

**Freedom Properly Understood
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“In people’s day-to-day struggle to live, in the extreme efforts workers put forth to earn an extra ruble through moonlighting, in the collective farmers’ battle for bread and potatoes as the one and only fruit of their labor, he could sense more than the desire to live better, to fill one’s children’s stomachs and to clothe them. In the battle for the right to make shoes, to knit sweaters, in the struggle to plant what one wished, was manifested the natural, indestructible striving toward freedom inherent in human nature.” (Grossman, p. 110)

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Ladies and gentlemen, it is an honor to be asked to come before such a distinguished group to address such a very serious issue. The theme of “Freedom Properly Understood” is certainly timely when our freedom is being chipped away by those who believe that no alleged threat to security, no matter how tiny, might ever be insufficient reason to override our liberties. That issue – whether we face a tradeoff between freedom and security, with more of one meaning less of the other, or the two tend to reinforce each other – deserves careful and systematic attention. As urgent as that question is, it is also a topic for another occasion, as I hope to focus our attention today, not on whether the small threats posed by terrorists warrant overriding freedom, but on the deeper issue of the proper understanding of freedom.

Freedom is notoriously one of those “essentially contested concepts” that so exercise political theorists. (See Gallie) Or, as Ronald Dworkin put it in his discussion of “fairness,” we can distinguish the “concept” of freedom from various specific “conceptions” of freedom. (See Dworkin)

Competing conceptions of freedom have been with us since the dawn of philosophy in Greece. In *The Republic*, Plato has Socrates ask about the character of freedom in a democratic regime:

“In the first place, then, aren’t they free? And isn’t the city full of freedom and free speech? And isn’t there license in it to do whatever one wants?”

“That is what is said, certainly,” he said.

“And where there’s license, it’s plain, that each man would organize his life in it privately just as it pleases him.” (Plato, p. 235, 557 b)

The natural outcome of such a regime, of course, is a litany of horrors, for, according to Socrates,

“And the ultimate in the freedom of the multitude, my friend,” I said, “occurs in such a city when the purchased slaves, male and female, are no less free than those who have bought them. And we almost forgot to mention the extent of the law of equality and of freedom in the relations of women with men and men with women.”

“Won’t we,” he said, “with Aeschylus, ‘say whatever just came to our lips’?” (Plato, p. 241, 563b-c)

Such freedom, we are instructed, merely leads to the greatest slavery. True freedom is not merely to say, “whatever just came to our lips.” True freedom is to be unimpeded, not in our *pursuit* of the truth, or of happiness, or of virtue, but in its *attainment*. In Book III of *The Republic* Socrates described the important role of the properly educated Guardians, which is to “give up all other crafts and very precisely be craftsmen of the city’s freedom and practice nothing other than what tends to it.” (Plato, pp. 73-74, 395c) To be free is to stand in the presence of truth, and to be freed means to be freed from illusion and falsehood. True freedom is the freedom to do

what is good and not merely “whatever one wants.” Knowledge is freedom and as truth is one and knowledge must of necessity be of truth and of truth alone, the free are all in agreement. Disagreement is only a sign of unfreedom, as Socrates notes in his dismissal of the freedom of democracy, for under democratic freedom “all sorts of humans come to be.” (Plato, p. 235, 537c)

The very existence of a plurality of “sorts of humans” denies to such a regime even the designation of “constitution,” for it is not one regime, but “contains all species of regimes.” (Plato, p. 235, 537d)

It is a common view that democracy and freedom emerged among Greek thinkers. It’s more accurate to think that freedom emerged at various times among some Greek cities, but rarely was it popular among its intellectuals, and certainly not in the case of Plato, who offered in its place an allegedly higher or truer freedom that consisted in the knowledge of the good; as Winston Coleman summarized Plato’s view, “real freedom is reduced to the rule of knowledge.” (Coleman, p. 42) A modern statement of that view was provided recently by Charles Taylor, who argued that to “exalt” freedom of choice means to exalt it “as a human capacity.” And to do so means that,

It carries with it the demand that we become beings capable of choice, that we rise to the level of self-consciousness and autonomy where we can exercise choice, that we not remain enmired through fear, sloth, ignorance, or superstition in some code imposed by tradition, society, or fate which tells us how we should dispose of what belongs to us. (Taylor, *Atomism*, p. 197)¹

This is all rather familiar territory. It was canvassed quite well by Isaiah Berlin in his famous essay “Two Concepts of Liberty.” Berlin pointed out that Plato’s conception of freedom, which posited removal of encumbrances on the “real,” “true,” or “higher” self, has led to very real enslavement. Rulers have merely to declare that those who resist their guidance

...are actually aiming at what in their benighted state they consciously resist, because there exists within them an occult entity – their latent rational will, or their ‘true’ purpose – and that this entity, although it is belied by all that they overtly feel and do and say, is their ‘real’ self, of which the poor empirical self in space and time may know nothing or little, and that this inner spirit is the only self that deserves to have its wishes taken into account. Once I take this view, I am in a position to ignore the actual wishes of men or societies, to bully, oppress, torture them in the name, and on behalf of, their ‘real’ selves, in the secure knowledge that whatever is the true goal of man (happiness, performance of duty, wisdom, a just society, self-fulfillment) must be identical with his freedom – the free choice of his ‘true,’ albeit often submerged and inarticulate, self. (Berlin, p. 180)

Freedom Ancient and Modern, Collective and Individual

¹ “I must be actually exercising self-understanding in order to be truly or fully free.” (Taylor, “What’s Wrong with Negative Liberty,” p. 229)

The freedom that Plato praises is frequently, as Berlin also notes, married to a conception of the bearer of freedom that is collectivist. Real freedom is the freedom of a collective self. It is a view that keeps recurring among western intellectuals. Harvard philosopher Michael Sandel has argued, for example, that classical liberal individualism fails to deal adequately with the problem of personal identity, for, as he argues, "to be capable of a more thoroughgoing reflection, we cannot be wholly unencumbered subjects of possession, individuated in advance and given prior to our ends, but must be subjects constituted in part by our central aspirations and attachments, always open, indeed vulnerable, to growth and transformation in the light of revised self-understandings. And in so far as our constitutive self-understandings comprehend *a wider subject than the individual alone, whether a family or tribe or city or class or nation or people*, to this extent they define a community in a constitutive sense." (Sandel, p. 172) (emphasis added)²

Participation in collective decision making is, we are also told, a higher kind of freedom, for then we are not merely saying, in Plato's dismissive terms, "whatever just came to our lips," but truly "deliberating":

Those issues, which can only be effectively decided by society as a whole and which often set the boundary and framework for our lives, can indeed be discussed freely by politically irresponsible individuals wherever they have license to do so. But they can only be truly *deliberated* about politically. A society in which such deliberation was public and involved everyone would realize a freedom not available anywhere else or in any other mode. (Taylor, *Atomism*, p. 208)³

² The move from shared understandings to the constitution of a "wider self" is unjustified. As John Haldane remarks, "even if this were granted it would not follow from it that subjects of these relationships are anything other than distinct persons. To suppose otherwise is to infer fallaciously that epistemological considerations enter into the constitution of the object known." That individuals share notions of justice, compassion, and self-understanding does not imply that the boundaries of those individuals melt into a vast fondue of communal understandings, for, as Haldane points out, "Features can only be shared if they attach to bearers which at base are numerically diverse." (Haldane, p. 195) That is an old debate, and the outlines can be traced quite clearly in the debate between the "Latin Averroists," notably Siger of Brabant, and St. Thomas Aquinas over whether there is one "intellective soul" for all of mankind. The Averroists argued that, for two individuals to know the same thing, they have to have the same form impressed by the agent intellect into the same material (or possible) intellect; to know the same form, they must share the same material intellect; and, as some sources reported, it was reported by some in the thirteenth century that that thesis had radical implications for the moral responsibilities of the individual: if Peter was saved, then I will be saved too, as we share the same intellective soul, so I am free to engage in whatever sinful behavior I wish, in the knowledge that I will be saved nonetheless. Thomas responded that the impressed intelligible species is not literally the very form of the thing raised to a higher level of intelligibility, but rather that *by which* we know the thing. (See Siger of Brabant and Thomas Aquinas.)

³ Quentin Skinner identifies a "neo-Roman theory of free states" that he presents as an alternative to liberalism, according to which "a state or nation will be deprived of its liberty if it is merely subject or liable to having its actions determined by the will of anyone other than the representatives of the body politic as a whole." (Skinner, 1998, p. 49) The dichotomy that Skinner asserts between "republicanism" and "liberalism" discounts or ignores the substantial tradition of "liberal republicanism." The discussion on p. 84 ignores the element in the traditional understanding of Locke and others of liberty "a *Liberty* to dispose, and order, as he lists, his Persons, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own." (Locke, *Second Treatise of Government*, Chap. VI, §57, p. 306)

Benjamin Constant referred to such collective freedom as “ancient freedom” and contrasted it with “modern freedom.”⁴ The confusion between the two, Constant argued, was at least one major reason for the collapse of the French Revolution into an orgy of murder and terror. Ancient freedom was, he believed, incompatible with modern conditions and required terrible measures in the attempt to realize it. Ancient freedom was a response to the ever-present threat of war among ancient polities. The loss of a war in the ancient world typically meant the complete elimination or enslavement of the population; if the uniformity of opinion and action characteristic of ancient freedom was the price to be paid to avoid defeat and enslavement, one can certainly understand its attractions. But to confuse such collective freedom with the freedom characteristic of the modern world generated a catastrophe.

Modern freedom is the product of a distinctive set of political relationships that emerged in Europe that were quite unlike the polities of the ancient world. Commerce, rather than war, determined the character of the modern age, but the language of political science did not reflect that difference. Indeed, much of the hottest political-theoretical debate of the past few hundred years may be traced to the application of the concepts and terms of ancient political science – as recovered by western thinkers with the texts of Plato and Aristotle – to institutions and practices that were radically different in kind and character from those known by Plato and Aristotle. The nature of the relationship among persons in the modern world is primarily contractual, based on agreements and oaths of various sorts (e.g., *Eidgenossenschaften*) and accordingly voluntary.⁵ In western European history the seedbed of modern liberty is the commune. Those communes were not merely hypothetical social contracts among purely rational entities – higher selves, as it were, but robustly empirical agreements. Harold Berman described the process in the English town of Ipswich, England, as recorded in *Domesday Book of Ipswich*.

On Thursday, June 29, 1200, the whole community of the town assembled in the churchyard of St. Mary at the Tower. They proceeded to elect, with one voice, two bailiffs, who were sworn to keep the office of provost, and four coroners, who were sworn to keep the pleas of the crown and to handle other matters affecting the crown in the town "and to see to it that the aforesaid bailiffs justly and lawfully treat the poor as well as the rich." . . . On Sunday, July 2, . . . all the townsmen stretched forth their hands toward the Book (the Gospels) and with one voice solemnly swore to obey and assist, with their bodies and their goods, the bailiffs, coroners, and every one of the capital portmen in safeguarding the borough, its new charter, its liberties and customs, in all places against all persons, the royal power excepted, "according to their ability, so far as they ought justly and rationally to do." (Harold Berman, pp. 383-84.)

⁴ As Fustel de Coulanges found, “The ancients knew . . . neither liberty in private life, liberty in education, nor religious liberty. The human person counted for very little against that holy and almost divine authority which was called country or the state.” (Fustel de Coulanges, p. 222) Indeed, “They did not believe that there could exist any right as against the city and its gods.” (Fustel de Coulanges, p. 223)

⁵ “The idea that any legitimate polity must originate in an act of consent was of course a scholastic commonplace, one which the followers of Ockham no less than Aquinas had always emphasised.” (Skinner, 1978, p. 163)

The freedom that has characterized the legal and political experience of western society emerged, not from a rediscovery of the texts of the ancients, but from the experience of civic freedom in the communes of Europe, where Europeans had to sort out legal and political arrangements anew. The cities of Europe were islands of freely organized production and exchange protected by walls that were built to exclude the practitioners of violence and theft. As a fortified place – a *Burg* – a city made possible the freedom of the Bürger. The new cities of Europe were generally places of trade and commerce, rather than administrative centers of vast empires, centers of religious cults, or centers of exploitative rule over subject peasant populations. The communes represented something new; they were often founded by people with no place in the feudal order of the countryside, divided as it was between those who fought, those who prayed, and those who worked. The cities were typically founded and populated by wandering peddlers, by fleeing vassals, by mechanics and craftsmen and others without status in the legal order of feudalism. It was in the cities that they found freedom. The communes, notably those of northern Italy, of the Low Countries and the Rhineland, and of Germany east of the Elbe, were governed by written charters--or constitutions--that guaranteed the liberties of their inhabitants. The old German slogan about city air and freedom was a matter of law, recognized, for example, as a privilege of the City of Lübeck, fully acknowledged by the Emperor Frederick I in the year 1188. “Stadtluft macht frei nach Ablauf von Jahr und Tag” was since the twelfth century a legal principle of the majority of civitates, the distinguishing feature of their civil freedom. (Planitz, p. 117-118) Serfs or vassals who could make it to a city and live there for a year and a day were freed of feudal obligations and would be defended by the city. Freedom under the rule of law was what attracted people to the cities, which were surrounded by thick walls that effectively defended civil society from the barbarians, greedy nobles and knights, bandits, and plundering armies outside. Such communes were the seedbeds of modern civil society--of free-market capitalism, of freedom, of the security of person and property.

Henri Pirenne noted in his classic study *Medieval Cities: Their Origins and the Revival of Trade* that “just as agrarian civilization had made of the peasant a man whose normal state was servitude, trade made of the merchant a man whose normal condition was liberty.” (Pirenne, p. 50) The civil liberty of modern society is the product of civil society, that is, of the society that grew in the cities of Europe. The liberty of the person was individual liberty, but it was acquired by being a member of a civil society, by enjoying a particular kind of legal relationship with others, through membership in a guild, company, or association. Antony Black notes, “The crucial point about both guilds and communes was that here individuation and association went hand in hand. One achieved liberty by belonging to this kind of group. Citizens, merchants, and artisans pursued their own individual goals by banding together under oath.” (Black, p. 65)⁶

⁶ Black notes also that “It is worth noticing how the idea of contract, which was later embodied in a political theory peculiarly suited to the values of civil society, was already acquiring a special status in the Middle Ages. Contractual relations were one thing the feudal world and the world of commerce had in common. Mutual trust that contracts will be honoured, bills paid and goods delivered was a prerequisite for the development of trade. The Roman law jurists were the first to introduce contract into political theory.” (Black, p. 37)

Such freedom could only be freedom under the rule of law. Civil liberty is not “liberation” from all constraint of any sort, but mutual enjoyment of equal freedom. In John Locke’s memorable critique to the vision of lawless “freedom” painted by the advocate of royal absolutism Sir Robert Filmer,

“*[T]he end of law is not to abolish or restrain, but to preserve and enlarge Freedom: For in all the states of created beings capable of Laws, where there is no Law, there is no Freedom. For Liberty is to be free from restraint and violence from others which cannot be, where there is no Law: But Freedom is not, as we are told, A Liberty for every Man to do what he lists: (For who could be free, when every other Man’s Humour might domineer over him?) But a Liberty to dispose, and order, as he lists, his Persons, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own.*” (Locke, *Second Treatise of Government*, Chap. VI, §57, p. 306)

The freedom of modern civil society, in Constant’s words, is “the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals. It is the right of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for their motives or undertakings. It is everyone’s right to associate with other individuals, either to discuss their interests, or to profess the religion which they and their associates prefer, or even simply to occupy their days or hours in a way which is most compatible with their inclinations or whims. Finally it is everyone’s right to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed.” (Constant, p. 311)

The modern conception of freedom is compatible with plurality of religions, plurality of styles of life, plurality of opinions. Under modern liberty “all sorts of humans come to be.” It’s unpredictable. The rules of the process are known, but the outcome is not. Moreover, the complex outcome of the interaction of so many free persons is not a consciously chosen outcome; it can’t be. Modern freedom and self-direction is individual, not collective.

Where does that bring us? Isn’t modern liberty triumphant? Haven’t we seen the retreat of all advocates of collectivist conceptions of liberty, the collapse of totalitarian projects to free man by abolishing false consciousness, the universal triumph of liberalism, even the end of history? Hardly. I won’t address the hybrid of pre-modern and post-modern horror that is Islamist radicalism, with its confused mélange of twentieth century European fascism and an imagined tradition of the golden age of Islam.⁷ That, too, is a subject for another occasion. Rather, I will address the reemergence of theories of freedom that promise us “real,” “true,”

⁷ For a flavor, see Paul Berman (2003).

“higher,” “effective,” or “substantive” freedom through the rather softer techniques of the modern welfare state.

“Real” and “Substantive” Freedom and the Presumptions of Power

The opponents of mere freedom modify their alternative as “true freedom,” “higher freedom,” “real freedom,” or “substantive freedom.” They tell us that the exercise of a choice is free only if it is justified, or part of the attainment of a life that we “have reason to value.” Such intellectuals presuppose that the rest of us must justify ourselves to them. They propose a fundamental shift in the burden of proof. In place of the authentically liberal adage that “all that is not clearly forbidden is permitted,” we are told that real freedom consists in following the adage that “what is not clearly justified may be forbidden.” Only justified freedoms are enumerated and only those that are enumerated are protected.

The idea was set forth very clearly by one of the authors of liberalism’s collapse in the late 19th and early 20th centuries, the English philosopher and follower of G.W.F. Hegel, Thomas Hill Green. In his famous 1881 lecture against freedom of contract Green stated,

We shall probably all agree that freedom, rightly understood, is the greatest of blessings; that its attainment is the true end of all our effort as citizens. But when we thus speak of freedom, we should consider carefully what we mean by it. We do not mean merely freedom from restraint of compulsion. We do not mean merely freedom to do as we like irrespectively of what it is that we like. We do not mean a freedom that can be enjoyed by one man or one set of men at the cost of a loss of freedom to others. When we speak of freedom as something to be so highly prized, we mean a positive power or capacity of doing or enjoying something worth doing or enjoying, and that, too, something that we do or enjoy in common with others. We mean by it a power which each man exercises through the help or security given him by his fellow-men, and which he in turn helps to secure for them. (Green, 1906, 370-71)

Thus, to understand freedom rightly (or properly) is to understand that “the mere removal of compulsion, the mere enabling a man to do as he likes, is in itself no contribution to true freedom.” (Green, 1906, 371) Indeed, we are made free precisely when we are subjected to compulsion in the name of forcing us to do what we ought to do, which is, after all, what we “really” want to do. In his argument for prohibition of alcohol (one of Green’s pet causes), Green concluded,

The citizens of England now make its law. We ask them by law to put a restraint on themselves in the matter of strong drink. We ask them further to limit, or even altogether to give up, the not very precious liberty of buying and selling alcohol, in order that they may become more free to exercise the faculties and improve the talents which God has give them. (Green, 1906, 386)

Arguments offered in support of an obviously failed policy such as prohibition of alcohol may seem like a mere historical curiosity, were it not for the fact that Green’s conception of freedom has become dominant among most intellectuals. In

place of mere “freedom from restraint of compulsion,” such intellectuals offer us a life of justifying our behavior to them. And when we finally realize our true desires and submit ourselves to the rule of the intellectuals, we will enjoy, not mere freedom, or merely empirical freedom, but “real” or “substantive” freedom.

In his wide-ranging book *Development as Freedom*, Nobel Laureate Amartya Sen repeats the language of Green, when he explains that to treat “the freedoms of individuals as the basic building blocks,” one must be focused on “the expansion of the ‘capabilities’ of persons to lead *the kind of lives they value – and have reason to value.*” (Sen, 1999, 18, italics added) Not merely the kind of lives they actually value, but the kind of lives they have reason to value. Have reason to value means can offer reasons for being allowed to pursue them. “To whom” is never specified, of course. Green formulated the same principle as “a positive power or capacity of doing or enjoying something worth doing or enjoying.” The focus is on the giving of reasons: it is something “worth doing” or something they “have reason to value.” The fact that they value it is by itself of no significance. Attaining a value is an exercise of freedom if and only if it is a justified value. Otherwise, not.

Accordingly, freedoms must be enumerated. They must be enumerated because they require justification. The complement to enumerated freedoms, each requiring a justification, is a background of unenumerated powers of the state to compel, to prohibit, to forbid, to coerce. When the presumption of liberty is replaced with the presumption of power, liberalism is turned on its head.

The American Bill of Rights, written when liberalism was emerging into its own, added to the enumeration of rights a most important qualifier: the Ninth Amendment, which states that “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” With the exception of procedural legal rights (such as due process of law, a speedy and public trial, and trial by jury) all of the enumerated rights are rights to freedom from state power. The Ninth Amendment to the US Constitution tells us that the listing of rights does not imply that if a right is not listed, it is no right.⁸ The Tenth Amendment (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”) tells us that the enumeration of powers does not imply that if the power is not enumerated, the state authorities do not have that power.

Contrast that approach with the Universal Declaration of Human Rights, which offers twenty-one articles that are compatible with modern conceptions of freedom and then, with Article Twenty-two, initiates a list of entitlements to security, health, housing, periodic holidays with pay, and so on. The capstone to the list tells us that we have left the presumption of freedom far behind and entered into the realm of the presumption of power:

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

⁸ For the right to travel, see *Kent v. Dulles*, 357 U.S. 116 (1958)

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

A Universal Declaration of Human Rights that concludes with a “right” to have duties “to the community,” that is, duties to obey the state, is entirely different in kind from a declaration that concludes with an explicit statement of unenumerated rights (“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”) and enumerated powers (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”). Moreover, nothing in the Universal Declaration, it insists, should be construed to recognize “any right to engage in any activity or to perform any act” that might be “aimed at the destruction of any of the rights and freedoms set forth herein,” which means not merely that there are no rights to suggest that there are no rights, but far more importantly, that there is no right to challenge the presumption of the state to enjoy the obedience of its subjects.

Moreover, by including in such a declaration rights to “food, clothing, housing and medical care and necessary social services” along side the right to “freedom of thought, conscience and religion,” the difference between such “positive entitlements” and rights to non-interference is elided. All rights are grants from the state. Indeed, that is another moment in the conception of freedom, not as “mere” freedom, but as “substantive” freedom, the freedom to do what we are directed to do by the state. As law professors Stephen Holmes and Cass Sunstein put it in their interesting work *The Cost of Rights: Why Liberty Depends on Taxes* (using the American term for “social rights” granted by the state), “apparently nonwelfare rights are welfare rights too” and “all legal rights are, or aspire to be, welfare rights.” (Holmes and Sunstein, pp. 219 and 222)⁹

Discriminating Among Stipulations

⁹ I display the logical incoherence of their thesis in my review of *The Cost of Rights* (*Cato Journal*, Vol. 19, No. 2, Fall 1999, <http://www.cato.org/pubs/journal/cj19n2/cj19n2-10.pdf>). “Some even identify the receipt of benefits from the state as the experience of “real freedom,” including the “freedom” to live one’s life as a surfer who refuses to work to produce wealth and is instead supported entirely by the taxpayers. See Philippe Van Parijs, *Real Freedom for All* (Oxford: Oxford University Press, 1995)

If there are different conceptions of freedom, are there any reasons to prefer one to another? One can always stipulate that by freedom, or justice, or equality one means this or that and, if the stipulation is clearly understood at the outset, others have little reason to complain. But are there reasons why one stipulation should be preferred to another? Yes, there are.

First, as the apostle of “positive freedom” Thomas Hill Green himself admitted, “As soon as the term ‘freedom’ comes to be applied to anything else than an established relation between a man and other men, its sense fluctuates much more.” (Green, 1960, p. 2) That fluctuation of sense means that some stipulations have disadvantages, at least if we hope to use language precisely. Why is the classical liberal conception of freedom – “mere” freedom, as it were – preferable to the vague and imprecise stipulation offered by advocates for “higher,” “real,” true, “substantive” freedom? The “relation between a man and other men” is the historical core of the experience of freedom and the foundation of the concept.¹⁰ Other uses are, at best, analogical, as when we say that one is “freed” from a bad habit or “freed” from ignorance or want. This intellectual territory is also quite well trod and was considered in considerable depth by F. A. Hayek in the opening chapters of *The Constitution of Liberty*:

It so happens that the meaning of freedom that we have adopted seems to be the original meaning of the word. Man, or at least European man, enters history divided into free and unfree; and this distinction had a very definite meaning. The freedom of the free may have differed widely, but only in the degree of an independence which the slave did not possess at all. It meant always the possibility of a person’s acting according to his own decisions and plans, in contrast to the position of one who was irrevocably subject to the will of another, who by arbitrary decision could coerce him to act or not to act in specific ways. The time-honored phrase by which this freedom has often been described is therefore “independence of the arbitrary will of another.” (Hayek, p. 12)

To that we could add a few other reasons, notably that to call wealth or health or intelligence or education or beauty “freedom” because it enables us to do more than those who lack it is to do violence to language; we already have quite good words to denote those concepts, namely, wealth, health, intelligence, education, and beauty. Sen simply confuses the discussion when he writes that “The usefulness of wealth lies in the things that it allows us to do – the substantive freedoms it helps us to achieve.” (Sen, p. 14) By that logic, all kinds of lack of goods “deny freedom.” Indeed, according to Sen, “Very many people across the world suffer from varieties of unfreedom. Famines continue to occur in particular regions, denying to millions the basic freedom to survive.” (Sen, p. 15) Do HIV, shark attacks, and traffic accidents also “deny” to people “the basic freedom to survive”? Surviving is a good thing, to be sure, but does anything that gets in the way of surviving to count as a denial of freedom? Is freedom just another word for ability?¹¹ It is hard to see what is added to discourse by such language, other than confusion.

¹⁰ “[S]ome notion of freedom existed wherever slavery was found.” (Orlando Patterson, p. 41)

¹¹ For example, “In the foregoing discussion, I have been concentrating on a very elementary freedom: the ability to survive rather than succumb to premature mortality.” (Sen, p. 24) Sen also refers to

Amartya Sen attempts to seize the high ground in the debate by accusing “the ‘libertarian’” (in scare quotes) with “preoccupation with procedures for liberty (with deliberate neglect of consequences that derive from those procedures),” thus confusing the reason for a rule (the consequences) with the rules themselves. It’s processes that can be directly addressed by policies, not outcomes.¹² All a policy can set in motion is a process that will result in an outcome. We don’t live in a world of magic, in which we have but to say the magic words – “no hunger” or “universal health care” – and those things come to be. What we can affect directly are institutions and incentives, but not outcomes. We create, form, or reform institutions. Institutions form incentives. Incentives form behavior. Behavior forms outcomes. We may evaluate the institutions by the outcomes they generate.¹³ In contrast, we can directly impinge on the freedom of another by exercising coercion over her. If I use force to confiscate a person’s wealth, I have directly violated his freedom and made him poorer. The loss of wealth is not equivalent to the denial of freedom; it is its consequence.

Those who favor plain, old, evidently uninspiring, merely empirical “freedom” – as distinguished from adjectivally modified “higher,” “true,” “real,” “effective,” or “substantive” freedom – have the advantage of using a term to denote something distinct from its consequences. Freedom may lead to more wealth and knowledge, but it does not follow that freedom is wealth or that wealth is freedom, nor that freedom is knowledge or knowledge freedom. Indeed, scientific investigation of cause and effect relationships is greatly hindered by such confusion. If all good things are freedom, then freedom cannot be isolated as a cause of any of them, for they are all freedom. The best that those who consider all good things to be freedom can do is to distinguish between different “kinds” of freedom, but they fail to inform us of what distinguishes those kinds. Rather than asking whether freedom leads to more prosperity, they have to argue that one kind of freedom leads to another, but without acknowledging what might distinguish one of those “kinds” of freedom from the other.

The simple and unmodified use of the term avoids such political/linguistic catastrophes as concluding that people living under a technologically more advanced despotism or dictatorship are “freer” because they can do things that people living in less technologically advanced societies cannot. To take the obvious case, very, very few Germans in 1913 could take antibiotics or use machines to peel potatoes or make

“basic capabilities and effective freedoms” (p. 19), suggesting that he equates “capability” with “effective freedom.” It is not clear what work is being done by the word “effective.”

¹² “The gaining of a popular good, being the external conspicuous trait common to Liberal measures in earlier days (then in each case gained by a relaxation of restraints), it has happened that popular good has come to be sought by Liberals, not as an end to be indirectly gained by relaxation of restraints, but as the end to be gained directly. And seeking to gain it directly, they have used methods intrinsically opposed to those originally used.” (Herbert Spencer, p. 69) Compare E. L. Godkin, writing in *The Nation* in 1900, “To the principles and precepts of Liberalism the prodigious material progress of the age was largely due. Freed from the vexatious meddling of governments, men devoted themselves to their natural task, the bettering of their condition, with the wonderful results which surround us. But it now seems that its material comfort has blinded the eyes of the present generation to the cause which made it possible. In the politics of the world, Liberalism is a declining, almost a defunct force.” (E. L. Godkin, 1900)

¹³ “Institutions provide the incentive structure of an economy; as that structure evolves, it shapes the direction of economic change towards growth, stagnation, or decline.” (Douglass C. North, p. 97)

telephone calls, but it does not follow that Germans in 1939 were “freer” because they could do so. To say that they were wealthier seems quite reasonable; to say that they were freer is absurd.

Finally, there are good epistemic reasons not to identify freedom with those “‘capabilities’ of persons to lead the kind of lives they value – and have reason to value.” (Sen, 1999, 18) To say that they “have reason to value” their lives means that they must be justified to others. In other words, in place of a presumption of freedom to live and act, there is a presumption that one must justify one’s life and free action to others, or be subject to permissible coercion by someone else. That is to say, there is a presumption of permissible prohibitions, rather than of permissible actions. That’s why the view of freedom put forth by advocates of “truer,” “higher,” “real,” or “substantive” freedom is typically instantiated in bills of enumerated rights. Things you have reason to value are put on lists of things to which you have rights. Those that you don’t have reason to value are left off of lists of things to which you have rights. Thus, the conclusion of the list of enumerated “rights” in the Universal Declaration’s by the insistence that all have a “duty” to the community, meaning that if something is not enumerated, there is a presumption that it is not a matter of right, but is subject to the power of state compulsion.

A presumption of liberty, the exercise of which needs no specific justification, puts the burden of proof on those who would impede the actions of others. Such a presumption of liberty has an overwhelming advantage. As “A Federal Farmer” noted in 1788, “we often find it easier to enumerate particularly the powers to be delegated to the federal head, than to enumerate particularly the individual rights to be reserved.” (Federal Farmer, p. 401) In the debate over the constitution and whether there should be included an enumeration of rights, James Wilson famously declaimed,

Enumerate all the rights of men! I am sure, Sir, that no gentleman in the late convention would have attempted such a thing. ... (Farrand, p. 162)

Wilson had a good point. You cannot make an exhaustive list of all the things one might freely undertake. You have a right to set your alarm clock for 6 am, or 6:05 am, or 7:00 am, or not at all, to wear a hat or not wear a hat, to listen to Brahms, Mozart, or New Sound Theory. As Anthony de Jasay has noted, “the list of feasible actions is indefinitely long.” (de Jasay, 1996, p. 24)¹⁴ The presumption of liberty is justified for the same reason – the relative weight of the burden of proof – that justifies the presumption of innocence of the accused and the presumption of possession of property.¹⁵ The burden of proof is on the one who would put one in jail, not on the one who would remain free. Of course, those who follow Rousseau

¹⁴ “There are two rival presumptions: ‘everything is admitted that is not specifically excluded,’ and ‘everything is excluded that is not specifically admitted.’ Whichever hypothesis is adopted, either the list of excluded, or the list of admitted actions is sufficient for identifying any action as either admitted or not. Both are not needed for guidances in choosing actions. However, the list of feasible actions is indefinitely long. Compiling the full list of interdictions is, under ordinary circumstances, a less onerous task than compiling a full list of permissions; enumerating what we must not do, and monitoring that we not do it, are less exacting than listing what we have a right to do, and monitoring that we do not do what we have no right to do.” (de Jasay, p. 24)

¹⁵ “It takes no particular insight to realise that the presumptions of innocence and of property are special cases of the presumption of liberty. They are derived by the same source in the asymmetry between verification and falsification.” (de Jasay, 2005, p. 575)

and Thomas Hill Green would have to agree that when they are compelled by violence to do what they ought to do or to refrain from doing what they ought not, to do what they have reason to do and to refrain from what they do not have reason to do, they are not “really” being compelled, punished, or coerced, for they are experiencing “true” freedom.

For clarification, let me turn to the words of a man who understood what it means to be compelled in the name of “higher,” “true,” “real,” “substantive,” and “effective” freedom, and in being so liberated to lack simple and unmodified freedom. To live in a society without unmodified freedom is to live in a society in which violence and power can be visited upon one with no reason whatsoever, for no reason had to be given for the exercise of power.¹⁶ In place of the presumption of liberty, he lived in a system based on the presumption of power. I will conclude with the words of Vasily Grossman, a writer for the Red Army paper *Red Star* who witnessed some of the greatest crimes of the twentieth century, all perpetrated in the name of one or another form of “higher” freedom.

In his novel *Forever Flowing*, a work never published in his lifetime, he described the punishment in the USSR of “parasites and nonworking elements,” meaning people who created – at night after working for the state by day – sweaters, shoes, bags, food, and other goods. Grossman’s character Ivan Grigoryevich concludes,

I used to think freedom was freedom of speech, freedom of the press, freedom of conscience. But freedom is the whole life of everyone. Here is what it amounts to: you have to have the right to sow what you wish to, to make shoes or coats, to bake into bread the flour ground from the grain you have sown, and to sell it or not sell it as you wish; for the lathe operator, the steelworker, and the artist it’s a matter of being able to live as you wish and work as you wish and not as they order you to. And in our country there is no freedom – not for those who write books nor for those who sow grain nor for those who make shoes. (Grossman, p. 99)

Let us not, then, confuse freedom with ability, capability, knowledge, virtue, health, or wealth. Let us hold up a standard of freedom, expressed in clear and precise terms, not modified by misleading adjectives, and promote that standard to the public, in the knowledge that with freedom – because of freedom – we enjoy prosperity, peace, dignity, knowledge, health, and so many other benefits. But as we enjoy the blessings of freedom, let us not confuse those blessings with freedom itself, for on that path we are led to lose both freedom and its blessings.

¹⁶ “Starting in 1937, he [Stalin] signed orders which were sent to the regional NKVD bosses, listing quotas of people to be arrested (no cause was given) in particular regions. Some were to be sentenced to the ‘first category’ of punishment – death – and others to be given the ‘second category’ – confinement in concentration camps for a term ranging from eight to ten years.” (Applebaum, p. 94)

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