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The End of the End of History: Some Epitaphs for Liberalism

Two L iberalisms Revisited

In 2006 a certain form of liberal international law reached its apotheosis with the publication of The Princeton Project's *Forging a World of Liberty Under Law*.[1] This set of desiderata, given the imprimatur of the U.S. foreign policy elite and working in the spirit of George Kennan, represented a distillation of the themes present in a form of muscular liberalism that seemed ascendant then but is, perhaps, less obviously visible or self-confident now. Indeed, the European Society of International Law meeting in Tallinn, from which these papers are drawn, seemed to have been convened not to praise this liberalism but to give it a decent burial. The papers themselves – each, in its own way, an epitaph for a certain form of liberal hubris – were keen to advertise their scepticism about liberal claims (sometimes normativity itself) and about liberalism's close association with the various forms of Western domination. Rather than the end of history, then, we have the end of the end of history.

In this essay, I want to explore some questions about liberalism arising from these papers. But first, what exactly does it mean to be a liberal? That, as Michael Oakeshott puts it, "is anyone's guess".[2] So, let me guess.[3] In an essay called "Two Liberalisms", published in the *European Journal of International Law* over ten years ago, I contrasted two forms of liberalism: Charter liberalism and liberal anti-pluralism.[4] I won't repeat what I said there except to say that these two liberalisms seemed to differ in their attitude towards sovereignty - with one (Charter liberalism) apparently deferring to sovereign desire or "domestic jurisdiction", and the other (liberal anti-pluralism) demonstrating a willingness to penetrate (some) sovereigns in order to pursue liberal ambitions.[5]

In retrospect, that paper missed something rather complicated about these two liberalisms. Charter liberalism, it turns out, is far less liberal or deferential than the paper suggested. The regime established in the Charter, and particularly in Chapter VII and in combination with Article 103, in fact disposes of domestic jurisdiction quite early on with a dual reference to its centrality (Article 2(7) and then, almost immediately, its elasticity (see also, Article 39-42). So, Charter liberalism announces sovereignty as the basis of the United Nations Organisation and then sets about providing a series of ways in which it might be degraded. Liberal anti-pluralists, meanwhile, are usually a bit divided on the universalizability of liberal intervention: seeking it there, resisting it here, sovereigntist at this time, anti-sovereigntist at another time.

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[1] G. John Ikenberry and Anne-Marie Slaughter, *Princeton Project Final Report* (2006) at http://www.princeton.edu/~ppns/report.html

[2] M. Oakeshott, *Rationalism in Politics and other essays*, (1991) at 439.

[3] Here, I have not offered a political philosophy of liberalism. Such a definition would emphasise liberalism's relationship to individual freedom or rights, or the role of the state and so on. Some of this work is undertaken in a paper in this collection by Oleksandr Merezhko ("Ideology of Liberalism and International Law").

[4] "Two Liberalisms", 12(3) *European Journal of International Law*, (2001) 537-571.

[5] This point is made by Phil Chan in his chapter: "As they proclaim that State sovereignty as a principle of international law has become obsolete, Western States and scholars assert that their States' sovereignty must be protected at all costs". (Chan)

It might be better, then, borrowing from Oakeshott, to divide liberals into prescriptive liberals (my term) and conversational liberals.[6] According to Oakeshott, prescriptive liberals are interested in defining the parameters or limits of politics (Rawls) or government (Nozick) from foundational principles (Kant) while conversational liberals are wedded to exploratory forms of reasoning and tentative conclusions. Political discourse, as John Gray puts it in support of this latter liberalism, is "…not an argument but a conversation".[7] At its most argumentative (though I think he means assertive or doctrinaire here) it becomes totalitarian or a form of "fundamentalist liberalism".[8]

Gray is hostile to the legalist turn in democratic politics. The combination of a corrupted and uncompromising political discourse with a continual reversion to constitutional argument has led to deficiencies in both realms. What is lost in this to-ing and fro-ing between an aggressive politics of enmity and a legal politics founded on "the absurd device of a Bill of Rights" is a sense of non-instrumental civic association: citizens living together and dedicating their public lives to the project *of* living together. Oakeshott's distinction between a civil association and an enterprise association are instructive here, surely. In the case of the former, the purpose is civility, civic-mindedness and co-existence. The latter form of association – corporations, trade unions, most Western governments today – is dedicated to certain specified ends or purposes (profit, worker's rights, economic growth).

The implications for our thinking about international law are not immediately obvious. Perhaps one way to approach these ideas from the perspective of international law is to think about the attitude of liberal international law to legalism in a more specific sense. On one hand, liberal international law is bound up with legalist responses to international (dis)order. The whole Wilsonian experiment with international dispute resolution, principles of self-determination and bureaucratised international law was described as "liberal", and this form of liberalism in its more pragmatic variants still dominates mainstream thought in international law. When Wight, in his famous tripartite scheme, describes (legal) rationalists he associates them with a brand of lawful international relations or a civic association with law.[9] On the other hand, more recent variants of liberalism have been impatient with some strands of legalism. "Forging a World of Liberty under Law" is one thing but the law in question is not necessarily international law as it is currently configured. The Princeton Project reveals a frustration with the way in which Charter law constrains the use of force (by insisting on a veto, or by understanding self-defence too restrictively or by failing to allow regional bodies to use force independent of any collective authorisation on the part of the Council or by rendering impermissible certain types of humanitarian force).

The liberalism represented by Slaughter *et al* seems drawn to an enterprise association ("that mode of association constituted by shared adherence to a common enterprise") marked by commitment to substantive ends of a certain form of liberalism (human rights, "an American way of life" (*Princeton* at 15), democratic elections and so on) whereas Charter liberalism's apparent agnosticism sits more comfortably with the civic association in which states manage to

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[6] John Gray, "Oakeshott as a Liberal", *Gray's Anatomy*, (2008).
[7] Ibid 79.
[8] Ibid 79.
[9] Wight, "An Anatomy of International Thought", 13 *Review of International Studies*, (1987) 221-227.

live together under a set of rules designed to ensure cooperation, co-existence and peace rather than a "hierarchy of ends".[10] This relationship of course plays out, too, when liberal states are confronted with illiberal challenges domestically. To what extent should the hierarchy of ends prevail over procedural commitments to freedom of expression and so on? This is a theme taken up in Veronika Bilkova's interesting paper on the way in which post-Soviet liberal states have tried to restrict the use of illiberal symbols. In the Czech Republic, for example, it was illegal to display communist symbols if these symbols had a tendency to "preach the dictatorship of the proletariat and the leading role of the party"[11]

Liberal Claims

In any event, Oakeshott's distinction seems richer than the liberalisms one encounters in the international law. Indeed, the liberalism deployed in some of the international law literature then seems a bit thin in general when set against the variegation found elsewhere. Many theories of liberalism are either excessively formalistic (Marks, Chan), or fail to see how democracy might work against liberalism (see Phil Chan's discussion of Western antipathy towards democratically elected governments in Palestine, in Venezuela, in Algeria and in Austria) or against human rights (Chan, again) or are over-dependent on progressivist accounts of history. [12] Meanwhile, the passionate ideological struggles of the post-war era (between redistributive Atlee-style liberalism and Eisenhower-era American liberalism, or between Scandinavian welfarism, French *dirigisme* and Reaganite and Thatcherite forms of liberalism) is flattened out in favour of a procedural liberalism. (It was a relief then to detect in the papers here the possibility of rival, contested liberalisms (in, say, the pronouncements of the Russian diplomatic elite (Roele, p11-13))). In addition, there was a sense in Tallinn that there was a need to make explicit the different levels of claims being made by new liberals. These operated at three different levels. First, there were two sets of empirical claims. The first revolves around the apparent difference in behaviour between liberal and illiberal state with the former said to be, on the whole, law-abiding, responsive to the regulation of international organisations and pacific. The second is a claim about the disaggregation of the state itself into its domestic constituencies (Moravcsik) or into different legislative, regulatory or judicial components each working across state boundaries to create an international expert class (Slaughter). The first empirical claim was subject to a comprehensive critique by Jose Alvarez in his 2001 article. I expressed some doubts about the second claim and the implications of it in an essay in the *Oxford Handbook of International Relations*.[13]

Alongside the empirical claims of liberal international law and relations, there are, of course, a host of normative propositions about the desirability of promoting a liberal peace or a form of negarchy (Deudney) within or between states. But these normative claims have often been either subsequently denied or lack a basis in anything except a set of empirical developments.[14] As commentators have pointed out it is not clear why we should adopt a suspicious attitude to the

[10] Gray at 81.

[11] Czech Republic, Police Notification, No. KRPL-15450-6/TC-2011-181171, 3 February 2012.

[12] Thomas. Skouteris, *The Notion of Progress in International Law Discourse* (T.M.C. Asser Press, The Hague, (2009); Susan Marks, 'The End of History: Reflections on Some International Legal Theses" 3 *EJIL* (1997) 449-477.

[13] G. Simpson, "The ethics of the new liberalism" in C. Reus-Smit, D. Snidal (ed), *The Oxford Handbook of International Relations* (2008) 255-266.

[14] Christian Reus-Smit, "The Strange Death of Liberal International Theory,' 12 (3) *European Journal of International Law,* 573-593.

state or design liberal institutions around these preferences simply because it is being challenged from above and below. Nor is it at all obvious that the rise of transnational elites has facilitated progress in the areas of war and peace, poverty and, in particular, global warming and environmental degradation.[15] Nor is it obvious that international law should rest on the desires of liberal states or the inclinations of regulatory expert classes, or, even, domestic preferences. Compatibility with the expansion of capital or substantive conceptions of fairness would be two other possible contenders.

Finally, there is a set of explicitly programmatic ideas. At least two have been prominent in liberal thinking. The first is the idea of a Concert of Democratic States capable of projecting, and authorised to use, force in the absence of Security Council approval. This idea institutionalises the democratic peace and provides cover for extra-curricular intervention (*Princeton*, 26). Its membership would be self-selecting rather than selective. The Princeton Paper envisages Mexico as a member (27). This sort of liberal confidence provokes considerable anxiety among critics. It combines a blithe disregard for the substance of lives lived on the ground (Mexico's drug war against its own people is rendered irrelevant, its paper thin democratic credentials (largely meaningless periodic elections) are, as ever, the supervening consideration) with a wish to increase the opportunities to project force. The second – closely associated idea – relates to the R2P doctrine. Again, the idea is to extend the parameters of lawful – or, legitimate – force in defence of liberal values or to prevent either genocide or, at least, gross and systematic violations of human rights. Such proposals are easy targets for those with suspicious inclinations. Much has been written about T2P and, to a significantly lesser extent, the Concert of Democracies (an idea that has gained far less traction in general). It would be pointless adding to this now.

Against Prescription

On the whole, the papers in this collection seem to be wary of Oakeshott's prescriptive liberalism. In some respects this all comes down to a general split in the field of international law itself. Martin Wight wondered aloud at the end of his classic essay "An Anatomy of International Thought" whether the differences between realists, rationalists, and revolutionists might not be a matter of temperamental inclination. As he put it: realists have a sense of proportion, rationalists a sense of responsibility and revolutionists a sense of injustice.[16] When it comes to liberalism, then, there are two temperaments or sets of political commitments. To put it quite bluntly, when one group of people look out into the European-North American public realm world they see human rights, the rule of law, free markets, and a decent life, and they hope to export these progressive values (or in stronger version they look out at the global political economy and see an expanding sphere of freedom and economic well-being liberated from the constraints of history). Another group sees empire, exploitation, or war, or colonialism, or violence. And whole research agendas are built around this distinction. To read, say, Anne-Marie Slaughter's *New World Order* against, say, Sundhya Pahuja's *Decolonizing International Law* is to see two different worlds being described (and yet they are the same worlds). For some the "rule of law is death, violence, blood" (China Mieville), for others it represents a hopeful future. Here there is a sort of pre-intellectual commitment that is as situational as it is intellectual. How else can we explain the

[15] G. Simpson, 'What is to be done? Who is to do it?' (2004) 15 *Finnish Yearbook of International Law,* 384-499.
[16] Wight, "Anatomy".

differences between Ferguson on one hand, and, say, Richard Gott and John Newsinger on the other? In Ferguson's work, British liberal empire was largely a positive experience through which the UK bequeathed parliamentary democracy to its commonwealth allowing some states to flourish (Australia, New Zealand) while others made the mistake of rejecting the Crown inheritance and fell into oligarchy or dictatorship. It was mainly liberal with a smattering of empire. In the case of Gott *et al*, it is largely empire with very little of what we might call liberalism. Bill Bowring dissects this literature and the score-card of British empire and concludes (though he is not explicit about this) that liberal empires are no less violent and repressive than some of their competitors. Comparing Russian empire in the near East with Britain's behaviour in India (where one author has argued, 10 million dies at the hands of the British over a period of ten years) he states:

> "Though I cannot resist observing that life in Soviet Central Asia was much more civilised and material conditions were much better than those in the British Indian Empire immediately to the south. And democracy, human rights and the free market were implemented to a similar extent." (at 6)[17]

This relationship between empire and liberalism worried a lot of the scholars in Tallinn. Phil Chan saw similarities between liberal interventionism in the 21st century and the way in which rhetoric around the "family of nations" in the 19th was relied upon to justify colonisation and possession.[18] Isobel Roele pointed to the sheer hubris of the Western powers. She describes the way in which the Lithuanian representative (also representing this hubris) characterised the use of the veto in the Syrian situation: 'Today's veto is a stand on the wrong side of justice and accountability — a stand on the wrong side of humanity'.[19]

Liberal/Illiberal

In Tallinn a number of people wondered if the distinction between liberal and non-liberals states, or between democratic and undemocratic states really matters that much anymore, or is in any way constitutive, because other distinctions between states matter more (North-South, East-West, Great Powers-Outlaws, "bigness-smallness" ((Merezhko) or because social and political divisions within states were so such more salient (the rise of the offshore class, the shared values of transnational elites) or because of a general intensification in legal regulation or because such distinctions were too crude and insufficiently varied to capture the diverse forms of government on the ground.[20] It is clear, for example, that "emerging democracies" have very special and distinctive features: a kind of qualified liberalism. Laura-Maria Craciunean, in her informative account of Romania's post-cold war transition, shows how the transplantation of liberal norms has to be made to work "each and every single day" (1), how this is constantly a matter of

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[17] The figures on India are quoted by Bowring and drawn from Randeep Ramesh "India's secret history: 'A holocaust, one where millions disappeared...". Author says British reprisals involved the killing of 10m, spread over 10 years" *The Guardian* 24 August 2007, at http://www.theguardian.com/world/2007/aug/24/india.randeepramesh (accessed on 20 May 2014)

[18] Chan, around fn 92.

[19] UN Doc. S/PV.7180 (22 May 2014) p. 10

[20] Even the Princeton project document concedes that democracy, for example, might produce adverse consequences for international order though this speaks of a general distrust for popular sentiment in the non-Western world. Venezuelans might expropriate or nationalise their mineral wealth; Iranians might become nationalistic and adopt an even more threatening nuclear posture (at 19).

negotiation (sometimes with international advisory bodies (the Venice Commission in the case of Romania) playing a prodding, persuasive role and how "literal" transplantation can only accomplish so much in the absence of cultural transformation.

It may be the case, too, that states are liberal in some spheres and illiberal in others and that this is more closely related to features inherent in the sphere in question than to the internal dynamics of the state itself. Jose Alvarez has remarked that many human rights violators are compliant and "liberal" when it comes to international economic and trade agreements.[21] And, following the lead of Alvarez's 2001 essay in the European Journal of International Law, there seemed to be a wide acceptance that liberals do behave badly or that the distinction does not operate in a very linear fashion.

Isobel Roele's paper proposes a different principle of distinction: one based not on the illiberality of deviant states but on their incorrigibility. This captures something about the current practice of the global elites and avoids some of the taint of the liberal-illiberal distinction. It is certainly the case that interventions in Serbia, Iraq and Libya had less to do with the liberal or democratic credentials of those states or even their tendency to violate human rights standards, and more to do with a growing impatience about the failure of these governments to pay any heed to successive Security Council resolutions (hence the continual references to the "13 resolutions" passed in relation to Iraq before *that* intervention). It is true, too, as Roele argues, that the Russians and Chinese would be much more likely to acquiesce in authorising resolutions if the debate was framed in terms of incorrigibility rather than liberalism. At present, the references to the rule of law, human rights and democracy, derived from liberal international law, sound tired and inauthentic, and, in any case, are alienating half the membership of the Security Council.[22] These tend now to be combined with the familiar Council refrain of calling for the prosecution of leading members of the regime in question.[23] Thus does the ICC risk become the judicial wing of NATO (or the relevant interveners). More to the point, though, according to Roele, the increasingly resort to punitive humanitarianism is simply not working as a tactical device for getting the Council to act. An alternative, as Roele argues, is to adopt a Foucaldian approach based on the based on the microphysicality of disciplinary prescriptions and "the disciplinary mechanisms of surveillance and assessment"(at 15). It is unusual to see Foucault used in this way since his work explicitly problematizes the move to "humane" or gradualist forms of punishment

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[21] Jose Alvarez, 'Trade and the Environment: Implications for Global Governance: How Not to Link: Institutional Conundrums of an Expanded Trade Regime', 7, *Widener Law Symposium Journal* (2001) 1. On the other hand, as Vladislav Mulyun notes on his paper, litigation around human rights violations linked to infringements of WTO commitments and obligations may produce a liberalism by stealth even within illiberal states like Russia, Mulyun, "Liberalism in International Trade, Illiberalism in Domestic Economic Governance, and Human Rights Protection in the Context of WTO". The relationship between international law and domestic law is the stuff of treatises, of course. Leonid Tymchenko, in his essay on Ukraine, shows how the Ukrainian Constitution contains traces of liberal international law ("International Legal Norms in the System of Ukrainian Constitution") and how a state might seek to modernise through the absorption of international legal technique into its constitutional apparatus and judicial practice.

[22] See e.g. French Statement in UNSC meeting at UN Doc. S/2012/6810 (19 July 2012).

[23] UN Doc. S/PV.7180 (22 May 2014). See, in the case of Libya, SCR 1970.

and control. Still, the move from liberalism to incorrigibility seems politically promising from the perspective of those who demand Council action in cases like Syria.[24]

When it comes to liberal and illiberal states, the Tallinn papers of course usefully expanded our usual concerns in the direction of taking the large, emerging powers more seriously. Wim Muller's essay on China asks how an "illiberal" state might be socialised into the liberal international order or to what extent illiberal authoritarian free(ish) market hegemons like China might offer alternative models of international order or might modify the existing one.[25] The conclusion here is that China (including more latterly the PRC) has tended to deploy the conceptual apparatus of thin Charter liberalism in order to protect itself from the intrusions of imperial power (sovereign equality as a barrier foreign intervention and meddling) or the excessive scrutiny of the human rights system (carving out a liberal "private sphere" as a way of protecting China's internal affairs).[26] On the other hand, the appeal of liberal international law has not extended to strong support for a more substantive "rule of law" in international relations. The Chinese have not latterly been enthusiastic about international adjudication viewing it as an encroachment into sovereignty and so on. We can think here of China's refusal to countenance various forms of "liberal" dispute resolution in its conflicts over territory in the South China Seas and the Spratly Islands.

But this caution when it comes to the rule of law is not exclusive to illiberal states. Liberal and illiberal states alike have been resistant to various forms of thin and thick constitutionalism. The key split here may be between Great Powers and other states with the Great Powers far more reluctant to expose themselves to forms of adjudication while they pursue their interests and protect their often extensive political and material resources. China may simply be a classic Great Power in this regard, more akin to the United States than, say, an illiberal small power like Belarus. Indeed, it may not even be the case that small illiberal states are always allergic to adjudication. A glance at the ICJ's late-20th and early 21st century docket reveals some surprising names among the litigant states. There has even been a propensity for states thought of as somehow rogue or outlaw to pursue highly legalistic claims in court. Obvious examples would include the Democratic Republic of the Congo (in its cases against Belgium and Rwanda/Uganda), Serbia (in its action against the states of NATO), and Iran's various stoushes with the United States. It may be, too, that the distinction between emergent democracies and old democracies might be of some relevance in assessing the way in which states behave domestically and internationally. We can think of Veronika Bilkova paper here and its description of the very illiberal practices of some post-Soviet states in relation to freedom of expression (e.g. at 4-7) or Gleb Bogush's illuminating survey of Russia's "cautious" approach to international criminal law (an approach still influenced, he claims, by Soviet thinking) or Jernej Cernic's lament for the failings of formal legal liberalism (e.g. the non-execution of European Court of Human Rights judgments in some Eastern European states).[27]

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[24] Roele recognises this at the end of her essay.

[25] Muller, "China: An Illiberal, Non-Western State in a Western-centric, Liberal Order", at 1.

[26] See Charlesworth and Chinkin, *The Boundaries of International Law* (2000) for a critique of this private space in international relations.

[27] As Bogush puts it: This cautious approach to international criminal law contributes to the conservative nature of the Russian doctrine of international law, which is still suffering from the Soviet influence. In particular, its

Perhaps the worst offence of the liberal/illiberal distinction lies, then, in its tendency to smooth out differences and exaggerate similarities. Put differently it over-determines and under-determines; it explains too little and too much. Like Roele's, Anna Dolidze's fine paper on the way in which states speak international law proposes a fresh and arresting distinction between states (or cultures) that speak international law as native speakers and those that have been socialised into international society more latterly or who will forever, no matter how proficient they become, be "non-native". While Chan and Muller focus on China as an emerging complication in the way we might think of liberal international order Dolidze's paper focusses on Russia, "….a non-native speaker, [which] has perceived international law with two rhetorical moves: as a disaffected foreigner and as an empowered multilingual subject who aspires to uphold and interpret the rules of the language recently acquired" (1). Dolidze greatly complicates the image we have of Russian international law (instrumental, opportunistic, crude) by showing how non-native speakers are able to switch modes in ways not open to the native speaker. A state like Russia then is granted the freedom to defy international law in some circumstances (by emphasising the foreignness of that law) and control and enforce it in others (by exercising its grammatical competence) (at 4). Dolidze's paper, then, goes a long way to explain how a "revolutionary" state like Russia also managed to enjoy the benefits of Great Power privilege and it is a useful lens through which to explore and understand Russia's apparent *volte faces* on questions of sovereignty (in Kosovo and Crimea). Ultimately, the fluency/non-fluency is an original and bold way of thinking into the behaviour of the new hegemons (China, Russia, Iran) as well as the history of international law.[28]

Of course, Russia's behaviour may be just the typical activity of a great power whether liberal or illiberal. Charlotte Steinorth, in her provocatively titled and well-argued paper, "Russia, the Security Council and the Return of History", shows how members of the Security Council, liberal or illiberal, move back and forth between advancing the values of peace or sovereignty in some cases, and more humanitarian norms in other cases. A form of liberal interventionism may have briefly flourished as semi-official Council policy just after the Cold War but more recently, with the fading of liberal-democratic confidence, a more nuanced picture has emerged and again we have two liberalisms co-existing (un)comfortably in the legal positions taken, and political rhetoric deployed, by each of the P5.[29]

Reading these papers together, and hearing some of them delivered in Tallinn so close to the Russian border, I get a sense of Russia's many faces: non-native speaker, Great Power *par excellence*, illiberal neo-tyranny, liberalising hegemon, opportunist. John Haskell, in a probing account of the uses of Russia in international political culture, inverts things a little by showing how Russia is an *object* of international law and diplomacy, a zone "comprehensively identified with a set of negative connotations, from Stalin's Gulag to security state totalitarianism." (at 1). But Haskell's informed and stylish paper in a sense brings us back to the liberal/illiberal split. For him, this idea has gained renewed power and traction in recent projections and

reluctance to recognise individuals as subjects of international law, its cautious approach to customary international law and direct application of international law in the domestic legal order make it seem very uncomfortable with the idea of international criminal responsibility." (at p 5).

[28] See, too, Lauri Mälksoo, The History of International Legal Theory in Russia: A Civilizational Dialogue with Europe, 19 *EJIL* (2008) 211, 217.

[29] Steinorth, at 3-4.

characterisations of Russia on the part of the Western diplomatic elite and media. Russia has (been) returned to (illiberal) history. But the world in which the binaries of liberalism-illiberalism or rule of law-tyranny predominate is a world in desperate need of interrogation. Its ruins lies all around us (the disasters of shock therapy, or the Iraq Wars); according to Haskell it is time to penetrate "the tournament of shadows" (14-15).

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In the end, then, the tenor of the papers in Tallinn tended to be critical but, in some respects, liberalism, in all its variants, remains alive and well. To return to Oakeshott, liberalism has turned into a conversation among liberals, a liberalism of liberalism. And the liberal values of conversation, openness and variety are well worth preserving. Indeed, when gays and lesbians are discriminated against in the former Eastern bloc, the appeal of what we might think of as "traditional' liberal values is potent. In the paper by Akeksandra Gliszczynska-Grabias and Anna Sledzinska-Simon, it is these values that are defended in the face of outright repression (the current spate of anti-gay laws being enacted in Russia and Lithuania) and the excessive forms of value-pluralism (extending the margin of appreciation too far) that might be used to defend such practices. Liberalism has in different ways been captured by, or associated too closely with, the reversion to legalism or constitutionalism in times of crisis or the imposition of a thoroughly attenuated and shop-worn set of prescriptive devices. But there remains plenty of space for a different liberalism: liberalism as a Socratic conversation, "dialectical and, at last, lyrical".[30]

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[30] Gray, 86.