

Carlsbad 1819

Like another Chouannerie

Constant, Remusat and the Tensions Between Ancient and Modern Liberties

May 7, 2017 by Nulle Terre Sans Seigneur

Freedom! What word has caused more acrimony? Our great modern liberals, owing their lineage from cameralist blowhards on to German Kathedersozialisten who then cross-pollinated with American institutionalists (Friedrich S. List, widely credited as the founder of economic nationalism, was actually influenced by an early ideologue of the American System and of Northern manufacturing interests, Daniel Raymond), are ever clamoring for greater positive liberties. They fancy themselves as builders of an inclusive polis, complete with its patron deities of Science and Reason. A polis where behavioral norms are set completely uninhibited as if from a De Sade novel, and where no problem cannot be solved by social insurance programs legitimated through popular plebiscite and executed by technicians and clerks.

Against this stand the dwindling numbers of Manchesterites, espousing the negative conception of freedom from interference. To a large degree, this is an aristocratic idea: the nobleman jealously guarding his seigniorial rights from regalian prerogative on top, and thus developing an ethic of independence. The ideal here is the *rzeczpospolita szlachecka*, a constitutionally limited commonwealth consisting of allodial property-holders having free conscience and owing little to the taxman, its ultimate dream being sinecure through absentee rent-extraction. Except this vision was transplanted to the burghers.

The Manchesterites would find out that the capitalists are natural-born Ghibellines, since strictly speaking, they have no status in terms of formal peerage. Their status is determined by wealth, and wealth can always (selectively) be maximized, if in an illusory manner, by the coalition-building powers of the exchequer and by lavish public works projects to serve as subsidized foundations of their own enterprises.

Social liberalism and Manchesterism are the inevitable perversions of two archetypes that French liberal Benjamin Constant would respectively draw between liberty of the ancients and liberty of the moderns (<http://oll.libertyfund.org/titles/constant-the-liberty-of-ancients-compared-with-that-of-moderns-1819>), himself an avowed champion of the latter.

Of the liberty of the ancients, he writes:

The latter [liberty of the ancients] consisted in exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws, in pronouncing judgments; in examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing, condemning or absolving them. But if this was what the ancients called liberty, they admitted as compatible with this collective freedom the complete subjection of the individual to the authority of the community. You find among them almost none of the enjoyments which we have just seen form part of the liberty of the moderns. All private actions were submitted to a severe surveillance. No importance was given to individual independence, neither in relation to opinions, nor to labor, nor, above all, to religion. The right to choose one's own religious affiliation, a right which we regard as one of the most precious, would have seemed to the ancients a crime and a sacrilege. In the domains which seem to us the most useful, the authority of the social body interposed itself and obstructed the will of individuals. Among the Spartans, Therpandrus [Terpander] could not add a string to his lyre without causing offense to the ephors. In the most domestic of relations the public authority again intervened. The young Lacedaemonian could not visit his new bride freely. In Rome, the censors cast a searching eye over family life. The laws regulated customs, and as customs touch on everything, there was hardly anything that the laws did not regulate.

Isonomia; how cold and cruel it is. To be a citizen of a great polity, is to simply be an organelle in a structure forcefully imposed on you, ever subservient to that structure and with your identity a function of your political and customary duties.

Constant will have none of it, and so he proclaims: "The aim of the ancients was the sharing of social power among the citizens of the same fatherland: this is what they called liberty. The aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures."

Modern liberty implies some alienation, as political institutions are no longer social organisms, but representative bodies — at least ideally. But is it not also liberation from the cruel demands of magistrates and crowds? To be modern is to be a customer and not a hereditary executive.

But wait, would this make modern liberty closer to respecting the sovereign-subject distinction? Not quite, for Constant is quick to tell us that the value of representative institutions lies precisely in that it is allegedly "a proxy given to a certain number of men by the mass of the people who wish their interests to be defended and who nevertheless do not have the time to defend them themselves."

And one cannot leave this proxy to do its work alone. One must be ever vigilant. Here Constant reveals to us just what a laborious and grueling task the maintenance of "enjoyment of private pleasures" really is, as "the people who, in order to enjoy the liberty which suits them, resort to the representative system, must exercise an active and constant surveillance over their representatives, and reserve for themselves, at times which should not be separated by too lengthy intervals, the right to discard them if they betray their trust, and to revoke the powers which they might have abused."

Representative institutions free us from being mere cogs in the all-encompassing social machine, but... do they, really? Now, as *private individuals*, we must become muckrakers and watchdogs. Where once we were all statesmen united in our bondage to a polity, we are now editorialists linked in an amorphous network of contractual relations. There is no one above us but ourselves, for we are now the Third

Estate, the one and only estate that has crushed all the others and left the constitutional liberal state in its wake, its liberties jealously guarded by the peddlers of tabloids and trash rags, which is simply how we “exercise an active and constant surveillance” over “our representatives.”

Thucydides, in his *History of the Peloponnesian War*, quotes Pericles on democracy:

Our public men have, besides politics, their private affairs to attend to, and our ordinary citizens, though occupied with the pursuits of industry, are still fair judges of public matters; **for, unlike any other nation, regarding him who takes no part in these duties not as unambitious but as useless,** we Athenians are able to judge at all events if we cannot originate, and, instead of looking on discussion as a stumbling-block in the way of action, we think it an indispensable preliminary to any wise action at all. Again, in our enterprises we present the singular spectacle of daring and deliberation, each carried to its highest point, and both united in the same persons; although usually decision is the fruit of ignorance, hesitation of reflection.

Discussion, daring, deliberation! To hell with your discussion, says M. Constant! He instead emphasizes to us the value of commerce of enlarging the inward, private sphere: “Individuals carry their treasures far away; they take with them all the enjoyments of private life. Commerce has brought nations closer, it has given them customs and habits which are almost identical; the heads of states may be enemies: the peoples are compatriots. Let power therefore resign itself: we must have liberty and we shall have it. But since the liberty we need is different from that of the ancients, it needs a different organization from the one which would suit ancient liberty. In the latter, the more time and energy man dedicated to the exercise of his political rights, the freer he thought himself; on the other hand, in the kind of liberty of which we are capable, the more the exercise of political rights leaves us the time for our private interests, the more precious will liberty be to us.”

In Plutarch’s *Life of Lycurgus*, he recounts a peculiar ordinance (http://penelope.uchicago.edu/Thayer/e/roman/texts/plutarch/lives/lycurgus*.html) in the Lacadaemonian polity:

The third and most masterly stroke of this great lawgiver, by which he struck a yet more effectual blow against luxury and the desire of riches, was the ordinance he made, that they should all eat in common, of the same bread and same meat, and of kinds that were specified, and should not spend their lives at home, laid on costly couches at splendid tables, delivering themselves up into the hands of their tradesmen and cooks, to fatten them in corners, like greedy brutes, and to ruin not their minds only but their very bodies which, enfeebled by indulgence and excess, would stand in need of long sleep, warm bathing, freedom from work, and, in a word, of as much care and attendance as if they were continually sick. It was certainly an extraordinary thing to have brought about such a result as this, but a greater yet to have taken away from wealth, as Theophrastus observes, not merely the property of being coveted, but its very nature of being wealth. For the rich, being obliged to go to the same table with the poor, could not make use of or enjoy their abundance, nor so much as please their vanity by looking at or displaying it. So that the common proverb, that Plutus, the god of riches, is blind, was nowhere in all the world literally verified but in Sparta. There, indeed, he was not only blind, but like a picture, without either life or motion. Nor were they allowed to take food at home first, and then attend the public tables, for every one had an eye upon those who did not eat and drink like the rest, and reproached them with being dainty and effeminate.

Truly the community must be tight-knit, almost a monad, for such cohesion and leveling of status to occur. But to Constant, Sparta was all a “vast monastic barracks.” Only sophists like Rousseau and Mably could trust that the application of the old republican forms of “authority to the social body over

liberty” to the new republics of private commerce would work out.

For in the case of the “monastic barracks,” Constant would have to deal with the pain of seeing the riff-raff being among his fellow legislators, as opposed to simply shadowy figures in the distance doing their truck, barter and exchange. And, as Pseudo-Xenophon commented on (<https://www.gutenberg.org/files/1178/1178-h/1178-h.htm>) *The Polity of the Athenians*:

In the next place, in regard to what some people are puzzled to explain—the fact that everywhere greater consideration is shown to the base, to poor people and to common folk, than to persons of good quality—so far from being a matter of surprise, this, as can be shown, is the keystone of the preservation of the democracy. It is these poor people, this common folk, this riff-raff, whose prosperity, combined with the growth of their numbers, enhances the democracy. Whereas, a shifting of fortune to the advantage of the wealthy and the better classes implies the establishment on the part of the commonalty of a strong power in opposition to itself. In fact, all the world over, the cream of society is in opposition to the democracy. Naturally, since the smallest amount of intemperance and injustice, together with the highest scrupulousness in the pursuit of excellence, is to be found in the ranks of the better class, while within the ranks of the People will be found the greatest amount of ignorance, disorderliness, rascality—poverty acting as a stronger incentive to base conduct, not to speak of lack of education and ignorance, traceable to the lack of means which afflicts the average of mankind.

And yet, fear of Lacadaemonian or Athenian tyranny notwithstanding, Constant nevertheless tells us: “The danger of modern liberty is that, **absorbed in the enjoyment of our private independence, and in the pursuit of our particular interests, we should surrender our right to share in political power too easily.**”

At once Constant complains of ancient liberty being about deliberating in sovereign decision-making to the exclusion of individual rights, and that the virtue of modern liberty consists in it (allegedly) withering away political decision-making in favor of commerce... yet here Constant is concerned about his “right to share in political power.”

Constant wants his bazaar *and* his monastery, too. Well, we all know which won out.

Charles de Remusat, eminent doctinaire and aristocratic liberal, in *De la Liberté moderne* (https://fr.wikisource.org/wiki/De_la_Libert%C3%A9_moderne) (1859), writes: “Now, political liberty in our modern times, we know of only two forms, the representative monarchy and the republic. If anyone knows a third, let him name it.”

I can’t name it. Representative monarchy, here is a model that represents the ultimate triumph of empire over papacy, of Royal Supremacy as laid down by Thomas Cromwell for the Church of England, or even earlier of Henry II’s Constitutions of Clarendon, which paved the way for strangling the ecclesiastical jurisdiction that had formerly served to counteract the Minotaur. A clergyman is now a subject of civil law like any other. All of our affairs are now *civil* affairs, or public affairs. Even the anointed and inviolable monarch now gets the same title of nobility that all of us are equally entitled to: that of *citizen*, a member of a hereditary aristocracy open to everyone by virtue of being born into the human race in a fixed jurisdiction.

Remusat’s commitment to this perverse state is most evident when he discusses the role of the Church:

As a dogmatic belief, religion is not in the hands of legislators or publicists. It must be taken as it was received. I shall agree that, at the beginning of the sixteenth century, one or two more political and accidental causes would have sufficed for the church of France to undergo a transformation similar to that of the Anglican Church. It may also be said that the Protestant countries seem to be closer than the others to self-government. Is it because they are Protestants, or rather are they not Protestants because of this? Others will decide. **Protestantism has, I agree, the advantage of being able, without detaching itself from the Gospel tradition, to be a national Christianity, and it is unfortunately a faculty which the ultramontane power strives to remove from Catholicism. We owed to our French traditions a happy combination of Christianity and nationality, it was the Gallican church.** The religious persecutions of the revolution began to bring Gallicans and Ultramontanes together for common defense. Since then the policy of the court of Rome and the absolute theories of a few political and religious theologians have almost succeeded in destroying the work of centuries and the traditions of the country in a matter where, more than elsewhere, antiquity is held sacred. To the Christian originality which recommended the church of France among all the churches, an attempt was made to substitute the imitation of Spain and Italy. France is followed by them, and the spirit of centralization comes again. **Everything, it is said, must be sacrificed to unity; but unity is usually servitude.** Those who created the theory of this ecclesiastical reform, the Abbe de Lamennais, for example, knew what they were doing by preaching it to the world.

A “national Christianity.” Where once it was the prerogative of the court bishops to educate the Christian prince, it now became the Christian prince’s duty to educate his bishops. Such was Gallicanism, as represented in the Pragmatic Sanction of Bourges (https://en.wikipedia.org/wiki/Pragmatic_Sanction_of_Bourges) in 1438, to disconnect the faith from the ecclesiastical jurisdiction of the Roman Pontiff, making the king and the church councils prince-bishoprics in their own right. As the Catholic Encyclopedia attests (<http://www.newadvent.org/cathen/12333a.htm>): “By this edict the French king issued a law of the secular legislative authority in purely ecclesiastical affairs. The recognition of the authority [papal supremacy] of the Council of Basle was only formal, for the validity of its decisions in France rested solely upon the edict of the king. As the law was recorded in the Parliaments these, especially the Parliament of Paris, received the right of interfering in the internal affairs of the Church. In addition, no attention had been paid to the pope, consequently every effort was made at Rome to have the law set aside. Pius II (1458-64) declared it an infringement of the rights of the papal see, and called upon the French bishops to aid in its suppression. Charles VII appealed against this to a general council. His successor Louis XI promised the pope to repeal the sanction, but the Parliament of Paris and the university resisted, and the king let the matter drop.”

Theosis had now become étatisation, and the heresy later known as Erastianism institutionalized. If the Church, with its duty of administering sacraments, had now had its sacral function simply reduced to a civil matter like any other corporate body inside the royal demesne (redefined from specific allods and fiefs directly pertaining to the crown, to an entire fixed national territory claimed by absolute sovereign right against any countervailing claims of customary law), then eventually the sovereign citizenry could quite rightly seize the Church’s benefices and sell them off, this simply being an administrative matter pertaining to fiscal policy. All is well under utilitarian considerations.

If, then, liberty of the ancients culminates in Erastianism — the sacred turning mundane, authority degrading into plunder, then liberty of the moderns culminates in anomie and amorphism — the republic having no attractor or fixed point to revolve around and define itself through, being constitutionally self-referential, i.e. defined only in terms of *itself* (the multitude being represented) and not on any higher power.

Liberty of the ancients, in particular, is liable to be misinterpreted under a Straussian-esotericist reading where the polity itself acquires a divine mission to consume not only the relations of authority within its own citizenry, but of the entire world. Willmoore Kendall, in his reaction to Lockeanism and the rhetoric of inalienable rights, ended up sanctioning a popular majoritarianism, and influencing neoconservatism.

What are we left with, then? The subject is too long to explore here, but I will drop a hint as to a potential “liberty of the medievals.” The name I have given can sound misleading, for I do not intend it to be some middle ground between ancient and modern liberty. It is a wholly distinct idea.

Perhaps we may take a brief look at Victor Pradera, one of the premier theoreticians of latter-day Carlism, in its brief moment of hope during the 1930s before its ultimate decline. His book *El Estado Nuevo* (<http://www.saavedrafajardo.org/Archivos/LIBROS/Libro0638.pdf>) (1937) was widely hailed in traditionalist circles. It is worth making a disclaimer that it infuses plenty of corporativist-organicist ideas that are more a hallmark of romanticism, but it remains a good starting point nonetheless. From (pp. 284; 289):

The Revolution made the multitude sovereign and immediately declared it incapable of drafting a law; it proclaimed that its essence lay in the expression of the general will, and in reality it is no more than that of an indifferent minority; it took justice as a flag, and did not know it as a source of law. The revolutionary clot is so evident that it astonishes how the intelligentsia were victims of it and how all the peoples of the world suffered their resignation.

However, fortune was not so scarce that the destructive work did not come to an end. The shock has shaken humanity, which, in need of law, instinctively returns to the paths that lead to its right concept, illuminated with the torch of Catholic Philosophy. The word “law” ringing in our ears, it immediately wakes up in our minds the ideas of “government” and “submission.” That the whole universe is subject to an order, which is detached from the teleological law of which mention was made of the purpose in man.

Plato already speaks of that government of the universe, and consequently of its law. To which he described as divine, Catholic theologians, to avoid the double meaning of the term, called it eternal. By it, which is nothing other than the reason for the rule of the universe, all things are ordered to their ends by suitable means. There is therefore no one who is not subject to the eternal law — to cease to participate in it in one way or another, since its effect is the inclination of each to their own acts and ends. But this participation is very different in beings endowed with reason and in those who do not possess it.

In the former, the inclination to one’s own acts and ends is free under the opinion of the understanding, and may be contradicted by breach of the law; In the latter, it acts under the rule of necessity. And so, in regard to them, the said participation is called “natural law”, and in regard to these, “necessary relationship resulting from its nature.”

[...]

In order to be duly dictated, the legislative body, therefore, must be formed by three different elements: that which is the source of the rational principle, which contributes the matter of the common good, and the other being that which seals it with force of sovereignty. And with the spontaneity of all that is natural, the three institutions that in their own spheres cooperate in the formation of the law in a State organized in accordance with the law are drawn in these words: the King, his Councils and the Cortes [estate-based assemblies].

And it is also made clear that the law is not a mere act of will. Neither the will of a man (the Prince in the despotic regimes), nor the will of an Assembly (the parliament of the liberal regime), nor the will of the multitude (the people in plebiscitary absolutism). The mere act of will can be irrational and unjust, and the law, as the ordering of reason, cannot be so.

Since I will be revisiting all of these topics, I will simply leave you hanging from a cliff for the time being. But, a government by social estate and ordered by teleological principles, how offensive it is to certain particularist doctrines...

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6 thoughts on “Constant, Remusat and the Tensions Between Ancient and Modern Liberties”

1. Vladimir says:

May 8, 2017 at 1:49 am

An excellent post. I must say yours is the most interesting new blog I've seen in quite a while.

Nowadays America and Switzerland are probably the last two places in the world where republican liberties of the ancient type still survive to some degree in the institutions of local self-government. (And where until relatively recently, indeed within living memory, they were still vigorously alive.)

In this regard, two observations from Tocqueville come to mind. The first is his famous one about the lack of "independence of mind and true freedom of discussion" in America. Clearly he was observing what Constant described as "as compatible with this collective freedom the complete subjection of the individual to the authority of the community" — not as severe in ancient Sparta, to be sure, but still far more severe than in European states where the institutions of traditional liberty and self-government had long disappeared or faded into insignificance.

The second observation is from "The Old Regime and the Revolution," where he compares the American vigorous institutions of self-government that he observed first-hand with the relics of ancient local liberties that still persisted in 18th century France in a diminished and degenerate form, crushed under the heel of the centralizing monarchy. In a stunning passage, he wrote that reading about the latter in 18th century documents, and comparing them with the former, *"They resembled each other, in fact, as closely as a living body resembles a corpse. Nor is this a matter of surprise, for the two systems, different as their destinies were, had the same origin."*

Interestingly, on this topic Joseph de Maistre managed to be at the same time insightful and spectacularly wrong. In the 1790s, he famously predicted that the United States would fail completely — he went so far to predict that the Union would be so dysfunctional and short-lived that Americans wouldn't even manage to build Washington DC at its planned site. His argument was a sensible one that republican institutions — understood, of course, as those of classical liberties, exercising sovereignty collectively and directly — clearly don't scale to large populations and countries. (This was in the context of arguing for the absurdity of the revolutionaries proclaiming France a republic.)

Yet de Maistre failed to appreciate the genius of the British Constitution in its American variety, and failed to understand that this unique system would allow genuine local republican liberty to flourish while at the same time providing enough large-scale cohesion to allow for a union capable of acting in concert on the world stage. Of course, in the long run, the central government grew powerful enough to crush and subdue the local institutions. But while it lasted, what a marvel it was! Truly a unique phenomenon in world history.

Reply.

- Michael Rothblatt says:

May 8, 2017 at 1:21 pm

>Clearly he was observing what Constant described as "as compatible with this collective freedom the complete subjection of the individual to the authority of the community"

It seems that freedom from interference is possible only under despotate with somewhat clan-based society (Imperial China, and eastern Roman Empire are the most prominent examples with their laissez-faire economies) and freedom in the meaning of "self-government" only under

totalitarian polity. Libertarians like to point out Medieval Ireland and Iceland as examples of anarchocapitalism, but while they indeed had non-meddlesome high kings, they had strong clan structures. Many think England the center of limited government, but if we compare British stats with Tzarist Russia's, we see a different picture. Per thousand subjects there was seven times less policemen in Tzarist Russia than in Great Britain, and five times less in Russia than in French Republic. In the year 1912 the index of direct taxes in Russia was 311, in France 1235, and in Great Britain 2675. In the same year index of indirect taxes was 598 in Russia, 1600 in France, and 1386 in Great Britain. Public debt in then's rubles was 58.7 per person in Russia, 288 rubles per person in France, and 169.5 rubles per person in Great Britain. French Revolution may have brought liberty of "self-government," but it took away the freedom from interference, as Ralph Raico writes:

"In his work on the Great Revolution of 1789, Molinari eviscerated the founding myth of the French Republic. France had been proceeding gradually and organically towards liberal reform in the later 18th century; the revolution put an end to that process, substituting an unprecedented expansion of state power and a generation of war. The self-proclaimed *liberal* parties of the 19th century were, in fact, machines for the exploitation of society by the now victorious predatory middle classes, who profited from tariffs, government contracts, state subsidies for railroads and other industries, state-sponsored banking, and the legion of jobs available in the ever-expanding bureaucracy."

Reply

o spandrell says:

May 11, 2017 at 11:04 pm

Not sure whether you're drawing the line at 1865 or 1933; but what was so marvelous about American life before that? What great art what great science did America produce? Why should anyone aspire to that?

I've seen what bottom-up politics works like in Japan; of course vastly different from anything in the West, but you can still see the "ancient liberty" in them. I can't say I'm a fan.

Reply

2. Pingback: Communalists and constitutionalists | Carlsbad 1819

3. quaslacrimas says:

October 17, 2017 at 2:13 am

Eventually I'd like to see you write something more substantial on Erastianism. This is workmanlike, you've gathered together a lot of the most famous quotations from Constant's lecture; but the point you touch on at the end as you begin to rethink the relationship between liberty and its framing institutions is the most interesting post in the essay, don't you think? But unfortunately here you seem to be thinking about Erastianism from the standpoint of the eternal 1920s. The historical context that produced the debate over Erastianism will greatly enrich your thinking on this issue, I suspect.

Reply

4. Pingback: [X-Post: Thermidor] Costin Alamariu Is Damn Right About The 'Alt-Right' | Carlsbad 1819

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