



RATIONALISM, PLURALISM, AND THE HISTORY OF LIBERAL IDEAS

Jacob T. Levy, the Tomlinson Professor of Political Theory at McGill University, argues in his recent book, [Rationalism, Pluralism, and Freedom](#) (OUP 2014), that there is a deep and recurring tension within liberal theories of freedom, between on the one hand a family of views concerned with the risk of tyranny posed by the modern, centralized and centralizing, Weberian state, and on the other a family of views that see the graver threats to liberty as arising from customary, local, religious, traditional, and decentralized authority. He describes these views as “competing liberal social theories of power” and explores their deep origins within the classical liberal tradition which goes back several centuries. Levy believes that the tradition known as “ancient constitutionalism” has been unjustly neglected by modern classical liberals and he attempts to resurrect aspects of it to make modern classical liberal theory more robust. He is joined in this month’s discussion by Gary Chartier, Professor of Law and Business Ethics at La Sierra University in Riverside, California; Jeremy Jennings, Professor of Political Theory at King’s College London; and Chandran Kukathas, the Chair in Political Theory at the London School of Economics.

RATIONALISM, PLURALISM, AND THE HISTORY OF LIBERAL IDEAS

by Jacob T. Levy

In [Rationalism, Pluralism, and Freedom](#)^[1] I argue for the existence of a deep and recurring tension within liberal theories of freedom, between on the one hand a family of views concerned with the risk of tyranny posed by the modern, centralized and centralizing, Weberian state, and on the other a family of views that see the graver threats to liberty as arising from customary, local, religious, traditional, and decentralized authority. To put it another way, the first approach sees intermediate groups—from the family through churches and voluntary associations to local and provincial government—as sites of freedom, wherein free persons live their various lives according to their various choices, and as bulwarks protecting us against state power. The second, by contrast, sees such groups as real or potential sites of local despotism, and trusts to the rationalizing force of the modern state to

check the power of local and internal elites, of personalistic domination, and of the obscure and conservative rules associated with group life. I refer to the first view as pluralist liberalism and the second as rationalist liberalism: both liberal, because both concerned with the protection of freedom, but divided by competing analyses of where the greater social threat to it lays.

I describe these as competing liberal social theories of power. I don’t think that they necessarily differ on basic moral questions; in particular, I don’t think that they genuinely differ on any question like “are individuals morally primary?” or “do groups have rights?” Those, I argue, are red herring debates. On the liberal concept of the free person, much of what a person is free to do is to associate with other free persons. In their association, they are free to have (explicit or implicit) norms of belonging, rules of membership, standards of behaviour, and so on—and so taking the freedom of persons seriously entails taking the freedom of their groups seriously.

As the late historian of political thought Istvan Hont said, in a passage I use as the epigraph of Part II of the book:

History cannot be expected to solve the core analytical puzzles of political or economic theory. But it has its hour when the long-expected solutions of social and political science fail to materialize. History is the tool of skeptics. It helps us to ask better questions. More precisely, it can help us avoid repeating some questions again and again, running in circles unproductively.^[2]

The individual rights/ group rights debate is an unproductive circle; and one of my strategies in the book is to turn to the history of political thought to find richer intellectual resources than might be available in contemporary philosophical debates about rights. I trace rationalist and pluralist liberalisms to traditions as old as liberalism itself, and indeed older. In response to the truth about the world that human freedom was imperilled both by the early modern centralizing state of absolute kings and by the variety of authorities the state competed with and gradually displaced—the Church, feudal nobles, provinces, cities, guilds, universities, and so on—the liberal concern with freedom manifested as rival political sociologies from the beginning.



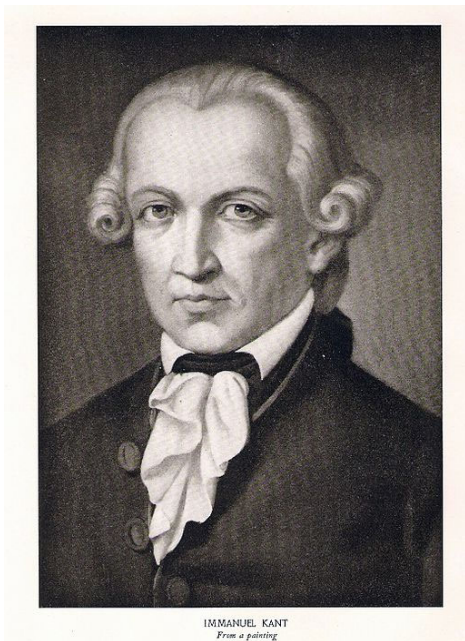
I discuss these medieval and post-medieval institutions in order to emphasize that, by the time European states began to solidify in the fifteenth and sixteenth centuries, they came into a social world that was already thickly

populated with organizations and institutions. The importance of this is twofold. First, the state as an organizational form was constitutively hostile to them. State actors competed with these other institutions for resources, authority, and power. Just insofar as the state form succeeded and took hold, it did so by displacing, expropriating, or crushing them. As monarchs turned to absolutism, they did their best to centralize authority and bring intermediate bodies to heel.

Second, one of the most important bodies of thought in early modern political philosophy tends to erase this fact, the fact that the European state was preceded by other social institutions. Social contract theory imagines an all-at-once transition from a world of normatively isolated individuals, the state of nature, into a coherent and unified society with coherent and unified structures of political and legal authority. In the real world, states built their legitimacy piecemeal out of juridical traditions that preceded it: canon law, Roman law, feudalism. But in social contract theory, the idea of pre-state social organization makes little sense, and the idea of pre-state juridical traditions makes none. Contractarianism can only do its work if the contractors would agree on a unique and determinate rule, whether that be absolute sovereignty in Hobbes, a modified majoritarianism in Locke, or democratic absolutism in Rousseau. There must be one coherent authority structure that we all would have willed in common, so that we may now all be treated as if we had consented to it. In that system there is no room for competing, pluralistic, or pre-contractarian organizations and rules. And so social contract theory provided a legitimation for the Weberian state. To the degree that contractarians acknowledged the existence of intermediate groups at all, they either sought to normatively break them up into their individual members, as Locke did with churches, or treated them with deep suspicion, as Hobbes did in thinking of them as “lesser commonwealths in the bowels of a greater, like worms in the entrails of a natural man.” Social contract theory was not as such a *liberal* theory; it came too early for that, and was compatible with great authoritarianism. But of course John Locke in particular reframed contractarianism in terms of the defense of individual

liberty, and made it an important resource for later liberalism.

Indeed, I think Locke, and then Kant, made contractarianism *such* an influential source of liberalism that it has sometimes been easy to mistake social contract theory for the whole of liberal thought. This has been especially true since the resurgence in contractarianism among liberal theorists and philosophers in the 1960s and 70s: Buchanan and Tullock, Gauthier, Narveson, and especially Rawls. (Although Nozick was in a special sense not a contractarian, Locke and Kant were his key forbears; such resources as he drew from the liberal tradition came from the rights theories of social contract thinkers.) And so modern liberal political philosophy has inherited the idea of a social world made up of free individual persons and a legitimate unitary sovereign state above them, a rationalist vision in which other social organizations must either be delegated authority from the state or have no legitimate authority at all.



Immanuel Kant

In order to overcome this, I work to articulate and bring to light an intellectual tradition that was importantly opposed to contractarianism, and that eventually formed a key source for pluralist liberalism as contract theory did for its rationalist counterpart.

Ancient constitutionalism—“ancient” here meaning “old” in the same sense as the *ancien* in *ancien régime*, not referring to classical antiquity—refers to a range of works and thinkers from early modern Europe, united by their opposition to centralizing royal absolutism, and by their conviction that, as Germaine de Staël famously put it, [liberty was ancient, despotism modern.](#)^[3] With varying degrees of historical accuracy, they reconstructed and imagined a coherent pluralism out of the complex jurisdictional world of the Middle Ages. They held that the rights and privileges of the Estates and of the *corps intermédiaires* had jointly made up a constitution for a kingdom such as France, a constitution now threatened by monarchical ambition. They routinely characterized this ancient constitution as being animated by a spirit of egalitarian collective self-determination that they might trace to Gothic or otherwise Germanic ancestors—an original liberty that was meant as historical description, not as hypothetical device.

Within this category I would place the Calvinist French theorists known as the monarchomachs: Francois Hotman, author of *Francogallia* (1573); Theodore de Beza, author of *On the Rights of Magistrates* (1574); and the pseudonymous Junius Brutus who wrote *Vindiciae Contra Tyrannos* (1579). Confronted with the combination of royal absolutism and Catholic power, they sought to justify resistance in terms of a constitutional order now being upset and defied by kings. In the authority of the Estates and the self-government of cities and provinces they found the remaining vestiges of this legitimate older order; and it was the duty of those who led such *corps* to organize resistance when tyranny threatened. The nobility and magistrates of the cities and provinces—as well as local religious officials—owed a duty to the traditional constitution to protect it against royalist innovation. They saw in the radically decentralized Holy Roman Empire the truth of the old Frankish order out of which the French monarchy had emerged. In so doing, they articulated a theory of *institutionalized* resistance to monarchical overreach: not the inchoate right of “the people” to resist, a right that is always plagued with indeterminacy because “the people” lack an institutional identity and a corporate voice, but a determinate right of

intermediate officials to defend the constitution that defines their offices, privileges, and local liberty.

The theorist Johannes Althusius was a self-conscious follower of the monarchomachs: a Calvinist like them, and a defender of both Protestant resistance in France and of the Dutch provinces' war for independence against Spain. Althusius is sometimes identified as a founder of federalist theory, and for good reason; but his federalism was decidedly ancient-constitutional. His *Politica* (1603) holds that a commonwealth is created when "[many cities and provinces](#) obligate themselves to hold, organize, use, and defend, through their common energies and expenditures, the right of the realm..." It is a "[mixed society, constituted partly from private, natural, necessary, and voluntary societies](#), partly from public societies [*i.e.* cities and provinces]." The state does not create those bodies; rather, "families, cities, and provinces existed by nature prior to realms, and gave birth to them."[\[4\]](#) This was of course literally true in the Dutch case; the provinces had political existence prior to their decision to unite, abjure the Spanish monarchy, and create a new state. But it is true "by nature," not just contingently in the Dutch case; private associations are prior to cities and provinces, which are prior to commonwealths or realms. Althusius uses contractual language—but the contract is not one entered into by individuals in a prior state of nature. Indeed Althusius denies that individuals as such are members of the commonwealth at all. They are *parts* of it in the same way that boards and nails are part of a house; but "[cities, urban communities, and provinces are members of a realm](#), just as... roof, walls, and floor are essential parts of a house."[\[5\]](#) And, like the monarchomachs, he places the right and duty of resistance to tyranny in the officials of those intermediate bodies, defending their members' liberty.

The Anglo-Irish Whig theorist Robert Molesworth a century later explicitly linked the ancient constitutionalist cause on the continent with resistance to the would-be absolutist Stuart Kings in England, and, after the Glorious Revolution, with opposition to Tory royalism. He created a diplomatic scandal when, upon his return

from a term as ambassador to Denmark, he published a blistering attack on emerging Danish absolutism, [An Account of Denmark As It Was In The Year 1692](#).[\[6\]](#) He distinguished, more sharply than the monarchomachs or Althusius had done, ancient constitutionalism from Protestantism; indeed, he argued that Catholic independence from the state might bolster liberty, and that Lutheran subservience to the state had in Denmark, and could elsewhere, worsen the modern turn toward despotism. And, unlike his near-contemporary and political ally John Locke, he grounded the alternative to absolute monarchy in a gradually evolved history with a plurality of intermediate institutions, not in an imagined world of individuals creating a sovereign state.



Robert Molesworth

Molesworth's work of connecting the English Whig tradition to continental ancient constitutionalism was cemented with his 1711 translation into English of *Francogallia* under the telling title [Franco-Gallia, or, an account of the ancient free state of France, and most other parts of Europe, before the loss of their liberties](#), and with a lengthy 1721 preface enunciating the principles of "True" (Country) Whiggism, explicitly linking Whiggism with the "Gothick" constitutionalism defended by Hotman.[\[7\]](#) The True Whig sought to protect "[our just Rights and Liberties](#), together with the solid Foundations of our Constitution:

Which, in truth, is not ours only, but that of almost all *Europe* besides.”^[8] That pamphlet continued to be reprinted as a freestanding defense of Whig theory throughout the 18th century.

While ancient constitutionalists spoke the language of liberty, that is not enough to identify them as liberal. The opposition to royal centralization had sometimes been a defense of one kind or another of local domination, such as the power of the feudal nobility. I suggest that we see the ancient constitutionalists, like the early social contractarians, not as liberals, but as generating resources on which liberalism would later draw. At a minimum, I think that a liberal view must include a reasonably capacious idea of religious liberty, a supportive attitude toward commerce and the emergence of commercial society, and a strong commitment to the rule of law and procedural protection against lawless executive power. On this understanding, we should see ancient constitutionalism as having been fully developed into a *liberal* theory of pluralism in the work of the Baron de Montesquieu, who transformed the medieval past and the early modern memory of it into a vision of a tolerant, commercial, and free modern society.

Indeed Montesquieu himself notes the difference between the ancient constitution’s roots in privilege and its emergence as something far freer:

It was at first a mixture of aristocracy and monarchy. Its drawback was that the common people were slaves; it was a good government that had within itself the capacity to become better. Giving letters of emancipation became the custom, and soon the civil liberty of the people, the prerogatives of the nobility and of the clergy, and the power of the kings, were in such concert that there has never been, I believe, a government on earth as well tempered as that of each part of Europe during the time that this government continued to exist; and it is remarkable that the corruption of the government of a conquering people [the Franks in France, Gothic and Germanic tribes generally] should have formed the best kind of government

men have been able to devise.^[9] [see the [different OLL online](#) version]

It nonetheless is controversial to see Montesquieu as an ancient constitutionalist, despite his robust defense of *corps intermédiaires* as constituting and preserving a moderate monarchical constitution as distinct from a despotic one. Some admirers insist on seeing Montesquieu as a crypto-republican, and this idea of a modern monarchy reformed along ancient constitutionalist lines as a disguise for his true ideas. This is in part, I think, because of the prejudice that rationalist and contractarian liberalism is the whole tradition; it is hard to deny the force of Montesquieu’s liberalism, and so when confronted with his pluralism, these interpreters are tempted to rationalize it away. But it is also because his ancient constitutionalism is partly expressed in the final third of *The Spirit of the Laws* in a dense legal and constitutional history of France that is difficult to understand without an appreciation of the debates about that history in the previous two centuries.

I argue in *RPF* and elsewhere^[10] that Montesquieu offers a novel reconstruction of the fundamental law of France—one that is even more radically pluralist than the monarchomachs, because the law of the kingdom was *always* polycentric and diverse. There was no original contract or founding moment that could legitimize royal absolutism, or noble domination, or for that matter popular sovereignty. Legal diversity and political diversity *were* the fundamental law, and any claimant to the whole of legitimate power had his history wrong. To put it another way, the rejection of founding principles in the quotation above—the idea that the constitution was at its best in a kind of corruption, not when it was truest to its origins—sat as poorly with theories of primeval liberty in real historical forests as it did with contractarianism (or, for that matter, with civic republicans’ Machiavellian obsession with virtuous foundings, though that dispute is beyond the scope of this essay). And ancient constitutionalism, in order to remain relevant, would have to be adapted again, now to a world of commerce, religious pluralism, and central state military power that dwarfed what was known in the

Middle Ages. In turning the pluralist ancient constitution into an inspiration for the *reform* of modern states, rather than a vain attempt to turn back the clock, Montesquieu reshaped ancient constitutionalism and made it available for later liberals on both sides of the Atlantic. These included, in qualified ways, both Adam Smith and Benjamin Constant, and in a particularly forceful way Alexis de Tocqueville, whose celebrated defense of freedom of association and township self-government in America^[11] drew inspiration from the same sources as his ancient constitutionalist, and Montesquieuan, *The Old Regime and the Revolution*.^[12]

In this essay I have emphasized *RPF's* account of ancient constitutionalism, partly because developing it is a central part of the work I try to do in the book of reconstructing the liberal tradition in a way that decenters social contractarianism and thereby makes pluralist liberalism more intellectually available today. I have also done so partly in order to emphasize the connections between my book and the works made available through the Online Library of Liberty that hosts this exchange. In the subsequent exchange, I would of course be happy to discuss any other issues in the book the commentators would like to raise.

Endnotes

^[1.] Jacob T. Levy, *Rationalism, Pluralism, and Freedom* (Oxford: Oxford University Press, 2014).

^[2.] Istvan Hont, *Jealousy of Trade* (Cambridge, MA: Harvard University Press, 2005), p. 156

^[3.] Germaine de Staël, *Considerations on the Principal Events of the French Revolution*, Aurelian Craiutu, ed. (Indianapolis, IN: Liberty Fund Press, 2008).

^[4.] Johannes Althusius, *Politica*, Frederick S. Carney, ed. (Indianapolis, IN: Liberty Fund, 1995), p. 66.

^[5.] *Ibid.*, p. 67.

^[6.] Molesworth, “An Account of Denmark” in *An Account of Denmark, With Francogallia and Some Considerations for the Promoting of Agriculture and Employing the Poor*, Justin Champion, ed. (Indianapolis, IN: Liberty Fund, 2011).

^[7.] Molesworth writes that the preface was meant for inclusion in the first edition, but the publisher declined to do so; this seems to be true on the basis of events referred to, and not referred to, in it. Most conspicuously, Molesworth grudgingly accepts the Triennial Act of 1694, until such time as annual elections can be obtained; by 1721, it had been superseded by the—far worse from his perspective—Septennial Act, which goes unmentioned.

^[8.] Molesworth, *Francogallia*, translator’s preface 3.

^[9.] Montesquieu, *Spirit of the Laws*, Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone, eds. (Cambridge: Cambridge University Press, 1989), 167-68

^[10.] “Not so *Novus an Ordo*: Constitutions Without Social Contracts,” 37(2) *Political Theory* 191-217, 2009; “Montesquieu’s Constitutional Legacies,” in Rebecca Kingston, ed., *Modernity in Question: Montesquieu and His Legacy*, (Albany, NY: SUNY Press, 2009).

^[11.] Alexis de Tocqueville, *Democracy in America*, Eduardo Nolla ed., James T. Schleifer trans. (Indianapolis, IN: Liberty Fund 2010 [1835-40]).

^[12.] Alexis de Tocqueville, *The Old Regime and the Revolution*, vol 1, François Furet and Françoise Mélonio, eds., Alan S. Kahan, trans. (Chicago: University of Chicago, 1998).

ONE AND A HALF CHEERS FOR PLURALISM

by Gary Chartier

Jacob Levy paints a rich and fascinating picture of “ancient constitutionalism” as a crucial foundation for a “pluralist” liberalism he regards as a valuable alternative to the social-contract tradition he associates with “rationalist” liberalism. I believe we ought to welcome pluralist liberalism, but doing so need not mean abandoning important features of rationalist liberalism.

For Levy, if I understand him correctly, the pluralism represented by the “ancient constitution” features a variety of competing, overlapping institutions—“legal

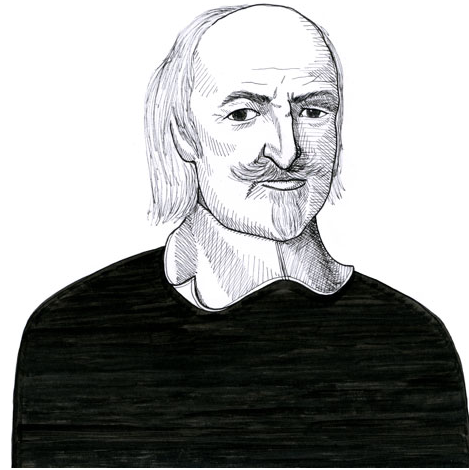
regimes,” in my terms—that are simply accepted as givens, or, at any rate, that don’t need to be grounded in consent. They can doubtless be critiqued or reformed in various ways, but they don’t need any deep justification. These institutions foster liberty because they compete with one another, thus restraining efforts on the part of any to achieve absolute authority, and because the entrepreneurially minded can engage in a kind of legal arbitrage, taking advantage of the opportunities offered by differences in the rules upheld by different regimes to realize greater freedom in particular instances.

“ANCIENT CONSTITUTIONALISM PROVIDES A PARTICULAR SORT OF GROUND FOR PLURALISM.”

Ancient constitutionalism provides a particular sort of ground for pluralism. For the proponent of this approach, different institutions rest on different sorts of justifications or else don’t need to be justified at all. They may present themselves as authoritative, and people may simply accept them as such. And of course a broadly Humean account of political authority might treat this as sufficient: because they secure order and foster liberty, they should be accepted, left undisturbed.

“Rationalist” liberalism in this context seems to feature a set of diverse elements. It includes (i) the idea that political authority requires justification, (ii) the idea that this sort of justification can be provided by a social contract, and (iii) the idea that a centralized state can, should, and will “rationalize” social institutions by subjecting them to uniform laws.

It seems clear to me that (iii) is a nonstarter. This is both because states are dangerous, so that centralizing power in the hands of state authorities is an invitation to mischief of all kinds, and because (ii) is false, given that no state does, and arguably no realistically conceivable state could, derive its authority from a Lockean social contract, with the result that the state could not have consent-based authority to engage in the rationalizing activity contemplated in (iii).



Thomas Hobbes

As I understand Hobbes’s view, a Hobbesian social contract is primarily an imaginative device designed to make clear how it makes sense to reason about submission to the state. Locke, by contrast, really seems to have assumed that actual consent really does matter and that at least some states were established on the basis of actual agreements on the part of the citizenry. While I am doubtful that individual states really did come into being this way (the hypothesis that kings and other tyrants begin as “stationary bandits” or tribal warlords strikes me as more plausible), the notion that consent is ordinarily needed to justify the exercise of authority seems attractive and defensible.

In brief, this idea might make sense for more than one reason. For instance, (i) autonomous moral agents begin as equal in authority and moral value, so no one has any natural entitlement to exercise authority over anyone else; consent, however, could, it seems, confer such an entitlement. Further, (ii) since I wouldn’t want to be ruled without my consent, it’s unreasonable for me to attempt to rule others without *their* consent. Similarly, (iii) requiring consent contributes to the welfare of those over whom authority is exercised, since self-dealing rules won’t be able to retain consensual support. And (iii) violating consent in the course of imposing authority on someone may involve acts that are wrong on independent grounds—instances of presumptively unjustifiable interference with people’s bodies and justly acquired possessions.

The kind of rationalist reconstruction of pluralism I would favor need not depend on any “original contract or founding moment.” That sort of contractualism is, surely, historically most implausible. The point, rather, is that the kind of authority claimed by a legal regime, the authority to use force against people’s bodies and justly acquired possessions, requires, at least presumptively, consensual legitimation.

That there are multiple reasons to regard consent as important does not show that nonconsensual authority is never justified. One might imagine a variety of emergency situations in which there could be temporary justifications for the exercise of nonconsensual authority (though even in emergency situations it would be important to take seriously the possibility that those treated as legitimately exercising such authority might seek, and perhaps seek successfully, to exercise it after the emergencies had ended, with predictably problematic consequences). But, despite this possibility, there seems to be a strong general presumption in favor of requiring consent as a prerequisite to the exercise of authority.

If this is so, there will certainly be reason to critique the claims of some actual traditional institutions like those endorsed by ancient constitutionalists. But the pluralist model of which ancient constitutionalism provides one example will remain more attractive than the alternative, to which a rationalizing, and putatively rational and rationally justified, state is central. This is so for at least two reasons.

(i) While rationalist liberalism sees state authority as rooted in a social contract, it is not clear that any actual state has ever been established on the basis of such a social contract. Even if there had been such a social contract in the past, a contract made by the members of one generation cannot bind the members of another generation. And attempts to maintain that new members of a society governed by a given state can be understood to give tacit, even if not explicit, consent to that state’s authority on an ongoing basis seem strained and unpersuasive. (ii) The uniformity characteristic of state-based legal regimes (and characteristically celebrated by proponents of such regimes) tends to stifle diversity and

experimentation as regards substantive and procedural legal standards. It is also likely to deny people legal options—and ready opportunities to influence legal regimes by means of low-cost exit decisions.

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These considerations give us good reason to prefer pluralism to rationalism. But they leave open the question of the *kind* of pluralism we ought to prefer. For the reasons I’ve already noted, I believe pluralistic institutions ought to be consensual. That is to say, legal authority should be vested in institutions the jurisdiction of which people ought to be able to *choose* to accept.

That is, in principle, quite compatible with endorsing many institutions that were not created consensually from scratch or formed on the basis of any sort of rational planning. Institutions can be consensual without being deliberate creations of the rational, or rationalizing, will. People might choose to be subject to rabbinical law or Catholic canon law, for instance (in general or with regard to a particular dispute), without anyone’s supposing that either legal regime was the product of democratic deliberation or ground-up formulation by experts. Perfectly defensible institutions may have developed in Burkean fashion—in the manner of Harriet Beecher Stowe’s *Topsy*, just growing. What matters, on

the view I'm defending, is that they not impose authority on the unconsenting.

Realistically, then, an attractive pluralism will feature a combination of institutions, some *given* and some intentionally crafted from scratch (though even these will, of course, tend to develop in unplanned and frequently unexpected ways). This sort of pluralism will embrace the consensualism of rationalist liberalism without supposing that centralized territorial monopolists are legitimate or are essential guardians of liberty. And it will embrace the diversity treasured by adherents of ancient constitutionalism without regarding nonstate institutions as legitimately authoritative if they lack the consent of those they are intended to serve.

The right of exit from these consensual institutions, rather than the authority of the state, could be expected to reduce the likelihood and the seriousness of local tyranny. Institutional competition could winnow out undesirable legal norms and practices and encourage the adoption of ones calculated to foster the flourishing and fulfillment of participants. Obviously, the absence of an ideal liberal state would mean that this sort of societal structure could not (as it seems it would be, for instance, in Nozick's *Anarchy, State, and Utopia*^[13]) be enforced from above. Its viability would depend in large part on widespread acceptance of social norms treating the pluralist institutional framework and the bedrock pre-institutional rights of persons as valuable and worth respecting—and as legitimate. But that would not render this sort of structure any less secure than that of any currently extant liberal society, since all such societies depend, similarly, on the widely shared conviction that their institutions are legitimate.

Levy seems to me to be completely right to emphasize the merits of pluralism as a defender of liberty. Where I think I disagree with his position, if I understand it correctly, is in thinking that pluralistic institutions themselves need to be justified on the basis of consent. If the social contract tradition is understood as positing a direct relationship between individuals and states that renders all small-scale institutions secondary to states, then we have every reason to reject the idea of the social

contract. This is so not only because small-scale, often nonterritorial, institutions offer important safeguards for liberty that states do not, but also because states lack precisely the kind of justification the social contract-tradition suggests they need. States do not enjoy consensual legitimacy. By contrast, small-scale, nonterritorial institutions *can* enjoy this kind of legitimacy, and, arguably, do so in some cases.

Endnotes

^[13.] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

PLURALISM MAY OR MAY NOT ADVANCE LIBERTY

by David M. Hart

Jacob Levy has provided us with an important new way to analyze the classical-liberal tradition by, firstly, arguing, in a way reminiscent of Larry Siedentop's effort 25 years ago,^[14] that there have been two traditions (or what I would call theoretical binaries) within classical liberalism, namely, the "rationalist" and the "pluralist," which have produced tensions that need to be addressed and if possible resolved; and secondly, reminding us in a neo-Pocockian fashion of the historical importance of the so-called "ancient constitution" and its intermediate institutions (also known as "civil society") as a bulwark against tyranny.^[15] Let me begin my comments with some reflections on the former.



French Revolution

I would like to suggest that there have been several other important theoretical binaries that have deeply divided the classical-liberal tradition which should not be forgotten. To mention only a handful, these are differences over the very foundation of the principles of liberty and property in either natural law or some utilitarian social calculation; the proper role of violence in bringing about radical change in a pro-liberty direction, either by revolutionary violence (the English Revolution in the 1640s, the American and French revolutions of the late 18th century, and the European revolutions of 1848-49) or by slow incremental, parliamentary reforms such as those introduced in England throughout the 19th century; the role of religion and the Church, with some classical liberals arguing that religion provides the moral bedrock upon which any free and civilized society must be based (Constant and Tocqueville), and others arguing that religion itself is a threat to reason and that organized religion in particular is a threat to liberty, since “religionists” (whether “Christianists” or “Islamists”) cannot help but get involved in politics and impose their beliefs and practices on others, as history has repeatedly shown; and the fundamental divide which exists between the advocates of a “limited state,” who believe that some form of a state is necessary for liberty to flourish and that a “liberal state” can be limited and kept limited (Bastiat), and those other classical liberals (Herbert Spencer and Gustave de Molinari) who believe that it is naive and utopian to think that a state, even a liberal state, can be kept limited for very long before the forces described by the Public Choice school of economics inevitably reassert themselves (self-interest, rent-seeking). There are other binaries which I will not mention for reasons of space, but I have listed what I think are the most important ones. The question I ask of Jacob is why he thinks the “rationalist” vs. “pluralist” binary is the most important one for understanding both the history and theory of classical liberalism?

In attempting to understand what Jacob means by his “rationalist” vs. “pluralist” binary I thought I could hear the breath of Hayek on his shoulders. (He does mention Hayek five times in the book.) By this I mean that he seems to regard “rationalism” as a “top down” process,

much like some kind of a societal “central planner” or lawmaker who knows what is in society’s best interest; and “pluralism” as a “bottom up” process, much like Hayek’s notion of “spontaneous order,” where a multiplicity of private associations with dispersed local knowledge emerge “spontaneously” to solve social problems. The historical example that comes to my mind when thinking along these lines is the “top down” rationalist abolition of the guilds and corporations (also known as “feudalism”) which took place in France on 4 August, 1789.^[16] This was accomplished by a revolutionary seizure of power by various groups (including a strong classical-liberal faction such as the Girondins) and the immediate and “top down” abolition of centuries of legal and economic practice by many private associations which made up the French “ancient constitution.” Some of these ancient bodies were guilds and corporations which might at one time have served the needs of their members and society at large but which, over time, had become ossified by rent-seeking and monopoly privileges granted by the state and had thus become hated institutions by 1789 which deserved to be abolished.



Charles Louis de Secondat, Baron de Montesquieu

I can hear Jacob replying in the voice of Montesquieu that a key source of opposition to the encroaching power of King Louis XVI were some of the intermediate associations, such as the regional Parlements, and this is true. But what makes the French Revolution so complex,

both from an historical as well as a classical-liberal perspective, is that these regional competing associations and sources of authority had also become ossified and monopolistic, and those individuals who were excluded from membership and participation eventually turned against these intermediate institutions in turn. Thus, the revolution quickly turned into this cascading escalation of revolt which got out of control (at least from a classical-liberal point of view, if not from Robespierre's or eventually Napoléon's point of view, both of whom benefited from the ensuing chaos). The question, then, for the French liberals of the revolutionary period, as well as for us today, is to find the correct balance between "top down" rationalist reform and the preservation of strong liberty-protecting "pluralist" intermediate associations.

A second historical example I would like to bring up is the abolition of slavery, especially in the problematic case of the United States (the only slave society which fought a civil war to abolish slavery, if one ignores the failed revolution of Spartacus in the ancient Roman world). Given the power of the local institutions in the British Caribbean and their representatives in the House of Commons in England, it is hard to imagine how slavery might have been abolished there without external, "top down", "rationalist" intervention against the entrenched power of the "intermediate powers" in the colonies. (Interestingly, a similar argument was made by Gustave de Beaumont about land reform in Ireland in 1840, which he thought required English intervention to destroy the power of local Irish elites.)^[17] As a result of the spread of enlightened political values over a period of several decades, there emerged a lobby group in British society which had representatives in the House of Commons (headed by William Wilberforce) that pushed for the abolition first of the slave trade (achieved in 1808), then of slavery itself in the British colonies (achieved in 1833). Had the North American colonies remained part of the British Empire, the southern slave-owning states might have been forced to abolish slavery, just like their Caribbean colleagues were forced to do in 1833 -- some three decades before the Civil War -- but this is an

exercise in counterfactual history, which is beyond the scope of this essay.

However, it does raise the important question of what to do with local autonomous associations which continue to practice very illiberal policies such as slavery. The advocate of "pluralism" might argue that competition with outside bodies (rivalrous associations) might lead to the mitigation of slavery without outside interference over time. Classical political economists of the period, such as Jean-Baptiste Say and his followers, argued that this would happen only once the metropole stopped supporting the slave colonies with guaranteed home markets for their products, such as sugar, and state (i.e., taxpayer-subsidised) protection from internal slave revolts by the local police, the French Army, and the Navy. However, it took another top-down "rationalist" reform during the 1848 Revolution to finally destroy (for the second time) slavery in the French colonies.

Had the Articles of Confederation prevailed in the United States (and the "Philadelphia coup of 1787" not imposed a more highly centralized and powerful national government on the ex-North American colonies^[18]), it is possible to imagine a group of highly autonomous and competitive "mini-states" competing in a very rivalrous fashion amongst themselves to create a "Jonesian" system of competing jurisdictions across the eastern seaboard of America.^[19] In such a system, without a powerful central government ("empire") to enforce a fugitive-slave act nationwide, the pressures to abolish slavery would have intensified to the point where the local jurisdictions (the Southern slave states) might have been forced to adapt by reforming their "peculiar institution" or face collapse from the economic bleeding produced by runaway slaves and the constant outbreak of slave revolts^[20] funded and armed by Northern abolitionists (like Harriet Tubman, John Brown, and Lysander Spooner). One can only speculate.



Lysander Spooner

However, it seems that slavery was a highly adaptable system which might have survived for decades (spontaneously evolved?) without outside intervention to bring it to an end. In Russia and in some of the Southern cities in the 1850s, serfdom and slavery were adapting to economic forces as serf/slave owners granted their property some autonomy to set up workshops which they would run on condition of sending their masters a “cut” of the profits they made, much like the present income-tax system. One could say that we can see here a premonition of what the modern state based upon the income tax would look like some hundred years later.

Let me conclude by saying that “pluralism” in the form of intermediate institutions may or may not be conducive to liberty. Intermediate institutions may be a necessary condition for liberty, but not a sufficient condition. As Gary Chartier notes in his post, we must not forget the importance of the widespread belief in liberty held by the people who make up a society. Without that belief in liberty, no amount of intermediate associations will produce a truly free society.

Endnotes

[14.] Larry Siednetop, “The Two Liberal Traditions,” in *The Idea of Freedom: Essays in Honor of Isaiah Berlin*, ed. Alan Ryan (Oxford: Oxford University Press, 1979).

[15.] J.G.A. Pocock, *The Ancient Constitution and the Feudal Law; a Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957).

[16.] See François Furet, “Night of August 4,” in François Furet, and Mona Ozouf, eds. *A Critical Dictionary of the French Revolution* (Harvard University Press, 1989), pp. 107-114; and John Mackrell, *The Attack on Feudalism in Eighteenth-century France* (London: Routledge & Kegan Paul, 1973).

[17.] Gustave de Beaumont, *Ireland: Social, Political, and Religious*, ed. W.C. Taylor (London: Richard Bentley, 1839). 2 vols. <[/titles/2430](#)>.

[18.] Sheldon Richman, *America’s Counter-Revolution: The Constitution Revisited* (Ann Arbor, Michigan: Griffin & Lash, 2016).

[19.] Eric Jones, *The European Miracle: Environments, Economies and Geopolitics in the History of Europe and Asia* (Cambridge; Cambridge University Press, 1981).

[20.] The pressure for reform caused by the constant threat of slave revolts has been underestimated by historians. See the older but still classic accounts by Marxist historians such as Herbert Aptheker, *American Negro Slave Revolts* (New York: International Publishers, 1943, 1974) and Eugene D. Genevese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World* (Baton Rouge: Louisiana State University Press, 1979). See also two modern accounts by Scot French, *The Rebellious Slave: Nat Turner in American Memory* (Boston: Houghton Mifflin, 2004) and *The World of the Haitian Revolution*, ed. David Patrick Geggus and Norman Fiering (Bloomington: Indiana University Press, 2009).

LIBERAL THEORY'S ESSENTIAL TENSION: ON JACOB LEVY ON RATIONALISM, PLURALISM AND FREEDOM

by Chandran Kukathas

Political theory has both a descriptive and a normative aspect. As theory, it aims at consistency and coherence, for no description of the world has any point if it is unable to recognize and account for apparent oddities and aberrations. As politics, it advances a view of how things ought to be, or at least, ought to be changed, revised, or improved. Theory implies consistency; but in politics there is rarely such a thing in any deep sense, for politics is about reconciling differences—most of all when they are too deep, or too entrenched (which is not the same thing), to admit of principled (or philosophical) rapprochement.

The political theorists of the liberal tradition, most noticeably when they have come in contractarian guise, have aspired to the development of a normative philosophical position that reconciles the differences among actual people and groups or communities not only in theory but also in practice. The key to the solution is rationality. We would all, surely, agree to live according to arrangements that reason revealed to be good, or just, or secure, or consistent with living freely. And if we would, the intransigence of dissenters can without hesitation be brought to practical reconciliation with the reasonable majority by the wholly justifiable enforcement of right. Implicit in this move is the thought, first, that practice must bow to reason—which is perhaps not so difficult a thing to accept—and, second, that that reason to which all must yield is not anyone's particular reason but reason itself—which is a tougher proposition to swallow. There is, after all, no shortage of claims to possession of the one true understanding of the nature of things. Indeed, there is a great plurality of such claims. If politics yields to philosophy, it is only through violence.

It is one of the great merits of Jacob Levy's study, *Rationalism, Pluralism, and Freedom*, that it recognizes this essential tension between politics and philosophy. Yet its insightfulness does not end here. If politics and philosophy may not be reconciled except by violence, cannot the answer be that we seek a higher philosophy that recognizes the wrongness of violence—that recognizes that what must govern human affairs is not power but something else. Freedom, perhaps. The answer could be simply to let people be, that their many and various ways and convictions might lead them wherever they wish to go, to live however they see fit, in communities or groups or gatherings of whatever sort within which they might find meaning.



If one strain of the liberal tradition emphasized the importance of political power deriving its authority from the willing agreement of the governed, the other emphasized its corollary: that those unwilling to agree or acquiesce be left in peace or permitted to depart—freely to form their own ways of governing themselves. The problem, however, is that those who repudiate the authority of one group and strike out on their own cannot avoid replicating the original problem of politics. To fulfil the desire to flourish, human beings are inclined to cooperate; but as their numbers increase, so will the possibility of agreement diminish, and laws—as well as the power to enforce them—will be established to deal with dissent. Inescapably, some dissenters will long for the freedom to escape the communities that so confine them, though others will wish only to remain and seek wherever they can find it the power to reassert their freedom within the collective—if necessary, by an act not of secession but of irredentism. These are the people

within a group who prefer the rationality of the powers beyond to the rationality of those within. Their freedom, in their own eyes, is congruent with their freedom from their group, rather than with the freedom of their group from the outside powers that would govern it.

This tension is a permanent feature of the human condition. No less enduring is the philosophical quest for a resolution—since the answer to this conundrum is for many political theorists the holy grail they have been trained to seek. The discipline of political theory is therefore as replete with explanations of why others have failed as it is with attempts to find the answer, or to convince others who cannot or will not see it.

Political theorists, on the whole, have very little capacity to shape or change the political world. That is not to say that ideas have no effect—only that the influence of theorists is limited. When they do have that capacity, all too often it is because their ideas are taken up by those willing to exercise power to implement them. This is no less the case when those ideas are about freedom. And those who are forced to be free will enjoy one kind of freedom even as they forgo—or forsake—another.

The conclusion of Jacob Levy's book is a sobering one. He writes in its final paragraph: "If we are concerned with liberal freedom we are ... left with no choice but to reject synthesis—whether of intermediate groups' ethos with the state, or of rationalism and pluralism. This means living with a degree of disharmony in our social lives, our moral psychologies, and our political theory."

What can we take from this ultimate assessment? To my mind what it points to is a form of political philosophical skepticism. It is not a counsel of despair, or a suggestion that nothing matters, or least of all that freedom is not worth pursuing. It is rather that there is a great need to be wary of those theorists and those theories that promise something that cannot be delivered: a way of reconciling all liberal values.

A RESPONSE TO LEVY

by Jeremy Jennings

First, I wish to congratulate Jacob Levy on the excellence of *Rationalism, Pluralism, and Freedom* (RPF). I have long been an admirer of his work, and his latest contribution confirms his place as a political theorist of the first rank.

There are so many things in RPF to comment on that it is difficult to know where to start. However, I might begin by suggesting that it is a very good example of how the study of history can make for better political theory. And in this endeavour Jacob Levy is probably far too modest than he should be about his achievements. At the beginning of his account of the ancient constitutionalism, he suggests that much of what follows will be familiar to historians although probably not to political theorists and philosophers. If this is undoubtedly true of the latter I suspect that such unfamiliarity holds true for much of the history profession. It might be worth reminding ourselves that Quentin Skinner's much-read and widely admired *Liberty before Liberalism*^[21] makes no mention of this tradition, preferring rather to contrast the Hobbesian and what he sees as the liberal and hegemonic view of liberty only with the neo-Roman theory of free states. Note that Skinner speaks only of "the liberal understanding of freedom" whereas it might be said that Jacob Levy's entire project is underpinned by the aspiration to make his readers understand that there are liberal understandings of freedom and ones moreover that defy synthesis.

Here too Jacob Levy neatly brings out the contrasts between Skinner's favoured neo-Roman republicanism and ancient constitutionalism. If one looks to Roman precedents, the other looks admiringly to the Gothic Middle Ages. If Machiavelli and his followers saw a life of freedom as only being possible in a sovereign city-state, for the ancient constitutionalists free cities were located within a complex web of often competing jurisdictions. Perhaps most significantly of all, and despite seeming overlap, both traditions had very different readings of the idea of a mixed constitution. As Jacob Levy correctly remarks, "participation by clergy ... belonged

distinctively to the institutions of the ancient constitution, finding no equivalent in mixed-constitutional republicanism.” Indeed, to the humanistic neo-Romans of the past and the present the very idea of such participation would be anathema.



Niccolo Machiavelli

Similarly Jacob Levy does well to dislodge Hobbes and contract theory from the central place they all too often play in histories of liberalism and in contemporary liberal theorizing. As Levy observes, the ancient constitutionalists were quite happy to make use of the language of contractarianism, but for them the contract was literal and historical and not hypothetical. More fundamentally, the ancient constitutionalists used the idea of contract as a way of defending the freedom of groups and associations against the “increasingly rationalist modern state.” Contractarian theories, on the other hand, were specifically designed to justify that modern state and not to provide grounds of resistance to it. Here it is interesting to note that the theorist that Benjamin Constant probably took most exception to was Thomas Hobbes. Hobbes, Constant wrote at the beginning of his *Principles of Politics Applicable to All Governments*,^[22] was “[the man who reduced despotism to a theoretical system most cleverly.](#)” He was, Constant continued, “quick to support unlimited political power, in order to declare thereby in favour of the legitimacy of absolute

government by a single person.” The error of the modern democratic age had been to transfer that unlimited power to the people. As Constant observed, whether that power was entrusted to one man, to several, or to all, “it is still equally an evil.” Sovereignty, therefore, had only a limited and relative existence, and, as Constant wrote, “at the point where independence and individual existence begin, the jurisdiction of sovereignty ends. If society oversteps this line, it is as guilty as the despot who has, as his only title, his exterminating sword.” Here the word “sovereignty” could just as easily be “reason.”

Moreover, by developing this argument Jacob Levy demonstrates convincingly that liberalism cannot be reduced to a doctrine concerned only with individuals and states; that its origins are distinctly premodern, and, contra the late Brian Barry, that it is a nonsense to narrow liberalism down to an Enlightenment doctrine that “stood for equality before a uniform law and the abolition of group-based legal distinctions.” Unfortunately, both its friends and foes have tended precisely to see liberalism in this way, thereby opening it up to a series of largely unfounded criticisms, not the least of which have been that it ignores the social constitution of mankind, idealizes homo economicus, and, of course, displays an excessive faith in reason.

In his undermining of this dominant narrative, it is hard not to draw parallels between Levy’s *RPF* and Larry Siedentop’s equally subversive *Inventing the Individual*.^[23] The theses are very different – Siedentop argues that our understanding of the freedom of the individual has deep roots in the moral intuitions of Christianity – but both, like Germaine de Staël, see liberty as being ancient, not modern, and both marginalize the contribution of the writers of the Renaissance and their rediscovery of classical humanism in favor of giving a greater prominence to the canon lawyers and philosophers of medieval Europe. Crucially, both reject Western liberalism’s usual account of itself as a doctrine that, in the name of autonomy, is fundamentally and irreconcilably antipathetic to religion and all its works.

Again, with undue modesty, Levy characterises *RPF* as “stylized history,” suggesting that his ambition is only to

provide an alternative to other stylized histories of the emergence of liberalism. Here we can concede that all histories of ideas are to an extent stylized in the sense that they need to impose order upon complex patterns of thinking and all too often this is done through the use of a set of antinomies (collectivism versus libertarianism, revolution versus reform, and so on). But to view Levy's text solely in this limited light would be a grave injustice, as one of its greatest achievements is to provide a rich, insightful and wide-ranging reading of a series of writers who have often been unduly ignored. Levy himself draws attention to some of these thinkers in his contribution to this discussion. Yes, many of us will be familiar with the French monarchomachs, but can we say the same of Althusius and the Anglo-Irish Robert Molesworth? One of the most welcome chapters concerns the British Pluralists – Acton, above all, but also Figgis and Maitland – thinkers of whom it is good to be reminded of their importance. Can it be true, as Levy suggests, that David Runciman entirely ignores Acton in his own recent study of the Pluralists?^[24] If so, it is a startling omission. Especially rewarding are Levy's analyses of the opposed accounts of how freedom might be protected to be found in the writings of Montesquieu and Voltaire and, later, Tocqueville and J.S. Mill. And of course these contrasting positions skillfully illustrate Levy's central thesis.

That thesis, as we know from this discussion, is that within liberal thought there are two mindsets – the rationalist and the pluralist – and that the existence of these two mindsets is not only long-standing but also “to a large degree” irresolvable. If Levy's historical narrative amply proves the existence of these two mindsets, I suspect that many of us who regard ourselves as liberals have felt the existence of them within ourselves. For example, I am pretty sure what I think about what we in the United Kingdom call faith, or denominational, schools. I am in favor of them and am happy for them to receive financial aid from the state. This, it seems to me, denotes more than a recognition of religious toleration: it is to affirm the value of cultural difference and the contribution that this can make to the broader well-being – the social capital – of the community in which I live. But these schools are undoubtedly a source of inequality

in our society and some of the things that are apparently taught in such establishments leave me feeling decidedly uneasy. I am a practicing Anglican (as we say in Britain) and somehow or other I have had to reconcile my faith with a Church that has discriminated against both women and homosexual men. Fortunately there has been progress here of late, but I can fully understand why some liberal friends question my attachment to such an institution.

Jacob Levy himself makes reference to the debate about the wearing of the *hijab*, or veil, by Muslim women. Cécile Laborde, in her *Critical Republicanism: The Hijab Controversy and Political Philosophy*,^[25] has done sterling work in setting out the arguments that might make possible a compromise on this issue, but it is well worth remembering that this public debate has waged pretty furiously for the past 20 years and shows little sign of abating. For the rationalist liberal, banning the wearing of the veil sets Muslim women free from group/male oppression; for the pluralist such an act is to criminalize a legitimate form of cultural/religious expression. It is hard to see how these two liberal positions can be reconciled.

But Jacob Levy also points us to some of the difficulties of the pluralist position. These are mostly addressed in the final part of *RPF*. However, we get a clear glimpse of these issues simply by referring to one of Levy's *dramatis personae*: Lord Acton. As we know, the Catholic Acton never got around to finishing his projected history of liberty, but we know enough about his opinions to be sure of his opposition to the centralizing tendencies of the nation-state. Yet such was his commitment to national and religious plurality that he found himself siding with the causes of State Rights and the slave owners in the American Civil War. Pluralist liberal endorsements of multiculturalism have undoubtedly produced similar troubling outcomes in recent years.

Of course, Jacob Levy makes clear that his text should not be read as a defence of pluralist liberalism, except in so far as it is corrective to rationalist liberal claims that it should be ignored altogether. Nevertheless, as he states unambiguously, he does not stand above the fray, and he

“generally” sympathizes with “the pluralist tradition.” So where exactly does he stand? Not for the egalitarian liberalism described by Charles Taylor. Nor for some fuzzy Rawlsian consensus or – the best contender of all – for Hegel’s account of ethical life. Rather, as Chandran Kukathas observes in this conversation, he leaves us only – if “only” is the right word – with the prospect of living with a degree of social disharmony. David Hart suggests that he can hear the breath of Hayek on Levy’s shoulders. I wonder if it might rather be Michael Oakeshott^[26] (mentioned four times in the text) who is sitting there. Oakeshott too claimed that he was only engaged in the activity of description, but his readers then and now always have felt that beneath the mellifluous prose lay a series of normative conclusions. What, we might ask, are those of Jacob Levy?

Endnotes

[21.] Quentin Skinner, *Liberty before Liberalism* (Cambridge University Press, 1998).

[22.] Benjamin Constant, *Principles of Politics Applicable to all Governments*, trans. Dennis O’Keefe, ed. Etienne Hofmann, Introduction by Nicholas Capaldi (Indianapolis: Liberty Fund, 2003). <[/titles/861](#)>.

[23.] Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism* (Harvard University Press, 2014).

[24.] David Runciman, *Pluralism and the Personality of the State* (Ideas in Context) (Cambridge University Press, 1997).

[25.] Cécile Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy* (Oxford University Press, 2008).

[26.] Michael Oakeshott, “Rationalism in Politics,” in *Rationalism in Politics and Other Essays. New and expanded edition. Foreword by Timothy Fuller* (Indianapolis: Liberty Fund, 1991. First edition 1962.), pp. 5-42.

PLURALISM AGAINST A BACKDROP OF THE WEBERIAN STATE: A REJOINDER

by Jacob T. Levy

My thanks to all four commentators in this symposium. My initial essay offered a summary of one set of claims from *Rationalism, Pluralism, and Freedom*: that we should think of the history of liberal thought as encompassing two very different strands, one rationalist and the other pluralist; and that we should think of the prehistory of liberal thought as offering two different sets of resources for the ideas that would later crystallize as liberal, one the relatively familiar idea of the social contract and the other the relatively forgotten idea of the ancient constitution. These are of course not the only ideas in the book. Some of the essays engaged directly with *Rationalism, Pluralism, and Freedom* as a whole, while others (quite reasonably!) engaged with the essay. I’m afraid that my replies to the latter will in part consist of the boring answer, “I talk about that in the book.” But both David Hart and Gary Chartier raise important and serious points, and any attempt to deal with them in a few sentences would fail to do them justice. In both cases, my best efforts are, well, in the book. In this first response I’ll accordingly talk about David’s and Gary’s questions; in the second I’ll turn to Chandran Kukathas’s and Jeremy Jennings’s.



David notes that pluralism is not always conducive toward liberty, and notes cases ranging from the *corps* of *ancien régime* France to slavery in the American South. With this I entirely agree, and I take the liberty of quoting here from the book’s Introduction.

There is a deep, recurring tension within liberal political thought between seeing those groups that stand between the person and the central state as sites where free people live their diverse lives, and seeing them as sites of local tyranny that the liberal state must be strong enough to keep in check. One strand of liberalism emphasizes freedom for persons as they are, living the lives that they already lead, lives that are embedded in particular communities and partly shaped by particular cultural and religious traditions. The other looks to the importance of free persons' ability to transform or transcend those current lives. On one side of this divide lies a liberalism I will call "pluralist": skeptical of the central state and friendly toward local, customary, voluntary, or intermediate bodies, communities, and associations. On the other we see a liberalism I will call "rationalist": committed to intellectual progress, universalism, and equality before a unified law, opposed to arbitrary and irrational distinctions and inequalities, and determined to disrupt local tyrannies in religious and ethnic groups, closed associations, families, plantations, the feudal countryside, and so on.

While I will suggest that *liberalism* as such necessarily faces a tension between these two strands, particular liberal *thinkers* or *theories* do not necessarily sit balanced between them. The moral, social, and political truths in the two strands are difficult to fully respect simultaneously, and so theorists who consider these questions tend to incline in one direction or the other. I illustrate this with a survey of disputes among proto-liberal or liberal theorists across this intellectual divide, some stressing the threats to freedom posed by the state, some those posed by intermediate groups. A clear difference of emphasis emerges: John Stuart Mill saw the threat to freedom posed by the structure of the Victorian family, *and* by conformist intellectual cultures, but *not* by an enlightened state governing imperially over neighboring

nationalities or distant lands. Tocqueville meanwhile saw the importance for freedom of voluntary associations in America and of *corps intermédiaires* in *ancien régime* France, but thought the authority of men over women within the family "natural." These contemporaries and mutual admirers, among the most profound thinkers in the liberal tradition, shared a deep attachment to freedom and a fear that it would be swamped in a democratic age, but their basic sensibilities about where to find threats to it and how to defend it often pointed them in opposite directions.

Each view brings with it both insights and blind spots. Just to the degree that each one illuminates some genuine threats to freedom, it obscures others. Another example of that, from the same era, is provided by the liberal historian Lord Acton. His pluralistic commitment to checking state power, his opposition to centralization, allowed him to see more deeply than his contemporaries the danger posed by the growing identification of nation and state, to argue forcefully for multinational states as well as federalism and religious liberty. It also allowed him to believe that the most important threat to liberty at stake in the American Civil War was Lincoln's assertion of central supremacy over the states, and not the Southern states' own commitment to human slavery. He understood that slavery was evil, yet protecting federalism and decentralization seemed to him more urgent.

The ideas that Tocqueville was right about associations but wrong about the family, that Mill was right about the family but wrong about imperialism, that Acton was right about nationalism but wrong about the American Civil War, and that in each case the right and the wrong are very hard to disentangle inspire the central claim of this book. I argue not only that the tension between rationalism and pluralism within liberal thought is longstanding, but also

that it is to a large degree irresolvable. We can try to be open to reasons and arguments of both sorts; we can try to reach case-by-case judgments in particular times and places. But there is no systematic way to combine all of the virtues and none of the vices of the two mindsets, and no secure middle way that would allow us to know for sure which are virtues and which are vices. I generally favor pluralist liberalism; I also think that it is the more neglected and unfamiliar of the two strands. The book therefore does much more reconstructive work with pluralist than with rationalist ideas and traditions. But the book is not a defense of pluralist liberalism, except as against the pretensions of some rationalist liberals that it should be ignored altogether. It is rather, ultimately, an argument for that claim of irresolvability. A full understanding of liberal freedom would draw on truths from both the rationalist and pluralist traditions; it would recognize that states and intermediate groups alike can oppress. And yet we cannot compromise between or combine the two accounts in a wholly satisfactory manner.^[27]

Gary Chartier, I think, likewise takes me to be entirely an advocate of the decentralized institutions, associations, and legal orders which ancient constitutionalism and modern pluralist liberalism defend. This isn't so, for two reasons. One, noted above, is that I am not uncritically an advocate of pluralist liberalism, and I don't think it can contain the whole truth of a theory of freedom. The second, which I think I didn't emphasize clearly enough in the book, is that neither ancient constitutionalism nor its modern pluralist-liberal descendant is simply a call to abolish central authority in favor of smaller units. Both ancient constitutionalism and modern pluralist liberalism are usually theories of *multilevel* systems, in which there are possibilities of local and central authorities balancing and checking each other. Think of the difference between being a federalist—that is, an advocate of a system that has *both* state/provincial and central levels of authority—and simply advocating the breakup of a place like the United States or Canada into its component states or

provinces. Ancient constitutionalists were, and most pluralist liberals are, advocates of pluralistic systems.

This means that I agree with Gary in part, but only in part. As I write early in the book, Nozick's utopia of self-contained utopias is not the best vision of pluralist liberalism, for reasons that overlap with Gary's interest in consent to associational membership. In the Nozickean world, the various thick communities seemingly exhaust the social landscape, dividing it up neatly among themselves. But liberal freedom depends in part on the existence of a social space in between, a place where dissenters can go, new associations can be formed, and members of the various communities can meet on relatively neutral terms. This requires literal space; I've argued elsewhere that *cities* are a characteristic locale.^[28] And it in part requires normative space: arenas like the market in which governing rules are impersonal even if the rules governing other aspects of life depend on who one is, *Gesellschaft* space between *Gemeinschaft* communities. Gary emphasizes consent, of which I think too much can be made, but it's true that we can't impute consent (or even acquiescence) to membership in local, communal, or customary groups if there's no social place they could go if they chose to leave. Philosophical writings on the right of exit often treat it exclusively as something recognized or not by the group's own norms, but it's really in part something that arises out of the interaction between the group's norms and those of this in-between space.

Where I suspect I disagree with Gary is in linking that in-between space governed by *Gesellschaft* norms and serving to limit the power of intermediate groups with the Weberian modern state. That is, I think that ancient constitutionalism was a theory for how to limit—not how to abolish—the early modern absolute state, and I think that pluralist liberalism is probably best understood as a theory concerned with intermediate bodies *in an order in which they are genuinely intermediate*—that is, in a hybrid order that includes the modern state. Gary argues in his important book *Anarchy and Legal Order*^[29] that this connection isn't a necessary one, and that there are

reasons to think it undesirable and unjust; that stateless orders can include appropriately abstract systems of law.

I don't disagree with his diagnoses of the many evils associated with the state form; but I treat the state as a social fact, a given in our current historical and technological circumstances. As a pluralist and an anti-contractarian, I'm uninterested in the mythology that seeks to dress up the state in moral legitimacy all the way down, grounded in individual consent; but that also means that I deny the anarchist contrapositive, that the absence of such consent or moral legitimacy all the way down much matters for how we live with states. And so my approach to thinking about pluralist liberalism treats associations *against the background of the Weberian state*. While I don't moralize the state or treat it as automatically likely to promote the freedom of those subject to it—quite the contrary—I do think its rationalizing, centralizing, and bureaucratic tendencies can provide a counterbalance to the sometimes personalistic, conservative, and hierarchical character of associational and group life.



Charles Louis de Secondat, Baron de Montesquieu

As far as the (entirely true) claim that the *corps intermédiaires* of the ancient constitution were often involuntary and internally unjust: I think that part of the gradual evolution of ancient constitutionalism into modern pluralist liberalism was the work by theorists

after Montesquieu to think about pluralism without privilege^[30] and to understand how voluntary associations could perform the work that the privileged and involuntary *corps* had performed in the past. But such thinkers as Tocqueville and Acton, and even the usually less-gloomy Benjamin Constant, were doubtful. Pluralist liberalism is not only interested in associational freedom; against the background that states exist, it is interested in *how intermediate groups can effectively limit and counterbalance the state*. I think the 19th-century liberals had, and we have, good reason to think that sometimes such balance will be most effectively provided by groups that do not themselves fully satisfy at the bar of justice—groups that are semi-voluntary in membership, groups that have a strong claim on their members' identity and loyalty.^[31]

Now, it's entirely possible that the combination of a Weberian state and intermediate associations will give us the worst of both worlds—state power captured by large groups or powerful group elites to enforce both internal power and the suppression of other groups. (Something like this has often been true of the relationship between states and patriarchal male power, for example.) But given the existence of states, the pluralist liberal hope is to be able to provide some kind of balancing and mutual constraint, so that we can have access to some impersonal and rationalist rules that limit group power, while also preserving enough meaningful group social power to be able to hold the state's centralizing and anti-associational tendencies in check.

Endnotes

^[27.] Levy, *Rationalism, Pluralism, and Freedom*, "Introduction," pp. 2-3.

^[28.] "Sexual Orientation, Exit, and Refuge," in Avigail Eisenberg and Jeff Spinner-Halev, eds., *Minorities Within Minorities: Equality, Rights, and Diversity* (Cambridge: Cambridge University Press, 2005).

^[29.] Gary Chartier, *Anarchy and Legal Order*, (Cambridge: Cambridge University Press, 2012).

^[30.] Jacob T. Levy, "Corps Intermédiaires, Civil Society, and the Art of Association," *NBER Working Paper No.*

21254, June 2015.
 <<http://www.nber.org/papers/w21254>>.

[31.] Jacob T. Levy, “Federalism, Liberalism, and the Separation of Loyalties,” *American Political Science Review*, August 2007, pp. 459-77.
 <journals.cambridge.org/article_S0003055407070268>.

RESPONSE TO KUKATHAS AND JENNINGS

by Jacob T. Levy

I am very gratified by the posts from Chandran Kukathas and Jeremy Jennings—very possibly the leading scholars in the English-speaking world of the issues treated in (respectively) the normative and the historical portions of *Rationalism, Pluralism, and Freedom*. If they both think I’m onto something—and they seem to—then that’s about the best vote of confidence I could have hoped for.

Chandran, typically, puts ideas with which I agree into words more elegant than any I could hope to write. I call the reader’s attention to this passage in particular:

If one strain of the liberal tradition emphasized the importance of political power deriving its authority from the willing agreement of the governed, the other emphasized its corollary: that those unwilling to agree or acquiesce be left in peace or permitted to depart—freely to form their own ways of governing themselves. The problem, however, is that those who repudiate the authority of one group and strike out on their own cannot avoid replicating the original problem of politics. To fulfil the desire to flourish, human beings are inclined to cooperate; but as their numbers increase, so will the possibility of agreement diminish, and laws—as well as the power to enforce them—will be established to deal with dissent. Inescapably, some dissenters will long for the freedom to escape the communities that so confine them, though others will wish only to remain and seek

wherever they can find it the power to reassert their freedom within the collective—if necessary, by an act not of secession but of irredentism. These are the people within a group who prefer the rationality of the powers beyond to the rationality of those within. Their freedom, in their own eyes, is congruent with their freedom from their group, rather than with the freedom of their group from the outside powers that would govern it.

This tension is a permanent feature of the human condition.

Notice that he makes *no* reference here to states or associations—or indeed to centralization or decentralization, or rationalism or pluralism. The account is perfectly general, in Oakeshottian style, and it makes clear that the complex relations between states and intermediate groups I try to parse in the book are a species of a broader genus. Moreover it makes clear how much states and associations have in common. In the book I explicitly aim to set associations and groups off as a category phenomenologically and morally distinct from both individuals and states, while also trying to recognize that states are a special case of group life. Chandran here emphasizes the latter, I think.



Michael Oakeshott

What I draw from this is that *even in the absence of states, the tensions would endure*. Indeed, as I argue briefly in the book, nonstate complex associations take on state-like features relative to the groups within, as the higher-order association (a university, the Catholic Church) becomes legalistic, bureaucratic, and institutionalized, and enthusiastic commitment to causes starts to manifest in subordinate associations (student clubs, religious orders). I do think that states have some very particular sociological and moral features, and I ultimately argue that we should insist on a kind of liberal neutrality from states while acknowledging the purposive character of even large and bureaucratic complex institutions. But the uneasy relationship among bureaucratic centralization, thick meaningful association, and liberty is evident in complex nonstate associations even when there is a state in the background, and matters would become uneasier still if the complex associations were called upon to be top-level providers of dispute resolution in a stateless order.

As Chandran says, this is not a counsel of despair. The unavailability of a perfect resolution, of being securely free in just the right ways from local personalistic despotism and from distant bureaucratic tyranny all at the same time, in no way diminishes the real choices we often face between better and worse. It just warns us against confident visions of the best, visions that lack any sense of conflict and trade-off.

This brings me to Jeremy's questions:

Of course, Jacob Levy makes clear that his text should not be read as a defence of pluralist liberalism, except in so far as it is corrective to rationalist liberal claims that it should be ignored altogether. Nevertheless, as he states unambiguously, he does not stand above the fray, and he "generally" sympathizes with "the pluralist tradition." So where exactly does he stand? Not for the egalitarian liberalism described by Charles Taylor. Nor for some fuzzy Rawlsian consensus or – the best contender of all – for Hegel's account of ethical life. Rather, as Chandran Kukathas observes in this

conversation, he leaves us only – if "only" is the right word – with the prospect of living with a degree of social disharmony. David Hart suggests that he can hear the breath of Hayek on Levy's shoulders. I wonder if it might rather be Michael Oakeshott (mentioned four times in the text) who is sitting there. Oakeshott too claimed that he was only engaged in the activity of description, but his readers then and now always have felt that beneath the mellifluous prose lay a series of normative conclusions. What, we might ask, are those of Jacob Levy?

I've faced this question from others too, and I admit that it bemuses me, since I think of myself as ... not shy with my normative judgments. *The Multiculturalism of Fear* (Oxford University Press 2000) and my subsequent work on ethnic politics, indigenous rights, and federalism were full of them. Two of my reasons for writing *Rationalism, Pluralism, and Freedom* the way I did were to *chasten* myself as a normative theorist, and to *situate* the kinds of normative arguments I will go on making for many years to come. I wanted to make myself see the limits of the kinds of claims I'm predisposed to make (and in some cases, as with the pure theory of freedom of association, I argued myself out of such claims altogether), but having done so, to be able to make directly normative arguments in the future without surrounding them every time with the various qualifications they call for. If, as I argue in the book, neither Tocqueville nor Mill nor Acton could avoid crucial blind spots that related directly to their areas of insight, well, then, I'm unlikely to do so either. That I've managed to invite this question surprises me; I generally assume that my problem is that the normative arguments sit too close to the surface, not too far. I'm happy to learn that I've held them in some check in this book, but I did so partly in order to let them loose in the future.

I'll very happily admit the importance of what I've learned from Hayek; while I'm critical of the way he understands the history of the liberal tradition in *The Constitution of Liberty* (University of Chicago Press, 1960), I also say that I'm trying to fulfill a call he issued a

half-century ago for a full study of the problem of rationalism in that tradition. I push back against his conception of what that problem *is*, but I think that really I'm working on the same problem that he was. (He just didn't see it quite clearly.) I'm never quite as sure what to say about Oakeshott, not least because, as Jeremy notes, Oakeshott's normative views are often hidden within his idiosyncratic kind of descriptive philosophy. I find his categories useful, and there's something in his intellectual sense of "rationalism in politics" that I put to work in my sociological understanding of rationalist liberalism. But I don't mean to bury my normative commitments, just to keep them in check for purposes of the argument of this book. I believe in very robust freedom of association, religious freedom, and cultural freedom; a more robust federalism and governmental decentralization than is popular among American left-liberals; a diversity among intermediate institutions—religious and nonreligious, internally strict and internally loose, local and global, and so on—rather than a strict insistence on mirroring social diversity with each of them. I think that intermediate group power, real though it is, is often limited by the availability of an open and pluralistic society and rights of exit, while state power in general and state power in large democratic nation-states in particular tends to grow dangerously if not checked by intermediate bodies. And I think that our individual liberties are, very often, most meaningfully and powerfully exercised in association with others: freedom of religion in a church, freedom of speech in an activist group, freedom of thought in a university, and so on. This means that often when the state purports to be protecting our liberties against local oppression, it is doing nothing of the sort.

The thesis of the book is what it is because all of those *oftens* in the previous paragraph really are *oftens* not *alwayses*. For a lot of purposes in political and social theory we need to make do with tendencies and generalizations and institutional approximations. "Get all the answers right, in every case" isn't useful action-guiding political advice. I have my views about which arrangements will get more answers right more of the time. But that doesn't allow me to shrug off the times when those arrangements get things wrong.

MEN OF SYSTEM, BUSYBODIES, AND PREDATORS

by David M. Hart

I would like to raise a couple of points which came out of my reading of the very interesting Chapter 3, "Reunderstanding Intermediate Groups,"^[32] where Jacob asks himself what kind of people rise up the ranks of intermediate groups and centralized states to reach positions of power and authority over others. His answer is, respectively, "busybodies" and "men of system." A cynical Hayekian response, which is closer to my own jaundiced view of the world, would be to add "the worst."^[33] An even more cynical Bastiat-like response would be to say that Jacob seriously underestimates the kinds of people who are attracted to institutions with power and that a realist would have to add a third category, namely, "the plunderer," or what I prefer to call "the predator." And since a predator cannot come to power and exercise it efficiently on his own, he needs a substantial body of what I call "henchmen" to carry out his orders, to eliminate his enemies, to maintain "law and order," and to gather resources to carry out his policies. If the 20th-century experience has taught us one thing, it is that the modern centralized state has attracted the worst kinds of predators to seek, gain, and wield massive power over others. The names Hitler, Stalin, Mao, and Pol Pot immediately come to mind, but I would also have to say that "Western democracies" have also had their own share of ruthless political predators, such as Lyndon Johnson and Richard Nixon.

In smaller and more local intermediate associations, there is less opportunity for predators to be successful because of the limitations imposed upon them by the local scale of the organization and by the existence of local opposition, such as other groups and associations in their vicinity, or even by their own groups' memberships. However, when one studies the careers of successful political predators, one can see that smaller local intermediate bodies have provided stepping stones to

higher orders of power. They might even be seen as incubators of power. On the Left in many European and Commonwealth countries, trade unions are one way in which aspiring politicians (often starting their careers as union lawyers) can gain experience, political contacts, and a political reputation before breaking into national politics. Of course, the perversion here is that what had once been voluntary and private associations formed to promote the legitimate interests of their members, such as by providing insurance, health care, and vacation and savings opportunities, became over time rent-seeking monopolies protected by the state. On the Right, the equivalent conduit for aspiring political predators has been Chambers of Commerce, banks, large law firms, and so on.

The perennial question is: how does one prevent intermediate associations from overstepping their bounds (regarding their own members and the local people around them who are not members) and becoming threats to liberty in their own right? One answer is to have as much competition between rivalrous associations as possible, as well as to have some opportunity for exit (admittedly often costly for individuals), that is to say, to have as many “interstices,” or “jurisdictional gaps,” as possible into which dissidents and nonconformists can escape.^[34] One could then see how there might be a continuous tug of war among the busybodies who rise to the top of associations, members who resent the activities of the busybodies, and the individuals and competing associations around them who have their own different ideas about how to arrange their lives. A *modus vivendi* among the various groups and their leaders might evolve over time which might be quite stable.

My rather sad conclusion is that the very existence of a powerful centralized bureaucratic state which “encloses,” as it were, the myriad private associations within its seamless jurisdiction creates the possibility, or, I would say, even the inevitability of intermediate institutions like unions, business groups, single-interest groups, and even churches turning into stepping stones for ambitious political predators toward the higher stages the

centralized state has created for them. The busybodies will be left behind to continue to pester the local membership while the predators will move on to greener political and economic pastures.

Endnotes

^[32.] Levy, *RPF*, pp. 56-83, especially p. 82.

^[33.] “X. Why the Worst get on Top,” in Friedrich A. Hayek, *The Road to Serfdom* (The University of Chicago Press, 1944), pp. 134-52.

^[34.] E.L. Jones uses the wonderful term “interstices” in *The European Miracle* (2nd ed. 1987), p. 91.

LEVY ON THE VARIETIES OF ASSOCIATION

by Gary Chartier

Jacob Levy’s replies to his interlocutors are predictably gracious and good-natured. He appropriately emphasizes at considerable length the inescapable ambiguity of judgment and the unavoidability of trade-offs.

Jacob takes me to have read him as an unqualified defender of pluralism, rather than merely a sympathizer. So I hasten to emphasize that I very much recognize the degree to which what makes his project especially interesting is not only its explicit awareness of the tension between the rationalist and pluralist strands of liberal thought, but also its self-conscious embrace of that tension. And I agree entirely with him, too, that the tension on which he focuses is a feature of group dynamics generally, and not only of the relationships between states and intermediate associations. The use of force against people’s bodies and justly acquired possessions is a particularly serious and troubling form of interference with freedom, one I take to be categorically different from others; and associations that make people’s lives awful in nonforcible ways seem to me to be in a different moral category from those that employ force. But it would be thoroughly naïve to imagine that, provided force was off the table, an association’s capacity

to interfere in serious ways with its members' flourishing was morally and politically uninteresting.

I don't doubt for an instant that Levy is correct that the state's "rationalizing, centralizing, and bureaucratic tendencies can provide a counterbalance to the sometimes personalistic, conservative, and hierarchical character of associational and group life." I'm sure, in practical terms, that many people have at multiple points had cause to celebrate the state's restraint of the abuses perpetrated by associations. And, while I do believe consent matters, for the reasons I sought briefly to sketch in my initial response, I also believe that the considerations I adduce in support of grounding authority in consent ground a *presumption*, not an unqualified absolute. It's just that the presumption seems to me to be very strong indeed and that the moral limits on the use of force seem to me sufficiently robust to rule out the things states do in ordinary circumstances.

That is one reason—hardly the only one, given the distinctive temptations and liabilities to which state actors are likely to be subject—why I am willing to live with the uneasiness Jacob understandably notes that we ought to feel "if complex associations were called upon to be top-level providers of dispute resolution in a stateless order." My hope would be that, in such an order, dispute resolution might be particularly the province of associations marked by some of those features the statist pluralist might see as valuable in a state equipped to weigh in against oppressive intermediate institutions. It strikes me as at least possible that, despite their obvious limitations, narrowly commercial entities might be rather better at playing the needed role than other, more richly textured, associations, precisely because of their narrowness of focus. Such entities would seem more likely to focus on disputants as customers, perhaps as rights-bearers, than as group members with thickly layered identities, and so, perhaps, to replicate some desirable features of the modern state even while lacking its most odious characteristics.

Reflecting on this question prompts me to wonder, by the way, why explicitly *commercial* associations don't figure among the intermediate institutions on which the

pluralist strand has focused as counters to state power. It's perhaps less surprising that proponents of ancient constitutionalism didn't focus on such associations, which likely wouldn't have qualified as ancient in the relevant sense. But I'm curious to know whether later, liberal or proto-liberal, proponents of pluralism gave any attention to them—and, if not, why they likely wouldn't have.

COMPETITION AND CARTELIZATION

by Jacob T. Levy

David quite rightly notes that busybodies and men of system aren't the worst-case scenarios for power-seekers, naming a generic (I think overbroadly generic) category of plunderers and predators. The first thing to note is that the category is generic; "busybodies" and "men of system" were never meant to describe worst cases, but rather importantly *distinctive* cases. The selection of busybodies and men of system into office in (respectively) intermediate groups and the central state stamps the exercise of power in each with a distinctive character, one that affects how we should think about even the *best-case* scenarios. It is among the reasons (I discuss others in chapter three) why we should neither imagine states as justice-dispensing machines nor imagine intermediate groups as consensual emanations of their members' wills. Importantly, neither the busybody nor the man of system is an entirely malevolent archetype. (They do *not* represent Hayek's "worst.") They are obnoxious extensions of often-beneficial social impulses, turned into sometimes-serious problems by institutional contexts that afford them too much power.



Friedrich von Hayek

Plunder and predation seem to me somewhat different. While there are unusually greedy people, unusually bloodthirsty people, and people unusually driven to dominate, plunder and predation are only sometimes closely linked to such people, and such people are not necessarily the most effective at those tasks. As David notes, really large-scale plunder and predation are never the work of one man alone--and the ability to carry them out on a large scale *over a sustained period* requires the ability to credibly commit to sharing the proceeds of plunder across the dominant groups. The one monstrous ruler may commit true horror for years or decades without teaching us much about what stable long-term domination and exploitation really look like. The coalitions of elites that make up governing structures are better able to carry on their plunder without genocidal sociopaths.

But that shouldn't lead us to forget that the boring, nonmonstrous elites will seek to cartelize, if left free to do so. David asks us to imagine intermediate groups constrained by rights of exit, by competition from other groups, and by the existence of interstices among them. (Here see my previous discussion of civil society with Gary, as well as my discussion in chapter three of how intergroup competition can sometimes *worsen* power

relations within groups.) David suggests that, without a state, the predators will be stuck ruling over such constrained groups, with no wider stage on which to act. My two questions are:

1. Without a state, what restrains the group elites from choosing cartelization over competition, and devoting their efforts to stamping out the interstices, the better to enable them all to prey on their captive members?
2. If a state is really the only thing that allows elites to cartelize in such a fashion, *why would they not create one?*

As I've said in previous entries, I'm non-anarchist (not anti-, but non-) because I think states are social facts that emerge for non-decisionistic reasons and that aren't susceptible of being decided away. But if we imagine that they could be decided away, how shall we then imagine that the process is unidirectional? States undoubtedly do serve as highly efficient tools for cartels of elites to use to plunder whole populations. That's not all they do, but it is among the things that they do. Once that piece of social technology has been discovered, I don't think it will be forgotten. And so, if we pay attention only to the plunderers (and understand that this is not the name of some rare monstrous personality type), I see no reason to expect that David's vision would be sustainable: either they will find sufficient opportunities to dominate and plunder in the stateless order, *or they will not, and they will create a state.*

A theory of freedom of association is not where we will find the answers as to how to avoid rule by a Pol Pot. (Neither, I think, is any theory that elides the differences between Pol Pot and Johnson or Nixon--vicious though both of the latter were.) I'm not going to suddenly produce an answer to that kind of question. But a theory of freedom of association *might* help us take seriously the existence of domineering elites of more than one kind, and at more than one level. It can thus help us see that vertical contestation--between groups and states--*can* provide some space for freedom, and that purely horizontal competition among groups is probably no stable guarantee of doing any better.

ENDS VS. MEANS, OR MUDDLING THROUGH

by David M. Hart

The pluralism-vs.-rationalism opposition which Jacob observes within the classical-liberal tradition is one that I have found very helpful in trying to bring some sort of order to the rather obstreperous collection of intellectual groups which have all contributed their individual two cents worth (or in some cases five cents worth) to the tradition's intellectual development over the centuries. Another one of Jacob's great successes is in showing just how many centuries back one should trace these intellectual movements and groups. His interest in the Monarchomachs is an excellent example of this.



Murray N. Rothbard

However, there is one difficulty I am still struggling to come to grips with, and that is the difference between ends and means for classical liberals. My own perspective has been influenced by Murray Rothbard and his view that the “highest political value” (or end) is the absence of the initiation of violence in society, or what he termed the “nonaggression principle”^[35] --and it should be noted that this principle has come under attack by some libertarians in recent years.^[36] If this is my “end,” then pluralism or rationalism could be seen as two different

means which could be used to achieve that end of individual liberty.

If this is the case, then I am quite open to adopting or supporting one or the other, depending on the time, place, and circumstances (in other words, the historical circumstances in which a liberal might find himself), as the means to achieve my higher end. If the members of an intermediate association share my goal in wanting to increase the amount of individual liberty there is in the world, for example the Independent churches during the 1640s in England who were inspired by Leveller ideas and were agitating for religious freedom and toleration during the English Civil Wars,^[37] then I would be prepared to work with it to achieve that goal, even though I am an atheist. On the other hand, if an enlightened despot in the 18th or 19th century were influenced by Physiocratic or Smithian ideas about the greater economic efficiency of free labor as opposed to serfdom and wanted to abolish serfdom in a rationalistic, top-down fashion (like Joseph II attempted to do in 1781 and Alexander II in Russia in 1861),^[38] then I would support that too, even though I am a Painite anti-monarchist.

However, as soon as the Independent churches began lobbying the new government to enforce blue laws, I would have to oppose them. Similarly, as soon as Alexander's bureaucrats began looking for ways to pass the financial burden of liberation onto the serfs themselves via debt repayments to their erstwhile lords, I would have to oppose that as well.

The result is that I am both a “pluralist” and a “rationalist” depending upon the circumstances. I don't think political theory can tell us what at any given time or place is better, either as political theory or economic policy.

The problem faced by classical liberals and libertarians is when it becomes clear that members of intermediate associations or the bureaucrats in Weberian rationalistic states have very different ends than ones liberals hold, namely, that the members' and bureaucrats' ultimate goal is the preservation or expansion of their associations or the state at the expense of the individual liberty of others. What then? Both Chandran and Jacob seem to think that

an English-style “muddling through” is the best we can hope for and will have to suffice.

Endnotes

[35.] Murray N. Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982).

[36.] Matt Zwolinski, "Six Reasons Libertarians Should Reject the Non-Aggression Principle" (April 8, 2013) <<http://www.libertarianism.org/blog/six-reasons-libertarians-should-reject-non-aggression-principle>>.

[37.] Rachel Foxley, *The Levellers: Radical Political Thought in the English Revolution* (Manchester: Manchester University Press, 2013), “4. Religion, Politics, and Conscience,” pp. 119-49.

[38.] Jerome Blum, *The End of the Old Order in Rural Europe* (Princeton, N.J.: Princeton University Press, 1978).

VERTICAL AND HORIZONTAL COMPETITION

by Gary Chartier

As Jacob will not be surprised to learn, I think he is right that “vertical contestation--between groups and states--can provide some space for freedom.” But I hope we can do better.

First, a brief qualifier: I am not sure that the anarchist is committed to the view that “purely horizontal competition among groups is ... [a] stable guarantee of doing any better.”

That is, I think that a free society should expect to be sustained not only by similarly situated voluntary associations but also by institutions of other sorts, including religious traditions. (I would expect providers of Jewish law and Catholic and Anglican canon law to be among the entities fostering extended social cooperation in such a society, for instance.) I would expect overlapping jurisdictions and communal memberships to play an important role here. And this means that the

relevant sort of competition simply wouldn’t be “purely horizontal,” if what Levy has in mind with this phrase is “similarly situated and constituted, with clearly defined ranges of authority.”

Second: I certainly understand that something useful might emerge from the competition between states and intermediate institutions. But it’s not clear to me that what we could expect as the output of such competition would be any better than what we might get from the more complex (if not narrowly horizontal) competition I’d prefer.

It seems, in any case, that for the kind of competition Levy favors to work, actors at both the state and the intermediate level would need to have embraced norms treating each set of institutions as legitimate. That is, each kind of institution can effectively push back against the other only if each regards the other as rightly possessing authority it cannot simply override. If state actors believe it’s perfectly OK for them to assimilate intermediate institutions or ignore their traditional claims to legal standing, they will likely have the force to do so.

States do not, of course, in general persist because of the actual or threatened use of force. Rather, they maintain their power because people exercise that power as something they are *entitled* to do, whether because of divine right, the social contract, or some sort of Hobbesian or Humean necessity. If belief in that sort of entitlement disappears, the state will, I think, fight an increasingly uphill battle to maintain itself in existence, since it will then need to rely solely on the threat of force. (And will the state functionaries whose task it is to employ state violence to maintain order be as inclined to keep doing so once they, too, see that the state lacks any deep legitimation?)

But if this is the case, then it does not seem as if competing nonstate institutions are in any obviously worse position than states as sources of social order. If they can be seen as legitimate—and I submit that there is a pretty straightforward case to be made for them on both Lockean and Hobbesian/Humean grounds—they can enjoy the same sort of stability, rooted in perceived legitimacy, that the state now enjoys. Suppose people

embrace not only individual institutions on these grounds but also, and more importantly, the *ecology* of a free society, one in which the competition among institutions is consciously endorsed as crucial to maintaining freedom. And suppose this ecology is seen as not only desirable but a consequence of the maintenance of institutions with their own underlying legitimacy. In this case I think there's at least a case to be made that competition among institutions in a free society could, indeed, do a serviceable—or better—job of protecting liberty without the state.

APPLYING THE LEVY METHOD TO OTHER TRADITIONS OF THOUGHT

by David M. Hart

Jacob has applied a powerful and very interesting method for analyzing the various streams of thought which eventually came together into the river of classical-liberal thought. As I read through the book I kept thinking that this method could also be applied to other political traditions, such as socialism and Christianity. Here are some brief reflections on how his methodology might be applied to them.

The development of the early Christian churches in the 300 or so years before Christianity became the official religion of the Roman Empire is a classic example of Jacob's "pluralism" at work, with many private groups forming churches and congregations, which administered "services" of many kinds to their voluntary membership. A great diversity and rich tapestry of church groups emerged, which was successful in increasing their membership across the Roman Empire. On the other hand, we had the temptation offered by official endorsement of their views and practices, which enabled the Church to begin working towards turning itself into a state-sanctioned monopoly, a position it enjoyed in many parts of Europe for 1,500 years.

We can also see the emergence of countercurrents within the Church, such as monastic institutions with their private rules, canon law which emerged as a parallel set of legal practices, and institutions which both lay outside of the secular monarchical legal system and also served as a competitive alternative to it on occasion. There is also the fluctuation which Jacob argues is inevitable between the top-down "rationalism" of the hybrid body of "Church and State" (or "Throne and Altar") and the constant pressure for religious "secession" and independence (i.e., "pluralism") as shown during the Reformation and the settlement of North America by a plethora of competing and independent churches.

After the intellectual challenges provided by the Enlightenment and the rise of the initially limited constitutional liberal state, in our own era there is an uneasy equilibrium, at least within Christianity if not yet in Islam, between religious "rationalism" and "pluralism," which has created a situation where there is mostly religious toleration of competing religious groups and a fairly tolerable "live and let live" policy towards nonbelievers and secular groups. The Islamic world, on the other hand, persists in attempting to follow the "rationalist" tradition of the bureaucratic, centralized, and coercive form of religious organization and practice which had been common in Europe for over a thousand years.



My second example, which I will not delve into deeply here, concerns the rise of socialism in the mid-19th

century. It began as “pluralist” and voluntary among workers associations and unions, and there is a strong tradition within socialism of experimental breakaway communities (the Fourierists and their communities in the United States) and a form of anarchism based upon worker-owned and controlled workshops (Proudhon and his followers). Then there is the polar opposite of “rationalist” top-down coercive socialism either in the parliamentary form of labor parties (Britain, Australia, and elsewhere in the Commonwealth) or social democratic parties (such as the powerful one in Germany in the late 19th century), or in the ultra-rationalist and bureaucratic form which emerged in the Soviet Union.

Where socialism differs from Christianity is in how the pluralist stream seems to have atrophied or even disappeared while the rationalist social democratic stream has become the *de facto* standard across the industrialized world. The ultra-rationalist stream of socialism has, thank goodness, followed Leon Trotsky’s observation made about the defeated Menshevik faction and left to take up residency in “the dustbin of history.”

I think Jacob’s methodology might provide rich insights into these other traditions, as it has done in his study of classical liberalism. I hope he one day writes a larger history of political thought *tout compris* using this approach.

WRESTLING WITH LEVY’S QUESTIONS

by Gary Chartier

In predictably thoughtful and careful fashion, Jacob Levy pushes us to reflect and wonder and puzzle over our assumptions.

Toward the end of his most recent essay, he poses two difficult questions for those, like me, who believe that a stateless legal order provides a secure context for the display and protection of liberty and human diversity:

I want to engage briefly with these questions.

(1) *Without a state, what restrains the group elites from choosing cartelization over competition, and devoting their efforts to stamping out the interstices, the better to enable them all to prey on their captive members?*

The same question arises, with even greater force, when a state *does* exist. For a state provides such an obvious magnet for those who seek privilege and who hope to avoid the pressures imposed by a competitive marketplace, pressures that compel even the misanthropic to serve consumers’ needs. The state is not a source of restraint on cartelization, but, rather, both an instance of cartelization—since it prevents consumers from relying on alternative providers of law and dispute resolution—and a means of cartelization—since it is able, in ways nonterritorial providers of dispute-resolution services would not be, to confer monopoly privileges on its cronies.

And note that, if the state *is* to resist cartelization, this will be either because norms of fairness and similar moral constraints limit what state actors can do *or* because the costs of claiming privileges or conferring them on cronies are too high. Both of these sorts of constraints could be expected to obtain in the case of legal regimes in a society without the state.

Consider two possibilities.

(a) Most people embrace with relative sincerity, at least most of the time, the *legal ecology* of a stateless society. That is, they recognize, embrace, and support the *system* of institutions responsible for maintaining order in such a society. They value not only their own regimes and their own positions in legal disputes but also the *constitution*, if you will, of the society—the underlying framework of basic rules on the basis of which the legitimacy of dispute-resolution institutions can be assessed.^[39] This sort of basic loyalty to the constitution—the sort of thing on which proponents of state authority seem consistently to rely—would lead people to support institutions that impeded efforts designed to cartelize the provision of dispute-resolution services in particular. It would do so both

because such efforts would violate people's basic rights and because they would deprive people of the benefits of the stateless society's legal ecology. Noncooperation with cartelization efforts and active support of institutions that could be expected to resist such efforts would both, therefore, restrain cartelizing mischief by elites in such a setting

(b) Many people reason like pure Hobbesian agents—open to predation but avoiding it because of its costs. Such agents would still have reason to favor the legal ecology of a stateless society featuring competing legal regimes because such an ecology would benefit them as consumers. Of course, they might be delighted to impose their will in predatory fashion on others. But they would have every reason to resist elite groups that sought to treat *them* in predatory fashion. And their resistance could be expected to raise the costs of predation sufficiently that elites might grudgingly avoid it.

Both moderately moral agents—ones certainly no more moral than those needed to sustain a constitutional state—and potentially rapacious ones, then, would likely restrain cartelizing mischief in the part of elites.

(2) If a state is really the only thing that allows elites to cartelize in such a fashion, why would they not create one?

My answer to this question should be apparent: because those they seek to transform into their subjects will not regard them as legitimate, will not obey them, and will actively resist them. Once the mystique of state authority has been stripped away, elites will find it difficult to convince their intended prey that their attempts to rule are legitimate or necessary, so they will have little choice but to attempt to rule by force. And, in so doing, it seems as if they will meet with resistance from those who would prefer to avoid being exploited—both those who reject exploitation as immoral and also from those who simply say “no” to it on prudential grounds. Elites will seek to create states for their cartelizing benefits; but creating a state is a difficult business when those who are to be subject to it see it as neither legitimate nor necessary.

Endnotes

[39.] Cp. Roderick T. Long, “Market Anarchism as Constitutionalism,” *Anarchism/Minarchism: Is a Government Part of a Free County*, ed. Long and Tibor Machan (Aldershot: Ashgate 2008) 133-54.

LIBERAL PLURALISM AND IDEOLOGICAL INSTABILITY

by Jeremy Jennings

I too would like to thank Jacob Levy for his thoughtful and helpful responses to my comments and those of my fellow conversationalists. Through these responses he has more clearly defined his argument in RPF and certainly helped me better to understand where exactly he stands. One specific point he makes is well worth recalling; namely, that “the gradual evolution of ancient constitutionalism into modern pluralist liberalism was the work of theorists after Montesquieu to think about pluralism without privilege.” I had never thought about it this way before, but of course, this being the case, it helps us to explain why this tradition of thinking did not perish, along with much else of worth, in the cataclysm that befell the *ancien régime* in 1789. If Tocqueville is probably the best example of how this development occurred, there are many others: the point is that the claims of associational life were relocated to a new and emerging democratic society. For this we have much to be thankful for.



Charles Louis de Secondat, Baron de Montesquieu

However, the thing that most impresses me in RPF and in Jacob Levy's comments is his insistence, as expressed in his first reply, that, although liberal thinkers have shared a deep attachment to freedom, "their basic sensibilities about where to find threats to it and how to defend it often pointed them in opposite directions." This in turn leads him to a conclusion that also merits being repeated: "for lots of purposes in political and social theory we need to make do with tendencies and generalizations and institutional approximations." As we know, most contemporary political theory does not heed this advice, and it is all the poorer for it.

Clearly, much of the conversation has followed from Jacob Levy's first rejoinder and his remark there that his argument about pluralism has to be seen against a "backdrop of the Weberian State." As he concedes, in RPF he did not emphasize enough that neither ancient constitutionalism nor its modern pluralist version were calls to "abolish central authority in favor of smaller units." This allows him to claim that Gary Chartier has misunderstood where he stands and also to reject David Hart's observations about the predators who abuse the power of the modern bureaucratic state. More intriguingly it encourages Jacob Levy to describe him as a "non-anarchist."

I can understand what Jacob Levy means by this – the state is a social fact, etc. – although this was not a concept

with which I was familiar. But it did make me think of where I started more years ago than I care to remember: studying thinkers like Georges Sorel and the wider anarcho-syndicalist tradition in France. First, we should note that, unlike Jacob Levy, these people quite definitely did not exclude commercial associations from their considerations. Far from it, in fact. For them, we were first and foremost *homo faber*, and the primary intermediate institutions they focused upon were trade unions and cooperatives. As Gary Chartier observes, it is odd that later liberal or proto-liberal writers seem to have ignored this very important dimension of the picture. After all, for all our contemporary preoccupations with gender and ethnicity, we have come increasingly to define ourselves not by what we believe but by what we do. Second, I was always troubled when my French acquaintances characterized Sorel as a liberal. Surely, he was a Marxist! But I quite quickly saw that Sorel was a pluralist – he was, for example, virulently opposed to the French state's attacks on the Catholic Church after the Dreyfus Affair – and I came to see that the one abiding theme that tied his voluminous writings together was a detestation of the Jacobin state. He also loathed Rousseau!

I mention this because, when I looked beyond Sorel to his many very intelligent admirers, I was struck by the remarkably diverse political journeys they were subsequently to take. Sorel himself developed an enthusiasm for Lenin (naively believing that Lenin genuinely thought that all power should go to the *sovjets*); some came to admire Mussolini; others, the corporatism of the Vichy regime; others still became left-of-center reformists; and some (very few) remained true to their original positions. But, odd as it might sound, all shared a detestation of the rationalism of the Jacobin state and all believed in the virtues of a rich associational life.

In other words, at the heart of this particular form of what I am now ready to describe as a liberal pluralism lay a fundamental ideological instability. Now, it could be the case that Jacob Levy's endorsement of the Weberian state enables him to avoid such a fate and as such rest secure in his attachment to views he briefly describes as being "popular among American left-liberals." If so, all well and

good. But I too believe in a robust freedom of association, religious freedom, and cultural freedom, and just about the last thing I would wish to be described as would be an American left liberal! This is why I (rather hopefully) suggested that there might be a bit of Michael Oakshott lurking somewhere in the recesses of Jacob Levy's thinking.

Again, Gary Chartier is right to comment on the way Jacob Levy emphasizes the “inescapable ambiguity of judgment and the unavoidability of trade-offs,” but, following on from the above, I wonder if the whole tradition of liberal pluralism that Jacob Levy has so skilfully recovered is not prone to the kind of ideological instability I mention. It certainly has taken its adherents to some very strange places, not the least of which was Acton's support of the Confederate states. Not only might this explain why this rich tradition of thinking required archaeological excavation, but also why, for all our agreement, Jacob Levy might look one way and I look another.

Whether this be true or not, I look forward to continuing this conversation when Jacob visits London next week!

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