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CHAOS AND CONTROL
THE HIDDEN TENSION BETWEEN LIBERALISM AND FREEDOM

by

Drew Daniel Dickson

A Thesis

Submitted in Partial Fulfillment of the

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ABSTRACT

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From self-sovereignty to individual independence, freedom is about control. When people want freedom, they yearn for exclusive control over their life. Liberal institutions, from democracy to market economies, however, do not offer people control. Instead, liberal machinery outsources control to a collective, invisible power. Far from control, chaos governs liberal society. In the earliest stages of development, liberalism did serve the pursuit of freedom because liberal reforms focus on the destruction of controlling power from above, i.e. the expansion of liberty. Because controlling oneself first requires being controlled by no one else, liberty is the first, but incomplete, step toward freedom. After these first stages, however, the relationship breaks down. Liberalism can only liberate; it cannot cultivate the self-power at the heart of freedom. By continuing to promise a freedom liberalism cannot deliver, those who continue to wed liberalism and freedom undermine liberal society and sow the seeds of disaster.

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Introduction

Freedom is one of the great contested ideas. Observers have described freedom as "plastic[],"[1] "porous"[2] and "elastic."[3] Everyone wants freedom, but everyone wants a separate freedom.[4] Because "different men at different times have meant different things by liberty," the annals of history are filled with assorted and confused conceptions, understandings and practices.[5] Even the words are confused. English is blessed and cursed with two words directly related to the freedom concept, yet freedom and liberty haphazardly appear in each other's place, with little thought to any possible difference of nuance.[6]

Every Western philosophical tradition maintains some central understanding of freedom.[7] Totalitarians and democrats alike claim fealty to some flavor of freedom.[8] As Gerald McCallum's

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1. John Christman, "Saving Positive Freedom," *Political Theory* 33, no. 1 (Feb. 2005), 79. Small portions of this project were taken from papers written in the process of seeking a Master's in Political Science at the University of Memphis.

2. Isaiah Berlin, "Two Concepts of Liberty," in *Isaiah Berlin: The Proper Study of Mankind, An Anthology of Essays*, ed. Henry Hardy and Roger Hausheer (New York: Farrar, Straus and Giroux, 2000), 191.

3. Quoted in John Gray, "On Liberty, Liberalism and Essential Contestability," *British Journal of Political Science* 8, no.2 (October 1978), 386.

4. There is no shortage of thinkers who point to this observation. In fact, the observation that freedom means many things to different people is as old as the term freedom itself. See Isaiah Berlin, "Two Concepts of Liberty," 193. ("Almost every moralist in human history has praised freedom. Like happiness and goodness, like nature and reality, it is a term who meaning is so porous that there is little interpretation that it seems able to resist, pg. 193); Abraham Lincoln, "Address at Sanitary Fair," April 18, 1864. Available at http://teachingamericanhistory.org/library/index.asp?document=1067 (accessed June 1, 2011). ("The world has never had a good definition of the word liberty, and the American people, just now, are much in want of one. We all declare for liberty; but in using the same *word* we do not all mean the same *thing*.") Reiterated in Hans Morgenthau, "The Dilemmas of Freedom," *The American Political Science Review* 51, no. 3 (Sept. 1957), 714. Max Pohlenz, *Freedom in Greek Life and Thought: The History of an Ideal* (New York: The Humanities Press, 1966), translated by Carl Lofmark, ix. ("There is no slogan so much in vogue today or used in so many different sense as the word 'freedom.' No sooner have we read it in a newspaper of the free world in the West than we hear the echo from the East: 'Freedom? Only we have it, freedom from capitalism and exploitation.'").

5. Maurice Cranston, 'Liberalism,' in Paul Edwards, ed., *Encyclopedia of Philosophy* (New York: Cillier-Macmillan, 1972), vol. 4, pg. 458, quoted in John Gray, "On Liberty, Liberalism and Essential Contestability," 385-386. Harry Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 43. ("In a typical tribute made in 1828, Edward Everett, a future U.S. senator from Massachusetts, hailed 'the History of Liberty' as 'the real history of man.'").

6. Hannah Arendt and Hanna Pitkin are two of the only theorists to explicitly distinguish between liberty and freedom, though Bruce Baum does argue there are two implicit conceptions of liberty and freedom in J. S. Mill's collective work. See Hannah Arendt, *On Revolution* (New York: Penguin Books, 2006); Hanna Pitkin, "Are Freedom and Liberty Twins? *Political Theory* 16, no. 4 (Nov. 1988): 523-552.

7. Hannah Arendt, "What is Authority?" in *Between Past and Future: Eight Exercises in Political Thought* (New York: The Viking Press, 1968), 97; John Gray, Introduction to *Conceptions of Liberty in Political Philosophy*, ed. Zbigniew Pelczynski and John Gray (New York: St. Martin's Press, 1984), 1.

popular analysis — which construes freedom as an agent X seeking freedom from Y to do Z — demonstrates we are often forced to think of freedom as "one overarching conceptual schema allowing for several different conceptions."[9] The great debates over freedom ultimately argue about the domains of the several variables rather than competing conceptions.

Despite freedom's central role in Western political philosophy, it is barely a second consideration in other major traditions. Orlando Patterson explains the Japanese had no word for freedom prior to the opening of Japan in the 19th century. The first translators had terrible trouble in finding a sufficient substitute, and ultimately decided on a word (自由,*jiyu*) which tended to emphasize 'licentiousness.'[10]

The Chinese did have a word for freedom, but it was primarily a Confucian pejorative, conveying the "sense of existing by oneself (hardly a virtue in China)."[11] After the partition of their country into spheres of influence, Chinese philosophers did begin to discuss Western freedom at the beginning of the 20th century. Western literature tends to focus on the contributions of Liáng Qǐchāo (梁启超), who first introduced Western political classics to China.[12] Combing traditional Confucian communitarian values with a reaction against China's international humiliation, Liáng emphasized the importance of individual freedom as the submission to social needs. Echoing the recurrent understanding of freedom as sovereignty, Liáng wrote, "Freedom means Freedom for the Group, not Freedom for the Individual….Men must not be slaves to other men, but they must be slaves to their groups. For, if they are not slaves to their own group, they will assuredly become slaves to some other."[13] Though Chinese attitudes of freedom may be incorporating Western ideas, there is

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8. Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton & Company, 2007), 5; Gertrude Himmelfarb, "Editor's Introduction," in *John Stuart Mill: On Liberty* by John Stuart Mill (London: Penguin Books, 1974), 7; For a particularly bizarre example of an exploration of fascist freedom, see Mario Pei, "Freedom under Fascism," *Annals of the American Academy of Political and Social Science* 180 (July 1935): 9-13.

9. See Christman, 81; Gerald MacCallum, Jr., "Negative and Positive Freedom," *The Philosophical Review* 76, no. 3 (July, 1967).

10. Orlando Patterson, *Freedom, Vol. 1: Freedom in the Making of Western Culture* (New York: Basic Books, 1991), x.

11. Ibid.

12. See Andrew Nathan Jr., "Redefinitions of freedom in China," in *The Idea of Freedom in Asia and* Africa, ed. Robert H. Taylor (Stanford, CA: Stanford University Press, 2002): 248-272.

13. Edmund Fung, "The Idea of Freedom in Modern China Revisited: Plural Conceptions and Dual Responsibilities," *Modern China* 32, no. 4 (Oct. 2006), 454.

little indication or widespread desire to abandon these traditional communitarian values.[14] Individual liberty remains “a right to be exercised in the service of the state and for social ends, giving primacy to collective interests over individual interests.”[15] This fits with the historical development of Chinese philosophy, which developed amid impressive political stability and was more concerned with the good exercise of political power, rather than its just origin.[16] It simply appears incompatible with modern Western freedom, with its emphasis on autonomy and independence from social pressure.

The Arabic *ḥurr* and *ḥurrīyah* (free and freedom), likewise, contain none of the self-sovereignty found in the Western ideal. The Encyclopedia of Islam described Islamic freedom, encapsulated in the term *ḥurrīyah* as the state of “divine enthrallment.”[17] It is the freedom from unbelief. The importance of the sovereignty of God is reflected in freedom, the understanding of free rights and the law generally.[18] The entire society is constructed to encourage “man to live under the sovereignty of God and in accordance with His will.”[19] Only very recently, probably due to the expanding American attention to the region, has the idea of individual freedom as Westerners understand it begun to develop in earnest.[20]

These non-Western cultures, just to name a few, do not share Europe’s freedom fascination. In interacting with the West, they nevertheless feel compelled to confront the idea. Juxtaposed against the rest of the world’s general apathy toward individual freedom, the freedom’s centrality and diversity in the West is truly amazing. Even the quickest examination shows that “however much it may be distorted in conception,

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14. Fareed Zakaria and Lee Kuan Yew, “Culture Is Destiny: A Conversation with Lee Kuan Yew,” *Foreign Affairs* 73, no. 2 (March – April, 1994): 109-126.

15. Fung, 454.

16. Shaun O’Dwyer, “Democracy and Confucian Values,” *Philosophy of East and West* 53, no. 1 (January 2003), 44.

17. F. Rosenthal, “ḥurrīyya,” in vol. 3 of *The Encyclopedia of Islam*, ed. B. Lewis, V.L. Ménage, et al. (Leiden, Netherlands: E.J. Brill, 1971), 589.

18. For example of the troubles of ‘basic freedom’ in the Islamic world see, George N. Sfeir, “Basic Freedoms in a Fractured Legal Culture: Egypt and the Case of Nasr Hamid Abu Zayd,” *Middle East Journal* 52, no. 3 (Summer 1998): 402-414.

19. Fazlur Rahman, *Islam*, *Second Edition* (Chicago: University of Chicago Press, 1966), 68.

20. Reuel Gerecht, “How Democracy Became Halal,” *New York Times*, February 6, 2011, The Opinion Pages, National Edition, A23.

the idea itself continues to exercise that ultimate authority which once belonged to the idea of God, nature, justice, reason, or the ideal polity."[21] Like happiness or goodness, it is a "source of value" in its own right.[22]

FREEDOM &

As an important concept, freedom is often discussed within the context of the other great political ideas. Rather than simplifying the conceptual field, the range of 'freedom &' debates further complicate freedom's philosophical role.

For example, in the Freedom & Rights literature, people discuss freedom and liberty in the context of specific rights: the freedom or liberty to move about, untied to a particular spot; the freedom to pursue happiness or cultivation; the freedom to speak, think or worship on the sole dictates of one's conscience.[23] Most of these examples are tangential to the larger discussion here. Very often, 'Freedom & Rights' discussions refer only to specific operationalizations of freedom. The freedoms of speech or the freedoms to assemble are types of freedoms, things you may do freely, but having one or the other does not *make* you free.[24]

Other types of 'freedom &' debates involve the often confused interaction between freedom and the universe of other important philosophical values. Freedom and democracy; freedom and equality; freedom and justice, morality and happiness appear time after time, as writers try to discuss their natural interactions.

Freedom & Equality is one of the oldest, and most important connections. As we will see in Chapter 1, for example, the Greeks understood freedom almost exclusively in connection with equality, the freedom of isonomy. Furthermore, many conservative critiques of liberalism and democracy revolve around a rejection of the supposed link between freedom and equality, generally by way of a rejection of equality. Marxist, socialist and feminist literature, by contrast, almost invariable associate freedom and equality to such a degree the two concepts become one. According to this perspective, freedom is discovered and made possible only in a rampant total equality that destroys all relations of domination and

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21. Himmelfarb, 7; Patterson, ix.

22. Isaiah Berlin, "Two Concepts of Liberty," 193; Putterman, 418.

23. Watson, 43.

24. David Hoekema, *Rights and Wrongs: Coercion, Punishment and the State* (Cranbury, NJ: Associated University Presses, 1986), 65.

subordination. Such a claim seems to make sense if by freedom you mean equal freedom for all, but as we will see later, for the majority of human history unequal freedom has been the accepted norm.

As Isaiah Berlin points out, these ‘Freedom &’ discussions, which try to find the harmony between freedom and some other philosophical or moral desirable, are rooted “an ancient doctrine according to which all truly good things are linked to another in a single, perfect whole; or, at the very least cannot be incompatible with one another.”[25] This is especially true when scholars engage in a redefinition of freedom as one thing or another. Rousseau is famous for redefining freedom as democracy; the Stoics, freedom as virtue.

If nothing else, the present project is a repudiation of that philosophical free lunch. Just because two ideas are equally good and desirable does not mean they may coexist. There is nothing, for example, that says freedom, as I understand the concept, *must only* exist within equal relations. To the contrary, freedom is more readily realizable in societies marked by perfectly stratified relations. Moreover, these conflicts are hidden, as is the case for the central dichotomy of this project, the tension between freedom and liberalism. The purpose of the following pages is to show that two perfectly good ideals, freedom and liberalism, are at natural odds. That the liberal promise of freedom is a false promise. It is also a call for ideological maturity, all call to confront the inconsistencies and complications of ideal human existence and engages a practical equilibrium. Otherwise, we risk losing the institutions that matter most to us and our well-being in the philosophical goose-chase that is harmonious perfection.

Though many of these ‘Freedom &’ debates illustrate freedom’s place in human society, no project can touch on them all or pretend meaningful comprehensiveness. Very often space does not allow for more than a comment or two on what could, and has, formed the basis of another stand-alone work. The goal here is to identify a meta-conceptualization of freedom as control includes as many varieties of freedom as possible, and then examine the implications of this theory of freedom. I do not pretend this understanding of freedom is terribly complete or complex. I only mean for it to be useful in understanding how liberalism fails to live up to the promises of freedom, of individual control, (falsely) ascribed to it.

That thesis should not be taken as an indictment of either freedom or liberalism. Liberalism is the foundation of our society, and is one of the greatest sources of human justice and progress. The pursuit of

25. Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), x.

freedom is likewise deeply embedded in the Western philosophical tradition. The denunciation here is aimed entirely at those who claim liberalism, from capitalist market economics to democratic society, delivers something akin to freedom. Liberalism cannot bring people to freedom because the key mechanisms of liberal society outsource individual control, which is the heart of freedom, to the invisible forces binding and motivating society. The false liberal freedom promises raise expectations and hopes so high, nothing begets but frustration. Disillusioned, people abandon liberalism and lose the greatest foundation for peace and prosperity yet conceived.

Part of the problem is freedom is too big an idea. It would be nice to scale down freedom, to bring it back down to size. It is need not be imbued with the monumental importance it usually contains. To be free is the human birthright, people say.[26] It is the definition of what it means to be a man. Martin Luther King, Jr. rooted an "ethical demand of integration...[in] a recognition of the fact that a denial of freedom to an individual is a denial of life itself."[27] "The very character of the life of man," he writes, "demands freedom."[28] Jean-Jacques Rousseau likewise believed, "to renounce one's freedom is to renounce one's status as a man, the rights of humanity and its duties."[29] Both Kant and Rousseau, to name just two, "took man's capacity for free will to be a distinctive quality of his nature, distinguishing man from other animals."[30] To lose that state, is not merely to surrender to slavery, but involves a de-evolution of dignity to sub-human status. But surely other qualities are just as indicative of humanness as freedom; perhaps it is to these other qualities, the liberal qualities of participation and pursuit, we should begin to place greater emphasis on.

The problem of freedom is all the more troubling, and understandable, considering its operational varieties are very often mutually exclusive. President Abraham Lincoln realized how he himself was at a fulcrum of a particularly intense iteration of the freedom debate. Noting the use of 'liberty' in the North

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26. Pohlenz, ix.

27. Martin Luther King, Jr., "The Ethical Demands for Integration," in *A Testament of Hope: The Essential Writing and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperCollins Publishers, 1991), 119.

28. Ibid.

29. Jean-Jacques Rousseau, *On the Social Contract, with Geneva Manuscript and Political Economy*, ed. Roger D. Master, trans. Judith Masters (Boston: Bedford/St. Martin's, 1978), 50.

30. Stephen Ellenburg, "Rousseau and Kant: principle of political right," in *Rousseau after 200 Years: Proceedings of the Cambridge Bicentennial Colloquium*, ed. R. A. Leigh (Cambridge, UK: Cambridge University Press, 1978), 3.

signaled the autonomy to own one's labor, he remarks how in the South it means very directly the autonomy to own another's. "Here are two, not only different, but incompatible things," he writes, "called by the same name — liberty. And it follows that each of the things is, by the respective [opposing] parties, called by two different and incompatible names — liberty and tyranny."[31] Freedom is such a porous concept because it is very often the defense of a way of life. It simply means something different to everyone. When those conflicting images collide, as they did during the American Civil War, the resulting conflicts very often shaken men and nations to their very foundations.

CONTROL

One man's freedom is another's tyranny because freedom is more than just the liberty to think, do or go as one pleases. Freedom is control. And one man's free control is very often another's controlled slavery. "Freedom for the pike is death for the minnows."[32] Whether we call freedom, as so many different scholars have called it, 'sovereignty,' 'self-possession,' 'self-mastery,' or even less precisely independence or autonomy, the central concept we are approaching is self-control.

The ultimate problem is liberal society does not cultivate these feelings of self-empowerment, nor allow for their easy exercise. This is not true of all theories of society. Even if it fails to deliver, Marxism specifically promises the perfect society of free men, fully self-possessed, independent and in control of the social forces around him.[33] Many other liberal critiques, from both the political wings, implicitly comprehend liberalism's inability to create real freedom as well, and offer various solutions.

We all seek control of our environment and the people around us. Where control over the self is the issue, it very quickly becomes control over everything else. The desire for control is the desire for order and regularity, for predictability and peace. It is strongly connected to prospect theory's identification of human risk-aversion and preference for the status quo.[34] Control is most absent when

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31. Abraham Lincoln, "Address at Sanitary Fair," 18 April 1864. Available at http://teachingamericanhistory.org/library/index.asp?document=1067 (accessed June 1, 2011). A note on quotations. In dealing with all texts, and especially pre-modern one's with idiosyncratic grammar and spelling, I will silently edit both spelling and simple grammar where doing so does not alter the meaning of the text.

32. R.H. Tawney, *Equality* (New York: Capricorn Books Putnam, 1961), 208.

33. J. Hope Mason, "Discussion of 'Rousseau et Marx,'" in *Rousseau after 200 Years: Proceedings of the Cambridge Bicentennial Colloquium*, ed. R. A. Leigh (Cambridge, UK: Cambridge University Press, 1978), 85.

others exercise an arbitrary — in the very specific sense of according to another's will — power over oneself and one's decision.[35] It is most obviously absent when that arbitrary will's influence is capricious or intermittent.

The desire for control is the human mind's desire for order and predictability. There is a happy satisfaction when trains run on time. Designed and incredibly efficient at understanding patterns and regularity, the human mind simply disdains everything else. The desire for predictability and control informs "the feeling in each person's mind that everybody should be required to act as he, and those with whom he sympathizes, would like them to act."[36] If for no other reason, it is because then we might better understand and predict why people behave the way they do.

Control, as a natural human inclination, does not necessarily mean dominance or dominion. It is not necessarily a will to power. Nor, does it really mean individual power. Like the transcendentalists and romantics emphasize, one can create control over one's life by departing society and living the life of a hermit. A recluse's control is discovered in the absence of foreign domination and the perfect experience of effective will.

One can also create control over one's environment by submitting to another's more effective authority. When countries face chaos, despots sing stability's siren song. For at the core of every person's heart is the desire to be well-governed, and well-governed in the right way. Irving Kristol smacked at this idea when he correctly suggested, "people have always preferred strong government to weak government, although they certainly have no liking for anything that smacks of overly intrusive government."[37] Governed control is better than anarchy, but control of me in ways objectionable becomes control over me, becomes tyranny.

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34. See, for example, Robert Jervis, "The Implications of Prospect Theory for Human Nature and Values," *Political Psychology* 25, no. 2 (April, 2004): 163-176.

35. This will be the meaning of the term *arbitrary* throughout the paper. It is used exclusively in the sense of according to another's dictates, and carries none of the usually connotations involving randomness or caprice.

36. Stefan Collini, introduction in *On Liberty and Other Writings* by John Stuart Mill (Cambridge, UK: Cambridge University Press, 2004), 9.

37. Irving Kristol, "The Neoconservative Persuasion," *The Weekly Standard*, August 25, 2003, Available at http://www.weeklystandard.com/Content/Public/Articles/000/000/003/000tzmlw.asp (accessed June 1, 2011).

FROM CHAOS TO PARADOX

Control stands against chaos. Although the two are not properly opposites, they do exist in a certain tension with each other. If control is associated with regularity and order, chaos is the *apparent* absence of both. Chaos is the jumble, the confusion, the raucous commotion. Even when separate actions are governed by ironclad rules of motion, if they each act differently, or separately, they quickly succumb to a chaotic order, a pattern of behavior which the human mind simply cannot comprehend or countenance.

Just like control is a prime motivator of the human condition, chaos comes to symbolize the limitations and ultimate impotence of humanity. As such, most find it unseemly and abhorrent. Chaos involves risk because prediction becomes impossible. It goes against every scientific imperative known to the human mind. We are a species born to classify, to order, to understand the forces of the universe and bring them to bear. Chaos complicates, defies and prohibits control. In the final calculus, what is good is reckoned to exist with order, predictability and harmony; what is bad is chaotic, confused, irrational. Chaos is simply uncivilized.

The great irony, however, is that our society is founded on chaos. Modern liberal social orders are marked by the sheer amount of uncoordinated, seemingly random activity going this way and that. People get in each other's way; they respond loudly and unpredictably; they worship in a thousand different ways to a hundred different gods. In some respects liberalism is diversity, and diversity is chaos.

Freedom by contrast is about power and control. When people say they want freedom; what they mean is they want control over their lives. They want control over their person, free from capricious imprisonment or torture. They not only want control over choices, but the environment in which those choices are made. Freedom is the taming of the great forces of chaos that frustrate and confound our attempts at control. Though we may have many things in liberal society, control is not one of them. The irony is in our free societies, we are doomed to be unfree.

WHERE WE GO FROM HERE

With that central paradox in view, this project begins with an admittedly incomplete and cursory survey of the history of freedom as an idea, covering a few of the many ways both trained thinkers and laymen have deployed the concept of freedom. Specifically, I try to highlight the way that freedom has

been conceptualized as types of social and individual sovereignty, autonomy and moral control across a number of domains of discussion.

In the second part, I offer an analysis of these usages, suggesting that more often than not, the central demand of freedom is a plea for control. Freedom in its myriad uses is ultimately an eternal struggle for ordered sovereignty, a self-government committed and maintained by a conscious self without interference. In the earliest periods of development, the state offered the principle obstacle to self-control and so negative liberty barriers were constructed to carve out ever-larger spaces where individual sovereignty is inviolate. As even those restrictions proved inadequate to secure individual self-government in sufficient quantities, liberals and socialists alike turned to social and economic institutions that exerted power over the autonomous, independent self. But none have managed to offer freedom goods to any satisfying degree.

The final part further explores the chaos at the heart of liberalism, and then in the final chapter, juxtaposes the idea of freedom as control with society as chaos. Principally, I suggest there is a far greater tension between liberalism and freedom than is commonly understood. And freedom, more generally, is a fugitive concept that can only exist in perfectly autarkic or perfectly autocratic regimes. Liberalism, which is marked by the dismantling of control structures, far from destroying power or offering control of the self, renders naught the life ownership and possession to which freedom speaks.

PART ONE: FREEDOM, POWER AND SOVEREIGNTY

Chapter I

Sovereign Freedom

It is often said an idea cannot exist without its opposite. So it is with freedom that it is best understood, and was born, in the presence and threat of its opposite, slavery.[1] Most histories of freedom place its origins as a core philosophical concept in ancient Greece at the onset of war from the east.[2]

According to Max Pohlenz, a German chronicler of the history of Greek freedom, the Greco-Persian Wars of the early 5th century BCE offered the supreme defining experience for Greek culture and thought. The monumental threat from the Persian armies of Darius I, and later Xerxes I, fertilized an exploration of freedom as the defining characteristic of humanity.[3] The Greeks began using eleutheria (ἐλευθερία) to describe the stakes: "not being enslaved, of course, and not being ruled by foreign domination."[4] With the threat of foreign occupation, freedom for the ancient Greeks became intensely interwoven with notions of sovereignty and self-determination.[5] For example, when Greek scholars like Herodotus described the free Greek people, he specifically highlighted their independence from foreign rule and influence.[6] To further the contrast, the Greeks emphasized the differences between the two societies, and specifically the Greek "lawful and impersonal rather than arbitrary and despotic rule [of the Persian kings], open and collegial public life…rather than a sacred, inaccessible priest-king."[7] The ancient

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1. Orlando Patterson, *Freedom, Vol. 1: Freedom in the Making of Western Culture* (New York: Basic Books, 1991), xiii.

2. Max Pohlenz, *Freedom in Greek Life and Thought: The History of an Ideal*, trans. Carl Lofmark (New York: The Humanities Press, 1966), ix.

3. Arrnaldo Momigliano, "Persian Empire and Greek Freedom," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford, London: Oxford University Press, 1979), 139. Pohlenz, 17. The development of the philosophy of freedom was surely as much of a intellectual revolution, already in the making, as an effort to spur Greek warriors to ever greater levels of sacrifice and fighting, which "endowed the Greeks with the strength to ward off foreign domination, induced every single city-state to try and maintain its own freedom at all costs and to resent any interference with its self-government, its autonomy." Ibid.

4. Hanna Pitkin, "Are Freedom and Liberty Twins?' *Political Theory* 16, no. 4 (Nov. 1988), 533.

5. Richard Mulgan, "Liberty in Ancient Greece" in *Conceptions of Liberty in Political Philosophy*, ed. Zbigniew Pelczynski and John Gray (New York: St. Martin's Press, 1984), 9.

6. Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton & Company, 2007), 32. Zakaria also adds, by way of illustrating the degree to which this first definition is insufficient to modern eyes, "By this definition, the North Koreans today are a free people." Ibid.

freedom as sovereignty, law and independence developed with the strength and struggle of the individual city-states. After the Person War, this emphasis on sovereignty and freedom kept the various city-states at odds, and encouraged the competition between them, resulting for example in the Peloponnesian War.[8]

Though Hannah Arendt discusses this idea more in the context of individuals, her understanding of the primacy of isonomy is also instructive in the way it interacts with the fundamental understanding of freedom as sovereignty. Isonomy, or isonomia (ἰσονομία), the principle element of freedom for the Greeks, emphasized "conditions of no-rule, without a division between rulers and ruled."[9] The idea has obvious connections with democracy, where the people who rule are the same as those that are ruled. This current is especially strong today in republican democratic theory, and strongest with Rousseau.[10] The Greek freedom was more specifically social than we are given to thinking today, and so the isonomy they sought was closely tied with the sovereignty and independence of the *polis*. It carries connotations of sovereign equality of the city-state and signifies no other entity stands above it.[11]

The Greek idea of freedom was also reflected in their word for politics. The Greek *politeia* (πολιτεία), an ambiguous term which can refer generally to a government, to specific forms of government, a given constitution or the politics surrounding, nevertheless almost universally carries with it references to "a way of life that a people worked out by itself for itself."[12] In other words, the *politeia* of a free *polis* could not be instilled from outside or above. This is what Aristotle means when he "identifies freedom as the leading democratic principle and includes in it both equal sharing in the government of the state and

7. Pitkin, "Are Freedom and Liberty Twins?," 533.

8. Pohlenz, 30.

9. Hannah Arendt, *On Revolution* (New York: Penguin Books, 2006), 20.

10. Stephen Ellenburg, "Rousseau and Kant: principle of political right," in *Rousseau after 200 Years: Proceedings of the Cambridge Bicentennial Colloquium*, ed. R. A. Leigh (Cambridge, London: Cambridge University Press, 1978), 6. ("Rousseau denounced all dependence upon the commanding or obeying will of another. He denounced every arrangement, official and unofficial, which differentiates ruler from ruled. Indeed, Rousseau's condemnation of political inequality from the point of view of the ruler as well as the ruled, his claim that a ruler is also unfree because he commands another, reveals the extent of his radical egalitarianism.")

11. Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), 53, quoted in Jens Bartelson, *A Genealogy of Sovereignty* (Cambirdge, UK: Cambridge University Press, 1995), 23. Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), 53.

12. Pohlenz, 30. Thomas Lindsay, "Liberty, Equality, Power: Aristotle's Critique of the Democratic 'Presupposition," *American Journal of Political Science* 36, no. 3 (Aug. 1992), 745.

also the freedom to live as one likes."[13] To live as one likes is not, individual autonomy or freedom to act, it is the ability of the collective community to determine how it shall live. It was something internal and unique to a specific social body, a mode of behavior that was distinctly its own.

The urge to independence and sovereignty also extended beyond simple political domination, and also cautioned the Greeks away from excessive interdependence. As Aristotle suggests in Book VI of *Politics* self-sufficiency was a crucial element of the free *demos*.[14] Without it, without the strength of military virtue and the abilities to provide for needs from within, weaknesses eventually lead to dependence, which in turned generated relations of subordination or subjugation.[15]

SOVEREIGN INDIVIDUAL

Modern scholarship has also widely argued the Greek understanding of social freedom precluded an understanding of individual liberty beyond what a person enjoyed in his share of the social sovereignty.[16] John Stuart Mill mused personal liberty and freedom was "a mode of thinking which may have been admissible in small republics surrounded by powerful enemies, in constant peril of being subverted by foreign attack or internal commotion, and to which even a short interval of relaxed energy and self-command might so easily be fatal."[17] Isaiah Berlin, likewise, argues any society beset by insufficient

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13. Mulgan, 11.

14. Aristotle, *Politics*, trans. Benjamin Jowett, (Web Atomics, 2009), Book V, Section XI. Available at http://classics.mit.edu/Aristotle/politics.html (accessed June 1, 2011). ("It is characteristic of a tyrant to dislike everyone who has dignity or independence; he wants to be alone in his glory, but anyone who claims a like dignity or asserts his independence encroaches upon his prerogative, and is hated by him as an enemy to his power.")

15. Lindsay, 747. This self-sufficiency was most apparent in the cultivation of military virtue, but also mattered in other contexts. See also Benjamin Constant, "The Liberty of the Ancients Compared with that of the Moderns," in *Political Writings*, trans. Biancamaria Fontana (Cambridge, UK: Cambridge University Press), 311. See also John Stuart Mill, *On Liberty and Other Writings*, ed. Stefan Collini (Cambridge, UK: Cambridge University Press, 2004), 31.

16. A notable, if rare, exception to this is Orlando Patterson's book on Freedom. He constructs what might be called a people's history of freedom through ancient and medieval times. He argues, contrary to typical interpretations, the very large social and political under-classes were instrumental in the development of understandings of freedom. Although interesting, this interpretation falls short of compelling. See Patterson; Pavlos Eleftheriadis, "Freedom as a Fact," review of *Freedom in the Making of Western Culture*, by Orlando Patterson, *The Modern Law Review* 56, no. 6 (Nov. 1993), 902.

17. Mill, *On Liberty and Other Writings*, 16.

“food, warmth, shelter, and minimum degree of security can scarcely be expected to concern themselves with freedom of contract or of the press,” in other words the individual freedom as rights.[18]

Greek society, and ancient life generally, was exactly so precarious, and individual claims to freedom were often limited to one’s share in, or benefit from, the corporate, social sovereignty.

This was true for all the Greek states, but was especially true in Athens. Often mistaken for the norm in ancient Greece, Athenian freedom is idiosyncratic for its time, with a special emphasis on democracy. It is instructive, however, for the way the Athenian government, set apart by its emphasis on democracy and individual autonomy, still discussed both in the language of social sovereignty. The close conceptual ties between freedom and democracy were first drawn here in ancient Athens, in a way that occurs again and again in modern thought. As Aristotle acknowledges in *Politics*, freedom (as something distinct from but ultimately the end of democracy) is an approximation of individual sovereignty, “the claim to be ruled by none, if possible, or, if this is impossible to rule and be ruled in turns.”[19] It is this rotation in office, in the place of direct democracy, which is the heart of “living as one wants.”[20] From freedom as sovereignty for the *polis* to rule of the *polis* by democracy, emphasized the importance of sovereignty by metaphor and offered individuals to share in the sovereignty of the state, either directly or through lot.[21]

The freedom of the ancients, then, from both a social and individual perspective was associated with sovereignty. As Benjamin Constant pointed out in his iconic lecture on the difference between the modern and ancient forms of freedom, “the later consisted in exercising collectively, but directly, several

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18. Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), xlii.

19. Aristotle, *Politics*, trans. Benjamin Jowett (Web Atomics, 2009), Book VI. Available at http://classics.mit.edu/Aristotle/politics.html (accessed June 1, 2011). Lindsay, 746-747.

20. Ibid. See also Aristotle, *Politics*, trans Benjamin Jowett (Web Atomics, 2009), Book VI, available at http://classics.mit.edu/Aristotle/politics.6.six.html (accessed June 1, 2011); and, Lindsay, 746-747.

21. Zakaria, *The Future of Freedom,* 32. Pohlenz, 23. (“The term [democracy] was probably coined originally by its aristocratic adversaries and meant that form of the state in which not the ‘best’ but the common people, the demos wield the power. But demos was also used in another sense, i.e. for the whole ‘people,’ and so the adherents of the new regime could take up with self-conscious pride what had been meant as a term of derision, because it signified for them that democracy is not the dictatorship of a class but is that constitutional form in which the whole nation governs and only the well-being of the community prevails (Thucydides, II, 37, 1).”) Ardent, *On Revolution*, 20. (“The word ‘democracy’, expressing even then majority rule, the rule of the many, was originally coined by those who were opposed to isonomy and who meant to say: What you say is no-rule is in fact only another kind of rulership, it is the worst form of government, rule by the demos.”)

parts of the complete sovereignty."[22] A conception shared by the Greeks and Romans, this ancient freedom was both political and personal, but ultimately was about the sovereignty of the state.[23] Freedom was the communal understanding and experience of the state's self-determination; it was "an active and constant participation in collective power."[24] In Thucydides' *The Peloponnesian War*, Pericles' funeral speech extols Athenian government for the ways in which the Athenian allows freedom for all, not just a privileged few, to serve the interests of the state.[25]

Habermas and Rawls follow the same lines of thought, equating democratic principles and government with this very specific form of ancient freedom, which Habermas describes as "the political rights of participation and communication that make possible the citizens' exercise of self-determination."[26] For the city-state, freedom meant the absence of a higher imperial power. For the individual, it meant some kind of share in that freedom. For most of the Greek states, unenamored with democracy, it was in being a part of a state that was governed by its own essence and traditions. For the democratic states, and especially Athens, it was the participation in government and one's part in the determination of what that essence was.[27] Either way, the idea was linked essentially to the independence and sovereignty of the state. It was the collective right of the supreme power, and it was intimately tied with his status.[28] Not just man's

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22. Constant, 311.

23. Pohlenz, ix.

24. Constant, 316.

25. He specifically points to the way Athenian laws "afford equal justice [read as equal enjoyment in sovereignty] to all in their private difference; if no social standing, advancement in *public* life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way, *if a man is able to serve the state*, he is not hindered by the obscurity of his condition." Emphasis added. The point here is that the enjoyment of freedom and justice is directly tied into participation in the state activities and service. Thucydides, "Pericles' Funeral Oration," available at http://public.wsu.edu/~dee/GREECE/PERICLES.HTM (accessed June 1, 2011).

26. Quoted in James Tully, "The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy," *The Modern Law Review* 65, no. 2 (March 2002), 206.

27. When most modern observers refer back to the ancient freedom, this is usually what they mean. For example, this is the kind of freedom, the freedom of public self-government, espoused by deliberative democrats, like Habermas, and reflected in conceptions like Arendt's. Ardent, *On Revolution*, 20. (The "actual content of freedom…is participation in public affairs or admission to the public realm.") Though Arendt draws on the ancient tradition heavily, her understanding is still distinctly modern because she emphasizes the role of the individual in constituting the state and then continuing to give it form through individual participation. In this way, hers is a bottom-up approach. For the ancient, it would be more common to talk about the society or government giving form to the individual. Participation only exists in a sovereign social context; it is, then, more top-down.

28. Zakaria, *The Future of Freedom,* 32.

survival and well-being but his freedom depended on the security and prosperity of the state. The one was the other. If the state lost its independence, so did the man.[29]

Divorced from liberalism's emphasis on individuality, the ancient freedom was not only collectivist in practice but in origin. Today's liberal freedom treats the state as "a human organization shaped by history, which [is] only a means to an end if not indeed a necessary evil."[30] The power of the state is held at bay by individual's natural, inherent rights to liberty and autonomy. The ancients, however, had no understanding of inherent or individual rights. Far from it, for the ancients, individual equality and freedom were "conventional and artificial, the products of human effort and qualities of the man-made world."[31] As Arendt explains, the public space artificially made people individually equal, so they might take part in sovereignty together.

If the ancients had any concept of individual liberty apart from the equality and sovereignty of the public square, it was particularly thin and much later in origin.[32] Instead, the internal sovereignty of the state, the right of the rulers to rule, over society was absolute. As Constant reads, ancient "men were…merely machines, whose gears and cog-wheels where regulated by the law."[33] J.S. Mill likewise noticed, "the ancient commonwealths thought themselves entitled to practice…the regulation of every part of private conduct by public authority, on the ground that the State had the deep interest in the whole bodily and mental discipline of every one of its citizens."[34] As noted above, the precarious independence and survival of the state was the principal concern, and the state practiced its authority on the people in order to further that end.

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29. Pohlenz, 5.

30. Pohlenz, 29.

31. Arendt, *On Revolution*, 21.

32. Mulgan, 9.

33. Constant, 312.

34. Mill, *On Liberty and Other Writings*, 16.

SPARTA AND ATHENS

This general principle exhibits degrees of realization in practice, as Constant notes in the disparity between the private freedoms of Sparta and Athens.[35] According to the discussion, the Spartan freedom was nothing more than the independence of his motherland. To achieve that end, the Spartans subjected themselves to "a way of life that placed man from the cradle to the grave under the control of the state and compelled him to military discipline."[36] Pohlenz described the Spartan *kosmos* as a "totalitarian state which took possession of the whole man, so pressing his interests into service that no room was left for any private life of his own."[37] The Athenians by contrast, though extolling the same measure of state independence, nevertheless made room for a separation between the public and private spheres.

Certainly, as a matter of policy, though certainly not constitution, personal autonomy was realized in Athens. As Plutarch notes, "In Athens everyone could live as he liked; in Sparta that was permitted to nobody."[38] As Pericles describes in the Funeral Oration, Athenians are "far from exercising a jealous surveillance over each other."[39] Elsewhere, he remarks, "freely we conduct not only our public life but also our everyday dealings with one another."[40] In both Plutarch and Pericles's words, it would appear the Athenians understood freedom as the independence of individuals from the collective will, just as we might today.

It is important not to take this to mean the idea of individual freedom was more than slightly developed in ancient Greece, as a few scholars have argued.[41] The freedoms Pericles mentions first, for example, are distinctly social and political in form. They involve "advancement in public life fall[ing] to reputation for capacity" and how "if a man is able to serve the state, he is not hindered by the obscurity of

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35. Constant, 312.

36. Pohlenz, 25.

37. Pohlenz, 25.

38. Quoted in Pohlenz, 25.

39. Thucydides.

40. Quoted in Mulgan, 11. Thucydides, II, 37.2

41. Mulgan, 11.

his condition."[42] Where he does mention private life, it is with the distinct feeling, as Berlin describes, that Pericles is saying Athenians "perform their civic duty out of love for their polis, without needing to be coerced, and not under the goads and whips of savage laws or taskmasters (as in Sparta or Persia)."[43] So where the discipline and order of Sparta had to be maintained through a totalitarian control, in Athens the same order and devotion was authentic and natural. As we understand today, and as the Athenians understood then, that meant their devotion and their state was freer.

The point, of course, is that this liberty was a matter of choice, a matter of chosen policy as a means of furthering a stronger, wiser state. It was not determined philosophically. There was no understanding of absolute right behind it.[44] Instead, individual liberty operated to make the city of Athens stronger, by encouraging a greater devotion to the state. The citizens more perfectly felt their place in society and had more to lose in their sovereignty. Individual autonomy was a method of making Athenian sovereignty stronger and more palpable. The notion of individual right was simply not a part of Greek culture, or any ancient civilization, in any meaningful way.[45]

Furthermore, to call their freedom unregulated would be a travesty because the state retained incredible power over its citizens. Pericles elaborates on the ultimate authority of the state later in the funeral speech when he remarks, "all this ease in our private relations does not make us lawless as citizens. Against this fear is our chief safeguard, teaching us to obey the magistrates and the laws."[46] The fear of state, with its terrible retribution and authority, still maintained the order of society. At any moment, Athenian freedom, protected by far less than even barriers of parchment, might be broken at the public's

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42. Thucydides.

43. Berlin, xl-xli.

44. Pohlenz, 13.

45. Berlin, *Four Essays on Liberty*, xli. It is worth noting, as Berlin does, that not everyone agrees the difference between ancient and modern concepts of freedom are as discrete and separate as usually understood. A reading of the funeral speech, for instance, can leave one feeling the idea of individual rights was incredibly important to the citizens of Athens. Suffice it to say, however, that there is certainly room for debate, but I tend to agree with the traditional view that ancient freedom was not the individual freedom we know today.

46. Thucydides.

whim. As Constant contends, the Athenian citizen, despite his autonomy, was still very much "subservient to the supremacy of the social body in Athens."[47] This social power was omnipotent and plenipotentiary.

The Athenian body politic constrained and guided man's freedom, carving out very specific, often miniscule, spaces for what we might call private, autonomous free action.[48] As part of the sovereign power, an individual citizen "interrogated, dismissed, condemned, beggared, exiled or sentenced to death his magistrates and superiors," but by the same token was subject to the absolute "discretionary will of the whole to which he belonged."[49] Constant, and others, point to the practice of ostracism as a particular harsh example on the supreme authority of the state.[50] As Richard Mulgan explains, ostracism whereby an individual was forced away from the city for 10 years, though certainly more civilized than capital punishment or permanent banishment, was nevertheless marked by its brutal absence of fairness and process. Ostracism "required no specific charge…and no right of defense or appeal was allowed. People ostracized were exiled solely on the ground that the members of the assembly wished to be rid of them."[51] The trial of Socrates only further highlights the social arbitrariness at play in ancient Greece.[52]

The Greeks, the Athenians in particular, did not see the two characterizations of their society as free and yet subject to such awesome social power as a contradiction. The Greeks, like the Romans, understood individual autonomy as the ability to act where the law was silent. Where the body politic had yet to legislate, the individual was free to act as he pleased. The Greeks and Romans emphasized man's "strong urge to be master of his fate" within the realm of the law's tacit regulation.[53] They did not understand this urge to be freedom per se, instead it was more a sense of autonomy.

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47. Constant, 316.

48. Pohlenz, 29.

49. Constant, 312.

50. Constant, 316.

51. Mulgan, 14

52. Plato, "Crito," in *Plato: Apology, Crito, Phaedo, Symposium, Republic*, trans. B. Jowett, ed. Louise Ropes Loomis (Princeton, N.J.: D. Van Nostrand Company, Inc: 1942), 75-79 (Socrates was accused of being one who "corrupts the youth; and who does not believe in the gods of the state, but has other new divinities of his own." Meletus replies to Socrates's arguments by saying the laws are the improvers of the youth.)

Individual liberty, to the extent that it existed, was a confined space delimited by a vast collection of forces that contained personal action. Even in this space, as Pericles suggests, the social power remained vigilant. Unrestricted by due process, and with no limit to post facto action, the will of the state remained a powerful regulating power. Even in the context of the law's silence, the state remained a great power bound to come crashing down at any moment.

This perspective was indicative of the overall ancient understanding of man's place in the world. Man existed in an awesome, often cruel world, where an array of dangers and powers worked against man's individual or social will, threatening to not just destroy his freedom, but imminent destruction. As Pohlenz describes,

> He [the ancient man] sees the dangers that threaten him. But his essential feeling is not a fear that puts him on the defensive, but a positive will to live, an urge to shape his life within the limits imposed upon him by the order of the universe, according to his own nature and his own will…To mortal man, the gods are able to decree physical death; but even then there is one thing of which they cannot deprive him, the right and the power to act as he himself freely decides. He has no power to modify the outward march of events. But *within himself* he remains master of his decisions.[54]

The space he controlled was tiny, and there was nothing keeping the gods or the power of the state of encroaching in on it, but the feeling and desire for power was nevertheless real.

It is in this description that the importance of individual power and control as elements of freedom become dramatically clear. The desire to possess control is obvious enough in the freedom of social sovereignty for the city states; it is the power for a polity to determine its own way of life without interference. For the individual, the story was so much more complicated in a world where individual control was all but impossible. The powerful forces beyond him were simply too much to contend against. As human knowledge and technological capacity has grown, so has the extent of his power. It became easier and easier to understand freedom not as social control and stability, but as an individual power effectively held against others. We no longer are in awe of the universe, and so are not inclined to tolerate its vicissitudes. Unlike the ancient, we are more confident and secure in our power, and so make far greater demands on our individual power and freedom.

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53. Pohlenz, 1.

54. Pohlenz, 2. Emphasis Added.

FREEDOM IN THE LAW

This change in emphasis, from absolute social power to increasing individual power is often associated with the influence of Roman jurisprudence. The Romans, with more emphasis on legal process and law, exercised authority over free individuals in a less capricious, arbitrary manner than the Greeks.[55] Yet, this does not mean the Roman's had any more developed notion of individual freedom. The Roman "sense of individual political liberty seems to have been weak beside that of the corporate liberty of the whole Roman people," just like the Greeks'.[56] But, in the rule of law, and the emphasis on process and codification, however, they discovered and celebrated an individual autonomy unlike the kind practiced even in Athens.

Other similarities also exist. Roman law, according to Florentinus in *Institutiones,* comprehended freedom in a very similar way to the Greek construction, as the "ability to do what one wishes, except if it is prevented…by law."[57] This is a conception, also shared later by Hobbes in *Leviathan*, where the ability to act freely is understood to exist only where the law does not specifically proscribe activity.[58] The sovereign for Hobbes*,* the law for Romans, and the *polis* for the Greeks, could regulate (almost) any form of activity.[59]

The contribution of Roman law, however, was a far greater enunciation, and gradation, of an individual's position and power within the social arrangement. Gary Reed offers a compelling reading of the history of freedom that emphasizes the role of social and legal belonging. According to his reading, the word freedom evolved beyond its original meanings, which referred to varieties of plants and animals,[60] to include "belonging to an ethnic stock designated by a metaphor of vegetal growth."[61] In this earliest stage, freedom was a measure of belonging by birth to a given lineage and included understandings of the

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55. Zakaria, *The Future of Freedom,* 32.

56. Alan Harding, "Political Liberty in the Middle Ages," *Speculum* 55, no. 3 (July, 1980), 425.

57. Bruce Frier and Thomas McGinn, eds., *A Casebook on Roman Family Law* (Oxford, UK: Oxford University Press, 2004), 14. See also Harding, 424.

58. D. D. Raphael, "Hobbes," in *Conceptions of Liberty in Political Philosophy*, ed. Zbigniew Pelczynski and John Gray (New York: St. Martin's Press, 1984), 34-35.

59. In every instance, there are some laws not that are forbidden to be enunciated but that individuals, in appealing to a higher law could disobey. For Hobbes, this was any instruction to violate the law of self-preservation. For the Romans and especially the Greeks, it was a violation of divine mandate or unjust ruler. Mulgan, 37.

60. Bruce Baum, "J.S. Mill on Freedom and Power," *Polity* 31, no. 2 (Winter 1998), 200.

61. Gary Reed, "Berlin and the Division of Liberty," *Political Theory* 8, no. 3 (August, 1980), 371.

privileges as well as behavioral expectations for those who belonged. A person was free because he belonged in the same way that a plant belongs to its kingdom, genus or variety. When the importance of the sovereign city-state developed, the notion of sovereignty again made the metaphorical jump so that a free person was one who belonged to, and in some places participated in, the sovereign governance.

Unlike the sovereign citizen, the stranger and slave were not free because they could not know true belonging.[62] They were apart, alien and separate.[63] In its final sense, with the growth of citizenship, freedom became something one could acquire. One could cease to be a stranger, become a free citizen.[64]

In this understanding, rights and freedom are related in the reverse of how they are today. Rights do not make one free. Instead, rights and liberties belong to a man because he is free.[65] Because one belonged, one had specific entitlements to social and political powers. The idea that rights and freedoms are linked to belonging continued well into the late Enlightenment. As Arendt explains, for example, the patriots of the American revolutions,

> though quite sure that what they claimed from England were 'the rights of Englishmen', [they] could no longer think of themselves in terms of 'a nation in whose veins the blood of freedom circulates' (Burke); even the trickle of non-English and non-British stock in their midst was enough to remind them: 'Whether you be English, Irish, Germans, or Swedes,…you are entitled to all the liberties of Englishmen and the freedom of this constitution. What they were saying and proclaiming was in fact that those rights which up to now had been enjoyed only by Englishmen should be enjoyed in the future by all men.[66]

This underscores just how new the idea of universal freedom really is. Not just within populations, that is between free persons and slaves, but across civilizations as well. For the longest time, the idea of freedom was so closely associated with the idea of belonging, and specifically belonging to a sovereign, independent nation.

In Rome, these distinctions took a very real form in the Roman *ius personarum* (law of persons) that delineated the various powers, obligations and immunities of slaves, freemen and citizens. If nothing

62. Reed, 371.

63. Considering most slaves were foreign captives, as Reed points out, this metaphor captures even greater salience.

64. Reed, 371.

65. Ibid, 373.

66. Arendt, *On Revolution*, 139.

else, the law of status and freedom as belonging resulted in an understanding, nearly universal in the ancient world, that freedom was the exception instead of the rule. There was no universal right in practice or rhetoric. For example, the Romans, like the Athenians, were "committed to freedom and equality at home," they practiced a "ruthless control abroad."[67] Likewise, though there was no shortage of theoretical justifications for slavery in the ancient world, there appears to be no push among ancients for the abolition of slavery.[68] Those who did not belong, those who were not free, could make no claim to power over themselves or others.

The law played a large role in understandings of freedom and belonging in the ancient world, necessitated in part by the institution of slavery. As Pohlenz asserts, "the concept of freedom implies its antithesis…The awareness of freedom could only arise in a place where men lived together with others who were not independent but had a master over them whom they served and who controlled their lives."[69] And, slavery in the ancient world was ubiquitous. As much as a tenth of the Roman Empire's 50 or 60 million people might have been slaves, with a large portion of them living in Italy.[70] As mentioned before, the development of freedom is best felt in an environment marked by its opposite; and throughout the ancient world, "men lived together with others who were not independent but had a master over them whom they served and who controlled their lives."[71] Like Arendt's interpretation of Greek freedom as something artificially built and constructed, the Romans tended to emphasize the artificiality of slavery.[72] It was a strictly social construct.[73] As Florentinus continues after his definition of freedom, he defines slavery

67. Mulgan, 9.

68. Ibid, 9.

69. Pohlenz, 3.

70. Frier and McGinn, 14.

71. Pohlenz, 3.

72. Arendt, *On Revolution*, 21. I am not convinced by Arendt's narrative, which might very well be more rhetorical than historical. For example, Plato was given to describing all forms of slavery as artificial social constructions, but as far as I can tell, made no such commentary on freedom. It would appear her understanding is the only thing artificially constructed about Greek freedom. Indeed, as discussed later, Arendt's reliance of the constitution of power is more in line with an understanding of slavery as an artificial construct than of isonomic freedom as an artificial creation, unless one simply suggests all relations are by definition the products of artificial construction.

73. Arendt, *On Revolution*, 21.

as “an institution of the law of nations whereby, contrary to nature, a person is made subject to another’s ownership,”[74] Likewise, Gaius spells out, “slaves are in the power (*in potestate*) of their owners. This power comes from the law of nations; for uniformly among all peoples we can observe that owners have the power of life and death over their slaves.”[75] The slave was subject to the artificial power of his master.

These distinctions also existed among citizens, and governed familial relations as well. Roman law gave the male head of a family (the *pater familias*) a range of powers (the *patria potestas*) over those *in potestate*, including the power of life and death (*vitae necisque potestas*). It was the same power Gaius had suggested the master held over the slave. The father exercised “absolute mastery…over his children.”[76] As the oft-quoted Dionysius of Halicarnassus wrote, it was a power that lasted for the life of the father.[77] Even free adult children, and their children, remained under their father’s power. The one exception was a married daughter, who fell within the power of her husband.[78] Those *in potestate* could not own land, marry or exercise many other qualities of independence, without their father’s permission. His authority was absolute, with no recourse to the higher authority. The father “was at liberty to imprison him [his children], flog him, to keep him prisoner working on the farm, and to kill him.”[79] The Romans moreover, understood the extraordinary nature of the *patria potestas*, and acknowledged it was an entirely artificial construction, even if rooted in history. It was an invention of Roman law. So where the Romans understood that filial obligation and devotion was characteristic of all societies, only the Roman’s had anything similar to the *patria potestas*.[80]

It is a historical irony that the very culture that has become exemplar of liberty, the rule of law and due process, operated under a code of the very arbitrary, even capricious, *patria potestas*. The love of one’s children did not regulate the *patria potestas*. (The love and affection parents feel for their children is a

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74. Frier and McGinn, 14.

75. Frier and McGinn, 14.

76. Michael Grant, *Gladiators: Pageants of History* (London: Widenfeld Nicolson, 1967), 114-115.

77. Grant, 114-115.

78. The Roman marriage ceremony was literally a bridal walk from one house (*domus*) to another, signifying the transition of power.

79. Grant,115.

80. Frier and McGinn, 12, 230.

relatively new invention.[81]) In the early imperial period, the father's power did come "to encompass a father's duty to protect those in his power."[82] As Richard Saller points out, though that might appear to be progress, "to the great sixtheenth-century political theorist of absolute sovereignty, Jean Bodin, it was a fundamental cause of the breakdown of good order in the Roman empire."[83] For Bodin and others, the regulating influence of the *patria potestas* was crucial for the regulation of Roman society. It was the control and order, which kept the empire together, and its gradual decline, the weakening of the familial bond, lead to the decline of the whole society from within.[84]

One of the few exceptions to the *patria potestas* highlights the chief connection between freedom, citizenship and public participation for ancient peoples. The father's power never extended to one's public life. Though a father certainly had a wide range of option for controlling his children in office, according to Pomponius, he could not directly affect the participation in legal affairs or pursuit of office.[85]

Finally, Roman law envisioned another kind of liberty. Where individual freedom was usually understood as the ability to act where the law did not regulate action, especially in the later Empire, it became more and more common for privileged men to be exempt from the various public duties. These exemptions were granted by law, and most often excluded wealthy men from the *sodida munera* (shameful burdens), legally mandated taxes of labor "such as making bread for the army, providing animals for the postal service, housing officials on their journeys, and maintaining public works."[86] These privileges began carving out a new sense of liberty as not the silence of the law, but an exemption from it.

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81. Abandonment and outright infanticide were common in the earliest stages of human development, followed by a more general apathy. Only with the 18ths century, did parents become actively interested in personally raising strong children, and in the 19th century with empowering them with support. See Lloyd DeMause, *The History of Childhood* (London: Jason Aronson, 1995).

82. Richard Saller, *Patriarchy, Property and Death in the Roman Family* (Cambridge, UK: Cambridge University Press, 1997), 104.

83. Saller, 104.

84. That is not to suggest his analysis is correct. In fact, as Saller says, it borders on comical. The point I wish to stress is the degree to which Bodin understood the decline of the potency of the *patria potestas* constituted an abridgment of freedom for the father and, even more importantly, the collapse of civilization. Both themes are taken up in Part III.

85. Frier and McGinn, 210.

86. Harding, 425.

This was especially true of the various temples and religious orders, which were exempt not only from the *sodida munera* but from taxation as well. The Roman Catholic Church steadfastly defended these exemptions well into the Middle Ages as the power of the Empire waned and the power of regional governors and kings slowly grew.

To many, the story of modern liberty in Europe begins in these exemptions from taxation, and continues when the emperor Constantine moved the Roman capital to modern-day Istanbul.[87] The result was a magnificent power vacuum in the West, a fact confirmed by the rapid disintegration of the Western empire. The collapse of the Roman Empire left a vast number of smaller political entities in its place, yet despite pretentions of grandeur, none had the strength to extend its control very far.

The Catholic Church centered in Rome played these groups against each other, usual the precedents of preferential exemption to develop into a real political player in Europe. As a result, the Church successfully and "tenaciously opposed the power of the state and thus placed limits on monarchs' rule."[88] It large, tax-exempt land wealth across Europe, empowered the church with both material means and material interest in keeping the various state powers weak. Its traditional exemption from taxation and variety of other legal immunities enabled it to maintain an independent power base. With the collapse of the Roman Empire in the West, and the rise of a massively powerful nonstate organization in its place, for the first time, an organization strong enough to challenge a state authority "cracked the edifice of state power, and in the nooks and crannies individual liberty began to grow."[89] It was in this power struggle between the states of Europe and Church, and the various kings and barons of the realm, in J.S. Mill's words, that "the struggle between liberty and authority…[became] the most conspicuous feature" of history.[90]

These church immunities also set the precedent for the privileges in the temporal authority as well. It was because of the traditional ecclesiastical prerogatives against the state that "it became possible in England to conceive of the territorial liberties of the barons as a class. The ecclesiastical immunity gave to

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87. Zakaria, *The Future of Freedom,* 29.

88. Ibid, 34.

89. Zakaria, *The Future of Freedom,* 34.

90. Mill, *On Liberty and Other Writings*, 5.

the sense of liberty the element of freedom from official interference within a defined territory."[91] These rights not only took the form of specific limits to governmental power, namely the power to tax, but also in expansions of the barons' authority to act independently. It was in this period that political liberty became more "a matter of *doing,* not *being*, the exercise of power rather than the possession of status."[92] The usages of the very words shifted from belonging to practice. Liberty became the privilege of action for the landed elite, and "could refer to the land as well as to the freedom."[93] So, a lord had the freedom to exercise political power across his liberty, granted to him from either the force of his dominion against other would-be rulers or by grant from some higher political figure.

This autonomy was essentially to the advancement of freedom. From the land, and their authority over it, the barons and lords had access to independent sources of wealth and power. Until the very latest feudal stages, most kings, the lords of the lords, were kings in name only. The political game they played was aimed at wresting resources, borrowing money and recruiting troops from their constituent aristocrats. In this way, "Europe's landed elite became an aristocracy with power, money, and legitimacy — a far cry from the groveling and dependent courtier-nobles in other parts of the world."[94] This was vital to political freedom because the lords, in exchange for resources to the king, demanded absolute, unalienable exemptions from his authority. As time passed, these exemptions became automatic, proforma*,* constituting rituals in coronations and regular public decrees. In England, they were also codified in documents such as Magna Carta.[95] The history of freedom, then, owes largely to this ability of the elite to maintain control over their territories and their ability to provide their own "protection against the tyranny of the [higher] political rulers."[96]

These rights moreover begin to take individual character through the individual barons. In some instances, special towns were give "free customs," privileges applying to the many individuals who inhabited the towns which included everything from the right to be sued only in special courts and

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91. Harding, 430.

92. Ibid, 424. Emphasis in Original.

93. Ibid, 441.

94. Zakaria, *The Future of Freedom*, 37.

95. Ibid. The landed gentry was certainly also aided by Europe's treacherous topography, with its many rivers and mountains that helped protect and secure many independent nations.

96. Mill, *On Liberty and Other Writings*, 5.

immunity from tolls. As the power of the central monarchies increased through the 13th and 14th centuries, it was the special powers of the barons that began filter down to individual free citizens. A man imprisoned by the king or his officers, could sue for release because the king had violated the baron's privilege to keep prisons.[97] The rights of the prisoner himself are of little concern.

The rise of liberty and freedom in Europe, then, is inexorably linked to both religious and temporal power struggles. No religious or state authority was ever able to exert a universal or preponderant power. As Mill remarks in regard to the various religious sects that developed after the Reformation, the various "minorities, seeing that they had no chance of becoming majorities; were under the necessity of pleading to those whom they could not convert, for permission to differ."[98] Similarly, as a new class of independent gentry developed in the mercantile classes, the rights of the landed gentry took an even greater universal feel.[99] Freedom was no longer realized in participation in the sovereignty of the state, it was the sovereignty of the baron beyond it. It had become immunities from the temporal and religious authority that had constrained human action in the preceding millennia. Liberty was something a man held against the power of another, rather enjoyed with him.

Freedom still only pertained only to a select few, still carried notions of belonging, whether the ancient citizen, the landed baron, the wise or men of the cloth.[100] It was his privilege, his right to an authority and sovereignty distinctly his own. It was for another time to determine the ultimate implications of this trend and the discovery of freedom as we commonly understand it today.

97. Harding, 434.

98. Mill, *On Liberty and Other Writings*, 11; Zakaria, *The Future of Freedom*, 40.

99. Shaun O'Dwyer, "Democracy and Confucian Values," *Philosophy of East and West* 53, no. 1 (Jan. 2003), 41.

100. Mulgan, 10.

Chapter II

Sovereignty Beyond the State

Though by the end of the Middle Ages freedom had become something more than just the sovereignty of the state, the enjoyment of free privilege was still reserved to the upper echelons of society. Status freedom still operated to separate those who enjoyed participation in sovereignty and those who did not. The liberties of the lords and barons of Europe had successfully grown large enough to include both the positive experience of sovereignty and individual immunities from higher powers.

Toward the end of the Enlightenment, however, with the rise of new loci of power in the merchant and industrial classes there was an expansion of interest in liberty, this time largely unlimited by status freedom. Because the new sources of wealth, and hence power, emanated from individuals and not the land, discussions of individual autonomy began to take on a universal character. The emphasis shifted largely from the sovereignty of states and elite rulers to the freedom of individuals as the new centers of power searched out for ever-greater spaces of self-direction. By necessity, however, the new freedom was not the sovereignty to make one's own law or state but was a free self-mastery within the state.

J.S. Mill's *On Liberty* is the classic liberal enunciation of political liberty. Few other works are given so much devoted study; the sheer volume of material critiquing, defending, or refining Mill's exposition approaches insanity.[1] Though critical approval of *On Liberty* in particular and Mill's larger oeuvre has waxed and waned over time, no single speaker has more successfully or more eloquently marked out "the nature and limits of the power which can be legitimately exercised by society over the individual."[2] And although his theory is far from actively practiced, Mill is widely credited with bequeathing to the modern age "the idea of the free and sovereign individual."[3] His work envisions a vast

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1. As for the ups and downs of critical disposition, there was a long period in which Mill's work was treated as internally inconsistent. Accusations against *On Liberty* were made in particular suggested Mill abandoned utilitarianism, privileging other qualities such as individuality and liberty over general utility, and that Mill's understanding of utilitarianism was particularly hedonistic, as well as a few unresolved moral issues. Critical review took a deserved swing upward in the late 1970s and early 1980s with a number of new articles and books. See, for example of critiques against Mill, James Fitzjames Stephen *Liberty, Equality Fraternity* (Cambridge, UK: Cambridge University Press, 1967). For a defense, see John Gray, *Mill on Liberty: A Defense* (London: Routledge & Kegan Paul, 1983).

2. John Stuart Mill, *On Liberty and Other Writings*, ed. Stefan Collini (Cambridge, UK: Cambridge University Press, 2004), 13.

3. Gertrude Himmelfarb, Introduction to *John Stuart Mill: On Liberty* (London: Penguin Books, 1974), 8.

region of space for man's parochial freedom, marked by the conspicuous absence of both statutory and social constraints on individual activity.

Mill's liberty goes beyond just the state's influence upon individual action. Limitations to state power had been won over the centuries by the nobles, and particularly in England, had largely trickled down by the 19th century. Unlike earlier and more traditional views of political freedom, Mill worries more about extra-governmental forces that constrain autonomy and individuality.[4] So though the few formal political and economic restraints remained were quickly falling away, powerful social mores and requirements "were many, and often onerous."[5] Freedom from an arbitrary or capricious government is not enough, he says, "there needs [to be] protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them."[6] The social power Mill recognizes as a new form of tyranny is the chief impetus for writing *On Liberty*.[7]

For Mill the chief problem with social pressures, whether wholly social or given form in law, is the way such pressure limits and destroys individuality. As he remarks elsewhere, commenting on communism, Mill wonders whether under socialist systems "any asylum [is] left for individuality of character; whether public opinion would not be a tyrannical yoke; whether the absolute dependence of each on all, and the surveillance of each by all, would not grind all down into a tame uniformity of thoughts, feelings, and actions."[8] Because particular mixes of traits and interests are so unique to each individual, societies marked by autonomy and complete, free choice are necessarily marked by variety and individuality. These two traits, Mill continues, work in unison to better both individual people and the society as a whole. "No society," he says "in which eccentricity is a matter of reproach can be a wholesome state." Notice first, how this is a singularly liberal perspective. Mill is ultimately arguing for individual

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4. Maurice Cranston, "John Stuart Mill and Liberty," *The Wilson Quarterly (1976-)* 11, no.5 (Winter 1987), 86.

5. Ibid.

6. Mill, *On Liberty and Other Writings*, 8.

7. Himmelfarb, 34.

8. Robert Heilbroner, *The World Philosophers: The Lives, Times, and Ideas of the Great Economic Thinkers, Revised Seventh Edition* (New York: Touchstone, 1999), 131.

power and liberty as a means of furthering the social end in language very similar to Adam Smith before him. He is arguing fundamentally for the dispersal of power and authority to individual people and against the regulation of life styles, ideas and even morality.

Construing liberty as something far more than independence from governmental authority, but political and social self-rule, Mill spends nearly the entirety of *On Liberty* arguing for an appropriate line to distinguish legitimate social and political governance from tyranny. His principle is as simple as it is bold. "The sole end for which mankind are warranted…in interfering with the liberty of action…," Mill writes, "is self-protection."[9] This prohibition covers the entirety of action and forebears any other excuse for interference, from the simple majority desire or preferences to appeals to ethics or general well-being. It was, and is still today, a radical notion.[10] In the first place, Mill creates a rule that sets freedom as the standard and interference as the exception, placing the burden of argument on those who would interfere with free action.

WHERE TO DRAW THE LINE

One of the chief difficulties for modern readers of Mill is just were the line of sovereignty is drawn. Mill tells us "the individual is not accountable to society…in so far as these concern the interest of no person but himself" and that only "for such action as are prejudicial to the interests of others, the individual is accountable."[11] As Gertrude Himmelfarb describes, "sometimes Mill used words such as 'concern', 'affect', and 'regard' to express the qualification…[which envision] a far greater latitude to society, than the negatively charged words Mull used on other occasions – 'harm,' 'hurt,' 'injury,' 'mischief,' 'evil.'"[12] The ambiguity notwithstanding, the whole context of Mill's work suggests the criterion for interference is always actions that directly concern or affect others negatively.[13] Mill goes to lengths to specify the harm must be of the first order, direct and palpable. The mere assault on tastes or good sense, even harm one or two degrees removed, is insufficient.[14] But even this construction admits a

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9. Mill, *On Liberty and Other Writings*, 13.

10. Himmelfarb, 29.

11. Mill, *On Liberty and Other Writings*, 94.

12. Himmelfarb, 30.

13. Ibid; John Gray, *Mill on Liberty: A Defense* (London: Routledge & Kegan Paul, 1983), 57.

range of interpretations in practice. Especially in contemporary society, as the line dividing private and public acts continues to blur, this point is of particular import.[15]

Even Mill recognized this dividing line might prove exceedingly difficult to determine in practice. His goal, and victory, was the supremacy of that line as the most common principle. The rest, from determining what exactly counts as harm to whether the burden is met, is a matter for the politics of the moment. As Isaiah Berlin points out, "men are largely interdependent, and no man's activity is so completely private as never to obstruct the lives of others in any way."[16] This is especially true when one considers the space where one person's freedom, even in his private activities, can infringe upon another's.[17] The assumption, fundamental to both Mill, Berlin and the range of liberal thinkers, is that despite this interrelation, there is some sphere of human activity that is off limits to the political and social regulation no matter the level of effect.[18]

Not all so-called liberals have shared in this belief. Locke's state of nature, for example, appears very much akin to Mill's understanding of liberty. For Locke, the state of nature is "a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit…without asking leave or depending upon the will of any other man."[19] Freedom, within society, for Locke, is distinctly circumscribed, and bears far more resemblance to the society Mill rejects than the one he extols. Locke describes the social freedom as marked by the rule of law, the right to "a stranding rule to live by, common to every one of that society and made by the legislative power erected in it, a liberty to follow my own will in all things where the rule prescribes not, and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man."[20] In this sense, freedom is the absence of an arbitrary, maybe

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14. Harry Clor, "Mill and Millians on Liberty and Moral Character," *The Review of Politics* 47, no.1 (Jan. 1985), 5.

15. Stefan Collini, Introduction in *On Liberty and Other Writings* by John Stuart Mill (Cambridge, UK: Cambridge University Press, 2004), xvi.

16. Berlin, "Two Concepts of Liberty," 196.

17. Ibid, 196. See also, R.H. Tawney, *Equality* (1931), ch. 5, section 2, Equality and Liberty, pg. 208.

18. Berlin, "Two Concepts of Liberty," 196.

19. John Locke, *The Second Treatise of Government*, ed. Thomas Peardon (Upper Saddle River, N.J.: Prentice-Hall, Inc., 1997), 4.

even capricious will. If one stopped here, there appears to be little difference between Locke and Mill. Both require rules be enunciated and fully formed by a legitimate power before they can curtail the actions of any individual. Locke, however, places very few limits on the legislative authority. And limits he admits primarily encompass the controlling safeguards for life and property, the protection of which was behind the formation of society in the first place.[21]

Beyond the protections for life and property, Locke is borders on Hobbesian.[22] Locke admits a whole realm of limitations to thought an action. As he wrote elsewhere, "No opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society, are to be tolerated by the magistrate."[23] More specifically, though the variety of Christian sects should be tolerated, individual immorality was to be squashed at every point. Atheism was a particularly pernicious threat because "promises, covenants, and oaths, which are the bonds of human society, can have no hold upon the atheist."[24] Locke's concern was the origin of power and the way the state realized it. He was not concerned with the fundamental distribution of that power, with the destruction of sites of power, the true hallmarks of modern liberalism.

DEFENDING DIVERSITY (AND LIBERTY)

Mill's defense of liberty refuses to treat liberty as an end in itself, a strategy with which many more conservative thinkers of his time agreed.[25] Instead, he opts for a second variety of justification, by relying instead on a consequentialist approach that, according to Shaun O'Dwyer, generally "justifies

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20. Ibid, 15.

21. Ibid, 81.

22. D.D. Raphael, "Hobbes," in *Conceptions of Liberty in Political Philosophy*, eds. Zbigniew Pelczynski and John Gray (New York: St. Martin's Press, 1984), 34-35.

23. Quoted in Himmelfarb, 9. From John Locke, *A Letter Concerning Toleration*, ed. Patrick Romanell, New York, 1955, pg 50, 52.

24. Ibid. This, of course, is a claim that Mill would likewise dispute. If Locke's willingness to curtail individual freedom in the society is overblown, the example of atheism at least shows how much further Mill's conception of individual autonomy went beyond Locke's freedom in society.

25. See James Fitzjames Stephen, "Liberty, Equality, Fraternity," in *Conservatism: An Anthology of Social and Political Thought from David Hume to the Present*, ed. Jerry Muller (Princeton, N.J.: Princeton University Press, 1997), 190: ("'Liberty, Equality Fraternity…whatever significance be attached to them…are not ends in themselves.") Also Mathew Arnold, *Culture and Anarchy*, ed. Stefan Collini (Cambridge, UK: Cambridge University Press, 1993), 83.("Freedom…was one of those things which we thus worshipped in itself [as machinery], without enough regarding the ends for which freedom is to be desired.")

liberties and equal rights from the standpoint of their ability to promote ends such as social harmony, progress, and prosperity."[26] For Mill, this justification comes from an adherence to a particular form of grand utilitarianism, a "utility in the largest sense, grounded on the permanent interests of man as a progressive being."[27] Mill's liberty stems from a complete devotion to utilitarian principles, and specifically to the ways in which liberty, most often conceptualized as a kind of private autonomy, contributes to the progressive improvement of men and ideas.[28]

Mill defends liberty on two utilitarian fronts. In the first, liberty promotes aggregate individual happiness. Because there is a natural diversity of tastes, interests and predispositions, under Mill's thinking, no one mode of life is likely to simultaneously suit all of those naturally derived inclinations and only each individual is best positioned to understand what mode of life is the best fit. The solution then is openness to a experiential variety. This is the essence of Mill's oft-quoted definition of "the only freedom which deserves the name…[as] pursuing our own good in our own way."[29] It is "framing the plan of our life to suit our own character."[30] Just like the Greeks understood the freedom of the city-state to determine its own way, Mill has fully translated the same idea onto the individual.

Incidentally, though, Mill is associating liberty with the same kind of diversity Plato dismissively recognized in democracy, which he called "an agreeable form of anarchy with plenty of variety and equality of a peculiar kind for equals and unequals alike."[31] Plato's wording is eerily reminiscent of Mill's, even if their conclusions are different. Describing the origin of that diversity, Plato remarks, "liberty and free speech are rife everywhere [in a democracy]; anyone is allowed to do what he likes…every man will arrange his own manner of life to suit his pleasure. The result will be a greater variety of individuals than

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26. Shaun O'Dwyer, "Democracy and Confucian Values," *Philosophy of East and West* 53, no. 1 (Jan. 2003), 41.

27. Mill, *On Liberty and Other Writings*,14.

28. Clor, 4.

29. Mill, *On Liberty and Other Writings*, 16; Bruce Baum, "J.S. Mill on Freedom and Power," *Polity* 31, no. 2 (Winter 1998), 216.

30. Mill, *On Liberty and Other Writings*, 15.

31. Plato, *The Republic of Plato*, trans. Francis MacDonald Cornford (London: Oxford University Press, 1945), 283.

under any other constitution."[32] Plato rejected such variety as abhorrent and contrary to the dictates of a good society. Mill is not only embracing that diversity as a condition of goodness, he is suggesting that democratic government alone cannot achieve it. Democratic society and government are about the regulation of individual behavior. If nothing else, Mill is advocating the retreat of democratic power to allow for the advance of individual sovereignty to determine one's mode of life.

Mill's second utilitarian defense extends to the realm of ideas. Liberty, Mill asserts, promotes the advancement and perfection of civilization by constructing a marketplace for ideas. Asserting "the truth of an opinion is part of its utility," Mill goes on to suggest that liberty, by allowing a diversity of opinions, is the best way to encourage the cultivation of truth.[33] In the first instance, freedom of thought allows the world to enjoy the fruits of "promising intellects combined with timid characters, who [otherwise] dare not follow out any bold, vigorous, independent train of thought, lest it...be[] considered irreligious or immoral."[34] Here Mill is directly addressing the individual power. These men with timid characters, he suggests are blessed with an abundance of brains but plagued by a dearth of personal vigor and command. Society, he insists, must retreat to allow this man greater space to operate and express himself. Otherwise, any small power he might possess is overrun and consumed by the social force.

The marketplace of ideas wrought by liberty also offers a means for the dispensing with false or partly false ideas. In the "collision of adverse opinions," as the adherents of conflicting ideas perfect old or develop new thoughts to displace others in the collective consciousness.[35] The process also forces people to discover the reasons for their opinions and to hold those opinions actively rather than as dogma. Mill privileges "real and heartfelt conviction" over passive acceptance of an idea.[36] A notion, incidentally, that even some of Mill's contemporary detractors, like Mathew Arnold for instance, agreed with.[37] Liberty is the

32. Ibid, 282.

33. Mill, *On Liberty and Other Writings*, 25.

34. Ibid, 25.

35. Ibid, 53.

36. Ibid, 54.

37. Mathew Arnold, *Culture and Anarchy*, ed. Stefan Collini (Cambridge: Cambridge University Press, 1993), 83. Arnold's pursuit of culture is very similar to Mill's own utilitarian pursuit of truth. They both ultimately serve the "study and pursuit of perfection." (Arnold, 61) They both also require, in their most legitimate forms, for the

ether mediating the marketplace of ideas. The greater the market created the greater the justification, the better society is served by new ideas from those with weak characters and quicker bad ideas tend to die.[38]

In this way, Mill's argument is not so much about freedom itself but about the best ways to advance society. Liberty is worthwhile not on its own merits, but on its ability to advance social progress, which is best done in a diverse environment marked by the free contest of ideas. Tyranny, and particularly social tyranny, undermines both the diversity and the contest by discouraging difference and declaring artificial truths. In both instances, as Berlin summarizes, "unless the individual is left to live as he wishes…civilization [sic] cannot advance."[39]

Mill places an absolute prohibition on Victorian social engineering and morality laws and is advocating what Gertrude Himmelfarb described as "moral laissez-fairism."[40] Though equating liberty with autonomy from political and social constraints, he is not saying men in society should absolutely abandon others to licentiousness. Mill was certainly no moral relativist. What he was constructing, however, was a system in which, though moral code operated, no one — much less a collective of ones — could enforce those mores with coercion. He does allow, indeed advocates, mutual concern and a kind of moral suasion, whereby one might disarm an evil-doer by "remonstrating with him, or reasoning with him, or persuading him, or entreating him" to live a virtuous life.[41]

What exactly the distinctions between social and political tyranny are, Mill never makes clear. Divorced by time from heavy-handed Victorian moral suasion, a modern observer might legitimately read Mill's critique as an indictment of peer-pressure, which pushes individuals to socially accepted modes of behavior in the exact homogenization process with which Mill was ultimately concerned. Peer-pressure, seems to be exactly the kind of social suasion Mill, with his remonstrating, reasoning and persuading, seems to be suggesting as the mechanism for moral growth. How to wed non-tyrannical

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pursuit and thought to be conscious and sustained. Where Mill and Arnold very much depart, however, is in their belief on whether individual autonomy achieves those ends. Mill believes they only can; Arnold responds there needs to be an increased emphasis on a form of positive liberty, as we shall see below.

38. Mill, *On Liberty and Other Writings*,41-42; Himmelfarb, 39.

39. Berlin, "Two Concepts," 199.

40. Himmelfarb, 39.

41. Mill, *On Liberty and Other Writings*, 13.

social interest in individual morality with individual autonomy is an enduring problem for Mill, especially for those delicate and "timid characters."[42]

Under Mill's construction, the liberty of one to judge, condemn or even just to pressure, in the interest of advancing a social morality, nonetheless threatens to infringe on the liberty of the subject to act according to his natural inclinations. For Mill, this is an unfortunate and destructive course of events, but ultimately appears to be irresolvable. Society must exert some kinds of regulating pressure on individual action, and other than saying society's touch must be light there is little one can do to protect the timid characters.[43] The difficulty also speaks to the central incompatibility of the liberal desire to destroy centers of power, pursue individual freedom, and maintain social organization. Because the social power, which in Mill's case is a type of social morality market, can never truly be broken, moments of real freedom, of complete self-sovereignty and possession, are elusive.

SOCIAL POWER, SOCIAL CONTROL

Mill's liberalism, understandably, invited significant rebuke. Some simply disputed Mill's claim that social pressures significantly limited individuality. Or if they did, they argued a circumspect view of Victorian England revealed more than ample variety, or at least much more than Mill admitted.[44]

More common and interesting are the conservative criticisms that specifically extol the regulating forces Mill opposed. To varying degrees, these thinkers found custom, tradition and social pressure indispensible social devices, without which the very fabric of the social structure might unravel.[45] These thinkers present a distinctly illiberal need for regulating devices of society. They need forces to hold man together, to keep society from spinning out of control. Rejecting Mill's advocacy of autonomy from social constraints as the essence of freedom, this line of thought most specifically worried how people, particularly

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42. Mill, showing how mankind has lost the fruits of genius whose contributions were stayed by the weakness of "timid characters" afraid to confront a disapproving public. Mill, *On Liberty and Other Writings*, 35.

43. Michael Walzer, *Politics and Passion: Toward a More Egalitarian Liberalism* (New Have: Conn.: Yale University Press, 2004), 19.

44. Himmelfarb, 34, 37.

45. See Edmund Burke, "Reflections on the Revolution in France," in *The Writings and Speeches of Edmund Burke: Vol. III, The French Revolution, 1790-1794*, ed. L.G. Mitchell, textual ed. William B. Todd (Oxford, UK: Oxford University Press, 1989).

the lower classes, might abuse their newfound power. Freed of social regulating forces, people would devolve to all variety of evils. Pandemonium and chaos would preempt any high-brow progress Mill promised.

Mathew Arnold, in the *Culture and Anarchy* chapter titled "Doing as One Likes," criticized the common notion of freedom as "an Englishman's right to do what he likes; his right to march where he likes, meet where he likes, enter where he likes, hoot as he likes, threaten as he likes, smash as he likes."[46] To Arnold, it was nothing more than "anarchy," and Mill's utilitarian justification notwithstanding, he was convinced it was an unthinking idolatry, with no larger justification behind it.[47] The worship of the machinery of freedom exhibited in an unrestricted individualism, Arnold sensed both needlessly low ambitions — he thought man was capable of far higher pleasures and achievements than mere liberty — and an extreme arrogance that everyone and anyone could, independent of society, discover life's sweetness and light.[48]

To match this anarchy and push people on to greater discoveries of beauty and truth (it is interesting that the end goal of both Arnold and Mill is so similar), Arnold appealed to what Mill rejected: a concept of collective society, which he calls *the State*, to help regulate every Englishman's individual freedom. For Arnold, the nation, as the collective repository of society's wisdom and culture, was "the power most representing the right reason of the nation, and most worth, therefore, of ruling,—of exercising, when circumstance require it, authority over us all."[49] There might be limits to that authority. Arnold, after all, was the product of a more liberal world than an absolutist like Locke or Hobbes, but there was a distinct role for both society and law to play in molding individual characters and wills.[50] It was an institutionalized role Mill absolutely detested.

Arnold's conception of freedom is not necessarily different from Mill's; they both understood freedom as the breakdown of regulating structures, of autonomy from them. The difference is a matter of

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46. Arnold, 85.

47. Ibid.

48. Stefan Collini, Introduction to *Arnold: Culture and Anarchy and Other Writings* by Matthew Arnold (Cambridge: Cambridge University Press, 1993), xix.

49. Arnold, 89.

50. Arnold, 83. ("*the State* – the nation in its collective and corporate character, and controlling individual wills in the name of an interest wider than that of individuals. We say, what is very true, that this notion is often made instrumental to tyranny.")

desirability. They maintained different attitudes toward the value of order. Mill, like all liberals, was open to possibility of chaos, of disorder and unpredictability. Arnold, by contrast, was unconvinced by the religious faith in beneficial outcomes.[51] Like most anti-liberals, he was unwilling to abandon the physical, identifiable controlling mechanisms of society, lest the entire thing begin to fall apart.

Likewise, James Fitzjames Stephen takes direct aim at Mill in *Liberty, Equality, Fraternity*. Stephen balked at the idea of divorcing action from its moral implications. More than just questioning Mills devotion to utilitarian principles, Stephen specifically claims goodness and happiness are diametrically opposed to liberty in most cases.[52] Like Arnold, Stephen is inclined to believe society and morality are maintained by fear, "fear of the law of the land…by fear of the disapprobation of their neighbors…by the fear of punishment in a future state of existence, which is the religious sanction."[53] Mill's theory, Stephen decries, attacks the notion of morality and God itself, reasoning "A God who punishes anyone at all, except for the purpose of protecting others, would, upon his [Mill's] principles, be a tyrant trampling on liberty."[54] For Stephen and so many others, these sources of authority and power are necessary and virtuous. As Stephen describes, "to obey a real superior, to submit to a real necessity and make the best of it in good part, is one of the most important of all virtues — a virtue absolutely essential to the attainment of anything great and lasting."[55] By destroying these obvious sources of obedience, Stephen accused Mill of undermining the progress, society and order.

Between Mill and his illiberal detractors, the dispute is less about the meaning of freedom as autonomy and more about whether it produces the progressive ends he promises. In this way, the argument is more about liberal chaos than it is about freedom. Arnold and Stephen prefer a world of benevolent, inspired subjugation to authority. But as Stephen suggests, that submission is not freedom; it is another

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51. James Fitzjames Stephen rightly calls this variety of liberal freedom a religion. "It is one of the commonest beliefs of the day that the human race collectively has before it splendid destinies of various kinds, and that the road to them is to be found in the removal of all restraints on human conduct, in the recognition of a substantial equality between human creatures, and in fraternity or general love. These doctrines are in very many cases held as a religious faith." Stephen says this to suggest the apostasy he finds in Mill and liberalism generally. The veracity of these claims not withstanding (Mill is no apostate), an honest appraisal requires any liberal to admit it is a religious faith in humanity and human capacity. Stephen, "Liberty, Equality, Fraternity" in *Conservatism*, 190.

52. See Gray, *Mill on Liberty: A Defense*.

53. Stephen, "Liberty, Equality, Fraternity" in *Conservatism*, 193.

54. Ibid, 206.

55. Ibid.

virtue entirely. The prime target of Stephen's rebuke is a rejection of the idea that people acting autonomously can create a better society. Only divine guidance or elite wisdom can do that.

FREEDOM — ARE YOU POSITIVE?

Arnold and Stephen, of course, are not alone in privileging other values over freedom. Others go even further in their rejection of freedom as autonomous action from sources of power and control. In fact, from the very birth of the idea, many philosophers have tried to redefine the concept as a kind of control.[56] Rousseau, Kant and Hegel are some of the most prominent in this party, moving from the proposition that freedom is a moral and political good or a moral and political right to the quite different proposition that person and actions are free only to the extent that they are morally good and their actions morally right."[57] Where Arnold and Stephen merely wish for more complete social government than Mill to affect a better society within more limited freedoms, in effect disagreeing on how much negative liberty is desirable, the advocates of positive freedom, as Berlin understands it, actually re-conceptualize freedom as the discovery and practice of virtue.

As Isaiah Berlin famously expounded in his "Two Concepts of Liberty," this tradition of freedom is totally apart from Mill's negative conception of liberty. Berlin's thorough and lucid description of an old dichotomy between positive and negative freedom sparked a furious debate about the existence and legitimacy of two "concepts" of freedom. Berlin identified two primary meanings of freedom: a negative sense, associated with Mill and the vast array of liberal institutions, which rested on the absence of restraint; and a positive, which emphasized the self-mastery and discovery.[58]

The negative liberty he describes is generally the most familiar to us, involving the "simply the area within which a man can act unobstructed by others…[or] not being interfered with by others."[59] Hannah Arendt describes the Bill of Rights specifically, and the U.S. Constitution generally, as a prime example of negative liberty. Even the right of representation and suffrage, "claim not a share in government

56. Orlando Patterson, *Freedom, Vol. 1: Freedom in the Making of Western Culture* (New York: Basic Books, 1991).

57. Richard Flathman, *The Philosophy and Politics of Freedom* (Chicago: University of Chicago Press, 1987), 2.

58. Isaiah Berlin, "Two Concepts of Liberty," 194.

59. Ibid.

but a safeguard against government."[60] It consists of all the things I may do, or perhaps more correctly, all the things someone else cannot keep me from doing. Mirroring Mill's understanding, Berlin's negative freedom is about possibilities; it "entails not simply the absence of frustration (which may be obtained by killing desires), but the absence of obstacles to possible choices and activities — absence of obstructions on roads along which a man can decide to walk."[61] The idea of variety, the presence of real choices or options, but not necessarily the exercise of these options is crucial to negative liberty. It is both the greatest amount of autonomy combined with the widest array of choices.

As one might imagine, Mill is often taken to be the quintessential advocate of negative liberty. *On Liberty*, after all, is about the "limits of the power which can be legitimately exercised by society over the individual."[62] Likewise in *The Subjugation of Women*, Mill writes how "the love of power and the love of liberty are in eternal antagonism."[63] Other thinkers, from Hobbes and Tocqueville to Milton Friedman, also defend negative liberty as *the* desirable form.[64] Benjamin Constant's exposition of the difference between ancient and modern liberties, likewise, was as much a glorification of the modern's more enlightened views on (negative) liberty as it was a call for a better inclusion of the ancient variety.[65]

As Berlin points out, negative liberty says almost about who rules the state, i.e. whether it is independent or democratic, how political power is created or affected, or even what people do with their freedom once they have it. Liberal institutions and democratic governments appear to be the most conducive to preserving negative liberties, but the ideas are clearly distinct.[66]

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60. Arendt, *On Revolution*, 143.

61. Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), xxxix.

62. Mill, *On Liberty and Other Writings*, 5.

63. Ibid, 214. See Baum, 187-188. As Baum indicates, there might very well be two concepts working in Mill's thought. The first is his very explicit conception of liberty, as enunciated in *On Liberty*, the other is an un-delineated concept of freedom. Mill's conception of freedom, according to Baum, contains far greater flavors of the positive sense. This distinction and conclusion will become important in the next chapter, for now it is sufficient to see that Mill's liberty is often very closely associated with the negative conception of liberty.

64. Eric Nelson, "Liberty: One Concept Too Many?" *Political Theory* 33, no. 1 (Feb. 2005), 59. See Thomas Hobbes, *Leviathan*, ed. C.B. MacPherson (New York: Penguin Books, 1985); Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve, ed. Thomas Bender (New York: McGraw-Hill, Inc., 1981); Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962).

65. Constant, 327; Nelson, 59.

It is this notion of governance that rests at the heart of positive freedom. It speaks to notions about what and who should be free. The positive liberty, according to Berlin, "derives from the wish on the part of the individual to be his own master," not simply to have none.[67] It is the "freedom to be the most one can be. Attaining this goal—often a group effort—entails both the discovery of one's higher self and the extension of its master over one's lower (deluded) self."[68] Like the ancient Greek conception of freedom and the sovereignty of the *polis*, positive freedom involves sovereignty and self-government of the individual, not just the absence of a foreign rule.

In some applications, positive freedom is distinctly personal and apolitical. The Stoics, for instance, advocate a form of positive freedom in encouraging self-control "by either adapting to the world or making oneself as independent of it."[69] In their philosophy, as epitomized by Epictetus's *The Handbook*, there is a sense that the world is what it is, independent of human desires, and man must adapt to it.[70] For the Stoics, positive freedom becomes about changing the person, molding him and his preferences to match what the world can offer. Freedom is achieved not by opening the realm of choices, but by shaping the person to make the available options desirable. Since the subject no longer wants something beyond the attainable, because he chooses what is available, he is free. This is often likened to the type of "character planning" of the Stoics and Buddhists, who endeavor to cultivate a spiritual harmony within the person by controlling the tempest of internal thoughts and desires.[71]

Thoreau also presents a very peculiar class of positive freedom, a freedom as self-direction which is both distinctly positive in conception, Marxist in foundation and bordering on anarchist. For Thoreau, as Brian Walker describes, "to be free means to have time for one's proper pursuits; time to figure out what

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66. Isaiah Berlin, "Two Concepts of Liberty," 202. See also Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*. (New York: W. W. Norton & Company, 2007), 5-7.

67. Isaiah Berlin, "Two Concepts of Liberty," 203.

68. Leslie Paul Thiele, "Heidegger on Freedom: Political not Metaphysical," *The American Political Science Review* 88, no. 2 (June, 1994), 279.

69. Christian Rostbøll, "Preerences and Paternalism on Freedom and Deliberative Democracy," *Political Theory* 33, no. 3 (June 2005), 375.

70. Ibid, 375.

71. Ibid, 374.

one wants to do and then go out and do it."[72] Finding the true self, the mark of positive liberty, takes time, reflection and introspection.

Ruth Lane goes further to suggest Thoreau is advocating an individual self-government where freedom is defined in the double entendre to "mind our own business."[73] In the first sense, like Walker's suggestion, we must be mindful of what we are doing, and what we truly want to do, in order to be free. He instructed individuals to discover and doggedly pursue the activities, desires and wants of the intrinsic self.[74] But also, Lane's construction indicates the best route to freedom is away from people, distractions and interdependence with others.[75]

The problem as Thoreau saw it is people too often celebrated the legal liberation from restraints without recognizing the social constraints, particularly in the form of obligation and necessity. In "Slavery in Massachusetts," Thoreau writes how "Now-a-days, men wear a fool's cap, and call it a liberty cap…there are some, who, if they were tied to a whipping-post, and could get but one hand free, would use it to ring the bells and fire the cannons, to celebrate *their* liberty."[76] For Thoreau, excessive attachments to the social institutions, the obligations of work and wealth, constrained the liberty of individuals to be the masters of their own lives.

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72. Brian Walker, "Thoreau' Alternative Economics: Work, Liberty, and Democratic Cultivation," *American Political Science Review* 92, no. 4 (Dec. 1998), 845.

73. Ruth Lane, "Standing 'Aloof' from the State: Thoreau on Self-government," *The Review of Politics* 67, no. 2 (Spring 2005), 286.

74. Ibid, 289. Lane also remarks, "More than most American democratic theorists, Thoreau was sharply aware of the disciplines exerted by anonymous social forces, forces lodged in even Thoreau's own proclivities to accede to conventions." Ibid, 291.

75. In a memorable passage from Berlin's "Two Concepts," he describes this tendency. "I have withdrawn into myself: there, and there alone, I am secure…This is the traditional self-emancipation of ascetics and quietists…men of various religions or of none, who have fled the world, and escaped the yoke of society or public opinion, by some process of deliberate self-transformation that enables them to care no longer for any of its values, to remain, isolated and independent, on its edges, no longer vulnerable to its weapons. All political isolationism, all economic autarky, every form of autonomy, has in it some element of this attitude." Berlin, "Two Concepts," 207. It should be obvious this is freedom, because it is control, the ultimate control and right to leave that every man possesses. It is his final veto against a world of enslaving powers. Freedom need not be dominance; there is equal freedom and control in this submission and surrender.

76. Henry Thoreau, "Slavery in Massachusetts," in *Civil Disobedience and Other Essays*, ed. Philip Smith (Mineola, N.Y.: Dover Publications, 1993), 22.

Thoreau was not alone in this belief. Max Pohlenz describes how the Greeks say both debt and trade as sources of unfreedom, because they create a dependence on forces outside the city-state.[77] According to Stephen Ellenburg, Rousseau also railed against "those social arrangements which also render men dependent upon the particular wills of one another… economic specialization, an economic division of labor…commerce, economic competition, and the use of money as a medium of exchange and for collecting taxes."[78] Society and the demands of social living bred a dependency and obligation that was the antithesis of freedom. It encouraged debt and trade and the division of labor, all of which undermined the ability of a man to be his own person and accountable only to himself. Not surprisingly, Ralph Waldon Emerson also shared the same perspective and was equally quick to indict society for the tendency to exacerbate mutual dependence. In his "Self-Reliance," Emerson writes, "society everywhere is in conspiracy against the manhood of every one of its members…Society is a joint-stock company, in which the members agree, for the better securing of his bread to each shareholder, to surrender the liberty and culture of the eater. The virtue in most respects is conformity. Self-reliance is its aversion…Whoso would be a man must be a nonconformist."[79] All dependence is a source of unfreedom because it diminishes the power of individual autonomy.

All these theories seem to solve Mill's problem of social power by simply disbanding or dramatically recasting 'the social.' Thoreau's slightly less radical solution was to keep one's estate as small as possible, so as to keep the necessity for work and other drudgeries as light as possible. As he explains in "Life without Principle," this enables him to both enjoy the work he does and to keep it at the bare minimum levels, maximizing his time for principled deliberation. He writes,

> Perhaps I am more than usually jealous with respect to my freedom. I feel that my connection with and obligation to society are still very

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77. Max Pohlenz, *Freedom in Greek Life and Thought: The History of an Ideal* (New York: The Humanities Press, 1966), translated by Carl Lofmark, 6, 30. The way interdependence breeds unfreedom is also felt very strongly today in international relations. The world of globalization has made us all aware of how our mutual dependence restricts our autonomy. See Robert Keohane and Joseph Nye, *Power and Interdependence, Third Edition* (New York: Longman, 2001).

78. Stephen Ellenburg, "Rousseau and Kant: principle of political right," in *Rousseau after 200 Years: Proceedings of the Cambridge Bicentennial Colloquium*, ed. R. A. Leigh (Cambridge, London: Cambridge University Press, 1978), 9.

79. Quoted in Willard Gaylin and Bruce Jennings, *The Perversion of Autonomy: Coercion and Constraints in a Liberal Society, Revised and Expanded* (Washington, D.C.: Georgetown University Press, 2003), 35. From Ralph Waldo Emerson, *Essays and Lectures* (New York: Library of America, 1983), 261.

> slight and transient. Those slight labors which afford me a livelihood, and by which it is allowed that I am to some extent serviceable to my contemporaries, are as yet commonly a pleasure to me, and I am not often reminded that they are a necessity. So far I am successful. But I foresee, that, if my wants should be much increased, the labor required to supply them would become a drudgery.[80]

Adopting a simple life, not only frees one from burdensome work, but as Thoreau suggests makes work less of a burden. At this level, Thoreau's work is a discussion on discovering the freedom as self-direction in a world that necessitates work, labor and struggle.[81] As Walker points out, Thoreau is special among the philosophers of freedom because he did not enjoy particular wealth or economic security. Instead, or perhaps because, he advocated a simplification of life, a rejection of as much "stuff" of the world as one could muster. Like the Greeks before the gods generally and Stoics specifically, Thoreau advocates changing the scope and desires of the self to meet the world's limitations. By rejecting as many worldly goods as possible, a man could reduce the requirements upon him and devote more exclusive attention to the pursuits he truly enjoyed. In other words, he could avoid obligation and requirement, which are imposed from outside and negate freedom, in exchange for greater self-direction, whereby an authentic self-determined pursuits.

Since Berlin's first lecture on the division between positive and negative freedom, positive freedom in the sense of self-discovery has undergone a bit of revision. As Berlin describes in the first version of positive liberty, the individual searches for his more perfect self, which is achieved by enslaving the "empirical bundle of desires and passions" making up the natural self.[82] These varieties of positive theories are about the taming of human passion and vice and extend an old dichotomy between the mind and body envisioned by Aristotle. In the first book of *Politics*, Aristotle argues "the distance between master and slave is likened to that between soul and body, and man and beast."[83] Those with capacities

80. Thoreau, 78.

81. Walker, 845.

82. Isaiah Berlin, "Two Concepts of Liberty, " 206.

83. Aristotle, *Politics*, translated by Benjamin Jowett (Web Atomics, 2009), available at http://classics.mit.edu/Aristotle/politics.html (accessed June 1, 2011).

limited to the simply physical are by definition forces of slavery, while human rationality, the quintessential human trait, is true mastery.

The original positive freedom entailed releasing the true human from the tyranny of his passions and bodily needs. A number of critics, led by Gerald C. MacCallum, have fairly successfully pointed out this is just negative liberty by another name. Positive freedom that sought to free the mind from the constraints of the body is little more than the pursuit of freedom from *internal* restrictions.[84] Under this reading, all the typical champions of positive liberty, from the Stoics to Plato and Kant, "turn out on close inspection to disagree with Hobbes and Constant, not about the meaning of liberty but about what counts as a constraint."[85] Quentin Skinner, likewise, suggests Berlin's observation relies heavily on the observation that "the obstacles to your capacity to act freely may be internal rather than external, and that you will need to free yourself from these psychological constraints if you are to act autonomously."[86] Positive and negative freedoms appear to be more about two sites of freedom rather than two different conceptions.

Responding to this view, defenders of positive liberty recast it as self-realization. Like Thoreau, this type of positive liberty emphasizes the process of discovering the authentic self. At that discovery, one may change the nature of the internal constraints to achieve higher and higher levels of transcendent perfection. Skinner, for his parts, adopts this narrower understanding of positive liberty. "Freedom," he writes, "is thus equated not with self-mastery but rather with self-realization, and above all with self-

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84. Gerald MacCallum, Jr., "Negative and Positive Freedom," *The Philosophical Review* 76, no. 3 (July, 1967), 312; Eric Nelson, "Liberty: One Concept Too Many?" *Political Theory* 33, no. 1 (Feb. 2005), 59.

85. Nelson, 59. This prescient critique notwithstanding, Berlin is unconvinced it matters. The location of restraints within, he contents, still pose a radically different conception of freedom, one with important political implications. "The Stoic sense of freedom, however sublime, must be distinguished from the freedom or liberty which the oppressor, or the oppressive institutionalized practice, curtails or destroys. For once I am happy to acknowledge the insight of Rousseau: to know one's chains for what they are is better than to deck them with flowers….There is a clear sense [among Stoics and other positive freedom adherents] in which to teach a man that, if he cannot get what he wants, he must learn to want only what he can get, may contribute to his happiness or his security; but it will not increase his civil or political freedom." Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), xxxix.

86. Quoted Nelson, 59. From Quentin Skinner, "A Third Concept of Liberty," (The Isaiah Berlin Lecture), *Proceedings of the British Academy* 117 (2001): 237-68.

perfection, with the idea (as Berlin expresses it) of myself at its best."[87] Likewise, Gary Reed discusses, "self-mastery is self-realization, making actual a self that is latent or potential only, but represented by an ideal which is imagined as the ruling part, the part of oneself that inspires one's proper actions."[88] The emphasis is no longer internal constraints as such, but once again, the goal just beyond them, an end state that has moral and ethical, even spiritual content. According to Eric Nelson, this view puts neo-Hegelians T.H. Green and Bernard Bosanquet in position as the chief defenders of positive liberty.

FORCED TO BE FREE

The problem for many is less about the specific form of positive liberty. Instead, when the pursuit of self perfection leaves the asocial tendencies of Thoreau and takes on a distinctly political flavor, it seems to operate as a tyranny. In political positive liberty, the individual seeking perfection looks outward for status, confirmation and enforcement. Pursing the process of the perfect self, the individual often seeks to lose himself to the "social 'whole' of which the individual is an element or aspect: a tribe, a race, a Church, a State, the great society of the living and the dead and the yet unborn."[89] The group or social whole crafts an understanding of the perfect man, a philosophical ideal of perfection. The social whole then enforces the observance of those laws on individuals in order to affect their emancipation to 'true freedom.'[90] Coercion, then, the social and legal restrictions, becomes a means to attain and maintain liberation of the self; to be "shamed, penalized or even physically harmed—by other members of the group in an effort to rid one of that [impure] obstacle to the liberty of self-mastery is then to be helped to be free."[91] The law, then, becomes not only a means of preserving peace, but of pursuing freedom, not just for one, but for all.

The adherents of positive freedom usually emphasize the degree to which law and order are necessary for the discovery of true freedom. Goethe, for example, in his 1802 poem "Nature and Art," remarks, "Only in self-restriction does the master reveal himself/And only law can give us liberty."[92] As

87. Quoted in Nelson, 60. From Quentin Skinner, "A Third Concept of Liberty," (The Isaiah Berlin Lecture), *Proceedings of the British Academy* 117 (2001): 237-68.

88. Gary Reed, "Berlin and the Division of Liberty," *Political Theory* 8, no. 3 (August, 1980), 367.

89. Isaiah Berlin, "Two Concepts of Liberty, " 204.

90. Reed, 367.

91. Ibid, 367.

mentioned above, Mathew Arnold likewise makes an appeal to authority as something that brings greater levels of freedom. Contending that culture brings us to light, which in turn "shows us that there is nothing so very blessed in merely doing as one likes…that the really blessed thing is to like what right reason ordains, and to follow her authority."[93] John Christman contends the defense of positive freedom comes from an understanding that the ability to act is devoid of any discussion on what, where, how and why acts should occur. The question of freedom becomes, then, a concern "of the *quality of agency* and not merely the opportunity to act."[94] Without that discussion, without an understanding of a higher order positive freedom, citizens lose "the conditions of authentic self-government that make freedom meaningful as an ideal."[95] In a pure negative conception, the gain the means to be free by lose the method.

Christman characterizes the fear of positive liberty as concern over "a treacherous tilt toward the justification of centralized power under the guise of moral superiority."[96] Berlin, in particular, is often read as maintaining insurmountable doubts about whether positive freedom can be anything but tyrannical. He seems to suggest this "tilt" appeals to some innate predisposition or desire of the human psyche. Despite all the wranglings on individual freedom, we still " recognize that it is possible, and at times justifiable, to coerce men in the name of some goal (let us say, justice or public health) which they would, if they were more enlightened, themselves pursue, but do not, because they are blind or ignorant or corrupt."[97] Because of mutual sympathy, compassion, even an entirely laudable desire to nurture and care for one's fellow man, a desire born in rough prehistoric tribes where society and mutual aide not only separated man from the rest of the animal kingdom but was essential for survival, an imperative to help that is now coded in our DNA, because of all these things, the temptation to help others by coercing them to an action is just too great. It

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92. Goethe, "Nature and Art," available at http://www.independent.co.uk/arts-entertainment/wednesday-poem-nature-and-art-by-j-w-von-goethe-translated-by-david-luke-1114712.html (accessed June 1, 2011). Pohlenz, 165.

93. Arnold, 89. See Plato, *The Republic*, 303-304. See Pohlenz, 45.

94. John Christman, "Saving Positive Freedom," *Political Theory* 33, no. 1 (Feb. 2005), 79.

95. Ibid, 80.

96. Ibid, 81.

97. Isaiah Berlin, "Two Concepts of Liberty," 204.

becomes so "easy for me to conceive of myself as coercing others for their own sake, in their, not my, interest."[98] So, the best intentions ultimately affect a tyranny.

But then, it would seem, we have come full circle. Mill guided us away from the positive freedom of Victorian England. He asserted we each must be able to determine for ourselves the best mode of life. It was not for society to determine a morality and set it upon us. Yet even Mill had no concern for positive liberty. In *A System of Logic*, he argues having "power over our own character" is an essential part of freedom.[99] We can also see them in *On Liberty* in his sideways acceptance of paternalism, so long as the objective is the cultivation of individuality.[100] His desire, it would appear, is a perfect harmony, a pacification of the human tumult. As he points out in *On Liberty*, those potentially objectionable "desires and impulses are as much a part of a perfect human being as beliefs and restraints: and strong impulses are only perilous when not properly balanced."[101] Even for Mill, balanced control and harmony are central motivations.

Even looking back to Arnold, there seems to be a sense, despite his emphasis against do as one likes, that he too desires a more complete union between doing and doing rightly. His understanding of Hebraism and Hellenism, after all, parallels the distinction between positive and negative liberty.[102] Mills negative liberty is more akin to Hellenism. It is about agility and escape, fluidity and dynamics. As Arnold writes, "Hellenism attacks ignorance, ugliness, and rigidity of mind."[103] By contrast, "Hebraism…fixes above all on the idea of duty, of moral rules, of the subjugation of the self: its chief concern is to act rightly."[104] Nearly the same concept recognized in Berlin's positive liberty.

These two elements, Hellenism and Hebraism, quickly capture the trends found in this chapter: the tension between freedom as individual autonomy, self-government and self-realization and the social

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98. Ibid.

99. John Stuart Mill, *A System of Logic*,

100. Mill, *On Liberty and Other Writings*, 63. ("Even despotism does not produce its worst effects, so long as 'individuality' exists under it; and whatever crushes individuality is despotism, by whatever name it may be called, and whether it professes to be enforcing the will of God or the injunctions of men.")

101. Ibid, 60

102. Collini, Introduction to *Arnold: Culture and Anarchy and Other Writings*, xix.

103. Ibid, xx.

104. Ibid.

constraints found within both Mill and positive theorists. Even for a liberal like Mill, there is a dual, competing desire, between the chaos of dynamism and autonomy and the regulating control of social institutions and norms. It is to the explication of this tension, to the examination of freedom as control, that the next section turns.

PARTT TWO: FREEDOM AND CONTROL

Chapter III

Freedom & Liberty

Freedom and liberty are not the same. True most people consciously treat them as twins. Hobbes persistently talk about "liberty, or freedom."[1] In his "Two Concepts," Berlin notes he considers the two as interchangeable; as does Quentin Skinner in *Liberty before Liberalism*. It is bad enough that in ordinary use, the two words operate as nearly complete synonyms despite some etymological nuances. In the precise semantic exercise of theory, the haphazard use of liberty and freedom is so cavalier, scholars seemingly feel the space is so minute or inconsequential its best dispensed with. But it is a mistake to squander the happy accident of linguistics endowing English with the free choice.[2] Considering some cultures do not even have a native word resembling either liberty or freedom, the lack of distinction is even more tragic. We squander our treasure. Use your liberty and freedom completely and correctly, a mother might admonish, there are unfree around the world who would love to have either.

Only a handful of scholars seriously distinguish liberty and freedom. Hannah Arendt in *On Revolution* is certainly the heavy weight of the group.[3] Hanna Pitkin furthers Arendt's own distinctions; and Bruce Baum follows a few others to suggest J.S. Mill has both an explicit principle of liberty within an implicit freedom.[4]

For all these individuals, the key difference between liberty and freedom is a matter of power. Liberty is rightfully the absence or destruction of power over an agent. It is the process of liberation,

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1. Thomas Hobbes, *Leviathan*, ed. C.B. MacPherson (New York: Penguin Books, 1985), 266;

2. Hanna Fenichel Pitkin, "Are Freedom and Liberty Twins?' *Political Theory* 16, no. 4 (Nov. 1988), 523. Pitkin observers the Germans have only *freiheit*, and the French only *liberté.* Japan has two words, but their meanings are sufficiently different from the English to obviate comparison.

3. Hannah Arendt, *On Revolution* (New York: Penguin Books, 2006), 19-20. In Pitkin, "Are Freedom and Liberty Twins?" 526, Pitkin indicates Arendt only ever distinguishes freedom from liberties and liberation, not from liberty itself. As one may see in the Arendt quote on the next page, she was most concerned with liberation as opposed to revolution. But Arendt's conception of liberty is so specific, denoting the exercise of self-government, that it is hard to believe she would not have, push come to shove, differentiated the two terms.

4. Pitkin, "Are Freedom and Liberty Twins?" 523; Bruce Baum, "J.S. Mill on Freedom and Power," *Polity* 31, no. 2 (Winter 1998), 191. See also G.W. Smith, "J.S. Mill on Freedom," in *Conceptions of Liberty in Political Philosophy*, ed. Zbigniew Pelczynski and John Gray (New York: St. Martin's Press, 1984). Others, and here I am thinking specifically of Quentin Skinner, channel the differences, but either do not recognize them or do not consider them exceptionally important. See Quentin Skinner, *Liberty before Liberalism* (Cambridge, UK: Cambridge University Press, 1998).

similar to a slave's manumission. Freedom is the more difficult constitution and exercise of power from within the free agent. It is possession and control. It is the full emancipation of man's energy and potential. Manumission is not the same as emancipation.

Liberty is negative. It is the absence, the "'holding off' an intruder, trespasser, or despot."[5] Rousseau grasped at a similar idea of *la liberté*, which "does not consist as much in acting according to one's own will as in not being subjected to the will of anyone else."[6] Iris Young, likewise, construed liberty as the escape "from domination...in the sense that…[no other] is in a position to coerce or threaten others into accepting certain proposals or outcomes."[7] Mutually conditions of liberty are precisely what the Greeks sought with the emphasis on isonomy. It was the conditions of no-rule that gave men the opportunity to construct public spaces, equally, where they might perform their freedom of self-government.

For the medieval lord, his liberty is the literal space, the territory, where he is outside the control of the sovereign. His freedom, is the exercise of his power to both hold off encroachment on that liberty and to effectively govern it. His freedom is, quite literally, his sovereignty.

Perhaps the best metaphor for explaining liberty is the Roman *patria potestas*. As described in Chapter I, the *patria potestas* was the complete power of the father over those within his family: the slaves, his wife, his minor and adult children, even his children's children. This power was plenipotentiary and unjusticable. Even the manumitted slave was not completely free because he remained in his former master's power.[8] It was an inescapable power. Every freedom or liberty one enjoyed was at the discretion, or liable to the veto, of the *patria potestas.*

For an individual or a society to live under another's power is to be a slave. As Quentin Skinner describes, what he calls the Neo-Roman, or republican, writers were painfully aware of this. Livy, among others, connects the idea of living in another's power (*in potestate*) as the antithesis of liberty. As Skinner describes, Livy used the common terminology to describe "communities without liberty as living *in potestate*,

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5. Gary Reed, "Berlin and the Division of Liberty," *Political Theory* 8, no. 3 (August, 1980), 370.

6. Quoted in Jean-Jacques Rousseau, *One the Social Contract, with Geneva Manuscript and Political Economy*, trans. Judith Masters, ed. Roger D. Master, (Boston: Bedford/St. Martin's, 1978), 134. Footnote 8.

7. Iris Young, *Inclusion and Democracy* (Oxford, UK: Oxford University Press, 2002) 23.

8. Bruce Frier and Thomas McGinn, eds., *A Casebook on Roman Family Law* (Oxford, UK: Oxford University Press, 2004), v-vii.

within the power or under the dominion of another nation or state."[9] To live in another's power is to make a farce of your own. The Greeks, with their emphasis on independence from foreign domination, likewise understood this idea. So, did Arendt, in differentiating the liberation from the constitution of power.[10]

To find liberty is to destroy or leave the power of another. It is to become, as in the *ius personarum*, *sui iuris*, in one's own jurisdiction, or more properly within the jurisdiction of the public law.[11] Skinner explains that even when the slave is able to turn the tables on his master, as was common in Roman comedy, he was never truly free or in control, because he always remained under the power of his master, "subject or liable to death or violence at any time."[12] Skinner describes this condition by recalling the etymological origin of 'obnoxious,' which in the Roman law context described someone "perpetually subject or liable to harm or punishment."[13] To be obnoxious is to be, as Thoreau would have said, dependent on the unbalanced relations of control with another, within another's power.

Liberty is essentially not being *obnoxious*. It is about escaping the *potestas* of a higher authority. The process of destroying or leaving the power of another, liberation, is only one step in the process of freedom. We have liberty, but no real *libertas*, as Livy described the ability "to stand upright by means of one's own strength without depending on the will of anyone else."[14] We in liberty are not dependent on a higher will, but do we have any strength? Liberty, in this sense, denotes none of the pervasive self-possession found in the concept of freedom. Arendt forcefully explains, "It may be a truism…that liberation and freedom are not the same; that liberation may be the condition of freedom but by no means leads automatically to it; that the notion of liberty implied in liberation can only be negative, and hence, that even the intention of liberating is not identical with the desire for freedom."[15] She remarks the coincidence of the two is so temporally proximate it is easy to lose the distinction, but that it is there

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9. Quentin Skinner, *Liberty before Liberalism*, 45-46.

10. Hanna Ardent, *On Revolution*, 19-20.

11. Roman law of persons. See Chapter I. Skinner, *Liberty before Liberalism*, 41.

12. Skinner, *Liberty before Liberalism*, 40-41.

13. Skinner, *Liberty before Liberalism*, 42.

14. Quoted in Quentin Skinner, *Liberty before Liberalism* (Cambridge, UK: Cambridge University Press, 1998), 46.

15. Hanna Ardent, *On Revolution*, 19-20.

nevertheless.[16] Liberation is the destruction of *potestas*, the power of one agent over another. Freedom, however, is more than just the absence of *potestas*; it is the creation and exercise of an internal self-power.

ANOMIA* AND *AUTONOMIA

Liberation can just as easily lead to conditions of *anomia* as *autonomia*.[17] Familiar enough, the root of both *anomia* and *autonomia* refers to the Greek *nomos*, which conveys conditions of "rule, governance, or law."[18] The *a-* prefix in *anomia* conveys a negation or absence, so *anomia* is the absence of every kind of rule; *auto-*, naturally enough, refers to the self, so that *autonomia*, associated with autonomy, quite literally means "the state of being self-governed or self-sovereign."[19] In both conditions, there is no power over the actor, no *dominus potestas*, we might say.

This is important because when an external figure controls or commands, we cannot rightly speak of any kind of liberty or freedom. In *Two Tracts on Civil Liberty*, Richard Price sums up this sentiment, saying a country "subject to the legislature of another country in which it has no voice, and over which it has no control, cannot be said to be governed by its own will. Such a country, therefore, is in a state of slavery."[20] The same is true for the slave subject to his master's power. But once liberated, we do not necessarily know anything about the new state of affairs, whether the condition is *anomia* or *autonomia*.

Anomia is the absence of government. It is, in some senses, the unconstrained, unregulated liberty conservative-inclined thinkers fear, Arnold's absolute abandon of "doing as one likes."[21] Like the failed state, conditions of *anomia* are absolutely anarchical. There is no order, no command. There is no authority, no government either locally or internationally. A failed state is in conditions of *anomia*. It is proper to say that it is a free state, because no higher authority or colonial power rules over it, but neither does it rule itself. It is in conditions of pure anarchy.

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16. Hanna Ardent, *On Revolution*, 132.

17. Willard Gaylin and Bruce Jennings, *The Perversion of Autonomy: Coercion and Constraints in a Liberal Society, Revised and Expanded* (Washington, D.C.: Georgetown University Press, 2003), 35.

18. Ibid, 28.

19. Ibid.

20. Quoted in Skinner, *Liberty before Liberalism*, 50. From Richard Price, *Two Tracts on Civil Liberty* (1778).

21. Mathew Arnold, *Culture and Anarchy*, ed. Stefan Collini (Cambridge: Cambridge University Press, 1993), 81.

Autonomia is sovereignty, both the independence from *potestas* and the exercise of internal power. Ancient cities and empires were autonomous "when they made their own laws and controlled their own affairs, as opposed to being controlled by some other city or empire."[22] When we are both liberated and possess *autonomia*, we are free.

LIBERTY AGAINST POWER

Liberation can lead either to *anomia* or *autonomia*. Another way of putting this is liberty and power are antithetically opposed, but not opposites. To have no liberty is literally to be possessed by another. To be free is to be possessed by yourself. But the first condition by no means necessitates the other.

The history of Western civilization is principally the history of liberty, not freedom. The great political struggles have been about busting concentrations of power as a means of dispersing the *potestas* above.[23] In the process of that struggle, power has become the demon; it has become the object of scorn and derision. We have become inclined to hate all power, to see it as the opposite of freedom, even when nothing could be further from the truth. Working the anti-power fetish, we have destroyed the very means by which we might gain control and become free.

The problem is the anti-power struggle is deeply engrained in our history. As mentioned at the onset of the first chapter, it was a conflict of power between the Greeks and invading Persians which probably set off exploration of the freedom idea in the first place.[24] The imminent threat of a *foreign power* catalyzed the idea of freedom. The landed barons of the Middle Ages sought their liberties from the power of the higher kings. The women's liberation movement, in many ways, was about the destruction of the last vestiges of social *patria potestas*, which followed a far older, similar struggle between fathers and sons.

The United States was also born in the struggle against the foreign power. An awareness and struggle that by the 19th century it had become a paranoia. "Good republicans feared, 'power,' liberty's tyrannical opposite," Harry Watson explains, because "power was the threat of control by others. Power was a terrible

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22. Gaylin and Jennings, 28.

23. Stefan Collini, Introduction in *On Liberty and Other Writings* by John Stuart Mill (Cambridge, UK: Cambridge University Press, 2004), 5.

24. Max Pohlenz, *Freedom in Greek Life and Thought: The History of an Ideal* (New York: The Humanities Press, 1966), translated by Carl Lofmark, ix.

attribute of governments and private authorities that constantly sought to restrict what it did not control."[25] Like the ancients, the presence of both master's and slaves only made the concept and appeal of freedom sharper. Unfortunately, however, these initial struggles underestimated the difficulty of establishing freedom as something beyond merely the absence of external *potestas* or *dominus.* These liberty-fighters, largely unacquainted with the actualities of undominated life, thought freedom was automatic in the absence of external control. They understood the struggle of liberty, but not the fight for freedom.

Americans of this period could feel the blessings of liberty and pull of freedom because they were just beginning to feel the absence of restraint on the one hand, and the promise of personal power on the other. Again Harry Watson argues, "At a practical level, such a man could identify liberty as the independence he enjoyed as the owner of a farm or ship. Power, by contrast, was the total authority that a master could exercise over his dependents, whether they were slaves, servants, women, or children."[26] The destruction of central power in the 19th century provided a wealth of both liberty and freedom for the lucky few at the top of the social hierarchy.

Certainly, the process of liberation had to come first for a greater freedom to ascend. Freedom as self-possession and sovereignty is inconceivable in a world marked by domination. They had yet to learn the lesson, as many continue to miss, that even though "coercion is usually counted among the most important obstacles to freedom [and even though] liberty has even been defined as the absence of coercion" does not mean that freedom itself is *merely* the "absence of coercion."[27] Describing the relation between liberty and power in Jacksonian America, Harry Watson speaks about both the tendency for early-American republicans to resist power as antithetical to liberty, while at the same time describing how the great democratic reforms of the early 19th century consciously operated to expand the level of popular control. As is typical, he unconsciously separates the terms freedom, power and control, without questioning how they might be related, let alone synonymous.[28]

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25. Harry Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 44.

26. Ibid, 46.

27. David Hoekema, *Rights and Wrongs: Coercion, Punishment and the State* (Cranbury, NJ: Associated University Presses, 1986), 63.

As the vanguards of liberty gained greater and greater levels of success, deconstructing ever larger sources of *potestas*, many chafed at continued frustrations to the realization of their freedom. They saw concentrations of power falling by the way side, but still did not feel the control and power they sensed freedom promised. Surely, the problem must be continued, hidden sources of *potestas* continuing to practice upon them. They succumbed to a ravenous inquisition against all possible sources of *dominus*. With each new step, surely the realization of freedom was just around the corner.

Eventually, they realized power was not the only source of *potestas*. Force, law, authority – they all act to give the possessor control over others. The first struggles were against specific powers, but later extended to sources of authority as well. Authority, the influence without power, was a particularly promising target.[29] Authority is the exercise of *a priori* right and commands assent not because it is power or because it is reasonable, but because it is.[30] Authority, like power, still places men into hierarchical relations and so just another form of *potestas*. And it is the hierarchy itself which denotes *potestas* and limits liberty.

The liberty theocracy evolves into an orthodox zealotry against power and authority of every kind. The result, described by Gertrude Himmelfarb is "the debasement of the idea of authority…[which] is reduced to nothing more than the exercise of power or force."[31] Any number of commentators on liberty political left and right fret over liberty's tendency to "become hyperexteneded into a kind of libertarian liberalism that sees power, and nothing but power, everywhere, and that casts the same acids of suspicion and mistrust on the family and civil associations that political liberals have traditionally reserved for the government."[32] In an extreme, this tendency is seen in the philosophy of those like Thoreau, whose love of nature is rooted in "his recognition that in the woods and the fields there is no authority structure to set one man over another."[33] Plato

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28. Watson, 50.

29. For example, the church is generally considered the quintessential example of authority in practice. The church's dictates, it words have force and meaning, not because it possessed any particular temporal power -- the papal armies were never particularly strong compared with the great powers' – but because the people vested in the church authority. It has authority because it has it.

30. Hannah Arendt, "What is Authority?" in *Between Past and Future: Eight Exercises in Political Thought* (New York: The Viking Press, 1968), 92-93.

31. Gertrude Himmelfarb, Editor's Introduction in *John Stuart Mill: On Liberty* by John Stuart Mill (London: Penguin Books, 1974), 8.

32. Gaylin and Jennings, 6.

recognized how citizens of the democracy, infatuated with their isonomy, “become so sensitive that they resent the slightest application of control as intolerable tyranny, and in their resolve to have no master they end by disregarding even the law, written or unwritten.”[34] Liberty’s begins sights on the power above is clearly not enough because sheer liberty cannot guarantee the freedom of control. So, the search for freedom expands into the destruction of authority and every other force acting as an external *potestas*.

So where liberty and liberalism operate to reduce individual power and authority of and over individuals, freedom demands individuals retain functional power. The command of freedom is to control, but liberalism’s emphasis on liberty excoriates sources of power, authority and distinction that make meaningful, palpable control ineffective. Within the rabid excesses of liberty, one finds the dissolution of the very mechanisms which make freedom possible and real.

POWER AND CONTROL

The threat of power is the threat of control. But, it is important to differentiate between power. Power is potential; control is application. The distinction is common in international relations literature, where power is often operationalized as “control over outcomes.” As Robert Keohane and Josephy Nye write in the classic, *Power and Interdependence*, “we can look at the initial power resources that give an actor a potential ability; or we can look at that actor’s actual influence [that is control] over patterns of outcomes.”[35] For the more ethereal discussions of liberty and freedom, the difference is more important. It is not necessary that someone practice control, or any kind of *dominus*, over you for your liberty to be incomplete. You merely need to be under the potential of control or *dominus*, the *potestas* over you.

The benevolent master’s slave remains a slave because both external power and external control pose real limits. It is easy enough to understand how outside control is a threat. When one is controlled he is compelled to act, forced physically. The threat of power is a bit deeper. We see this in the particularly insidious unfreedom of self-censorship. When one is dependent on another, it is far more difficult to practice the full expression of the self, for fear of reprisal, the exploitation of the power of

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33. Ruth Lane, “Standing ‘Aloof’ from the State: Thoreau on Self-government,” *The Review of Politics* 67, no. 2 (Spring 2005), 285.

34. Plato, *The Republic of Plato*, 289.

35. Robert Keohane and Joseph Nye, *Power and Interdependence, Third Edition* (New York: Longman, 2001), 196.

dependency. To avoid this control, as Mill noted among those of weak constitution, people engage in a self-restraint called self-censorship.

Failing to understand freedom as one's own self-power can lead an individual to miss the artificial character of his supposed freedom. Hobbes, for instance, was convinced freedom amounted to little but doing. In particular, Hobbesian freedom was nothing but the practice of doing, and like the ancient Greek and Roman conceptions, was principally the ability to act within the law's silent space and limited only by the restrictions of one's faculties. This method of understanding freedom led Hobbes to suggest both the citizens of the republic of Lucca and the subjects of the sultan of Constantinople shared comparable levels of freedom. Both, he said, acted within comparably large domains of space, that is, the law was sufficiently silent in both communities to permit an extended range of action.[36]

The problem is this construction denies the source of control of the freedom. Inhabitants of both Lucca and the Ottoman Empire might enjoy the same liberty, the people of Lucca, because they govern themselves and exercise control over the law are certainly more free. The object of the Ottoman sultan, however, does not exercise anything like control over the law, and are subject not only to changes in their liberty in the future, but to changes which are unannounced or ex post facto. The difference is in the reliance on the person of the sultan for your liberty, while maintaining no control, no security, yourself.

As Harrington responds to Hobbes, "even the greatest bashaw in Constantinople is merely a tenant of his head, liable to lose it as soon as he speaks or acts in such a way to cause the sultan offense. The very fact, in other words, that the law and the will of the sultan are one" limits one's freedom.[37] The critique parallels Thoreau's own understanding of freedom as self-sufficiency. Both arguments assert that freedom is something internal, that it cannot depend on others and it cannot be at the whim of others.

The challenge for a number of prominent theorists has been the method of resolving this conflict. How may men be free in society and yet dependable on no one for his freedom? The solution a great many,

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36. Hobbes, 266; Hobbes's suspicion also seems to come from his skepticism about claims to personal liberty in general. "It is an easy thing," he writes, "for men to be deceived by the specious name of liberty…mistake that for their private inheritance, and birthright, which is the right of the public only" (267). Only a society may be free in the sense of sovereignty employed by the Greeks and Romans; Skinner, *Liberty before Liberalism*, 85. (The people of Lucca "have no reason to believe that, as ordinary citizens, they have any more liberty than they would have had under the sultan in Constantinople. For they fail to realize that what matters for individual liberty is not the source of the law but its extent, and thus that 'whether a Common-wealth be Monarchical, or Popular, the Freedome is still the same.'")

37. Skinner, *Liberty before Liberalism*, 85.

such as Harrington and Jean-Jacques Rousseau, has been a form of republican democracy. Since one's freedom cannot exist based on the will of a king, despot or tyrant, only the people, the freemen in corporate, can make a truly free law. Otherwise, they depend on the will of the tyrant for their rights. They have no liberty or freedom. The neo-Romans argued that it "it is only possible to be free in a free state," because otherwise one was always under another's power and also dependent on the good will of that power for one's freedom.[38] In essence, the argument goes, a people can only be free in a society marked by the absence of a single *potestas*.

Skinner describes a style of thought which demands people be the maker of their own social order. It is not enough to have liberties, one must also possess the social power. "As [Marchamont] Medham affirms," Skinner describes, "if the people are to have 'any real liberty,' they must be 'possessed of the power' of 'enacting and repealing laws' and 'duly qualified with the supreme authority.'"[39] Skinner continues, "Milton agrees that, if we are to count as a free people, we must submit only to 'such Laws as our selves shall choose.'"[40] The neo-Romans stressed the fact that one need not actually experience the control of another, feel the pressure of coercion, to find oneself in a state of unfreedom. Merely falling "into a condition of political subjection or dependence, there by leaving yourself open to the danger of being forcibly or coercively deprived" of your freedom.[41] Their target was principally the energy and power of the state, which they enthusiastically sought to constrain under principles of the rule of law, legal codification, and due process. Their argument was that to live in a society without these ironclad protections was already to live in an unfree state. As Quentin Skinner explains, "your rulers may choose not to exercise these powers, or may exercise them only with the tenderest regard for you individual liberties. So you may in practice continue to enjoy the full range of your civil rights. The very fact, however, that your rulers possess such arbitrary powers means that the continued enjoyment of your civil liberty remains at all times dependent of their goodwill."[42] You, in essence, have sacrificed true self-government by existing under the potential jurisdiction of an arbitrary will.

38. Ibid, 60.

39. Ibid, 31.

40. Ibid, 31.

41. Ibid, 69-70.

The focus these neo-Romans are given to again involves the centrality of power to actual freedom. In their emphasis on the arbitrary *dominus potestas,* they risk simply replacing it with a *civitatis potestas*. The power of the community, which as we saw with the Greeks, is just as capable of curbing liberty and freedom as a despotic will. They risk crushing individual liberty and freedom under the crushing weight of a concentrated social regulation. When the people meet in corporate, their effective control, is no less concentrated or arbitrary, than the autocratic command.

The founders of the American republic were sympathetic to this line of reasoning. As Madison describes in *The Federalist Papers*, it is vital "not only to guard the society against the oppression of its rules; but to guard one part of the society against the injustice of the other part …from interested combinations of the majority.'"[43] Arendt explains the solution realized by Montesquieu and the American founders, particularly Madison, was to create power aligned against itself to frustrate and confuse the application of social control.[44] Each branch of government has the potential to control, the authority and the power, but are frustrated in the application. There becomes no method for the fruition of the will. The American system is blessed with an embarrassment of power, and cursed by a dearth of control.

This frustration of social control, in order to preserve mass liberty, is itself a limitation to freedom. In creating a system dominated by an inability to control, the American Founders created a system that preserved liberty but denied people the ability to exercise freedom. There are many things a person might do, control that could be exercised, but simply cannot be. Anyone who has ever been frustrated by the cumbersome granite that is American government can attest. The American system of government is not free, it is liberal.

Freedom is both a matter of wanting, ability, and transforming into reality. Anyone who has ever encountered an obstacle understands the want. It is the desire beyond what is immediately attainable. It is the need for some development or change to reality. Once encountered by a need, one encounters the question of whether he has the ability to meet the need. As explained before, man's capacity to meet needs has expanded tremendously over the centuries, to the point now that almost anything is realizable. In doing so, however, we

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42. Ibid, 69-70.

43. Hanna Ardent, *On Revolution*, 138.

44. Ibid.

have expanded the domain of what properly counts as an unfreedom. There are things we want, things which we have the ability to obtain, but which we are prohibited from obtaining by an inability of control.

In government, we encounter this lack of control in a system with power, with means, but insufficient control. In other words, it is not just the ability to be at liberty from the control of others but the power, our self, to control that creates freedom. And, it is exactly this freedom which is denied to us. In Arendt's words, "the political realm must be construed and constituted in a way in which power and freedom would be combined…and when we read in the earliest documents of colonial times that 'deputies thus chosen shall have *power and liberty* to appoint' we can still hear how natural it was for these people [the Founders] to use the two words almost as synonyms."[45] Berlin's positive freedom, which is very clearly about control, strikes at this meaning. As Mill demonstrates, "It is of course necessary, to render our consciousness of freedom complete, that we should succeed in making our character all we have hitherto attempted to make it; for if *we have wished and not attained*, we have, to that extent not the *power over* our own character, we are not free."[46] It is the union of the wish, the means, and the effective power to the means, the control, that makes up both political and personal freedom.

RESOURCES OF FREEDOM

The means of control necessitate other elements that are often then mistaken for freedom itself. Especially in a social context, where interaction and interference are always liable to curb one's liberty and freedom, maintaining an individual source of power is crucial.[47] Ultimately, the individual's liberty and freedom rest on "his ability to resist encroachment and enforce his commands."[48] In that context, the struggle, and liberties, of the landed gentry makes so much more sense. Their independence, their rights and privileges, were tied to the land because that was the source of wealth and power, resources which enabled both their liberty and freedom. With the expansion of commerce, and wider avenues to the pursuit of wealth and power, the idea of liberty, and the free power to support it, became something more and more

45. Hanna Ardent, *On Revolution*, 141.

46. J.S. Mill, *A System of Logic, Collected Works* 8, 841. Emphasis Added. Baum, 197.

47. See John Christman, "Saving Positive Freedom," *Political Theory* 33, no. 1 (Feb. 2005), 81; also Isaiah Berlin, "Two Concepts of Liberty," in *Isaiah Berlin: The Proper Study of Mankind, An Anthology of Essays*, ed. Henry Hardy and Roger Hausheer (New York: Farrar, Straus and Giroux, 2000), 191

48. Larry Siedentop, "Two Liberal Traditions," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford, London: Oxford University Press, 1979), 168.

could reach at, unconstrained by the sparse supply of real estate.[49] Similarly, the Greeks' claim to freedom did not contradict the idea of holding slaves or power over others, instead one idea appeared to "complement the other, as exercising power over others confirmed and enhanced one's own freedom."[50] Wealth is both a sign and source of freedom. The possession of resources expands one's freedom because it enables and the reach of one's power.

The free market, as Milton Friedman understood it, operates as power-destructing (read liberty-enhancing) and power-generating (read freedom-creating) enterprise. In *Capitalism and Freedom*, he writes, "Economic arrangements play a dual role in a free society. On the one hand, freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself. In the second place, economic freedom is also an indispensible means toward the achievement of political freedom."[51] His view in the first place is that economic independence, the liberty to pursue one's own economic life is the emancipation from an authority that tells you what to do. Friedman expands on both ideas in *Free to Choose*, where he remarks "economic freedom is an essential requisite for political freedom…by dispersing power, the free market provides an offset to whatever concentration of political power may arise."[52] The market destroys anti-liberty hierarchies.

The second place, he refers to economic autonomy as a means toward an independent source of pecuniary power. This power is, then, the foundation of every claim to freedom, as the ability to resist encroachment and give form to will. The first process decentralizes power, that is creates liberty; the second provides a means for mass wealth, which supports individual claims to control, that is the free market is a means toward freedom.

Certainly another vital part of this same process is choice. Someone who is in control has options to be exercised. It is a mistake, however, to make decision-making the object, the total content, of freedom. As Mortimer Adler understands, freedom is more than just the choice and the ability to carry

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49. Hannah Arendt, *On Revolution*, 172.

50. Ricaahrd Mulgan, "Liberty in Ancient Greece" in *Conceptions of Liberty*, 10.

51. Milton Friedman *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), 8; Steven R. Hickerson, "Complexity and the Meaning of Freedom: The Classical Liberal View," *American Journal of Economics and Sociology* 43, no. 1 (Jan. 1984), 92.

52. Milton Friedman and Rose Friedman, *Free to Choose* (New York: Harcourt Brace Jovanovich, 1980), 2-3.

it out, but is realized, "if, through both choice and action, he has the *power* to achieve a desired objective," a man is practically free.[53]

Choice is too commonly mistaken as the object of freedom. Liberals are particularly guilty of this sin. There remains an instinctual inclination to judge the "liberty of a man or group….[as] determined by the range of choosable possibilities…the more avenues men can enter, the broader those avenues, the more avenues that each opens into, the freer they are."[54] Business ethicist Charles Horvath also points to Merriam-Webster's Dictionary entry for freedom, defining freedom as "the absence of necessity, coercion, or constraint in choice or action."[55] As Theodore Putterman puts it, "to throw off restraints is to be free; to be free is to have choices, and to have choices is to be empowered."[56] Certainly choice is important. To force a man into "a life in which he exercises no choices…is sin against the truth that he is a man, a being with a life of his own to live."[57] Isaiah Berlin hesitantly admits, saying "the mere existence of alternatives is not….enough to make my action free."[58] So although it seems natural to say someone with freedom will have choices, options and alternatives are not enough to make one free. It is power itself, and its means of expanding choice, that is the functional operation of freedom.

Freedom then is "the 'power to make one's will effective,' as John R. Commons might have put it."[59] "Genuine freedom is not merely a negative absence of restraint, but also a position of power of participation."[60] To have liberty is to be free from *potestas*; to have freedom is to have some kind of *autonomia*, a power from which choice derives.

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53. Hickerson, 99. Footnote 4.

54. Theodore Putterman, "Berlin's Two Concepts of Liberty: A Reassessment and Revision," *Polity* 38, no. 3 (July 2006), 427.

55. Charles Horvath, "The Social Equation: Freedom and Its Limits," *Business Ethics Quarterly* 5, no. 2 (April 1995), 331.

56. Putterman, 420.

57. Berlin, "Two Concepts," 199.

58. Ibid, 202.

59. Hickerson, 99. Footnote 4. Emphasis added.

60. Ibid.

Chapter IV

World of Constraint

There are various freedoms we are fond of: the freedoms of speech, religion, and of the press. To have the freedom to move or the freedom to speak are actions you may do freely, but simply doing them does not make you free. This realization leads one, as it does for David Hoekema, to the "important differences between *acting freely*, *being free to act*, and *being free*."[1] Understanding freedom requires understanding the gradations of free action.

Acting freely is the lowest order, involving mere autonomy or independence *of action*. To act freely is to act, generally according to one's will, without the overly burdensome influence of outside forces. Acting freely, however, says nothing about whether those outside forces can potentially come to bear later. The slave to a beneficent master acts freely; he acts *as if* he were free. His master, however, retains power, or potential control, over him. Like the neo-Roman scholars teach us, even if that power is never exercised as control, it severely circumscribes the freedom of the agent. The freely acting slave is neither liberated, nor free.

Hoekema refers to a Lockean thought experiment. During the night, a sleeping man is carried to a dungeon, sealed and locked in, the man awakes to find himself in the presence of a very dear friend who he very much wants to be with. What can we say about the man's friend, Locke asks, considering he does not want to be anywhere else but where he is, locked in a prison? As Hoekema describes, it seems clear that the man in Locke's example is *staying in the room freely*, since that is, after all, what he now wants to do, and he is doing so."[2] The action is autonomous, the prisoner is not trying to get away or thwart his captors. The limits in which he exists are benign, but nevertheless present.

This is to say freedom is never simple preference satisfaction, which we would be better to call happiness.[3] The prisoner in the cell might be happy, he is after all getting everything he wants (as long as he does not want his freedom), but he is not free.

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1. David Hoekema, *Rights and Wrongs: Coercion, Punishment and the State* (Cranbury, NJ: Associated University Presses, 1986), 65.

2. Ibid.

3. See Dennis C. Rasmussen, "Does 'Bettering Our Condition' Really Make Us Better Off? Adam Smith on Progress and Happiness," *The American Political Science Review* 100, no. 3 (Aug. 2006): 309-318.

The friction between happiness and freedom is sadly underappreciated. George Fitzhugh, defending Southern slavery, remarks the peculiar institutions' slaves "are the happiest and, in some sense, the freest people in the world. They enjoy [true] liberty, because they are oppressed neither by care nor labor."[4] For Fitzhugh, freedom is not about escaping the restraint – after all, in Fitzhugh's words, "the moral and physical world is but a series of subordinations."[5] Instead, the search for freedom is about realizing "corporeal and mental repose" that is the essential quality of freedom.[6] Fitzhugh is the prime, albeit, extreme example of the conflation of freedom, happiness and tranquility. But like Rousseau contends, "Life is tranquil in jail cells, too. Is that reason enough to like them? The Greeks lived tranquilly shut up in the Cyclop's cave as they awaited their turn to be devoured."[7] Being happy or at peace is not the same as being free.

Jon Elster has written a great deal about the interaction of preferences and freedom. His principle concern is in adaptive preference formation, whereby preferences change according to what appears achievable. As James Bohman describe, "like the happy slave, those who can achieve little often desire little."[8] So Fitzhugh's slave might very well be happy in his repose and tranquility because that singular moment of respite is all he can possibly wish for. To seek any more would be to subject oneself to the added oppression of despair.

The practical problem with most adaptive, as opposed to autonomous, preference formation people tend to over-adapt, their new "preferences tend to overshoot; that is, to adapt more than necessary, to make one want even less that is actually possible."[9] These individuals, therefore, end up being even less free than originally because they constrain themselves more than necessary. "The happy slave may not actually lack

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4. George Fitzhugh, *Cannibals All! Or, Slaves Without Masters* (Charleston, S.C.: Fogotten Books, 2010), 29.

5. Ibid, 302.

6. Ibid, 30.

7. Jean-Jacques Rousseau, *One the Social Contract, with Geneva Manuscript and Political Economy*, ed. Roger D. Master, trans. Judith Masters (Boston: Bedford/St. Martin's, 1978), 49.

8. James Bohman, "Deliberative Democracy and Effective Social Freedom," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge: MIT Press, 1997), 327.

9. Christian Rostbøll, "Preferences and Paternalism on Freedom and Deliberative Democracy," *Political Theory* 33, no. 3 (June 2005), 374.

in achievements; that is, he may actually satisfy all of his given, but nonautonomous preferences."[10] He is not free, however, because his power is not his own, he does not control the methods by which he is judged. Joshua Cohen adopts a similar construction, by concentrating on individual autonomy in deliberative society. He understands that freedom ends when "the preference on which an agent acts are, roughly, given by the circumstances, and not determined by the agent."[11] In both instances the man is not free because his preferences are directed, if not determined, specifically and directly by his external condition. His autonomy is the farce of freedom without control.

As noted previously, a number of positive freedom theorists focus on the idea of character planning, of determining a virtuous self-rule that gives moral force to freedom. In bringing the passions to bear, the character planning of the Stoic, Buddhist and Spinozistic philosophies are distinguished from adaptive preference formation by the autonomous nature of their philosophy. One does not change one's preferences to suit one's surroundings, but to perfect one's self-rule.[12] The trouble for negative freedom advocates like Berlin occurs when the autonomous nature of the preference formation is absent. Freedom is present in preference formation when it is an exercise of control, not surrender. Adaptive formation, because it responds to what is exterior and foreign, is an extension, a signal, of unfreedom rather than a method of escape.

So acting freely, as it is associated with potentially non-autonomous happiness, is a weak indication of freedom. For the slave, it indicates a level of autonomy, but not *autonomia*.

But not all restrictions of autonomy are unfreedoms. It makes perfect sense to think of instances in which a free individual might subject himself to restriction or obligation, without necessarily abridging his freedom.[13] Indeed, we should not dismiss the way self-restriction both admits greater levels of freedom while reducing autonomy, as a means of heightening our positive freedom. The very meaning of personal

10. Bohman, 327.

11. Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Deliberative Democracy*, ed. James Bohman and William Rehg (Cambridge: MIT Press, 1997), 77.

12. Rostbøll, 374.

13. As a demonstration of how theoretical insights need not be elitist or esoteric, I feel compelled to quote: "The irony of commitment is that its deeply liberating — in work, in play, in love. The act frees you from the tyranny of your internal critic, from the fear that likes to dress itself up and parade around as rational hesitation. To commit is to remove your head as the barrier to your life." My Starbucks Cup, aka., Anne Morriss, Starbucks customer from New York. She describes herself as an 'organization builder, restless American citizen, optimist.'

power and freedom is the ability to place restrictions on one's actions. The power to choose is taking possibilities and options and eliminating them down to a single one.

Cohen's defense of deliberative democratic preference formation ultimately has to do with the degree the agent wants to mold and transform his preferences in response to reasoned argument. In essence, although admitting external, adaptive preference formation is an unfreedom, he is able to defend deliberate reformation by arguing what it means for preferences to be given by circumstances versus determined by an agent. To Cohen, the agent retains a kind of *autonomia*, a self-government by communal deliberative process.

Robert Wolff also suggests autonomy does not require complete independence or autarky. The requirement of autonomy for Wolff is submission on conditions of the internal characteristics of the subject. An autonomous man, Wolff says, "may do what another tells him, but not because he has been told to do it…By accepting as final the commands of the others, he forfeits his autonomy."[14] Rousseau maintained a similar construction, it was the self-imposition of rules that were the defining element of his conception of freedom.[15] The crucial difference again is the location of a power, who and why the submission occurs.

One way to understand the difference is by reference to the power to leave. A restriction I submit to does not limit my freedom if I retain the first order autonomy to depart. No such ability resides with those *in potestate* because the slave has no autonomy to leave his master's control. The power (freedom) to leave is a critical power endemic to freedom, and in some sense is the distinguishing characteristic of what it means to be in one's own power, to have freedom. Even when to submitting for authority, an agent can remain free by retaining the right, the authority, the power to rescind the submission.[16] Similarly, Walzer contends, "liberalism is distinguished less by the freedom to form groups…than by the freedom to leave the groups and sometimes even the identities behind…What makes a marriage voluntary is the permanent

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14. Robert Pail Wolff, *In Defense of Anarchism* (New York: Harper and Row, 1970), 14. Willard Gaylin and Bruce Jennings, *The Perversion of Autonomy: Coercion and Constraints in a Liberal Society, Revised and Expanded* (Washington, D.C.: Georgetown University Press, 2003), 28-29.

15. Larry Siedentop, "Two Liberal Traditions," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford, London: Oxford University Press, 1979), 169. ("Clearly, the 'self-imposition of rules' was the sense of liberty which Rousseau asserted in *Du contrat social*.")

16. See Alan Fuchs, "Autonomy, Slavery, and Mill's Critique of Paternalism," *Ethical Theory and Moral Practice* 4, no. 3 (Sept., 2001): 231-251.

possibility of divorce."[17] Certainly the power to leave is critical. It is a prime indicator of first-order control and is one of the first powers a *potestas* seeks to destroy when curbing liberty.

The importance of the power to leave, though, is far from specific to liberalism. Socrates' speech on law in the Crito emphasizes the opportunities Socrates had to leave Athens long before his trial and sentence. His choice to stay was a submission to its laws.[18] Rousseau also made much of the "right of emigration," which was only restricted in times of great emergency when the right to leave devolves into immoral abandonment.[19] Walzer also includes an example from Jewish history. "Members of the *kahal*, the autonomous or semiautonomous community of the Middle Ages," he writes, "were free to leave, to look for a community where they would be more comfortable with the local practices, but not until they had protested in public and tried to change the practices at home."[20] The autonomy to leave is an indication of power, but it is not the complete power and control of freedom. Since we experience freedom as control, we are inclined to be dissatisfied with the option of leaving, but want the power to stay on our own terms.[21]

The ability to act freely is not freedom or liberty, but nor is an inability to act freely necessarily slavery so long as the right to leave, or first-order autonomy, is *truly* intact and the restrictions are in some sense self-imposed.[22] The first-order is the possession of a power that does not exist in conditions of slavery. The slave, after all, is always subject to the potential control of his master. His power is conditioned on the delegated *dominus potestas* over him. He has no power of his own.

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17. Michael Walzer, "The Communitarian Critique of Liberalism," *Political Theory* 18, no. 1 (Feb. 1990), 15.

18. Plato, "Crito," in *Plato: Apology, Crito, Phaedo, Symposium, Republic*, trans. B. Jowett, ed. Louise RopesLoomis (Princeton, N.J.: D. Van Nostrand Company, Inc: 1942.), 75

19. Rousseau, 106-107. (Book III, Chapter 18). Michael Walzer, *Politics and Passion: Toward a More Egalitarian Liberalism* (New Haven, Conn.: Yale University Press, 2004), 9-10.

20. Walzer, *Politics and Passion*, 10.

21. For more on the importance on the right to leave and its connection to political consent, see Jimmy Klausen, "Room Enough: America, Natural Liberty, and Consent in Locke's Second Treatise," *The Journal of Poltics* 69, no. 3 (Aug. 2007): 760-769.

22. There is always the empirical question of whether the power to leave is intact. In order to be effective, it must not only be a right, but a real ability with costs imposed only by the physical action of leaving.

IMPEDIMENTS TO FREE ACTION

A man who is free to act has even more power than a man who merely acts freely. To refer back to Locke's thought experiment, the man who is free to act does not simply like what he is doing, but is free to do what he likes. Hoekema argues, the man in Locke's dungeon "is *free to stay*, clearly: he is able to stay, and nothing prevents him from staying. But of course he is not *free to leave*, since the doors are locked."[23] That is to say, there is a power above him which prohibits his liberty, artificially constrains significant potential desires. The man is not free to act across the full range of potential, or even likely, alternatives.

He has the range of possible avenues to want-satisfaction at his disposal; his is the power of potential action. As Theodore Putterman puts it, this is the instinctual inclination to judge the "liberty of a man or group….[as] determined by the range of choosable possibilities…the more avenues men can enter, the broader those avenues, the more avenues that each opens into, the freer they are."[24] These open avenues are an indication no greater *potestas* exercises control or dominion over the agent to direct his action; the man with options is at liberty.

Those who are free to act may still not be autonomous in the sense discussed above. They may have chosen to submit to some type of obligation or law, and so have a slightly smaller range of options than in autarky; but as liberated agents, they retain the ability to withdraw from that obligation. The freedom to act is a matter of degrees; the more options the agent can pursue, the freer he is. So, the prisoner may sit or stand, crawl or lay down, but is distinguished by the incredible range of things he may not do simply because someone else wills against it and physically restrains him from pursuing other actions.

Because states of freedom are not conducive to dichotomy — one can be slightly freer or slightly less free with just marginal changes to situation — it is difficult to make bold declarations about how many choices are necessary to be free to act, versus merely acting freely. The determining factor usually hinges, instead, on the quality, not the quantity, of restriction.

Perhaps the best way to deal with these many difficulties is to establish a hierarchy of unfreedom. Some unfreedoms count more than others, just like some freedoms are more essential than others. The

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23. Hoekema, 65.

24. Theodore Putterman, "Berlin's Two Concepts of Liberty: A Reassessment and Revision," *Polity* 38, no. 3 (July 2006), 427.

power to leave is more important than the liberty to drive a car, even though the two would be strongly related.[25] The first casts out an entire range of our wants, the second only strikes at a method of convenience. Both diminish control, but one does so far more than the other. The car prohibition proscribes a tactic, not the desire or will realization. Likewise, the prohibition on a critical tactic constitutes the prohibition of the goal and exercise of will, it becomes a more complete unfreedom.

Many also debate how to determine what true freedom limitations are. Isaiah Berlin, F.A. Hayek and Hoekema believe unfreedom must have a human source. Mere physical obstacles are not unfreedoms. To decide otherwise, they claim, is to make far too much of freedom, to make a straw-man of the concept. "For freedom is not the mere absence of frustration of whatever kind," Berlin says, "this would inflate the meaning of the word until it meant too much or too little."[26] Hoekema cites the difference between freedom and ability. Not everything one is unable to do constitutes an unfreedom, particularly if the source of the inability is somehow statically determined. To construct freedom any other way is simply too broad; "It has the consequence that human beings, or at any rate those who have a will to fly, are unfree to fly, and that persons who want to become good runners but lack the self-discipline necessary to achieve that condition are unfree to do so."[27] Disregarding a class of impediments out of hand seems largely to be without cause. It seems the product of a general human fascination with the freedom fetish and a more basic unwillingness to accept limits. Instead, these thinkers would have us dismiss these limits as no real limits to our freedom at all, but beyond the domain of reasonable discussion.

Others, like Gerald MacCallum are more generous. MacCallum understands freedom as ultimately a triple combination of the "freedom *of* someone *from* something *to do* or become something" specific,

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25. Hoekema, 72. ("Being able to move about freely is something which is important to nearly all persons, and therefore any restriction on our movements diminishes our freedom. But the closing off of certain alternatives which no one is likely even to think about doing does not count as a restriction, or at any rate as a significant restriction, on our freedom erecting a fence around a nuclear waste disposal site is an example: the fence prevents me from walking about the site, but since no one wants to expose himself to dangerous radiation, this restriction on freedom of moment does not make me significantly less free.")

26. Isaiah Berlin, "Two Concepts of Liberty," in *Isaiah Berlin: The Proper Study of Mankind, An Anthology of Essays*, ed. Henry Hardy and Roger Hausheer (New York: Farrar, Straus and Giroux, 2000), 197.

27. Hoekema, 65. Hoekema further writes, "Everyone is free o play the *hammerklavier* sonat a on the piano, or for that matter on the accordion. But relatively few persons are able to do the former, and thankfully still fewer to do that latter. A person who studies the piano until he can play the Beethoven sonatas gains an ability he lacked but does not increase his freedom."

with the many debates on freedom principally concerning the various prepositional objects.[28] In this construction, MacCallum himself "appears willing to count any hindrance to action as a restriction on freedom."[29] But since the important factor is not the quantity of impediments, but their quality, it is better to determine a rule for those unfreedoms which are tolerable (like an inability to fly away) and those that are not (the ability to get away).[30]

It would seem the hindrances which may be immediately disbanded are the most obnoxious to our freedom. More specifically, we can understand the bounds of what can properly be thought of as a limitation to freedom as marked by what is within the plausible boundary of human control. Among the mutable differences, those that are, human in origin, and thus potentially within our control, amount to the worst tyrannies. "To be free *tout court* is to be free from those hindrances to action which could be removed by others' actions."[31] This is true, if for no other reason, because these things are more easily placed within our control. We can dominate others, and compel their action or action, more easily than we might control our internal chemistry or move a mountain.

An implication to this construction, implied previously, is that what seemed as the natural-world-givens to the ancient Greeks, the hard and fast, immutable boundaries that circumscribed individual freedom, seem like trival matters of convenience to the modern observer. As the knowledge of man has advanced, our expectations of what counts as freedom have likewise grown. Our capacity to control our world has grown by leaps and bounds, and so has the yardstick marking the distance to freedom. More and more quantities have been added to those things within our control, within the domain of things that constrain our freedom.

So, there is a hierarchy of unfreedom. As Hoekema suggests, "the hindrances that we count as obstacles to freedom…compose a subclass of the obstacles that are alterable by human action…and although a great many obstacles *can* be removed by human effort, it is the interference of other agents with

28. Hoekema, 69-70.

29. Hoekema, 70.

30. Gerald MacCallum, Jr., "Negative and Positive Freedom." *The Philosophical Review* 76, no. 3 (July, 1967): 313

31. Hoekema, 72.

our action as we will that is of *particular* concern to us when we speak of freedom in general."[32] The restrictions that count less are those imposed by nature; they are simply more difficult to control. These non-human objects can restrain an individuals' ability to act freely, and even prevent him from being free to act; but these non-human objects cannot properly keep a man from being free, since these objects, as non-purposive agents, cannot take control away from the agent. They can obstruct, inhibit and even occasionally compel, but they cannot control. Next, human-derived obstacles are the most noxious, because they are so easy to dispel, at least in theory.

UNFREEDOM, RESTRAINT AND FORCE

Of the human powers to make us unfree, restraint by force is the most critical. Hobbes, for example, would have us believe that any time my choice is executable I am free. For him, the distinction is not in the practice of coercion, the manipulation of 'natural' costs or benefits, but only very physical impediments to the realization of the choices.

Hobbes' purpose is to create an understanding of freedom compatible with (potentially) mercilessly governed action. Like the Greeks before him, Hobbes is given to understanding freedom as the quality of individual spontaneity in response to the world's influences, costs and benefits constructed by more powerful, external forces. Freedom, as he understands, is the ability, the absence of impediments, to respond to those costs and benefits as the individual mind and will determines. The result is that "fear and liberty are consistent; as when a man throws his goods into the sea for fear the ship should sink, he does it nevertheless very willingly, and may refuse to do it if he will: It is therefore the action of one that was free."[33] The fear of the potential costs of the storm, i.e. drowning when the ship sinks, induce the man to take an action he otherwise might not. Because there is not power over the man, in the sense of a will over the individual compelling the action, his liberty remain intact.

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32. Emphasis Added. Hoekema, 72-73. ("First, interference by other persons is more readily removed or diminished by concerted social action than are either physical limits or internal incapacities, and for that reason it is more relevant to the design and assessment of social institutions. Second, while we are willing to accept and make adjustments for physical and psychological inabilities and obstacles, coercion and violence divert us radically from the expected course of events in an unpredictable and highly undesirable ways.")

33. Thomas Hobbes, *Leviathan*, ed. C.B. MacPherson. New York: Penguin Books, 1985), 262.; David Hoekema, *Rights and Wrongs: Coercion, Punishment and the State* (Cranbury, NJ: Associated University Presses, 1986), 67.

For Hobbes, the same is true of government regulation or the force of the sovereign. "So a man sometimes pays his debt," Hobbes says, "only for fear of imprisonment, which because nobody hindered him from detaining, was the action of a man at liberty. And generally all action which men do in commonwealths, for fear of the law, [are] actions, which the doers had liberty to omit."[34] Hobbes's emphasis is on the way the law re-forms and molds the will to the correct action. It is not an unfreedom, but a channeling of behavior.

Even in this context you are free, Hobbes maintains, because your will is the basis of your action. By yourself you analyze options, costs and benefits, and finally determine a best course of action for yourself. Under Hobbes' understanding, "it makes no sense to speak of being coerced into acting against your will, since the will lying behind your action will always be revealed by your action itself."[35] The mind takes in stimulus from the environment, processes it according to the dictates of the individual's character, produces a determination that is then translated into action. Limitations to freedom and liberty occur, not in the processing of the various stimuli, or in some coercion, as modern observers generally do, but in impediments that break the link between the will's first-best option, based on the environmental stimuli, and what the individual has the ability, the means, to perform.[36] Where someone prohibits, usually by force or physical presence, an action, only there is unfreedom.

Coercion is just another incentive, not an unfreedom. If a man points a gun to my head, telling me to either hand over my wallet or else, Hobbes maintains I still act freely and am free to act. For Hobbes, "the person who acts under coercion acts as a result of his choice to submit rather than risk intolerable harm, and surely the making of a choice presupposes freedom. A person who is physically compelled is evidently deprived of his freedom, and yet coercion leaves the victim a decision whether or not to

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34. Ibid, 263; David Hoekema, *Rights and Wrongs: Coercion, Punishment and the State* (Cranbury, NJ: Associated University Presses, 1986), 67.

35. Skinner, *Liberty before Liberalism*, 8

36. Hobbes, 262.

submit."[37] I still have choice to either turn over my money or be shot. We instinctively understand such a circumstance is unfree, a quintessentially coercive relation.[38]

In Hobbes' understanding of freedom there is more than just the realization that Hobbes was a little power crazed. One must admit that to a great extent Hobbes was correct, but not about what it means to be free to act, but what it means to be free, to have power and control.

Before the gunman approaches me, I am filled with liberty and freedom. I have no master, and perfect power and control over myself and my surroundings. The gunman transgresses on my freedom when it puts the gun to my head. He has attacked my autonomy, diminishing the range of choices on which I may act. He has also curtailed my right to leave, therefore diminishing an important source of my power, control and freedom.

He has not yet destroyed either my freedom or liberty, but has curtailed them in important ways and promises to further if his demands are not met. As Hoekema states, the "threatened penalty [by itself] leaves an agent no less free than he was without the threat."[39] The highwayman's ultimate object is to place me under his power, but because I have power of my own, power which might overwhelm his, he stops before an outright assault and instead resorts to coercion, a projection of the threat of power. In this coercion, the gunman is merely tinkering with my potential payoffs.

If I refuse to acquiesce, the gunman might try to compel me to hand over the money. That is, he will try to take it by force. The gunman, then, directly attacks my liberty by attempting to exercise control over me. His ultimate goal is to destroy my liberty in the absence of a higher power and my freedom in the presence of my own power. Until his formal assault, he has not truly taken either, simply threatened to.

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37. Hoekema, 63.

38. There are any number of rationales for this position though. James Fitzjames Stephen, "Liberty, Equality, Fraternity," in *Conservatism: An Anthology of Social and Political Thought from David Hume to the Present*, ed. Jerry Muller (Princeton, N.J.: Princeton University Press, 1997), 192. ("All voluntary acts are cause by motives. All motives may be placed in one of two categories—hope and fear, pleasure and pain. Voluntary acts of which hope is the motive are said to be free. Voluntary acts of which fear is the motive are said to be done under compulsion, or omitted under restraint. A woman marries. This in every case is a voluntary action. If she regards the marriage with the ordinary feelings and acts from the ordinary motives, she is said to act feely. If she regards it as a necessity, to which she submits in order to avoid greater evil, she is said to act under compulsion and not freely.")

39. Hoekema, 67.

THE REFUSAL TO SUBMIT

If at any point, however, I submit to his demands, I choose to surrender both my liberty and my freedom. In this sense, the disposition of my freedom is determined by my own actions and my power, not his. If I submit to his will, I allow his power, his potential for control, to become real. He exercises control over me, and robs me of both the money in my wallet and the power in my freedom. I can hope he does nothing more; but I cannot deny that I have freely given away my freedom. This is how we can talk about men who die free rather than live as slaves. They refuse to submit, to surrender their own control. So instead, their liberty is destroyed, very often followed quickly by their life.

In the refusal to submit, however, we can see that to be free refers to the overall trans-experience that explains one's place in the world. Being free is the highest order power. Here, we properly speak of not just autonomy, but *autonomia*. It moves beyond given actions, and strikes to who truly controls a given situation. It is the choosing to confront the challenges of the world vigor, not to submit to them. Control or self-mastery does not mean to act without cost or repercussion. Control, mastery and power mean the confrontation of these forces, and then generally, the ability to change those costs and repercussions at will.

The amount of freedom one possesses is directly related to the amount of power one commands. The more power, the more vigor one confronts the world and the more costs one can bear before submitting to some other power.

The same dynamic is at play in the different levels of 'coercion' one can practice upon you. Different levels of power can withstand different levels of pressure, so any one person can be subjected to the same stimulus but end in a different state of freedom. Those with great amounts of power can retain freedom even under the highest degrees of pressure; those with very little power crumble under the lightest touch.

For example, under persuasion, even the mildest person usually maintains all three levels of freedom. He acts free, is free to act, and is free.[40] He maintains the highest level of control over himself, and the costs and benefits that face him. The persuading force is weak, distant and nuanced. Higher levels of persuasion, something akin to strong-arming, may weaken his autonomy, by creating a power to fiddle with the costs and benefits of a particular decision. This stronger persuasion is distinguished by a greater

40. Ibid, 75.

proximity to the decision-maker; it is more imminent. It is also more likely to result in the submission of quite a few weaker wills.

The jump from strong-arming to coercing is a matter of degrees. It is a gradual process, as the outside force intrudes deeper and deeper into the autonomy of the agent. A power remains with the man who decides, but the coercing force makes bolder and bolder plays at confrontation. The two wills can become locked in a contest, a struggle for control. The infringement on autonomy, is the limited intrusion on the ability to act freely. The agent retains his own power, is not truly under the power of another, but nevertheless is less free to act. His autonomy and sovereignty are eroding. As David Hoekema describes, "the victim of coercion is free to act but not free to choose; he has the normal sort of control over his bodily actions but lacks the normal kinds of control over his choices and their consequences."[41] Manipulation is a particularly insidious form of coercion because it is hidden. The anonymity and secrecy are a source of greater power. The manipulator exerts impedes on control from afar; the goal is to remain undetected and, therefore, all the more powerful.

Compulsion includes the greater attempt against the individual. In this state, the outside force is not only trying to destroy the actor's liberty, by constructing a power above him, but by weakening the actor's own power, directly and physically. Compulsion is usually required only against those with the greatest will power, because the victim would have resisted all other encroachments. In some sense, compulsion becomes a tactic in these cases because it offers the ability to change the site of the contest. Instead of a contest of wills, compulsion is more often a contest of physical strength.

FREEDOM EMANATES FROM WITHIN

Freedom is about internal, conscious power. Even under the strictest, most limited definitions of freedom, the source of freedom must be internal. Self-consciousness is the only source of freedom. Whether talking about the state or the individual, being free is marked by internal deliberation and determination, even against external hindrances. The emphasis of freedom is always on the internal and authentic.

For the individual, freedom must come from within his own consciousness. It must be authentic to the true self and usually to the rational self. Aristotle, for example, spoke of *proairesis*, a deliberate choice,

41. Ibid.

fully informed and derived from an internal rationality regime.[42] For an action to be fully voluntary and free it must accord with reason and deliberation.[43] That predisposition introduces a range of discussions one what it means for a choice to be rational, deliberate and informed, that is to be free.

The internal origin of freedom ultimately is also incident on psychological, cognitive determinism. If decisions are determined, freedom is false, a cruel deception of human self-consciousness. Because freedom, if nothing else, implies one could have done differently, that the self exercised some level of control. Determinism denies the possibility "that men are free to choose between at least two possible courses of action – free not merely in the sense of being able to do what they choose to do (and because they choose to do it), but in the sense of not being determined to choose what they choose by causes outside their control."[44] Determinism in other words denies the great human spontaneity which many people claim as the fundamental element of freedom.[45]

This, of course, begs the question of whether some people are truly capable of freedom. Is there some limit to freedom? More conservative thinkers are inclined to believe one's innate limitations do ultimately cap one's potential for freedom. Hobbes seems to think not but not because he believes in man's ultimate potential. He describes a free man as "he, that in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to do."[46] So one's ability does not so much limit freedom as much as it specifies the domain on which you measure your freedom. As Hoekema describes, "inabilities which are part of the person's own physical or psychological nature or condition do not restrict freedom. But if similar restrictions were imposed from without, they would be infringements of freedom."[47]

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42. Fuchs, 239.

43. This discussion is directly related to the very old, and very dubious, suggestion that rationality is the quintessential humanity, found in both Plato and Aristotle. It is man's ability to think and reason, that sets him apart from the animal world. Animals think and feel, but they do not think and feel as I do. What I *feel* is every bit a part of who I am as what I *think*. Though reason may result in wiser decisions, we can only call those decisions better per se, if we accept a simple utilitarian basis of good. A better decision implies some criteria for determining better. More often than not, that criterion is a rationalist, utility measure that itself privileges rational decision making.

44. Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), xi-xii.

45. See, for example, Daniel Dennett, *Freedom Evolves* (New York: Viking, 2003); Timothy O'Connor, ed., *Agents, Causes, & Events: Essays on Indeterminism and Free Will* (New York: Oxford University Press, 1995).

46. Hobbes, 262; Hoekema, 66.

47. Hoekema, 66.

Those external restrictions would be unfreedoms because they cordon off your choices based on autarkic abilities. In this sense, the origin of the inability is vitally important.[48]

Assuming everyone enjoys roughly the same mental capacity, which is not a terribly difficult assumption, we must also ask how much knowledge and understanding is necessary for free actions results. One must know to control. Manipulation is the unfreedom most incident on discussions of knowledge because manipulation endeavors, to unbeknownst to the agent, reduce power and control, even as the decision-making power remains within the agent.[49] The manipulator tries to reduce your freedom without obvious attacks on your liberty.

Mill, for example, permits the interference with liberty, i.e. the imposition of power over another, when the subject is unaware of the full consequences of action, either do to mental deficiencies or unawareness of facts. Mill's example of the man attempting to cross a bridge that is about to fail, according to Alan Fuchs, "suggests that we can, and possible should, intervene when a potentially dangerous action probably does not accord with that will."[50] Since some interests of universal among men, such as the preservation of life, we can usually make practical, reasonable assumptions in guiding these abridgments of liberty. Surely, ceteris paribus, few men wish to try to pass a collapsing bridge, risking death. We serve their interests by stopping them to ensure they are in full control of the situation, principally that they are aware the bridge is damaged and liable to collapse. In other words, in ensuring their decision has been deliberate.[51] We are also correct to make sure the conduct is voluntary.[52] In the final analysis, however, if the man is both aware and has his wits about him, Mill does command we let him go, subject only to our entreaties not to.[53]

This type of restriction, however, is not properly thought of as a restriction of freedom, because the individual exercised no control over his decision when beginning to cross the dilapidated bridge.

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48. Ibid, 66.

49. Philip Pettit, "Freedom as Antipower," *Ethics* 106, no. 3 (April, 1996), 579.
5050. Fuchs, 239.

51. Ibid.

52. Quoted in Alan Fuchs, "Autonomy, Slavery, and Mill's Critique of Paternalism," *Ethical Theory and Moral Practice* 4, no. 3 (Sept. 2001), 239.. ("According to Feinberg's formulation of this theory, 'the state has the right to prevent self-regarding harmful conduct…when but only when that conduct is substantially nonvoluntary, or when temporary intervention is necessary to establish whether it is voluntary or not.")

53. Ibid.

Everything about the man could indicate he is an autonomous agent, but merely the lack of knowledge about the potential risks, benefits and costs (i.e. his lack of *full* control over the situation) to make an abridgment of freedom permissible. This formulation strongly suggests that control is an essentially part of freedom. In other words, it is not the restriction that makes the man unfree. The limitation merely made manifest his lack of control over the situation, over the decision to cross the bridge. In the restriction, in forcing the individual to reassess the costs and benefits in light of new information, we have, in one sense, forced him to be free, to take control of his deliberate choice.

We now have criteria for determining what is and what is not free action. The impediments outside ourselves and directly mutable, particularly the actions of others, are the most odious to free living. These factors all profane our own control and power in the world. Not every obstacle is an unfreedom, and no single unfreedom automatically renders us absolutely unfree. Instead, it is when we face a conspiracies of limitation that our freedom is particularly curtailed. Those social and political conspiracies endemic to liberalism are the topic of the final section.

PART THREE: CHAOS

Chapter V

The Liberal Theory of Chaos

Liberalism is a theory of society without command. It is the theory of society always at risk of undoing itself, of dissolving. As Michael Walzer describes, "association is always at risk in liberal society. The boundaries of the group are not policed; people come and go, or they just fade into the distance without every quite acknowledging that they have left."[1] But, for all the howling regarding the atomization of man, of collapsing civil society, of bowling alone, people wake up every day, go to work every day; the shouting heads shout; people campaign and vote, get married and divorce. They even campaign and vote for the right to marry and divorce.

In life's great hustle and bustle, it is easy to lose sight of the liberal miracle. Liberalism as a body of thought is often associated with various institutions such as the rule of law, constitutionalism and individual rights. These institutions are not themselves liberalism, and excessive reliance on them exaggerates the philosophic genealogy.[2] They are certainly very important; no liberal society could hold together very long without them. The liberal apparatus, however, is just the social mechanism and legal machinery. To use Steven Hickerson's apt phrase, they are the "freedom insurance of liberalism."[3] The profound epiphany of liberalism is so much deeper and so much simpler. Liberalism is the theory of the harmony of chaos.

The great liberal insight was the discovery that within society the instruments for its own perpetuation can exist. Liberal society is autonomous and self-regulating. Civilization requires no leviathan, no single man or group of men, none of Walzer's policemen, to hold it together by force, nor a commanded regulation of individual activity. The chaos of individual action begets social order.

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1. Michael Walzer, "The Communitarian Critique of Liberalism," *Political Theory* 18, no. 1 (Feb. 1990), 15-16.

2. John Gray, "On Liberty, Liberalism and Essential Contestability," *British Journal of Political Sciencei* 8, no.2 (Oct. 1978), 386.

3. Steven R. Hickerson, "Complexity and the Meaning of Freedom: The Classical Liberal View," *American Journal of Economics and Sociology* 43, no. 1 (Jan. 1984), 93.

CONTROL AND COMMAND

For the vast majority of human history, political elites have employed political control as the centripetal force binding society together.[4] Both raw violence and unquestionable authority served this purpose. True, more civilized thinkers have found authority's lighter touch more palatable (and less palpable), and thus preferable over sheer violent power; but in both cases, their function is to maintain society. Dissolve power and authority, and society diffuses into confusion, bedlam and mayhem. Much of Arendt's work on authority describes how "in premodern societies, authority had served to stabilize the world by preserving the foundations of the body politic and by tying a people back to its beginning."[5] Without these foundations, without Burke's regulating institutions, civilization is but vapor.[6] To keep order, the governments of men had to rule with a fist.

Many of the oldest, and certainly most interesting, examples of the controlled order philosophy relied on fear, power and force to keep society. Thucydides, remarking on the freedom of the people Athens, points to fear as the instrument that maintains morality and order. "In public life," he writes, "fear makes us carefully avoid doing anything illicit."[7] It is the check of fear that regulates Athenian freedom. Athene, Athens' guardian goddess, repeats the sentiment, when she "warns her citizens not only against the slave mentality which bows low before the despot but also against the indiscipline that acknowledges no master: 'Who, being no longer afraid, will still observe the law.'"[8] Well past the Middle Ages, these ideas literally dominated.

Hobbes is also associated with similar inclinations toward absolute rule. Hobbes' despotic leviathan is predicated on the belief "that without the restrains of government men would be in a constant

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4. Even today we are afraid of letting go as it were, afraid society will spiral out of control, dissolve into pandemonium. Chaos is hard to trust.

5. Robert Mayer, "Hannah Arendt, Leninism, & the Disappearance of Authority," *Polity* 24, no. 3 (Spring, 1992), 399.

6. See Edmund Burke, "Reflections on the Revolution in France," in *The Writings and Speeches of Edmund Burke: Vol. III, The French Revolution, 1790-1794*, ed. L.G. Mitchell, textual ed. William B. Todd (Oxford, UK: Oxford University Press, 1989).

7. Quoted in Max Pohlenz, *Freedom in Greek Life and Thought: The History of an Ideal* (New York: The Humanities Press, 1966), translated by Carl Lofmark, 31.

8. Quoted in Pohlenz, 31. EUM. 696.

state of war and insecurity…The choice is between despotism and anarchy, and this should be apparent to every thinking being."[9] The men of government were always afraid. Society was always at risk of falling apart. Only the force of their command from above kept it together.

But, Joseph de Maistre presents this disposition in its most grotesque form. For him, constancy and divine origin are vitally important for sustaining society. Only "superior will enforce[es] obedience;" and "force on the one side and powerlessness on the other…[are] the only bond of human society," he says.[10] In one of his most famous passages, de Maistre expounds on the executioner's supreme role in buttressing society. For de Maistre, not so much fear of the law, but the raw fear of the *force*, the violence, of the law, personified in the executioner regulates, perpetuates and eternizes society. "He is the terror of human society and the tie that holds it together," de Maistre tells us. "Take away this incomprehensible force from the world and at the very moment order is superseded by chaos, thrones fall, society disappears."[11] de Maistre's perspective is extreme, but not unique in anything more than its honesty. He does not sugar coat the reality; social order demands fear, power and total domination. Without it, nothing remains.

Even in the relative sanity of Rousseau and Kant, man must have a master to deserve society. Man "'requires a *master* to break his self-will and force him to obey a universally valid will under which everyone can be free.'"[12] Not just freedom, but society, depends on it. For Rousseau, the role of law is twofold. It is both "the external bond that holds in individual wills and prevents their scattering…[and] it is the constituent principle of these wills, the element that confirms and justifies them spiritually."[13] So formal

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9. Thomas Peardon, Introduction in *The Second Treatise of Government* (Upper Saddle River, N.J.: Prentice-Hall, Inc., 1997), xi. See also J. Judd Owen, "The Tolerant Leviathan: Hobbes and the Paradox of Liberalism," *Polity* 37, no. 1, Fashion for Democracy (Jan. 2005): 130-148.

10. Joseph de Maistre, "Essay on the Generative Priciniple of Political Constitutions and of Other Human Institutions," in *Conservatism: An Anthology of Social and Political Thought From David Hume to the Present*, ed. Jerry Muller (Princeton, N.J.: Princeton University Press, 1997), 137.

11. Joseph de Maistre, *The Executioner* (London: Penguin Classics, 2009).

12. Stephen Ellenburg, "Rousseau and Kant: principle of political right," in *Rousseau after 200 Years: Proceedings of the Cambridge Bicentennial Colloquium*, ed. R. A. Leigh (Cambridge, London: Cambridge University Press, 1978), 5.

13. Ernst Cassierer, *The Question of Jean-Jacques Rousseau*, trans. Peter Gay (New York: Columbia University Press, 1954), 63.

law and social force both keep people together and socialize them for society, making them capable of living in a properly free society.

Especially in Hobbes and de Maistre, the theories of social control are predicated on man's natural evil. Hobbes, for example, men "are by nature so quarrelsome and competitive that only the strongest rule will restrain them."[14] Bradley Owen explains de Maistre "possessed an exquisitely refined sense of the nearness of human atrocity, a perennial capacity for barbarism barely held within bounds by institutions, ritualized behavior, and myth…His alertness to the interplay of transgression and limits, order and disorder, law and violence led him to a conservative defense of limits, order, and law as the lesser of necessary evils."[15] Kant likewise talked about man's "unsocial sociability."[16] Left to their own devices, Kant describes individuals as unrestrained and animalistic, "generally inclined 'to play the master over others.'"[17] These different thinkers vary in how society is jumpstarted. For some, government and society are simply the triumph of the strongest. Rousseau sends us a law-giver. For the moderately humane, like Hobbes, it is by consent. So vicious and wicked are men, they quickly grow weary of violence, the give in to social order.[18] But beyond the particulars, the central tendency is the same.

Society's delicate condition also necessitated a more static social order. A second portion of the command society, one many are more familiar with, was the constancy of an individual's position within the social structure. Even the slightest perturbation could reverberate through the system, causing it to unravel. To keep the system working, every part had a function, and every function a place. To allow movement or mobility was the threat of illegitimate risk to stability. Artisans and monarchs alike fretted over the destabilizing forces of innovation, and there is no shortage of stories of progress as we understand it today being stymied, outlawed, and outright destroyed.[19] Society and civilization were always at risk. To keep them required a static order, and order demanded control.

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14. Peardon, xi.

15. Bradley Owen, *The Modern Maistre*: *The Social and Political Thought of Joseph de Maistre* (Lincoln, NE: University of Nebraska Press, 1999), xi.

16. Ellenburg, 5.

17. Ibid.

18. Ibid.

THE LIBERAL INNOVATION

That perspective began to die toward the end of the Dark Ages, and really declined into the Enlightenment. This change paralleled a new understanding of human nature. Where before the philosophies of violence had presented man as "naturally vicious or wicked," liable to rob you or cut your throat given the opportunity.[20] The new philosophy happened by a new human nature, one that was given to peace and compromise and coexistence.[21] Where Hobbes was worried society might rend itself to pieces, that the human heart was too dark, too selfish and violent, to be naturally conducive to society, Locke was not nearly as concerned about such centrifuge. Instead, "stability, it has been said, was the central assumption of his thinking."[22] Locke's understanding of social stability was the beginning of a new faith in society as a self-perpetuating organism. No one had to hold it together; it held itself together.

The kicker is if society holds itself together, justifications for concentrations of command and control ring hollow. Because "if one can assume that there is a deep social stability underlying and more fundamental than government, one will be unwilling to surrender almost all rights for the benefit of political order as Hobbes was willing to do."[23] There remains little justification for concentrations of power and force pervasive in pre-liberal societies. If these structures of control are unnecessary, so are the injustices they perpetrate. They must be dispensed with.

Under the new liberal understanding, individuals need not occupy a specific, predetermined place in the social structure. Power, authority and tradition, all element of command, are unnecessary. In tradition's place, a new fundamental equality ran through the liberal system.[24] No one now had "a moral obligation to obey another…that is, the right to command and the duty to obey were no longer written into hereditary social

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19. Heilbroner, *The World Philosophers*.

20. Peardon, ix.

21. The connection between centrifugal society and presumptions about human nature cannot be overemphasized. A reliance on one rests on the other. See Paul R. Brewer and Marco R. Steenbergen, "All against All: How Beliefs about Human Nature Shape Foreign Policy Opinions," *Political Psychology* 23, no. 1 (March, 2002): 39-58. ("Cynical citizens are more likely than trusting citizens to endorse the principle of isolationism and to oppose cooperative forms of intervention in other nations' problems.")

22. Peardon, ix.

23. Ibid.

24. Larry Siedentop, "Two Liberal Traditions," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford, London: Oxford University Press, 1979), 153.

roles as in a caste society."[25] People were dislodged from their traditional places in society and enabled to seek their own life. Through various cycles of struggle and reform, they were, in a word, liberated.[26]

Liberalism targeted the great concentrations of power that had marked the previous system of social command. Once they began destroying the great edifices of power society, these liberals placed nothing in their stead. "Over a period of generations the market system and accumulation process destroyed various old systems of social control (feudalism, mercantilism)," Benjamin Ward describes, "substituting new ones for some of them, but in other cases leaving a void."[27] The new tradition of anti-control lead to a reified dichotomy of social life into the economic sphere and the political sphere. The first came to be ruled by decentralized economic theories most strongly associated with markets and the laizze-faire philosophy; the second, by decentralized power theories, usually discussed in terms of democracy.

Where there was once order by command, liberalism left the chaos, the eternal conflict of various opposed, largely impotent, uncenters of power. As Siedentop describes, "The dislodging of individuals from fixed positions in a 'democratic' society… release[d] individual ambition and raise[d] expectations; it create[d] anxiety, competition and social mobility."[28] These feelings, the sense of anxiety especially, flow directly from systemic chaos liberalism embraces, specifically the competition and social mobility.[29]

COSMOS* AND *TAXIS

So command and chaos are two fundamental methods for organization society. For us, born and raised in the system of chaos, it is hard to understand anything else; but society most certainly does not have to be organized this way. For most of human history it has not. Society "can use the whip of authoritarian rule to see that its tasks get done. The pyramids of ancient Egypt did not get built because some enterprising contractor took it into his head to build them, nor did the Five Year Plans of the Soviet Union get carried out

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25. Ibid.

26. See John Scott, "The Sovereignless State and Locke's Language of Obligation," *The American Political Science Review* 94, no. 3 (Sep. 2000):547-561.

27. Benjamin Ward, "Review of *The Worldly Philosophers: The Lives, Times and Ideas of the Great Economic Thinkers, 4th Edition* by Robert Heilbroner," *Challenge* 16, no. 3 (July/Aug. 1973), 65.

28. Siedentop, 162.

29. Ibid, 161. Siedentop emphasizes, as did the French liberals, the importance of democratic society as opposed to simply democratic government. Democratic society, more than the state power or apparatus is what is important here.

because they happened to accord with hand-me-down custom or individual self-interest."[30] The goal of feeding, clothing, and sheltering the mass citizenry can just as easily be done by fiat, as by market.[31] Command society is not necessarily totalitarian or utterly oppressive. It is, in fact, pre-totalitarian in a way that Arendt would probably understand.[32] Command society uses none of the market mechanisms to create wealth or organize social action in the way a modern authoritarian state would. A command society is feudal or mercantilist. It is more ordered and controlled.

No one is clearer on this dichotomy between chaos and command than F.A. Hayek. One of his greatest contributions to both political and economic theory is his enunciation of the liberal epiphany, the understanding of "how a *predictable* and *stable*, but under designed, order can emerge from the free actions of individuals."[33] Hayek shows how chaos, the absence of command, nonetheless begets a social order worthy of the name society.

Hayek identified two kinds of order. *Taxis*, or the deliberately constructed order, is "the made order…or any arrangement [that] may again be described as a construction, an artificial order, as an *organization*."[34] The state, the government apparatus is *taxis*, the grocery store down the street, the communist command economy: They are all *taxis*. They are by necessity constructed, rigid and hierarchical and built by human hands. The old command structure of Hobbes and de Maistre saw society itself as *taxis*. It was something to be made and constructed, and held together.

Cosmos, on the other hand, is "the grown order…a self-generating or endogenous order, [and] is in English most conveniently described as a *spontaneous* order."[35] It is the truth that in comsos "there exist orderly structures which are the product of the action of many men but are not the result of human

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30. Robert Heilbroner, *The World Philosophers: The Lives, Times, and Ideas of the Great Economic Thinkers*, *Revised Seventh Edition* (New York: Touchstone, 1999), 20.

31. Jonathan Schell, Introduction to *On Revolution* by Hannah Arendt (New York: Penguin Books, 2006), xiii.

32. Pre-totalitarian "tyrants contented themselves chiefly with domination of the political sphere," she says, "leaving private life, and sometimes large swaths of economic and cultural life, alone." Schell, xiii.

33. Norm Barry, "Hayek on Liberty," in *Conceptions of Liberty in Political Philosophy*, ed. Zbigniew Pelcynski and John Gray (New York: The Athlone Press, 1984), 264.

34. F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy , vol 1: Rules and Order* (Chicago: University of Chicago Press, 1973), 37.

35. Ibid.

design."[36] Oddly enough, Hayek cites morals as his chief example of a human institution which was grown, not made, before striking to the best-known, but not well-known, example of the Adam Smith's market economics. The liberal orthodoxy comprehends society as *cosmos*. It is something that springs up on its own; it need not be held together, or created.

The traditional world of God is *taxis*. It was not just constructed; it was constructed in a hasty six days. God, in the Christian Bible's *taxis* universe, is the central, all-knowing figure which makes the whole thing go round. He created the universe, and is the definitive, final authority on what is, what is to be, and what is right. He is the catholic command. The world of scientific liberalism is *cosmos*. It was organically, naturally constructed bit by bit by no one in particular. It is not created, directed or controlled by anyone, and at least to some extent is subjective, non-teleological and capricious. Evolution is the order or chaotic, random, unpredictable change.[37]

The philosophical jump at the heart of liberalism is a belief in society as *cosmos*. Both political and economic liberalism are joined in the realization that society need not be held together, that it in fact is *cosmos*, self-generating and self-sustaining.

In realizing society need not be held together, the new liberal orthodoxy changed the fundamental purpose of government. Government was no long the necessary evil to keep society from undoing itself. Government was a force for the creation of public will. By the time of the Declaration of Independence, the purposes of government were very explicitly about effecting the preservation of rights and pursuit of happiness, not keeping society from collapsing into anarchy. In this realization, liberalism also deployed new orders of government. Instead of production by fiat, we produced and consumed by market.

It should never be forgotten just about much society as *cosmos*, society by market, involves a willing engagement with risk. Liberal chaos rests on a faith in human capacity and potential. Liberalism is the willingness to risk disaster, because it believes the disaster will never come. Economic liberalism means you are willing to risk destitution in exchange for the autonomy to make your own life. Political liberalism is to risk that people will make bad choices. There is a faith that the risks will be avoided and the good will triumph.

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36. Ibid.

37. But please note the changes themselves are not random in the sense of being indeterminant.

LIBERALISM'S INVISIBLE *POTESTAS*

Hayek's goal in delineating *cosmos* and *taxis* was to emphasize the self-generating order economic thought rested upon. In that successful goal, however, he perhaps neglected the degree to which *cosmos* does not appear to be order at all. It appears to be unadulterated, uncontainable, unconscionable chaos.

Systems of chaos are created when "the components of a system do not coordinate but fight one another. In its maximal version, remnants of order are barely or not at all discernable."[38] Form the individual point of view, the economic and democratic market system is sheer chaos. Billions of people move in trillions of directions, each with different value systems and sympathies. The infinite expanse of human society is simply overwhelming.

Hayek himself, as a conservative, was skeptical of rationalist freedom, the freedom of "prediction, control, and the deliberate manipulation of society."[39] Hayek was wedded to an understanding of freedom as "spontaneous action, i.e. action which is inherently unpredictable, within traditional rules."[40] His disposition most likely would have been against a determinist understanding of human action, and likewise, his understanding of human chaos would have been even deeper. This predisposition makes his belief in the order of *cosmos* even more amazing. Individual action is random, but social outcomes are determinant. In something of a contradiction, free human action is itself unpredictable and spontaneous, but gives rise to a rational, predictable order.[41] The order is predictable, but on the ground, human spontaneity, human movement, appears only as chaos.

Liberal systems are many things; but they are not control. As Hayek described, *cosmos* "induce[s] the formation of an order of such complexity (namely comprising elements of such numbers, diversity and variety of conditions) as we could never master intellectually, or deliberately arrange."[42] In destroying concentrations of control native to the command societies, by giving into chaos, we create a system both

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38. Rudolf Arnheim, "From Chaos to Wholeness," *The Journal of Aesthetics and Art Criticism* 54, no. 2 (Spring 1996), 118.

39. Barry, 264.

40. Ibid. See F.A. Hayek, "Individualism: True and False" in *Individualism and Economic Order* (Chicago: University of Chicago Press, 1948).

41. Barry, 264.

42. Hayek, 41.

greater and more powerful than each individual separately. Adam Smith's invisible hand tricks individuals, as Smith said, into "promot[ing] an end which was no part of his intentions."[43] In both economic and social markets, the *cosmos* system operates to guide our actions. Walzer describes these new liberal systems as "'social constructions' that we, as individuals, have had a hand in making…[but that, we sense, are not] wholly made by ourselves."[44] This is the crux of Adam Smith's invisible hand. Our actions are our own, but the outcomes are somehow unsynched.

These structures are not just more powerful than us each individually, they are more powerful than each collectively. As so many failed attempts at collective regulation indicate, from Prohibition, to immigration to speed limits, once we have acknowledge chaos as a system of government, it is very hard to regulate individual actions even when the constitute parts agree regulation is desirable! As Hayek continues, over systems of *cosmos* "we will have less power over the details of such an order than we would of one which we produce by arrangement."[45] The system is both bigger than any one or any combination of ones; it is quite literally beyond the control of individuals, individually or collectively.

Indeed, the lack of control is one of its goals and benefits. The struggle of liberalism, after all, began in a quest for liberty, for the destruction of *potestas*, the chief characteristic of command societies. It should be clear that command society, society that is maintained, perpetuated and controlled by a concentrated force resting above it, is absolutely incompatible with liberty and freedom. There is no liberty, because the *potestas* exists above; it is not freedom because you are by necessity dependent on the *potestas* for your mode of survival. Your place in society, your actions, and your future are all at least theoretically determined by the command.

The process of generating *cosmos* and the process of achieving liberty are the same, the destruction of *potestas* by *taxis*. Liberalism liberates us from this power, and sets about the process of governance by *cosmos*.

43.Quoted in Hayek, *Law*, 37.

44. Michael Walzer, *Politics and Passion: Toward a More Egalitarian Liberalism* (New Haven, Conn.: Yale University Press, 2004), 2.

45. Hayek, 41.

The dirty, if worst-kept, secret of liberalism is that it does not liberate us by destroying power. In both command and chaotic societies, power controls. The goal and the regulating power are the same, but they come from different sources and attack us in different ways. Robert Heilbroner in *The Making of Economic Society*, along with others, has made a similar argument, suggesting that "market-capitalism represents a system of power incorporating the same processes that were at work in earlier societies employing tradition and command."[46] It is the same process, by a different name.

Liberalism, instead of destroying power, de-centers it and makes it invisible. Just think of Smith's invisible hand. The hand itself is real enough, just like it might be in a command society. When the invisible hand slaps you, it hurts. The clever bit is the hand's invisibility and disembodiment. Its power does not come from above, it is not a *potestas*; instead, the power and regulating force of markets come from around. The market power pervades the ether. It is at the same time no one and everyone, nowhere and everywhere. As Heilbroner explains,

> The beautiful consequence of the market is that it is its own guardian. If output or prices or certain kind of remuneration stray away from their social ordained levels, forces are set into motion to bring them back to the fold. It is a curious paradox that thus ensures the market, which is the acme of individual economic freedom, is the strictest taskmaster of all. One may appeal the ruling of a planning board or win the dispensation of a minister; but there is no appeal, no dispensation, from the anonymous pressures of the market mechanism. Economic freedom is thus more illusory than at first appears. On can do as one pleases in the market. But if one pleases to do what the market disapproves, the price of individual freedom is economic ruination.[47]

The language is clearly reminiscent of the difference between acting freely and being free to act. Within the market prison, I can act freely to do what I am allowed to do by the constraints. But as soon as I push those constraints, as I dare to act differently, I tempt the forces of power to close in on me. One is not truly free to act in a market society.

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46. L. E. Johnson, "Review of *Behind the Veil of Economics: Essays in Worldly Philosophy* by Robert Heilbroner," *Journal of Economic Issues* 23, no. 3 (Sep. 1989), 897. See also Douglas Dowd, *The Twisted Dream* (Cambridge, Mass.: Winthrop, 1977); Robert Heilbroner and William Milberg, *The Making of Economic Society, 11th Edition* (Upper Saddle River, N.J.: Prentice Hall, 1980).

47. Heilbroner, *The Worldly Philosophers,* 57-58.

The market is nothing more than a decentralized system for "enforcing discipline and order in our social system."[48] The market systems are morally and functionally superior because they provide the function of tradition and command without arbitrary tyranny.[49] Hayek's emphasis tends to be on the efficiency of *cosmos*. It is a system that "emerged to cope with man's necessary ignorance, to co-ordinate actions in a more effective way than deliberately designed ones could."[50] Although this is certainly true, and extremely important, it belies the deeper understanding of liberalism important here. These systems allow us to "extend the scope or range of the order which we may induce to form" without increasing the control of any individual because the system "will utilize the separate knowledge of all its several members, without this knowledge ever being concentrated in a single mind, or being subject to those processes of deliberate coordination and adaptation which a mind performs."[51] The nonliberal command societies are characterized by the concentration of power in a person or elite cabal. The liberal are characterized by the decentralization; they provide us with liberty.

DEMOCRACY AND CONSTRAINT

Another way of putting this is true liberalism operates to replace restraints with constraints. Restraint connotes a singular force which holds and binds another. One person restrains another. This is the most typical form of tyranny, where an individual is kept from doing or acting because some force, the state or a man prevents it.

Constraint, however, uses a different prefix, one that emphasizes multiple sites and origins of restraint. In liberal theories, the collective, the market, works to constrain the behavior of any one individual. There is no singular source of power or authority. It comes from all directions. In liberalism, no *one* creates the forces that bind society; indeed, one could even say the forces never exist in any specific time and place. They are both present and absent. Both real and imaginary. This new hand of the market, is invisible, disembodied and far stronger. Chaos is not anarchy.[52]

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48. Johnson, 897.

49. Ibid.

50. Barry, 264.

51. Hayek, 41-42.

The liberal campaign was not so much a quest to destroy or obviate power, as it was to disperse it fully and completely. So, "they began by challenging kings but aimed to set limits everywhere, even (sometimes especially) on the collective decisions of the 'people.' They agreed early on that the best way to set limits was to divide and disperse the capacity to exercise power."[53] Where command is concentrated and hierarchical, whether in the form of power, control or authority, liberalism has been shockingly effective.

Liberalism makes very few attempts, and is very bad at, dispersing lateral power, the power we exert on each other. On one level this is because these are the very forces which liberalism uses to regulate human behavior. Markets, by setting prices, regulate behavior, not hierarchically, but laterally. They push us into certain types of behavior, not by thumbing us into submission.

DEMOCRATIC *COSMOSIS*

Thus far, I have used the language of economics and markets to describe *cosmos*. Most people do. There tends to be an uneasy truce between the economic and political arms of liberalism. Economists see the political world as illogical, passion-driven and inefficient. Politics more often creates trouble than solutions.

Likewise, the language of economists is often anathema in political science. 'Market' is somewhat a dirty word for many political theorists. It is something apolitical, an atomized sphere of particular interests, a place not just of self-interest, but selfishness, consumerism and profligacy. The unfortunate attitude obscures the dynamic virtue of markets, as decision-making structures. But for that reason, it is difficult to use the word market, and the word democracy or democratic, especially in the way Tocqueville was given to using the term, better captures the idea. When one understands democratic society properly, the sharp distinction between economic and political markets melts away.

Democracy, in theory if not in practice, is little more than the perfect idealized market for policy. Both democracy and market-capitalism have "made change and dynamism – rather than order and tradition – the governing philosophy of the modern age."[54] They both de-center and democratize decision-making. Consumers (citizens), trade, buy and sell, (debate) goods (ideas about the perfect society), until they finally

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52. Quentin Skinner presents a similar idea. Quentin Skinner, Quentin Skinner, *Liberty before Liberalism* (Cambridge, UK: Cambridge University Press, 1998), 18, Footnote 54.

53. Walzer, *Politics and Passion*, 21.

54. Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton & Company, 2007), 45.

purchase (vote) on a conclusion, before start the process again. Most contemporary democratic forms, even deliberative democracy, are reconcilable with some form of liberal economic metaphor, because in the end democracy is government by *cosmos*. There might be man-made *praxis* in the Arendtian constructed spaces where deliberation takes place and in the government apparatus, but these are lagniappe. They themselves are not democracy any more than the physical act of voting is democracy.

Strip them away, and what remains is dynamic democratic *cosmosis*. It is the organic, deliberative process, the sharing of experience and knowledge. Democracy may end in the construction of *praxis*, erected orders for the dissemination of policy outcomes. But the process itself is *cosmos*. There are *attempts* at "deliberate coordination" characteristic of *praxis*, but anyone who has worked in government knows these attempts are rarely successful. Democratic knowledge is always imperfectly shared when democracy is practiced en masse. Democratic operation is the process of many people seeking many different goals, coalescing into coalitions when expedient, often without ever even realizing they are. No one individual ever dictates or decides; there is sharing, but no concentration of knowledge. The government by the people is a *cosmos*. To think otherwise is to confuse democracy with the government apparatus, process with procedure. An authoritarian government is pure *taxis*, it is top-down, all decisions, or at least every decision of any importance, is made at the top, and is necessarily constrained by an individual ability and will to know, understand and control. Democracy is no such thing; it is purely decentralized and un-hierarchical.

Both democratic and economic markets, despite what is said about them, liberate but do not free. The process of liberalism is the process of liberation; it is the destruction of the centers of power that practice *potestas* upon society. Liberal chaotic orders, however, do nothing to free, nothing to create power within its subjects, nor render them sovereign. They replace restraint with constraint. Worse still, liberal society outsources control. When we are faced with undesirable outcomes, we are impotent. Even when we agree on change, change is elusive. The very *cosmos* structure conducive to our social liberty is destructive to our freedom.

Chapter VI

Social Unfreedom

Political philosophers have always understood that society limits liberty and freedom, an understanding that has led a number of theorists to stoop to an ahistorical theorizing of the perfect pre-society. John Locke begins with a "natural liberty of man [that] is to be free from any superior power on earth, and not to be under the will or legislative authority of man."[1] He is to be his own master. John Milton, speaking in the mid-17th century, boldly declares no one "can be so stupid to deny that all men naturally were born free, being the image and resemblance of God himself."[2] Jean-Jacques Rousseau, likewise, understood the unique qualities of natural freedom, "which is limited only by the force of the individual."[3] The pre-social savage, he says, "breathes only repose and freedom" and could never understand slavery or *dominus*, *potestas* or control.[4]

Early liberal thought is particularly prone to the pre-social fiction, the vision "of a presocial self, a solitary and sometimes heroic individual confronting society, who is fully formed before the confrontation begins."[5] Perfect freedom, the thinking seems to imply, is something discovered only before society, before the construction of social power and force.[6]

Locke, Milton and Rousseau, just to name three, all reminisce at the wonders that were lost and from which they were seized. They all introduce society by way of eulogy because they sense something sinister in social arrangements necessitating, or causing, abridgments on freedom. Some, like Thoreau, yearn to put back to nature and restore the promise of pure asocial freedom. The mainstream merely

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1. John Locke, *The Second Treatise of Government*, ed. Thomas Peardon (Upper Saddle River, N.J.: Prentice-Hall, Inc., 1997), 15.

2. John Milton, *The Tenure of Kings and Magistrates*. Quoted in Quentin Skinner, *Liberty before Liberalism* (Cambridge, UK: Cambridge University Press, 1998), 19.

3. Jean-Jacques Rousseau, *One the Social Contract, with Geneva Manuscript and Political Economy*, ed. Roger D. Master, Translate Judith Masters (Boston: Bedford/St. Martin's, 1978), 56.

4. Quoted in Stephen Ellenburg, "Rousseau and Kant: principle of political right," in *Rousseau after 200 Years: Proceedings of the Cambridge Bicentennial Colloquium*, ed. R. A. Leigh (Cambridge, London: Cambridge University Press, 1978), 6.

5. Michael Walzer, "The Communitarian Critique of Liberalism," *Political Theory* 18, no. 1 (Feb. 1990), 20.

6. This is not the only understanding. As mentioned before Arendt argues the Greeks understood freedom as something constructed in the public space. Freedom is not something found before society but only in society.

dismayed at the freedom that was, while rationalizing and justifying the social limits. For most of them, the threat of violence is what pushes man away from the state of perfect independence. Afraid of impairments on their liberty, people limit their freedom.

Cast down from Eden, "the liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, no under the dominion of any will or restrain of any law but what that legislative shall enact."[7] For Rousseau, individual freedom in society "is limited by the general will."[8] It is not there is some different liberty in society, but that this new liberty of society is the best man can hope for. Man must be in society, and so he must have a new understanding of freedom and liberty to go along with that new social order.

Liberal society appear as society born in sin. It is a crime foisted upon the people, an invention of cruel necessity. As Max Pohlenz describes, the state for these liberals is "a human organization shaped by history, which [is] only a means to an end if not indeed a necessary evil."[9] The cruel accident of nature has made cooperation and society necessary for life, without endowing men with the capacity to make cooperation easy.[10] With its indigenous burdens and constraints, society renders free life a pale imitation of itself. The liberal task becomes to make the best of the imperfect situation, to limit the power constructed in necessity. It is odd, indeed, that a line of philosophy so reluctant and suspicious of social freedom, freedom beyond nature, should effectively become freedom's signet.

This tragic contradiction is especially apparent in the earliest writers, who were primarily interested in the justification and origin of political power and much less about democratic practice. Arguing for the consent of the governed like Locke, as noted before, required very little of him by way ensuring the freedom, the self-power, of citizens. Lockean and Hobbesian societies were largely the slave societies of free men. The free men of presociety freely entered into the commonwealth to preserve some

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7. John Locke, *The Second Treatise of Government*, ed. Thomas Peardon (Upper Saddle River, N.J.: Prentice-Hall, Inc., 1997), 15.

8. Rousseau, 56.

9. Max Pohlenz, *Freedom in Greek Life and Thought: The History of an Ideal* (New York: The Humanities Press, 1966), translated by Carl Lofmark, 29.

10. Robert Heilbroner, *The World Philosophers: The Lives, Times, and Ideas of the Great Economic Thinkers*, *Revised Seventh Edition* (New York: Touchstone, 1999), 20.

quality more important than their independence, whether liberty, property or their very lives. Once this transfer was completed, the sovereign exercised an impressive power over the population.

This system ultimately proved unsatisfactory, because it left people dependent on the sovereign will. The problem of politics then became something altogether different. The problem was not where the sovereign power originated and on whose behalf it was exercised. Instead, it was how the people might most effectively and freely rule themselves. In other words, how might citizens maintain the benefits of society without losing the control, the freedom, the self-government, they practiced in the state of nature.[11]

SOCIAL CONSTRAINT

The great challenge of government, what Rousseau called the fundamental problem of politics, is how to avoid "dependence on the goodwill of others."[12] As discussed previously, the threat of dependence on another for one's existence and freedom is a prima facie indication of one's unfreedom.

The central difficulty, of course, is the simple fact entering society begins the process of depending on others. Constructing the state, one must consider the power of society itself and the very real ways society constrains the practice of self-government. Entering into society, the proximity of other agents, automatically constrains freedom from all directions. It is not simply that in society the presence of one person's freedom delimits another's. This is certainly true to the extent populations diminish scarce resources. It is also true to the degree that interests and goals can conflict. One is not free to hit another, because the freedom from being hit is superior. Society does more than this simple limitations on pure autonomy.

As we saw in Chapter 2's discussion of Thoreau and the unfreedom of dependence, society breeds relations of unfreedom by promoting the interdependence of constituent participants. As Thoreau demonstrates, entanglements with society, by obligating us and making binding requirements on us limit the experience of our freedom.

The discussion takes place in all sorts of political discussions, but the implications are hardly ever fully parsed. Debates over energy-dependence and sovereign debt, for example, inevitably fall to discussions of freedom. A careful observer will note how integration into the world economy, by

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11. Hanna Pitkin, "Obligation and Consent—I," *The American Political Science Review* 65, no. 4 (Dec., 1965): 991.

12. Skinner, *Liberty before Liberalism*, 119.

thickening the social web of interaction, likewise limits the autonomous decision-making, the freedom, of states. External considerations constrain the domain of possible actions.

The problem is that liberalism, both democratic and market, thicken dependence. Tocqueville, for instance, is famous for recognizing how "social obligations" imposed very powerful constraints on individual action in American democracy.[13] In democracy, you become dependent on the coalition of people to get things do. Or, you are dependent on him to adopt your preferences, or at least to give in to mutual modification. In the market, you are dependent on an objectivity, uncontrollable price-setting mechanism. You are dependent on the market for labor, availability of wages, etc. There is not only no control, there is ever increasing levels of dependency. You are dependent on the man next door to make your shoes, the milkman to deliver milk, and the butcher to cut the meat. You are locked into a system which is both beautiful and frightening delicate.

French President Charles de Gaulle complained the integration of the North Atlantic Treaty Organization more often than not became a "euphemism for control."[14] That control, he said, limited the member states, or at the very least the weaker member states, subordinating them to the will of all others. They were subordinated to the will of the rest.[15] Dependence is the "state of being determined or significantly affected by external forces[, and] *Interdependence*, most simply defined, means *mutual* dependence."[16] As Keohane and Nye show, relations of interdependence are rife with power, and they very successfully demonstrate "mutual dependence can be used as a power resource" in international relations.[17] What is true for the sovereign state is no less true for would-be sovereign individuals. The only real difference is anything approaching effective society is a relatively recent international creation. In that

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13. Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve, ed. Thomas Bender (New York: McGraw-Hill, Inc., 1981)1:73. Quoted in Roger Boesche, *The Strange Liberalism of Alexis de Tocqueville* (Ithaca, NC: Cornell University Press, 1987), 141.

14. Geoffrey Goodwin, "The Erosion of External Sovereignty?" in *Between Sovereignty and Integration*, ed. G. Ionescu, (New York: John Wiley & Sons, 1974, 104.

15. Goodwin, 104.

16. Robert Keohane and Joseph Nye, *Power and Interdependence, Third Edition* (New York: Longman, 2001), 7

17. Ibid, 196.

transformation, it is possible to see the freedom deflation, society has wrought, chiefly by means by degrading state's internal power.

In point of fact, that is not a drawback, it is the point. Free trade is not supposed to prevent war by perfecting the people, encouraging their transcendence to higher levels of peaceful humanity. Free trade, by encouraging specialization, means to make war incomprehensively costly by slowly eroding the autarkic sustainability of economies. Globalization might prevent war; it might improve people's lives; it might even further the liberation of the masses of mankind. It does so, however, by limiting freedom.

Very many are afraid of this interference, afraid of the way it erodes control to make one's life according to one's will, afraid of the precarious position and the potential doom if anything goes awry. For these people, the problem of politics not only becomes a way of creating social power, but creating controllable social power. Power that enables liberty, the absence of control over oneself, and freedom, the control over one's world.

The most important way that society constrains is far more subtle. Social forces bind us, constitute us, in ways very similar to the uncomfortable influence genetics, biology and chemistry hold against the mind.[18] It is impossible to get away from these forces and nearly impossible to control them. Every social system is a system of control and coercion. The virtues of physical existence construct natural boundaries and constitute behavior in ways that are neither controllable nor ameliorable. They are constant and forever.

The social construction of wants and preferences is well-established. Choices made by social actors are never truly autonomous or internally created because preferences which guide and determine intentions are themselves "shaped by a process that preempts the choice?"[19] Michel Foucault is among the best at demonstrating this truth. Power in the modern age is not simply about meeting desires, it plays a crucial role in deciding what those desires are. Power is an "insidiously creative force" with the object of forming and constructing life in ways directly incident on what it means to be free.[20]

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18. Christian Rostbøll, "Preerences and Paternalism on Freedom and Deliberative Democracy," *Political Theory* 33, no. 3 (June 2005), 372.

19. Quoted in Christian Rostbøll, "Preferences and Paternalism on Freedom and Deliberative Democracy," *Political Theory* 33, no. 3 (June 2005), 373.

20. Leslie Paul Thiele, "Heidegger on Freedom: Political not Metaphysical," *The American Political Science Review* 88, no. 2 (June, 1994), 279.

The outside factors constitute an influence at best, and the true origin at worst, of our wants, goals and desires in such a way that violates the sovereignty presumption of freedom.

As liberation has become more complete with the abolition of forms of restraint upon actions, these social chains have become more and more chaffing. As a result, “mistrust of the state has broadened to become a more generalized mistrust off society and culture as a whole…As liberals have recognized, society and culture themselves impose limits on autonomy in the form of moral norms and mores, which may be as powerfully and coercively enforced in informal social settings as any formal law is by the government.”[21] So it does not seem enough anymore, if it ever was, that “preferences [are] autonomous merely because they are consciously and reflexively formed.”[22]The usual prescriptions of rationality are not enough to make one free. The external influences on both the preferences which are consciously judged, the metapreferences which do the judging, and even the process by which we go about consciously forming are all socially constituted. This makes the notion of self-fashion or self-creation a farce.[23] It has reduced many to assert it is enough to be “capable of reflecting critically on the values that have governed… socialization.”[24] Social position influences wants and desire, perhaps to a point that it is a cruel fiction to speak of any kind of authentic internal government of the self. Socially induced preferences are the fifth column of unfreedom.

CIVITATIS POTESTAS

The state presents a particular problem, because it is the necessary concentration of aggregated individual power, a *taxis*, with the potential to become *potestas* over me. As Qunetin Skinner describes, “the state has a duty not merely to liberate its citizens from such [mutual] personal exploitation and dependence, but to prevent its own agents, dressed in a little brief authority, from behaving arbitrarily in the course of imposing the rules that govern our common life.”[25] The problem becomes how to control without being controlled. To control, someone must command, but the only permissible command is one I control.

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21. Willard Gaylin and Bruce Jennings, *The Perversion of Autonomy: Coercion and Constraints in a Liberal Society, Revised and Expanded* (Washington, D.C.: Georgetown University Press, 2003), 33.

22. Rostbøll, 374.

23. Michael Walzer, *Politics and Passion: Toward a More Egalitarian Liberalism* (New Haven, Conn.: Yale University Press, 2004), 15. He also points to George Kateb, “Notes on Pluralism,” *Social Research* 61, no. 3 (Fall 1994): 531.

24. Walzer, “The Communitarian Critique of Liberalism,” 21.

For Rousseau and other republican types, the answer is to make people direct owner, direct participator in the government. As Gary Reed describes, "since politics is a matter of control, of who control[s?] whom, and in what ways, the only possible *political* 'self-control' is control shared with others."[26] The struggle to resolve this tension is a hallmark of much democratic theory and usually rests on the ability of people to share in the control of their government.

The difficulty with the republican approach, best exemplified by Rousseau, is it simply tends to replace a *patria potestas* with a *civitatis potestas*. The problem is instead by liberating us from the power of and dependence on one, these institutions enslave us to the power of and dependence on many. Control is what I give up, and if I get any modicum of it back, in a republican democracy, it is usually at the expense of my liberty.

Part of the problem is certainly equality. The push toward equality serves to end domination of the usual sort by reducing individual power to zero. Equality is the antithesis to the *patria potestas*, the power of one over another. It creates, what the Greek democrats were conditions of isonomy. When all are equal, no one controls and no one dominates. In this sense, equality serves, as Elizabeth Anderson puts it, "to end oppression, which by definition is socially imposed…to create a community in which people stand in relations of equality to others.'"[27] But equality alone is liberty, not freedom, because it only destroys others' power over me and does nothing to project my own power over my affairs or the affairs of others. So even if we could attain equality by some equitable process that did not in and of itself destroy freedom, by robbing them of their wealth, control does not ensure because we are left only with the impotence, and anti-control, equality necessarily entails.

The first part of the process is ordinary enough. Repeating it here is not necessary, except to say that advocates of equality must contend with the fact that the equalizing process necessitates a central, dominating power. The relationship between centralized power and equality was realized by the French liberals. Larry Siedentop describes how many of the French liberals before that country's revolution had identified the process that connected the equalizing and centralizing processes. Making every man equal

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25. Skinner, *Liberty before Liberalism*, 119.

26. Gary Reed, "Berlin and the Division of Liberty," *Political Theory* 8, no. 3 (August, 1980), 369.

27. Elizabeth Anderson, "What is the Point of Equality?" *Ethics* 109, 2 (Jan. 1999), 288.

required constructing a central authority exercising power equally over all. The central authority weakened the local elites by robbing them of their effective sovereignty over their lands, and operated to protect the formerly subjugated prerogatives of hoi polloi. The solution for the French thinkers was the system of free *moeurs*, the manners and lifestyle of a free people, very similar to American reliance on republican virtue.[28] Free *moeurs* quite literally constituted "an active citizenry attached to local freedom and joined together in numerous voluntary associations — the only real safeguard against excessive centralization, which, in turn, destroys free *moeurs*."[29] The only method of achieving freedom is by keeping the body politic small and manageable, thereby promoting equilibrium between corporate power over individuals and individual power over the corporate.[30] Even if the process of generating equality is equitable and not by force, it necessitates the creation of a strong central government which threatens to render liberty empty.

The more interesting, and I think damning, element of equality is the way it confounds control. This relationship is also well-understood. Rousseau himself described the individual democratic power as a perfect, $1/n$, share of the sovereignty.[31] For a modern mass democracy, this effectively means, as Walzer puts it, "One person, one vote, one quantum of influence and power."[32] In short, it means nothing. The more perfect the democracy, the more powerless the person. The democratizing, equalizing process reduces power to naught. As it declines, the share of the uncontrolled power of any one citizenl becomes absolute. Because he holds and possesses no discernable quantity of control over society or government, the democratic individual, based on a calculation of his own power, has no reason to feel any freer than the despotic object. Even though the power of the autocratic sovereign is dissolved does not mean an effective power, or control is centered among the individual citizens.

The democratic man's only solace is the fact that the power against him is isolated and fragmented. It is not united above, and so does not properly offend his liberty. Although he does not

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28. For discussion of the importance of American virtue, see Harry Watson. *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990).

29. Larry Siedentop, "Two Liberal Traditions," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford, London: Oxford University Press, 1979), 170.

30. Ibid.

31. Walzer, *Politics and Passion*, 22.

32. Ibid, 26.

possess power or control, neither does anyone else. The democratic citizen is freer to the extent that he does not face a concentration of power over or against him. Again, to stress, however, this is the quality of being liberated, of being outside the power of another. In his condition, the democratic man is without sovereignty or self-mastery in any senses of the terms.

In Rousseau's understanding, by contrast, "each man, by giving himself to all, gives himself to nobody."[33] In this Rousseau is surely correct in the sense that no higher figure exists above him. There is no *pater* to exercise *potestas*. Rousseau's difficulty is in the second half of the construction, "and since there is no associate over whom he does not acquire the same right that he has given the other over himself, he gains the equivalent of everything he had lost and more power to preserve what he has."[34] But the democratic man has gained no power because he exercises no control, and no means for exercising control. The citizen, in fact, gains nothing over his fellows. Any power he does command is a violation of the central equality principle. In establishing this point, Rousseau believes he has solved the problem of politics by constructing a system in which man obeys only himself.[35]

As even Benjamin Constant reasoned, the size of the body politic does play into this.[36] The Greek freedom was so more powerful, he suggested, because the states were small and the share of power each citizen possessed, though a fraction, was nevertheless of palpable fraction. The Greek citizen could *feel* the effects and exercise of his control and so it satisfied him. In modern society, however, the same power is divided many millions of times. The citizen is left without an iota of control over the society if he were to vote, and even less if the whole mass were to try to speak or move at once.

The small, local democracy seems to be the only one that might work as a provider of freedom. "One of the first things we learn about the newly discovered island of Utopia," Quetin Skinner reminds us, "is that its citizens live in fifty-four self-governing cities."[37] As Skinner continues, he explores the small, geographic concentration of Utopia's political organization that gives rise to its experience of freedom. The advocacy of

33. Rousseau, 62.

34. Ibid, 62.

35. Ellenburg, 7.

36. Benjamin Constant, "The Liberty of the Ancients Compared with that of the Moderns," in *Political Writings*, trans. Biancamaria Fontana (Cambridge, UK: Cambridge University Press), 311.

37. Skinner, *Liberty before Liberalism*, 31.

small is not new. It has played a central role in the history of this country, usually in the form of federalism debates. Advocates from both the political left and right have used the arguments, often placing special emphasis on small, homogenous societies, where citizens may still feel the effect of their power, or more precisely where their power still has effect. The small, uniform society helps alleviate the pressures that vote dilution exacts on individual democratic control, and so heighten the experience of freedom.

Small need not refer to only geographic concentration or population numbers. In fact, it is far more common in relation to diversity and the emphasis on the singular society of the self. Rousseau and others try to obviate the discussion of social control by insisting that in properly governed or constituted societies, the only social control is indistinguishable from self-control. Under J. Hope Mason's reading, Rousseau in the Social Contract believed social freedom is necessarily proscribed, but that "limit also need not be a restriction."[38] The society of a single consciousness, cloned a million times over, is not unfree whether ruled by one or by the whole million and one, because the government would be the same.

The perfectly free society, for Rousseau, becomes one that is ruled by a collective of individuals who are similar in every important respect. It is a society in which politics, political struggle and disagreement essentially ceases. They are replaced with the congruent consensus, agreement based not on comprise and negotiation but on absolute preference equivalence. Individual wills cease, and a true social freedom, freedom of sovereignty and self-government are achieved because the only ruling will is the will each citizen would impose on himself in the absence of society. This is how Rousseau can seem to be about both freedom and totalitarianism. His freedom is a law, and perfect submission to the law, but it is a social law applied perfectly. The law is not a restriction because the society and the individual are one. Or, in other words, the separate self has ceased to exist, and only a social self remains. As Cassierer says, freedom and law for Rousseau, "did not mean arbitrariness [as in the independent rule of a self] but the overcoming of all arbitrariness."[39] The limitation of law need not be a restriction because one does not chafe at the application of self-law, practiced rules of conduct created by a self and imposed on the self. There may be many bodies, many personalities even, but each man, woman and child would want and aspire to the same

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38. J. Hope Mason, "Discussion of 'Rousseau et Marx,'" in *Rousseau after 200 Years: Proceedings of the Cambridge Bicentennial Colloquium*, ed. R. A. Leigh (Cambridge, London: Cambridge University Press, 1978), 85.

39. Cassierer, 55.

conduct. In this way, "the individual in uniting himself with all others nevertheless obeys only himself in this act of union."[40] It is the construction of free society, ruled by a common will, by means of the destruction of the separate self.

Still, to most observers there is something artificial to Rousseau's freedom. It involves a surrender of the individual sovereignty we enjoy today, a destruction of the self in every way we understand it. It involves making us fit for free government, forcing us to be free. Though the ultimate goal would be to give us control, it would do so by taking it away. Rousseau's plan might be extreme, but others share the sentiment.

As mentioned previously, deliberative democratic theories try to internalize the tension between individual selves and social control. Like Rousseau's democracy of the unitary social self, deliberative democrats try to reform people during the policy-making process, thereby making social constraints more palatable. Deliberative democracy becomes the process of controlling the constituting forces of society for political effect.[41] Where Rousseau simply expected men to acquiesce to the general will, deliberative democrats seek to create it. They do not "regard preferences and interests as brute facts that uncritically can serve as input to legitimate democratic decision making."[42] In this regard, deliberative democracy in some formulations violates the principle of autonomous opinion formation because "deliberation [specifically] asks citizens to adjust their preferences and beliefs in light of the limits of their circumstance and the beliefs and preferences of other citizens."[43] I am not particularly saying deliberation is bad or morally abhorrent, but it strains credibility to call it freedom. It abandons the notion of freedom as original and internal, and forces us to accept only the weakest formulations of freedom.

SOCIAL COMMAND

We understand freedom as the concentration of effective control, but all these remedies operate to dilute control. The only legitimate control for these thinkers is shared control, but shared control, more often than not, means no individual control with complete individual subordination.

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40. Ibid.

41. Rostbøll, 371.

42. Ibid.

43. James Bohman, "Deliberative Democracy and Effective Social Freedom," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge: MIT Press, 1997), 326.

These thinkers all chafe at the central undeniable fact that social existence limits freedom, limits individual control, in very palpable ways, by constraining our actions, limiting our capacity, even shaping our thoughts. The majority of these limits, and especially the constitution of individual preferences, are *cosmos*. No one intends or plans them; they simply spring up and practice their art upon us by virtue of our interactions.

In order to recapture the lost freedom, these democratic minds all seek a range of anti-liberal solutions that arrange social political power above these processes, above the process of equalization, above the process of socialization, above the process of economic accumulation. Karl Marx is the apogee of this line of thought. Marx "enjoyed power; mastery, domination, *Herrschaft*," just as much as the next man. The concepts were essential to his understanding of freedom, which was the freedom of control.[44] The great harmony of his vision was the hopeful discovery of communal freedom, where no one was master and everyone was endowed with "an expression and realization of power, self-assertion to an unlimited degree."[45] Much of the Marxist promise was a means of taking those social relations and "subjecting…[them] to conscious control."[46] Feminist and some conservative critiques of liberalism follow the same trend. As Walzer intimates, "socialization is always coercive, but its character and condition are open to democratic debate and reform."[47] The central point is that these reforms may make the world more just, but by definition, they cannot make the world freer, without significantly weakening the idea of what it means to be a self or what it means to be in control.

Republican democracy does not just found a body politic, it constitutes a power politic. It fashions a concentrated, singular *civitatis potestas* that regulates and controls men with autocratic force. What appears at first glance to be isonomic no-rule is in fact something very different: all-rule.[48] It is more *taxis* than *cosmos*, because its purpose is the creation, the formation, the design of society from a unified consciousness above. The ultimate goal is to tame the *cosmos*, to replace chaos with control.

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44. Mason, 85.

45. Ibid.

46. Andrzej Walicki, "The Marxian Conception of Freedom," in *Conceptions of Liberty in Political Philosoph*y, ed. Zbigniew Pelcznski and John Gray (New York: St. Martin's Press, 1984), 220.

47. Walzer, *Politics and Passion*, 19

48. Hannah Arendt, *On Revolution* (New York: Penguin Books, 2006), 25.

Liberal society is the exaltation of the very same social processes. In its truest forms, liberalism calls for these processes to be the only social regulators. And though there is always room to problematize them, we do gain degrees of freedom when we know and accept these influences, we cannot in any way solve or banish them. They are part of the cosmos, part of the centripetal structures instigating society. The lack of control and central manipulation is what makes them legitimate.

Liberal society and government leave you with no more than modicums of power. In short, a liberal citizen is left with his liberty and autonomy. He is free from the burdens of *dominus potestas*; he has his liberty. He is also at will to leave the body politic, if he so desires; he has his autonomy. He, however, is not free. He has no power of his own. He is dependent upon and constrained by his fellows in ways both magnificent and subtle. His preferences are constituted by social structures; his incentives to action determined by the uncontrollable actions of countless, faceless figures all around him. He is powerless, and his powerlessness is exactly the object of liberalism. It is what liberalism is all about. He is alone; he is powerless; he is a slave without a master.[49]

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49. George Fitzhugh, *Cannibals All! Or, Slaves Without Masters*, (Charleston, S.C.: Forgotten Books, 2010).

Conclusion

Freedom is a dead end. In its worst formulations, freedom arouses yearning for an unattainable control and autonomy. Intoxicated by its alluring promises of power and control, we chafe at the restrictions and boundaries that remain. Even as we bust concentrations of control, we quail at yet new frontiers of obstructions to our own power. In hoping to find personal empowerment in liberal society, we sow the seeds of our own despair.

The attractive quixotic self-governance of freedom threatens to, in Isaiah Berlin's words, "acquire an unchecked momentum and an irresistible power over multitudes of men that may grow too violent to be affected by rational criticism."[1] Realizing the emptiness of liberal freedom, new regimes pop up, promising great freedom based on "man's domination over nature and…rational control over social relations."[2] In the end, though, even these fail. Freedom's false promises threaten to undermine the liberal order and the hard-fought liberty surrounding it, and mankind risks losing its best hope for a better future. The advance of illiberal democracy and state capitalism is just that.[3] Facism, communism, even fanatic, tyrannical libertarianism: they all begin in the guarantee of the freedom liberalism fails to create, and they all end in terror. Faced with the impossibility of the dream, we risk falling into nightmare. Liberal society is far from perfect. There are plenty of avenues to pursue better social arrangements, to struggle for better laws, debate a better morality, and encourage each other to live better lives. Liberal society need not leave people cold and alone. If anything, there is a paradox in the anti-liberal claims that liberalism renders us isolated and apart while at the same time molding our behavior under the massive weight of a gargantuan socializing power.

These social forces complicate the story of self-ownership and self-determination. How can we really say "a person is free…[when she is able] to pursue her life in her own way" when what she wants in a life, the methods that count as pursuit and even what she considers her way are not truly hers at all.[4] That social power is the modern progeny of the autocrat, the great taskmaster. The point I wish to stress is that it

1. Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 119.

2. Andrzej Walicki, "The Marxian Conception of Freedom," in *Conceptions of Liberty in Political Philosophy*, ed. Zbigniew Pelcznski and John Gray (New York: St. Martin's Press, 1984), 217.

3. See Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton & Company, 2007).

4. Iris Young, *Inclusion and Democracy* (Oxford, UK: Oxford University Press, 2002), 23.

is not a power that comes from above, but from around. It binds and pushes, forms and molds, around participants. It originates in this moment as the product of over thoughts and actions, and is perpetuated in the next by our thoughts and actions. It is, in a manner of speaking, a market. It is a spontaneous, self-perpetuating structure, a *cosmos* of understanding. We could tame these forces with *taxis*. Create structures, individually or collectively, to define and freeze these constitutive forces, but then we would no longer live in a liberal society. We would be opting for order by command.

A FUTURE FOR FREEDOM?

Where freedom means the realization or pursuit of life within these structures, there is little to complain about. The central problem involves claims to control, exertion against society and the regulating structures in a way that is the opposite of freedom. It is an admission that I shall be governed, I shall be dependent on forces beyond myself, forces I could control, at least in theory, if given the chance, but will not.

Freedom is fugitive, and I say let it go. Freedom is control, but our control has receded to chaos. We could dispel chaos; we could replace or contain *cosmos* with *taxis*. Such an ordered, constructed society would, in fact, be the historical norm. But even then freedom would be the privilege of control. Any kind of mass freedom is simply impossible in the physical world, a world of frictions and failures. It would be far better to abandon freedom, ditch misconceived notions of pure agency and acknowledge that freedom and control are deceptions of hubris. Such a mode of living would be in keeping with history. It was a spirit alive in the early periods of the republican. “A cautious member of the Massachusetts constitutional convention of 1820-21,” Harry Watson describes, “contrasted ‘a spirit of universal or unlimited liberty’ [that is, freedom] with ‘the spirit of limited liberty; or reciprocal control,’ and other republican advocates would have agreed with him, at least in principle.”[5] Our liberty should be enough.

One last distinction is in order. Freedom is possible. It is possible in society. It is not possible, however, for everyone. In a grand sense, we have three tactics. We can follow Thoreau into the woods, sacrificing society;[6] or we can tie each other closer and closer together in social bonds, sacrificing the individual self; or finally, despite the complications explicated by the ancients, Rousseau and others, we can

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5. Harry Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 43.

6. Roger Boesche, *The Strange Liberalism of Alexis de Tocqueville* (Ithaca, NC: Cornell University Press, 1987), 142.

pursue our own individual domination, sacrificing everyone else's liberty.[7] These different tactics reveal liberalism and freedom are not oil and water. The two can coexist, even if they are at odds. The truth presented here is liberalism does not create freedom, nor bestow or cultivate it among the people. Instead, liberal capitalism, as we practice it today, offers individuals the opportunity to create it in themselves. The masses of men marvel and celebrate the willful personalities with the indigenous power, energy and vigor necessary to push the horizons of their freedom. These captains of industry are the men who appear the most free, because at the end of the day they are. Their freedom, however, is not something born in liberalism, though liberty might have made it easier for them to realize their freedom. These men and women owe their freedom, their autonomy, sovereignty and power, to their own energy. They created freedom within themselves, by attacking the world. Their success, their achievements of wealth and freedom, might have been facilitated by freedom; but it is just as likely they would have come to be free in any society, by the sheer force of their will and talents. The lions are the Alexanders, the Chengis Khans, the Tamerlanes, of the modern age. They are free because they make themselves free, not because the liberal system empowers them. If there is a promise in liberalism, it is these men may pursue freedom without violent contests of power.

By the same token, we must remember how powerless liberty renders most men. It is very easy for the liberated individual to fall victim to the forces around him. He can be lost; he can be forgotten in the chaos. We must remember liberty can be excruciating. Every day, it forces individuals to bring their dismal power to bear against conflagration. It is not empowering, it is exhausting. And, people need the power of escape. Humanity and compassion demand people retain the right of escape, the opportunity, to be taken care of.

Because what matters most is control. When people thirst for freedom, they hunger for control. To bar people from that solace, to compel them to face the despotism of caprice and disorder of liberal society day after day, without respite, would reduce liberalism to yet another *potestas*, to a tyranny of chaos.

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7. Gary Reed, "Berlin and the Division of Liberty," *Political Theory* 8, no. 3 (August, 1980), 365. ("Liberty seems to have the uncanny property of extinguishing itself. For if I am free to do whatever I want, and so are you, then I have no assurance that I can actually do what I want; you, as free as I, may interfere with me. If my freedom is complete, it seems, it can only be at the expense of that of everyone else.") Fitzhugh and Rousseau, as well as the Greeks discuss how the master is a slave to those in his power. These observations do have merit, but more than weakening the claim that freedom is control, it merely heightens the degree to which all interpersonal relations are mutually constitutive and absolute power is extremely rare. One must admit the master seems far freer than the slave. See Plato, *The Republic of Plato*, trans. Francis MacDonald Cornford (London: Oxford University Press, 1945); George Fitzhugh, *Cannibals All! Or, Slaves Without Masters* (Charleston, S.C.: Forgotten Books, 2010); Jean-Jacques Rousseau, *One the Social Contract, with Geneva Manuscript and Political Economy*, ed. Roger D. Master, Translate Judith Masters (Boston: Bedford/St. Martin's, 1978).

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