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Down in the Valley of Elah

Plàton Gàtsinos[†]

ABSTRACT

What is the potential for modern liberal constitutions in light of the current financial crunch? In strict compliance with the *Hobbes*-ian naturalist assumption of human equality, this paper discusses the establishment of a single and universal, public educational system as a sine qua non condition for democracy in a society founded upon the premise that "Virtue can be taught".

"When the Philistines saw that their champion was dead, they fled"

Old Testament – 1 Samuel 17:51 fine

In the climax of civil war and political disorder in England of 17th century, Thomas Hobbes started writing his treatise on *the structure of society and legitimate government, Leviathan*, a book that is still regarded as one of the earliest examples of social contract theory and a landmark in the history of political philosophy¹. The key concept in Hobbes's structure of government is that *all men are created equal*². *From such equality of ability*, Hobbes argues, *there was developed the equality of hope in the attaining of [one's] ends*³. In this world, anybody could claim anything; a condition where every man could go against every man, a world of constant conflict. That is the *natural condition*. To end this state of extreme uncertainty, people gave up their rights to a central authority (Government) in order to receive social order and its

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¹ See Hobbes's Moral and Political Philosophy, *Stanford Encyclopedia of Philosophy*, found at http://plato.stanford.edu/entries/hobbes-moral/ (last checked on April 11, 2009)

² See Th. Hobbes, *Leviathan*, Vol. I, Chapter XIII, "Nature hath made men [...] equal in the faculties of body and mind"; found at http://socserv.mcmaster.ca/econ/ugcm/3ll3/hobbes/Leviathan.pdf, (last checked on April 11, 2009)

³ Th. Hobbes, *Ibidem*

benefits⁴. The relation between people and their Government is based upon this fundamental exchange of rights and obligations for the achievement of common welfare, and finally, the survival of human race. That is what is called *social contract*⁵.

This naturalist assumption of human equality limits the nature of Government and determines duties for the individuals in the community. In other words, such Government can only be legitimate, if it reflects and serves such commitment to human equality. By its turn, the rule of majority can be the only justified determinant for policy-making in a system of peers; therefore, such government can only be democratic⁶. In a democratic system of governance there is no justification for any member of the society to possess or accumulate a disproportionate share of

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⁴ Such decision seems fully compliant even with the rational actor theory taking into account Hobbes's assumptions regarding man's natural condition. In Hobbes's own words, "In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short"; see Th. Hobbes, *Ibidem*. Professor Posner would also have found no better reason to optout from such a situation and delegate powers to the Sovereign

There stands no equivalent example for an illustration of the above to the two fundamental documents that established the United States of America. See the Preamble to *The Constitution of the United States of America*, where it is stated "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America" found at http://www.law.cornell.edu/constitution/constitution.preamble.html (last checked on April 11, 2009) and the Preamble to *The Declaration of Independence* "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness" found at http://www.wfu.edu/~zulick/340/Declaration.html (last checked on April 11, 2009)

⁶ The finest definition of democracy can be found in Pericles' Remarks, as recorded by Thucydides, *The History of* the Peloponnesian War, Book I, Chapter IV, "Our constitution does not copy the laws of neighboring states; we are rather a pattern to others than imitators ourselves. Its administration favors the many instead of the few; this is why it is called a democracy. If we look to the laws, they afford equal justice to all in their private differences; if no social standing, advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way, if a man is able to serve the state, he is not hindered by the obscurity of his condition. The freedom which we enjoy in our government extends also to our ordinary life. There, far from exercising a jealous surveillance over each other, we do not feel called upon to be angry with our neighbor for doing what he likes, or even to indulge in those injurious looks which cannot fail to be offensive, although they inflict no positive penalty. But all this ease in our private relations does not make us lawless as citizens. Against this fear is our chief safeguard, teaching us to obey the magistrates and the laws, particularly such as regard the protection of the injured, whether they are actually on the statute book, or belong to that code which, although unwritten, cannot be broken without acknowledged disgrace", http://classics.mit.edu/Thucydides/pelopwar.html (last checked on April 11, 2009)

wealth, since that would oppose the very foundations of the Republic; and any form of public or other prestigious office should not be reflected in different (disproportionate) allocations of wealth, but in additional public merit⁷. In any other case, the system will be based on an elliptic conception of efficiency⁸ that overlooks human exploitation, and shall only reproduce inequality by letting a ruling class internalize for its own benefit the spillovers stemming from education, arts, research and development⁹, and by structuring unequal access to proper education¹⁰.

This paper argues that liberal constitutions can only form a second-best to democracy¹¹, since they leave open the question of initial distribution of wealth among the members of a community, and therefore, can be *criticized for ignoring the actual distributional consequences* of policies and the difficulty of accurately measuring all of the negative (and the positive) effects of third parties that follow a given action¹². Further, that the present political status quo by

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⁷ In that way, individuals will have the incentive to keep maximizing utility, innovate, and therefore, contributing to the pursuit of social maximization. In light of the aforementioned, it is evident that herein a clear distinction between utility and wealth is drawn. For a sophisticated analysis on why utility does not equal wealth, and why wealth could not be a social value; see R. Dworkin, Is Wealth A Value?, 9 *J. Legal Stud.* 191, 1980

⁸ For example, according to the dominant theory on efficiency (namely, Kaldor-Hicks), the legitimacy of initial distribution of wealth is not challenged. Therefore, such view on efficiency can be criticized for ignoring the actual distributional consequences of policies and the difficulty of accurately measuring all of the negative (and the positive) effects of third parties that follow a given action; see Allen, Kraakman, Subramanian, Commentaries and Cases on the Law of Business Organization, Aspen, 2nd, 2007, p. 4-5

⁹ Professor Frischmann, mainly focusing on the area of copyright, argued convincingly on how the establishment of a strict system of property rights may not be per se efficient. To the contrary, it may favor disproportionately, and therefore unjustifiably, the existing owners over the commons by letting them unduly internalize positive externalities and even restrain further innovation, see Brett M. Frischmann, "Evaluating the Demsetzian Trend in Copyright Law", 3(3) *Review of Law and Economics*, 2007, pp. 649-677. A great illustration of the above in the field of patent law is provided by the case of Chevron, the energy giant that holds a decisive stake in the NiMH batteries industry by controlling Cobasys LLC (a major supplier in the automobile market), and therefore, affecting the competitiveness in the supply curve. For tensions created among Chevron and various auto-manufacturers, see for example: "Mercedes may cancel hybrid SUV plan due to Chevron dispute", found at http://www.informationweek.com/news/global-cio/legal/showArticle.jhtml?articleID=209901592 (last checked on April 11, 2009)

¹⁰The argument made here is that socio-economical status and access to proper education are interrelated. Namely, a society based upon an unequal (or be it grossly disproportionate) initial distribution of wealth among its members can only produce unfair results by structuring unequal access to proper education. This by its turn shall only continue a vicious circle of unequal (or be it grossly disproportionate) allocation of wealth in society

¹¹ The observations herein are structured upon the premise that *in a rational and just Universe where human beings* are created equal, one should always treat the other as an end, and never as a means to an end. Democracy only seems to satisfy these conditions, therefore, turns as the most appropriate administrative system

¹² See Allen, Kraakman, Subramanian, *Ibidem*

adopting the liberal political scheme does not reflect the rationale underlying the aforementioned social contract, and therefore, *can hardly respond to the task of legitimacy* set by the advocates of Natural Law.

Nowadays, it is no secret that in Western liberal societies a certain small group of people, having institutionalized their power, managed to secure a grossly disproportionate share of wealth and a privileged status among the rest¹³. Nor that *at least 80% of humanity lives on less than \$10 a day*¹⁴. Today's form of Government serving the interests of this small group of sophisticated and talented people has let disparities in allocation of wealth grow immensely¹⁵. This form of production, exchange, and communication, which only reproduces the reign of the few at the expense of the majority in a globalized society, needs a fundamental reform¹⁶.

The greatest step towards the creation of a just political system and the establishment of democracy would be the demystification of intelligence and the formation of a single and universal, public educational system strictly based upon equal access and merit.

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¹³ According to the Time Magazine, "the richest 2% of adults own more than half the world's wealth, according to the most comprehensive study of personal assets"; see, Richest Tenth Own 85% of World's Assets, found at http://www.timesonline.co.uk/tol/news/world/asia/article661055.ece (last checked on April 11, 2009). Just as a historical reference, in France of the ancien régime, the Third Estate (the part of the population that did not belong to the ruling class, i.e. aristocracy and clergy) made up 97% of the French population (about 20,000,000 plus) and about 40% of the land in France, found at http://en.wikipedia.org/wiki/Third_Estate#Third_Estate (last checked on April 11, 2009)

¹⁴ Found at http://www.globalissues.org/article/26/poverty-facts-and-stats#src1 (last checked on April 11, 2009), along with further shocking facts and data regarding living standards in our globalised world

¹⁵ The point made here of course, is not a mainstream capture argument. My remark goes no further from showing that in an economy based upon oversized financial institutions, the people who control those behemoths (aka the financial oligarchs) exercise extreme leverage upon public policy, and the administration. As Professor S. Johnson argues in his latest paper "The Quiet Coup", found at http://www.theatlantic.com/doc/200905/imf-advice (last checked on April 14, 2009), these major financial institutions draw much of their power from being too big to fail for the American economy. The problem the current administration faces is that in case this small set of interconnected firms fails, the whole economy can be can brought down to its knees. Therefore, the case here is not about a highly sophisticated conspiracy at the expense of the people, to the contrary it is about path dependency a flaw upon which the modern monetary-based system has been developed

¹⁶The fact that the *world now is so much more interconnected and the banking sector is now so big* merely underlines the urgency of an immediate solution that addresses the problems efficiently and responsibly. Temporary nationalization of any unhealthy financial institution to clean up the banking sector, as well as the destruction of the new age financial oligarchy by replacing failed management, setting salary caps to the executives and size limitations to those business organizations seems the most likely scenario for long-tem success; for a detailed analysis see S. Johnson, *Ibidem*

Intelligence plays an important role in any aspect of our social life, from the justification of our political system, our social stratification to our consumption. Popular belief has intelligence linked to success. What is to be shown, therefore, is that intelligence is merely context-based, and utterly depended on training and experience. That intelligence is related to certain genetic factors is probably true. Certainly, no one doubts the role of genes in the formation of personality, regardless how obscure it is. Nonetheless, what is argued here is that democracy is intrinsically linked to the notion of natural equality and that only upon developing this premise a political system could truly be democratic. In other words, it is not implied herein that even Jack could turn out to be Mozart, had his family been wealthier and more sophisticated. To the contrary, it is simply argued that J. S. Bach could only have been born in the Bach family¹⁷. To put it in a straightforward way, it is necessary for every child in a democratic society to grow up having at least a chance to be challenged and explore its abilities in an environment that furnishes it with any possible intellectual stimulus. If we do not open the door, we do not know what could have been behind it. Children should be tested, trained, and educated in public institutions, in an environment as much equalitarian as possible. In such a neutral ambiance, the students will develop their abilities and shape their own future in full self-reliance; they will qualify for the studies they fit most and elect the profession it suits them most ¹⁸.

The timing seems ideal for such an experiment. Even though, the current financial crisis has not been the first time where the market almost froze, leading several industries to distress and the

¹⁷ The Bach family was of importance in the history of music for nearly two hundred years, with over 50 known musicians and several notable composers, the best-known of whom was Johann Sebastian Bach (1685-1750), found at http://en.wikipedia.org/wiki/Bach_family (last checked on April 11, 2009)

¹⁸ It seems obvious and fair, even if prima facie cruel, that a student shall take a placement in the market according to her overall performance throughout her years of training. In such an educational system, even beauty and charm may find their proper place in the refinement of one's character. Therefore, the more risk-seeking individuals may end up in Wall Street, the more sensitive at the Conservatoire de Paris, the more attracted by fashion in Milan, by hitech research in Silicon Valley, and of course, the more indifferent as garbage men at the East End of London. Nevertheless, the difference here is that their vocations shall not signal the socio-economical status of their families, nor the future of their children

economy on its verge¹⁹, it is a historical moment because only such a great blow to our system can remind us that the power ultimately lies with the people (the *hoi polloi*, not the powerful special interest groups and lobbyists that parasite near the legislature), and that the people are capable of designing a better future for the next generation, primarily, through education, upon the premise that "*Virtue can be taught*"²⁰. The latest credit shock may have generated a lot of personal drama in communities around the globe. However, this will not be the last time. The meaning of this crisis should not end up with the restructuring of our financial system. To the contrary, it signals a unique chance for true political action; an opportunity to make a step further and change, leaving routine to the past and focusing on what limits our potential²¹.

Democracy is not impossible. Even if it has not been perfected ever before, it is a historical fact²². Democracy is not a static institution. It is a highly contingent political system based upon a continuous struggle for the development of human abilities and the creation of a world

¹⁹ Economic history is full of examples from the Tulipmania in the Dutch Golden Age (1634–1637), the British South Sea Bubble (1717–1719), the French Mississippi Company (1717–1720), the post-Napoleonic depression (1815–1830) to the Great Depression (1929–1939) and the 1973 Oil Crisis ²⁰ Plato was the first to capture the importance of education for public affairs in his dialogue called *Protagoras*,

²⁰ Plato was the first to capture the importance of education for public affairs in his dialogue called *Protagoras*, i.e. "And I will now endeavour to show further that the [Athenians] do not conceive this virtue to be given by nature, or to grow spontaneously, but to be a thing which may be taught; and which comes to a man by taking pains"; found at http://classics.mit.edu/Plato/protagoras.html (last checked on April, 11 2009)

²¹ I read Professor Dworkin's story of Agatha and Sir George in a way that illustrates how a person who starts from the bottom of our liberal societies stands great chances not to meet his true potential, but end-up compromised in a daily routine that primarily benefits third parties (his boss, his financier, etc), see R. Dworkin, *Ibidem*

At the beginning of the 6th century B.C. in Athens, a major social unrest and political conflict ended up not by the subordination of the majority to the few, but by a massive redistribution of land to the commons. "Since such, then, was the organization of the constitution, and the many were in slavery to the few, the people rose against the upper class. The strife was keen, and for a long time the two parties were ranged in hostile camps against one another, till at last, by common consent, they appointed *Solon* to be mediator and Archon, and committed the whole constitution to his hands. [...] As soon as he was at the head of affairs, Solon liberated the people once and for all, by prohibiting all loans on the security of the debtor's person: and in addition he made laws by which he cancelled all debts, public and private. This measure is commonly called the *Seisachtheia* [= removal of burdens], since thereby the people had their loads removed from them"; see Aristotle, Athenian Constitution, found at http://classics.mit.edu/Aristotle/athenian_const.mb.txt (last checked on April 11, 2009). Such reforms led to a steady development of public and private institutions that cherished human singularity and nourished ingenuity; it seems not irrelevant that at this period both arts and sciences boomed. The lifespan of this project did not extend to more than two generations. Nonetheless, it culminated in the creation of a joyous everyday life for its citizens. This is evidenced by the general belief held by the Athenians; they valued their community so high that they preferred to sacrifice even their lives for it. In my opinion, that is how social utility maximized looks like

community where all the people could equally share the fruits of arts and technology. Democracy has always been incompatible with overconcentration of wealth, overspecialization in the production process, with haste in public affairs, and imperial needs in governance. It has always been the form of government for the amateur, the outsider, the average. This struggle did not stop with the establishment of liberal constitutions since the 17th century in Europe; that was just a step ahead. Today, the resources are available for the creation of a global society of abundance, what is missing is the conscience to back such project. And conscience can only be built through the establishment of proper education. In this process, the current administration has an indispensable duty to discharge. It should stand up and face *Goliath*, establish order in the markets and lead the way for the more innovative solutions towards social reform. *And this should be a change we should believe in*.

There seems to be no doubt that such an analysis can only end up in a debate on values (and/or worldviews) and methods of evaluation (namely, whether the *present* matters more than the *future*, and how discounting could work in such a case); questions whether society can afford more for more or just more for less, what are the actual costs and benefits and how these should be administered to the community, etc. For me, it seems to rely mainly upon one's own personal taste, and ultimately, luck. In any case, this consideration furnishes me with a *raison d'être*, and in that way with a convincing argument against suicide. To paraphrase Professor Dworkin, *History is* indeed *an embarrassment of failure*; nonetheless, *it lies upon our discretion to make our lives better*.

Ithaca, 04.17.2009