

Liberty and Debt

TOM FOURNIER

The libertarian conception of negative freedom most accurately embodies the meaning of human freedom and holds moral primacy over other conceptions. Yet libertarianism is morally incomplete. To become wholly legitimate, the libertarian claim must simultaneously recognize the moral sway of society's less-strong claim regarding the indebtedness of individuals. My goal here is to illuminate a significant moral deficiency in the libertarian conception and to point to the associated missing piece. Precisely how libertarianism and its missing piece are to be joined is left for another (longer) writing.

To show this deficiency, I will first present an overview of the distinction between positive and negative freedom conceptions, inclusive of four sub-distinctions: non-interference, non-domination, collective rule, and autonomy. I will then show some skeletal argument supporting the negative freedom conception in its libertarian form. I will finally make the case for moral incompleteness, using a somewhat novel approach to the original position of human cooperation.

The Positive-Negative Distinction

Non-Interference

Negative freedom may be thought of as *freedom from* manmade obstacles or interferences (Berlin 2–3). This aspect of the negative conception

Tom Fournier is a senior majoring in philosophy at the University of Arizona. He has a prior BA in business administration and has worked a number of years in the management of technology businesses related to pollution measurement. His current interests are political and moral philosophy as well as philosophy of science. He plans to pursue graduate studies in philosophy.

is also described by Charles Taylor as relying on an *opportunity-concept* whereby to be free is to have opportunity open to pursuit (144). The champions of negative freedom seek to reduce interference with individual choices, including interference created by society, governments, institutions, corporations, or other individuals.

In general, the negative conception of freedom is not concerned with helping individuals overcome personal limitations that are normal (e.g., lacking talent to sing) or even aberrant (e.g., emotional incapacities due to social class or upbringing). When viewed from the individual's perspective, negative freedom is all about "leave me alone to do as I please," and it carries a moral claim centered squarely on the rights of the individual.

In its pure, non-interference form, negative freedom is epitomized by Robert Nozick's 1974 book, *Anarchy, State, and Utopia*. Following the Kantian principle that individuals are ends in themselves and not merely means to the ends of government, Nozick proposes that individual rights have the status of inviolable side constraints to any governmental action (28–35). He seeks to discredit the notion that government is here to work toward a goal of minimizing rights violations. Instead, non-violation of rights is seen as a mandatory side constraint that governments may not trespass on their way to any goal whatsoever. Additionally, in Nozick's view, government goals should encompass little more than protection of the citizenry against invasion, crime, and fraud. Therefore, small government is conducive to libertarian negative freedom.

In short, an advocate of non-interference will claim that individuals are unfree if society, governments, organizations, or other individuals obstruct or interfere with individual pursuits, unless those pursuits are unfairly trampling the equal rights of others.

Non-Domination

Philip Pettit champions a further distinction within the negative freedom conception, which he labels "liberty as non-domination," and with it he takes a modest step away from the notion of absolute non-interference (51). When defining non-domination, Pettit points out two additional criteria in need of consideration—one tends to increase the scope of what may be considered unfree, while the other decreases the scope.

The first has to do with *capacity* to interfere. Under Pettit's observation, the capacity to interfere with an individual's freedom is as detrimental to freedom as the *actual* interference would be. For example, a citizen in an all-powerful but historically benevolent monarchy is subject to the whim of the monarch. He could be said to be unfree because the monarch's ability

to interfere (and punish) affects the citizen's choices and is therefore as debilitating as actual interference. Therefore, the scope of "unfree" under the non-domination view is widened to include potential as well as actual interference.

Moving in the other direction, Pettit claims that *arbitrariness* is a prerequisite to labeling certain interferences as true obstacles to freedom. Whereas an advocate of the non-interference conception would claim that any interference other than liberty protections makes us less free, an advocate of non-domination does not see restrictive or coercive laws as limiting freedom, provided such laws are formed under legitimate collective rule and implemented in concert with rights to fair appeal. For example, a judge who fines a citizen for withholding partial payment of income tax in protest against government spending on bank bailouts is not interfering with the citizen's freedom because the judge's action is not arbitrary. It is authorized by law that stems from legitimate collective rule even though it forcibly takes money for a cause that the citizen abhors. In this respect, the scope of "unfree" under non-domination is narrowed to only include arbitrary interferences.

In summary, the non-domination variety of negative freedom holds, unlike the purely obstacle-driven notion of libertarian non-interference, that the *potential* for interference is to be included in the mix of obstacles to freedom, whereas lawfully authorized *non-arbitrary* interferences are not. As pointed out by Jacob Levy, the non-domination concept of negative freedom is thought of as combining with the collective rule concept of positive freedom (discussion to follow) to form the current notion of Republicanism (Levy).

Collective Rule

Just as the negative freedom conception is championed in two varieties (i.e., pure non-interference vs. non-domination), the positive freedom conception is also thought of as having two varieties: collective rule and individual autonomy.

In contrast to the *freedom-from* mantra of the negative conception, the positive freedom advocate sees freedom inclusive of a large *freedom-to* component. Under the freedom-to component, strong emphasis is placed on freedom to have a say in government, i.e., political participation via collective rule. As explored by Benjamin Constant, this particular feature of the positive freedom conception dates back to the ancient societies of Rome, Sparta, Athens, Gaul, and others (Constant 1–2). In these ancient embodiments, the notion of freedom to participate in governance often

had little connection to the idea of personal liberty in private life. Freedom entailed little more than having the status of citizen (as opposed to slave) and therefore having some say in governance. Individual rights in private life were not seriously in play as foundational principles of governance until the eighteenth century hosted the American and French revolutions. In Constant's words, "the aim of the ancients was the sharing of social power among the citizens of the same fatherland; this is what they called liberty" (5).

Just as "opportunity-concept" is sometimes used to characterize negative freedom, "exercise-concept" is sometimes used to characterize positive freedom. In modern times, "exercise-concept" is often applied well beyond the exercise of voice in governance. Charles Taylor illuminates the conceptual link between positive freedom and realms beyond collective rule: "The view that freedom involves at least partially collective self-rule is essentially grounded on an exercise-concept. For this view (at least partly) identifies freedom with *self-direction*, i.e., the actual exercise of *directing control over one's life*" (144, my italics). In other words, the early idea of individuals having a say in government is a good thing because it is a form (albeit diluted) of self-direction.

Autonomy

In modern times, the notion of self-direction has been extended to include directing control over one's life in general. The modern liberal sense of positive freedom encompasses the notions of *capacity for action* and *self-mastery*; that is, freedom is autonomy-based. If society and government are to be deemed protectors of freedom, they are no longer responsible only for non-interference with the citizenry. They are also to assume an enabler role, and this enabler role conflicts with the idea of non-interference.

One consequence of accepting the positive freedom conception is sharing in the moral claim over individuals' lives. Under the negative conception, the individual has a sovereign moral claim to inviolable rights to choose whatever course of action pleases him or leads to fulfillment of her life goals (while not infringing on the equal rights of others). In contrast, under the positive freedom conception, society and government bear at least some responsibility for enabling the individual to realize autonomy (and therefore to succeed in the pursuit of goals). This could be as innocuous (by some standards) as the provision of public education for youth. However, on some counts it extends much further into the realm of paternalism, e.g., banning use of drugs, mandating use of seat belts, or forbidding pornography.

In short, a modern liberal positive freedom advocate will claim an individual is unfree if society and/or government fail to provide meaningful opportunities and fail to assist the individual in obtaining the requisite autonomy to pursue those opportunities.

Below I have provided, in tabular form, a rough sketch of the negative-positive distinctions presented thus far.

Table 1: Negative-Positive Distinction – Summary Sketch

| | Negative Freedom | Positive Freedom |
|-------------------------------|---|--|
| Catch Phrase | “Freedom from” | “Freedom to” |
| Generalized Concept | Opportunity-Concept | Exercise-Concept |
| Societal Emphasis | Non-interference | Provision of Enablers |
| Individual Emphasis | “Leave me alone” | “Help me out” |
| Obstacle Sources | Outside of Individual | Both Inside and Outside |
| Sources of Moral Claim | The Individual | The Individual and Society |
| Political Concern | Small Government | Collective Rule |
| Individual Unfree If | Government, society or other individuals obstruct actions or pursuits | Individual lacks capacity for action, autonomy or self-mastery |

A further summarization of the sub-varieties of negative and positive freedom is given in the next table. These sub-varieties are identified with the political concerns of the groups mentioned above. The table uses a notion of Republicanism held by Jacob Levy, inclusive of both collective rule and non-domination (Levy). I include a further distinction between modern and ancient republicanism since the ancients seem to have been less concerned about issues of domination.

Table 2: Political Concerns

| Approximate Affiliation | Negative Freedom | | Positive Freedom | |
|-------------------------|------------------|----------------|------------------|---------------------|
| | Non-Interference | Non-Domination | Collective Rule | Individual Autonomy |
| Modern Libertarian | X | | | |
| Modern Republican | | X | X | |
| Ancient Republican | | | X | |
| Modern Liberal | | | X | X |

Negative Freedom's Moral Claim

In my view, the negative freedom conception in its non-interference form has the strongest moral claim. I will not attempt to construct an entire fortress of argumentation in defense of this view because my primary goal is to explore negative freedom's greatest drawback: debt blindness. In lieu of the whole fortress, I will instead describe and defend only the flag flying above it: *The position that the meaning and value of human life is founded in the act of choice and experience of subsequent consequence.*

As I see it, this flag is the primary claim of importance in favor of the libertarian view. Nozick illustrated the nature of this claim via his thought experiment: "the experience machine" (42-5). This thought experiment asks the reader to imagine a machine that can generate any series of experiences with absolute fidelity so as to be completely indistinguishable from the real world. The occupant specifies the experiences she wishes. These may include any level of success, reward, and excitement—be it through friendships, love, power, wealth, adventure, etc. The occupant then undergoes those experiences via the machine, taking time out every two years to re-specify what she would like for her next string of experiences.

Upon reflection, most of us would conclude that the experience machine, if it were possible, would be unattractive as a complete substitute for life. Few people would elect to spend more than a vacation week or two in the machine, yet alone two years of life. But why? The temptation is to shrug and exclaim, "It's not real!" Yet, you—in the machine—would still be the 'real' you. What seems so bad about the real you having a bunch of fantastic but fabricated experiences over an extended portion of your life?

The bad thing, it seems, is the lack of *real* consequences resulting from *important* self-made choices. The choices you make while in the machine would be of no consequence since the important part of the outcome has already been specified. This observation points to a primal feature of the self: *choosing in the face of real consequence is the very being and becoming of self*. We both define and make ourselves via our choices—be they reactive to experiences or proactive, seeking out certain experiences. These choices are driven not only by wishes or desires to experience certain things, but also by second-order wishes or desires to *be* a certain way; that is, to want to want certain things or experiences or personal attributes. These important choices (both first- and second-order motivated) are made in the context of a real world that will resist—a world that must be overcome or at least negotiated.

I am saying that the very meaning of our lives is embodied in the choices we make. Everything that denies us the opportunity to choose takes away some portion of meaning from our lives, some portion of our self. None of us are meant to be robots, slaves, serfs, or subjects. Our moral claim to life is a claim to choice. Therefore, if our individual right to life has primacy over all other rights (and I think it does), then so too does our right to choose. For this reason, the positive freedom claims of freedom as autonomy or freedom as collective will, and even the negative freedom claim of freedom as non-domination, must all occupy a place of secondary importance to freedom as non-interference because each of these other types of freedom gain their distinction by demanding some ground belonging to our freedom to choose.

Freedom as non-domination allows for certain types of interference sanctioned by laws rooted in collective rule. Thus, the government, through the collective will of society, is given the role of arbiter over what shall be deemed free or unfree (albeit in the spirit of making persons feel free). As Pettit points out, and I agree, this is a demanding and perhaps unrealistic expectation of government (77). Capacities for and definitions of freedom vary with the individual. We ought not to expect that institutions can successfully account for these variations while reliably avoiding domination of some segments of the population. If freedom of the individual is the goal, then resolving to avoid violations of individual rights as a mandatory constraint to government action is the most direct path to success. Such a mandatory constraint is the core of libertarianism and freedom as non-interference.

Freedom seen purely as collective rule is worse still than non-domination. Collective rule can and sometimes does oppress the minority and take away freedom to choose. This could take the form of demanding labor via tax dollars to support things one would not choose to support voluntarily,

or it could take the form of collective rule that elects representatives who pass laws limiting the freedom of minorities (e.g., the Southern U.S. “Jim Crow” laws of the not-too-distant past).

Freedom as autonomy carries its own special brand of dehumanizing potential in that it allows for government and society to second-guess individuals regarding choices they make over their own lives. Though done in the name of the individual’s own interest, this second-guessing is nonetheless a restriction on free choice and directly interferes with the individual’s wishes and being. It also carries with it a collateral impingement on the freedom of those who are required to support such government programs through tax dollars.

The above arguments in favor of freedom as non-interference are very rough sketches of well-worn arguments delivered by others with considerably more finesse. My goal in presenting them is to stake out the core tenant of my own view and encourage the reader to consider the moral claim both you and I have in regard to our own lives and, by equivalence, our life choices: liberty is our birthright.

Yet the story does not end here with me insisting that liberty is all that matters. It is not. A portion of the positive freedom conception still holds sway, even in the face of our greater claim to individual liberty. That portion has nothing to do with modern issues of citizens with impaired autonomy, nor does it relate to inequality of opportunity or holdings. Its foundation rests, in my view, on the origin of law itself.

Positive Freedom Holds Some Sway

Some portion of the intent behind positive freedom advocacy ought to have some sway with libertarianism. To see why, consider the origin of law. Many who have written about freedom look to the original position of human cooperation for explanation or justification of favored political theories, (e.g., Aristotle, Hobbes, Locke, Hume, Rawls, Nozick). In some cases the original position is treated as an entirely contrived scenario for the purpose of studying how political theories might reasonably be justified (e.g., Rawls’ “veil of ignorance”). In other cases thinkers speculatively extrapolate backwards in time to prehistory with an eye to determine what mankind may have been thinking when transitioning from a state of nature to a state of governance. Hobbes, Locke, and Hume exemplify such extrapolation, though they each come to distinctly different conclusions regarding what the prehistory transition from nature to civilization was like and why it occurred. My purpose is not to examine the distinction between their approaches and conclusions, but instead to point out that in each case they

place considerable emphasis on the origins of government as rooted in the need for man to protect himself from his fellow men. My issue is with that emphasis.

On the surface it seems reasonable to start in the present, taking inventory of all the services performed by modern government. Then moving back in time, but still within the period of written history, we see the sophistication of government services falling away. As the clock moves backwards, various features of government disappear—transportation regulation, financial regulation, social security programs, etc. When we go back far enough in time, the residual features of government are military defense (or conquest) and dispute resolution (i.e., civil law). From there, it seems plausible to reason that if our earliest records indicate that the function of the first governments was primarily to protect men from other men (either nation-from-nation or citizen-from-citizen), then the origin of law and government must have been the perceived need for such protection. Therefore, acquiescence to that perceived need is the likely marker between state-of-nature and civilization.

However, I think the above reasoning is in error. By starting in the present and reasoning backward in time, our speculative extrapolation is pre-loaded with modern biases. Since we are dealing entirely with conjecture anyway, we could instead begin with the state of nature in the *very* distant past and reason forward—asking why any two of our ancestors would decide to live together in the first place instead of foraging alone. Perhaps the easiest answers to imagine involve mothers with babies. Mothers instinctually protect their offspring by living with, feeding, and caring for them. We can imagine our male ancestors as being interested in these young mothers for reproductive reasons as evidenced by the babies having come into existence. We can further suppose that the occasional male would recognize reasons to live with mother and baby (e.g., availability of sex, sharing body warmth at night, or having a partner to help scare off predators). Some of these recognized reasons could be instinctual and some learned by experience.

From this prototypical example of a far-distant ancestral family, we can hypothesize that some offspring come into contact with outsiders and mate. Some of the mates join the group and the family becomes a tribe. Survival enhancement was its bond and social cooperation its lubricant.

I am proposing that the earliest social cooperation is best understood as a means to enhance comfort and survival. If this is the case, it was largely instinctual with perhaps a vague sense of anticipated or expected reciprocity mixed in. On this view, it is highly unlikely that social cooperation was conceived of and acted on as a means to ensure or enhance liberty. You may argue that the current topic is supposed to be the origin of law and government, not the origin of social cooperation. My reply is that these

two are not at all distinct. *There is a grayscale between social cooperation and governance, beginning with the first tacit understanding of mutual expectations arising out of early cooperation.* Long before our ancestors could write it down, tribes had social cooperation in place, and that cooperation involved at least some rudimentary shared idea of expected reciprocity among members of the tribe. This was not government, nor was it law. However, it seems clear that *shared ideas of expected reciprocity among tribe members are the foundational precursors to law.*

Was this a kind of consent? Yes. But it was not the kind of consent imagined in social contract theory whereby an individual trades certain freedoms and rights in return for protection by a ruler. It was consent to trade favors according to vaguely shared ideas of reciprocity within a tribe. *This was the foundational behavior that, with the development of greater social reasoning capabilities, was the stepping stone to first law.* We may argue about how far back into our pre-history these behaviors occurred;¹ however, it seems clear that they would have both predated and inspired the invention of law.

Thus far I have concluded that the formation of the idea of law more likely had its roots in shared ideas of expected reciprocity among groups

¹ Imagine some point in our far-distant ancestral past when shared ideas of expected reciprocity first became tribal norms of behavior. We may well wonder how much time elapsed from that development until our ancestors took the next big step of transforming those cooperative behavioral norms into law. That step, I suspect, was a long way off in time—because the ancestral tribe I have described here were likely apes.

If you are squinting (or perhaps smirking), I hope it is out of amusement as opposed to incredulity. Assuming the latter—we can look to primates for signs as to what humans were like before we tamed ourselves. In a scholarly paper titled “‘Any Animal Whatever’ Darwinian Building Blocks of Morality in Monkeys and Apes,” psychobiology researchers noted what could believably be viewed as moralistic behavior in primate societies (Flack, et al). Their research involved extended observations of social interaction within primate groups. It is no surprise that the researchers reported displays of raw anger by primate individuals toward aggressive behavior from other primate individuals. The interesting part is that the members throughout some primate groups also displayed moralistic aggression against members of their group who had violated apparent social codes of reciprocity. For weaker individuals, this aggression took the form of protest against the perpetrator, and for stronger individuals, it took the form of punishment against the perpetrator. In some cases these behaviors even led to a time-extended spiral of counter retaliations between the punished and the punisher: monkey feuds!

My interest here is in the apparent existence of shared ideas of expected reciprocity among the primate group members. Of course, this is interesting only if one presumes, as I do, that Darwin was correct and humans evolved from primates over some period in the very distant past. This makes it seem plausible and perhaps even likely that the first steps toward creation of law were taken before we were even human. It also calls into question the state-of-nature speculations that view the source of government as rooted first in warring humans.

So as not to be misunderstood, I am not claiming that law or government predates humanity. Nor am I claiming that we have anything close to proof regarding the motivations behind the earliest cooperation between our ancestors. I am using the observable social behaviors of our genetic ancestors to influence a speculative model of how we came about the notion of law.

of individuals that live together. I see the significance of this conclusion, if correct, as follows:

First, the source of law and therefore governance was not a quest for freedom, but instead an outgrowth of cooperative reciprocation.

Second, the state-of-nature scenarios that place emphasis on a man-fighting-man origin of governance overlook the practical need for shared ideas of expected reciprocation to exist within the tribe before the fighting (in a social context) can even start. Prior to the existence of a social context, fighting between one hominid and another carries no more significance regarding freedom than fighting between a hominid and any other of nature's animals. That large males brutally dominated prehistory tribes once a social context existed was an unavoidable consequence of group life. But it was not the source or reason for law. The source was shared ideas of expected reciprocation. The large males were the best at demanding reciprocation from others and enforcing reciprocation on behalf of others, such enforcement itself being performed in expectation of favors returned. But the precursors to law (the shared ideas) had their own source in cooperation and reciprocity, and those sources were motivated by a desire to ensure survival and enhance comfort.

Third, at the soonest, the idea of freedom in its negative, non-interference sense came *after* the existence of tribal cooperation and shared ideas of expected reciprocity. Due to the greater mental sophistication needed to hold the idea of civil freedom, it seems likely that such an idea came into being after law and governance had evolved from the more vague notion of expected reciprocity.

Fourth, reciprocity began as a mirrored moral claim (i.e., a cross-claim) between individuals participating in the cooperative exchange.

Fifth, at the point when matching ideas of expected reciprocity became shared throughout the tribe and the tribe began enforcing those ideas jointly, the moral claim was expanded to include a cross-claim between the individual and the group. *The group now had a claim on the individual. That group claim rightfully concerns positive freedom conceptions and existed before the idea of negative freedom had been born.*

Therefore, the portion of the positive freedom conception that worries about what individuals may owe society seems to have a moral foundation dating back to the tribal beginnings of humans. As I write these words I imagine a troop of our distant ancestors huddled under a rock overhang on a cold, rainy night, sharing body heat to stay alive—each having a sense that their survival was dependent upon the existence of the group. To be sure, that sense was part instinct in a deep, visceral way—brought on by the stark contrast between the body heat of the group and the penetrating cold of the night. However, at some point in our history, that sense of dependent

survival transcended mere instinct and took on a less-vague form—the form of an idea: *indebtedness*.

That same indebtedness holds sway today. In modern times the metaphorical body heat of the group has so overwhelmed our experience of the world that we can barely feel the cold of the night. Few of us in Western, free-enterprise democracies believe we are in any real danger of starving, freezing, or being eaten by an animal. Unless we give pause to consider it, we are unaware of the indebtedness we have to modern society for our safety and comfort, let alone our very existence. Those of us who live in free-enterprise democracies wander through a forest of opportunities while breathing liberty. Our worries have nothing to do with starving or freezing: they have more to do with picking the right opportunity and obsessing over whether someone else has more. That we each have a debt to society is evidenced by the stark difference between the worries we have today and the worries our distant ancestors had. My point is not that the advocates of positive freedom are correct. They are not. Freedom should not be measured by the autonomy of individuals—it should be measured by the lack of obstacles from government, society, and other humans. As individuals, we have a moral claim to this freedom because choosing among opportunities and experiencing the consequences is what gives meaning to our lives. What I am saying about the positive freedom conception is that a portion of its intent has moral sway: the portion that recognizes the need for reciprocity in the quest to enhance comfort and happiness in our lives, *not* the portion that seeks equality of goods for all, nor the portion that seeks to drive all humans to some standard of autonomy or some notion of human perfection.

Conclusion

My goal in this writing has been to assert that even while holding the superior claim, a libertarian conception of negative freedom founded on the moral claim of primacy of individual rights suffers from a significant moral deficiency. There is no error of cogency in libertarianism. There is an error of completeness—a missing piece. Libertarianism fails to recognize the moral sway of the weaker claim regarding the individual's initial debt to society. I am asserting that this indebtedness supports at least some of the goal of positive freedom advocates while still denying their conception of freedom as state-induced autonomy, state-induced happiness, or state-induced moral perfection. I have left open the question of how the individual ought to pay back society. The orthodox libertarian may worry that this open question of debt leaves room for the positive

freedom advocate to assert that the state has a moral claim for taxation above the threshold required to support protective services in a Nozickian minimal state. I do not cringe at the notion of paying some tax to support some social programs beyond the minimal state required for protection. However, I *do* cringe at the motives of those who would stick a lever in that crack and pry it open to target a character perfectionist goal or an egalitarian move to homogeneity in holdings. To me, such goals represent an untenable loss of freedom akin to medieval bloodletting in the name of saving a patient. Freedom in the negative sense of non-interference is our birth right. Yet we all carry a birth debt owed to the society that enabled our moral claim to freedom. One of the most meaningful choices we can make as individuals is how to repay that debt. Perhaps that is just where it ought to be left—our choice.

Acknowledgements: I am indebted to Bas van der Vossen for advice and corrections on an early draft of this paper as well as to the editorial staff at Aporia for substantive and helpful editorial suggestions on later versions.

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