

FREEDOM AND THE LAW



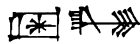
Bruno Leoni

BRUNO LEONI

F R E E D O M
A N D
T H E L A W

EXPANDED THIRD EDITION

FOREWORD BY ARTHUR KEMP



Liberty Fund

Indianapolis

This book is published by Liberty Fund, Inc., a foundation established to encourage study of the ideal of a society of free and responsible individuals.



The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word “freedom” (*amagī*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

© 1991 Liberty Fund, Inc.
All rights reserved.

Freedom and the Law © 1961 by William Volker Fund. Reprinted 1972 under the sponsorship of the Institute for Humane Studies, Inc., Fairfax, Va.

All inquiries should be addressed to Liberty Fund, Inc., 8335 Allison Pointe Trail, Suite 300, Indianapolis, IN 46250-1684.
Manufactured in the United States of America.

Frontispiece courtesy of Silvana Leoni.

Library of Congress Cataloging-in-Publication Data

Leoni, Bruno.

Freedom and the law / Bruno Leoni : foreword by Arthur Kemp. —
Expanded 3rd ed.

p. cm.

Includes bibliographical references and index.

ISBN 0-86597-096-3 (hardcover). — ISBN 0-86597-097-1 (paperback)

1. Liberty. 2. Law—Philosophy. I. Title.

K487.L5L46 1991

340'.1—dc20

91-3283

CIP

C 10 9 8 7 6 5 4 3

P 10 9 8 7 6 5 4 3

CONTENTS

Foreword to the Third Edition	vii
-------------------------------	-----

F R E E D O M A N D T H E L A W

Introduction	3
1 Which Freedom?	26
2 “Freedom” and “Constraint”	43
3 Freedom and the Rule of Law	58
4 Freedom and the Certainty of the Law	76
5 Freedom and Legislation	95
6 Freedom and Representation	112
7 Freedom and the Common Will	133
8 Some Difficulties Analyzed	153
Conclusion	172

T H E L A W A N D P O L I T I C S

[A Note]	188
1 The Law as Individual Claim	189
2 Law and Economy in the Making	204
3 The Economic Approach to the Political	219
4 Voting Versus the Market	235
Index	249

FOREWORD TO THE THIRD EDITION

Bruno Leoni was a devoted proponent, in virtually all his activities, of those ideals we call liberal. He was a remarkably talented, intelligent, able, persuasive, multifaceted individual who might well have deserved the description Renaissance man, if it were not for the fact that the words have been so frequently misapplied.

Born April 26, 1913, Bruno Leoni lived a dynamic, intense, vigorous, and complex life as a scholar, lawyer, merchant, amateur architect, musician, art connoisseur, linguist, and—above all else—as a defender of the principles of individual freedom in which he so passionately believed. He was Professor of Legal Theory and the Theory of the State at the University of Pavia, where he also served as Chairman of the Faculty of Political Science, as Director of the Institute of Political Science, and as founder-editor of the quarterly journal *Il Politico*. As a distinguished visiting scholar, he traveled all over the world, delivering lectures at the Universities of Oxford and Manchester (in England), and Virginia and Yale (in the United States), to mention only a few. As a practicing attorney, he maintained both his law office and his residence in Turin where he was also active in the Center for Methodological Studies. He found time, on occasion, to contribute columns to the economic and financial newspaper of Milan, *24 ore*. His successful efforts in saving the lives of many Allied military personnel during the German occupation of

northern Italy gained him not only a gold watch inscribed "To Bruno Leoni for Gallant Service to the Allies, 1945," but also the eternal gratitude of too many persons to mention. In September 1967, he was elected President of the Mont Pelerin Society at the Congress of the Society held in Vichy, France. This was the culmination of long years of service as Secretary of the Society to which he devoted a major portion of his time and energies.

Bruno Leoni died tragically on the night of November 21, 1967, at the height of his career, at the peak of his powers, and in the prime of his life. The community of scholars all over the world is poorer without him because it has been denied those promised accomplishments and achievements he could not live to finish.

For anyone interested in knowing something of the depth and breadth of his interests, there is no better place to start than a perusal of two sources. A compilation of the works of Bruno Leoni, together with poignant testimonials by his friends and colleagues, may be found in the volume entitled, *Omaggio a Bruno Leoni*, collected and edited by Dr. Pasquale Scaramozzino (Ed. A. Giuffrè, Milan, 1969). A casual reading will convince even the most skeptical of his wide-ranging interests and scholarly erudition. There is also the cumulative index to *Il Politico*, the multidisciplinary quarterly he founded in 1950, prepared so ably by Professor Scaramozzino.

* * *

From 1954 through 1959, I had the pleasure, the duty, and the honor to administer six Institutes on Freedom and Competitive Enterprise held at Claremont Men's College (now Claremont McKenna College) in Claremont, California. The Institutes were designed to present a program of graduate lectures in economics and political science of special interest to those teaching related subjects as members of the faculties of American colleges and universities. At each of these Institutes three distinguished scholars were invited to present individually an analysis of freedom as the source of economic and political principles; an analysis of the development of the free market mechanism and its operation; and a study of the philosophical bases, characteristics, virtues, and defects of the private enterprise system.

Approximately thirty Fellows participated in each of these Institutes, selected from a long list of applicants and nominees—most were professors or instructors in economics, political science, business administration, sociology, and history. A few were research scholars or writers and, here and there, even an academic dean or two. In all, about 190 Fellows participated in the six Institutes, drawn from ninety different colleges and universities located in forty different states, Canada, and Mexico.

The distinguished lecturers, in addition to Professor Bruno Leoni, included Professor Armen A. Alchian, Professor Goetz A. Briefs, Professor Ronald H. Coase, Professor Herrell F. De Graff, Professor Aaron Director, Professor Milton Friedman, Professor F. A. Hayek, Professor Herbert Heaton, Professor John Jewkes, Professor Frank H. Knight, Dr. Felix Morley, Jacques L. Rueff, and Professor David McCord Wright.

In an effort to increase both the quality and quantity of international intellectual communication, so far as possible at least one lecturer at each Institute represented the European scholarly tradition.

* * *

I first met Bruno Leoni in September 1957 at the Mont Pelerin Society meeting in St. Moritz, Switzerland. We were both relatively new members of the Society, and both of us were presenting formal papers at one of the sessions. Following my return to the United States, I convinced my colleagues of the desirability of inviting Leoni as one of the lecturers for the upcoming Institute. Leoni eagerly accepted. In 1958, Leoni joined Milton Friedman and Friedrich Hayek (the latter two each doing a second stint) as lecturers at the Fifth Institute on Freedom and Competitive Enterprise that was held from June 15 to June 28. It was an impressive faculty. Professor Hayek's lectures ultimately became a part of his *Constitution of Liberty*, Professor Friedman's his volume on *Capitalism and Freedom*. Professor Leoni's lectures were to become *Freedom and the Law*.

Few who attended those sessions have forgotten them. The intellectual stimulation, the discussions lasting far into the night, the camaraderie—all these combined into a nearly perfect whole. Leoni, a superb linguist fluent in English, French, and German as

well as his native tongue, delivered his lectures in English from handwritten notes. I suspect they were written at odd times and, certainly, on odd pieces of paper. They were constantly being amended as he became more accustomed to the group. He even brought with him a small book that had belonged to his father—a dictionary of American slang of the twenties. The lectures as well as some of the discussions were recorded on tape.

I prepared the first draft of *Freedom and the Law* from these notes and tapes at the strong urging of F. A. (Baldy) Harper and with financial assistance from the William Volker Fund. Later a professional editor added the finishing touches. This work was done with the author's express approval and retained the order and form of delivery as far as possible. This volume is as close to the original series of lectures as the constraints of the written word permit.

The original notes, manuscript, and tapes were deposited at the Institute for Humane Studies, Inc., in Menlo Park, California. When they moved to George Mason University, this material was deposited at the Hoover Institution of War, Revolution and Peace at Stanford University.

The first edition of *Freedom and the Law* was published by D. Van Nostrand Company of Princeton, New Jersey, in 1961 as part of the William Volker Fund Series in the Humane Studies. A second edition, virtually unchanged except for my new Foreword, was sponsored by the Institute for Humane Studies and published by Nash Publishing Company of Los Angeles in 1972. For this new edition, I have incorporated into the Foreword some of the remarks I made at the Mont Pelerin Society General Meeting in St. Vincent, Italy, on September 1, 1986, on "The Legacy of Bruno Leoni."

Although most of Leoni's works are in Italian, *Freedom and the Law* is not. At one of the Mont Pelerin Society meetings, an Italian gentleman asked if permission could be obtained to undertake an Italian translation. I replied affirmatively and enthusiastically, but nothing, so far as I know, has come of it. There have been two translations into Spanish: one published by the Centro de Estudios Sobre La Libertad, in Buenos Aires (1961); and one by the Biblioteca de la Libertad, Union Editorial, in Madrid (1974). Both translate the title as *La Libertad y La Ley*.

Since its first publication, *Freedom and the Law* has enjoyed, I am told, considerable attention by students of law and economics. For example, in 1986, two conferences on the book were held under the direction of Liberty Fund, Inc. One was held in Atlanta in May and the other in Turin, Italy, in September. The major new paper prepared for the former—"Bruno Leoni in Retrospect," by Peter H. Aranson—was subsequently published in the Summer 1988 issue of the *Harvard Journal of Law and Public Policy* along with "Freedom and the Law: A Comment on Professor Aranson's Article," by Leonard P. Liggio and Thomas G. Palmer.

In the opinion of many, *Freedom and the Law* is the least conventional and most challenging of all Leoni's works, promising to bridge, as Professor F. A. Hayek has written, "the gulf which has come to separate the study of law from that of the theoretical social sciences. . . . Perhaps the richness of suggestions which this book contains will be fully apparent only to those who have already been working on similar lines. Bruno Leoni would have been the last to deny that it merely points a way and that much work still lay ahead before the seeds of new ideas which it so richly contains could blossom forth in all their splendor."

That promised bridge, unfortunately, was never completed. It is our fond hope in publishing this third edition of *Freedom and the Law*, together with some related lectures given in 1963, that the many students and colleagues, friends and admirers of Bruno Leoni will expand and develop the ideas and suggestions contained herein beyond the point where his efforts so abruptly ceased.

Bruno Leoni was a remarkable student of law and political science and had a substantial understanding of economics as well. I recall with a mixture of sorrow and joy the many facets of a Bruno Leoni I admired, loved, and enjoyed being with.

June 1990

Arthur Kemp
Professor Emeritus, Economics,
Claremont McKenna College,
Claremont, California

F R E E D O M
A N D
T H E L A W

INTRODUCTION

It seems to be the destiny of individual freedom at the present time to be defended mainly by economists rather than by lawyers or political scientists.

As far as lawyers are concerned, perhaps the reason is that they are in some way forced to speak on the basis of their professional knowledge and therefore in terms of contemporary systems of law. As Lord Bacon would have said, "They speak as if they were bound." The contemporary legal systems to which they are bound seem to leave an ever-shrinking area to individual freedom.

Political scientists, on the other hand, often appear to be inclined to think of politics as a sort of technique, comparable, say, to engineering, which involves the idea that people should be dealt with by political scientists approximately in the same way as machines or factories are dealt with by engineers. The engineering idea of political science has, in fact, little, if anything, in common with the cause of individual freedom.

Of course, this is not the only way to conceive of political science as a technique. Political science can also be considered (although this happens less and less frequently today) as a means of enabling people to behave as much as possible as they like, instead of behaving in the ways deemed suitable by certain technocrats.

Knowledge of the law, in its turn, may be viewed in a perspective other than that of the lawyer who must speak as if he were bound whenever he has to defend a case in court. If he is sufficiently well versed in the law, a lawyer knows very well how the legal system of his country works (and also sometimes how it does

not work). Moreover, if he has some historical knowledge, he may easily compare different ways in which successive legal systems have worked within the same country. Finally, if he has some knowledge of the way in which other legal systems work or have worked in other countries, he can make many valuable comparisons that usually lie beyond the horizon of both the economist and the political scientist.

In fact, freedom is not only an economic or a political concept, but also, and probably above all, a legal concept, as it necessarily involves a whole complex of legal consequences.

While the political approach, in the sense I have tried to outline above, is complementary to the economic one in any attempt to redefine freedom, the legal approach is complementary to both.

However, there is still something lacking if this attempt is to succeed. During the course of the centuries many definitions of freedom have been given, some of which could be considered incompatible with others. The result is that a univocal sense could be given to the word only with some reservation and after previous enquiries of a linguistic nature.

Everyone can define what he thinks freedom to be, but as soon as he wants us to accept his formulation as our own, he has to produce some truly convincing argument. However, this problem is not peculiar to statements about freedom; it is one that is connected with every kind of definition, and it is, I think, an undoubted merit of the contemporary analytical school of philosophy to have pointed out the importance of the problem. A philosophical approach must therefore be combined with the economic, the political, and the legal approaches in order to analyze freedom.

This is not in itself an easy combination to achieve. Further difficulties are connected with the peculiar nature of the social sciences and with the fact that their data are not so univocally ascertainable as those of the so-called natural sciences.

In spite of this, in analyzing freedom, I have tried, as far as possible, to consider it first as a datum, namely, a psychological attitude. I have done the same with constraint, which is, in a sense, the opposite of freedom, but which is also a psychological attitude on the part of both those who try to do the constraining and those who feel that they are being constrained.

One could hardly deny that the study of psychological attitudes reveals differences and variations among them, so that a univocal theory of freedom, and consequently also of constraint, with reference to the ascertainable facts is difficult to formulate.

This means that people belonging to a political system in which freedom is defended and preserved for each and all against constraint cannot help being constrained at least to the extent that their own interpretation of freedom, and consequently also of constraint, does not coincide with the interpretation prevailing in that system.

However, it seems reasonable to think that these interpretations on the part of people generally do not differ so much as to foredoom to failure any attempt to arrive at a theory of political freedom. It is permissible to assume that at least within the same society the people who try to constrain others and those who try to avoid being constrained by others have approximately the same idea of what constraint is. It can therefore be inferred that they have approximately the same idea of what the absence of constraint is, and this is a very important assumption for a theory of freedom envisaged as the absence of constraint, such as is suggested in this book.

To avoid misunderstandings, it must be added that a theory of freedom as the absence of constraint, paradoxical as it may appear, does not preach absence of constraint in all cases. There are cases in which people have to be constrained if one wants to preserve the freedom of other people. This is only too obvious when people have to be protected against murderers or robbers, although it is not so obvious when this protection relates to constraints and, concomitantly, freedoms that are not so easy to define.

However, a dispassionate study of what is going on in contemporary society not only reveals that constraint is inextricably intertwined with freedom in the very attempt to protect the latter, but also, unfortunately, that according to several doctrines, the more one increases constraint, the more one increases freedom. Unless I am wrong this is not only an evident misunderstanding, but also an ominous circumstance for the fate of individual freedom in our time.

People often mean by "freedom" (or "liberty") both the ab-

sence of constraint *and something else as well*—for instance, as a distinguished American judge would have said, “enough economic security to allow its possessor the enjoyment of a satisfactory life.” The same people very often fail to realize the possible contradictions between these two different meanings of freedom and the unpleasant fact that you cannot adopt the latter without sacrificing to a certain extent the former, and vice versa. Their syncretistic view of freedom is simply based on a semantic confusion.

Other people, while contending that constraint is to be increased in their society in order to increase “freedom,” merely pass over in silence the fact that the “freedom” they mean is only their own, while the constraint they want to increase is to be applied exclusively to other people. The final result is that the “freedom” they preach is only the freedom to constrain other people to do what they would never do if they were free to choose for themselves.

Today freedom and constraint pivot more and more on legislation. People generally realize fully the extraordinary importance of technology in the changes that are taking place in contemporary society. On the other hand, they do not seem to realize to the same extent the parallel changes brought about by legislation, often without any necessary connection with technology. What they appear to realize even less is that the importance of the latter changes in contemporary society depends in its turn on a silent revolution in present-day ideas about the actual function of legislation. In fact, the increasing significance of legislation in almost all the legal systems of the world is probably the most striking feature of our era, besides technological and scientific progress. While in the Anglo-Saxon countries common law and ordinary courts of judicature are constantly losing ground to statutory law and administrative authorities, in the Continental countries civil law is undergoing a parallel process of submersion as a result of the thousands of laws that fill the statute books each year. Only sixty years after the introduction of the German Civil Code and a little more than a century and a half after the introduction of the Code Napoléon the very idea that the law might not be identical with legislation seems odd both to students of law and to laymen.

Legislation appears today to be a quick, rational, and far-reaching remedy against every kind of evil or inconvenience, as compared with, say, judicial decisions, the settlement of disputes by private arbiters, conventions, customs, and similar kinds of spontaneous adjustments on the part of individuals. A fact that almost always goes unnoticed is that a remedy by way of legislation may be too quick to be efficacious, too unpredictably far-reaching to be wholly beneficial, and too directly connected with the contingent views and interests of a handful of people (the legislators), whoever they may be, to be, in fact, a remedy for all concerned. Even when all this is noticed, the criticism is usually directed against particular statutes rather than against legislation as such, and a new remedy is always looked for in “better” statutes instead of in something altogether different from legislation.

The advocates of legislation—or rather, of the notion of legislation as a panacea—justify this way of fully identifying it with law in contemporary society by pointing to the changes continually being brought about by technology. Industrial development, so we are told, brings with it a great many problems that older societies were not equipped to solve with their ideas of law.

I submit that we still lack proof that the many new problems referred to by these advocates of inflated legislation are really brought about by technology¹ or that contemporary society, with its notion of legislation as a panacea, is better equipped to solve them than older societies that never so blatantly identified law with legislation.

The attention of all the advocates of inflated legislation as an allegedly necessary counterpart of scientific and technological progress in contemporary society needs to be drawn to the fact that the development of science and technology, on the one hand, and that of legislation, on the other, are based respectively on *two completely different* and even contradictory ideas. In fact, the development of science and technology at the beginning of our modern era was made possible precisely because procedures

¹ It seems reasonable to believe that universal suffrage, for instance, has given rise to as many problems as technology, if not more, although it may well be conceded that there are many connections between the development of technology and universal suffrage.

had been adopted that were in full contrast to those that usually result in legislation. Scientific and technical research needed and still needs individual initiative and individual freedom to allow the conclusions and results reached by individuals, possibly against contrary authority, to prevail. Legislation, on the other hand, is the terminal point of a process in which authority always prevails, possibly against individual initiative and freedom. Whereas scientific and technological results are always due to relatively small minorities or particular individuals, often, if not always, in opposition to ignorant or indifferent majorities, legislation, especially today, always reflects the will of a contingent majority within a committee of legislators who are not necessarily more learned or enlightened than the dissenters. Where authorities and majorities prevail, as in legislation, individuals must yield, regardless of whether they are right or wrong.

Another characteristic feature of legislation in contemporary society (apart from a few instances of direct democracy in small political communities like the Swiss *Landsgemeinde*) is that the legislators are assumed to *represent* their citizens in the legislative process. Whatever this may mean—and this is what we shall try to discover in the following pages—it is obvious that representation, like legislation, is something altogether extraneous to the procedures adopted for scientific and technological progress. The very idea that a scientist or a technician should be “represented” by other people in the carrying on of scientific or technical research appears as ridiculous as the idea that scientific research should be entrusted, not to particular individuals acting as such even when they collaborate in a team, but to some kind of legislative committee empowered to reach a decision by majority vote.

Nonetheless, a way of reaching decisions that would be rejected out of hand in scientific and technological fields is coming to be adopted more and more as far as law is concerned.

The resulting situation in contemporary society is a kind of schizophrenia, which, far from being denounced, has been hardly noticed so far.

People behave as if their need for individual initiative and individual decision were almost completely satisfied by the fact of their personal access to the benefits of scientific and technologi-

cal achievements. Strangely enough, their corresponding needs for individual initiative and individual decision in the political and legal spheres seem to be met by ceremonial and almost magical procedures such as elections of “representatives” who are supposed to know by some mysterious inspiration what their constituents really want and to be able to decide accordingly. True, individuals still have, at least in the Western world, the possibility of deciding and acting as individuals in many respects: in trading (at least to a great extent), in speaking, in personal relations, and in many other kinds of social intercourse. However, they seem also to have accepted in principle once and for all a system whereby a handful of people whom they rarely know personally are able to decide what everybody must do, and this within very vaguely defined limits or practically without limits at all.

That the legislators, at least in the West, still refrain from interfering in such fields of individual activity as speaking or choosing one’s marriage partner or wearing a particular style of clothing or traveling usually conceals the raw fact that they actually do have the power to interfere in every one of these fields. But other countries, while already offering a completely different kind of picture, reveal at the same time how much farther the legislators can go in this respect. On the other hand, fewer and fewer people now seem to realize that just as language and fashion are the products of the convergence of spontaneous actions and decisions on the part of a vast number of individuals, so the law too can, in theory, just as well be a product of a similar convergence in other fields.

Today the fact that we do not need to entrust to other people the task of deciding, for instance, how we have to speak or how we should spend our leisure time fails to make us realize that the same should be true of a great many other actions and decisions that we take in the sphere of law. Our present notion of the law is definitely affected by the overwhelming importance that we attach to the function of legislation, that is, to *the will of other people* (whoever they may be) *relating to our daily behavior*. I try to make clear in the following pages one of the chief consequences of our ideas in this respect. We are actually far from attaining through legislation the ideal certainty of the law, in the practical sense that this ideal should have for anybody who must plan for

the future and who has to know, therefore, what the legal consequences of his decisions will be. While legislation is almost always *certain*, that is, precise and recognizable, as long as it is “in force,” people can never be certain that the legislation in force today will be in force tomorrow or even tomorrow morning. The legal system centered on legislation, while involving the possibility that other people (the legislators) may interfere with our actions every day, also involves the possibility that they may change their way of interfering every day. As a result, people are prevented not only from freely deciding what to do, but from foreseeing the legal effects of their daily behavior.

It is undeniable that today this result is due both to inflated legislation and to the enormous increase of a quasi-legislative or pseudo-legislative activity on the part of the government, and one cannot help agreeing with writers and scholars like James Burnham in the United States, Professor G. W. Keeton in England, and Professor F. A. Hayek, who, in recent years, have bitterly complained about the weakening of the traditional legislative powers of Congress in the United States or the “passing” of the British Parliament as a consequence of a corresponding enlargement of the quasi-legislative activities of the executive. However, one cannot lose sight of the fact that the ever-growing power of governmental officials may always be referred to some statutory enactment enabling them to behave, in their turn, as legislators and to interfere in that way, almost at will, with every kind of private interest and activity. The paradoxical situation of our times is that we are governed by men, not, as the classical Aristotelian theory would contend, because we are not governed by laws, but because we *are*. In this situation it would be of very little use to invoke the law against such men. Machiavelli himself would not have been able to contrive a more ingenious device to dignify the will of a tyrant who pretends to be a simple official acting within the framework of a perfectly legal system.

If one values individual freedom of action and decision, one cannot avoid the conclusion that there must be something wrong with the whole system.

I do not maintain that legislation should be entirely discarded. Probably this has never happened in any country at any time. I do maintain, however, that legislation is actually incompatible

with individual initiative and decision when it reaches a limit that contemporary society seems already to have gone far beyond.

My earnest suggestion is that *those who value individual freedom should reassess the place of the individual within the legal system as a whole*. It is no longer a question of defending this or that particular freedom—to trade, to speak, to associate with other people, etc.; nor is it a question of deciding what special “good” kind of legislation we should adopt instead of a “bad” one. It is a question of deciding whether individual freedom is compatible in principle with the present system centered on and almost completely identified with legislation. This may seem like a radical view. I do not deny that it is. But radical views are sometimes more fruitful than syncretistic theories that serve to conceal the problems more than they solve them.

Fortunately we do not need to take refuge in Utopia in order to find legal systems different from the present ones. Both Roman and English history teach us, for instance, a completely different lesson from that of the advocates of inflated legislation in the present age. Everybody today pays lip service to the Romans no less than to the English for their legal wisdom. Very few realize, however, what this wisdom consisted in, that is, how independent of legislation those systems were in so far as the ordinary life of the people was concerned, and consequently how great the sphere of individual freedom was both in Rome and in England during the very centuries when their respective legal systems were most flourishing and successful. One even wonders why anyone still studies the history of Roman or of English law if this essential fact about both is to remain largely forgotten or simply ignored.

Both the Romans and the English shared the idea that the law is something to be *discovered* more than to be *enacted* and that nobody is so powerful in his society as to be in a position to identify his own will with the law of the land. The task of “discovering” the law was entrusted in their countries to the juriconsults and to the judges, respectively—two categories of people who are comparable, at least to a certain extent, to the scientific experts of today. This fact appears the more striking when we consider that Roman magistrates, on the one hand, and the British Parliament, on the other, had, and the latter still has, in principle, almost despotic powers over the citizens.