The foundation for legitimate government power is consent. Moreover, civil power is limited not only in its purpose—protecting the rights of man—but by its structure. The legislative power, appropriately circumscribed, is the most fundamental power, but Locke also articulated the principle of separation of powers, distinguishing

executive and "federative" powers as well (the judicial power being a part of executive power, and the federative power involving not the execution of laws but the defense of the commonwealth against threats to its preservation from foreign and domestic violence). This separation of powers helps to limit the power of rulers and thereby serves to protect rights.

Locke, like Spinoza before him, also dedicated a great deal of attention to religious toleration. Locke made various kinds of arguments to defend toleration. Some of them were specifically scriptural and theological arguments. Other arguments focused on the nature of legitimate government power, whose concerns are, in principle, limited to temporal matters, and do not extend to care of man's eternal salvation. Religious opinions are a private matter, therefore, and religious persecution is unjustifiable.

Montesquieu, writing in the mid-eighteenth century, followed Locke in many ways, though he was less doctrinaire in some respects, not limiting legitimate governments to those based on consent, but taking into consideration the great variations of nations in their history, circumstances, and culture. His *Spirit of the Laws* began with a typology of governments that divided them into forms of monarchy, despotism, and republic, and his description of the republic was strikingly classical, with its emphasis on virtue as its moving principle. But this typology was undercut in subsequent sections of the work, which contained a long and admiring chapter on the English constitution. Montesquieu developed liberal political thought by adding an emphasis on the importance of the sense of personal security, without which men are not truly free. This emphasis on personal security helps to explain his shift from Locke in describing the separation of powers, (followed by America's founders): he separated out and gave greater prominence to the judicial power (subsuming Locke's federative power into the executive power).

The eighteenth century Scottish enlightenment—David Hume, Thomas Reid, Adam Smith—made significant contributions to the development of liberal thought. Adam Smith, in particular, departing from the prevalent mercantilism, developed the economic theory of liberalism, arguing for expanded personal economic freedom and initiative, operating within a framework that channeled the pursuit of self-interest, as if guided by an invisible hand, toward the public good.

Meanwhile, on the European continent, the French philosophies led the Enlightenment project of undermining the religious orthodoxy so closely identified with the privileges of aristocracy in the ancient regime. Precisely because of the political strength of the Catholic Church in France, French liberalism took a more strongly anticlerical cast than British liberalism, as exemplified in the writings of Voltaire (a political absolutist, but a strong advocate of intellectual freedom and an opponent of clerical despotism). In figures such as Diderot and Condorcet, Enlightenment thought was suffused with an extraordinary belief in progress through the efforts of human reason.

One of the influential critics of Lockean-style liberalism and of progress, Jean-Jacques Rousseau, did contribute to its unfolding in certain ways. Beginning from a more idyllic state of nature, in which men were equal, but weak and relatively unthreatening to each

other, men were irreversibly thrust into civil society, with its inequalities and oppression, by the assertion of individual property rights. Once in civil society, individuals could achieve their freedom only through their participation in the formation of and their affirmation of the "general will." But, in addition to a strong (and potentially oppressive) participatory republicanism, developed in *The Social Contract*, Rousseau also had a romantic individualistic side, which found expression in other of his works, especially his *Confessions*.

Immanuel Kant played a key role in the development of liberalism by giving autonomy a central role in his philosophy. Individuals should act free of external compulsion, so that their acts were truly "the execution of their choices", but also free of internal compulsions such as "uncontrolled desires, passions, or prejudices." This would leave their actions to be "controlled by reason, understood as conformity to universalizable principles" and including the command to always treat humanity (one's own and others') as an end, not a means. Obedience to these imperatives was the formal criterion for the morality, and justice, based on reciprocity, was understood in terms of rights and duties (rather than classical virtue). The role of the state was to protect "every man's liberty to perform every external act that he pleases so long as he does not encroach on the same liberty in others." Yet man's liberty was not "freedom to do whatever he likes even within the limits of similar freedom of others, but was rather his freedom from obeying any external laws to which he might not have consented"—his consent being understood (following Rousseau) as implicit in the sovereign general will of a republican government, whose aim was to protect the rights of man (rather than to secure through moral education the substantive well-being and happiness of its citizens).

The American Revolution represented a first opportunity to establish a new government along strongly liberal lines, beginning with the Declaration of Independence, with its self-evident principles, largely drawn from Locke, and crystallizing in the Constitution that reflected the "new science of politics" to achieve the goal of free popular government. The greatest exposition of its leading principles, *The Federalist* (authored by Alexander Hamilton, James Madison, and John Jay), contributed to liberal thought in a number of interesting ways: by developing the idea of separation of powers further (especially the institutional mechanisms necessary to make it effective), by defending the compromise that created a republic with a strong national government for certain purposes and with states that retained important powers of their own, by adding to the earlier American innovation of written constitutions the principle of enforcement through judicial review, and especially by defending the benefits of an extended republic whose diversity would help to prevent the formation of tyrannical majorities.

The central, shattering historic event of the modern era was the French Revolution, which uprooted and cast aside the ancient political, social, and religious hierarchies and attempted to establish a new republic based on the rights of man. The Revolution moved from an earlier moderate phase of constitutional monarchy, through radical republican utopian aspirations and bloody repression, to a Napoleonic empire whose armies carried the ideals of liberty, equality, and fraternity from one end of the continent to the other.

Despite the reaction that set in after 1815, the Revolution had undone the old world in a way that made a return to it impossible.

During the first part of the nineteenth century, liberal ideals were articulated in France by Benjamin Constant, in his *Ancient and Modern Liberty*, which contrasted the ancient freedom of republican participation with the modern freedom of personal liberty. Among the leading French liberals was Alexis de Tocqueville, whose *Democracy in America* was not only a remarkably perceptive book about America, but also a keen analysis of the interior forces moving modern democracies, especially the passion for equality.

Tocqueville, a liberal democrat himself, was aware that democratic tendencies could be self-destructive as well as beneficial, and he highlighted especially the potential danger of democratic despotism. Unlike many other liberals, Tocqueville, while defending the separation of Church and State, denied that there was a necessary hostility between religion and democracy. He argued, to the contrary, that religion was an essential support for democracy, because it helped to provide a necessary fixed moral framework for the flux of democratic political life and served as an antidote to self-destructive democratic tendencies such as individualism and materialism.

Nineteenth century continental Europe saw an ongoing clash between the representatives of declining monarchies and aristocracies and religious authorities and the emergent forces—often themselves at odds—of republicanism, nationalism, bourgeois liberalism, socialism, and anticlericalism. The forces of liberalism were not as successful on the continent as in England and America: in some places less absolute monarchies survived (in the Austro-Hungarian Empire and in a newly united Italy), in others new forms of authoritarianism emerged (Bismarck's unified Germany), and in others, republicans and monarchists continued to battle, with often-varying fortunes (as in France and Spain). Among political thinkers, the influence of anti-liberal writers, such as Marx and Nietzsche, was striking.

In England, liberalism took a turn in the early nineteenth century with the utilitarianism of Jeremy Bentham and John Mill. Social utility, understood as the maximization of pleasure and the minimization of pain, was held to be the standard of political action. These thinkers exemplified the strong reformist element in liberalism, as, for example, in Bentham's proposals for reform of the English penal system.

Meanwhile the Liberal Party, under the leadership of Cobden and Bright, exercised considerable political power, successfully advocating a shift to free trade policy. Under William Gladstone, the Liberal Party often dominated British government in the middle and latter part of the century, standing for "freedom, free trade, progress, and the Seventh Commandment" as well as "reform" and "peace".

John Stuart Mill, perhaps more than anyone since John Locke and Adam Smith, came to embody liberal ideals, especially in his early and middle years. Mill made powerful arguments for freedom of thought and discussion, and for the "harm principle," according to which government and society ought to interfere with individuals' freedom only in cases where their acts affect other people in a relatively direct and tangible way. He

shared, however, Tocqueville's concern about the despotic power of democratic opinion, and emphasized (drawing on German romanticism) the need for individuality. He was also a trailblazer of liberalism in his discussion of *The Subjection of Women*. In his later years, he exemplified an important strand of developing liberal thought, in his abandonment of orthodox liberal ideas on economic freedom and his growing socialist sympathies.

The split of late nineteenth century liberalism on the economic question is exemplified in the writings of Herbert Spencer and T. H. Green. Spencer pressed the emphasis on economic freedom to considerable extremes, adding a sort of Darwinian gloss on the reasoning for it. Green represented the view that economic freedom might entail not merely the protecting of property rights as they currently stood, but also active government measures to equalize the standing of the propertied and unpropertied.

In his classic *Liberalism* L.T. Hobhouse, just before the first World War, was able to identify the following as the elements of liberalism: civil liberty (rule of law, equal liberty under law), fiscal liberty (no taxation without representation), personal liberty (including liberty of thought, discussion, and religion), social liberty (equality of opportunity, as against class and gender privileges in education and occupations), economic liberty (free trade rather than protectionism, but with some measure of legitimate industrial regulation, including some limits on the power of economic associations such as trade unions and corporations), domestic liberty (wives being free and responsible, marriage resting on a purely contractual basis, with duties imposed on parents—by the state as Over-Parent—relative to the care of children), local and racial and national liberty (including autonomy of nations and racial equality), international liberty (non-interference, hostility to the use of force and armaments and the military spirit), and political liberty and popular sovereignty (with the executive and legislature being responsible to the whole community, but with some limits on the franchise).

But, ironically, this classic definition of liberalism appeared on the eve of the first World War, during which the Liberal Party, rent by various tensions, especially those regarding economic liberty, self-destructed, giving way to the emerging Labour Party as the main opponent of the Conservative Party in English politics.

The division within liberalism on economic questions was also making itself felt in America, where the late nineteenth century laissez-faire individualism of the so-called "Gilded Age" saw enormous fortunes made, and, again, often defended on Darwinian grounds. During this period, the judiciary developed expansive new concepts of substantive due process, which were often employed to defend property rights.

Pitted against these tendencies was a developing Progressive movement. Some Progressives focused on reform of the structure of government. For example, the early Woodrow Wilson sought to diminish the checks and balances of federalism and separation of powers that inhibited a more active national government, and reformers at the state and local level pressed for democratization of party nomination procedures and for the direct democratic power of initiative and referendum.

But the main thrust of Progressivism dealt especially with the purposes of government, above all, its relationship to property and wealth and the goal of establishing greater economic equality. Reformers such as Upton Sinclair attacked the perceived injustices and inequities of capitalism. Political and social critics such as Charles Beard and Vernon Parrington criticized the Constitution as undemocratic and the founders as self-interested property owners. In contrast to capitalism, Progressive writers aspired to a more economically egalitarian society, such as the fictional socialist utopia of Edward Bellamy's *Looking Backward*, or the national democracy of Herbert Croly's *The Promise of American Life*. Among the most influential of social thinkers, John Dewey outlined in highly general and formalistic terms a progressive, pragmatic, secular public philosophy.

At a time when other Western democracies were drawn toward fascist and socialist alternatives, Franklin Roosevelt's New Deal public philosophy drew on the Progressive impulse, significantly reforming the economic system and increasing the role of government in the regulation of business, the protection of workers' rights, and the provision of a broad array of social welfare services. Roosevelt judges, who retreated from judicial intervention in economic affairs, initiated a less broadly visible, but significant expansion of free speech and religious rights.

The Cold War following World War II saw America emerge as the leading opponent of the totalitarian Marxist-Leninist state of Stalin and his successors. As the great liberal democratic power in the world, America helped to establish liberal democracies in the defeated Axis powers, and (after the fall of Eastern Europe and China) supported Western Europe in its resistance to external and internal forces allied with the Soviet Union.

At the same time, the U.S. began to confront its own internal problems of racism, established *de jure* in the South, and *de facto* throughout the rest of the nation. The civil rights revolution proceeded from desegregation of the military, through the *Brown* school desegregation decision, protests and civil disobedience under the leadership of Martin Luther King, Jr., passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965, to increasingly controversial school desegregation and bussing controversies.

In the early 1960s, John F. Kennedy aroused liberal hopes, and after his death his civil rights and social welfare programs were carried on and expanded dramatically through Lyndon Johnson's Great Society and War on Poverty. Meanwhile, the Warren Court expanded the role of the courts in bringing about liberal social reform, beginning with the 1954 *Brown* decision and moving on in the 1960s to expansive decisions in the areas of criminal defendants' rights, reapportionment, Church and State (especially school prayer), free speech and obscenity, and privacy.

Even as liberalism seemed triumphant, however, the focus of national life was shifting, and the conflict of the late 1960s ushered in a new era, aptly described as a time of "culture wars." Over the course of the next several decades American "liberalism" found itself under assault from two directions. Left-wing critics, appealing to the ideals of the civil rights movement, growing domestic opposition to the Vietnam War, concern about economic inequalities, and the "sexual revolution," condemned the United States in the

name of radical, participatory democracy and personal autonomy. At the same time, new critiques emerged on the right. "Neo-conservatism" was born among liberals disillusioned with liberalism on two points: first, the failure of contemporary liberals to defend liberal democracy against its enemies (communism abroad, and radicals at home), and second, the failure of contemporary liberals to see the utopian character, and hence the failure, of many of their domestic programs (such as the war on poverty, and ways of responding to increasing crime). In addition, the religious right emerged in the 1970s, especially in reaction to what it perceived as an attack on traditional religious and moral values led by the Supreme Court, with its decisions secularizing public schools and establishing abortion rights.

During the same period, however, in the academy liberalism was powerfully represented in the work of John Rawls's enormously influential *A Theory of Justice* (1971), somewhat revised in *Political Liberalism* (1992). Rawls developed a new variation of social contract theory to provide a foundation for the two key elements of late twentieth century liberalism: the impulse to protect and expand personal autonomy and the commitment to greater economic equality. Rawls's influence extended well beyond academic political philosophy, serving as the intellectual foundation for legal thinkers such as Ronald Dworkin and Bruce Ackerman.

But this revived liberalism met opposition from powerful radical forces, especially those in the academy associated with multiculturalism, who continued to condemn the nation for its lack of racial and sexual diversity, and from a renewed intellectual conservatism, whose limited numbers in academia were given a stronger voice by frequent conservative political successes in the last part of the twentieth century. Even the retaking of the presidency by Democrats in the 1990s failed to signal broad liberal success, given the loss of Congress in 1994 to the Republicans, erratic public support for the liberal political agenda, and the accommodation of the Clinton administration to certain conservative impulses, e.g., welfare reform.

What can we draw from this thumbnail sketch of the history of liberalism to identify the core of liberalism? In the following section, I want to avoid defining liberalism simply in terms of the most important liberal political philosophers—because there is so much variation among them, on many issues, from Locke to Rawls. At the same time, we face the same problem if we define liberalism primarily in terms of a political program, since the programs identified as liberal have changed significantly over time. I will try to identify what I consider the most important political principles and the most important "tendencies" of liberalism, understood as a broad intellectual and social movement.

The Core of Liberalism

Liberalism is not a single, seamless political philosophy, but rather a tradition with considerable variation. Still, to call it a tradition, we must be able to identify a solid core. Liberal political philosophers will not all have embraced each element in this core, but most of them—especially as the tradition develops over time—will have accepted most

of those elements, or will have contributed in a significant way to the development of at least some of them.

What is the core of liberalism? I will try to describe it as five principles and five "tendencies."

The first principle of liberalism is the foundation of human dignity rooted in equality. If human beings are not born equal in all regards, they are at least equal in certain fundamental natural rights, among which are "life, liberty, and the pursuit of happiness." No just political order can simply discount or ignore the well-being of certain members of the political community, reducing them to mere means to the well-being of others. This rules out slavery, serfdom, and rigid social castes. (There have been, of course, theoretical defenses of these social forms that contend they do conduce to the well-being of the "lower orders" on whom they are inflicted, but the general practice of these institutions shows that these theoretical defenses are specious.)

Second, political rule requires consent. No one group or class of people is born with a right to rule others. Autocracy, aristocracy, and theocracy are forms of despotism that deprive people of their requisite participation in the process of rule. How broad that participation should be is controversial, even within the liberal tradition. Consent began as consent to the form of government, which might not be democratic. But in general—and increasingly over time—liberals have called for some actual popular participation within the form of government. This rules out any form of absolute government and points in the direction of thorough-going democracy.

Third, the purpose of government is the protection of rights. These rights begin with certain fundamental natural rights (life, liberty, pursuit of happiness), but then they are elaborated as a series of legal rights. Among these rights, five categories stand out: 1) political rights, 2) religious freedom and toleration, 3) freedom of thought and discussion, 4) property rights, and 5) impartial legal procedures and equality before the law. These rights are not absolute—they can and must be limited in certain ways—but, appropriately limited, their protection is the end of political life.

Fourth, to accomplish its purpose, government must be strong, but limited. As Madison argued, we must establish a government that can control the governed (so that rights will be secure) and that can itself be controlled (so that it will not threaten rights). The government must have adequate powers to defend itself, at home and abroad, and it must have adequate power to enforce its laws, for the achievement of legitimate public purposes. The most effective ways to limit government, without depriving it of its necessary powers, are principles such as representative democracy (especially accountability of rulers through elections), separation of powers, and an independent judiciary.

Fifth, men should be governed by law. The rule of law—government according to general standards that apply to all citizens—is the best way to approximate the aspect of justice that demands that those in like circumstances should be treated alike, and the best

guarantee that no undue partiality will be shown some people or classes at the expense of the legitimate concerns of others.

To these five principles—equal human dignity, consent of the governed, individual rights, effective limited government, and the rule of law,—might be added other "tendencies," which are perhaps too vague to be called principles, but which tend strongly to inform or animate liberal thought. First, the liberal tradition tends to be a rationalist tradition, a tradition of "enlightenment." Inherited truths are submitted to critical analysis, and freedom of inquiry vis-à-vis political and ecclesiastical authorities is highly valued. Modern science assumes a central place in intellectual life and often becomes a model for philosophy.

Second, the liberal tradition tends to be reformist, examining the past and present with a critical eye, proposing changes to improve the condition of men, and experimenting with new social forms and policies. In particular, traditional hierarchies (typically based on blood and inheritance) and inequalities based on the chance of birth, and legally and socially enforced limits on individual efforts, are deserving of criticism and revision.

Third, the liberal tradition tends toward individualism. It is concerned that an improper focus on the glory and well-being of the "community as a whole" will redound primarily to the benefit of the few, the powerful and the well-off, at the expense of the many, the weak, and the poor. It is rooted in equality and therefore tends to exalt the individual, whose choices should be curtailed only to the extent that they interfere with others' rights or with requirements essential to maintain the community that protects everybody's rights.

Fourth, liberalism tends to promote either rationalist religion or secularism. It is skeptical of claims of revelation, or at least of their relevance to political life. This was due, in no small measure, to an accidental but nearly universal (and therefore not *obviously* accidental) feature of early modern Europe: the social and political intermingling and alliance of State and Church hierarchies.

Fifth, the liberal tradition tends to be universalistic. Appealing to rational principles that apply to all men, it tends to be cosmopolitan and anti-imperialist, though it has its interventionist and noninterventionist strands.

Disputes among liberals will often concern exactly how far these principles and tendencies are to be pushed. Liberals generally allow for the fact that they are not always absolute. For example, in some cases, rights may conflict with each other, or they may be incompatible with certain fundamental requirements of political and social life. Therefore, religious, property, and speech rights are all essential, but they can be limited in certain ways for the public good. This commonsense recognition makes it more difficult to determine what the "true" liberal position is, since there will be significant differences among liberals themselves on the scope of liberal principles.

The Truth in Liberalism

If what I have described is a fair account of the core of liberalism, then people of sound judgment and good will, including natural law theorists, should be willing to be considered liberals. The main principles of liberalism are not just defensible, but good. What I call the "tendencies" are more problematic in some ways, but are general enough that they can be understood in ways that are, for the most part, valuable rather than objectionable.

Let us begin by asking how a believer in natural law might evaluate the various tenets of liberalism. For this purpose, I want to cite a description of liberalism whose formulation is slightly different from mine, but whose substance is the same, namely Peter Berkowitz's description of liberalism.

Seen in the light of both its fundamental premise [natural freedom and equality] and its overriding aim [to secure political conditions necessary for the exercise of personal freedom], liberalism is a tradition that extends over centuries, cuts across national boundaries, and finds eloquent advocates in parties of the left and the right. It is wide enough to include not only such standard-bearers as Locke, Kant, and Mill, but also thinkers more eclectic and difficult to categorize such as Montesquieu, Madison, and Tocqueville. It is a tradition that has articulated a set of characteristic themes including individual rights, consent, toleration, liberty of thought and discussion, self-interest rightly understood, the separation of the private from the public, and personal autonomy or the primacy of individual choice; has elaborated a characteristic set of political institutions including representative democracy, separation of governmental powers, and an independent judiciary; and, less noticed these days but vital to understanding liberalism's possibilities and prospects, has provided a fertile source of reflections on such nonpolitical supports of the virtues that sustain liberty as commerce, voluntary association, family, and religion.

If this is a fair description of liberalism (and I think it is), let us ask how someone who takes his orientation from natural law will view the various components that Berkowitz describes as its "characteristic themes" and its "characteristic set of political institutions."

Natural Law and Liberalism's Characteristic Themes

Individual Rights: Should natural law theorists believe in rights?

Some people argue that there are dangers in the adoption of rights-language, that it may be imprudent to employ language whose origin is in philosophical systems (such as Hobbesian and Lockean natural rights theory) that are antithetical in so many respects to classical natural law theory and which may encourage some of the defects of those systems (such as individualism). For the moment, though, putting aside such prudential questions, let me simply ask whether a natural law theorist should consider it true that, for example, unborn children have "rights." I think the answer is "yes."

While the classic natural law tradition, especially in the work of Thomas Aquinas, did not speak much about rights, there clearly are grounds in that tradition for embracing rights. If it is wrong for A to hit B, then B can be said to have a right not to be hit by A. If it is a

principle of justice that A ought to give x to B, then B can be said to have a right to x from A. (This explains why Catholic social thought, rooted in natural law, has been willing to embrace rights so strongly in the twentieth century.)

Consent: Should natural law theorists accept the notion of consent?

There are serious reasons to hesitate about fully embracing a theory of consent. First, there is the highly artificial character of most theories of consent. Most nations have never undertaken to secure consent explicitly from their citizens, and, more importantly, few of those that have been willing to regularly recollect this consent, opting instead to rely on theories of tacit consent, with all the difficulties entailed by it.

Moreover, if consent is understood to be the actual source of authority, we should have misgivings about it. A natural law theory of political authority considers political power to be just that—"natural"—rather than the artificial or conventional creation of human beings in some pre-social state of nature.

Nonetheless, as Yves Simon showed in his classic discussion, a more limited idea of consent makes good sense, if it is understood as popular participation in the *designation* of those who hold political authority (and this can include designation in the broad form of deciding the form of government, as well as narrower designation, as in the election of certain persons to hold office). And in this respect Simon is only harkening back to a tradition at least as old as Aristotle, who notes that collecting the opinions of those who experience the effects of rule (asking the person who is wearing the shoe how it feels) is quite sensible. The idea of requiring consent also draws support from its tendency to contribute to political stability (a notion supported by Tocqueville's discussion of the advantages of democracy). And, finally, it has a very strong grounding in the severe objections that can be lodged against any theory that makes political power hereditary or limits the choice of rulers to a particular social class, since no such class is particularly trustworthy to hold such power, unchecked by others. In this more limited sense, then, consent can be seen as a legitimate and valuable aspect of good government.

Toleration: Should natural law theorists embrace tolerance?

Classic natural law thought has typically been associated with Catholicism, and Catholic teaching was long regarded as either outright intolerant, or as tolerant only under certain conditions, but not in favor of a principled tolerance. So an examination of Catholic social teaching may be a useful way to approach the question of whether it is true that natural law is incompatible with a broad form of tolerance (not a mere tactical version of it).

I think the basic historical facts are the following. Christian doctrine always required a free and uncoerced faith. That is why, for example, during the Middle Ages, it was not the systematic policy of "Christian" countries to require all citizens to adopt Christianity. However, Catholics—both political authorities and ecclesiastical authorities who directed them—sometimes persecuted non-Christians and other Christians (acts for which the

present Pope has gone so far as to ask forgiveness). While some of this persecution was not on grounds of religious heterodoxy per se, but rested on political grounds (namely, the politically seditious activities of non-believers or heretics), intolerance of different religious belief did occur on many occasions.

Contemporary liberals such as Jeremy Waldron and Brian Barry have accurately identified the theoretical arguments that provided grounds for suppressing, not false religious belief per se, but the public expressions of it. The point of suppression, according to this rationale, was not to compel individuals to adopt true religious belief, but to protect those who held true religious beliefs from those who sought to spread false ones. This rationale for a certain measure of intolerance is not as easily dismissed as the argument for direct religious compulsion.

I think that this line of reasoning has been rejected by the Catholic Church in its Second Vatican Council document *Dignitatis Humanae*, which declared not only that people had a right to religious belief, but also to religious speech. (To be more precise, there is a right *not to be compelled* in these matters.) The right to religious belief entails a broad right to religious actions (subject to the requirements of public order), and those religious actions include efforts of evangelization.

What is the ground for this right? Is it only a right in certain circumstances, as a matter of prudence? That is, does it rest on the fact that, in the circumstances of the modern world (i.e., religious pluralism), true religious belief is better off with a policy of religious tolerance—leaving open the possibility that, if conditions changed, the policy of toleration might be dropped? If so, then it might fairly be said that such tolerance would be merely "tactical" and not "principled." (This is the approach that Rawls refers to, pejoratively, as a "modus vivendi.")

My suggestion for resolving these questions is that natural law theorists not distinguish so sharply between "prudential" and "principled" arguments. I would argue that certain prudential arguments (i.e., arguments that do not depend on the intrinsic immorality of an act) hold so broadly that they are really principled arguments (i.e., arguments that hold universally). For example, some of the prudential arguments against religious intolerance are that a) in a world that accepts the principle of intolerance, that intolerance will more often be visited on true religious belief than on false religious belief (e.g., from the Christian perspective, on Christians in Islamic countries today); b) there is little reason to suppose that political authorities will be likely to discern religious truth; c) reliance on the secular authority to enforce religious orthodoxy will undermine reliance on the more important, "spiritual weapons" of religious truth (e.g., the tendency toward a sort of bourgeois and lazy faith in so many countries with established religions); and d) a policy of persecution will cause deep animosities that will be passed down from generation to generation, poisoning the atmosphere for future apostolic efforts to regain people for the true religion. Taken together, I believe that these arguments (especially the last two) provide for religious tolerance a strong, principled argument, rather than a selective or tactical one dependent on conditions (and even against the argument for religious

intolerance in its narrower form—limits on religious proselytism by those who hold false religious beliefs—that seems most defensible).

Liberty of Thought and Discussion: Should natural law theorists believe in a very broad liberty of thought and discussion?

This question is tied somewhat closely to the previous one, since Catholic social thought—historically so closely tied to natural law theory—was for a long time considered opposed to such liberty. For example, in the nineteenth century, Leo XIII in his encyclical *Libertas Praestantissimum* defended free speech and press rights for both "what things so ever are true and honorable" and for "all matter of opinion which God leaves to man's free discussion", but denied such rights to false or "lying opinions", arguing that "right is a moral power which . . . it is absurd to suppose that nature has accorded indifferently to truth and falsehood." But restricting free speech to true opinions, most would say, is a denial of what we typically mean by free speech.

Again, however, it seems to me that a strong argument for free speech can be constructed from natural law thinking. Once "the cat is out of the bag" and we have left behind a world in which education was restricted to a very small part of the population—and it is good, as a general principle, that education is no longer so restricted—then restrictions on speech beyond those required by public order are likely to be more harmful than helpful to the cause of truth. The same reasons that justify religious free speech would apply more broadly: the likelihood that speech limits would be imposed on the truth, the unlikelihood of political authorities having special insight into what is true, the encouragement of intellectual sloth among those who in some way represent or have responsibility for defending what is true, and the creation of deep passions and resentments among those who hold heterodox opinions, which would create deep and abiding obstacles to their openness to the truth.

One should not downplay the requirement of public order, which will be the source of legitimate, if controversial, limits on free speech and press rights. This would include not only cases of "clear and present danger," but also cases where public order is threatened more indirectly, such as pornography. Still, sound political reasoning will justify a right to free speech (again, better: a right *against being coerced* in matters of speech) in many cases where the speech itself is not intrinsically good speech.

Self-interest Rightly Understood: Should natural law theorists favor political arrangements resting, not on disinterested dedication to the common good, but on self-interest, even with the qualifying "rightly understood"?

Certainly there are forms of self-interest that are wrong. Those who pursue their own interest without regard for the common good and the well-being of others are properly criticized. But "self-interest rightly understood," if not as noble a formula as "public-spiritedness," or "civic virtue," is not only an acceptable, but to some extent a necessary element of political life. It reflects, in part, what traditionally was called "the order of charity." Why, for example, should a person dedicate more efforts to helping his or her

child than other children? Because we have responsibilities to ourselves and other in a certain order, depending on the closeness of the relation. We have a naturally deeper "interest" (in both senses of the word) in those closely related to us. So we ought to support ourselves and our families before (though not instead of) attending to the needs of others. We should take care of the property that supports our families before taking care of others' property.

Yves Simon goes so far as to make the controversial argument that a good wife, who happens to be the wife of a murderer

hates the prospect of her husband's being put to death; she is normally and virtuously concerned with the good of her family, and, from the standpoint which is and ought to be hers, the death of the murderer is an evil [as opposed to the viewpoint of the judge, who stands for society and the common good]. . . The common good, of course, shall prevail, but, significantly, Aquinas considers altogether sound and honest the opposition made to the requirements of the common good by the person in charge of the particular good. The common good itself demands that wives should want their husbands to survive, even though the latter happen to be criminals. *That particular goods be properly defended by particular persons matters greatly for the common good itself.* The wife of the murderer, as she fights for the life of the man whom the common good wants put to death, does precisely what the common good wants her to do.

That is, Simon says, she desires the common good formally in this case, but not materially.

Self-interest also is an inevitable part of social life, given man's fallen nature. So, for example, Leo XIII buttresses the argument for private property with an appeal to the importance of self-interest:

And in addition to injustice, it is only too evident what an upset and disturbance there would be in all classes, and to how intolerable and hateful a slavery citizens would be subjected. The door would be thrown open to envy, to mutual invective, and to discord; *the sources of wealth themselves would run dry, for no one would have any interest in exerting his talents or his industry*; and that ideal equality about which they entertain pleasant dreams would be in reality the leveling down of all to a like condition of misery and degradation. (*Rerum Novarum*, No. 15, emphasis added)

Self-interest, then, from a natural law perspective, can be considered a legitimate aspect of good government (assuming, of course, that it is not absolutized, at which point it would be incompatible with the overriding principle of the common good).

Separation of the Private from the Public: Should natural law theorists consider the private separate from the public?

The distinction between the private and the public is one to which Christianity made a significant contribution. It is not central to classical political philosophy. In the ancient world, for example, there was typically not a separation, but a union of religion and political life. Christianity was persecuted by Roman political authorities precisely

because it insisted on a fundamental private sphere into which the public could not intervene: the sphere of faith.

Moreover, natural law theory has articulated the principle of subsidiarity, according to which higher or more general associations should intervene in the life of lower or more particular associations only when the latter are incapable of performing a task adequately. One implication of this is that public authorities ought not to insert their authority into the private world of families and voluntary associations, except when this is necessary for the common good.

Of course, the private and the public are not completely independent. They are distinct, but they have an impact on each other. The private world of the family is obviously deeply influenced by the "social ecology" within which it exists, as any parent knows only too well. The public world is affected by the conduct of people in their private lives (especially when attention is paid to the aggregate pattern of private actions). That is why some acts that look simply "private" may not be so, as in the case of adult consensual acts, such as hiring someone for less than the minimum wage.

Personal autonomy or the primacy of personal choice: How important is personal autonomy? It seems to me that natural law theorists should agree that personal autonomy is a very important *means*. Without genuine freedom and choice, it is not possible to lead a moral life. Liberals are right to think that what is important is not just *what* we do, but *how* we do it, that *we choose* to do it.

What we do does matter, and so personal autonomy cannot be absolutized. First, the autonomy of one person must be compatible with that of another, so in some cases it is good that autonomous action be suppressed, as when one person seeks to curtail the legitimate autonomy of another. This is no minor qualification, as some liberals tend to treat it. It demonstrates that autonomy is not an ultimate and unqualified good: it must yield to the moral imperative of respecting the rights of others. Autonomy itself cannot account for that moral imperative.

Second, virtually everyone realizes that certain autonomous actions can undercut genuine autonomy, simply as a factual matter. One can freely choose to get drunk, but in doing so one loses genuine autonomy—self-determination—while in that state. More importantly, one can freely choose to participate in the conception of a child, but in doing so one brings into existence obligations that limit one's autonomy. It is more controversial among liberals (unfortunately) whether one can (autonomously) contract into a relationship that permanently curtails one's autonomy, such as indissoluble marriage. Some liberals object that such an institution is incompatible with what they hold to be essential: the permanent revisability of one's commitments. Ironically, the same liberals tend to defend the right to suicide, though suicide, however autonomously chosen, destroys the autonomous actor—it is the *ultimate* unrevisable act.

Whatever the limits of autonomy, however, it is an essential and key element in living a good human life, since it is necessary in order to be able to choose freely to perform good actions.

Note that, in the case of each of these characteristic themes of liberalism, an advocate of natural law would respond, not by rejecting the principle, but by saying "yes, that is right—if the principle is understood properly, if it is moderate and limited." That is, natural law theorists would join what might be called the great ongoing internal dialogue of liberalism regarding the scope of its various principles. We are part of the tradition of liberalism. We are liberals.

Natural Law and Liberalism's Characteristic Political Institutions

I will only briefly note here that natural law theory has no trouble seeing value in what Berkowitz calls "liberalism's characteristic set of political institutions," namely, representative democracy, separation of governmental powers, and an independent judiciary. While institutional questions always involve a measure of prudential judgment relative to the circumstances of a given political community, it is fair to say that natural law theory: 1) looks with favor on political arrangements (such as representative democracy) that promote the participation and therefore the capacities of as many citizens as reasonably possible, because this development of capacities is an important part of the common good; and 2) in general looks with favor on arrangements that provide checks on political power (such as separation of powers and a limited form of judicial review), because of its recognition of both good and evil in human beings.

Natural Law, Liberalism, and "Virtues Sustaining Liberty"

Berkowitz also points out that part of the liberal tradition is "liberalism's fertile source of reflections on such nonpolitical supports of the virtues that sustain liberty as commerce, voluntary association, family, and religion." The first two of these, commerce and voluntary association, can be described as typically *modern* supports for the virtues that sustain liberty. Neither of them was salient in an earlier era where status rather than contract determined relations in society.

The other two, however, family and religion, are not distinctly modern (though they may take typical forms in the modern world). Reflection on family and religion can, I think, be described as part of liberalism's continual internal debate about its relation to the pre-liberal world, or, better perhaps, to certain perennial aspects of human life, or, better yet, to "nature." It is especially in this area of reflection, I think, that we can raise the question of the limits of liberalism.

What Liberalism Fails To See

I said earlier that, given my description of the core of liberalism, "people of sound judgment and good will, including natural law theorists, should be willing to be considered liberals," and I really mean that. But I also want to say that they should be

uncomfortable about being simply liberals. If liberalism has grasped much of the truth about political life, it has also found it difficult to embrace some of that truth, or perhaps has even simply missed some of it.

The first problem with liberalism is that it fails to recognize sufficiently the influence of "the regime," a notion which is so central to classical political philosophy. (This blind spot is tied up with liberalism's view that political life is conventional—man-made—rather than natural.) The vision of political life in the liberal tradition is that it exists to establish a framework for the protection of individual rights. Government should remove the barriers to individual "pursuit of happiness." Even when it acts positively (e.g., in modern liberal economic redistribution), this is viewed simply as providing means to self-development, not actually determining that development—it is providing means rather than dictating ends. But both classical and postmodernist theorists doubt that liberalism can avoid shaping ends as well as means.

Jeremy Waldron defends liberalism against a more modern form of this criticism:

Sometimes liberals are accused of taking the beliefs and preferences of individuals as given and hence of ignoring the fact that forms of society may determine forms of consciousness and the structure and content of preferences. But liberals need not be blind to the possibility of preferences changing, either autonomously or along with changes in social structure and social expectations. Provided this possibility of change is in principle something that people as they are can recognize in themselves and take into account in their reflective deliberations, then it can be accommodated perfectly well in a liberal account of freedom.

The confident "can be accommodated perfectly well" may distract us from the tenuousness of the assumption on which it rests. Liberals can recognize, Waldron says, that people's ends may be chosen due to "changes in social structure or social expectations", that is, due to the shape and tone and influences of the communities of which they are a part. This should not bother liberals, however, as long as "in principle" people "as they are" can recognize this fact and take it into account in their reflective deliberations. Waldron appears to assume that this condition is not problematic. It seems to me deeply so.

The force of the "in principle" is not clear. Is this to be opposed to "in practice"? If it refers merely to the theoretical *possibility* that some people, some of the time, may recognize social and political influences on their lives, that is certainly true, but it's not clear how that constitutes a defense of liberalism against the charge that liberal citizens often do not—perhaps even typically do not—recognize the way that living in a liberal society subtly forms their preferences. How likely, in fact, are people to recognize such influences? Waldron appears to go beyond just theoretical possibility when he specifies that it must be people "as they are." So that is the question: do (not just "can") people, as they are, recognize the extent to which their preferences—their ends, their goals, their assumptions about what is good in life—are shaped by the social ecology of liberalism?

This is the kind of empirical question that is very difficult to answer on the basis of anything other than our own experience with human beings. On the basis of my experience, I am simply puzzled that Waldron seems so confident that this condition is met. The people I have dealt with in the course of my life, the students I have taught—even, I confess, some of the scholars with whom I have interacted—have not *consistently* demonstrated this awareness and control over such influences in their "reflective deliberations." It is common to see reflection and critical awareness with respect to a certain range of issues—especially the ones that are more subject to controversy in our society at a given time—but this is compatible with little or no reflection of other broad attitudes toward life (especially where there is a broad social consensus). In fact, I am impressed over and over again with how many people seem simply to absorb many of their most important attitudes toward life from their surroundings, the culture or subcultures of which they are a part, with relatively little or no critical distance from those influences. (Some simple examples: assumptions about the "minimum" standard of living for a "decent" human life, broad dating and courtship patterns, ideas about the "right" size for a family, the notion that a church is a "voluntary association", which areas of thought can attain genuine certitude.) The idea that people "as they are" engage in a high level of self-critical analysis, then, strikes me as an extraordinarily optimistic assessment. It seems to be a very good example of a kind of romanticism at the heart of much liberalism.

But someone might say, "So what if liberalism shapes people, as long as it shapes them well?" Should we be bothered about the way liberalism shapes people?

I should point out immediately that some of that influence is quite beneficent. For example, liberalism, on the whole, encourages people to be tolerant and peaceful, to be active in pursuit of opportunities, and to have an awareness of their own dignity and rights.

For the moment, though, I want to ask about some of the more problematic aspects of liberalism, about three tendencies in particular, relative to truth, religion, and family. The first tendency is to emphasize freedom at the expense of an emphasis on truth about ultimately realities. The claim to know the truth about human purposes has so often been associated with abridgment of freedom that liberals are somewhat understandably cautious, not to say suspicious, of truth claims about human ends. The post-Reformation religious wars (international and domestic) are the most commonly invoked example, from Hobbes and Locke to Rawls, and today their place is admirably filled by the Ayatollah Khomeini and the dreaded "Religious Right" in America. This suspicion of dogma is compatible with acceptance of certain truth claims, above all, the claims of modern science and the liberalism's "procedural" principles. (Indeed, the prestige of modern science and its methods—its status as the most credible form of knowledge—helps to account for the widespread doubt that moral philosophy can attain any certitudes.)

Over time, it seems that the citizens of liberal democracies tend to move from "tolerance of other people" to "relativism about ideas of the good." The virtue of non-judgmentalism

eclipses the virtue of wisdom. Some people consider this skepticism (more or less qualified) as one of liberalism's attractive features, but those of us who believe, like natural law theorists, that human beings are very much worse off when they do not understand the most fundamental truths about human life are concerned about the tendency of freedom to overshadow truth so dramatically.

The second tendency, somewhat related to the first, is the tendency of liberal democracy to undermine revealed religion. Alexis de Tocqueville is well-known for his statements about the importance of religion in America. Indeed, he called it "the first of their political institutions," even though he also emphasized the separation of Church and State (one of the primary reasons, he said, for the "peaceful dominion of religion"). But there is another side to Tocqueville that is less noted. In particular, it is interesting to note that at the end of *Democracy in America*, in his recommendations for how to prevent democratic despotism, he says nothing about religion. I think the explanation for this is that Tocqueville was aware of the tenuous status of revealed religion in modern liberal democracy.

Tocqueville thought that liberal democracies would be suspicious of tradition, and that the philosophical method of Americans would be to rely on themselves. But this strikes at the heart of a certain kind of religion: namely, revealed religion, which rests precisely on the "handing down" ("tradition") of the message that has been revealed to mankind by a God who has intervened in a particular moment of human history. Tocqueville recognized that the natural tendency of modern liberal democracy was the more diffuse and indefinite religion of pantheism.

Tocqueville likewise recognized that liberal democracies would incite and cater to the human desire for physical well-being. He specifically pointed out that one of the advantages of religion was its tendency to curb or moderate this desire, thereby fostering the pursuit of the greater and more glorious possessions of mankind. But a moment of reflection shows that this can be turned around. If religion can benefit democracy by acting *against* one of its strongest tendencies, democracy can undermine religion by propagating that tendency.

For these and other reasons, Tocqueville, I think, had some doubts about how efficacious a restraint on liberal democracy religion might be in the long run. I think that American history bears out those concerns. Those who take a more benign view of that history point out the surprising strength of religion in America, especially when compared to Europe. While this strength should not be ignored, a closer attention to the character of that religious belief raises serious questions. In many respects, traditional Christian beliefs, for example, seem to have been modified to accommodate liberal democratic tendencies. Nowhere is this seen more clearly than in the progressive decline of marriage as an institution in American society, a process in which many churches as well as religious believers have accommodated dramatically changing sexual morals.

Which leads us to the third problematic tendency of liberalism, which is the undermining of the stability of the family. Many scholars argue that the family is just as strong as it has been in the past, but has simply assumed new forms. It is certainly true that we should resist the tendency to view the history of the family with an unjustified nostalgia. There were plenty of problems with families in the past, including an excessive rigidity in social gender roles, spousal abuse, sexual "double standards," and many informal as well as formal ways of "breaking up" a family (desertion being one frequent form).

Nonetheless, I think that it is wrong to think that there have not been dramatic changes that have greatly weakened the family in performing its essential functions, most importantly, the raising of children. In the past there were many exceptions and violations of the ideal of marriage, but today the notion that there is an ideal or norm is itself under assault. As Elizabeth Fox-Genovese has written,

Today, if we credit our senses, we are witnessing a concerted attempt by a portion of the elite to deny the value of the norm. In its place we are offered marriage as the personal fulfillment of the individual, who must be free to switch partners at will. And we are offered family as "families"—whatever combination of people choose to live together on whatever terms for whatever period of time. It is possible that adults may survive this madness, although one may be permitted to doubt. It is doubtful that any significant number of children will survive it, as the mounting evidence of their distress amply warns.

And, while it is also true that many of the forces undermining the family are part of modernity in general, there seem to be reasonable grounds for finding in liberal democracy itself tendencies contrary to stable family life, such as excessive individualism, affluent materialism, and doubt about absolute substantive moral principles.

It does not follow from my analysis that, because the influence of the regime is so great, and in some cases this influence is not benign, we ought to abandon liberalism. The alternatives, after all, might be worse. I for one certainly have no desire to return to the Greek polis or the Roman republic. Medieval Christendom might seem to some people (especially Catholics) to be more attractive, but I would warn people not to romanticize the actual once-existent forms of that ideal either. As Tocqueville suggested about the aristocracy of the *ancient regime*, one can be distracted by the high points so much that one fails to see the great amount of human misery and injustice.

What I would say, instead, is that natural law theorists should help people as much as we can to be more self-critical about aspects of liberalism that are less attractive. We should remind our fellow citizens, for example, of the sobering passage with which Tocqueville concludes his discussion of the "advantages" of democracy in America, in which he notes the deep tendency of liberal democracy to gravitate toward the "middling state of things", the down side of which is "mediocrity". And we should also try to "high-tone" liberalism to the extent that we can—for there is a wide range of forms of liberalism, and some of them shape people in much better ways than others.

There is distinguished precedent, I think, for this approach to the question of liberalism. It parallels closely Aristotle's descriptions of democracy in his *Politics*. An examination of his account of the various forms of democracy would find that he describes a range of democracies that are on a spectrum from less to more democratic. The democracy he considers best is one that would be at the somewhat less democratic end of that spectrum. (The same would be true of oligarchy.) Underlying his judgment is the principle behind the "mixed regime": the recognition that any form of government has its own defects, and benefits from an infusion of the principles of other forms of government. Just as democracy is best when it is a moderate democracy, liberalism is best when it is a moderate liberalism.

Why Does It Matter?

Someone may raise the question: why does it matter whether there is some phenomenon called "liberalism" and whether it is a good thing or a bad thing? Such an objector might argue that this discussion is primarily a semantic game—people fighting over whether they or others fall in a category that can be defined in very different ways—and that what matters is not semantics and names, but substance. So, he would argue, let's talk about substantive principles and not worry about whether this or that person or principle is "liberal", or "conservative", or whatever.

There is some truth to this, of course. "Liberalism" is a term that has been used to cover such a broad range of thinkers and programs that it might be wondered whether it is that useful a term at all. And, in the final analysis, what matters is not whether a particular principle or political practice is "liberal", but whether it is good.

But the discussion about liberalism is, I think, useful. Again, Peter Berkowitz has some useful observations:

Several reasons justify the effort to give liberalism its due. First, liberalism clarifies the contemporary intellectual scene by providing a framework which reveals that what appear to be rival and incompatible schools of thought in fact share a formal structure and governing moral intention. Second, giving liberalism its due means a substantial gain in self-knowledge, both for those who think of themselves as liberals and for those who do not recognize the liberalism of their ways. Third, the liberal tradition has untapped resources for understanding more precisely how to defend, and sustain a political life that rests upon, the premise of natural freedom and equality, a premise whose power not many would wish to deny and whose authority few can honestly resist.

By his first point, Berkowitz means to point out that an understanding of liberalism demonstrates the similarities that get glossed over or lost in discussions of the differences between liberalism and communitarian writers, and liberal and post-modernist writers. I would add that discussions of the differences between liberalism and contemporary natural law theory can also obscure what they have in common. Likewise, by his second point, Berkowitz suggests that it is important for communitarians and post-modernists to recognize their own liberalism, and I add that the same is true for advocates of natural law. By his third point, Berkowitz argues that the liberal tradition has resources that are

often overlooked today, and I would argue that those resources are sometimes principles that classical liberals inherited from pre-liberal thought and practice, based on forms of natural law, and which they did not consider incompatible with liberalism, but rather supportive of it. That is, not only is it true that natural law thinkers are often more liberal than they know, but also liberal thinkers (especially the more moderate ones) are often more rooted in natural law than they know.

In the end, it matters whether natural law theorists should consider ourselves liberals because, if we don't, we may not think and speak as clearly about ourselves and others as we should. This is bad for at least two reasons. First, we won't understand the truth about ourselves. And second, we will be less able to defend our own principles persuasively to others who value liberalism greatly. At the same time, we can be self-critical liberals who are aware of the limits of liberalism and help others to be the same.

One final point I should mention, for the record: this paper is just part of a larger overall analysis of American public philosophy. A logical companion paper would be: "Why We Should (and Should Not) Be Conservatives."

Addendum: Natural Law Liberalism

The following represents a fuller development of the thinking in the above paper.

Should those who take their orientation from natural law theory be liberals? And should liberals ground their liberalism in natural law?

Many liberals and natural law theorists will regard each other as distinctly unlikely (and uncomfortable) bedfellows. They will feel, in fact, that if they wake up and find themselves in bed with each other, that it must have been the result of some improbable Shakespearean plot in which one's expected bedfellow has been switched and the difference has not been noticed until the following morning.

I want to argue that the relationship between liberalism and natural law is—or at least can be—more like the ordinary relationship between another kind of bedfellows: namely, good spouses. In a good marriage, there is underlying agreement on fundamental matters, combined with some genuine complementarity—that is, differences—that may cause tensions but that also contribute to their mutual personal improvement. Often it takes years to see that the differences and tensions are not just a source of difficulty but an opportunity for growth. That has certainly been the case with the rocky relationship between liberalism and natural law.

It is interesting to play with this analogy, though in the end it falters. Not the least of the difficulties is that the stories of the relationship of natural law and liberalism vary so greatly, depending on whether the story describes continental, English, or American liberalism. The story line I follow focuses on Anglo-American liberalism: born and developing in England, but eventually coming to have its center of gravity in America, more democratic and more free of the vestiges of pre-liberal social structures.

Natural law and liberalism were, after all, originally "married", in the classical liberal political philosophy of John Locke. From the beginning, there were problems with the marriage. Perhaps the brash young man had married the daughter of an old and declining family only to buttress his own reputation, and the young woman had been misled by the young man's veneer of respectability. But the partners gradually discovered that they didn't have much in common. Though they had used the same words, they had meant different things by them. Their growing recognition of their differences led to bitterness and recrimination, terrible fights, irreconcilable differences, separation, and a bitter divorce. Only after many years did the former partners—spurred in part by a growing realization of their own defects—take another, deeper look at each other and recall the genuine good in the other person that had been lost sight of amidst the fighting. As their feelings toward each other softened, to their own surprise it seemed possible that reconciliation might be possible, the marriage once again consummated.

The happy ending to this story, though, requires that both parties come to the realization of their compatibility and even their need for each other. But the achievement of that happy ending is more than a little doubtful. The process by which natural law has come to appreciate the strengths of liberalism has moved at a much more rapid pace than liberalism's recognition of its need for natural law. And, in fact, liberalism today seems intent on "going it alone", without the need for any support outside its own commitment to autonomy, which entails the permanent revisability of all personal commitments.

It is often said today that there is a "crisis of liberalism," but it is really a crisis of *contemporary* liberalism. Liberalism, understood broadly, is generally triumphant around the world, in the wake of the collapse of communism, and for good reasons. Liberal democracy offers people a measure of freedom, prosperity, and well-being that no other form of government seems able to provide as consistently. Whatever the faults of liberalism—and liberal democracy, like every other form of government, has its own characteristic weaknesses—it is by far the best game in town, and we should want to preserve and strengthen it. But preserving and strengthening it may mean moderating it, and the vice of contemporary liberalism is to place such a great emphasis on the chief animating principles of liberalism, liberty and equality, that insufficient attention is paid to other human goods, including truth, piety, and family.

The way to deal with the crisis of contemporary liberalism is to embrace what I will call natural law liberalism. The principles of natural law philosophy provide a more solid foundation for liberalism and moderate its more problematic tendencies. It secures the strengths of liberalism while mitigating its defects. Above all, it provides a ground for liberalism that rests on a confidence that human beings can and do know the truth about the human good (in its great variety of forms) rather than a skepticism about such knowledge or despair that human beings can ever agree on it. It grounds liberalism positively in the truth about the human person rather than negatively in various forms of agnosticism, about man as much as God.

This natural law liberalism cannot be billed simply as a "return" to some past form of liberalism, one that was still influenced by medieval natural law thought before it became

attenuated in the course of time. Contemporary natural law thinkers have to confront the plain fact that liberalism arose precisely as a reaction *against* a society in which natural law thinking seemed dominant. For most of the last four centuries classical natural law and liberalism have been perceived (by people on both sides) as opponents, even deadly enemies.

But this perception is wrong, for several reasons. First, much of what passed as "natural law principles" in pre-liberal societies was not in fact part of the essence of natural law philosophy, but merely one particular application of it, or even, in some cases, an actual distortion of it. Second, while it is true that liberalism was a reaction against a society in which natural law principles played a role, it is also true that from the beginning liberalism retained important elements of natural law thought.

Natural law liberalism, then, depends on moderating both traditions. Classic natural law has to be separated from its original historical, political, and social context, purified of elements that are inconsistent with its most important principles, and adapted to modern circumstances. In this process, the fundamental harmony between natural law and liberty and equality will become apparent.

Liberalism has to be freed of its insensitivity to the fact of the deep influence of the "regime"—including liberal democratic political communities—on the formation of people's ideals and character: their thoughts, desires, attitudes. Moreover, certain perennial substantive tendencies of liberalism, which tend to be exacerbated in contemporary liberalism, have to be overcome: the tendency of toleration to evolve into forms of skepticism and relativism (at least about the human good) and religious indifferentism, and the tendency of equality and freedom to evolve into an egoistic individualism that undermines the family and commitment to human goods beyond consumeristic well-being.

Another way to say this is that liberalism must be moderated so that when it shapes its citizens—as it inevitably will, even in its milder way—it do so in ways that are more fully compatible with important intellectual and moral goods: with reason and faith, and with the moral virtues that regulate the passions and make possible individual and social well-being. Natural law, without disturbing its conviction that there is a truth, that human beings can know it, and that their well-being lies in finding and living in accord with it, has to be so formulated as to recognize, in ways that its representatives have sometimes failed to do historically, the intrinsic importance—the necessity—of human freedom and the limits of compulsion.

I want to ask in this paper whether "we" should be liberals. The "we" of the title has two dimensions. First, it refers to Americans generally. Should we Americans want to have liberalism as the foundation of our public philosophy? Second, it refers more specifically to Americans who believe in traditional (not Lockean) natural law. Should we think of ourselves as liberals, as advocates of a liberal public philosophy, or should we think of ourselves as opponents of liberalism and liberal public philosophy?

To each of these questions, I want to respond "yes" and "no." First, I want to show why, by and large, it is appropriate for us to consider ourselves liberals. Second, I want to show why we should not be willing to think of ourselves simply as liberals, without reservations about liberalism.

To accomplish these goals, I will have to 1) briefly examine current understandings of liberalism, 2) identify what I take to be the solid core of liberalism, 3) show the considerable truth in core liberal principles, and 4) show the parts of the truth that liberalism overlooks.

Understanding Liberalism

The term "liberal" today, as it always has, describes both a political philosophy and a political program. For the typical American, it implies, for example, particular political stances, or at least strong inclinations, on abortion and homosexual rights, on economic regulation, social welfare programs, gun control, censorship of pornography, and Church-State separation. Why this particular constellation of policy views or orientations deserves the term "liberal" is not immediately clear, especially in light of the fact that, in the past, persons considered liberals had quite different views on some of these issues. In the nineteenth century, to take one instance, liberals would have had attitudes toward economic regulation virtually the opposite of those considered liberal today.

The best explanation for the use of the term at any given time comes from looking at liberalism as a tradition of political thought extending over centuries, and from examining the historical process by which liberals passed on to their successor-liberals a generally consistent set of political views, but with each generation modifying the received liberal wisdom in certain ways, as they confronted new circumstances and issues, or worked through older, unresolved problems of liberal theory. In such a process, the movement of thought from one generation to another might be limited, but over the course of a number of generations, the changes could be, and have been, quite substantial.

In general, liberalism refers to a family of political philosophies whose origins date to the 17th century. It has been a broad movement in politics and society, whose primary purpose has been the expansion of freedom through enlightenment. Liberals have sought to achieve their goals by displacing older hereditary and established hierarchies and authorities (political, social, and religious)—regarded as forms of despotism—with limited government based on equality before the law and broad personal freedoms, especially freedom of religion and thought and discussion.

But liberalism also refers, in a somewhat different way, to the specific, dominant late twentieth century expression of liberal political philosophy, represented most importantly in the thought of John Rawls. This version of liberalism, which claims to be the proper working out of the liberal political tradition broadly speaking, maintains that government should be neutral with respect to the question of the human good, embracing a notion of justice that prescind from the truth of "comprehensive" philosophical, theological, or moral views. This approach has been characterized by one of its critics, Michael Sandel,

as "the procedural republic," that is, a nation that provides a broad framework or procedure for individuals to pursue their own goals, without attempting to influence the substance of those pursuits (except insofar as they interfere with the similar rights of others to pursue their own goals). It can also be referred to as "anti-perfectionist" liberalism, because it denies that political life should aim to perfect its citizens, according to some standard of human excellence. While this term is useful, however, it is important to note that many contemporary anti-perfectionist liberals do recognize that liberalism ultimately must be understood, and defended, as contributing to moral improvement in important ways.

What is the relationship between these two meanings of liberalism, between the broad tradition of liberal political theory and its dominant contemporary form? It seems to me that there are three main answers. One possible relationship is that contemporary liberal political theory is the logical fulfillment of the aspirations of the broad liberal tradition, one that has thought through and realized the implications of earlier liberal thought and achieved a more coherent political theory that is also properly adapted to the circumstances of our time. This has involved winnowing out some elements of earlier expressions of liberalism that were unconsidered remnants of pre-liberal thought now understood to be inconsistent with liberalism.

(This position can be subdivided into those who reject contemporary liberalism—and therefore also the principles from which it ineluctably flowed—and those who embrace contemporary liberalism, and who therefore view earlier forms of liberalism somewhat critically, as incomplete liberalism, but also somewhat benignly, as the first steps toward a fuller form of it.)

A second position on the relation between liberalism old and new is that contemporary liberalism is merely one possible working out of broad liberal principles. It is not logically and necessarily implied by the most important principles of earlier forms of liberalism, but it is a defensible or plausible development of them. (And, again, people with this view can divide as to whether the development is a good one.)

A third position would be that contemporary liberalism is a departure from, or even a betrayal of, the broad liberal tradition. Its efforts to sort through elements of earlier liberal thought and to discard parts that are inconsistent with what it holds to be the central logical thrust of the tradition are actually destructive of a proper coherence or balance represented by that earlier liberalism. Those who hold this position can, of course, can vary on the question of which earlier strand of liberalism (or combination of parts of them) is considered to be a more adequate expression of liberalism.

Most of contemporary political thought can be viewed as representing variants of one of these three different positions—which is to say that contemporary political thought and discussion can be understood as competition among various forms of liberalism, all within the broad context established by the liberal tradition broadly understood. The "liberalism-communitarianism" debate, therefore, is not really a debate between liberals and non-liberals, but a debate within liberalism. Likewise with the "liberalism-

republicanism" debate, and so too even with the "liberalism-postmodernism" debate. And, finally, I want to argue, the same framework may be adopted in examining the ongoing debate between liberalism and contemporary natural law theory.

A Brief History of Liberalism

We must begin a history of liberalism with a description of what it is *not*. That is, what was the form of political thought against which liberalism was born and developed?

One form of pre- and anti-liberal thought was the theory of the "divine right" of kings. Rulers derived their power from some supernatural or divine authority, irrespective of whether the ruled consented to this authority. In the *First Treatise of Government*, Locke argued that this theory was a form of paternalism, a development of rule held by the hereditary patriarch of a kinship group, and thus "natural" in the same way that parental rule over children is natural. The object of his attack in this essay was the divine right claims of the Stuart dynasty in England.

Liberalism also from its inception was a response against a prevailing idea that the scope of legitimate government power extended to virtually all human affairs, and in particular to religion. While no one in medieval or early modern times—after the inception of Christianity—argued that government power was unlimited, there was no sharp demarcation between public and private that put whole areas of human concerns simply "off-limits" to government. Liberalism was born with an insistence that certain questions were beyond the scope of government. Most importantly, the political community was not the arbiter or enforcer of religious truth, and religious persecution was one of the chief evils which gave rise to liberal political philosophy.

The precursor of liberalism was Thomas Hobbes. His starting point, portraying man in "a state of nature," was the fundamental equality of all human beings, who share the same first "law of nature," namely, the desire for self-preservation. As men in the state of nature pursue this goal, what results is a "war of all against all," in which life is famously "solitary, poor, nasty, brutish, and short." With a view to pursuing more effectually their self-preservation, men eventually leave the state of nature, forming a social contract, and thereby establishing civil society on the basis of consent. The scope of legitimate civil power is limited, in principle, to the protection of the right of self-preservation. But Hobbes thought that the only effective way to attain this goal was by fear: the establishment of an absolute power that could compel men to respect each other's fundamental rights. The magnitude of this absolute power makes it difficult to describe Hobbes simply as a liberal. But the starting points he provided—equality in a state of nature, with the desire for self-preservation constituting the first law of nature, and government being established by a social contract for limited purposes—were the foundation for a later, more fully developed liberalism.

John Locke, writing at the end of the seventeenth century, is widely regarded as the central figure of classical liberalism. His starting points were similar to Hobbes, in that he described a state of nature in which all men are equal, above all in their desire for self-

preservation, which eventually gives way to a social contract establishing civil society, with its limited purpose of protecting the rights of man. But there are important differences in Locke. The state of nature was not described in quite the stark terms of Hobbes, being characterized not so much as a war of all against all, as a situation in which there were many "inconveniences." Locke also presented the desire for self-preservation as being instilled in man by God, giving an ostensibly theistic foundation to the law of nature (in contrast to Hobbes' frank materialism). He developed a strong connection between the initial, fundamental right to life and other rights that are necessarily implied in it, especially liberty and property.

Most importantly, Locke argued that Hobbes' absolute power was as great a threat to life, liberty, and property as the anarchy of the state of nature was. Rather than establishing an absolute power, it is incumbent on men to establish a civil society in which government is limited. The foundation for legitimate government power is consent. Moreover, civil power is limited not only in its purpose—protecting the rights of man—but by its structure. The legislative power, appropriately circumscribed, is the most fundamental power, but Locke also articulated the principle of separation of powers, distinguishing executive and "federative" powers as well (the judicial power being a part of executive power, and the federative power involving not the execution of laws but the defense of the commonwealth against threats to its preservation from foreign and domestic violence). This separation of powers helps to limit the power of rulers and thereby serves to protect rights.

Locke, like Spinoza before him, also dedicated a great deal of attention to religious toleration. Locke made various kinds of arguments to defend toleration. Some of them were specifically scriptural and theological arguments. Other arguments focused on the nature of legitimate government power, whose concerns are, in principle, limited to temporal matters, and do not extend to care of man's eternal salvation. Religious opinions are a private matter, therefore, and religious persecution is unjustifiable.

Montesquieu, writing in the mid-eighteenth century, followed Locke in many ways, though he was less doctrinaire in some respects, not limiting legitimate governments to those based on consent, but taking into consideration the great variations of nations in their history, circumstances, and culture. His *Spirit of the Laws* began with a typology of governments that divided them into forms of monarchy, despotism, and republic, and his description of the republic was strikingly classical, with its emphasis on virtue as its moving principle. But this typology was undercut in subsequent sections of the work, which contained a long and admiring chapter on the English constitution. Montesquieu developed liberal political thought by adding an emphasis on the importance of the sense of personal security, without which men are not truly free. This emphasis on personal security helps to explain his shift from Locke in describing the separation of powers, (followed by America's founders): he separated out and gave greater prominence to the judicial power (subsuming Locke's federative power into the executive power).

The eighteenth century Scottish enlightenment—David Hume, Thomas Reid, Adam Smith—made significant contributions to the development of liberal thought. Adam

Smith, in particular, departing from the prevalent mercantilism, developed the economic theory of liberalism, arguing for expanded personal economic freedom and initiative, operating within a framework that channeled the pursuit of self-interest, as if guided by an invisible hand, toward the public good.

Meanwhile, on the European continent, the French philosophers led the Enlightenment project of undermining the religious orthodoxy so closely identified with the privileges of aristocracy in the ancient regime. Precisely because of the political strength of the Catholic Church in France, French liberalism took a more strongly anticlerical cast than British liberalism, as exemplified in the writings of Voltaire (a political absolutist, but a strong advocate of intellectual freedom and an opponent of clerical despotism). In figures such as Diderot and Condorcet, Enlightenment thought was suffused with an extraordinary belief in progress through the efforts of human reason.

One of the influential critics of Lockean-style liberalism and of progress, Jean-Jacques Rousseau, did contribute to its unfolding in certain ways. Beginning from a more idyllic state of nature, in which men were equal, but weak and relatively unthreatening to each other, men were irreversibly thrust into civil society, with its inequalities and oppression, by the assertion of individual property rights. Once in civil society, individuals could achieve their freedom only through their participation in the formation of and their affirmation of the "general will." But, in addition to a strong (and potentially oppressive) participatory republicanism, developed in *The Social Contract*, Rousseau also had a romantic individualistic side, which found expression in other of his works, especially his *Confessions*.

Immanuel Kant played a key role in the development of liberalism by giving autonomy a central role in his philosophy. Individuals should act free of external compulsion, so that their acts were truly "the execution of their choices", but also free of internal compulsions such as "uncontrolled desires, passions, or prejudices." This would leave their actions to be "controlled by reason, understood as conformity to universalizable principles" and including the command to always treat humanity (one's own and others') as an end, not a means. Obedience to these imperatives was the formal criterion for the morality, and justice, based on reciprocity, was understood in terms of rights and duties (rather than classical virtue). The role of the state was to protect "every man's liberty to perform every external act that he pleases so long as he does not encroach on the same liberty in others." Yet man's liberty was not "freedom to do whatever he likes even within the limits of similar freedom of others, but was rather his freedom from obeying any external laws to which he might not have consented"—his consent being understood (following Rousseau) as implicit in the sovereign general will of a republican government, whose aim was to protect the rights of man (rather than to secure through moral education the substantive well-being and happiness of its citizens).

The American Revolution represented a first opportunity to establish a new government along strongly liberal lines, beginning with the Declaration of Independence, with its self-evident principles, largely drawn from Locke, and crystallizing in the Constitution that reflected the "new science of politics" to achieve the goal of free popular government.

The greatest exposition of its leading principles, *The Federalist* (authored by Alexander Hamilton, James Madison, and John Jay), contributed to liberal thought in a number of interesting ways: by developing the idea of separation of powers further (especially the institutional mechanisms necessary to make it effective), by defending the compromise that created a republic with a strong national government for certain purposes and with states that retained important powers of their own, by adding to the earlier American innovation of written constitutions the principle of enforcement through judicial review, and especially by defending the benefits of an extended republic whose diversity would help to prevent the formation of tyrannical majorities.

The central, shattering historic event of the modern era was the French Revolution, which uprooted and cast aside the ancient political, social, and religious hierarchies and attempted to establish a new republic based on the rights of man. The Revolution moved from an earlier moderate phase of constitutional monarchy, through radical republican utopian aspirations and bloody repression, to a Napoleonic empire whose armies carried the ideals of liberty, equality, and fraternity from one end of the continent to the other. Despite the reaction that set in after 1815, the Revolution had undone the old world in a way that made a return to it impossible.

During the first part of the nineteenth century, liberal ideals were articulated in France by Benjamin Constant, in his *Ancient and Modern Liberty*, which contrasted the ancient freedom of republican participation with the modern freedom of personal liberty. Among the leading French liberals was Alexis de Tocqueville, whose *Democracy in America* was not only a remarkably perceptive book about America, but also a keen analysis of the interior forces moving modern democracies, especially the passion for equality. Tocqueville, a liberal democrat himself, was aware that democratic tendencies could be self-destructive as well as beneficial, and he highlighted especially the potential danger of democratic despotism. Unlike many other liberals, Tocqueville, while defending the separation of Church and State, denied that there was a necessary hostility between religion and democracy. He argued, to the contrary, that religion was an essential support for democracy, because it helped to provide a necessary fixed moral framework for the flux of democratic political life and served as an antidote to self-destructive democratic tendencies such as individualism and materialism.

Nineteenth century continental Europe saw an ongoing clash between the representatives of declining monarchies and aristocracies and religious authorities and the emergent forces—often themselves at odds—of republicanism, nationalism, bourgeois liberalism, socialism, and anticlericalism. The forces of liberalism were not as successful on the continent as in England and America: in some places less absolute monarchies survived (in the Austro-Hungarian Empire and in a newly united Italy), in others new forms of authoritarianism emerged (Bismarck's unified Germany), and in others, republicans and monarchists continued to battle, with often-varying fortunes (as in France and Spain). Among political thinkers, the influence of anti-liberal writers, such as Marx and Nietzsche, was striking.

In England, liberalism took a turn in the early nineteenth century with the utilitarianism of Jeremy Bentham and John Mill. Social utility, understood as the maximization of pleasure and the minimization of pain, was held to be the standard of political action. These thinkers exemplified the strong reformist element in liberalism, as, for example, in Bentham's proposals for reform of the English penal system.

Meanwhile the Liberal Party, under the leadership of Cobden and Bright, exercised considerable political power, successfully advocating a shift to free trade policy. Under William Gladstone, the Liberal Party often dominated British government in the middle and latter part of the century, standing for "freedom, free trade, progress, and the Seventh Commandment" as well as "reform" and "peace".

John Stuart Mill, perhaps more than anyone since John Locke and Adam Smith, came to embody liberal ideals, especially in his early and middle years. Mill made powerful arguments for freedom of thought and discussion, and for the "harm principle," according to which government and society ought to interfere with individuals' freedom only in cases where their acts affect other people in a relatively direct and tangible way. He shared, however, Tocqueville's concern about the despotic power of democratic opinion, and emphasized (drawing on German romanticism) the need for individuality. He was also a trailblazer of liberalism in his discussion of *The Subjection of Women*. In his later years, he exemplified an important strand of developing liberal thought, in his abandonment of orthodox liberal ideas on economic freedom and his growing socialist sympathies.

The split of late nineteenth century liberalism on the economic question is exemplified in the writings of Herbert Spencer and T. H. Green. Spencer pressed the emphasis on economic freedom to considerable extremes, adding a sort of Darwinian gloss on the reasoning for it. Green represented the view that economic freedom might entail not merely the protecting of property rights as they currently stood, but also active government measures to equalize the standing of the propertied and unpropertied.

In his classic *Liberalism* L.T. Hobhouse, just before the first World War, was able to identify the following as the elements of liberalism: civil liberty (rule of law, equal liberty under law), fiscal liberty (no taxation without representation), personal liberty (including liberty of thought, discussion, and religion), social liberty (equality of opportunity, as against class and gender privileges in education and occupations), economic liberty (free trade rather than protectionism, but with some measure of legitimate industrial regulation, including some limits on the power of economic associations such as trade unions and corporations), domestic liberty (wives being free and responsible, marriage resting on a purely contractual basis, with duties imposed on parents—by the state as Over-Parent—relative to the care of children), local and racial and national liberty (including autonomy of nations and racial equality), international liberty (non-interference, hostility to the use of force and armaments and the military spirit), and political liberty and popular sovereignty (with the executive and legislature being responsible to the whole community, but with some limits on the franchise).

But, ironically, this classic definition of liberalism appeared on the eve of the first World War, during which the Liberal Party, rent by various tensions, especially those regarding economic liberty, self-destructed, giving way to the emerging Labour Party as the main opponent of the Conservative Party in English politics.

The division within liberalism on economic questions was also making itself felt in America, where the late nineteenth century laissez-faire individualism of the so-called "Gilded Age" saw enormous fortunes made, and, again, often defended on Darwinian grounds. During this period, the judiciary developed expansive new concepts of substantive due process, which were often employed to defend property rights.

Pitted against these tendencies was a developing Progressive movement. Some Progressives focused on reform of the structure of government. For example, the early Woodrow Wilson sought to diminish the checks and balances of federalism and separation of powers that inhibited a more active national government, and reformers at the state and local level pressed for democratization of party nomination procedures and for the direct democratic power of initiative and referendum.

But the main thrust of Progressivism dealt especially with the purposes of government, above all, its relationship to property and wealth and the goal of establishing greater economic equality. Reformers such as Upton Sinclair attacked the perceived injustices and inequities of capitalism. Political and social critics such as Charles Beard and Vernon Parrington criticized the Constitution as undemocratic and the founders as self-interested property owners. In contrast to capitalism, Progressive writers aspired to a more economically egalitarian society, such as the fictional socialist utopia of Edward Bellamy's *Looking Backward*, or the national democracy of Herbert Croly's *The Promise of American Life*. Among the most influential of social thinkers, John Dewey outlined in highly general and formalistic terms a progressive, pragmatic, secular public philosophy.

At a time when other Western democracies were drawn toward fascist and socialist alternatives, Franklin Roosevelt's New Deal public philosophy drew on the Progressive impulse, significantly reforming the economic system and increasing the role of government in the regulation of business, the protection of workers' rights, and the provision of a broad array of social welfare services. Roosevelt judges, who retreated from judicial intervention in economic affairs, initiated a less broadly visible, but significant expansion of free speech and religious rights.

The Cold War following World War II saw America emerge as the leading opponent of the totalitarian Marxist-Leninist state of Stalin and his successors. As the great liberal democratic power in the world, America helped to establish liberal democracies in the defeated Axis powers, and (after the fall of Eastern Europe and China) supported Western Europe in its resistance to external and internal forces allied with the Soviet Union.

At the same time, the U.S. began to confront its own internal problems of racism, established *de jure* in the South, and *de facto* throughout the rest of the nation. The civil rights revolution proceeded from desegregation of the military, through the *Brown* school

desegregation decision, protests and civil disobedience under the leadership of Martin Luther King, Jr., passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965, to increasingly controversial school desegregation and bussing controversies.

In the early 1960s, John F. Kennedy aroused liberal hopes, and after his death his civil rights and social welfare programs were carried on and expanded dramatically through Lyndon Johnson 's Great Society and War on Poverty. Meanwhile, the Warren Court expanded the role of the courts in bringing about liberal social reform, beginning with the 1954 *Brown* decision and moving on in the 1960s to expansive decisions in the areas of criminal defendants' rights, reapportionment, Church and State (especially school prayer), free speech and obscenity, and privacy.

Even as liberalism seemed triumphant, however, the focus of national life was shifting, and the conflict of the late 1960s ushered in a new era, aptly described as a time of "culture wars." Over the course of the next several decades American "liberalism" found itself under assault from two directions. Left-wing critics, appealing to the ideals of the civil rights movement, growing domestic opposition to the Vietnam War, concern about economic inequalities, and the "sexual revolution," condemned the United States in the name of radical, participatory democracy and personal autonomy. At the same time, new critiques emerged on the right. "Neo-conservatism" was born among liberals disillusioned with liberalism on two points: first, the failure of contemporary liberals to defend liberal democracy against its enemies (communism abroad, and radicals at home), and second, the failure of contemporary liberals to see the utopian character, and hence the failure, of many of their domestic programs (such as the war on poverty, and ways of responding to increasing crime). In addition, the religious right emerged in the 1970s, especially in reaction to what it perceived as an attack on traditional religious and moral values led by the Supreme Court, with its decisions secularizing public schools and establishing abortion rights.

During the same period, however, in the academy liberalism was powerfully represented in the work of John Rawls's enormously influential *A Theory of Justice* (1971), somewhat revised in *Political Liberalism* (1992). Rawls developed a new variation of social contract theory to provide a foundation for the two key elements of late twentieth century liberalism: the impulse to protect and expand personal autonomy and the commitment to greater economic equality. Rawls's influence extended well beyond academic political philosophy, serving as the intellectual foundation for legal thinkers such as Ronald Dworkin and Bruce Ackerman.

But this revived liberalism met opposition from powerful radical forces, especially those in the academy associated with multiculturalism, who continued to condemn the nation for its lack of racial and sexual diversity, and from a renewed intellectual conservatism, whose limited numbers in academia were given a stronger voice by frequent conservative political successes in the last part of the twentieth century. Even the retaking of the presidency by Democrats in the 1990s failed to signal broad liberal success, given the loss of Congress in 1994 to the Republicans, erratic public support for

the liberal political agenda, and the accommodation of the Clinton administration to certain conservative impulses, e.g., welfare reform.

What can we draw from this thumbnail sketch of the history of liberalism to identify the core of liberalism? In the following section, I want to avoid defining liberalism simply in terms of the most important liberal political philosophers—because there is so much variation among them, on many issues, from Locke to Rawls. At the same time, we face the same problem if we define liberalism primarily in terms of a political program, since the programs identified as liberal have changed significantly over time. I will try to identify what I consider the most important political principles and the most important "tendencies" of liberalism, understood as a broad intellectual and social movement.

The Core of Liberalism

Liberalism is not a single, seamless political philosophy, but rather a tradition with considerable variation. Still, to call it a tradition, we must be able to identify a solid core. Liberal political philosophers will not all have embraced each element in this core, but most of them—especially as the tradition develops over time—will have accepted most of those elements, or will have contributed in a significant way to the development of at least some of them.

What is the core of liberalism? I will try to describe it as five principles and five "tendencies."

The first principle of liberalism is the foundation of human dignity rooted in equality. If human beings are not born equal in all regards, they are at least equal in certain fundamental natural rights, among which are "life, liberty, and the pursuit of happiness." No just political order can simply discount or ignore the well-being of certain members of the political community, reducing them to mere means to the well-being of others. This rules out slavery, serfdom, and rigid social castes. (There have been, of course, theoretical defenses of these social forms that contend they do conduce to the well-being of the "lower orders" on whom they are inflicted, but the general practice of these institutions shows that these theoretical defenses are specious.)

Second, political rule requires consent. No one group or class of people is born with a right to rule others. Autocracy, aristocracy, and theocracy are forms of despotism that deprive people of their requisite participation in the process of rule. How broad that participation should be is controversial, even within the liberal tradition. Consent began as consent to the form of government, which might not be democratic. But in general—and increasingly over time—liberals have called for some actual popular participation within the form of government. This rules out any form of absolute government and points in the direction of thoroughgoing democracy.

Third, the purpose of government is the protection of rights. These rights begin with certain fundamental natural rights (life, liberty, pursuit of happiness), but then they are elaborated as a series of legal rights. Among these rights, five categories stand out: 1)

political rights, 2) religious freedom and toleration, 3) freedom of thought and discussion, 4) property rights, and 5) impartial legal procedures and equality before the law. These rights are not absolute—they can and must be limited in certain ways—but, appropriately limited, their protection is the end of political life.

Fourth, to accomplish its purpose, government must be strong, but limited. As Madison argued, we must establish a government that can control the governed (so that rights will be secure) and that can itself be controlled (so that it will not threaten rights). The government must have adequate powers to defend itself, at home and abroad, and it must have adequate power to enforce its laws, for the achievement of legitimate public purposes. The most effective ways to limit government, without depriving it of its necessary powers, are principles such as representative democracy (especially accountability of rulers through elections), separation of powers, and an independent judiciary.

Fifth, men should be governed by law. The rule of law—government according to general standards that apply to all citizens—is the best way to approximate the aspect of justice that demands that those in like circumstances should be treated alike, and the best guarantee that no undue partiality will be shown some people or classes at the expense of the legitimate concerns of others.

To these five principles—equal human dignity, consent of the governed, individual rights, effective limited government, and the rule of law,—might be added other "tendencies," which are perhaps too vague to be called principles, but which tend strongly to inform or animate liberal thought. First, the liberal tradition tends to be a rationalist tradition, a tradition of "enlightenment." Inherited truths are submitted to critical analysis, and freedom of inquiry vis-à-vis political and ecclesiastical authorities is highly valued. Modern science assumes a central place in intellectual life and often becomes a model for philosophy.

Second, the liberal tradition tends to be reformist, examining the past and present with a critical eye, proposing changes to improve the condition of men, and experimenting with new social forms and policies. In particular, traditional hierarchies (typically based on blood and inheritance) and inequalities based on the chance of birth, and legally and socially enforced limits on individual efforts, are deserving of criticism and revision.

Third, the liberal tradition tends toward individualism. It is concerned that an improper focus on the glory and well-being of the "community as a whole" will redound primarily to the benefit of the few, the powerful and the well-off, at the expense of the many, the weak, and the poor. It is rooted in equality and therefore tends to exalt the individual, whose choices should be curtailed only to the extent that they interfere with others' rights or with requirements essential to maintain the community that protects everybody's rights.

Fourth, liberalism tends to promote either rationalist religion or secularism. It is skeptical of claims of revelation, or at least of their relevance to political life. This was due, in no

small measure, to an accidental but nearly universal (and therefore not *obviously* accidental) feature of early modern Europe: the social and political intermingling and alliance of State and Church hierarchies.

Fifth, the liberal tradition tends to be universalistic. Appealing to rational principles that apply to all men, it tends to be cosmopolitan and anti-imperialist, though it has its interventionist and noninterventionist strands.

Disputes among liberals will often concern exactly how far these principles and tendencies are to be pushed. Liberals generally allow for the fact that they are not always absolute. For example, in some cases, rights may conflict with each other, or they may be incompatible with certain fundamental requirements of political and social life. Therefore, religious, property, and speech rights are all essential, but they can be limited in certain ways for the public good. This commonsense recognition makes it more difficult to determine what the "true" liberal position is, since there will be significant differences among liberals themselves on the scope of liberal principles.

The Truth in Liberalism

If what I have described is a fair account of the core of liberalism, then people of sound judgment and good will, including natural law theorists, should be willing to be considered liberals. The main principles of liberalism are not just defensible, but good. What I call the "tendencies" are more problematic in some ways, but are general enough that they can be understood in ways that are, for the most part, valuable rather than objectionable.

Let us begin by asking how a believer in natural law might evaluate the various tenets of liberalism. For this purpose, I want to cite a description of liberalism whose formulation is slightly different from mine, but whose substance is the same, namely Peter Berkowitz's description of liberalism.

Seen in the light of both its fundamental premise [natural freedom and equality] and its overriding aim [to secure political conditions necessary for the exercise of personal freedom], liberalism is a tradition that extends over centuries, cuts across national boundaries, and finds eloquent advocates in parties of the left and the right. It is wide enough to include not only such standard-bearers as Locke, Kant, and Mill, but also thinkers more eclectic and difficult to categorize such as Montesquieu, Madison, and Tocqueville. It is a tradition that has articulated a set of characteristic themes including individual rights, consent, toleration, liberty of thought and discussion, self-interest rightly understood, the separation of the private from the public, and personal autonomy or the primacy of individual choice; has elaborated a characteristic set of political institutions including representative democracy, separation of governmental powers, and an independent judiciary; and, less noticed these days but vital to understanding liberalism's possibilities and prospects, has provided a fertile source of reflections on such nonpolitical supports of the virtues that sustain liberty as commerce, voluntary association, family, and religion.

If this is a fair description of liberalism (and I think it is), let us ask how someone who takes his orientation from natural law will view the various components that Berkowitz describes as its "characteristic themes" and its "characteristic set of political institutions."

Natural Law and Liberalism's Characteristic Themes

Individual Rights: Should natural law theorists believe in rights?

Some people argue that there are dangers in the adoption of rights language, that it may be imprudent to employ language whose origin is in philosophical systems (such as Hobbesian and Lockean natural rights theory) that are antithetical in so many respects to classical natural law theory and which may encourage some of the defects of those systems (such as individualism). For the moment, though, putting aside such prudential questions, let me simply ask whether a natural law theorist should consider it true that, for example, unborn children have "rights." I think the answer is "yes."

While the classic natural law tradition, especially in the work of Thomas Aquinas, did not speak much about rights, there clearly are grounds in that tradition for embracing rights. If it is wrong for A to hit B, then B can be said to have a right not to be hit by A. If it is a principle of justice that A ought to give x to B, then B can be said to have a right to x from A. (This explains why Catholic social thought, rooted in natural law, has been willing to embrace rights so strongly in the twentieth century.)

Consent: Should natural law theorists accept the notion of consent?

There are serious reasons to hesitate about fully embracing a theory of consent. First, there is the highly artificial character of most theories of consent. Most nations have never undertaken to secure consent explicitly from their citizens, and, more importantly, few of those that have been willing to regularly recollect this consent, opting instead to rely on theories of tacit consent, with all the difficulties entailed by it.

Moreover, if consent is understood to be the actual source of authority, we should have misgivings about it. A natural law theory of political authority considers political power to be just that—"natural"—rather than the artificial or conventional creation of human beings in some pre-social state of nature.

Nonetheless, as Yves Simon showed in his classic discussion, a more limited idea of consent makes good sense, if it is understood as popular participation in the *designation* of those who hold political authority (and this can include designation in the broad form of deciding the form of government, as well as narrower designation, as in the election of certain persons to hold office). And in this respect Simon is only harkening back to a tradition at least as old as Aristotle, who notes that collecting the opinions of those who experience the effects of rule (asking the person who is wearing the shoe how it feels) is quite sensible. The idea of requiring consent also draws support from its tendency to contribute to political stability (a notion supported by Tocqueville's discussion of the advantages of democracy). And, finally, it has a very strong grounding in the severe

objections that can be lodged against any theory that makes political power hereditary or limits the choice of rulers to a particular social class, since no such class is particularly trustworthy to hold such power, unchecked by others. In this more limited sense, then, consent can be seen as a legitimate and valuable aspect of good government.

Toleration: Should natural law theorists embrace tolerance?

Classic natural law thought has typically been associated with Catholicism, and Catholic teaching was long regarded as either outright intolerant, or as tolerant only under certain conditions, but not in favor of a principled tolerance. So an examination of Catholic social teaching may be a useful way to approach the question of whether it is true that natural law is incompatible with a broad form of tolerance (not a mere tactical version of it).

I think the basic historical facts are the following. Christian doctrine always required a free and uncoerced faith. That is why, for example, during the Middle Ages, it was not the systematic policy of "Christian" countries to require all citizens to adopt Christianity. However, Catholics—both political authorities and ecclesiastical authorities who directed them—sometimes persecuted non-Christians and other Christians (acts for which the present Pope has gone so far as to ask forgiveness). While some of this persecution was not on grounds of religious heterodoxy per se, but rested on political grounds (namely, the politically seditious activities of nonbelievers or heretics), intolerance of different religious belief did occur on many occasions.

Contemporary liberals such as Jeremy Waldron and Brian Barry have accurately identified the theoretical arguments that provided grounds for suppressing, not false religious belief per se, but the public expressions of it. The point of suppression, according to this rationale, was not to compel individuals to adopt true religious belief, but to protect those who held true religious beliefs from those who sought to spread false ones. This rationale for a certain measure of intolerance is not as easily dismissed as the argument for direct religious compulsion.

I think that this line of reasoning has been rejected by the Catholic Church in its Second Vatican Council document *Dignitatis Humanae*, which declared not only that people had a right to religious belief, but also to religious speech. (To be more precise, there is a right *not to be compelled* in these matters.) The right to religious belief entails a broad right to religious actions (subject to the requirements of public order), and those religious actions include efforts of evangelization.

What is the ground for this right? Is it only a right in certain circumstances, as a matter of prudence? That is, does it rest on the fact that, in the circumstances of the modern world (i.e., religious pluralism), true religious belief is better off with a policy of religious tolerance—leaving open the possibility that, if conditions changed, the policy of toleration might be dropped? If so, then it might fairly be said that such tolerance would be merely "tactical" and not "principled." (This is the approach that Rawls refers to, pejoratively, as a "modus vivendi.")

My suggestion for resolving these questions is that natural law theorists not distinguish so sharply between "prudential" and "principled" arguments. I would argue that certain prudential arguments (i.e., arguments that do not depend on the intrinsic immorality of an act) hold so broadly that they are really principled arguments (i.e., arguments that hold universally). For example, some of the prudential arguments against religious intolerance are that a) in a world that accepts the principle of intolerance, that intolerance will more often be visited on true religious belief than on false religious belief (e.g., from the Christian perspective, on Christians in Islamic countries today); b) there is little reason to suppose that political authorities will be likely to discern religious truth; c) reliance on the secular authority to enforce religious orthodoxy will undermine reliance on the more important, "spiritual weapons" of religious truth (e.g., the tendency toward a sort of bourgeois and lazy faith in so many countries with established religions); and d) a policy of persecution will cause deep animosities that will be passed down from generation to generation, poisoning the atmosphere for future apostolic efforts to regain people for the true religion. Taken together, I believe that these arguments (especially the last two) provide for religious tolerance a strong, principled argument, rather than a selective or tactical one dependent on conditions (and even against the argument for religious intolerance in its narrower form—limits on religious proselytism by those who hold false religious beliefs—that seems most defensible).

Liberty of Thought and Discussion: Should natural law theorists believe in a very broad liberty of thought and discussion?

This question is tied somewhat closely to the previous one, since Catholic social thought—historically so closely tied to natural law theory—was for a long time considered opposed to such liberty. For example, in the nineteenth century, Leo XIII in his encyclical *Libertas Praestantissimum* defended free speech and press rights for both "what things so ever are true and honorable" and for "all matter of opinion which God leaves to man's free discussion", but denied such rights to false or "lying opinions", arguing that "right is a moral power which . . . it is absurd to suppose that nature has accorded indifferently to truth and falsehood." But restricting free speech to true opinions, most would say, is a denial of what we typically mean by free speech.

Again, however, it seems to me that a strong argument for free speech can be constructed from natural law thinking. Once "the cat is out of the bag" and we have left behind a world in which education was restricted to a very small part of the population—and it is good, as a general principle, that education is no longer so restricted—then restrictions on speech beyond those required by public order are likely to be more harmful than helpful to the cause of truth. The same reasons that justify religious free speech would apply more broadly: the likelihood that speech limits would be imposed on the truth, the unlikelihood of political authorities having special insight into what is true, the encouragement of intellectual sloth among those who in some way represent or have responsibility for defending what is true, and the creation of deep passions and resentments among those who hold heterodox opinions, which would create deep and abiding obstacles to their openness to the truth.

One should not downplay the requirement of public order, which will be the source of legitimate, if controversial, limits on free speech and press rights. This would include not only cases of "clear and present danger," but also cases where public order is threatened more indirectly, such as pornography. Still, sound political reasoning will justify a right to free speech (again, better: a right *against being coerced* in matters of speech) in many cases where the speech itself is not intrinsically good speech.

Self-interest Rightly Understood: Should natural law theorists favor political arrangements resting, not on disinterested dedication to the common good, but on self-interest, even with the qualifying "rightly understood"?

Certainly there are forms of self-interest that are wrong. Those who pursue their own interest without regard for the common good and the well-being of others are properly criticized. But "self-interest rightly understood," if not as noble a formula as "public-spiritedness," or "civic virtue," is not only an acceptable, but to some extent a necessary element of political life. It reflects, in part, what traditionally was called "the order of charity." Why, for example, should a person dedicate more efforts to helping his or her child than other children? Because we have responsibilities to ourselves and other in a certain order, depending on the closeness of the relation. We have a naturally deeper "interest" (in both senses of the word) in those closely related to us. So we ought to support ourselves and our families before (though not instead of) attending to the needs of others. We should take care of the property that supports our families before taking care of others' property.

Yves Simon goes so far as to make the controversial argument that a good wife, who happens to be the wife of a murderer

hates the prospect of her husband's being put to death; she is normally and virtuously concerned with the good of her family, and, from the standpoint which is and ought to be hers, the death of the murderer is an evil [as opposed to the viewpoint of the judge, who stands for society and the common good]. . . The common good, of course, shall prevail, but, significantly, Aquinas considers altogether sound and honest the opposition made to the requirements of the common good by the person in charge of the particular good. The common good itself demands that wives should want their husbands to survive, even though the latter happen to be criminals. *That particular goods be properly defended by particular persons matters greatly for the common good itself.* The wife of the murderer, as she fights for the life of the man whom the common good wants put to death, does precisely what the common good wants her to do.

That is, Simon says, she desires the common good formally in this case, but not materially.

Self-interest also is an inevitable part of social life, given man's fallen nature. So, for example, Leo XIII buttresses the argument for private property with an appeal to the importance of self-interest:

And in addition to injustice, it is only too evident what an upset and disturbance there would be in all classes, and to how intolerable and hateful a slavery citizens would be subjected. The door would be thrown open to envy, to mutual invective, and to discord; *the sources of wealth themselves would run dry, for no one would have any interest in exerting his talents or his industry*; and that ideal equality about which they entertain pleasant dreams would be in reality the leveling down of all to a like condition of misery and degradation. (*Rerum Novarum*, No. 15, emphasis added)

Self-interest, then, from a natural law perspective, can be considered a legitimate aspect of good government (assuming, of course, that it is not absolutized, at which point it would be incompatible with the overriding principle of the common good).

Separation of the Private from the Public. Should natural law theorists consider the private separate from the public?

The distinction between the private and the public is one to which Christianity made a significant contribution. It is not central to classical political philosophy. In the ancient world, for example, there was typically not a separation, but a union of religion and political life. Christianity was persecuted by Roman political authorities precisely because it insisted on a fundamental private sphere into which the public could not intervene: the sphere of faith.

Moreover, natural law theory has articulated the principle of subsidiarity, according to which higher or more general associations should intervene in the life of lower or more particular associations only when the latter are incapable of performing a task adequately. One implication of this is that public authorities ought not to insert their authority into the private world of families and voluntary associations, except when this is necessary for the common good.

Of course, the private and the public are not completely independent. They are distinct, but they have an impact on each other. The private world of the family is obviously deeply influenced by the "social ecology" within which it exists, as any parent knows only too well. The public world is affected by the conduct of people in their private lives (especially when attention is paid to the aggregate pattern of private actions). That is why some acts that look simply "private" may not be so, as in the case of adult consensual acts, such as hiring someone for less than the minimum wage.

Personal autonomy or the primacy of personal choice. How important is personal autonomy? It seems to me that natural law theorists should agree that personal autonomy is a very important *means*. Without genuine freedom and choice, it is not possible to lead a moral life. Liberals are right to think that what is important is not just *what* we do, but *how* we do it, that *we choose* to do it.

What we do does matter, and so personal autonomy cannot be absolutized. First, the autonomy of one person must be compatible with that of another, so in some cases it is good that autonomous action be suppressed, as when one person seeks to curtail the legitimate autonomy of another. This is no minor qualification, as some liberals tend to

treat it. It demonstrates that autonomy is not an ultimate and unqualified good: it must yield to the moral imperative of respecting the rights of others. Autonomy itself cannot account for that moral imperative.

Second, virtually everyone realizes that certain autonomous actions can undercut genuine autonomy, simply as a factual matter. One can freely choose to get drunk, but in doing so one loses genuine autonomy—self-determination—while in that state. More importantly, one can freely choose to participate in the conception of a child, but in doing so one brings into existence obligations that limit one's autonomy. It is more controversial among liberals (unfortunately) whether one can (autonomously) contract into a relationship that permanently curtails one's autonomy, such as indissoluble marriage. Some liberals object that such an institution is incompatible with what they hold to be essential: the permanent revisability of one's commitments. Ironically, the same liberals tend to defend the right to suicide, though suicide, however autonomously chosen, destroys the autonomous actor—it is the *ultimate* unrevisable act.

Whatever the limits of autonomy, however, it is an essential and key element in living a good human life, since it is necessary in order to be able to choose freely to perform good actions.

Note that, in the case of each of these characteristic themes of liberalism, an advocate of natural law would respond, not by rejecting the principle, but by saying "yes, that is right—if the principle is understood properly, if it is moderate and limited." That is, natural law theorists would join what might be called the great ongoing internal dialogue of liberalism regarding the scope of its various principles. We are part of the tradition of liberalism. We are liberals.

Natural Law and Liberalism's Characteristic Political Institutions

I will only briefly note here that natural law theory has no trouble seeing value in what Berkowitz calls "liberalism's characteristic set of political institutions," namely, representative democracy, separation of governmental powers, and an independent judiciary. While institutional questions always involve a measure of prudential judgment relative to the circumstances of a given political community, it is fair to say that natural law theory: 1) looks with favor on political arrangements (such as representative democracy) that promote the participation and therefore the capacities of as many citizens as reasonably possible, because this development of capacities is an important part of the common good; and 2) in general looks with favor on arrangements that provide checks on political power (such as separation of powers and a limited form of judicial review), because of its recognition of both good and evil in human beings.

Natural Law, Liberalism, and "Virtues Sustaining Liberty"

Berkowitz also points out that part of the liberal tradition is "liberalism's fertile source of reflections on such nonpolitical supports of the virtues that sustain liberty as commerce, voluntary association, family, and religion." The first two of these, commerce and

voluntary association, can be described as typically *modern* supports for the virtues that sustain liberty. Neither of them was salient in an earlier era where status rather than contract determined relations in society.

The other two, however, family and religion, are not distinctly modern (though they may take typical forms in the modern world). Reflection on family and religion can, I think, be described as part of liberalism's continual internal debate about its relation to the pre-liberal, or, better perhaps, to certain perennial aspects of human life, or, better yet, to "nature.". It is especially in this area of reflection, I think, that we can raise the question of the limits of liberalism.

What Liberalism Fails To See

I said earlier that, given my description of the core of liberalism, "people of sound judgment and good will, including natural law theorists, should be willing to be considered liberals," and I really mean that. But I also want to say that they should be uncomfortable about being simply liberals. If liberalism has grasped much of the truth about political life, it has also found it difficult to embrace some of that truth, or perhaps has even simply missed some of it.

The first problem with liberalism is that it fails to recognize sufficiently the influence of "the regime," a notion which is so central to classical political philosophy. (This blind spot is tied up with liberalism's view that political life is conventional—man-made—rather than natural.) The vision of political life in the liberal tradition is that it exists to establish a framework for the protection of individual rights. Government should remove the barriers to individual "pursuit of happiness." Even when it acts positively (e.g., in modern liberal economic redistribution), this is viewed simply as providing means to self-development, not actually determining that development—it is providing means rather than dictating ends. But both classical and postmodernist theorists doubt that liberalism can avoid shaping ends as well as means.

Jeremy Waldron defends liberalism against a more modern form of this criticism:

Sometimes liberals are accused of taking the beliefs and preferences of individuals as given and hence of ignoring the fact that forms of society may determine forms of consciousness and the structure and content of preferences. But liberals need not be blind to the possibility of preferences changing, either autonomously or along with changes in social structure and social expectations. Provided this possibility of change is in principle something that people as they are can recognize in themselves and take into account in their reflective deliberations, then it can be accommodated perfectly well in a liberal account of freedom.

The confident "can be accommodated perfectly well" may distract us from the tenuousness of the assumption on which it rests. Liberals can recognize, Waldron says, that people's ends may be chosen due to "changes in social structure or social expectations", that is, due to the shape and tone and influences of the communities of which they are a part. This should not bother liberals, however, as long as "in principle"

people "as they are" can recognize this fact and take it into account in their reflective deliberations. Waldron appears to assume that this condition is not problematic. It seems to me deeply so.

The force of the "in principle" is not clear. Is this to be opposed to "in practice"? If it refers merely to the theoretical *possibility* that some people, some of the time, may recognize social and political influences on their lives, that is certainly true, but it's not clear how that constitutes a defense of liberalism against the charge that liberal citizens often do not—perhaps even typically do not—recognize the way that living in a liberal society subtly forms their preferences. How likely, in fact, are people to recognize such influences? Waldron appears to go beyond just theoretical possibility when he specifies that it must be people "as they are." So that is the question: do (not just "can") people, as they are, recognize the extent to which their preferences—their ends, their goals, their assumptions about what is good in life—are shaped by the social ecology of liberalism?

This is the kind of empirical question that is very difficult to answer on the basis of anything other than our own experience with human beings. On the basis of my experience, I am simply puzzled that Waldron seems so confident that this condition is met. The people I have dealt with in the course of my life, the students I have taught—even, I confess, some of the scholars with whom I have interacted—have not *consistently* demonstrated this awareness and control over such influences in their "reflective deliberations." It is common to see reflection and critical awareness with respect to a certain range of issues—especially the ones that are more subject to controversy in our society at a given time—but this is compatible with little or no reflection of other broad attitudes toward life (especially where there is a broad social consensus). In fact, I am impressed over and over again with how many people seem simply to absorb many of their most important attitudes toward life from their surroundings, the culture or subcultures of which they are a part, with relatively little or no critical distance from those influences. (Some simple examples: assumptions about the "minimum" standard of living for a "decent" human life, broad dating and courtship patterns, ideas about the "right" size for a family, the notion that a church is a "voluntary association", which areas of thought can attain genuine certitude.) The idea that people "as they are" engage in a high level of self-critical analysis, then, strikes me as an extraordinarily optimistic assessment. It seems to be a very good example of a kind of romanticism at the heart of much liberalism.

But someone might say, "So what if liberalism shapes people, as long as it shapes them well?" Should we be bothered about the way liberalism shapes people?

I should point out immediately that some of that influence is quite beneficent. For example, liberalism, on the whole, encourages people to be tolerant and peaceful, to be active in pursuit of opportunities, and to have an awareness of their own dignity and rights.

For the moment, though, I want to ask about some of the more problematic aspects of liberalism, about three tendencies in particular, relative to truth, religion, and family. The

first tendency is to emphasize freedom at the expense of an emphasis on truth about ultimately realities. The claim to know the truth about human purposes has so often been associated with abridgment of freedom that liberals are somewhat understandably cautious, not to say suspicious, of truth claims about human ends. The post-reformation religious wars (international and domestic) are the most commonly invoked example, from Hobbes and Locke to Rawls, and today their place is admirably filled by the Ayatollah Khomeini and the dreaded "Religious Right" in America. This suspicion of dogma is compatible with acceptance of certain truth claims, above all, the claims of modern science and the liberalism's "procedural" principles. (Indeed, the prestige of modern science and its methods—its status as the most credible form of knowledge—helps to account for the widespread doubt that moral philosophy can attain any certitudes.)

Over time, it seems that the citizens of liberal democracies tend to move from "tolerance of other people" to "relativism about ideas of the good." The virtue of non-judgmentalism eclipses the virtue of wisdom. Some people consider this skepticism (more or less qualified) as one of liberalism's attractive features, but those of us who believe, like natural law theorists, that human beings are very much worse off when they do not understand the most fundamental truths about human life are concerned about the tendency of freedom to overshadow truth so dramatically.

The second tendency, somewhat related to the first, is the tendency of liberal democracy to undermine revealed religion. Alexis de Tocqueville is well-known for his statements about the importance of religion in America. Indeed, he called it "the first of their political institutions," even though he also emphasized the separation of Church and State (one of the primary reasons, he said, for the "peaceful dominion of religion"). But there is another side to Tocqueville that is less noted. In particular, it is interesting to note that at the end of *Democracy in America*, in his recommendations for how to prevent democratic despotism, he says nothing about religion. I think the explanation for this is that Tocqueville was aware of the tenuous status of revealed religion in modern liberal democracy.

Tocqueville thought that liberal democracies would be suspicious of tradition, and that the philosophical method of Americans would be to rely on themselves. But this strikes at the heart of a certain kind of religion: namely, revealed religion, which rests precisely on the "handing down" ("tradition") of the message that has been revealed to mankind by a God who has intervened in a particular moment of human history. Tocqueville recognized that the natural tendency of modern liberal democracy was the more diffuse and indefinite religion of pantheism.

Tocqueville likewise recognized that liberal democracies would incite and cater to the human desire for physical well-being. He specifically pointed out that one of the advantages of religion was its tendency to curb or moderate this desire, thereby fostering the pursuit of the greater and more glorious possessions of mankind. But a moment of reflection shows that this can be turned around. If religion can benefit democracy by

acting *against* one of its strongest tendencies, democracy can undermine religion by propagating that tendency.

For these and other reasons, Tocqueville, I think, had some doubts about how efficacious a restraint on liberal democracy religion might be in the long run. I think that American history bears out those concerns. Those who take a more benign view of that history point out the surprising strength of religion in America, especially when compared to Europe. While this strength should not be ignored, a closer attention to the character of that religious belief raises serious questions. In many respects, traditional Christian beliefs, for example, seem to have been modified to accommodate liberal democratic tendencies. Nowhere is this seen more clearly than in the progressive decline of marriage as an institution in American society, a process in which many churches as well as religious believers have accommodated dramatically changing sexual mores.

Which leads us to the third problematic tendency of liberalism, which is the undermining of the stability of the family. Many scholars argue that the family is just as strong as it has been in the past, but has simply assumed new forms. It is certainly true that we should resist the tendency to view the history of the family with an unjustified nostalgia. There were plenty of problems with families in the past, including an excessive rigidity in social gender roles, spousal abuse, sexual "double standards," and many informal as well as formal ways of "breaking up" a family (desertion being one frequent form).

Nonetheless, I think that it is wrong to think that there have not been dramatic changes that have greatly weakened the family in performing its essential functions, most importantly, the raising of children. In the past there were many exceptions and violations of the ideal of marriage, but today the notion that there is an ideal or norm is itself under assault. As Elizabeth Fox-Genovese has written,

Today, if we credit our senses, we are witnessing a concerted attempt by a portion of the elite to deny the value of the norm. In its place we are offered marriage as the personal fulfillment of the individual, who must be free to switch partners at will. And we are offered family as "families"—whatever combination of people choose to live together on whatever terms for whatever period of time. It is possible that adults may survive this madness, although one may be permitted to doubt. It is doubtful that any significant number of children will survive it, as the mounting evidence of their distress amply warns.

And, while it is also true that many of the forces undermining the family are part of modernity in general, there seem to be reasonable grounds for finding in liberal democracy itself tendencies contrary to stable family life, such as excessive individualism, affluent materialism, and doubt about absolute substantive moral principles.

It does not follow from my analysis that, because the influence of the regime is so great, and in some cases this influence is not benign, we ought to abandon liberalism. The alternatives, after all, might be worse. I for one certainly have no desire to return to the Greek polis or the Roman republic. Medieval Christendom might seem to some people

(especially Catholics) to be more attractive, but I would warn people not to romanticize the actual once-existent forms of that ideal either. As Tocqueville suggested about the aristocracy of the *ancient regime*, one can be distracted by the high points so much that one fails to see the great amount of human misery and injustice.

What I would say, instead, is that natural law theorists should help people as much as we can to be more self-critical about aspects of liberalism that are less attractive. We should remind our fellow citizens, for example, of the sobering passage with which Tocqueville concludes his discussion of the "advantages" of democracy in America, in which he notes the deep tendency of liberal democracy to gravitate toward the "middling state of things", the down side of which is "mediocrity". And we should also try to "high-tone" liberalism to the extent that we can—for there is a wide range of forms of liberalism, and some of them shape people in much better ways than others.

There is distinguished precedent, I think, for this approach to the question of liberalism. It parallels closely Aristotle's descriptions of democracy in his *Politics*. An examination of his account of the various forms of democracy would find that he describes a range of democracies that are on a spectrum from less to more democratic. The democracy he considers best is one that would be at the somewhat less democratic end of that spectrum. (The same would be true of oligarchy.) Underlying his judgment is the principle behind the "mixed regime": the recognition that any form of government has its own defects, and benefits from an infusion of the principles of other forms of government. Just as democracy is best when it is a moderate democracy, liberalism is best when it is a moderate liberalism.

Why Does It Matter?

Someone may raise the question: why does it matter whether there is some phenomenon called "liberalism" and whether it is a good thing or a bad thing? Such an objector might argue that this discussion is primarily a semantic game—people fighting over whether they or others fall in a category that can be defined in very different ways—and that what matters is not semantics and names, but substance. So, he would argue, let's talk about substantive principles and not worry about whether this or that person or principle is "liberal", or "conservative", or whatever.

There is some truth to this, of course. "Liberalism" is a term that has been used to cover such a broad range of thinkers and programs that it might be wondered whether it is that useful a term at all. And, in the final analysis, what matters is not whether a particular principle or political practice is "liberal", but whether it is good.

But the discussion about liberalism is, I think, useful. Again, Peter Berkowitz has some useful observations:

Several reasons justify the effort to give liberalism its due. First, liberalism clarifies the contemporary intellectual scene by providing a framework which reveals that what appear to be rival and incompatible schools of thought in fact share a formal structure and

governing moral intention. Second, giving liberalism its due means a substantial gain in self-knowledge, both for those who think of themselves as liberals and for those who do not recognize the liberalism of their ways. Third, the liberal tradition has untapped resources for understanding more precisely how to defend, and sustain a political life that rests upon, the premise of natural freedom and equality, a premise whose power not many would wish to deny and whose authority few can honestly resist.

By his first point, Berkowitz means to point out that an understanding of liberalism demonstrates the similarities that get glossed over or lost in discussions of the differences between liberalism and communitarian writers, and liberal and post-modernist writers. I would add that discussions of the differences between liberalism and contemporary natural law theory can also obscure what they have in common. Likewise, by his second point, Berkowitz suggests that it is important for communitarians and post-modernists to recognize their own liberalism, and I add that the same is true for advocates of natural law. By his third point, Berkowitz argues that the liberal tradition has resources that are often overlooked today, and I would argue that those resources are sometimes principles that classical liberals inherited from pre-liberal thought and practice, based on forms of natural law, and which they did not consider incompatible with liberalism, but rather supportive of it. That is, not only is it true that natural law thinkers are often more liberal than they know, but also liberal thinkers (especially the more moderate ones) are often more rooted in natural law than they know.

In the end, it matters whether natural law theorists should consider ourselves liberals because, if we don't, we may not think and speak as clearly about ourselves and others as we should. This is bad for at least two reasons. First, we won't understand the truth about ourselves. And second, we will be less able to defend our own principles persuasively to others who value liberalism greatly. At the same time, we can be self-critical liberals who are aware of the limits of liberalism and help others to be the same.

One final point I should mention, for the record: this paper is just part of a larger overall analysis of American public philosophy. A logical companion paper would be: "Why We Should (and Should Not) Be Conservatives."

Addendum: Natural Law Liberalism

The following represents a fuller development of the thinking in the above paper.

Many liberals and natural law theorists will regard each other as distinctly unlikely (and uncomfortable) bedfellows. They will feel, in fact, that if they wake up and find themselves in bed with each other, that it must have been the result of some improbable Shakespearean plot in which one's expected bedfellow has been switched and the difference has not been noticed until the following morning.

I want to argue that the relationship between liberalism and natural law is—or at least can be—more like the ordinary relationship between another kind of bedfellows: namely, good spouses. In a good marriage, there is underlying agreement on fundamental matters, combined with some genuine complementarity—that is, differences—that may cause tensions but that also contribute to their mutual personal improvement. Often it takes

years to see that the differences and tensions are not just a source of difficulty but an opportunity for growth. That has certainly been the case with the rocky relationship between liberalism and natural law.

It is interesting to play with this analogy, though in the end it falters. Not the least of the difficulties is that the stories of the relationship of natural law and liberalism vary so greatly, depending on whether the story describes continental, English, or American liberalism. The story line I follow focuses on Anglo-American liberalism: born and developing in England, but eventually coming to have its center of gravity in America, more democratic and more free of the vestiges of pre-liberal social structures.

Natural law and liberalism were, after all, originally "married", in the classical liberal political philosophy of John Locke. From the beginning, there were problems with the marriage. Perhaps the brash young man had married the daughter of an old and declining family only to buttress his own reputation, and the young woman had been misled by the young man's veneer of respectability. But the partners gradually discovered that they didn't have much in common. Though they had used the same words, they had meant different things by them. Their growing recognition of their differences led to bitterness and recrimination, terrible fights, irreconcilable differences, separation, and a bitter divorce. Only after many years did the former partners—spurred in part by a growing realization of their own defects—take another, deeper look at each other and recall the genuine good in the other person that had been lost sight of amidst the fighting. As their feelings toward each other softened, to their own surprise it seemed possible that a reconciliation might be possible, the marriage once again consummated.

The happy ending to this story, though, requires that both parties come to the realization of their compatibility and even their need for each other. But the achievement of that happy ending is more than a little doubtful. The process by which natural law has come to appreciate the strengths of liberalism has moved at a much more rapid pace than liberalism's recognition of its need for natural law. And, in fact, liberalism today seems intent on "going it alone", without the need for any support outside its own commitment to autonomy, which entails the permanent revisability of all personal commitments.

It is often said today that there is a "crisis of liberalism," but it is really a crisis of *contemporary* liberalism. Liberalism, understood broadly, is generally triumphant around the world, in the wake of the collapse of communism, and for good reasons. Liberal democracy offers people a measure of freedom, prosperity, and well-being that no other form of government seems able to provide as consistently. Whatever the faults of liberalism—and liberal democracy, like every other form of government, has its own characteristic weaknesses—it is by far the best game in town, and we should want to preserve and strengthen it. But preserving and strengthening it may mean moderating it, and the vice of contemporary liberalism is to place such a great emphasis on the chief animating principles of liberalism, liberty and equality, that insufficient attention is paid to other human goods, including truth, piety, and family.

The way to deal with the crisis of contemporary liberalism is to embrace what I will call natural law liberalism. The principles of natural law philosophy provide a more solid foundation for liberalism and moderate its more problematic tendencies. It secures the strengths of liberalism while mitigating its defects. Above all, it provides a ground for liberalism that rests on a confidence that human beings can and do know the truth about the human good (in its great variety of forms) rather than a skepticism about such knowledge or despair that human beings can ever agree on it. It grounds liberalism positively in the truth about the human person rather than negatively in various forms of agnosticism, about man as much as God.

This natural law liberalism cannot be billed simply as a "return" to some past form of liberalism, one that was still influenced by medieval natural law thought before it became attenuated in the course of time. Contemporary natural law thinkers have to confront the plain fact that liberalism arose precisely as a reaction *against* a society in which natural law thinking seemed dominant. For most of the last four centuries classical natural law and liberalism have been perceived (by people on both sides) as opponents, even deadly enemies.

But this perception is wrong, for several reasons. First, much of what passed as "natural law principles" in pre-liberal societies was not in fact part of the essence of natural law philosophy, but merely one particular application of it, or even, in some cases, an actual distortion of it. Second, while it is true that liberalism was a reaction against a society in which natural law principles played a role, it is also true that from the beginning liberalism retained important elements of natural law thought.

Natural law liberalism, then, depends on moderating both traditions. Classic natural law has to be separated from its original historical, political, and social context, purified of elements that are inconsistent with its most important principles, and adapted to modern circumstances. In this process, the fundamental harmony between natural law and liberty and equality will become apparent.

Liberalism has to be freed of its insensitivity to the fact of the deep influence of the "regime"—including liberal democratic political communities—on the formation of people's ideals and character: their thoughts, desires, attitudes. Moreover, certain perennial substantive tendencies of liberalism, which tend to be exacerbated in contemporary liberalism, have to be overcome: the tendency of toleration to evolve into forms of skepticism and relativism (at least about the human good) and religious indifferentism, and the tendency of equality and freedom to evolve into an egoistic individualism that undermines the family and commitment to human goods beyond consumeristic well-being.

Another way to say this is that liberalism must be moderated so that when it shapes its citizens—as it inevitably will, even in its milder way—it do so in ways that are more fully compatible with important intellectual and moral goods: with reason and faith, and with the moral virtues that regulate the passions and make possible individual and social well-being. Natural law, without disturbing its conviction that there is a truth, that human

beings can know it, and that their well-being lies in finding and living in accord with it, has to be so formulated as to recognize, in ways that its representatives have sometimes failed to do historically, the intrinsic importance—the necessity—of human freedom and the limits of compulsion.