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If You're a Classical Liberal, How Come You're Also an Egalitarian? A Theory of Rule Egalitarianism

Åsbjørn Melkevik, 2020

Palgrave MacMillan

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F.A.Hayek once wrote that the idea of social justice was a “mirage”. Claims like this have contributed to an impression that classical liberals value individual freedom but do not care about other moral values, such as equality. The fact that Hayek and others (such as Milton Friedman) nonetheless endorsed measures such as basic income looks, on this view, like an aberration: Either such concessions were arbitrary departures from a strongly liberal endorsement of ‘free markets’, or else evidence that this endorsement was ultimately a defeasible, consequentialist sort.

In this excellent book, Åsbjørn Melkevik argues that this orthodox view gets classical liberalism wrong. He offers a ‘radical restatement of the classical liberal tradition’ (p.30), on which a commitment to social justice is a central feature. Melkevik’s goal is to both defend this interpretation and explore its implications for how classical liberals might take a position on various more focused controversies about justice and markets.

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Chapter 1 offers some conceptual housekeeping, distinguishing classical liberalism from the likes of libertarianism, 'high liberalism', and 'neoclassical liberalism'. The orthodox interpretation of classical liberalism, according to Melkevik, envisages a view that is hostile to the use of coercive rules as a means of pursuing social justice (p.4). For Melkevik, this interpretation pays insufficient attention to the importance that classical liberals assign to the rule of law, and the implications of this. It is on this point that classical liberalism differs from other varieties of liberalism, and from where it can get its commitment to social justice.

Melkevik's conception of classical liberalism is filled out in chapters 2 and 3. Here, two important observations are made. These are (i) that a capitalist system cannot exist with a system of coercive rules, and that (ii) that the very idea of a market society is indeterminate between the "many ways of organizing markets" by the various "bundles of rules" available (p.69). In order to resolve such indeterminacy, classical liberals need to accept a commitment to social justice in ways compatible with their more familiar theoretical commitments to freedom and rule of law. In chapter 2, drawing especially on Hayek, a detailed account is offered of how rules can be "general" and "abstract" in ways compatible with rule of law and a commitment to individual freedom, but without ruling out the pursuit of social justice. Melkevik calls this approach "Rule Egalitarianism". This is the book's most important theoretical move.

The rest of the book applies Rule Egalitarianism to various specific questions about justice and the regulation of markets. These include the case for basic income (chapter 4), the allegedly basic status of economic rights (chapter 5), progressive taxation (chapter 6), inheritance (chapter 7), freedom of contract (chapter 8), and just prices (chapter 9), followed by a concluding chapter. While I cannot convey the entirety of Melkevik's rich discussion, a clear theme emerges whereby classical liberals can endorse (even if they are not *committed* to endorsing) egalitarian positions on these issues without this being ad hoc or in tension with their other theoretical commitments. A basic income guarantee, for example, may reduce the amount of coercion in society by curbing the power that employers have over workers. Economic rights cannot be basic without some implausible implications, such as the rejection of eminent domain. On inheritance taxes, Melkevik argues that limits on bequest can be favoured by classical

liberals as a means of preserving the competitiveness of market order. Freedom of contract requires some set of (fair) default rules to relieve contracting parties of the massive costs of working up entire contracts from scratch. Finally, the idea of a just price can be defended, for at least some markets, on grounds that prices cannot emerge wholly out of free interactions between transacting individuals but are shaped by state institutions too (for example, court rulings have an impact on the value of certain legal services).

It is highly welcome to see a project recognising the reality that capitalism is not just one thing, but rather a range of possible arrangements separated by different types of institutional and legal background. Melkevik's criticisms of 'neoclassical liberalism' in the early chapters, on grounds that it involves a falsely singular conception of capitalism, are well-founded. I suspect that there is room for disagreement as to the various applications that are ventured in the later chapters of the book, but I don't think Melkevik takes himself to have the last word about what classical liberals must say on these issues, but rather to show that they can take a range of positions that include an egalitarian element.

I will, nonetheless, venture a few critical observations. The moral badness of coercion plays an important role in chapter 4's argument for basic income. Here Melkevik draws on Hayek's idea that coercion's badness is of one's actions being subordinate to the will of someone else. This view has intuitive force, but may presuppose too much competency on behalf of the coercing agent. The coerciveness of the welfare state, for example, needn't always involve the subordination of one will to another: Unemployed workers attempting to navigate a fallible and intrusive bureaucracy often become the victims of institutional failures that happen to degrade their choice sets, like a badly programmed algorithm. This is coercion of a messier and more haphazard sort, though one that classical liberals would likely regard as no less egregious. Overall, one suspects that more needs to be said on what account of coercion's wrong-making feature(s) makes most sense for classical liberals.

In the chapter on inheritance, it was suggested that the power to bequeath or transfer is in some sense essential to the idea of ownership. This gives rise to a 'conflict

between property rights and inheritance taxation' (p.184). But this is up for debate: There are enough elements in the 'bundle' of rights and powers associated with property that it is questionable whether any one of them, as opposed to a critical mass, is absolutely essential. Melkevik quotes the familiar remark in Mill's *Principles of Political Economy* that property is not 'complete' without the power to bequeath. Elsewhere, in the *Chapters on Socialism*, Mill wrote that the idea of property was 'not fixed but variable' and explicitly identified inheritance as one of the elements that might be removed. So, while I was sympathetic to the positive argument offered in the chapter, I wonder whether classical liberals were really under such theoretical pressure to oppose inheritance taxation (though Melkevik is right that many, at least in the 20th century, felt moved to do so).

While Melkevik's "restatement" of classical liberalism is carefully defended and significant in its implications, one might still wonder in what sense it is "radical". It never becomes wholly clear whether Melkevik regards Rule Egalitarianism as what the tradition has been trying to articulate all along, or whether his interpretation is more revisionary, suggesting that classical liberals over the years (especially since the 20th century) have got the understanding of their own position wrong. Melkevik offers ample and well-chosen textual evidence of Hayek's views on the rule of law in ways that count in favour of Rule Egalitarianism. But still the idea that Hayek was nevertheless some sort of egalitarian is hard to square, for example, with his rather dismissive claims about the status of social justice, not to mention his remark that egalitarian demands are 'based on nothing better than envy' – *The Constitution of Liberty* (London: Routledge, 2006: p82). One explanation, gestured at in the book's concluding chapter, may be that the 20th century proponents of classical liberalism were economists rather than philosophers. They spent less intellectual effort on questions of justice and were prone to the occasional careless remark that ended up infecting the way their contributions have subsequently been understood. Here a contrast might have been drawn with the tradition's earlier figures, such as Adam Smith, who wrote before the fragmentation of political economy into economics and political philosophy, and for whom egalitarian interpretations, though contested, certainly have some standing in the scholarly literature.

Notwithstanding these criticisms, Melkevik's book is well motivated and ambitious, and the quality of argument is high. It effectively demonstrates the need for careful thought about the philosophical foundations of classical liberalism. It deserves to be read by anyone interested in liberal political thought or contemporary questions of justice regarding the regulation of market society.

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