

Liberalism and Power

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LIBERALISM AND POWER

by Peter Berkowitz

I. The Human Rights Era and the Persistence of National Interest

The American led coalition's achievements in Operation Iraqi Freedom proved, in a variety of ways, unprecedented. Never before had a military force moved so much armor and so many troops so far so fast, or bombed from the air with such precision, or surgically excised a totalitarian regime while largely sparing the civilian population and preserving intact the country's material and commercial infrastructure. The humanitarian achievement also proved unprecedented. For not only were civilian casualties and damage to non-military targets minimized to a hitherto unmatched extent. Never before had a complex and massive military operation so effectively prepared for the swift delivery of food and water and other basics in order to relieve civilian suffering. But perhaps the most remarkable achievement of Operation Iraqi Freedom was the unprecedented weaving of military might and humanitarian assistance.

By contrast, the international debate about the legal merits of the use of military force to disarm Saddam Hussein that led up to Operation Iraqi Freedom proved soberingly familiar. Among the permanent members of the U.N. Security Council—itsself not a body whose structure derives from any recognized norms of international law but which survives as a rickety institutional relic of the post-World War II political settlement—debate was derailed by the national self-interest of several permanent members of the Security Council parading as deference to international law and international institutions. Of course reasonable people and nations could quarrel with the Bush administration's diplomacy, and with its key contention that in a post September 11th world, Saddam's tyranny—with its (now

in doubt) weapons of mass destruction and (now confirmed) programs to develop weapons of mass destruction; its harboring and funding of terrorists; and its murderous brutality toward its own people—posed an intolerable threat to US national security interests and to global order. Yet the respectable if not decisive legal argument put forward by the US and Great Britain, rooted in a perfectly plausible reading of Security Council resolution 1441 passed by unanimous vote in November 2002 and of 16 other Security Council resolutions over the course of 12 years that preceded it, was met with adamant opposition and resolute obscurantism from France, Russia, and China. They were not content to claim that their legal arguments were superior. Rather, with France at the forefront (and Germany cheering from the sideline), they made a mockery of the truth by resolutely maintaining that the legal arguments advanced by Great Britain and the US were devoid of merit. And they insisted that any response to Saddam’s defiance of the U.N. consistent with international law must take the form of more diplomacy, more inspections, and more multilateralism. Yet the impartiality in the interpretation of Saddam’s obligations, the US’s prerogatives under international law, and the UN’s role in dealing with the Iraq crisis of these permanent members of the Security Council was severely compromised by their extensive commercial ties to Saddam’s Iraq, their resolute evasion of the Iraqi sanctions they themselves had voted to impose, and what they perceived to be their national interest in reining in the US by frustrating any and all of its political and military initiatives.

What the all-too-predictable post September 11th international debate over Iraq, taken together with the US led coalition’s unprecedented achievements in the waging of Operation Iraqi Freedom has demonstrated, in other words, is that the breathtaking advance of the humanitarian ethic has not yet, nor is it likely to, eliminate a sizeable role for national self-interest in international politics. Even in the foreign policy of those—this certainly includes both Europeans and the United States—whose moral and political orders in various ways affirm the humanitarian ethic. What is puzzling is why American and European perceptions of their national interest are diverging so dramatically.

Robert Kagan’s short book goes a long way toward solving the puzzle. Written in the shadow of September 11 and published in the months leading up to Operation Iraqi Freedom, his incisive analysis of strategic culture in the US and Europe suggests that the trans-Atlantic allies are increasingly likely to disagree about the role of international law and international institutions in securing the conditions for global order. “It is time to stop pretending,” Kagan provocatively declares at the start, “that Europeans and Americans share a common view of the world or even that they occupy the same world .” Drawing upon Thucydides, recent history, and common sense, Kagan makes a compelling case that a nation’s strategic culture is determined by its political situation. Militarily strong nations like the United States will naturally see the virtues in military strength and will naturally seek to exercise them to

advance their interests, while militarily weak nations like those of Europe, making a virtue out of necessity, will attempt to vindicate their interests by championing the supremacy of international law and diplomacy. America enforces its will because it can. Europe falls back on the United Nations because it must.

Yet there is more to the puzzle than Kagan allows. Contrary to the provocation with which his book begins, Europe and America, in a decisive respect, occupy the same world and share a common view of it. Behind the “great and growing disparity of power,” and the resultant divergence of short term national interest and perspective, is a remarkable area of agreement. It was not written in stone, for example, that the debate between the US and Europe about Iraq would revolve around how best to secure human rights and promote democracy, rather than, say, whether human rights and democracy are universally valid and desirable. In fact, a nation’s strategic culture is determined not only by its political situation but also by its moral and political principles, particularly those widely shared background ideas about what human beings are and what they deserve that give shape and direction to all spheres of a nation’s life. To be sure, Kagan notes that both US and Europe are offspring of the Enlightenment. But he neither pursues the thought that ideas matter in the formation of strategic culture, nor does he correctly identify the moral and political tradition that links the US and Europe.

The tradition in question is best called liberalism. One critical strand within this tradition is the Enlightenment, which teaches that universal principles of reason govern moral and political life and that all human beings can be educated to live in accordance with them. But the Enlightenment ideal does not go to the heart of the matter, which is freedom, or more accurately, equality in freedom.

The liberal tradition rests on the premise of equality in freedom, or the natural freedom and equality of all. It is the tradition, among others, of Locke, Montesquieu, the fathers of the American Constitution, Kant, Tocqueville, Constant, and Mill. Like all great moral and political traditions, it is in part constituted by a debate over the practical implications of its fundamental premise. Conservative liberals, liberal liberals, and radical liberals are united by their commitment to equality in freedom; they are divided by opinions about what beliefs, practices, and associations best secure it. Some matters, such as the need for regular competitive elections, toleration, freedom of speech and press, and an independent judiciary are relatively settled. Others, such as the role of the government in the

economy, remain quite contentious. The disagreement between the US and Europe over strategic culture turns out to be a new and critical chapter in the continuing debate that constitutes the liberal tradition over the best means for securing individual freedom.

II. Philosophical Roots of the Strategic Divide

Liberalism is above all devoted to establishing a form of government able to secure conditions under which individuals can enjoy the personal freedom to live as they see fit. Securing political freedom gives rise to a number of enduring challenges. Three are of particular importance to understanding the divide that has opened up between the US and Europe about the use of power in international affairs. The first concerns freedom and rule: In what circumstances can the laws under which citizens live be reasonably seen as expressing and advancing, rather than denying or curtailing, their freedom? The second deals with equality and passion: How does equality before the law and as a condition of social life affect citizens' common human striving for preeminence and power? The third goes to the question of sovereignty and foreign affairs: What principles should guide a liberal state in its dealing with other states, some of which are bound to have adopted very different policies for safeguarding their citizens' freedom, and some of which reject the safeguarding of individual freedom as a goal of politics and even as a genuine human good. Taken together, the answers to these questions suggest that in recent years European strategic culture has put an undue reliance on international law and institutions and that the cause of freedom is best served, as the United States has frequently argued throughout the last quarter century, by states that recognize, and are prepared to act on the recognition, that global order and liberty under law regularly require the exercise of power in international affairs.

Freedom and Rule

A frequently remarked upon ambiguity afflicts the liberal understanding of legitimate political authority. What kinds of laws do individuals who are by nature free and equal have an obligation to obey? Those, the liberal tradition teaches, which individuals have chosen because they believe them to serve their interests or, in other words, to which they have consented. Individuals have an interest in consenting to give up some of their natural freedom and living under laws to which they along with others have also consented because life under laws that bind others equally is in every way better than an untrammelled freedom for oneself that exposes one to the untrammelled freedom of others. But individuals need not give their formal and public consent to every particular law enacted by the state. That would be utterly impractical. It is enough for people to consent to the basic political framework, the constitutional order, through which particular laws are enacted by

representatives who remain accountable to the people. Having consented to the underlying system through which laws are made and implemented and enforced, and through which controversies that arise under the law are adjudicated, and having had a say in choosing office holders through free and fair elections, one has in effect consented to obey even specific laws or rulings about the laws that one finds onerous or foolish. The diminution of freedom that one voluntarily and rationally chooses to incur in political society in exchange for the benefits of life under laws that bind others equally can itself be seen as an expression of one's freedom, a voluntary and rational choice.

But in what does the original act of consent consist? What deeds must be performed, what signs must be given, what conditions must be met in order to establish consent? After all, none of us were there when the Constitution was debated and ratified. We did not give our actual consent. Nor have we been asked recently. And even if we were to be asked, many of us would be in a poor position to consent responsibly owing to a weak grasp of the structure of government established by the Constitution and unfamiliarity with the alternatives. In what sense then can we be said to have consented?

In practice, responds the liberal tradition, we must be understood to have consented tacitly. We give tacit consent to the laws and basic political framework of a free society by choosing to stay and live under them rather than leave and live somewhere else. In accepting the laws' benefits, we agree to bear their burdens, including obedience to duly enacted laws that we regard as wrongheaded. To be sure, the doctrine of tacit consent is not in every way satisfactory. In the real world material and moral constraints—poverty, sickness, ignorance, prejudice, familial and cultural ties—leave many individuals with no realistic alternative but to live out their lives in the country of their origin. Their consent is not freely given but, one might say, coerced by circumstance. However, the liberal tradition resists making the state responsible for overcoming every form of coercion under which we labor. The paradigm form of coercion that it opposes is that of lawlessness or arbitrary laws. To the extent that the liberal state goes further by assuming responsibility for combating the inexhaustible variety of material and moral constraints on individual freedom—which it irresistibly does because the distinction between legal coercion and material and moral coercion is imperfect—it risks sanctioning the sorts of massive invasions of personal freedom liberalism is sworn to protect against.

Indeed, the liberal theory of consent threatens to turn into its very opposite when consent is severed from any concrete action undertaken by those who have allegedly given it. This happens when consent is no longer seen as an open and voluntary affirmation or, more

tenuously, as implicit in our actions, but as derived from our natures as free and equal beings. Such a conception disjoins consent from anything we self-consciously say or do or think. Instead it elaborates principles and practices that it would be rational for us to choose despite the fact that we never have considered those choices or may have considered them and rejected them. It then proceeds to declare some choices as in principle invalid on the grounds that no reasonable person could possibly choose them, and to announce that other rules and regulations are not only valid but should be seen as binding because no reasonable person could possibly fail to choose them. Such a step is tempting and perhaps on rare occasion appropriate, because the very idea of consent carries with it the idea of rational, self-aware choice. It is also dangerous because the idea of consent also carries with it the notion of open and voluntary affirmation. Despite its danger, proponents commonly wield the doctrine of derived consent to nullify the agreements people actually reach and to establish people's obligation to uphold arrangements of which they have never heard or to which they strongly object.

Although the doctrine of derived consent has roots liberal ideas about freedom and rule, in practice it is more likely to menace individual freedom than it is to serve it. Hints of the doctrine of derived consent can be seen in the teachings of Hobbes and Locke, according to whose theories the outline and main provisions of the social contract are objective and universal. Although he writes as a friend of freedom, Rousseau makes explicit some of its startlingly illiberal implications through the idea of the general will, which stirred many of the French Revolutionaries to ruthless violence, particularly the imperative connected to the doctrine of the general will of forcing individuals to be free. Kant elaborates a sublime version of the doctrine of derived consent in his moral philosophy, contending that each should regard himself as a legislator for, but also subject in, a universal kingdom of ends. The doctrine is savagely perverted in the Leninist idea of a dictatorship of the proletariat, in which Party leaders rule despotically on the grounds that they alone know and are capable of advancing the people's true interests. In his famous lecture, "Two Concepts of Liberty," Isaiah Berlin warned liberals against the illiberal temptation embodied in the doctrine of derived consent: it is one thing to say that people may be confused about their interest or are making poor choices, quite another to say that those who rule are capable of discerning the people's true interests, and yet another matter to argue that the people can be made more *free* through a government that, contrary to their expressed preferences, imposes on them through law their supposed true interests. The doctrine of derived consent lives on in muted terms in the writings of Jürgen Habermas and John Rawls and in the sprawling school of academic political theory known as deliberative democracy, which was inspired by their common conviction about the power of reason to determine democratic policies independent of the actual opinions and votes of democratic majorities. It is subscribed to by large numbers of international human rights lawyers.^[1]

The doctrine of derived consent lives on as well in European strategic culture. Indeed, it has become the mainstay of the European outlook. While reliance on international law and international institutions as the primary means of dealing with other countries may suit the interests of militarily weak nations, as Kagan suggests, such reliance is justified through arguments and appeals that presuppose or celebrate a doctrine of derived consent.

Consider, for example, the case for investing the United Nations with greater authority to promulgate laws that bind all nations, for establishing an International Criminal Court, and for granting to the courts of sovereign states universal jurisdiction to try certain classes of crimes committed anywhere and by any parties. The growth of international law in its various manifestations, it is said, advances the cause of human rights by supporting the spread of freedom and equality around the globe. Yet such endeavors only make liberal sense if their legitimacy can be squared with consent. The only form of consent, however, that the spread of international law rooted in the decisions of the United Nations could be consistent with is derived consent. It is obviously not the product of actual consent since almost half of the nations represented at the UN themselves lack democratic legitimacy. Nor could its legitimacy flow from tacit consent: individuals who object to the directions taken by the international order have no other planet to which they can move. So the UN, and the International Criminal Court, and local European courts claiming universal jurisdiction must maintain that their actions and edicts reflect universal laws that all individuals would agree to if they were rationally considering their true interests. Indeed, Europe's arguments on behalf of international law reflect its liberal heritage, and such arguments at minimum prick the conscience and command the attention of the United States because of its.

The well-known problems that arise domestically for the doctrine of derived consent are exacerbated in the international system where, because of the distance and levels of government separating the people from those who speak for them on the world stage, consent and accountability, already stretched in the modern nation state, are greatly attenuated. What if delegates to the United Nations and justices on the International Criminal Court and local European judges claiming universal jurisdiction get the universal rational norms wrong? Or misapply them? What if the universal norms are invoked not on principled grounds but on grounds of self interest? What if the self-interest is not enlightened but cynical? And, what if the cynical appeal to self-interest does not reflect the sort of human lapse concerning which we must always be on guard but is rather a by product of the spirit that liberalism itself fosters?

Equality and the Passions

In fact, the wayward passions that equality stirs up provide good cause to worry that nations imbued with the liberal belief in equality in freedom will be tempted to invoke universal principles on grounds ranging from the dubious to the disgraceful. The connection between high-minded liberal principle and the abuse of it to which wayward human passion is inclined is obscured by those who insist that liberalism is nothing more than a set of shared procedures for organizing moral and political life. Even the soundest principle requires care and courage in its application to concrete circumstances.

Liberalism, like every political regime, constitutes a way of life. It translates its guiding premises and principles into political institutions. These reinforce the guiding premises and principles in citizens' hearts and minds which, amplified, citizens import into private life and culture. The reverberations of equality in freedom in all spheres of our lives foster many appealing qualities: curiosity, casualness in social relations, openness to new experiences and ideas, a respect for human beings of diverse backgrounds. But not all the qualities that equality encourages are humanly attractive or good for a liberal state. Equality, for example, also encourages a certain arrogance, one-sidedness, and resentment.

Consider first the arrogance. Regimes based on the principle of equality embody an obvious claim to justice, as even the classical political philosophy of Plato and Aristotle, which is highly critical of democracy, reminds. It makes sense for all to share in political power because we have common needs and desires, limitations and vulnerabilities. From this, however, partisans of equality are inclined to reason that all are equally well-equipped to hold office and to judge the conduct of affairs of state. But such reasoning rests on the fallacy that because we are equal in one or some morally relevant respects we are equal in all respects.

The one-sidedness promoted by the rein of equality is related to the arrogance. It comes to the fore in a democracy that protects individual rights, or a liberal democracy. According to the classical liberal critique of equality, the critique elaborated by friends of democracy and equality such as Tocqueville and Mill and which is fully compatible with their devotion to the principle of equality in freedom, the problem is not only that majorities think they always know better. It is also that the experience of equality leads to the desire for more of it, and so majorities eventually cease to be satisfied with the characteristically liberal forms of equality, which is formal equality, or equality before the law and equality of opportunity. These forms of equality can coexist with many forms of inequality; in fact, they produce inequality as the competition under law between diverse individuals for society's scarce

goods results in winners and losers. One way to combat the inequality that arises out of equality before the law and equality of opportunity is to guarantee equality of results. This approach calls upon government to become the great equalizer, expanding its role from guarantor of rights, to imposer of burdens and distributor of benefits. The benefits can eventually come to include such intangible goods as the sense of self-esteem.

The battle against inequality is partly a matter of justice. What sense does it make to speak of equality of opportunity when some people are so unfortunate—whether owing to the cruelty of fortune or to the malfeasance of others or their own folly—as to be bereft of a bootstrap with which to pull themselves up? But it involves injustice as well, since achieving the new forms of equality requires sacrificing other goods. When it treats citizens unequally in order to compensate for the myriad unfairnesses of life, government jeopardizes the right of individuals to be treated equally before the law and to dispose of private property as one sees fit.

In addition to promoting the inclination to make exaggerated claims on behalf of equality and the desire to expand its domain, the experience of equality also fosters resentment of those who are stronger, more successful, and happier. This, as Nietzsche argued in his career-long polemic against equality, is where things get ugly. For the demand for equality is no longer driven by a desire to lift up the disadvantaged but rather to hold back and pin down the prosperous and the preeminent. When resentment takes hold, the appeal to individual rights can serve as a vehicle for the unconscious as well as the calculated and cynical bid for power. Wielding equality as an instrument of domination, resentment uses liberal rhetoric to secure an illiberal end.

Many of the wayward passions stirred up by equality are at work in Europe's ambition to portray international law and international institutions as the comprehensive means for securing global order. All nations of the world, by virtue of the sovereignty they exercise, are in an important sense equal. The liberal spirit intensifies among Europeans the sense of equality among nations, while the reality of American power and European weakness painfully reminds Europe of the sense in which they are unequal. So the Europeans make a priority out of increasing the realms in which they can regard themselves as equal. They arrogantly confuse equality among nations in respect of sovereignty for equality in all respects, including equality in regard to competence and accountability. They one-sidedly assume that more equality between states in international affairs is always to be preferred, denying in the process such other relevant attributes of states, as population size and respect human rights and the rule of law. And resenting the power on the international stage

exercised by more powerful nations, a resentment that is fomented by the triumph of the norm of equality in the international arena, they can in moments of weakness cynically seize upon international law and international institutions and employ them as a shackle to bind the strong, regardless of the justice of the initiatives undertaken by the strong. Ironically, this weapon of the weak is especially effective against strong nations that share their basic commitment to the natural freedom and equality of all. It is especially effective, that is, against United States, a state of unprecedented power imbued with a profound liberal conscience.

Sovereignty and Foreign Affairs

What kind of world do liberal states inhabit? So long as the world is not entirely composed of liberal states, the liberal tradition is largely in agreement with Hobbes's dark assessment that life outside the boundaries of an established state, and therefore between states, is "solitary, poor, nasty, brutish, and short." It is not that morality is non-existent, or that reason is in abeyance, in the anarchic international arena, an arena which, from the point of view of standard liberal social contract theory, is akin to a state of nature. Rather, reason teaches that without a properly authorized, internationally recognized sovereign power, it would be unreasonable for a state to suppose that other states will regard themselves as bound by universal laws. To be properly authorized, a sovereign must be consented to by the people, and must have the power to enforce laws, but there is no universal or international sovereign to which all of humanity, or all the nations of the world, could be said to have consented. Certainly not the United Nations, which also lacks the other indispensable attribute of sovereignty, the power to enforce its laws.

Kagan writes as if on the question of the natural condition of states, Hobbes and Kant represent antipodes corresponding to the divergent orientations toward power adopted by America and Europe. Whereas Hobbes thinks that the international order is irreducibly brutish, and thus that only power can decide disputes among nations, Kant believes, suggests Kagan, that nations must conduct themselves in relation to other nations in accordance with universal moral laws. Kagan, however, is mistaken about what Kant believes. In fact, contrary to Kagan, Kant is, on the crucial point, in close agreement with Hobbes. To be sure, Kant lays out preconditions for a perpetual peace among nations and elaborates articles that define such peace. But he does not argue that a nation must act as if perpetual peace has been obtained when it hasn't. That would be folly. Absent a properly constituted world government, which on Kant's view requires the nations of the world to more or less become liberal democracies and for them to agree to be bound by a common authority, nations

should understand that they are effectively in a state of war. Kant does argue that states have an obligation to bring about a condition in which reason can at last govern international affairs. But he does not suggest that that condition naturally maintains or that when it doesn't states must pretend that it does.

What has his mistake concerning Kant got to do with Kagan's larger argument about strategic culture? Plenty. Kagan treats the difference of opinion between the United States and Europe about how world politics actually operates as an open question, as if it were a theoretical matter for which there are respectable alternative views. But this is not the case. Certainly not within the liberal tradition. The supposed antipodes, Hobbes and Kant, are in agreement about the harshness of international politics, and the need for power to back right. Moreover, whether the international arena today displays the qualities that limit the reach of international law and international institutions and make the exercise of power necessary is an empirical question to which there is a correct answer. And it is not the answer that Europe tends to give. As Kagan implicitly acknowledges: "those who favor security through international law and institutions will constantly downplay the world's irrationality and brutality." That is a polite way of saying the European position distorts reality to justify its foreign policy.

Moreover, the Europeans are wrong to believe that they live, as Kagan puts it, in a "post-modern paradise." Comfortable they may be. And insulated to a considerable extent from the illiberal and undemocratic comings and goings in much of the rest of the world. But since Europe includes only a fraction of the world's nations, the paradise cannot be Kantian, for real peace, according to Kant, requires liberal democracy everywhere. Nor is the European paradise postmodern, in the sense of having overcome the need for power. Again, as Kagan himself points out, the European Union depends upon the military might of the United States, not only for the defense of European borders but also for the policing of hot spots around the globe. And European peace and security could be shattered at any moment by rogue states or by terrorists wielding weapons of mass destruction. Europe may resent U.S. power, it may refuse to develop its own, and it may honestly believe that every use by the United States of power abroad threatens the universal validity of Europe's liberal utopian aspirations, but its resentment and refusal and honest belief do not change the fact that its peace and prosperity and freedom rely in myriad and critical ways on power not its own.

III. Beyond the Psychology of Strength and the Psychology of Weakness

US and European strategic culture do not only reflect the universal political propensities which Kagan calls the psychology of strength and the psychology of weakness. They reflect as well competing liberal interpretations of the place of law and power in international relations. But not, as Kagan's analysis too often implies, equally valid interpretations, under varying geopolitical circumstances, of the liberal stance toward power. The European view also gives expression to characteristic liberal exaggerations, temptations, and deceptions.

The liberal provenance of European strategic culture should put the United States on guard against its own wayward tendencies. The mistakes exhibited by contemporary European strategic culture—the aggressive reliance on a doctrine of derived consent, the cynical use of norms of equality to enhance its own power and prestige and weaken that of its perceived rival, a self-induced blindness to the political realities of international affairs—certainly suit militarily weak nations committed to the natural freedom and equality of all. But they also appeal to many progressive liberals in the United States, as any brief survey of political science scholarship, writings by law professors on international law, or the pages of the *New York Times* will attest. So our situation is more dire than Kagan acknowledges. He not only downplays the disreputable motives that readily seize upon the brand of liberal utopianism many Europeans espouse, but he also neglects the powerful attraction of that same liberal utopianism for many American intellectuals despite, or as a reaction to, American strength.

So long as there are liberal states some will be strong and some will be weak and their differing capacities will incline them to adopt opposing views, or a common view with opposing emphases, about the role of law and power in international affairs. Their strategic culture, however, will be determined not only by their military might but also by their liberalism. Though not strictly determined. Indeed, so long as there are liberal states, there also will be partisan battles not only *between* strong ones and weak ones, but also *within* liberal states, both the strong ones and the weak ones, over how consent and the rule of law should be understood internationally, over what the norm of equality calls for in regard to weighing the interests and voices of other nations, and over the circumstances that justify the use of military force. In international relations, as in domestic affairs, liberalism never calls for a simple choice between the path of law and the path of power. It always calls for a wise blending of them.

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[1]I explore in greater depth develop the disadvantages of the doctrine of derived consent in “The Demagoguery of Democratic Theory,” in CRITICAL REVIEW, vol. 15, nos. 1-2, Winter- Spring 2003,
<<http://www.peterberkowitz.com/TheDemagogueryOfDemocraticTheory.pdf>>.