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The Liberties of the Ancients: A Roundtable with Kinch Hoekstra and Quentin Skinner

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A discussion of ancient conceptions of liberty, and some of their modern implications, via discussion of papers by Clifford Ando, Jed Atkins, Eva von Dassow, Benjamin Gray, Anthony Kaldellis, Melissa Lane, Jonathan Stökl, and Philip Wood. Special issue edited by Valentina Arena: <https://www.tandfonline.com/toc/rhei20/44/6?nav=tocList>.]

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KH:

I'm very grateful to all the speakers; I've learned a tremendous amount in the last day and a half. I'm also grateful to the learned chairs we've had directing traffic. These papers fully vindicate Valentina Arena's judgement of the fruitfulness of bringing together a wide range of ancient conceptions of liberty, an exercise with many benefits, including bringing to our attention the political thought of less familiar eras and areas of the ancient world.

Scholars of ancient history and ancient philosophy have pushed past the boundaries of classical Athens and Rome, but historians of political thought have typically been less adventurous. The extraordinary power of such writers as Thucydides, Plato, Aristotle, Cicero, Sallust, and Tacitus, together with the influence of established syllabi and a preponderance of scholarship, have made a focus on other figures, periods, and places seem antiquarian, at least within the history of political thought. These papers make clear, however, that we can cast a wider net and work to refine and extend our understanding of the history of such central topics as liberty. The identity of liberty does shift over the course of these papers, and the implicit conversation between them is as much one between different ideas of liberty as it is of tracking different approaches to the same idea.

As Quentin indicated, I will say a little about each of the papers delivered yesterday, which I'll tackle in chronological order. This allows me to start with Eva von Dassow's stunning contribution on the understanding of liberty in the Near East in the late Bronze Age, with a focus on Ugarit and Emar (both in present-day Syria) under the Hittites. Professor von

Dassow's article is remarkable for combining impressive scholarship with conceptual clarity and intrepid interpretation. She takes on an entrenched view of these dynasties, according to which the king owned everything, there was no free property holding, most people served the state as slaves, and those who served the state in a higher capacity did so as a particular class. Von Dassow's argument, by contrast, is that the subject of a state was understood as necessarily free and could freely own property, and that all free subjects owed service to the state, while slaves did not.

Because citizenship, liberty, and property are the normal prerequisites of service to the state, the state therefore has a vital interest in securing citizenship, liberty, and property for the subjects. Not only is service to the state not equivalent to servitude, the two are even incompatible. When someone is indebted to another and falls into the private condition of slavery thereby, that person is no longer available for service to the state. A condition of servitude precludes service to the king, typified by military service. For a question of contemporary concern, we might wonder how, as a practical matter, one who was treated as eligible for service to the state was supposed to be protected by the state from falling into a condition of servitude, in particular debt servitude.

I wish to focus, however, on the conceptual core of this rich paper. The central idea is that there is a relational conception of liberty that tied it to the state: the subject of the state was by definition free, service to the state presupposed the subject's liberty, and that liberty entailed the duty to serve the state.

As so often, the ontology depends on the philology, and I know neither Akkadian nor Hittite. But it is nonetheless easy for me to understand on the evidence proffered why the traditional view, that the late Bronze Age king was like the master of all of his subjects, has held the field. For at the heart of von Dassow's argument is an audacious claim that the word *wardu* means 'slave' when it is unmodified or refers to a particular master, whereas to be a *wardu* of the king is to be a free subject. This requires us to see this pivotal word as flipping its valence when applied to the king. (I have a complementary concern about the argument in the conclusion that what would normally be a reference to emancipation or release from servitude must in the context of the state refer to exemption

from duty rather than emancipation—though the vocabulary (of *zukkû*, etc.) is exactly the same.) This may be right, but it does look more exorbitant, and I am left wondering whether the most economical way forward here remains that of the established interpretation: all owe service, and those who are free of the service due from slaves to their master still owe the higher service due as slaves of the king. It could still be that to be a slave meant something importantly different in different contexts, and that slavery to the king was by comparison an exalted condition. But couldn't the traditional view be modified more modestly, such that the full significance of the relational specifics was properly registered, while the continuity of conception was not elided?

It is to von Dassow's credit that she has envisioned a different conceptual structure that explains the same texts. It is certainly a loftier architecture of liberty than that to be found in the simple authority of a king who rules the state as his household. The argument that the loftier version is superior as an understanding of the texts does not come through so convincingly as the argument that the texts are consistent with that version, but the latter conclusion is significant even on its own. From the hoofbeats we had assumed a horse, but Professor von Dassow has proposed a zebra.

A vivid possibility, and one that reveals pressing issues of contemporary relevance. Consider the edicts of debt remission. The key cases seem to be of bondage because of foreclosed mortgages, and rather than the state protecting foreclosure as a profit centre, it shut down such predation as inimical to its interests. There is a puzzle here about whether the edicts of debt remission undermine the whole institution of credit, and whether there is an alternative. Having the release and restoration to liberty occur irregularly rather than at set intervals seems an effective expedient, but it's difficult to see that as policy; and as Jonathan Stökl points out in his paper, already in the eighteenth century BCE we encounter the difficulty that contracts could include the proviso that the indebtedness or servitude would remain despite any general remission to the contrary. If such provisos were upheld, then it looks like remission would only be followed by the pious and enforced against the legally unsophisticated.

Given the Ugaritic tablets that proclaim some favoured citizens exempt from service to the state, we have to qualify the principle that all

who were free had a duty to serve the state. In her talk, von Dassow mentioned that some scholars believe that these exemptions from service for the *mudu-sharri*, the friends of the king, contributed to the collapse of Ugarit and other Bronze Age polities. Surely a lesson for the ages, that one.

Jonathan Stökl's account of Leviticus 25:10 and its reception, however, can be read as a warning against drawing on ancient texts for insight into or traction on one's contemporary problems. His indictment of anachronistic misinterpretations that arise from the interpreters' own preoccupations is grounded, naturally enough, on his own analysis of the text.

The Hebrew word *děror* is what is rendered as 'liberty' in the translation of Leviticus 25:10 cast into the Liberty Bell in Philadelphia (and then quoted on another icon of American independence, the Statue of Liberty): PROCLAIM LIBERTY THROUGHOUT ALL OF THE LAND UNTO ALL THE INHABITANTS THEREOF. Stökl convincingly argues that the 'liberty' in question in this American slogan and in salient earlier understandings of the verse that he discusses differ in meaning from one another and from the original *děror*. In the Hebrew bible, the term seems to mean freedom from bondage, or rather the restoration of the bonded to their previously free status and the cancellation of their labour debt. Leviticus 25 in particular is concerned with the Sabbath Year every seventh, and the Jubilee every fiftieth year. In the Jubilee, land and indentured labourers are to be returned to their families. It might be better described as a conservative restoration of the status quo, Stökl suggests, than a progressive policy. And insofar as the Jubilee would set significant limits on inequality, exploitation, and unfreedom, these limits are founded on absolutism: Israel's god is the true owner of everything, and this is the periodic redistribution he requires.

The liberty in question, Stökl argues, is less a matter of political or personal independence, and more a theological, economic, and social principle. 'If liberty in a more fundamental way were at the heart of the matter in these texts', he says, 'there would be no reason to limit the release of indentured labourers to Israelites.' First, however, it's not clear that an economic, social, and theological understanding of liberty is less fundamental than a personal and political one; and in suggesting that it is, Stökl may succumb to the temptation he argues that we should eschew, of

privileging the aspects of a concept that are currently most salient. Second, the Hebrew and Aramaic bible does not always limit the liberation it proclaims to the Israelites, and Leviticus 25:10 makes clear by its insistence that this is not accidental (the release is *throughout all* of the land, for *all* of the *inhabitants* thereof). Third, although some may believe that liberty properly speaking requires no limitations or even specifications of scope, there would be no history of liberty to tell were we to exclude those instances where some particular form of liberty is demanded or taken by, or given to, specific groups.

Having proposed a nuanced account of what's at stake in a number of the relevant texts of the Hebrew and Aramaic bible, Stökl turns to three important periods of interpretation: the rabbinic, patristic, and early modern. In Rabbinic Judaism, Stökl argues, the focus on Leviticus 25:10 remained on an economic reading rather than moral, philosophical, or religious understandings of liberty. Despite this claim, of course there is a kind of religious underpinning to the rabbinic view, and it may be unsurprising that in the Mishnah we find rabbis who argue more or less that only rabbis are truly free (see Avot 6:2). Stökl is less happy with the reading practices of the Church Fathers in the first millennium CE, presenting them as forcing Leviticus 25:10 into Christological abstractions about the forgiveness of sins rather than debts, and spiritual rather than legal and corporeal liberation. This opens the way to later interpretations of the passage as about 'Liberty writ large', Stökl maintains, but he laments that the numerological, Christocentric, and spiritual patristic interpretations are based on inadequate hermeneutical principles.

Similar concerns animate Stökl's engagement with early modern authors. Cunaeus, Grotius, Selden, and Spinoza are presented as 'historically naive', if understandably so, given their assumptions that the biblical texts are divinely revealed, internally largely consistent, and to be read ahistorically, as if written in their own day. But this surely gives short shrift to the significant contributions of these early modern scholars precisely to the development of critical biblical hermeneutics, including their attention to inconsistency, historical contextualization, and diversity of authorship.

For whom does the Liberty Bell toll? In an understated way that is easy to miss, Stökl illustrates just how embedded interpreters are in their partial standpoints. When what became known as the Liberty Bell was cast for the Pennsylvania State House in the mid-eighteenth century, Isaac Norris, Speaker of the Pennsylvania Assembly, commissioned it with the inscription from Leviticus 25:10. The bell marked the fiftieth anniversary of the Charter of Privileges, which guaranteed to all resident theists ‘the Freedom of their Consciences, as to their Religious Profession and Worship’ and a broadly republican frame of government. As a slaveholder, Norris doesn’t seem to have countenanced liberty throughout the land for *all* its inhabitants, despite the clear focus in Leviticus on the freeing of slaves. ‘Obedience without liberty is slavery’, wrote William Penn in the 1682 Frame of Government for Pennsylvania, and this republican conception of political unfreedom as slavery surely helps to make vivid the harm of such unfreedom. But to equate political unfreedom with slavery may not help adherents of the republican conception to prioritize the fate of those living in what we might then be inclined to distinguish as *real* slavery, such as those slaves owned by William Penn and Isaac Norris.

A final question for Professor Stökl, given that he has demonstrated how even the leading intellectual lights of each era invariably read into the text their own preoccupations and limitations. He finds that these interpreters consistently fall short of the standards of critical academic biblical scholarship. But can we begin to glimpse how it is that that interpretative framework itself imposes its own limitations and time-bound preoccupations onto given passages or questions? Or have critical biblical scholars like Prof. Stökl at last transcended the cycle of distorting normative paradigms that he traces in his essay?

With Clifford Ando’s paper, we move forward to Rome, but will see that the religion of the Jews remains a test case when considering Roman ideas of religious liberty. Cicero insisted that *religio* was based on a shared law (*De legibus* 1.3). Robert Turcan, John Scheid, and a number of others have taken such a delineation as primary, arguing that the Roman view of *religio* was defined in terms of the *res publica* or *civitas*, and that a distinction between public worship and private worship was accordingly fundamental. Professor Ando joins this tradition with an argument about the use of distributive and reflexive pronouns, and proposes a similarity of doctrine

where he finds this similarity of form: ‘it is preeminently juridically constituted communities that are sovereign over themselves and some territory that are entitled to use their own ... religion’.

Professor Ando is surely right that Roman conceptions of religious liberty and religious belonging were configured in ways that are alien to us, and he lays out a wide-ranging account of this configuration. To understand and assess his proposal that the Roman view was that each *civitas* is entitled to its own religion will require us to understand what kind of *civitas* is meant, and what kind of *entitlement* is meant (who grants or guarantees it? is it tantamount to a kind of right?). We might also wonder about the angle given to these questions by Ando’s choice of particular authors and documents, but can consider now only a few of the passages he offers as evidence for the claimed civic entitlement to one’s own religion.

In our first case, Livy (1.24.6-8) constructs an account of the treaty between the Romans and the Albans that was to give one of them dominion over the other according to the outcome of the triple combat of the Horatii versus the Curiatii brothers. Ando says that the account shows that ‘the counterparty to the Romans ... is fully entitled to use its own oath and swear by its own gods. (Indeed, the proprietorial “their own” is repeated four times.)’ But this passage does not say or show that the Romans regard the Albans as *entitled* to use their own oath and swear by their own gods, especially as a matter of law or right attaching to a *civitas*.

Any treaty or other *foedus* will require a kind of juridical standing for both parties. The point of requiring a foreign party to swear by what is holy to them is of course that you do not effectively bind them if you have them swear instead by what is holy to you, which they may regard with indifference or disdain. That would be like trying to ensure your enemy’s compliance with an agreement by holding your own mother as hostage rather than his. We can conclude nothing about Roman religion or Roman toleration from the fact that the Romans were (at least) content for the Albans and others to swear with their own sacred oath, according to their own religion, and by their own gods. The Albans (and others) are presented as similarly content to have the Romans swear according to their own oath and religion—not because the Romans were entitled to do so by the Albans’

conception of politics and religion, but presumably because the Albans preferred for their enemy to regard themselves as bound by their oath.

Consider also the account of the worshippers of Bacchus in Livy (39.13.13-14, though perhaps 39.16.1-4 would be stronger evidence for Ando's argument). This passage is not marked by the same formal elements, but Ando focuses on the statal status in the claim (of the freedwoman Hispala) that the worshippers are "very nearly another *populus*," which is to say, another citizen body'. One thing to note is that this recognition of status does not trigger a recognition that therefore these worshippers are entitled to their own *religio*. On the contrary, the overall diagnosis of which this is a part leads to a brutal clampdown on these worshippers, in which thousands are executed by the Roman state apparatus.

Scheid and others have argued that the repression of the Bacchanals was essentially political, motivated by the political preservation of Rome. Ando adds an argument that the state reaction is to be explained by classification and status. Yet it is not merely the statal *form* that catalyzes the reaction. Livy presents the perceived threat as social, moral, religious, and political; and the political risks are seen as real and material, especially as there is 'a prodigious huge number' of worshippers (39.13.14; cf. 39.15.8 and 10). The rites, Livy lets us know, were seen as the site of manifold crimes and vices, including perjury, forgery, contamination of evidence, poisonings, rapes, kidnappings, and many murders. The threat to the state is presented as overwhelming.

The consul justifies crushing the cult by warning against bad or perverse religion, which he says makes divine authority a justification for crime and sets up a conflict between civil law and a perception of divine law (Livy 39.16.6, re. *prava religio*). Thus the magistrates must search out and burn prophetic books, forbid foreign cults and rites (39.16.8 and 9: *sacra externa; externo ritu*), and undertake other actions that will also inevitably constrain and form private worship. The consular edict is concerned with religious encroachments on state prerogatives, but in clearly restricting private worship it also challenges Ando's idea that private worship 'lay

beyond state interest' or was 'outside elite knowledge interests altogether'.¹ We may thus doubt that people were *entitled* to worship as they chose within the private realm, and suppose instead that they enjoyed a contingent absence of current official concern, rather than private religious liberty. Private worship was beyond state interest unless the state decided that it wasn't.

The final case is Ando's use of a renowned phrase from Cicero's *Pro Flacco* (69): 'every political community has its own religion', *sua cuique civitati religio*. He calls this 'Cicero's famous dictum on religious pluralism', and accepts the view, standard among historians of religion and historians of Rome, that it is an authoritative formula of Roman religious toleration. As we will see when we turn to the text, however, this established interpretation is erroneous: Cicero does not here endorse toleration, an entitlement to religion along civic lines, or even religious pluralism. Although the (itself deeply ambivalent) sixteenth-century template *cuius regio, eius religio* may conjure up this phrase, that is hardly the policy Cicero was proposing.

It's first worth remark that, on the tolerationist interpretation of the claim, its scope and meaning are generally underspecified. It is unclear how the link between *civitas* and *religio* results in toleration or official pluralism. Professor Ando seems to suggest that Roman toleration was conditioned by this link, but sometimes treats the relevant *civitates* as 'sovereign' (e.g., the Albans squaring off against the Romans), and sometimes as subordinate units under Roman rule (e.g., in the discussion of 'Roman towns' in the conclusion). Is this a recognition of the entitlement of other states to their own religion, or an entitlement to local religious self-determination within the Roman empire? To which kind of *civitas* is the formula that every one has (is entitled to have?) its own *religio* supposed to apply?² The proposed theory takes an entirely different shape according to the answer.

¹ The consular edict of 186 BCE, as represented in the inscription normally called the *senatus consultum de Bacchanalibus*, says that these sacred rites may be performed 'neither in public, nor in private, nor outside the city' (NEVE IN POPLICOD NEVE IN PREIVATOD NEVE EXSTRAD VRBEM) unless approved by the praetor urbanus and the senate (*Corpus Inscriptionum Latinarum* I² 2, 581 (Berlin, 1918), where Theodor Mommsen sensibly calls it *Epistula consulvm ad Tevranos de Bacchanalibvs*).

² *Civitates foederatae, civitates sine foedere liberae, civitates sine suffragio, civitates stipendiariae, civitates immunes, civitates optimo iure*, or some combination of these, or all of them? All *coloniae* and *municipia*?

To the text. The *Pro Flacco* is structured to undermine the credibility and worth of the accusers in comparison with the service to Rome provided by a distinguished citizen, Lucius Valerius Flaccus, who is charged with malfeasance while propraetor of the province of Asia a few years earlier. Cicero targets accusers and witnesses by aggressively maligning the entire groups they are from, especially Asiatics, Greeks, and Jews. Those who accuse Flaccus would unscrupulously and mendaciously harm Rome, so the Roman jury (composed, even after the *lex Aurelia iudiciaria*, exclusively of senators and those who were in the highest wealth census level) must disregard them. After sneering about Phrygians (who ought to be beaten), Mysians and Carians (who are contemptible), and Lydians (who are typically slavish) (65), Cicero says that what the Jews have is really but a *barbara superstitio*, and ‘to oppose this barbarous superstition was [an act] of steadfastness, to defy the multitude of Jews ... in defence of the republic was [an act] of the greatest dignity’.³

The particular issue at stake is the religious requirement, based on Exodus 30:11-16, that all adult male Jews send an annual tax to the Temple at Jerusalem. Flaccus as propraetor prohibited this practice in his province, and moved to seize such gold as had been collected in violation of the prohibition. Cicero is trying to address the suspicion that Flaccus did this for his own gain, a suspicion he presents as stoked by the discontent of the Jewish mob. He says that Flaccus acted for the public good when he despised the Jewish crowd in this way. Cicero then considers an objection that had probably already been pressed by Laelius (a protégé of Pompey), that Pompey, out of respect for the religion of the Jews, did not touch anything in the Temple when he recently captured Jerusalem. Cicero’s response is revealing: ‘I do not believe that what hindered this most excellent commander was the religion of Jews and enemies’; rather, his restraint was a matter of outstanding wisdom, for ‘in such a suspicious and slanderous city, he did not give his detractors any grounds for talk’.⁴ That is,

³ Cicero, *Pro Flacco* 67: *huic autem barbarae superstitioni resistere severitatis, multitudinem Iudaeorum ... pro re publica contemnere gravitatis summae fuit.*

⁴ Cicero, *Pro Flacco* 68: *in primis hoc, ut multa alia, sapienter; in tam suspiciosa ac maledica civitate locum sermoni obtrectatorum non reliquit. non enim credo religionem et Iudaeorum et hostium impedimento praestantissimo imperatori.* The referent of *civitate* here is very probably Rome: cf. *Pro Flacco* 7, where Cicero refers to Flaccus’ tenure as a judge in Rome (*in maledicentissima civitate, in suspiciosissimo negotio*).

he is *rebutting* the idea that Rome should respect the religion of the Jews.⁵ And this is when he goes on to argue that rather than facilitating others' religious requirements, like the Jewish Temple tax, the Romans should be following the contrary requirements of their *own* religion. Yes, 'every *civitas* has its own religion, Laelius—and we have ours.'⁶ As Cicero indicates by addressing the prosecutor by name between one clause of this sentence and the other, the famous phrase *sua cuique civitati religio* is likely that of *Laelius*, quoted by Cicero before he offers *nostra nobis* as a curt rejoinder.⁷

After all, Cicero has just characterized Judaism (or at least the sacred requirement of the Temple tax) as a barbarous *superstition*—a Roman antonym of *religio*. And he associates superstition with wickedness that is rejected by the gods, with madness, pollution, barbarity, nefariousness, and that which is opposed to what pleases the gods, viz. 'piety, religion, and righteous prayers'.⁸ Especially once designated as superstitious, religious rites could be rejected, and indeed punished; and superstition was a common Roman name for the religion of others, whether minorities within

⁵ [The most recent discussion is Miriam Ben Zeev's 'The Myth of Cicero's Anti-Judaism' (*Religio licita? Rom und die Juden*, ed. Görge K. Hasselhoff and Meret Strothmann (Berlin: De Gruyter, 2017, pp. 105-134), which essentially updates the line of argument already in Max Radin's *The Jews Among the Greeks and Romans* (Philadelphia: The Jewish Publication Society of America, 1915, pp. 220-235). Viz.: Cicero's scornful anti-Judaic pronouncements *may* be due solely to what he judges effective in a given rhetorical context rather than ever reflecting his personal convictions, especially given that those pronouncements are broadly similar to Cicero's strategic vituperation of other non-Roman religions and groups. I do not think that it follows from these points that Cicero's anti-Judaism is a myth; in any case, granting them does not impair the argument I am making here.]

⁶ Cicero, *Pro Flacco* 69: *Sua cuique civitati religio, Laeli, est, nostra nobis.*

⁷ One might argue that this interpretation leaves the meaning of the maxim intact, but simply proposes to reassign its authorship to Decimus Laelius rather than his adversary, Marcus Tullius Cicero; and that this would reinforce its status as a standard Roman view. We have little information about the views of Laelius, however, or what he meant by the phrase, if it is his. We might reasonably assume that he presents this idea as part of an argument that Flaccus treated the Jews badly; but we can't say much more (about whether it was invented for the occasion, repurposed from another context, etc.) without addressing Laelius' conception of the demands of the genre of accusation, his perception of the audience, and so forth. Cicero's fierce opposition shows at a minimum that the formula was not an established piety, and that at the least we need to acknowledge Roman contestation, ambiguity, and ambivalence about these matters.

⁸ Cicero, *Pro Cluentio* 194: *pietate et religione et iustis precibus*; cf. the distinction of *superstitio* and *religio* in *De natura deorum* 2.28.71-2 (Lucilius).

the empire or foreigners.⁹ In the context of an argument against respecting the religious requirements of the Jews, that *sua cuique civitati religio* is not Cicero's own view is indicated not only by his reference to the superstition of Judaism, but also by his references to the *gens*, *natione*, and *multitudine* of the Jews rather than their *civitas* (a word he never applies to them elsewhere). The *civitas* to be respected is that of Rome; it is *totum statum civitatis* that he urges the jurors to defend against Laelius' prosecution (*Pro Flacco* 3).

Cicero immediately and repeatedly underlines his message of religious enmity. We need not defer to the religious requirements of the Jews; not least, they have warred on us, and we have conquered them. What is more:

When Jerusalem was still standing and the Jews at peace [with us], even then the demands of their religion were incompatible with the splendour of our empire, the dignity of our name, and the institutions of our ancestors; now this is all the more true, since that nation [*gens*] has shown by arms how it felt about our rule. It has shown how dear it was to the immortal gods by being conquered, made a tributary, and made a slave.

Wherefore, since you see that what you pretended was a crime is wholly transformed into something praiseworthy....¹⁰

Cicero not only does not deny the charge that Flaccus had not respected the religious requirements of the Jews, he embraces it, and suggests that's what being a good Roman requires (and what it required even when Jerusalem was politically independent from and at peace with Rome). [Cicero treats Jews at home and abroad as belonging first and foremost to the Jewish *gens*, and presents Pompey's forceful conquest of the Jewish enemy in Judea as a model for how the Jews already within the Roman empire are to be viewed and treated.] We see here not the distributive and reflexive language we might expect on Ando's analysis, nor the language of formal juridical or

⁹ At least by the time of Marcus Aurelius, superstitious rites were punishable by banishment to an island (*Digest* 48.19.30, Modestinus, *de poenis* 1; compare Tacitus, *Annals* 13.32 re. the earlier prohibition under Nero).

¹⁰ Cicero, *Pro Flacco* 69-70: *Stantibus Hierosolymis pacatisque Iudaeis tamen istorum religio sacrorum a splendore huius imperi, gravitate nominis nostri, maiorum institutis abhorrebat; nunc vero hoc magis, quod illa gens quid de nostro imperio sentiret ostendit armis; quam cara dis immortalibus esset docuit, quod est victa, quod elocata, quod serva facta* [accepting the 1531 emendation of François Dubois (MSS: *servata*)]. *Quam ob rem quoniam, quod crimen esse voluisti, id totum vides in laudem esse conversum....*

politico-religious parity along political lines, but the language of bluntest contempt (*victa, elocata, serva facta*).

Far from a slogan of toleration or formal religious entitlement, the phrase that every *civitas* has its own *religio* is invoked here in the context of religious and political enmity, and serves the condemnation of the Jewish religion (if it even merits the name) as antithetical to the rule of Rome. Strikingly, Cicero claims that this is not just the proper Roman view, but the view of the gods themselves. He characterizes the Jews along with the Syrians as ‘peoples (*nationes*) born to slavery’ (*De provinciis consularibus* 5.10: *nationibus natis servituti*). By contrast, the Romans are a nation born to mastery, and it is precisely their own *religio* that ensures divine favour and imperial domination.¹¹ When they had a sovereign state at peace with Rome, the religion of the Jews was none the less inimical to all that Rome stands for. And their conquest by Rome does not give the Jews religious liberty or entitlement to the equality of *sacra* within the empire; on the contrary, it makes them slaves, and shows that the gods themselves despise their religion and approve that of Rome. You and the Jews want us to pay heed to the requirements of their religion, Laelius; but we have an incompatible religion to which we must pay heed, the religion of the victors, not the superstition of slaves. So Cicero. Like the other texts that Ando brings together in his argument, this one bears analysis for many reasons. But not because it articulates a defence of religious toleration or a general position of the entitlement to religious self-determination.

Professor Ando concludes with a contrast between Anglo-American liberal states, which he takes to be individualistic and rights-based, and republics in general, which he casts as communitarian. Those who are Anglo-American liberals must find it hard to grasp republican thinking about religion, he believes, in which religion is a fundamental commitment of communal culture entailed by citizenship. That republics are necessarily communitarian in this way (or that they are so in particular about a community religion) seems doubtful, theoretically and empirically. Even if we restrict ourselves to considering the Roman approach to religion, in particular the allowance of multiple forms and objects of worship in tandem

¹¹ Cicero, *De natura deorum* 2.8 and 3.5, *De haruspicum responsis* 19, and *Pro Milone* 83; cf. e.g. Livy 5.51.4-5 and 5.52.2, and Valerius Maximus, *Facta et dicta memorabilia* 1.1.8.

with an insistence on conformity to a public civil religion, Anglo-Americans may well think that there is something familiar alongside what is strange.¹²

Whereas Clifford Ando focused on the form and consequences of a Roman conception of religion that followed political boundaries, Philip Wood considers how religious communities in the Roman East and in Sasanian Persia articulate their political thought when they have been excluded from or pushed to the margins of established political and ecclesiastical structures. After the council of Chalcedon in 451 CE, a schism ensued between those who accepted and those who rejected its theological conclusions. Professor Wood analyzes how two of the communities who repudiated the settlement formulate conceptions of freedom once they have been politically marginalized. Ando called our attention to the communal and statal basis for Roman religious understandings under the empire, arguing that this makes them hard to grasp for contemporary citizens of liberal states, who understand citizenship in terms of individual rights. Wood argues that the freedom that was attached to membership in the Roman empire was understood in terms of individual rights, whereas non-Chalcedonian religious groups understood freedom in terms of the liberty of those *communities*, from which the state with its guarantees was distinct and to which it was often antagonistic.

Rather than drawing on the political theory of Greece, Wood argues, these Christian minorities appealed to biblical models of a chosen people in exile. The fundamental liberty to which they laid claim was to do whatever they understood their god to require of them, including maintaining the identity and boundaries of their community and enforcing what they regarded as orthodoxy. Wood bases his analysis on hagiographies, which I emphasize because it may make the result more predictable. Perhaps it is unsurprising, that is, that praise of the saints focuses on their imitation of biblical models and their zealous defence of the true faith even when it is opposed to political authority. Not least, this choice of sources may raise

¹² The idea that America is neither republican nor guided by a civic religion is denied at length and in detail by two recent histories of American civil religion. One focuses on 'prophetic republicanism' within the United States, and the other on how the United States is driven by a 'divine right republicanism' in its foreign relations: Philip Gorski, *American Covenant: A History of Civil Religion from the Puritans to the Present* (Princeton University Press, 2017); Walter A. McDougall, *The Tragedy of U.S. Foreign Policy: How American Civil Religion Betrayed the National Interest* (Yale University Press, 2016).

questions about the scope of the conclusions, and whether we can generalize about the character of political discourse in these communities from eulogies of the saints. (Wood may of course have a response to this, for example from comparing these cases to the political models and language to be found in Chalcedonian hagiographies.)

In 1 Peter 1:1, Peter addresses the faithful as the chosen (*eklektoi*), who are foreigners or refugees (*parepidēmoi*) in their native lands. He goes on to say (1 Peter 2:16) that they are free (*eleutheroi*) but should live as slaves of God (*hōs Theou douloi*). Both John Rufus and John of Ephesus focus on the holy boldness of free speech or *parrhēsia* as a way to describe how the saints manifest freedom while living in strict obedience to the divine. Wood gives the example of the life of Z'ura by John of Ephesus, in which Z'ura, clothed in rags, confronts and condemns the emperor Justinian and pope Agapetus. John of Ephesus presents Z'ura's *parrhēsia* as enabled by his orthodoxy, Wood says, and the effect is to embolden the community of believers in every city such that they too have *parrhēsia* and openly hold assemblies. The case of Z'ura illustrates how orthodoxy enables courage and virtue, which makes Z'ura free (as a parrhesiast), and this in turn liberates the religious community across different cities.

Especially in his later writings, however, John of Ephesus is willing to contemplate coexistence with the Chalcedonian churches and compromise with the state authorities; and his lessons are, Wood says, more about 'ascetic renunciation and moral advice'. Wood plausibly suggests that this somewhat accommodating approach may be due to his particular time and situation, including a reckoning with the religious mandate provided by Justinian's imperial success in reconquering Italy and North Africa.

On the other side of the Euphrates, a Christian minority struggled under the Sasanian empire, the last pre-Islamic Persian empire. The Zoroastrian religious establishment was inextricably tied to a political establishment that persecuted the Christian community. Wood focuses on two lives of saints, one of Abda and the other of Aba a century later. Context for the former includes shah Yazdegard's attempt to keep a religious peace in place among different sects. Context for the latter includes a culture of assimilation and socialization between Christians and Zoroastrians, and shah Khusrau's attempts to protect Aba and the Christian

community. Against the first backdrop we are given an account of the zeal of Abda and his deacon Hosea, to show that Christians should stay true to their orthodox religion and despise the norms of the state and of Zoroastrianism, even by destroying its temples. Against the later backdrop, we are given an inflexible saint who repudiates accommodations with the Zoroastrians and rejects the authority of their courts. In both cases, a kind of *parrhēsia* of orthodoxy suggests a kind of Christian liberty that is set against multi-cultural or multi-faith accommodation.

In America, one can currently hear a defence of some form of this conception of Christian liberty. At the outset of his essay, Wood connects his materials with contemporary analysis. Although he doesn't explicitly endorse the suggestion, his own presentation resonates with his opening representation of Elizabeth Schubert's argument that we need models for political thought that aren't based on the Greek polis, but are appropriate for (in Wood's paraphrase) 'minority groups in the contemporary West, who define themselves by their religion, and mark this in their dress, diet and worship ... and whose concerns for "liberty" are framed in terms of communal liberties rather than individual ones'. But the actions of Z'ura, of Abda, and of Abda's deacon Hosea are hard to distinguish in principle from models of zealotry and intolerance. As Professor Wood notes, this is the *parrhēsia* of orthodoxy. The truth justifies not just talking out of turn, but destroying the temples of the unbelievers; it is a truth that is not negotiated in the most neutral terms available, but a religious truth that aspires to be encompassing and uncompromising because it is the truth.

Christian *parrhēsia* also plays a role in Anthony Kaldellis's bracing corrective about Byzantine conceptions of freedom. He highlights John Chrysostom's report that the pagans were amazed by the *parrhēsia* of the followers of Christ, recognizing their own comparative servility and unfreedom (*douloprepeia kai aneleutheria*). As in the different contexts discussed by von Dassow (and Stökl), so too in Byzantium there were cases where an emperor makes clear that he wishes to rule over free citizens rather than slaves; where he follows through on relieving dependency due to debt; and where *douleia* and *eleutheria* were presented as compatible. In particular, a free citizen of liberal character (*eleutherios*) could nonetheless be understood as a *doulos* (normally, 'slave', though here more like one in an honourable position of service) to the emperor.

Resisting Greek and ‘Oriental’ associations that often dominate an understanding of Byzantine political thought, Kaldellis prefers the self-identification of this empire as *Roman*. He points out that the Byzantines did not refer to themselves as Byzantines, for what we call Byzantium they called *Romanía*, the realm of the Romans. On this foundation he makes a strong case that the Roman value of *libertas* was much discussed and valued by these later Romans. Kaldellis insists on this continuity with Roman values enough, in fact, to raise the question whether there are important and *distinctive* ideas about liberty in this period. The case that the Byzantines were committed to the value of liberty is highly significant in itself, but we have yet to learn what intellectual contributions to understanding liberty were made by the Byzantines that were not essentially mainstream conceptions of earlier Romans.

Kaldellis makes the argument for the Byzantine commitment to liberty by taking their claims about liberty under the emperors at their word, and by arguing against the conception that Roman *libertas* was especially full and vital in the Republic. Indeed, he argues that only in modern times was it called distinctly thus, whereas ‘Roman writers continued to refer to their society as the *res publica* under the empire: they saw no dissonance’. Kaldellis here faces a historical and a theoretical challenge. He implicitly rejects an influential historical account, dating back at least to Tacitus, according to which imperial Rome adopted the *names* of Republican institutions and values, while the realities were quite different. It would be helpful to know how that account can be discounted or dismissed. (There is a striking contrast here between Professor von Dassow’s case for a heterogeneous historical reality that is masked by homonymy, and Professor Kaldellis’s insistence that the continuity of terms gives us good reason to reject claims of historical dissimilarity.) Kaldellis also implicitly sets aside theoretical arguments that republican forms of self-rule were, or are, *necessary* for liberty. These arguments—to which I think Professor Skinner will refer—provide a recognizably Roman challenge to the tenability of what Kaldellis insists is a Roman understanding of liberty.

In many contexts, Kaldellis argues, the Byzantines considered the emperor ‘the chief bulwark of freedom’. While a republican sceptic may wonder about the motivations for and reliability of the Byzantine claims to

this effect, and may well criticize their theoretical coherence, Kaldellis hereby puts the Byzantine understanding of liberty in an important tradition in the history of political thought. Many before and since who defended or lionized monarchs did not loathe liberty, but were looking for a champion of freedom and security, typically against the encroachments of oppressive elites.

Kaldellis criticizes the periodizers for their polemical simplifications, so it seems fair to object that his presentation of them can be polemical and simplifying. To focus on one example: in his chapter on the change of state, Montesquieu in his *Considerations on the Causes of the Greatness of the Romans and Their Decline* is not primarily concerned with a sharp shift from a Roman to a Byzantine form of rule under Diocletian. He discusses a range of changes over time after Probus, especially those brought in by Constantine (and says that it is by *not* following the precedent of Diocletian that Constantine undertakes ‘less a change than a revolution’). Montesquieu’s view of change here is not based solely ‘on a subtle perception of a change in “affability”’, but on a series of significant factors that, he argues, led to emperors who were (among other things) gentler and less bloodthirsty, characterized by fewer massacres and lesser vices.¹³

In twenty-three thumbnail chapters, Montesquieu ventures a spirited analysis of the rise and fall of the Romans over twenty-three centuries. In doing so, he frequently indicates complexities, but naturally he also engages in many simplifications. For anyone wishing to catch historical shortcuts, Montesquieu provides a well-stocked pond. More generally, when encountering divisions into epochs, it is fairly safe to assume that the full story involves greater continuity and complexity.

Yet we do have a tendency to believe in our own creations, and periodization tends to determine our view of what was the case, and not only vice-versa. Kaldellis provides an important corrective, therefore, especially to historians of political thought, when he lets us know in no

¹³ Montesquieu, *Considérations sur les causes de la grandeur des Romains et de leur décadence*, ch. 17 (‘Changement dans l’État’): ‘moins un changement qu’une révolution’ (the only instance of ‘changement’ in this chapter other than in the title). What is more, in line with its etymology, ‘affabilité’ in the eighteenth century did not signal an easy friendliness, but a superior’s (and especially a ruler’s) openness in receiving and listening to inferiors or subjects—a not inconsiderable mark of the character of a regime.

uncertain terms that we should not accept a prevalent caricature of Byzantium and its political thought. On his rousing account, it turns out that Byzantium was liberty-loving. At the least, he has done us all a service with a vigorous exhortation not to be lazy or ignorant when it comes to the historiography of liberty. We must be wary of stories that are triumphalist, or critical when the real target of criticism is the critic's own society, or romantically backward looking. Professor Kaldellis has demonstrated that some important later thinkers manage to commit all of these sins at the same time when characterizing Byzantium, and powerfully suggests that we have inherited from them a simplified periodization that hides from view an important period in the history of liberty.

[To QS] Over to you!

QS:

These are deep as well as learned comments, and I hope there will be a chance to discuss them thoroughly. I now plan to take a slightly different tack. I shall say something about today's talks. But I want to make sure that I pick up Valentina's challenge, so I shall concentrate on trying to uncover some connections I see between the discussions we have been having about freedom in antiquity and some contemporary debates. This is treacherous terrain to negotiate, of course, and a salutary warning from Kinch is ringing in our ears, but here goes.

Professor Jed Atkins refers throughout his paper to the idea that freedom essentially takes the form of non-domination, and asks how far this analysis captures the Roman understanding of freedom as articulated in particular by Cicero in *De republica*. I should like to begin by entering a quibble here. When the Roman moralists and historians – and many early-modern writers too – characterise loss of freedom as the outcome of a dominating relationship between two persons (or more strictly between two wills) they do not usually approach the issue from the perspective of the *dominus*. Rather they tend to focus on the figure who is dominated and ask what makes that person unfree. As Professor Atkins rightly notes, they generally answer with a definition of what it means to be a slave. Slaves are *ex hypothesi* unfree, but the crucial point that many Roman moral philosophers as well as jurists want to make is that the lack of liberty suffered by slaves is not fundamentally a matter of being coercively

prevented from acting at will; it is a matter of being subject to the arbitrary power of someone else. To be a slave is thus to live *in potestate*, as Ulpian says in the *Digest*, in a condition of subjection to the power of a *dominus* at whose mercy you are condemned to live.

Professor Melissa Lane fascinatingly argues that Plato in the *Republic* already adopts a similar approach. As she observes, Plato has often been treated as a proponent of the ‘positive’ theory of liberty. To be free, on this account, is to act in a determinate way, and specifically to follow a life of virtuous action, so that (in John Milton’s words) only the virtuous can be truly free. Professor Lane maintains, by contrast, that Plato already approaches the issue in a manner very similar to that of the Roman jurists and moralists. To grasp the concept of freedom, Plato believes, what we basically need to understand is what it means to be a slave.

This way of thinking seems to me important in relation to some questions we currently ask about individual liberty. There has been a marked tendency in recent debates to assume that the basic antonym of freedom must be constraint or coercion, whether of the body or the will. This commitment has the effect of making it appear that the fundamental question to ask, if you want to get clear about freedom, is what it means to be coerced. But this approach stands in strong contrast with the governing assumption that Lane already finds in Plato, and that we find again among the Roman jurists and moralists. There the fundamental contrast is not between liberty and coercion but between liberty and dependence, and freedom is in effect defined as absence of dependence on the arbitrary will of anyone else.

Professor Lane also notes that Plato is deeply interested in a further question about freedom that a number of Roman writers – especially the historians – subsequently go on to emphasise. This further question is about the phenomenology of slavery. Here again, it seems to me, the classical writers have something to tell us that is not merely of philosophical interest but embodies a challenge to some of our current ways of thought. Professor Lane notes that Plato sees the problem in part from the point of view of the kind of figure who dominates others, especially the figure of the tyrant. The tyrant, no less than the slave, is seen by Plato as someone whose dispositions and actions do not befit a free person. The Roman writers are

more interested in considering the same phenomenon from the point of view of those condemned to living in dependence on others. The basic claim they make is perhaps most memorably summarised in Tacitus's mournful reflection that it is almost impossible to be a slave without becoming slavish. Like Sallust before him, Tacitus sees a strong and inevitable connection between servitude and servility. The crucial mechanism on which both writers concentrate is that of self-censorship. If you live wholly at the mercy of someone else, the worst feature of your predicament is never knowing what may happen to you. Perhaps nothing bad will happen, but you can never be sure. So it becomes an elementary survival strategy to try to do everything possible to keep out of trouble. It will always be rational to find out what your *dominus* wants and turn his desires into the rule of your actions. Above all you must ensure that you avoid doing anything that might look like defiance or criticism, or indeed anything that might have the effect of exciting ill-will.

The underlying claim here is that self-censorship – like any other kind of censorship – has the effect of limiting freedom of speech and action. But notice that this limitation is present simply in virtue of the relationship of domination and dependence in which any slave stands to his or her *dominus*. There need never be any coercive interference on the part of the *dominus* for his will to be followed with due servility. It might even be said, as Tacitus intimates, that the *dominus* may suffer loss of face if he has to make it clear to his slaves how he wants them to behave by means of threatening them. But this is to say that there can be loss of liberty in the absence of any act of coercion or even any threat of it.

If you think that the antonym of liberty is interference or constraint, this conclusion obviously makes no sense. But it would be a mistake to infer, as many contemporary political theorists have done, that this is enough to show that there is something incoherent about the 'republican' understanding of liberty. On the contrary, what the example reveals is something that many contemporary theorists are apt to deny: that liberty can be limited and undermined even in the absence of any act of constraint. What distinguishes the republicans is their anxiety about the silent exercise of power.

Does this mean – to switch classical languages for a moment – that *ελευθερία* is the same as *αὐτονομία*? When this suggestion was raised in discussion yesterday it elicited some protests, but I can certainly see the force of the argument. Suppose you translate *ελευθερία* as *libertas*, and suppose that, following the Roman jurists, you define *libertas* as absence of dependence on the mere *arbitrium* of anyone else. Then the *liber homo* is the person who is able, in virtue of not being dependent, to act entirely according to his or her own will. But one obvious way of understanding the concept of *αὐτονομία* is to say that it names the state of someone who is able to speak and act with exactly this kind of independence. So on this account *ελευθερία* and *αὐτονομία* are effectively synonymous terms.

During our discussions, the names of the Roman jurists Ulpian and Florentinus were more than once mentioned together. As I have already noted, Ulpian is cited in the *Digest* for the crucial claim that what it means to be a slave, and hence to lack liberty, is to live in in the power and hence at the mercy of a *dominus*. But Florentinus, by contrast, is quoted in the *Institutes* as well as the *Digest* as saying that *libertas* can be defined as ‘the natural faculty of someone to do what they want unless prohibited by force or law.’ (‘*Libertas ... est naturalis facultas eius, quod cuique facere libet, nisi si quid vi aut iure prohibetur.*’) This leads me to wonder if, rather than yoking these two jurists together, we ought to be sharply contrasting them. It appears to be an implication of Florentinus’s definition that you are free to act so long as you are not prevented by law or by force. But it appears to be an implication of Ulpian’s view that your freedom will be limited, even in the absence of any such interference, by the mere fact of living in dependence on the goodwill of someone else. Florentinus seems to take the view, familiar in contemporary political theory, that freedom is nothing more than a predicate of actions. But for Ulpian freedom is in effect the name of a status – that of the free person or *liber homo* who possesses complete autonomy or *αὐτονομία*.

These are not only rival understandings of liberty; they also generate contrasting views about the relationship between liberty and law. If you think that freedom can basically be defined as non-interference, then the power of law will appear as a natural enemy of liberty, simply because law normally operates by coercing us into obedience by way of making us more frightened of the consequences of failing to obey. But if you think that

liberty ought instead to be defined as absence of dependence, then law becomes a friend of liberty. If the rule of law is imposed equally upon all, one effect will be to save us from falling into the hands of people who are able to wield arbitrary power over us. But as John Locke observes, the law ‘ill deserves the name of confinement’ if it merely saves us from falling into this kind of servitude. Here the force of law liberates us from the danger of enslavement, and consequently adds to our freedom as well as guaranteeing it, rather than limiting or taking it away.

I should like to end by offering some observations about Benjamin Gray’s and Melissa Lane’s powerful contributions to the discussion of these themes. My first observation is about liberty and political participation. One way of seeing this relationship, as Dr Gray observes, is from an Aristotelian point of view. It is possible to argue, that is, that the value of active participation in the public life of a community stems from the fact that it calls on your highest powers, in the exercise of which you become most fully free. I wonder how much Dr Gray wanted to contrast this position with Polybius’s view, which on his account appears to take the form of the purely causal claim that participation is a necessary condition of securing your own liberty.

It would be nice to think that Polybius may have influenced Machiavelli, as many commentators have indeed suggested. The purely causal claim is certainly the one that we find in Machiavelli’s *Discorsi* on Livy. If you fail to ensure, Machiavelli argues, that your own voice is heard in the process of legislating, you will find yourself obliged to obey laws that expresses the will of someone else – that of an oligarchy or, even worse, a conqueror. But to be subject to the will of someone else, as Livy and Machiavelli agree, is what it means to be a slave. The paradox hovering over the argument is thus that service is freedom. But the reason why this is not paradoxical for Machiavelli is that he sees participation as the best means of ensuring that your will is heard, and consequently sees it as a causal condition of ensuring that your own liberty is respected.

I should also like to comment on Dr Gray’s claim that the writers he discusses are exclusively interested in what he calls common liberty, the liberty of the state as opposed to personal or individual liberty. I do not see a distinction here, or at least not in the case of the Renaissance republican

writers – like Machiavelli in his *Discorsi* – who take their inspiration directly from Cicero, Livy and other protagonists of the *civitas libera*. The basic contention that these writers want to defend, it seems to me, is that one reason for wishing to live in a free state is that this alone guarantees your own liberty.

This is not to deny that the Roman writers chiefly concentrate on the *civitas libera*, and that their Renaissance followers likewise focus on what Machiavelli describes as the *vivere libero*. But what do these writers mean when they talk about the freedom of states? For Machiavelli, to claim that a body politic is free is precisely analogous to claiming that an individual person is free. A state is free if and only if it is able to act according to its own will, that is, according to the will of the body of the people. A state is in turn said to be capable of acting in this way if and only if it is not subject to the will of any other power, whether that of an oligarchy within the state or an imperial power controlling it from outside. A free state is accordingly one in which there are no discretionary or arbitrary forms of political authority of any kind. The government is conducted entirely according to the rule of law, and the laws are made entirely by the will of the people. This is to say, however, that a free state is one in which the people are protected from any subjection to arbitrary power. They are consequently free, within the bounds of the law, to act entirely according to their own will. Nor can it even be said that this freedom is restricted by the law, because the law expresses as much as constrains the will of anyone who consents to live under it. But these claims about the character of a *vivere libero* are at the same time claims about individual liberty. What is being contended is that you can hope to lead a free way of life if and only if you live as a citizen of a free state.

This pivotal claim is in part presented as a critique of monarchy. All monarchical forms of government embody prerogative powers. But these are inherently discretionary, and consequently leave the people in a state of dependence on those who have the right to exercise them. But to live in such dependence, they have laid down, is what it means to be a slave. Freedom is thus impossible under monarchy. The argument is also presented, however, as a celebration of self-governing republics or free states. These are the only forms of government under which equal liberty is assured, and hence in which social justice is upheld.

This is the point at which we can most clearly see the gulf fixed between ‘republican’ and contemporary neo-liberal ways of thinking about freedom. Neo-liberal theorists believe that the best means of maximising individual liberty is to minimise the powers of the state; republican theorists believe that the best means is to maximise popular control of the state. Notice that, for neo-liberal writers, forms of government are of secondary importance; what is crucial is that governments should exercise a minimum of power. For republicans, by contrast, forms of government are crucial; the essence of their case is that it is possible to enjoy a maximum of individual liberty only within a genuinely democratic state.

According to Professor Lane, however, it is central to Plato’s vision of freedom in the *Republic* that to accept any such ‘republican’ vision of law and liberty is to embrace an illusion that needs to be given up. For Plato, on Professor Lane’s account, liberty must always be limited if it is to remain compatible, as it must, with obedience to government. If liberty is to be a political value, it must always be ‘mixed’ with subjection to rule. Plato’s final word – and here Professor Lane seems to agree – is thus that every form of government embodies an unavoidable element of enslavement. A sobering as well as a thought-provoking note on which to end.

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