

Liberty and Order in Eighteenth-Century England: Civil Liberty, Civil Government and the Common Good

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Abstract

This paper explores the subject of 'civil government' in eighteenth-century England and the discourses on liberty deployed around this subject, relating it to new 'republican' or 'neo-Roman' theories of freedom articulated by Quentin Skinner and Philip Pettit. I argue that English civil government concerned itself with intensive social ordering in the name of the common good. Nonetheless, it was located within a distinctive discourse about freedom at the same time as being concerned with detailed intervention in social life. The authors studied here defined liberty not as the absence of constraint or in terms of increasing liberation, but as a fixed, mean condition between anarchy and tyranny. In this discursive scheme the greatest threats to freedom were not interference or domination by the state, but popular license and disorder. Civil liberty was a product of social ordering in the name of the common good. The sources used to explore this subject are texts produced by and in relation to the Quarter and Petty Sessions of the Peace and the manorial courts, particularly the Court Leet. These include 'Charges' to the courts, sermons at their commencement and the handbooks produced for their officers. As such the discourse analysed is that of the hegemonic Whig order, seeking to legitimise its authority, not the oppositional 'Country' discourse usually studied for pre-liberal versions of freedom.

A longer paper with slightly different focus can be found at www.cresc.ac.uk/publications/papers.html no. 21.

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I

This paper explores the subject of ‘civil government’ in eighteenth-century England and the discourses on liberty deployed around this subject.¹ Recent literature on the history and theory of freedom before liberalism, inspired by the work of Quentin Skinner and Philip Pettit, has identified a distinct way of writing about liberty in operation in the eighteenth century. According to their account, ‘republican’ or ‘neo-Roman’ liberty was defined not as a state of freedom from interference, but as a condition of freedom from dependence or domination.² Freedom was contrasted to slavery and to be in possession of liberty one had to live in a free state and not be subject to the arbitrary will of a master.

The rediscovery of this concept of freedom in political thought has provided a new mode of critical engagement with liberalism, to accompany the more general communitarian versions of ‘republican’ liberty inspired by the work of J. G. A. Pocock, who, amongst others, articulated a more participatory, humanist version of freedom and citizenship.³ Richard Bellamy, Iseult Honohan, Duncan Ivison and John Maynor, amongst a rapidly-growing list of followers of Pettit and Skinner, have variously developed a new republican political theory concerned with conditions of governance and the production of particular kinds of citizen.⁴ In order to make their argument, these authors draw on a series of classic texts in the history of political thought, including not only the classical sources of Aristotle and Cicero, but also political argument in eighteenth-century England, particularly that defined as the ‘commonwealth’ or ‘Country’ opposition to the dominant Whig political order. In this literature liberalism emerges from the hegemonic discourse of the Court Whigs who sought to refute this neo-classical ‘Country’ discourse.

My focus in this paper is rather different. Rather than looking at opposition discourse, I explore literature mobilised in relation to the subject of ‘civil government’ in the long eighteenth century. These texts were produced by those involved in the government of peace and order in the name of the common good, a task principally carried out by the various traditional courts that governed the different divisions of English government: the Quarter and Petty Sessions of the Peace and the manorial courts, the Court Leet and the Court Baron. The parish vestry was also responsible for much of such work

¹ Despite H. F. Pitkin, ‘Are Freedom and Liberty Twins?’, *Political Theory* 16 (1988), pp. 523-52, I use the terms ‘freedom’ and ‘liberty’ interchangeably, partly because I do not find all aspects Pitkin’s account convincing, but chiefly because the authors I engage with did not make such distinctions.

² P. Pettit, *Republicanism: A Theory of Freedom and Government* (revised edn, Oxford, 1999); Q. Skinner, *Liberty Before Liberalism* (Cambridge, 1998) and *Visions of Politics* (3 vols., Cambridge, 2002), vol. ii. See also Q. Skinner and M. Van Gelderen, eds., *Republicanism: A Shared European Heritage* (2 vols., Cambridge, 2002).

³ J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Chichester, 1975) and *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge, 1985). Work in this vein inspired both British and American communitarians, most notably: A. MacIntyre, *After Virtue*, 2nd edn, (London, 1987); A. Oldfield, *Citizenship and Community: Civic Republicanism and the Modern World* (London, 1990) and M. Sandel, *Liberalism and its Critics* (Oxford, 1984) and *Democracy’s Discontents* (London, 1996).

⁴ R. Bellamy, *Rethinking Liberalism* (London, 2000); I. Honohan, *Civic Republicanism* (London, 2002); D. Ivison, *The Self at Liberty: Political Argument and the Arts of Government* (London, 1997); J. W. Maynor, *Republicanism in the Modern World* (Cambridge, 2003).

and I also invoke some sermons from the Assizes, which dealt with felony and capital crime. These bodies dealt variously with statute and civil law, as well as the common law and local byelaws. Their officers included the Sheriff, the Justice of the Peace, the Churchwarden, Boroughreeve, Surveyor of the Highway and the Constable, as well as various subordinate deputies, Beadles, Streetkeepers and Watchmen.

The texts produced by and in relation to these bodies and officials include 'charges' and sermons, essentially exhortations to government delivered at the beginning of the various court sessions, as well as handbooks outlining the legal duties of the various officers of the courts. These works represent the hegemonic values of the governing authorities rather than opposition to the Whig settlement.⁵ This body of text embeds a distinct way of writing about freedom in the legal and procedural structure of the government of common life and has a direct relation to a particular body of governmental practice related to social ordering and legal intervention in conduct. Study of this subject, therefore, not only extends the history of freedom into the field of the 'policing' of public life (broadly conceived), but also allows us to identify a distinctive pre-liberal way of writing about freedom in the hegemonic discourse of the English *ancien régime*.⁶

My purpose in so doing is twofold. First, I think there is a sense in which critics of liberalism need to be reminded precisely why it emerged in the first place, something largely forgotten in a society in which the benefits of liberalism are taken for granted.⁷ My second, related concern is to draw attention to the ways in which discourses on freedom closely related to those identified by Skinner and particularly Pettit could be, and were, used to legitimise a highly interventionist mode of government that I consider (normatively) undesirable. Neglect of both aspects of this subject is a consequence of the focus on opposition discourse, ignoring the ways in which the governing authorities themselves sought to justify their fairly authoritarian practices of rule and social ordering in relation to a particular neo-classical vision of freedom. Intensive social intervention was legitimised in the name of the common good and the liberty of the body politic, located at a mean between popular license or anarchy and arbitrary will or despotism. Freedom, then, was closely associated with the maintenance of an established order, including specified modes of worship, place of abode, wage and occupation.⁸

Lest we forget, liberalism did not emerge simply through utilitarianism, or in response to attempts to defend the American revolution in neo-classical

⁵ The discourse of the Court Whigs has also been effectively studied in S. Burt, *Virtue Transformed: Political Argument in England, 1688-1740* (Cambridge, 1992), pp. 110-27 and R. Browning, *Political and Constitutional Ideas of the Court Whigs* (London, 1982).

⁶ The argument that England possessed an *ancien régime* in the long eighteenth century based on the assumption of hegemony by the Whig oligarchy is presented in J. C. D. Clark, *English Society, 1660-1832: Religion, Ideology and Politics During the Ancien Regime* (2nd edn, Cambridge, 2000).

⁷ This point is made more substantially and with reference to other questions in D. Saunders, *The Anti-Lawyers: Religion and the Critics of Law and State* (London, 1997).

⁸ I do not intend a critique here comparable to the bizarre one advanced by G. Maddox, 'The Limits of Neo-Roman Liberty', *History of Political Thought* 23 (2002), pp. 418-31, who seems to imagine that Pettit and Skinner want to revive the real Roman republic and that their work can be criticised on the basis that the Roman republic was not really that desirable. What I do intend to point out, however, are the possibilities opened up by such discourse and the potential significance of the distinction between the positions of Pettit and Skinner.

terms, as argued by Pettit and Skinner, but also in response to a general system of government that sought to impose a unitary vision of order on society, one that restricted freedom of association, worship and political participation, as well as proscribing and prescribing many forms of public behaviour.⁹ The chief targets of reformist Whigs and real Liberals were the unreformed franchise; corrupt, closed and dominating local government; the hegemony of the Anglican church and exclusion of dissenting protestants, Roman Catholics and Jews from public and political life; the reduction of protectionist policies favouring the agricultural power-base of the aristocratic elite; draconian restrictions on public behaviour and freedom of association during the Napoleonic wars; and the growth of a large, centrally-run 'fiscal-military' state machine, alongside more general cultural concerns to undermine the formality of eighteenth-century life.¹⁰ These, after all, were the abiding concerns not only of Whig and Liberal politicians, but of such central figures in the liberal intellectual canon as Joseph Priestley, who sought to carve out a sphere of non-interference in religion and education, or John Stuart Mill, who in *On Liberty* sought to establish freedom from the tyranny of the majority in terms of opinion, sentiment and practice. The texts I invoke in what follows were written in support of a ruling order which sought to establish the precise contours of English liberty for everyone in that society; it was to this order and this prescriptive mentality of government that liberals opposed themselves.¹¹

All this bears directly on an apparently minor dispute between Pettit and Skinner. Skinner argues that in the eighteenth century interference and dependence were seen as equivalent restrictions on liberty, while Pettit maintains that interference according to the law was not a reduction on freedom, rather it 'conditioned' it.¹² I argue below, and in forthcoming work elsewhere, that the authors I engage with here, and the 'neo-Roman' sources specifically identified by Skinner, all see interference according to the law as constitutive of freedom, not a restriction on it. They would argue that any form of interference or domination would be an equivalent restriction on *natural* liberty, but that is not their concern. Rather, they identify a specific form of freedom, *civil* liberty, the freedom of people in society, as distinct from simple natural liberty, and align it with freedom under the law. Civil liberty depended upon the existence of a free state and certain orderly social conditions and is a product of governmental intervention, according to law, not its antonym. Even Bolingbroke, the leading opposition writer agreed, quoting Cicero, the

⁹ Pettit, *Republicanism*, pp. 41-50; Skinner, *Liberty before Liberalism*, pp. 77-84, 96-9.

¹⁰ See J. C. D. Clark, *English Society*; J. Parry, *The Rise and Fall of Liberal Government in Victorian Britain* (London, 1993). On the 'fiscal-military state', see J. Brewer *The Sinews of Power: War, Money, and the English State, 1688-1783* (London, 1989) and L. Stone, ed., *An Imperial State at War: Britain, from 1689-1815* (London, 1994).

¹¹ By 'mentality of government' I mean 'a way or system of thinking about the nature of the practice of government (who can govern; what governing is; what or who is governed), capable of making that activity thinkable and practicable both to its practitioners and to those upon whom it was practiced', C. Gordon, 'Governmental Rationality: An Introduction', in Graham Burchell, Colin Gordon and Peter Miller, eds., *The Foucault Effect: Studies in Governmentality* (Hemel Hempstead, 1991), pp. 1-51, at p. 3.

¹² Skinner, *Liberty before Liberalism*, p. 18 n. 54, pp. 81-4, n. 52, n. 54-5; P. Pettit, *Republicanism*, pp. 300-3 and 'Keeping Republican Freedom Simple: On a Difference with Quentin Skinner', *Political Theory*, 30 (2002), pp. 339-56.

mainstay of both his and Skinner's conception of neo-Roman liberty: 'we are all slaves of the law, so that we can be free' and 'I am not free from the Law, but by the Law'.¹³

However, although I think that Skinner is mistaken in ascribing equivalence to the conditions of domination or dependence and interference according to the law to seventeenth- and eighteenth-century authors, I think that normatively there may be good reasons to prefer his definition of neo-Roman liberty to Pettit's republicanism. If we are seeking to augment the liberal concept of freedom from interference with the concept of freedom from domination, in order, for example, to contest the position of individuals in relation to multi-national corporations, or instances of the absence of genuine 'choice' in the 'marketplace' for social service 'products', then Skinner's account allows us to retain the benefits of liberal freedom from interference, while offsetting the problems of imposed social uniformity and homogeneity raised by schemes like Pettit's.

II

The bodies I am dealing with here, principally the Quarter and Petty sessions of the peace and the manorial courts, were involved in the general regulation of communal life. John Hawkins's 'Charge to the Grand Jury of the County of Middlesex', delivered in 1770, outlines the role of the quarter sessions court over which he was presiding. The jurisdiction of the court was widespread. The quarter sessions could, in theory, deal with such serious offences as treason, including 'petit treason', that is the homicide of someone 'between whom and the offender the law supposes a special obedience' (such as the relation between man and wife, parent and child, master and servant), or libel. It could also deal with the capital offences of murder, robbery, burglary and so on. More often, however, the court dealt with such offences as perjury, bribery, extortion, maintenance, riots, routs and unlawful assemblies, assaults, forestalling, ingrossing and regrating, artificers and selling unwholesome food. These more serious offences were complemented by a concern to regulate more minor nuisances, that is 'acts injurious to the ease, the health, or the morals of the people: such are annoyances and obstructions in the public streets and highways, the exercise of noxious trades and businesses in particular places, and the keeping of houses for the purposes of lewdness'. In this category of offence, 'none will appear to be more worthy of your notice, than those that have a tendency to corrupt the manners of youth,' such as gaming houses and 'places of lewd resort', in which 'the habits of idleness and debauchery are first contracted, connections of the worst kind are formed, and all the ends of a virtuous education frustrated'. It was also the duty of the magistrate to promote the national religion, punish public expressions of atheism, deny the scriptures or derogate the Book of Common Prayer. Practice of the Roman Catholic religion was specifically prohibited.¹⁴

¹³ H. St John, Viscount Bolingbroke, 'On the Spirit of Patriotism' [1749], in D. Armitage, ed. *Political Writings* (Cambridge, 1997), pp. 193-216 at p. 196 n.6.

¹⁴ J. Hawkins, 'A Charge to the Grand Jury of the County of Middlesex. Delivered at the General Quarter Session of the Peace, Holden at Hick's Hall in the Said County, on Monday the Eighth Day of January 1770', in G. Lamoine, ed. *Charges to the Grand Jury, 1688-1809* (London, 1992), pp. 423-8.

The government of order, then, encompassed moral behaviour, religious observance, the condition of the urban environment, trading practices and health and welfare generally. This extended to substantial powers for the control of vagrancy and the poor laws, including the forcible resettlement of many individuals and families in their parish of origin, as well as the power to fix the price of commodities and especially bread, control labour mobility, including the right to direct labour, fix wages and regulate the conduct of servants and the licensing of alehouses and places of entertainment, alongside the general maintenance of the peace.

The system was structured so that those entrusted with the task of governing should know all inhabitants of the area, contain them within it and apply their labour where it was required, maintaining the flows of commerce while preserving the moral order. This intense regulation of all aspects of life constitutes a system of comprehensive social and economic ordering quite distinct from the 'liberal' modes of government established in the nineteenth century: there is no sense here of a 'social' or 'the economy' with laws of their own, operating free from political interference. Rather, the common good dictates that the body politic should be moulded through active intervention in a wide array of situations and behaviour. Movement and conduct should be precisely regulated by those in possession of personal and complete knowledge of the area and who possessed the capacity and character to judge impartially questions of the public good.

In Manchester these functions were undertaken by the Court Leet of the Manor of Manchester, a body which oversaw the government of the township from the Elizabethan period up to 1842. The Leet was presided over by the Steward of the Lord of the Manor, who appointed the officers of the Court, generally from amongst the propertied men of the township. The Court also appointed the two constables every year and as such its officers dealt with statute law as well as nuisances and the contravention of bylaws. Service as an officer of the Court was annual and compulsory, part of the 'civic duty' of the officers.¹⁵ The role of the Court Leet was close to that of the quarter sessions described above and was continually defined as that of promoting the 'common-weal' or 'the Good of the Publick, and not for the aggrandizing of any particular Person or Family; for the just Preservation of the Lives, Liberties and Properties of the honest and inoffensive, against the Abuses of the violent, the crafty, the rapacious, the licentious and disorderly'.¹⁶ This was echoed by William Roberts, Steward of the Manchester Court Leet: 'This Court is solely intended for the public good, and cannot be subservient to any private purpose whatever, without corruption, without perjury, or without

¹⁵ F. Dodsworth, "'Civic' Police and the Condition of Liberty: The Rationality of Governance in Eighteenth Century England', *Social History* 29 (2004), pp. 199-216 and 'Masculinity as Governance: Police, Public Service and the Embodiment of Authority, c. 1700-1850', in M. L. McCormack, ed., *Public Men: Masculinity and Politics in Modern Britain* (Basingstoke, 2007), pp. 33-53.

¹⁶ Anon, *The Power and Practice of the Court-Leet of the City and Liberty of Westminster Display'd* (London, 1743), p. 1; J. Ritson, *The Jurisdiction of the Court Leet: Exemplified in the Articles which the Jury or Inquest for the King, in that Court, is Charged and Sworn, and by Law Enjoined, to Inquire of and Present. Together with Approved Precedents* (2nd edn, London, 1809), p. 1 n*; Sir W. Scroggs, *The Practice of Courts-Leet, and Court-Baron: Containing Full and exact Directions for holding the said Courts, and making up the Rolls thereof* (London, 1728), pp. 2-3.

injustice'.¹⁷ The purpose of the Court was to establish 'domestic security and good order' and this task is defined as that of 'regulating the police of the town', a term which was increasingly coming into use in the late century to describe such systems of government.¹⁸

The impartiality of the Leet's officers was heavily stressed. The Boroughreeve, the chief officer of the town, was to be considered the 'representative' and 'centre of union of the town' and 'the moment he is invested with his office, whatever were his private sentiments, or his private interests; whatever contested scheme he had in view; whatever party he was engaged by affection, or otherwise to promote; to be upright, to be impartial, and to be worthy of his office, he should beware of using his weight in a public capacity, as an influence in any way whatever, except for the public good'.¹⁹ Those appointing such officers should not allow party motives, either of religion or politics, to interfere with their judgement: in doing so, one would be 'forgetful of the sacred obligation you are under of acting only for the public welfare, and not from private inclination'.²⁰ Their authority and legitimacy lay in their devotion to the common good, beyond individual or party interest.

But despite the significance placed on order, hierarchy and the common good, and their active intervention in public and private affairs, these mechanisms of government were not considered antithetical to freedom. Rather, civil liberty and the common good were seen to be inextricably entwined. As Skinner has underlined, the freedom of the state was considered to be a condition of individual liberty.²¹ It is important to be clear what we mean by freedom here. Eighteenth-century writers were generally very clear that they spoke about 'civil' as opposed to 'natural' liberty. William Hay, Justice of the Peace for Sussex and later MP loyal to the Whig administration, could write without paradox, that 'all government is an Infringement on their Natural Equality, and a Restraint on their Natural Liberty', while at the same time defining the 'end of government' as the protection of men in 'their Lives, their Liberty, their Possessions, and (as they are rational Beings) their Religion'.²² This distinction between natural and civil liberty is a common and an important one, central to the legitimisation of government in the name of freedom, but largely absent from the work of Skinner and Pettit, who chart a shift from one unitary understanding of freedom to another, from freedom from dependence to freedom from interference. In fact, what we see is a more complex modulation of different kinds of freedom: natural, civil, and later political, bound up with these wider concerns.

¹⁷ W. Roberts, *A Charge to the Grand Jury of the Court Leet for the Manor of Manchester. Containing an Account of the Internal Government of that Town; and of the Nature, Jurisdiction, and Duties of Courts Leet in General. Delivered at Michaelmas Court, on the 15th of October, 1788* (2nd edn, London, 1793), p. 16.

¹⁸ *Ibid.*, p. 18, p. 16, p. 26. English discourse on 'police' is examined in F. Dodsworth, 'Police and the Prevention of Crime: Commerce, Temptation and the Corruption of the Body Politic, from Fielding to Colquhoun' *British Journal of Criminology* (forthcoming). Advance Access: doi:10.1093/bjc/azl054, 17 July 2006
<http://bjc.oxfordjournals.org/cgi/rapidpdf/azl054?ikey=EvEiJTzS5hFnBDa&keytype=ref>.

¹⁹ Roberts, *Charge to the Grand Jury*, pp. 28-9.

²⁰ *Ibid.*, p. 33.

²¹ Skinner, *Liberty before Liberalism*, p. 23, p. 60 and throughout.

²² [William Hay], *An Essay on Civil Government: Treating Summarily Of its Necessity, Original, Dissolution, Forms, and Properties* (London, 1728), p. 2, p. 17.

Although not all the authors here can or need to be seen as precisely following the 'neo-Roman' discursive form defined by Skinner, it is clear that they do subscribe to the idea that civil liberty is a state that can only be achieved under certain conditions. It was common to follow a Hobbesian pattern in describing the state of natural liberty as complete freedom of action, essentially infringed by government, and also to argue that the basic condition of such natural order was chaos and the violent rule of the strong over the weak.²³ But these authors rarely drew Hobbesian conclusions about the best form of government from this basic position. Rather, the authors I am concerned with here, whose aim was to bolster and legitimise the ruling order they were serving, sought to frame the maintenance of the existing hierarchy in terms of the liberties established by the constitutional revolution of 1688-9 and the subsequent Hanoverian settlement. In doing so they tended not to define the greatest threat to liberty as tyranny or political corruption, so common in the oppositional argument studied in the work of Pocock, Skinner and others.²⁴ Rather, they saw the greatest threat to liberty as license, the unrestrained pursuit of self-interest or gratification, subversive to the entire body politic.

Just as opposition writers drew upon historical, particularly classical models to argue that party factions and political corruption had brought about the collapse of numerous historical regimes, most notably Rome, so government supporters placed the emphasis on popular tumult and the increase of vice and license in the decay of the body politic. The key sources here were Aristotle and Polybius. Aristotle suggested that 'the legislator must labour to ensure his citizens become good men'.²⁵ The inculcation of virtue in the citizens was the central definition of the task of government and the politician. Aristotle defined virtue in the following terms as a state involving rational choice, a mean between the vices of excess and deficiency.²⁶ Virtue consisted in rational action, which took a mean, temperate course; irrational or extreme actions were by definition vicious. There were, Aristotle wrote, three types of character to be avoided, vice, incontinence [weakness], broadly aligned with 'softness and effeminacy', and brutishness. The contraries to the first two were virtue and self-control, aligned with endurance and temperateness, the third, of course, civility.²⁷ The virtues of the mind could be taught, but 'virtue of character (*ēthos*) is a result of habituation (*ethos*). From this it is clear that none of the virtues of character arises in us by nature. For nothing natural can be made to behave differently by habituation.'²⁸

Character, then, was formed entirely through nurture, a position echoed by Cicero, quoted here by Henry Fielding: 'The Manners of Men are not born with them, or derived from their Ancestors. Their true Source is no other than Custom, or the general Habit of their Lives'. This applied to nations as well as individuals. Locke, too was invoked in the same manner: 'Habit hath been

²³ T. Burch, *A Discourse on the Origin of Civil Government, and the Obligations of a People to Obedience* ... (London, 1753), p. 21; Hay, *An Essay on Civil Government*, p. 2.

²⁴ Pocock, *Virtue, Commerce, and History*; Skinner, *Liberty before Liberalism and Visions of Politics*, ii, pp. 344-67.

²⁵ Aristotle, *Politics*, trans. E. Baker, Introduced by R. F. Stalley (Oxford, 1995), p. 285.

²⁶ Aristotle, *Nicomachean Ethics*, trans. R. Crisp (Cambridge, 2000), p. 31.

²⁷ *Ibid.*, p. 119.

²⁸ *Ibid.*, p. 23.

often called a second Nature, the former may indeed be said to govern and direct the latter. I am much deceived, (and so was Mr. Lock too) if from our earliest Habits we do not in a great Measure derive those Dispositions, which are commonly called our Nature, and which afterwards constitute our Character'.²⁹

For Aristotle the virtues of character were temperance, justice and courage and needed to be embedded through repetition, the role of government being to cultivate these virtues: 'legislators make the citizens good by habituating them'.³⁰ The very aim of politics, the science of the legislator, was to act to produce the good society through shaping the character of the citizens in the right way: 'political science is concerned most of all with producing citizens of a certain kind'.³¹ Substantial sections of the *Politics* were devoted to a plan of education that would realise these ends, creating rational, temperate citizens who would be able to uphold the state.³² These Aristotelian themes and their re-working in the Stoic and particularly Ciceronian vein, permeated eighteenth-century discourse on government, which centred on the themes of education and habituation into virtue.

William Hay argued that it was the passions of men that necessitated government itself: 'Were Men to direct their Actions by the Dictates of Reason, they would want no other Ruler; but Reason is so faint, and Passion so prevalent, that they must be held with Bit and Bridle, lest they fall on each other'.³³ He was clear that there was authority in every state, no matter its form (democracy, aristocracy, mixed government or otherwise) to intervene in action, for 'If Men in a Civil State were left to act as they please, they would be subject to the same Inconveniences as in a State of Nature, and the End of their joining in Society would be intirely [sic] frustrated'.³⁴ This extended to their punishment or reward, without which the law would simply be a dead letter, although the penalty should be proportionate to the offence.³⁵

Equally, he argued that it was not just actions that should be dictated by the state, but opinions and character: 'Every State has Authority and Right to inform the Opinions of their Subjects. For Men are guided in their Actions by their Opinions; and if they think amiss they will act so' and further, 'when Men differ in Principles, they will naturally divide into Factions, to the manifest weakness and disjointing of the Body Politick'.³⁶ Dissent was, of course, permissible in private, but it should not be made public as it would undermine the state.³⁷ The way to mould these opinions was through education in childhood: 'The impressions Men receive when Children, are not easily defaced: Let Governors therefore provide good Laws concerning Education,

²⁹ Quoted in H. Fielding, *The Covent Garden Journal*, 66, Sat 14 Oct 1752, in B. A. Goldgar, ed., *The Covent Garden Journal and A Plan of the Universal Register Office* (Oxford, 1988), pp. 347-8. The reference is to Cicero, *De lege agrarian (contra Rullum)*, II, xxiv. 95.

³⁰ Aristotle, *Ethics*, pp. 23-4.

³¹ *Ibid.*, p. 16.

³² Aristotle, *Politics*, pp. 279-317.

³³ Hay, *An Essay on Civil Government*, p. 1.

³⁴ *Ibid.*, p. 36.

³⁵ *Ibid.*, p. 44, p. 47.

³⁶ *Ibid.*, p. 38, p. 39.

³⁷ *Ibid.*, p. 40.

that their subjects may receive an early Tincture of Virtue and Morality, and especially of Religion'.³⁸

William Cooke, fellow of King's College Cambridge, gave a sermon which is exemplary in its statement of the subject in the late eighteenth century. 'Liberty is the same Civil, Moral, and Religious', wrote Cooke, 'and in each distinction may be Justly defined – Action of a reasonable Being according to the direction of Right or Restraint'.³⁹ This could not be clearer: key components of freedom are reason and restraint. Invoking natural law and divine power, he writes 'Observant of these Rights – Obedient to these Restraints according as they are adjusted and secured by thee, - We are free – in any Government'.⁴⁰ Clearly this is quite distinct from the neo-Roman tradition identified by Skinner which defines freedom as possible only under certain forms of rule.⁴¹ He denies the very idea of a state of nature or equality and suggests such was never divine intention, 'Nor can the State of Nature ever take place – till Men driven mad by their Passions shall have pulled down all legal Government', leading to 'one vast Demolition and Ruin'.⁴² Clearly, for Cooke, an undesirable prospect.

As far as unfreedom is concerned, the source is very clear: 'our Hearts deceive us – our Passions warp and distract our Judgement, though whilst we think or act under their Bias and Influence, we abuse our Liberty of every Kind – Civil – Moral – and Religious'.⁴³ Allowing ourselves to be dictated to by our passions, we fail in our duty of using freedom responsibly. Further, 'Selfwill as DESPOT, lords it over our Reason; at the same time that we experience all those Tides, Tumults and Vicissitudes, which can never fail to affect and agitate the REPUBLIC of Passions'.⁴⁴ In contrast to the despotism of the passions, freedom depended upon temperance: 'To be Free, in Thought, Word, or Deed, we must be cool and dispassionate. – Party is therefore irreconcilable with true Liberty. – Party being inseparable from Passion, whose treacherous Mirrour [sic] reflects all objects on the Eye of the Mind, disproportioned and distorted. – Hence Illegitimate assumption of Rights: - Unnatural Divorce from just Restraints'.⁴⁵ Once again, dispassion and restraint are united in the definition of liberty and opposed to the passions, the root of faction, the source of the decline of the free state. These definitions are founded both on Biblical and classical sources, particularly Aristotle, source of 'the best Heathen Testimony', Polybius and Livy.⁴⁶ Following a review of 'the causes of National Degeneracy and Decline' in the ancient democracies, Cooke concluded: 'That Moral, Civil and Religious Liberty are one and the same – and a kind of Trinity in Man. – That the Public and Private Character cannot be disunited – That the good man is the good Citizen – That Men must reform themselves in order to a State-Reformation – That we are not to expect Public Virtue from Private Vice ... That the Abuse of Liberty has

³⁸ *Ibid.*, p. 39.

³⁹ W. Cooke, *Civil Liberty: A Sermon Preached Before the University of Cambridge, on April the 9th, 1780, at Great St. Mary's Church* (Cambridge, 1780), p. 1.

⁴⁰ *Ibid.*, p. 5.

⁴¹ Skinner, *Liberty before Liberalism*.

⁴² Cooke, *Civil Liberty*, p. 3.

⁴³ *Ibid.*, pp. 2-3.

⁴⁴ *Ibid.*, p. 6.

⁴⁵ *Ibid.*, p. 5.

⁴⁶ *Ibid.*, p. 1, n. *, p. 4 n*, p. 9 n*, p. 10 n*, p. 11 n*, p. 12 n†. Quotation at p. 4 n*.

proved Perdition to the most flourishing States ... and that Vice and Wickedness in any Nation, must precipitate their fall and accelerate their final overthrow'.⁴⁷

Polybius likewise was a key source for those seeking to press the analogy between the condition of Britain and that of ancient Rome. In the introduction to his translation of Polybius' sixth book, which outlines the source of revolutions in government, James Hampton was keen to draw attention to the fortunes of a 'free but fluctuating, state'. He saw no distinction between this freedom and 'order and submission', the promotion of which were the 'just and reasonable ends' of government. It was the task of the governor to form 'some certain rule of judgement, sufficient to determine the pursuits and direct the conduct of every disinterested and prudent citizen'.⁴⁸

Britain's constitution, it was argued, was formed like Rome's as a mixture of the pure forms of monarchy, aristocracy and democracy. 'The general object of all mixed governments is the same', wrote Hampton, 'to avoid, on the one hand, tyranny; and, on the other, anarchy'. The former has been heavily analysed in the historical literature, but the latter comparatively ignored. For Hampton, this emerged 'from a single source: from an excess of power allotted to the people, or extorted by them'. This had, he argued, caused the downfall of Rome and the same would happen to Britain: 'the ruin of the constitution will ensue; not caused, as it has commonly been expected and foretold, by the corruption of the legislative body, but by the general corruption of the people' following from 'the license of democracy'. 'Liberty', he argued 'is lost, as soon as it is emancipated from subjection to the laws'. 'Liberty in excess' becomes the source of its own destruction as 'dissolute manners' and a 'rejection of all controul' lead to tumult and violence, and thus to the necessity of powerful dictatorship to restore order. The only solution was 'to bring back the constitution to that middle point, in which alone the true poise of all mixed government is to be found; the point between the two extremes, of popular license and arbitrary will'.⁴⁹

These arguments were complemented by a series of popular moralists, who argued more vociferously that failure to instil social order would bring divine displeasure and judgement on the nation. Failure to practice Christian virtue would bring an end to liberty.⁵⁰ Such arguments were supported in literature which more directly articulated the voice of the governing authorities. One magistrate defined the duty as being 'truly and indifferently to minister

⁴⁷ *Ibid.*, p. 12.

⁴⁸ [J.] Hampton, *Two Extracts from the Sixth Book of the General History of Polybius ... Translated from the Greek. To which are added some reflections tending to illustrate the doctrine of the AUTHOR concerning the natural destruction of mixed governments, with an application of it to the state of Britain* (London, 1764), Preface, n.p. There are seventeenth-century antecedents for the association of liberty with subordination and discipline. See C. Condren, 'Liberty of Office and its Defence in Seventeenth-Century Political Argument', *History of Political Thought* 28 (1997), pp. 460-82 and J. C. Davis, 'Religion and the Struggle for Freedom in the English Revolution', *Historical Journal* 35 (1992), pp. 507-530.

⁴⁹ Hampton, *Two Extracts*, Preface, n.p.

⁵⁰ See, for example, Anon., *A Letter from a Citizen of LONDON to his Fellow CITIZENS, And through them to the People of ENGLAND in General, Occasioned by the late EARTHQUAKES* (London, 1750); Anon., *The Vices of the Cities of London and Westminster. Trac'd from their Original ... In Five Letters from a Citizen of London to a Member of Parliament* (Dublin, 1751); J. Burgh, *Britain's Remembrancer* (5th edn, London, 1757).

justice to the punishment of wickedness and vice, and to the maintenance of true religion and virtue'.⁵¹

Writing in the context of the recent Jacobite rebellion in a sermon, given at the Surrey Assizes, and thus representing direct engagement with government in practice, Leonard Howard, the chaplain to the Prince of Wales, discoursed in classic neo-Roman fashion on liberty, linking it to the rule of law and the absence of servitude or arbitrary government.⁵² In doing so he united the Aristotelian and Polybian concerns with habituating good, self-governing citizens and the problem of popular licentiousness. He took pains to distinguish liberty, defined as the sweetest of all earthly possessions, from licentiousness, 'which is the Bane of all Peace and Order'.⁵³ Equally, however, he was clear that what defined English liberty was the rule of law: "Tis the Voice of the Law, no Threat of Man above us, that an *Englishman* must hearken to The Obedience or Subjection of an *Englishman*, is not the *Service* of a *Slave*'.⁵⁴ The English, like the Romans, he argued, were free born, but 'though there is such a seeming Aversion to *Slavery*, yet Men are not ashamed of being *Slaves* to their Vices', despite the fact that 'the *Servitude* of Sin is the greatest we experience'.⁵⁵ English freedom did not mean the absence of constraint, rather 'To be less *limited* than we, would be to have the Order and Decency of Things inverted, and a wild Irregularity and Confusion prevail against the proper Discipline and Necessary Restraint of Authority. What we have most to fear, is from the excessive Indulgence of our Passions; from those *Luxuries* and *vicious Habits* which, more than any *Burdens* of State, are likely to hurt us'.⁵⁶ What would prevent this was 'proper Discipline and the necessary Restraint of Authority'.⁵⁷ The solution was to 'bring our Children up *in the Nurture and Admonition of the Lord*; in the pliable State of Infancy to bend them into that Shape of Virtue, which it becomes a Man, and especially a Christian, to appear in'. Children were to be brought up with self-restraint founded on religion, avoiding the accumulation of vicious habits and intemperate pursuit of luxury.⁵⁸

The understanding that liberty was threatened by vice and disorder, by lack of government as much as tyranny, is made clear by several practicing Magistrates presiding at the Guildford Quarter Sessions in the mid-eighteenth century. Absence of government, wrote one magistrate, would lead to little other than 'well modell'd combinations to oppress, cheat & ruin the weaker & submitting part of mankind'. He continued 'it may be doubted whether Tyranny it self tho never so unlimited, never so grievous, be not rather to be chosen

⁵¹ W. H., *Some Hints Towards a Revisal of the PENAL LAWS, the better regulating the POLICE, and the Necessity of enforcing the Execution of Justice: And the Evil Consequences to SOCIETY from a false mistaken Lenity, which has so much prevailed of late. In a Letter to a Member of Parliament. By a Magistrate* (London, 1787), p. 22.

⁵² L. Howard, *The Advantages of a Free People, and ill Consequences of Licentiousness, consider'd, in a Sermon Preached in the Parish-Church of Croydon, in the County of Surry [sic], At the Assizes held there, Before the Honourable Sir Thomas Abney, Knt, One of the Justices of His Majesty's Court of Common-Pleas, on Friday the 22 March, 1744-5*, (London, 1745), pp. 4-6.

⁵³ *Ibid.*, p. 5.

⁵⁴ *Ibid.*, p. 7.

⁵⁵ *Ibid.*, p. 8, p. 9.

⁵⁶ *Ibid.*, p. 9.

⁵⁷ *Ibid.*, pp. 9-10.

⁵⁸ *Ibid.*, pp. 13-14.

than a wild & corrupt state of anarchy. This state exposes men to the frauds & violence of their neighbours & the extravagant Caprices of the People, the other [tyranny] Subjects whole Nations to the mad Frolicks, & brutal Passions of a Flatter'd & an abus'd Tyrant'. The best solution was the Aristotelian mean and it was thanks to the laws of England that they had achieved this state living neither 'under ye Terror of an arbitrary Power, nor are we cast loose to ye Wildness of ungoverned [sic] Multitude'.⁵⁹

Reeve Ballard agreed, aiming to expose 'the chief Causes of Vice, unbounded Liberty, and Licentiousness', his aim being 'to shew the Necessity of laying proper Restraints upon Men of these unhappy Principles'.⁶⁰ Government was a necessity as 'The Reason of Man, is not sufficient for the Government of Man: She often gives up her Empire to the Passions', which 'will lead a Man, to Oppression, Rapine and Spoil; nay, to the uttermost Ravage and Cruelty, if ungoverned, if un-controuled [sic]'.⁶¹ The 'publick Welfare and Happiness of a People, depend upon a regular Dominion' which was divinely ordained: 'God no sooner had put Breath into our Mouths, but he put Law into our Hearts, and withal annex a Reward or Penalty, upon our Observance or Disobedience'.⁶² Echoing the positions outlined above he argues 'All Government was design'd for the Benefit of the Governed, and the Laws are the Strength and Sinews of it'; 'we are governed by Laws of our own making; and how can any one complain at the Sentence of that Law, which Himself had a Share in enacting'.⁶³ He even invokes the injunctions of Machiavelli and Cicero, who, 'though a Heathen', writes of the Roman republic that: 'her Dignity and Honour were then most conspicuous and extended, when she flourished most in Virtue, and that her Decrease in the former, was attributed to her falling off in the latter; which is a second Argument to enforce the Suppression of Sin and Wickedness, as essential to our Peace and Quiet, to our Welfare and Happiness'.⁶⁴

III

The literature on English civil government defines civil liberty in contrast to license rather than interference, a term which almost never occurs in these works. Like the 'neo-Roman' version of liberty identified by Skinner, freedom is a condition, usually contrasted to servitude. However, in contrast to the standard opposition argument, the chief threat to this form of liberty is not domination by the executive but popular licentiousness. Good order was a condition for the existence of freedom; anarchy and disorder were as great a threat to freedom as the extension of government patronage which was the chief target of opposition attack. Freedom, then, is not a boundless condition associated with increasing liberation from social and political constraint; rather, it is a mean condition between anarchy and tyranny. Liberty and order

⁵⁹ Anon., delivered at the Midsummer Quarter Sessions, Guildford, 1736, in Lamoine, ed., *Charges to the Grand Jury*, p. 283, my interpellation.

⁶⁰ R. Ballard, *The Necessity of Magistracy, from the Vices of Mankind: An Assize Sermon, Preached at Kingston upon Thames, August 16, 1745. Before the Right Honourable Sir William Lee, Knt. Lord Chief Justice of England; and the Honourable Mr. Justice Burnet* (London, 1745), p. iii.

⁶¹ *Ibid.*, p. 3.

⁶² *Ibid.*, p. 5, p. 6.

⁶³ *Ibid.*, p. 7.

⁶⁴ *Ibid.*, p. 8.

are not opposites, but a mutually dependent pair. To reduce constraint can often decrease freedom rather than increase it, even as it increases the range of possible action. Liberty was not opposed to the rule of law, rather freedom was a condition produced by legitimate legal interference in conduct and public morality. This creation of the condition of liberty marks one part of the 'pervasive activity of regulation rooted in a multiplicity of agencies across the social body' that is characteristic of pre-liberal government, there being no separation between a unitary centre of government and the body politic, rather there was a dispersed 'police' that gave the social body form.⁶⁵

Pre-liberal Whig discourses on freedom were closely associated with maintenance of the established order, hierarchy, sublimation of individual interests (and particular freedoms) in the name of the freedom of the state, the common good and the perpetuation of established modes of thought and action. Study of this mode of government might encourage us to temper our enthusiasm for a rejection of liberal values by reminding us why they came about in the first place. Liberalism was born as an attempt to prevent the domination of one body of social and political opinion and practice over the lives of a particular community. If some of these values have been lost in academic debate on the subject, they are worth reinstating, but we should be careful not to throw the baby out with the bath water.

The current political climate is dominated by laudatory invocations of 'public opinion', 'common sense' and the public good, usually aligned with security and articulated in terms of freedom. This is coupled with the emergence of new authoritarian discourses and legislation in Anglo-American politics with the obsessions with the 'war on terror', the 'war on drugs' and other terms with echoes of Mussolini, the dominance of discourses of security with the attendant erosions in Britain of *habeas corpus*, the right to silence, the presumption of innocence and the right to trial by one's peers, along with more minor rights to association and protest in particular locations and potential imprisonment for 'anti-social' behaviour without conviction of any particular offence. Many of these incursions on basic rights and freedoms are legitimised by politicians arguing simply that these are exceptional cases and that public opinion supports their action, or that the freedom of the community comes before that of the individual. This is not only eerily reminiscent of the neo-classical link between freedom, public virtue and the common good as articulated in the eighteenth century, but suggests that constraint and coercion by the state are once again problems as significant as domination. It is worth remembering that our real political choice might not be between the contemporary liberal order and a better, more just world, but between liberalism and a more authoritarian, interventionist successor. This does not mean rejecting the inclusion of the idea of non-domination within liberalism, but we do need to be keenly aware of the balance between the individual and the community and the ways in which aspects of this discourse can be used in service of other ends. Forewarned, as they say, is forearmed.

⁶⁵ Here I draw on R. Axtmann, "'Police" and the Formation of the Modern State: Legal and Ideological Assumptions on State Capacity in the Austrian Lands of the Hapsburg Empire, 1500-1800', *German History*, 10 (1992), pp. 39-61; P. Pasquino, 'Theatrum Politicum: The Genealogy of Capital – Police and the State of Prosperity', in Burchell, Gordon and Miller, eds., *The Foucault Effect*, pp. 105-18; K. Tribe, 'Cameralism and the Science of Government', *Journal of Modern History*, 56 (1984), pp. 263-84, at pp. 276-7 and 282-3.