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Lakoff: Equality in Political Philosophy; Spitz: The Liberal Idea of Freedom

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But some mechanism would eventually have been created to limit the impossibly growing work load even if the Court had been forced to improvise without legislation, and certainly the Supreme Court's decisions upholding New Deal legislation found their real inspiration in Marshall's views on federal power, in the urgent economic necessities of the 1930's and in the changes in the Court's membership.

Despite the absence of original material, this is a worthwhile book to have and to use. It is well written, less discursive (though less original) than Pringle's; it brings up to date the additional materials and puts them in a single readable volume. Some chapters, such as that on judicial reform, discuss aspects of Taft's work more coherently than have been done elsewhere. The numerous quotations from Taft and others are illuminating rather than distracting. The book gives us another look behind the judicial curtain with the aid of that dreaded modern weapon, intra-court memoranda, as well as of the uninhibited private correspondence between the Chief Justice and his relatives. As Matthew Josephson wrote of Pringle's biography, Mason's "attitude toward the hero is a mixture of decent sympathy and pained critical disapproval."⁶⁰ With the added knowledge of the years, Mason quite properly shows less of the first quality and more of the second. Mason's words may not be harsh but the resulting portrait is merciless. The reader is left with melancholy in the reminder that well-meaning men often make up that "blind" Court⁶¹ of which Taft himself wrote, that our governmental masters are usually not great men, and that under their guidance each age finds new devils to exorcise.

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EQUALITY IN POLITICAL PHILOSOPHY. By Sanford A. Lakoff. Harvard University Press, 1964. Pp. 270.

THE LIBERAL IDEA OF FREEDOM. By David Spitz. The University of Arizona Press, 1964. Pp. 210.

THESE studies of the political ideals of Liberty and Equality may serve to remind us, in the first place, of the unfortunate decline of the third ideal of the French Revolution. Political philosophies appear to be unacquainted with the ideal of Fraternity, and practical politicians, at once cynical and mawkish, prefer to invoke the unavailable powers of Love. The memorable modern considerations of the notion of fraternity — Dostoyevsky's, Freud's, Malraux's — are not philosophical in manner, nor are they designed to enforce fraternity as a political ideal. Freud's totemic brotherhood confronts the ideal of fraternity with the impulse to fratricide, and the Illusha brotherhood inspired by Alyosha Karamazov is pointedly extra-political. Malraux may seem to provide an ex-

60. Josephson, *Taft in His Times*, 101 *The New Republic* 174 (Nov. 29, 1939).

61. *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 37 (1922).

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ception. But the "virile" fraternity displayed by the retreating troops in *Les Noyers de l'Altenburg* and by Kyo and Katov in *La condition Humaine* is not to the point. These actions are only incidentally political, and judged politically they represent defeats. Their triumphant nature can only be grasped when it is understood that they are in fact revolts against the human condition. But the Absurd is not a political condition and the means of transcending it do not define the ends of politics. It is a misfortune that contemporary scholarship has failed to investigate the decline of fraternity as a political ideal, even as it is a misfortune that contemporary political thought has allowed the idea to become the possession of a few sectarian Socialist Writers.

The other ideals of the French Revolution remain at the center of our rhetoric and our politics. The rhetoric has been corrupted and the ideals often enough violated: we need only remind ourselves of Orwell's slogans, "Freedom is slavery," and "All animals are equal, but some are more equal than others," to recognize that. But this is only another confirmation of La Rochefoucauld's maxim, Hypocrisy is the tribute that vice pays to virtue. Despite their intermittent debasement, these ideals have a discernible meaning, a distinguished history, and a permanent validity. It is the merit of the books under discussion that they contribute to our understanding of these characteristics. Mr. Lakoff's book is a sustained and valuable history of the idea of equality in political philosophy, unfortunately marred by its analytic confusions and often proleptic readings. Mr. Spitz's more modest volume is a useful, although highly miscellaneous, collection of essays in explanation and defense of "the liberal idea of freedom." It is philosophically stronger (and less pretentious) than Lakoff's book. But most of the essays are too short, some of them trivially so. A little over a page is devoted to Frank Lloyd Wright, and in it we are treated to a characteristically unbuttoned observation: "architects, when they discourse politically, tend to form a community of aversion to 'the mob'." (From this we glean that Spitz has also read Ralph Adams Cram, but not much else.) Then, too, the quality of the views under discussion varies so violently (Montesquieu and Barry Goldwater, Santayana and Walter Berns) that Spitz does not seem able to sustain a consistent level of discussion. Nevertheless, these books represent in a respectable way the sort of work done by the teachers of political theory in the political science departments of our colleges and universities. They are to be admired for holding out against the vulgar inanities of much "behavioral" science and against the unfortunate neglect of political theory by a generation of philosophers. But their position is anomalous and their future uncertain. For they do not submit themselves to the disciplines of history or of philosophy, and their work is not quite satisfactory either as theory or as history of ideas.

Lakoff professes to isolate and study the Liberal, the Conservative, and the Socialist concepts of equality. Unfortunately, he is unclear about the nature of concepts and refers indifferently to concepts, definitions, views, doctrines, and principles. These are, however, very different things, and it does not follow from the fact that different traditions have different views of equality that they

have different definitions or concepts of it. Thus, it does not follow from the fact that Nietzsche (whom Lakoff dubiously regards as a Conservative) deplores the equalitarianism espoused in the French Declaration of Rights that Nietzsche and the French revolutionaries have a different concept of equality. On the contrary, the natural presumption must be that they have the same concept, and Lakoff nowhere rebuts such presumptions. If it is unclear that different concepts characterize the various traditions it is equally unclear that single concepts characterize any of them. Liberalism (as Spitz not implausibly sees it) is committed to both equality of citizenship and to equality of opportunity. The Conservative tradition is suspicious not only of an equality of rights but also of an equality of conditions. It is fundamental to Marxian socialism to regard both the equality of rights and of opportunities as bourgeois illusions, while socialists as various as the Utopians and the Fabians have been committed to achieving such different ends as the equality of incomes and of human dignity. Lakoff has failed, then, either to make plain what a concept of equality is, or to show that particular concepts of equality are peculiar to the different political traditions. These failures inevitably affect the value of his historical and philosophical investigations (one keeps wondering what Lovejoy might have done with this subject), and they quite invalidate his patronizing reflection of the work of Sir Isaiah Berlin. Indeed, if Lakoff had understood Berlin's illuminating essay on equality he might have avoided many of the errors in question.

The distinguished historian of Liberalism, Ruggiero, argued, I think correctly, that the Liberal tradition is committed both to "the idea of equality" and also to "the feeling of liberty." Spitz, as we have seen, supposes Liberalism to be committed to equality of citizenship and of opportunity, but also, we must now add, to "the liberal idea of freedom." He speaks in one place of liberty as literally requiring "an absence of chains." In this he is surely wrong for, unless "chains" is understood metaphorically, such a conception is far too restricted for even the most puristic liberals. In fact, however, Spitz habitually regards "chains" as a trope for "restraints." And, indeed, the liberal tradition has come to hold — with what justice we cannot discuss here — that not only physical inhibitions and legal prohibitions, but also various forms of economic, and even psychological, duress are fairly regarded as "restraints." He is, furthermore, inclined to argue that legal restraints on these non-legal restraints may favor the interests of liberty. To be sure, for instance, the anti-trust laws abridge the freedom to enter into price-fixing agreements. But it may be claimed that in restraining agreements "in restraint of trade" the laws secure, among other things, an important freedom of choice for the buyer. If this argument is acceptable, it may be maintained that an increase in governmental legislation may not — as so many suppose — be inimical to the interests of freedom. Indeed, it may be held to foster them. Spitz's line of argument leads one to ask how far the legislation of the modern welfare state is susceptible of such a libertarian interpretation. Unfortunately, no serious analysis of the question is attempted, and we are left wondering precisely what relations in fact obtain be-

tween the interests in liberty and equality as they manifest themselves in the contemporary political arena.

Spitz's notion of liberty as the absence of restraints derives from the British empirical tradition. Hobbes, Bentham, and Mill employ it, and it is what Berlin means by "negative" freedom. A number of Spitz's best essays are critiques of writers, for example, Harold Laski, who confuse liberty with quite different conceptions such as happiness, or who confuse "negative" liberty with more "positive" conceptions of it. Spitz's objection to positive notions of freedom is familiar enough. They imply that persons are free when the plain fact is that they have been constrained or coerced in the name of law, reason, nature or virtue. Montesquieu declares, for instance, that liberty is the right of doing what the law permits. But, as Bertrand Russell has objected, after the Revocation of the Edict of Nantes doing what the law permitted did not make the French Protestants free. If Spitz is unwilling to have liberty abridged conceptually, he is equally concerned that it not be abridged on openly illiberal grounds. He is, therefore, properly and effectively appalled by the egregious suggestion made in Walter Berns' *Freedom, Virtue and the First Amendment*. Our entire tradition would be undermined if we followed the epigone of the school of Professor Leo Strauss in his suggestion that the First Amendment be understood to guarantee that "Congress shall make no law abridging the freedom of *good* speech." But Spitz brings the quality of his own mind into question when he sees Berns as representative of such figures as "Walter Lippmann, Eric Voegelin and John Hallowell, Bertrand de Jouvenel and, to a lesser degree, Hannah Arendt." It is one thing to depart from the tradition of liberalism that Spitz somewhat provincially sees as running from Mill to R. M. Mac Iver, Bertrand Russell, and Morris R. Cohen, and another to embrace the cabalistic "conservatism" of Professor Strauss. Spitz is a valuable critic of Republican Party apologists and *Sunday Times* ideologists. But his essays on the profounder critics of liberalism, whether Conservative (as in the essays on Santayana or Hannah Arendt) or Socialist ("Why Communists Are Not of the Left") are often partisan and perfunctory.

Spitz is concerned to deny that there is, as Lakoff alleges, a "crisis in liberalism." (Nor does Lakoff fail to produce those other freshman course show-stoppers "the conservative paradox," and "the socialist dilemma.") And it is an unusual merit of Spitz's discussion not to confuse the contention that the liberal states are in some political crisis with the claim that there is a theoretical difficulty in the principles of liberalism. Every serious political thinker has, of course, attempted to set some limits to the exercise of freedom. One has only to mention (in order of increasing plausibility) that Spencer proposed to forbid actions that prevent others from doing the same sort of act, and that Kant wished to prohibit those actions that infringed the freedom of others. Mill, the most satisfactory of the classical philosophers on this problem, maintained that society might restrain actions if they are neither self-regarding (*i.e.*, if they do not harm others) nor, altogether other-regarding, such that it would not advance the general good to forbid them. It is Spitz's contention that liberalism

is not committed to guaranteeing any particular freedoms (except the freedom of speech that Berns would abridge). And he claims that liberalism is nothing more than a method for settling the conflicting claims of freedom and constraint. This method he judges to be the method of rational inquiry. That liberalism is not simply a method but has always undertaken to make certain substantive determinations is, however, plain both from the history of liberal states and from the attempts of liberals to formulate principles such as the ones mentioned above. A commitment to rational method independent of any commitment to principles of liberty or equality, utility or the common good, would be quite incompetent to settle the conflicts Spitz has in mind. Nor has the liberal tradition ever attempted so empty an exercise. Spitz's identification of liberalism with rational method is designed, I take it, to confound the charge of "crisis," but it is misleading and arrogant — misleading because it suggests that the only critics of liberalism are critics of rational method, and arrogant in maintaining that to be a critic of liberalism is necessarily to be an irrationalist. "From this standpoint" Spitz writes, "conservatives who look to a body of principles allegedly embodied in some remote past and utopian radicals who look to a body of principles contained in some blueprint of the future are alike fanatical men." This may be comforting, but it is surely an inadequate view of the historical repertoire.

Spitz does not, of course, consistently adhere to his untenable identification of liberalism with rational method. Indeed, he habitually, and properly, allows that liberalism is committed to particular liberties and, indeed, to certain equalities. He is even willing to consider the Conservative allegation — familiar from Donoso Cortes and Tocqueville, from Nietzsche and the anti-civil rights ideologists — that Liberty and Equality are incompatible political ideals. This supposed dilemma cannot, of course, be discussed profitably in so abstract a form, or disposed of, as Lakoff cavalierly does, by dismissing "those mock philosophers who claim that equal rights contradict individual liberties." It is plain that the enforcement of equal rights for the Negro will, in fact, limit the freedom of white citizens to associate on whatever terms they please. And the attempt of legislatures a generation ago to equalize the bargaining positions of labor and management did in fact lead them to abridge the freedom to contract. The attempt to equalize rights or conditions may (to follow Lakoff's Hegelian usage) "contradict" the exercise of certain individual liberties. In this sense there are possible conflicts between Liberty and Equality. There is no need to deny this as Lakoff does. Far better to admit the conflict and make the choices required. But if there are possible conflicts between Liberty and Equality then it is also the case that securing the one is often simply a question of securing the other. Some of the pertinent inequalities are inequalities of liberty. Winning equality for women, and for Negroes, has, to a large extent, meant nothing other than freeing them from certain legal and political restraints, and conferring upon them certain legal options and political freedoms. Indeed, Richard Wollheim has gone so far as to argue that the Liberty liberalism seeks is simply an Equality of Rights. Whether Liberty and Equality are, indeed, the

David and Jonathan of political philosophy may be doubted. But neither are they as conservatives suggest (in Tawney's phrase) its Cain and Abel.

In the final analysis, it is the Socialist, rather than the Conservative, critique that is most damaging to Liberalism. One need not be a Marxist to see the truth in Marx's observation that equal rights guarantee the right to be unequal. Indeed, liberals like Spitz frankly recommend the liberal commitment to equality of opportunity as "the necessary and proper condition for the discovery of whatever inherent inequalities may exist among men." Marx's rejection of such a programme in favor of one in which men's admitted inequalities are mitigated by "unequal" rights rather than made manifest by "equal" ones need not concern us here. But the criticisms of historical liberalism made by such socialists as R. H. Tawney and Michael Young are very much to the point. The liberal object of revealing natural inequalities requires, in Tawney's words, "not only an open road but an equal start," and it may issue as Young has indicated, in a meritocracy with features as obnoxious as those of any other class system. Historical liberalism (perhaps bemused by visions of a Lockean state of nature in which equal liberty prevails) has so far failed to guarantee that equal start. If the fathers are to be rewarded for the distance they can make it down the road how are the sons to be given an equal start? This is one manifestation of the "liberal crisis" that Lakoff never quite formulates and Spitz never quite faces.

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