

“Modern Liberal Democracy: Cultivators and Critics”

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Leo Strauss wrote that all modern political philosophers share at least one trait in common: they all “reject the classical scheme [built on virtue] as unrealistic.”¹ Beyond that unifying -- albeit negative -- principle, no two modern thinkers studied in this course reach absolute agreement on even the most primary, fundamental questions. Despite this plethora of contrasting opinion, scholarly examination can still yield commentary on general trends between varied thinkers. One of these trends is the idea that those regimes which the world presently identifies as “liberal democracies” find their foundational underpinning in modern political philosophy. This paper explores the thought of Hobbes, Spinoza, Locke, and Montesquieu with an eye towards identifying those underpinnings. Specifically, it focuses on identifying the foundations of three essential principles of liberal democracy,² the principles of consent of the governed, freedom of speech, and checks between branches of government.³ It then identifies and assesses arguments by a powerful critic of liberal democracy from the left, Karl Marx, and a powerful critic from the right, Frederick Nietzsche.

The concept of “consent of the governed” describes a part of social contract theory. Citizens voluntarily *consent* to give up their total self-autonomy in the state of nature in order to enter into the protection of civil society. Thomas Hobbes gave the first account of this phenomenon in his *Leviathan*. Hobbes describes the state of nature as “solitary, poor, nasty,

¹ *An Introduction to Political Philosophy* (Edited by Hilail Gildin) pg. 40.

² I do not mean to imply that these three characteristics are the most important conceivable three, but rather that they are three very important characteristics amongst many other possibilities.

³ I take as given that the United States is an exemplar of what we call “modern liberal democracy.” The first of the three principles listed here appears verbatim in the preamble of the Declaration of Independence. The second appears in the First Amendment to the Constitution. The third is embodied throughout the first three articles of the Constitution.

brutish, and short.”⁴ Men experience “continual fear and danger of violent death” in an omnipresent war of “every man against every man.”⁵ In order to escape this constant terror brought about by want of a common power, men “reduce all their wills, by plurality of voices, unto *one* will.”⁶ Critically, for Hobbes, this action *includes* consent but also “is more than consent, or concord; it is a real unity of them all, in one and the same person.”⁷ The list of the sovereign's rights and powers in the eighteenth chapter of *Leviathan* demonstrates the absolute authority of Hobbesian sovereignty. Once man has issued his consent to exit the state of nature through the establishment of the commonwealth -- i.e., the Leviathan -- there exists no “just” way to exit because “just and unjust were nothing before the state was constituted.”⁸ Furthermore, a successful exit from civil society can only occur when those dissenting can physically overcome the sovereign. In Hobbesian terms, that struggle would have to take place back in the state of nature, and a victory would indicate that the sovereign would have failed in his primary obligation to protect his citizenry from fear of violent death.

Locke's notion of consent of the governed in his *Second Treatise of Government* takes a large step away from Hobbes and towards modern liberal democracy. He takes this step by expanding the rights maintained by the citizen after consenting to enter civil society. Locke does agree with Hobbes that men are born in the state of nature⁹ “and remain so, till by their own *Consents* they make themselves Members of some Politick Society,”¹⁰ their ostensible agreement

⁴ Hobbes, *Leviathan*, XIII.9.

⁵ *Id.*

⁶ *Id.*, XVII.13.

⁷ *Id.*

⁸ *Id.* XVIII.6 in the Original Latin (found in Edwin Curley's Hackett edition)

⁹ It is also important to note that Locke's conception of the state of nature is not necessarily identical to Hobbes', but, for the sake of fleshing out the main topics of this paper, the differences aren't particularly significant.

¹⁰ Locke's *Second Treatise* § 16 (emphasis added).

ends here. Locke maintains that “the chief end [of civil society] is the preservation of *Property*.”

¹¹ For Locke, property includes men’s “Lives, Liberties, and Estates.”¹² Hobbes’ account of the end of civil society included only the first of this tripartite list, so Locke has clearly narrowed the rights that man gives up when he consents to enter civil society. Thomas Jefferson and other founders of the United States accepted Locke’s formulation and included his three-part formulation in his nation’s founding document.

Locke expanded the rights of the governed in comparison to Hobbes and modern liberal democracy has embraced *that* expansion, but it would be incorrect to therefore assert that modern liberal democracy favors unmitigated *expansion* of citizens’ rights as a general principle. Modern liberal democracy’s failure to accept a paradigm of sovereignty as radically democratic as Jean Jacques Rousseau’s in his *Social Contract* demonstrates this idea. Rousseau argues that “*Any law which the People has not ratified in person is null; it is not a law.*”¹³ He then applies this example to England where “[t]he English people thinks it is free; it is greatly mistaken, it is free only during the election of Members of Parliament; as soon as they are elected, it is enslaved, it is nothing.”¹⁴ Surveying the realized regimes of modern liberal democracy, one might note that a slim majority of states in the United States do have some sort of referendum mechanism to pass laws.¹⁵ But there is no federal referendum system, and the vast majority of laws in states are passed via representatives in the legislature.¹⁶ Rousseau presents the most radically democratic

¹¹ *Id.* § 86 (emphasis added).

¹² *Id.* § 123

¹³ *Social Contract*, Book III, Chapter 15, Sentence 5.

¹⁴ *Id.*

¹⁵ http://ballotpedia.org/States_with_initiative_or_referendum

¹⁶ E.g., only 13 ballot initiatives were *proposed* to California voters in 2012 (http://ballotpedia.org/California_2012_ballot_propositions). In contrast, over 1,000 bills were *passed* in the same year (<https://www.billtrack50.com/blog/election/comparing-state-legislatures-by-counting-bills/>)

formulation of consent of the governed, a formulation that modern liberal democracy has declined to adopt.

In addition to the principle of establishing consent of the government, freedom of speech also stands as a fundamental component of modern liberal democracy that finds its roots in modern political philosophy. Baruch Spinoza posits one of the earliest arguments for freedom of speech in the final chapter of his *Theological-Political Treatise*. Spinoza begins his argument for free speech by arguing that any attempt to subjugate free speech will end in failure. He first asserts the commonsensical notion that “it is impossible to deprive men of the freedom to say what they think.”¹⁷ Pairing this with everyone’s “absolute moral right to be master of his own thoughts,” Spinoza concludes that “utter failure will attend any attempt in a commonwealth to force men to speak only as prescribed by the sovereign despite their different and opposing opinions.”¹⁸ This makes the case for freedom of speech because “[w]hat cannot be prohibited must necessarily be allowed, even if harm often ensues.”¹⁹ Additionally, Spinoza points out that not only is free speech *compatible* with a strong regime, but it in fact *strengthens* the regime. Freedom of speech “must be granted” if “public peace... piety... and the right of the sovereign... are to be preserved.”²⁰ The state puts itself in a precarious position when “the exemplary punishment inflicted on honourable men seems more like martyrdom, and serves not so much as to terrorise others as to anger them and move them to compassion, if not to revenge.”²¹ Spinoza therefore makes a powerful argument for freedom of speech not from the perspective of high principles, but instead from the “low” ground that it is ultimately in the state’s best interest: the

¹⁷ Spinoza, Shirley Translation 229.

¹⁸ *Id.* 223

¹⁹ *Id.* 225

²⁰ *Id.* 229

²¹ *Id.*

danger that comes from freedom of speech is relatively minor and, in any case, freedom of *thought* simply cannot be stopped, and -- on the other hand -- the danger that comes from potentially making martyrs out of controversial speechmakers serves represents a tangible threat to the commonwealth.

In a somewhat similar but notably different way, Montesquieu also makes arguments for free speech. He makes these arguments in the 12th book of his *The Spirit of the Laws*, entitled “On the laws that form political liberty in relation to the citizen.” In chapter 11 of this book, Montesquieu comes out with a position on human thought similar to Spinoza’s when he says, “Laws are charged with punishing only *external* actions.”²² His reasoning demurs from Spinoza's, though, when Montesquieu takes the “high” road of evaluating the principled essence of speech rather than the *practical* advantage of free speech for the government. Speech itself, Montesquieu contends, “does not form a *corpus delicti* [body of the crime]” since “it remains only an idea.”²³ Words cannot have meaning without the “link the words have with other things.”²⁴ Montesquieu applies these principles to those nations that make speech a crime of high treason. In blunt and dramatic terms, Montesquieu claims, “Wherever this law is established, not only is there no longer *liberty*, there is not even its shadow.”²⁵ Montesquieu then clarifies that a rabble rouser who encourages a mob to revolt would still be guilty of high treason. In that case, “[i]t is not speech that is punished but an *act* committed in which the speech is used.”²⁶ Speech becomes criminal when it “prepares,” “accompanies” *or* “follows” an act of crime. The current

²² *Spirit of the Laws*. (Cohler, Miler and Stone) pg. 197 (emphasis added).

²³ *Id.* 198.

²⁴ *Id.*

²⁵ *Id.* (Emphasis added)

²⁶ *Id.* 199.

free speech paradigm in American Constitutional law²⁷ turns Montesquieu's "or" into an "and." Montesquieu nonetheless hits on a fundamental nerve of free speech jurisprudence with these distinctions; several American free speech decisions of the 20th century turned on these ideas.²⁸ Whether one takes Spinoza's pragmatic rendering or Montesquieu's principled articulation, there is no denying that free speech is a fundamental part of the foundation of modern liberal democracy.

Another essential component of liberal democracy is the presence of separation of powers. One can trace the clearest roots of this concept to Locke and Montesquieu. Locke warns of the danger of vesting the legislative and executive power in one body when he writes in the context of political society more generally. He claims that doing so makes it so that there is "no Judge to be found. No Appeal lies open to any one, who may fairly, and indifferently, and with Authority decide, and whose from decision relief and redress may be expected of any Injury or Inconveniency."²⁹ Such an individual would really be an actor in the state of nature rather than an individual actually engaging in civil society. It subsequently comes as no surprise when, later in the *Second Treatise*, Locke explicitly lays out his ideal schema for the separation of powers. He renders a tripartite design consisting of 1) a legislative power that "has a right to direct how the force of the Commonwealth shall be employ'd for preserving the Community and the Members of it,"³⁰ 2) an executive power that "see[s] to the Execution of the laws that are made, and remain in force,"³¹ 3) and a federative power (which is part of the natural power) that

²⁷ I.e., the *Brandenburg* test.

²⁸ I have *Schenck*, *Abrams*, *Whitney*, *Brandenburg*, etc. in mind here... specifically how the distinction that Judge Learned Hand made in *Masses* between "triggers of action" and "keys of persuasion."

²⁹ *Second Treatise* § 91.

³⁰ *Id.* § 143

³¹ *Id.* § 144

“contains the Power of War and Peace, Leagues and Alliances, and all the Transactions.”³²

Among these three, Locke makes it clear on multiple occasions that the legislative ought to be the strongest by far.³³ At the same time, the executive power should always exist while the legislative need not constantly be actualized.³⁴ Further, the executive maintains the power of assembling and dismissing the legislature.³⁵ The latter practice has not lived on into modern liberal democracy (using the United States as a litmus test), but the basic scheme that Locke advocates and the supremacy of the legislature achieve actualization in the American regime.³⁶

Montesquieu’s account of an optimal separation of powers indicates that he clearly was aware of -- and largely in agreement with -- Locke’s. Montesquieu’s model ostensibly offers a symmetrical three parts to the Lockean design -- legislative power, internal executive power, and external executive power.³⁷ Further inspection reveals however that Montesquieu actually adds in a distinct judicial power. The distinction between this power and the other three seems to be that it “should not be given to a permanent senate but should be exercised by persons drawn from the body of the people... in a manner prescribed by law to form a tribunal which lasts only as long as necessity requires.”³⁸ Although large swaths of judiciary matters in actualized liberal democracies are handled by professional judges, juries of peers -- just as Montesquieu describes here -- still form the heart of the judicial process in the United States and other liberal democracies around the world. Beyond this major addition to the scheme of separation of powers

³² *Id.* § 146

³³ *Id.* § 150 is a good example.

³⁴ *Id.* § 153

³⁵ *Id.* § 156

³⁶ To clarify, the Supremacy of the legislature is virtually impossible to argue against from the Constitution alone. History has shown a clear expansion of the executive power in the United States (especially regarding foreign affairs), but I still think it’s a stretch to call the executive “supreme” over the executive in the manner Locke warns against.

³⁷ *Spirit of the Laws*.(Cohler, Miler and Stone) pg. 156

³⁸ *Spirit of the Laws*.(Cohler, Miler and Stone) pg. 158

in the United States, Montesquieu can also properly be credited with praising relatively minor details like giving the legislature exclusive power of the purse³⁹ and establishing the executive's role as the indisputable commander in chief.⁴⁰ Looking from either a macro or micro perspective, there is no disputing that the separation of powers in modern liberal democracy would be very different if not for Montesquieu.

Having examined the roots of three essential components of modern liberal democracy, this paper will now turn to its critics. Karl Marx is undoubtedly a harsh and serious critic of liberal democracy. Marx associates liberal democracy with what he labels bourgeoisie culture,⁴¹ Marx therefore indicts liberal democracy with his overarching philosophy. Marx presents a political philosophy that completely collapses the distinction between ideals- and actions insofar as what man should strive towards. Marx ultimately only cares about the distinction between Marxist thought (i.e., thought motivated and enabled by a materialist dialectic) and non-Marxist thought. Subdivisions in the latter category do not merit serious attention. Marx starts off from a materialist premise that rejects and inverts Hegelian ontology. Marx summarizes this aspect of his philosophy with, "Life is not determined by consciousness, but consciousness by life."⁴² From this premise, Marx undergoes an analysis of human affairs that leads to his infamous assertion that "The history of all hitherto existing society is the history of class struggles."⁴³ Marx includes the debate over the best regime into this analysis when he states, that "all struggles within the State, the struggle between democracy, aristocracy, and monarchy, the

³⁹ *Spirit of the Laws*.(Cohler, Miler and Stone) pg. 164

⁴⁰ *Spirit of the Laws*.(Cohler, Miler and Stone) pg. 165

⁴¹ The word "democracy" only appears once in the entire *Communist Manifesto* (pg. 490 in Tucker's *Reader*). The context also makes it clear that Marx is not using the word in the sense of "modern liberal democracy."

⁴² *Marx-Engels Reader*, Tucker, pg. 155.

⁴³ Tucker 473

struggle for the franchise, etc., etc., are really the illusory forms in which the real struggles of the different classes are fought out among one another.”⁴⁴ In this vein, Marx seeks to relegate *political* actions aiming towards freedom, liberty, or suffrage (i.e., *precisely* the sorts of questions that liberal democracy is defined by and engaged with), beneath *economic* actions that guarantee communist utopia. This would effectively replace “‘civil’ society” with “human society, or socialised humanity.”⁴⁵

Marx’s thinking carries a self-imposed “all-or-nothing” character. Marx fought and hoped for perfect communist society, but he also repeatedly espoused his belief in communism’s inevitability.⁴⁶ An assessment of Marx’s argument must then take into account the fact that Marx was either wrong about the inevitable appearance of communism⁴⁷ or failed to mention the fact that it would take at least 130 years (and counting) after his death. Personally, I find Marx’s premises to be rather convincing, and, beyond my personal bias, there can be little denying that the broader concept of something like a materialist dialectic has taken hold as a very popular means of understanding life in the 20th and 21st centuries. At the same time, modern man does not live in the communist utopia that Marx predicted. Marx gave the world an interesting -- and arguably accurate -- *method* of understanding itself, but that understanding seems to consist of precisely the opposite of Marx’s central claim; it speaks to the dominance and resilience of modern liberal democracy.

If one were forced to politicize Friedrich Nietzsche, he might fairly assert that Nietzsche attacks modern liberal democracy from the *right* side of the political spectrum. At the same time,

⁴⁴ Tucker 161

⁴⁵ Cf. The tenth thesis on Feuerbach, pg. 145 in Tucker

⁴⁶ See, for one example of this, the final sentence of the first section of the *Manifesto*. Pg. 483 in Tucker.

⁴⁷ I’ll give Marx the benefit of the doubt and maintain that the USSR never represented a truly Marxist state faithful to his ideas.

a fair rendering of Nietzsche's thought ought to acknowledge that it is nonpolitical, if not *anti*-political. Nietzsche aims to cultivate a "philosophy of the future" centered around the embracing of a spiritualized will to power. He identifies his task to go beyond politics -- or at least into a fundamentally *new* variety of politics -- when he says, "The time for petty politics is over; the very next century will bring the fight for the dominion of the earth -- the *compulsion* to large-scale politics."⁴⁸ Despite this claim, *Beyond Good and Evil* is chock full of stinging accusations against both democracy itself and the principles upon which it were built. The bulk of these criticisms concern democracy's enablement and glorification of the "herd mentality." He comments that "the herd animal receives and dispenses in Europe, when 'equality of rights' could all too easily be changed into equality in violating rights -- I mean, into a common war on all that is rare, strange, privileged, the higher man, the higher soul, the higher duty."⁴⁹ For Nietzsche, the way towards a fully realized will to power (and subsequently the philosophy of the future that he seeks as his ultimate goal) can only be achieved through cultivation of a noble soul -- i.e., by embracing those very qualities that the herd seeks to destroy. Where liberal democracy sees a nominalistic landscape that edifies mankind with the self-evident truths of equality, Nietzsche sees a molestation of spirit, compelling him to proclaim, "[T]he democratization of Europe is at the same time an involuntary arrangement for the cultivation of *tyrants* -- taking that word in every sense, including the most spiritual."⁵⁰ Nietzsche figures man's potential for greatness -- which is also for him that which is most worst striving towards -- orders of magnitude beyond what he believes the modern democratic regime makes allowances for.

⁴⁸ *Beyond Good and Evil*. Kaufmann translation. pg 131.

⁴⁹ *Id.* pg. 139

⁵⁰ *Id.* 177.

Without doubt, this criticism has some merit. Modern liberal democracy is built upon the principle of equality. That equality may not be radical -- the founders of the United States certainly did not believe that man is created equal in every conceivable way or even in most ways --but the claim of at least fundamental equality exists. It is hard to argue successfully against Nietzsche that such a paradigm does not theoretically hold democratic man back from reaching his full potential. One might push back against Nietzsche on the grounds that *societal* greatness is worth striving for over *individual* greatness, but then it becomes difficult to argue against rather radical forms of socialism. Radical socialism and modern liberal democracy are not compatible with one another. Perhaps the best way to disprove Nietzsche is to point out counterexamples to his criticisms, examples of men who achieved true greatness within a modern democratic regime. Without doubt, Abraham Lincoln serves as the best example. Lincoln may not have been a Zarathustran *ubermensch*, but his accomplishments and writings demonstrate that modern liberal democracy is capable of producing incredible men. Only time will tell if Lincoln was correct in his bold assertion that modern liberal democracy -- that is, “government of the people, by the people, for the people, shall not perish from the earth.”