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LORD ACTON, THEORETICIAN OF POLITICS

Justification and Abuse of Political,
Ecclesiastical, and Societal Power*

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For hundreds of years Christianity has promoted the existing political and cultural powers and, above all, conservative ideas and principles, due in no small part to the legitimation of political sovereignty that comes from reasoning grounded in a theology based on biblical revelation.¹ Since the 1980s the study of politics and current

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¹ For centuries the classic passage for Christian and ecclesiastical thought on the state was Romans 13:1–7, which begins: “Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed.” The natural-law interpretation, which reflects historical-contingent and socio-ethical conditions, as well as illegitimate political rule, finds its high point in medieval Scholasticism, especially in Albert the Great and Thomas Aquinas in the thirteenth century. Baroque Scholasticism—Francisco Vittoria, Francisco Suarez, and others in the sixteenth century—and neo-Scholasticism draw on high Scholasticism but

events as well as the study of fundamentalism have confirmed the tight relationship between religions—including Christianity—and both conservative political and societal ideas in particular. Analyses of the history of theology and of ideas, however, show that the Christian religion and ethics can be combined with many different political movements and ideas. Today, the Protestant churches—of which the Anglican is the largest denomination—and the Roman Catholic Church affirm human rights, democracy, and the rule of law as the basis of modern statehood.

The connection between the Christian religion and liberal political thought is prominently evident in the life and writings of the English historian John Emerich Edward Dalberg-Acton. From 1859 to 1866 Acton was a member of the British House of Commons and was a promoter of the politics of the English liberal prime minister William Ewart Gladstone. In 1869 Acton became the first Catholic to enter the House of Lords since the separation of the Anglican church from the papal church in 1534. This honor for the English aristocrat was surely a belated satisfaction, given the fact that his desire to study in England had been rejected by three universities, among them Cambridge, on the grounds that he was a Catholic.² This rejection caused Acton to study in Edinburgh, Scotland, as well as at the University of Munich, where he studied history and theology under the well-known church historian Ignaz von Döllinger. Also influential on Acton was the historian Leopold von Ranke. In 1872 Acton received an honorary doctorate in philosophy from the University of Munich and in 1876 he was admitted into the Bavarian Academy of Sciences as a nonresident member. In 1880 he was made a fellow

modify it considerably. Cf. Rudolph Uertz, *Vom Gottesrecht zum Menschenrecht: das katholische Staatsdenken in Deutschland von der Französischen Revolution bis zum II. Vatikanischen Konzil (1789–1965)* (Paderborn: Schöningh, 2005), 236–37.

² Cf. Johannes B. Müller, “Lord John Emerich Edward Dalberg-Acton,” in *Lexikon des Konservatismus*, ed. Caspar von Schrenck-Notzing (Graz: L. Stocker, 1996), 13ff. As is well known, F. A. Hayek originally wanted to name the Mont Pelerin Society (founded in April 1947) the “Acton-Tocqueville Society,” but in light of the protests from Ludwig von Mises and Frank Knight against naming it after two Roman Catholic aristocrats, it was agreed that the liberal society should be named after the venue in Switzerland.

of All Souls College in Oxford, and in 1891 he was made Regius Professor of Modern History at Cambridge.

The purpose of the following discussion is to outline Acton's political theory and ethics; his understanding of the relationship between church and state in the light of his activities during the First Vatican Council in Rome (1869–70) as it relates to the dogma of papal infallibility; and his approach to democracy, constitutionalism, and social order.

RELIGION AND POLITICS IN THE THOUGHT OF LORD ACTON

The political ethics of Lord Acton is primarily built on two foundations. The first is Greek philosophy, in the tradition of Socrates and the Stoics. In this line of thought, which is also indebted to transcendental thinking, Acton constructs the most important distinctions for his understanding of the relationship between law and injustice, and between good and evil. According to Socratic and Stoic philosophy, human beings were given reason and conscience to make that determination. Endowed with this ability humans have a solid basis for thinking about order that must follow ethical standards. But for Acton it is the Christian religion that brings the crucial element for the “development of the freedom of conscience, since it provides what Greek philosophy, for all its Socratic and Stoic wisdom, cannot provide: the distinction between state and society, between state and church.”³

The natural endowment of humans with reason and conscience meant much for the “emancipation of human conduct,”⁴ but nothing had been done with that yet. “But when Christ said: ‘Render unto Caesar the things that are Caesar’s, and unto God the things that are God’s,’ those words, spoken on His last visit to the Temple, three days before His death, gave to the civil power, under the protection of conscience, a sacredness it had never enjoyed, and bounds it had

³ Ulrich Noack, *Politik als Sicherung der Freiheit. Nach den Schriften von John Dalberg-Acton dem Historiker der Freiheit 1834–1902* (Frankfurt am Main: G. Schulte-Bulmke, 1947), 133.

⁴ Noack, *Politik als Sicherung der Freiheit*, 133.

never acknowledged; and they were the repudiation of absolutism and the inauguration of freedom. For our Lord not only delivered the precept, but created the force to execute it.”⁵

One can easily see that Acton’s ethical-personal position is built on a synthesis of philosophical and theological reasons. This approach unmistakably differentiates the English historian from the neo-Scholastic natural-law theory that had been expanding since the mid-nineteenth century. This theory started in Italy after Pope Leo XIII’s encyclical *Aeterni patris* in 1879 met with official ecclesiastical approval, and functioned until the start of the 1960s as the official political and social-ethical guideline of the church. It considerably shaped and influenced the politics and programs of the German Centre Party as well as other Christian democratic parties in central Europe.

Acton’s interpretation of society, politics, and law differed clearly from the specific natural-law interpretation of the official ecclesiastical teaching on state and society, which was based on the pope’s state and social encyclicals, dictated an interpretative frame for Christian moral teaching, and sanctioned any deviation from the norms the church had decreed. The ecclesiastical-cultural and political atmosphere that was coupled with the emerging neo-Scholasticism, which came into being under Pius XI’s papacy (1846–78), had strong integral features. Moral theology and Catholic teaching on the state at this time took for themselves the right, through the instrument of *potestas indirecta*—the indirect power of the pope, or, as the case may be, the teaching of the church in worldly matters—to dictate societal, cultural, and political-ethical guidelines too. They were meant to guide Catholics in their everyday lives of marriage, family, society, state, and cultural matters. In this way it was possible for the neo-Scholastic teaching and praxis of the church to infiltrate the Catholic parties—the Centre Party, Christian people’s parties, unions, and others—and have a significance influence.⁶

This form of centralization of clerical power and authority, as well as guidance of laypeople by clerics and the teaching of the church,

⁵ Acton, “The History of Freedom in Antiquity,” in *SW* 1:28; cf. Matthew 22:21 and Mark 12:17.

⁶ Cf. Carl Ulitzka, “Soll der Klerus die Führung in der Öffentlichkeit übernehmen?,” *Die Seelsorge* 6 (1928/1929): 321ff.

experienced its greatest excess under the papacy of Pope Pius IX. With his encyclical *Quanta cura* and the *Syllabus* of 1864, which was primarily a judgment against both liberal and moderate liberal middle class ideas, the pope declared principles and rules that must have been greatly offensive to a liberal thinker such as Lord Acton.⁷ Informed by his religious and philosophical understanding of moral conscience, Acton advocated decisively for the separation of church and state, as well as the differentiation between religion and politics, whereas Pius IX condemned these positions in his *Syllabus*. It is important here to note that the excesses in the papacy and among the Roman Curia had to do with Rome's attempts to continue to secure the worldly reign of the pope over a church-state (756–1870) and to declare this as a necessary condition for ecclesiastical freedom and pastoral care.⁸

This kind of close connection of the human conscience and Christian morality with ecclesiastical-pastoral standards, along with mechanisms of interpretation and control, were foreign to Acton's imagination. His ethical-personal position is rooted to a considerable degree in English Common Sense thought, a much more free and pragmatic interpretation of social-philosophical and natural-law principles than was aimed at by the neo-Scholastic system of thought that consistently guided French- and German-speaking Catholics. Influenced by his studies with Ignaz von Döllinger and the close relationship he cultivated with this well-known church historian, Acton was well prepared in his role as critic of the papal teaching on faith and morality.

⁷ For the English text of the encyclical *Quanta cura*, see *The Papal Encyclicals*, vol. 1, 1740–1878, ed. Claudia Carlen (Wilmington, NC: The Pierian Press, 1990), 381–86. For the English text of the *Syllabus*, see Henry Denzinger, ed., *The Sources of Catholic Dogma*, trans. Roy J. Deferrari (St. Louis: B. Herder, 1957), 433–42.

⁸ Cf. Uertz, *Vom Gottesrecht zum Menschenrecht*, 193–94.

LIBERAL ETHICS AND THE REJECTION OF STATE ABSOLUTISM

This blending of religion and politics, church and state, and church dogma and civil life, which marked the Catholicism of the second half of the nineteenth century under the papacy of Pius IX, deeply contradicted Lord Acton's thoughts about freedom and his sense of conscience, which he claimed for himself precisely as a believing Catholic, without becoming a heretic. Acton's understanding of law and state is influenced by the Anglo-Saxon understanding of law, which differs significantly from the continental European tradition, which was shaped by Roman law. The characteristics of Common Sense Philosophy, as well as the corresponding common-law school of thought will be mentioned here briefly: Common law is a case law, a casuistic law, which orients itself to precedents, which were ruled by courts.⁹ Common law does not operate by abstract principles, as the constitutional continental European legal system does, but rather builds upon decisions of the past that have proven viable. Because there are no time limits to the binding applicability of precedents, this case law is more conservative than the statutory law that is known by other European legal cultures. Having said that, the Anglo-Saxon law also knows a competing, dynamic legal culture, the so-called equity law or equity jurisprudence, which, in the end, comes down not so much to the traditional argument as to a reflected and wise situational decision.

Thus one can see significant correlations in the legal thought of Acton and Edmund Burke, who is considered more of a conservative by continental European observers.¹⁰ But Acton is more flexible and liberal than Burke. And he does not share the extreme positions of

⁹ Cf. Theo Stammen, *Der Rechtsstaat: Idee und Wirklichkeit in Deutschland*, 4th ed. (Munich: Bayerische Landeszentrale für Politische Bildungsarbeit, 1972), 41–42; René David, *Einführung in die grossen Rechtssysteme der Gegenwart*, trans. Günther Grasmann (Munich: Beck, 1966), 15–16, 323–24.

¹⁰ Cf. Edmund Burke, *Reflections on the Revolution in France* [1790], in *Select Works of Edmund Burke*, vol. 2 (repr., Indianapolis: Liberty Fund, 1999), 85–476; Karl Graf von Ballestrem, “Burke,” in *Klassiker des politischen Denkens*, 2 vols., 5th ed., ed. Hans Maier, Heinz Rausch, and Horst Denzer (Munich: Beck, 1987), 2:118ff.; Manfred Henningsen, “Burke,” in *Vom Nationalstaat zum Empire*.

a populist and radically democratic style that attempts to impose a new order in the state and society. Acton rejects every form of state absolutism as simply immoral. In a letter to Richard Simpson he says, “I understand by political science the development of the maxim *sum cuique* in the relations of the state with other states, corporations and individuals.”¹¹ Burke’s resistance to a radical change of the British constitution in the sense intended by Parisian intellectuals is grounded in his belief that the constitution grew up on English soil and therefore fundamentally included civil rights and liberties, which the French could only import. Acton, on the other hand, emphasizes more strongly that the essence of freedom and political ethics is not to be found in outward forms and demands but rather in the living conscience, so that the sphere of constitutional life is not based on dead letters of edicts and regulations, but rather on the living thoughts of people.

HISTORICAL LAW AND THE NEW LAW

Acton identified the first principle of legislation to be that it “should grow in harmony with the people,”¹² that it is based on customs as well as on prescriptions, and that it identifies with the national character and life. What Acton outright rejects are the codes that are forcefully imposed on a people, such as those that were introduced in continental European states in the fifteenth century with the Roman law. This system, administered by “legists, jurists, bureaucrats,” proceeds “downwards,” so that the people are not the ones who administer the law, which of course grows out of the morality and customs of the people.¹³ An orderly system, accordingly, has to grow, and naturally it also can be changed in response to developments in culture, technology, and society, but this change has to occur cautiously. Thus Acton, just like Burke, rejects the voluntaristic theory, at least

Englisches politisches Denken im 18. und 19. Jahrhundert, ed. Manfred Henningsen (Munich: List, 1970), 43ff., esp. 48–49.

¹¹ Acton to Richard Simpson, May 7, 1860, in *CLARS* 2:58–60.

¹² Acton to Simpson, January 5, 1862, in *CLARS* 2:251.

¹³ Acton to Simpson, January 5, 1862, in *CLARS* 2:251.

its radical-democratic version. But how does this fit with Acton's later position? His German biographer Ulrich Noack writes:

A generation later he celebrates the American War of Independence as "the abstract revolution in its purest and most perfect shape," as "the most notable circumstances that people have seen," and says about the Americans: "On the principle of subversion, they are building the greatest political system in the history of humanity."¹⁴

One can detect in Acton that his judgments are based on the history of legal systems. Noack makes a point of emphasizing that these are very different from traditionalistic, or legitimist, arguments. For Acton, radical changes, no matter whether they come "from above" or "from below," are always immoral and destructive, because they place the past and future in opposition to one another and place exclusive value on the one or the other. But when it comes to what is inescapable, such as legal facts that are operative and cannot be changed anymore, British constitutional thought is not willfully obstructive, but demonstrates a realistic-pragmatic view. Acton as a young man, according to Noack, is "much more conservative than the older Acton; one could say that in the beginning he was a Whig but later became a devoted liberal. His views of tradition and revolution, and therefore his view of the essence of a state's institutions, receive a different coloring. But the contrast is not a sharp one; the transition is a smooth one."¹⁵ Noack tries here to get to the bottom of Acton's thoughts of law and state. But it is not necessary to distinguish between the young and older Acton, because Acton remains faithful to British constitutional thought throughout his life. It is perhaps less his personal development that is significant here; rather, his thinking is tied to the events in the American colonies, which forced Acton, just as much as Burke, to accept the inevitability of the increasing political and administrative independence of the American colonies as a fact of law and to legitimize them constitutionally.

It should be noted in this context that Catholic teaching on state and law, which was put in effect by the papacy of Leo XIII (1878–1903),

¹⁴Noack, *Politik als Sicherung der Freiheit*, 144.

¹⁵Noack, *Politik als Sicherung der Freiheit*, 144.

combines its specifically Thomist–natural law ideas with historical legal thought to a considerable degree. This becomes clear in Pope Leo XIII’s attitude toward the French Republic. The pope advises the French in his encyclical *Au milieu des sollicitudes* (1892), after he had diagnosed the irretrievability of the monarchical order, to “Acceptez la république!” Catholic teaching on the state, as well as historical legal thought in general, does not allow for a change of system from monarchy to a republican or democratic order. Similarly, Scholastic teaching on the state proceeds from the assumption that when a new order prevails, even if by revolution, this new order can and must be accepted as legitimate as long as it (according to the legal-ethical grounds of Catholic teaching) does not contradict the common good. Thus, the Catholic teaching on the common good can in principle justify a democratic order in place of a monarchic one. Problematic for the Catholic teaching on the state is the separation or differentiation between morality and law. In this regard the ecclesiastical teaching differs from the secular historical thinking on law, whose English version was represented by Lord Acton. While Acton systematically differentiates between ethics and law, neo-Scholasticism’s clerical teaching on the state views the law as nothing more than the outskirts of ethics and morality.¹⁶ Because of this, it is difficult, from the aspect of Catholic legal theory, to acknowledge the positive right of the state as a legitimate right, of which Acton naturally disapproved.

It is important to observe, in terms of political and legal theory, that the historical legal thought as represented in England—and to some degree on the Continent—relies, with regard to the history of ideas, on the classical Thomist model.¹⁷ To what else but vested rights should

¹⁶ Cf. Ernst-Wolfgang Böckenförde, introduction to *Erklärung über die Religionsfreiheit: Zweites Vatikanisches Ökumenisches Konzil* (Münster: Aschendorff, 1968), 16–17.

¹⁷ Cf. Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press, 1953), 296. It may be surprising that Burke—as also incidentally the Scholastic teaching on the state—goes back to a classical or Thomistic model, which then of course was also true of Lord Acton. However, common law, which also takes up traditional elements of Scholastic natural-law theory, differs from its neo-Scholastic version. This becomes evident in the *Magna Carta* (1215). In this respect, continental European law emphasizes more the legal idea of freedom—“free person”—whereas the English system

monarchies such as England and the papal state refer? To what else but the “historical law”? In other words, in English constitutional and legal thought, the poles of persistence and change, conservatism and liberalism, are much closer than in continental European thought, which since the nineteenth century has been influenced much more by the rationalistic theory of natural law coming out of France. This differentiation must always be taken into consideration when characterizing Acton’s theory of society and state and this theory’s qualification as “liberal.”¹⁸

THE VATICAN COUNCIL AND THE DOCTRINE OF PAPAL INFALLIBILITY

Acton remains faithful to his principles of socio-ethical and legal theory in his attitude toward ultramontanism and the ecclesiastical-curial movement right up to the assertion of the doctrine of papal infallibility at the First Vatican Council (1869–70). Acton, who after his studies in Munich under Döllinger (1850–54) worked as publisher of philosophical-theological and historical writings and served from 1859 to 1865 as a liberal member of the House of Commons, was appointed as peer to the British House of Lords by the English Prime Minister William Ewart Gladstone on December 11, 1869. Acton’s appointment happened only three days after the opening of the First Vatican Council in Rome. This temporal connection was not entirely coincidental. Acton was one of the most prominent critics of the decisions of this council.

On July 18, 1870, in the fourth session, the constitution *Pastor aeternus*, which included the infallibility doctrine, was officially adopted, with 522 voting in favor and only 2 opposed. Acton did not have an official assignment to serve as an observer of the council for the English government, but he stayed in close contact with Prime Minister Gladstone via the English embassy’s diplomatic courier service. Just like other European statesmen, Gladstone had a keen interest in the doctrinal decisions of the council. As member of the

emphasizes the legal norms and procedure. Cf. Stammen, *Der Rechtsstaat*, 46–47.

¹⁸ Cf. Roland Hill, *Lord Acton* (New Haven: Yale University Press, 2000), 74.

House of Lords, Acton had a diplomatic status. This status, along with his good connections to the Curia and the main leaders of the supporters, as well as to the critics of the doctrine of papal infallibility among the participants of the council and publicists, meant that Acton was well informed regarding the deliberations concerning the constitution *Pastor aeternus* and the intentions of its originators and opponents. From Rome he also informed Döllinger, who under the pseudonym “Janus” frequently published articles in the *Augsburger Allgemeine Zeitung* about the internal affairs of the preparations and consultations in the council.¹⁹

For the Catholic Church and for the majority of European states—England, France, Bavaria, Prussia, and others—the doctrine of papal infallibility and its background were a political issue of the greatest significance. It was feared that the dogmatic constitution of the infallibility of the pope would include far-reaching political and socio-ethical powers for the Roman pontifex, so it was not an unwarranted concern that the council would decree new norms that could impact civil obedience and fiduciary duties toward the ruler. There were good reasons to assume that the decisions of the council by means of extensive interpretation of the Catholic teaching on morality and faith would lead to tensions between Catholics and Protestants in states where the population was confessionally mixed. Similar worries were voiced by the Bavarian government.²⁰ Take, for example, the president of the council, curial cardinal Karl-August von Reisach—appointed by the pope—the former bishop of Eichstätt and archbishop of Munich and

¹⁹ Cf. Johann Joseph Ignaz von Döllinger, *Der Papst und das Concil* (Leipzig: E. F. Steinacker, 1869); ET: *The Pope and the Council* (Boston: Roberts Brothers, 1870). The substance of this book originally appeared in 1869 as a series of articles in the *Augsburger Allgemeine Zeitung* under the nom de plume “Janus.”

²⁰ Döllinger was excommunicated by the archbishop of Munich because he did not submit to the doctrine of infallibility. On the occasion of the four hundredth anniversary of the Ludwig Maximilian University in the summer of 1872, honorary doctorates were given to Lord Acton, William Ewart Gladstone, and John Stuart Mill, among others. “But the central figure in these events was the rector of the University, Dr. Döllinger. In deliberate response to Rome’s excommunication, the highest grade of the Bavarian Order of Merit was bestowed on him by the Bavarian prime minister” (Hill, *Lord Acton*, 249).

Freising. After the announcement of the council, immediately after the publication of the *Syllabus* on December 6, 1864, he declared in an opinion that a new council was necessary, arguing that “the last council, that of Trent, had not expressly refuted the fundamental error of the reformers, namely their denial of the hierarchical structure of the Church and her authority to teach unerringly. This omission had created some uncertainty even within the Church herself.”²¹

The preparations for the council stood therefore in a close connection (in both time and content) with the condemnations of the liberal principles of modern statehood as expressed in the *Syllabus*. Among other things, this pertained to human rights and rights to freedom as well as to the separation of state and church. Because of this, and not least owing to the activities of the Curia and the accompanying material that appeared (especially the distribution of the Jesuit publication *Civiltà Cattolica*), there was fear that the pope would interpret his power of teaching so broadly that—as Acton feared—not only future statements of the pope but also obvious erroneous judgments and heresies of former popes would fall subject to the claim of papal infallibility.

POLITICAL AND ECCLESIASTICAL RAMIFICATIONS OF THE COUNCIL

Contrary to fears, the Vatican Council, with its ceremonial adoption of the constitution *Pastor aeternus*, in fact did not establish such a far reaching definition of papal authority, because it tied authoritative papal statements of doctrine to specific conditions.²² This did not

²¹ Hubert Jedin, *Ecumenical Councils of the Catholic Church: An Historical Outline*, trans. Ernest Graf (New York: Herder and Herder, 1960), 191.

²² See *Dogmatic Constitution I on the Church of Christ*, in Denzinger, ed., *The Sources of Catholic Dogma*, 457:

The Roman Pontiff, when he speaks *ex cathedra*, that is, when carrying out the duty of the pastor and teacher of all Christians in accord with his supreme apostolic authority he explains a doctrine of faith or morals to be held by the universal Church, through the divine assistance promised him in blessed Peter, operates with that infallibility with which the divine Redeemer wished that His church be instructed in defining doctrine on faith and morals; and so such definitions of the Roman Pontiff from himself, but not from the

change the fact, however, that the doctrine of infallibility could withstand neither strictly biblical-exegetical methods nor the merely revelatory theological statements in the New Testament. On the contrary, it seemed preposterous, in light of the historically grown fullness of power and authority of the papacy, to posit this as an entire system of belief and of law. The papacy is historically based on a primacy of honor. The doctrine of papal infallibility made the claim of papal powers excessive.²³

In this context it is easy to apply Acton's most famous statement to papal powers too: "Power tends to corrupt and absolute power corrupts absolutely."²⁴ The argument relating to the inopportuneness of the dogmatic definition, not however the infallibility in and of itself, was represented by many European and American bishops. Among them were many of the most highly educated theologians at the council, such as Bishop Wilhelm Emmanuel von Ketteler of Mainz, who, like the other Inopportunist among the bishops, left before the synod had concluded but submitted to papal infallibility later. It is true to say that the broad opposition of bishops, priests, and laity, especially from northern and middle European countries, could claim that their opposition had prevented the definition of broader claims to papal power, as had been discussed by the ecclesiastical press.

The relationship between Acton and his former teacher Döllinger is also remarkable in this context. Both agreed not only that the definition of papal infallibility was inopportune for political-cultural and ecclesial-political reasons, but also "that the teaching is wrong."²⁵ Acton saw the doctrine of infallibility as a result of a spiritual climate that contradicted the theological-ethical doctrine of the freedom of conscience, and so the doctrine of infallibility cannot be given the

consensus of the Church, are unalterable. But if anyone presumes to contradict this definition of Ours, which may God forbid: let him be anathema.

²³ Cf. August Hasler, *How the Pope Became Infallible: Pius IX and the Politics of Persuasion*, trans. Peter Heinegg (Garden City, NY: Doubleday, 1981).

²⁴ Acton to Mandell Creighton, April 5, 1887, in *SW* 2:383.

²⁵ Ulrich Noack, "Liberale Ideen auf dem Ersten Vatikanischen Konzil. Lord Acton in Rom 1869/70," *Historischer Zeitschrift* 205 (1967): 81ff. (quote on p. 85).

highest claim to truth even by the authoritative decision of a pope. This means that the doctrine's claim to truth is based on an erroneous opinion and a consequential wrong decision that cannot be rectified.

As Roland Hill comments, "Acton's disillusion with the Church was in a sense greater than Döllinger's but also less, for Acton at least entertained the thought that the dogma of Infallibility might one day be 'explained away' or, as Catholics of the Vatican II generation might say, placed in its theological context, whereas Döllinger hoped for a retraction, which Rome would never make. Acton and Döllinger were agreed that there existed among Catholics an attitude towards religion that was immoral."²⁶ Döllinger was an extraordinary church historian but not as well-versed in systematic theology; according to Acton, he had never sufficiently considered the religious-ethical and psychological climate in which the doctrine of infallibility was able to come into being in the absence of enough mechanisms that could have prevented the worst from happening. So it certainly is a paradox that Acton—who according to Noack was so greatly influenced by Döllinger's teaching in terms of his assessment of the inopportunities of the doctrine of papal infallibility—and Döllinger were so estranged from each other on precisely this issue; at the end of the day the two views were irreconcilable.

The argument between Acton and his former teacher erupted in, of all places, the context of an obituary for Félix Antoine Philibert Dupanloup (1802–78), bishop of Orléans and member of the French Academy, that Döllinger had coauthored under his nom de plume. Even though Dupanloup was one of the Inopportunistes among the participants of the council, in a discussion Dupanloup once had shown appreciation for the *Syllabus*, which condemned the liberal

²⁶ Hill, *Lord Acton*, 319–20. The fact is that the Second Vatican Council modified the doctrine of infallibility of 1870 by putting it into a different context. Walter Kasper writes in *Publik* (December 12, 1969), here quoted from Hans Küng, *Infallible? An Inquiry*, trans. Edward Quinn (Garden City, NY: Doubleday, 1971), 199: "The overcoming of ecclesiastical triumphalism by Vatican II affects also the Church's understanding of truth and demands a new and more profound interpretation of the concept of infallibility, which is so open to misunderstanding. This concept belongs more than any other to the still unmastered past of Vatican I."

theory of state and society, and he had been praised by the pope specifically for that.

Acton thought it incomprehensible that Döllinger could have not investigated the immoral attitude of Roman Catholicism toward religion, namely, that there were unmistakable connections between the condemnation of liberal principles by Pius IX in the *Syllabus* of 1864 and the doctrine of infallibility of 1870. Döllinger did not appreciate that the encyclical *Quanta cura* and its condemnations of freedom of religion, conscience, and opinion provided the intellectual breeding ground in which the doctrine of infallibility could thrive. Among the conditions by which it came into being was not only a religious irrationalism but also, along with this, a belief in miracles that displaced reasoning and that was especially prevalent among the Catholics in southern Europe, among whom were also members of Jesuit orders who belonged to the advisors of the council and, furthermore, cardinals, curial bishops, and even the pope himself.²⁷

Acton discusses in a letter to Döllinger the immoral attitude of Catholics toward religion, which he says consists in the belief that

sin ceases to be sin if it is committed for the purposes of the Church. Theft is not theft, lies are not lies, murder is not murder, if they are sanctioned by religious interests or authorities.... We are therefore dealing not with heretics or skeptics but with liars, thieves, and murderers—be it in actuality or potentially. Thus we have a much worse enemy than Protestantism, because Protestantism is compatible with the strictest morality and because this view poisons the fount of truth, the elixir of the church.²⁸

²⁷ Cf. Hill, *Lord Acton*, 318–19. The intellectual-religious climate in which the council preparations took place becomes evident in a speech given by the archbishop of Messina, Luigi Natoli, in which he said that Saint Peter himself preached infallibility in Sicily. After all, the Madonna had confirmed this deputation (cf. Hill, *Lord Acton*, 221). Regarding the belief in miracles in Rome in the nineteenth century and its shady side, cf. Hubert Wolf, *Die Nonnen von Sant’Ambrogio. Eine wahre Geschichte* (Munich: Beck, 2013).

²⁸ Acton to Döllinger, n.d. (ca. 1879–80), here quoted from Ignaz von Döllinger, *Briefwechsel*, vol. 3, *Ignaz von Döllinger—Lord Acton 1871–1890*, ed. Victor Conzemius (Munich: Beck, 1971), 212–13.

Acton's liberal stance toward integrity, which does not differentiate between a position of moral theology and one of philosophical ethics, demonstrates its extensive dimensions here. Acton even accepts a break from Döllinger, his teacher and friend of many years, which adds a further personal and tragic note to the history of the impact of the doctrine of infallibility.

DEMOCRACY AND SOCIAL ORDER

Acton recognizes the tremendous power that can proceed from the Christian teaching on conscience for human beings and for the commonwealth in a liberal order. The basis for his free and democratic understanding of people and society is the conscience, or the conscientiousness of the human being. However, along with the opportunities that freedom presents to humans, there are also certain connected dangers, such as the abuse of power in the hands of individuals, of institutions, and of collectives, as well as revolutions and riots. The right order, according to the theory of a mixed constitution, which English and Catholic thought have in common, therefore should preserve the middle ground between unrestricted democracy and abstract idealistic absolutism. That means, first, that the order of the state cannot exclusively be the product of deliberate creation by human beings and citizens, but rather—just like law—grows with the passing of time and, second, that the state receives its authority precisely from the fact that the state as legislator is “heteronomous.” The state stands over society but is also bound to law and justice.²⁹

Noack points out the different evaluations that Acton gave regarding revolution throughout his life, and he characterizes the younger Acton as more conservative than the older one. Whereas Acton condemned revolution in early statements because, as he argued, a nation cannot “cast off its history, reject its traditions ... and commence a new political existence,”³⁰ he was enthusiastic about the American Revolution and wars for independence: these were “abstract revolu-

²⁹ Noack, *Politik als Sicherung der Freiheit*, 152–53.

³⁰ Acton, review of *Irish History*, by Goldwin Smith, *Rambler*, n.s., 6 (January 1862): 190–220, here quoted from *SW* 2:76; cf. Noack, *Politik als Sicherung der Freiheit*, 142.

tion in its purest and most perfect shape,” and he said that Americans, “on the principle of subversion ... are building the greatest political system in the history of humanity,” and he welcomed it as “the most notable circumstances that people have seen.”³¹

Noack’s evaluation refers us back to the above-mentioned theory of the state. The French Revolution is a radical overthrow, whereas the American Revolution is a secession and the creation of a completely new order. For historical legal thought this is a special challenge. Something new, or even a new order, cannot be justified merely on the basis of tradition. The American order is voluntaristic and grounded on the social contract theory and is in this sense a new legal creation. In fact, however, Acton evaluates the American Revolution (and the deliberate-artificial element of human work and energy) to be a deeply ethical-anthropological element: human beings are co-creators of the order of a community, and depending on the situation, the duty to act, informed by the conscience, can be greater or smaller. Regarding the American constitution, Acton positively evaluates, not least, “the system of a federalist government ... which astonishingly increases the national power, and which nonetheless respects local freedom and authorities,” which corresponds to the “principle of equality.”³² In this sense moralistic-political decisions can never be static and deduced from general principles. Indeed Acton sees the societal and political balance in the America of his time as troubled, because Americans could not lean “on the ideas of former generations” as the Europeans could.³³

It is not a contradiction when Acton, who approved of the American Revolution, rejects a radical democracy just as much as an absolute monarchy. “Both republics and monarchies are either absolute or *organic*, that is, they are either governed by laws, in other words constitutionally, or by means of will, which (because it is the basis for laws and cannot therefore be its object) is despotic. Only in the way they *grow*, in the direction toward which they gravitate, are democracy and monarchy directly antithetical.”³⁴ The criterion that Acton uses

³¹ As quoted in Noack, *Politik als Sicherung der Freiheit*, 144.

³² Noack, *Politik als Sicherung der Freiheit*, 154.

³³ Noack, *Politik als Sicherung der Freiheit*, 155.

³⁴ Noack, *Politik als Sicherung der Freiheit*, 151 (emphasis in original).

to assess these two different orders of democracy and constitutional monarchy are the civil rights, as well as the rules and provisions, that correspond best to the area of accountability of the citizens. These are the constitutional institutions and the balance of powers inside the political community. In the *Rambler*, a paper that Acton published from 1858 to 1862, in “Political Causes of the American Revolution,” he wrote,

[Democracy and monarchy] differ, therefore, not only in direction, but in the principle of their development. The organization of a constitutional monarchy is the work of opposing powers, interests, and opinions, by which the monarch is deprived of his exclusive authority, and the throne is surrounded with, and guarded by, political institutions.... Hence monarchy grows more free, in obedience to the laws of its existence, whilst democracy becomes more arbitrary. The people is induced less easily than the king to abdicate the plenitude of its power, because it has not only the right of might on its side, but that which comes from possession, and the absence of a prior claimant.³⁵

With his pointed theory of personal ethics, Acton clearly recognized that progress was moving toward the enlargement and expansion of a liberal-democratic order, for which he undoubtedly had much sympathy given his personal disposition. On the other side, shaped in his thinking by the English experience, he recognizes that a constitutional monarchy with its balance between throne and the forces of the opposition—privileged classes and their parliamentary representation—presents a more favorable system of state and legal order than a liberal-democratic system, since Acton (who saw this in the development of America) could not quite tell where the path of that system would lead. This shows itself in Acton’s perplexity regarding the tension between democracy and the sovereignty of the people, majority rule and the rights of minorities, as well as between

³⁵ “Political Causes of the American Revolution,” *Rambler*, n.s. (3rd ser.) 5 (May 1861), here quoted from *SW* 1:217.

the unitarian system and federalism—the “most difficult chapter” in Acton’s system.³⁶

Unlike Burke, Acton recognizes the social dimensions of further progress; besides the democratic and constitutional principles, that means the necessity of standards and regulations for a socio-political welfare state, for which Acton entertained much greater sympathies than Burke. However, Acton was not yet able to delineate future societal and socio-political structural orders. His outline of the potential problems in this regard, however, goes quite far for a political thinker who saw himself as a defender of individualism against public authority based on the Stoics’ teaching of equality, fraternity, and humanity—even though his prognosis here for the future too is quite general. Acton analyzes the differences between freedom and democracy by reference to the antagonisms between the South and the North in the American union. He admittedly hopes that the doctrine of equality will also include in the future the concept of responsibility, but he fears, with good reasons, that in America there is a fight against a true sovereignty of the people. Regarding this matter Acton refers to economics as well as to the problem of property and possessions for freedom and democracy.

He leans on the theories of the English socio-political thinkers John Lilburne (1614–57) and James Harrington (1611–77). Their theory of the necessity of the balance of property made them the first to have recognize the “real conditions for democracy,” and in many regards, to have “seen as clearly and as far as we see today.”³⁷ Acton calls the teaching of these early social reformers “as important as the invention of printing, or the discovery of the circulation of the blood.”³⁸ It is the recognition that power follows property. According to Acton, this is what Lilburne and Harrington believed, even though they were lacking empirical evidence. Acton, however, proceeds from this theory as if it were a law. “The cleavage between the political and the social democrat, which has become so great a fact in modern

³⁶Noack, *Politik als Sicherung der Freiheit*, 152.

³⁷Acton, “Sir Erskine May’s *Democracy in Europe*,” in *SW* 1:72; Noack, *Politik als Sicherung der Freiheit*, 158.

³⁸Acton, “Sir Erskine May’s *Democracy in Europe*,” in *SW* 1:72; Noack, *Politik als Sicherung der Freiheit*, 159.

society,” complains Acton, “was scarcely perceived.”³⁹ Political democracy, which relies on the equality of civic rights, is the foundation for constitutionalism. Acton discards social democracy, but he concedes that “legal equality must strive towards balance of property,” since power follows property “as by a law of nature” and the government obtains “its form from the dominant powers of society.” It is obvious that Acton recognizes the fundamental dilemma of the contemporary-modern social state and its tension between “teaching on freedom and law.”⁴⁰

Noack states that Acton sees clearly “that the terms of civil freedom and social order bring no social service to the masses of the people.”⁴¹ As Acton writes, what the masses mean by freedom is “that the strong hand that heretofore has formed great States, protected religions, and defended the independence of nations, shall help them by preserving life, and endowing it for them with some, at least, of the things men live for.... That is also its purpose and its strength. And against this threatening power the weapons that struck down other despots do not avail.”⁴² Acton criticizes the divine rights of big landowners, which the revolution of 1688 put in place of the divine right of the king, and in this regard he characterizes John Locke as “thin, lacking in energy and impoverished, since his ‘notion of liberty involves nothing more spiritual than the security of property.’”⁴³

Noack comments that “the goal of liberal social politics,” expressed in a programmatic and formulaic way, is, in Acton’s words, “independence of labour and the security of property; to make the rich safe against envy, and the poor against oppression.”⁴⁴ Again, Noack summarizes:

³⁹ Acton, *LFR*, 58.

⁴⁰ Noack, *Politik als Sicherung der Freiheit*, 159.

⁴¹ Noack, *Politik als Sicherung der Freiheit*, 159.

⁴² Acton, “Sir Erskine May’s *Democracy in Europe*,” in *SW* 1:81; Noack, *Politik als Sicherung der Freiheit*, 159.

⁴³ Noack, *Politik als Sicherung der Freiheit*, 160; Acton, “The History of Freedom in Christianity,” in *SW* 1:47.

⁴⁴ Noack, *Politik als Sicherung der Freiheit*, 161; Acton, “The History of Freedom in Antiquity,” in *SW* 1:12.

A sense of justice and empathy flow into each other here and are in the depth of his heart a matter of conscience borne by the religious person. To him, ignoring suffering is as bad as a crime, pure and simple. Just as he sees political justice as a matter of his religion, so too, he sees ignoring suffering as not just a sin before God but also a crime before people. Every honorable politician has a duty to punish publicly those who commit this crime. "We are bound ... to make the rude workman understand and share our indignation."⁴⁵

CONCLUSION

The program that Acton championed could have derived from Pope Leo XIII's 1891 social encyclical *Rerum Novarum*. Acton basically appreciated the papacy, saw it as a unifying office and absolutely necessary, and never ignored the social context of Christian ethics. That is why he surely could have had no fundamental misgivings toward the papal teaching on social reform and its theory of property, which, contrary to some proponents of the more radical liberal camp, did not deserve to be labeled "socialistic." However, Acton was miles ahead of the papal teaching on the state with his liberal and constitutional theory, which included civil rights and rule of law. He essentially already represented a view that much later was taught by the Second Vatican Council's (1962–65) pastoral constitution *Gaudium et spes* and the declaration on freedom of religion in *Dignitatis humanae*, which made possible the ecclesiastical convergence toward human rights as well as liberal and constitutional ideas on order—ideas that already had circulated for some time within political and social Catholicism, as well as in Protestantism.

Acton's liberal-Catholic conviction about the conscience, which so inspired his opposition against the doctrine of papal infallibility and against the exaltation of spiritual and political power, finds clear expression in the famous witticism of Cardinal John Henry Newman, who was critically linked to his compatriot Acton. In Newman's letter

⁴⁵Noack, *Politik als Sicherung der Freiheit*, 161; Acton to Mary Gladstone, April 24, 1881, in *Letters of Lord Acton to Mary, Daughter of the Right Hon. W. E. Gladstone*, ed. Herbert Paul (London: George Allen, 1904), 96.

to the Duke of Norfolk, he says, “Certainly, if I am obliged to bring religion into after-dinner toasts, (which indeed does not seem quite the thing) I shall drink,—to the Pope, if you please,—still, to Conscience first, and to the Pope afterwards.”⁴⁶

⁴⁶John Henry Newman, *A Letter Addressed to His Grace the Duke of Norfolk on Occasion of Mr. Gladstone’s Recent Expostulation* (New York: The Catholic Publication Society, 1875), 86.