Jennings, Jeremy. "Benjamin Constant on the Liberty of the Ancients and the Moderns." *Liberal Moments: Reading Liberal Texts*. By Ewa Atanassow and Alan S. Kahan. London: Bloomsbury Methuen Drama, 2016. 28–34. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781474251082.0009>>.

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Benjamin Constant on the Liberty of the Ancients and the Moderns

Jeremy Jennings

Ask yourselves, Gentleman, what an Englishman, a Frenchman, and a citizen of the United States of America understands today by the word 'liberty.' For each of them it is the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals. It is the right of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it, to come and go without permission, and without having to account for their motives or undertakings. It is everyone's right to associate with other individuals, either to discuss their interests, or to profess the religion which they and their associates prefer, or even simply to occupy their days or hours in a way which is most compatible with their inclinations or whims. Finally, it is everyone's right to exercise some influence on the administration of government, either by electing all or particular officials, or through representations, petitions, demands to which particular authorities are more or less compelled to pay heed.¹

These words were uttered by Benjamin Constant in a speech he made in Paris in 1819. In this well-known text, he not only set out a concept of modern liberty but also compared this concept to the idea of liberty he believed had been held by the ancients. By the ancients, he meant the citizens of classical Athens and Sparta as well as of the Roman republic. But this speech was no mere text of historical exposition. Its message was a deeply political one, and one intended to give guidance to the citizens of Restoration France as they sought to recover from the double trauma of the French Revolution of 1789 and the dictatorship of Napoleon Bonaparte, recently brought to an end by defeat for France at the

Battle of Waterloo. Over the course of the French Revolution, in a short span of time of just over twenty years, France had witnessed not only the descent into revolutionary terror but had also been subject to the dictates of a centralized and military regime, where many of the liberties listed by Constant had been done away with. The key question Constant sought to answer in his lecture, therefore, was how could this be explained? Why was it that liberty had not been established in France?

The short answer was that those who had led the Revolution had confused the two types of liberty he sketched out in his lecture. They had sought to give the French population a form of liberty appropriate not to the modern age but to the past. So, what was the ancient conception of liberty?

First, we should note that the description of modern liberty focuses its attention on the right of individuals to engage in a series of activities of their own choosing (practice a religion, choose a job, travel somewhere and so on) without the need to seek permission from either the government or society more generally. Individuals were to be free to spend their time and energy as they wished and to do so with whomever they wished. By contrast, according to Constant, the liberty enjoyed by the ancients was a form of 'collective freedom'. It was, above all, the right to participate in the decision-making processes of society, to decide on issues of war and peace and to vote on laws. However, this same freedom enjoyed by the ancients, as they debated in the public square, also countenanced the complete subjection of the individual to the community. As Constant said in his lecture, 'All private actions were submitted to a severe surveillance. No importance was given to individual independence, neither in relation to opinions, nor to labour, nor, above all, to religion.'² Indeed, for the ancients, the right to choose your own religion would have been seen as a crime. In short, the ancients had no conception of the rights of the individual.

Constant could see that this ancient conception of liberty was not without its attractions. If enslaved in his private affairs, the citizen, through public deliberation, participation in the framing of treaties with foreign powers and holding magistrates to account, participated in the exercise of sovereignty when it came to public affairs. But, Constant contended, its wholesale adoption in a modern context could only produce disastrous results. Why?

Most obviously, because the societies we now live in are fundamentally different from those familiar to the ancients. The ancient city was small in size, rarely reaching the proportions of even the smallest of modern states. The spirit of these societies was bellicose: citizens came together principally to fight

wars. Finally, they were societies where most productive tasks were carried out by slaves. None of these conditions now applied. States were now much larger, thereby depriving most individuals of direct involvement in public affairs. Moral and intellectual progress had led to the abolition of slavery among European nations, with the result that free men now provided for the material needs of society. Crucially, modern societies sought to enrich themselves not through war but by engaging in commerce and trade. If, therefore, the uniform tendency of commerce was towards peace, it also inspired in men a vivid sense of their own independence. 'Commerce', Constant observed, 'supplies their needs, satisfies their desires' and it did so without any intervention on the part of government.

So, in Constant's opinion, the French Revolution had made the catastrophic mistake of offering the people an inappropriate form of liberty. It had told the people that they must behave like the citizens of classical Athens and republican Rome and when, to the surprise of their leaders, they refused to do so, the people were offered the scaffold and the guillotine as an alternative. The advent of Bonapartist dictatorship only served to continue this sorry state of affairs. Here, we should acknowledge that not only did Constant see some merit in the French Revolution but he also, albeit for a relatively short period of time, thought that Napoleon Bonaparte might have his good points. Above all, he might bring the Revolution to an end. Nevertheless, Constant quickly concluded that Napoleonic rule was something of an anachronism. This was so precisely because the regime Napoleon had created rested entirely upon a spirit of conquest. As such, it demanded only passive obedience from its population.

But there was also something remarkably new about the Napoleonic Empire. It was, as Constant wrote, a form of usurpation. This sentiment he expressed most clearly in *The Spirit of Conquest and Usurpation and their Relation to European Civilization*, first published in 1814. The regime of the usurper, Constant wrote, was a regime of corruption, treachery, illegality and violence but it was also a regime that sought to disempower all equally. It strove to reduce all of us to something akin to individual atoms on a vast level plain. And, as Constant was fully aware, uniformity reduced our existences to 'mere mechanism' and death.³ But there was more to usurpation than this. The usurper sought to destroy the most intimate aspects of an individual's existence. It pursued that individual into the inner sanctuary of his or her soul. The result was that silence itself was a crime: the citizen had to affirm his or her support for the regime. In one brilliant insight, Constant saw the nature of modern dictatorship as it has unfolded under Hitler, Stalin, Mao Zedong and the preposterous tyrant Kim Jong-un in North Korea.

How could we free ourselves from this new, and even more threatening, version of arbitrary power? Most clearly, by recognizing that we were moderns and, therefore, by choosing modern liberty. What institutional form was this to take? The first part of the answer rested upon the argument that in 1789 the French revolutionaries had simply transferred the indivisibility of sovereign rule from the absolute monarchy of Louis XVI to the people and then on the suggestion that the unlimited sovereignty of the people was itself even more of a danger than what had preceded it. An indivisible sovereignty in the hands of the one, the many or all would remain an evil. And this was so, as Constant explained, because there is 'a part of human existence which by necessity remains individual and independent and which is, by right, outside any social competence'.⁴ This was an argument that was to figure at the heart of J. S. Mill's *On Liberty*.

So, the correct strategy for anyone interested in extending the realm of human liberty was not to attack the holders of sovereignty but to redefine the concept of sovereignty itself, to recognize that no form of sovereignty – including popular sovereignty – was unlimited and that society did not have an unlimited authority over its members. In theoretical terms, this meant hostility to the ideas of Thomas Hobbes and, of course, Jean-Jacques Rousseau. Constant had an ambiguous attitude to Rousseau: like almost everyone else in his day, he could see the genius in Rousseau. But he also saw that the adoption of his ideas by the French revolutionaries had provided 'the most formidable support for all kinds of despotism'. Constant's belief that individuals were the possessors of rights independently of any social and political authority also meant that he rejected Bentham's utilitarian critique of the language of rights. The principle of utility, he believed, encouraged us to place considerations of personal advantage over those of public duty.

The task, therefore, was to set up a form of government that, in Constant's words, could not counterfeit liberty. If the key theoretical underpinnings of this project were sketched out in Constant's lecture, the institutional structure received its clearest statement in an earlier text, *Principles of Politics Applicable to all Representative Governments*, published in Paris in 1815 during the period of Napoleon's first exile. Like many French writers of a liberal persuasion, Constant drew heavily upon the example of English constitutional history for inspiration. He also reworked Montesquieu's separation of powers argument, adding the notion of the monarchy as a 'neutral' power to Montesquieu's already existing tripartite division between executive, legislative and judiciary. The only interest

of a constitutional monarch, Constant believed, was the maintenance of liberty and order. He championed ministerial responsibility as well as representative government based on a restricted franchise. Leisure provided education and, therefore, a fitness to participate in politics. In political terms, he favoured landed property over industrial property, fearing that the latter might be a source of social instability.

But how was modern liberty to be protected once the all-important task of dividing up sovereignty had been accomplished? Very unusually for someone writing in post-revolutionary France, Constant endorsed the principles of federalism and of local and municipal power. 'Just as in individual life,' Constant observed, 'that part which in no way threatens the social interest must remain free, similarly in the life of groups, all that does not damage the whole collectivity must enjoy the same liberty.'⁵ Local self-government would not only produce better outcomes but also prevent the encroachment of the state into affairs that were none of its business. In addition, the army, with its tradition of subordination to the state, had to be reduced in size and prevented from intervening in the internal affairs of the country.

Like many a liberal both before and since, Constant defined the right to own property as one of those all-important rights that existed independently from all political authority. Nevertheless, he saw that property was a social convention and therefore that, to an extent, it did fall under the jurisdiction of society. Constant's point, however, was that, if the ownership of property should not be considered an absolute right, governments should not subject it to arbitrary power. Constant's reasoning here was that the use of arbitrary power over property would soon be followed by the use of arbitrary power over people. In short, it would prove to be contagious. States, Constant acknowledged, attacked property primarily indirectly and in two ways. The first was through such devices as the national debt, where by subterfuge the state effectively defrauded its citizens and despoiled the nation's wealth. The second was through taxation. In Constant's opinion, taxation was a 'necessary evil' but, when pushed to excess, it subverted justice, led to a deterioration of morals and, of course, reduced the capacity of the individual citizen to freely use his or her own money as he or she wished. All forms of taxation had a pernicious effect and were inevitably damaging.

Constant was equally adamant that the state should not interfere in the expression of ideas. The Athenians, Constant observed, ostracized those they disagreed with, casting them into exile. The Romans resorted to censorship. In

Constant's view, without freedom of expression, and in particular freedom of the press, all other freedoms were illusory. Without it, the state could repress at will and society would soon fall into terminal intellectual decline. For Constant, there was perhaps one form of freedom of expression that was more important than any other: the freedom to publicly profess a religion of your choice. Constant's views on religion are themselves very complex. He was raised a Protestant and devoted many years to the study of religion. He believed not only that all our lasting consolations were religious but also that religion was a vehicle to attain to human dignity. In this context, it is sufficient for us to acknowledge that Constant believed that any intervention in the domain of religion by government caused harm. He also believed that the existence of numerous competing religious opinions and sects was good for society as a whole.

All of these arguments placed the stress on the non-interference by the state in the lives of the individual citizen. Modern liberty consists of the right of people to associate with those they wish, to use their property to their advantage (or even disadvantage), to say what they want and to do so with the protection of the law and without fear of arbitrary restraint. This surely explains why Isaiah Berlin cited Constant, along with John Stuart Mill, as an exponent of the doctrine of negative liberty.

Yet we should look a little more closely at the opening quotation from Constant's lecture. There we see that Constant also says that modern liberty entails the right to influence government. This, Constant acknowledged, could not now be done in the way it had been done in the Athens of Pericles, where all male citizens could come together on a hillside, but, he believed, it could be done through the modern invention of representative government. It was through the watchfulness of the people's representatives and the openness of their debates – 'a vivid sense of political life', Constant calls it – that the constitution of the state would be preserved and our individual liberty maintained.

This last point is of considerable significance. The main weight of Constant's lecture falls upon praising the quality of modern liberty. He does not disguise his view that we need a form of liberty appropriate to modern conditions. However, in that lecture, he also tells us that modern liberty contains its own danger, and that danger is that, absorbed as we are in the enjoyment of our private independence and the pursuit of our private interests, we will all too readily and easily give up our right to participate in the discussion of those public matters that affect us all. The danger, in other words, is that we will all simply walk away from politics. And, of course, this was precisely what our masters wanted us to do – just leave it to them and all would be well.

So, Constant's conclusion was not that we should simply embrace the charms of modern liberty. Rather, we had to learn to combine the two forms of liberty. And this, as Constant explained at the end of his lecture, was because it was 'not to happiness alone' that our destiny called us but to 'self-development', and that 'political liberty is the most powerful, the most effective means of self-development that heaven has given us'.⁶

In the twelve years that remained to Constant after he had given his lecture, he spent much of the time working on his monumental study of religion (a text that is soon to appear in English). He did, however, produce one more major political statement: his *Commentary on Filangieri's Work*, published in 1824. Heavily influenced by the works of Adam Smith, Constant's emphasis fell on what governments could or should not do. It was wrong to believe, Constant argued, that governments were either more enlightened or more efficient than individuals and that governments better understood an individual's interests. Governments could do little to make people more moral and generous. The best they could do was to try to ensure that they did not harm one another. Constant argued against restraints on free trade and competition, against controls on emigration and against attempts by the state to limit population growth. Summarizing his position, Constant wrote: the 'idea is that the functions of government are negative: it should repress evil and let the good take care of itself'.⁷ Here were ideas that were to become central to the European liberal tradition in the nineteenth century. Here too were ideas that allowed Isaiah Berlin to describe Constant as 'the most eloquent of all defenders of freedom and privacy'.⁸ Yet it must not be forgotten that Constant also believed that if we did not participate in the public decision-making processes of our society, if we turned our backs completely upon the ancient liberty of the Greeks and the Romans, then the private liberties we all enjoyed as moderns would all too easily be crushed by a state eager to take them away from us.