

Carlsbad 1819

Like another Chouannerie

Why Post-Liberalism Failed

October 3, 2021 by Nulle Terre Sans Seigneur

In 1884, Herbert Spencer, the Victorian intellectual who had become a household name before slipping away into obscurity and posthumous defamation as a “Social Darwinist,” wrote an essay on *The New Toryism* (https://www.econlib.org/library/LFBooks/Spencer/spnMvS.html?chapter_num=5#book-reader) describing the numerous developments in England from 1860 onward that were turning against his vision of an industrious liberalism and the law of equal freedom. Factories acts, mine inspections, compulsory vaccination boards, restrictions on child labor, stricter medical licensing, bakehouse regulation acts, registration of lodging houses, inspection of cattle sheds, public works, compulsory schooling, nationalization of telegraphy, penalties on hawking without a certificate, train fare subsidies, and much more were instated by parliamentary legislation. “As we have seen, Toryism and Liberalism originally emerged, the one from militancy and the other from industrialism. The one stood for the régime of status and the other for the régime of contract—the one for that system of compulsory cooperation which accompanies the legal inequality of classes, and the other for that voluntary cooperation which accompanies their legal equality; and beyond all question the early acts of the two parties were respectively for the maintenance of agencies which effect this compulsory cooperation, and for the weakening or curbing of them. Manifestly the implication is that, in so far as it has been extending the system of compulsion, what is now called Liberalism is a new form of Toryism,” Spencer lamented.

In “The Coming Slavery,” Spencer blasts mendacious humanitarianism toward the poor in words that would make any so-called “liberal” today flinch:

“They have no work,” you say. Say rather that they either refuse work or quickly turn themselves out of it. They are simply good-for-nothings, who in one way or other live on the good-for-somethings—vagrants and sots, criminals and those on the way to crime, youths who are burdens on hard-worked parents, men who appropriate the wages of their wives, fellows who share the gains of prostitutes; and then, less visible and less numerous, there is a corresponding class of women. Is it natural that happiness should be the lot of such? or is it natural that they should bring unhappiness on themselves and those connected with them? **Is it not manifest that there must exist in our midst an immense amount of misery which is a normal result of misconduct, and ought not to be dissociated from it? There is a notion, always more or less prevalent and just now vociferously expressed, that all social suffering is removable, and that it is the duty of somebody or other to remove it. Both these beliefs are false. To separate pain from ill-doing is to fight against the constitution of things, and will be followed by far more pain.**

In any event, what Spencer and many of his contemporaries were realizing is that the (or at least *a*) liberal creed marked by non-interference, freedom of contract and individual negative right was heading toward its demise. This was obvious to all social reformers, Fabians, radicals and the like who inveighed against it and worked to end it.

Yet well over a century later, it is not obvious to many of our self-professed “post-liberals.” UnHerd communitarians, post-Trump economic nationalists, anti-woke leftists, common good conservatives — all are united by Milton Friedman living rent free in their heads. Patrick Deneen, author of the widely discussed *Why Liberalism Failed*, [speaks of \(https://simoneweilcenter.org/publications/2020/11/2/post-liberalism-as-working-class-conservatism-a-conversation-between-patrick-deneen-and-boris-mezhnev-ykj6k\)](https://simoneweilcenter.org/publications/2020/11/2/post-liberalism-as-working-class-conservatism-a-conversation-between-patrick-deneen-and-boris-mezhnev-ykj6k) “the transformation of all human relations into the transactional, market-based model of ‘utility maximization.’,” the “strengthening of the liberal state and liberalized global market as the main engines of individual liberation,” and the “growing and radical inequality of winners and losers under this system” — all things you could hear at any DSA meeting or really from any mainstream “liberal” newspaper for decades. In the conclusion of Deneen’s book, he admits the conventional premise of the “ideals of liberty, equality, and justice coexisted with extensive practices of slavery, bondage, inequality, disregard for the contributions of women, and arbitrary forms of hierarchy and application of law,” and that therefore “liberalism was a sign of the profound success of the West’s most fundamental philosophical commitments, a manifestation of a widespread demand that daily practices should more closely conform to ideals.” The whole thing was an act; the problem all along was liberalism “not living up to its ideals,” a quintessentially liberal position if there ever was one. Many people have fallen for this shell game.

Even without “post-liberalism” as such, most people agree that the world order we live in is a liberal one and based on essentially liberal foundations. This is also why the standard way to dismiss an interlocutor on the e-right is to call him a liberal, and in so doing invoke the intercession of Félix Sardà y Salvany who forcefully declared “el liberalismo es pecado,” and “a greater sin than blasphemy, theft, adultery, homicide, or any other violation of the law of God.” Yet the premise at the start is false. We do not live in a liberal order, and have not for quite a while. Still, what’s the harm of such a belief? (A very utilitarian question to ask, by the way.) After all, liberalism is a massive compound of errors, perhaps the very fountain of error, so why shouldn’t people be vigilant about it? The problem is that calling our present order a liberal one leads to numerous historical misinterpretations and tactical stupidities.

The belief in the continued persistence of liberalism leads to all sorts of asinine detours. It leads to people play-acting as union bosses organizing the coal miners of Colorado into a revolutionary struggle to break the system of wage slavery upheld by the robber barons, who of course represent “liberalism,”

and whose grasp is stronger than ever with the gig economy. It leads to the same sterile polemics against caricatures of Hobbes, Locke, Mill and Rousseau as if these thinkers are relevant to our period, much as if though one tried to understand the 18th century by studying Petrus Ramus and Jan Comenius, to go on and discover ‘influences’ and ‘traces’ wherever one happens to see them. It leads to people thinking that if only we come up with the right “industrial policy” to finally overthrow the tyranny of the “neoliberal Washington consensus,” we can finally deprogram the multiracial working class from the false consciousness that the porkies deliberately instilled into them (so as to avoid the “threat” of another Occupy Wall Street), and unite the country around the one issue that deep down everyone cares about: health insurance. It leads to people endorsing vaccine passports so as to not come across as some square who believes in “inborn rights” and “the right of resistance,” a dreadful and ostensibly Lockean notion. Worst of all, it permits a thriving scene of post-liberal grifters who combine their mid-1950s Labor Party platform with functionalistic appeals to ‘transcendent values,’ ‘community,’ and ‘faith,’ and who present this as the apex of dissidence, as a fundamental repudiation of the Enlightenment, and not of course as the old New Republic editorial line that it really is. The latter is particularly pernicious because it utterly distorts the historical development of liberalism, by resuscitating the eternal spectre of ‘Manchesterism,’ ‘laissez-faire’ and ‘acquisitive individualism’ so as to pretend that we are still being ruled by the cigar-smoking Monopoly Man, except all the more deviously well hidden with his new marijuana cigar and a Hawaiian shirt to replace his suit. It thus allows social liberalism to disguise itself as an “anti-liberal” or “post-liberal” front fighting the “neoliberals,” meaning the eternal plot by Margaret Thatcher (and now her ghost) to privatize the NHS.

The purpose of this essay is to vindicate the thesis that liberalism doesn’t exist. It is dead. Almost as dead as animal magnetism. Moreover, its death is by no means recent. I can’t prove a negative? Just watch me. I’m not suggesting anything new or groundbreaking — Paul Gottfried, Theodore J. Lowi, Walter Lippmann, James T. Kloppenberg, Panagiotis Kondylis and a host of others have made similar arguments, or in any case have revised liberalism into something unrecognizable from its origins. On a superficial level a lot of people will agree. *Of course* we don’t live in the bourgeois-liberal epoch. And just as they say this they will forget all about it momentarily after and proceed to bang on about “the free market,” “negative rights,” how the idea of civic equality inevitably led to trans rights, the “commodification” wrought by “neoliberal woke capital,” so on and so forth. Copious references to Alasdair MacIntyre, John Gray, Christopher Lasch and others will inevitably follow. Fat and greasy “Red Tory” military history buffs will start defending lockdowns in the name of the common good. They say it, but they don’t believe it. The people who are “left on economics, right on culture” and who lecture others on “materialist class analysis” are utterly divorced from present material conditions, and can’t help but see the Gilded Age everywhere they go. Remind them that the proletariat’s pensions and health benefits come from the asset portfolios of pension funds investing in public and private equity, and that therefore the proletariat’s class interests are just as tethered to capital markets as any fatcat, and there’s not much they can say. The utter erosion of the rule of law is widely acknowledged, yet people can’t put two and two together that this implies a demise of the liberal epoch. The facile attempt at pretending it is still with us by pointing to the widespread belief in equality is not unlike someone trying to argue that 18th-century Geneva was still Roman Catholic because people continued to pray to God.

The plain refusal to face the reality and accept the fact that we *are* in a post-liberal society and have been for a long time eventually turns into a situation that Max Stirner pithily described as “ideas having people” rather than vice versa. Bad intellectual genealogies and Cliffs Notes versions of political philosophy are in large part responsible. But it also reveals a predilection among many to focus excessively on form and never on substance. When someone points out for the umpteenth time that Stalin outlawed abortion and made rapprochement with the Orthodox Church, we all nod along that this was a substantial transformation for Communism. When someone points out that a lot has

happened in the last century or so with dire consequences for the theory and practice of liberalism, people get upset and start saying “no, you see, I found someone using the words ‘equality’ and ‘individual rights,’ that means liberalism still exists the same as ever.”

There is plenty of ground to cover so as to thoroughly dispel any illusions of liberalism’s persistence. I will begin with a philosophical examination of 19th-century bourgeois liberalism and those neglected aspects of it, such as its class-conscious view of history, its vision of the common good, and other things people aren’t used to associating with liberalism. Next I will turn to the juridical nature of liberalism, and it is this that I believe to be the true *sine qua non* of liberalism. The philosophical justifications for liberalism have been wide and varied, which greatly contributes to confusion about its nature and continued existence. However, virtually all forms of liberalism have been united in one thing: a commitment to representative constitutional government under the rule of law, or as it’s known in German, the *Rechtsstaat*. I will show that these things are no longer with us (and not simply due to anarcho-tyranny, but for ideological deviations from the liberal ideal as well), and that this is sufficient to demonstrate the post-liberal nature of our present society. I shall also add some observations on the decline (in fact, deliberate killing) of the midwestern non-interventionist wing of both classical American liberalism and the American nationalist right from the 1930s onward, and how this represented a major transformation from liberal to post-liberal society in the postwar era, one with world-historical implications in light of the Pax Americana. But finally I must also address the myth of “neoliberalism,” because this is a major stumbling block for many. Even if some will grant that the “postwar consensus” was a post-liberal phenomenon of sorts, they will argue that the rise of Friedman and Hayek in academic economics and Reagan and Thatcher in politics from the 70s onward along with think tanks such as the Mont Pelerin Society and the Institute of Economic Affairs, constituted a kind of free market liberal restoration. This historiographic thesis has become so ubiquitous as a result of the sheer volume of ink expended on it by leftist academics, but I will show it to be untenable.

I. Liberalism and its philosophy of history

Liberalism is most visible as a set of demands against the (more-or-less) enlightened absolutist and patrimonial states that preceded it. These include but are not limited to: parliamentary control of the civil list and state expenditures, ministerial responsibility, freedom of the press, equal protection before the law (specifically against noble privileges and bills of attainder by which punishment was levied without due process), an independent judiciary, the separation of powers in a constitutional framework, freedom of association, abolition of feudal tenures and entailed estates, the conversion of royal domains into state property, etc. Now did these demands emerge from a “liberal creed that champions ‘negative liberty’ and individual happiness, [undergirding] positions on both the right and the left – free-market capitalism, state bureaucracy and individualism in social life,” as John Milbank and Adrian Pabst would have it? Has it “had the effect of subordinating human association and the common good to narrow self-interest and short-term utility”?

I will start with an essay by the Spanish liberal Francisco Martinez de la Rosa (1787-1862), briefly prime minister under Isabella II, titled *Espíritu del siglo* (Spirit of the century; 1835). In it, Martinez, an admirer of the English constitution, inquires as to the reasons for its longevity and concludes it is due to “circumstances [which] have managed to fraternize the interests of society with political institutions; that the rights of the nation are not only based on documents, but are supported by interests; and that these form a common bond, a chain so strong that it resists the impetus of passions and the onslaught of parties.”

What is Martinez's case for liberalism? Not some rationalistic appeal to rights-bearing individuals. He explicitly rejects contractualism as an artificial chimera. Rather, it is a historical argument. The spread of the arts and sciences, improvements in printing and navigation, the economic expansion created by the mercantile system have made all of the old class distinctions objectively obsolete, no longer resting on social need but on brute force, in contradistinction to the 'spirit of the times' which is defined by the emergence of an independent sphere of 'public opinion' representing the 'nation' to which all authorities must conform. In his words, as education became more widely diffused across social classes, this led to "the disappearance of one of the causes that served as a pedestal for the elevation of the privileged classes, and naturally to a rise in the social ladder of other classes of the nation. Therefore codified inequalities began to appear more unjust, as their foundations were less grounded in reality; the similarity in the education of the various classes of the state contributed to bring them closer together, producing less disparity in their customs; and from this point on the elevation of certain classes [above others] was found to be artificial."

The Marxist, who believes himself to be such an iconoclast for exposing the underlying economic and historical roots of ideological slogans, is in fact met with full agreement by the liberal himself. V.I. Lenin confesses as much in *State and Revolution*: "For the theory of the class struggle was created not by Marx, but by the bourgeoisie before Marx, and, generally speaking, it is acceptable to the bourgeoisie."

French liberalism developed a sophisticated form of class theory, notably by Augustin Thierry (1795-1856), who Marx himself dubbed the father of class struggle in French historiography. Thierry's *Formation and Progress of the Tiers État, or Third Estate* (1853) spoke candidly of Cardinal Richelieu, who had "for the purpose of reducing all to the same level of submission and order, he raised the royal power above the ties of family and the tie of precedent; he isolated it in its sphere as a pure idea, the living idea of the public safety and the national interest."

Thierry summarizes the ultimate historical role of the Third Estate as follows:

"Ancient rights were nothing else but ancient privileges, the restoration of them in a body under the name of liberty could not be an object of serious desire except to the two first orders; the Tiers Etat, with the exception of some old municipal liberties, which were no longer regarded with interest, had nothing to regret in the past, everything to expect from the future. It thus became in the last part of its political action the great focus, the indefatigable instrument of the new spirit, of the ideas of social justice, of equal liberty among all, and of civic fraternity. It is not here implied that this spirit, superior in its independence to the customs and interests of order and class, yet availing itself of those customs for its own purposes, and of those interests in order to render its adoption less repulsive and less restricted, should necessarily continue a stranger to **the classes whose exclusive rights, already lost in part, were condemned to perish for the general good.** If the unprivileged order was naturally disposed by its very instincts and interests to such inspirations, it could not be alone in feeling them. Wherever elevated minds and generous hearts met, there was found food to cherish what may be named the idea of modern liberality; that voice of opinion, which renovated everything in 1789, had its brilliant and sincere instruments among the nobility and clergy."

In short: prior to liberalism, right and liberty had only been a private franchise and privilege. It is only with the rise of the Third Estate and establishment of representative government that right and liberty could acquire a national and public basis for the promotion of the "general good," the same general good that obligated the destruction of the aristocracy and clergy. There had been no perfect society for the common good before liberalism, only a class society. This was his case.

It was not only Thierry saying this. François Guizot (1787-1874), the thought leader and political stalwart of 19th-century French doctrinaire liberalism, had earlier in 1828 made the same case in his *General History of Civilization in Europe*. Guizot argued that “scarcely have feudalism, municipal communities, and the clergy, each taken their distinct place and form, when we have seen them tend to approximate, unite, and form themselves into a general social system, into a national body, a national government.” Yet all attempts to establish this until liberalism had failed, i.e. “no particular system has been able to take possession of society, and to secure it, by its sway, a destiny truly public.” This failure was due to the “absence of general interests and general ideas; we have found that everything, as yet, was too special, too individual, too local; that a long and powerful process of centralization was necessary, in order that society might become at once extensive, solid, and regular, the object which it necessarily seeks to attain.”

In his *History of the Origins of Representative Government in Europe*, Guizot criticized absolutism, hereditary aristocracy and democracy on an equal footing. He said that “the principle of the sovereignty of the people starts from the supposition that each man possesses as his birthright, not merely an equal right of being governed, but an equal right of governing others. Like aristocratic governments, it connects the right to govern, not with capacity, but with birth.” In short, Guizot and many other liberals completely rejected that political rights (as opposed to civil rights) are innate birth rights, a point that has been completely lost with universal suffrage and the formation of organized political party caucuses.

For Guizot, “the true law of government is that of reason, truth, and justice, which no one possesses but which certain men are more capable than others of seeking and discovering. Faithful to this aim, representative government rests upon the disposition of actual power in proportion to the capacity to act according to reason and justice, from whence power derives its right. It is the principle which, by the admission of all, and by virtue of its simple appeal to the common sense of the community, is applicable to ordinary life, and to the interest of individuals themselves.” If this sounds similar to St. Thomas’ definition of law as “an ordinance of reason for the common good, made by him who has care of the community, and promulgated,” it is no coincidence.

This “common sense of the community” required a sphere of public opinion. Charles de Remusat (1797-1875), another prominent doctrinaire, wrote that “deliberation is what constitutes the character and excellence of representative government. From all sides, people demand and expect that the government truly become a public entity by means of a free press, common deliberation, and popular elections.” In England, publishing transcripts of parliamentary debates was long considered a breach of parliamentary privilege, with secrecy in deliberation held to be sacrosanct. This did not significantly change until the late 18th century with the publication of the Hansard (<https://en.wikipedia.org/wiki/Hansard>).

Jean-Louis de Lolme (1740-1806), a Genevan devotee of English constitutionalism, wrote in his widely publicized work *The Constitution of England* (1771) that unified executive and judicial authority under Henry II and the emergence of the king’s bench, or common law courts, was an indispensable public precondition for liberty, as opposed to the feudal polyarchy of France with its unchecked private ambition: “In France, the royal Authority was indeed inconsiderable; but this circumstance was by no means favourable to the general liberty. The Lords were every thing; and the bulk of the Nation were accounted nothing. All those wars which were made on the King, had not liberty for their object; for of this the Chiefs already enjoyed but too great a share: they were the mere effect of private ambition or caprice. The People did not engage in them as associates in the support of a cause common to all; they were dragged, blindfold and like slaves, to the standard of their Leaders.”

Rousseau, the “childless and selfish man” as Sohrab Ahmari would have it, in his *Discourse on Political Economy* underlined the necessity of patriotism for public virtue: “Do we wish men to be virtuous? Then let us begin by making them love their country: but how can they love it, if their country be nothing more to them than to strangers, and afford them nothing but what it can refuse nobody?” Not only that, but he called for the levying of “heavy taxes... on servants in livery, on equipages, rich furniture, fine clothes, on spacious courts and gardens, on public entertainments of all kinds, on useless professions, such as dancers, singers, players, and in a word, on all that multiplicity of objects of luxury, amusement and idleness, which strike the eyes of all, and can the less be hidden, as their whole purpose is to be seen, without which they would be useless.” Hardly the paragon of conspicuous consumption, Rousseau was a neo-Lacedaemonian patriarchal agrarian who scorned all forms of luxury and decadence to an extreme. His constitutional projects for Corsica and Poland display the same ethos even more strongly.

The bourgeoisie, of course, valued thrift and saving. In this regard, the gold standard and the balanced budget were the applications of the same principles of private household accounting to that great “public household,” the *oikonomia* of the state. Joseph Schumpeter referred to the gold standard as “both the badge and the guarantee of bourgeois freedom — of freedom not simply of the bourgeois interest, but of freedom in the bourgeois sense,” and this due to it being “extremely sensitive to government expenditure and even to attitudes or policies that do not involve expenditure directly, for example, to foreign policy, to certain policies of taxation, and, in general, to precisely all those policies that violate the principles of liberalism.” The level of debauchery in the present is in complete contradiction to the bourgeois ethos of sexual continence, thrift and stoic demeanor (it was the bourgeoisie’s great charge against the nobility that they were all effeminate fops who lived a life of sensual luxury, preferring hunting and banquets over diligent work). Today, female hysteria and public displays of the basest emotions are not merely tolerated but openly celebrated, it is indeed a badge of honor to scream and cry as a weapon for political gain. There is nothing “bourgeois” about any of this.

Much like the French doctrinaires, the Whig historians had a similar view of constitutional development. The term “Whig history” as coined by Butterfield has been completely butchered to the point where it is now synonymous with a universalistic view of progress. That is not at all what 19th-century Whig history was about, as I have written elsewhere. (<https://carlsbad1819.wordpress.com/2019/10/16/what-was-whig-history/>). Rather, Whig historians such as E.A. Freeman, Bishop Stubbs, Henry Hallam and Thomas Macaulay held to a deeply patriotic vision of an Anglo-Saxon germ of liberty that had always been substantially the same, but which history served only to accentuate its exterior form. This was as much a primordialist as a progressive vision, and it was specifically English, not universalist. “At once conservative and progressive — conservative because progressive, progressive because conservative” is how Freeman described England’s constitutional history. Bishop Stubbs wrote that “the Great Charter was won by men who were maintaining, not the cause of a class, as had been the case in every civil war since 1070, but *the cause of a nation*.” Macaulay wrote of 13th century England that it was the time when “the national character began to exhibit those peculiarities which it has ever since retained, and that our fathers became emphatically islanders, islanders not merely in geographical position, but in their politics, their feelings, and their manners. Then first appeared with distinctness that constitution which has ever since, through all changes, preserved its identity; that constitution of which all the other free constitutions in the world are copies, and which, in spite of some defects, deserves to be regarded as the best under which any great society has ever yet existed during many ages.” A greater ode to the English nation couldn’t be written.

This puts “individualism,” “negative rights,” “equal freedom,” “private initiative” and other such phrases that so many have grown to dread in quite a different light. In fact, the doctrine of negative rights has a lot more expansive implications than most people aware of. The legal maxim *sic utere tuo ut alienum non laedas* has a long pedigree (<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2418&context=clr>) dating to medieval law and was as much a principle of facilitative power for the removal of obstacles as it was a simple negative constraint. Suffice to say, there was nothing contradictory in advocating the principle that government exists to protect the fullest enjoyment of rights so far as they do not infringe on the rights of others, alongside a state with extensive regulatory and police powers. This was not some paradox of liberalism, but a necessary consequence: the argument went that the rise of civilization, public opinion and national unity throughout the centuries had inculcated ever more sophisticated moral sentiments among individuals, and a greater capacity for restraint. It was the French ultra-royalist Pierre-Sebastien Laurentie himself who said that “Morality is not the gendarme, but rather what makes the gendarme useless.” The defense of property entails a highly developed legal system to cover torts, nuisances and damages which are capable of regulating public morality, and insuring public health. Liberals did not get rid of the absolutist *Polizeistaat* and its commitment to public order, but rather reconstructed it to ensure basic rights, due process, subjection to legislative oversight, and so on. Still less did any of it mean “moral neutrality.” The bourgeois-liberal order was heavily grounded on *mos maiorum* and force of custom, a.k.a. “the law of the land.” In this way, the guarantee of negative rights (freedom from) opens up positive rights (freedom to) by regulating all those obstacles to equitable enjoyment of property and fulfillment of contract. The two poles of negative and positive liberty have never been strictly separate in practice.

That all this reflects an old pre-liberal European instinct can be gleaned, e.g. from this citation of the *Coutumes de Beauvaisis*, an eminent 13th-century work of French customary law:

In the kingdom of France no one except the king can make a town into a commune for the first time, because all innovations are forbidden. And if the king wants to make some {communes}, or has made some, it must be contained in the charter of freedoms [franchises] that he gives them, that the rights of religious houses and lords [chevaliers] are preserved, for he cannot and should not {create communes} by doing harm to religious houses or reducing the rights of lords.

When we say that all innovations are forbidden, this means the innovations which are made against the rights of others, for no one is must be contained in the charter of freedoms [franchises] that he gives reservoir [vivier] or some other thing in a place where there never had been any. But this means it may not be against the rights of others. And in some must be contained in the charter of freedoms [franchises] that he gives without the innovation being forbidden [ostee] for that reason: for example if I construct a mill on my land where I can and should, and my neighbor’s mill diminishes in value because fewer people go there than before, or since I give a better price for milling than he does; because of such losses my mill will not be torn down, since it is for the good of all [li comunns pourfis] that each person may better himself [fere son preu] and improve his property without doing harm to anyone else.

Individual (civil) rights are simply the obverse of community. It is no coincidence that the French *société* refers to a firm or corporation. The German “Volksgenosse” (people’s comrade) that would go on to become infamous, is rooted in Genossenschaft, i.e. a cooperative. Specifically it harkens back to the *Markgenossenschaft*, which were effectively cooperatives of agricultural tenants subject to common jurisdiction of a bailiff with joint (not to be confused with collective) ownership of land. The “gemeine Mark,” the commons, included the forest, parts of the meadows, the paths as well as bodies of water and their banks. This not fundamentally different from any traditional community with open-field

agriculture. Any kind of jurisdiction implies writs, assizes and actions for defendants to assert rights claims in a sphere of judicially arbitrated law. So that Henry de Bracton in the 13th century wrote of *iustitia*, that “the just man has the will to give to each his right, and thus that will is called justice. His will to give each his right refers to what is intended not to what is done, as the emperor is called Augustus not because he always augments his empire but because it is his intention to do so [and] as matrimony is said to be an inseparable conjoining because the parties intend never to be separated though they may afterwards be separated for just cause.” The clear emphasis on intention means that a concept of subjective right already existed by then. For *ius*, Bracton goes on that “Jus is sometimes used for an action, sometimes for an obligation, sometimes for an inheritance, as for the proprietas of a thing, sometimes for the possession of goods. Sometimes it signifies potestas, as when it is said ‘He is sui juris.’”

Milbank and Pabst, however, show their true colors in “The Politics of Virtue” when they speak of their “post-liberal alternative”:

As we also saw, those nineteenth-century liberals who tried to transform liberalism in a more organicist direction, were, in reality, producing a hybrid theory that was no longer pure liberalism. Rather, it drew upon some form of ‘organic pluralism’ on which contemporary post-liberalism builds... Liberalism so inspired, as with aspects of W.E. Gladstone and the more theologically orthodox drift of mainline Victorian Protestant dissent (as compared with the eighteenth century), denoted not religious or philosophical ‘indifference’, nor the revolutionary ‘rights of man’. Rather, it denoted charitable humanitarianism, constitutionalism, the rule of equitable law, and the deepening and widening of ancient civil liberties (in a manner that could, as with Gladstone, sometimes blend variously whig and tory legacies). This liberalism, which is still liberal in the root sense of ‘generous’, post-liberals fully endorse and sustain. That which genuinely challenges liberalism is a truer ‘liberality’, which supposes that societies are more fundamentally bound together by mutual generosity than by contract – this being a thesis anciently investigated by Seneca in his *De Beneficiis*, and in modernity again reinstated by Marcel Mauss.

Much to the surprise of no one who was paying attention for more than 15 minutes, post-liberalism is simply liberalism. Alas, actually existing post-liberalism has outrun the post-liberal theoreticians themselves by now, such that we no longer have the “constitutionalism, rule of equitable law, and the deepening and widening of ancient civil liberties” that Milbank and Pabst hold up as values. I should also add that the dichotomy between “gift economy” and “exchange economy” relied upon in the paragraph above is overstated; it is a monetary exchange economy and rules of contract that allows for credits and debts to settled simultaneously in a spot market with an exact agreed upon numeraire of value; a culture of relying primarily on reciprocity of the gift effectively ends up in what the Russians call *blat*, with the dagger of uncertain future debts to your “creditor” always hanging above you as he starts “charitably” giving you things as a show of dominance over you, the ungrateful client.

However, to the extent that post-liberals acknowledge the at least partially “post-liberal” nature of New Liberalism, welfarist “social citizenship,” social democracy and the like, this is good for my argument. Because history did not stop with Locke and Rousseau, and indeed these men are scarcely important to what ended up happening in the 20th century. Let me draw a few examples, but first, on Milbank and Prabst again, and their identification of what forms the unified core of all liberalism:

This unity pivots about the primacy of the individual. Always allied to this primacy is the replacing of notions of substantive goodness or truth with the ultimacy of subjective rights, subjectively and voluntaristically grounded; the substitution of formal social contract for prescribed, substantial unity and the privileging of progress (towards negative liberty) and ‘laws of history’ (entailing the necessary ‘rationality’ and, therefore, logical necessity of this progress) over tradition and contingency.

As we have seen, the doctrine of the social contract was by no means essential to many liberals advocating a regime of subjective rights grounded on purported historical laws of development. Actually, I should go further: there is nothing essentially liberal about the social contract at all. Social contractualism holds that political authority emerges as a conventional pact that marks the exit from a non-social natural state to a civil state protected by law. In some variants, men abrogate prior existing rights when entering the civil state (and contrary to popular belief, Locke was in fact one of them, if not as harsh as Hobbes), and in others they retain them. It was Samuel von Pufendorf who developed a three-stage contract theory that would become standard in German jurisprudence: a *pactum unionis* to leave the state of nature, a *pactum ordinationis* to determine the form of government, and a *pactum subiectionis* to declare submission to the ruler.

The social contract is an artifact of Roman law, and the later reception of Roman law by the medieval glossators. The Institutes of Justinian mention that “what the Emperor determines has the force of a statute, the people having conferred on him all their authority and power by the ‘lex regia,’ which was passed concerning his office and authority.” Later, as described by Daniel Lee in *Popular Sovereignty in Early Modern Constitutional Thought*: “In his gloss on a central passage in the Digestum Vetus, Irnerius (c.1050–c.1130), the “Father of the Glossators,” explains that the Roman people may have had the power to make and unmake law at one time in Antiquity, but they had fully lost that capacity in his day “because such power has already been transferred [translata] to the Emperor.” Thus, what the Digest says (D.1.3.32) concerning the residual ability of the people to ‘abrogate’ [abrogentur] a law simply by the ‘tacit consent of all the people through desuetude’ [tacito consensu omnium per desuetudinem] was no longer valid and, thus, should be treated merely as a curious historical artifact of pre-Imperial Rome [sua tempora]. Irnerius’ position on the lex regia as a complete and irrevocable transfer became the standard doctrine for later Glossators. Placentinus (d.1192), who studied at Bologna and later taught civil law at Montpellier, likewise in his Summa Institutionum denies any residual lawmaking power in the people because, as he writes, ‘the people, in transferring [transferendo] their public power to the Emperor, reserved nothing for themselves.’”

Philosophes didn’t pull any of this out of their own imagination; they weren’t that creative. Their doctrines on the origins of states were those of the civil law that their ancestors had imbibed for so long. The notion that all state officials are publicly recallable in turn derives from the *lex curiata de imperio* through which the curiate assembly conferred *imperium*, and which under the influence of the medieval *ius commune* went from a particular law of the Romans to a universal archetype of political authority.

The other great legacy of liberalism was to elevate the nation to such a preeminent stage that henceforth all dynastic claims of authority became *ipso facto* illegitimate, and not only that but to expand the political nation beyond lords and commons, beyond spiritual and temporal barons, beyond estates, beyond the nobility of the sword, to all men of a given territory. And to elevate all men into responsible nationhood entailed what has been called the “bourgeois civilizing offensive,” as in the Netherlands in the 19th century. (<https://quod.lib.umich.edu/h/humfig/11217607.0004.102/--dutch-bourgeois-civilising-offensive-in-the-nineteenth?rgn=main;view=fulltext>). This involved all sorts of community initiatives to instill moral virtues, including punctuality, as when “one Protestant minister, Ottho Gerhard Heldring,

used to visit his parishioners in the 1830s and saw to it that they learned to use the clock he gave them in order to instill timekeeping discipline. In that way they themselves could see to it that they did not waste their time, but used it in as frugally and organised a fashion as possible." This also included sending children to school, advising people not to drink to excess, and to avoid gambling. These were all initiatives founded on securing the public good and to elevate the standard of morality, and not on the "primacy of the individual" above all else.

Milbank and Prabst go on to say that of those liberals "who tried bravely to channel liberalism in a more organicist direction," that they were "either proffering incoherence, or else producing a hybrid theory, which was no longer exclusively or even predominantly liberal, since they sought in effect to blend formal with substantive freedom." If a commitment to substantive freedom is antithetical to liberalism, then liberalism no longer exists, and in fact it probably never has.

In any case, it is correct to point out that liberalism and democracy are not the same. When census suffrage was loosened into universal suffrage, the democratic impulse to conflate political rights with civil rights spelled a grim future for liberalism. Albert Venn Dicey, the greatest English exponent of parliamentary sovereignty and the rule of law, was strongly critical of women's suffrage for this reason. Organized political parties courting massive electoral constituencies destroyed the elitist and club-like nature of elections under a limited suffrage regime with property qualifications for voting, paving the way for electoral canvassing, getting out the vote, lavish campaigns, and the dilution of the representative principle which was not originally meant to simply act as a proxy for the people at large, but to select those parts of the nation with the greatest talent. Democracy will always eat liberalism in the end if not checked, and so it did. Democracy is writing who you want to proscribe on the pottery shard, liberalism is procedural due process. Radicalism and socialism were the enemies of the old liberals, who ended up paying their just desserts as they preached the sanctity of private property while expropriating the aristocracy, clergy and monarchy. Alas, we too are debtors of those past transgressions, and we're paying with interest.

What happened since Herbert Spencer kicked the bucket? Walter Weyl (1873-1919), American progressive intellectual leader and co-editor of *The New Republic* from 1914 to 1916, penned his manifesto *The New Democracy* in 1912. It heralded the rise of a new spirit. This would be a "new spirit [which is] is social. Its base is broad. It involves common action and a common lot. It emphasizes social rather than private ethics, social rather than individual responsibility." The "overlordship of the public over property and rights formerly held to be private" was to be emphasized. The inner soul of this new democracy is explicitly "not the unalienable rights, negatively and individualistically interpreted." Conventional liberal rights are rejected as useless: "The right of habeas corpus, the right to bear arms, the rights of free speech and free press could not secure a job to the gray-haired citizen, could not protect him against low wages or high prices, could not save him from a jail sentence for the crime of having no visible means of support." Therefore, "no democracy is possible in America except a socialized democracy, which conceives of society as a whole and not as a more or less adventitious assemblage of myriads of individuals." Weyl also rejects "consent of the governed" and "no taxation without representation" as slogans that are respectively destructive of social order and cover for domination by a property-owning elite. Herbert Croly (1869-1930), progressive stalwart, rejected rights-talk in his *Promise of American Life* (1909): "The traditional democratic system of ideas provided fanatical activity on the part of the Abolitionists as defenders of "natural rights," a kindred fanaticism in the Southerners as the defenders of legal rights, and moral indifference and lethargy on the part of the Northern Democrat for the benefit of his own local interest."

Perhaps the strongest attack on rights came from Lester Frank Ward (1841-1913), pioneering American sociologist and sworn enemy of Herbert Spencer's social statics, who flat out reduced government to force in his *Dynamic Sociology*, so strongly did he hate negative rights liberalism that he became the progressive Thrasymachus: "The so-called 'abstract rights' of mankind must be denied if society is ever to become the arbiter of its own destiny – in theory, that is, for it is impossible that the real enjoyment of liberty should be thereby in the least diminished, while the sum of human happiness must be greatly increased, and this is the only conceivable object of any right. All the prevailing theories of human rights are but ideal conceptions which not only have never yet been realized, but in the nature of things never can be. In point of fact, all things are now and always have been governed by force, and all the attempts to disguise it under the color of abstract right have only served to make it easier for the unscrupulous to accomplish their personal aggrandizement. Government has always wielded an iron scepter, which the forms of law have only rendered the more inexorable. The most complete recognition of the right of force in human society – the only rule known to the rest of the sentient world, and the only one ever acted upon by mankind – could by no possibility render matters, worse than they are. But this recognition would put it in the power of the controlling authorities in society to introduce progressive elements into government, and make the coercion which is now so fruitless a positive and increasing future benefit. Under the negative system of government which has prevailed thus far, the world naturally looks round and asks what return it has received in exchange for all this sacrifice, and it is no wonder that many insist that the account is against government, and would gladly dissolve the partnership and annul the 'social compact.'"

Evidently, it is the bitter hatred of Lockean liberalism that reduces one to nominalism and voluntarism, after all.

Woodrow Wilson, in his 1887 study of administration, acknowledged the necessity to clamp down on popular rule if his vision of good and orderly government were to take hold, writing that "the bulk of mankind is rigidly unphilosophical, and nowadays the bulk of mankind votes. A truth must become not only plain but also commonplace before it will be seen by the people who go to their work very early in the morning; and not to act upon it must involve great and pinching inconveniences before these same people will make up their minds to act upon it." Even more starkly, that "the very fact that we have realized popular rule in its fullness has made the task of organizing that rule just so much the more difficult. In order to make any advance at all we must instruct and persuade a multitudinous monarch called public opinion, a much less feasible undertaking than to influence a single monarch called a king." (Not only is liberalism dead, but neoreaction is obsolete, as well.)

Frank J. Goodnow (1859-1939), pioneer of administrative law in the United States and close associate of Wilson, rejected the doctrine of separation of powers in *The principles of the administrative law of the United States* (1905), giving three reasons: "In the first place, it is impossible to arrive at clear definitions of legislative, executive, and judicial power in accordance with which specific powers, which it is desirable should be exercised, may be unquestionably denominated as legislative, executive, or judicial. In the second place, it is inexpedient to confine the exercise of what is unquestionably legislative power to one governmental authority. Thus it is often highly desirable that the courts shall have the power to make law through their power of declaring, in their decisions, what is often spoken of as the unwritten law. Thus often it is desirable that the executive authorities shall have the power, through the issue of what are known as ordinances or regulations, either to supplement existing statutes or lay down the law as to details not regulated by such statutes. Finally, as political systems develop, the authorities of government become differentiated. To each of these differentiated authorities it is attempted to entrust

some portion of one of what may be called the primary functions of government. Thus the expression of the will of the state on certain subjects may be entrusted to a constitutional convention and not to the legislature."

In our time, public administration textbooks (such as that by Shafritz and Russell) boldly declare that "social equity today does not have to be so much fought for by young radicals as administered by managers of all ages." How true. And how it implies a notion of substantial freedom guided by a vision of the common good. Well, I should rather say the common bad, but what do post-liberals care — it's the presence of "thick" values in one's freedom that counts. In 1948, Dwight Waldo, another major scholar of public administration, declared the watchwords of the time to be "cause, reaction, scientific, expert, efficient, progress," as opposed to the older keywords of "reason, nature and rights." This still holds true.

Lastly, I should draw attention to a certain Mary Parker Follett (1868-1933), who is an important name in management consultancy, organizational theory and other such managerial pseudosciences. Moreover, she served as a consultant to Theodore Roosevelt. Her book *The New State* (1918) is the best distillation of the managerial-functionalist approach to the state that would become central to our post-liberal order, eclipsing the older bourgeois-liberal anthropological orientation. Follett states that "liberty is not measured by the number of restraints we do not have, but by the number of spontaneous activities we do have." For her, the free man "is he who actualizes the will of the whole." Democracy, so dear to her, is not simply the extension of suffrage, but "it is a drawing together; it is the imperative call for the lacking parts of self." Democracy is the "organizing of men which makes most sure, most perfect, the bringing forth of the common idea." The function of government should be "to build, to construct the life of its people. We think now that a constructive social policy is more democratic than the protection of men in their individual rights and property." What is also interesting historically is she acknowledges the influence of New Liberalism at the time, how "partly through the influence of [T.H.] Green and [Bernard] Bosanquet, the idea of contract has been slowly fading away."

But most fascinating about Follett is her open appeal to organizational theory and to a "systems" approach of political thinking, a distinctly modernist and yet post-liberal phenomenon. For Follett, democracy is inseparable from group psychology. Scarcely any traditional liberal conceptions are to be found, a triumph of what Panagiotis Kondylis called the "analytical-combinatory" mindset, as opposed to the "synthetic-harmonizing" approach of old liberalism. Follett says: "Even now so far as a majority has power it is not by the brute force of numbers; it is because there has been a certain amount of unifying; it has real power directly in proportion to the amount of unifying. The composition of a political majority depends at present partly on inheritance and environment (which includes sentiment and prejudice), partly on the mass-induced idea (the spread of thought and feeling throughout a community by suggestion), and partly on some degree of integration of the different ideas and the different forces of that particular society. Its power is in proportion to the amount of this integration."

Ergo, there was absolutely an attempt at building "prescribed, substantial unity" *ex novo* — though the notion that this didn't exist in the bourgeois-liberal epoch is simply false, and the cruel irony of the whole situation is that the moral backbone of society has been eroded precisely by people who eagerly wanted to replace the deficiencies of "individualistic negative-rights liberalism" and its freedom of contract. It was the liberals who respected tradition and contingency, their successors not so much. The idea of progress, to the extent that it really is such a crucial motivating factor these days, is directed toward positive liberty. But it is in the subsequent chapter that I will address this more thoroughly.

I now turn to the juridical aspect.

II. Juridical nature of liberalism

As I stated at the beginning, arguing about the philosophical foundations of liberalism in terms of its ontology or anthropology is often a fruitless endeavor because of how elusive the concept is. In terms of jurisprudence, however, liberalism has a clearer meaning, and it is here that it left its greatest mark. The rough definition as mentioned earlier is “representative constitutional government under the rule of law.” I should begin by describing what the “rule of law” really is, and then ask why was this once a revolutionary demand and so widely desired?

“Rule of law” is an English term, and the main authority on said concept is Albert Venn Dicey (1835-1922), who heralded it as a singularly English achievement (by extension to former colonies). But it is transferable to other countries. The idea of the *Rechtsstaat* (lit. “rights-state,” or legal state), championed by jurists such as Robert von Mohl (1799-1875) and Otto Bähr (1817-1895) is the one that had the widest influence on the continent.

For Dicey, the rule of law, as treated in *Introduction to the Study of the Law of the Constitution*, includes “the idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary Courts” taken to its utmost limit. It succeeds that stage of development “when nobles, priests, and others could defy the law.” No benefit of clergy, no patrimonial courts, no judicial immunities. In another sense, the English constitution “is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts,” i.e. common law, case-driven law. Further, this implies the “absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else. It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts.” Thus, this means a significant reduction in the preponderance of discretionary executive power.

No arbitrariness effectively means no bills of attainder, lettres de cachet, proscriptions, star chambers, Vehmgerichte and the like — i.e. no deprivation of rights without a hearing, and no secret hearings without the presence of the defendant. The various constitutional aspects governed by the rule of law include the right to personal freedom; the right to freedom of discussion; the right of public meeting; the rights and duties of the army; the collection and expenditure of the public revenue; and the responsibility of Ministers.

The comments that Dicey makes on free speech are worthy of consideration. The contrast between England and France at the time, he says, is that English law does not concern itself with the management or regulation of public opinion *as such*. This in no way means that blasphemy, seditious libel, defamation and like are (or anyway have to be) legal. Rather, it means there is no *proactive* attempt to regulate opinion beyond the standards of liability established by common law. A man does not have to obtain imprimatur for publishing, but he is still fully responsible for what he publishes.

Most pertinently of all, according to Dicey administrative law is antithetical to the rule of law: “The notion which lies at the bottom of the ‘administrative law’ known to foreign countries is, that affairs or disputes in which the government or its servants are concerned are beyond the sphere of the civil Courts and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs.”

In the preface to one of his last editions of his work, he was already bemoaning the emergence of quasi-judicial bodies: “Recent Acts have given judicial or quasi-judicial authority to officials who stand more or less in connection with, and therefore may be influenced by, the government of the day, and hence have in some cases excluded, and in others indirectly diminished, the authority of the law Courts. This tendency to diminish the sphere of the rule of law is shown, for instance, in the judicial powers conferred upon the Education Commissioners by the Education Act, 1902 on various officials by the National Insurance Acts, 1911 and 1913, and on the Commissioners of Inland Revenue and other officials by the Finance Act, 1910.”

Things aren’t looking good for the rule of law to say the least, but before we dig deeper, let’s also look at the *Rechtsstaat*.

In *Der Rechtsstaat. Eine publicistische Skizze* (1864), Otto Bähr says that *Rechtsstaat* is “the watchword and in truth it is also the drive for development in modern times. It should precisely determine the paths and limits of its effectiveness as well as the free sphere of its citizens in the manner of law and secure it inviolably... This is the concept of the constitutional state, not that the state merely handles the legal system without administrative purposes, or merely protects the rights of the individual.” From the get-go, a mere commitment to protection of negative rights alone is ruled out. Neither is the importance of public morality ignored, since “the law surrounds people with a spiritual barrier. Within this limit lies an area in which he is allowed to act freely and develop his human existence, restricted by no other command than the interior of morality. Right is therefore identical with freedom. But it’s not absolute freedom. That spiritual barrier that prevents the one from interfering with the other in his freedom should at the same time be a defense for himself, which prevents him from intervening in that area in which the other may claim equal freedom. Right is the relative freedom of all in relation to one another.” At first glance this may seem to just be the law of equal liberty, but in fact it does not exclude extensive use of police power to positively expand the sphere of right.

Bähr assigns a wide latitude to judicial interpretation, writing that “in most cases [law’s] concrete application requires a peculiar way of inquiring into its meaning and thought (interpretation). A still higher, more difficult task falls to the judge, where there is a total lack of a law, and where, therefore, when the activity of the lawgiver approaches him, the task of determining the legal rule to be applied only from the legal idea living in the facts comes to him as a matter of form.” Moreover, the executive could well be a prince ruling by his own birthright, but what is important is “that the regent, when exercising state power, is bound in a certain way to the cooperation of his own subjects. In so far as this is the case, the independent will of the subjects forms a power in the state which the prince is legally unable to transgress.” He cites the moderate Prussian conservative Friedrich Julius Stahl on the “independence of the courts from the sovereign is the first guarantee of true impartial justice, the basis of all justice,” since “it is not the spirit and personality of the ruler who... freely decides, who may decide, but only the law, unchangeably the same,” i.e. rules and not discretion.

But while this sounds like formalism so far, Bähr continues to liken the state to a cooperative (*Genossenschaft*), and not simply as a mutual defense pact for securing rights:

“If we now think of the individual rights flowing from this area of law, not as an aggregate of individual rights, but as a unitary mediation through an idea elevated to a legal factor, cooperative law comes to full development. When the “corporation” is thought to be something different from the individual members within it; If one compares them to a minor, but the persons appointed to represent them with guardians, then it is quite correct to describe the separation of the cooperative interests from the individual interests of the members of the cooperative and the connection of those to an overall interest, which those appointed to represent them should feel and behave not only as individuals, but as members of a larger whole. But it is incorrect if one does this as if this whole thing no longer concerns the individual. The cooperative is only ideally, not really, different from the sum of its individual members. The personality of the former is nothing more than a discarded piece of the personality of the legends. The interests of the former are the united interests of the latter, but in such a way that these interests are not merely outwardly strung together, but inwardly fused and raised to a unity...

We have presented the nature of the cooperative and of cooperative law in a little more detail in order to be properly understood when we say: the state is the legally developed term for the cooperative of the nation; and constitutional law is nothing more than a kind of cooperative law. To be sure, the state is the largest, most important, and most complex cooperative; and therefore it may be justified to treat “constitutional law” as a special legal discipline. But it is based on too narrow a perspective when one converts constitutional law into an exclusive and absolute antithesis between “public law” and “private law.””

Ergo, there is no conflict between holism and individualism, they are seen as mirror images and ultimately the state is the “cooperative of the nation.”

Robert von Mohl contrasts the *Rechtsstaat* to the *Polizeistaat*, and we will get to the latter in a bit. Mohl is especially concerned with the hierarchy of norms. Legislative acts should not be confounded with executive ordinances and provisions, and instead the latter should be refinements of the basic norms set by the former. This necessarily implies a division of powers and a coherent procedural machinery of state. In Mohl’s words, “every state has subjects, but only that governed by the rule of law has citizens.” Civil rights and political rights are differentiated; the latter need not be extended to all. Equality of civil rights and burdens among social classes is a must. Freedom of association is to be protected, as well as the right of action against servants of the state who infringe on civil rights. Neither does he limit the state to the protection of negative rights, as “there are innumerable threads in which the individual is hindered in his rational activity by overpowering external obstacles, and in which he therefore demands the help of the state.” Nor does he see man as a materialistic utility maximizer, but as a union of body and soul with a moral purpose: “Each individual lays down, in his dual quality as sensual-spiritual being attaches great importance to himself, demands to dispose of himself, and find his happiness. The only restrictions that he must admit as a sensible being are that he cannot do anything that would be irrational in that it would be contrary to his dignity and nature, and, secondly, that in his expressions of strength he does not violate any other person’s rights, because otherwise living together would not be possible.” Clearly, a whole host of socially subversive activities can be justly prohibited if they are “contrary to [one’s] dignity and nature.”

What was the *Polizeistaat*, however? It literally translates to “policy state,” and does not mean “police state” in the modern sense. *Polizei* and its numerous variations including “gute Polizey,” was a commitment to public order, regulation of morals, health, sanitation, vagrancy and so on. These began as police ordinances promulgated by the free cities from the 15th century onward to regulate dress, ensure religious conformance, put beggars to work, insure against house fires, inspect the quality of beer, etc.

This usage survives to this day in American constitutional law as “police power,” which is defined as “the permissible scope of federal or state legislation so far as it may affect the rights of an individual when those rights conflict with the promotion and maintenance of the health, safety, morals, and general welfare of the public.”

In 1802, Guenther von Berg defined *Polizei* “like a well-intentioned genius who carefully levels the way for those committed to his care; cleans the air that they breathe; secures the villages and holdings in which they dwell, and the streets along which they walk; protects the fields that they cultivate, secures their homes against fire and flood, and they themselves against illness, poverty, ignorance, superstition and immorality; who, even if he cannot prevent all accidents, seeks however to diminish and ease their consequences, and offers refuge in time of need to every pauper, casualty or person in need. Its watchful eye is ubiquitous; its helping hand is ever-ready, and we are invisibly surrounded by its unceasing care.”

This differs from the modern welfare state in several ways, however. Firstly, there is no right to social assistance as such, rather it is a duty of municipal corporations to provide labor for the destitute in the interests of public safety, and moreover this fusion of welfare and police power, absent in today’s welfare states where the closest we have is means testing, means that recipients of poor relief necessarily have their legal status reduced in their capacity as dependents. The *Polizeistaat* did not coddle the poor and the homeless, it put them to work by force if need be, or even expelled them from its (district) boundaries if it could not afford to maintain them. It certainly did not subsidize promiscuity and single parenthood, nor illegitimate children. *Polizei* could be exercised variously by princes, bishops, cities, knighthoods, guilds and so on. We would call it executive power today, but it was really inherent in jurisdiction conferred by any kind of proprietary interest in land, or by the power of corporations to regulate their affairs through bylaws. One expels a vagrant or inspects food as much as one punishes any other kind of territorial boundary violation, as a damage or nuisance to one’s land that incurs liability. Blackstone thus defined the king’s responsibility for “public peace and oeconomy” as including “the due regulation and domestic order of the kingdom: whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious, and inoffensive in their respective stations.” The shortest definition of *Polizei* is that it means setting one’s household straight. Importantly, this power was discretionary, and not a matter of normative rules.

Polizei later became part of cameralism, a wide-ranging “science” of territorial administration that encompassed everything from finances, public order, agricultural improvement, population policy, trade, etc. Joseph von Sonnenfels (1732-1817) defined the various headings of cameralism: “*Polizeiwissenschaft* is concerned with the principles according to which internal security is founded and maintained. *Handlungswissenschaft* is the teaching concerned with the multiplication of the means of subsistence through the most advantageous use of what the earth and labor can produce. Finally *Finanzwissenschaft* shows the most advantageous manner in which the revenues of the state should be raised. German writers define *Polizei*, *Handlung* and *Finanz* also under the heading *Staatswirthschaft* or call them the *oeconomic sciences*. The last two are also referred to as the *Kameralwissenschaften*, from the *Kammer* of the rulers from where the affairs which they are concerned with are customarily administered.” In the 18th century Elector Frederick Christian of Saxony would say that “the wealth of his subjects, the public credit and a good standing army constitute the true happiness of a prince.”

However, cameralism marked an important semantic shift in *Polizei*, as it went from being the prerogative of a territorial ruler to maintain ‘police and good order’ in his lands, to an expansive *carte blanche* for proactive social engineering. This development is described by Roland Axtmann

(<http://instytucjonalizm.uw.edu.pl/wp-content/uploads/sites/75/2016/02/Police-and-the-Formation-of-the-Modern-State.-Leg.pdf>):

Since the late seventeenth century, natural law theorists contributed to a new conceptualization of 'police'. 'Police' was now thought to be concerned with promoting the public good, the happiness, or even bliss (Glückseligkeit) of the population: since the mid-seventeenth century the purpose of the state was seen, both by the rulers themselves and by the majority of the natural law theorists, as going beyond the confines of preserving pax et iustitia and comprising the task of actively promoting the secular and material welfare of the state and the population. Salus publica and felicitas beatitudo civitatis replaced pax et iustitia as the primary definition of the 'state-objective' (Staatszweck). Not the 'reformation' of a destabilized 'good old order', but the creation and formation of a new order based on reason and rationality were now thought to be the ruler's task.

In Christian Wolff's rationalistic natural law theory, *societas civilis*, which was thought to have been established through a social contract and to be identical with the 'state', was 'a means to promote the common weal [gemeine Wohlfahrt]'. The contractual relationship between sovereign authority and its subjects comprised the promise by the ruler 'to muster all his powers and diligence to devise those means beneficial to the promotion of the common weal and security and to make all necessary preparations for their deployment'. The subjects, on the other hand, promised 'to consent and accede to any given instructions which are considered by the ruler to be beneficial to them'."

"Justi defined policey as the 'science to organize the internal constitution of the state in such a way that the welfare of individual families should constantly be in a precise connection with the common good [dem allgemeinen Besten]'. Police was thought of as an activity aimed at mediating between the happiness of the individual (family) and that of the state. Justi thus rejected the idea of a coalescence of private and public interests. The recognition of private interests led to the idea of a sphere of civil liberties which remained outside the reach of the state. Justi argued that 'as long as the citizens are obliged to obey only those laws that had been enacted for the common happiness, they are in fact free. This is the essential characteristic of the civil liberty [bürgerliche Freiheit]."

"Putter in 1770 epitomized the new departure in the thinking about police when he conceived police as 'cura auerrendi mala furura'. Not the promotion of the common good, but 'the concern for averting the ills to come' would increasingly define the task of the police. It was this redefinition of police which shifted the meaning of police as the synonym of good government and public order to a conceptualization of the police as an organizational force charged with maintaining public order and safety and with preventing and investigating unlawful activity."

In other words, we went from peace and order to the "common good," exactly as our dear integralists would like it. Thus cameralism would merge with enlightened absolutism and become a vehicle for revolution from above. A prime example is that of Jakob Friedrich von Bielfeld (1717-1770), advisor to Frederick the Great. In 1760 he wrote a widely read treatise on the decline of states, and among these causes he included "excessive religiosity," saying that "as much as it is necessary for the good of the state for religion and a solid piety to prevail in the nation, it is fatal if the state allows it to become too ascendant. **A people of devotees, of whatever religion, would be a people both ridiculous and feeble.** The reasons for this are so palpable that they require no elaboration. External devotion too easily leads to enthusiasm, to superstition, to fanaticism, to idleness, to indolence, to a disregard for worldly matters which is so harmful to the progress of the arts, talents and commerce."

And so, for the “common good,” monasteries were closed, estates were broken up, serfs “liberated” to become paupers, guilds suppressed, the death penalty abolished, crushing income taxes imposed, and so forth.

The greatest observer of this tendency was the Swiss jurist and political philosopher Karl Ludwig von Haller (1768-1854), the restorer of political science (<https://carlsbad1819.wordpress.com/2021/08/25/karl-ludwig-von-haller-his-life-and-work/>) and vanguard of counterrevolution. As society was becoming rationalized and natural inequalities progressively liquidated to create a state of “civil society” founded on a “social compact,” this was to abolish all of these small private jurisdictions and liberties of male householders, municipal corporations, etc. Moreover, as kings began naming themselves “first servants of the state,” Haller traced the consequences of this very aptly. Effectively they had rebranded themselves into republican magistrates and implicitly surrendered their birthright, making them no longer the fount of justice, but cogs in an administrative machine that could be dispensed with altogether:

It will result from these false locutions that, on the one hand, the sovereign will be contradicted and criticized in any use of his income, on the pretext that he is disposing of the people’s money; and that on the other, we will no longer believe that we owe him any attachment, any feeling of gratitude, not even for special favors and graces, because one no longer considers them as benefits coming from his own person, but as debts of the state. Finally, do not address the servants and subjects of a prince as citizens, much less, as was done in France during the revolution, and since then in Russia, as children of the fatherland, etc.; but on the contrary one must use the term specific to their social position, or rather, as was done in the past, enumerate in the preamble of each edict the various classes of subjects, so that each recognizes the relationship in which he finds himself with the prince, and knows why and to what extent he is bound to obey his orders. The word for citizen is applicable only in republics, and even then it is only appropriate those who are members of the sovereign city, not to residents or simple inhabitants. In a principality, on the contrary, this term is quite inappropriate, because it supposes that the subjects form among themselves a sovereign community, and are the fellow citizens or the associates of the prince, having equal rights to his existence, to his possessions and to all that derives from it. That if therefore the sovereigns tolerate that in edicts and ordinances which bear their name, their subjects are called citizens, and the king only a public official, or at most the head of state, much like the mayor of a city is the head of this community: it is obvious that thereby they accredit themselves the misconception that the subjects are above the prince, which completely destroys the respect that was shown to him, by making the servants the masters, and the master the servant. We have thought it necessary to enter into some details on the danger of this false language, either because this observation is very important in our day, or because it proves the incredible influence which revolutionary principles have usurped in our modern states. Even in countries where the revolutionary system has not been put into practice, we have at least managed to introduce this language to pervert all principles, distort the most fundamental notions, and subversively undermine the foundations of the sovereign princes’ existence.”

On a similar note, in opposition to “civil liberty” [buergerliche Freiheit], the German conservative party leader Philipp von Nathasius-Ludom (1842-1900) called for “a strong monarchical principle combined in a harmonious and mutually dependent manner with well-developed class freedoms [ständische Freiheiten]” in his platform. Not as equal subjects of the ‘political community’ so-called, but as orders and stations in the body politic. “If the monarchical basis of the covenant was lost, the Kaiser, by the grace of God, would also become the first official of the Reich who, at best, with the help of the army, would defend Caesarism against the reluctant democratic elements of the dissolved Reich,” he wrote.

Thus, there were two broad paths of dealing with this revolutionary development: the restoration, championed by Haller, meaning a return to the patrimonial state founded on the unconditional personal freedom of a territorial lord, his domains and proprietary rights, and his unequal pacts with different social classes of his subjects. Alternatively, in a republic, that of an independent corporation and its territorial authority over non-citizen residents who would have no political rights, but at the same time in return would not be expected to pay extraordinary taxes or be conscripted into military service. The other option, was liberalism.

Centuries of royal police power had certainly raised the moral standard of many of their subjects. These free moral agents, these loyal subjects, however, began to dread all of this discretionary judicial authority and so began calling for written constitutions, independent judiciaries, free assembly, classless representation, etc. Moreover, it was surely “irrational” that an “unproductive” warrior aristocrat should be tax-exempt, or that a priest should be tried in an ecclesiastical court separate from a general court of law.

Perhaps the best way to illustrate this is by an anecdote recollected by the Russian conservative publicist Mikhail Katkov (1818-1887) in an article titled “Гражданская свобода и политическая свобода” [Civil liberty and political liberty (http://az.lib.ru/k/katkow_m_n/text_1884_grazhd_svoboda.shtml), 1884]:

“We recall a case that happened several years later after the introduction of new judicial regulations. One of the senators in the Court of Civil Cassation made an inappropriate speech in the zemstvo or city assembly, which made a painful impression on the Tsar. His Majesty found it impossible to leave in the rank of senator a person who publicly spoke out inappropriate to his rank, and ordered his dismissal. Frightened in his innocence, the minister, stammering, remarked that by the force of the law it was impossible to do this, since the judicial ranks were irreplaceable. “Irreplaceable for you,” said the Emperor, “but not for Me.”

“Irreplaceable for you, but not for me” — is there a better expression of supreme power? Does anyone possess said power in the administrative state? The post-liberals would be the first to scream about a “neoliberal assault on organized labor” if this were to be done to the public sector unions.

But let me return to the rule of law. It is beyond question that independent executive agencies with their rulemaking power and administrative law judges combine executive, legislative and judicial power (even though according to the formalities of administrative case law, rulemaking is not legislation) into one body within the executive branch, and with extensive protections from dismissal by the president. Thus, Dicey’s rule of law is unambiguously broken. But it is a lot worse than this. Executive agencies do not simply violate the separation of powers, avert checks and balances and overstep the maxim of *delegata potestas non potest delegari*, they actively create basic constitutional norms out of thin air, i.e. there is no hierarchy of norms from a constitution to acts to ordinances as in the *Rechtsstaat*, either. A sizable literature has emerged on “administrative constitutionalism” discussing this. Given that judicial deference is the norm for agency rules, “the law of the land” in Dicey’s sense is also inapplicable.

Max Isaacs, in “LGBT Rights and the Administrative State (<https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-92-6-Isaacs.pdf>)” (2017) gives several examples. The Department of Education’s 2011 “Dear Colleague” letter giving guidance on Title IX compliance is probably the most famous, but there are others, such as the Department of Health and Human Services extended the prohibition of sex discrimination in the Affordable Care Act to encompass gender identity before SCOTUS set the same precedent; the Department of Housing and Urban Development egregiously reinterpreted a clause in the Housing Act of 1949 referring to police powers for the general welfare as therefore requiring that transgender clients in homeless shelters should be grouped according

to self-identification, and when the Department of Justice under Eric Holder in 2011 refused to uphold the Defence of Marriage Act. In *Able v. United States* (1998), however, SCOTUS deferred to legislative authority in upholding don't-ask-don't-tell provisions: "As we discussed in our previous opinion, we are required to give great deference to Congressional judgments in matters affecting the military." Judicial deference is selective indeed. All this adds up to the basic fact that neither the rule of law nor the Rechtsstaat are operative.

In Karen M. Tani's *States of Dependency: Welfare, Rights, and American Governance, 1935–1972*, she recounts the story of how the then-named Department of Health, Education, and Welfare used its rulemaking authority to override the state of Louisiana's exercise of police power to avoid welfare benefits being given to fornicators: "In the summer of 1960, as the country prepared for a landmark presidential election, the federal agency's proverbial chickens came home to roost. Using Mississippi's federally approved "suitable home" law as a template, Louisiana amended its Aid to Dependent Children law to prohibit payments to any woman who had a child out of wedlock after receiving a check from the welfare department, unless and until she presented proof that she had "ceased illicit relationships" and was "maintaining a suitable home for the child." A law enacted in the same legislative session denied welfare benefits to an illegitimate child if the mother of that child had two or more older illegitimate children. State attorney general Jack Gremillion sharpened the laws by giving them retroactive effect. The result, as intended, was a purging of the state's ADC rolls: 22,500 children lost their benefits. The vast majority (an estimated 98 percent) were African American."

The agency responded by enacting the so-called Flemming rule (https://en.wikipedia.org/wiki/Flemming_Rule), which rejected state-level "suitable home" laws as a requirement for receiving income assistance, and thus gutted state police powers to regulate public morality. The same actors would proceed to mount a judicial activist campaign, culminating in *Goldberg v. Kelly* (https://en.wikipedia.org/wiki/Goldberg_v._Kelly) (1970) which ruled welfare benefits to be property, and "a matter of statutory entitlement for persons qualified to receive them." Thus, under "substantive due process" it is now a constitutional right for loafers and vagabonds to live off other people's money.

Things get further damning when we turn to the issue of reparations for slavery. Already reparations have been paid out in Evanston, Illinois; Providence, Rhode Island and many other places have started committees to inquire as to the process. The California reparations committee (<https://calmatters.org/california-divide/2021/06/california-reparations-committee-direct-payment/>) explicitly refers to reparations as an "act of atonement." Now what reparations are is quite clear: they are a bill of penalties. A group is being expropriated for the benefit of another in the reward of punitive damages without due process of law, not unlike the star chamber proscribing enemies of the state. This goes against Article I, Section 9: "No Bill of Attainder or ex post facto Law shall be passed." The rule of law has been violently suspended, and we are back to the age of the Tudors. Liberalism doesn't exist.

What about freedom of speech? Free speech in its original meaning (*parrhesia*) is a rhetorical concept referring to boldness or frankness in one's oratory. It would later develop into a parliamentary privilege long before it was ever a matter of public law much less a civil right. This privilege has a long pedigree, going back to Haxey's case (https://en.wikipedia.org/wiki/Haxey%27s_case) in 1397 where "a bill was introduced in the House of Commons condemning the extravagant expenditures of the royal household. Richard [III] demanded to know who had introduced the bill, and Thomas Haxey's name was given up. The Lords declared Haxey a traitor and condemned him to death, but the sentence was not carried out when the archbishop claimed Haxey as a clerk. In 1399, the new King Henry IV annulled the act condemning Haxey and granted Haxey's petition for a reversal of the judgment against him on the grounds that it was contrary to the liberties of the Commons. In the same year, the House of Commons

itself also petitioned the King for an annulment of the judgment, an admission that the judgment had been erroneous and contrary to normal parliamentary procedure, and a restoration of Haxey's estate, which had been forfeited upon the Lords' judgment in 1397." (*Democracy's Privileged Few: Legislative Privilege and Democratic Norms in the British and American Constitutions*)

Beginning from its spatial limitations to Parliament as a particular assembly, free speech eventually encompassed entire countries as everyone was made into a potential parliamentary representative by universal suffrage. The heyday of free speech was the heyday of parliamentary government. As parliamentary government has declined in favor of the Administrative Procedure Act and similar statutory enabling of *droit administratif* across the world, so free speech is on its decline. Which is another way of saying the rule of law is no longer with us, and liberalism doesn't exist.

The "liberal paradox," also known as the Böckenförde dilemma, of how does a pluralistic liberal society founded on the highest norm of not having a highest norm protect itself from subversion, was not always a problem since liberalism did not originally necessitate value pluralism in the moral-relativist sense, nor did it object to the regulation of obscenity. A natural law minimum existing as a residue of Christianity kept personal liberty in bounds of a police power based on traditional moral norms. Besides, many of these procedures and formalities about the hierarchy of legally binding norms *are* value commitments in themselves; rejecting agency rules as constitutional law precedents commits one to an idea of a 'law of the land' vested in non-delegated legislative supremacy and the superiority of legislative acts over executive ordinances, and in so doing binds one to a certain vision of liberty, that of representation. What motivated the emergence of post-liberalism, in any case, was the rise of an even more morally traditional opponent: fascism. It is time we discuss the idea of "militant democracy" [streitbare Demokratie], a.k.a. "fortified democracy."

Coined in 1937 by constitutional lawyer Karl Loewenstein in his paper "Militant Democracy and Fundamental Rights," militant democracy represents the destruction of procedural due process in order to resolve the paradox of tolerance. You have no doubt seen that Karl Popper meme, and it is to this idea that it owes its provenance. "If democracy is convinced that it has not yet fulfilled its destination, it must fight on its own plane a technique which serves only the purpose of power. Democracy must become militant," Loewenstein candidly wrote, in response to fascism, for if democracy were not to fortify itself, then "democracy as a pattern of political organization is doomed, as royal absolutism was once doomed when liberal democracy conquered the globe."

"Democracy and democratic tolerance have been used for their own destruction. Under cover of fundamental rights and the rule of law, the anti-democratic machine could be built up and set in motion legally. Calculating adroitly that democracy could not, without self-abnegation, deny to any body of public opinion the full use of the free institutions of speech, press, assembly, and parliamentary participation, fascist exponents systematically discredit the democratic order and make it unworkable by paralyzing its functions until chaos reigns. They exploit the tolerant confidence of democratic ideology that in the long run truth is stronger than falsehood, that the spirit asserts itself against force. Democracy was unable to forbid the enemies of its very existence the use of democratic instrumentalities. Until very recently, democratic fundamentalism and legalistic blindness were unwilling to realize that **the mechanism of democracy is the Trojan horse by which the enemy enters the city.**"

I need not go on. Anyone who still complains of liberalism's alleged focus on "procedure," "legality," "formality" above all, on its refusal to reckon with the good, with values — has simply lost the memo. Any such weaknesses were patched over many decades ago, heralding the post-liberal epoch. It is however fascinating to note Loewenstein's rationale for why restrictions on speech and organizing against fascists are structurally different from the efforts of the Holy Alliance against liberalism, or of the

Russian Empire against socialism. Loewenstein says that socialism is an idea, and you can't kill an idea. But fascism is merely a "a political technique under ideological pretenses," and therefore "there is no historical evidence that a political technique is irresistible if recognized and fought as such." If this reminds you of the FBI director's statement that "antifa is an idea, not an organization," then once again, no coincidence. Deplatforming and cancel culture are not some economic outcome of private power running amok, it is simply the means by which militant democracy is exercised.

It is the Federal Republic of Germany that provides the most explicit example. Their constitution specifically mandates that "abuse" of basic rights "in order to combat the free democratic basic order" leads to one forfeiting his rights. Further, it states that "property entails obligations. Its use shall also serve the public good," no doubt something that Vermeule and Ahmari swoon over as the finest realization of Catholic social teaching. And that is why The Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz, BfV) works hard in Germany to make sure people don't listen to Rock Against Communism records (<https://www.verfassungsschutz.de/SharedDocs/hintergruende/DE/Rechtsextremismus/rechtsextremistische-erlebniswelt-musik-und-kampfsport.html>), while being bludgeoned by migrant mobs. (<https://freewestmedia.com/2020/05/21/germany-migrant-mobs-united-against-law-enforcement/>). In fact, Germany has what is known as the *Sozialstaatsprinzip* which partially supersedes the older *Rechtsstaatsprinzip* with extensive positive substantial rights to material welfare being part of it. Even without explicit constitutional provisions, virtually all "liberal democracies" today are militant to one degree or another. Even in Central and Eastern European nations, the militant-democratic ethos is necessarily infused by the supremacy of EU law.

"Democracies withstood the ordeal of the World War much better than did autocratic states-by adopting autocratic methods. Few seriously objected to the temporary suspension of constitutional principles for the sake of national self-defense. During war, observes Leon Blum, legality takes a vacation. Once more, democracy is at war, although an underground war on the inner front," wrote Loewenstein. This war has never ended, because liberalism doesn't exist.

Yet our interlocutor may continue to insist that liberalism is still dominant because all of this machinery is still dedicated to pursuing individual rights-claims. The growing tide of "intersectional discrimination" (<https://www.equalrightstrust.org/ertdocumentbank/Intersectional%20Discrimination%20and%20Substantive%20Equality%20A%20Comparative%20and%20Theoretical%20Perspective.pdf>), lawsuits ought to dispel this. As Ben Smith, an advocate of such a benchmark in anti-discrimination law argues: "A legal recognition of intersectionality in discrimination law arguably requires that in assessing discrimination courts must examine the structural disadvantages operating in the background. This is because the complexity of intersectional identity and the insidious nature of intersectional discrimination means that clear evidence of discrimination will be, in most cases, unavailable. Courts will then have to engage in an examination of the 'nature and situation of the individual or group at issue' as well as the 'social and legal history of (...) society's treatment of that group', in order to determine the existence of discrimination."

In fact, the whole idea that our post-liberal world order is somehow averse to group rights claims is such an absurdity that to still believe it amidst all evidence to the contrary is simply willful blindness of such an egregious level that it practically constitutes complicity with the regime. What are indigenous land acknowledgements? Race laws are a fact, and with it the doctrine of equality before the law, the abolition of legal deference to hereditary ranks and orders, and thus the status of "citizen" as the single accepted title in public law, have all been utterly demolished. Smith criticizes the "conventional" paradigm of equality law for being "predicated on a model of procedural fairness that approaches the legal subject as

something which can be abstracted, stripped of 'extraneous' characteristics to reveal a 'sameness' that facilitates comparisons. It creates a fiction of uniformity, which states that the problems of a particular, generally dominant, sub-group are the only issues affecting the group as a whole." There is a massive volume of literature on "difference feminism," and indeed all of the various critical theories, critical legal studies whether they be black, brown, queer, feminist, etc. all have post-liberal methodological foundations.

The widespread involvement of university professors in the drafting of public policy in the United States dates to what is known as "the Wisconsin idea" in the 1910s. It was explicitly influenced by the model of German social science and its *Kathedersozialisten* ("socialists of the chair"). Wisconsin was the pioneering state of American progressivism, where eminent reformers such as Richard T. Ely and John R. Commons taught at the University of Wisconsin-Madison. In 1912, Charles McCarthy eponymously publishes "[The Wisconsin Idea](https://digicoll.library.wisc.edu/WIReader/Contents/Idea.html) (<https://digicoll.library.wisc.edu/WIReader/Contents/Idea.html>). Its comments on the law of the land and on checks and balances are revealing:

"Let us suppose the state auditor thinks a certain great commission unconstitutional and refuses its payments while awaiting a decision from the attorney-general. If the attorney-general declares that it is unconstitutional he can then appear for the constitution as protecting the state treasury against the commission itself—the embodiment of a law established by the will of the people and passed by its representatives. Here then is the situation—the state is paying its attorney for appearing against it to destroy a law which it has decreed shall exist! How absurd!"

"Indeed, precedent has become so sacred and so confused with the principles the fathers laid down in the grandest charter of human rights the world has ever seen, that if one attacks a foolish decision, up pops little Mr. Pettifogger and angrily accuses him of trying to undermine the very foundation of government—the constitution itself. Many of our law schools have become mere trade schools, and their graduates, instead of being men well founded in the fundamental principles of law, turn out to be attorneys who know all the tricks of the technicalities, but are sadly deficient in a knowledge of the economic conditions, surrounding law. How can we hope for anything else than a turning to commissions for help, right and justice with such a growing impatience of the justice administered by these tradesmen? The law schools, lacking as they do real appreciation of history and sympathy with democracy, have become, in many instances, seats of Bourbonism."

The commitment to procedural due process and to checks and balances so as to prevent legislative trampling of basic norms was by then already dismissed as "Bourbonism," a lack of sympathy with democracy, and formalism unconcerned with justice and the good. Over a century later, it hasn't gotten any better.

I should say a few words about the transformation of American liberalism in the 20th century, or how militant democracy found its way on American soil and from there to world politics.

III. The post-liberal transformation

In 1940, Lewis Mumford published an essay for The New Republic titled "[The Corruption of Liberalism](https://newrepublic.com/article/119690/lewis-mumfords-corruption-liberalism). (<https://newrepublic.com/article/119690/lewis-mumfords-corruption-liberalism>)" This may well have been a post-liberal manifesto. Mumford charged liberalism with being "on the side of passivism, in the face of danger; it has been on the side of appeasement, when confronted with aggressive acts of injustice," and that now "liberalism has been on the side of 'isolation,' when confronted with the imminent threat of a worldwide upsurge of barbarism."

Mumford blasts the liberal's squeamishness at the use of force, the view that "reasoning in the spirit of affable compromise is the only truly human way of meeting one's opponent [which] overlooks the important part played by force and grace."

"The bad arrangements of the peace of Versailles did not by themselves create fascism, nor will the best results of a magnanimous peace conference be able at once to wipe out its destructive impulses and undermine its irrational philosophy, Unfortunately it is not in Ricardo or Marx or Lenin, but in Dante and Shakespeare and Dostoevsky, that an understanding of the true sources of fascism are to be found. Economic explanations reflected a reality in the nineteenth century; they disguise a reality—the claim to barbaric conquest—today," wrote Mumford in what might have been a column for UnHerd. He saw the coming of a new Dark Age unless liberals develop a martial ethos. His greatest bugbear: "isolationism."

The "isolationists" in question encompassed everyone from America First nationalists to progressive senators such as Burton K. Wheeler, Gerald Nye and Hiram Johnson. As documented by James J. Martin and Harry Elmer Barnes, WWI revisionism was a mainstay of American liberals for two decades. The scholarship of Sidney Bradshaw Fay (1876-1967) was taken as definitive, and Woodrow Wilson condemned as a foolish adventurer and moral idealist. In the mid-1930s the Nye Committee (https://en.wikipedia.org/wiki/Nye_Committee) investigated the role of munitions manufacturers in American entry into WWI. For most of the 20s and 30s, a commitment to non-intervention, support of arm embargoes, opposition to naval rearmament, skepticism toward the League of Nations, and the assumption that wars are fomented for the financial interests of "merchants of death" was the orthodox line among American liberals. This began to change slowly but steadily with the USSR's pursuit of collective security under Maxim Litvinov, and with the Spanish Civil War. But the break did not become definitive until about 1940. One of the first major rehabilitations of Wilson's legacy came from the historian Paul M. Birdsall (https://en.wikipedia.org/wiki/Paul_M._Birdsall), who despite having an award named in his honor issued by the American Historical Association, is such an enigmatic figure that his year of birth is unknown!

What followed was the Brown Scare, a massive hunt against fascists, Axis fifth columnists, "Hitlerite America Lasters" and so on. It is scarcely known today, but it was highly effective in tarring non-interventionist senators and remolding public opinion such that by 1954 all remnants of that coalition had vanished. This demise is documented by Justus Drew Doenecke in *Not to the Swift: the Old Isolationists in the Cold War Era* (1979). The big cause-celebre was Sen. Arthur Vandenberg (R-MI) who started as a non-interventionist before dramatically flip-flopping (<https://www.usglc.org/blog/reflecting-on-senator-vandenbergs-isolationism-transformation/>) into open embrace of internationalism (not merely war for national interest) in 1941. In 1945, Vandenberg delivered his "speech heard round the world" where he was optimistic about the USSR and the USA allying to maintain international peace, if only the last remnants of "Axis aggression" were to be liquidated.

The House Un-American Activities Committee began, of course, as the McCormack-Dickstein committee to investigate "Nazi subversives" and the alleged "business plot" to instigate a fascist coup in the USA, for which no evidence was ever found. Samuel Dickstein, NY representative, worked as a spy (<https://www.politico.com/magazine/story/2014/10/samuel-dickstein-congressman-russian-spy-111641/>) for the NKVD under the code name "Crook." The Dies Committee in 1938 also began (<https://www.jstor.org/stable/2745144>) for the purpose of investigating the German-American Bund, and did not shift to communist activity until testimony given by AFL union leader John P. Frey.

The American entry into WWII was facilitated by British intelligence special operations. We know this beyond doubt as a result of declassified SOE documents, which are the subject of a second-hand account by Thomas E. Mahl's *Desperate Deception: British Covert Operations in the United States 1939-44* and

Andrew Johnstone's *Against Immediate Evil: American Internationalists and the Four Freedoms on the Eve of World War II*. Front groups like the Committee to Defend America by Aiding the Allies and the Committee for Non-Participation in Japanese Aggression were essential in these efforts.

The level of anti-fascist hysteria is described well by Geoffrey R. Stone (*Free speech in World War II: "When are you going to indict the seditionists?"*):

With the rumblings of war in Europe, however, the activities of these organizations increasingly tested the depth of America's renewed commitment to tolerance. In the late 1930s, groups such as the Non-Sectarian Anti-Nazi League, the Mobilization for Democracy, and Friends of Democracy (whose advisory board included John Dewey, Thomas Mann, and Paul Douglas) came into being in an effort to expose and thwart American-based fascism. Members of these antifascist groups were concerned, as Sinclair Lewis had suggested in *It Can't Happen Here*, that Americans, who had grown accustomed to being duped by con men and ad artists, were especially vulnerable to fascist propaganda. Reflecting these concerns, in 1936, Warner Brothers released the movie *Black Legion*, in which a common man (Humphrey Bogart) is misled into joining a paramilitary group, and *Life* magazine, in an article on "fascism in America," warned that small-town folk were "easy meat" for right-wing demagogues.

Antifascist commentators like Walter Winchell, Lewis Mumford, and Max Lerner sharply criticized advocates of Justice Holmes's clear and present danger test as dangerously naive. They argued that fascist movements could easily lay the groundwork for their agendas through the use of insidious propaganda, and that such propaganda must be squelched. Traditional liberals, who had long championed civil liberties, were suddenly calling for an end to "antidemocratic propaganda." The outbreak of hostilities in Europe in September of 1939, created a mood of high anxiety in the United States. Attorney General Frank Murphy declared that there would be no witch hunt for subversives, but he emphasized that there would be "no laxity" either. Pressured by the House Un-American Activities Committee's incessant accusations that the Roosevelt administration was lax on radicals, and "by clear signals" from the president, who insisted upon a "no-nonsense approach to un-Americanism," Murphy promised Roosevelt that he would demonstrate that "we are not a soft, pudgy democracy."

Various authors — John Roy Carlson, George Seldes, Rex Stout, Henry Hoke, Michael Sayers, Albert Kahn — wrote widely serialized books about fascist infiltration, and invariably tied them to non-interventionist senators and anti-New Deal journalists. These methods were described by John T. Flynn in *The Smear Terror* (<https://www.heritage-history.com/index.php?c=read&author=flynn&book=smear&story=defamation>) (1947): "The plan was to prove that they were in league with traitors. This was attempted by first holding up Pelley and the Bund and Joe McWilliams and numerous smaller fry as traitors and then connecting them with Senator Wheeler, Senator Nye, Colonel Lindbergh, Senator Robert Taft, Colonel Robert McCormick, General Robert E. Wood and others." When the Nye-Clark Committee was formed in 1941 to investigate pro-war propaganda in Hollywood films, it was quickly denounced as the "Hitler First-America Last Committee" and its efforts quickly stalled.

Examples of these smear tactics include this Friends of Democracy propaganda leaflet (<http://jfk.hood.edu/Collection/Weisberg%20Subject%20Index%20Files/F%20Disk/Friends%20Of%20Democracy/Item%2007.pdf>) against Gerald L.K. Smith, where Col. Robert McCormick, publisher of the *Chicago Tribune* and numerous anti-war senators are lumped into a tangled web. Swastikas and shots of the *Volksischer Beobachter* ominously fly in this "expose" (<https://fultonhistory.com/newspaper%2010/Carmel%20NY%20Putnam%20Country%20Courier/Carmel>

[%20NY%20Putnam%20Country%20Courier%201942%20Grayscale/Carmel%20NY%20Putnam%20Country%20Courier%201942%20Grayscale%20-%20200137.pdf](#)) of Hamilton Fish III, who funnily enough was an early advocate of the civil rights movement, or this “rebuttal” of John T. Flynn by the Federation to Fight Fascism (https://ia600103.us.archive.org/10/items/1947FederationToFightFascism/1947_Federation_to_Fight_Fascism.pdf) in 1947, which states that “one of the accepted marks of Nazi-fascism is its incessant propaganda to destroy the good name of Franklin D. Roosevelt.” New Jersey was passing hate speech laws (<https://todayinclh.com/?event=new-jersey-race-hatred-law-held-unconstitutional>) in the 1930s. In 1942, the New York Post manufactured (<https://journals.sagepub.com/doi/abs/10.1177/1363460716658421?journalCode=sexa>) a fake sex scandal against Irish Catholic isolationist senator David I. Walsh alleging that he had conversed with Nazi spies in a gay bordello. This successfully neutered his opposition and he lost the 1946 Senate race. All of this would culminate in the “Great Sedition Trial of 1944” when 30 largely fringe figures were the subject of a show trial under the Smith Act, the indictments overturned in 1946. David Baxter, one of the defendants, shared his personal memoir (http://www.ihr.org/jhr/v06/v06p-23_Baxter.html) in 1985. Another anti-New Deal conservative organization, the Committee for Constitutional Government, was the subject of intermittent judicial persecution for over a decade (https://www.independent.org/pdf/tir/tir_21_01_03_beito-witcher.pdf) up to the early 1950s, until the landmark *United States v. Rumely* (1953).

Perhaps the greatest legacy of all this was that it resulted in the idea of a press that ought to be subordinated to an ideal of “social responsibility,” which birthed the postwar Fairness Doctrine broadcast media that has since taken its notion of social responsibility in an openly militant activist direction once the Internet (partially) overturned the vertical transmission model, and once minority radicalism could no longer be organized in the background purely administratively through federal initiatives. This ideological shift was coordinated in 1947 by the Hutchins Commission (https://en.wikipedia.org/wiki/Hutchins_Commission) (officially the Commission on Freedom of the Press). Its participants included Henry Luce, Robert Hutchins, Zachariah Chafee, Archibald MacLeish, Reinhold Niebuhr, William Ernest Hocking and Harold D. Lasswell. It culminated in a public report. A recent book by Stephen Bates titled *An Aristocracy of Critics: Luce, Hutchins, Niebuhr, and the Committee That Redefined Freedom of the Press* has documented the commission in detail.

Hocking provided the most starkly post-liberal vision, who utterly rejected liberalism’s suspicion of government, its deification of rights, and its “arrogant” individualism. He praised the “fierce idealism” of Russian and Chinese youth, “to whom the nation itself... has become the absorbing business of life.” Moreover, he explicitly rejected the classical arguments in favor of free speech made John Milton, John Stuart Mill, and Oliver Wendell Holmes, with many other commissioners agreeing. “The Commission,” wrote Henry Luce, “must not be afraid to announce the greatest and most exciting discovery and rediscovery man ever makes: man is responsible to his Creator.” The same Henry Luce who dreamed of The American Century uttering his fake wholesome pieties that people so easily fall for today.

Bates describes the brown-baiting careers of the commissioners and the tenor of their discussion:

Lasswell's content analysis helped send people to jail, based on the theory that those who sound like Nazis are, perforce, Nazis, much as Senator Joseph McCarthy would later assert that those who sound like communists are, perforce, communists. As an expert witness in 1942, Lasswell testified that 1,195 passages in William Dudley Pelley's Galilean magazine matched Axis propaganda themes. Pelley was convicted of sedition and sentenced to fifteen years in prison. The U.S. Court of Appeals for the Seventh Circuit upheld the reliance on Lasswell's guilt-by-rhetorical-association analysis. In another case, Lasswell testified that a news agency, Transocean, was distorting information in a pro-Nazi direction; he used the New York Times as his neutral baseline. In a subsequent case, he compared allegedly seditious magazines to the Saturday Evening Post and Reader's Digest.¹⁵ As part of the administration's efforts to silence Robert McCormick, Lasswell and his staff applied the same methodology to the Chicago Tribune. The Tribune's anti-Roosevelt themes, they found, overlapped with the anti-America themes of the Axis. Both contended that communists ran the U.S. government, that FDR was corrupt, and that the administration was bungling the war effort. A Justice Department attorney recommended indicting the Tribune for sedition. **Intent, said the attorney, didn't matter: "Whether this is deliberately contrived by seditious elements or is the honest view of patriotic but blind Americans is of minor importance; the result is the same."** The attorney general declined to prosecute.

Many other inconsistencies arose. Commission members wanted the press to publish only truthful material while offering an open forum for diverse voices, but some of the diverse voices might propagate falsehoods. They wanted the press to reduce social divisions by providing balanced representations of minorities, but they also wanted editors to resist the demands of self-interested groups trying to influence coverage, including, in Merriam's words, "extremely touchy minorities." They wanted fact separated from opinion, but they also wanted "the truth about the fact," which, Reinhold Niebuhr maintained, is a matter of opinion. **They lamented the ineffectiveness of journalistic ethics codes, but they also lamented the effectiveness of the Hays Code over movies.** They wanted owners to keep their hands off newspaper content, but when told that an owner had instructed a columnist to attack Eleanor Roosevelt no more than three times a week, John Dickinson called it "a modest request." **They applauded editors who stood their ground in the face of a boycott by Father Charles Coughlin's followers, but they also supported editors who, when Jewish advertisers threatened a boycott, agreed to devote more coverage to Nazi atrocities.** Broadly, they wanted the press to be both "free from the menace of external compulsions from whatever source" and "accountable to society" — "two different perspectives," said Niebuhr, "which have never really been worked out."

In short, this was a project for the permanent institutionalization of militant anti-fascist democracy, and to neuter the chance of any significant right-wing opposition. In this it was quite successful — the Merwin K. Harts and the Robert W. Welch were marginalized by the likes of James Burnham (who was boosted in his career by Henry Luce, media mogul and co-organizer of the Hutchins Commission) who acted as the foreign policy wonk for the ensuing National Review fusionist conservatism. The post-liberal world order and its resilience was set.

Finally, what about that bugbear of "neoliberalism"? Wasn't there a return to laissez-faire, deregulation, privatization and a breakdown of the welfare state and labor union power from the 1970s onward? To begin with, I'd like to draw attention to David Harvey's *A Brief History of Neoliberalism*, one of the most popular books expounding this thesis. Here is what Harvey says:

The desire for an alternative to neoliberalization is abundantly in evidence. There are even signs of discontent within ruling policy circles as to the wisdom of neoliberal propositions and prescriptions. Some earlier enthusiasts (such as the economists Jeffrey Sachs, Joe Stiglitz, and Paul Krugman) and participants (such as George Soros) have now turned critical, even to the point of suggesting some sort of return to a modified Keynesianism or a more ‘institutional’ approach to the solution of global problems—everything from better regulatory structures of global governance to closer supervision of the reckless speculations of the financiers. In recent years there have been not only insistent calls but also major blueprints for the reform of global governance.

According to Harvey, George Soros was a critic of neoliberalism, and “better regulatory structures of global governance” are the antithesis of neoliberalism. What this shows is that all the people parroting this term have truly been had like suckers, and that it is nothing else but a left-wing alibi to shift their own culpability for the rise of the new social movements, anti-discrimination and the anti-white NGO-industrial complex to the “right-wing” Chicago Boys and their supposed employer, the Chilean helicopter pilot.

To cut a long story short: the reason that Milton Friedman and the monetarist school rose to prominence is because most of the neo-Keynesian macroeconomic models neglected (often denied) the role of monetary transmission in raising the general price level. The IS-LM model tended to draw a strict dichotomy between the real goods sector and the money market sector. It was Friedman’s contribution to add expected inflation as a proxy for real goods (such as housing) into the money demand function, and along with his empirical research, to restore the dictum that “money matters.” In contrast, Keynesians tended to regard inflation as simply any raise in prices with a myriad of causes — wage pressure by unions leading to wage-price spirals, supply shocks, capitalist greed, and so on. If one reads William Beveridge’s *Full Employment in a Free Society*, the Economic Reports of the President of the United States, etc. this real-cost approach to inflation was ubiquitous. Most hilariously it led to Gerald Ford issuing badges and t-shirts imploring people to Whip Inflation Now (https://en.wikipedia.org/wiki/Whip_inflation_now) by turning down their thermostats to reduce energy consumption and so somehow lower the general price level. In other words, the same austerity measures as ever, but now in the name of averting a climate-driven human extinction. No “neoliberals” to blame the former on, however.

The Labor Party under Harold Wilson was already losing control of macroeconomic policy by the mid-1970s. The failed “Social Contract” (<https://doi.org/10.1111%2Fj.1467-856X.2009.00382.x>) with the Trades Union Congress that offered rises in social spending in exchange for wage restraints failed as significant spending cuts were pursued due to a deteriorating balance of payments and a declining credit rating. The policies of corporatist mediation between state, employers and unions collapsed with the wave of wildcat strikes that became known as the “Winter of Discontent,” which led to the Keynesian state’s unraveling. In the United States, repealing of gold reserve requirements alongside massive increases in public spending to finance both Great Society programmes and the Vietnam War led to an accelerating rate of inflation from 1965 onward, well before the infamous OPEC oil embargo. Moreover, the so-called “postwar consensus” state deliberately pursued a policy of mergers and acquisitions with the intent of reaping economies of scale, as in the British “national champions” (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277158/ep2-government-policy-since-1945.pdf) policy. Corporate concentration is hardly a “neoliberal” perfidy; the progressive desire for large trusts to serve as a base for nationalization and socialization is really old. Keynes was arguing for it in “The End of Laissez Faire,” among many others. Martin J. Sklar’s

The corporate reconstruction of American capitalism, 1890-1916 is a seminal work on this subject. It was also Laborites who were at the forefront (<https://journals.openedition.org/rfcb/1719#tocto2n3>), of the new approach to race relations.

Neither can “free trade” be levied on the “neoliberals.” GATT is a thoroughly postwar consensus institution. Moreover, from an oral history interview (<https://www.trumanlibrary.gov/library/oral-histories/coppockj>) of Joseph D. Coppock, State Department official 1945-1953, on the anti-tariff proclivity of the Export-Import Bank and World Bank (then the IBRD):

There would be stiff competition under these circumstances, but the mechanism for dealing with balance-of-payments problems is really through the international monetary mechanism, by changing exchange rates, getting your balance of payments adjustment through that mechanism rather than putting on tariffs. Now tariffs can be similar in their short term effects, but in terms of the operation of international barriers, it's much better to think of your tariffs as long-range things and make your short term adjustments through monetary policy. I might say here that all of us working in this international economic realm had a very clear conception of what we were about. And this derived from our living through the thirties, our study of the experience of the twenties and the thirties, as well as from our professional training. One thing that was embodied in the Lend-Lease Act of March '41, that there not be a big carryover, big holdover of international debts because of the bad experience after World War I, was very important. So the negotiations out of the lend-lease obligations at the end of the war was an aspect of that. Another major point was that you needed to stimulate international investment in order to promote economic development over the world generally. Private foreign investment had dried up — it was almost negative — during the thirties. So what you had to do was to get some kind of guarantee against losses by private investors, as well as have some direct governmental loans. The IBRD represented that conception. Of course, the expansion of the lending power by the U.S. Export-Import Bank, which Will Clayton also put through in 1945, was a big help, since the U.S. could then move on a bilateral basis. You'd try to stimulate private investment with Ex-Im or IBRD guarantees, but private investors would have been insane generally to invest in the chaotic situation that prevailed over most of the world.

The focus on the “international monetary mechanism” was quite right. It was not the welfare state or unions that made the postwar consensus, but the Triffin dilemma and the gold exchange standard. Nicholas Kaldor made the same point in *Causes of growth and stagnation in the world economy* (1984): “Thus the primary impulse in the case of many countries was the growth of international demand – in exports – which was partly the cause and partly the response of the increase in investment expenditure in industry, commerce and social infrastructure. To a considerable extent, the forces making for expansion communicated themselves from one country to another- the increase in A's exports involved an increase in income and hence in demand by A, which meant in turn an increase in ex-ports by B, and so on. Though the question of causation is far from settled, I would attribute primary importance to the role of the United States dollar which, after the adoption of the Bretton Woods arrangement concerning currencies, became de facto the international reserve currency, so that America had, in fact, an unlimited borrowing power – she was able to borrow automatically by incurring deficits on “basic transactions” (on current and capital accounts taken together) and thereby provide other countries with additional reserves, thus enabling them to expand their economic activities without running into a balance of payments constraint.”

Union power has simply shifted from the private to the public sector, and this was due to anti-discrimination law being used to strike down union seniority criteria, work referrals and work rotation clauses which greatly weakened their bargaining power against employers. Title VII lawsuits overrode

NLRA collective bargaining agreements. The former became law of the land. The latter was only law of the shop floor. See my own thread (<https://twitter.com/pompilivs/status/1400177810896044034>) on this. From what I have been told, Reuel Schiller's *Forging Rivals: Race, Class, Law, and the Collapse of Postwar Liberalism* makes the same case.

The shift from heavy industry to bohemian cafes was already part of the postwar Labour agenda. The clearest example is from Anthony Crosland's *The Future of Socialism* (1956), where he wrote that "we need not only higher exports and old-age pensions, but more open-air cafes, brighter and gayer streets at night, later closing hours for public houses, more local repertory theatres, better and more hospitable hoteliers and restaurateurs, brighter and cleaner eating houses, more riverside cafes... better design for furniture and pottery and women's clothes..." Moreover, he went on to bring up "the divorce laws, licensing laws, prehistoric (and flagrantly unfair) abortion laws, obsolete penalties for sexual abnormality, the illiterate censorship of books and plays, and remaining restrictions on the equal rights of women," and that "most of these are intolerable, and should be highly offensive to socialists..." There you have it; it was social democracy wrecking itself, no outside help needed. Funnily enough, the number of employees in financial regulation had risen fivefold (https://iea.org.uk/wp-content/uploads/2016/07/DP_Thatcher-the%20myth%20of%20deregulation_web_May.pdf) from 1979 to 1990 under Thatcher's term; clearly it wasn't of great assistance.

Neoliberals did not boost the rise of new social movements to "crush the working class." It was Eurocommunists who did. "Take the problem of women's liberation. This is not a new one, but it is surely evident that thanks to recent scientific discoveries, modern contraceptives, and so on, this problem appears to us in a different light from the way it appeared to our predecessors. Capitalist society requires woman to be inferior to man. This means that women not only serve as a reserve labour force, but also carry out their unpaid task of reproducing the labour force via the family. Ideologically, woman's reduction to an inferior status in the home is a necessary precondition of keeping alive that attitude of submission and conformity which is typical of the bourgeois family." (Spinelli and Azcarate, *What Is Eurocommunism?* (<https://www.marxists.org/reference/subject/philosophy/works/it/eurocommunism.htm#azcarate>), 1978) Paul Gottfried has remarked on this in *The Strange Death of Marxism*. But as always the tendency reigns to exculpate the hard left, to claim that their social progressivism is the fault of not being "leftist" enough, which ostensibly means being class-first above all. If our self-professed historical materialists stopped pretending that the "bourgeoisie" and the "proletariat" are the same as they were in 1870, and took a look at actual class dynamics, they would figure it out this conundrum pretty quickly. (<http://www.telospress.com/sklar-capitalism-socialism-mix/>).

Andre Gorz's *Farewell to the Working Class* (1980), as well as Laclau and Mouffe's *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (1985) were probably the two strongest cases for the socialist pivot to race and sex interest group politics. One may cope and seethe all he wants, but the rationale was there and quite robust. The latter deserves to be cited extensively:

These new demands must also be set within the context of the Keynesian Welfare State, the constitution of which has been another fundamental fact of the post-war period. It is without doubt an ambiguous and complex phenomenon, for if on the one hand this new type of state was necessary in order to perform a series of functions required by the new capitalist regime of accumulation, it is also the result of what Bowles and Gintis have called 'the post-World War accord between capital and labour', and the result, therefore, of struggles against changes in the social relations generated by capitalism. It is, for example, the destruction of the networks of traditional solidarity of a community or family type (based, let us not forget, on the subordination of women) which has forced the state to intervene in diverse 'social services' for the sick, the unemployed, the old, and so on. Elsewhere, under pressure from workers' struggles, the state has intervened to assure a new labour policy (minimum wage, length of the working day, accident and unemployment insurance, and the social wage). If we can accept with Benjamin Coriat that this state-plan intervenes in the reproduction of the labour force in order to subordinate it to the needs of capital, thanks to the practice of the collective contract and the negotiated agreements which link rises in wages to those in productivity, it is no less the case that these are gains which have brought real and important benefits to the workers.

But this intervention by the state at ever broader levels of social reproduction has been accompanied by a growing bureaucratization of its practices which has come to constitute, along with commodification, one of the fundamental sources of inequalities and conflicts. In all the domains in which the state has intervened, a politicization of social relations is at the base of numerous new antagonism... But what crucially concerns us here is to trace the consequences of this bureaucratization underlying new antagonisms. The important fact is the imposition of multiple forms of vigilance and regulation in social relations which had previously been conceived as forming part of the private domain. This shifting of the line of demarcation between the 'public' and the 'private' has ambiguous effects. On the one hand, it serves to reveal the political character (in the broad sense) of social relations, and the fact that these are always the result of modes of institution that give them their form and meaning; on the other, given the bureaucratic character of state intervention, this creation of 'public spaces' is carried out not in the form of a true democratization, but through the imposition of new forms of subordination... This should not blind us, however, to numerous other aspects which point in the opposite direction, and which give the Welfare State its characteristic ambiguity: **the emergence of a new type of right designated as 'positive liberties' has also profoundly transformed the dominant common sense, lending legitimacy to a whole series of demands for economic equality and insistence upon new social rights.**

Well, what do you know — the materialist class analysis of why materialist class analysis is obsoleted by material class factors. What a dialectic that is. Overall, the dual periodization scheme of the post-1945 era where one differentiates an "embedded liberal" or "consensus liberal" era from 1945 to roughly 1978, from a "neoliberal" era since then, makes little sense; rather the entire postwar period must be viewed as one continuous totality. That is about all I need to say on this, so allow me to wrap up.

IV. Conclusion

Post-liberalism failed because it succeeded. It is with us. We are in a post-liberal society, and no in-a-vacuum debates about rights, the individual, virtue ethics, the common good or so on will get us out of it. Indeed, they are quite redundant. Much as the bugman receiving his fourth booster shot is convinced he is part of a resistance against white supremacist heteropatriarchal fascism which is at the verge of seizing power, the post-liberal is convinced that he is resisting a post-liberal regime by criticizing liberalism (in the name of advancing slightly newer liberalism, no less). It truly is a testament to our age that men who live in "liquid modernity" as it's called have their intellectual horizons capped at "early

modernity.” They see a man beating a woman to a pulp in a wrestling match and watch it trumpeted as a victory for women’s rights, and conclude that this is the fault of freedom of contract and the anthropological foundations of social contract theory. But perhaps one will interject that, after all, we are looking at root causes, abstract as they may be? If one wants to look at “root causes,” they might want to go back to Cain and Abel. Yet the line has to be drawn somewhere. And the line that demarcated liberalism has long been crossed.

“Post-liberalism” can lead to some truly laughable directions, as when the common-good constitutionalists start praising the New Deal (<https://iusetiustitium.com/revisiting-corporatism-eighty-five-years-after-schechter/>) as a model of Catholic social teaching. Yet most of these common-good constitutionalists have probably not heard of Fr. Arthur Terminiello (https://web.archive.org/web/20180101072101/https://en.metapedia.org/wiki/Arthur_Terminiello), the Catholic priest who in 1946 decried “the Morgenthau plan for the starvation of little babies and pregnant women in Germany,” and that “we have fifty-seven varieties of pinks and reds and pastel shades in this country; and all of it can be traced back to the twelve years we spent under the New Deal, because that was the build-up for what is going on in the world today.” For these words he was convicted in Illinois, and he took his case (https://en.wikipedia.org/wiki/Terminiello_v._City_of_Chicago) to the Supreme Court, where he won.

We also have Aris Roussinos crediting “woke capital” for the British Empire (<https://unherd.com/2021/09/how-liberals-made-the-british-empire/>), i.e. the same moral pieties as the left, but with a different scapegoat. “Liberals are the *real* capitalist roaders.” How exciting. Not only that, but Roussinos referred to a completely banal take from the Financial Times on the 2008 financial crisis being a failure of laissez-faire economics, as a post-liberal one. (<https://twitter.com/arisroussinos/status/1443502157941125123>) Paul Krugman, Joseph Stiglitz, Martin Wolf and Thomas Piketty are all part of the post-liberal canon as it turns out. “Capital has always been woke” is another related platitude people love to throw around. Meanwhile, L’Oréal was bankrolling militant right-wing actions by La Cagoule (https://en.wikipedia.org/wiki/La_Cagoule) in the 1930s. “But fascism is capitalism in decay.” Of course it is.

In fact, at some point the post-liberal impulse begins to verge on anti-white propaganda. I realize this is a heavy charge, but I believe it to be true. “White people are devils for inventing individual rights, equality and free trade. Whiteness is Lucifer bringing Enlightenment values to non-whites and their ‘indigenous ways of knowing’ untainted by liberalism.” The spectre of the noble savage always lurks in the background, and blasting “the Enlightenment” long after it has been consigned to the annals of history alongside pansophism and scholastic term logic eventually becomes a resentful way of chiding Europeans for having the nerve to invent liberalism, which is supposed to be the *summum malum*. I would rather take Lacordaire, Dupanloup, Montalembert and Ozanam over any modern integralist reciting the same neo-Thomism 101, for instance.

I think there is something more pertinent here. The use of the term “liberal” among the online right is extraordinary loose indeed, and at this point functionally identical to a woman calling someone “creepy.” In true post-liberal fashion, it has become an emotivist term without substance. But what would a “liberal state under the rule of law” obeying an “individualist minimum” look like? It would mean no funding for Planned Parenthood, no welfare payments to pregnant teenage black soon-to-be baby mamas, no Department of Education or state-level education commissions demanding sacrifices to Aztec gods, unrestricted confessional schooling, no anti-discrimination law, no community development corporations housing activist sinecures, no Federal Reserve, no labor protections for civil servants, strict nondelegation, no public sector unions, no foreign aid, no grants for NPR, so on and so forth. By any

measure, *liberalism in its strict sense is an objectively counterrevolutionary tendency*. And this is so for the simple reason that liberalism now *is* the ancien regime. The old regime is not the pre-liberal epoch anymore, since what superseded it has itself been superseded. Liberals *are* the real reactionaries, after all.

My point isn't to imply that this is necessarily a realistic political programme; I'm not advocating any programme at all. Although, I don't think "democratic Caesarism" or "administrative state but Catholic" is any more realistic, either. Rather, it is to show what the stakes are. Any political dissident who wants a return to rule of law and accountability against anarcho-tyranny will necessarily be driven in a liberal direction, in fact it is pretty much only by the residues of liberalism that we can pretend to have some virtual coffeehouse/salon/public sphere. The other basic fact is that the old liberals are a lot closer to the anti-liberal counterrevolutionaries and legitimists, not simply for temporal proximity but owing to the same social milieu of the long nineteenth century. Men like Guizot and Dicey were bourgeois in their class, but aristocratic in their character. How funny that a modern counterrevolutionary should end up taking the mantle of old enemies, but so it is. The *monarchiens* and the Orleanists in France, the *neocatolicos* in Spain, the *Wochenblattpartei* in Prussia are all examples of liberal-conservative/reactionary hybrids in the 19th century. Friedrich von Gentz, Metternich's close aide, defended the American Revolution and always expressed sympathies some moderate forms of constitutionalism. Herbert Spencer, William Graham Sumner and Vilfredo Pareto were all staunch classical liberals, but drifted sharply to the right with age. Gustave de Molinari, one of the first known proponents of market anarchism, nonetheless believed most people were not fit for liberty (esp. women and non-whites), and would require a transitory submission under tutelage until "viticulture" (eugenics) could raise them. These examples show that many of the hard individualist liberals weren't starry-eyed dreamers about the prospects of liberty, but had a cold realist dimension which served to bring them closer to counterrevolution, and sometimes into rediscovering the faith. In any case, these men did not place their bets on a "multiracial working class" to come and save them, which is more than can be said for many of the post-liberals.

Of course, one last option is to claim that one has transcended both left and right. Though I won't deny that this is possible in principle, from my experience most people who insist they have done this in truth have only converged back to the left in a roundabout way.

Once the reality of the post-liberal order is acknowledged, the old clichés of "capitalism," "the bourgeoisie," "individualism," "neoliberalism" and others can be finally discarded as inapplicable relics of an old order, as if one were to still talk about Gallicanism, venal offices and the *ferme générale* as living institutions. The new order based on non-white, non-male and sodomite radicalism against the historical European nations and their mores can be acknowledged unabashedly for what it is without dreaming of some revival of a liberal-labor consensus by organizing Uber Eats drivers, taxing Google, nationalizing British Rail again, "industrial policy" (which is nothing more than the inverse of the Chamber of Commerce Republican and his own supply-side economism), or whatever else the *American Affairs* post-Trump populist crowd may be coming out with. This new order is as much an assault on the liberal order as what came before it, indeed it is *primarily* an assault on liberalism, since the older order is only of antiquarian interest by now. One does not have to side with the timidity of the Intellectual Dark Web at all; on the contrary, they are heavily tainted by post-liberal residues themselves. But when they say that what has transpired with us over the past half-century or more is not liberalism, they are right, and the people mocking them for not realizing "the inevitable consequences of the liberal ontological subject" are wrong.

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44 thoughts on “Why Post-Liberalism Failed”

1. Adamas Nemesis says:

October 3, 2021 at 8:25 pm

A long, fascinating, and most enjoyable piece. I can only hope (with, alas, low expectations) that it'll disabuse people of this bizarre idea that we live under some kind of liberal hegemony of radical individualism, which, whatever one might think of radical individualism, doesn't remotely describe the world we actually live in. What's even more bizarre is how this idea is hegemonic across the political spectrum from left to right, though I certainly agree with you wholeheartedly that our latter-day right-wing “post-liberals” are by far the worst about this, taking the scapegoating of liberalism and individualism for everything wrong in society, culture, and politics to comical heights.

There is no cause for any kind of optimism from anybody of any political persuasion with regard to any movement as long as its understanding of what modern society, culture, and politics is and where it came from is based on fundamentally and deeply wrong premises, and “post-liberalism” is no exception. Indeed, there is ample reason to believe the actually-existing post-liberal movement to the extent it gains any power over the state will exacerbate and further entrench the very problems it seeks to solve, that it is, as I put it at my own blog, an echo of the (as you put it, already post-liberal!) status quo rather than a choice that provides a genuine alternative. Absorbing the view you present here would do them a lot of good.

Reply

o NIGEL is a TEAPOT says:

October 22, 2021 at 10:26 am

you are living in a liberal hegemony. your enemies are marxists, you are cultural marxists.

you are both satanists trying to justify your eager sin, and with the original poster here trying to do so under the most absurd pseudo-intellectualism I have seen.

liberalism is the powers and principalities of the devil, “individualism” is the devil's lie that “ye will be like gods.” I don't expect you to notice your own paradigm, when the devil demands you not notice it.

From Venerable Fulton Sheen:

“But it is anything but progress to act like mice and eat the foundations of the very roof over our heads. Intolerance about principles is the foundation of growth, and the mathematician who would deride a square for always having four sides, and in the name of progress would encourage it to throw away even only one of its sides, would soon discover that he had lost all his squares. So too with the dogmas of the Church, of science, and of reason; they are like bricks, solid things with which a man can build, not like straw, which is “religious experience,” fit only for burning.

A dogma, then, is the necessary consequence of the intolerance of first principles, and that science or that church which has the greatest amount of dogmas is the science or the church that has been doing the most thinking. The Catholic Church, the schoolmaster for twenty centuries, has been doing a tremendous amount of solid, hard thinking and hence has built up dogmas as a man

might build a house of brick but grounded on a rock. She has seen the centuries with their passing enthusiasms and momentary loyalties pass before her, making the same mistakes, cultivating the same poses, falling into the same mental snares, so that she has become very patient and kind to the erring pupils, but very intolerant and severe concerning the false. She has been and she will always be intolerant so far as the rights of God are concerned, for heresy, error, untruth, affect not personal matters on which she may yield, but a Divine Right in which there is no yielding. Meek she is to the erring, but violent to the error. The truth is divine; the heretic is human. Due reparation made, she will admit the heretic back into the treasury of her souls, but never the heresy into the treasury of her wisdom. Right is right if nobody is right, and wrong is wrong if everybody is wrong. And in this day and age we need, as Mr. Chesterton tells us, "not a Church that is right when the world is right, but a Church that is right when the world is wrong.""

Reply

- o NIGEL is a TEAPOT says:

October 22, 2021 at 10:28 am

And another on Peity, duty To God, Family, and Country. When you lose one you lose them all.

Also Venerable Fulton Sheen:

"The United States has been an arsenal of defense against aggression; a Samaritan helping nations to rehabilitate themselves in peace; a pantry to the hungry and starving world; and, under Providence, the secondary cause for the preservation of the liberties of the free peoples of the world.

The moral and religious tone of our society has derived in part from our Declaration of Independence and our Constitution, which affirm: first, that rights and liberties are derived not from men or majorities, but from God and, therefore, are inalienable; second, because rights and liberties are God-given, citizens enjoy rights and liberties in addition to those given by the Constitution; third, the "people" and not the "masses" hold the title to civil power, which derives from God—the people being self-determined through conscience are opposite to the "masses," who are other-determined or dictator ruled.

Despite our rich national moral background, serious-minded citizens are concerned lest, like prodigal sons, we waste our spiritual inheritance through a decline in moral responsibility. Such a decay is due to two causes: first, forgetfulness that man must one day render an account of his stewardship before the Eternal Judge; second, selfishness—a man cares most for those things to which he is bound organically, as he cares more for his head than his hat. As he becomes egotistic and separated from all organic bonds and social functions, such as Church, his country and his family, his sense of responsibility declines.

The consequences are many:

1. As persons surrender a sense of responsibility to God, to the state, to family and to their vocation in life, they dissolve into atoms; atoms exist only for themselves. To say we live in the atomic age may be a more unfortunate characterization than we know; for if we are nothing but atomic individuals, then we are ready either to be split or fissioned mentally, or else collectivized into a socialistic dictatorship. The latter is nothing but the forcible organization of the chaos created by a conflict of individual egotisms.

2. Once God and the moral law and conscience are exiled, then there is no standard outside of the crisis itself by which the crisis can be judged; no standard of time by which to set our watches, no score of music by which to distinguish our harmonies and discords.
3. Then science is left without a world of values, purposes, choices, ideals. The scientist himself, who is always a mind outside the facts he studies, is left without an explanation for all his descriptions. He is also without truth which he is always seeking in his experiments and which he knows exists and endures, even if the human race should go down to extinction.
4. Then education trains only half a man, developing his intellect, but not his will; his mind, but not his character; it gives him knowledge of facts, but gives him no purpose or destiny.
5. Finally, when Divine Truth is denied, there is no final determinant of truth except power, which has already enslaved one third of the world."

reading the ramblings of your kind reminds me not only that the devil is "right wing" post devil's century (which ended in 2017), but it's like you people are demanding there are no answers to a test that I and anyone else in The Church long passed.

Like Chesterton said, "the agnostic is not someone who admits they know nothing, the agnostic is someone who demands no one can possibly know more than them."

Reply

2. Pingback: [Gödel's Loophole: My Pet Theory | Adamas Nemesis](#)

3. [Xenopol \(@XenopolitiX\)](#) says:

October 4, 2021 at 9:19 pm

The reason for this tendency is that the real division between left and right isn't hierarchy-equality or chaos-order: it's responsible-irresponsible. Real liberalism is disliked because it suggests a high degree of responsibility, with very few place to hide. Hence the individual responsibility found in liberalism is reinterpreted as "selfishness" or "atomisation"; of course, it is communism that is selfish and atomised—its ills are projected onto liberalism. Irresponsible people naturally reinterpret liberalism as a problem—even if they think they are rightists—because labels don't matter but your fundamental character does; they have to get away from anything that suggests responsibility—deep down they know they couldn't hide as easily under real liberalism.

That said, liberalism was subverted and so, in that sense, led to our current situation; "reactionary liberals" could advocate a reset, but without knowing how liberalism was subverted last time the same degeneration would occur again.

Reply

o NIGEL is a TEAPOT says:

October 22, 2021 at 10:20 am

"liberalism is a sin" is a nice refutation of all you know and believe, Read it!

freedom is Responsibility, "liberty" is meaningless and is sophistic "license" to sin and evil. liberals hate responsibility, hobbes demanded that "freedom" was following one's "passions" without restraint.

liberals are playing german word games to confuse you and sadly you are all too eager to hum along.

Reply

4. Carl says:

October 5, 2021 at 11:00 pm

Very good. The right wing insistence on creating a “genealogy of ideas” always end up being a grotesque waste of time. Marx mentions the “social circle”? He must be an Illuminati! and so forth...

NB: Two typos:

1. “This WAS failure was due to the...”

2. “...a certain Mary PaLker Follett...”

Reply

o Nulle Terre Sans Seigneur says:

October 6, 2021 at 7:18 am

Thank you; I’ve fixed them.

Reply

o NIGEL is a TEAPOT says:

October 22, 2021 at 10:37 am

Yes, marx was. marx was taught by feuerbach (so was neitzche and spiritually freud later) who was a fabian; marx was just their fall guy and a name for the fabian’s book covers. marx’ actual writings were in poems of gibbering insanity admitting that he was a servant to the devil.

fabians are based in freemasonry, all heresies at once. freemasonry began with locke, and was just the world satanic coven brought to the public by his disciples after he died and went to hell.

freemasonry (the name a reference to the builders of the tower of babel) is a mix of protestantism and the sabbatean/frankist talmudics. protestantism is the synthesis of all heresies, the talmud is just a gnostic text from babylon with some slight rewording by pharisees to try to reconsolidate power after God Perfected Israel Into The Catholic Church.

all of the above also shares geneology with the satanic “orthodox heresy” and its gnostic beliefs and “liturgy of ideas.” I suppose that is why you screech like a demon about to be exorcised at the thought of the tree of evil being mapped out: who would want to incriminate themselves?

all of that is just a retread of cain, who is a retread of the devil. demons are dead and damned, and since one’s will (Capability To Do Good, What Is Rightly Ordered) is set upon death, demons cannot change their minds or their path. of course doing any evil act (that which seeks to destroy Goodness; from a place of dead, rotting malfunction due to sin) precludes the will.

this is why every evil throughout history is the exact same thing with just a new label and new face.

Here, From God Himself To St Catherine Of Sienna The Seraphic Virgin:

“Do you know dearest daughter, how I raise the soul out of her imperfections? Sometimes I vex her with evil thoughts and a sterile mind. It will seem to her that I have left her completely, without any feeling whatever. She does not seem to be in the world, because she is in fact not there; nor does she seem to be in me because she has no feeling at all other than that her will does not want sin.

I do not allow enemies to open the gate of the will that is free. I do let the devils and other enemies of humankind beat against other gates, but not against this, which is the main gate guarding the city of the soul. I do not will the soul's death as long as she is not so stupid as to open the gate of her will. They cannot enter unless her own will chooses to let them in."

Reply

5. clem says:

October 5, 2021 at 11:21 pm

Very Enlightening essay!

As a native German-speaker I think the term Leitstaat refers to what you are talking about when you mentioned Polizeistaat literally translated as policy state. And „Wehrhafte Demokratie“ is the militant Democracy you are talking about, at least that's the term they are using in schools and the Media nowadays.

Reply

6. Pingback: Winners, Losers and Links – The American Sun

7. rpt says:

October 8, 2021 at 7:38 pm

I am guilty of the 'the inevitable consequences of the liberal ontological subject' kind of thinking and it is probably wrong as you say. Nonetheless, it is still surprising how short-lived and unstable (classical) liberalism was. That suggests some disconnectedness from reality without implying the current situation is necessary consequence of this.

The active role of state plays major part in the transition you describe so vividly. The state became a semi-god. Every now and then I hear people talking about what the state should or shouldn't do, how to make the state workings transparent and avoid corruption etc. I thought it is a post-communist phenomenon of Central Europe but maybe it is much more ubiquitous.

A spectacular failure of state would end the trust of majority in this institution. That could restart some of the old institutions but it is nowhere to be seen.

Reply

o NIGEL is a TEAPOT says:

October 22, 2021 at 10:12 am

locke and marx and neitzche and freud et al follow hobbes, who denies that Man Is Lovingly Made In The Image Of God and claims that people are "material" who are following "passions."

– freud's rewording of this was "sexuality":freud claimed man was "perversion," and that perversion is "self-expression."

– locke's first principle was to demand that a green apple is just a grey sphere that cannout feed you (he even denied that you need food, claiming your body would commit suicide just to maintain the "lie") because to admit even the slightest Truth is to Prove The Church 100% Correct.

– marx openly admitted he was a demoniac.

– neitzche exemplifies that evil is just stupidity, worship of evil is due to fear of evil, and that devilry is when stupidity meets boredom.

And so forth.

these then follow the illuminati and albigenisians and all heresies, and the gnostics, and the pythagoreans, all the way back to cain.

they worship government, because the devil is the ape of God and demands a “social kingship” for the antichrist. people have been trying to create an “earthly zion” an “immanentized eschaton” since cain, and the descendents of cain are eager to carry on their “father”s work.

every evil is just one tendril of one beast. all new errors are just old errors with a new label, as Venerable Fulton Sheen said!

Reply

8. muunyayo says:

October 9, 2021 at 1:07 am

Reblogged this on muunyayo.

Reply

o rpt says:

October 26, 2021 at 5:47 pm

Now I understand your occasional remarks againts Trads. Some of them seem to be pretty disturbed by your writings.

Reply

o NIGEL is a TEAPOT says:

October 26, 2021 at 11:02 pm

Seems my posts are being censored here now.

I will just close with this:

“Conscience, Christ, and the gift of faith make evil men uneasy in their sin. They feel that if they could drive Christ from the earth, they would be free from “moral inhibitions.” They forget that it is their own nature and conscience which makes them feel that way. Being unable to drive God from the heavens, they would drive his ambassadors from the earth. In a lesser sphere, that is why many men sneer at virtue—because it makes vice uncomfortable.”

Reply

o muunyayo says:

October 27, 2021 at 1:37 am

My remarks? Or the remarks by the writer of the blog post I reblogged?

Reply

o rpt says:

November 12, 2021 at 8:45 pm

Wrong place, meant for Mr. Teapot above.

Reply

9. 🙄 (@lezadumtchique) says:

October 14, 2021 at 9:17 pm

This is a terrific piece. Thanks!

Reply

10. Pseudo-Chrysostom says:

October 18, 2021 at 12:18 am

The chief criticism of our ancient liberals, as far as i have observed is, not that they themselves necessarily desired ‘proactive attempt to regulate opinion beyond the standards of liability established by common law’ – and certainly not in the bioleninist form it takes today in particular – but that they had no effective defense against those who did. There are several factors underlining this happenstance, some more and some less historically contingent, but perhaps the most prosaic being that ‘standards of liability established by common law’ are essentially themselves also ‘proactive attempts to regulate’.

Liberalism in practice would happen to disappear almost as soon as it would happen to triumph, not unlike a stick of dynamite. It was effective in deconstructing the incumbent social orders that preceded it, then found itself replaced in turn by something better adapted to quickly filling the power vacuums – which usually entailed possession by daemons. Like an infant nephew declared heir on the deathbed of a childless king, proponents simply didn’t have the power to hold power; voluntarily tied themselves down even, bound and delivered to enemies.

>”...From all sides, people demand and expect that the government truly become a public entity by means of a free press, common deliberation, and popular elections...”

Which is to say, from all sides people demand and expect the government truly become a theocracy by means of a sovereign priesthood.

I think one key part of understanding how this happens is understanding the psychology of how classical liberalism would appeal to different groups in the first place. The doctrinaire liberal thinker might think of himself as a supporter of “[...]reason, truth, and justice, which no one possesses but which certain men are more capable than others of seeking and discovering. Faithful to this aim, representative government rests upon the disposition of actual power in proportion to the capacity to act according to reason and justice, from whence power derives its right.”. What reasonable man would disagree with ‘power to the reasonable’? On the other hand, we can also consider on a practical level what specific targets liberalism as an ideological weapon would happen to be pointed at at the time; which would be, aristocrats, landed gentry, old money, hereditary nobility, and so on. Which is to say, liberalism also held the ability to appeal to the conceits, invidiousness, and status consciousness of large groups of people, while conveniently providing good sounding pretexts for rationalizing these impulses, to others, but more especially to oneself. Merchants rebelling against warriors, co-opted by priests rebelling against warriors.

To put it in simple terms, historical liberalism as a social phenomena derived a not insignificant amount of it’s impetus from traitorous elites who found it convenient as a tool for doing leftism against their peers, and which was likewise subsequently abandoned in favor of other means if and when it ever lived out it’s usefulness for these purposes. Turns out the long term meta-level selection mechanisms and incentive structures of ‘the right to govern from birth’ produced better outcomes after all.

>Beginning from its spatial limitations to Parliament as a particular assembly, free speech eventually encompassed entire countries as everyone was made into a potential parliamentary representative by universal suffrage.

But on what basis would one argue against such an inflation? There is an inherently unstable equilibrium here, where arguments to expand franchise against proprietary privileges have rhetorical cardinalities that ultimately point towards indefinite expansion – whereas arguments in

favor of this or that right as understood properly as a proprietary privilege of this or that group of men in particular, in turn also have rhetorical cardinalities that implicate the right of a man to dispose of his freehold as he sees fit in general, up too and including a state itself.

Reply

- Nulle Terre Sans Seigneur says:

October 18, 2021 at 7:52 am

Preaching to the choir, but this is a decent response,

Reply

- Winking Sequence says:

October 21, 2021 at 10:22 pm

There are:

1. Logical propositions A, A', A'', ..
2. Logics concluding A, A', A'', ..

Therefore, Individuals rights & Group rights go together. A power that can give individuals rights when they previously had none can also give groups rights when they previously had none.

Reply

- NIGEL is a TEAPOT says:

October 22, 2021 at 10:04 am

liberals are trying to satanize Catholic things in the delusion they will take what The Church Created outside of Her. that doesn't work, but God gives the damned to insanity and demons cannot change their minds.

therefore evil is in a vicious cycle repeating the same mistakes.

to answer you specifically, what you are pointing out about liberalism here is that they are trying to make a freemason copy of The Social Kingship Of Christ, but more a "social democracy of the antichrist."

Dr John C Rao:

"It is precisely because this venomous attempt to build a civilization upon a freedom from efforts to fight Original Sin and its willful effects upon individuals is so tempting that it has infected almost all of us in some way or another. We almost all fall prey to the enticement simply to pick what "liberty" most appeals to our particular passion, declare it pleasing to God, willfully condemn whichever application of the same principle we find personally unacceptable when used by others, and ignore the innately poisonous nature of the entire concept. And, quite frankly, we almost all fall prey to the cynical temptation to mobilize the "total depravity" argument anew when we chuckle over the naïve, utopian vision of opponents who want to use law and authority to help make people virtuous in realms where we want "liberty". But blithely making common cause with "liberty" in a world that did not have to be totally depraved but is making every effort to become so is riding on the back of a willful monster—with the current self-destructive appeal to religious liberty at the top of the list. It is only the positive liberty to use our Faith, Grace, our Reason, and the help of social authorities, both supernatural and natural, to correct and transform ourselves under the Social Kingship of Christ that can lead to a life worth living in this world and to eternal happiness in the next."

Reply.

11. NIGEL is a TEAPOT says:

October 22, 2021 at 10:01 am

I do believe that the article is missing a point, but it wouldn't be on this site if it didn't. Not just for your eagerness to support all kinds of evil, but because you are a cultural marxist trying to hide behind older liberalism; then pseudo-intellectually trying to hide all that behind being "right wing" (which IS the cultural half of the hegelian dialectic).

you have no access to Love, Absolute Truth, And Natural Law without The Church. "liberty" is meaningless and is an ancient greek term used to justify sophistic "liscence" to sin and evil.

Natural Law is this:

1. Because man is intelligent, man is moral and free (free actually means Responsible).
2. Because man is intelligent, moral, and responsible, the world is intelligible to man.
3. Because man is intelligent, moral, and responsible, and the world is intelligible, then man can see all is teleological (ordered to a purpose).

locke denies this wholeheartedly. his first principle was to claim a green apple is just a grey sphere because to admit even the slightest Truth is to Prove The Church 100% Correct.

your satanic coven in an earlier form tried to steal what The Church Created and "remake the world" without Her. No. you cannot have ANYTHING The Church Created outside of Her. this is why all flavors of liberalism fails.

Meaning: liberalism is a satanic ethos made by john locke based on the delusion that denying Love, Absolute Truth, And Natural Law would allow you to erase The Church on earth and steal all She Alone Created for you. all you get is pagan collapse, which is what the devil meant paganism to do.

I'll recommend you some things also:

look up "John Locke: Un-Lockeing America" from The Fatima Center on youtube.

For books:

"liberty, the god that failed" by Christopher Ferrara.

"Catholic Republic" by Timothy J Gordon.

Reply.

- o Curt Doolittle says:

October 22, 2021 at 3:18 pm

Pagan: continuous creative destruction, forcing continuous evolution, by which man becomes the gods he imagines.

Christian: continuous stagnation, forcing continuous devolution, by which man decays into the animal he rose himself from.

Reply.

- o NIGEL is a TEAPOT says:

October 22, 2021 at 8:20 pm

mediocre hypocrite and devil worshiper, paganism is worship of demons. it was a self-destructive weapon used against Humanity for 4000 years that had to be destroyed.

it worked by appealing to your original sin and allowed you a way to claim your vice was pretend-virtue by hiding all Virtue from you. you aren't a chubby fatalist chasing after death cult hedonism who worships evil due to fear of evil, you're "diyonisian" or whatever.

you get to pretend your satanism like freemasonry and freudianism (the foundation of all straussian "right-wing" thought) is all there is. you sneer at the edifice of The Church, afraid of The Infinity Within Her, and you try to shoot everyone wanting to even peek through the door. I trample those like you daily, nothing is lost.

Venerable Fulton Sheen describes your malady succinctly, and I was pleasantly surprised I haven't posted it here yet! So I will do so:

"The modern man is no longer a unity, but a confused bundle of complexes and nerves. He is so dissociated, so alienated from himself that he sees himself less as a personality than as a battlefield where a civil war rages between a thousand and one conflicting loyalties. There is no single overall purpose in his life. His soul is comparable to a menagerie in which a number of beasts, each seeking its own prey, turn one upon the other. Or he may be likened to a radio, that is tuned in to several stations; instead of getting any one clearly, it receives only an annoying static.

If the frustrated soul is educated, it has a smattering of uncorrected bits of information with no unifying philosophy. Then the frustrated soul may say to itself: "I sometimes think there are two of me a living soul and a Ph. D." Such a man projects his own mental confusion to the outside world and concludes that, since he knows no truth, nobody can know it. His own skepticism (which he universalizes into a philosophy of life) throws him back more and more upon those powers lurking in the dark, dank caverns of his unconsciousness. He changes his philosophy as he changes his clothes. On Monday, he lays down the tracks of materialism; on Tuesday, he reads a best seller, pulls up the old tracks, and lays the new tracks of an idealist; on Wednesday, his new roadway is Communistic; on Thursday, the new rails of Liberalism are laid; on Friday, he-hears a broadcast and decides to travel on Freudian tracks: on Saturday, he takes a long drink to forget his railroading and, on Sunday, ponders why people are so foolish as to go to Church. Each day he has a new idol, each week a new mood. His authority is public opinion: when that shifts, his frustrated soul shifts with it."

Reply

- o Curt Doolittle says:

October 23, 2021 at 1:05 am

Paganism consists of (a) the primacy of man over nature (b) the transcendence of man into gods (c) by the discovery, application of, adaptation to, and evolution by, the laws of the universe.

Christianity consists of (a) the primacy of a false god over nature (b) the subjugation of man to false prophets and priests (c) the prohibition on the discovery, application, adaptation to, and evolution by the laws of the universe (d) by mandatory superstitious ignorance, and false confidence of the ignorant who follow it in the certainty of their superstition.

Reply

- o NIGEL is a TEAPOT says:

October 23, 2021 at 1:32 am

I can see the level of discourse here is smug satanism trying to worship paganism that exists only in your head. As Chesterton described you: decayed calvinists mixed with diluted buddhists. Or as I described you earlier: metastasized lutherans.

God Is The Uncreated, Uncontingent Prime Mover Who is so far above His Creation that you can only Witness Him as He interacts with Creation. All God does is for The Good Of The Created. From Creating you, to letting you live here, to even letting you d*mn yourself to no longer harm Us who are Human.

The Church Is The Eternal, Indefectible, Immutable, Indestructible, And Most Of All Catholic Body And Bride Of Christ; The Perfection Of Israel. Created By The Holy Spirit In 33AD. Everything Promised To Israel And Man is Perfected In The Church In Full.

The Church Created All you know, don't know, & all you take for granted. without your Remaining Catholic Capital, you lose it all.

We Are Human Beings Lovingly Made In The Image Of God. you were allowed to be born here instead of in hell to allow you this one chance to Repent.

paganism is worship of demons, it has 0 other features besides that. your stupidity was confused for innocence, then worship evil due to fear of evil; devilry comes when above mixes with boredom.

you fear all pain and humiliation because they prove Conclusively that you are not God; fearing the paper tiger you worship them in the hopes they eat you last. unable to admit your capital sin of pride is a lie, you demand you're "greater" than God.

now for your delusion that "ye will be like gods" through the sciences which you have no access to.

Natural Law is this:

- 1) Nature is Moral.
- 2) Because 1, Nature is Intelligible.
- 3) Because 2, Nature is Teleological.

you have no means of even recognizing Natural Law outside of The Church.

The Church Created the sciences and they cannot actually exist or be justified outside of The Church.

This is because the foundational statements of the sciences are:

- 1) the earth is not Divine
- 2) all is intelligible

Since we know God Is Ipsum Esse Subsistens, therefore we know that God is not in creation as He is uncreated and uncontingent. We can only study through observing contingency, and therefore meaning we can only study other created, contingent things like us. That God is not in His creation as a created thing means that we can study all of creation.

That we can know things from creation is that we have the same creator and therefore can know things about the stars as we can about ourselves. Technically all material things are siblings to us, far lesser siblings but siblings nonetheless.

The Church created the term “evolution” originally to mean how things change over time by watching God work before us in real time. This feeds back into God being ipsum esse subsistens (the subsistent act of “to be” itself) as God is so above and outside His creation that we may only know of him by the interaction of His paintbrush on our universe.

That man is Made in the Image of God comes to us by implicit knowledge of God and that we are not made for this world as we are far greater than it. Not to mention God informing this to Moses during their meetings in the tent; Moses’ book containing this information is the Book of Genesis.

I do wonder what the point of not only replying to you was, but being so thorough.

dissociation is not refutation, blaspheming is suicide due to denial of God And His Church.

each sin That Cries To Heaven For Vengeance incurs special punishment in hell worse than all else, blood prices on earth to be paid even if you Repent, immediate demonic possession, and also to be hunted by a demon who pushes you to suicide before you can Repent.

you will want to Remember this as you’ll be begging God at the end of your life for Salvation:

Contrition, Conversion, Confession, Penance, Repentance.

death, Judgement, Heaven, or hell.

Period. END OF.

Reply

- o NIGEL is a TEAPOT says:

October 22, 2021 at 8:31 pm

The Church Is The Eternal, Indefectible, Immutable, Indestructible, And Most Of All Catholic Body And Bride Of Christ; The Perfection Of Israel. Created By The Holy Spirit In 33AD. Everything Promised To Israel And Man is Perfected In The Church In Full.

The Church Created All you know, don’t know, & all you take for granted. without your Remaining Catholic Capital, you lose it all.

We Are Human Beings Lovingly Made In The Image Of God. you were allowed to be born here instead of directly in hell to allow you this one chance to Repent. the worst pain of hell is knowing that you have wronged God & wont see Him again; and at your Particular Judgement God reveals to you EVERYTHING about your life. you’re then given The Grace to not only know it, but to never be able to forget, rationalize, or lie about it.

Now to be more specific in the excising of your demonic tumor: there is no “creative destruction” and that makes no sense. I suppose since protestantism is the synthesis of all heresies, and since freemasonry is all heresies at once, therefore you would adopt eastern theosophism just as easy as you would satanism.

your suicidal, hateful, emotional, ritualistic denial of God make you believe with wishful thinking that “ye will be like gods.” just like your similar denial of Reality (As God Based Reality On Himself) make you think you will get “control” over Reality by wishful thinking. the capital sin of pride is the delusion that you will somehow “usurp” Divine Will by your delusions.

unable to admit your capital sin of pride is a lie, you demand you are “greater” than God. when you find evil (an absence of Good) is stronger than you, you then demand evil as “greater.” this comes from the mortal sin of despair, which is the reaction to the dying capital sin of pride:

- 1) hopelessness.
- 2) trying to damn others in your place by projection.
- 3) trying to normalize your sin to claim damning you, will somehow damn everyone else.

As for your “evolution” delusion, that is the gnostic belief in self-creation. you try to claim you’re your own uncreated, uncontingent prime mover & use the absurdity of claiming it took you “a long time” to do it. you are clearly Created and Contingent. you even confirm this in the first sentence of your satanic post here.

I am also nearly certain you have just described “darkness” vs “light” from final fantasy 14, which would explain where you got your views from. could also be from more openly satanic games like the “shin megami tensei” series. It’s definitely from japanese media and video games though!

Reply

- o NIGEL is a TEAPOT says:

October 22, 2021 at 8:43 pm

paganism is fatalistic stupidity. following your mental fashions (which you have nothing else but) you slither into only two outcomes: hedonism (purposely doing evil in delusion you have to in order to live) or death cult paganism (sacrificing Humanity in delusion it pacifies the demons you worship, who you are deluded into thinking are “powerful” or worse “all-powerful”). this then metasticises into heathenism, or government worship.

like carl here who claim’s that The Eucharist, The Greatest Sacrament, The Body And Blood Of God, The Only Thing That Can Remove damage left by sin, is below the political issues that he damns himself over just to attack “the jews.” Like Anthony Esolen described you of the politics religion: you are senile before ever having become old.

the devil, whom you serve, is a dead, damned, created, contingent being; authorityless, powerless. you were lied to. a spirit supremacist that killed himself because he refused to admit he wasn’t what he thought he was. nothing to give you and has no awareness. nothing to offer you, no power for himself let alone to give you whom he hates and wants nothing more than for you to be dead and damned like he is. the devil wants nothing more than for you to be dead and damned. this applies to any other pagan “god” to whom you worship due to stupidity mixed with bored fear.

And for part 3 (look at the chronological order to see which part is which):
the devil is constantly trying to present humans as beasts or even below beasts because we are Greater than spirits. the dolls like yourself are then ordered to speak like this, which you obey due to mediocrity into stupidity into boredom. devil worshipers therefore did not eat animal flesh because they only ate human flesh.

if a demon thinks they can get you to damn yourself by playing to weakness & showing you nonsense, they will. you fall for stupid tricks.

Woe Eternal Unto you.

Hilaire Belloc describes your defect succinctly:

“Now the Manichean was so overwhelmed by the experience or prospect of suffering and by the appalling fact that his nature was subject to mortality, that he took refuge in denying the omnipotent goodness of a Creator. He said that evil was at work in the universe just as much as good; the two principles were always fighting as equals one against the other. Man was subject to the one just as much as to the other. If he could struggle at all he should struggle to join the good principle and avoid the power of the bad principle, but he must treat evil as an all-powerful thing. The Manichean recognized an evil god as well as a good god, and he attuned his mind to that appalling conception.

Such a mood bred all sorts of secondary effects. In some men it would lead to devil worship, in many more to magic, that is a dependence on something other than one's own free will, to tricks by which we might stave off the evil power or cheat it. It also led, paradoxically enough, to the doing of a great deal of evil deliberately, and saying either that it could not be helped or that it did not matter, because we were in any case under the thrall of a thing quite as strong as the power for good and we might as well act accordingly.

But one thing the Manichean of every shade has always felt, and that is, that matter belongs to the evil side of things. Though there may be plenty of evil of a spiritual kind yet good must be wholly spiritual. That is something you find not only in the early Manichean, not only in the Albigensian of the Middle Ages, but even in the most modern of the remaining Puritans. It seems indissolubly connected with the Manichean temper in every form. Matter is subject to decay and is therefore evil. Our bodies are evil. Their appetites are evil. This idea ramifies into all sorts of absurd details. Wine is evil. Pretty well any physical pleasure, or half-physical pleasure, is evil. Joy is evil. Beauty is evil. Amusements are evil—and so on. Anyone who will read the details of the Albigensian story will be struck over and over again by the singularly modern attitude of these ancient heretics, because they had the same root as the Puritans who still, unhappily, survive among us.”

your “white pride” delusions come from luther, just like every evil from the past 500 years have also.

as I keep mentioning, the devil is the ape of God.

this is why you refer to your country as Catholics do The Church, and why intelligent people are confused by your worship of satanic pagan land. you even try to use Catholic terms (that you Fundamentally do not understand) to refer to your satanist enemies.

luther stated it was the “germans” who created everything and not The Church (germans had such big egos they could not resist even though they knew it was wrong and evil). protestantism (the synthesis of all heresies) used nationalism to corrupt humanity, and so “germans” was changed to “swedes” or “swiss” or “english” or “dutch,” etc. therefore the belief that “white” people (aka ex-Catholics who no longer have a Culture or Right to Christendom) creates everything.

since liberalism, freemasonry, atheism, marxism, satanism, et al is based on protestantism, therefore they think their enemy is “white” people when they really just want to attack Catholics.

evil is dull after all. as Chesterton said, evil is just the byproduct of stupidity and devilry is when stupid people get bored.

Reply

12. Pingback: So what is “the dissident right” anyways? – NigelTeapot's Abattoir

13. ratioetdignitashumanae says:

November 5, 2021 at 12:15 pm

Very interesting post! Unfortunately, even here, in postcommunist Poland, we still have some “radical conservatives” who condemn “capitalism” as the root of all evil and who support any third world dictator as long as he is “anti American”.

However, I am still not convinced, if you are not absolving liberalism too easily. First of all, I would like to suggest, that there are at least two different types of liberalism. Lets name them provisionally as Lockean liberalism and Tocquevillean. First is based on Hobbes and Ockham (the true root of all evil ;). Its central point is neither “rule of law” nor “due process”, but social contract. But what is the social contract? A contract, in which individuals create the society – the Leviathan, to whom which they confer whole of their previous, natural power – in other words absolute power. What is the goal of this process? To protect the rights of individual. But there rise problems – firstly, the Leviathan is the sole creator and judge, concerning the issue of the boundaries of those rights. Secondly – if the Leviathan is created by the individuals in order to protect individual rights, what about the natural communities which existed before this creation such as family? Also – if the individuals are both free and equal, there can't be any differences in their situation – there should be no “privilege” for being white, male or well born. Therefore it is the Lockean individualism, which created the basis for the woke movement. Because just on the basis of liberal social contract theory there is no ground for excluding women, plebeians or immigrants from the status of the equal individual in the society. For XIX century liberals, it was obvious, that political rights should belong only to adult fathers of the families, but this was only an customary axiom, with not real basis in the social theory upon which their ideology was built.

However there is also another liberalism, which I call Tocquevillean. It is profoundly anti egalitarian and anti democratic and rather than wishing to establish “one, equal law for all” it aims to protect all communal and local liberties and rights. And while the first liberalism is truly revolutionary, this one is definitely reactionary. But is this really liberalism? Isn't it rather anti-absolutist, preenlightenment reactionism, praising old feudal world and its remnants, from before the age of Bodin and origins of the sovereignty?

Reply

o NIGEL is a TEAPOT says:

November 5, 2021 at 12:30 pm

De Tocqueville is Catholic if I recall and pointed out the flaws in the us constitution even before The Pope did.

This is why there is Substance in his words.

It's not hard to take a system like liberalism that is fundamentally satanic but subsists entirely on stolen Catholicism, scoop out the devilry and insert real Catholicism.

Reply

- Douglas Gomes says:

November 8, 2021 at 3:42 am

Didn't Tocqueville praised the democratic and civil equality tendencies of 19th American society? Things which Carlsbad in his articles hardly excuses, also Nigel has noted critiques of freedom of the press and of expression.

Also if you are sufficiently sex dualist due to a posteriori empirical considerations, political ideology is hardly enough to refute a more patriarchal slant.

Reply

- rpt says:

November 12, 2021 at 9:07 pm

Postcommunist Czechia (or Slovakia for what I know) all the same, esp. tradcaths and their favorite third ways of corporatism (like Toniolo) or distributism.

Reply

- NIGEL is a TEAPOT says:

November 13, 2021 at 8:44 pm

capitalism is and always was industrialized communism.

the goal was for the locke-lenmings to steal as much as they could, and then use that to pay for their leviathan. there was never any other goal, and the system was never designed to last longer than that.

Reply

14. Mistborn says:

November 11, 2021 at 9:19 pm

MINOR MISTAKES

1. Police power. The federal government does not have police power, only the states do. That police power is constrained by Congress through the Supremacy Clause and later on by the Courts through the incorporation of the Bill of Rights against states.

2. Able v. United States (1998). This was a case in the Second Circuit not SCOTUS. LGBT members of the armed forces were bringing a constitutional challenge against a socially conservative law, so the example cuts against your argument.

3. Goldberg v. Kelly (1970). This was a procedural due process case. It held that if someone was given certain government benefits, the government had to hold a hearing if it wanted to take those benefits away. It did not create a constitutional right to welfare.

4. *Terminiello v. City of Chicago* (1949). (a) This is a well-known case, the famous phrase the Constitution is not a suicide pact comes from Jackson's dissent. (b) The case and Jackson's dissent appear in Vermeule's *The Constitution of Risk* (pp. 68-69). (c) When he gave the speech Terminiello was not a priest, Jackson notes that he was under suspension by his Bishop, Vermeule calls him "a defrocked Catholic priest" (at any rate I don't see how what one priest said in 1946 has much relevance to what Catholics are arguing today). (d) What you quote is not why Terminiello was arrested, see Jackson's dissent which quotes from Terminiello's speech at length.

LEGALITY OF ADMINISTRATIVE LAW

Albert Venn Dicey's writings are not a good way of assessing the legality of administrative law. Comparing Social Security Administration's Office of Hearing Operations to the Star Chamber is just not that persuasive. If you want a more positive defence of administrative law's legality I refer you to Vermeule's *Rules, Command, and Principles in the Administrative State* which appeared earlier this year in *Yale Law Journal* (at 14 pages it is quite short).

JUDICIARY AND LIBERALISM

Throughout you seem to imply that liberalism requires judicial supremacy (e.g. your comments on administrative constitutionalism) which I find puzzling given the role the judiciary has played in "post-liberalism" since 1960. Yarvin for example has said: "the most modern part of the modern regime really begins with *New York Times v. Sullivan* (1964)."

INTEGRALISM TODAY

Vermeule's position (I am limiting myself to him because I know his work and writings, I am not familiar with Ahmari or Deneen) is that every state is an integralist state, the only question is what the state religion is, so liberalism in the sense you understand it is not possible today, if it ever was.

The progressives have a robust vision of "Common Good" that they try to promote and enforce and the right should do so as well instead of engaging in delusions of neutrality. Your choice is between different post-liberalisms.

GOAL OF ESSAY

I don't know what is it exactly that you are arguing against. For example is there anyone who disputes the illiberality of the progressive movement of late 19th and early 20th century?

I will end with Vermeule's view on the relationship between liberalism and progressivism:

>>>Progressivism is the child and heir of liberalism, its purified and logically consistent expression. Progressivism is just what happens when the Festival of Reason has overcome the most obvious villains—deposed the monarchs and slaughtered the priests—and then looks for new villains to play their assigned part in the great liturgy. Progressivism is what happens when one follows the logic of human liberation to its endpoint, overriding all the culturally contingent limitations and shaky conceptual barriers, like the public/private distinction and the distinction between state organs and the corporate form, that progressives like Robert Hale showed to be intellectually untenable. When the arch-progressive John Dewey speaks in grandiloquent tones of "great movements for human liberation" it is because he takes himself to be carrying out the liberal project, not hijacking or betraying it.

Reply

- o Nulle Terre Sans Seigneur says:

November 12, 2021 at 10:18 am

> The federal government does not have police power, only the states do.

In the context of American federalism, yes. I was discussing police power in general. This is indifferent.

> LGBT members of the armed forces were bringing a constitutional challenge against a socially conservative law, so the example cuts against your argument.

The example was about whether agency rules trump legislative acts or vice versa in judicial deference, and its 'indeterminacy.' But how does it cut against my argument? It's activism against legislative norms/parliamentary supremacy.

> It did not create a constitutional right to welfare.

When you continuously strike down state-imposed restrictions as has been the tendency from *King v. Smith* onward, and the fact that welfare payments are "a matter of statutory entitlement" that comprise property and not gratuity, then it may as well be. It's elevated to a matter of basic norms.

> Albert Venn Dicey's writings are not a good way of assessing the legality of administrative law.

Who said anything about "legality"? That's a fairly thin ground to cover.

> Throughout you seem to imply that liberalism requires judicial supremacy

I don't.

> The progressives have a robust vision of "Common Good" that they try to promote and enforce and the right should do so as well instead of engaging in delusions of neutrality. Your choice is between different post-liberalisms.

That's exactly what I'm saying. In which case, why does anyone still speak of liberalism in the present tense?

Reply

- o NIGEL is a TEAPOT says:

November 12, 2021 at 10:56 am

Because liberalism is the name of the evil currently besetting the world, the most insidious form being its spore-state: classical liberalism.

Of course it's just another name for the same evil that has been there since cain. every evil throughout all history is the same evil.

Reply

- o Mistborn says:

November 13, 2021 at 3:32 am

>>>In the context of American federalism, yes. I was discussing police power in general. This is indifferent.

Here is what you wrote:

>>>This usage survives to this day in American constitutional law as “police power,” which is defined as “the permissible scope of federal or state legislation so far as it may affect the rights of an individual when those rights conflict with the promotion and maintenance of the health, safety, morals, and general welfare of the public.”

>>>The example was about whether agency rules trump legislative acts or vice versa in judicial deference, and its ‘indeterminacy.’ But how does it cut against my argument? It’s activism against legislative norms/parliamentary supremacy.

In 1993 Congress passed a law, members of the armed forces brought a constitutional challenge which succeeded in the district court. On appeal the executive argued that Congress was owed a great deal of deference in regulating armed forces. The Second Circuit agreed, reversed the judgement of the district court and upheld the law as constitutional. The law remained in effect until it was repealed by Congress in 2010. How does that example help your argument?

>>> When you continuously strike down state-imposed restrictions as has been the tendency from *King v. Smith* onward, and the fact that welfare payments are “a matter of statutory entitlement” that comprise property and not gratuity, then it may as well be. It’s elevated to a matter of basic norms.

What you wrote about *Goldberg v. Kelly* (1970) is factually incorrect.

King v. Smith (1968) is a statutory case about a federal program in which states could participate if they wanted to. The first issue is whether the Court construed the statute properly, even if we assume they got to their desired policy result via creative statutory construction, how is that a substantial issue?

I called these are minor mistakes but there is a tension in your essay which I should highlight more clearly: you say that the current regime is no longer liberal because it doesn’t have the juridical nature of liberalism but at the same time you are dismissive of the procedural requirements imposed by Congress in Administrative Procedure Act and by SCOTUS in *Goldberg v. Kelly* (1970).

>>> Who said anything about “legality”? That’s a fairly thin ground to cover.

Albert Venn Dicey:

>>>The singularity of England was not so much the goodness or the leniency as the legality of the English system of government.

>>> I don’t [imply that liberalism requires judicial supremacy].

Using Albert Venn Dicey as your standard for rule of law and criticizing administrative constitutionalism means only courts get to say what the law is. In the U.S. context this means other actors (the President, the states, ...) can not hold a legal position that is different from SCOTUS. That is judicial supremacy.

>>>That's exactly what I'm saying. In which case, why does anyone still speak of liberalism in the present tense?

In that case the integralists are the least of your problems. Those who don't realize liberalism is no longer with us are the moderates in the middle who daydream about getting things back to the way it was in the 1990s...

Reply.

- o Nulle Terre Sans Seigneur says:

November 13, 2021 at 9:57 am

It seems we're at cross purposes here, since a) there are a lot of peculiarities to American federalism that complicate British and continental accounts of the rule of law, but at the same time the story of how this institutional division and plurality becomes slanted is an important datum. Furthermore, the formal content of it being federal assistance and a statutory case isn't as important to my case as the question of 'thick' norms, such that the state-level restrictions being struck down were those that *encouraged thrift* and *discouraged dependency*. That's the point; b) Dicey's England didn't have a Supreme Court proper anyway and the blatant overturning of legal/civic equality is sufficient to destroy the legality criterion though it obv. doesn't transfer perfectly outside England; c) I'm not a positivist or a proceduralist.

> Those who don't realize liberalism is no longer with us are the moderates in the middle who daydream about getting things back to the way it was in the 1990s

Both have issues. Wanting to go back to an unsustainable transitional state is futile, but having a wrong analysis of your enemy when planning future action is foolish.

Reply.

- o NIGEL is a TEAPOT says:

November 13, 2021 at 9:06 pm

the enemy is easily understood, the problem you see might be that the real enemy is closer to you than you find comfortable having destroyed.

this is why the "dissident right" hates and banalizes anything Catholic, all while sneering about how pointing out the hypocrisy of the left is pointless.

The first is because while people try to imprison Catholics in your paradigm, we are Beyond it and so the whole system is not as all-controlling as locke promised you,

The second is that, No, it isn't pointless, as that is how people on the left wake up. The problem is more along the lines of "if you are pointing out the hypocrisy on the left, you may come to make a hobby of pointing out the hypocrisy on the 'right.'"

both left and right have an inner circle and outer circle, the problem is:

1) that the inner circle for both is the same people, though both outer circles deny the existence of the inner circle for different reasons. the left denies it because of brainwashing, the right denies it because of ambition and ego.

2) the inner circle is so far away from the right that the people on the right believe they are a burgeoning inner circle rather than an outdated, displaced outer circle. the right believes itself and automatic Virtuous foil to the left, rather than a purposeful component of the hegelian dialectic where the coven believes conflict legitimizes everything. if you are too busy fighting the "other," you can't see or refuse to look that you are both being controlled by two different hands of the same puppeteer.

3) the devil operates by reactions. the devil cannot make direct orders, as no one would listen, and has no power to compel or do anything; therefore the devil makes groups insufferable by corrupting their weakness so that a "reactionary group" comes to destroy the former. the reactionary group is the devil's goal (if a corpse can have a goal, that is).

ex. feminism. the devil HATES women, more than you could imagine. therefore in an attempt to wipe out women once and for all, the devil made weak women stupid, demonic, and insufferable. the goal being that frustrated men would "react" by giving the feminists all their worst fears in revenge; which is what the devil wanted all along.

master manipulators know, that true comes when you make your victims believe they came up with the ideas you planted in their heads. this is no different, all demonic oppression, obsession, and possession are fundamentally abusive relationships and operant conditioning.

therefore the horrid ideal of the neopagan "dissident right" is what the devil wanted all along. as with all evils, they just could never take hold because of The Remaining Catholic Capital of the world. this the heart of why the "dissident right" banalizes all things Catholic.

Reply

- o Mistborn says:

November 14, 2021 at 6:11 am

a) Rule of law (as elaborated by Albert Venn Dicey [AVD]) is related to, but different from the Rechtsstaat; the former is dominated by judges, the latter by legislators. The current legal framework in U.S. does not conform to AVD's parameters but it is rooted in that tradition which is why judicial review is so prominent and gets codified by Congress in the Administrative Procedure Act (Daniel R. Ernst has a book on the failed attempts at importing the Rechtsstaat into the U.S. political system which I have not read but it might be relevant). One disagreement we have is whether this evolution away from AVD is enough to declare that the rule of law has been suspended.

b) Having looked at the opinion King v. Smith (1968) doesn't work for what you have in mind. In addition to my objections above, it seems the Supreme Court reached the right decision. The opinion describes the program (emphasis added):

>>>>The AFDC program is based on a scheme of cooperative federalism. See generally Advisory Commission Report, *supra*, at 1-59. It is financed largely by the Federal Government, on a matching fund basis, and is administered by the States. States are not required to participate in the program, but those which desire to take advantage of the substantial federal funds available for distribution to needy children ___are required to submit an AFDC plan for the approval of the Secretary of Health, Education, and Welfare (HEW)___.

In this context the Flemming rule seems fine legally (whether it is good policy is another matter). More importantly:

>>>>Congress quickly approved the Flemming Ruling, while extending until September 1, 1962, the time for state compliance. 75 Stat. 77, as amended 42 U. S. C. § 604 (b).

Once Congress adopts the Flemming rule as legislation it is hard to fault the Supreme Court for enforcing it years down the road.

>>>>Both have issues. Wanting to go back to an unsustainable transitional state is futile, but having a wrong analysis of your enemy when planning future action is foolish.

Do you regard Ahmari and French as being equally wrong? That integralists have to deal with liberal conservatives such as French doesn't mean they don't understand the nature of progressives.

Reply

15. Pingback: On Meekness, nominalism, action movies, effeminacy, and how the worst problem in the world is actually "toxic masculinity" after all! – NigelTeapot's Abattoir

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