

Singapore Management University

Institutional Knowledge at Singapore Management University

Research Collection School of Social Sciences

School of Social Sciences

1-1993

Liberty

Chandran KUKATHAS

Singapore Management University, kukathas@smu.edu.sg

Follow this and additional works at: https://ink.library.smu.edu.sg/soass_research



Part of the [Ethics and Political Philosophy Commons](#)

Citation

KUKATHAS, Chandran. (1993). Liberty. In *A companion to contemporary political philosophy* (pp. 685-698). Oxford: Blackwells.

Available at: https://ink.library.smu.edu.sg/soass_research/3011

This Book Chapter is brought to you for free and open access by the School of Social Sciences at Institutional Knowledge at Singapore Management University. It has been accepted for inclusion in Research Collection School of Social Sciences by an authorized administrator of Institutional Knowledge at Singapore Management University. For more information, please email cherylids@smu.edu.sg.

Chapter 39

Liberty

CHANDRAN KUKATHAS

Such is the rhetorical appeal of the idea of liberty that a variety of political philosophies claim to honour it. Republicans and Marxists, no less than libertarians and liberals, maintain that they and they alone are the true defenders of freedom. The literature of contemporary political theory is thus replete with rival analyses of the meaning of liberty, and disputes about its measurement, distribution and institutional requirements. Our aim here is to gain some understanding of the meaning and the conditions of liberty by working through the thicket of contemporary argument, though we may have to rest content with a better knowledge of the terrain.

The Concept of Liberty

Contemporary discussion of the concept of liberty has been most profoundly shaped by the analysis of Isaiah Berlin. In his essay 'Two concepts of liberty', Berlin argues that, in the history of ideas, liberty has had two quite different meanings or senses. In the first, 'negative' sense of the word, a person is free 'to the degree to which no man or body of men interferes' with his activity. 'Political liberty in this sense is simply the area within which a man can act unobstructed by others' (Berlin, 1979a, p. 122). In the second, 'positive' sense of the word, a person is free to the extent that he is his own master, whose life and decisions depend upon himself and not upon external forces of any kind. A person who is autonomous or self-determining – who is 'a thinking, willing, active being, bearing responsibility for [his] own choices and able to explain them by references to [his] own ideas and purposes' – is 'positively' free (Berlin, 1979a, p. 31).

Whether or not such a distinction can properly be drawn might be disputed. In Berlin's analysis, the contrast is more readily seen if we recognize that the positive and negative concepts of liberty are responses to 'logically distinct' questions. If one asks, 'Who governs me?', the answer will reveal the extent of one's positive liberty: someone who can reply, 'I govern myself', is positively free. If, on the other hand, one asks, 'How far do others interfere with me?', the answer will reveal the extent of one's negative liberty: someone who can answer, 'very little', is negatively free. In general, a person enjoys greater negative liberty to the extent that he is unimpeded or unconstrained by other human agents and can act without being interfered with. On this view, a lack of

ability does not mean a lack of freedom – I am not unfree because I am unable to understand Hegel. However, if my inability is due to human arrangements that obstruct or interfere with me, then I am negatively unfree.

In drawing the contrast between negative and positive liberty, Berlin thinks he has identified an important conceptual distinction. But it is also a part of his concern to criticize positive conceptions of freedom. His criticisms are worth considering because they open up a number of issues which must be tackled in order to come to terms with the notion of freedom. Berlin presents his criticisms in the form of an account of the historical development of the negative and positive notions of liberty. Positive libertarians begin by invoking the harmless metaphor of self-mastery, maintaining that one is free if one is one's own master and a slave to no man. But they go on to suggest that one might equally be a slave to nature, or to one's own unbridled passions, or indeed to one's lower self. At this point, Berlin maintains, they proceed to develop a distinction between two selves: the dominant self, invariably identified with reason and man's 'higher nature', which is also the 'real' or 'ideal' or the 'autonomous' self – the self 'at its best'; and the 'lower', 'empirical' or 'heteronomous' self, which is the self of irrational impulse and uncontrolled desire, 'swept by every gust of desire and passion, needing to be rigidly disciplined if it is ever to rise to the full height of its "real nature"' (Berlin, 1979a, p. 132). From here it is a short step to claim that the real self may be best understood as something greater than the individual, as a social whole (such as a tribe or a state) of which the individual is only a part. 'This entity is then identified as being the "true" self which, by imposing its collective, or "organic", single will upon its recalcitrant "members", achieves its own, and therefore their, "higher" freedom' (ibid.). This positive libertarian understanding of freedom, according to Berlin, has in this way made it easy to justify coercing people, for the coercion is of the lower self by the higher, and such coercion is deemed not only consistent with but required by freedom.

Berlin is careful enough to concede that even negative libertarians could make such questionable philosophical moves, by maintaining, for example, that only the individual's real or higher self should not be constrained or interfered with. They too might argue that obstructing the individual's actual wishes would better serve his real desires. Nonetheless, Berlin insists, 'the "positive" conception of freedom as self-mastery, with its suggestion of a man divided against himself, has, in fact, and as matter of history, of doctrine and of practice lent itself more easily to this splitting of personality into two' (ibid., p. 134). Indeed, he suggests that 'socialized' forms of the 'positive doctrine of liberation by reason' lie at the heart of many of the nationalist, communist, authoritarian and totalitarian creeds of today (ibid., p. 144).

But these propositions, and Berlin's famous distinction between negative and positive liberty, have not gone unchallenged. Gerald MacCallum, in his almost as famous paper, 'Negative and positive freedom', rejects Berlin's distinction between two concepts of liberty. Freedom, he maintains, is always one and the same triadic relation: 'Whenever the freedom of some agent or agents is in question, it is always freedom from some constraint or restriction on, interference with, or barrier to doing, not doing, becoming, or not becoming something' (MacCallum, 1991, p. 102). Freedom is always *of* something (an agent or agents), *from* something, *to* do or not do, become or not become, something. Any statement about freedom must take the form '*x* is (is not) free from *y* to do (not do) *z*', where *x* ranges over agents, *y* ranges over constraints,

restrictions, interferences or barriers, and *z* ranges over actions or conditions of character or circumstance.

MacCallum does not deny that there might be uncertainty, or even disagreement, about what counts as an agent or about what counts as a constraint or restriction. But this does not alter his view that there is only a single triadic concept of liberty. Thus he rejects Berlin's distinction between negative or 'freedom from', and positive or 'freedom to' concepts of liberty (Berlin, 1979a, p. 131) on the grounds that any statement about liberty is a statement about the freedom of *x* from *y* to *z*. Berlin, in a reply to his critics, concedes that the terms 'negative' and 'positive' liberty 'start at no great logical distance from each other', and that the questions 'Who is master?' and 'Over what area am I master?' 'cannot be kept wholly distinct' (Berlin, 1979b, p. xliii). Indeed, MacCallum's understanding of liberty as a single triadic concept has been endorsed by a number of contemporary theorists, including Benn and Weinstein (1971, p. 194), Rawls (1971, p. 202), Feinberg (1980, pp. 3–4) and T. Gray (1990, pp. 11–16).

Nevertheless, others have argued that MacCallum's triadic formula does not capture all there is to the concept of liberty (J. Gray, 1984, pp. 326–7), though there is also disagreement over whether Berlin has in fact distinguished different *concepts* of liberty or merely identified two kinds of *conceptions* of liberty. To some extent the question of whether there are two concepts or one is a matter to be settled by convention. In Berlin's favour it might be said that a distinction between negative and positive liberty has been drawn and widely employed. On the other hand, not all usages of the distinction have conformed to Berlin's original. One common way of drawing the distinction has been as a contrast between the opportunities available to a person (negative liberty) and the capacity or the resources that person has to take advantage of them (positive liberty). As Levin expresses it, 'a man is *positively* free when he is doing what he wants to do, and *negatively* free when no one is interfering with him' (Levin, 1984, p. 85). Rawls (1971, p. 204) suggests that the 'inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally' should not be counted as among the constraints definitive of liberty. Instead, he maintains, we should distinguish between liberty and the worth of liberty. But for some proponents of the negative/positive distinction, the correct inference to be drawn from this way of viewing matters is that both opportunities (or negative liberties) and resources (positive liberties) must be viewed as different but equally important dimensions of liberty (Goodin, 1982, p. 152).

Yet while this kind of analysis has been influential, there are other philosophers who have tried to show that a much deeper distinction exists between negative and positive liberty. A particularly influential discussion of the distinction is offered by Charles Taylor, who suggests that negative freedom is usually an 'opportunity concept', while positive freedom is always an 'exercise concept' (Taylor, 1979). In Taylor's analysis, negative liberty is usually an opportunity concept because it suggests that 'being free is a matter of what we can do, of what it is open to us to do, whether or not we do anything to exercise these options'. This is so, he says, with the negative conceptions of freedom employed by Hobbes and Bentham. Positive freedom, however, is an exercise concept because doctrines of positive freedom 'are concerned with a view of freedom which involves essentially the exercising of control over one's life. On this view, one is free only to the extent that one has effectively determined oneself and the shape of one's

life' (*ibid.*, p. 176). The key to Taylor's distinction, as he understands it, lies in the fact that the opportunity concept sees only 'external' obstacles to action as obstacles to freedom. By contrast, to recognize freedom as an exercise concept is to accept that the 'internal' obstacles of the mind, which affect our motivations, our self-control and our capacity for moral discrimination, also affect our freedom (*ibid.*, p. 179).

One problem with Taylor's view is that it is not clear why, for the negative libertarian, only external obstacles count. 'Internal' impediments to action may just as easily be regarded as obstacles that affect an individual's freedom. Physical barriers, legal prohibitions and credible threats reduce my negative liberty since they are impediments or constraints upon my action. But my negative liberty is similarly reduced if I am drugged or brainwashed, or if I am manipulated or deceived into taking particular actions: the 'internal' obstacles reducing my liberty are the false beliefs with which I have been inculcated.

Now, Taylor argues that, once it is conceded that 'internal' obstacles restrict freedom, the negative libertarian is no longer using freedom as an opportunity concept but is using it as an exercise concept. This is because to be free of internal obstacles invariably involves actively 'exercising' freedom by removing those internal barriers (*ibid.*, pp. 177–8). This seems to be a mistake. While removing or surmounting internal obstacles, such as fears or anxieties, involves action, the same is also true of the overcoming of external obstacles. Whether or not activity is required to enjoy freedom is irrelevant. Furthermore, as Baldwin tellingly observes, one might agree that overcoming internal obstacles involves one in action, 'but it does not follow that the freedom thereby attained is more than an opportunity to act' (Baldwin, 1984, pp. 131–2).

Negative freedom, then, I would suggest, is always to be understood as an opportunity concept; but the contrast to be drawn is not between negative liberty meaning the mere absence of external obstacles and positive liberty meaning the active overcoming of internal obstacles. Negative liberty is what an agent enjoys when there are no humanly imposed impediments, internal or external, to action.

There is, however, a further question about the concept of freedom: can we refer simply to freedom as a fundamental good that we can all have more or less of, or does it make sense to think only of specific freedoms – the freedom to speak or the freedom to emigrate, for example? Those who advance the 'specific-freedom thesis' (Carter, 1999, pp. 11ff.) deny that there is any such thing as 'freedom' in itself, and therefore deny that freedom is itself a fundamental good. Freedom is not a commodity to be weighed and measured (Benn and Peters, 1959, p. 214), and it makes no sense, they suggest, to think we can have a right to liberty as such (Dworkin, 1979). Ian Carter, however, has suggested that the concept of 'overall freedom' has been mistakenly rejected (Carter, 1999). The defenders of the specific-freedom thesis have denied that there is any such thing as overall freedom, argued that overall freedom cannot be measured, and concluded that there is no point in measuring overall freedom. If these claims hold, it would make little sense to make statements of the following sort: Alf is freer than Betty; or Britain is freer than China – unless one means by such remarks that Alf or British citizens enjoy specific liberties not available to Betty or people in China. Carter's ambition is to show not only that it makes sense to think in terms of overall freedom but also that freedom can successfully be measured. (For a more recent account of how freedom might be measured see Kramer, 2003.)

Conceptions of Negative Liberty

Among those who conceive of liberty in negative terms there is still disagreement about when an individual can be said to be free. Although all might concur that liberty means an absence of impediments or constraints or interference, there remains the question of what is to count as a constraint which makes us unfree. There are also the questions of who (or what) is the subject of freedom, and what it is that the free subject is free to do. The first of these three questions is undoubtedly the most problematic for an account of liberty, but something should be said about the latter two.

Generally, theories of liberty assume that the subject of freedom is the individual. G. A. Cohen, however, has suggested that there may be good reason to recognize the collective dimensions of freedom and unfreedom, arguing that while members of the proletarian class are held to be free because they are at liberty to leave the proletariat this does not alter the fact of their unfreedom, since they are not free *collectively* or *as a class* to leave the proletariat (Cohen, 1979, pp. 21–5). Under capitalist institutions, even though anyone might rise up from the proletariat, it is not possible for everyone to do so since capitalism requires ‘a substantial hired labour force, which would not exist if more than just a few workers rose’ (ibid., p. 21). This way of viewing liberty is important for Cohen because it bears upon claims made about freedom under capitalism. The position of the proletariat he holds to be analogous to that of a group of imprisoned individuals who have the opportunity for only one of their number to escape. Since *all* cannot escape, even though *each* has an opportunity to do so, the group is collectively unfree or unfree as a class.

Cohen’s paper has been widely discussed, but it is not clear that thinking about the subject of freedom in these collective terms adds a great deal to our understanding of the notion. At the very least, it is odd to think that we are in any significant way unfree to do something simply because we cannot all do it at the same time. We cannot all claim unemployment benefits at the same time, nor can we all become plumbers or professors of political theory, but this does not mean that we are unfree to do or become any of these things (J. Gray, 1986, p. 166).

The second question which needs to be asked is that of what the subject of freedom must be free to do if liberty is to be enjoyed. One might say, for example, that to be free the subject must have the opportunity to exercise traditional liberties, or to do what he desires, or to do anything. At first sight it appears that to be free one must have the opportunity to do what one wants or desires. The difficulty with this position is that it means that liberty can be increased by trimming or reducing desires. Thus the contented slave could be seen as free because he has no desire to escape. This problem was raised in criticism of Berlin’s original formulation of the notion of liberty (McFarlane, 1966, pp. 77–81). Berlin’s response was to acknowledge that the ‘extent of my social or political freedom consists in the absence of obstacles not merely to my actual, but to my potential choices – to my acting in this or that way if I choose to do so’ (Berlin, 1979b). On this view, then, an individual enjoys negative liberty if he is not obstructed or interfered with should he seek to perform an action. Generally, this account of the ends of negative liberty meets the relevant objections and its acceptance should not be controversial.

The more difficult problem in accounting for negative liberty is in answering the question of what counts as an obstacle or interference. Here, there is a greater variety of views on offer, and conceptions of liberty generally differ on the basis of their answers to this question. A clear, if uncompromising, answer to the question is offered by Hillel Steiner: 'An individual is unfree if, and only if, his doing of any action is rendered *impossible* by the action of another individual' (Steiner, 1991, p. 123, emphasis added; Steiner, 1994, ch 1; see also Parent, 1974). If an individual is still able to perform an action, even if someone has made doing so extremely undesirable, the individual remains free. In this regard, threats and penalties do not make anyone unfree to perform an action since they leave open the option of performing the action and incurring its costs. Indeed, these kinds of *threatening* interventions are indistinguishable from *offers*, and neither diminishes liberty; in both cases the intervention alters the *desirability* of performing the action, but not the *possibility* of doing so. Steiner's reasons for taking this path are not difficult to discern: if liberty can be reduced by interventions which merely make a course of action less desirable, then a person can be rendered less free if he is subject to any kind of influence by other human agents. I could claim to be made less free in term time because I will not go to restaurants for fear of running into pesky undergraduates. Any departure from the stance that only interference rendering action impossible makes an individual unfree, Steiner maintains, makes freedom dependent upon desire and leads to our misconceiving it as a psychological condition rather than as a physical fact.

If only *prevention* of action and not mere intervention in its course can reduce liberty, however, what exactly does prevention amount to in this account of liberty as a physical fact? In Steiner's theory an agent is prevented from action to the extent that he is rendered unable to make use of a portion of physical space or a number of physical objects: 'the greater the amount of physical space and/or material objects the use of which is blocked to one individual by another, the greater is the extent of the prevention to which the former individual is subject' (Steiner, 1991, p. 137). A person who is imprisoned is thus unfree to the extent that he has use of less space and fewer resources. Furthermore, Steiner maintains, some of the persons who are not imprisoned have now had their freedom expanded, since they can make use of the space and material objects to which the prisoner is denied access. This is because, according to Steiner, freedom has to be seen as a fixed quantity which cannot be expanded or reduced but only redistributed. One person's loss of freedom must involve another's gain: the 'universal quest for greater personal liberty is . . . a zero-sum game' (Steiner, 1983, pp. 88–9). It is thus pointless to talk of maximizing the total amount of freedom; the important normative questions are not about the manufacture but about the *distribution* of freedom.

Steiner's views, I would like to suggest, are mistaken in important ways. Essentially, the idea that freedom has to be understood purely as a physical fact (wholly independently of desire) is, in the end, untenable. To see this, we should consider first the idea that freedom involves the use or control of physical space and resources. Steiner is quite precise: 'to act is, among other things, to occupy particular portions of physical space and to dispose of particular material objects' (1991, p. 137). For an agent to be free to perform an action entails that all the physical components of doing that 'action are (simultaneously) unoccupied and/or disposed of by another' (*ibid.*, p. 138). In other words, the agent must *possess* that physical space or those material objects, and he

possesses an object only 'when he enjoys exclusive physical control of it, that is, when what happens to that object – allowing for the operation of the laws of physics – is not subject to the determination of any other agent and is therefore subject only to his own determination'. As Steiner prefers to understand the notion, control only obtains when an agent is able to render it *physically impossible* for another to occupy space or use an object.

Yet it seems clear that this sort of complete physical control Steiner thinks is necessary for freedom cannot be had. For the most part individuals seeking to exercise control over their possessions look to putting in place non-physical impediments to trespass. My freedom to use my house, and to exclude the uninvited, is enjoyed not because I am capable of physically excluding others but because of a range of non-physical circumstances: I have title to my property, property rights are respected and can be enforced if necessary, and so on. Now it might be maintained that I only have freedom to the extent that others do not in fact physically intrude, and that if they do I do not have (as much) freedom because I do not control as much physical material. But the implication of this strongly physicalist attitude which must be noted is that such things as rights, entitlements and laws have to be regarded as having no bearing on liberty. This does not appear to be a plausible line of argument. Indeed, if one accepts Steiner's view that we should be concerned primarily about the *distribution* of liberty, then our concerns would most likely be about the rules or laws that affect that distribution, rather than with physical impediments.

The implication which has to be – and generally is – accepted, then, is that liberty can be affected by interventions which affect the desirability of performing particular actions. But we have to deal with the question of which kinds of interventions that affect the desirability of an action are to be regarded as freedom restricting – since we do not want to say that all influences on an action diminish the agent's liberty by making other options less attractive.

One argument, put by F. A. Hayek, is that we only regard as freedom restricting those actions which are *coercive*: '“freedom” refers solely to a relation of men to other men, and the only infringement on it is coercion by men' (Hayek, 1960, p. 12). What is striking about Hayek's formulation is that he maintains that freedom is restricted only by coercive intervention by *persons*; the law, however, does not restrict freedom. Freedom, for him, is best described as 'independence of the arbitrary will of another' (ibid.). But it is also his contention that 'when we obey laws, in the sense of general abstract rules laid down irrespective of their application to us, we are not subject to another man's will and are therefore free' (ibid., p. 153). There is coercion if a person threatens to inflict harm with the intention of bringing about a change in the conduct of a second person (who regards himself as having been made worse off). But there is no coercion – and so there is liberty – if the law makes a person worse off and 'forces' a change in conduct (ibid., pp. 134–6; and see Kukathas, 1989, pp. 150–1).

Hayek's solution, however, is unsatisfactory on two counts. First, his account of coercion is inadequate because it makes many kinds of competitive action appear liberty restricting. A trader who intends to inflict harm on his competitor by lowering prices, and brings about a change in conduct (by forcing him out of this line of business) would, on Hayek's definition, be infringing liberty. Yet Hayek himself would not want to say that this kind of competitive conduct is coercive or liberty diminishing. Second,

his suggestion that law does not restrict liberty because any 'coercion' implicit in its commands and prohibitions is predictable and avoidable is unconvincing: predictable coercion remains coercion. While there is merit in Hayek's attempt to argue that law should be viewed as a condition of, rather than an obstacle to, liberty, the theory of coercion does not really account for this.

A different solution to the question of which kinds of intervention are freedom restricting comes from Robert Nozick. Like Hayek, he thinks that a distinction has to be drawn between threats and offers, and while he does not think it right to 'capsulize freedom as absence of coercion' (Nozick, 1972, p. 101), he also sees liberty as intimately bound up with coercion. Moreover, Nozick's view is in line with Hayek's in that he sees threats, but not offers, as coercive for the reason that 'when a person does something because of threats, the will of another is operating or predominant' (ibid., p. 128). This thought forms the basis of the conception of liberty which is invoked (but not explicitly developed) by Nozick in *Anarchy, State and Utopia*, where it is suggested that interference with individual choice makes for liberty infringement (Nozick, 1974, pp. 160–4). What has to be noted about this account, however, is that only some kinds of intervention count as interference which involves restriction of liberty. For example, it cannot be said that the choices of individuals acting 'within their rights' (ibid., p. 262) interfere with or restrict the liberty of another individual, even if those choices leave that individual with no reasonable options. So if, as a result of others acting within their rights, I am left with the choice of working for Robert Maxwell or starving I cannot claim that I am forced or coerced into involuntary employment. If, however, Mr Maxwell had engineered this situation (say, by stealing from and bankrupting his competitors) I can claim to have been forced.

Nozick's conception of liberty here is one which is dependent upon his conception of justice, which in turn is founded upon a view about what rights individuals have (since any action which does not violate rights is not unjust). Liberty cannot be violated by actions which are just. In some respects this understanding of liberty is consistent with our everyday use of the term. We do not normally say that the gang member's liberty is lost because the law forbids assault and battery. Nonetheless, the problem with Nozick's conception of liberty is that it is so dependent upon a theory of rights which is never fully expounded. Furthermore, tying liberty so intimately to another substantial moral value risks depriving the notion of liberty of independent force in political argument.

This latter objection lies at the centre of G. A. Cohen's criticisms of Nozick's view of freedom. According to Cohen, because Nozick sees only illegitimate actions as capable of violating liberty he is operating with a 'moralized' notion of freedom. This allows Nozick to ignore many situations in which people are 'forced' by circumstances such as poverty to take or to forgo particular options. Nozick's 'moralized' definition allows him to deny that the indigent are necessarily unfree since the mark of unfreedom is not the absence of options or opportunities but the violation of (a narrow range of) rights (Cohen, 1978). Yet Cohen's critique of Nozick may not be as telling as he suggests. While rejecting 'moralized' conceptions of freedom, Cohen does not deny that we are concerned here with freedom as it relates to interaction between human agents. We are not concerned with those obstacles which are not subject to human influence. Someone whose path has been blocked by a rockslide is not unfree, although unable,

to continue on that route – unless someone can be held responsible for the creation of (or failure to remove) that obstacle, in which case we would say the traveller is not merely unable to journey but unfree to do so. The important issue, however, as David Miller makes clear, is that of the basis upon which we determine whether someone can be held responsible, for this will determine whether or not we can regard an obstacle as a constraint on freedom. This is a moral issue, and an answer to it cannot be morally neutral (Miller, 1983, p. 72). Nozick has not provided a morally neutral account of what counts as a constraint on freedom, but neither can one be expected. There is, however, the stronger criticism of Nozick that he does not merely offer a morally non-neutral definition of freedom, but a view that says that morally justified interferences do not restrict liberty; the definition is thus ‘moralized’. But this is not quite the case. In Nozick’s theory the domain of individual liberty is specified by (rights-based) principles of justice. Morally justifiable interferences with individual liberty (to avoid ‘catastrophic moral horror’, for example; Nozick, 1974, p. 30) do restrict liberty. However, they restrict liberty not because they are unjustified but because they are *unjust*. Nozick invokes a *justicized* account of liberty, but not a moralized one (J. Gray, 1986, p. 169).

Nonetheless, this does not mean that Nozick’s approach to specifying what counts as a constraint on freedom is satisfactory. For Nozick justice can never compete with liberty; justice cannot violate liberty. Yet this seems too strong a demand; there may well be times when liberty must be violated for justice to be done. For example, upholding justice in rectification by transferring property rights may infringe the liberty of those whose justly acquired property is now taken. Specifying what makes for constraints upon liberty may be a more complicated matter than Nozick’s theory suggests.

This point is brought out with especial clarity by Nancy Hirschmann in her feminist analysis of freedom. It is not possible properly to appreciate the nature of freedom, she suggests, without coming to terms with the social construction of the self. An important part of freedom may consist in removing obstacles to the fulfilment of our desires; but we cannot evade the question of what kinds of desires we acquire as if it had nothing to do with the question of freedom. If social institutions construct subjects who accept violence against their persons, or who become dependant on welfare, or resist the impositions of their cultural groups, freedom is at stake. The task, however, is to account for this loss of freedom without losing sight of the idea of freedom captured by the idea of negative liberty (Hirschmann, 2003).

These attempts to specify what counts as a constraint upon individual liberty illustrate the difficulty of developing an uncontroversial conception of liberty. In part, this may simply reflect the ‘essential contestability’ of the concept. The more important reason, however, is that judgements about freedom cannot be insulated completely from other evaluative questions and from issues in social theory. While it should be recognized that freedom requires the absence of obstruction, and that coercive behaviour (which penalizes or frustrates action) restricts liberty, it is a matter of moral argument what precisely qualifies as an obstruction, or constitutes coercive behaviour. Rawls, for example, suggests that a person is obstructed by others if they fail to uphold the rights or perform the duties which they are obliged to. ‘If, for example, we consider liberty of conscience as defined by law, then individuals have this liberty when they are

free to pursue their moral, philosophical, or religious interests without legal restrictions requiring them to engage or not to engage in any particular form of religious or other practice, and when other men have a legal duty not to interfere' (Rawls, 1971, pp. 202–3). Yet what is crucial here is the specification of the relevant rights and duties. Whether or not any particular individual is free according to a Rawlsian conception of liberty may be a purely *descriptive* matter insofar as it is necessary only for us to enquire whether or not he is actually obstructed to establish whether he is free. But what counts as an obstruction under that conception is an *evaluative* matter which requires the development of arguments in moral and social theory (Berlin, 1979a; J. Gray, 1984). Thus we should expect to find that different political theories or ideologies, even if they should accept the core understanding of negative liberty as the absence of interference, will embrace quite different conceptions of liberty.

Liberty: Liberal and Republican

What, then, would make for a free society? One prominent answer in modern thinking about liberty is that a free society is fundamentally a *liberal* society. It is the answer offered by Berlin (1979a), as well as by other contemporary theorists such as John Rawls, F. A. Hayek and James Buchanan (1975). Liberalism has, in recent times, come under severe criticism for a range of alleged inadequacies – for overvaluing justice and for undervaluing community, among other things (Sandel, 1982). But since liberty is often taken to be the core value upheld by liberalism, it is worth examining its claim to being the philosophy of a free society.

The most substantial challenge to liberalism's libertarian credentials has come from Quentin Skinner in a series of papers (1984; 1991) criticizing liberal conceptions of negative liberty and advancing a 'republican' conception of negative liberty. Skinner's primary claim is that there is something unsatisfactory about liberalism's reliance on a particular notion of negative liberty merely as the absence of interference. His targets are the Hobbesian notions that liberty consists in the absence of external impediments to motion, and that in political society the 'greatest liberty of subjects, dependeth on the silence of the law', since law is an obstacle to liberty (Hobbes, [1651] 1968, II, 21, 143). His criticism of liberalism is largely a criticism of the legal theories of writers like Jeremy Bentham, for whom law itself must be viewed as an invasion of liberty. Skinner himself seeks to uphold a negative conception of liberty; but it is the particular negative conception associated with the notion of law as a fetter on freedom, which he associates with liberalism, that he seeks to criticize.

To see why Skinner may have a point we might consider again the case of the slave who enjoys a good measure of negative liberty, and yet chooses not to escape. However much negative liberty the slave might enjoy, there is something unsatisfactory about this liberty. The reason, essentially, is that he is not secure in its possession. Whether or not, and for how long, he is able to exercise that liberty is subject to the good will and the good fortune of the master. In Philip Pettit's useful term, his liberty has no 'resilience' (Pettit, 1993). Thus we find, for example, that even the most contented slaves, living under the kindest masters, in *Uncle Tom's Cabin* want manumission for fear that, should their masters die or be forced to sell them, their lives could instantly

be transformed for the worse. The point here was well recognized by Edmund Burke in arguing against the Chatham Methodists in 1773. The Methodists objected to a Bill for the relief of Protestant Dissenters on the grounds that Dissenters did in fact enjoy a measure of liberty, and that it would be dangerous to grant it to them as a matter of law. To Burke, however, this was 'liberty under a connivance', which he rejected because 'connivance is a relaxation from slavery, not a definition of liberty. What is connivance, but a state under which all slaves live? If I was to describe slavery, I would say, with those who *hate* it, it is living under will, not under law' (Burke, 1970, p. 77).

Skinner's concern is that liberty exercised in spite of the law, rather than enjoyed under its protection, is insecure – indeed, no more than liberty under a connivance – and will soon be lost. His argument is that what are needed are social institutions which will better assure individuals of their liberty. More specifically, we need institutions which make for active self-government, even to the point of coercing citizens into performing their public duties and so 'upholding a liberty which, left to ourselves, we would have undermined' (Skinner, 1991, p. 186). The target of Skinner's criticism is contemporary liberalism, 'especially in its so-called libertarian form' which, by threatening to sweep 'the public arena bare of any concepts save those of self-interest and individual rights', threatens also our rights and liberties themselves (Skinner, 1991, p. 204).

Skinner's contention that it is the liberty that is enjoyed under the protection of the laws which is the liberty to be sought is entirely persuasive, I would suggest, because the contrast it draws is that between free individuals and slaves. In the moral world, the opposite of liberty is slavery. (See Patterson, 1991, for a discussion of the origin of the ideal of freedom in the experience of slavery.) What is more disputable, however, is whether he is right to say that it is the institutions of self-government, underpinned by the enforcement of republican virtue, which are going to preserve that liberty. Equally contestable is the claim that liberalism, with its emphasis on individual rights, is a threat to that liberty. Indeed, the very idea that liberalism necessarily views law as invasive of liberty is questionable. Hayek, for example, has consistently argued that law is not invasive of liberty but its necessary precondition.

The liberal and republican traditions are not always easy to disentangle. One reason for this is that both attach great value to institutions which check, and attempt to control, political power. Both emphasize the importance of the rule of law, of constitutional government and of the separation of powers for the preservation of a free society. Yet where they might be seen to differ is over the question of how political power is to be checked. Republicans, like Skinner and Pettit (see also Pettit, 1989; 1992), seem to suggest that it is best checked by political institutions which increase public participation and so increase the accountability of the executive power (though Pettit maintains that his understanding of republicanism is neither communitarian nor populist; see Pettit, 1996, p. 8). Liberals, I would suggest, are less impressed by such checks *within* the structure of political institutions because they do not serve sufficiently to disperse power in society. It is not the political separation of powers that is vital but their social separation. While republicans are concerned 'to improve the accountability of our so-called disinterested representatives' (Skinner, 1991, p. 204), they also look to extending the power of the ('checked and controlled') state both to empower (Pettit, 1992, p. 30) and to

coerce its citizens. Liberals, while they might accept that institutional checks are of some value, insist that it is the accumulation of power which is the danger – above all, to liberty.

It is in this context that one should understand the liberal preoccupation with *individual* rights and liberties rather than *public* duties. Asserting such claims on behalf of individuals is intended to deny power to the state by limiting the scope of legitimate public concern. There are at least two reasons for limiting the scope of the public domain, both of which bear upon liberty. The first is one alluded to by J. S. Mill when he wrote:

If the roads, the railways, the banks, the insurance offices, the great joint-stock companies, the universities, and the public charities, were all of them branches of the government; if, in addition, the municipal corporations and local boards, with all that now devolves on them, become departments of the central administration; if the employés of all these different enterprises were appointed and paid by the government, and look to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any other country free otherwise than in name. (Mill, [1859] 1985, pp. 244–5)

Mill's fear was partly that such power would convert 'the active and ambitious part of the public' into 'hangers-on' of the government. But the greater danger was that, as the more able were drawn into government office because 'every part of the business of society which required organized concert, or large and comprehensive views' was in the hands of government, there would be fewer people among those outside capable, 'for want of practical experience', of criticizing or checking the government's mode of operation (*ibid.*, p. 245). An extensive public power would weaken public life.

The second reason for diminishing the scope of the public domain is to be found in an argument advanced by Edmund Burke, who maintained that 'the state ought to confine itself to what regards the state', and not embroil itself in the affairs of society. For as rulers 'descend from the state to a province, from a province to a parish, and from a parish to a private house, they go on accelerated in their fall. They *cannot* do the lower duty; and in proportion as they try it, they will certainly fail in the higher. They ought to know the different departments of things, – what belongs to laws, and what manners alone can regulate' (Burke, 1970, p. 31). As the state expands it will perform all its functions less well, and particularly its primary function of upholding the peace and security which is necessary for liberty (*ibid.*, p. 65). Once again, the argument is that expanding the scope of the public domain weakens the public in its capacity to supply a check upon executive rule.

If these points are sound, then what is needed to uphold liberty is a set of institutions which foster individual responsibility and protect certain individual rights – and not institutions which purport to make for public virtue. Whether or not these points are sound, however, is a matter of social theory, which cannot be easily resolved here. If questions of liberty are to be answered there must be recourse to social theory. (This is a point made by Berlin; for a discussion see J. Gray, 1984.) The contention which can only be asserted here is that for answers we should turn not to the classical republicans but to the ideas of classical liberalism.

References

- Baldwin, T.: 'MacCallum and the two concepts of freedom', *Ratio*, 26 (1984), 125–42.
- Benn, S. I. and Peters, R. S.: *Social Principles and the Democratic State* (London: Allen and Unwin, 1959).
- Benn, S. I. and Weinstein, W. L.: 'Being free to act, and being a free man', *Mind*, 80 (1971), 194–211.
- Berlin, I.: 'Two concepts of liberty', in *Four Essays on Liberty* (Oxford: Oxford University Press, 1979a), pp. 118–72.
- : 'Introduction', *Four Essays on Liberty* (Oxford: Oxford University Press, 1979b), pp. ix–lxiii.
- Buchanan, J. M.: *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago, Ill.: University of Chicago Press, 1975).
- Burke, E.: *The Philosophy of Edmund Burke*, ed. L. I. Bredvold and R. G. Ross (Ann Arbor, Mich.: University of Michigan Press, 1970).
- Carter, Ian: *A Measure of Freedom* (Oxford: Oxford University Press, 1999).
- Cohen, G. A.: 'Robert Nozick and Wilt Chamberlain: how patterns preserve liberty', *Justice and Economic Distribution*, ed. J. Arthur and W. H. Shaw (Englewood Cliffs, NJ: Prentice-Hall, 1978), pp. 246–62.
- : 'Capitalism, freedom, and the proletariat', in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. A. Ryan (Oxford: Oxford University Press, 1979), pp. 9–26.
- Dworkin, R.: 'We do not have a right to liberty', in *Liberty and the Rule of Law*, ed. R. L. Cunningham (College Station: Texas A and M University Press, 1979).
- Feinberg, J.: *Rights, Justice and the Bounds of Liberty* (Princeton, NJ: Princeton University Press, 1980).
- Goodin, R. E.: 'Freedom and the welfare state: theoretical foundations', *Journal of Social Policy*, 11 (1982), 149–76.
- Gray, J.: 'On negative and positive liberty', *Conceptions of Liberty in Political Philosophy*, ed. J. Gray and Z. Pelczynski (London: Athlone Press, 1984), pp. 321–48.
- : 'Marxian freedom, individual liberty, and the end of alienation', *Social Philosophy and Policy*, 4 (1986), pp. 160–87.
- Gray, T.: *Freedom* (London: Macmillan, 1990).
- Hayek, F. A.: *The Constitution of Liberty* (London: Routledge & Kegan Paul, 1960).
- Hirschmann, N.: *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton, NJ: Princeton University Press, 2003).
- Hobbes, T.: *Leviathan* (1651) (Harmondsworth: Penguin, 1968).
- Kramer, M.: *The Quality of Freedom* (Oxford: Oxford University Press, 2003).
- Kukathas, C.: *Hayek and Modern Liberalism* (Oxford: Clarendon Press, 1989).
- Levin, M.: 'Negative liberty', *Social Philosophy and Policy*, 2 (1984), 84–100.
- MacCallum, G.: 'Negative and positive freedom', in *Liberty*, ed. D. Miller (Oxford: Oxford University Press, 1991), pp. 100–22.
- McFarlane, L. J.: 'On two concepts of liberty', *Political Studies*, 14 (1966), 77–81.
- Mill, J. S.: *On Liberty* (1859), in *Utilitarianism, On Liberty, Essay on Bentham*, ed. Mary Warnock (Glasgow: Fontana, 1985).
- Miller, D.: 'Constraints on freedom', *Ethics*, 94 (1983), 66–86.
- Nozick, R.: 'Coercion', in *Philosophy, Politics and Society*, fourth series, ed. P. Laslett, W. G. Runciman and Q. Skinner (Oxford: Blackwell, 1972), pp. 101–35.
- : *Anarchy, State and Utopia* (Oxford: Blackwell, 1974).
- Parent, W. A.: 'Some recent work on the concept of liberty', *American Philosophical Quarterly*, 11 (1974), 149–67.

- Patterson, O.: *Freedom*. Vol. 1: *Freedom in the Making of Western Culture* (New York: Basic Books, 1991).
- Pettit, P.: 'The freedom of the city: a republican ideal', *The Good Polity. Normative Analysis of the State*, ed. A. Hamlin and P. Pettit (Oxford: Blackwell, 1989), pp. 141–68.
- : 'Republican themes', *Legislative Studies*, 6 (1992), 29–30.
- : *The Common Mind: From Folk Psychology to Social and Political Theory* (Oxford: Clarendon Press, 1993).
- : *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1996).
- Rawls, J.: *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).
- Sandel, M.: *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).
- Skinner, Q.: 'The idea of negative liberty: philosophical and historical perspectives', *Philosophy in History*, ed. R. Rorty, J. B. Schneewind and Q. Skinner (Cambridge: Cambridge University Press, 1984), pp. 193–221.
- : 'The paradoxes of political liberty', in *Liberty*, ed. D. Miller (Oxford: Oxford University Press, 1991), pp. 183–205.
- Steiner, H.: 'How free: computing personal liberty', in *Of Liberty*, ed. A. Phillips Griffiths (Cambridge: Cambridge University Press, 1983), pp. 73–90.
- : 'Individual liberty', in *Liberty*, ed. D. Miller (Oxford: Oxford University Press, 1991), pp. 123–40.
- : *An Essay on Rights* (Oxford: Blackwell, 1994).
- Taylor, C.: 'What's wrong with negative liberty', in *The Idea of Freedom. Essays in Honour of Isaiah Berlin*, ed. A. Ryan (Oxford: Oxford University Press, 1979), pp. 175–94.

Further reading

- Benn, S. I.: *A Theory of Freedom* (Cambridge: Cambridge University Press, 1988).
- Cohen, G. A.: 'The structure of proletarian unfreedom', *Philosophy and Public Affairs*, 12 (1983), 3–33.
- Cohen, M.: 'Berlin and the liberal tradition', *Philosophical Quarterly*, 10 (1960), 216–27.
- Day, J. P.: *Liberty and Justice* (London: Croom Helm, 1987).
- Flathman, R. E.: *The Philosophy and Politics of Freedom* (Chicago, Ill.: Chicago University Press, 1987).
- Friedman, M.: *Capitalism and Freedom* (Chicago, Ill.: Chicago University Press, 1962).
- Gray, J.: 'Liberalism and the choice of liberties', in *Liberalisms: Essays in Political Philosophy* (London: Routledge, 1989), pp. 140–60.
- Green, T. H.: 'Liberal legislation and freedom of contract', in *Liberty*, ed. D. Miller (Oxford: Oxford University Press, 1991), pp. 21–32.
- Hayek, F. A.: *Law, Legislation and Liberty*, 3 vols (London: Routledge & Kegan Paul, 1982).
- Pettit, P.: 'A definition of negative liberty', *Ratio*, NS 2 (1989), 153–68.
- : *A Theory of Freedom* (Cambridge: Cambridge University Press, 2001).
- Raz, J.: *The Morality of Freedom* (Oxford: Clarendon Press, 1986).
- Schauer, F.: *Free Speech. A Philosophical Inquiry* (Cambridge: Cambridge University Press, 1982).
- Taylor, M.: *Community, Anarchy and Liberty* (Cambridge: Cambridge University Press, 1982).
- Van Parijs, P.: *Real Freedom for All: What (If Anything) Can Justify Capitalism* (Oxford: Oxford University Press, 1995).
- Weinstein, W. L.: 'The concept of liberty in 19th century English political thought', *Political Studies*, 13 (1965), 145–62.