

Foucault's Hobbes and the Concept of Liberty

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I

After more than 350 years, Hobbes remains a vital political philosopher. Indeed, in more ways than one, we live in Hobbesian times. I want to explore one dimension of his influence, namely, the extension of his conception of political liberty into recent political thought.

One of the fundamental questions in political philosophy is, surely: what does it mean to be free? And one of the fundamental questions we are asking today is: what is the price of freedom? In the midst of a complex struggle against transnational terrorism, many people argue that the value of freedom needs to be balanced against that of security. Or, more precisely, that security is a pre-condition of liberty, and since we live in extreme times new adjustments need to be made between these two values. I disagree with many proposed adjustments in recent debates over anti-terrorism laws, but my aim here is not to make that case in full, but to explore the concept of liberty in more detail. More specifically, I want to analyze three distinctive views about political liberty, each of which bears an interesting relationship to Hobbes.

If political philosophy has a distinctive role to play in the broader public culture – and I believe passionately that it does – then what it can offer is not so much specific answers to complex policy questions, but rather as clear an articulation as possible of the conceptual, historical and normative resources for framing and thinking about

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the problems we face. In what follows, I explore three views about political liberty: (1) the distinction made famous by Isaiah Berlin between 'negative' and 'positive' liberty; (2) the republican conception of 'freedom as non-domination' (developed by Quentin Skinner and Philip Pettit); and (3) the conception of liberty understood as a 'practice' developed by Michel Foucault. Hobbes is central to all three, albeit in each case for very different reasons. One question I am asking (although not necessarily answering) is whether we are dealing with three different concepts of liberty here, or rather with a host of conceptions branching out from a single core. The other question, much broader and even more contestable, is to ask which concept (or conception) offers the greatest critical resource for thinking about liberty today. My sympathies lie with some variation of (2) and (3), but I can offer only the barest outline of that argument here.

II

For Jean-Jacques Rousseau, freedom is always to be contrasted with dependence, and especially with dependence on the will of another. There is a big difference, on Rousseau's account, between my being confined inside my house due to a snowstorm and the case in which my neighbours lock me in.¹ Although the objective degree of constraint is similar in each case – I am constrained from exiting my house – my reaction to the second will be very different from the first, or so Rousseau suggests. In the case of being locked in by my neighbours, I might well feel anger or resentment towards their actions (or inaction, if others had the ability to free me but ignored my calls for help). In the first case, Rousseau suggests, feelings of resentment, at least, would be out of place. Subjugation to the impersonal forces of nature is different from being locked in by my neighbours. But what exactly is different? One thing is that when we react to someone by resenting him we are holding him responsible in some way.² It doesn't make sense to resent the weather, or my dog, as much as both may let me down, or indeed confine me to my house. And whatever the truth of determinism, whatever the truth of the increasingly powerful naturalistic picture of human behaviour and

psychology, our social and political practices are shot through with such 'reactive attitudes'.³

Liberty as a political value is clearly linked to the presence of coercion and constraint, but the precise nature of this relation is complex. Is there a primitive, non-moralized conception of freedom that lies at the base of our more elaborate conceptions of political liberty?⁴ A number of years ago, Charles Taylor introduced an interesting example to test this thought, which has become familiar in the literature.⁵ Consider the situation of citizens living in two different places (for Taylor it was London and Albania *c.*1979). In one there is freedom of religion, association and expression, but also lots of rules and norms that restrict our actions in many ways – traffic lights, road rules, tax laws, etc. In the other, there isn't much freedom of religion or expression, but there aren't many traffic lights, tax laws or other regulations either. It might well be, Taylor suggested, that if we literally added up all the 'free acts' available to us in the first and compared them with the second, we would be 'freer' overall in the second. That is, if by 'freer overall' we mean the total number of 'free actions' available to each citizen. But, Taylor suggested, this is preposterous; freedom of religion and expression just mean more to us and are objectively more valuable (given the kind of agents we are) than the freedom to drive unconstrained by traffic rules or to be free of many other social and legal obligations. It follows, therefore, that whenever we compare freedoms we cannot help but make evaluative judgments about which freedoms are more meaningful or valuable to us. The freedom to forgo wearing a tie to work on Fridays is not the same as the freedom to wear a turban in accordance with your faith.

The upshot for Taylor was that there is no neutral or bare account of 'free acts' lurking beneath the surface upon which these evaluative judgments can be built. At the very least, so this argument goes, it is just too difficult to individuate, weigh and compare all the possible 'free acts' open to individuals at any one point in time in such a way so as to give us an empirical measure of freedom.⁶

Still, is there at least a more or less basic concept we can work with, however unavoidably inflected by these kinds of judgments?

Locke defined liberty as 'a power to do or not to do; to do or forbear doing as we will'.⁷ This gives us a connection between freedom and capacity; but capacity in relation to what? We do not have a complaint in freedom in the political sense merely when our primitive freedom is violated. The presence of the state, or any kind of formal political order, necessarily violates our primitive freedom in some way. So the extension of freedom as a political value requires saying more about the nature of coercion involved and how it blocks or affects one's freedom in a much richer sense. I only have a claim in liberty if I am able to make a case beyond the terms of primitive freedom.⁸

We are not unfree if we are constrained from doing what we fundamentally lack the capacity to do. This gives us a difference between freedom and power. Hobbes gave the example of two men trapped in a room. One has the power or capacity to leave, but is restrained by 'walls, or chains'; the other is 'fastened to his bed by sickness' and hence lacks the ability to leave. According to Hobbes, the first is unfree, the second is neither free nor unfree, he is simply unable (as opposed to being rendered unfree by being blocked from exercising an ability he possesses).⁹ The link between freedom and capacity, and, more importantly, to obstacles to the exercise of our capacities as we desire to exercise them with humanly imposed coercion or interference (which I noted above), is here present.

Hobbes also argued that liberty, properly understood, involves the 'absence of opposition', and by 'opposition' Hobbes meant what he called 'external impediments of motion' – physical constraints on our freedom.¹⁰ His immediate analogy was to water, but it was intended to apply to human bodies as well: 'For whatsoever is tied, or environed, as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath not liberty to go further'.¹¹ Since for Hobbes, the rational will is necessarily a determined will (the will is simply the 'last appetite or aversion' in a process of deliberation), it makes no sense to talk about either the passions or sense impressions as constraints (including the passion of fear: fear can shape our will but does not constrain our liberty, in the proper sense of the term).¹²

So liberty consists in the absence of physical constraint on natural

motion. The sailors who are forced to throw their goods overboard in a storm are no less free than someone who decides to walk to the shops to buy some milk. But there is a difference between our natural liberty and the 'liberty of subjects', that is, the freedom we enjoy once subject to sovereign power. On the one hand we clearly lack the liberty we enjoyed as natural bodies. However, although political obligation clearly binds and constrains our action in many ways, the freedom that is left over to political subjects – certain inalienable natural rights, as well as freedom of action in relation to domains in which the sovereign has passed no law – is still considerable.¹³ In this sense, at least, subjects of a monarchy enjoy as much liberty as those who live in a popular commonwealth or republic.¹⁴

In his now classic 'Two Concepts of Liberty', Isaiah Berlin referred first to what he called a negative concept of liberty. Citing both Hobbes and Helvétius, he summarized it as 'the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree. . . . The criterion of oppression is the part that I believe to be played by other human beings, directly or indirectly, with or without the intention of doing so, in frustrating my wishes'.¹⁵ Although Berlin goes on to argue that this concept is the most appropriate as an ideal of freedom for modern liberal societies, other philosophers have wanted to go one step further. In another important paper, 'Negative and Positive Freedom' (published in 1967), Gerald MacCallum argued that all intelligible claims about freedom can be subsumed under a formula that includes the absence of constraint.¹⁶ One of the main points of Berlin's lecture was to distinguish between two families of concepts of liberty. MacCallum rejects this, arguing that freedom is essentially a triadic relation: Freedom always necessarily refers to an agent (x), to the constraint, interference or obstacle (y), and to the goal or end (z). Whenever you talk about freedom you are talking about an agent being free from something, to do or be something (or not to do or be something): one concept, many possible conceptions.

However, as I mentioned, one of the main purposes of Berlin's lecture is to distinguish between two concepts of liberty. Of course, the idea that there are rival and even incommensurable ideals of

liberty is older than Berlin's lecture. The most obvious antecedent (which Berlin acknowledges) is Benjamin Constant's speech to the *Athénée Royale* in 1819, 'The Liberty of the Ancients compared with that of the Moderns'.¹⁷ In that lecture, Constant sought to portray the ancient Greek ideal of citizenship based on civic virtue and direct participation in politics as ill-suited to modern commercial societies. Berlin too has problems with modern appeals to this ancient ideal. But he accepts that there are indeed two different ideals of liberty at stake, as opposed to MacCallum's suggestion that to speak of anything other than freedom involving the absence of constraint is a mistake. But then what is this second concept of liberty? Berlin gives us a number of different accounts. He starts off by associating it with the wish 'on the part of the individual to be his own master', as opposed to being acted on by external forces; to be 'moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside'.¹⁸ But as critics have pointed out, this is entirely consistent with the negative conception and so can't stand as an example of a separate concept of liberty. He then moves to the idea of self-realization, initially in terms of removing those internal obstacles that may obstruct acting autonomously; but once again this seems compatible with the negative conception. It is only when he identifies freedom as self-realization with the realization of true self, or real self, that he identifies, potentially, a distinctive concept of liberty.¹⁹ Here freedom, arguably, cannot be subsumed to MacCallum's triadic structure, since it is not to speak of a condition in which someone is free in the absence of constraint but rather as free in a 'pattern of action of a certain kind'.²⁰

In fact, it is not clear that the distinction between negative and positive freedom really does denote two distinct concepts of liberty.²¹ Instead, what we have are differences about the nature of constraint. Recall that, for Hobbes, only physical impediments count as relevant forms of constraint when clarifying the meaning of the concept of liberty. For other theorists, however, including many of those often allied with 'positive liberty', there is a much broader set of possible constraints. Even for the theorist (such as T. H. Green or indeed Hegel) who says I am free only in realizing my genuinely rational self, or

in acting in a particularly self-conscious – albeit socially mediated – way, it must be the case that all those things that might interfere with me so acting count as constraints. To say that freedom is self-realization really means to say either that people, if free, will realize themselves; or, that if people realize themselves, they will be free.²² This means we need to say something about what gets in the way of people realizing themselves, as well as what self-realization actually consists in. For Hobbes, to be free means, in the strictest sense of the term, not to be physically constrained; what your actions amount to in terms of the overall pattern or quality of your choices or actions is of no ultimate concern. For someone like Hegel or Green, on the other hand, to be free involves a certain form of self-understanding or self-consciousness, achieved in part by living in the right kind of social and political order. Freedom is ‘achieved’ or realized with regard to a certain pattern of action or state of being. Anything that gets in the way of that achievement counts as a constraint, including non-physical or ‘internal’ constraints (for example, the absence of structures of mutual recognition).

Berlin was particularly concerned with the problems he associates with positive liberty. On the one hand, he is worried about conceptual inflation: if liberty is assimilable to just about everything that is politically desirable it loses its conceptual usefulness. But a greater danger, he argues, is that a claim about the rational self-direction or self-realization of man’s inner life could be translated into a claim about societies as a whole, and thus a thesis about individual freedom transformed into a doctrine of authority and oppression. Rousseau’s notion of individuals being ‘forced to be free’ is, for Berlin, a *locus classicus* of this kind of confusion.²³ Writing in the midst of the Cold War, and not so long after the end of the World War II and the struggle against fascism, Berlin was concerned to point out the risks that such metaphysical claims posed when translated into political ideals. Even though writers such as Green (who along with Kant, Fichte and Bosanquet loom large in the background of Berlin’s critique) were speaking above all about the self-realization of individuals, and held that state action was only justified where it could be shown to increase the likelihood of individual self-development, Berlin remained

sceptical. The danger for him seemed inherent to the concept.

We arrive now at a large and ongoing debate over whether or not Berlin has indeed identified something intrinsically dangerous about positive liberty.²⁴ And it is not clear that he has. There are clearly less organicist and more comprehensive conceptions of the self-realization or 'state' approaches to liberty that might block the worries Berlin expressed. First of all, as I mentioned earlier in relation to Green, the fact that my extant desires can clash with what I ought to do according to my rational self doesn't necessarily mean that someone else can legitimately coerce me into so acting.²⁵ We can readily say that the heroin addict would be freer if free of his addiction, without thereby endorsing coercive measures to bring about that state of affairs.

Another example that Berlin mentions but doesn't fully explore is the idea of freedom as autonomy. Autonomy is a complex idea, but for argument's sake let us assume it means something like the capacity to set myself rational goals, or to give myself coherent principles of action that I can endorse in some way. Now much can be packed into the idea of the 'rational', but need not be. There are any number of different things it might be rational for me to do, some of which might well involve acting against what morality, social norms or the state, for that matter, might demand. Rationality need not entail monism about ends, but rather pluralism. Still, we might want to say that autonomy means acting according to those desires with which, after reflection, I can identify. In a well-known article, Harry Frankfurt argued for a distinction between first and second order desires (and thus first and second order volitions).²⁶ Second-order desires are desires about my first order desires. So, for example, my (first order) desire to flee a seminar in order to get some dinner might conflict with my (second-order) desire not to be moved so easily by my bodily desires when it comes to my education. One way to make sense of this conflict is to reflect on my desires; that is, whether I will that these are the desires that should move me to act. If I end up acting on a desire that I discover is in conflict with these second-order desires – I bolt for the door and dinner – then my action, suggests Frankfurt, is one I might not endorse. The basic idea is that if I cannot identify with or come to 'own' that action (or set of actions), then I have not acted freely.²⁷

What is the political upshot? A state concerned to promote autonomy – a liberal state, for example – might be justified in coercing us to act ‘rationally’ only in the very limited sense of promoting the right kind of second-order reflection, for example, by forcing us to stay in school until we are sixteen, to vote, or to be immunized against certain diseases. An analogy: ‘positive’ freedom in this sense may be no more menacing than the rules of grammar are for speakers of a language. These rules do indeed constrain our use of words and sentences, but they also promote intelligibility and remarkable semantic creativity.

This seems to land us back in Rousseau’s paradoxical argument that people can be forced to be free. In fact, at this point Quentin Skinner and Philip Pettit insist there is another conception of liberty to hand. If one strand of positive freedom involves freedom as self-realization through politics (Rousseau), and another strand of negative freedom involves freedom from external interference (Hobbes), then this third conception of freedom involves a distinctive assemblage of these strands. Pettit refers to it as the republican conception of negative liberty (Skinner prefers the more historically sensitive ‘neo-Roman’ conception of liberty). The basic idea lying behind this conception is that freedom can be restricted by dependence, an idea we encountered above with Rousseau. In keeping with our earlier analysis, dependence then enters the frame as a relevant candidate, as a form of constraint that must be overcome in order to be free. Physical interference is thus not the only kind of constraint relevant for a theory of political liberty, since my dependence on others may cause me to shape my behaviour in ways to gain their favour or avoid their wrath. The key claim that Pettit and Skinner make is that the mere presence of arbitrary power has the effect of undermining political liberty; it shapes the range of options open to us, as well as those we feel capable of acting on. Put in its strongest terms, the mere presence of arbitrary power within a civil association has the effect of rendering its citizens slaves. To live under the arbitrary power of another is to live in such a way that one is dependent on another not choosing to interfere with you, or to exercise control over you, even though they could if they wanted to. This is to lack the ability to act

according to your own will (to act or forbear from acting), and to be subject to that of another. There are two dimensions here. Living under arbitrary rule means living in a condition where one cannot easily predict what the rules will be and how they will affect you. But it also means being especially vulnerable to those able to control those rules. Even if the master acts according to a clearly defined set of rules that the slave can see and thus plan for, the slave is still at the mercy of his master. In fact, living even under arbitrary liberal government²⁸ – a government that does not interfere very often in one's life, but could if it wanted to without being subject to the discipline of the rule of law – renders one unfree.

Whereas defenders of negative freedom argue that any interference entails a loss of liberty, the republican argues that only arbitrary interference counts as a loss of liberty, and arbitrary here means roughly interference that is capricious and that does not track the avowable interests of the agent affected by it. The political upshot is that negative liberty lacks resilience in the absence of some form of self-government, or 'contestatory democracy' as Pettit has put it.²⁹ Political liberty is therefore not incompatible with upholding public duties. Why? Not because one realizes one's true self in cultivating the civic virtue required to do so, but because in upholding public duties one blocks the imposition of significant constraints upon one's actions; i.e. the potentially arbitrary actions of others.³⁰ Moreover, those interferences required to secure the conditions of non-domination – for example, regulatory powers or laws needed to block powerful political actors from being able to interfere with one with impunity – don't in themselves constitute a cost in liberty. I shall return to this point below.

So, are there really two – or even three – different concepts of liberty at play here? If there are, then the difference is not best captured in terms of Berlin's notion of negative versus positive liberty. Recall MacCallum's triadic structure: freedom is always of something (an agent or agents), from something, to do (not do) or become (or not become) something. And recall my initial discussion of the link between a primitive conception of liberty and the presence of coercion and constraint. All claims about freedom seem to involve the absence

of constraint in some way; it is hard to find any account of freedom in which that element is completely absent. But, having said that, the differences between the nature of those constraints (internal, external; wide, narrow) and especially the nature of the persons or agents to whom the description applies, and the ends to which they are or should be oriented, are indeed often profound. If there are different concepts of liberty then surely the differences are to be found there – to do with the nature of constraints and conceptions of the person – as opposed to claims about negativity or positivity.

III

I began by suggesting that freedom as a political value bears a close relation to coercion. The republican conception of freedom as non-domination preserves the link with coercion, but disconnects coercion from any necessary link to external interference. I can be constrained even when not physically interfered with. But the republican goes a step further in claiming that interference *per se* does not diminish freedom. There is no cost in liberty, it seems, if I am obliged to uphold my public duties as a citizen as a condition of preserving my freedom from arbitrary interference. Pettit, for example, makes this clear when he talks about the distinction between arbitrary and non-arbitrary interference. The imposition of taxes, for example, is in my interest even though I may well want to be an exception when it comes to actually paying them.³¹ In this sense, the republican conception seeks to remove the sting from what for many is a fundamental paradox at the heart of 'positive liberty', namely, that one can be forced to be free.³² For the republican, there are modes of interference that do not diminish freedom.

But recall the earlier example of an arbitrary liberal government. What if there was an illiberal but rule-following government, one that heavily regulated our lives, but reasonably so (that is, in ways that really did advance our interests to varying extents), and in a clear and predictable way, including providing opportunities for us to argue for changes in the laws and rules etc.³³ From the perspective of freedom, under which would you rather live: arbitrary

liberal government or illiberal but rule-following government? One promises less interference but unpredictability; the other predictability but more interference. At the very least, the thought experiment shows that both interference and domination have a role to play in evaluating how free people are. A critical question is identifying which forms of interference and which kinds of domination matter most, or are most important to prevent. The republican attempt to dissolve the unfreedom of interference *per se* threatens to overlook one side of this analysis.

This brings us to Michel Foucault. Foucault famously disconnected the analysis of power from any necessary relation to the intentional behaviour or attitudes of individuals, groups, systems or institutions. But he also sought to link the way people formed their beliefs and intentions to notions of normality and predictability derived from the human and behavioural sciences. If we want to say that freedom consists in the ability to act according to one's plans and intentions unconstrained by either domination or arbitrary interference, then Foucault offers another set of considerations about the range of constraints that are relevant, and the conceptions of self informing our analysis of those constraints.

We are used to thinking of Foucault's engagement with political theory in terms of his analysis and critique of sovereignty and power. But his approach also has interesting consequences for an analysis of liberty. In a lecture at the College de France in 1976, Foucault summarized his approach in this way:

To grasp the material agency of subjugation insofar as it constitutes subjects would, if you like, be to do precisely the opposite of what Hobbes was doing in the *Leviathan*. Ultimately I think that all jurists do the same thing, as their problem is to discover how a multiplicity of individuals and wills can be shaped into a single will or even a single body that is supposedly animated by a soul known as sovereignty. . . . Well, rather than raising this problem. . . . I think we should be trying . . . to study the multiple peripheral bodies, the bodies that are constituted as subjects by power-effects.³⁴

Foucault offers a distinctive analysis of the nature of free action, as well as the connection between liberty and coercion. One of his central claims is that freedom and power, broadly understood, are

conceptually and practically interdependent, not opposed. For him, modern subjectivity is always conceived of in terms of the effects of various relations of power, as opposed to being grounded in a foundational account of human flourishing. In *Discipline and Punish* and other writings, including the *History of Sexuality*, these relations of power – summarized as ‘discipline’ and ‘bio-power’ – have bodies as their object, conceived not as inert matter but composed of various forces and capacities shaped by specific historical and institutional practices. ‘Bio-power’, of which the disciplines are a part, is focused especially on what he calls the ‘species body’ – on the regulation, shaping and disciplining of life itself. Discipline focuses on the discrete acts of bodies; bio-power refers to the shaping of the life of the body itself.

An important historical development for Foucault, which he outlines in his lectures on the ‘Birth of Biopolitics’, is the emergence of a distinctive liberal ‘art of government’ or discipline, which he associates especially with the work of Adam Smith. Here the discovery and analysis of the ‘natural system of liberty’ – the apparently spontaneous mechanisms that underlie market relations – present another mode of government that works through a distinct knowledge of and respect for the ‘circuits’ of economic relations. Governments must ensure people are able to act freely in order to enable markets to work effectively. However, this respect for freedom is not based mainly on respect for individual rights. The limitation of governmental power is justified not by respect for individual freedom, but by ‘the evidence of economic analysis which [governments] know has to be respected’.³⁵ For Foucault, this is a crucial moment in the history of modern liberalism; it marks the beginning of an economic critique or limitation of sovereignty, especially as associated with the early modern ‘police’ state and *raison d’état*.³⁶

For reasons somewhat similar to those examined earlier (in discussing Taylor), Foucault does not think the emergence of the economic critique of sovereignty means we can say there is a quantitative increase in freedom from the eighteenth century onwards, just because the state begins to interfere less with individuals

and markets. Freedom is not a universal that is realized over time, Foucault claims. Rather, it is an 'actual relation between governors and governed, a relation in which the measure of the "too little" existing freedom is given by the "even more" freedom demanded'.³⁷ Liberal government is concerned not only with respecting freedom but 'consuming' it. It can only function if a number of freedoms actually exist:

Liberalism formulates simply the following: I am going to produce what you need to be free. I am going to see to it that you are free to be free. And so, if this liberalism is not so much the imperative of freedom as the management and organization of the conditions in which one can be free, it is clear that the heart of this practice is an always different and mobile problematic relationship between the production of freedom and that which in the production of freedom risks limiting and destroying it.³⁸

In order to work properly, free markets need buyers as well as sellers; workers with the right set of skills and capacities; they also need the rule of law and legislative frameworks to protect against anti-competitive practices and fraud. In short, there needs to be a whole range of governmental interventions and practices to secure the freedom required to sustain liberal societies. Individual interests have to be protected against the over-encroachment of certain collective interests (whether of the state, corporations or other powerful groups), and certain other collective interests (for example, public goods) have to be protected against potentially destructive conflict between unbridled individual interests. The freedom of economic processes must also not be allowed to undermine the health and well-being of individuals to such an extent that they are unable to act 'freely' in the manner required to sustain healthy economies. There is, in other words, a complex interplay between freedom and security at the heart of these emergent liberal arts of government. The 'disciplines' – procedures of control, constraint and coercion – are extended alongside the emergence of new liberal freedoms. But along with these freedoms come new mechanisms, whose purpose is 'breathing life into, and increasing freedom, of introducing additional freedom through additional control and intervention'.³⁹

The key conceptual claim Foucault is making is that freedom and

discipline – and power more broadly – are not only non-contradictory, but mutually dependent. In one sense, freedom only really matters to us when constraints or obstacles are placed upon it (Foucault and Hobbes are in complete agreement here). This means that freedom can only ever be sustained (however we define it) if we are able to understand and act in such a way as to resist the forces seeking to constrain it. These capacities, of course, must come from somewhere and will involve some form of discipline or power, at the very least, over ourselves. Foucault has a distinctive account of this aspect of the relation between freedom and power.

In his important late essay, 'The Subject and Power', Foucault made it explicit that what he was referring to here was the idea of power relations existing wherever there are 'actions upon the actions of others'.⁴⁰ That is, he conceives of power relations as always presupposing agents capable of acting in various ways. We are both subject to relations of power (including those we impose on ourselves), and subjects with various capacities for action in response to those relations. Foucault thinks of human capacities as always developed in light of these relations of power, as he tries to demonstrate in his genealogies of human sexuality and disciplinary institutions. Our capacities for action, in other words, are partly a function of not only our physical constitution, but also the social and institutional context in which we live, including, crucially, those normative considerations (moral, political, ethical, cultural) one brings to bear on understanding and justifying one's actions to others.⁴¹ Capacities can change, but also perspectives; sometimes the same capacities can acquire radical new meaning in the light of a changed or newly acquired perspective.⁴² The human sciences, for example, provide regulative models or ideals of 'normal' human flourishing that shape our practical reasoning in different ways. They also shape how the state and its agencies treat their citizens (as well as non-citizens). These discourses exercise a kind of epistemic authority in the public culture and in our own practical reasoning, but insofar as they come to shape implicit conceptions of the person and thus normatively available ideals of human flourishing, they come to shape moral attitudes as well.

As these relations of power and the forms of subjectivity they engender stabilize and become normalized, they act to constrain some range of actions (and thus persons) more than others, and identify some actors for particular forms of governance and interference rather than others. To the extent that this ends up severely constraining the capacities of particular individuals or groups to act on the actions of others acting on them, they congeal into relations of domination as opposed to relations of power.

Foucault sometimes refers to the subject as forming itself through reflection and action, as when he suggests that thought is 'freedom in relation to what one does, the motion by which one detaches oneself from it, establishes it as an object, and reflects on it as a problem'.⁴³ In 'What is Enlightenment', he associates what he calls the 'ethos of a permanent self-criticism' with work carried out 'by ourselves upon ourselves as free beings'.⁴⁴ The suggestion is that to the extent that we actually have the capacities to act upon our own actions and react to those acting upon us, including gaining some reflective distance on those actions, we are free.

But how are we to characterize this kind of freedom? For some, Foucault is caught in a contradiction between his commitment to genealogy and the positing of a kind of transcendental subject (especially given the emphasis on reflection and 'problematization' noted above).⁴⁵ But this is to presuppose exactly what Foucault sought to question in much of his work. Understanding the conditions of possibility for experience, including what it means to be free, can only be grasped in terms of what Foucault called the 'historical a priori'. According to this account, there is no contradiction between the idea of a self engaging in self-reflection and self-criticism on the one hand, and a genealogical account of the development of those very capacities in the context of 'power-knowledge' on the other. Freedom is a kind of ontological precondition for ethics and politics, but this is an historical as opposed to metaphysical ontology.⁴⁶ I am free to the extent that I possess the actual capacities and self-understanding to (re-)act in a particular way to a particular set of relations of power, which presupposes agents who are capable of so acting. Hence what we might call Foucault's practice conception of liberty:

So there may . . . always be a certain number of projects whose aim is to modify some constraints, to loosen, or even break them, but none of these projects can, simply by its nature, assure that people will have liberty automatically, that it will be established by the project itself. The liberty of men is never assured by the institutions and laws that are intended to guarantee them. This is why almost all these laws and institutions are quite capable of being turned around. Not because they are ambiguous, but simply because 'liberty' is what must be exercised.⁴⁷

There are two interesting results to note here, returning to our comparison with the republican conception of freedom and that of Hobbes. First of all, as in the republican conception, interference *per se* doesn't constitute unfreedom, but in an even more radical sense, free agents are made, not given. Our capacity to practise freedom is contingent on a wide range of other practices, including practices of the self. Second, recall that on the republican conception I am unfree if I find myself in a situation in which someone or some agency could arbitrarily interfere with my liberty, even if they never actually intend to. The mere knowledge of my being in their debt renders me unfree. On Foucault's account, however, the fact that others could arbitrarily interfere with my freedom is a given feature of the social and political domain. It is inescapable, a permanent possibility of politics; part of the ontology of freedom. If Foucault's conception of freedom is not a liberal one, it is clearly not republican either.

Thus, perhaps surprisingly, Foucault ends up endorsing something like a corporeal conception of liberty: I am free to the extent that I can actually exercise my capacities in such a way as to modify the actions of others on my actions. Freedom is tied very closely to action. But that corporeal freedom is itself conditioned by various social, political and historical forces, as well as the interpretive frameworks within which the agent understands himself. Thus Foucault's conception of corporeal freedom is far richer than Hobbes's, given his genealogical account of the nature of human bodies and their capacities. It is not merely a natural body seeking to maintain itself in motion and satisfy whatever desires it happens to possess. Instead, it includes a dynamic account of the capacities and perspectives that enable a particular kind of natural body to respond to and reflect on those actions acting on it, however much it is always acting within a dense

field of relations of power.

Paul Patton has pointed out that to the extent that Foucault distinguishes between relations of domination and relations of power, subjects must be capable of experiencing something like the former as limits to their freedom of action in the first place.⁴⁸ This is consistent with our initial claim that freedom only matters or comes to the fore in the context of forces seeking to constrain it in some way. This clearly presupposes agents who have available to them modes of self-interpretation (individually and collectively) that enable them to grasp their situation in this way. This is sometimes extended to an interpretation of Foucault's work on ethics and the modes of self-fashioning found in various ancient Greek texts that he explores in the *History of Sexuality*. The suggestion is that, in these studies, Foucault was rediscovering a 'free subject' that discipline and bio-power had previously crowded out of his analysis. No doubt he changed his mind about many things. But the fundamental inter-relationship between power and agency, and especially the increasing intensification and efficiency of relations of power, remained central to his discussion of ethics as well. The kind of agency Foucault is interested in, both in his work on modern political thought and ancient ethics, is not causal – that is, the power to initiate action by an act of will in some way independent of antecedent causal conditions – but essentially historical. Moreover, he did not see it as his project to provide any universal criteria for what these critical modes of self-interpretation might be, or for their validity. Freedom, in the end, is what must be practised, and it will always be a function of the relations of power within which one is always enmeshed and against which one always reacts. Foucault's conception of freedom is a particularly radical version of what Ian Carter has called the 'specific freedom thesis'.⁴⁹ Individuals are not to be understood as free as such, or free in some non-specific sense, but free to do particular things and pursue particular ends.

IV

My story is almost at an end. If we are interested in a theory of political

liberty for our times, what should we be looking for? If freedom is a value constitutive of the identity of modern liberal democracies, then the legitimacy of the basic structure of that society will depend – in part – on the realization of freedom. As much as we can identify a primitive concept of liberty, it is too thin to serve these purposes. Any political order at all, and certainly one involving something like the state, will violate our primitive freedom. Moreover, freedom is always constrained, in some way, by different forms of internal and external determination, as we have seen. This need not entail that political liberty is a contradictory ideal, only that those forms of determination will have to be redeemed in light of the value of freedom as well. And this is precisely what we have been examining in our discussion of the distinction between negative and positive liberty, the republican freedom as non-domination and Foucault's practice conception of liberty. The differences between these conceptions are not best summarized in terms of negativity or positivity. They lie instead in the different accounts of the value of freedom, the relevant constraints on freedom and in their conceptions of the person and of human flourishing.

What guidance do they provide for thinking about the urgent debate today over the balancing of our political liberties and the demands of security? First of all, one thing we must be careful about is the whole language of balancing in the first place.⁵⁰ Balancing of what, exactly? If we think of our civil liberties as rights then there should already be constraints on the extent of any such balancing, given the way we usually think about the nature of rights in the first place. Even consequentialist justifications of rights acknowledge their special character in this sense. Also, we need to pay attention to the distributive effects of any such balancing. What might actually be occurring is that we are considering trading off the liberties of some people rather than those of all of us, and usually the civil liberties of a few for the security of the majority. And we need to ask hard questions about what difference any such trade-off might actually make in addressing the threats we face. Arguments for changing the priorities we assign to basic liberties require special scrutiny with regard to the consequences they purport to promote.

We also need to be wary of those who would argue there are not tough choices to be made, that because security is a necessary precondition for the enjoyment of our civil liberties, there is no inherent contradiction between security and freedom. There may not be a fundamental contradiction, but nor are they always easily reconciled. The best argument for restricting liberty in these circumstances is for the preservation of liberty itself, whether we understand liberty to be valuable as such or in terms of some scheme of specific liberties. But this means any proposal for restricting liberty will have to be judged against its consequences for the enjoyment of individual freedom overall, and/or in relation to the enjoyment of what we consider to be our most important liberties. Security is not intrinsically valuable; we value it for what it enables us to do or be.

To keep sight of this tension we need to hold onto the notion of a cost in liberty, something I was pressing against the republican case. It is often tempting for liberals to say that if I have no right to do x then I have no claim in liberty to do x , and therefore if I am prevented from doing x I have no complaint in liberty against that constraint.⁵¹ Both Pettit and Skinner, albeit for slightly different reasons, make similar moves. I think this is mistaken, for reasons to do with the nature of freedom as a distinctly political value.⁵² Political liberty is inevitably a moralized concept, albeit to different extents. But in any political community there will be deep disagreements about the judgments that go into evaluating which constraints matter most in relation to liberty, and which conceptions of the person (and their ends) are most desirable or valuable. Even if people understand they have no rightful claim to x , or that some forms of 'interference' are actually liberty-enhancing, they may still experience the constraint as restriction of their liberty and resent it. I might well think you are wrong to resent these particular constraints on your freedom, but this is different from saying you are being forced to be free. Democracy helps create the conditions for the possibility of collective action, but it also generates losers. The remainders of democratic loss – resentment, disappointment, rage – need always to be kept in view, lest they fester and undermine the sociability democracy requires to work.

Notes

- 1 The relation between freedom and dependence can be found in many aspects of Rousseau's work, especially *Emile, or On Education*, ed. & transl. Allen Bloom, New York, 1979. I take up this relation in more detail below. It is also discussed by Raymond Geuss, *History and Illusion in Politics*, Cambridge, 2001, pp.104–05, who supplies the example.
- 2 Resentment is a complex moral emotion; see Friedrich Nietzsche, *The Genealogy of Morality*, eds M. Clark and A. Swenson, Indianapolis, 1998; P. F. Strawson, 'Freedom and Resentment' in *Freedom and Resentment and Other Essays*, London, 1974.
- 3 Strawson, *passim*.
- 4 See Ian Carter, *A Measure of Freedom*, Oxford, 1999.
- 5 Charles Taylor, 'What's wrong with negative liberty' in *Philosophy and the Human Sciences: Philosophical Papers 2*, Cambridge, 1983, pp.211–29. There are many other discussions in the literature that trade on a similar kind of point; see for example Amartya Sen, 'Welfare, Preferences and Freedom', *Journal of Econometrics* 30 (1991): 15–29; Richard Arneson, 'Freedom and Desire', *Canadian Journal of Philosophy* 3 (1985): 425–48.
- 6 But see Carter, *passim*, for an impressive attempt at doing precisely this (especially ch.7).
- 7 John Locke, *An Essay Concerning Human Understanding*, ed. P. Nidditch, Oxford, 1975, ii.1.56.
- 8 The phrase is from Bernard Williams, 'From Freedom to Liberty: The Construction of a Political Value' in *In the beginning was the deed*, Princeton, 2005, p.86.
- 9 This gives us a distinction between power and freedom; for Hobbes, we are only unfree when we are constrained from acting in relation to something that is actually within our power to do; see *Leviathan*, ed. E. Curley, Indianapolis, 1994, Ch.xxi, p.136. There is debate over how to interpret Hobbes here; compare Quentin Skinner, 'Thomas Hobbes and the Proper Signification of Liberty' in *Visions of Politics III: Hobbes and Civil Science*, Cambridge, 1999, pp.209–37 (especially 213–15), and 'A Third Concept of Liberty' *Proceedings of the British Academy* 117 (2002): 237–68, with Mathew Kramer, *The Quality of Freedom*, Oxford, 2003, pp.53–60. Note also the analogy to water and thus to natural objects; among other things it highlights the way freedom as non-obstruction can only be removed by physical obstacles, as opposed to psychological states or coercive threats. But as we shall see, this is not the whole story.
- 10 For the development of Hobbes's conception of liberty see Quentin Skinner, *Hobbes and Republican Liberty*, Cambridge, 2008.
- 11 *Leviathan*, ch.21, p.136.

- 12 *Leviathan*, ch.21, pp.136–37; for more discussion of this distinction see Skinner, *Hobbes and Republican Liberty*, pp.128–38.
- 13 On the liberty of subjects see especially *Leviathan*, ch.21, pp.138–45; for the list of inalienable rights see pp.141–43. We seem to have then at least three kinds of freedom at issue in Hobbes’s political theory: corporeal freedom, the freedom of action; the freedom ‘to do or omit’, that is, to decide one way or the other (for example, *Leviathan*, ch.6, p.33); and the ‘liberty of subjects’ or ‘civil freedom’. The liberty of subjects is the freedom we enjoy when we leave the state of nature and become subjects of sovereign power. We covenant to create the conditions for the establishment of civil society by relinquishing certain of our rights. However, it also follows that given the point of establishing civil society in the first place, we retain some of our rights (see ch.21, pp.141–44). The end of civil law (whether in a republican or monarchical regime) is ‘no other ... but to limit the naturall liberty of particular men, in such a manner, as they might not hurt, but assist one another’ (ch.26, p.175). But if laws are only artificial chains (as he refers to them in chs 14 and 21), how do they actually limit our liberty? Laws do not prevent action in the same way a dam prevents the flow of water. Thus Hobbes is clear that we always retain our liberty to break them if we really want to (however much we may fear the consequences of doing so). The upshot of his discussion then is that in civil society we are indeed contractually obliged to obey the sovereign, but we continue to possess extensive natural rights and a wide degree of (corporeal) freedom of action. We always also ultimately retain the freedom to break the law, whatever the internal inhibitions induced by threat of sanctions. For a searching discussion of some of the problems these different conceptions of freedom cause Hobbes, see Annabel Brett, *Liberty, Right and Nature*, Cambridge, 1997, pp.225–35.
- 14 See *Leviathan*, ch.21, pp.138–40; see also ch.29, pp.214–15.
- 15 Isaiah Berlin, ‘Two Concepts of Liberty’ in *Four Essays on Liberty*, ed. Henry Hardy, Oxford, 1969, pp.118–72.
- 16 Gerald C. MacCallum, ‘Negative and Positive Freedom’, *The Philosophical Review* 76 (1967): 312–34.
- 17 In Biancamaria Fontana, ed., *Constant: Political Writings*, Cambridge, 1988, pp.308–28.
- 18 Berlin, ‘Two Concepts’, p.131.
- 19 Berlin, ‘Two Concepts’, pp.146–48.
- 20 The phrase is from Skinner, ‘A Third Concept of Liberty’; cf. Berlin’s own response to MacCallum in *Four Essays*, p.xliiiff. For further discussion see Duncan Ivison, *The Self at Liberty*, Ithaca, 1997.
- 21 Cf. Skinner, ‘A Third Concept of Liberty’ and Eric Nelson, ‘Liberty: One

- Concept too Many?', *Political Theory* 33 (2005): 58–78; Ivison, *The Self at Liberty*.
- 22 See Nelson, 'Liberty: One Concept Too Many?'; but cf. Thomas Baldwin, 'MacCallum and the Two Concepts of Liberty', *Ratio* 26 (1984): 125–42.
 - 23 Berlin, 'Two Concepts', pp.xliv,145–54. See Rousseau, *Of The Social Contract*, ed. Victor Gourevitch, Cambridge, 1997, bk II, ch.7.
 - 24 At places Berlin suggests the connection is contingent (xliii–xlix), but the general line of argument seems to go much beyond that, to a more intrinsic connection.
 - 25 Mill (and von Humboldt) can be read as arguing something along these lines as well. Berlin accepts that there is a difference between the 'humane liberalism' of Green and the 'tough, rigidly centralized "organic" state of Fichte', but suggests the slide to authoritarianism is inexorable (see especially pp.150–54).
 - 26 Harry Frankfurt, 'Freedom of the will and the concept of a person' in *The Importance of What We Care About*, Cambridge, 1988, pp.11–26.
 - 27 There are problems with Frankfurt's account, however. Briefly, what makes second order volitions any more a candidate for reflective endorsement than first-order ones? What if my second order desire that I be moved by the desire to be well-educated was beaten into me by my father, and is now one I look upon with some angst, even disgust? I am not any closer to genuinely identifying with those actions than I was in the case of the first. Pettit refers to this as the 'bystander problem'; the self does not experience its doings or desires as its own, but relates to them as a bystander, or an alien onlooker. See Philip Pettit, *A Theory of Freedom: The Psychology and Politics of Agency*, Oxford, 2001, p.88.
 - 28 For further discussion of this example, see Stephen Wall, 'Freedom, Interference and Domination', *Political Studies* 49 (2001): 220–21.
 - 29 Pettit, 'Republican freedom and contestatory democratization' in Ian Shapiro, Casiano Hacker-Cordon eds, *Democracy's Value*, Cambridge, 1999, pp.163–90.
 - 30 Non-domination is valuable since domination 'sidelines or undermines [a] relation of mutual respect. If you exercise alien control over me in an active way they you straightforwardly give up on exercising only a reason-sensitive form of influence, resorting to force or coercion, deception or manipulation. And if you exercise it in a virtual way, then whether or not I realize the fact, you equally give up on such co-reasoning' ('A republican law of peoples', *European Journal of Political Philosophy*, forthcoming).
 - 31 *Republicanism*, pp.55–56.
 - 32 For criticism of this move see Williams, *In the beginning was the deed*, pp.81, 88–89.
 - 33 This counter-example is from Wall, 'Freedom, Interference and

- Domination', pp.223–26. A possible real world example is contemporary Singapore.
- 34 Michel Foucault, *Society Must be Defended: Lectures at the College de France 1975–76*, ed. Mauro Bentani, Alessandro Fontana, transl. David Macey, New York, 1997, pp.28–29.
 - 35 Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978–79*, ed. Michael Senellart, transl. Graham Burchell, Houndsmills, 2008, pp.61–52, 282–83.
 - 36 Foucault, *The Birth of Biopolitics*. Another crucial development in this history is the emergence of civil society as a distinct sphere or domain in relation to the state. Civil society is the 'concrete ensemble within which these ideal points, economic men, must be placed so that they can be appropriately managed', but it also means new 'arts of government' are required for doing so, quite distinct from those associated with reason of state or social contract theory. See the discussion on pp.292–313.
 - 37 Foucault, *The Birth of Biopolitics*, p.63.
 - 38 Foucault, *The Birth of Biopolitics*, pp.63–64.
 - 39 Foucault, *The Birth of Biopolitics*, p.67.
 - 40 Michel Foucault, 'The Subject and Power' in *Power: The Essential Works 3*, ed. James Faubion, transl. Robert Hurley and others, London, 2001, pp.326–48.
 - 41 Cf. Charles Taylor's notion of 'strong evaluation'; see 'What is Human Agency?' in *Human Agency and Language: Philosophical Papers 1*, Cambridge, 1985, pp.15–44 ; and for a Nietzschean twist, see Patton, 'Foucault's subject of power' in Jeremy Moss, ed. *The Later Foucault*, London, 1999, p.74; and 'Nietzsche and Hobbes', *International Studies in Philosophy* 33.3 (2001): 99–116.
 - 42 Nietzsche provides the clearest example of such a case in the first essay of his *Genealogy of Morality*; see the discussion in Patton, 'Nietzsche and Hobbes'.
 - 43 In Paul Rabinow, ed., *The Foucault Reader*, New York, 1984, p.388.
 - 44 Rabinow, *The Foucault Reader*, p.47.
 - 45 For this critique see Beatrice Han, *Foucault's Critical Project*, Stanford, 2002.
 - 46 See for example Ian Hacking, *Historical Ontology*, Cambridge, Mass., 2002.
 - 47 In 'Space, Knowledge and Power', *Foucault Reader*, p.245. He goes on: 'I think that it can never be inherent in the structure of things to guarantee the exercise of freedom. The guarantee of freedom is freedom.... If one were to find a place, and perhaps there are some, where liberty is effectively exercised, one would find that this is not owing to the order of objects, but, once again, to the practice of liberty'.

- 48 Patton, 'Foucault's Subject of Power', p.75.
- 49 *A Measure of Freedom*, pp.18–23. Against this, Carter argues that freedom has non-specific value, independent of the value we attach to any specific freedoms we may enjoy. This means we can make judgements about overall freedom that defenders of the specific freedom thesis (as well as what he calls the 'value based approach') either deny or fail to understand correctly. The defender of the non-specific value of freedom need not be committed to the idea that freedom is therefore unconditionally or intrinsically valuable. Freedom can still be justifiably constrained, and the non-specific value of freedom might well be understood as only instrumentally valuable in relation to the achievement of some other good, such as individual well being.
- 50 See Jeremy Waldron, 'Security and Liberty: The Image of Balance' *Journal of Political Philosophy* 11.2 (2003): 191–210.
- 51 For example, Ronald Dworkin, 'What is Equality Part 3: The Place of Liberty', *Iowa Law Review* 73 (1987): 3–6.
- 52 See also Williams, *In the beginning was the deed*, pp.86–90; and G. A. Cohen's classic paper 'Capitalism, Freedom and the Proletariat', reprinted in David Miller, *Liberty*, Oxford, 1991, pp.163–82.