
This elegantly written volume originated as a dissertation directed by Quentin Skinner at Cambridge University. Along the way, it was read in its entirety by J. G. A. Pocock, and it appears in the distinguished series ‘Ideas in Context’ that Skinner edits for the Cambridge University Press. As one would expect, it exemplifies the approach to intellectual history that Skinner and Pocock champion.

When applied to professions, academic disciplines, and self-conscious schools of thought, which really do generate their own peculiar procedures and vocabularies, linguistic contextualism can be an invaluable tool. There are no doubt other angles from which to analyse the evolution of England’s common law, the development of modern sociology, the history of Marxist doctrine, and the thinking of the Cambridge Platonists. But few would deny that, in such cases, attending to the peculiar language deployed and to the procedures followed is likely to be fruitful.

Linguistic contextualism is less satisfactory when applied to thinkers of high rank who acknowledge no superintending authority, for figures such as Plato, Aristotle, Machiavelli, Montaigne, Hobbes, Harrington, Montesquieu, Jefferson, and Heidegger are perfectly capable of generating their own vocabularies and of establishing their own procedures, and they frequently appropriate existing vocabularies and procedures and redeploy them in radically novel ways. To locate these thinkers properly, to understand them fully, one must treat them as if they were systematic thinkers (even when, in their writings, they have directly addressed only a circumscribed subject). In the process, one must distinguish in their thought what is fundamental from what is epiphenomenal, and, while attending to ‘the alternatives available within the contemporary frameworks of ideas and institutions’, one must resist the temptation to force them into a Procrustean bed constituted by that ‘context’. Before supposing that Aristotle, Machiavelli, Harrington, and Jefferson belong together within a hitherto unnoticed ‘civic humanist’ tradition, for example, one would be well advised to consider whether they share the same teleology, whether they understand the ends of government in the same way, whether they are in agreement concerning political psychology, and whether they have the same thing in mind when they speak of ‘virtue’. Otherwise, one will be inclined repeatedly to lump, where one should split, as J. G. A. Pocock did in The Machiavellian moment.

Eric Nelson is no fan of Pocock’s argument, but he does imitate the procedures the latter followed. Where Pocock treated Aristotle as the progenitor of republicanism, Nelson singles out Plato. Where Pocock contended that Machiavelli, Harrington, and Jefferson were Aristotle’s heirs, Nelson makes Sir Thomas More, Harrington, his Whig admirers, Montesquieu, his heirs, and the American founding fathers Plato’s disciples. Had he been content to follow the method prescribed by Arthur Lovejoy and to trace a ‘unit idea’ from one author to another, attending closely to the differing ways in which the various authors
integrated the notion within their quite different systems of thought, this would have been a highly valuable book – for Nelson has rightly identified as a trope the notion that republican government presupposes on the part of the citizens a modicum of equality and, therefore, limits on the concentration of property, and he does a fine job of showing that the authors he discusses deployed this ‘unit idea’. In asserting that these thinkers constitute a ‘tradition’ and that they share ‘an orientation on questions relating to justice’ and ‘the good life’ as well as ‘property’ (p. 17), however, he goes astray – for this forces him to do considerable violence to the figures he treats. In consequence, at times, this book reads more like a lawyer’s brief than a scholarly exploration.

More is, to be sure, an example that belies my claim. He really was a Platonist, and it is appropriate to read *Utopia* as a self-conscious restatement of some of the principal themes announced in *The Republic*. But Harrington’s *Oceana* is another matter. Its author boasts that he is a disciple of Machiavelli, and in the crucial sphere of political psychology he announces his adherence to Thomas Hobbes – whom he judges in most things, apart from his monarchist bias, ‘the best writer, at this day, in the world’. That Harrington lifts *Oceana*’s property legislation from Plato’s *Laws* is an indication of debt in this particular and nothing more. His treatment of the ends of government, his account of human psychology, the principles underpinning his constitutionalism – these he shares with Machiavelli, Bacon, and Hobbes, and not with Plato. He reiterates Machiavelli’s contention that ‘*it is the duty of a Legislator to presume all men to be wicked*’. He quotes with approval Hobbes’s dictum that ‘*as often as reason is against a man, so often will a man be against reason*’. He concedes that, in practice, ‘reason is nothing but interest’; and he concludes that ‘there be divers interests, and so divers reasons’. These claims are not consistent with the argument presented in Plato’s *Republic*.

Nelson’s treatment of Montesquieu is an even more obvious case of special pleading. That Montesquieu relied heavily on Plato for his depiction of the republics of ancient Greece there can be no doubt. But there is little reason to suppose that he derived his first principles from the Greek. Montesquieu listed Plato among the ‘great poets’, not among the philosophers. He described him as a legislator who gave way to his ‘passions and prejudices’, while priding himself on having drawn his own ‘principles’ not from his ‘prejudices but from the nature of things’.

Of course, Montesquieu really was interested in the phenomenon of ancient virtue, and in this regard he did remark that ‘the less we can satisfy our particular passions, the more we give ourselves up to passions for the general order’ (p. 167). But, in citing this passage, Nelson fails to reflect on what it means to be in the grips of passion and to consider just how alien this is to the account given of moral virtue by Aristotle, Cicero, Aquinas, and the like, and he neglects the observation’s immediate sequel:

> Why are monks so fond of their order? Precisely because of those things which make it insupportable. Their rule deprives them of all the things on which the ordinary passions rest: there remains, then, only that passion for the rule which torments them. The more austere the rule, that is, the more it curbs their inclinations, the more force it gives to the one inclination which it leaves them with. No one who pauses to digest this passage can think Montesquieu an unmitigated admirer of the virtue he attributes to the ancient Greek republics. It is no wonder that he later denies that such republics are ‘in their nature free states’ and that he insists that virtue can itself give rise to the ‘abuse of power’. Neither of Nelson’s two claims – that ‘Montesquieu gives us substantial grounds for believing that only republics will maximize human virtue and create a morally ‘natural’ life for human beings’ (p. 166), and that for Montesquieu ‘“political virtue” is the root of free government’ (p. 169) – can be sustained.
Of all the towns belonging to the Swiss Federation today, Geneva has undoubtedly been the most studied by historians. Attention has focused, above all, on the political, cultural, and social changes that occurred when the city adopted John Calvin’s religious reformation. Geneva became a sort of inverted ‘New Rome’; a place of attraction and appeal for European Protestants and a place of perdition in the eyes of the Counter-Reformation authorities. Accordingly, various forms of civil life and patterns of behaviour, affected by this religious change still attract the attention of social historians, as evidenced by this book on the outbreaks of plague in Geneva during the sixteenth and seventeenth centuries and its alleged artificial spreading with poultries and ointments. Naphy focuses particularly on the complex relationship between potions and witchcraft, which ensured that plague conspiracy could be classified as both a human and a material crime: either as a special kind of poisoning or as a supernatural crime resulting from a diabolic pact.

The book’s early chapters concentrate on the nature of the administrative and health measures to counteract the threat of plague adopted by the Genevan authority from the fifteenth century onwards. Naphy then outlines the magistrates’ actions, together with the behaviour of suspect plague-spreaders during the most severe and deadly plague crisis. In particular, Naphy carefully examines trials held in the years 1530, 1545, and 1570–1 in terms of the nature of the charges brought against the defendants and the judicial procedures adopted in evaluating the evidence. As Naphy reveals, the criminal proceedings reflect a complicated reality. In 1530 and 1545, the judges determined that the potions were the result of plots that aimed to increase the plague epidemic so that doctors, barber-surgeons, and workers in the ‘lazaretto’ could increase their profits. In 1570–1, however, the human subterfuge was replaced by ‘a wider, more stereotypical malicious use of poisonous grease by witches’ (p. 149). In fact, the composition of the materials used to spread the epidemic differentiated the human crimes from the diabolic. Production of deadly ointment required grease obtained from the corpses of hanged men, putrescent matter extracted from bubos of plague-victims, animal blood, and even arsenic. The use of such ingredients required individuals with basic medical skills, who were also capable of handling poisonous substances. By contrast, if Satan were to be involved in the potion-makers’ conspiracies, the devil simply gave the witch, on the Sabbath, a box of grease, without listing the ingredients, ensuring that deliberate plague-spreading was not always the focus of accusations or interrogations. In some cases, the distinction between these two levels was subtle or difficult to establish. In others, the lack of reference to diabolic beliefs supported the opinion that money and wealth were the stimulus for the production of plague substances and their use. Moreover, in 1545, fears of a widespread conspiracy to prolong the plague epidemic, and to seize the assets of dead people by stealing and plundering their houses, were reflected in the significant number of defendants (sixty-five) and in those sentenced to death (nineteen).

To conclude, Naphy’s monograph certainly expands our knowledge of early modern Geneva, although the geographical specification of the title (‘the Western Alps’) does not fully reflect the book’s geographical scope. Out of six chapters, the first five are devoted to the Genevan situation and only in the sixth is mention made of the other cities of what is
today the French part of Switzerland, Savoy, and Lyon and Milan. Secondly, although the book’s main theme is the connection between plague-spreaders and witches, other aspects emerge meriting further analysis from a comparative viewpoint. One is the correlation between plague of the body and plague of the soul; another is the relationship between different forms of Protestantism or Catholicism and social upheaval. In this context, the author might have picked up on Jacques Revel’s suggestion in 1970 that the history of plague might be studied in different societies in order to identify common elements of social behaviours and its representation (‘Autour d’une épidémie ancienne: la peste de 1666–1670’, Revue d’histoire moderne et contemporaine, 17 (1970), p. 954). There are also a number of inaccuracies in the use of Italian terms, and the author does not acknowledge the existence of other research dealing with this topic, such as published work on the activities of the Genevan plague-spreaders (P. Preto, Epidemia, paura e politica nell’Italia moderna (1987), or A. Pastore, Crimine e giustizia in tempo di peste nell’Europa moderna (1991)). Nor does he mention other studies that have shed light on the strong link between the plague epidemic and plague-spreading conspiracies, as in the first chapter of Carlo Ginzburg’s Ecstasies: deciphering the witches’ sabbath (1990). Nevertheless, Naphy’s book should be appreciated for its faithful and accurate reading of archive documentation.

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Drawing on close and sensitive readings of the Old Bailey session papers (synoptic accounts of criminal trials that owed much to their predecessors, the Elizabethan chapbooks), Langbein charts a paradigmatic shift in the nature and purpose of the criminal trial in the eighteenth century. He argues persuasively that between 1690 and 1790 the criminal trial moved rapidly from an unstructured, amateur altercation between victim and accused to a model in which legal professionals spoke on behalf of each party, organizing and arranging the relevant evidentiary material and subjecting their opponent’s case to the scrutiny of cross-examination. Langbein labels these two types of trial the ‘accused speaks’ model, which insisted that the accused be available as a testimonial resource, and the format in which defence counsel ‘tested the prosecution case’, thereby silencing the accused. He suggests a number of cogent reasons for this transition, most notably a reaction against the punitive excesses of the late Stuart judicial administration, which in turn resulted in a legal system
shaped by piecemeal correction (what he calls the logic of ‘evening up’ the advantages enjoyed by prosecution counsel in the treason trials). It is this organic, reactionary process that fascinates Langbein: ‘The saga of the emergence of adversary criminal trial in England is a topic of legal history much more than of legal theory, because it is the story of how we came to live under a criminal procedure for which we have no adequate theory’ (p. 9).

The story Langbein tells – of the extension of representation from those accused of treason, courtesy of the Treason Trials Act of 1696, to those accused of felony (first in a restricted capacity, and by dint only of judicial discretion, then fully, as a consequence of the enactment of the Prisoners’ Counsel Act in 1836) – is persuasive and powerful, and he extends his insightful appraisal to include the impact of this development upon the role of the judge (who became increasingly passive), the juror (who became an arbiter of fact rather than the self-informing witness of medieval trial process), and the exclusionary laws of evidence (which appeared at about the same time as the lawyers). Langbein’s prose is lucid and vigorous, and the logic of his analysis is almost irrefutable. He is a consummate historian, attentive to the structural weaknesses of the Old Bailey session papers and aware that the appearance of certain putative trends in the source material (a greater number of counsel active at the Old Bailey or a more aggressive role played by counsel in the course of cross-examination) may instead reflect only changes in the reporting practices of the period: he adheres to his long-established maxim that if an account in the Session papers ‘says something happened, it did: if the … report does not say it happened, it still may have’ (p. 185). He imparts to the reader a vivid sense of eighteenth-century trial particulars as he pauses to give voice to characters as disparate as the arrogant Old Bailey lawyer, William Garrow, whose annotations to the Session papers Langbein traces with enthusiasm as an early example of professional self-education, and an old woman sentenced to death for forgery in 1757 because she was unable to afford the assistance of counsel.

This, of course, is one of the two primary disadvantages of the adversarial trial – that wealth purchases more effective representation. The other is identified by Langbein as the ‘combat effect’ – namely, that the discovery of the ‘truth’ of an offence is rendered subordinate to party antagonism. (With the silencing of the accused after the enactment of the Prisoners’ Counsel Act in 1836, the fears that a guilty accused may be acquitted on a mere technicality are expressed in sources as diverse as Punch, the pages of the Examiner and the Morning Chronicle, and the writings of Charles Dickens.) Langbein concludes this study by tracing the reasons why Anglo-American trial procedure preferred to retain a system that entrenched these two structural inequities rather than embrace the continental alternative, and he locates these primarily in the English aversion to the techniques of torture that were often deployed in continental cases where the two requisite eye-witnesses to any alleged crime were not available. Langbein concludes that the continental criminal trial process, amended in the nineteenth century to preclude torture, has retained its definitive feature, namely ‘the principle that criminal courts must have the duty and the authority to seek the truth’;

In England, by contrast, the well meaning reforms of the eighteenth century that resulted in adversary criminal trial had the effect of perpetuating the central blunder of the inherited system; the failure to develop institutions and procedures of criminal investigation and trial that would be responsible for and capable of seeking the truth.

(p. 343)
This observation provides a provocative point of closure for Langbein’s careful assessment of the textual evidence. Yet it also draws attention to the study’s only significant weakness, namely a somewhat unsophisticated deployment of the term ‘truth-seeking’. Much valuable work has been undertaken by historians and literary critics alike in recent years to trace more fully the implications of forensic investigation and trial process for our understanding of the histories of rhetoric, epistemology, and narrative construction: Steven Shapin’s *A social history of truth* (1994), Alexander Welsh’s *Strong representations: narrative and circumstantial evidence in England* (1992), and Barbara Shapiro’s *A culture of fact: England, 1550–1720* (2000) would all have offered Langbein templates for a more culturally and historically inflected interpretation of ‘truth’. Langbein’s work complements this body of research, but the reader may have benefited from his deeper engagement with it: for example, Langbein draws attention to the Stuart court’s preference for spontaneous, unprepared speech as the means of disclosing the accused’s guilt or innocence yet he does not situate this alongside the lexicons of Puritanism and the research of the Royal Society which would in fact have supported his case. Yet, *The origins of adversary criminal trial* remains an outstanding achievement of scholarship, a genuinely compelling account of the rise of defence counsel which will prove invaluable to all who seek to understand the operations of eighteenth-century trial process. It takes its rightful place alongside David Cairns’s *Advocacy and the making of the adversarial criminal trial, 1800–1865* (1998) and J. M. Beattie’s *Crime and the courts in England, 1660–1800* (1986) as essential reading for all historians of the criminal courts in England.

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‘Most Americans do not think of liberty and freedom as a set of texts, or a sequence of controversies, or a system of abstractions’ (p. 3), writes David Hackett Fischer. These concepts are, he argues, best understood as changing ‘habits of the heart’ or folkways whose origins lie in the dynamic heritage brought to America by its English-speaking peoples. The plural form of these propositions is noteworthy, signalling Fischer’s intention to offer a catalogue of changing expressions and establishing a relationship between *Liberty* and *freedom* and his earlier, equally ambitious, study of English folkways in America, *Albion’s seed* (1989). Within this model, Fischer seeks to examine the interplay between invention and tradition and words and images that informed distinctions between liberty and freedom. For example, in an opening chapter on the iconography of ‘Liberty trees’ in the American Revolution, Fischer asks a good question: why were they not known as ‘Freedom trees’? That question is soon lost in a thicket of interesting details concerning the symbolic values associated with trees in New England. This mixture of thick description and thin explanation continues as Fischer catalogues differing iconographic traditions in distinct regions: New Yorkers favoured liberty poles, backcountry farmers favoured rattlesnakes, these
preferences speaking in turn to regional folkways. The methodology becomes increasingly problematic as the narrative marches relentlessly toward the modern day.

At various points in what is, of necessity, a fast-paced narrative, Fischer pauses to make the point that liberty and freedom were contested concepts that have been understood in different ways by different sections of American society. However, he repeatedly drives such discussions toward the conclusion that contestation enriched, even strengthened, mainstream definitions of these terms. ‘While parties battled in the early republic’, we are told, ‘Americans were inventing other visions of liberty and freedom’ (p. 213). There follows a discussion of Yankee Doodle, Brother Jonathan, and Uncle Sam. Ideas and values that less self-evidently strengthened the mainstream are given shorter shrift. America’s Populists are seen off in three pages (pp. 401–4); Eugene Debs and socialism in two (pp. 412–13). Quite why America possessed any socialist or anarchist sympathizers and what these activists might have wanted remain largely unexamined. The 1920s are described as ‘one of the most important periods in the history of liberty and freedom’ in America because ‘new and very powerful visions’ developed in reaction to domestic intolerance and repression during the First World War. ‘These new visions of a free society’, Fischer writes, ‘were different from one another … but all of them shared abiding belief in liberty and freedom, and a determination that America should become more free’ (pp. 456–7). There follows a discussion of Prohibition, the ‘protection of the unpopular’, personal liberation, and shopping. Twenty pages later we are told that in the 1930s ‘American politics’ witnessed ‘a pitched battle between different visions of freedom and liberty’ (p. 480). During the court-packing controversy, Fischer writes, ‘most Americans from the far right to the ultra left became more mindful of the Constitution and the rule of law’ (p. 503). How we might measure ‘more mindful’ is left to the reader’s imagination. Introducing a discussion of ageing sixties lefties with the lapidary statement that ‘in every American generation, dark undercurrents of uncertainty, alienation, cynicism, and self-indulgence flowed against the mainstream, and in turbulent times they sometimes rose to the surface’ (p. 679), seems guaranteed to raise hackles. Does this really account for the production in the late 1970s and 80s of ‘iconoclastic’ works that ‘combined a strong spirit of historical and ethical relativism with a revulsion against the values of American society, even values of liberty and freedom’ (p. 680)? That Benedict Arnold and Al Capone received sympathetic biographies in the late twentieth century hardly seem proof of the existence of a ‘dark age’ of revulsion. Fischer’s denunciation of a loony campus left is followed by a chapter subtitled ‘The Reagan revolution and the revival of liberty and freedom’. In many ways Liberty and freedom seems to be a product of that contemporary American kulturkampf whose very existence Fischer finds troubling.

As Fischer points out, people tend to define liberty and freedom by reference to their antonyms. They enjoy characterizing individuals and movements as either enemies or defenders of liberty. Fischer argues that even illiberal groups like southern White Citizens Councils have played some part in shaping mainstream definitions of freedom and liberty in America. Readers might disagree. Any attempt at an inclusive catalogue of iconographic representations or discussions of liberty and freedom in America from the Revolutionary era to the modern day would be vulnerable to the charge that it omits some visions, whilst overstating the influence of others. Fischer is as entitled as his potential critics to play favourites and assign praise and blame where he sees fit. The fundamental problem with Liberty and freedom is that the catalogue of expressions which forms the main body of the text must also serve the purpose of sustaining a proposition derived from Tocqueville that
liberty and freedom have been understood by Americans as ‘habits of the heart’. For Fischer, America enjoys free political institutions because its citizens have over the years shared an innate understanding of liberty and freedom whose continuities and powers are visible in iconography. For all its erudition, and after one has made allowances for the sheer scale of Fischer’s endeavour, *Liberty and freedom* disappoints because the lavishly illustrated text seems too obviously tailored to serve its conclusion.