

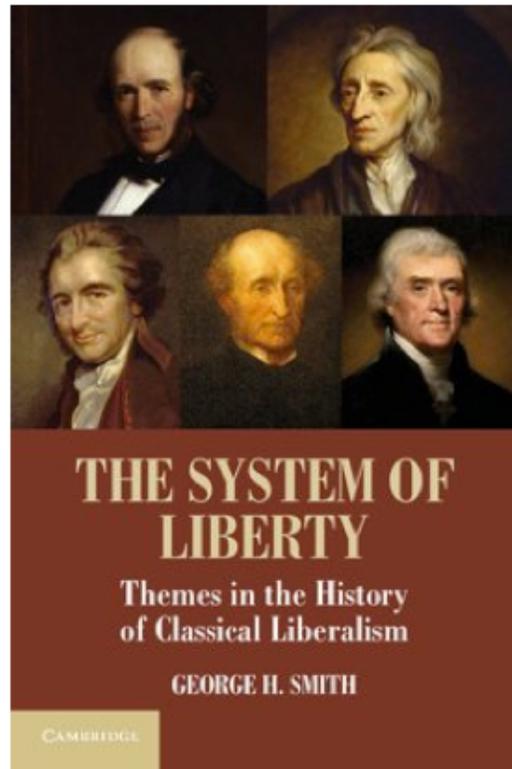


## "LIBERTY MATTERS"



A FORUM FOR THE DISCUSSION OF MATTERS PERTAINING TO LIBERTY

### George H. Smith, "The System of Liberty" [September, 2013]



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## **LIBERTY MATTERS**

“Liberty Matters: A Forum for the Discussion of Matters pertaining to Liberty” is a project of Liberty Fund, Inc. which is part of the Online Library of Liberty website. Every two months we ask a leading scholar to present an argument on a particular topic “pertaining to liberty” in a “Lead Essay” and to develop this argument at some length. The “Lead Essay” is posted in the first week of the month. Three or four other scholars will respond to this essay in slightly shorter “Response Essays” during the second week of the month.

Once all these ideas and arguments are on the table an open discussion between the various parties takes place over the course of the following weeks. At the end of the month the online discussion is closed.

We plan to have discussions about some of the most important online resources which can be found of the *Online Library of Liberty* website. We will link to these resources wherever possible from the essays and responses of our discussants so our reader can find out more about the topic under discussion.

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## 1. THE DEBATE:

### GEORGE SMITH, "THE SYSTEM OF LIBERTY" (SEPTEMBER, 2013)

This was an online discussion which appeared in "Liberty Matters: A Forum for the Discussion of Matters pertaining to Liberty" on Liberty Fund's Online Library of Liberty during the month of September, 2013. Please visit <oll.libertyfund.org> for further details.

#### SUMMARY

This is a discussion of George H. Smith's new book *The System of Liberty: Themes in the History of Classical Liberalism* published by Cambridge University Press (2013). Smith describes how he came to write the book, the works of the history of political thought which inspired him (in particular the writings of the German legal historian Otto von Gierke), and the methodology he uses in approaching the history of ideas (Locke's idea of "the presumption of coherence"). He demonstrates his approach with a brief discussion of one of the key ideas he has identified in the history of classical liberal thought, namely, the idea of "inalienable rights," or to phrase it in the terminology of 17th century natural rights philosophers like Pufendorf, the distinction between "perfect and imperfect rights." His essay is discussed by Jason Brennan, assistant professor of strategy, economics, ethics, and public policy at Georgetown University; David Gordon, Senior Fellow at the Ludwig von Mises Institute; and Ralph Raico, Professor Emeritus of History at the Buffalo State College.

The online discussion consists of the following parts:

1. **Lead Essay:** George H. Smith, "The System of Liberty" [September, 2013]

## 2. Responses and Critiques:

1. Jason Brennan, "The Idea of Freedom: Little Is at Stake" [Posted: September 6, 2013]
2. David Gordon, "Utilitarianism and Natural Rights" [Posted: September 9, 2013]
3. Ralph Raico, "Why Only in the West?" [Posted: September 11, 2013]

## 3. The Conversation:

1. George H. Smith's Reply to Ralph Raico, David Gordon, and Jason Brennan [Posted: September 13, 2013]
2. Ralph Raico, "What Thou Meanest by Seizing the Whole Earth?" [Posted: September 18, 2013]
3. George Smith replies to Ralph Raico: And the Secular Powers Checked the Church [Posted: 23 September, 2013]
4. David Gordon, "Is Social Utility Enough to Justify Natural Rights?" A Response to George Smith [Posted: September 24, 2013]
5. Jason Brennan, "Consequences without Consequentialism" [Posted: September 24, 2013]
6. George H. Smith, "Were Natural-Rights Theorists Consequentialists?" A Reply To Jason Brennan [Posted: September 25, 2013]
7. George H. Smith, "Natural Rights and Moral Autonomy": A Reply to David Gordon [Posted: September 25, 2013]
8. Ralph Raico, "A Summing Up" [Posted: Sept. 27, 2013]
9. George H. Smith, "The Divinely Mandated Institution: A Reply to Ralph Raico" [Posted: September 30, 2013]
10. Jason Brennan, "Christianity and Liberalism" [Posted: September 30, 2013]
11. Ralph Raico, "My Final Word" [Posted: September 30, 2013]
12. David Gordon, "The Anarchy Game" [Posted: September 30, 2013]
13. George H. Smith, "When Did the Church Defend Freedom of Conscience?" A Final Reply Ralph Raico [Posted: October 1, 2013]

## ABOUT THE AUTHORS

**George H. Smith** is an independent scholar and a weekly columnist at the Cato Institute's Libertarianism.org. He is the author of *Atheism: The Case Against God* (1974), *Atheism, Ayn Rand, and Other Heresies* (1991), *Why Atheism* (2000). He is also the author of the audio series on "Great Political Thinkers," "The Meaning of the Constitution," and "The Ideas of Liberty." He has articles and book reviews published in the *New York Times*, *Newsday*, *Reason*, *Liberty*, *The Journal of Libertarian Studies*, *Free Inquiry*, and *The Humanist*.

**Jason Brennan** is assistant professor of strategy, economics, ethics, and public policy at Georgetown University. He is the author of *Compulsory Voting: For and Against*, with Lisa Hill (forthcoming from Cambridge University Press); *Libertarianism: What Everyone Needs to Know* (Oxford University Press, 2012); *The Ethics of Voting* (Princeton University Press, 2012); and, with David Schmidtz, *A Brief History of Liberty*. He is currently writing *Against Politics* for Princeton University Press as well as *Why Not Capitalism?* and, with Peter Jaworski, *Markets without Limits* for Routledge Press. He has published in *Philosophy and Phenomenological Research*, *Philosophical Quarterly*, *The Australasian Journal of Philosophy*, and *Social Philosophy and Policy*. He blogs (sometimes) at Bleeding Heart Libertarians <<http://bleedingheartlibertarians.com/>>.

**David Gordon** is Senior Fellow at the Ludwig von Mises Institute. He received his Ph.D. in History from UCLA in 1975. He is the author of *Resurrecting Marx*, *An Introduction to Economic Reasoning*, and *The Essential Rothbard*. He is the Editor of the *Mises Review* and a member of the senior faculty of the Mises Institute. He has contributed to *Analysis*, *Mind*, *Ethics*, *Quarterly Journal of Austrian Economics*, *Journal of Libertarian Studies*, and other journals.

**Ralph Raico** is a retired professor of European history at Buffalo State College. He studied in Chicago with F. A. Hayek, where he received his Ph. D., and in New York with Ludwig von Mises, whose book *Liberalismus* he translated into English. Raico is the author of two collections of essays, *Classical Liberalism and the Austrian School* and *Great Wars and Great Leaders*, a revisionist work. His history of German liberalism was translated into German by Joerg Guido Huelsmann. Raico has lectured widely on classical liberalism in the U. S., Canada, and Europe.

## 1. LEAD ESSAY: GEORGE H. SMITH, "THE SYSTEM OF LIBERTY"

*The System of Liberty: Themes in the History of Classical Liberalism*[1] was written, on and off, over a period of nearly 15 years. I originally had in mind a longer, more ambitious book of which *System* would have comprised only a third, but reality finally persuaded me -- "compelled" might be a better word -- to divide the project into smaller segments along the lines of F.A. Hayek's *Law, Legislation, and Liberty*. The working titles of the other two parts of my trilogy, should I ever be able to finish them, are *The Disciplines of Liberty* and *Sovereign State, Sovereign Self*.

Every account of history has a history of its own. This consists of biographical details -- personal factors that caused historians to become interested in their subject matter and that shaped their perspective. Whether or not such personal details are relevant to understanding a particular text will vary from case to case, but when considering a history of controversial ideas, as we find in accounts of religious and political thought, some biographical knowledge of the historian may help us to understand his or her text.

As I reread *The System of Liberty* while preparing to write this essay, I was struck by how my basic perspective on the history of modern political thought was formed many years ago. In 1969, while a student at the University of Arizona, I visited my favorite used bookstore in Tucson and found, side by side, copies of two books by the great German scholar Otto Gierke. One was a paperback edition of *Political Theories of the Middle Ages*.<sup>[2]</sup> The other was a hardcover version of *Natural Law and the Theory of Society, 1500-1800*.<sup>[3]</sup>

Both books, which were taken from Gierke's three-volume work, *Das deutsche Genossenschaftsrecht (The German Law of Association, 1881)*, were tough going for an undergraduate whose knowledge of the history of political theory had come mainly from superficial survey courses. I had never heard of Gierke before, but as I thumbed through the volumes for around 20 minutes, I was intrigued by his generalizations. Although the paperback was only a dollar, the Cambridge hardcover was ten dollars, which was more than I had ever paid for a used book. But having gotten paid the day

before from my job at an auto supply store, and with two weeks of minimum wage income weighing me down, I decided to purchase both volumes. That decision would significantly influence my subsequent intellectual development -- an influence that is reflected in *The System of Liberty*.

I still possess both volumes, and after 44 years it is instructive to see the passages that I bracketed for future reference. For example, in *Political Theories of the Middle Ages* (p. 87), Gierke, referring to the transition from medieval to modern political thought, wrote:

The Sovereignty of the State and the Sovereignty of the Individual were steadily on their way towards becoming the two central axioms from which all theories of social structure would proceed, and whose relationship to each other would be the focus of all theoretical controversy.

Gierke's contrast between state and individual sovereignty is reflected in various places in my book, most conspicuously in the title of Chapter 4, "Sovereign State, Sovereign Self." Although it is possible to trace features of individualism to the ancient and medieval worlds, I maintain in *System* that the political individualism of classical liberalism is a distinctively modern phenomenon, one that did not coalesce into a coherent political philosophy until the early 17th century. This development was facilitated, perhaps necessitated, by the rise of the absolute nation-state and, more specifically, by philosophical defenses of absolutism that became prominent in the 16th century. Such defenses of state sovereignty -- as found, most famously, in the writings of Jean Bodin -- were expressed in the language of rights, or enforceable moral claims. These rights were merely the flip side of the obligations that subjects owed to their sovereign. Bodin even discussed "inalienable" rights when considering which rights a political sovereign could never transfer or renounce.

Faced with this arsenal of arguments for state sovereignty, opponents of absolutism typically framed their criticisms in terms of individual sovereignty -- a concept that went by various labels, such as property in one's person, self-proprietorship, self-proprietorship, and, later, self-ownership and self-sovereignty.

Here, from *Natural Law and the Theory of Society* (p. 96), is another passage that I marked decades ago:

[T]he guiding threat of all speculation in the area of Natural Law was always, from first to

last, individualism steadily carried to its logical conclusions. Every attempt to oppose this tendency was necessarily a revolt, on this point or on that, against the idea of Natural Law itself....The fixed first principle of the natural-law theory of society continued to be the priority of the Individual to the Group.

Gierke was not favorably disposed to the individualism of natural-law theories. He believed that the modern demotion of medieval corporations to a secondary status, one that placed them under the jurisdiction of a sovereign state, promoted absolutism by leaving no protective buffers between the state and the individual. The natural-law tradition recognized no group personalities; only individual human beings could claim moral autonomy. Thus, for natural-law liberals, the natural rights of individuals became the moral foundation of civil society – and this approach, in turn, generated the need for a fictitious social contract (in some form) to justify political authority through a process of consent. Thereafter the major currents in political thought became a struggle between the sovereignty of the state and the sovereignty of the individual.

The following is another passage from *Natural Law and the Theory of Society* (p. 113) that I not only bracketed but further emphasized by writing “NB” in the margin.

[T]he theory of the Rights of Man grew into a great and spreading tree. The supposition that individuals, on their entry into civil society, were only willing to surrender the smallest possible part of their freedom, was now associated with the doctrine that certain of the original rights of the individual were inalienable and intransferable, and could not, therefore, be effectively surrendered, even by an express act of contract. In this way a distinction came to be drawn between inherent and acquired rights. Acquired rights, it was argued, were subject to the system of positive law, which depended on the existence of the State; but inherent rights were based on the pre-social Law of Nature, and since that law was still valid to protect them, they were immune from any invasion by legislative action.

Although parts of Gierke’s summary are misleading, such as his depiction of “inherent rights” as pre-social rather than as pre-political, it was after reading this passage that I came to appreciate the theoretical significance of *inalienable* rights in the tradition of

liberal individualism. For natural-law liberals, inalienable rights were inextricably linked to man’s moral agency, so they could not be transferred, abandoned, or otherwise alienated, even with the consent of the rights-bearer. A person could no more transfer his inalienable rights than he could transfer his powers of reason and volition.

As I argue in Chapter 6, “The Radical Edge of Liberalism,” the doctrine of inalienable rights played a crucial role in the Radical Whig theory of revolution. The hypothetical construct of a social contract was unable to specify with precision which *alienable* rights had supposedly been delegated to government, so this was regarded as a legitimate topic of debate. But *inalienable* rights were a different matter altogether. Since they were incapable of transfer, no government could legitimately claim jurisdiction over them by appealing to a social contract or to a theory of implied consent. Consequently, a government that repeatedly violated inalienable rights qualified as tyrannical and became theoretically ripe for revolution.

In “The Radical Edge of Liberalism,” I use this analysis to explore the old controversy about why Thomas Jefferson did not include “property” in his list of “unalienable” rights in the Declaration of Independence. Aside from the fact (one often overlooked) that Jefferson wrote “among these” when referring to the inalienable rights of life, liberty, and the pursuit of happiness – thereby indicating that his list was not exhaustive – I point out that to have mentioned “property” as an inalienable right would have proved confusing to eighteenth-century readers. At that time “property” could refer to the moral power of dominion over one’s body, labor, actions, conscience, and so forth; or it could refer to external objects. In the former sense, “property” was regarded as an inalienable right, but this was not true of “property” in the narrow, more modern sense of the term. We can obviously alienate our external property by transferring ownership to other people. Indeed, Lockean commonly argued that a social contract entails an agreement to transfer some of our property, collected as taxes, which governments need to function. Thus for Jefferson to have included property in his partial list of inalienable rights would have been highly ambiguous, at best.

Lastly, I employ the notion of inalienable rights in *The System of Liberty* to call attention to an essential

difference between theories of liberal utilitarianism and natural rights. Although the liberal theory of natural rights has been characterized as a type of rule utilitarianism, this overlooks the function of inalienable rights in that tradition. Inalienable rights, such as “liberty of conscience,” were immune to calculations of public utility, the general good, the common good, etc. Inalienable rights, unlike alienable rights, were viewed as absolute.

Having discussed some aspects of my approach to the history of modern political philosophy, as presented in *The System of Liberty*, I shall now summarize some of my thoughts about methodology, and I shall conclude with a topic that, in my judgment, merits further investigation by historians of classical liberalism. I have chosen the following topics in the hope that they will stimulate discussion.

1) Although, as I state in the introduction, my book “is not a history of classical liberalism per se,” its historical perspective raises the same problems of methodology that we encounter in any history of ideas. I have an enduring interest in the philosophy of history and have accumulated a mini-library of books on that topic alone,[4] but I am skeptical whether technical discussions of meaning, intention, and related matters are of much value to working historians, however interesting they may be to philosophers. Although the modern stress on context, such as we find in the methodological writings of Quentin Skinner, J.G.A. Pocock, and other historians associated with the Cambridge School,[5] is valuable, I don’t think there is much that is *essentially* new in that approach.[6]

2) So far as the interpretation of texts is concerned, I’m surprised that more attention has not been paid to John Locke’s discussion in *An Essay for the Understanding of St. Paul’s Epistles*, published posthumously in 1707.[7] Concerned with the tendency of laypersons to rely upon the interpretations of supposed biblical authorities (who often contradicted one another), Locke proposed some commonsensical rules for understanding texts, which may be summarized as follows:

Locke points out that we naturally tend to interpret a passage through our own understanding of words, even when those words meant something different to an author from a different era and culture. To overcome this obstacle we should read through a given

section or chapter as if it were a self-contained unit – seeking thereby to understand the central theme of that unit, or if it contains additional themes, to ascertain how they are connected, if at all. We should seek, in other words, a general view of the writer’s “main purpose in writing,” as well as his fundamental arguments in which that purpose is fulfilled. This will give us a sense of “the disposition of the whole.” One or two hasty readings is insufficient, according to Locke, especially when a text proves difficult to understand. The reading “must be repeated again and again, with close attention to the tenor of the discussion.”

It is best to assume that a given section “has but one business and one aim, until, by a frequent perusal of it, you are forced to see that there are independent matters in it.” When seeking the meaning of “obscure and abstruse” passages, we need to recall the overall purpose and context of the writer. It helps to know the particular circumstances and intended audience of the writer. If we cannot discern these, then we must use the text itself as a tool of interpretation. We should assume that the writer was coherent and informed, and we should interpret him in a manner that is consistent with this assumption. We should interpret a text with a view to the writer’s “character,” which we come to know from “diligent examination.” We should look for “coherence of discourse, tending with close, strong reasoning to a point.”[8]

Locke thus proposes what we may call a *presumption of coherence*. We should presume that the author had a full and comprehensive grasp of his subject and, moreover, that he had a reason for expressing his arguments in a certain manner. These assumptions, though defeasible, will lead us to an interpretation that is more likely to be correct than any other. Or, at the very least, this procedure will enable us to eliminate some of the more improbable interpretations as inconsistent with the overall tenor of the text. Having studied how a writer argues – and, by implication, how he thinks – we will be able “to pronounce with confidence, in several cases, that he could not talk this or that [way].”

I first read Locke’s discussion around 1977, and I found it more useful for practical purposes than volumes of modern, hyper-technical discussions about the historical interpretation of texts.

3) A topic that I discuss briefly in *The System of Liberty* is the distinction between “perfect” and “imperfect” rights and obligations. This is, in effect, an early version of the crucial distinction that later libertarian writers, such as Lysander Spooner, made between crimes and vices, so I think the topic deserves more attention than I was able to give it.

Although Hugo Grotius, writing in 1625, distinguished between perfect and imperfect rights, linking the former to “Justice properly and strictly taken,”[9] the definitive formulation, so far as later writers on natural law were concerned, was that given by Samuel Pufendorf in *The Law of Nature and Nations* (1672).

It should be observed ... that some things are due us by a perfect, others by an imperfect right. When what is due us on the former score is not voluntarily given, it is the right of those in enjoyment of natural liberty to resort to violence and war in forcing another to furnish it, or, if we live within the same state, an action against him at law is allowed; but what is due on the latter score cannot be claimed by war or extorted by a threat of the law.[10]

The dichotomy between moral obligations that may be coercively enforced and obligations that must rely on voluntary compliance became standard fare in the literature on natural law and natural rights. As I discuss in my book, Adam Smith mentioned it during his Glasgow lectures on jurisprudence (1762-63), and it is reflected in his discussion of justice in *The Theory of Moral Sentiments*. [11]

I cannot say when this usage fell into disfavor, but I know of one criticism from the late 18th century. In *The Principles of Moral Philosophy Investigated*, Thomas Gisborne criticized “the injudicious practice of moralists, in dividing rights into two kinds, which they have termed perfect and imperfect.”

This division I have rejected, as being radically indefensible and groundless, and a source of continual and important errors. Under the title perfect, all rights whatever were in fact comprehended. Those denominated imperfect, were not rights, according to any consistent definition of that term. If I were told by a moral philosopher, that a person in distress had a right to my charity, I should admit that he might have good reasons for presuming that I should relieve him; because he might reasonably expect that I should cheerfully employ the gifts which God had bestowed upon me, in a manner so con-

formable to the will of the donor: but I should deny that he had a *right* to that assistance from me which my Creator gave me authority to confer or to withhold at my discretion; and authority for the due exercise of which I am answerable to him alone.[12]

I have mentioned only a few of the intellectual currents that run through *The System of Liberty: Themes in the History of Classical Liberalism*. The book covers a good deal more, such as “the presumption of liberty,” so I hope my commentators will feel free to discuss anything that interests them.

### Endnotes

[1] *The System of Liberty: Themes in the History of Classical Liberalism* (Cambridge, U.K.: Cambridge University Press, 2013).

[2] Otto Gierke, *Political Theories of the Middle Ages*, trans. Frederic William Maitland (Boston: Beacon Press, 1958). [A PDF version of the 1900 edition is available online at the OLL: Otto von Gierke, *Political Theories of the Middle Ages, translated with an Introduction by Frederic William Maitland* (Cambridge: Cambridge University Press, 1900). <<http://oll.libertyfund.org/title/2562>>.]

[3] Otto Gierke, *Natural Law and the Theory of Society*, trans. Ernest Barker (Cambridge: Cambridge University Press, 1950).

[4] My favorite book on the philosophy of history is by the medieval historian Gordon Leff: *History and Social Theory* (Tuscaloosa, Ala.: University of Alabama, 1969). Also excellent is the neglected treatment by the Catholic intellectual historian James Collins: *Interpreting Modern Philosophy* (Princeton, N. J.: Princeton, 1972).

[5] For a collection of Skinner’s writings on methodology, see *Visions of Politics, Volume 1: Regarding Method* (New York: Cambridge, 2002). For some criticisms of Skinner (and his reply), see *Meaning and Context: Quentin Skinner and His Critics*, ed. James Tully (Princeton, N.J.: Princeton, 1988). The article by Kenneth Minogue (176 ff.) is especially good. For Pocock’s views, see *Political Thought and History*:

*Essays on Theory and Method* (New York: Cambridge, 2009).

[6] See, for example, the remarks on method by C.E. Vaughan in chapter 1 of his two-volume work, *Studies in the History of Political Philosophy: Before and After Rousseau* (Manchester, U.K.: University of Manchester Press, 1925). Cf. the Introduction in J.W. Allen, *A History of Political Thought in the Sixteenth Century* (London: Methuen, 1928). Also worthwhile is the earlier discussion by Sir Leslie Stephen in *History of English Thought in the Eighteenth Century*, 3d ed. (New York & Burlingame, Cal.: Harbinger Books, 1962), I: 1-16. This classic work, which remains unsurpassed in some respects, was first published in 1876.

[7] All quotations are from *The Works of John Locke*, 12th ed., vol. 7 (C. and J. Rivington: London, 1824). ["An Essay For the Understanding of St. Paul's Epistles, By Consulting St. Paul Himself" (1707) <<http://oll.libertyfund.org/title/1556/81024>>.]

[8] Editor: the full passage is: "Whether a superficial reading, accompanied with the common opinion of his invincible obscurity, has kept off some from seeking in him, the coherence of a discourse, tending with close, strong reasoning to a point; or a seemingly more honourable opinion of one that had been rapped up into the third heaven, as if from a man so warmed and illuminated as he had been, nothing could be expected but flashes of light, and raptures of zeal, hindered others to look for a train of reasoning, proceeding on regular and cogent argumentation, from a man raised above the ordinary pitch of humanity, to a higher and brighter way of illumination; or else, whether others were loth to beat their heads about the tenour and coherence in St. Paul's discourses; which, if found out, possibly might set them at a manifest and irreconcilable difference with their systems: it is certain that, whatever hath been the cause, this way of getting the true sense of St. Paul's epistles, seems not to have been much made use of, or at least so thoroughly pursued, as I am apt to think it deserves." Locke, "An Essay For the Understanding of St. Paul's Epistles, By Consulting St. Paul Himself" (1707) <<http://oll.libertyfund.org/title/1556/81024/1927033>>.

[9] *The Rights of War and Peace*, ed. Richard Tuck, from the edition translated by Jean Barbeyrac (Indianapolis: Liberty Fund, 2005), I: 142-45. <<http://oll.libertyfund.org/title/1425/138593/2633771>>.

[10] Samuel Pufendorf, *On the Law of Nature and Nations*, trans. C. H. Oldfather and W.A. Oldfather (London: Oxford at the Clarendon Press, 1934), 118. See also the discussion at 315.

[11] Editor: The passages Smith quotes in *System of Liberty* are from pp. 60-61 and are reproduced here. From *Lectures On Jurisprudence*: "Perfect rights are those which we have a title to demand and if refused to compel an other to perform. What they call imperfect rights are those which correspond to those duties which ought to be performed to us by others but which we have no title to compel them to perform; they having it intirely in their power to perform them or not. Thus a man of bright parts or remarkable learning is deserving of praise, but we have no power to compel any one to give it him. A beggar is an object of our charity and may be said to have a right to demand it; but when we use the word right in this way it is not in a proper but a metaphoricall sense." <<http://oll.libertyfund.org/title/196/55587/919834>>. From *Theory of Moral Sentiments*: "Society may subsist, though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it. Though Nature, therefore, exhorts mankind to acts of beneficence, by the pleasing consciousness of deserved reward, she has not thought it necessary to guard and enforce the practice of it by the terrors of merited punishment in case it should be neglected. It is the ornament which embellishes, not the foundation which supports the building, and which it was, therefore, sufficient to recommend, but by no means necessary to impose. Justice, on the contrary, is the main pillar that upholds the whole edifice. If it is removed, the great, the immense fabric of human society, that fabric which to raise and support seems in this world, if I may say so, to have been the peculiar and darling care of Nature, must in a moment crumble into atoms." <<http://oll.libertyfund.org/title/192/200110/3301454>>.

[12] Thomas Gisborne, *The Principles of Moral Philosophy Investigated*, 3d ed. (London: B. and J. White, Fleet Street, 1795), 227-28.

## 2. RESPONSES AND CRITIQUES

### 1. JASON BRENNAN, "THE IDEA OF FREEDOM: LITTLE IS AT STAKE"

Smith's book is deep and rich. Anyone with an interest in the history of liberal thought will learn something valuable from it.

In this short response, I'm going to focus on the issue of how two different thinkers—Thomas Hobbes and John Locke—defined “liberty,” and what is and is *not* at stake in their definitions. Hobbes and Locke would have thought that their different definitions of liberty have different implications about what governments ought and ought not do, but I think they're mistaken.

Classical liberals are liberals. What is supposed to make liberal doctrines distinctive is that it gives freedom some special, privileged, or fundamental place. But, as Smith notes (134) this presents a few problems.

First, there is a lot of disagreement about just what “freedom” or “liberty” signify, and also what it takes to secure freedom, so defined. Isaiah Berlin claims to have identified 200 different concepts of freedom, though Berlin doesn't tell us what these 200 different concepts are, and Smith is rightly skeptical that Berlin found quite that many. (134) Even non-liberals or anti-liberals claim to be *for* rather than against freedom. Marxists and fascists both say their preferred systems deliver a better kind of freedom or do a better job delivering freedom than liberal capitalism does.[13]

Second, “liberty” and “freedom” are often defined in terms of *other* moral concepts, such as *rights*, *property*, and *coercion*. (These terms are often in turn defined in terms of freedom, leading to problems of circularity.) So, while a typical libertarian will say that he advocates the free market because she opposes coercion, a typical Marxist will respond that she rejects the free market because she opposes coercion. Here, the two disagree about what counts as coercive.

Smith says that debates about the “true” meaning of freedom are usually futile, because “nominal definitions are determined by linguistic conventions, not by philosophers, and the conventional meanings of ‘free-

dom’ are significantly diverse to support a wide variety of interpretations.” (135) So, for instance, one cannot just pound the table and insist that “freedom” just means libertarian negative liberty—that won't reflect the common usage of the word in English and it will just come across as ideological special pleading.[14]

Smith proposes instead (in chapter 7, “The Idea of Freedom”) to dispense with the futile debate about what the “true” meaning of “freedom” or “liberty” is, and instead to just examine how classical liberals thought of the concepts, as the concepts were embedded in the context of classical-liberal ideology.

Smith notes that in conventional English, the words “liberty” and “freedom” appear to be used to refer to variety of related but not identical things. My view is that “freedom” and “liberty” are not in the first instance *philosophical* concepts, unlike, say, “epistemic justification” or “social contract.” Instead, these are conventional concepts in natural language, though they are concepts that philosophers appropriately take great interest in. Thus, there is a default presumption that philosophers should yield to common usage when discussing what “liberty” really means. (The same goes for, say, the word “fish,” which is a pre-scientific term, but not the word “mammal,” which is a scientific term. [[15] In contrast, there is a default presumption that laypeople should yield to philosophers’ usage when discussing what “epistemic justification” means. These presumptions can be defeated, of course. So, for instance, if the common usage of “liberty” turned out to be radically confused or incoherent, then philosophers have grounds for revising the language, if they can.

Very little is at stake ideologically in how we define our terms. For any plausible definition of “liberty,” it will be an open question—a question not settled by definition—whether that kind of liberty is valuable, whether we have a right (of some sort) to that kind of liberty so defined, whether and how that liberty ought to be protected or promoted, and so on. In short, the real debate between, say, Marxists and classical liberals is not over the best understanding of the word “liberty,” but is about something else.[16]

Smith says classical liberals often adopt “negative” conceptions of liberty. A “negative” conception of liberty defined liberty in terms of the absence of something. Smith notes that while Thomas Hobbes and Locke both had negative conceptions of liberty, these

conceptions were different in kind. Hobbes's conception is "mechanistic" while Locke's is "social" (136). Hobbes says that literally any physical obstacles to achieving your goals count as impediments to your liberty, while Locke reserves the word "liberty" to refer to the absence of rights violations (in one's property). So, for Hobbes, if a tree falls and pins you down, this is just as much an impediment to your freedom of movement as when a thug pins you down. In contrast, Locke would say that the thug violates your freedom, but he would not say (except in a loose sense) that the tree impedes your liberty.

Smith says that these two ways of understanding liberty "can have profound ideological implications..." (137) For absolutists like Hobbes and Filmer, it would be absurd to say the purpose of laws is to promote liberty, because laws always, in the first instance, create obstacles where there were none. Governments primarily *restrain* liberty, and for good reason, according to Filmer and Hobbes. In contrast, for Locke, when a government protects rights, it thereby protects our freedom. For Hobbes, to stop a thief from mugging you involves a loss of freedom for the thief, while to allow the thief to mug you involves a loss of freedom for you. For Locke, only the latter counts as a loss of freedom—since the thief has no right to your wallet, it doesn't count as a loss of freedom to stop him from mugging you. (139)

I think Smith's exegesis is correct, and I think he's right that Locke and Hobbes would have seen their disagreement about the right way to define "liberty" as in turn leading to different conclusions about politics. But I disagree with Locke and Hobbes here over whether this difference in definition in fact has *any* moral implications. Locke and Hobbes have deep disagreements, but this disagreement does not result logically from their disputes over the best way to define "liberty."

To see why, consider: I'm pretty much an anarchist classical liberal, yet I also I pretty much accept the Hobbesian definition of negative liberty. In my view, as in Hobbes's, 1) a tree that falls on me is just as much an impediment to my freedom as 2) a big thug pinning me down in order to mug me, which is turn the same impediment to my freedom as when 3) a police officer pins me down after I've mugged someone. However, while there is no metaphysical difference among these

cases—I'm equally unfree in all three—there are huge *moral* differences. In the first case—a tree falls on me—I'm unfree, but this is just an unfortunate fact of no moral significance. In the second case, I'm unfree, and wrongly so. In the third case, I'm unfree, and *rightly so*. The situations are the same in terms of freedom but not in terms of their moral portent.

I take issue with Locke's definition of liberty, because it implies, as far as I can tell, that people who are rightfully imprisoned haven't lost any freedom. After all, they *ought* to be in prison, and so their rights aren't be violated. Since their rights aren't being violated, they aren't unfree. Yet, there they are, behind bars. That seems a bit weird. Isn't it conceptually cleaner just to say that justly convicted and imprisoned prisoners are not free to leave, and rightly so?

Continuing with this point, I'd say that a classical-liberal government restrains the freedom of government officials to do as they please—and rightly so!—while an authoritarian government gives officials great freedom to do as they please—and wrongly so! My right of free speech, when protected, comes at the expense of others' freedom to restrict my speech—and rightly so. Etc.

If we decide to use the Hobbesian definition of "liberty," then the ideological question isn't so much what counts as a restriction of freedom, but what counts as a good or bad, rightful or wrong restriction of freedom. Very little is at stake in how we define our terms.

Smith says,

The mechanistic view [of liberty] was favored by absolutists ... because it supported their contention that all laws *necessarily* restrict liberty. All governments enforce laws that restrain people from doing what they might otherwise have a will to do – so it is absurd to claim, as did the political individualists, that the primary purpose of government is to preserve liberty. It is therefore nonsensical to reject absolutism for its supposed incompatibility with freedom.

Again, I think Smith is right that the absolutists, Hobbes and Filmer, saw things this way. But the absolutists are making an important mistake. I agree with Hobbes and Filmer that, say, a law forbidding rape, if enforced properly, stops would-be rapists from having the freedom to rape. But since people *shouldn't* have the freedom to rape, this is a *good* and *just* restraint of

liberty. In contrast, a government that stops people from, say, smoking pot restrains liberty, but in this case, unjustly. I can just agree with Hobbes that even a liberal polity restricts freedom, but then respond that it restricts *wrongful* freedoms while allowing *rightful* freedoms. When Locke says that a good government promotes freedom, we can easily translate this into Hobbesian language by saying instead that a good government protects *rightful* freedoms while restricting *wrongful* freedoms. So, again, nothing is at stake in how we define our terms. The debate over what governments ought and ought not to do is *not* settled by finding the right definition of liberty.

Note that even on Hobbes's own terms, the move to government from the Hobbesian state of nature should be seen as an improvement in how much liberty we enjoy. The state of nature is a war of all against all, Hobbes argues, in others continuously interfere with us. The Leviathan imposes barriers and obstacles upon us, and so in the first instance reduces our liberty, as Hobbes understands the concept. But the result is that we are interfered with much less than we were in the state of nature. So, overall, we gain rather than lose liberty. What's more—and here Hobbes agrees—the value of the liberty we enjoy under the Leviathan is much higher than the value of our liberty in the state of nature. Now, Smith and I both dispute whether anarchy really would be like the Hobbesian state of nature, and of course neither Smith nor I accept Hobbes's favored form of government. My point here is just that even Hobbes's argument for government can be re-stated as the view that government exists to promote liberty, even if Hobbes himself didn't describe it that way.

In closing, I think there are three main questions about liberty:

1. What is it?
2. How much and what kind of value, if any, does liberty have? (Do people have a right to certain kinds of liberty?)
3. What institutions and social conditions best produce and protect the kinds of liberties worth having? (In particular, what role should government have?)

The first question is the most basic. One cannot answer the other questions without having good answer to the first. The third question (and the second, to

some degree) requires more than just the tools of philosophical theorizing. To know what institutions best produce and protect liberty requires social scientific investigation. It cannot be answered from the armchair.

The right way to think about these questions is to answer them in order. But I tend to find—and Smith notices something like this as well (133)—that most people tend to theorize about these questions in the something like the reverse order. People first begin with their ideology, whatever that is, and then reverse-engineer a definition of “liberty” such that it comes out, fortuitously, that their favored political regime is the only regime that promotes *real* liberty. It's bogus, regardless of whether a Rousseauian or a Randian is doing it.

## Endnotes

[13] E.g., Benito Mussolini and Giovanni Gentile, “The Doctrine of Fascism,” <<http://www.upf.edu/materials/fhuma/nacionalismes/nacio/docs/muss-doctrine.pdf>>: “In our state the individual is not deprived of freedom. In fact, he has greater liberty than an isolated man, because the state protects him and he is part of the State. Isolated man is without defence.”

[14] With all due respect, this is how I see Tom Palmer's essay here: <<http://www.cato-unbound.org/2010/03/12/tom-g-palmer/liberty-liberty>>. Nonlibertarian understandings of the word “liberty” have been mainstream pretty much forever.

[15] John Dupré, “Natural Kinds and Biological Taxa,” *The Philosophical Review* 90 (1981), 66-90, here esp. pp. 75-76.

[16] For more on this, see David Schmidtz and Jason Brennan, *A Brief History of Liberty* (Boston: Wiley-Blackwell, 2010), pp. 1-29.

## 2. DAVID GORDON, "UTILITARIANISM AND NATURAL RIGHTS"

Reading George Smith's outstanding new book brought back a pleasant memory. I first met George Smith in 1978 at the Acres of Books bookstore in Long Beach, California, and, if memory serves, we spoke about one of George's favorite authors, the historian and sociologist J.M. Robertson. George's vast learning very much impressed me then, and it has continued to do so through the many years that have elapsed since that first encounter, when we were both young.

George's scholarship is abundantly evident in *The System of Liberty*. Despite my reputation, to my mind an undeserved one, as a harsh reviewer, I do not have any criticisms to offer of the book. Rather, I'd like to ask questions about a few passages, in the hope that George will be able to cast further light on these.

George quotes a puzzling remark from Locke: At any rate, it has puzzled me. "The rightness of an action does not depend on its utility; on the contrary, its utility is a result of its rightness." (p.27. All subsequent references to the book will be by page numbers in parentheses in the text.) George seems to me entirely right in grouping Locke among the liberals who saw natural rights and social utility as "perfectly compatible." (p.27) What, though, is meant by saying that the rightness of an action *results* in its utility? How can the rightness of an action bring about, or cause, it to be useful? If Locke just means that right actions tend to *be* useful, then Locke's meaning is clear. But saying that a right action is useful and saying that the rightness of the action causes it to be useful are two different claims. What exactly does Locke mean?

Thinking about this passage leads to a question of greater scope. A principal theme of the book is a contrast between two sorts of classical liberal. Both sorts thought that there was a general presumption in favor of *laissez faire*. Interference with liberty, they all agreed, required justification: *laissez faire* was the default position. The difference between the two groups was that one of them forbade altogether interference with certain rights, deemed inalienable. Considerations of social utility, those who held this position maintained, could not trump these rights. The other group did not exempt these rights, or anything else, from interference, if a case could be made for it. "Those liber-

als who, like Jefferson, distinguished between alienable and inalienable rights typically maintained that only alienable rights should be regarded as defeasible presumptions. Under no circumstances could a government violate *inalienable* rights, so rights in this category were regarded as absolute." (p.23, emphasis in original)

George's contrast of the two sorts of liberalism leads to a question. He says: "The difference consists mainly in this: Utilitarians justified rights solely on the grounds of their social utility, whereas proponents of natural rights considered social utility to be a *consequence* of observing moral principles that are ultimately justified in terms of human nature--especially the role of reason in judging which actions will enable a person to live a good life." (p.33, emphasis in original).

In sum, the supporters of natural rights argued in this way. "In order to figure out how to lead a good life, we need to examine human nature. If we do so, we will discover that people require a protected sphere of activity in order to flourish. Living in a society that guarantees this sphere of activity though rights that the government cannot violate will best promote human flourishing."

Does this not raise a question? Are not people who argue in the way just described themselves appealing to social utility? They are saying that it is best for everybody if natural rights are respected. If rights are respected, this will result in an increase in social utility. [17] If so, it would seem that we have here an intramural quarrel among utilitarians. One group asserts, and the other denies, that the proper way to promote social utility is to respect rights. Are there considerations to which the natural rights liberals appeal that are independent of human flourishing, and if so what are they?

Certainly there have been professed utilitarians who endorsed natural rights. Herbert Spencer, about whom George has, both in *The System of Liberty* and elsewhere, written illuminatingly, was one such. This raises all the more pointedly the need to set forward exactly how a natural rights view differs from a utilitarian one, if indeed it does.

Further, I think another position should be noted. A classical liberal could defend complete *laissez faire*, or close to it at any rate, without appeal to rights. Mises

defended this position. He argued that the free market is the only viable social system. Interferences with it will fail to achieve the goals their supporters favor; and, if continued and extended, lead to socialism, a system doomed to calculational chaos.

As will by now be evident, the topic of rights is central to George's book. Reading George's account of rights leads me to one more question. George writes: "Whatever the origin of individual rights may be, the general notion of a political right to compel obedience is implicit in the notion of political obligation. To ponder our duty to obey a political authority is also to ponder the *right* of that authority to compel obedience. Whether this authority was historically conceived as secular or religious is irrelevant to this point, as is the specific language that was used to express this right. So long as political philosophers were concerned with the justification of political obligation, they were also concerned with the justification of political rights." (p.68, emphasis in original)

I do not doubt that George is here perfectly correct. If I am obligated to obey someone, this obligation can be rephrased as someone's right to compel me to obey. The question I wish to raise is whether the principal defenders of a duty to obey the state did in fact speak in this connection of the right of the state to compel obedience. They could have, but did they? Would, e.g., defenders of absolutism have said something like this: "You are required to obey the king, because if you don't, you would be violating the king's rights"?

That is a very broad question, so let us narrow it down. In his discussion of sovereignty, George rightly draws attention to Jean Bodin. "Sovereign power, according to Bodin, is 'absolute and perpetual'; a sovereign authority is not limited in power, in function, or in length of time. This stress on the absolute nature of sovereign power is what links Bodin and others in his school to the political approach called 'absolutism.'" (p. 77) Did Bodin speak of the sovereign's *right* to compel obedience? I do not mean in asking this to suggest that he didn't. It has been many years since I read him, and I fear that I do not recall. But I think it is an important question whether the language of rights was explicitly used about the sovereign.

In his discussion of sovereignty, George valuably draws attention to an argument deployed by Bodin and

by Marsilius of Padua before him. According to this argument, there must be a single final source of authority to resolve conflicts in a society. Marsilius imagines a situation in which there are several competing governments in a territory. Each government might at the same time summon a person to appear before its respective court, but the person summoned, unable to be in two places at the same time, "would be held in contempt by at least one ruler for failing to fulfill a moral and legal obligation that no one could possibly fulfill." (p.79)

It is worth pointing out that this argument does not on its own terms succeed in showing the need for a single sovereign. Suppose someone faces conflicting legal obligations of the kind described. For each such instance, there must be an authority to resolve the conflict. Otherwise, the person will be unable to fulfill at least one obligation. It does not follow from this, though, that the same authority must resolve all such disputes. From "For each conflicting obligation, there must be an authority to determine which (if any) is binding" it does not follow that "There must be in a society be a single authority to resolve all disputes about obligations." The fallacy is the same as that involved from going from "Every person has a father" to "Someone is everyone's father."

*The System of Liberty* is a major contribution to the understanding the classical liberal tradition, and I highly recommend it. The chapter "The Anarchy Game" is particularly important.

### *Endnotes*

[17] Note, to revert to my previous question, that to claim that observing people's rights will promote social utility is not to claim that the rightness of doing so brings about an increase in utility.

### 3. RALPH RAICO, "WHY ONLY IN THE WEST?"

My good friend George Smith is, in all likelihood, the premier scholar of freethought of the present day, besides being an excellent historian of modern political thought in general. His new book will doubtless be an important contribution to the history and philosophy of classical liberalism.

I wonder, though, whether George has ever considered why liberalism and the idea of freedom originated in the West and not in other great civilizations, such as China, India, and Islam. Ludwig von Mises noted the fact that liberalism is quintessentially Western, but, again, did not explain why. In fact, in Europe even classical antiquity lacked the idea of individual freedom. For the Greeks, the *polis* was the center of their existence. The Romans worshipped their city; *Roma* was a goddess, with temples and priests to serve her.

What made the difference in the West was the introduction of a powerful new factor: Christianity.

Christian contributions include the mitigation of slavery and a greater equality between parents within the family. But the crucial *political* impact of Christianity emerged with the critique of state-worship of the early Church Fathers, particularly St. Augustine, who contrasted the City of God to the City of Man, giving unquestionable priority to the first. Karl Ferdinand Werner, in (Baechler, Hall, and Mann, eds. *Europe and the Rise of Capitalism*, 1988) pointed out that St. Augustine and other Christian writers had *desacralized* the state and thus radically altered the conception prevalent in Greco-Roman antiquity.

In my view, a reliable guide to the history of liberty is Lord Acton. In his great essays, "The History of Freedom in Antiquity" and "The History of Freedom in Christianity," Acton traced the dichotomy that made liberty possible to the words of Jesus Himself:

When Christ said: "Render unto Caesar the things that are Caesar's, and unto God the things that are God's," those words, spoken on His last visit to the Temple, three days before His death, gave to the civil power, under the protection of conscience, a sacredness it had never enjoyed, and bounds it had never acknowledged; and they were the repudiation of

absolutism and the inauguration of freedom. [From "The History of Freedom in Antiquity".]

A Roman Catholic, Acton explains how Jesus provided, in addition to the idea, the practical means for its achievement:

For our Lord not only delivered the precept, but created the force to execute it. To maintain the necessary immunity in one supreme sphere, to reduce all political authority within defined limits, ceased to be an aspiration of patient reasoners, and was made the perpetual charge and care of the most energetic institution and the most universal association in the world. The new law, the new spirit, the new authority, gave to liberty a meaning and a value it had not possessed in the philosophy or in the constitution of Greece or Rome before the knowledge of the truth that makes us free. [From "The History of Freedom in Antiquity".]

Acton records the results of the medieval struggle between the Catholic Church and the state:

To that conflict of four hundred years we owe the rise of civil liberty.... [A]lthough liberty was not the end for which they strove, it was the means by which the temporal and the spiritual power called the nations to their aid. The towns of Italy and Germany won their franchises, France got her States-General, and England her Parliament out of the alternate phases of the contest; and as long as it lasted it prevented the rise of divine right. [From "The History of Freedom in Christianity."]

In recent years, Acton's conclusions have come to be supported by a large body of scholarship. Harold J. Berman, in his essay, "The Influence of Christianity on the Development of Western Law" (1974) and his work, *Law and Revolution: The Transformation of the Western Legal Tradition* (1983), has stressed that with the fall of Rome and the eventual conversion of the Germans, Slavs, Magyars, and other peoples, Christian ideas and values suffused the whole blossoming culture of Europe. Importantly, such Christian ideas included the concept of natural law, including the legitimacy of resistance to unjust rulers.

Berman, like Acton, focuses attention on a critical development that began in the 11th century: the creation by Pope Gregory VII and his successors of a "corporate, hierarchical church ... independent of emperors, kings, and feudal lords," [p. 56] and thus capable of foiling the power-seeking of temporal au-

thority. In this way, he bolsters Acton's analysis of the central role of the Catholic church in generating Western liberty by forestalling any concentration of power in the secular rulers such as marked the other great cultures.

Berman's work is in the tradition of the learned English scholar, A. J. Carlyle, who, at the conclusion of his six-volume study of political thought in the Middle Ages, *A History of Medieval Political Theory: Political Theory from 1300 to 1600* (1950), summarized the basic principles of medieval politics: that all—including the king—are bound by law; that a lawless ruler is not a legitimate king, but a tyrant; that where there is no justice there is no commonwealth; and that a contract exists between the ruler and his subjects.

Other recent scholarship has supported these conclusions. In his last, posthumous work (*Religious Thought and Economic Society*, 1978), the distinguished historian of economic thought, Jacob Viner, noted that the references to taxation by St. Thomas Aquinas "treat it as a more or less extraordinary act of a ruler which is as likely as not to be morally illicit." Viner pointed also to the medieval papal bull, *In Coena Domini*—evidently republished each year into the late eighteenth century—which threatened to excommunicate any ruler "who levied new taxes or increased old ones, except for cases supported by law, or by an express permission from the pope."

Throughout the Western world, the Middle Ages gave rise to parliaments, diets, estates-generals, Cortes, etc., which served to limit the powers of the monarch. A. R. Myers (*Parliaments and Estates in Europe to 1789*, 1975) notes:

Almost everywhere in Latin Christendom the principle was, at one time or another, accepted by the rulers that, apart from the normal revenues of the prince, no taxes could be imposed without the consent of parliament.... By using their power of the purse [the parliaments] often influenced the rulers policies, especially restraining him from military adventures. [pp. 29-30]

Popular rights, above all protection against arbitrary taxation, were defended by representative assemblies elected by the tax-bearing classes and were often enshrined in charters that the rulers felt more or less obliged to respect. In the most famous of these, the Magna Carta, which the barons of England extorted

from King John in 1215, the first signatory was Stephen Langton, Archbishop of Canterbury.

In a synthesis of modern scholarship (*Inventing the Middle Ages*, 1991), Norman F. Cantor has summarized the heritage of medieval times

In the model of civil society, most good and important things take place below the universal level of the state: the family, the arts, learning, and science; business enterprise and technological process. These are the work of individuals and groups, and the involvement of the state is remote and disengaged. It is the rule of law that screens out the state's insatiable aggressiveness and corruption and gives freedom to civil society below the level of the state. It so happens that the medieval world was one in which men and women worked out their destinies with little or no involvement of the state most of the time. [p. 416]

One highly significant factor in the advance of the West is its relative lack of institutionalized envy. The sociologist Helmut Schoeck (*Envy: A Theory of Social Behavior*, 1987) has drawn attention to the omnipresence of envy in human societies. Perceived as a grave threat by those at whom it is directed, it typically results in elaborate envy-avoidance behavior: the attempt to ward off the dangers of malicious envy by denying, disguising, or suppressing whatever traits provoked it. The anti-economic consequences of socially permitted—or even encouraged—by envy and reactive envy-avoidance scarcely lend themselves to quantification. Nonetheless, they may clearly be highly damaging. Western culture has somehow been able to inhibit envy to a remarkable degree, a fact that Schoeck links to the Christian faith: "It must have been one of Christianity's most important, if unintentional, achievements in preparing men for, and rendering them capable of, innovative actions when it provided man for the first time with supernatural beings who, he knew, could neither envy nor ridicule him."

Thus, long before the 17th century, Europe had produced political and legal arrangements and personal attitudes—a whole way of life—that set the stage for both individual freedom and the later industrial "take-off."

With the Reformation and the French Revolution, the Church felt compelled to turn to the state to fight its Protestant and then its anti-Christian enemies (an alliance that lasted into the 19th century). By then,

though, the job of the Catholic Church in engendering Western liberty was done.

### 3. THE CONVERSATION

#### 1. GEORGE H. SMITH'S REPLY TO RALPH RAICO, DAVID GORDON, AND JASON BRENNAN

My thanks to Ralph Raico, David Gordon, and Jason Brennan for their thoughtful commentaries. They covered an extremely broad range of topics, so, given my space limitations, I am unable to reply to everything. Perhaps I can comment on neglected points in subsequent exchanges.

(1) Ralph wrote: “Ludwig von Mises noted the fact that liberalism is quintessentially Western, but, again, did not explain why.”

In the opinion of Mises, liberalism was largely a product of the Enlightenment. In *Socialism: An Economic and Sociological Analysis*, he referred to “the dislike which the Church has shown for economic liberty and political Liberalism in any form.” Mises continued:

Liberalism is the flower of that rational Enlightenment which dealt a death blow to the regime of the old Church and from which modern historical criticism has sprung. It was Liberalism that undermined the power of the classes that had for centuries been closely bound up with the Church. It transformed the world more than Christianity had ever done. It restored humanity to the world and to life.[18]

Ralph wrote: “In my view, a reliable guide to the history of liberty is Lord Acton.”

I share Ralph’s enthusiasm for Acton. Indeed, I first became familiar with Acton’s account of the history of western freedom from one of Ralph’s brilliant lectures in the late 1970s, and I later published two articles on what I call the “Acton Thesis.”[19] It should be understood, however, that Acton did not regard the Church as a powerful force for liberty per se after Constantine forged an alliance between Christianity and the Roman state during the fourth century.

According to Acton, neither church nor state (i.e., the secular powers) favored liberty, but, while competing for allies, each granted various immunities and privileges to towns, parliaments, universities, guilds, and other corporations. Eventually some of these insti-

tutions were able to resist the power of both church and state – and so there evolved a decentralized system of power unknown to the ancient world and the East. Individual liberty was a happy byproduct of this system. As Acton wrote in “The History of Freedom in Christianity”: “If the Church had continued to buttress the thrones of the kings whom it anointed, or if the struggle had terminated speedily in an undivided victory, all Europe would have sunk down under a Byzantine or Muscovite despotism. For the aim of both contending parties was absolute authority.”[20] Thus the primary role of the Church in the history of western freedom lay not in its liberal tendencies but in functioning as a counterweight to competing secular powers. [21]

Ralph wrote that “St. Augustine and other Christian writers had *desacralized* the state and thus radically altered the conception prevalent in Greco-Roman antiquity.” This is certainly a legitimate point, but there is another side to the story. Augustine, for example, developed a systematic justification of religious persecution that would exert a profound and deleterious influence for centuries to come.

Moreover, like many Church Fathers, Augustine used the doctrine of original sin to justify slavery and the state. In this approach human laws should function as a divinely ordained punishment and remedy for sin, not as a protection for individual freedom. We see one of many consequences of this theory in Augustine’s account of the degenerative causes that led to the sack of Rome in 410. Among other things, Augustine blamed the moral *laissez-faire* of Rome. I know of no better description in ancient literature of a free society than is described in the following passage, but Augustine condemned the very policies that later classical liberals and libertarians would defend.

The laws should punish offences against another’s property, not offences against a man’s own personal character. No one should be brought to trial except for an offence, or threat of offence, against another’s property, house, or person; but anyone should be free to do as he like about his own, or with his own, or with others, if they consent.[22]

[Editor: In the edition used on the OLL the quote comes from *City Of God*, Book II, chap. 20. "Let the laws take cognizance rather of the injury done to another man’s property, than of that done to one’s own person. If a man be a

nuisance to his neighbor, or injure his property, family, or person, let him be actionable; but in his own affairs let every one with impunity do what he will in company with his own family, and with those who willingly join him."]

To conclude: Christianity was an extremely broad stream of thought; to use A.V. Dicey's metaphors, it contained ideological currents, counter-currents, and cross-currents. In my opinion, to speak of the historical influence of Christianity on such-and-such is to reify an abstraction. I would be the last to deny the indispensable role that countless *Christians* played in the development of free institutions and libertarian ideas, but important contributions were also made by deists, secularists, atheists, and so forth.

(2) I shall now turn to some of David Gordon's comments.

David wrote: "George quotes a puzzling remark from Locke: At any rate, it has puzzled me. 'The rightness of an action does not depend on its utility; on the contrary, its utility is a result of its rightness.'...What exactly does Locke mean?"

The sentence I quoted by Locke is the last line of his *Essays on the Law of Nature*. [23] Locke wished to rebut the claim that there is "no such thing as a natural law of justice, or, if it exists, it is the height of folly, inasmuch as to be mindful of the advantages of others is to do harm to oneself." Locke was addressing the argument that "each person's own interest is the standard of what is just and right," and that "nothing in nature is binding except so far as it carries with it some immediate personal advantage." Locke replied, in essence, that our estimates of personal advantage cannot be the "basis of natural law," because we would be unable to pursue our rational interests in a society with no regard for the natural law of justice, a society in which there is no security for life and property. Locke concluded that "utility is not the basis of the [natural] law or the ground of obligation, but the consequence of obedience to it." In other words, justice is the *standard* that must be followed if the *goal* of utility is to be achieved. It is in this sense that the utility of an action is the *result* of its rightness. It is by adhering to the latter than we attain the former.

David wrote: "In sum, the supporters of natural rights argued in this way. 'In order to figure out how to lead a good life, we need to examine human nature. If

we do so, we will discover that people require a protected sphere of activity in order to flourish. Living in a society that guarantees this sphere of activity though rights that the government cannot violate will best promote human flourishing.' Does this not raise a question? Are not people who argue in the way just described themselves appealing to social utility?"

Yes. But as I pointed out at various places in my book, this traditional approach to natural rights invoked social utility (or the public good, or the greatest happiness, etc.) as the *purpose* of legislation, not as its *standard*. Only by using natural rights as the standard of legislation can public utility (which cannot be calculated directly) be achieved.

David wrote: "Did Bodin speak of the sovereign's right to compel obedience?"

Unfortunately, I cannot say without further research whether or not Bodin referred *explicitly* to the *right* of a sovereign to compel obedience, but he certainly wrote about the "rights of sovereignty" and the "rights of majesty" at various places in *Six Books of the Commonwealth*. And in at least one instance, Bodin used the term "inalienable" in regard to the rights that constitute the "marks of sovereignty."

Here I am omitting many petty rights on which sovereign princes insist in one or another country, but which are in no way marks of sovereignty. For the latter are proper to all sovereign princes to the exclusion of all other lords having administration of justice, magistrates, and subjects; and by their very nature they are untransferable, inalienable, and imprescriptible. [24]

Since the power of legislation was one of Bodin's inalienable rights of sovereignty, I don't think it is a stretch, given the meaning of "legislation," to translate this as the inalienable right of a sovereign to compel obedience.

(3) Since Jason agreed with much of what I had to say in my book, it is difficult to find something to disagree with him about. There is, however, one issue that I would like to discuss briefly, namely Jason's distinction between "rightful freedoms" and "wrongful freedoms."

In Chapter 7 of my book (p. 139), I wrote:

This conception of freedom as a social concept is a recurring theme of liberal individualism (though it was not always consistently upheld). In linking "a state of perfect freedom" to "a

state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another;” Locke set the stage for later liberals who attempted to express social freedom in terms of a universal principle of equality.

I then quoted Kant’s “universal law” of freedom and Spencer’s “law of equal freedom.” [25] The point here is that an important strain in classical liberalism – one with which I largely agree – conceives of “freedom” as a social state of affairs in which no coercion is present. Thus if a man points a gun at me and demands money, he is not exercising a “wrongful freedom” to steal; rather, by introducing coercion into our *relationship*, he has violated the social condition known as “freedom.” Thanks to his action, we are in a *coercive relationship* rather than in a *free relationship*.

Unfortunately, classical liberals were sometimes unclear about the meaning of “freedom,” and I can think of a number of instances in the literature that would support Jason’s distinction between rightful and wrongful freedom. Nevertheless, when liberals referred to a “free” society, they typically meant a society in which every (competent) adult is able to exercise equal rights. And implicit in this notion of *equal* rights, I believe, is the idea of equal freedom that Kant and Spencer would later formulate explicitly.

### Endnotes

[18] Ludwig von Mises, *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane, Foreword by F.A. Hayek (Indianapolis: Liberty Fund, 1981), 382. <<http://oll.libertyfund.org/title/1060/104099/2216496>>.

[19] See my 1992 article for the Acton Institute, “Christianity and Liberty,” at: <<http://www.acton.org/pub/religion-liberty/volume-2-number-6/christianity-and-liberty>>. For a more detailed discussion of the Acton Thesis, see my Excursions Essay for the Cato Institute, “Lord Acton and the History of Liberty, Part 3” (March 19, 2013) at: <<http://www.libertarianism.org/publications/essays/excursions/lord-acton-history-liberty-part-3>>.

[20] *Essays on Freedom and Power*, ed. Gertrude Himmelfarb (Boston: Beacon Press, 1948), 62. This is from the same passage quoted by Ralph. The edition

on the OLL is John Emerich Edward Dalberg, Lord Acton, *The History of Freedom and Other Essays*, ed. John Neville Figgis and Reginald Vere Laurence (London: Macmillan, 1907). <<http://oll.libertyfund.org/title/75>>.

[21] As I point out in my Cato essay (cited above), various secular historians before Acton, such as Voltaire, Condorcet, and W.E.H. Lecky, employed a similar thesis, though Acton developed that thesis more broadly and in more detail than any of his predecessors. [See also works in the OLL by Voltaire (1694-1778); Condorcet (1743-1794); William Lecky (1838-1903)].

[22] *Concerning the City of God Against the Pagans*, trans. Henry Bettenson (London: Penguin Books, 1967), 71. The edition of “The City of God” on the OLL is Philip Schaff, *A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church. Vol. II St. Augustin’s City of God and Christian Doctrine*, ed. Philip Schaff, LL.D. (Buffalo: The Christian Literature Co., 1887). <<http://oll.libertyfund.org/title/2053/152827>>. [The full passage from the OLL version: “But the worshippers and admirers of these gods delight in imitating their scandalous iniquities, and are nowise concerned that the republic be less depraved and licentious. Only let it remain undefeated, they say, only let it flourish and abound in resources; let it be glorious by its victories, or still better, secure in peace; and what matters it to us? This is our concern, that every man be able to increase his wealth so as to supply his daily prodigalities, and so that the powerful may subject the weak for their own purposes. Let the poor court the rich for a living, and that under their protection they may enjoy a sluggish tranquillity; and let the rich abuse the poor as their dependants, to minister to their pride. Let the people applaud not those who protect their interests, but those who provide them with pleasure. Let no severe duty be commanded, no impurity forbidden. Let kings estimate their prosperity, not by the righteousness, but by the servility of their subjects. Let the provinces stand loyal to the kings, not as moral guides, but as lords of their possessions and purveyors of their pleasures; not with a hearty reverence, but a crooked and servile fear. Let the laws take cognizance rather of the injury done to another man’s property, than of that done to one’s own person. If a man be a nuisance to his neighbor, or injure his property, family, or person, let him be actionable; but in his

own affairs let every one with impunity do what he will in company with his own family, and with those who willingly join him. Let there be a plentiful supply of public prostitutes for every one who wishes to use them, but specially for those who are too poor to keep one for their private use. Let there be erected houses of the largest and most ornate description: in these let there be provided the most sumptuous banquets, where every one who pleases may, by day or night, play, drink, vomit, dissipate. Let there be everywhere heard the rustling of dancers, the loud, immodest laughter of the theatre; let a succession of the most cruel and the most voluptuous pleasures maintain a perpetual excitement. If such happiness is distasteful to any, let him be branded as a public enemy; and if any attempt to modify or put an end to it let him be silenced, banished, put an end to. Let these be reckoned the true gods, who procure for the people this condition of things, and preserve it when once possessed. Let them be worshipped as they wish; let them demand whatever games they please, from or with their own worshippers; only let them secure that such felicity be not imperilled by foe, plague, or disaster of any kind. What sane man would compare a republic such as this, I will not say to the Roman empire, but to the palace of Sardanapalus, the ancient king who was so abandoned to pleasures, that he caused it to be inscribed on his tomb, that now that he was dead, he possessed only those things which he had swallowed and consumed by his appetites while alive? If these men had such a king as this, who, while self-indulgent, should lay no severe restraint on them, they would more enthusiastically consecrate to him a temple and a flamen than the ancient Romans did to Romulus."]

[23] *Locke: Political Essays*, ed. Mark Goldie (Cambridge, U.K., Cambridge University Press), 79-133.

[24] *Bodin on Sovereignty*, ed. and trans. Julian H. Franklin (Cambridge, U.K., 1992), 87.

[25] [Editor: In the edition of Kant's *Science of Right* (1796) on the OLL the quote is: "Every Action is right which in itself, or in the maxim on which it proceeds, is such that it can co-exist along with the Freedom of the Will of each and all in action, according to a universal Law.' If, then, my action or my condition generally can co-exist with the freedom of every other, according to a universal Law, any one does me a wrong

who hinders me in the performance of this action, or in the maintenance of this condition. For such a hindrance or obstruction cannot co-exist with Freedom according to universal Laws." From Immanuel Kant, *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*, by Immanuel Kant, trans. W. Hastie (Edinburgh: Clark, 1887). Introduction to the Science of Right. C. Universal Principle of Right. <<http://oll.libertyfund.org/title/359/55687>>.

The quote from Spencer comes from *Social Statics: or, The Conditions essential to Happiness specified, and the First of them Developed*, (London: John Chapman, 1851), Part II, Chap. IV "Derivation of a First Principle": "This, however, is not the right of one but of all. All are endowed with faculties. All are bound to fulfil the Divine will by exercising them. All therefore must be free to do those things in which the exercise of them consists. That is, all must have rights to liberty of action. And hence there necessarily arises a limitation. For if men have like claims to that freedom which is needful for the exercise of their faculties, then must the freedom of each be bounded by the similar freedom of all. When, in the pursuit of their respective ends, two individuals clash, the movements of the one remain free only in so far as they do not interfere with the like movements of the other. This sphere of existence into which we are thrown not affording room for the unrestrained activity of all, and yet all possessing in virtue of their constitutions similar claims to such unrestrained activity, there is no course but to apportion out the unavoidable restraint equally. Wherefore we arrive at the general proposition, that every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man." <<http://oll.libertyfund.org/title/273/6206/932826>>.]

## 2. RALPH RAICO, "WHAT THOU MEANEST BY SEIZING THE WHOLE EARTH?"

As regards St. Augustine, he writes in *The City of God*,

Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, that was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, "What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet art styled emperor." [26]

This, it must be admitted, was a profound insight into the true nature of states, and stands in sharp contrast to classical antiquity.

George admires the "laissez-faire" morality of the Roman Empire. It is possible for those with different standards to disagree. In fact, that morality was through and through pornographic. It included, for instance, the posting of erect phalluses in front of homes. Men openly carried amulets of the male genitals around their necks and touched them often, for luck. Much worse were the filthy blood games in the arena, the favorite pastime of the Roman populace. There the crowd eagerly witnessed and cheered the horrible deaths of unarmed victims as well as fighters, savoring each detail. The Church put an end to all that. One may be excused for sympathizing with G.K. Chesterton when he wrote that, given the moral standards prevalent in the Roman Empire, a period of cleansing of society was called for.

All three of the "Abrahamic" religions were persecutors when they had the upper hand. Islam, of course; Judaism at the time of Jesus and His Apostles. The

major Christian denominations were also oppressors, with the notable and noble exception of the Baptists, to their great credit. The world-historical difference that Catholicism made is this: regardless of its intentions, it played a critical role during crucial centuries in thwarting state power. This could only have been accomplished by an independent, international, and powerful Church. In this way, the Church enabled the growth of freedom and classical liberalism in the West, as testified to by the scholars I cited in my original post and left unaddressed by George.

### Endnotes

[26] Philip Schaff, *A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church. Vol. II St. Augustin's City of God and Christian Doctrine*, ed. Philip Schaff, LL.D. (Buffalo: The Christian Literature Co., 1887). BOOK IV. 1 <<http://oll.libertyfund.org/title/2053/152949/2734396>>. This quote was also feature in one of the "Quotes of the Week" on the OLL <<http://oll.libertyfund.org/quote/200>>.

## 3. GEORGE SMITH REPLIES TO RALPH RAICO: AND THE SECULAR POWERS CHECKED THE CHURCH

Ralph Raico quotes a famous passage from Augustine's *City of God* and concludes: "This, it must be admitted, was a profound insight into the true nature of states, and stands in sharp contrast to classical antiquity."

Ralph's conclusion depends on what we think Augustine was saying. He was by no means condemning the state per se; on the contrary, Augustine was a big booster of the state, especially if it enforced Christian principles. His example of Alexander the Great and the pirate was taken directly from Cicero:

For when a [pirate] was asked what criminal impulse had led him to make the sea unsafe with a single little ship, he replied, "The same impulse which has led you, [Alexander], to make the whole world unsafe.[27]

The fact that Augustine's entire discussion was based on Cicero's treatment of commonwealths indicates that he was not breaking new ground. Like Cicero, Augustine was discussing the question of whether justice is a necessary component of a true commonwealth. There have been two major interpretations of Augustine's own position, which I won't go into here, [28] but the claim that justice is required for a legitimate state was a staple of classical political philosophy, as we see in the writings of Plato, Aristotle, and (most pertinent to Augustine) the Stoics.

Ralph wrote: "George admires the 'laissez-faire' morality of the Roman Empire. It is possible for those with different standards to disagree."

I simply pointed out that Augustine did not recognize the distinction between vices and crimes – a distinction that later became a cornerstone of classical liberalism and libertarianism. According to Augustine, the institution of government, which was authorized by God as a punishment and remedy for sin, has a divine mandate to repress and punish sinful behavior. True, the category of sinful behavior includes what libertarians view as rights-violating activities, but the category also includes personal beliefs and self-regarding actions. There was nothing liberal or libertarian about Augustine's view of the proper functions of government. On the contrary, Augustine's extensive defense of "righteous persecution," according to which people may be coerced for their own good, was one of the most pernicious doctrines in the history of Western civilization. Moreover, as every libertarian knows, to say that people should be free to do x does not imply a moral sanction of x.

Ralph wrote: "The world-historical difference that Catholicism made is this: regardless of its intentions, it played a critical role during crucial centuries in thwarting state power. This could only have been accomplished by an independent, international, and powerful Church."

I agree with this analysis, as I thought I made clear in my original comment. I stated that the main value of the Catholic Church, so far as its contribution to freedom is concerned, is that it sometimes served as a countervailing power against various secular powers and thereby prevented the establishment of one centralized power throughout Europe. But this role had little or nothing to do with the ideology of the Church

itself, which was as absolutist as any secular state and sometimes advocated policies that were more oppressive than those desired by secular princes. Indeed, as many historians have pointed out, the Church itself was a type of state, in substance if not in name. To quote the distinguished medieval historian R.W. Southern:

In a word, the church was a compulsory society in precisely the same way as the modern state is a compulsory society.... It had all the apparatus of the state: laws and law courts, taxes and tax-collectors, a great administrative machine, power of life and death over the citizens of Christendom and their enemies within and without. It was the state at its highest power, such as even Hegel among modern prophets of the state scarcely contemplated.[29]

If we may say that the church prevented secular powers from becoming as totalitarian as they would have liked, we may also say, with equal justification, that those selfsame secular powers prevented the church from becoming as totalitarian as it would have liked. (Acton made precisely this point.) The medieval church, according to its defenders, had legitimate jurisdiction over all of Christendom, and its more extreme defenders ("papalists") extended this jurisdiction to the entire world. I can think of no medieval defender of secular power who made a comparable claim for princes and emperors.

### Endnotes

[27] Marcus Tullius Cicero, *On the Commonwealth*, trans. George Holland Sabine and Stanley Barney Smith (Indianapolis and New York: Bobbs-Merrill, n.d. [reprint of the 1929 ed. by Ohio State University Press]), 210. [The translation of Cicero on the OLL is *The Political Works of Marcus Tullius Cicero: Comprising his Treatise on the Commonwealth; and his Treatise on the Laws. Translated from the original, with Dissertations and Notes in Two Volumes*. By Francis Barham, Esq. (London: Edmund Spettigue, 1841-42). Vol. 1. Chapter: CICERO'S COMMONWEALTH.: BOOK III. <<http://oll.libertyfund.org/title/546/83303/1958539>>.]

[28] For a good discussion of this controversy, see Charles Howard McIlwain, *The Growth of Political*

*Thought in the West: From the Greeks to the End of the Middle Ages* (New York: Macmillan, 1932), 154-60.

[29] R.W. Southern, *Western Society and the Church in the Middle Ages* (Harmondsworth, England: Penguin Books, 1970), 17-18.

#### 4. DAVID GORDON, "IS SOCIAL UTILITY ENOUGH TO JUSTIFY NATURAL RIGHTS?"

I am grateful to George for his answers to my questions. One of my inquiries had to do with the contrast, drawn in George's book, between classical liberals who believed in inalienable rights that are not to be violated, and other classical liberals who believed only in a presumption of liberty. In the latter group's view, interference with liberty was usually a bad idea, but they were prepared to allow it if such interference could be shown to promote the general welfare.

That group obviously appeals to what best promotes happiness. My question was: to what extent does the former group do so as well. If one says, "Society ought to be organized so that each person is granted a protected sphere of liberties that is not to be interfered with, because doing this will be best for everyone, or nearly everyone," isn't this proposal also an appeal to social utility?

In response George says, "[A]s I pointed out at various places in my book, this traditional approach to natural rights invoked social utility (or the public good, or the greatest happiness, etc.) as the *purpose* of legislation, not as its *standard*. Only by using natural rights as the standard of legislation can public utility (which cannot be calculated directly) be achieved."

George's answer was precisely the starting point for my question. If one says that the way to advance social utility is to respect individual rights, is this not still an appeal to utility? Certainly, in this approach utility is not the standard for deciding what to do in particular cases; but it explains why the standard of rights is adopted.

To say that social utility is best promoted by respecting a sphere of rights for each person is not sufficient, it seems to me, to justify the claim that each per-

son has certain moral, or natural, rights. That claim ascribes rights to persons owing to morally relevant properties they have: the claim is that because people are such-and-such, they ought morally to be treated in particular ways. The claim that things will go better for people if they are treated in these ways is a different one, though one may make both claims, as some classical liberals in fact did. That is, one can hold that people ought morally to be treated in certain ways, and that doing this will promote social utility. To hold, though, that rights should be the standard of legislation does not suffice to make these rights natural, or moral. (The difference between "natural" and "moral" would be another question well worth pursuing.)

#### 5. JASON BRENNAN, "CONSEQUENCES WITHOUT CONSEQUENTIALISM"

Commonsense moral thinking is sensitive to consequences without being consequentialist. A consequentialist moral theory holds that the rightness and wrongness of actions is determined at a fundamental level entirely by the consequences of those actions. (Act consequentialist theories say every individual act is to be evaluated individually, while rule consequentialists say that moral codes are to be evaluated as a whole.) Most moral theories hold that consequences matter; they just aren't all that matter. So, for instance, Adam Smith thought that part of what justified the system of natural liberty, the division of labor, and free trade were the consequences of the attendant moral norms, and he also was worried about some of the potential negative consequences. (For instance, he worried that the division of labor might stultify workers.[30]) But Adam Smith rejected utilitarian theories -- he didn't think consequences were all that matter.

What justificatory role do consequences play in a classical-liberal theory? For some classical liberals, consequences are the whole story. But for most, consequences are at least part of the story. So, for instance, to simplify Locke a little, part of what justifies a system of private property is that it can be expected to be for the benefit of all. To remove items from the commons and claim them as our own, we must leave enough and as good for others. But, Locke thinks, the system of

private property, under the right institutions, can be expected to leave more and better for others, not merely enough and as good. For most classical liberals, if they became convinced that their favored institutions would have disastrous consequences from a humanitarian point of view, they would stop advocating those institutions.

If consequences matter, why not say that only consequences matter? I once heard John Yoo make the following argument:

1. Almost everyone agrees that some rights can be overridden or trumped in order to prevent catastrophic moral disasters.
2. Therefore, deep down, everyone is an act utilitarian.

Of course, 2 doesn't follow from 1. And one reason for that is that if you *care about consequences*, you don't want people to live by an act consequentialist moral code. So, for instance, John Stuart Mill argues that if you want good consequences -- such scientific progress, advancement in the arts, cultural progress, peace, and feelings of mutual respect -- then you need to allow a wide sphere of free speech *regardless* of the consequences. This may sound paradoxical. However, Mill says, the policy of only allowing beneficial speech has no history of being beneficial. The policy of allowing speech only when society judges that speech to be in its best interests has no history of being in society's best interests.

I agree with David that consequentialist concerns are usually not enough to ground basic moral rights. But I also think it's important that living by classical-liberal principles (including principles of rights) should be expected, under normal circumstances, to produce good consequences in general. Otherwise, we would see morality and justice as a kind of curse, rather than as a system that helps us live together in peace and prosperity.

### **Principled or Ad Hoc?**

With that in mind, I have a question for George Smith. As he notes, few of the classical liberals he discusses were what he would call libertarian. They advocated some state regulation, state provision of certain so-called public goods, state-subsidized or state-provided public education, and certain welfare-state and social-insurance programs. So, my question: Do you see

these as ad hoc concessions to commonsense politics, inconsistent with the various classical liberals' fundamental moral principles? Or do you see these positions as consistent with their fundamental moral views?

### *Endnotes*

[30] See Dennis Rasmussen, *The Problems and Promise of Commercial Society: Adam Smith's Response to Rousseau* (College Station: Pennsylvania State University Press, 2008).

## 6. GEORGE H. SMITH, "WERE NATURAL-RIGHTS THEORISTS CONSEQUENTIALISTS?" A REPLY TO JASON BRENNAN

Jason asked: "What justificatory role do consequences play in a classical-liberal theory?"

My short answer to this question, viewed historically, is: Consequences were indispensable to the major theories of justice in the classical-liberal tradition. Indeed, I think this answer would be virtually self-evident to every classical liberal, the deontologism of Kant notwithstanding. But, as we shall see, to describe such theories as "consequentialist" is not very helpful in understanding them.

Here we must distinguish between consequentialists and utilitarians. A concern with the consequences of moral and/or just actions does not necessarily make one a utilitarian, in the strict sense. Unfortunately, I cannot pursue this distinction here, but consider Jason's mention of *act* versus *rule* utilitarianism. Although we might say that the liberal conception of rights was a type of rule utilitarianism, this categorization would be misleading in some respects, especially (as I discuss in my book) in regard to the doctrine of inalienable rights.

Although the act/rule distinction is found as early as 1785, in William Paley's influential book *The Principles of Moral and Political Philosophy*, natural-law philosophers focused more on the distinction between short-term and long-term consequences. And in the

assessment of long-term consequences, they typically appealed to the fundamental nature of human beings and social interaction as the basis for their theories of justice.

A recurring theme – one found most prominently in the writings of Hugo Grotius (1583-1645) -- grounds justice in enlightened, or rational, self-interest. In the words of Richard Tuck, Grotius “went back to the principles of the Stoics ... in particular the Stoic claim that the primary force governing human affairs is the desire for self-preservation. But he interpreted this desire in *moral* terms, as the one and only *universal right*: no one could ever be blamed for protecting themselves....”[31]

Man has an “impelling desire for society,” according to Grotius, but the benefits of social interaction are conditional. Other people can harm us as well as help us, so certain conditions must be maintained if we are to reap the advantages of social interaction. Fortunately, man possesses the unique ability to reason, which Grotius describes as “the faculty of knowing and acting in accord with general principles.”[32] Reason thus enables man to formulate and act upon the general principles that set the *foundation* for a *beneficial* social order.

Foremost among these conditions is the preservation of one’s *suum*, i.e., moral jurisdiction and power over one’s life, body, and liberty. For Grotius, these spheres of moral jurisdiction are expressed in terms of *rights*, which define and delimit the use of physical force in society. Grotius would have agreed wholeheartedly with Ayn Rand’s statement that “*Individual rights are the means of subordinating society to moral law.*”[33]

According to Grotius, people form *political* societies primarily for the purpose of protecting their rights from the violent invasions of others: “the end of society is to form a common and united aid to preserve to every one his own.” Self-preservation is a fundamental right that is violated by the initiation of physical force, so self-defense is a right “which nature grants to every one.”[34] Rights “do not prohibit all use of force, but only that use of force ... which attempts to take away *the rights of another.*”[35] The right of self-defense justifies the retaliatory use of force: “a person, if he has no other means of saving his life, is justified in using any forcible means of repelling an attack.”

Now consider the position of Emer de Vattel (1714-1767), whose writings on natural law were widely read in 18th-century America. Vattel was unusual among philosophers of natural law in that he attempted to ground our moral obligation to observe the rules of justice ultimately and *solely* on *self-interest*. Although Vattel agreed with Grotius that rights are necessary preconditions for a beneficial social order, he denied that our obligation to observe the rules of justice is based on some kind of concern for society. Rather, rational self-interest is the foundation of juridical obligations. Here is a summary of Vattel’s approach:

Each individual has as a general and overriding motive [for] his own self-interest, and this motive creates the obligation to which he is liable: it is an unvarying principle of his decisions, against which it would be absurd to claim that he could be made to act. But if society is useful and even necessary to him, and this society is unable to subsist without laws or general rules observed by all its members, he is obliged, by virtue of his own expediency, to follow them. He ought not even consider sacrificing them to an immediate advantage, because they are what guarantee him peaceful enjoyment of all his other goods.[36]

This brief discussion illustrates the variations to be found in the theories of justice defended by natural-law philosophers during the 17th and 18th centuries – and there are many, many more. So may these be described as “consequentialist”? Well, I suppose so, but this label doesn’t tell us much, since consequences *in some sense* were taken for granted in all such theories.

At the conclusion of his comment, Jason asked if I regard those classical liberals as inconsistent who defended state activities beyond those activities that modern libertarians would endorse. My answer is No, since (as I discuss in my book) they typically worked from a *presumption* of liberty. Their main problem, as I see it, was that these liberals rarely formulated clear principles of defeasibility, so exceptions to the presumption of liberty came fast and furious, until the presumption itself became so diffuse as to be virtually meaningless.

In short, the ideal of individual freedom died the death of a thousand qualifications.

## Endnotes

[31] *The Cambridge History of Political Thought, 1450-1700*, ed. J. H. Burns and Mark Goldie (Cambridge, U.K.: Cambridge University Press, 1991), 506.

[32] Hugo Grotius, *Prolegomena to the Law of War and Peace*, trans. Francis W. Kelsey (Indianapolis: Bobbs-Merrill, 1957), 8. Another version of the *Prolegomena* is available in the Liberty Fund edition as "The Preliminary Discourse." The quote is

"But it must be owned that a Man grown up, being capable of acting in the same Manner with respect to Things that are alike, has, besides an exquisite Desire of Society, for the Satisfaction of which he alone of all Animals has received from Nature a peculiar Instrument, viz. the Use of Speech; I say, that he has, besides that, a Faculty of knowing and acting, according to some general Principles; so that what relates to this Faculty is not common to all Animals, but properly and peculiarly agrees to Mankind."

Hugo Grotius, *The Rights of War and Peace, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac* (Indianapolis: Liberty Fund, 2005). Vol. 1. Chapter: THE PRELIMINARY DISCOURSE Concerning the Certainty of Right in general; and the Design of this Work in particular. <<http://oll.libertyfund.org/title/1425/138591/2633704>>.

[33] Ayn Rand, "Man's Rights," in *The Virtue of Selfishness* (New York: Signet Books, 1964), 92.

[34] Hugo Grotius, *The Rights of War and Peace*, trans. A.C. Campbell (Washington and London: M. Walter Dunne, 1901), 33, 291. Available online at the OLL: Hugo Grotius, *The Rights of War and Peace, including the Law of Nature and of Nations, translated from the Original Latin of Grotius, with Notes and Illustrations from Political and Legal Writers*, by A.C. Campbell, A.M. with an Introduction by David J. Hill (New York: M. Walter Dunne, 1901). CHAPTER II.: Inquiry Into the Lawfulness of War. <<http://oll.libertyfund.org/title/553/90747/2052953>>; CHAPTER I.: What is Lawful in War. <<http://oll.libertyfund.org/title/553/90793/2053707>>.

[35] Quoted in Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (New York: Oxford University Press, 1991), 28. This quote is also

available in the Liberty Fund edition, Hugo Grotius, *The Rights of War and Peace, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac* (Indianapolis: Liberty Fund, 2005). Vol. 1. CHAPTER II: Whether 'tis ever Lawful to make War.

"But Right Reason, and the Nature of Society, which is to be examined in the second and chief Place, does not prohibit all Manner of Violence, but only that which is repugnant to Society, that is, which invades another's Right." <<http://oll.libertyfund.org/title/1425/138595/2633807>>.

[36] Emer de Vattel, *Essay on the Foundation of Natural Law and on the First Principle of the Obligation Men Find Themselves Under to Observe Laws*, trans. T.J. Hochstrasser, in Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, edited and with an Introduction by Béla Kapossy and Richard Whitmore (Indianapolis: Liberty Fund, 2008), 754-55. <<http://oll.libertyfund.org/title/2246/212566/3431624>>.

## 7. GEORGE H. SMITH, "NATURAL RIGHTS AND MORAL AUTONOMY": A REPLY TO DAVID GORDON

David Gordon suggests that liberal defenders of inalienable rights might have justified those rights by appealing to social utility in some sense.

Let us first keep in mind that the liberal doctrine of inalienable rights first arose in regard to freedom of religion, or "liberty of conscience." Although advocates of religious freedom often argued that freedom would lessen conflicts in society, this was an ancillary argument, not a primary one.

There were several basic arguments for freedom of religion. First, this right was often said to be "inalienable" because it is literally impossible to transfer one's ability to reason and form rational beliefs to another person. Thus "inalienable" in this sense refers to rights that *cannot* be transferred to another; not to rights that merely *should not* be transferred to another. If the subject of a right -- such as the ability to reason and judge

-- cannot be alienated, then neither can the right associated with that subject.

Another common argument – one found in some early Christian advocates of toleration, such as Tertullian and Lactantius, as well as later liberal thinkers, such as the Levellers and John Locke – was that beliefs per se cannot be compelled. If we don't see or understand the evidence for something, then no amount of coercion will change our minds. This was an adjunct to the first argument, presented above; in both cases the conclusion was that coercion is useless in matters of belief. Neither of these arguments appeals to social utility.

There was also the argument -- one that rose to prominence after the Protestant Reformation -- that one's religious beliefs are exclusively a matter between oneself and God, for it is to God that we are ultimately accountable. Again, no appeal to social utility is evident here.

When the inalienable right of liberty of conscience was extended beyond religion to matters like charity – as we find in Herbert Spencer's earliest extended defense of freedom, *The Proper Sphere of Government* (1842) – one argument was that only good works voluntarily undertaken can have moral value. But the main argument was that to trespass on the sphere of conscience was to violate the *moral autonomy* of others – to deny their moral status as rational agents, in effect. At times this moral autonomy was said to be a necessary *precondition* for the *individual* to achieve happiness, but this was not an appeal to social utility per se. Would “society” be better off if inalienable rights were respected? Yes, of course, but to call attention to the probable consequence was not part of the justification in any fundamental sense. Rather, when push came to shove, the basic contention was that there is a right way to deal with human beings and a wrong way to deal with human beings, whatever one's estimate of the social consequences might be.

I agree wholeheartedly with David's last paragraph: “To say that social utility is best promoted by respecting a sphere of rights is not sufficient ... to justify the claim that each person has certain moral, or natural, rights,” etc. I think David put the matter very well.

## 8. RALPH RAICO, "A SUMMING UP"

It's time, I think, to sum up the discussion between George Smith and me, as I see it.

There is no doubt that George is learned in the thought of a number of figures highly important in the early modern history of classical liberalism and well versed on liberalism in general. I don't find, however, that he has sufficiently considered the question I raised in my first post: “Why the West?” Why did liberalism arise in the West -- the lands that were or had been in communion with the bishop of Rome -- and not anywhere else in the world, not even in the rest of Europe, for example, in Russia?

George concedes that Christianity desecralized the state, a very great step forward from the Greeks and Romans, who deified it. The bishop of Hippo may well have derived the story of Alexander the Great and the pirate from Cicero. But it was his formulation that became famous. It so caught the eye of Noam Chomsky, the philosopher and left anarchist, for instance, that he used it as the title of one of his books.

George states that St. Augustine and other Christian leaders were prepared to use state power to persecute dissenters, which, sadly, is all too true, as I have said in previous posts. According to George, the saint “blamed the moral laissez faire of Rome” for helping to cause its downfall. I dislike the use of laissez faire in this connection, since to me it's an honorific. George makes no mention of the blood games in the arena, the favorite entertainment of the Roman populace. This perhaps casts “Roman morality” in a more sinister light than as simply a system protecting life and property. It was the Church that put an end to these games. In the ruins of the Coliseum today stands a large Cross commemorating that event.

I find George's discussion of “totalitarianism” curious. He says that the medieval church was totalitarian in that it claimed jurisdiction over all of Christendom and some papalists even claimed jurisdiction over the whole world. He believes that no thinker of the time on the state's side made comparable claims for the state.

But “papalists” like Pope Boniface VIII maintained not that the Church should exercise secular power, but that secular rulers were under the authority of the pope. There was at least one medieval thinker

who did argue for universal secular monarchy: Dante, in his *De Monarchia*.

When we consider the real existing totalitarian states of the 20th century, instead of the putative ones of the 12th, we discover that they were anti-Christian. The heroes who stood up against them -- Claus von Stauffenberg, who tried to kill Hitler and was executed when the plot failed, and Alexander Solzhenitsyn, who exposed the Gulag to the world and was imprisoned and then sentenced to internal exile for his pains -- were both inspired by their Christian faith.

George passes over in silence the chief occupation of kings, presidents, and the other masters of states throughout history: war. The misery that it has brought down on mankind is infinitely greater than the oppression of any church. In an important article, Joseph R. Stromberg shows that even the so-called religious wars of the 16th and 17th centuries were actually carried out by secular rulers, to further their own ends. [37] Stromberg aptly cites the social historian Charles Tilly's line: "War made the state and the state made war."

Out of self-interest, the Church thwarted the state during a few crucial centuries. It could do that because it was independent, international, and powerful. George thinks it was tending to total power, and the medievalist scholar he cites held it was already all-powerful in the early middle ages. R. W. Southern also seems to have believed it would remain so for the indefinite future. But these are speculations. History is full of surprises, and there were other forces working against Church omnipotence besides the state. It was the state that veered off towards omnipotence. We are living in a world where it is approaching that goal, and there is no longer any church that can act as a counterweight.

### *Endnotes*

[37] Joseph R. Stromberg "Onward Secular Soldiers, Marching as to War," *The Independent Review*, vol. 17, no 3, Winter 2013, 461-65. Online at <[http://www.independent.org/pdf/tir/tir\\_17\\_03\\_08\\_stromberg.pdf](http://www.independent.org/pdf/tir/tir_17_03_08_stromberg.pdf)>. Chapter 3 of Charles Tilly, *Coercion, Capital, and European States, AD 990-*

*1990* (Basil Blackwell, 1990) is called "How War Made States, and Vice Versa".

## 9. GEORGE H. SMITH, "THE DIVINELY MANDATED INSTITUTION: A REPLY TO RALPH RAICO"

Ralph Raico again says that I have not "sufficiently considered the question I raised in my first post: 'Why the West?' Why did liberalism arise in the West...?"

On two previous occasions, I said that I agree (in essentials) with Lord Acton's explanation, which is the same explanation that Ralph has proposed. I may disagree with Ralph about many things, but not with his belief that the medieval church served as an effective *institutional* barrier to the growth of absolute power in the West. Given my agreement with Ralph on this key point, I cannot understand why he needs more information.

I will add, however, that the emergence of a secular culture in the West contributed a great deal to the development of liberalism.

Ralph wrote: "George concedes that Christianity desacralized the state, a very great step forward from the Greeks and Romans, who deified it."

I originally gave a passing nod to this claim in order to avoid some technical and potentially tedious exchanges. To be more precise, the claim is true in part and untrue in part. All this depends on which Greeks and Romans we are talking about, as well as the time period in question. Aristotle, for example, did not "deify" the state, nor did Epicureans and Stoics. But (as I have explained in previous comments) many Christian theologians, including Augustine, viewed government as a divinely mandated institution -- a punishment and remedy for sin. So this matter ultimately reduces to what we mean by "desacralize."

Ralph wrote: "George makes no mention of the blood games in the arena, the favorite entertainment of the Roman populace. This perhaps casts 'Roman morality' in a more sinister light than as simply a system protecting life and property."

I never said anything about Roman moral practices or culture. I simply pointed out that Augustine opposed the notion that a person “should be free to do as he likes about his own, or with his own, or with others, if they consent.” I wasn’t aware that “blood games in the arena” were voluntary activities between consenting adults.

Ralph wrote: “I find George’s discussion of ‘totalitarianism’ curious. He says that the medieval church was totalitarian in that it claimed jurisdiction over all of Christendom and some papalists even claimed jurisdiction over the whole world. He believes that no thinker of the time on the state’s side made comparable claims for the state.”

Ralph goes on to say: “There was at least one medieval thinker who did argue for universal secular monarchy: Dante, in his *De Monarchia*.”

Dante recommended universal monarchy as an *ideal* (primarily as a way to end war); he did not claim that any emperor of his time *actually* possessed such jurisdiction. The papalists, in contrast, claimed universal authority for *existing* popes. In addition, Dante’s ideal monarch did not possess anything like the absolute power that papalists bestowed upon the pope.

Ralph wrote: “But ‘papalists’ like Pope Boniface VIII maintained not that the Church should exercise secular power, but that secular rulers were under the authority of the pope.”

The “plenitude of power” was a traditional Catholic doctrine that invested popes with jurisdiction over *both* temporal and spiritual affairs. The theory was that popes delegated certain tasks to temporal rulers -- an act that was symbolized by the anointing of rulers. To delegate a power is not to renounce one’s ultimate authority over that sphere. Christendom was regarded by papalists as one society, one Christian Republic, with the pope at its head.

The theory that church and state are two independent powers, each with its own legitimate sphere of authority, was most often defended by *critics* of the Catholic Church. Liberal secularists in particular -- those who opposed any kind of established church -- maintained that the church should have no coercive authority whatsoever; it should confine itself to the sphere of voluntary beliefs, practices, and so forth. It

took centuries for the church to catch up with this essential libertarian tenet.

Ralph mentioned some heroes who, “inspired by their Christian faith,” stood up against 20th-century totalitarian states. Well, shall we compile a list of those people who, inspired by *their* Christian faith, committed unspeakable acts of cruelty and mass murder? The list would be a long one. It is fortunate that those earlier criminals did not have access to 20th-century weaponry and technology. True, it was more laborious and time-consuming to depopulate entire towns and cities with mere swords, but they did what they could with what they had. Moreover, it is no longer acceptable to excuse the atrocities of the Nazis and Soviets, whereas apologists for church atrocities are not nearly as rare. (Lord Acton, though himself a Catholic, relentlessly denounced historical whitewashing of the church.)

Ralph wrote: “George passes over in silence the chief occupation of kings, presidents, and the other masters of states throughout history: war. The misery that it has brought down on mankind is infinitely greater than the oppression of any church.”

Why is this even relevant to this discussion? As an anarchist, I don’t need to be tutored in the atrocities of states. In the 19th century, the liberal historian W.E.H. Lecky wrote that “the Church of Rome has shed more innocent blood than any other institution that has ever existed among mankind.” I freely concede that things have changed dramatically since the time Lecky wrote his comment. I freely concede that the church is no longer in first place, or anywhere close.

Ralph wrote: “In an important article, Joseph R. Stromberg shows that even the so-called religious wars of the 16th and 17th centuries were actually carried out by secular rulers, to further their own ends.”

In part, yes. But though some secular rulers used religion as a cover, the ferocious emotions that motivated the horrors of those wars were rooted in religious beliefs and differences. Nationalism wasn’t much of a factor during the 16th and 17th centuries, but religion was. Massacring heretics was a popular blood sport among Catholics and Protestants alike.

Ralph wrote: “History is full of surprises, and there were other forces working against Church omnipotence besides the state. It was the state that veered

off towards omnipotence. We are living in a world where it is approaching that goal, and there is no longer any church that can act as a counterweight.”

At least the church no longer bestows divine grace on mass murderers by anointing them. We may take some comfort in that.

## 10. JASON BRENNAN, "CHRISTIANITY AND LIBERALISM"

As a matter of fact, liberalism developed in a Christian culture. One can find elements of most western philosophical ideas in other culture's philosophical traditions, but widespread liberalism appears in western culture under Christianity, and not elsewhere. As Ralph Raico has indicated, there seem to be clear intellectual sources in Christianity for liberalism, the most importance of which is the desacralization of the state.

When I was writing *A Brief History of Liberty* with David Schmidtz, I was struck by how fragile the path toward liberalism seemed. It's easy in retrospect to tell Whiggish history -- though I'm not accusing anyone here of that -- but it's also easy to see how the elements of western Christian culture that help explain why liberalism developed could easily have failed to have led to liberalism.

1. Consider: as Perez Zagorin notes,[38] while Christianity might now be considered among the most tolerant of religions, at the time it developed, it was much less tolerant than the religions around it. Greek and Roman religion was pluralistic and disunified. There were many gods with many different names, a wide variety of cults, but no doctrine taken as official. Roman religion was largely syncretic. There were no official sacred texts. In general, most religious views were permitted, provided they could be integrated with other religious views.

Ancient Mediterranean societies tended to hold that their religions were largely the same. They weren't entirely mistaken. Given cultural exchanges and similar ethnic backgrounds, they did tend to have similar mythologies. The Greek Zeus, Roman Jupiter, and Etruscan Tinia were largely the same god with the same stories. Still, partly they were made the same God be-

cause the Greeks and Romans were committed to viewing each others' gods as the same. So, syncretism was partly accurate mythography and partly self-fulfilling prophecy.

The reason that early Christians were persecuted in Rome (keeping in mind the degree of their persecution is exaggerated by Christians) was because of their refusal to integrate. Christians were exclusivists. In their understanding of themselves, their God was not some variation of Zeus. (Their understanding of themselves was not completely accurate, as both Judaism and Christianity grew out of and adopted pieces of pagan religions.) The Christian refusal to assimilate made them seem to be a threat.

The ancient Greeks and Romans lacked a firm concept of freedom of religion in part because they lacked a firm concept of heresy. One crucial distinction is between heretics and heathens. The heathen, e.g., the pagan or the Jew, rejects the Catholic Church's teachings, or often simply has not accepted them. The heretic, however, is normally considered worse, because the heretic *perverts* official doctrine. Jews, for instance, deny the divinity of Christ, but they belong to another religion. A heretic, however, accepts most official doctrine, but rejects certain pieces. In some sense, the heretic agrees with most of the Church's doctrine, while the heathen disagrees. However, the heretic is considered more evil, because he is considered to have heard God's word (as pronounced by the Church) and rejected it, while the heathen is considered not to have heard. More politically, heresy is a form of treason against the Church's authority. Heathens, on the other hand, are enemies of the Church, but at least are not traitors.

2. Scottish Calvinist reformer John Knox was no friend of liberty -- he advocated the usual bans on theater and music, and even succeeded in limiting people's freedom to move from one parish to another without permission.

Knox decided he wanted the Scots to become God's Chosen People, and so moved to instantiate public education. He wanted everyone to be able to read the Bible, in order to confront the Word of God, and God himself, as individuals, rather than through intermediaries like the Church. But the problem with teaching people to read -- and he was immensely successful in that -- is that they might read and think about much

more than you want them to. And so, Knox inadvertently sowed the seeds of the Scottish Enlightenment, by helping to create a culture in which even bakers and butchers were checking philosophy books out of local libraries.

3. Both Zagorin and Herbert Butterfield,[39] among others, claimed that freedom of religion in the West resulted in part out of exhaustion from the Wars of Religion. Zagorin goes further than Butterfield in articulating how people came to have a genuine commitment to freedom of religion rather than just a mere lack of will or means to keep fighting. And historians tend to regard most of our current-day commitments to civil liberties as outgrowths and generalizations of freedom of religion. But, then, imagine what might have happened if one side had won decisively early on.

4. Christianity desacralized the state, and yet we have had authoritarian, invasive, and illiberal Christian polities for 1200 years. I don't want to gloss over all the things that happened in the first thousand years after the fall of Rome, but just consider that if one knew everything that had happened in Europe up until, say, 1450 AD, one could not easily predict the rise of liberalism.

I'm not so sure what the lesson is here -- just that there must be some lesson to be learned.

### *Endnotes*

[38] Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton: Princeton University Press, 2003).

[39] Herbert Butterfield, *Toleration in Religion and Politics* (New York: Council on Religion and International Affairs, 1980), pp. 4-8.

## 11. RALPH RAICO, "MY FINAL WORD"

George Smith says that he agrees with Lord Acton and me on the importance of the Church in thwarting the rise of the state to omnipotence. I won't quote Lord Acton here, his statement can be found in my first post, "Why Only in the West?" But I wonder if George understands the full implications. It was the Church that helped set the stage for the rise of liberalism and the whole new way of life that followed in the West. He harbors such an implacable hostility to Roman Catholicism that he never gives it the credit it's due.

George cites some philosophers in ancient times who did not deify the state. The point, though, is that the Greek and Roman *people* -- the *societies* of those times -- did. He brings up "Roman morality," but chooses to discuss it only in his own restricted terms. Maybe he was unaware of the role of the Church in stopping the blood games in the arena, where the crowd enjoyed its greatest thrills, or maybe he was unaware of the games in the first place.

George states that Dante favored universal monarchy merely as an ideal without actually naming any particularly ruler who espoused it. In fact, the great poet maintained that the Holy Roman Emperor had authority over all of mankind, receiving that authority directly from God. As Liberty Fund puts it, in its online edition of *De Monarchia*, Dante held that "Christ in dying confirmed the jurisdiction of the Roman Empire over all humanity."

Attempting to rebut Joseph Stromberg's article showing that the so-called religious wars of the 16th and 17th centuries were in fact political wars waged by secular rulers, George writes, "the ferocious emotions that motivated the horrors of those wars were rooted in religious beliefs and differences." Unfortunately, he provides no evidence for this claim.

On war and the state, George feels he doesn't need to be "tutored" on state atrocities. I think he does. We are comparing the evils committed by the Church and the state. The Roman and Spanish Inquisitions together executed some few thousands over centuries. Leaving aside the earlier, essentially political, wars, here are some more modern examples of the horrors committed by states and their military forces: The U.S. army in the Philippines (some 200,000 dead Filipinos), the Ja-

panese army in Nanking and the Wehrmacht in Russia and the Ukraine, the British and American air forces over Hamburg, Dresden, Hiroshima, and Nagasaki, and now American drones all over the Muslim world.

Keeping to his agenda of not crediting the Catholic Church, George makes no mention of popes like Gregory VII, who denounced secular rulers in ferocious, contemptuous terms. Nor does he mention St. Thomas Aquinas. St. Thomas, recognized by the Church as its chief theologian, promoted Aristotelianism, and his *Summa Theologica* was set forth in strictly logical form. His formula was to follow reason as far as it could go, and then faith comes in. Through Thomism rationality permeated all the Catholic controlled schools and universities of Europe, and was a permanent contribution to our civilization.

And that's all I have to say.

## 12. DAVID GORDON, "THE ANARCHY GAME"

One of the most valuable contributions in George's book is his account of what he calls "the Anarchy Game." Writers on political theory have often attempted to show that the positions of their opponents led to anarchy. If this could be done, they thought, they would have exposed a fatal flaw in these positions. "For centuries, the epithet 'anarchy' served the same function in political debates that 'atheism' served in religious debates. If one could show that the theory defended by one's adversary logically ended in anarchy, then that theory stood condemned and nothing more needed to be said against it." (97)

George shows that this pattern of argument was especially important in the 17th and 18th centuries. Robert Filmer, defending royal absolutism, claimed that consent theories of government failed to accomplish their goal of providing a justification for government. No government could pass the tests that genuine consent requires. Locke, in response to Filmer in the *First Treatise*, turned the tables on his predecessor. The absolute sovereign defended by Filmer was in an anarchical relation with everyone else in his society,

because he could not be held legally responsible for his acts.

George maintains that Edmund Burke "played the Anarchy Game with great skill" (108) and he offers a penetrating discussion of Burke's criticism of natural rights. He says of Burke's early work *A Vindication of Natural Society* that "Burke of course intended this as satire; by embracing the anarchistic implications of consent theory, he was attempting to illustrate its absurdity." (p.109) Here George differs with Murray Rothbard, who argued in a notable article that Burke's work was seriously intended. ("A Note on Burke's Vindication of Natural Society," *Journal of the History of Ideas*, January 1958, 114-18.) Most Burke scholars differ with Rothbard, although Isaac Kramnick, in *The Rage of Edmund Burke* (New York: Basic Books, 1977), mentioned with sympathy Rothbard's interpretation. I'd like to ask George for his comments on this piece. I'm sure he rejects its thesis, but it would be good to have his thoughts about the article.

What was an absurd implication for Filmer was willingly embraced by Lysander Spooner and a few other radical individualists of the 19th century. If legitimate government required actual consent, but no actual government met this requirement, then existing governments were illegitimate. What was formerly taken to be an absurd implication of consent theory was willingly embraced. I'd like to call attention to a parallel in the history of science, elaborated with enormous learning in Amos Funkenstein's great *Science and the Theological Imagination* (Princeton, N.J., Princeton University Press, 1986), to my mind one of the masterpieces of 20th-century historiography. Funkenstein shows that premises, taken to be absurd, that were used in thought experiments were sometimes adopted by later writers in their theories of the actual world. Such premises proved of especial importance in the theory of motion. Evidently both in science and political theory, it sometimes happens that "the stone that the builders rejected has now become the cornerstone." (Psalm 118:22).

### 13. GEORGE H. SMITH, "WHEN DID THE CHURCH DEFEND FREEDOM OF CONSCIENCE?" A FINAL REPLY TO RALPH RAICO

Ralph Raico wonders if I understand the “full implications” of a passage he quoted from Lord Acton – a passage that I quoted from as well. Unfortunately, Ralph failed to quote a crucial part of that passage, a part in which Acton said that “if the struggle had terminated speedily in an undivided victory, all Europe would have sunk down under a Byzantine or Muscovite despotism. For the aim of both contending parties was absolute authority.”

Even in the part quoted by Ralph, Acton says that we owe the rise of civil liberty, not to the Catholic Church per se, but to that “conflict of over four hundred years” between the church and various secular powers. Acton knew better than to attribute liberal ideas to the church of that era; it sought “absolute authority,” just as various secular powers did, and it was the resulting *conflict* that prevented any one power from gaining absolute power. I agree that this *institutional* conflict among competing powers resulted in something of a stalemate for a long time, but this doesn’t mean that the Catholic Church was some kind of pro-freedom, liberal organization.

To address one of the points Ralph makes, let us take a brief glance at Gregory VII. We should keep in mind that, in his *Dicatus Papae* (#19), Gregory claimed that the pope “may be judged by no one.”[40] This reflected the absolutist pretensions of the papalists, which included the right to depose kings and emperors. Thus after Gregory had excommunicated Henry IV, he called upon German princes to unseat him, so his detestation of secular powers extended only to those rulers who refused to obey the church. As Tierney and Painter put it: “Kings and feudal princes were to him essentially police chiefs who had the duty of using coercive force to achieve objectives laid down by the church.... He did not covet the policeman’s office. He regarded it as beneath his dignity.”[41]

Now, I don’t wish to be misunderstood here. I think that the Papal Revolution (as it is sometimes called) was a good thing for Europe, since it maintained the independency of the church and thereby prevented a dangerous concentration of political power. But we need to keep things in perspective. The church was

seeking to maintain its position of power, as were various secular rulers. And, as with various secular rulers, the church sometimes used that power for evil purposes.

According to Ralph, “We are comparing the evils committed by the Church and the state.” I’m afraid that this “we” does not include me, for I completely agree that states throughout history, collectively considered, murdered far more people than the church ever did. It is also true that Stalin murdered far more people than Pol Pot ever did, but I don’t regard this as a mark in Pol Pot’s favor.

Let us agree, for the sake of argument, with Ralph’s lowball estimate that the church was responsible for the murders of *only* a few thousand people during various inquisitions. Even putting aside all the tortures and imprisonments that didn’t result in executions, that is still a lot of murders. I find myself unable to locate liberal tendencies in an institution that was directly responsible for a few thousand murders, most of which were extremely gruesome.

The church never had much of an army, so, as Ralph surely knows, it frequently called on secular powers to do its dirty work. It is therefore quite facile (as Acton repeatedly pointed out) to absolve the church of any responsibility for the resulting horrors of war. Whom, for example, does Ralph suppose the Catholic Church backed during the 16th-century Dutch Revolt, as King Philip II of Spain and his henchman, the Duke of Alba (or Alva) – the fanatical Catholic commander of the Spanish army in the Netherlands – went on their murderous rampages? Among other complaints, such as burdensome taxes, the Dutch did not want the Inquisition brought into their country, and they paid a heavy price in blood and treasure for their desire to be left alone. So where was the liberal outrage of the Catholic Church during all this?

Moreover, the church sometimes gave its blessings in retrospect to mass murderers. Consider the Albigensian crusade in southern France – in particular the horrendous massacre of heretics (men, women and children) in Béziers (1209). Upon hearing this good news, Pope Innocent III (one of the supposedly great pontiffs) was ecstatic. This massacre, Innocent pointed out, was a double blessing: wicked heretics (the Cathars) were being killed, and their killers were that much closer to attaining salvation.

God hath mercifully purged his people's land and the pest of heretical wickedness ... is being deadened and driven away.... Wherefore we give praise and thanks to God Almighty, because in one and the same cause of his mercy, He hath deigned to work two works of justice, by bringing upon these faithless folks their merited destruction, in such a fashion that as many as possible of the faithful should gain their well-earned reward by the "extermination" of these folk.[42]

Consider one more example: the Massacre of St. Bartholomew. This wholesale massacre of Huguenots (French Calvinists) began with the attempted assassination of a Huguenot leader, Gaspard de Coligny, in Paris (22 August 1572). On the morning of 24 August, several dozen other Huguenot leaders were murdered, after which the violence escalated throughout Paris. Then, to quote the historian J.H. Elliott, "Within a few hours Coligny and two or three thousand of his fellow-Huguenots had been butchered in the capital, and it was not long before the anti-Protestant frenzy was spreading through France." [43]

Historians disagree over the role played by Catherine de Medici in these events, but she and her Catholic advisers (the Guises) certainly planned the assassination of Coligny, and, at minimum, the Guises were behind the second stage of the plot. After that, however, popular religious hatred got out of control and led to mass killings that even French officials could not stop.[44]

I wish to make two points here.

First, when, in an earlier reply to Ralph, I noted the widespread religious hatred that fueled the Wars of Religion in post-Reformation Europe, he chided me for failing to present any "evidence" for my claim. Never mind that Ralph does not hesitate to generalize about what the common people in ancient Rome and Greece supposedly believed about the state, and that he does so without providing a scintilla of evidence for this and sundry other claims.

I find it hard to believe that an accomplished historian, as Ralph certainly is, would question the commonplace observation that post-Reformation Europe was rife with religious prejudice and hatred, and that those intense feelings had a lot to do with the violence of that period. But if Ralph does need evidence, I would suggest that he begin with the widespread anti-Protestant frenzy that precipitated most of the thou-

sands of murders (possibly as many as 7,000, according to some estimates) during those horrible days in August 1572, and then go from there.

Second, and more important for our purpose, was the role of the Catholic Church in the Massacre of St. Bartholomew. Here again historians disagree (though Lord Acton believed that the papacy was probably complicit in the early stage). At the very least, however, we know that "Gregory XIII was duly delighted, and had a special medal struck to commemorate the great event." [45] Thus, instead of merely toting up the number of murders for which the church was *directly* responsible, we should also take into account the many more murders – including some outright massacres -- that merited its approval. Any institution that would strike a medal to commemorate the indiscriminate slaughter of thousands of innocent people should not be praised as a harbinger of liberalism.

We need to ask: When did the church defend freedom of conscience, freedom of speech, freedom of the press, freedom of commerce, and other classical liberal/libertarian values? Although some *individual* Catholics defended these values from time to time, the church itself lagged behind Protestants and secularists in such matters, often by centuries. The church, depending on the circumstances, has been both a force for good and a force for evil, but it was *never* a defender of the classical-liberal agenda.

I have not mentioned some of Ralph's points, such as the correct understanding of Dante – we still disagree on this, though it is a pretty minor dispute – but I have attempted to cover the major issues. My thanks to Ralph for participating in this discussion

### Endnotes

[40] For this document, see Brian Tierney, *The Crisis of Church and State, 1050-1300, with selected documents* (Englewood Cliffs, N.J.: Prentice-Hall, 1964), 50.

[41] Brian Tierney and Sidney Painter, *Western Europe in the Middle Ages, 300-1475*, 4th ed. (New York: Alfred A. Knopf, 1983), 231.

[42] Quoted in G.G. Coulton, *Inquisition and Liberty* (Boston: Beacon Press, 1959), 103-4.

[43] J.H. Elliott, *Europe Divided, 1559-1598* (New York: Harper and Row, 1968), 220.

[44] For a detailed account, see Mack P. Holt, *The French Wars of Religion, 1562-1629*, 2nd ed. (New York: Cambridge University Press, 2005).

[45] Elliott, 220.

## ADDITIONAL READING

### ONLINE RESOURCES

We have works by the following authors on the OLL website:

- Lord Acton (1834-1902)
- St. Thomas Aquinas (1225-1274)
- St. Augustine (354-430)
- Edmund Burke (1729-1797)
- Cicero (106-43 BC)
- Dante Alighieri (1265-1321)
- A.V. Dicey (1835-1922)
- Sir Robert Filmer (1588-1653)
- Otto von Gierke (1841-1921)
- Hugo Grotius (1583-1645)
- Thomas Hobbes (1588-1679)
- Thomas Jefferson (1743-1826)
- Immanuel Kant (1724-1804)
- Lactantius
- William Lecky (1838-1903)
- The Levellers
- John Locke (1632-1704)
- John S. Mill (1806-1873)
- Ludwig von Mises (1881-1973)
- William Paley (1743-1805)
- Samuel von Pufendorf (1632-1694)
- Adam Smith (1723-1790)
- Herbert Spencer (1820-1903)
- Lysander Spooner (1808-1887)
- The Stoics
- Tertullian (155-230)
- Emer de Vattel (1714-1767)

Other Related Links:

- Topic: Magna Carta
- Debate: The Divine Right of Kings vs. Individual Rights

### WORKS BY GEORGE SMITH

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- Ian Carter, *A Measure of Freedom* (Oxford University Press, 2004).
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- John Dupré, "Natural Kinds and Biological Taxa," *The Philosophical Review* 90 (1981), 66-90.
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- Ludwig von Mises, *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane, Foreword by F.A. Hayek (Indianapolis: Liberty Fund, 1981), 382. <<http://oll.libertyfund.org/title/1060>>.
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