

Liberty

Civil liberty¹ is not the natural status of states and societies. In most times and places, the strong have dominated the weak and human freedom has been quashed either by governmental coercion and force (e.g., Hong Kong, 2019-22) or by societal customs and norms (e.g., Medieval Europe).

States throughout history have generally been too weak to protect individuals from aggression by others, or they have been too strong for society to protect people from despotism. Thus, liberty is not possible without order, but suffers if there is too high a priority on order. As Madison noted in Federalist #51: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and the next place, oblige it to control itself.”

But what is liberty? There is not one conception, because liberty has been—and needs to be—different in different times and places. It has been markedly different among different cultures; the west has traditionally placed a much higher emphasis on liberty. Thus, there is no overall agreement among philosophers; everyone you will read has their own take. But there are some important concepts and patterns that generally hold and are worth understanding:

Liberty (or freedom) is a basic human right, if not the most basic right.

“Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.” — Immanuel Kant, *Groundwork for the Metaphysics of Morals* (1785)

"Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override." — John Rawls, *A Theory of Justice* (1971)

At its most basic, liberty is the absence of arbitrary or coercive restraints on one's beliefs, thoughts, speech, and actions; this has been characterized as the absence of one person or group having *dominion* over another. It is also the assurance of a body of rights, such as those found in bills of rights, in statutes, and in judicial decisions.

“In the state of nature, liberty consists of being free from any superior power on Earth. People are not under the will or lawmaking authority of others but have only the law of nature for their rule. In political society, liberty consists of being under no other lawmaking power except that established by consent in the commonwealth. People are free from the dominion of any will or legal restraint apart from that enacted by their own constituted lawmaking power according to the trust put in it. Thus, freedom is not as Sir Robert Filmer defines it: 'A liberty for everyone to do what he likes, to live as he pleases, and not to be tied by any laws.' Freedom is constrained by laws in both the state of nature and political society. Freedom of nature is to be under no other restraint but the law of nature. Freedom of people under government is to be under no restraint apart from standing rules to live by that are common to everyone in the society and made by the lawmaking power established in it.

¹ There are other types of liberty—including political and economic. They are related and overlap, but only civil liberty is addressed here.

Persons have a right or liberty to (1) follow their own will in all things that the law has not prohibited and (2) not be subject to the inconstant, uncertain, unknown, and arbitrary wills of others.” — John Locke, *Second Treatise on Government*, 1691

Such constraints can be imposed by the state or by society.

In society, “[t]he people who exercise the power are not always the same people ... over whom it is exercised, and the ‘self-government’ spoken of is not the government of each by himself but of each by all the rest. The will of the people...means the will of the most numerous or most active...; ... ‘the tyranny of the majority’ is now generally included among the evils against which society requires to be on guard.” — J.S. Mill, *On Liberty*, 1859

Constraints can be ad hoc or a component of systematic repression or oppression.

In her chapter entitled "Oppression" in the book *Feminist Frontiers* (1985), Marilyn Frye discussed the double bind in which women have tended to be trapped. This double bind includes the many "situations in which options are reduced to a very few and all of them expose one to penalty, censure, or deprivation". For example, it is neither socially acceptable for a woman to be sexually active or for her to be sexually inactive and labelled a "man-hater" or "uptight". This absence of choice permeates so thoroughly into women's day-to-day life that even small things like how they choose to dress or talk are criticized. Frye acknowledged that men face issues as well, but differentiates the issues of men and women through the metaphor of a bird cage. As Frye tells it, each individual bind that women face can be thought of as a single bar in a cage: by itself, it isn't enough to contain the bird. But, with enough bars, the bird is trapped inside the cage, left with nowhere to go. This is the complete absence of choice Frye describes, a culmination of issues women face that is so "immobilizing" and why, for Frye, women's struggle—and not men's—constitutes oppression.

Liberty, however, does not mean license. We should not take actions that deprive others of their liberties or otherwise harm them. Liberty, instead, is the power we have over ourselves.

In *On Liberty* (1859), J.S. Mill defined liberty is the ability of each and every person to think and do whatever is best for himself, as long as he does not harm another person. “[T]he only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others...” (This was later adapted by Justice Oliver Wendell Holmes, Jr. as the “clear and present danger” test in his opinion for the majority in *Schenk v. U.S.*, in 1919.)

Most thinkers agree that liberty can't exist without a degree of order.² Being a part of society and having a government necessarily involves the loss of some liberty through regulations and restrictions imposed by law for the common good. The loss, however, must be less than the benefits gained. This is the essence of the *social contract*.

"The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them." — Thomas Hobbes, *Leviathan* (1651)

² Jean-Jacques Rousseau is the most noteworthy exception. He began his most famous book, *The Social Contract* (1762) with, “Man was born free, and he is everywhere in chains.”

True liberty is more than just the absence of imposed constraints (i.e., *negative liberty*).

Positive liberty requires that each individual be able to exercise agency for oneself, to have certain capabilities enabling them to take advantage of the absence of constraints. For example, a destitute person, or one with a highly contagious and life-threatening disease that requires being quarantined, in today's society is not able to take advantage of many of the liberties the rest of us enjoy.

Some people are better able to take advantage of liberty than others.

The absence of constraints can elicit great achievements. In most cases, however, increasing liberty decreases equality. For example, when returns on capital are much higher than average wages, the well-off are likely to become much richer at the expense of wage earners. As a result, just as each society must decide on its desired balance between liberty and order, each society must also decide on its desired balance between liberty and equality.

Liberty, like democracy itself, is usually not an end but a means to an end.

To John Locke, for example, the desired end result is repairing the defects of the state of nature so that all people can live their lives without fear. To Mill, the desired end is moral excellence. "...all of us are under an obligation to seek the improvement of our moral character," to become "well-developed people of character."). To Amartya Sen, his *capabilities approach* broadened the understanding of freedom to include not just the absence of coercion but also the ability to lead a life one has reason to value. In this way, liberty is not just the means but also the end.

Even people who agree on most or all of the above concepts can still disagree on how much freedom is necessary and appropriate.

"Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything the state and its officials may do. How much room do individual rights leave for the state?...Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more state will violate persons' rights not to be forced to do certain things, and is unjustified. Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their *own* good or protection." — Robert Nozick, *Anarchy, State, and Utopia*, 1974

Robert Nozick was a Libertarian. Based on these principles, he believed that any attempt by government to redistribute income or wealth (through welfare programs, pensions, health insurance, and the like) was unjust, a violation of the rights of those individuals who paid more than they received in direct benefits. He also argued that taxes over and above those necessary to fund the minimal state was theft by the government, and constituted enslaving those people being forced to pay the taxes.