

ON THE MEANING AND JUSTIFICATION OF POLITICAL FREEDOM

WILLIAM T. BLACKSTONE

University of Georgia, Athens, Georgia, U.S.A.

The concept of freedom, even when restricted to the political context, has several uses, interpretations or meanings. Consequently, the social and political systems designed to implement political freedom vary considerably. In every case, however, political freedom involves a certain social and legal standing within a set of rules and institutions (though one could be free in *other senses as well*). That legal standing is generally explicated in terms of a set of rights, but different social orders recognize different rights and they restrict rights on the basis of different criteria. Neither slaves nor ordinary persons had the rights of citizens in Rome. Seen in this way, the problem of political freedom is this: What rights should members of a political community have? Such a list of rights would in effect spell out the boundaries of state authority and the legitimate use of state power. There is disagreement over what these rights should be, and over whether they should be seen in merely negative terms (as restricting arbitrary intrusion) or in positive terms as well. It is reasonable, some argue, to *restrain individuals or groups from the arbitrary use of power*. This negative action assures greater freedom for all by assuring the rule of law. Surely this Hobbesian point is correct. But several related questions arise: Even *restricting one's concern to negative freedom*, what is an acceptable crite-

tion for deciding what constitutes an arbitrary intrusion? Should we go beyond negative freedoms to positive guarantees of individual needs? Do such positive guarantees in a planned society ultimately destroy freedom? At the center of these questions is the thesis that laws or rights, whether conceived as positive or negative, must be appropriately formulated. That is, they must not discriminate on irrelevant grounds. This is the major thrust of both black liberationists and women liberationists. Our laws and social policies (and conduct) do often discriminate on irrelevant grounds. What we need is a criterion(s) for justified or relevant discrimination, and laws and policies based on that criterion(s).

Let us briefly consider these questions. First, does the extension of negative to positive freedom ultimately destroy freedom? Plainly, the answer depends on what one means by freedom. Those who argue that it does, generally do so on the grounds that a welfare state continuously restricts the areas of free action. State education, medical care, public transportation, the provision of a minimal standard of living for all — these place tremendous tax burdens and restrictions on citizens. They may effect great good in terms of the welfare and security of the majority. But they limit freedom, and if this continues, an individual's entire life will be planned for him. Advocates of negative freedom or a *laissez faire* state insist that this welfare and security is often purchased at the cost of freedom, and further, that freedom as a value conflicts frequently with other values such as welfare, security, and the extension of equality. It is not that such theorists are opposed to welfare, equality, and security. But they do not want these values, which receive primary attention in a planned society, to overrun and override freedom as a value. They opt for less welfare and security regulations for the sake of freedom, and they insist that we recognize that these values often conflict, and not disguise the conflict by conflating freedom with welfare, security, or equality (under the guise of "positive freedom").

Advocates of positive freedom respond by pointing out that traditional negative freedoms — freedom of speech, thought, press, assembly, association, worship, movement, and so on — cannot come to full fruition in the lives of persons until certain positive conditions accrue. A starving, uneducated man will hardly be concerned with his freedoms of press and speech. Furthermore, traditional negative freedoms were devised under historically different conditions than those which exist today. They were not designed to meet the problems of highly industrialized and heavily populated states. Under current conditions, nations which recognize merely negative freedoms consign millions of persons to misery. Of course, many persons prosper under such a system. In fact they can and do use the system to enlarge

their own freedom and welfare at the expense of those who are less able. The thrust of the advocate of positive freedom is that this should not be the case. There should be regulations imposed on the powerful which prevent their exploiting the weak, and there should be a distribution of resources, goods, and opportunities which assures equality of treatment. Therefore, a political system in which the state guarantees certain positive freedoms or rights is indispensable.

Take a current example. Ecologists and environmentalists have pointed out the devastating effect of population growth and man's growing technology on the environment. The growth of human population and the pollution of air and water pose threats to the quality of human life, indeed to its continued existence. If this is true, then it can be argued with some force that new regulations and controls on the use of environmental resources must be initiated, not only on the national but also the international level. Such regulations would constitute further restrictions on man's freedom. Indeed it may even be necessary to restrict the right to have children. But many argue that those restrictions are necessary to assure the welfare of all (indeed of future generations as well) and to extend rights and freedoms to all men. This line of argument simply recognizes that environmental conditions have changed radically since earlier times when there was an abundance of clean natural resources, and that these facts and concern for human welfare requires additional structures on human action.

The concept of political freedom and criteria for justified restriction of human action continue to evolve in the light of changing circumstances and in a give-and-take tussle with other ideals which we hold dear (equality, welfare, and so on). Certain kinds of freedom, and the extension of those freedoms, require the imposition of state controls on individual action. There is nothing paradoxical about this. It is a choice of structured freedom as against unstructured chaos. The question always is: How much structure and for what reasons? Often, utilitarian reasons are cited in defense of a structure or system of rights which guarantee certain kinds of freedom of action. Classically, these freedoms were largely conceived in negative terms — freedom of speech, thought, association, assembly, press, worship, and so on, where the emphasis is on the absence of interference or arbitrary restraints. These negative freedoms or rights were often justified on general pragmatic or utilitarian grounds, that is, they were (are) seen as instruments for assuring individual and societal happiness. By restricting the areas of legitimate intervention by the sovereign or the state, these freedoms or rights help prevent the misuse of state power. Certain types of free action

become customary and predictable — no small matter in planning one's life and calculating consequences.

But utility is not the only fundamental norm invoked in justifying freedom(s). The principle of justice has played a paramount role. A large part of the history of the idea of freedom is a history of change in what we consider to be arbitrary or justified restrictions. Put in terms of rights-talk instead of freedom-talk, that history is one of changes in our conception of what should constitute human and legal rights. We have come a long way from the concept of the divine right of kings (though the threat of executive power remains). Reasons must be given for state or social controls, and recent history has seen radical new developments in what are considered to be relevant reasons. The quest for relevant reasons is the quest for justice, i.e. the proper distribution of burdens and benefits. Race, color, religion, sex, and so on have been excluded, in theory if not in practice, as relevant reasons for certain modes of treatment. This has expanded the areas of freedom for millions of persons. How do we decide — how should we decide — on the relevance of reasons and criteria? This is the philosophical problem of social justice, a problem not unconnected to that of political freedom.

There may be justifying grounds for freedom other than utility and justice. Recall that Mill's total ethic invokes a concept of man as a rational being capable of freedom of choice and that he placed great value on a society of autonomous, self-determining agents. It is questionable that this ideal of society is straightforwardly reducible merely to the principle of maximizing happiness or to that of justice. If not, then this sort of consideration or ideal constitutes another ground of justification for freedom. Such ideal considerations lead Mill toward (though he never quite gets there) a deontological account of obligation, in which the rightness of an action is not based merely on the calculation of its happiness-maximizing effects. Persons are conceived as rights-possessing entities, not merely because such rights produce happiness, but because humans are what they are. As free beings (whether actual or potential) who possess rights, humans cannot (should not) be restricted in their actions or have their rights violated without moral justification. It is not that the rights are absolute but rather that violation of them must be morally justified by showing that there are overriding moral considerations or that the violation is a special exception.

Whether the ultimate norm to which appeal is made in justifying freedom (or, put another way, in justifying legitimate restraints) is utility, jus-

tice, the ideal of a society of autonomous, self-determining agents or some other; and whether the norms are teleological, deontological, or some combination, still, decisions of principle — the application and extension of these principles — must be continuously made. What constitutes harm to others (Mill's principle)? Or injustice? Depending on the context, it may be that having more than two children does. Or perhaps giving birth to any children. Perhaps refusing to rake up one's leaves? Or not agreeing to give one's heart or eyes to medical banks? Or pouring chemical wastes into rivers? All of these are possibilities, depending on context. The point is that none of these principles are self-applying. They are formal and largely vacuous until applied to particular circumstances or problems. Decisions in context must be made, and these must be decisions of principle, as Richard Hare insists, else we will not be playing the moral game. These decisions must also be made in the light of changing conditions of human existence (so poignantly expressed in recent years by ecologists). Such contextual decisions or application is not the business of the political philosopher or theorist, for his role is not political casuistry. But he can indicate through his theory the need to keep conceptually before us the several formal, moral considerations relevant to the question of restricting human action and he can indicate the empirical conditions and circumstances relevant to such decisions of principle.

It goes without saying that this conceptual and empirical "pointing" does not resolve the problem of political freedom. In fact, part of what we have been saying is that (1) the various general criteria set forth as legitimate restrictions on human action do not directly and simply provide an answer to this question, for all such general criteria require contextual decisions. (2) There are several different general criteria offered by political theorists (and utilized by politicians and nations). These criteria sometimes conflict. In fact, on occasion considerations internal to a given criterion of legitimate restriction may conflict. For example, it is surely conceivable that a criterion of restriction which invoked both general utilitarian reasons and those of social justice, may in some context, force one to opt in favor of general utility and override reasons of justice. Such cases would be very complex and perhaps would not arise often (I suppose I am expressing a Mill-like hope that utility and justice generally coalesce). But they do sometimes occur. One's principles of social justice, for example, may support freedom to engage in homosexual acts, to have abortions, to smoke marijuana and so on while one's concern for social utility (depending on one's assessment of empirical facts) may support the opposite. Furthermore, a general criterion of restriction may conflict (externally, to continue our

distinction) with another criterion, not because one embodies considerations which the other omits, but simply because of different emphases or priorities on the considerations embodied in the criterion. Two different criteria, for example, may both include considerations of justice and utility but one of them place higher priority on the latter. Or those criteria may conflict when applied to substantive issues because different emphases are given to certain types of social (in) justice. The Soviet Union, for example, seems to be far more concerned with eliminating social injustices which center around economic, sexual, and racial discrimination — hence, extending the freedom of millions in these areas — than in the extension of the franchise, freedom of speech, press, and so on. This need not mean that she is unconcerned about the latter (read the U.S.S.R. Constitution) but that, at least at this stage of history, the former is judged as having priority over the latter. Almost the opposite is true of the United States. Higher priority has been placed on political rights and freedoms as opposed to social and economic rights and freedoms.

Nor should we forget that majority rule, though desirable in many respects, can result in what Mill calls the "tyranny of the majority". Certain types of freedom are not without their cost in terms of other kinds of freedom. In a non-Utopian world, we must pay our money and take our choice, not only between types of freedoms (though we have seen how "positive" freedom seems to embody other values — equality, security, and welfare — which traditionally have been distinguished from freedom) but between freedom and other values.

The political theorist can help make these sorts of facts clear to us. He can draw conceptual lines between freedom and value-concepts related to it. He can focus our attention on changing empirical conditions of human existence. He can indicate the sort of world to which one is committed if he adopts this criterion rather than that. He can, on a normative level, argue for a certain criterion of restriction with several types of relevant considerations built into the criterion and with general value priorities on these types of considerations. He may, within a certain frame of reference, be able to show that the adoption of one criterion rather than other is the most rational course of action. But he can give no final normative solution to the problem, for there are different frames of reference and different value priorities. The issue between the individualist and the collectivist seems to be ever with us. There simply are philosophers and politicians who place higher value on the individual and his autonomy than on the group and collective welfare, and there are those who do just the opposite (recall that, for Hegel, individuals are real only as parts of a group). There does, however, appear to be consensus-trends toward greater concern for group welfare and social justice on a world-wide scale, this at the expense of what is called "arbitrary" freedom simply to do what one wants and also at the expense of some "negative" freedoms (the freedom not be interfered with). That is, even by theorist who reject the Hegelian metaphysics of collectivism, there is a strong trend to view freedom in a positive rather than a negative way.