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LIBERTY

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Introduction

The value of liberty figures prominently in people's individual self-conceptions. They see themselves as free agents capable of deliberating about and choosing what they should pursue or do. This value in turn features in accounts of moral and political philosophy concerning whether an action or policy is permissible, reasonable, or legitimate. People want to be free and it's hard to think of a theoretical tradition that doesn't at least afford lip service to some notion of liberty. Indeed, even proponents of presumptively *illiberal* theories will tend to offer some putative justification in terms of some other value to account for whatever impositions against liberty they tolerate. Authoritarians of all stripes feel at least some pressure to argue that these are necessary to promote virtue, for example, or protect important traditions. Alternatively, they may provide some conception of liberty according to which the imposition is necessary to secure or protect it. Accordingly, "work makes you free" (even in a forced labor camp!) rather than merely useful, manageable, or whatever. Every ideological outpost claims the mantle of liberty in one way or another, however plausible their claims appear and however successfully they withstand scrutiny.

This surface-level agreement about the value of liberty obscures a great number of questions about basic applied controversies and how we outline the contours of different positions within moral and political philosophy. First, there is a central debate about what liberty is, which I survey in the second section. Do questions about the value of liberty affect our understanding of the concept? Of course, as with other concepts and ideas subject to dispute, meaningful disagreement presupposes a core shared notion. Otherwise, it may seem like an uninteresting verbal dispute rather than one about attempts to clarify the concept. As in these other areas, we can think of these disputes about the meaning of liberty as different ways of identifying the conditions under which we should say a person enjoys liberty. On the one hand, the conditions we propose shouldn't stray too far from the core shared notion as to be radically revisionary; on the other, the account should afford us ways of being more precise about the use of the term in ways that can inform how we might settle various issues we confront in social life.

I turn to a set of questions, both methodological and substantive, concerning the value and significance of liberty in the third section. Many of these focus on identifying whether we

should think liberty is always and everywhere valuable, and whether its value is intrinsic or instrumental. Finally, I address the status of liberty among other moral and political values. That is, whatever sort of value liberty has, is its value high? Is liberty rightly prioritized or weighty relative to other valuable states of affairs? Libertarians tend to respond rather emphatically, “yes!” This way of answering to the value of liberty is perhaps the key distinguishing feature of libertarianism from among other liberal views. How do libertarians account for this positioning of the good in people doing what they want to do?

The Basic Concept

Liberty, or being free with respect to an action, is being able to do what you want to do. The two parts in this simple intuitive account — the ability to do and wanting to do it — are sufficiently ambiguous as to have given rise to significant debate about what we should do to promote or protect the liberty of the individual. The first part raises a host of questions concerning the nature and relevant sense of “ability to do” or avoid something. We say you can do something when you have the power to do it, when you have permission to do it, and also when no one, or nothing, is getting in your way to prevent you doing it. Each of these alternatives suggests different answers about whether someone is at liberty to do something.

The ambiguity in the second part of the account has to do with questions about what has to be true in order for you to be doing what you want to do. People who smoke crystal meth might want to do just that, but maybe only because they are addicted. They want to smoke crystal meth because they’re in the grips of this addiction, but they also might want not to be addicted and not to have the desire to smoke it. Maybe they smoke crystal meth without sufficient deliberation or because they have been pressured in some way. Additionally, there might be an information threshold that an actor should meet before we say that they (truly) want to do something. Are they sufficiently aware of the consequences of their choice, or of other available options and their consequences? How much information or awareness is sufficient?

We can see how this basic concept of liberty can map on to T.H. Green’s distinction between negative and positive liberty, made popular by Isaiah Berlin in “Two Concepts of Liberty” (Berlin 1969). The negative concept of liberty is captured by the sense of “can” where no one interferes with you with the effect of preventing you from doing the thing you want to do, and so the agent, as Berlin says, “can act unobstructed by others” (Berlin 1969, 122). Liberty compromising interference here is intentional and interpersonal. Berlin’s negative concept is therefore different than that of Thomas Hobbes, who writes that “liberty is the absence of all the impediments to action that are not contained in the nature and intrinsic quality of the agent” (Chappell 1999, 38). So, according to Hobbes, any “external” impediment, whether the intentional action of another person or a civil law, or a non-personal hindrance like a locked gate or a sheer cliff wall, may prevent you from doing something you want to do and compromise your liberty, but not your own sheer inability. Others, however, like Philippe Van Parijs, include even the agent’s “intrinsic” inability as freedom-compromising. His understanding of “real freedom”

amounts to selecting the broadest possible characterization of freedom-restricting obstacles consistent with the view that lacking freedom is being prevented from doing some of the things one might want to do. Any restriction of the opportunity-set is relevant to the assessment of freedom.

Van Parijs 1995, 23

Having liberty with respect to something, on this account, is the absence of whatever may prevent your goals. But notice that you can just as easily present this concept in a positive way: liberty is having the sufficient conditions, or the capacity, to do what you want to do.

Phillip Pettit's (1997) revival of a republican view of liberty as non-domination presents the idea that people can do what they want to do in terms of a kind of independence, such that no one has the capacity to interfere with the agent in an arbitrary way. In one obvious sense this is more restricted than some of the negative views canvassed so far: freedom-compromising factors will be other people who interfere with you in some way. Yet in other ways it's broader, since it includes another's *capacity* to interfere with you, rather than only their actual interference, as something that can prevent you from doing what you want to do. Pettit argues that this would be true, for example, if you were in a position of subjugation. In such a position, what you really want to do isn't decisive, independently of the subjugator's approval. You only get what you want if it happens to match what the person in charge wants for you, or if you have carefully managed to go unnoticed, or to secure their favor or indulgence. This means that it's possible you could *routinely* be able to do what you want, yet if your wanting it isn't decisive in the relevant sense — independently of the content of your wants and independently of you having an accommodating master — then you aren't really free.

Pettit's account requires that the subjugator's capacity to interfere is arbitrary in order that agents lack the relevant independence to do what they want. The will, judgment, or interests of the latter are replaced with those of the subjugator. Yet interfering in a way that tracks the avowed, or readily avowable, interests of the agent, or in a way circumscribed by a set of neutral rules or institutions, is legitimate and even liberty-enhancing. For example, Pettit argues that legitimate law "secures" (Pettit 1997, 40), rather than compromises, the independence of a citizenry.

Pettit finds a somewhat surprising ally in F.A. Hayek's account of the meaning of liberty:

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 1960, 59

In truth, without too much work we can find explicit endorsement of this civic republican tradition in at least two undisputed members of liberalism's Mt. Rushmore: John Locke and J.S. Mill.¹ Locke identifies civil liberty with acting "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 1988, VI, 57). This is because, he adds parenthetically, "who could be free, when every other man's humor might domineer over him?" (Locke 1988, VI, 57).

This is precisely Mill's concern in *The Subjection of Women*, which identifies the key republican issue in the title and makes the case on behalf of women to have "a life of rational freedom" rather than "a life of subjection to the will of others" (Mill 1963, 336). Mill argues that this is part of a more general principle that "freedom is the first and strongest want of human nature." He continues:

While mankind are lawless, their desire is for lawless freedom. When they have learnt to understand the meaning of duty and the value of reason, they incline more and

more to be guided and restrained by these in the exercise of their freedom; but they do not therefore desire freedom less; they do not become disposed to accept the will of other people as the representative and interpreter of those guiding principles. On the contrary, the communities in which the reason has been most cultivated, and in which the idea of social duty has been most powerful, are those which have most strongly asserted the freedom of action of the individual — the liberty of each to govern his conduct by his own feelings of duty, and by such laws and social restraints as his own conscience can subscribe to.

Mill 1963, 336

If this position represents a different emphasis than that in *On Liberty*, it should not be seen as a significant departure. There, too, Mill was concerned about the impact of not simply compulsion, but also control in “the dealings of society with the individual ...” (Mill 2004, 10). In particular, Mill expressed concern about the impact of compulsion and control on the development of individuality and staked out a thoroughgoing opposition to socially imposed conformism of all sorts. So Mill argued that “there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them” (Mill 2004, 59). According to Mill, “individuality should assert itself” because “where, not the person’s own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress” (Mill 2004, 59).

These, and other, paens to individuality in the book suggest a view of liberty that is broader than “one simple” negative harm-avoidance principle. It may, as I have been arguing, suggest the republican sense of doing what *you* want to do; i.e., doing that *rather than* comporting yourself according to social expectations that have become a means of domination. Alternatively, Mill’s concern for the cultivation of individuality may also suggest a different “positive” concept of liberty, where individuality is synonymous with later notions of autonomy. You are autonomous when you come into your own, having cultivated a life animated by the values that you identify with. T.H. Green presents a person’s freedom as “the state in which he shall have realised his ideal of himself, shall be at one with the law which he recognises as that which he ought to obey, shall have become all that he has it in him to be, and so fulfil the law of his being or ‘live according to nature’” (Green 1906, 323–324).

Proponents of positive liberty, then, argue that you are free when you can do what you — the *real* you — *truly* wants to do. Berlin interprets this as a state of “self-mastery” where you can exhibit a sufficient degree of deliberative self-control, such that you are authentically the author of your actions: “I wish to be a subject, not an object, to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me ... a doer — deciding, not being decided for, self-directed and not acted upon by external nature ~~of~~ by other men ... conceiving goals and policies of my own and realizing them” (Berlin 1969, 131). The meth addict, qua addict, wants to ingest the drug, and might not meet any impediment with respect to acting on this desire. But the addict is also a slave to the drug, which may override the “true self” and some of the beliefs, values, and commitments of that idealized version of the agent.

And this isn’t only true of addicts. All of us are subject, at least to some degree, and some of us significantly more than others, to cognitive, emotional, and epistemic deficiency and incompetence. We’re not always (ever?) masters of ourselves. We’re incapable of doing what we want to do in this sense. So what if that’s right? Beyond recognizing this about ourselves and

doing the best we can to measure up to the fully autonomous versions of ourselves, what is the practical upshot?

One lesson might be Berlin's worry that the positive concept of liberty undermines the negative one. This is because, for various reasons, your expectation to be left free from external, interpersonal restraints, perhaps with the exception of rules that are reckoned legitimate by way of some procedural test, may be discounted in order to promote your autonomy or your "true self." After all, since that's the version of you free of bias, misinformation, and incompetence, *its* desires are the ones to make effective, promote, or protect. Berlin writes, "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 must be identical with his freedom — the free choice of his 'true,' albeit often submerged and inarticulate self" (Berlin 1969, 133).

This is perhaps somewhat overwrought. A less extreme consequence is that focus on Green's positive liberty will lead to countenancing certain kinds of paternalistic interferences. Gerald Dworkin's Millian defense of paternalism (Dworkin 1972) argues that interfering with others is justified when it preserves a wider range of their future free choices, since they have reason to consent to that outcome. Of course, they will not likely *actually* consent. But that's only because "in various respects, chronologically mature individuals share the same deficiencies in knowledge, capacity to think rationally, and the ability to carry out decisions that children possess. Hence in interfering with such people we are in effect doing what they would do if they were fully rational. Hence we are not really opposing their will, hence we are not really interfering with their freedom" (Dworkin 1972, 75). Now Dworkin immediately takes back this last claim and is prepared to own up to the fact that paternalistic rules genuinely, though he thinks often justifiably, interfere with individual liberty. Yet he still thinks that the fact that some hypothetical fully rational and informed people would agree to the paternalistic restriction can justify applying the policy to actual folks.

This argument is persuasive only if we should think that eliminating all rational and epistemic mistakes would also eliminate disagreement about what projects are reasonable to pursue or choices are reasonable to make, and if policy makers had a good enough sense of what projects and choices idealized agents would converge on. This is implausible, though; and if so, policy makers will likely just be substituting someone else's (or their own) preferences for those of the public. Also, the success of the argument depends on whether the paternalistic policy makers can effectively craft rules that will have the results they intend. Here it's fair to say that they have mixed results.

A third possibility is that reflection on the positive concept of liberty will ground the positive provision of welfare rights in order to make a person's will *effective*. Being able to do what you want to do requires certain preconditions, capabilities, and material goods. According to proponents of this notion of positive liberty, mere absence of interference is insufficient for all but the already sufficiently endowed. But many others lack the means to pursue their self-determined projects.

Additionally, as Mill recognized, self-determination and individuality are not simply innate to the person. These need to be cultivated and developed in order for individual liberty to promote well-being. A genuine commitment to this goal through different individual experiments in living requires educational opportunities and probably other public provisions. More generally, interpersonal interference is by no means the only sort of constraint individuals are subject to. Your ignorance or culture or psychology may leave you unaware of some genuine good or unable to adequately appraise trade-offs among competing pursuits, and your poverty or incapacity may leave you unable to pursue the goods you identify. In these cases, even if no one

is interfering with you, are you truly free? Perhaps not, if you lack enough resources to have much chance to do what you want to do. Amartya Sen, for example, proposes supplementing the basic and purely formal negative liberty with a distribution of “substantial freedoms” or capabilities to achieve well-being. These are “freedoms we have reason to value” and make us “fuller social persons, exercising our own volitions and interacting with — and influencing — the world in which we live” (Sen 1999, 14–15).

The Value of Liberty

Part of the puzzle in deciding from among these different ways of applying or giving expression to the basic concept of liberty is that there are all kinds of “freedoms we have reason to value.” We might try to identify the one that occupies the relevant significance in moral and political questions and conflicts where we may have to trade off liberty to some degree against some other value or goal. Which is the liberty worth having such that the fact that something would promote, protect, or alternatively compromise liberty makes the difference in what we should do?

There are a couple of reasons why we should be careful about this kind of approach. The first reason is methodological. There’s a way of proceeding here that gets things backwards, since, as moral and political philosophers, what we want to know is whether and how something like liberty (or equality or virtue or loyalty or welfare) should figure in questions about what we should do. If we begin with an ideological commitment to a particular set of stock answers to normative questions and home in on a conception of liberty that allows us to reach those answers, then we shouldn’t think that the fact that our answers promote “liberty” (so defined) justifies the answers. For example, I make this mistake if, simply because I think people are making a bad or wicked choice, I say “that’s license, not liberty, and so a rule against it is legitimate.” Because, if the wicked choice has the right provenance, lacking whatever the relevant freedom-compromising factors turn out to be, it could be both! Instead, I should explain why people shouldn’t have the liberty to make that wicked choice. So the better approach is to identify the relevant factors, or catalogue the different things liberty means in different contexts, and then ask normative questions about whether it would be valuable to protect or promote it in a given case. And, the best way of answering those questions is to try to determine what would happen when we do that (Schmidtz and Brennan 2010, 15ff).

Indeed, it already sometimes proves difficult for philosophers to screen off their ideological biases from their theorizing and their normative conclusions. Even if they attempt to follow the better method, we can often make good guesses about the prescriptions that will shake out of their arguments. For example, a certain kind of libertarian will tend to argue for the singular importance of negative liberty where you can do what you want to do in the sense that no external agent interferes with you. Will an attempt to *persuade* you to do something else count as an interference? Maybe not — these libertarians may specify that the interference is freedom-compromising only when it’s coercive, when someone attempts to interfere with your choice by way of force or a perceived threat. In that case, what is the status of the directive “Hey, get off my lawn or I’ll call the police”? That seems like a coercive interference. Does the property owner compromise your liberty?² Many of these libertarians tend to want to say no (and no about whether the property owner’s directive is coercive). Why? Because the property owner has the right to direct you to get off the lawn, and you don’t have a right to be there.

Again, this is methodologically suspect. It may also suggest that liberty-as-absence-of-coercive-interference isn’t really driving the inquiry. Maybe some notion of rights is, instead, or a moralized definition of liberty, which counts only unjustified interference as

liberty-constraining.³ Apart from this, however, the idea that the property owner's directive doesn't compromise liberty-as-absence-of-coercive-interference simply seems false, and it would be an abuse of language to suggest otherwise. Alternatively, libertarians can say that the directive is coercive and compromises your negative liberty — *and appropriately so*. Part of the point is that any rule enforced, or backed by a credible threat of enforcement, is coercive and libertarians shouldn't think that those of the "Hey, get off my lawn" variety are necessarily less morally problematic than others. If, in the end, we judge that this coercive directive is appropriate, that conclusion should be the outcome of a justificatory account rather than simply assumed in some sort of flat-footed "Lockean" way (where "Lockean" bears only minimal resemblance to the much more complicated views of John Locke).

Here's another example, which highlights the fact that notions of liberty figure in relation to coercive rules on both sides of the ledger. Consider a state that responds to a dangerous pandemic, such as COVID-19, by requiring, on pain of a fine, wearing masks in public and strict social distancing. The rules mean that many people cannot do things they want to do without risking someone imposing the cost of a fine. But more permissive policies, or none at all, will mean that many people cannot do things they want to do without risking someone imposing the cost of an illness.⁴ Both approaches will compromise some people's "negative" freedom from interference. Whose liberty will be compromised will be different, but a definition of liberty isn't going to tell us whose it should be.⁵

That issue may instead turn on some account of why liberty is important — why it's important that people can do what they want to do in a broad range of circumstances. For some the main issue is whether the individual or the collective public has primary authority to direct the affairs of people.⁶ Interference with the individual's authority is the chief concern. For others what matters is that the agent acts according to the dictates of his or her true self. Still others only object to hindrances deemed arbitrary or unreasonable according to some justificatory test of legitimacy. And, of course, many care whether people have sufficient effective means to live a life that answers to their conception of success or the good. These are different conditions that theorists highlight in their approaches to problems in social life. None of them are irrelevant, and all of them bear some significant relationship to the basic concept.

Libertarians attempt to accommodate this lesson in a few different ways. For example, Loren Lomasky distinguishes between liberty rights and welfare rights according to purely formal features in the technology of their provision. First, non-interference is typically more easily provided than the direct provision of a good (I'm doing the former just sitting here now). Non-interference is also "unique among goods necessary for project pursuit in that it *must be provided by others* if it is to be enjoyed at all" (Lomasky 1987, 97). And, "moreover, it is needed *from everyone*" (Lomasky 1987, 98). According to Lomasky, "these considerations" of universality and reciprocity "indicate ... that classical liberalism is *not* myopic in its strong emphasis on liberty [-as-non-interference] rights" (Lomasky 1987, 99). Furthermore, these formal features may also ground the commonsense view that reasons not to harm are *prima facie* stronger than reasons to provide aid, and that it's more difficult to justify action that results in harm than to justify an omission that results in harm. It seems relevant that compromising negative liberty (as non-interference) is interpersonal and usually more or less intentional (or negligent). We can identify, and blame, specific people who actively interfere. In the case of positive welfare-oriented liberties, however, people often lack them simply because nature has been too stingy, or circumstances (or supply chains) don't cooperate with their desires. The significance of this for the debate concerning negative and positive liberty is that while it may be fine to regret the state of affairs where you desire, however autonomously, something beyond your reach, this state of affairs isn't necessarily unjust or one where someone is at fault.⁷

However, a strong emphasis on non-interference isn't the same thing as exclusive focus. A popular libertarian slogan is "taxation is theft."⁸ The thought is that others shouldn't get a claim on my stuff. But this just means that these libertarians want their rather strong (absolute?) interpretation of property rules to be enforced by the state coercively. Is the coercion of these rules justified? Maybe not, if holding everyone accountable to them would lead to some people's ruination. Lomasky says that "such a libertarianism is indefensible" (Lomasky 1987, 127). A system of property rights will be illegitimately coercive when the rules that make it up are interpreted in such a way that, given the status or functioning of some people, there's no point for them to observe those rules. For a property-rights regime to have legitimacy, for it to be reasonable that we demand of everyone that they comply with these rules, it should work out reasonably well for everyone. What kind of property regime is necessary for that in the world we live in?

This is an empirical question. On the one hand, one likely upshot is that legitimate claims to non-interference are compatible with a level of positive welfare provision that's at least sufficient for some bare minimum of functioning. On the other hand, classical liberals have argued both that (1) their preferred mix of rules would reduce both the incidence and the severity of poverty, and (2) this fact is an important part of the justificatory story in favor of those rules. For example, Adam Smith presents his system of natural liberty — property, contract, and consent — as a formula for the division of labor, the unleashing of commercial society, and the wealth of nations. He cites the fact that "luxury extends itself even to the lowest ranks of the people, and that the labouring poor will not now be contented with the same food, clothing, and lodging which satisfied them in former times, ... it is not the money price of labour only, but its real recompense, which has augmented" (Smith 1904, 1:80). Smith ascribes "equity" to this development since "they who feed, clothe, and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed, and lodged" (Smith 1904, 1:80). Forgive the anachronism, but a plausible reading of this is that Smith justifies the system of natural liberty in light of the fact that the resulting distribution improves everyone's situation, and especially that of the economically worst-off (Rawls 1971, 266).

Friedrich Hayek comes close to this argument when he claims that John Rawls' theory of justice has been "wrongly ... interpreted as lending support to socialist demands" for interventionist social welfare policies (Hayek 1978, 183 n.44). He argues that wealth is created chiefly by

directing resources to their most productive uses ... And there can be no doubt that most of those who have built up great fortunes in the form of new industrial plants and the like have thereby benefited more people through creating opportunities for more rewarding employment than if they had given their superfluity away to the poor.
Hayek 1978, 98

James Buchanan agrees:

growth-retarding policies will violate the difference principle if the intergenerational discount rate is sufficiently low. The indigent of the 1970s are in a better position than they would have been had a Rawlsian difference principle of justice been applied, without consideration of the intergenerational impact, in the 1870s.
Buchanan 1976, 10

Rawls' difference principle, on this reading, merely helps to recognize the functional importance of income and wealth differentials.

These classical liberal theorists — Smith, Hayek, Buchanan, Lomasky — all suggest that a traditional understanding of negative liberty actually promotes the kind of things that welfare liberals, or advocates of positive liberty, care about, like the effective means for people to realize their ends. In other words, as an empirical matter, we have good reason to believe that scrupulous institutional protections for negative liberty, protections against certain kinds of coercive interference, are the most effective means to promote positive liberty, e.g., self-mastery or autonomy, or the effective abilities, capacities, or powers to satisfy desires (Schmidtz and Brennan 2010, 10). In still other words, negative liberty is an instrumental value. Policies whose direct aim is to secure positive liberty aren't as effective as an indirect approach that utilizes, say, Smith's system of natural liberty to deliver economic and cultural advances. The reason I wouldn't trade places with *anyone* from a previous generation of people is because I enjoy an unimaginably greater degree of positive liberty than any of them. In that case, positive liberty genuinely matters and is a legitimate form of liberty well worth having, but the best way to secure liberation from poverty and do more of what I want to do is by way of an institutional regime that respects the negative liberties that libertarians typically emphasize.

One final approach to consider suggests that we take our cue concerning the value of liberty from formal features of individual agency and its significance to everyone. Alan Gewirth (1978) begins with the simple and uncontroversial thought that each of us considers the aims and purposes of our chosen actions as valuable. Deliberation about the best way to act eventually settles on a choice stemming from these deliberations. Each of us then, will insist that others not interfere with these actions, and will resent others if they do. We're all committed to objecting when others prevent us from doing what we want to do and what we consider valuable. These are basic features of human agency. From the first-person point of view, everyone is rationally committed to demanding that others not interfere with them. But if the basis of this demand stems from generic features of human agency, then every person has the same basis for making this demand as anyone else. If we're rationally committed to this idea, then anyone who makes this demand for herself while interfering with others and refusing to acknowledge their standing to make the same demand for themselves, as well, is acting inconsistently.⁹ This generalizable commitment makes liberty of action a moral default. It's not absolute, of course, but it establishes a moral presumption in favor of freedom and against coercive interference.

The Priority of Liberty

Liberalism, the anti-absolutist and anti-authoritarian deliverance of Enlightenment-era social thought, takes liberty seriously. To be sure, liberalism makes liberty a fundamental political value. One way liberalism makes liberty a fundamental political value is by privileging a condition of liberty as a moral default. A presumption in favor of liberty means that no one sits under a standing obligation to justify doing something that they want to do. They can simply act, exercising their agency as they see fit. The only requirement to justify an action applies to those who would limit this freedom by interfering with others coercively. John Locke writes that everyone is "naturally" in "a state of perfect freedom to order their actions and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man" (Locke 1988, II, 4). More recently, Joel Feinberg writes, "liberty should be the norm; coercion always needs some special justification" (Feinberg 1987, 9).

This defeasible presumption in favor of liberty, then, is also a presumption against coercive interference. It amounts to a justificatory standard where there is an asymmetry between the permissibility of one's self-directed action and the permissibility of coercively interfering with the self-directed action of another: someone who does the latter shoulders a burden to account for the legitimacy of doing that. Mill provides another statement of the presumption as a companion to his harm principle to help guide its application: "the burden of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition ... The *a priori* assumption is in favour of freedom" (Mill 1963, 262). So, for Mill, a necessary condition for meeting the presumption, and justifying some restriction, is harm prevention. The harm principle shows how to justify coercion.

We can also understand the presumption in favor of liberty in terms of a question of prior authority. Liberalism is based on the idea that people have a fundamentally equal moral and political status. In that case, *prima facie*, the normative force of a directive I give to myself is weightier than the normative force of a directive someone else gives to me. Therefore, everyone is presumed not to be under another person's authority and are at liberty to act as they see fit (so long as they don't harm others, etc.).

More recent liberal views have proposed various principles of public justification to meet the presumptive wrongness of coercion. To be legitimate, the coercion has to be justified in terms of reasons — beliefs, values, commitments, etc. — that are public in the requisite sense. Public reason theories differ in all sorts of ways, but generally the requirement prevents considerations that don't make sense to variously idealized members of the public from figuring into a successful justification for a coercive rule, and so answers to the liberal commitment to respecting the free and equal moral and political status of everyone.¹⁰ The test requires that everyone who's subject to a coercive rule should have reason to go along with it.

Any justificatory test that handicaps the legitimacy of coercive interventions will account for the presumption in favor of liberty. We can classify a moral and political theory, first, in terms of whether it has the presumption — i.e., whether it's a variety of liberalism — and second, in terms of the weight of the presumption. Libertarianism is a variety of liberalism that affords the presumption of liberty *significant* normative and deliberative weight. The presumption is *strong*. This is imprecise, of course, but a key libertarian idea is that it will typically be much harder than you might think to justify interfering with other agents doing what they want to do.

Libertarianism isn't committed as such to public justification in the sense that public reason liberals have proposed;¹¹ yet, relative to other genuine political values, like loyalty, community, or welfare, liberty is afforded priority. So Robert Nozick asserted that individuals have (liberty) rights and "so strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do" (Nozick 1974, ix) — even really worthwhile things like promoting the welfare of individuals. Moreover, even libertarians who argue that the theory is best grounded in a form of welfare consequentialism still tend to prioritize liberty. They may argue as an empirical matter that the direct pursuit of welfare tends to produce less of it in the aggregate and that a general pattern of policies that protect or promote liberty is reliably instrumental for promoting welfare (Mill 2004). In a similar way, as we have seen in the previous section, libertarians tend to think policies prioritizing (negative) liberty are effective means for protecting or promoting positive liberty, as well as values like equality or social justice, and outperform other, more direct, means of pursuing them.

Even so, there's a range of libertarian and classical liberal views concerning what considerations will meet the burden of justification. For example, a possible view, but one that's difficult to find any libertarian defending, is that interference is legitimate when it produces a net increase in liberty (or reduces the total amount of interference).¹² In his doctrine of right,

Immanuel Kant defends the view that “resistance that counteracts the hindering of an effect promotes this effect and is consistent with it” and so the right to external freedom will justify coercing people who would interfere with others (Kant 1991, 6:231). Or again, Mill specified a harm-prevention principle: “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill 2004, 10). Twentieth-century libertarian economists, like Murray Rothbard (1982), often present the protection of individual property rights as the key, or only, justification for interfering with others. Similarly, on the one hand, Nozick seemed to struggle with justifying boundary crossings within a libertarian “tradition which holds that stealing a penny or a pin or anything from someone violates his rights” (Nozick 1974, 75). On the other hand, he might have endorsed a justifying (or perhaps only an excusing) condition for infringements that are necessary to avoid “catastrophic moral horror” (Nozick 1974, 30).

A point from the third section above bears repeating: a strong emphasis on non-interference isn’t the same as exclusive focus. Here, we might say that the priority of liberty, or a presumption in its favor, isn’t the same thing as an absolute, impenetrable bulwark. Again, we saw that Lomasky argues that the sort of libertarianism that “regards all restrictions of liberty as impermissible” and “reject[s] the claim that there are any welfare rights ... is indefensible” (Lomasky 1987, 127). And virtually all classical liberal views provided for the legitimacy in certain circumstances of interventions with individual liberty and property to directly address the basic needs of the least well-off, including Locke (1988, I, 42), Kant (1991, 6:326), and Hayek (1994, 133), not to mention more recent libertarians of the “bleeding heart” variety.

Besides the strength of the presumption in favor of liberty, there is also a question about the basis for it. Ralf Bader has argued that the presumption requires affording liberty intrinsic normative significance and the idea that permissible interference will not be considered a constraint: “This is because intrinsic normative significance implies (at a minimum) that there is a pro tanto reason not to restrict liberty. Yet, certain objectionable and impermissible actions are such that there is no reason whatsoever not to restrict them” (Bader 2018, 15). That is, “there will be cases where it will be good to restrict liberty, where this is not simply a situation ... where the constraint is justified and the presumption of liberty is overridden, but where the constraint is good qua being a constraint” (Bader 2018, 15). In such cases, “there is no presumption in favour of letting people engage in such behaviour. In fact, quite the opposite is true, in that there are plenty of reasons to prevent people from performing these actions. Interferences with such actions thus cannot constitute constraints on freedom” (Bader 2018, 16).

Libertarians (and other liberals) who accepted Bader’s argument here would accept a moralized definition of liberty. I warned against a temptation to adopt such a definition in the previous section because it risks making certain question-begging moves in arguments where liberty interests are at stake. That is, moralizing the account is a problem when the various considerations in, e.g., libertarianism (like freedom, coercion, etc.) that are supposed to account for the theory’s conclusion about the legitimacy or illegitimacy of some action or rule aren’t *really* the considerations that deliver the conclusion. Rather, whether the action or rule is *moral* does.

Bader claims that “purely descriptive approaches face the problem of ... generating a notion of freedom that can have a plausible claim to being normatively significant” (Bader 2018, 6). But it seems to me that Gewirth’s argument for a universal commitment to agency provides an adequate basis for such a claim. The presumption of liberty is a method of structuring our justificatory practices that gives defeasible priority to people, understood as project pursuers, applying their own standard of value and doing what they want to do.

The (or a) primary task of moral and political theorizing also provides an important basis for the presumption. This is the task of identifying the success conditions for civil society,

where we figure out a way to live together in ways that are peaceful, cooperative, and mutually beneficial, despite the differences we have with each other about the best way to live. We obviously need rules that constrain in order to have this kind of society with each other, but people also don't want to give up acting in ways that are important to them. If "society" is going to impose on the freedom of people to do these things they want to do, these impositions must be justified. And, libertarians add, this could be harder to do than you think. It's insufficient, and betrays a fatal conceit,¹³ simply to impose a rule and assert that acting that way is better for all or that the things people want to do really aren't good or very important. This argument for the liberty presumption doesn't presume that people's projects have intrinsic value. In fact, the argument is based on the idea that people will predictably disagree about the value of each other's projects.

Conclusion

Libertarians value individuals being left to do what they want to do. They value and protect individual liberty by structuring the way people interact with each other through a justificatory requirement that applies to proposals to prevent people from doing what they want to do. Different libertarians will invoke different considerations for having this requirement, like the expected consequences of having it or the nature and value of persons and the questionable nature of claims to authority over others. They also may defend different tests. But they're generally united in their fairly strict interpretations of this requirement, relative to other liberal views. In these circumstances, they argue, people will reliably figure out how to order their lives peacefully and interact in mutually beneficial ways.

Notes

- 1 This is true thanks to some heavy lifting by Horacio Spector (2010). Spector uncovers allusions to the civic republican tradition in Montesquieu, Benjamin Constant's "liberty of the moderns," Leonard Hobhouse, and Karl Popper, in addition to Hayek, Locke, and Mill.
- 2 According to G.A. Cohen, "If the state prevents me from doing something I want to do, it evidently places a constraint on my freedom. Suppose, then, that I want to perform an action which involves a legally prohibited use of your property. I want, let us say, to pitch a tent in your large back garden . . . If I now try to do what I want to do, the chances are that the state will intervene on your behalf. If it does, I shall suffer a constraint on my freedom" (Cohen 1981, 226–227).
- 3 Cohen argues that a moralized definition of freedom "is implicit in much libertarian writing." This definition "entails that interference is *not* a sufficient condition of unfreedom" and "I am unfree only when someone does or would *unjustifiably* interfere with me." But it also "entails that a properly convicted murderer is not rendered unfree when he is justifiably imprisoned" (Cohen 1981, 228).
- 4 Is the imposition coercive in this case? I think so. People who refuse to wear a mask may limit the options of others by imposing a significant risk of illness. They must either risk illness or stay at home. Some libertarians may want to substitute a moralized account of coercion, according to which their preferred policy comes out as non-coercive. This seems to repeat the methodological mistake above.
- 5 This can become very complicated in the real world. For example, given that we want people to wear masks and social distance for the sake of some liberty-based concern, is a coercive rule the best way to achieve that? Would a mandate without state enforcement work better? Would informal social pressure provide adequate enforcement? Would enforcement by the police exacerbate existing racial disparities by making people who tend to be targeted for misdemeanor violations even more vulnerable?
- 6 See Constant (1816).
- 7 See Hayek (1978).
- 8 See Lomasky (1998).
- 9 See Gaus (2011, 345–346).
- 10 See, e.g., Rawls (2005) and Gaus (2011).

- 11 But Gaus (2010) provides a specification of public justification that he argues “tilts” in the direction of classical liberalism or libertarianism.
- 12 Pettit, though, offers a set of comparisons between his preferred account of non-domination and freedom as non-interference, which he says “requires us to minimize the person’s expectation of interference as such” (Pettit 1997, 85).
- 13 See Hayek (1988).

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