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*Cato's Letters. The political and legal dimension of republican and liberal  
synthesis*

***SUMMARY***

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The research subject of this dissertation is an analysis of “*Cato’s Letters Or, Essays on Liberty, Civil and Religious, and Other Important Subjects*”, (first edition 1722) i.e. a series of essays by Thomas Gordon and John Trenchard, using scientific instruments of political and legal doctrines. The author argues, as a research goal, that “*Cato’s Letters*” are an attempt to synthesize the seventeenth-century, modern republicanism with the axiology characteristic of early liberalism. The dissertation consists of four chapters, an introduction and conclusions.

The introduction contains approximate biographies of Gordon and Trenchard, the context of the historical and ideological origin of “*Cato’s Letters*”, the influence of this work on the political and legal discourse, sources of Gordon’s and Trenchard’s intellectual inspiration, presentation of the basic distinctive features of republicanism and liberalism, the state of scientific research on “*Cato’s Letters*” as well as presentation of methodological assumptions adopted in the research process.

Thomas Gordon (approx. 1691-1750) and John Trenchard (1662-1723) were British lawyers, intimately identified with the Whigs. Approximately 1718 they started a joint journalistic work by publishing, among others *The Independent Whig: Or, a Defence of Primitive Christianity, and of our Ecclesiastical Establishment, against The Exorbitant Claims and Encroachments of Fanatical Disaffected Clergymen*. Their most famous work - the subject of this dissertation – “*Cato’s Letters*” were published over a period of three years and contained 144 essays devoted to predominantly political and legal issues. At the time, the publication enjoyed great popularity, as well as many editions in British colonies in North America. The authors were under the inspiration of such thinkers as: John Locke, Algernon Sidney, Niccolò Machiavelli, Thomas Hobbes, Bernard Mandeville, Cicero. Gordon and Trenchard based their reflections on the historical experience of ancient Rome, which they gained through, among others: Livy, Tacitus, Sallust, Polybius, Seneca. Considering the quoted thinkers and historians two basic sources of doctrine appear in “*Cato’s Letters*”: republicanism and liberalism. Republicanism emphasized the primacy of common good through life in a just and free state. Liberalism perceived the individual as a subject of rights constituting political reality. The goal of Gordon and Trenchard was to reconcile both orders of political and legal thinking on the ground of coherent doctrine.

This dissertation assumes that categories of political and legal doctrines, such as - property, equality, freedom, society, law – as objective and universal arguments that should be considered without taking into account the historical context in which they were formulated. The essence of autonomous analysis is the perception of political and legal doctrines as a

timeless discourse between great minds and arguments, such as Aristoteles's vision of community and the concept of John Locke's civil society.

The first chapter entitled *Man as a morally ambivalent being*, discusses and analyses the views of Gordon and Trenchard on human nature. First of all, it contains the authors' response to the question about the character and features of human nature. Then the elements constituting the concept of human nature were analysed as well as the relations between the nature and postulated solutions in the field of politics and law.

The authors of "Cato's Letters" adopted a coherent vision of human nature, which was characterized by a mechanical description of a man whose deeds were an outcome of passion. They did not judge them in moral terms but paid strict attention to the analysis of rules governing humans. According to Gordon and Trenchard, human nature was ambivalent, that is, in its potentiality it was both good and evil, and the manner of its operation depended, to a large extent, on external factors in relation to man. The most important of the passions was egoism, the impact of which could have useful or harmful results. The task of a state and the law was to introduce solutions for controlling passions and generating benefit for the public.

The second chapter entitled *Arbitrary power - the basic threat to freedom*, considers the criticism of tyranny in *Cato's Letters*. First, it examines the views on the great men, that is, outstanding individuals who were able to acquire power inaccessible to mortals. Then, the chapter studies the political institution of power, the phenomenon of political corruption and the basic features of the tyrannical system.

The primary goal of Cato's Letters was to look for a way to prevent the constitution of arbitrary (tyrannical) power. This threat brought with it a phenomenon of great men - individuals who stand out above others, who have strived to achieve the greatest possible power by means of a social position. Passion was to lead them to submit to the rule of passion, and ultimately to wield tyrannical power - for example Caesar or Cromwell. According to Gordon and Trenchard, the institution of *power* carried many threats because it had a natural tendency to expand its scope. The authors take up another phenomenon related to power i.e. corruption, which the authors analysed from two perspectives: as a social phenomenon and a mechanism of political practice. The authors following the example of Algernon Sidney, said that corruption was an inseparable substrate of the tyrannical system. In this sense, it was a *modus operandi* of the sovereign's subjects, who at all cost tried - to improve own status - and endear themselves with the prince. Corruption raised the egoism of power, leading to the birth of tyranny. The tyrannical system was characterized by: the unlimited power of the prince, strength and superstition as a source of power, enslavement of the people and the rule of vices.

In that system, the sovereign possessed absolute and discretionary power. Failure to hold the ruler accountable to the Law was to lead as a result to: lack of legal certainty, frequent changes in legal regulations and unlawful violation of already established laws. The prince was able to wield it thanks to his army. In the tyrannical system, the people were - according to the authors - to be reduced to the role of slaves. The subjects of the arbitrary prince were to be objectified both in the political and economic terms.

The third chapter entitled *Free government – the teleological horizon of society*, examines the concept of a free state with features characteristic of both modern republicanism and early liberalism. First of all, the genesis of society and the state was discussed. Secondly, views on the axiological role of the population as a political subject are presented. Thirdly, ownership was analysed, which was one of the most important political and legal institutions. Then, the conceptual tension resulting from joining the categories of the common good and the particular interest was discussed. The last subchapter covered the issue of the scope and limitations of the political system of power.

The authors claimed that society and the state were created by way of a social contract, which the individuals concluded for the sake of their safety. That concept bore a strong resemblance to Locke's philosophy, with particular emphasis on the individualism and foundations of the social contract. Hence, it appeared that the sovereigns and officials could act only on the basis and within the limits of the law. Government is a public trust, i.e. the public places its trust to carry out specific tasks in public office. The basic principle that this government should follow is the identity of views, views and interests between the ruled and the ruling. The government should be guided by a basic principle, which is the identity of views, ideas and interests between the subjects and the governors. The authors assumed that all individuals were inherently equal, and collectively those people formed a society which was the foundation of a free state. The ruler ought in each case act in accordance with the public views and perceptions as political institutions have been established to provide security and prosperity to the public. Gordon and Trenchard presented a view that can be described as "optimistic populism", which was expressed in the belief that the people were infallible in judging public affairs. For, it was in people that all the privileges and responsibilities of the government had their source. The authors postulated the establishment of representative assemblies whose task would be to represent the public in the process of governance. An important role among the principles of the free system was fulfilled by property ownership. According to the authors property ownership decided about the actual share in the power, because only a few of the richest, owning great wealth, would not allow those less influential

to come to power. They observed that the fluctuations of property ownership relations were the first reasons for systemic change. Gordon and Trenchard believed that property was an institution that empowered the individual in his dealings with the government. In that sense the authors were propagators of private property, which secured the individuals against usurpation by the authorities. The assumptions of the free State doctrine gave rise to a question about the conceptual relationship between the categories of the common good and the individual interest. In the model perspective, the first was a reference to the tradition of republican reflection on politics and law, while the second was to be considered the foundation of the liberal paradigm. According to Gordon and Trenchard not only did those categories not exclude each other but were able to co-exist in a single political and legal order. In "*Cato's Letters*" this distinction was clearly outline into two spheres, i.e. public and private. That distinction was expressed by a different definition of rights and duties of entities operating in each of those spheres. The public sphere was seen as the duty of the government to safeguard the common good which is the sum total of individual goods and political principles constituting a free government. No one could order a private individual what to do, while the rulers were strictly bound by legal regulations and directives flowing directly from the will of the people. An important protection of the systemic order was to be the limitation of power, which would prevent the emergence of a government with absolute competence. Gordon and Trenchard postulated the introduction of constitutional norms that would constitute safeguards and restrictions imposed on the sovereigns. The constitution was not only to set up a system of punishments for political crimes, but also to create a system of mutual systemic safeguards that would generate mutual distrust, jealousy and concern for one's own existence in relation to the egoism of the sovereigns.

Fourth chapter entitled *Law as an Instrument for the Protection of Freedom* analysis and discusses: the law of nature and positive law, rules of proper legislation, goals and functions of the positive law of the public sphere and goals and functions of the law of a positive private sphere.

The authors began their reflection on the law by introducing a distinction into the law of nature and positive law. The first had the attribute of the supreme law, which was the source of all other norms. The fundamental principle of the law of nature was to discern between good and evil and order good things and forbidding the evil ones, therefore distinguishing and defining, justice and injustice. The positive law was to be hierarchically subordinated to the law of nature and draw its content directly from the higher order norms. The rule of good legislation stipulated that new laws should be created only when necessary, that is, the requirements of life in the state meant that certain regulations were indispensable. The norm regulating the public

sphere were supposed to regulate the political institution such as the government as well as any phenomena resulting from it. The law within the private sphere in reference to an individual should delineate a space of no interference from the government. Positive law of the public sphere was primarily intended to regulate the scope of government prerogatives, by defining clear competencies of the rulers, and by introducing a system of power restrictions. The objective of the positive law of the private sphere was to define the field excluded from interference by public authorities. In a broader sense, the very existence of the sphere of freedom of this kind constituted a limitation of power, simply by designating its scope of power. In the narrower dimension, it was the definition of the area of negative freedom due to the individual - a construction with a modern, strictly liberal connotation. The postulates regarding the positive law of the private sphere were mainly related to the ways of regulating personal freedoms to which all individuals were entitled to. Gordon and Trenchard included on that list: freedom of thought, freedom of ownership, freedom of religion and freedom of speech.

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