CRESC Working Paper Series

Working Paper No. 21

Liberty and Order: Civil Government and the Common Good in Eighteenth-Century England

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August 2006

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The support of the Economic and Social Research Council (ESRC) is gratefully acknowledged.

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Abstract

Recent Foucaultian work on 'governmentality' posits a distinction between two 'rationalities' of government: 'police' and 'liberalism'. The former is closely associated with the idea of order, produced through constant and detailed intervention in public life. The latter is associated with freedom and the insulation of the social and economic spheres from (particularly political) interference. In this working paper I argue that defining the novelty of liberalism in terms of the presence of freedom at the heart of the governmental imagination is misplaced. The differences between English liberalism and continental police represent as much the ethos of the different political systems analysed as a transformation in the basic focus of government. To better understand the distinction between liberalism and its predecessors, I suggest that we need to pay more attention to the history of the idea of freedom itself. Therefore, I analyse the system of government in England before liberalism, demonstrating that although English civil government bears marked similarities to continental systems of 'police', it was not understood as a condition of order as opposed to liberty. Rather, freedom and order were understood to be inextricably interlinked. Freedom here did not mean 'natural' liberty – freedom from all interference in action or from all constraint – but 'civil' liberty – a bounded condition at the mean between anarchy and tyranny, opposed not to interference but to license. This is not so much a change in the meaning of freedom, as argued in the history of political thought, but a change in the kind of freedom at the centre of the governmental imagination.

Keywords

Freedom / liberty; governmentality; liberalism; police; common good; order.

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Recent work in history and sociology has seen the emergence of a new paradigm which seeks to escape recent concentration on regional specificity and jurisdictional or cultural difference and to provide a narrative that encompasses the long-term, broad and largely comparable changes taking place across European states over the modern period. Drawing on the work of Michel Foucault, it is argued that the period from the late seventeenth to the early nineteenth century saw the emergence of a distinctively modern 'governmentality', meaning the

> way or system of thinking about the nature of the practice of government (who can govern; what governing is; what or who is governed [and how]), capable of making that activity thinkable and practicable both to its practitioners and to those upon whom it was practised
>
> (Gordon 1991: 3, my interpellation)[1]

Particular importance has been placed on exploring the way in which subjects have been governed and encouraged to relate to themselves in terms of freedom. For Rose, tracing the genealogy of freedom involves

> investigating the ways in which what we take to be freedom has historically been put together, the practices which support it, and the techniques, strategies and relations of power that go to make up what we call a free society
>
> (Rose 1999: 65-6)

This work has had a significant influence on sociology and is now beginning to have an impact on history.[2]

In charting this genealogy of freedom, much of this work evokes a contrast between liberal government, seen to emerge in late eighteenth-century Britain, and something called 'police' which tends to be associated with the *Polizeiwissenschaft* common to continental absolutist regimes, particularly Prussia. Liberalism is defined as a mentality of rule which respects the natural liberty of the governed, which is both an end in itself and necessary for good government. As a consequence, this is an ethos that constantly critiques the necessity of government in each situation. The liberal view of government sees the system of rule as separate from the society that is ruled, rather than one being the outcome of the other, and therefore predicates good government on detailed knowledge of the processes that animate the social body (Dean and Hindess 1998: 4-6). In contrast, according to this scheme, police was concerned with 'the production of good order in a civic or territorial community', providing regulations for 'the common benefit'.[3] This was a 'pervasive activity of regulation rooted in a multiplicity of agencies across the social body', there being no separation between a unitary centre of government and the body politic, rather there was a dispersed 'police' that gave the social body form (Dean and Hindess 1998: 3, 5-6; Tribe 1984: 276-7, 282-3).

In drawing out this contrast between liberalism and police, several oppositions are set up. Liberalism is identified with the rule of law, which is itself linked to the primary aim of preserving individual liberty. The rule of law is part of a concern for justice and contrasted to police laws which 'while not invariably opposed to individual liberty, do not have the maintenance of liberty as their primary objective' (Dean and Hindess 1998: 4). Rather, police concerns itself with 'good order', the 'common benefit' or a 'well regulated republic', 'these laws are employed in the interests of the happiness of society, not primarily in the interests of

justice' (Dean and Hindess 1998: 3). So, police concerns itself with communal happiness and the creation of order, while liberalism is concerned with justice, the rule of law and the maintenance of natural liberty. Liberalism, then, is concerned primarily with freedom, police with order. This opposition is problematic. First, concepts such as the rule of law, the separation of powers and questions about the proper exercise of authority and intervention, predate and exceed liberal regimes. Secondly, the simple opposition between liberty and order is misconceived.

To make this contrast between liberalism and police, these authors draw on the conceptual insights of students of Germanic *Polizei* and apply its principles to eighteenth-century English government. This undermines the objective of a genealogy of government if what is analysed are two geographically and politically distinct systems of rule. There is danger that what appears to be a change in 'ethos' over time might turn out to be synchronic differences in regional culture rather than diachronic changes in conception of the nature and purpose of government. If we want to identify the distinctiveness of liberal government, particularly as it first emerged in England, it would seem perverse not to analyse its immediate predecessor and the system that it was originally mobilized in opposition to. Although numerous studies of actual eighteenth-century English government now exist, the literature tends either to align it directly with *Polizei* (Dean 1991; Firth 2002; Neocleous 2000a, 2000b), or to treat it as proto-liberal (Ivison 1993), taking too much for granted from preceding assessments of police without exploring the precise nature of the shift to liberalism.

There is potential for confusion if principles drawn from a similar but not identical system of rule are mapped directly onto English government. As I will argue below, English government was very similar in practice to continental visions of police, however its exponents did not understand it in contrast to liberty and justice. Rather, the well-ordered society was seen to be the condition for liberty to exist.[4] Civil liberty was not opposed to governmental interference, but to its absence. Anarchy and disorder were as big a threat to freedom as tyranny. The rule of law was a central part of this edifice, not something that could be contrasted with it. What this bears witness to is not a straightforward shift from order to liberty as the lynchpin of the governmental imagination. Rather, it suggests we need to pay attention to arguments in the history of political thought about the transformation of understandings of freedom around this time (Skinner 1998, 2002; Pettit 1999, 2002). It may be that freedom is not the appropriate rubric around which to identify this transformation in government from 'police' to 'liberalism'. However, at the same time we need to be aware that this literature on the meaning of freedom has also failed to take into account the different kinds of freedom in operation in these debates, civil, political and natural, which are central to the relationship with government. This is not to say that there is no value in comparing English governmental practice with that of its European counterparts, if nothing else to explode the myth of English exceptionalism, but we need to be careful not to distort the subject in the process.[5]

In order to avoid the problematic conceptual mapping of European discourses of *Polizei* onto eighteenth-century English government, while maintaining a sense in which there is considerable similarity in practice, we need to analyse the system of English government in place before liberalism, and to which liberal government emerged in opposition. My aim here will be to chart the ways in which the practice of 'civil government' in eighteenth-century England was comparable to the detailed regulatory mentality of 'police'. I locate these practices within contemporaneous discourses on civil government and civil liberty, which define freedom not entirely in opposition to, but in terms of government and the rule of law. I will analyse the discourses, practices and structure of the minor courts, public bodies and officials charged with the maintenance of peace and good order in eighteenth-century England. As well as discourses generated directly by and in relation to these bodies (rules, judgements, charges of duty and proclamations), I will examine essays and sermons about government, which often relate directly to the practice of rule. The majority of these

discourses were produced by those with a direct interest in, or responsibility for, the discharge of government and largely represent the hegemonic values of the ruling order.

I

The civil government of peace and order in the name of the common good was the duty carried out by various traditional non-capital courts that governed the different divisions of English government: the Quarter and Petty Sessions of the Peace and the manorial courts, the Court Leet and the Court Baron. The parish vestry was also responsible for much of such work. These bodies dealt variously with statute and civil law, as well as the common law and local byelaws. Their officers included the Sheriff, the Justice of the Peace, the Churchwarden, Boroughreeve, Surveyor of the Highway and the Constable, as well as various subordinate deputies, Beadles, Streetkeepers and Watchmen. It has been common to characterize this system of government as 'local', as distinct from the 'central' government of the executive, seen as the state. This would seem to mark English government out as very different from its continental counterpart, however, this misrepresents the nature of government in the eighteenth century, as the sharp distinction between 'central' and 'local' government, and as such between 'local self-government' and 'state interference', was not a feature of eighteenth-century discourse (Innes 2002: 109). Equally, as Dean and Hindess (1998: 3-6) have shown, police was understood on the continent not in terms of central power (something which in fact emerged as a feature of liberalism), but as a pervasive mode of regulation immanent to, and constitutive of, the social body.

English 'local' government must be understood hierarchically as descending through the county via Royal appointment of its senior governor, the Lord Lieutenant, a nobleman and usually member of the Privy Council. He in turn appointed the executive positions of Deputy Lieutenant, High Sheriff and Justice of the Peace, usually from amongst the gentry or minor aristocracy. They presided over the courts concerned here and the parish or manor.[6] The Court Leet and the Quarter Sessions were the King's courts and their principle officers, the Justice of the Peace and constable, swore allegiance to the monarch and the former also to the established church (Ritson 1809: 4; Roberts 1793: 15; Anon. 1789: 3). The system as a whole represents not a bi-polar system of centre and provinces, but a hierarchy with many gradations between provincial authority and the mixed sovereignty of the King-in-Parliament, often termed 'self-government at the King's command'. This mirrored the wider social order, imagined in terms of a God-given hierarchy (Clark 2000: 164-200). As William Roberts, Steward of the Manchester Court Leet, put it: 'subordination in civil society' is 'the *sine qua non* of its existence – it is the soul, source and support of it' and everyone had a moral and religious obligation to uphold it (Roberts 1793: 31). In this sense, then, English government is not distinct from its continental cousins by being separate from 'the state' or sovereign power, nor, as will be evident below, is it any less pervasive in scope.

The Court Leet of the Manor of Manchester was the body that oversaw the government of the township from the Elizabethan period up to 1842. The Leet was eventually augmented by a body called the Police Commission, whose beginning is generally placed in 1792 and which ran in parallel with it.[7] In fact, the constituency of the two bodies was identical, as is made clear by John Cross in his 1799 'Charge to the Grand Jury of the Court Leet', when he saw fit to speak to the Jurors on the subjects of both Court Leet and Police business 'as you are all commissioners of the police' (quoted in Earwacker 1889: 254). The Leet was presided over by the Steward of the Lord of the Manor, who appointed the officers of the Court, generally from amongst the propertied men of the township. The Court also appointed the two constables for the township every year and as such its officers dealt with statute law as well as nuisances and the contravention of bylaws. These officers were called to 'present' to the Court offenders against the local bylaws, that is they declared a person in violation of one of those laws and they were automatically fined. This method of 'presentment' was also used to

ensure that the officers themselves carried out their duty. Service as an officer of the Court was annual and compulsory, part of the 'civic duty' of the officers (Dodsworth 2004, *forthcoming*).

The role of the Court Leet was continually defined as that of promoting the 'common-weal' or

> the Good of the Publick, and not for the aggrandizing of any particular Person or Family; for the just Preservation of the Lives, Liberties and Properties of the honest and inoffensive, against the Abuses of the violent, the crafty, the rapacious, the licentious and disorderly
>
> (Anon 1743: 1; Ritson 1809: 1 n.*; Scroggs 1728: 2-3)

This was echoed by William Roberts, Steward of the Manchester Court Leet: 'This Court is solely intended for the public good, and cannot be subservient to any private purpose whatever, without corruption, without perjury, or without injustice' (Roberts 1793: 16). This even extended to the private interests of the Lord of the Manor, which were to be given no more weight than anyone else's. The purpose of the Court was to establish 'domestic security and good order' and this is defined explicitly as that of 'regulating the police of the town', a term which was increasingly coming into use in the late century to describe such systems of government (Roberts 1793: 18, 16, 26).[8]

The impartiality of the Leet's officers was heavily stressed.[9] The Boroughreeve was to be considered the 'representative' and 'centre of union of the town' and

> the moment he is invested with his office, whatever were his private sentiments, or his private interests; whatever contested scheme he had in view; whatever party he was engaged by affection, or otherwise to promote; to be upright, to be impartial, and to be worthy of his office, he should beware of using his weight in a public capacity, as an influence in any way whatever, except for the public good
>
> (Roberts 1793: 28-9)

Any man appointed to this office 'ought to consider himself one of the guardians of the repose of his fellow-citizens: by being inattentive to the duties of such office, he violates one of the most important civil obligations' (Roberts 1793: 32). Those appointing such officers should not allow party motives, either of religion or politics to interfere with their judgement: to do so, one would be 'forgetful of the sacred obligation you under of acting only for the public welfare, and not from private inclination' (Roberts 1793: 33). Roberts continues to argue that even in the age of zeal that saw the introduction of the Test and Corporation Acts (which debarred all those refusing to take the Anglican sacrament from serving in public office), these restrictions did not apply to Leet officers:

> It is of no public consideration whatever, what religious persuasion the Borough-reeve, the Constables, or other officers hold – all we want, and all that are necessary, are sensible, respectable, steady, upright, active officers; men who testify an affectionate loyalty to the King, a veneration for the Constitution, and a proper sense of the blessings which flow from them
>
> (Roberts 1793: 33)

But despite the significance placed on order, hierarchy and the common good, these mechanisms of government were not considered antithetical to freedom. Rather, civil liberty and the common good were seen to be inextricably entwined. As Axtmann (1992: 43, 45-7) and Skinner (1998: 23, 60 and throughout) have underlined, the freedom of the state was considered to be a condition of individual liberty. It is important to be clear what we mean by

freedom here. Eighteenth-century writers were generally very clear that they spoke about 'civil' as opposed to 'natural' liberty. William Hay could write, without paradox, that 'all government is an Infringement on their Natural Equality, and a Restraint on their Natural Liberty', while at the same time defining the 'end of government' as the protection of men in 'their Lives, their Liberty, their Possessions, and (as they are rational Beings) their Religion' (Hay 1728: 2, 17). This distinction between natural and civil liberty is a common and an important one, but largely absent from the work of Skinner (1998) and Pettit (1999), who chart a shift from one unitary understanding of freedom to another, from freedom from dependence to freedom from interference. In fact, what we see is a more complex modulation of different kinds of freedom: natural, civil, and later political, bound up with these wider concerns.

Although not all the authors here can or need to be seen as following the 'neo-Roman' conception of liberty defined by Skinner, it is clear that they do subscribe to the idea that civil liberty is a state that can only be achieved under certain conditions. This has some important implications which bear on the dispute between Skinner and Pettit. Skinner argues that in the eighteenth century interference and dependence were seen as equivalent restrictions on liberty, while Pettit (2002) maintains that interference according to the law was not a reduction on freedom, rather it 'conditioned' it. This is clearly the case in the works I am studying here and has an important corollary. If civil liberty was depended upon the existence of a free state and certain orderly social conditions then freedom is a product of government intervention, according to law, not its antonym. Even Bolingbroke, the leading opposition writer agreed, quoting Cicero, the mainstay of both his and Skinner's conception of neo-Roman liberty: 'we are all slaves of the law, so that we can be free' and 'I am not free from the Law, but by the Law' (Bolingbroke 1997: 196 n.6). Civil liberty in this sense must be seen as a product of the active social ordering common to 'police' and English civil government.

It was common to follow a Hobbesian pattern in describing the state of natural liberty as complete freedom of action, essentially infringed by government, and also to argue that the basic condition of such natural order was chaos and the violent rule of the strong over the weak (Burch 1753: 21; Hay 1728: 2). But they rarely drew Hobbesian conclusions about the best form of government from this basic position. Rather, the authors I am concerned with here, whose aim was to bolster and legitimize the ruling order they were serving, sought to frame the maintenance of the existing hierarchy in terms of the liberties established by the constitutional revolution of 1688-9 and the subsequent Hanoverian settlement. In doing so they tended not to define the greatest threat to liberty as tyranny or political corruption, so common in the oppositional argument studied in the work of Pocock (1985), Skinner (1998, 2002: 344-67) and others. Rather, they saw the greatest threat to liberty as license, the un-restrained pursuit of self-interest or gratification, subversive to the entire body politic.

Just as opposition writers drew upon historical, particularly classical models to argue that party factions and political corruption had brought about the collapse of numerous historical regimes, most notably Rome, so government supporters placed the emphasis on popular tumult and the increase of vice and license in the decay of the political body. Polybius was a key source for those seeking to press the analogy between the condition of Britain and that of ancient Rome. In the introduction to his translation of Polybius' sixth book, which outlines the source of revolutions in government, Hampton was keen to draw attention to the fortunes of a 'free but fluctuating, state'. He saw no distinction between this freedom and 'order and submission', the promotion of which were the 'just and reasonable ends' of government. It was the task of the governor to form 'some certain rule of judgement, sufficient to determine the pursuits and direct the conduct of every disinterested and prudent citizen' (Hampton 1764: Preface, n.p.).

Britain's constitution was formed like Rome as a mixture of the pure forms of monarchy, aristocracy and democracy. 'The general object of all mixed governments is the same', wrote

Hampton, 'to avoid, on the one hand, tyranny; and, on the other, anarchy'. The former has been heavily analysed in the historical literature, but the latter comparatively ignored. For Hampton, this emerged 'from a single source: from an excess of power allotted to the people, or extorted by them'. This had, he argued, caused the downfall of Rome and the same would happed to Britain: 'the ruin of the constitution will ensue; not caused, as it has commonly been expected and foretold, by the corruption of the legislative body, but by the general corruption of the people' following from 'the license of democracy'. 'Liberty', he argued 'is lost, as soon as it is emancipated from subjection to the laws'. 'Liberty in excess' becomes the source of its own destruction as 'dissolute manners' and a 'rejection of all controul' leading to tumult and violence, and thus to the necessity of powerful dictatorship to restore order. The only solution was 'to bring back the constitution to that middle point, in which alone the true poise of all mixed government is to be found; the point between the two extremes of, of popular license and arbitrary will' (Hampton 1764: Preface, n.p.).

These arguments were complemented by a series of popular moralists, who argued more vociferously that failure to instil social order would bring divine displeasure and judgement on the nation. Failure to practice Christian virtue would bring an end to liberty. James Burgh's classic *Britain's Remembrancer*, published like so many works on the subject as a reaction to the Jacobite rebellion of 1745, argued that this war and the recent famine were signs of the displeasure of Providence. He reasoned that 'if there is a God in Heaven, who by his Providence over-rules the Revolutions and disposes the Fates of Nations' then 'whatever Distresses he brings upon the Kingdoms of the Earth, he brings them for no other End than the Punishment of Guilt, and the moral Improvement of Mankind' (Burgh 1757: 4). The recent war and famine were a warning to repent and reform, rather than embracing what he saw as 'the characteristic Vices of the Age', luxury and irreligion. Uniquely in Britain these were not only the preserve of the wealthy: 'no Rank or Station is too low for either of these polite Vices; for at this Day hardly any Man thinks himself so mean as not to be above Religion, Frugality and Sobriety' (Burgh 1757: 8). No degree of wealth or power, he argued, had ever been enough to save a nation mired in the evils attendant on these vices and he went on to detail the rise and fall of most major empires in world history according to the rise and fall of their public virtue (Burgh 1757: 8-13). Interestingly, despite his assertion that the fortune of these empires was due to divine displeasure, all of the examples he proposes are of a practical nature and would be quite at home in a neo-classical Machiavellian account of the rise and fall of empires which had little concern for religion. Mixing these classical and Christian discourses he argued that from contemporary luxury

> the greatest Danger may be feared to the State, both, on Account of the natural Consequences of that Vice itself, and the others which are its constant Attendants, and likewise of its judicial Consequences, or the Vengeance it is likely to bring us from the Hand of Heaven
>
> (Burgh 1757: 14)

In the same vein, one polemical author railed against 'the present Prevalency of Vice and Corruption; the Degeneracy and Depravity of Manners, and the almost total Neglect of Religion and Virtue which reigns among us', warning Britons to 'amend your Lives, lest the supreme and just Judge of the Universe, too highly provoked and incensed, should suddenly shower down his tremendous Judgements upon a wicked and sinful Generation' (Anon. 1750: 1-2). Another, or possibly the same author wrote of the

> almost universal Contempt of Religion, the total Perversion of the Morals, especially of the lower Class of People', claiming that 'Profaneness, Infidelity and practical Atheism, that Luxury, Prodigality, Idleness, and every Species of Wickedness, for which our Language has a Name

were spreading throughout the nation (Anon. 1751: 3). This is 'a dangerous Malady that preys upon the Vitals of the Body politic'. The author argued that anyone who considered themselves concerned for 'the Good of his Country and the Happiness of the Commonwealth' would battle personally against vice and immorality (Anon. 1751: 4). The author explicitly argued that national liberty was at stake, as it depended upon the manners and morals of the people:

> If Virtue and Liberty prevail in a Country blessed with a Constitution such as ours, it must be owing to that Disposition prevailing in the Generality of the People; without which, either the Government must be entirely military … or they must be in the State we are now in, free from legal Force and Violence, but Bond-Slaves to Vice, Luxury, and all Degrees of Wickedness
>
> (Anon. 1751: 5-6)

Following the standard argument the author argues that the only solutions would be the adoption of tyrannical force unless a reformation of manners is initiated. Only this would enable them to reclaimed, 'render'd fit for Freedom, and worthy to be free' (Anon. 1751: 6, 7). Freedom required certain capacities for its possession. The proper administration of the laws and assistance of the magistrate in this was one way in which these could be instilled.

Such arguments were supported in literature which more directly articulated the voice of the governing authorities. The duty of the magistrate was defined as being 'truly and indifferently to minister justice to the punishment of wickedness and vice, and to the maintenance of true religion and virtue' (W. H. 1787: 22). Writing in the context of the recent Jacobite rebellion in a sermon given at the Surrey Assizes, Howard, chaplain to the Prince of Wales, went to great lengths to contrast liberty and license. He too drew upon the example of Rome to discuss 'the noble and warming Subject of *Liberty*', 'the Advantages of a *free People*, and the Excellency of our *Constitution* in these Kingdoms' (Howard 1745: 4). He took pains to distinguish liberty, defined as the sweetest of all earthly possessions, from licentiousness, 'which is the Bane of all Peace and Order' (Howard 1745: 5). He defined liberty in conventional 'neo-Roman' terms, in contrast to slavery and as the absence of arbitrary rule, submission to another's will or the absence of consent in the making of law (Howard 1745: 6; cf Skinner 1998). Equally, however, he was clear that what defined English liberty was the rule of law: ''Tis the Voice of the Law, no Threat of Man above us, that an *Englishman* must hearken to …. The Obedience or Subjection of an *Englishman*, is not the *Service* of a *Slave*' (Howard 1745: 7). 'What we have most to fear', he argued, 'is from the excessive Indulgence of our Passions; from those *Luxuries* and *vicious Habits* which, more than any *Burdens* of State, are likely to hurt us and impoverish Posterity, to weaken and enervate the Courage and Force of *Britain*'. What would prevent this was 'proper Discipline and the necessary Restraint of Authority' (Howard 1745: 9-10).

The understanding that liberty was threatened by vice and disorder, by lack of government as much as tyranny, is made clear by several practicing Magistrates presiding at the Guildford Quarter Sessions in the mid-eighteenth century. Absence of government, wrote one magistrate, would lead to little other than 'well modell'd combinations to oppress, cheat & ruin the weaker & submitting part of mankind'. He continued

> it may be doubted whether Tyranny it self tho never so unlimited, never so grievous, be not rather to be chosen than a wild & corrupt state of anarchy. This state exposes men to the frauds & violence of their neighbours & the extravagant Caprices of the People, the other [tyranny] Subjects whole Nations to the mad Frolicks, & brutal Passions of a Flatter'd & an abus'd Tyrant.

The best solution was the Aristotelian mean and it was thanks to the laws of England that they had achieved this state living neither 'under ye Terror of an arbitrary Power, nor are we cast

loose to ye Wildness of ungoverned [sic] Multitude' (Midsummer Quarter Sessions at Guildford, 1736, in Lamoine 1992: 283).

Reeve Ballard agreed, aiming to expose 'the chief Causes of Vice, unbounded Liberty, and Licentiousness', his aim being 'to shew the Necessity of laying proper Restraints upon Men of these unhappy Principles' (Ballard 1745: iii). Government was a necessity as

> The Reason of Man, is not sufficient for the Government of Man: She often gives up her Empire to the Passions', which 'will lead a Man, to Oppression, Rapine and Spoil; nay, to the uttermost Ravage and Cruelty, if ungoverned, if un-controuled [sic]
>
> (Ballard 1745: 3)

The 'publick Welfare and Happiness of a People, depend upon a regular Dominion' which was divinely ordained: 'God no sooner had put Breath into our Mouths, but he put Law into our Hearts, and withal annext a Reward or Penalty, upon our Observance or Disobedience' (Ballard 1745: 5, 6). Echoing the positions outlined above he argues 'All Government was design'd for the Benefit of the Governed, and the Laws are the Strength and Sinews of it'; 'we are governed by Laws of our own making; and how can any one complain at the Sentence of that Law, which Himself had a Share in enacting' (Ballard 1745: 7). He even invokes the injunctions of Machiavelli and Cicero, who, 'though a Heathen', writes of the Roman republic that:

> her Dignity and Honour were then most conspicuous and extended, when she flourished most in Virtue, and that her Decrease in the former, was attributed to her falling off in the latter; which is a second Argument to enforce the Suppression of Sin and Wickedness, as essential to our Peace and Quiet, to our Welfare and Happiness
>
> (Ballard 1745: 8)

II

It was commonly argued that the freedom and order of the community, the common good, could only be obtained by the direct ordering of the body politic. Liberty and order were, according to this scheme, fundamentally interlinked, the free body politic being located at the mean between anarchy and tyranny. Civil liberty was a limited condition, not unbounded license to act without law or morality. This casting of the relationship between liberty and order as one of a mean condition might be distinctive to English political culture (although the work of Axtmann (1992) would perhaps suggest otherwise), however the mechanisms that were to secure this order were remarkably similar to Germanic systems of police, possibly owing to their Saxon origins. This section of the article explores the kind of practices carried out by the officers and courts whose arguments in favour of their own authority and whose claim to create the conditions of liberty and order were discussed above.

The practice of the Court Leet was to appoint individual officers to oversee correct conduct, not just in particular areas of the town, but also in specific trades. Thus the offices were divided into such roles as 'Market-Lookers for Fish and Flesh', 'Market-Lookers for Corn Weights and Measures', 'Mise Gatherers', 'Officers for wholesome Ale and Beer', 'Bylawmen', 'Appraizers of Goods' and the unenviable and unpopular 'Officer for Muzzling Mastiff Dogs and bitches'. These very specific offices were often further subdivided into particular officers for individual districts (Earwacker 1888: 2-5, 1 Oct. 1731). Discipline, both of those contravening particular bylaws, or for those refusing or failing to fulfil their duties (particularly for muzzling mastiff dogs), consisted solely of the power to fine offenders fixed sums upon presentment at the Court sessions. The organisation of this mode of government was, then, highly particular. Specific officers were appointed for a fixed period to look at

individual classes of offence in discrete locations. Power is exercised hierarchically and over a fixed location, by individual agents, acting only in their area, both in terms of subject and territory. Not only are the actors relatively immobile, their purpose is in some sense to fix certain attributes (manners, prices, qualities) in the goods and subjects over which they preside.

This detailed system of regulation is closely comparable to the 'police' regimes common on the continent, analysed in Foucault (1980, 1988) and Pasquino (1991) and which sought to regulate and scrutinize all aspects of public life. If this is compared to the practices of government in eighteenth-century Buckinghamshire, Middlesex and Manchester it is hard to escape the strong similarities.[10]

It is clear from examining the records of the Manchester Court Leet in the 1730s and 1780s that there were practices of police, in the archaic sense, operating. The function of the Court Leet was conceived as 'the preservation of the publick peace' and it should have

> a particular regard to everything that renders the enjoyment of life and property so uncomfortable, as to constitute a public nuisance; that is such as is noxious to all the people about the neighbourhood, or that may be passing that way
>
> (Roberts 1793: 21)

The Leet officers were concerned with inspecting the quality of goods sold at market, checking for weights and measures, freshness and adulteration, damage to hides and leather, scavenging (*i.e*. the clearing of refuse), muzzling dangerous dogs and engrossing, forestalling and regrating (that is interfering with the passage of goods to market or practices intended to raise the cost of produce), collecting rent and taking care of the town water conduit (Earwacker 1888: 2-5, 1 Oct 1731). They could also appoint a winter watch. Offences presented in 1731 included one Mr Brown for 'suffering his swine to go about town', Mr Legh 'for making steps at the Turnpike going into the said square as a dangerous Nuisance', various charges of unmarketable beef and fish and short weights and measures, as well as selling milk from a horse in the street. The scavengers reported several people for failing to keep the streets clean and not clearing away dung. There was also a prosecution for obstructing the water course with stones and straw (Earwacker 1888: 6-8).

In his *Charge to the Grand Jury of the Court Leet*, William Roberts complained that these responsibilities were not being discharged with the necessary vigour, despite 'the prevalence and contagion of licentiousness, irregularity, and disorder' (Roberts 1793: 17). In doing so, he noted that the main problems requiring attention were 'The laying of Timber, Dunghills, or other things in the public streets; or letting Carts stand in the streets or at doors ... which obstruct the passages', also 'suffering Swine to stray about the streets' (Roberts 1793: 21). The 'public security and convenience' also called attention to uncovered cellar holes and in general 'every man should so enjoy his own property, as not to be dangerous or hurtful to others'. Roberts's concern with open, passable streets was further emphasized by his complaints of constant 'Purpesture' or 'any Incroachment upon the common Streets, by building on, inclosing, or taking in a part, and endeavouring to make that private which ought to be public' (Roberts 1793: 21-2). He was concerned for 'the sake of the health of the public' and matters relating to the quality of foodstuffs, also with 'all nuisances and offences against public oeconomy', including 'obstructions, stoppages, restrictions, straightenings, or diversions of the highway' as well as walls, pools, ditches, causeways and pits, 'to the nuisance of the way, and the dangers of passengers, defective bridges and causeways; ditches not scoured; removing bounds and landmarks; offensive trades and manufactures' (Roberts 1793: 22-4). Roberts also saw the task of the Leet as the regulation of the offences of the common peace, including the 'common scolding of women', brawling, challenging another to a fight and 'the spreading of false news to create discord between the King and the nobility'

(Roberts 1793: 25). This list tallies closely with the definitions of Foucault (1980, 1988) and Pasquino (1991) in their outlines of the activity of police. This constitutes a system of regulation, fixation and circulation, dependent upon detailed knowledge provided by constant observation of a relatively small area by those taking a patrician interest in the welfare of their social inferiors, with whom they might be personally acquainted.

The chief officer of the Leet, the constable, was 'to certify the name, surname, place of dwelling, profession, and trade of every person who shall be just come into the Ward, and keep a roll thereof', which not only assumed such a complete knowledge was possible and that all the inhabitants knowable, but it presumed their stay would be lengthy enough to make such practices worthwhile (Paul 1776: 60). Movement was strictly controlled, as were prices and wages, which could be set by the magistrate (Eastwood 1994: 45). Likewise 'the constable &c. has Power *ex Officio* to set on work all Artificers, or mechanick Tradesmen, fit to labour by Day, upon any request to him made by any Person that wants Help in Hay or Corn Harvest ([Gardiner] 1724: 31). The attempt was made to strategically direct the flows of labour according to need. The old poor law required the recipient of relief to dwell in their home parish and acted as a further method for fixing residence, the 1697 Settlement Act allowing strangers to settle in a parish only if they possessed a certificate stating their old parish would accept them if they required poor relief. Those in receipt of poor relief were supposed to wear a badge marked 'P', demonstrating their pauper status (Hindle 2004).

The constable was instructed to be particularly attentive to the passage of strangers through the area, especially at night and was to instruct the watch that 'If any Stranger pass by them, he shall be arrested until the Morning, (when if they have no Suspicion of him) they shall let him go quit' ([Gardiner] 1724: 25). In practice, although they should stop all strangers, they were advised to only stop those 'if they find Cause of Suspicion in them' ([Gardiner] 1724: 26). Most important of all was his role in preventing vagrancy. Anyone over the age of seven,

> Man or Woman, single or married, that wander from their usual place of Abode, every where begging, or if they do not beg, if they wander and loiter abroad, without a lawful Passport, and give no good Account of their Travel

could be accounted a Rogue and dealt with as such ([Gardiner] 1724: 27). They were also to police 'All Jugglers (or slight of Hand Artists, pretending to do Wonders, by Vertue of *Hocus Pocus*, or the like) Tinkers, Pedlers, Petty Chapmen, Glass-men, especially if they be not well known, or have not a sufficient Testimonial', or 'All Labourers which wander abroad out of their respective Parishes, and refuse to work for Wages reasonably taxed, having no Livelihood otherwise to maintain themselves, and such as go with general Passports not directed from Parish to Parish' ([Gardiner] 1724: 28).

There was a moral dimension to this concern with order: For Roberts the Leet should regulate 'All public Gaming-houses, Houses of Ill Fame, and other disorderly places ... [which] must certainly be the receptacles of the perpetrators of those late frequent and outrageous attacks on the persons and property of his Majesty's peaceable subjects' (Earwacker 1889: 246). The system of dispositions extended to moral conduct, the parish constable being required to watch the local population for potential immoral behaviour: 'if he be inform'd of such as haunt Bawdy-Houses, or other suspicious Places, or if any lewd Man or Woman that are together, and about to be incontinent and lewd, he may take Assistance with him and arrest them'. He was also to observe unlawful gaming houses, drunkenness, 'Profane cursing and swearing' and the disturbing of ministers during their preaching ([Gardiner] 1724: 13, 35, 37, 39, 43).

It seems clear that there was a system of government operating in eighteenth-century Manchester that looks very much like 'police' in the general sense, one whose functions were ultimately complemented and to some extent replaced by a body called a 'Police

Commission' in 1792 when legislation was passed 'for cleansing, lighting, watching, and regulating the streets, lanes, passages and places, within the towns of Manchester and Salford … [and] for widening and rendering more commodious several of the said streets' (32 Geo. III, c. 69). At the same time, the Middlesex Justices Act of 1792 (32 Geo. III, c. 53) established seven 'police offices' in London, in addition to the extant Bow Street office. Each office was to have three salaried magistrates and six dedicated constables. After 1785 and the attempt to introduce a 'Police Bill' in London, the term 'police' was often used to refer to systems for the government of order (on which see Dodsworth 2006).

The Police Commission introduced in Manchester was a system of general police for the superintendence of the 'interior order and oeconomy of the town' and 'affairs of local polity', the primary concerns being for the safe passage of the streets and their maintenance in an orderly condition (Cross in Earwacker 1889: 254-8; quotations at 254 and 255). When this body was reorganized in 1828 (9 Geo. IV, c. 117) and 1830 (11 Geo. IV, c. 47) to run on more bureaucratic lines, with the different functions of the Commission separated out into four different committees, it remained a system of police with general concerns for the regulation of order. As late as the late 1820s the Manchester Police Commission spent its time doing such things as widening streets, noting 'the rapid increase of buildings in the interior of the Town renders it highly desirable that its leading avenues should be spacious, as well with a view to the health as the convenience of the Inhabitants' (Manchester Police Commission 1828-33: 249). Street corners were rounded and footpaths widened, ensuring easy and safe passage. They also ensured doors opened inwards, cellar doors were closed and buildings were constructed according to the fire regulations (Manchester Police Commission 1828-33: 122, 250, 384-5 and throughout). The Act of Parliament Committee that was responsible for establishing this 'New Police Bill' expressed its concern over the licensing of carriages, dealers in second-hand goods and pawnbrokers, as well as levelling, paving and draining the streets, preventing goods being thrown out of windows higher than the first floor, the selling of goods in the streets, flower pots projecting beyond the sides of houses, throwing stones, playing bat, 'wantonly' cracking whips, chimney sweeps shaking their clothes, 'the general prevention of singing ballads and songs or uttering obscene language in the streets or Markets or delivering or posting indecent placards or handbills', loitering in groups and obstruction of 'passengers' (Manchester Police Commission 1828: 10, 17, 56, 70, 72-3).

It might be considered that this was just the idiosyncrasy of the ancient and unusual manorial government of Manchester (although it is clear that manorial government in fact remained common and active in England up to the nineteenth century) and the specifics of the act of parliament introduced to improve it. But Manchester's Police Commission was not an aberration: in 1828 the Commission sought to reorganize their system of government in response to the significant political changes taking place with the repeal of the Test and Corporation Acts, which undermined the inherent power of the Tory oligarchy and required them to appear more concerned for the public good and practitioners of rational, economic government in order to maintain their position. As part of this process the Commissioners investigated comparable systems of 'police' in Birmingham, Edinburgh, Glasgow and London, study of which demonstrates very similar practices being undertaken in these towns (Manchester Police Commission 1828-9). Equally, study of the quarter sessions, by far the most common mechanism of government across the country, suggests considerable commonality in practice.

Richard Witton's *Charge to the Grand Jury* of Barnsley stressed the necessity of uniting for the public good so that Britain could defy all the powers of Europe. He defined the role of the quarter sessions as prosecuting all non-capital felonies, breaches of the peace (affrays, assaults, forced entries, trespasses, riots), all nuisances and common annoyances, the state of the highways, frauds, weights and measures, market offences and public vice, immorality and profaneness (Quarter Sessions at Barnsley, 15 Oct. 1741 in Lamoine 1992: 321, 323-4). In Westminster, John Fielding the Bow Street magistrate, concerned with the 'support and

liberty, the peace, good order, and happiness of civil society', encouraged the presentment or indictment of offences towards God, the King and the public, including blasphemy, swearing and breach of the Sabbath, as well as assault, defamation, public lewdness and gaming (J. Fielding at the General Quarter Session of the Peace, Guildhall, Westminster, 6 Apr. 1763 in Lamoine 1992: 390, 392-6).

It might be thought that this was simply rhetoric, however even a cursory examination of the records for Buckingham reveals that such practices were as much a feature of the Quarter Sessions in practice as they were of the Court Leet. The sessions at Aylesbury of 4 October 1711 and 17 January 1711-12 saw indictments for failing to repair the highway, assault, various matters concerning servants, theft, recusancy, obstructing a footway, ploughing up a common, stopping a highway across a field, selling ale without a license and selling unwholesome meat. Indictments, it should be remembered, could lead to corporal punishment or transportation. There were also presentments, which would lead automatically to a fine, for obstructing the way, selling ale without a license, recusancy (the same individuals), setting snares, ill-government of an ale house 'permitting whores and vagrants there', refusal to assist the constable, releasing someone from the constable's custody, building an unlawful dove loft and one woman was presented for 'being a common scold'. In addition to these general offences fathers were made to pay for the upkeep of their bastard children, the regulations regarding apprenticeship were enforced, nuisances and trespass were suppressed, sureties were taken from disputing individuals to ensure they kept the peace and several families were moved from one parish to another by warrant, alongside the wholesale conveyance of vagrants throughout the country (Le Hardy and Rickett 1939: 282-303).

Clearly the design was to know all inhabitants of the area, contain them within it and apply their labour where it was required, maintaining the flows of commerce while preserving the moral order. Such a system of comprehensive social and economic ordering is clearly quite distinct from the 'liberal' modes of government established in the nineteenth century: there is no sense here of a 'social' or 'the economy' with laws of their own. Rather, the common good dictates that movement and conduct should be precisely regulated by those in possession of personal and complete knowledge of the area and who possessed the capacity and character to judge impartially questions of the public good.

Conclusion

The theory and practice of civil government in England articulates a relationship between freedom and government which is clearly distinct from its liberal successor. Liberalism sought to maximize the freedom of action of the 'different spheres' of economy, politics and society, to increase the mobility of the agents within and between them and to interfere as little as possible in what were perceived to be 'natural' processes of operation. In contrast, for 'police' or 'civil government', the chief imperative was the creation of order through the precise regulation of the conduct of persons in all aspects of public life. However, we cannot see this as a condition of order as opposed to one of liberty. According to the pre-liberal mentality of rule, liberty was itself a product of that ordering. Here, freedom is a mean condition between anarchy and tyranny, opposed to license, not legitimate interference. The distinction between liberalism and police, or civil government, cannot be said too consist of the introduction of freedom into government *per se*. Liberty was at the conceptual heart of eighteenth-century practices of government that cannot be described as liberal, and which are virtually indistinguishable from those termed 'police' in the same literature. At the same time, the historical emergence of liberalism did not mean abandonment the notion of the common good. Nor, in practice, did liberal governments completely abstain from interference in social or economic life. Liberalism in general has certainly maintained the practice of enforcing certain rules of behaviour considered necessary to the maintenance of social order.

What we can chart, however, is a change in the nature of freedom and its relationship to government, alongside a well-known shift in emphasis on the freedom of the individual versus the community. I do not say a change in the meaning of freedom, rather I would suggest there is a change in the kind of freedom with which government is concerned. The key here is a move from civil liberty, a socio-political condition which is a product of ordering, to natural liberty, which implies freedom from all interference, following the model of Hobbes and others. When Adam Smith spoke of the 'system of natural liberty' (on which see Burchell 1991), he did so advisedly. The word 'natural' is not extraneous here and he would have been fully aware of its implications.

This can be made clearer by an examination of the work of Joseph Priestley who, in his *Essay on the First Principles of Government* (2nd edition 1771), argued powerfully against the dominant definition of liberty, which he termed 'illiberal', and in favour of an alternative very close to Smith's economic liberalism (Priestley 1993: 123, 125). Like Smith, he urged wariness about government intervention in life:

> Let us, however, beware, lest by attempting to accelerate, we in fact retard our progress in happiness. But more especially, let us take heed, lest, by endeavouring to secure and perpetuate the great ends of society, we in fact defeat those ends.

The reason for this was that

> it seems to have been the intention of divine providence, that mankind should be, as far as possible, *self-taught* …. But by the unnatural system of rigid unalterable establishments, [which he took to characterize the dispositional, interventionist mode of government] we put it out of our power to instruct ourselves, or to derive any advantage from the lights we acquire from experience
>
> (Priestley 1993: 113)

Nonetheless, while seeking to outline a sphere of non-interference in the sphere of 'civil liberty', that being 'that power over their own actions which members of the state reserve to themselves, and which their officers must not infringe', he defines political liberty in terms that were relatively conventional and which his predecessors would have recognized as central to what they termed 'civil liberty', he simply thought that these conditions were already well enough established in Britain not to require detailed treatment (Priestley 1993: 12-27).

This strikes at the heart of the distinction between liberalism and police. For the liberal, political liberty remains a concern, but one aspect of life separable from the concerns of public action. For police or civil government, public action is of political import as it pertains to the strength and durability of the state. Likewise, for the liberal, the kind of freedom they are concerned with is a given, something which generally does not need to be worked at or achieved, rather it simply needs to be unlocked from restraint. Their concern is to allow unbounded liberty to operate as far as possible according to laws which it assumes to be 'natural'. In contrast, for the pre-liberal mind, freedom is not a condition of unlimited license, but a bounded state of order and to reduce constraint is often to decrease civil liberty even as it increases the range of possible action.

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[1] For a guide to the field of governmentality see Dean (1999) and Rose (1999).

[2] For use of this literature in an historical and historical-sociological context, see Bennett (1995, 2004), Dean (1991), Firth (1998, 2002, 2003), Ivison (1993), Joyce (2003).

[3] For more on the concept and rhetoric of the common good at this time see Miller (1994).

[4] In fact the problem here may not be the writing of English history in terms of German, but a mis-reading of German history as well. Axtmann (1992: 43, 45-47) demonstrates that the link between civil liberty and the common good was also common to Germanic states, further undermining the opposition established in the Foucaultian literature.

[5] Clearly British government is slightly different from its European counterparts, but no more so than French government is different from Saxon government, or that Saxony is from Prussia or the Italian states. Equally, English government is legally distinct from Scottish rule, hence my focus solely on the English case here. See for example Axtmann (1992), Ertman (1999) and Raeff (1983) on the different varieties of 'police' and state structure.

[6] The symbolics of this are explored in Dodsworth (2005).

[7] In fact there were also improvement acts in 1765 and 1776 which did not have the powers to be effective. The Police Commission did eventually operate according to the 1792 statutes, but their activity did not begin until 1795 at the earliest, more substantially in 1799 (Redford 1939). The Commission was reformed in 1828, the moment at which Manchester local government received its bureaucratic, institutional form. Incorporation took three years because the Police Commission launched a legal challenge to the new body and the police introduced in 1839 was replaced with a new version in 1842.

[8] The discourse of 'police' is examined in Dodsworth (2006).

[9] Conal Condren's (1997) work on 'liberty of office' offers close seventeenth-century parallels and precursors to my argument here, developing closely related themes.

[10] See also Ertman (1999: 35) and especially Klippel (1999).

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