

Liberalism, neoliberalism, illiberalism, and civil rights in the United States

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Among the political philosophies of interest to *L'Ordinaire des Amériques*, liberalism is arguably among the most intriguing, one that is almost systematically constructed in an economic sense that borders on the oxymoronic in the case of the United States. While liberalism underpins the notions of democracy and human rights, it is as an economic model that it became the dominant doctrine in the United States at the end of the 18th century. In this case, we hastily refer to "economic" or "classical" liberalism. This is the model that most Europeans think of when they hear the word liberalism, with absolute confidence in the free market as the invisible regulator of the economy. In the wake of John Locke's 17th-century theory of property and, in the 20th century, of Friedrich Hayek's notion that the necessary functions of government as similar to those of a factory's night watchman, and of Robert Nozick's libertarianism and minarchism, classical liberalism no longer gave rise to much divergence in Anglo-Saxon societies, other than around the degree of state intervention and the degree of application of Keynesian ideas. "Classical" or "economic" liberalism is often seen as the precursor, if not the prototype, of what is now termed "neo-liberalism", with a mostly negative connotation.

In the U.S., the term liberalism incidentally adds to its own ambivalence, since to be liberal there means to be "of the left", with all kinds of possible variants ranging from "center left", to "moderate left", to "progressivism", even to "the left of the left". This type of liberalism is *a priori* that of the Democratic Party, one that sometimes manages to contain within a single group personalities as ideologically different as Bernie Sanders, Barack Obama, or Joe Manchin. In addition to the well-identified bipartisan polarization phenomenon, there happens to be less documented intra-partisan polarization phenomena, for example between moderate Republicans (RINOs, Republicans in name only) and very conservative Republicans, or between moderate Democrats (DINOs, Democrats in name only) and the white, conservative Democratic coalition of the Blue Dogs in the House of Representatives. These fault lines are most often made even more fragile by a growing divide between the grassroots and the establishment of each of the two major parties.

The liberalism of the American left implies the need for social legislation to protect the most disadvantaged and extend their rights and freedoms. Is this or is this not a promise of the U.S. Constitution which, in its Preamble, designates justice ("Establish Justice") and universal social welfare ("promote the general Welfare"¹) as two of its very foundations? Antoine Coppelani remarks that the philosophical foundations of liberalism are those that presided over the birth of the American nation, and that Patrick Garry, in *Liberalism and American Identity*, defines liberalism as a "broad, inclusive concept"² based on two principles: individual liberty, which inspired the Declaration of Independence, and the democratic organization of society, which inspired the Constitution.³ Coppelani posits that these two axes firmly anchor the roots of liberalism in the past of the American nation.⁴ In the words of Arthur Schlesinger Jr., a "liberal" historian in the American sense of the term, "American liberalism, in the broad sense, is an expression of the total national experience."⁵ In 1956, Louis Hartz's *The Liberal Tradition in America*⁶ sought to demonstrate the existence of a liberal consensus around which the entire history of the United States had been built. The key argument supporting Hartz's thesis was that the absence of a feudal system in American history had always protected the country from the notions of reaction and social revolution.

The "national experience" evoked by Arthur Schlesinger Jr. was transformed by the outburst of the 1929 crisis, by the Great Depression and, above all, by the New Deal, which saw "classical" liberalism cease to be the dominant doctrine in the United States. "Progressive" liberals and "modern" conservatives rallied around supporting capitalist economic development, defending the interests of multinational corporations and banks, and promoting an active role for the federal government in the economy. From then on, the difference between liberals and conservatives was no more than the acceptable degree of state intervention, or necessary reform, to advance dominant capitalist interests while maintaining social welfare. In a characteristic rhetorical inversion, Martin Luther King Jr. was to expose what he saw as the limits of this "modernism" on the occasion of the March on Washington on August 28, 1963: "This country has socialism for the rich, rugged individualism for the poor."⁷

This inverted prism is also present at the core of neoliberalism, which, contrary to a number of common beliefs about *laissez-faire*, cannot be equated with anarcho-capitalism insofar as neoliberalism does not really refer to a set of analyses or doctrines inspired by economic liberalism. In fact, neoliberalism is constructivist in that it establishes competition as the paradigm of economic activity, accepts all forms of social and cultural inequality produced, and intervenes little or not at all to compensate for the social distortions imposed by competition. As Michel Foucault put it in his 1978 Lectures at the Collège de France, "[n]eoliberalism should not therefore be identified with *laissez-faire*, but rather with permanent vigilance, activity, and intervention."⁸ Foucault's work on biopolitics and biopower concerns not political spaces or territories but the lives of individuals themselves, populations considered incapable of understanding the nature of their own problems and to pursue their own democratic objectives. In that sense, Foucault's work draws the line between classical liberalism and neoliberalism.

Neoliberalism advocates not simply the independence of the market, but the extension of the economic model to all spheres of social interaction. It has its origins in Jeremy Bentham's utilitarianism, while distancing itself from its his socialistic tendencies, notably in the formula "the greatest happiness of the greatest number,"⁹ and unfolds in the theories of Friedrich Hayek and Ludwig von Mises, as well as in the ordoliberalism of the Freiburg school. Many neoliberals, Hayek himself included, claimed that neoliberalism was born to counter authoritarianism and to protect civil rights. But how were they to achieve their political goals? How could majorities be expected to support the reforms they propounded? Neoliberals had to admit that some form of authoritarianism would be necessary to achieve their political goals. Citizens were seen as incapable of understanding the nature of their own problems and to pursue their own democratic goals without the prism of the market. In other words, whereas classical economic thought understood the market as a device for distributing resources, neoliberals turned it into an epistemic phenomenon, the greatest communication and information tool known to mankind. It was therefore appropriate to adapt to its demands.

In a 2019 book entitled *The Morals of the Market: Human Rights and the Rise of Neoliberalism*,¹⁰ Jessica Whyte examines the historical and conceptual relationship between human rights and neoliberalism, which emerged in the aftermath of the Second World War and reached a certain stability in the 1970s and 1980s. Rather than treating human rights and neoliberalism as two distinct logics, one formulated in the Universal Declaration of Human Rights, the other in Margaret Thatcher's famous TINA slogan ("There is no alternative"), Whyte shows that human rights "became the dominant ideology of a period marked by the demise of revolutionary utopias and socialist politics."¹¹ Whyte is not the first scholar to question the overlap between human rights and neoliberalism. Samuel Moyn once described human rights as the "powerless companions"¹² of a neoliberal global economic agenda. Whyte explains that neoliberalism is immoral in terms of both ends and means, in that it considers man only as an "economic animal." Yet what distinguishes 20th-century neoliberals from their 19th-century precursors is not so much their consideration of man as an economic animal as their recognition that the proper functioning of a competitive market requires an adequate moral and legal basis. Unlike the champions of *laissez-faire economics* in the 19th century, the early founders of the Mont Pèlerin Society, such as Mises and Hayek, believed that certain types of state intervention had to be endorsed in order to preserve the integrity of the market.

More recently, the notion of "illiberal" democracy emerged to give a name to the disenchantment that had followed the collapse of the Eastern Bloc and the hope that the whole planet would gradually rally to the regime of liberal democracy.¹³ The concept was put forward by Fareed Zakaria in a 1997 article entitled "The Rise of Illiberal Democracy;"¹⁴ the argument was that when countries fare better in terms of political freedoms than civil liberties, they can legitimately be referred to as "illiberal" democracies. While it was difficult to conceive of democracy without political liberalism, Zakaria argued that both had often existed without each other. Twenty years on, Zakaria's prediction partly came true. Above all, illiberal democracy spread to Europe, to countries (notably Hungary, Poland and Slovakia) that Zakaria had clearly classed as liberal democracies. Hungary's Prime Minister, Viktor Orbán, explicitly lays claim to the concept of illiberalism, and even claims to be its inventor. The French neologism "démocrature" has also been used in recent years as a quasi-synonym for regimes as diverse as Putin's Russia, Chavez's Venezuela, Erdoğan's Turkey and Morales's Bolivia.

Liberal democracy is accused of being nothing more than an oligarchy in the hands of technocrats driven by a globalist and multiculturalist ideology, while illiberal democracy is said to be supported by the real people, those left behind by globalization and attached to their traditions and cultures. Unlike liberal democracy, where the expression of the popular will is framed by the safeguards of the rule of law, and where it may be contradicted by unelected constitutional judges, illiberal democracy claims to give free rein to the popular will and works to free itself from the shackles of the

rule of law. Hence Viktor Orban's argument that the enemy is "legal impossibility."¹⁵ The fundamental question posed by illiberal democracy, both as a claimed concept and as an alternative form of democracy, is whether democracy is possible without traditional civil liberties. Zakaria considers that a regime can only be considered democratic when there are free, multi-party, competitive elections, and when freedoms of speech and assembly are guaranteed.¹⁶ On the other hand, "to go beyond this minimalist definition and label a country democratic only if it guarantees a comprehensive catalog of social, political, economic, and religious rights turns the word democracy a badge of honor rather than a descriptive category."¹⁷

Recently, however, it has been argued that illiberal democracy is a false concept in that the regimes claiming to be illiberal are in no way democratic. According to this view, democracy is by definition pluralist, and does not need to be called "liberal" in order to enshrine fundamental freedoms. For their part, regimes that undermine pluralism are not illiberal, but anti-democratic. The concept of "illiberal democracy" is therefore both deceptive and misleading: deceptive because it attributes freedom to political liberalism rather than to democracy itself; misleading because it conceals the fact that economic liberalism, for its part, is easily combined with authoritarianism.¹⁸ If democracy means the power of the people, and is therefore inconceivable without the majority deciding the destiny of the community, the exercise of popular sovereignty, to be valid, presupposes no other conditions than freedom of expression, information, or assembly. The moral legitimacy of the resulting decisions, meanwhile, is directly conditioned only by respect for the equality of the rights of the citizens who took part in them (cf. the priority of right in John Rawls, a basis for the neutrality standpoint of the liberal State). Beyond, the concept of democracy does not engage any ethical requirement whose respect would be a condition for democracy to remain what it is. The concept of illiberal democracy defended by Viktor Orban, and taken up by a few other leaders, cannot therefore be dismissed out of hand. It is important to recognize that it does make sense, and that democracy can indeed be illiberal without ceasing to be. In this sense, it has the merit of reminding us that democracy encompasses moral dilemmas in Isaiah Berlin's sense: a choice freely expressed by the majority of a people is legitimate, even if it may not appear to be just; it is always possible to condemn it morally, but it is not self-evident that it can be denied the qualification of democratic.¹⁹

This issue of *L'Ordinaire des Amériques* seeks to contextualize and exemplify what are often theoretical abstractions about liberalism, neo-liberalism, and illiberalism in the United States. Proposals that give substance to the breadth of liberalism's theoretical apparatus are welcome. Here are just a few examples:

- Can Trumpism and right-wing populisms be said to mark the end of neoliberalism? According to this thesis, there is hardly such a thing as an American conservatism; the expression itself would be a kind of oxymoron. Conversely, is there such a thing as authoritarian neoliberalism, as revealed by the events on Capitol Hill on January 6, 2021, for example, which could be described as "illiberal"?
- What to make of the unanimous support of Friedrich Hayek, Milton Friedman, Gary Becker and James M. Buchanan for the dictatorship of Augusto Pinochet?²⁰ From its origins in the 1940s to the post-Second World War period, the involvement of the Chicago Boys in Chile, the rise of Amnesty International, and the anti-third-worldism and anti-statism of human rights NGOs in the 1980s called into question the overlap(s) between human rights and neoliberalism.
- Particular interest could be given to reflections on civil rights in the United States, and, more broadly, on the concept of the welfare state and on the ideological v. electoralist ridgeline traversed by the Democratic Party, particularly, but not only, since the presidency of Bill Clinton, who in 1996 uttered this unlikely phrase for a Democratic president: "the era of big government is over"?²¹

Articles, written in English, Spanish, French or Portuguese, must not exceed 11,000 words (including notes, tables, graphs, etc.). They must comply with the journal's presentation standards: <https://orda.revues.org/1763>.

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¹ U.S. Constitution. Preamble (1787).

² Patrick M. Garry, *Liberalism and American Identity*, Kent, Ohio: Kent State University Press, 1992, p. 37.

³ Antoine Coppolani, « La résistible évolution du libéralisme américain : du consensus libéral au mouvement néoconservateur », Hélène Fréchet (éd.), *La démocratie aux États-Unis et en Europe, 1918-1989*, Paris, Editions du Temps, 1999, p. 231.

⁴ *Ibid.*

⁵ Arthur M. Schlesinger, Jr., *The Politics of Hope and The Bitter Heritage: American Liberalism in the 1960s*, Princeton, NJ, Princeton University Press, [1963] 2008, p. 93.

⁶ Louis Hartz, *The Liberal Tradition in America*, Harcourt, Brace & Company, New York, 1955.

⁷ Martin Luther Jr., « I Have a Dream », Address delivered at the March on Washington for Jobs and Freedom (August 28, 1963). The Martin Luther King Jr. Research and Education Institute (Stanford University), <https://kinginstitute.stanford.edu/king-papers/documents/i-have-dream-address-delivered-march-washington-jobs-and-freedom>

⁸ Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, London, Picador, 2008, p. 132.

⁹ Jeremy Bentham, *A Fragment on Government*, Cambridge, Cambridge University Press [1776] 2001, p. 116.

¹⁰ Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, New York, Verso, 2019.

¹¹ *Ibid.*, p. 6.

¹² Samuel Moyn, « A Powerless Companion: Human Rights in the Age of Neoliberalism », *Law and Contemporary Problems* 77 (2015), p. 147.

¹³ Didier Mineur, « Qu'est-ce que la démocratie illibérale ? », *Cités* n° 79 (1919), p. 105.

¹⁴ Fareed Zakaria, « The Rise of Illiberal Democracy », *Foreign Affairs* (Nov/Dec 1997), p. 22-43.

¹⁵ Mineur, p. 106.

¹⁶ Zakaria, p. 25.

¹⁷ *Ibid.*

¹⁸ Mineur, p. 111.

¹⁹ *Ibid.*, p. 117.

²⁰ Pierre Dardot, « Néolibéralisme et autoritarisme », AOC (4 mars 2021), <https://aoc.media/analyse/2021/03/03/neoliberalisme-et-autoritarisme>

²¹ Clinton, William J, President Clinton's 1996 State of the Union Address as delivered (January 23, 1996), Clinton White House, <https://clintonwhitehouse4.archives.gov/WH/New/other/sotu.html>