

The Sphere of Government



Nineteenth Century Theories:

3. *Thomas H. Huxley*

THOMAS HENRY HUXLEY was primarily a biologist, second only in eminence in the nineteenth century to Charles Darwin, whose theories of evolution he defended with such pertinacity and effectiveness that he was popularly known as "Darwin's bulldog." He also wrote on a wide range of other subjects, including scientific method, philosophy, education, religion (he called himself an "agnostic," and invented the term)—and politics.

His views on the proper sphere of government are principally set forth in two essays: "Administrative Nihilism" (1871), and "Government: Anarchy or Regimentation?" (1890).

In the first of these essays, he be-

gins with an unsympathetic description of the opponents of wide-ranging state powers:

"To these opponents, the Education Act is only one of a number of pieces of legislation to which they object on principle; and they include under like condemnation the Vaccination Act, the Contagious Diseases Act, and all other sanitary Acts; all attempts on the part of the State to prevent adulteration, or to regulate injurious trades; all legislative interference with anything that bears directly or indirectly on commerce, such as shipping, harbors, railways, roads, cab-fares, and the carriage of letters; and all attempts to promote the spread of knowledge by the establishment of teaching bodies. . . . According to their views, not a shilling of public money must be bestowed upon a public park or plea-

Henry Hazlitt, noted economist, author, editor, reviewer and columnist, here continues a series of nineteenth century theories on the sphere of government.

sure ground; not sixpence upon the relief of starvation, or the cure of disease. Those who hold these views support them by two lines of argument. They enforce them deductively by arguing from an assumed axiom, that the State has no right to do anything but protect its subjects from aggression. The State is simply a policeman, and its duty is neither more nor less than to prevent robbery and murder and enforce contracts. . . . On the other hand these views are supported a posteriori, by an induction from observation, which professes to show that whatever is done by a Government beyond these negative limits, is not only sure to be done badly, but to be done much worse than private enterprise would have done the same thing."

Huxley declares that he is unconvinced by these arguments, or by that "great negative commandment—"Thou shalt not allow any man to interfere with the liberty of any other man." He goes on:

"If my next-door neighbor chooses to have his drain in such a state as to create a poisonous atmosphere, which I breathe at the risk of typhoid and diphtheria, he restricts my just freedom to live just as much as if he went about with a pistol, threatening my life; if he is allowed to let his children go unvaccinated, he might as well be allowed to leave strychnine lozenges about in the way

of mine; and if he brings them up untaught and untrained to earn their living, he is doing his best to restrict my freedom, by the burden of taxation for the support of jails and workhouses, which I have to pay."

Huxley dismisses offhand the argument that, "If the right of the State to step beyond the assigned limits is admitted at all, there is no stopping." And he blandly concludes: "The Government, being nothing but the corporate reason of the community, will find out when State interference has been carried far enough."

No Fixed Limits as to Extent of Government Action

It is not only modern libertarians who will rub their eyes today at this argument, but the great majority who write on political affairs. It is naive to identify the politicians in office with the community, or to conclude that those who gain political powers can be safely trusted to decide the proper limits of those powers. But Huxley does not hesitate to carry this assertion to its logical conclusion, and to tell us: "I do not see how any limit whatever can be laid down as to the extent to which, under some circumstances, the action of Government may be rightfully carried. . . . The question where to draw the line between those things with which the State ought,

and those with which it ought not, to interfere, then, is one which must be left to be decided separately for each individual case."

So we are back to "the merits of the case" argument that Spencer had so eloquently derided—an argument which could be finally used to justify the totalitarian state.

Huxley returned to the subject of the proper sphere of State power in two other essays, both published in 1890. The first of these was "Natural Rights and Political Rights." I commend it to anyone who still takes Natural Law or Natural Rights doctrines seriously. Huxley regards such doctrines as the product of "the vicious method of a priori political speculation." Their plausibility depends upon a confusion between two senses of the word "right"—right as might, the "natural right" of tigers, for example, to attack and devour men—and *moral* right, which is utterly different. Huxley's essay is, incidentally, a devastating analysis of the theories of Henry George's *Progress and Poverty*.

But some of Huxley's own deductions combine truth with error. For example: "It is a necessary condition of social existence that men should renounce some of their freedom of action; and the question of how much is one that can by no possibility be determined a priori." The first part of that sentence is almost a truism; the part after the semicolon is a con-

tention that, as we shall see, no freedom-loving democracy today has been willing to concede.

Anarchy or Regimentation

The second 1890 essay by Huxley to which I earlier referred, "Government: Anarchy or Regimentation?" bore directly on the question of the proper province of the State.

In this essay Huxley undertook to examine in turn the answer to this question of practically all the great political philosophers of modern times, up to 1890. Specifically mentioned and dealt with were Hobbes, Locke, Morelly, Mably, Rousseau, Von Humboldt, Dunoyer, J. S. Mill, Stirner, and Auberon Herbert. And he rejected all of them alike (with the exception of Dunoyer) for building their case on abstract a priori assumptions regarding a previous "state of nature" and a subsequent "social contract." Huxley pointed out, however, that this had led them into two opposite camps: on the one hand, that espoused by Hobbes, Morelly, Mably and Rousseau, which justified "Regimentation" (the description suggested by Huxley) and the absolute power of the State; and, on the other hand, "Individualism," which Huxley condemned as equivalent to anarchy. He summed up:

"Thus the whole fabric of a priori political speculation which we have had under consideration is built upon the quicksand of fictitious his-

tory. So far as this method of establishing their claims is concerned, *Regimentation* and *Individualism*—enforced Socialism and Anarchy—are alike out of court.”

And what, then, is Huxley's own conclusion? One would expect him to come back once more to the conclusion of his “Administrative Nihilism” essay of 1871, that “the question of where to draw the line between those things which the State ought, and those with which it ought not, to interfere. . . is one which must be left to be decided separately for each individual case.” Perhaps he considers this conclusion implicit, but he does not draw it explicitly. Instead, he is content to tell us that the task which he set before himself was “simply a destructive criticism of a priori political philosophy, whether regimental or individualistic”; and if he has done this successfully, he implies, he has done all that a reader is entitled to ask of one essay.

He goes on to declare: “The political problem of problems is how to deal with overpopulation, and it faces us on all sides.” But whether or not this is true, or seemed true at the time he wrote it, it is irrelevant to the problem—the proper province of government—that his essay started out to discuss. No matter what the “problem of problems” is, the question before him was *who* shall have the power to decide it.

Now let us ask whether Huxley did in fact prove that there is no room for “a priori assumptions” or deductive reasoning in political philosophy.

It is quite true that Locke's assumptions, for example, do seem to rest in part on fictitious history. Huxley's sarcasm makes the most of this:

“To listen to Locke, one would imagine that a general meeting of men living in the state of nature having been called to consider the ‘defects’ of their condition, and somebody being voted to the tree (in the presumable absence of chairs), this earliest example of a constituent assembly resolved to form a governmental company, with strictly limited liability, for the purpose of defending liberty and property,” and so forth.

Individualism Attacked

All this is good fun, but it does not prove that Locke was wrong in assuming that “no one ought to harm another in his life, liberty, or possessions”; that it is the province of government to ensure this state of affairs, and that this was a sufficient task to give any one agency the power to carry out.

Huxley certainly carried his attack on “Individualism” and “Liberalism” too far. “Liberalism,” he declared, “tended to the adoption of Locke's definition of the limits of

State action, *and to consider persistence in letting alone as a definition of the whole duty of a statesman.*" (My italics.)

I can think of no eminent Liberal of the nineteenth century, and certainly none holding political office, who ever propounded such a view of his duties as that laid down in the clause I have italicized. Liberals deprecated the piling up of legal prohibitions and compulsions, burdensome taxation, government efforts to redistribute wealth and income, and other specific interventions in economic life, but they believed in enforcing a fundamental framework of law to protect their citizens against fraud, theft, and violence, internal or external. This in itself, if done well, is a tremendous assignment.

Today it is not done well anywhere; because—arguing from "the merits of the case"—too many other assignments are loaded onto the State, designed to save at least some of us all effort and risk. Once we assume that it is a legitimate function of the state to redistribute income, for example, we practically guarantee that the majority of politicians running for office will be charlatans and demagogues, outpromising each other concerning the largess they can provide to the nonproductive part of the population at the expense of the productive.

To return to Huxley's argument:

No doubt some of the leading political philosophers did base their theories on fictitious history, or on basic assumptions that were not justified. But Huxley seems to reject all "aprioristic" thinking in politics, which would mean that he rejected any attempt in advance to put any constitutional limits whatever on the sphere and power of the State. He apparently would have been satisfied with a constitution which read, simply: "The government may pass and enforce any law it sees fit, guided only by what it regards as the merits of the individual case; and no part of any citizen's freedom or property shall be respected if a majority of 51 percent or more decide otherwise."

In his thinking in the physical sciences Huxley was a professed empiricist, and suspicious of all mere deduction. Nevertheless, in his book on Hume, we find him writing with approval: ". . . [T]he form of the crest of every wave that breaks, wind-driven, on the sea-shore, and the direction of every particle of foam that flies before the gale, are the exact effects of definite causes; and, as such, must be capable of being determined, deductively, from the laws of motion and the properties of air and water."¹

The scientific belief in the law of

¹Hume. Ch. VI, "Propositions Concerning Necessary Truths."

universal causation is based on something more than frequent observance of it in particular cases, plus no certain knowledge of contrary cases. The concept of universal causation is built into our thinking. We can hardly conceive of an effect without a cause. In any case, its prior assumption is necessary for all rational deduction and all rational action.

Established Principles of Law to Prevent Arbitrary Abuse

Perhaps our basic political, legal or moral principles can never enjoy the same type of definitude and certainty as the laws of physics. But the discovery and adoption of such basic principles seem no less necessary as guides in our political, legal, and moral life than the laws of physics in our physical scientific reasoning. We do not leave it to an individual judge, for example, to decide the punishment for each case of fraud, theft, assault or murder—or to decide what actions he is entitled to punish at all—simply in accordance with his own judgment of the individual iniquity of each act. The law has already sought to define and categorize each type of offense and to prescribe minimum and maximum penalties. The principles and definitions of law have been worked out over the centuries, by careful reasoning and respect for precedent, precisely to limit or prevent any ca-

pricious or arbitrary exercise of police or judicial power.

The same thing has happened in the evolution of constitutional law. In the United States, neither a city, a state, nor our federal government can enact or enforce any law it sees fit, guided only by "the merits of the individual case." The Constitution, adopted in 1787, assigned the Congress, the President, and the judiciary only *enumerated* powers. And then, two years later, to nail things down, a Bill of Rights was adopted, beginning with the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . ." And so on through nine other amendments.

Huxley should have remembered that. And he should have remembered, also, that though not all modern democratic governments have written constitutions, and England still does not, the English Constitution was even in his own day—one might say especially in his own day—a very real and unmistakable protection against government arbitrariness or tyranny. No less than our own it protected the citizen's freedom of speech, freedom from arbitrary arrest, freedom of religion, and freedom of association.

The English Constitution exists

in no single document. It is made up of Magna Carta, the Petition of Right act, the Habeas Corpus act, the Bill of Rights and the Act of Settlement. But in addition to all these, it consists of innumerable statutes, a mass of custom and convention, hundreds of judicial decisions and precedents, and even, as the *Encyclopedia Britannica* has suggested, of "textbooks, lawbooks, the writings of historians and political theorists, the biographies and autobiographies of statesmen," and so on.

If Huxley had remembered all this, he would not so disdainfully have dismissed all the proposals of the older political philosophers as "mere apriorism." That all political power tends to be abused, and that absolute power is certain to be abused,

might reasonably have been suspected in advance. But even so it is no mere a priori conclusion. It has been forced on us by bitter and endlessly repeated experience.

Exactly where the boundaries of State power should be drawn, is one of the two great problems to which this series of articles is addressed, and which we have still to try to solve. But that they must be drawn by constitutional limitation somewhere, and unmistakably, is one conclusion no longer open to debate. What we have discovered, rather, is that in not a single country today have the existing constitutional limits on government power and interference in the lives of the citizens proved sufficient to prevent untold mischief. ☉

The Foundation of Laws

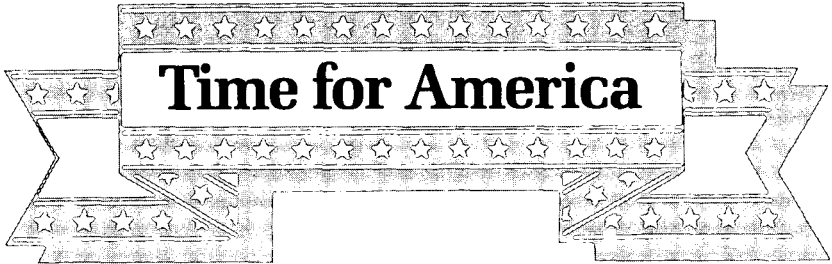
LET the bar proclaim "the laws, the rights, the generous plan of power" delivered from remote antiquity, inform the world of the mighty struggles and numberless sacrifices made by our ancestors in defense of freedom. Let it be known that British liberties are not the grants of princes or parliaments but *original rights, conditions of original contracts, coequal with prerogative and coeval with government*; that many of our rights are inherent and essential. . . . Let them search for the foundations of . . . laws and government in the frame of human nature, in the constitution of the intellectual and moral world. There let us see that truth, liberty, justice, and benevolence are its everlasting basis; and if these could be removed, the superstructure is overthrown of course.

JOHN ADAMS, 1765

IDEAS ON



LIBERTY



Time for America

MANY believe that time has run out on America, that the leading wave of history has begun to pass us by. Drawing analogies between the current state of America and the declining phases of previous cultures, these fatalists believe that we are destined to live out some theory of inevitable cycles or repetitions in history. They locate somewhere in our past a point at which America reached its pinnacle and began its decline. America's fate, however, has not been sealed by any historical imperative. Men *make* history through creating, witnessing, and recording significant deeds and events. History has not abandoned America; on the contrary, Ameri-

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cans have abandoned their place in history.

At one time, our forebears looked almost exclusively to the past for guidance. Mythical events that had happened in earlier times provided unchanging paradigms for individual and social actions. Having limited knowledge of the world and their place in it, these ancestors did not seek to study or understand history. Instead, they followed what they felt were sacred ways of thinking and acting. In contrast, one of the hallmarks of American thought is our rejection of such deterministic views of historical precedence.

In keeping with our rational, empirical bent, we pore over artifacts, classify them, and then devise various theories to explain their existence and significance. However, our