

Leonard P. Liggio, "F. A. Hayek and the Classical Liberal Tradition"
Philadelphia Society, Chicago, April 29, 2000

In the spring of 1979 the Philadelphia Society had as conference theme: "conservatism and classical liberalism." The dinner speaker was Robert Nisbet who was speaking as a conservative. Reflecting his noble character, Nisbet selected as his liberal opposite number, F. A. Hayek. One could select other classical liberals who would be less appreciated by the audience. Comparing himself to one of the founding fathers of the Philadelphia Society, F. A. Hayek. Nisbet presented his differences at such a high level and with his natural grace and charm, that all the members were appreciative.

Nisbet gave his highest commendation to Hayek's The Constitution of Liberty (Chicago, IL; University of Chicago Press, 1960), especially Hayek's emphasis on the medieval foundations for modern political thought, for constitutionalism and for Anglo-Saxon common law. Hayek's central contribution: "the origins of the rule of law" (chapter eleven) is rooted in medieval political thought. Just as Hayek progressed back to the middle ages, we, as Hayekian scholars, need to restudy the medieval sources in the political thought and in the legal institutions admired by Hayek and classical liberalism.

Nisbet likewise was appreciative that Hayek regained the central place for custom and for evolution of legal institutions. For Nisbet a number of Hayek's references paralleled Nisbet's contributions. For example, Hayek quotes Max Rheinstein, of University of Chicago's Oriental Institute regarding the traditional view that law is found and not made, and the late historical appearance of legislation replacing law: "in western Europe it was dormant until the rediscovery of Roman Law and the rise of absolute monarchy. The proposition that all law is the command of a sovereign is a postulate engendered by the democratic ideology of the French Revolution that all law had to emanate from the duly elected representatives of the people. It is not, however, a true description of reality, least of all in the countries of the Anglo-Saxon common law." (Hayek p. 458)

Hayek continued by quoting Edmund Burke's Tracts Relative to the Laws Against Popery in Ireland: "it would be hard to point to any error more truly subversive of all the order and beauty, of all the peace and happiness, of human society, than the position, that any body of men have a right to make what laws they please; or that laws can derive any authority from their institutions merely and independent of the quality of the subject matter. No arguments of policy, reason of state, or preservation of the constitution, can be pleaded in favour of such a practice....all human laws are, properly speaking, only declaratory; they may alter the mode and application, but have no power over the substance of original justice." (Hayek, p. 458). Hayek's and Nisbet's evolutionary legal thinking was best expressed by Bruno Leoni, Freedom and Law (1961) (Indianapolis, IN; Liberty Press, 1991)

Nisbet's History of the Idea of Progress (New York, Basic Books, 1980) is an important contribution to the history of classical liberalism. He demonstrates that Christianity is the source of modernity. The Christian fathers and their sources in the stoics of the Hellenistic civilization established the foundations of modernity. Jesus, the Evangelists and the Church Fathers were the builders of the concepts on which the modern world has evolved. (cf. Gerhart B. Ladner, The Idea of Reform: its impact on Christian thought And action in the age of the Fathers (Cambridge, MA., Harvard University Press, 1959)).

It was the Hellenistic civilization in which first Judaism and then Christianity flourished intellectually and spread geographically. F. E. Peters, The Harvest of Hellenism (New York, Simon & Schuster, 1970) notes the continuity of the shared cultural foundations of Judaism, Byzantine and Latin Christianity, and Islam. For western Europe the great fruits of the Germanic tribes migrations and settlements took time to flower. In towns, bishops were the residual defenders of citizens's rights. In the countryside, the new institutions of the monasteries introduced by the Father of Europe, St. Benedict, were oases of justice. The founding of the reformed Benedictine abbey of Cluny (910) in the Kingdom of Burgundy ignited struggles to defeat political powers and to reform the clergy.

The peace of god and truce of god movements led by bishops and abbots constrained the political powers' damage to society. Trade and agriculture flourished, giving rise to the great Gregorian reform movement. Church offices had become the possessions of Secular rulers who filled them with retainers or relatives. The motivations for entering high religious office were neither ecclesial nor moral; it was to enjoy the incomes from church properties. Many succumbed to simony, nicolaism (clerical marriage) and concubinage. The secular clergy's' marriage ties to the nobility and provision of wealth for their children created major conflicts of interest.

The Cluniac leadership of the peace of god and truce of god movements, and later Of the Gregorian reformation was achieved by sworn-oath associations. The sworn-oath associations became the basis of the town corporations and their guilds, and thus, the foundation of Western institutions. (Antony Black, The Guilds and Civil Society (Ithaca, New York, Cornell University Press, 1984).

The Gregorian Reform movement of the eleventh century is the starting point of modern Europe. Among the scholars who emphasize this are Harold Berman, Law and Revolution: the Formation of the Western Legal Tradition (Harvard University Press, 1983), especially chapter 2: "The Origin of the Western Legal Tradition in the Papal Revolution;" and Deepak Lal, Unintended Consequences (MIT press, 1998).

The Gregorian Reform's challenge to political control of church offices caused a violent response from the political leaders. An important political pamphlet literature was Produced as the first major European political thought. This Latin literature is collected in three volumes in the Monumenta Germaniae Historica, Libelli de Lite.

Charles H. McIlwain was a Harvard political theorist much cited by Hayek. Among his important contributions was: The Growth of Political Thought in the West: from the Greeks to the End of the Middle Ages (New York, the Macmillan Company, 1932).

McIlwain states: “one of the first great illustrations of the working of These new forces in the political thought of the west is to be seen in Then unprecedented outburst of polemical writings which accompanied The struggles between the emperors Henry iv and Henry v and popes Gregory vii, Urban ii, and Paschal ii. Within a period of little more than half a century, from 1052 to 1112, it has been estimated that no fewer than one hundred and fifteen separate writings appeared in defense of the papal and the imperial pretensions, fifty of them on the imperial side, sixty-five on the papal, written by sixty-five different authors; and that more than half the whole number came within the twenty-seven years between 1085 and 1112. To us this may not seem strange, but so far as is known nothing just like it had ever occurred before. In number, in bitterness, and in the manner of political argument, these pamphlets of the eleventh century mark the first definitive appearance of a type of political writing which was destined about to monopolize the field for five or six centuries to come. The controversy marks an era not only in the relations of church and state but in the history of political literature. “this ecclesiastical literature is none the less a popular literature, and in this lies its great originality. It was not written solely for the monasteries or the schools: it aimed to make its appeal to opinion; and to sway opinion striking cases were necessary, and forms of expression, clear, simple and such as the people could understand or at least retain.” (Imbart de la Tour, La polemique religieuse et les publicists a l’epoque de Gregoire vii (1907). Cf. Augustin Fliche, La reforme gregorienne (Louvain, 1924-1925); Etudes sur la polemique religieuse a l’epoque de Gregoire vii (Paris, 1916) (McIlwain, pp. 202-203)

McIlwain quotes from Gregory vii’s famous letter to Herman, bishop of Metz (1081): “who does not know that kings and rulers had their beginning in men inspired by the devil, the prince of the world, to turn away from god and presume in the blindness of their lust and their intolerable arrogance to bear rule over men, their equals, through pride, violence, fraud, bloodshed, and almost every known crime?.. Far better that any good Christians, rather than evil princes, should be considered kings. For the former Keep strict rule over themselves for the glory of god, while the latter, seeking their own good and not god’s, are enemies even of themselves and tyrannical oppressors of others. These are the body of Christ the true king, those, verily the body of the devil. These govern themselves to the end that they may rule forever, together with the highest ruler, the power of others tends to this, that they fall into eternal damnation along with the Prince of Darkness, who is king over all the sons of pride.”(registrum. of Gregory vii, no. 21) (McIlwain, p. 207)

Harold Berman notes that the contractual theory, whereby a government's legitimacy cannot be the result of its imposition on society by coercion, but only by compact or contract. Berman sees contract theory as elaborated by the Stoics and the Church Fathers, and as entering western political thought prior to the eleventh century. Sir R. W. Carlyle and A. J. Carlyle (Fellow, Lincoln College, Oxford), a History of Medieval Political Theory in the West (Edinburgh, William Blackwood & Sons, 1950 (1903) (6 volumes)), provides the analysis of medieval political thought. A.J. Carlyle in his 1915 preface to volume iii (p. Vii) notes his obligations to the "admirable work of Mr. R. L. Poole, the most learned of English students of the middle ages, who more than thirty years ago, in his 'Illustrations of Medieval Thought,' pointed out the great significance of the position of Manegold and John of Salisbury in the development of medieval political thought. The detailed study of the political literature of their times has only served to bring out more clearly the justice and insight of his recognition of their place and importance." Carlyle acknowledges the advice of Oxford's Sir Ernest Barker. (Cf. Ernest Barker, The Dominican Order and Convocation a Study of the Growth of Representation in the Church during the Thirteenth Century (Oxford, Clarendon press, 1913); Harvey Mansfield, "Modern and Medieval Representation," pp. 55-82, and Marek Sobolewski (Cracow), "Electors and Representatives," pp. 95-107, in J. Roland Pennock and John W. Chapman, editors, Representation (Nomos X), New York, Atherton Press, 1968).

Carlyle continues: "we shall presently have occasion to examine in detail the political theory of Manegold of Lautenbach, the most incisive writer of the investiture controversy, and the most unsparing critic in the Middle Ages of what he conceived to be the illegitimate pretensions of the imperialists." (iii, 103) Manegold held that any temporal power could only legitimately be derived from a compact with the members of society. A. J. Carlyle declared: "he was perhaps the most vigorous assailant of Henry iv. And the most radical theorist of the nature of government in the eleventh century, he had as respect for the arbitrary king as any of the Seventeenth century or of the French Revolution."

Manegold: "he who was to have The care of all, to rule over all, should possess grater virtue Than all, in order that he might administer his power with The highest equity. The people had not set him over them that he should act as a tyrant, but that he should defend them from Tyranny. Again, in another passage Manegold urges that the Chief distinction between human nature and that of other living creatures is that it is possessed of reason, and that therefore men consider not only what they should do, but Why they do it. No man can makes himself king or emperor; When therefore the people set one man over them, they do it in order that he should give to every man his due, that he should protect the good, destroy the wicked, and administer justice to all." (iii, 111-112, in Carlyle)

Berman continues: “as late as the 1080s the papal party had invoked the compact theory to challenge the authority of the emperor. Whose “cruel tyranny over his subjects,” it was said, had made it clear that “the people are free from his lordship and from subjection to him since it is evident that he first broke the compact by virtue of which he had been appointed.” Manegold of Lautenbach, quoted in Brian Tierney, The Crisis of Church and State, 1050-1300 (Englewood Cliffs, N. J., 1964), p. 79.

“Manegold adds, “to take an example from a meaner sphere, if a man hired someone for a fair wage to look after his swine and then found that he was not caring for them but stealing, killing and destroying them, would not the man withhold the promised wage from him and remove him ignominiously from his task of caring for the swine?” Later in the same document (p. 80) Manegold states: “...if, however, he breaks the compact by which he was elected ... reason justly considers that he has absolved the people from their duty of submission to him since he himself first broke the bond of mutual fidelity by which he was bound to them and they to him. “” (Berman, pp. 286, 614-615)

A. J. Carlyle says of that passage: “we have in this passage not only the summary of the political conceptions of Manegold himself, but the crystallization of a movement of political thought and principle into a great phase. For when Manegold represents the relations between the king and the people as embodied in an agreement or “pactum,” a contract binding equally upon each party, he is not only giving the first definite expression to the conception which came in later time to be known as the theory of the “social contract,” but he is summing up in one phrase the main principle of medieval political society. ... it is, indeed, of the first importance to observe that Manegold’s conception is not constructed upon some quasi-historical conception of the beginnings of political society, but rather represents in concrete form the constitutional principle of the medieval state as embodied in the traditional methods of election or recognition, and of the reciprocal oaths of the coronation ceremonies. ... the oath of the people is “ipso facto” null and void if the king does not on his part faithfully observe the obligations which he has taken.” (iii, 168)

Carlyle concludes: “it is not doubt true that the phrases of Manegold are related to a period of great confusing and civil war, and if they stood alone they would represent at the best an interesting and important anticipation of later developments of political principle or theory. But they do not stand alone, there is indeed no other writer of the Eleventh or Twelfth centuries who expresses the principle in exactly the same phrases, but the principle expressed by his phrases is the normal principle of political theory in these centuries.” (iii, 169)

Manegold of Lautenbach (b. c. 1045-d. c. 1119) wrote his major worksfFrom 1080 and continued after the monastery of Lautenbach was destroyed by supporters of Emperor Henry IV. Manegold after 1094 was Provost of the Augustinian abbey of Marbach in Alsace. (Cf. J. H. Burns, editor, The Cambridge History of Medieval Political Thought, 350-1450 (Cambridge, Cambridge University Press, 1988, p. 679).) There were several writers of political pamphlets in the Gregorian reform Who paralleled the thinking of Manegold. Among them were Lambert of Hersfeld and berth old of Constance. The constitutional practice of the Middle Ages was contract and reciprocal obligations.

As John of Salisbury was to emphasize (Policraticus (1159)) there was no legitimate will of the prince. The prince properly observed the continuity of the evolution of judicial decisions. The tyrant is the ruler who interferes in the regular process of justice. Harold Berman says of John of Salisbury: “ultimately, the reader is Confronted with the startling conclusion that a person may have a Right and even a duty not only to disobey a tyrant but even to kill him - the famous right and duty of tyrannicide, which John of Salisbury was the first western writer to elaborate as a doctrine and to defend with reasoned arguments. ... in the last analysis, however, every Person is under a duty to enforce the law by killing a tyrant who has put himself outside the law.” (p. 282)

In the Constitution of Liberty, F. A. Hayek adopts Lord Acton’s concept that Thomas Aquinas is the first whig. Hayek draws heavily upon Lord Acton, as well as J. N. Figgis and R. W. And a. J. Carlyle. Hayek also uses Charles

H. McIlwain, Constitutionalism: Ancient and Modern (Ithaca, New York, Cornell University Press, 1947: Edwin S. Corwin, The “Higher Law” Background of American Constitutional Law (Ithaca, New York, Cornell University Press, 1955), and Liberty against Government (Baton Rouge, LA, Louisiana State University Press, 1948).

The same year as Robert Nisbet addressed the Philadelphia Society in 1979 it was proposed to Hayek as president of the Mont Pelerin Society that a meeting be held in Spain. He agreed but insisted that he would speak only at a session in the Aula Major of the University of Salamanca. One highlight of that day was two small parties of MPS members each accompanying Hayek and Lord Lionel Robbins ascending and descending, and meeting on a winding stone stairway connecting the ancient Romanesque Cathedral of Salamanca with the 13th Century Gothic Cathedral.

But, the spectacular event was Hayek speaking in the Aula Major on the foundation of Classical Liberalism in the Scholastic School of Salamanca. It is widely known that the School of Salamanca are the founders of modern international law, as well as theorists of tyrannicide, limited government and consent and contract. It is Hayek and his student Marjorie Grice-Hutchinson who recognized the Scholastic School of Salamanca as the founders of Austrian Economics or modern economics. (Marjorie Grice-Hutchinson, The School of Salamanca, 1544-1605 (Oxford, Clarendon Press, 1952), and Early Economic Thought in Spain, 1177-1740 (London, Allen & Unwin, 1978).

The School of Salamanca was writing in the wake of the American Discoveries, of the consequent gold and silver imports and the financial crisis of expansionist foreign policies. Other contributions to Classical Liberal thought occurred during periods of crisis, whether economic or economic and political. The economic crisis leading to the growth of the state under Philip the Fair, and pamphlet responses, the debates over Property and poverty by the Spiritual Franciscans, in the early 14th Century, and the literature surrounding the Conciliar Movement in the 15th Century are sources. Similarly the debates during the Reformation, and in particular the French political literature of the 16th Century, and the pamphlet literature of the mid-17th Century Fronde, contemporaneous with the vast pamphlet literature of the English Civil War, reaching a crescendo in the political literature preceding and following the English Glorious Revolution are important forerunners of 18th Century Liberal thinking.