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F. A. HAYEK

The
Constitution of
Liberty

*Our inquiry is not after that which is perfect, well knowing
that no such thing is found among men; but we seek that
human Constitution which is attended with the least, or
the most pardonable inconveniences.*

ALGERNON SIDNEY



THE UNIVERSITY OF CHICAGO PRESS

JC585
H39
c.2

Library of Congress Catalog Number: 59-11618

THE UNIVERSITY OF CHICAGO PRESS, CHICAGO 37
Routledge & Kegan Paul Ltd., London E.C. 4, England
The University of Toronto Press, Toronto 5, Canada

© 1960 by The University of Chicago. Published 1960
Third Impression 1961. Composed and printed by THE
UNIVERSITY OF CHICAGO PRESS, Chicago, Illinois, U.S.A.

*To the
unknown civilization
that is growing
in America*

CHAPTER ONE

Liberty and Liberties

The world has never had a good definition of the word liberty, and the American people just now are much in need of one. We all declare for liberty: but in using the same word, we do not mean the same thing. . . . Here are two, not only different but incompatible things, called by the same name, liberty.

ABRAHAM LINCOLN

1. We are concerned in this book with that condition of men in which coercion of some by others is reduced as much as is possible in society. This state we shall describe throughout as a state of liberty or freedom.¹ These two words have been also used to describe many other good things of life. It would therefore not be very profitable to start by asking what they really mean.² It would seem better to state, first, the condition which we shall mean when we use them and then consider the other meanings of the words only in order to define more sharply that which we have adopted.

The state in which a man is not subject to coercion by the arbitrary will of another or others³ is often also distinguished as "individual" or "personal" freedom, and whenever we want to remind the reader that it is in this sense that we are using the word "freedom," we shall employ that expression. Sometimes the term "civil liberty" is used in the same sense, but we shall avoid it because it is too liable to be confused with what is called "political liberty"—an inevitable confusion arising from the fact that "civil" and "political" derive, respectively, from Latin and Greek words with the same meaning.⁴

Even our tentative indication of what we shall mean by "freedom" will have shown that it describes a state which man living

among his fellows may hope to approach closely but can hardly expect to realize perfectly. The task of a policy of freedom must therefore be to minimize coercion or its harmful effects, even if it cannot eliminate it completely.

It so happens that the meaning of freedom that we have adopted seems to be the original meaning of the word.⁵ Man, or at least European man, enters history divided into free and unfree; and this distinction had a very definite meaning. The freedom of the free may have differed widely, but only in the degree of an independence which the slave did not possess at all. It meant always the possibility of a person's acting according to his own decisions and plans, in contrast to the position of one who was irrevocably subject to the will of another, who by arbitrary decision could coerce him to act or not to act in specific ways. The time-honored phrase by which this freedom has often been described is therefore "independence of the arbitrary will of another."

This oldest meaning of "freedom" has sometimes been described as its vulgar meaning; but when we consider all the confusion that philosophers have caused by their attempts to refine or improve it, we may do well to accept this description. More important, however, than that it is the original meaning is that it is a distinct meaning and that it describes one thing and one thing only, a state which is desirable for reasons different from those which make us desire other things also called "freedom." We shall see that, strictly speaking, these various "freedoms" are not different species of the same genus but entirely different conditions, often in conflict with one another, which therefore should be kept clearly distinct. Though in some of the other senses it may be legitimate to speak of different kinds of freedom, "freedoms from" and "freedoms to," in our sense "freedom" is one, varying in degree but not in kind.

In this sense "freedom" refers solely to a relation of men to other men,⁶ and the only infringement on it is coercion by men. This means, in particular, that the range of physical possibilities from which a person can choose at a given moment has no direct relevance to freedom. The rock climber on a difficult pitch who sees only one way out to save his life is unquestionably free, though we would hardly say he has any choice. Also, most people will still have enough feeling for the original meaning of the word "free" to see that if that same climber were to fall into a crevasse and were unable to get out of it, he could only figuratively be

called "unfree," and that to speak of him as being "deprived of liberty" or of being "held captive" is to use these terms in a sense different from that in which they apply to social relations.⁷

The question of how many courses of action are open to a person is, of course, very important. But it is a different question from that of how far in acting he can follow his own plans and intentions, to what extent the pattern of his conduct is of his own design, directed toward ends for which he has been persistently striving rather than toward necessities created by others in order to make him do what they want. Whether he is free or not does not depend on the range of choice but on whether he can expect to shape his course of action in accordance with his present intentions, or whether somebody else has power so to manipulate the conditions as to make him act according to that person's will rather than his own. Freedom thus presupposes that the individual has some assured private sphere, that there is some set of circumstances in his environment with which others cannot interfere.

This conception of liberty can be made more precise only after we have examined the related concept of coercion. This we shall do systematically after we have considered why this liberty is so important. But even before we attempt this, we shall endeavor to delineate the character of our concept somewhat more precisely by contrasting it with the other meanings which the word liberty has acquired. They have the one thing in common with the original meaning in that they also describe states which most men regard as desirable; and there are some other connections between the different meanings which account for the same word being used for them.⁸ Our immediate task, however, must be to bring out the differences as sharply as possible.

2. The first meaning of "freedom" with which we must contrast our own use of the term is one generally recognized as distinct. It is what is commonly called "political freedom," the participation of men in the choice of their government, in the process of legislation, and in the control of administration. It derives from an application of our concept to groups of men as a whole which gives them a sort of collective liberty. But a free people in this sense is not necessarily a people of free men; nor need one share in this collective freedom to be free as an individual. It can scarcely be contended that the inhabitants of the District of Columbia, or

resident aliens in the United States, or persons too young to be entitled to vote do not enjoy full personal liberty because they do not share in political liberty.⁹

It would also be absurd to argue that young people who are just entering into active life are free because they have given their consent to the social order into which they were born: a social order to which they probably know no alternative and which even a whole generation who thought differently from their parents could alter only after they had reached mature age. But this does not, or need not, make them unfree. The connection which is often sought between such consent to the political order and individual liberty is one of the sources of the current confusion about its meaning. Anyone is, of course, entitled to "identify liberty . . . with the process of active participation in public power and public law making."¹⁰ Only it should be made clear that, if he does so, he is talking about a state other than that with which we are here concerned, and that the common use of the same word to describe these different conditions does not mean that the one is in any sense an equivalent or substitute for the other.¹¹

The danger of confusion here is that this use tends to obscure the fact that a person may vote or contract himself into slavery and thus consent to give up freedom in the original sense. It would be difficult to maintain that a man who voluntarily but irrevocably had sold his services for a long period of years to a military organization such as the Foreign Legion remained free thereafter in our sense; or that a Jesuit who lives up to the ideals of the founder of his order and regards himself "as a corpse which has neither intelligence nor will" could be so described.¹² Perhaps the fact that we have seen millions voting themselves into complete dependence on a tyrant has made our generation understand that to choose one's government is not necessarily to secure freedom. Moreover, it would seem that discussing the value of freedom would be pointless if any regime of which people approved was, by definition, a regime of freedom.

The application of the concept of freedom to a collective rather than to individuals is clear when we speak of a people's desire to be free from a foreign yoke and to determine its own fate. In this case we use "freedom" in the sense of absence of coercion of a people as a whole. The advocates of individual freedom have generally sympathized with such aspirations for national freedom, and this led to the constant but uneasy alliance between the liberal

and the national movements during the nineteenth century. But though the concept of national freedom is analogous to that of individual freedom, it is not the same; and the striving for the first has not always enhanced the second. It has sometimes led people to prefer a despot of their own race to the liberal government of an alien majority; and it has often provided the pretext for ruthless restrictions of the individual liberty of the members of minorities. Even though the desire for liberty as an individual and the desire for liberty of the group to which the individual belongs may often rest on similar feelings and sentiments, it is still necessary to keep the two conceptions clearly apart.

3. Another different meaning of "freedom" is that of "inner" or "metaphysical" (sometimes also "subjective") freedom.¹³ It is perhaps more closely related to individual freedom and therefore more easily confounded with it. It refers to the extent to which a person is guided in his actions by his own considered will, by his reason or lasting conviction, rather than by momentary impulse or circumstance. But the opposite of "inner freedom" is not coercion by others but the influence of temporary emotions, or moral or intellectual weakness. If a person does not succeed in doing what, after sober reflection, he decides to do, if his intentions or strength desert him at the decisive moment and he fails to do what he somehow still wishes to do, we may say that he is "unfree," the "slave of his passions." We occasionally also use these terms when we say that ignorance or superstition prevents people from doing what they would do if they were better informed, and we claim that "knowledge makes free."

Whether or not a person is able to choose intelligently between alternatives, or to adhere to a resolution he has made, is a problem distinct from whether or not other people will impose their will upon him. They are clearly not without some connection: the same conditions which to some constitute coercion will be to others merely ordinary difficulties which have to be overcome, depending on the strength of will of the people involved. To that extent, "inner freedom" and "freedom" in the sense of absence of coercion will together determine how much use a person can make of his knowledge of opportunities. The reason why it is still very important to keep the two apart is the relation which the concept of "inner freedom" has to the philosophical confusion about what is called the "freedom of the will." Few beliefs have done more to

discredit the ideal of freedom than the erroneous one that scientific determinism has destroyed the basis for individual responsibility. We shall later (in chap. v) consider these issues further. Here we merely want to put the reader on guard against this particular confusion and against the related sophism that we are free only if we do what in some sense we ought to do.

4. Neither of these confusions of individual liberty with different concepts denoted by the same word is as dangerous as its confusion with a third use of the word to which we have already briefly referred: the use of "liberty" to describe the physical "ability to do what I want,"¹⁴ the power to satisfy our wishes, or the extent of the choice of alternatives open to us. This kind of "freedom" appears in the dreams of many people in the form of the illusion that they can fly, that they are released from gravity and can move "free like a bird" to wherever they wish, or that they have the power to alter their environment to their liking.

This metaphorical use of the word has long been common, but until comparatively recent times few people seriously confused this "freedom from" obstacles, this freedom that means omnipotence, with the individual freedom that any kind of social order can secure. Only since this confusion was deliberately fostered as part of the socialist argument has it become dangerous. Once this identification of freedom with power is admitted, there is no limit to the sophisms by which the attractions of the word "liberty" can be used to support measures which destroy individual liberty,¹⁵ no end to the tricks by which people can be exhorted in the name of liberty to give up their liberty. It has been with the help of this equivocation that the notion of collective power over circumstances has been substituted for that of individual liberty and that in totalitarian states liberty has been suppressed in the name of liberty.

The transition from the concept of individual liberty to that of liberty as power has been facilitated by the philosophical tradition that uses the word "restraint" where we have used "coercion" in defining liberty. Perhaps "restraint" would in some respects be a more suitable word if it was always remembered that in its strict sense it presupposes the action of a restraining human agent.¹⁶ In this sense, it usefully reminds us that the infringements on liberty consist largely in people's being prevented from doing things, while "coercion" emphasizes their being made to do par-

ticular things. Both aspects are equally important: to be precise, we should probably define liberty as the absence of restraint and constraint.¹⁷ Unfortunately, both these words have come also to be used for influences on human action that do not come from other men; and it is only too easy to pass from defining liberty as the absence of restraint to defining it as the "absence of obstacles to the realization of our desires"¹⁸ or even more generally as "the absence of external impediment."¹⁹ This is equivalent to interpreting it as effective power to do whatever we want.

This reinterpretation of liberty is particularly ominous because it has penetrated deeply into the usage of some of the countries where, in fact, individual freedom is still largely preserved. In the United States it has come to be widely accepted as the foundation for the political philosophy dominant in "liberal" circles. Such recognized intellectual leaders of the "progressives" as J. R. Commons²⁰ and John Dewey have spread an ideology in which "liberty is power, effective power to do specific things" and the "demand of liberty is the demand for power,"²¹ while the absence of coercion is merely "the negative side of freedom" and "is to be prized only as a means to Freedom which is power."²² x

5. This confusion of liberty as power with liberty in its original meaning inevitably leads to the identification of liberty with wealth;²³ and this makes it possible to exploit all the appeal which the word "liberty" carries in the support for a demand for the redistribution of wealth. Yet, though freedom and wealth are both good things which most of us desire and though we often need both to obtain what we wish, they still remain different. Whether or not I am my own master and can follow my own choice and whether the possibilities from which I must choose are many or few are two entirely different questions. The courtier living in the lap of luxury but at the beck and call of his prince may be much less free than a poor peasant or artisan, less able to live his own life and to choose his own opportunities for usefulness. Similarly, the general in charge of an army or the director of a large construction project may wield enormous powers which in some respects may be quite uncontrollable, and yet may well be less free, more liable to have to change all his intentions and plans at a word from a superior, less able to change his own life or to decide what to him is most important, than the poorest farmer or shepherd.

If there is to be any clarity in the discussion of liberty, its definition must not depend upon whether or not everybody regards this kind of liberty as a good thing. It is very probable that there are people who do not value the liberty with which we are concerned, who cannot see that they derive great benefits from it, and who will be ready to give it up to gain other advantages; it may even be true that the necessity to act according to one's own plans and decisions may be felt by them to be more of a burden than an advantage. But liberty may be desirable, even though not all persons may take advantage of it. We shall have to consider whether the benefit derived from liberty by the majority is dependent upon their using the opportunities it offers them and whether the case for liberty really rests on most people wanting it for themselves. It may well be that the benefits we receive from the liberty of all do not derive from what most people recognize as its effects; it may even be that liberty exercises its beneficial effects as much through the discipline it imposes on us as through the more visible opportunities it offers.

Above all, however, we must recognize that we may be free and yet miserable. Liberty does not mean all good things²⁴ or the absence of all evils. It is true that to be free may mean freedom to starve, to make costly mistakes, or to run mortal risks. In the sense in which we use the term, the penniless vagabond who lives precariously by constant improvisation is indeed freer than the conscripted soldier with all his security and relative comfort. But if liberty may therefore not always seem preferable to other goods, it is a distinctive good that needs a distinctive name. And though "political liberty" and "inner liberty" are long-established alternative uses of the term which, with a little care, may be employed without causing confusion, it is questionable whether the use of the word "liberty" in the sense of "power" should be tolerated.

In any case, however, the suggestion must be avoided that, because we employ the same word, these "liberties" are different species of the same genus. This is the source of dangerous nonsense, a verbal trap that leads to the most absurd conclusions.²⁵ Liberty in the sense of power, political liberty, and inner liberty are not states of the same kind as individual liberty: we cannot, by sacrificing a little of the one in order to get more of the other, on balance gain some common element of freedom. We may well get one good thing in the place of another by such an exchange. But to suggest that there is a common element in them which allows us to

speak of the effect that such an exchange has on liberty is sheer obscurantism, the crudest kind of philosophical realism, which assumes that, because we describe these conditions with the same word, there must also be a common element in them. But we want them largely for different reasons, and their presence or absence has different effects. If we have to choose between them, we cannot do so by asking whether liberty will be increased as a whole, but only by deciding which of these different states we value more highly.

6. It is often objected that our concept of liberty is merely negative.²⁶ This is true in the sense that peace is also a negative concept or that security or quiet or the absence of any particular impediment or evil is negative. It is to this class of concepts that liberty belongs: it describes the absence of a particular obstacle—coercion by other men. It becomes positive only through what we make of it. It does not assure us of any particular opportunities, but leaves it to us to decide what use we shall make of the circumstances in which we find ourselves.

But while the uses of liberty are many, liberty is one. Liberties appear only when liberty is lacking: they are the special privileges and exemptions that groups and individuals may acquire while the rest are more or less unfree. Historically, the path to liberty has led through the achievement of particular liberties. But that one should be allowed to do specific things is not liberty, though it may be called "a liberty"; and while liberty is compatible with not being allowed to do specific things, it does not exist if one needs permission for most of what one can do. The difference between liberty and liberties is that which exists between a condition in which all is permitted that is not prohibited by general rules and one in which all is prohibited that is not explicitly permitted.

If we look once more at the elementary contrast between freedom and slavery, we see clearly that the negative character of freedom in no way diminishes its value. We have already mentioned that the sense in which we use the word is its oldest meaning. It will help to fix this meaning if we glance at the actual difference that distinguished the position of a free man from that of a slave. We know much about this so far as the conditions in the oldest of free communities—the cities of ancient Greece—are concerned. The numerous decrees for the freeing of slaves that have been found give us a clear picture of the essentials. There

were four rights which the attainment of freedom regularly conferred. The manumission decrees normally gave the former slave, first, "legal status as a protected member of the community"; second, "immunity from arbitrary arrest"; third, the "right to work at whatever he desires to do"; and, fourth, "the right to movement according to his own choice."²⁷

This list contains most of what in the eighteenth and nineteenth centuries were regarded as the essential conditions of freedom. It omits the right to own property only because even the slave could do so.²⁸ With the addition of this right, it contains all the elements required to protect an individual against coercion. But it says nothing about the other freedoms we have considered, not to speak of all the "new freedoms" that have lately been offered as substitutes for freedom. Clearly, a slave will not become free if he obtains merely the right to vote, nor will any degree of "inner freedom" make him anything but a slave—however much idealist philosophers have tried to convince us to the contrary. Nor will any degree of luxury or comfort or any power that he may wield over other men or the resources of nature alter his dependence upon the arbitrary will of his master. But if he is subject only to the same laws as all his fellow citizens, if he is immune from arbitrary confinement and free to choose his work, and if he is able to own and acquire property, no other men or group of men can coerce him to do their bidding.

7. Our definition of liberty depends upon the meaning of the concept of coercion, and it will not be precise until we have similarly defined that term. In fact, we shall also have to give a more exact meaning to certain closely related ideas, especially arbitrariness and general rules or laws. Logically, we should therefore now proceed to a similar analysis of these concepts. We cannot altogether avoid this. But before asking the reader to follow us further in what may appear to be the barren task of giving precise meaning to terms, we shall endeavor to explain why the liberty we have defined is so important. We shall therefore resume our effort at precise definition only at the beginning of the second part of this book, where we shall examine the legal aspects of a regime of freedom. At this point a few observations anticipating the results of the more systematic discussion of coercion should be sufficient. In this brief form they will necessarily seem somewhat dogmatic and will have to be justified later.

By "coercion" we mean such control of the environment or cir-

cumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another. Except in the sense of choosing the lesser evil in a situation forced on him by another, he is unable either to use his own intelligence or knowledge or to follow his own aims and beliefs. Coercion is evil precisely because it thus eliminates an individual as a thinking and valuing person and makes him a bare tool in the achievement of the ends of another. Free action, in which a person pursues his own aims by the means indicated by his own knowledge, must be based on data which cannot be shaped at will by another. It presupposes the existence of a known sphere in which the circumstances cannot be so shaped by another person as to leave one only that choice prescribed by the other.

Coercion, however, cannot be altogether avoided because the only way to prevent it is by the threat of coercion.²⁹ Free society has met this problem by conferring the monopoly of coercion on the state³⁰ and by attempting to limit this power of the state to instances where it is required to prevent coercion by private persons. This is possible only by the state's protecting known private spheres of the individuals against interference by others and delimiting these private spheres, not by specific assignation, but by creating conditions under which the individual can determine his own sphere by relying on rules which tell him what the government will do in different types of situations.

The coercion which a government must still use for this end is reduced to a minimum and made as innocuous as possible by restraining it through known general rules, so that in most instances the individual need never be coerced unless he has placed himself in a position where he knows he will be coerced. Even where coercion is not avoidable, it is deprived of its most harmful effects by being confined to limited and foreseeable duties, or at least made independent of the arbitrary will of another person. Being made impersonal and dependent upon general, abstract rules, whose effect on particular individuals cannot be foreseen at the time they are laid down, even the coercive acts of government become data on which the individual can base his own plans. Coercion according to known rules, which is generally the result of circumstances in which the person to be coerced has placed himself, then becomes an instrument assisting the individuals in the pursuit of their own ends and not a means to be used for the ends of others.

1. Freedom/liberty - condition by which coercion of some by others is avoided or reduced to a minimum
2. Monopolized coercion by the state { 21 }
3. Rules of law - not an arbitrary abstract, impersonally enforced and established