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## **Why “Market Liberals” Are Not “The True Liberals” or Who Really Inherits the Liberty Tradition Anyway?**

**By**

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Some republicans and libertarians are fond of claiming that they are the true liberals of modernity. F. A. Hayek, Milton Friedman, and members of various think tanks such as the founders of the Cato Institute, Edward Crane and Boaz, all claim that their views about liberty and government are more consistent with what they regard as classical conceptions of liberty than those who traditionally called themselves liberals and now call themselves progressives.<sup>1</sup> They therefore eschew the title “conservative” as not capturing their commitments to progress and liberty and think that the term “liberal” better serves to describe their position.

True liberals in their view are those who want to protect individual liberties against the encroachment of big government and who celebrate free markets. Since republicans and libertarians want to limit government size and regulations and promote free markets, they believe they are closer to the original and classic conceptions of liberty in the modern period and in the founding of America. They believe that the liberals of the early twentieth century and the progressives of the late twentieth century are not really liberals in the true sense of the word. Those so-called

liberals believe in big government, constraints on markets, and thus promote the limitation on individual freedom. With those kinds of commitments, they can not be “true liberals” and are really more like socialists. And so the true inheritors of the liberal tradition are those who want to limit government and maximize free markets.

We shall see that much more is at stake than simply a name or label. These statements about the term “liberal” are really intended as part of a much broader assault on the meaning of liberty and the liberty tradition. These writers want to limit the use of the term “liberal” by others because they alone stand in the liberty tradition. But such conclusions rest on an overly simplistic (if not intentionally misleading) reading of the liberty tradition and the meaning of liberty itself. These writers therefore fail in their effort to monopolize the meaning of the term liberal and liberty. Whether progressives or democrats decide to keep or abandon the term liberal is less important than that they defend their own continuity with the liberty tradition. For there are other and arguably better notions of liberty than those articulated by these writers. And those who think that government intervention and regulation is appropriate to shape market forces can also claim to stand legitimately in the liberty tradition.

Lets start then by taking a look at these statements by Hayek, Friedman and the founders of the Cato Institute, Crane and Boas.

F. A. Hayek, in the preface to the 1956 edition of *The Road To Serfdom* puts it this way:

I use throughout the term “liberal” in the original, nineteenth-century sense in which it is still current in Britain. In current American usage, it often means very nearly the opposite of this...It has been part of the camouflage of leftish movements

in this country, helped by the muddleheadedness of many who really believe in liberty, that "liberal" has come to mean the advocacy of almost every kind of government control. I am still puzzled why those in the United States who truly believe in liberty should have allowed the left to appropriate this almost indispensable term but should even have assisted by beginning to use it themselves as a term of opprobrium. This seems to be particularly regrettable because of the consequent tendency of many true liberals to describe themselves as conservatives. <sup>2</sup>

Milton Friedman takes up the same theme in his introduction to *Capitalism and Freedom*:

It is extremely convenient to have a label for the political and economic viewpoint elaborated in this book. The rightful and proper label is liberalism. Unfortunately, "As a supreme, if unintended compliment, the enemies of the system of private enterprise have thought it wise to appropriate its label," so that liberalism has, in the United States, come to have a very different meaning than it did in the nineteenth century or does today over much of the Continent of Europe.

Friedman continues:

As it developed in the late eighteenth and early nineteenth centuries, the intellectual movement that went under the name of liberalism emphasized freedom as the ultimate goal and the individual as the ultimate entity in the society. It supported laissez faire at home as a means of reducing the role of the state in economic affairs and thereby enlarging the role of the individual; it supported free trade abroad as a means of linking

the nations of the world together peacefully and democratically. In political matters, it supported the development of representative government and of parliamentary institutions, reduction in the arbitrary power of the state and protection of the civil freedoms of individuals.

Beginning in the late nineteenth century, and especially after 1930 in the United States, the term liberalism came to be associated with a very different emphasis, particularly in economic policy. It came to be associated with readiness to rely primarily on the state rather than on private voluntary arrangements to achieve objectives regarded as desirable. The catchwords became welfare and equality rather than freedom.... In the name of welfare and equality, the twentieth-century liberal has come to favor a revival of the very policies of state intervention and paternalism against which classical liberalism fought. In the very act of turning the clock back to seventeenth-century mercantilism, he is fond of castigating true liberals as reactionary!...

Partly because of my reluctance to surrender the term to proponents of measures that would destroy liberty, partly because I cannot find a better alternative, I shall resolve these difficulties by using the word liberalism in its original sense—as the doctrines pertaining to a free man.<sup>3</sup>

Writing in a similar vein, David Boaz and Edward Crane, founders of the Cato Institute, promise:

To make sense of the American people's dissatisfaction with the present state of affairs, we need a new vision for American government, a vision rooted in the principles of our Founders and suited to the challenges of the 21st century. In this book we propose such a vision, one that we

call *market liberal*. Today, people in the United States and around the world who believe in the principles of the American Revolution—individual liberty, limited government, the free market, and the rule of law—call themselves by a variety of terms, including conservative, libertarian, classical liberal and liberal...

The market liberal vision brings the wisdom of the American Founders to bear on the problems of today. As did the Founders, it looks to the future with optimism and excitement, eager to discover what great things women and men will do in the coming century. Market liberals appreciate the complexity of a great society, recognizing that socialism and government planning are just too clumsy for the modern world.<sup>4</sup>

What unites these writers is a common impulse to claim the term “liberal” as the best description of the position that liberty means minimal government, free markets, and maximum protection of individual liberties. For the purposes of this essay, we will follow Crane and Boaz and call this point of view “market liberalism” or “economic liberalism” to differentiate it from other forms of liberalism and other views of liberty.

It should be noted that not everyone who shares these political beliefs wants to use the term “liberal”. Many self-identified conservatives espouse very similar beliefs about government, individual rights and free markets.<sup>5</sup> But the market liberal writers cited above do not believe that the term “conservative” does justice to their commitment to progress and change. Others prefer the term “libertarian” to liberal.<sup>6</sup>

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At one level, it would seem that the debate over who is a true liberal is a debate over nothing more than a name or label, rather than a substantive debate over the meaning of liberty itself. “Call yourself anything you want,” we progressives might say! “Take the label ‘liberal’ if you wish.” And yet to respond to market liberal’s argument this way is to miss its real implications. The argument over the label “liberal” is part of a much broader argument over the substantive meaning of the liberty tradition and the meaning of liberty itself. These writers are arguing that they are the true inheritors of the liberal title because their ideas of liberty are more in keeping with the classical tradition of liberty and according to some the founding views of the American founders. In promoting individual rights and free markets against big government, they see themselves as returning us to a lost tradition of liberty, a tradition that was born with the modern world in general and the founding of American society in particular. But this earlier tradition liberty got lost under the weight of socialist tendencies, implemented in the early twentieth century by FDR in the New Deal, with Keynesian economics, and by a liberal and activist supreme court that misinterpreted the American Constitution.<sup>7</sup> The debate over the term liberal is one important strand in a broader argument that some have called the “Constitution in Exile” movement. In their view, these writers see themselves urging a return to earlier concepts of liberty and freedom that informed early American society and the birth of the modern world. They see themselves as part of a “return to liberty” movement.

The attempt by Hayek, Friedman, Crane and others to appropriate the term “liberal” is, therefore, not just semantics. It is a part of a strategy to say what the liberty tradition means and to claim that 1) one particular interpretation of that tradition is the correct one and 2) that they are the true heirs of the liberty tradition. So while progressives might not care about keeping the term “liberal” per se and might be complacent about letting republicans,

conservatives and libertarian’s appropriate the term for themselves, we should care a great deal more about their claim to be the only true interpreters of the liberty tradition. That is a much more serious and dangerous claim, a claim that is justifying a radical refashioning of our modern social life, our understanding of freedom and the interpretation of the American constitution. It is this latter claim that this essay is intended to critique.

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### ***The Liberty Tradition Has A History***

There are a number of fallacies with the market liberals’ suggestion that they are the true inheritors of the liberty tradition. The first is their assumption there is a monolithic tradition of liberty and a single conception of liberty. This assumption underlies market liberals’ claim that they are the only natural inheritors of the liberal tradition. For if there are multiple conceptions of liberty and if the conception of liberty is dependent on and shaped by historical context, then it is much harder to claim that they alone are the rightful inheritors of the liberty tradition. At the very least, it suggests that there are various ways to understand liberty and that the market liberals do not have a monopoly on liberty’s meaning.

By claiming then that their views represent the true understanding of liberty, the market liberals are making what we might call an “essentialist” move; they are portraying a complex tradition as if it has an essence or core. They are claiming that liberty is a simple unchanging idea that is aligned with their own understanding. But nothing is further from the truth. The liberty tradition is in fact quite complex and changed over time, as did the concept of liberty itself. Indeed, the sheer breath of the liberty tradition defies easy characterization. Even a cursory history of the tradition indicates just how broad and complex

it is and how overly simplistic it is to say what the liberty tradition stands for.

### ***A Brief History of Liberty***

In the modern period, the conception of liberty was initially embodied in the Magna Carta, which in 1215 required the King to renounce certain rights, respect certain legal procedures and accept that the will of the king could be bound by law. The notion that the monarchy had restrictions on its power was one of the first key steps towards a notion of liberty. Over the next centuries the powers of the parliament grew in relationship to those of the monarchy. In the seventeenth century, the Magna Carta had attained an almost mythical status among many of its admirers and was seen as representing a ‘golden age’ of English liberties extant prior to the Norman invasion. Throughout seventeenth century England, the idea that natural rights and liberties limited the monarchy’s power grew in importance, and was evident in the activities and writings of the Levellers a kind of loosely defined political movement that arose during the English Civil Wars in mid-century. Some Levellers appealed to a notion of “natural rights” that had been violated by the King in the English Civil Wars. John Lilburne, for example, argued that the English Common law, particularly the Magna Carta, was the foundation of English rights and liberties.

By 1688, the reign of James the II ended with the Glorious Revolution which arguably began the modern English parliamentary democracy and ended the absolute power of the monarch. The revolution of 1688 is considered by some as being one of the most important events in the long evolution of powers possessed by Parliament. At the end, Parliament passed an An Act Declaring the Rights and liberties of the Subject and Settling the Succession of the Crown, known as the *Bill of Rights* for short. This act represented a formal embodiment of the liberty trends and

formally announced and circumscribed the monarch's powers. The King could no longer suspend laws, levy taxes, or maintain a standing army during peacetime without Parliament's permission.<sup>8</sup> The English *Bill of Rights* is one of the basic documents of English constitutional law, alongside the *Magna Carta*, the *Act of Settlement* and the *Parliament Acts*. And the *Bill of Rights* had considerable influence over the ideas of the American Revolutionaries and the early debates about the American Constitution, influencing the writing of *The Declaration of Independence* and the American *Bill of Rights*.<sup>9</sup> Since 1689, England, and later the United Kingdom, have been governed under a system of constitutional monarchy, which has been uninterrupted. Since then, Parliament has gained more and more power, and the Crown has progressively lost it.

Although not written originally to justify the Glorious Revolution, John Locke's *Second Treatise on Government* certainly came to be thought of as one of the most powerful justifications for the revolution and the ideas of liberty behind it.<sup>10</sup> Here in Locke's *Second Treatise*, a work widely regarded as the classic statement on government and freedom, the idea of liberty was given mature philosophical articulation as a “natural right”. As is well known, Locke saw liberty as a natural right that was granted by God in the State of Nature in which all men (alas he was thinking of men) were created equal. In the State of Nature, one's natural rights included the right to “life, liberty, health, and possessions” (Locke II:6) and could not be legitimately taken away by anyone. But because the State of Nature was insecure, and people were afraid for their lives for their freedom and their property, they voluntarily came together into society. In forming societies, they made social contracts and thereby relinquished some of the rights that they had in nature in order to secure the benefits of society.

Locke's conception of liberty had a tremendous influence on the British tradition and influenced the English

Whigs, such as Thomas Gordon and John Trenchard, the authors of the Cato letters (and the namesake incidentally of the current Cato Institute), and became a standard justification for the Glorious Revolution.<sup>11</sup> It was the writings of the English Whigs and the British ideas about liberty that passed directly into the writings of the American Revolutionaries and shaped early American responses to the Stamp and Townshend acts, and the writings of Jefferson, Adams, Madison and Thomas Paine to mention only a few of the American revolutionaries who stood in this British tradition of liberty.<sup>12</sup> Indeed, it is clear that the early American ideas about liberty were identical to those of their British contemporaries.<sup>13</sup> Jefferson's description of inalienable rights in the *Declaration of Independence*, though rhetorically more powerful than Locke's, simply restated basic Lockean conceptions. Whether Jefferson actually read Locke or not is really not important since Lockean ideas held wide currency and were quoted in a wide range of American pamphlets before and up to the Revolution.<sup>14</sup> One can find statements of natural rights scattered throughout early American pamphlets leading up to the *Declaration of Independence* and then continuing into the American state constitutions. The British *Bill of Rights* moreover shaped Jefferson's *Declaration of Independence* as well as the American *Bill of Rights* that was enacted the year after the American Constitution.<sup>15</sup> Thus the American conception of liberty and the resulting *Declaration of Independence*, *Constitution* and the American *Bill of Rights* clearly embodied and refined the British ideas of liberties. Americans like the English themselves thought that the British constitution was the best in the world precisely because it defended English liberties.<sup>16</sup>

The American founding documents, as is well known, represented complex negotiations and compromises about what liberty meant and should mean as it was actualized in government institutions. The Constitution itself was the result of a pragmatic and philosophical negotiation between

the members of the Continental Congress with diverse views about how to implement the idea of liberty in federal institutions. An intense debate led up to the ratification of the Constitution and it was by no means self-evident that a “United States” would even be achieved. The debate concerned the questions of whether a centralized government (federalism) would undermine the power of the states and would thereby undermine the very notion of liberty. Within a year of the Constitution being ratified, rival political factions emerged in America that debated who were the true inheritors of liberty. The debate over the nature of liberty thus reaches back into the very founding moment of the United States

The argument over who really owns the liberty conception often ignores both the fact that American conceptions of liberty are completely rooted in earlier British ones and the fact that the very inception of the United States was fraught with debates over the meaning of liberty. There was no pure agreement on what liberty meant or how it should be implemented in the period leading up to the constitution or in the years following it. The constitution represents a series of compromises between different representations of liberty. To say then that a single idea of liberty is embodied in the early American documents is thus a complete oversimplification.

Furthermore, the story of liberty does not end here in America with the birth of the United States and the American Constitution, though some American narrators seem to imply that it does. The concept of liberty and the whole rights tradition was to be subjected to severe criticism by the British utilitarian Jeremy Bentham. Bentham convinced many of the modern period that the concept of liberty and rights was simply “nonsense built on stilts”. Instead of rights, Bentham gave articulation to a new theory that was to have powerful sway over the moral imagination of the modern society. In Bentham’s view, societies should

judge practices by their overall social utility and ability to maximize public good. Social rules should be implemented based on which actions would maximize benefits for the most people. This original utilitarian position was hostile to the concept of liberty and ridiculed the notion of individual rights on which it was based. A utilitarian orientation is still persuasive to many prominent writers of our own day, including, some of the market liberals, as we shall see.

But the idea of liberty was once again refashioned and re-justified in the work of John Stuart Mill, who gave a new utilitarian defense of liberty that would become persuasive to many in the post-utilitarian world.<sup>17</sup> In *On Liberty*, Mill argued that liberty, rather than being natural right, is a social entitlement because of its overall benefits for society. Societies should maximize freedom, Mill argued, because a society organized around liberty maximizes the diversity of viewpoints, which in turn generates the most individual motivation and invention, and ultimately the most benefits for the most people. For Mill, utilitarian assumptions in part led to the conclusion that organizing life around liberty was ultimately the way to create the most benefits to all. Now a liberal society could be justified without the need for the concept of natural rights.

This abbreviated history of liberty obviously does not do any justice at all to the thinking of any of these writers, whose works each have inspired extensive and massive secondary literatures that no one who wants to understand liberty can hope to completely master. The secondary literature on Locke, the Whigs, or Jefferson or Mill alone can and sometimes does occupy a scholar a full lifetime. Nor does this cursory review give any sense at all of a multitude of other writers who contributed to the liberty tradition and who might be mentioned, such as Rousseau, Algernon Sidney, Bolingbroke, George Mason, Blackstone, just to name a few other prominent writers in the tradition. But that is precisely the point. Any representation of the liberty

tradition that tries to extract its essence is necessarily a distortion and simplification of a complex, interesting and unfolding tradition that changed over time.

### ***Radically Different Justifications For Liberty***

One symptom of this complexity surrounding liberty is that there are actually radically different conceptions of why liberty is important. In one strand of the tradition reaching back through Locke, we see an argument that justifies liberty as a natural right granted by God in the State of Nature. In this tradition, stand the English Whigs, and the early American Revolutionaries including Jefferson, Madison, Adams and Hamilton. American writers would repeat ad nauseum the claim that liberty was a natural right. Jefferson’s famous formulation in the *Declaration of Independence* (“We hold these truths to be self-evident...”) was simply one of many articulations of like sentiments building up to the American Revolution.

The other strand of the liberty tradition that reaches back to John Stuart Mill, justifies liberty, not as a natural right, but by its utility or benefits for society as a whole. In this more recent strand of the tradition, liberty is not a natural right that inheres in the individual but a way of organizing social life to maximize benefit for the most people. The individual may benefit from liberty but that is not the ultimate goal or justification per se of liberty. Liberty is rather the means of achieving the most good for the most people.<sup>18</sup>

Significantly, this major fault line in the liberty tradition between a “natural rights” and “utilitarian” rational also shows up in the positions of the market liberals cited at the outset of this essay, who claim that they alone inherit the liberty tradition. The founders of the Cato Institute, for example, trace their conception of liberty back to the

“American founders’ and the Lockean tradition and endorse a natural rights view of liberty. But F. A. Hayek and Milton Friedman, by contrast, take a utilitarian approach to liberty.<sup>19</sup>

Now the disagreement about why liberty matters is significant. It shows that the market liberals do not all agree with each other on the justification or reason for liberty. Nor is it possible to dismiss this debate as irrelevant to the conception of liberty. For if one takes a natural rights approach, then one has to at least explain how one deals with the powerful challenges already leveled against the natural rights tradition. And those challenges are powerful indeed. Locke’s conception of liberty, though representing an emerging enlightenment conception, is still rooted in a set of religious assumptions that are no longer broadly persuasive to many thinkers today. Specifically, Locke bases the notion of liberty on the fact that God created men equal (and Locke was referring to men only). In Locke’s words:

The *State of Nature* has a Law of Nature to govern it, which obliges every one: and Reason, which is that Law, teaches all Mankind who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions. For Men being all the Workmanship of one Omnipotent and infinitely wise Maker; All the servants of one Sovereign Master, sent into the World by His order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another’s Pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* among us, that may Authorize us to destroy one another, as if we were made for one another’s uses, as the inferior ranks of Creatures are for ours. (II:6)<sup>20</sup>

We see that Locke bases his conception of natural rights on some familiar and unfamiliar notions. Familiar and still compelling to many people is the conviction that people are self-evidently equal. Less familiar and not as broadly acceptable is Locke's attempt to base that equality on the fact that man is the product of God's labor. Since man is the product of God's labor, man is God's property and therefore cannot be owned or controlled by any others. Our freedom from other's control stems from the fact that we are the property of God.

Now while Locke was clearly making a significant break with traditional religious assumptions in this emerging enlightenment view of the world, he is still resting the conception of liberty on a specific religious conception of the world. To argue today that liberty is only justified by a modified Judeo-Christian religious conception of God is problematic in several ways. It makes liberty contingent on a specific religious world view and a specific reading of religious ideas in that tradition. For many, that is an inadequate justification of liberty, for religious conceptions themselves are arguably themselves human constructions with their own history and context.<sup>21</sup> But if liberty is really to be a more general entitlement, it has to be grounded in some conception other than natural rights founded in a conception of God.

For those who abandon this natural rights justification of liberty, however, there is a problem that has to be solved. How can they claim continuity with the vision of the American founders if they don't accept the reasons why the founders found liberty persuasive?

In their introduction to *Market Liberalism*, for example, the founders of the Cato Institute are not explicit on whether they actually base their theory of liberty on a notion of “natural rights” as formulated by Locke and repeated by the

American revolutionaries.<sup>22</sup> But we can infer that they do endorse a natural rights theory based on the second essay in the *Market Liberalism* volume where Roger Pilon seems to espouse a theory of natural rights.<sup>23</sup> There are also other appeals to natural rights elsewhere in the Cato Institute website.<sup>24</sup> But in *Market Liberalism*, Crane and Boaz do not explain why they accept natural rights but only assert that they stand in the tradition of natural rights reaching back to the American founders.

One can imagine that these Cato Institute thinkers avoid this rather thorny question precisely because it might be an embarrassment for them. For if they try to justify their reliance on natural rights, they have to disclose whether they endorse all of Locke's religious assumptions and then their Christian and religious biases might become evident. But if they abandon the notion of natural rights than they have to admit that they are not really “returning” to the tradition of our founders, as they claim. For the American founders did stand in the natural rights tradition. And any abandonment of that natural rights tradition thereby implies that the writers have diverged from the philosophical assumptions that gave birth to the American Constitution and the Revolution itself. The founders of the Cato Institute are, as it were, caught between a rock and a hard place: they either have to accept a theory of natural rights, which is problematic and is not widely persuasive to everyone, or abandon it and acknowledge they diverge from the ideas of the founders.

Precisely because the natural rights tradition has serious problems, the other market liberals cited at the start of this essay justify liberty by appealing to its social benefit or utility. F. A. Hayek, for example, clearly has a pure utilitarian view of liberty and is explicit about standing in the tradition reaching back to Mill and the utilitarian view of liberty.<sup>25</sup> Yet oddly enough Hayek sees himself as inheriting a view of liberty from the English Whigs.<sup>26</sup> How Hayek can

see himself standing in that Whig tradition when he rejects the notion of natural rights is telling and ironic. The only way he can do so is by being selective and claiming continuity with the Whigs' conception of liberty in some respects only.

But the very fact that Hayek is being selective, by taking what he likes and leaving the rest, undermines his very claim to be the only true inheritor of the liberty tradition. How can a utilitarian theory of liberty claim to reach back to an essence in the liberty tradition that was formulated by writers who strongly believed in natural rights? One can, of course, understand Hayek's desire to link his theory of liberty to early British tradition of liberty, for how else can he claim that he deserves the title liberal, if he does not inherit his ideas from some of the most important thinkers on liberty in the classical tradition. But in linking himself to the Whigs, Hayek ironically links his own theory to a tradition that justifies liberty in a completely different theoretical framework from his own.

Like Hayek, Milton Friedman appears to lean towards the utilitarian view of liberty, and cites Hayek as one of his intellectual predecessors.<sup>27</sup> It makes sense then that Friedman does not try to link his idea of liberty back to the American founders or to the English Whig tradition. Instead he cites some unspecified late nineteenth century writers as his predecessors. Friedman then seems at least internally consistent. His theory of liberty tends to be utilitarian, and he never claims to have forerunners in the natural rights tradition.

But if Friedman seems more internally consistent, his position still undermines his claim that his theory of liberalism is the real essence of the tradition. For Friedman doesn't even try to link his own ideas back to the classic writers of Locke, the Whigs, or American Revolutionaries. How can his liberal views be the only representation of the liberty tradition when they can't even be linked to the

classical tradition of liberty developed by the American revolutionaries and their British predecessors?

The predicament of market liberals just described is quite interesting and telling for the broader debate about liberty itself. Thinkers who justify liberty based on its utility have a theoretical problem of how to relate to *The Declaration of Independence*, the *American Constitution* and the *American Bill of Rights*, documents that grew out of a tradition that viewed liberty as a natural right. To put it more generally, if one has a utilitarian view of liberty, how can one argue that one inherits the conception of liberty embodied in those early documents? This is the predicament of Richard Epstein, for example, who gives a utilitarian justification of liberty but then goes on to tell us how liberty should be implemented in American legal system. If he does not agree with the theory of liberty informing the Constitution, on what grounds can he claim that “we are returning to an earlier conception of liberty” or that such a view of liberty constitutes a strict construction of the American founding documents. What we see is that market liberals are picking and choosing what they like from earlier views of liberty.

Even this short overview of the liberty tradition shows how problematic it is to say that there is a single liberal position that best represents what liberty means. The very justification of liberty, whether as a natural right, or as a way to maximize the public good, cuts deep within the tradition and fundamentally creates different ways of looking at the problem of liberty. And depending on how one slices that problem a number of other issues arise in the attempt to claim to be the “true heirs of the liberty tradition.”

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### ***Liberty Is Not Just About Freedom***

It is not just the fact that the liberty tradition is complex or that the reasons for liberty are debatable that undermines the market liberals' claims to be the true inheritors of liberty. Even the substantive definition of what constitutes liberty varies in the tradition. And other definitions of liberty strike an interesting and suggestive balance between freedom, on the one side, and sacrifice and limitations required for social life, on the other. This alternative view of liberty that runs alongside some of the more “libertarian” impulses shows that liberty was not conceived only as “minimal government.”

Let's take a look again at Locke to illustrate this point. Locke is clearly one of the most articulate early spokespersons for the view that liberty includes a right to private property. In giving prominence to the right to property and ownership of one's labor, Locke clearly foreshadows our market liberals in some interesting ways, (ignoring of course his starting point with natural rights). For example, Locke sees the right to property as one of the critical rights in the State of Nature and in the state of society. And he explains that the right to property is critical because without it people would not labor and would not improve the world.<sup>28</sup> Since ownership of one's property and one's labor are natural rights, society is not entitled to take these away. In these respects, Locke sounds like our market liberals.

But if there are some ideas in Locke that anticipate the market liberals', there are clearly other ways in which Locke's understanding of liberty moves in a very different direction. For Locke does not argue, like our market liberals, that society should maximize the freedom of the individual and minimize government. Instead, Locke writes as if the nature of liberty in society is fundamentally different than liberty in the state of nature (“natural

liberty”). Indeed, liberty in society involves a kind of trade in which one relinquishes some of one’s freedom in exchange for the benefits that society gives. This implicit trade (what Locke calls the “social contract”) involves an individual giving up some of his or her liberty so as to get the benefit of society’s protection. As mentioned earlier, the state of nature was envisioned as an insecure state. Though one had maximum liberty in the state of nature, one feared for the loss of one’s life one’s freedom and one’s property. To reduce this state of anxiety and insecurity, people came together and agreed to give up some of their natural rights in exchange for society.

Now clearly people wouldn’t give up their right to life, freedom or property to live in society, since the whole purpose of choosing society was to better secure their natural rights. But Locke implies that they are willing to give up some of their natural rights to live in society and gain social benefits. Most notably, people agree to live by a body of laws to govern them. They also turn over to the right to make these laws to a legislative body and the enforcement of these laws to an executive. In one reading of Locke, as long as people have a voice of representation, this legislature invariably can and does make laws which limit their freedom.<sup>29</sup> But as long as the laws are known in advance and published, individual freedom is not compromised. At the heart of Locke’s notion of liberty is the idea that having a published constitution and limiting the powers of the monarchy are what make persons free. It is the standing law, the fact that there is a Constitution, and a legislature that makes law that limits the monarchy’s power, that constitutes liberty. In other words, liberty is not “total freedom” or “minimal government” but the presence of law and a constitution and a mechanism to allow for representation. Liberty, then, is the ability to use one’s will where the law does not specify behavior.

In Locke’s classic formulation:

*Freedom*, then, is not what Sir R. F. [Robert Filmer] tells us...*A liberty for every one to do what he lists, to live as he pleases, and not to be tyed by any Laws; But Freedom of men under Government, is, to have a standing Rule to live by, common to every one of that Society, and made by the Legislative Power erected in it. A Liberty to follow my own Will in all things, where that Rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, Arbitrary Will of another man. As Freedom of Nature is to be under no other restraint but the Law of Nature. This Freedom from Absolute, Arbitrary Power is so necessary to, and closely joined with, a Man's Preservation, that he cannot part with it, but by what forfeits his Preservation and Life together. (IV, 22).*<sup>30</sup>

Although Locke strongly endorses liberty and the right to property, he ends up with a notion of liberty that arguably differs from that of the market liberals. Locke sees liberty, not as minimal government, but as having “a standing rule to live by” and “a liberty to follow my own will in all things where that rule prescribes not, not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man...” We are free, then, when law is not arbitrary, and is based on decisions by elected bodies. It is because we are not subject to the arbitrary will of another person or persons, but live within a law that applies to everyone equally, that we achieve freedom. This notion of liberty as emerging out of law and an elected body is a view of liberty that was fairly widespread in the seventeenth and eighteenth century England.<sup>31</sup> What we see here in Locke, and arguably as a major strand in the natural rights tradition, is the idea that liberty is not freedom generally speaking but the state of society governed by a Constitution

and a set of laws representing the majority.

And thus every Man, by consenting with others to make one Body Politick under one Government, puts himself under an Obligation to every one of that Society, to submit to the determination of the *majority*, and to be concluded by it; or else this *original Compact*, whereby he with others incorporates into one *Society*, would signifie nothing, and be no Compact, if he be left free, and under no other ties, than he was in before in the State of Nature. For what appearance would there be of any Compact? What new Engagement if he were no farther tied by any Decrees of the Society, than he himself thought fit, and did actually consent to? (VIII, 97).<sup>32</sup>

This alternative conception of liberty is arguably far indeed from the refrain of “free markets, minimal government, and maximum individual rights” so familiar from market liberals and libertarians. Here in the earliest part of the liberty tradition, in what is a classic articulation of how powers of the government should be constrained, is a notion that freedom is achieved in law and through the limitation of the arbitrary will of others. Locke does not say that that law must be “minimal” or that it must maximize the choices of the individual. On the contrary, he says

For being now in a new State [i.e. the state of society and not the State of nature], wherein he is to enjoy many Conveniences, from the labour, assistance, and society of others in the same community, as well as protection from its whole strength, *he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the Society shall require*: which is not only necessary but just, since

the other Members of Society do the like”  
[emphasis added] (IX, 130).<sup>33</sup>

For Locke, individuals sacrifice to live in society. They have to “part also with as much of their natural liberty” as “the good, prosperity, and safety of the society shall require.” Just how much one has to part with one’s natural liberty is of course precisely a point that would need further examination. But the point is that it is debatable and Locke’s understanding of liberty hinges on it. The fact that it is open to interpretation at all shows that liberty is compatible with wider or narrower conceptions of government, depending on how much law one thinks is needed to achieve those common social goals. For Locke, the key is that not that the law is minimal by definition but that it is “not arbitrary”. And the way to make it “not arbitrary” is by taking it away from the monarchy and placing it in the hands of a legislative body that is representative of the people.

For Locke, then, social life was paradoxically a loss of liberty and a gain of liberty at the same time. We sacrifice some natural freedom in order to gain the benefit of society as a whole. It is a trade like a commercial contract. We give up what we own to get something else that we want. Living within the constraints of government as embodied by law is like keeping within the commercial contract we negotiated, even when the business opportunity may not have turned out the way we like. Our natural rights are only protected in society if we agree to renounce certain of our freedoms. Although we have the most liberty outside of society, we paradoxically achieve the most liberty in society. This whole notion of sacrifice or trade disappears from the market liberal’s conception of liberty. They stress that government should intervene only minimally in an individual’s choices and the market should be the vehicle by which social good is achieved.

So we see that even Locke, the classic champion of natural rights, doesn't fit in critical ways within the market liberal's view of liberty. Here in the very beginning of the liberty tradition is a basis for an alternative conception of liberty that sees individual sacrifice as part of the very act of achieving liberty. This notion of liberty is much more nuanced and allows for much broader governmental controls than the notion of liberty at the heart of the market liberals or libertarians.

### ***Context Matters: or Monarchies are Not the Same Thing As Big Government***

When we look at the concept of liberty over time, we not only see that there are different justifications and definitions of liberty but that the context of the thinking about liberty has itself changed. The market liberals portray liberty as a static concept, as if liberty never changes or responds to circumstances. But if the notion of liberty does and should respond to circumstances and if context does shape what liberty means, then the difference between our times and earlier times should matter in how we think of liberty. Just because Locke or Jefferson thought about liberty in a particular way does not mean that we should think of liberty in the same way. They wrote in response to particular situations. The extent to which our situation faces similar problems as theirs is itself a matter of interpretation. And so the relevance of their ideas of liberty for our time is also ultimately up for debate.

For example, one of the important differences between the earlier liberty traditions and our own American current situation is that monarchy is no longer a problem for us. This was not true in the early British tradition leading up to John Locke or in the early American tradition leading up to the Revolution. Indeed, the core issue of liberty in the early

tradition was the question of the monarchy's power and control. The early liberty tradition actually emerged as a way to limit the power of the monarchy, for example, preventing the King from taking people's property, arresting them arbitrarily, creating laws after the fact, and worshipping a State Religion. The early notions of liberty grew up in the context that worried about the unlimited power of a monarchy that justified its “divine right” to its powers.

The contemporary writers on liberty tend to ignore or downplay the historical context in which these earlier ideas about liberty developed. Even if John Locke did espouse a view of liberty like theirs, (and we see that he did not), it would not mean that his theory of liberty was transferable willy nilly to the contemporary situation. This “elision of historical context” or “sleight of hand” in the market liberal's portrayal of liberty is one of the ways in which they try to portray their own version of liberty as the one and only version of liberty that existed. It is indisputable that the economic complexity of the contemporary world is far different than in Locke's or Jefferson's time. They could never have imagined what our economies and technologies would be like. And therefore to extrapolate how they might have responded to our context, or what they might have said about liberty now, is a lot like guessing how Jesus might have thought about AIDS, or homosexuality. To answer such questions is to engage in an act of hermeneutics within a tradition.

But surely, if we think seriously about it, the context in which we live could very well impact how we construe the concept of liberty. But not for the market liberals, since the rights to liberty in their mind are static and timeless, as if historical circumstance does not touch those rights or our conception of those rights. And this is part of what's wrong with the market liberal's notion of liberty. They envision liberty as a changeless concept that stays static over time, as if liberty never needs to change in any conditions. They

see liberty in other words as a known set of attributes. But liberty is much more dynamic than this. Historically speaking, people’s conceptions of liberty responded to their historical context. Liberty has not been a single concept that transcended historical change.

An alternative and better view of liberty sees liberty as more adaptive and responsive to circumstances. This view of liberty argues that the set of entitlements included in liberty needs to change in response to the challenges society faces. Since our social challenges and moral judgments about them develop and change, we recognize liberty as a set of entitlements that have to be negotiated and debated.<sup>34</sup> This claim that the content of liberty may change over time raises a lot of questions that can’t be addressed here. But it points to a radically different conception of liberty that is not timeless and known once and for all. This concept of liberty is more like a “regulative” idea than a concept with specific unchanging content. And this concept of liberty actually better describes the changing nature of liberty over time.

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### ***Believe It Or Not, The Early American Liberty Tradition Is Complex Too***

Some market liberals like the Cato Institute founders in *Market Liberalism* argue that they are returning us to conceptions of liberty prevalent at the founding of the American Republic. They write as if the American society got off track in the early decades of the twentieth century in the New Deal and then veered towards socialist practices, resulting in big government and loss of individual liberty. By reemphasizing free markets, maximum individual liberty and minimal government, market liberals are returning us to the pure ideas of liberty of the American founders.

But such a claim is ludicrous for its oversimplification. First, in trying to link their ideas of liberty to early American conceptions, these writers tend to minimize any history of liberty before the American experience, despite the fact that the American ideas are clearly rooted in the British tradition. One can perhaps understand this tendency. These are Americans who ultimately are interested in reshaping contemporary views of liberty, contemporary government practice and decisions of the Supreme Court. For them the liberty questions starts “at home.” But even if we narrow our vision and ignore the whole history of liberty leading up to the American founders and the writing of the Constitution, we find American conceptions of liberty that evolved and that differ in significant respects from the market liberal’s conception of “free markets, minimal government, and maximum individual rights.” To argue that such ideas encapsulate early American notions of liberty is a gross oversimplification.

To begin with, there are in fact at least three and arguably more distinct phases in the early development of the American conception of liberty. Each of these phases is complex in its own right and to even try to overview them in a short essay does injustice to them. But at least a brief summary points to the underlying complexity of the American liberty tradition.

The first phase is in the 1760’s and 1770’s in the period before the American Revolution. For the American revolutionaries in this early period, the heart of the liberty issue was the lack of representation in the British Parliament and the subjection of the American colonies to laws which the colonies had no say in making. Although there were concerns over unfair taxes, the issue was not “free trade” per se or “minimizing big government”. The American colonies were angry that they were not treated with the same “liberties” that the British Constitution had promised them and that they had no representation in the making the

laws that governed them. The Stamp Act (1765) and Townshend Act (1767) created taxes without American representation in Parliament. It was the lack of representation, and therefore, the loss of liberty as defined by the British tradition, about which the colonists initially complained. Indeed, the initial debate was not about the definition of liberty per se because Americans accepted the British definition of liberty. The debate concerned whether the Colonies really were included in the rights of liberty given by the British Constitution and whether Parliament had the right to set laws over the American colonies without American representation. In essence the question was really not about liberty but about the status of British colonies and whether the rights and liberties of the British Constitution applied to the colonies. In other words, the debate was constitutional and legal. Americans argued that if they were not allowed representation then they were as good as slaves.<sup>35</sup> To say that liberty in this phase of liberty was focused on “free markets or minimal government” is simply not an adequate description of the debates and concerns with liberty.

The same is true in the second phase of liberty. In this phase, after the war against England was won, and as the colonies contemplated creating a “United States”, a different debate emerged about how liberty should be instituted. Now the question was how liberty could best be implemented in a new government framework. The founders actually thought that when they had declared Independence they had entered a State of Nature. Each of the colonies began the process creating new State Constitutions (i.e., “social contracts”). But once the war had ended, the debate shifted and concerned the relative importance of State powers versus the future powers of a federal government. As is well known, those against the ratification of the Constitution (the anti-Federalists) were worried about concentrating power in a central government, while those for the Constitution (the Federalists-led by Hamilton and

Madison) contended that the states needed to unite to achieve common purposes, such as defending the country, having a consistent foreign policy, and uniting around common economic issues.

Federalists pointed to difficult experiences during the revolutionary war to illustrate the need for a central common government, particularly the difficulty of raising enough taxes to pay and provide for the revolutionary army and the need for a consistent foreign policy. But there were other reasons as well. The Federalist papers articulated reasons how everyone could benefit by relinquishing some state powers to the federal government. Those for the Constitution and “United States” saw the importance of power in a central government and Constitution as the method by which liberty could be achieved.

Does liberty mean minimal government and free markets in this phase two of the American conception of liberty? The answer is no again. The market liberals’ notion of liberty simply doesn’t map over. If market liberals argue that the anti-federalists articulated their conception of liberty, then they are aligning themselves with people who were against a federal Constitution and against a United States altogether. It doesn’t seem, or course, that the Cato Institute market liberals want to argue that a “federal government” should be abandoned (although one could take their assumptions in that direction) but their ideas do align with people who were against the ratification of a national government. Thus while the rhetoric of the early anti-federalists against government power might match that of the market liberal’s rhetoric about “big government”, the substance of the earlier position was aimed at preventing the very creation of a United States. This is why in the period leading up to the ratification both Madison and even Jefferson were actually aligned with Hamilton in pushing for the creation of a “United States”.

Moreover, the real issue under debate before the ratification of the Constitution was the question of state versus federal powers, not individual liberty per se. Those who argued against ratification wanted to keep power more locally at the state level and feared power in a federal government that might be far away from local interests. Those who wanted a federal government argued that key common purposes could not be achieved when States pursued their own interests. Both sides argued that their conception of liberty was compatible with individual liberty. They disagreed on the best way to implement liberty now that they no longer subjects of the British empire and had to fashion their own government. This debate over state or federal power does not really map over to the market liberal's conception of individual liberty. For whether power is concentrated in the federal government or state government the question of individual liberty is still the same. How should individual freedom and government law and power relate to each other? States can and did abuse power as much as federal governments; The early debate between federal and state power therefore is more appropriately thought of as an argument about the appropriate form government should take and how government institutions should be shaped to implement liberty.

After the successful ratification of the Constitution, the concept of liberty enters a third phase in American tradition. At this point, the temporary unification that had been achieved in the ratification of the Constitution began to fall apart. In a fascinating story, Madison, who had been one of the writers of the Federalist papers and who joined Hamilton in promoting a “united” States, began to express new concerns, along with his Virginian colleague Jefferson. Together with Jefferson, who was then the first Secretary of State under Washington, Madison launched an attack on Hamilton's Federalist program, which in the end was to eventually become the basis for rival political factions.

As Secretary of Treasury, Hamilton had set out an ambitious plan for the federal government to assume the war debt that belonged to the states in a program known as assumption. Along with assumption, Hamilton outlined a broad economic agenda that would galvanize the economy and growth of the new country. The plan included a favorable commercial agreement with England, and a plan to build an economic policy with taxes, a funded public debt and a Federal Bank. Hamilton envisioned the public debt as a national blessing, for it would create and mobilize capital that could mobilize the economy.<sup>36</sup>

Madison and Jefferson, as is well known, became concerned with Hamilton's agenda and began a systematic campaign to undermine it and to charge Hamilton with the revival of monarchy and being a “monocrat.” This third phase of liberty's development is associated with the beginning of political factions.

Now on the surface, it might appear that the emerging “republican” rhetoric of Jefferson and Madison matches that of the Cato Institute market liberals today, at least the Cato writers would have us reach that conclusion. After all, these early founders began to articulate a deep suspicion of centralized and federated government power.

But even if the market liberals could link themselves with Jefferson and Madison's program, it would obviously be a distortion to pretend that they are somehow “returning us to a pure view of liberty held by the American founders.” To begin with, even if Jefferson and Madison did hold “market liberal” views, they were not by themselves “the founders.” There is no debate that there were at least two different visions among the founders. The Federalists represented by Hamilton, Adams and Washington saw no incompatibility with their federalist government program and liberty. They believed that their governmental program was fully

compatible with the liberty sought for before the Revolution. So it is clear that there are at least some founders who thought that a strong federal program was a way to implement liberty. At the very least, there were conflicting views of liberty even at the founding of the country.

Furthermore, it is simply not true that the market liberals view maps directly over to those of the early republicans, Jefferson and Madison. The picture is much more complex and nuanced. At issue was two different visions for the republic. Jefferson and Madison, as Virginians, had an agriculturalist ideal of the republic, where as Hamilton, as a northerner was much more closely aligned to the merchant class. Hamilton had read David Hume and Adam Smith, and had attempted to take their economic ideas and implement them in the new American government policy. In some ways, in fact, Hamilton was the founder who most understood the power of economic growth, who had a vision of America's success as an economic power. Hamilton saw that only by establishing good credit and a funded public debt could the United States energize robust economic growth. He also argued that by taking on debt, the government would create liquid capital that could be deployed for economic growth. Hamilton also favored close commercial relations with England and believed the by further reducing restrictions on commercial relationships with England that the American economy would prosper. Indeed, England's banking and economic policies were models for Hamilton's own vision of America's.

By contrast, Madison and Jefferson, in part because they were Virginians, had a more country or agricultural vision of the future, and were horrified by Hamilton's vision. Their vision was much more like the physiocrats, the early advocates of laissez faire, who believed that only agriculture and agriculturalists produced any real value. They did not see strong banking or funded debt as the basis for economic growth. They were aghast by Hamilton's vision of a banking

system based on English precedent and argued that his plan for assumption had created “gambling” and “stock jobbers.”

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The differences between the federalists and republicans therefore were complex and multi-faceted. There are ways in which Jefferson and Madison sound like “anti-big government” market liberals but there are ways in which they were not. Several of Madison’s positions, for example, were not aligned with what would be a strictly free market position. For example, in the debate about the federal government assuming the debt of states, Madison argued that the current holders of securities (those who bought them from the original owners) should have to share the value with the original holders out of justice.<sup>38</sup> He viewed the current holders of securities as “speculators” who made money by gambling on the possibility that the federal government would assume the debt. They therefore should not benefit completely off the backs of those who had sacrificed for liberty and taken the early securities when their value was unknown and in doubt. This view that “speculators” should not reap maximum profits was one example of how Madison and Jefferson did not fully embrace an image of a free market driven by merchant activity and the risks of the marketplace. As Madison put it “there must be something wrong, radically & morally & politically wrong, in a system which transfers the reward from those who paid the most valuable of all considerations, to those who scarcely paid any consideration at all”.<sup>39</sup> Such sentiments sound more like one who is willing to put limitations on free exchange than one who embraces free markets.

Another example of positions that would not be a classically “free market” position involved tonnage fees levied on shipping. Madison and Jefferson favored a tonnage resolution in which all ships bringing goods of any kind into American ports would be taxed according to tonnage. American built and owned ships would pay the lowest duties; ships of nation with which the United States had

treaties would pay a higher duty; and ships of all other powers would pay the highest duties. Since the United States had a treaty with France and none with England, the American government would be adopting a policy detrimental to British shipping.<sup>40</sup> The point here is that Madison and Jefferson did not favor open commerce or unrestricted free trade generally speaking. They saw the need for taxes and duties and saw the taxation of commerce as one means of getting there. And when Jefferson did finally become the third president of the United States, many of his own policies such as the Louisiana purchase and expanded transportation system clearly presupposed the actions of a strong federal government and did not align with his earlier anti-federalist positions<sup>41</sup>

Indeed, in some ways, Hamilton, the man who was shaping the Federalist program, was more of a “market liberal” than either Jefferson or Madison. Hamilton wanted to create a robust economy driven by commerce and the merchant class and saw that as the future of the country. He was reading Hume and Adam Smith and shared a view of a strong merchant driven economy and the power of commerce generally. But to get there, he believed that the federal government had to have an economic policy, a funded debt, and a national bank. It is beyond the scope of this essay to delve in detail into the interesting and complex debate that emerged between Federalists and Republicans over Hamilton’s proposed policy. The point is that none of the positions that emerged among the founders – even that of Jefferson and Madison – mapped neatly over to our “market liberals” view of liberty. In some ways, Madison and Jefferson sound like market liberals and in some ways Hamilton did. The emerging differences in parties were more complex than a simply “market liberal” portrait of the founders suggests.

Even this brief summary of the three phases of the American conception of liberty illustrates just how overly

simplistic it is to say that the market liberal's view of liberty is somehow a return to the view of the founders. To which founders? At which phase? And with respect to which policies? The founders lived at a different time and had different concerns on their mind. They did not hold entirely consistent views themselves and seemed to respond in part to the particular circumstances in which they found themselves. How do their ideas translate over into our own context with more complex social problems and global economies? The founders' notions of liberty developed over time and responded to specific situations they faced. Moreover, none of the founder's views, even Jefferson and Madison's map directly onto those of the market liberals. They held an agriculturalist vision that in many ways simply could not possibly accommodate a capitalist merchant vision. Hamilton, the advocate of strong federal policies, had a much more sophisticated vision and understanding of economics and a vision of a nation with a strong economy driven by merchants and commerce.

### ***Liberty Is Not Necessarily The Same Thing As Free Markets***

This brings us to a another fallacy in the market liberals' claim to be the true inheritors of the liberty tradition. The market liberals argue that the notion of liberty by definition implies economic liberty, by which they mean free markets. But this is another fallacy, part of which I have critiqued elsewhere.<sup>42</sup> The notion that liberty is the same thing as free markets is a concept that arguably developed only late in the liberty tradition. For the notion of liberty itself developed well in advance of any clearly articulated economic notion of free markets. The notions of liberty were already in the process of development in the mid-to-late seventeenth century, whereas the notions of free trade were developing somewhat later in the mid-to-late eighteenth century. The early liberty thinkers were worried about the control and power of the monarchy, not the

freedom of markets. Locke for example wrote his *Second Treatise* on Government a hundred years before Adam Smith wrote his *Wealth of Nations*. And while Locke was an early economic thinker, and did write some economic essays, he did not have a fully developed theory of how markets work nor a fully developed conception of free markets. Indeed, it is arguable that his theory of liberty and his theory of economics barely touched each other in his writing and remained separate strands of this thought.<sup>43</sup>

Adam Smith's *Wealth of Nations* only appeared in 1776 the same year as the *Declaration of Independence*, when the liberty tradition was already fairly mature. Before Smith, economic theory was dominated by mercantilists, who focused on the ruler's wealth, accumulation of gold and the balance of trade. Physiocrats developed the notion of *laissez faire* only in the second part of the eighteenth century. Their notions of the economy do rest on notions of individual property and self-interest that were to be picked up and further articulated by Adam Smith and arguably build on notions of liberty that already existed.

The two traditions of liberty and free markets therefore did not develop together. While notions of liberty and property seem to be assumed in notions of free markets, the reverse is not necessarily the case. It is possible to talk about liberty without completely endorsing free markets. In hindsight, looking back historically, it is often hard to untangle the fact that these two different conceptions and traditions were actually distinct. Free market liberalism could and did piggy-back on political liberalism. But in fact notions of liberty and notions of economy and markets developed somewhat independently of one another and the liberty tradition preceded the free market tradition and relied on different conceptions and foundations. To say that they are the same tradition and that the liberty tradition necessarily implies the free market tradition is to conflate two separate sets of arguments that each have their own reasons and

justification.

Even John Stuart Mill, writing as late as 1859, and articulating a utilitarian view of liberty, understood that these were two separate traditions, although both often used similar arguments. In his words,

But it is now recognized, though not till after a long struggle, that both the cheapness and the good quality of commodities are most effectually provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom to the buyers for supplying themselves elsewhere. This is the so-called doctrine of ‘free trade’, which rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this essay....As the principle of individual liberty is not involved in the doctrine of free trade, so neither is it in most of the questions which arise respecting the limits of that doctrine. <sup>44</sup>

Market liberals want to conflate these two traditions and claim that they are one and same tradition. But there are good reasons to treat them as separate traditions. Historically the tradition of liberty developed and matured before the tradition of free markets. The economic reasons for free markets may or may not be the same as the reasons for liberty generally speaking. The question at the heart of the liberty tradition, therefore, is really what should the relationship of economic theory and a theory of liberty be and who gets to decide? This question, which I have partly addressed elsewhere, is beyond the scope of the present discussion. The point here is that the market liberals have attempted to do away with this question, assuming that liberty is “economic liberty” and that the question of liberty’s

relationship to markets is not a question that has ever or needs ever be considered.

### **Conclusion**

We started our rather lengthy discussion with the claim by some writers that the term liberal should be reserved for those who favor free markets, maximum individual liberty and minimal government. They claim that this view of liberty is the only respectable view of liberty. But we how simplistic are the assumptions underlying this claim. The liberty tradition is not a simple tradition. Even this rather lengthy essay butchers the history of liberty and oversimplifies the rich complexity of the tradition. But this essay at least tries to show that the concept of liberty is complex, diverse and changed over time. In looking at liberty in context, we have seen that there were many different concerns on the minds of liberty's theorists. The concerns included the power of monarchy, the power of parliament, the relationship of colonies to mother country, the amount of individual sacrifice required for social life, the place of a federal banking system and taxes on shipping, to name only a few of the complicated issues that shaped the nature of liberty's conception. The point of course is that there has not been a static image of liberty over time. What counts as liberty emerges through debate and discussion in light of the current circumstances. What counts as liberty in one time and place may not count as liberty in another. The market liberals of course pretend that there has been and therefore should be only one essence of liberty. But what constitutes the essence of liberty and whether free markets or personal sacrifice should be part of what liberty means is at least up for debate as a liberal society defines its own hopes, aspirations, goals and methods of achieving its vision.

A much better way to conceptualize liberty is as a tradition that is asking and answering a set of questions about how to balance the power and role of government with the desires and will of the individual. As an unfolding tradition it has multiple strands and perspectives that not all consistent. There is not a single point of view or set of principles that represent the liberty tradition and the market liberals represent only one strand-and not necessarily the predominant or best strand-- within the liberty tradition. This complexity of the tradition by itself undermines the market liberals contention that they have a monopoly on the term liberal.



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<sup>1</sup> Quotes from Hayek, Friedman, and Boaz and Crane follow below.

<sup>2</sup> Hayek, *Road to Serfdom*, (xxxv). Hayek develops this further in his *The Constitution of Liberty* in an essay called, "Why I am not a Conservative" (397-411). "At a time when most movements that are thought to be progressive advocate further encroachments on individual liberty, those who cherish freedom are likely to expend their energies in opposition. In this they find themselves much of the time on the same side as those who habitually resist change. In matters of current politics today they generally have little choice but to support the conservative parties. But, though the position I have tried to define is also often described as "conservative," it is very different from that to which this name has been traditionally attached. There is danger in the confused condition which brings the defenders of liberty and the true conservatives together in common opposition to developments which threaten their different ideals equally. It is therefore important to distinguish clearly the position taken here from that which has long been known--perhaps more appropriately--as conservatism." And then after a description of Conservatism as an opposition to change, he writes, "I will nevertheless continue for the moment to describe as liberal the position which I hold and which I believe differs as much from true conservatism as from socialism. Let me say at once, however, that I do so with increasing misgivings, and I shall later have to consider what would be the appropriate name for the party of liberty" (397-398).

<sup>3</sup> Milton Friedman, *Capitalism*, 5-6.

<sup>4</sup> Boaz and Crane, *Market Liberalism*, 8-9.

<sup>5</sup> See for example the American Conservative Union's statement of principles adopted in December 1964. <http://www.conservative.org/about/principles.html> (Cited Feb 2, 2007)

- We believe that the Constitution of the United States is the best political charter yet created by men for governing themselves. It is our belief

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that the Constitution is designed to guarantee the free exercise of the inherent rights of the individual through strictly limiting the power of government.

We reaffirm our belief in the Declaration of Independence, and in particular the belief that our inherent rights are endowed by the Creator. We further believe that our liberties can remain secure only if government is so limited that it cannot infringe upon those rights.

- We believe that capitalism is the only economic system of our time that is compatible with political liberty. It has not only brought a higher standard of living to a greater number of people than any other economic system in the history of mankind; more important, it has been a decisive instrument in preserving freedom through maintaining private control of economic power and thus limiting the power of government.

- We believe that collectivism and capitalism are incompatible, and that when government competes with capitalism, it jeopardizes the natural economic growth of our society and the well-being and freedom of the citizenry.

- We believe that it is the responsibility of the individual citizen, whenever his inherent rights are threatened from within or without, to join together with other individuals to protect these rights, or, when they have been temporarily lost, to regain them.

- We believe that any responsible conservative organization must conduct itself within the framework of the Constitution; in pursuance of this belief we refuse to countenance any actions which conflict in any way with the traditions of the American political system.

- The American Conservative Union is created to realize these ends through the cooperation in responsible political action, of all Americans who cherish the principles upon which the Republic was founded.

- The American Conservative Union will welcome all Americans who are prepared to fight for the realization and preservation of these principles through political action at the local, state and national level.

#### The Sharon Statement

The following is the first statement of principles of the modern conservative movement, written by former ACU Chairman M. Stanton Evans and adopted in conference at Sharon, Connecticut (at the home of early ACU supporter William F. Buckley Jr.), on September 11, 1960.

In this time of moral and political crises, it is the responsibility of the youth of America to affirm certain eternal truths.

We, as young conservatives, believe:

- That foremost among the transcendent values is the individual's use of his God-given free will, whence derives his right to be free from the restrictions of arbitrary force;
- That liberty is indivisible, and that political freedom cannot long exist without economic freedom;
- That the purpose of government is to protect those freedoms through the preservation of internal order, the provision of national defense, and the administration of justice;
- That when government ventures beyond these rightful functions, it accumulates power, which tends to diminish order and liberty;
- That the Constitution of the United States is the best arrangement yet devised for empowering government to fulfill its proper role, while restraining it from the concentration and abuse of power;
- That the genius of the Constitution—the division of powers—is summed up in the clause that reserves primacy to the several states, or to the people, in those spheres not specifically delegated to the Federal government;
- That the market economy, allocating resources by the free play of supply and demand, is the single economic system compatible with the requirements of personal freedom and constitutional government, and that it is at the same time the most productive supplier of human needs;
- That when government interferes with the work of the market economy, it tends to reduce the moral and physical strength of the nation; that when it takes from one man to bestow on another, it diminishes the incentive of the first, the integrity of the second, and the moral autonomy of both;
- That we will be free only so long as the national sovereignty of the United States is secure; that history shows periods of freedom are rare, and can exist only when free citizens concertedly defend their rights against all enemies;
- That the forces of international Communism are, at present, the greatest single threat to these liberties;

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- That the United States should stress victory over, rather than coexistence with, this menace; and
  - That American foreign policy must be judged by this criterion: does it serve the just interests of the United States?

<sup>6</sup> See also *Libertarianism*, Chapter 1: “A Note on Labels: Why ‘Libertarianism?’” See <http://www.libertarianism.org/ex-3.html> (cited Feb 5, 2007)

<sup>7</sup> This lost sense of liberty is evident in the writing of Hayek, Friedman, and Boaz and Crane.

<sup>8</sup> For an overview of the English Bill of Rights, see the Wikipedia entry ([http://en.wikipedia.org/wiki/English\\_Bill\\_of\\_Rights](http://en.wikipedia.org/wiki/English_Bill_of_Rights)):

“The Bill of Rights 1689 is largely a statement of certain positive rights that its authors considered that citizens and/or residents of a constitutional monarchy ought to have. It asserts the Subject's right to petition the Monarch and the Subject's right to bear arms for defence. It also sets out (or in the view of its writers, restates) certain constitutional requirements where the actions of the Crown require the consent of the governed as represented in Parliament. In this respect, it differs from other “bills of rights,” including the United States Bill of Rights, though many elements of the first eight amendments to the U.S. Constitution echo its contents. This is in part due to the uncodified constitutional traditions of the UK, whereby the English Bill of Rights forms a list of rights in respect of the people as represented in Parliament, in addition to those rights already provided for individuals as set out in Magna Carta.

The basic tenets of the Bill of Rights 1689 are:

- Englishmen, as embodied by Parliament, possessed certain immutable civil and political rights. These included:
- freedom from royal interference with the law (the Sovereign was forbidden to establish his own courts or to act as a judge himself)
- freedom from taxation by royal prerogative, without agreement by Parliament
- freedom to petition the King
- freedom from a peace-time standing army, without agreement by Parliament

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- freedom [for Protestants] to have arms for defence, as allowed by law
  - freedom to elect members of Parliament without interference from the Sovereign
  - the freedom of speech in Parliament, in that proceedings in Parliament were not to be questioned in the courts or in any body outside Parliament itself (the basis of modern parliamentary privilege)
  - freedom from cruel and unusual punishments, and excessive bail
  - freedom from fines and forfeitures without trial”

<sup>9</sup> On the influence of the English Bill of Rights over the Declaration of Independence, for example, see Pauline Maier, *American Scripture*, 47-96.

<sup>10</sup> On the relationship between Locke’s ideas and the Glorious Revolution, see Peter Laslett, *Locke*, 45-59 who argues that Locke’s treatise was written well before the Glorious Revolution, possibly as early as 1679-80.

<sup>11</sup> On the reception of Locke’s theory by the British Whigs, see Mark A Plozay, “Early Reception.”

<sup>12</sup> On the influence of the Whigs over the American idea of liberty, see for example Bailyn, *Ideological Origins*, and Colbourn, *Lamp of Experience*.

<sup>13</sup> See Reid, *Concept of Liberty*.

<sup>14</sup> There is an extensive debate on whether Jefferson was familiar with Locke directly or picked up his ideas from the Whigs or the Scottish Enlightenment thinkers. In some sense the debate is beside the point, because it is arguable that Lockean like ideas about natural rights had so infused the thinking of the Whigs that the source of the ideas is beside the point. For a view favoring Locke’s influence, see Becker, Declaration of Independence. For a more recent review of the literature favoring Locke’s influence, see, Hirsch, *Theory of Liberty*, 36-37. For influence of the Whigs on the American thinkers, see Bailyn, *Ideological Origins*. For a view that Jefferson was influenced by the Scottish Enlightenment, see Garry Wills, *Inventing America*, 167-192.

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<sup>15</sup> Maier, *American Scripture*, 47-96

<sup>16</sup> See Reid, *Concept of Liberty*.

<sup>17</sup> Mill, *On Liberty*, 129, for example, anticipates Hayek, Friedman and Epstein in arguing that by allowing individual liberty, society promotes invention and discovery that would otherwise be quashed by rules limiting diversity of opinion or action. There is some complexity here in the interpretation of Mills. See for example Dworkin, *Taking Rights Seriously*, 259-265 on a critique of Gertrude Himmelfarb’s reading of Mill’s theory.

<sup>18</sup> While theories of liberty can fall broadly into these two different streams of “natural rights” and “utilitarian”, there are also differences within these two traditions. There are recent justifications of the rights approach (without the “natural”), found in Rawls and Dworkin, *Taking Rights Seriously*, and there are articulate versions of the utilitarian justification of liberty in the work of Richard Epstein. There are in fact different flavors of these rights and utilitarian traditions as well that don’t all agree on founding assumptions.

<sup>19</sup> I develop this point in more detail below.

<sup>20</sup> All quotations of Locke are taken from Laslett, *Locke*.

<sup>21</sup> The discussion of liberty by those favoring a natural rights tradition often ignores completely the extensive literature on the human construction of religion. As such, a natural rights theory, that grounds itself in a traditional understanding of revelation, does not adequately come to terms with the critique of religion in the modern period.

<sup>22</sup> Boaz and Crane simply claim to be restoring us to the principle of the founder without actually indicating if they embrace a notion of natural rights.

<sup>23</sup> See Roger Pilon, “Freedom, Responsibility and the Constitution.” In Boaz and Crane, *Market Liberalism*, 21-53.

<sup>24</sup> See for example, Roger Pilon, “Foreword” to *Restoring Constitutional Government*, an inaugural volume reviewing Supreme Court decisions.

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<http://www.catostore.org/pdfs/Supreme%20Court%20Intro.pdf>.

See also Randy E. Barnett, *Restoring the Lost Constitution*.

<sup>25</sup> Hayek, *Constitution of Liberty*, 30

<sup>26</sup> Hayek, *Constitution of Liberty*, 408.

<sup>27</sup> Friedman’s writing is actually somewhat ambiguous on the justification of liberty. There is clearly a strong utilitarian impulse in his writing. But at times he slips into what might be construed as “rights” oriented justifications, as when he says things like “freedom in economic arrangement is itself a component of freedom broadly understood, so economic freedom is an end in itself.” (Friedman, *Capitalism*, 8). Here he seems to imply that the general concept of liberty is already known and established before the inclusion of economic liberty in it. Whether the larger justification of liberty is a natural rights or a utilitarian justification in Friedman’s mind is not as clear, although the general tenor of his writing suggests a utilitarian viewpoint.

<sup>28</sup> Locke’s classic statement on property appears in his second chapter of his *Second Treatise*.

<sup>29</sup> For a reading of Locke which draws out the sovereignty of society and the majority, see Willmore Kendall, *John Locke and the Doctrine of Majority-Rule*.

<sup>30</sup> Laslett, *Locke*, 284.

<sup>31</sup> Reid, *The Concept of Liberty*.

<sup>32</sup> Laslett, *Locke*, 332.

<sup>33</sup> Laslett, *Locke*, 353.

<sup>34</sup> See H. N. Hirsch, *A Theory of Liberty*, who gives a similar view, arguing from the history of Constitutional theory that liberty is a black box whose content is only resolved over time with reference to context and facts as well as moral judgments.

<sup>35</sup> There was a strong conviction in British and American ideas of liberty that if one did not have representation one was “in slavery”. See Bailyn, *Ideological Origins*, and Reid, *Concept of Liberty*, 47-52.

<sup>36</sup> See Elkins and McKittrick, *Age of Federalism*, 116

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<sup>37</sup> Elkins and McKittrick, *Age of Federalism*, 128

<sup>38</sup> Elkins and McKittrick, *Age of Federalism*, 142.

<sup>39</sup> Elkins and McKittrick, *Age of Federalism*, 145.

<sup>40</sup> Elkins and McKittrick, *Age of Federalism*, 67, 155.

<sup>41</sup> See John Lauritz Larson, “Jefferson’s Union”, 358, on how Jefferson as president was challenged staying consistent with his own earlier republican principles as he worked to expand the transportation under his administration.

<sup>42</sup> See my essay Schwartz, “*What Color Tie Do You Vote For?: Or ‘Is Economic Freedom Part of Liberty?’*” a critique of Milton Friedman’s claim that economic freedom is part of freedom. The essay is published on <http://www.freedomandcapitalism.com>

<sup>43</sup> See an alternative view in MacPherson, *Possessive Individualism*, who argues that Locke’s essay on economics and his philosophy of liberty are deeply connected and intertwined. On Locke’s economic writings, see Letwin, *Origins*, 158-195.

<sup>44</sup> John Stuart Mill, *On Liberty*, 164.

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