

Introduction

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During the period surveyed in this second volume, two connected claims about the nature of free persons and free states enjoyed widespread acceptance.¹ One concerned the character of human freedom itself. A broad array of writers discussed in the chapters that follow – ranging from Montaigne to the Levellers, from John Milton to Mary Wollstonecraft – were in essential agreement about what it means to speak of being in possession of one’s liberty. They all invoke a distinction that had been central to the law of persons ever since its formulation in the *Digest* of Roman law in late antiquity. According to the *Digest*, what it means to be a *liber homo* or ‘freeman’ is not to be a slave, and hence not to be *in aliena potestate*, in the power of another person and hence at their mercy.² Picking up this distinction, the authors I have cited accept that freedom can be defined as absence of dependence upon the will of anyone else. Freedom is taken to consist, in other words, in the absence of arbitrary power.

Of no less importance is the fact that in speaking of ‘freemen’ these writers take themselves to be putting forward not merely a legal definition of civil liberty but an ideal of citizenship. This ideal was eventually encapsulated in a set of phrases that have never ceased to figure in the stories we tell about the significance of our autonomy and independence. To be a freeman is held to be equivalent to being ‘your own man’, not beholden to a patron or master, not the creature of anyone else. A freeman is therefore someone to be reckoned with, someone who can look you in the eye, who can reason and negotiate on terms of equality without feeling any need to doff the cap or bend the knee. As a result, freemen are said to enjoy the respect – and

1. In outlining these claims I draw on Skinner 2009b.

2. *Digest of Justinian* 1985: 1.5.3, vol. 1, 15; 1.6.1, vol. 1, 18.

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the self-respect – that comes of being known to speak frankly and behave without fear or favour, acting solely as reason and conscience dictate.

The contrast is always with the figure of the slave. If you are condemned to live in dependence on the goodwill of a *dominus*, then you will be able to act only by the grace of your master, only with his implicit permission, which can be withdrawn with impunity at any time. But to say that all your actions are performed as a matter of grace is to acknowledge that none of them can ever be performed as a matter of right. As the *Digest* expresses the point, your predicament is that you are unable to act *sui iuris*, because you are wholly restricted to acting as your *dominus* is willing to allow.³ One implication is said to be that this kind of servitude can hardly fail to induce servility. Confronting a master with the power to act as he may choose, it is almost inevitable that slaves will resort to slavish self-censorship. Not knowing what may happen to them, and desperate to avoid their master's rage, they will be sure to behave in appeasing and ingratiating ways.

The other and connected claim put forward by the exponents of this line of thought concerned the nature of the legal and institutional arrangements under which the ideal of freedom as absence of dependence can be realised. They agree that, just as it is possible to live and act freely if and only if you are a freeman, it is possible to live and act as a freeman if and only if you live in what they like to describe as a 'free state'. Discussing the freedom of states, they employ the term in the same way as they do when speaking about individual liberty. To describe a civil association as free is to say that it is capable of acting according to its own will – that is, according to the general will of its citizens – as a result of not living in dependence on the will of anyone other than the citizen-body as a whole. Here their argument stands in strong contrast with that of the classical utilitarians who rose to prominence in the course of the Enlightenment. For David Hume, and later for William Paley and Jeremy Bentham, civil laws are inevitably the enemies of individual liberty because their imposition involves the use of force or the threat of it. But according to the writers I am considering, any civil law which I help to enact, and to which I agree to submit myself, can be construed as an expression of my will rather than a restriction upon it, and must therefore be compatible with my liberty.

There are said to be two distinct ways in which it is possible for a body politic to lose the capacity to act according to its will and thereby lose its standing as a free state. One is when the power of the state falls under the

3. *Digest of Justinian* 1985: 1.6.1, p. 18.

control of anyone other than the sovereign body of the citizens, whether the usurping agent be a monarch, an oligarchy or a ruling class. The other possibility is that the state may fall into a condition of dependence upon the will of another state, whether as the result of conquest, colonisation or any other process that has the effect of bypassing the will of its citizens as the source of law. When either of these disasters occurs, those who are excluded from giving their consent to the laws by which they are governed find themselves reduced to living in dependence on the will of those who have arrogated the power to legislate. But to live in such circumstances is what it means to live in servitude. Hence the claim that, unless you live in a free state, you will find yourself bereft of individual liberty.

This commitment makes the writers I am considering sound like democrats, and it is certainly true that they think of sovereignty within free states as ultimately lying with the citizen-body as a whole. Generally, however, they modify this commitment in two ways. First, they espouse the cause of popular sovereignty largely for instrumental purposes, treating it less as an ideal in itself than as the only possible means of securing the cherished value of liberty as absence of dependence. Secondly, when they declare that civil laws must express the general will of the people, they usually add that the people must be prepared to allow their sovereignty to be exercised by some form of representative government. They concede that, if our representatives can plausibly claim not merely to be speaking in our name but to be safeguarding our values and interests, it remains appropriate to think of ourselves as living in a free state.

Addressing these connected themes, several of the following chapters concentrate on the claim that it is possible to live as a free person only in a free state. In Chapter 10 Reidar Maliks examines Kant's classic formulation of the argument itself, while other chapters consider the nature of the institutions and safeguards needed to uphold the ideal of freedom thus understood. In Chapter 9 Theodore Christov discusses Vattel's contention that civil liberty can be promoted by commerce between states, while Antti Tahvanainen, writing in Chapter 7 about seventeenth-century England, stresses the importance attached to elections and even to secret ballots by the radical thinkers of the time. Similarly focusing on England, Iain Hampsher-Monk adds in Chapter 6 that the freedom of freemen was additionally held to depend on their membership of the kinds of corporations that could help to uphold their rights.

A number of other chapters focus on the underlying vision of civil liberty as independence from the arbitrary will of others. In Chapter 12 Lena

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Helldenius explores Mary Wollstonecraft's reading of the implications of this commitment. If you are controlled by someone else's will, Wollstonecraft argues, then strictly speaking you cannot be said to be capable of moral action at all. As long as you live in subjection to a master, your actions can never be the product simply of your own will and desires; they will always be the product in part of what your *dominus* is willing to permit. As Avi Lifschitz reminds us in Chapter 5, Rousseau traced the origin of this form of servitude to the act of instituting the state itself. But as he goes on to show, Rousseau's account of the state of nature as a condition of freedom was powerfully contested by Moses Mendelssohn, who insisted on interpreting our alleged natural liberty as a species of enslavement.

Felicity Green and Rosanna Cox pursue further implications of the basic contrast between freedom and dependence. Examining the case of Montaigne, Green argues in Chapter 2 that his call to reclaim ownership over ourselves was his practical response to the problems of being a citizen in a war-torn world. For Montaigne, public service was a form of servitude, making us into slaves by encouraging us to engage with events over which we have no control. Montaigne's retreat to his estates represented an exile of the will, an inward refuge and a means to transform himself into a free man beholden only to himself. A comparable ideal of freedom, Rosanna Cox shows in Chapter 8, underlay John Milton's view of family life, and in turn affected his anti-monarchical propaganda as well as his tracts on divorce. Milton sees free consent as the only moral basis for family as well as public life, arguing that marriage between incompatible partners, no less than subjection to monarchical power, amounts to an intolerable form of servitude.

Although the ideal of freedom I have been sketching was crucial to the self-image of European citizens in the early modern period, we must be careful not to over-estimate its significance. One exaggeration to which many writers fell prey was that of supposing their opposition to the enslaving effects of arbitrary power to be a peculiarly European value. But as Michael Cook shows in Chapter 15, the story is more nuanced and complicated. Although the concept of freedom as independence undoubtedly played a less prominent role in the traditions of the major non-European civilisations, we find considerable overlap in the case of Islam. The early Islamic polity was remembered not merely as egalitarian in its outlook but as strongly opposed to the exercise of arbitrary power.

As several other chapters indicate, we also need to recognise that, even in early modern Europe, the idea of freedom as independence was far from universally endorsed. Some writers denied that freedom is anything to do

with having the status of freemen who are not subject to others. Thomas Hobbes was the first to put forward a rival definition, and he was followed by the classical utilitarians, including Jeremy Bentham and William Paley. Freedom, as Hobbes defines it in *Leviathan*, is simply the absence of ‘external Impediments of motion’; we are rendered unfree not by living in conditions of dependence, but only by being interfered with in the exercise of our powers.⁴ Still more radically, others doubted whether the ideal of freedom should be construed in negative terms at all, whether as absence of independence or merely as absence of interference. Catherine Ballériaux shows in Chapter 13 that many religious and especially missionary writers continued to insist that the pursuit of freedom should be envisaged not as a quest for autonomy, but as an attempt to establish harmony between God’s nature and man’s will. Finally, we need to take note of a more secularised version of the claim that freedom consists in the realisation of our powers, a version that came to prominence in the course of the Enlightenment. In Chapter 14 Fonna Forman uncovers its presence among the cosmopolitan thinkers of the period, while in Chapter 11 Alexander Schmidt isolates a similar ideal among a number of German thinkers of the late eighteenth century and beyond.

So far I have been speaking about rival understandings of the concept of free action. But many philosophers of the early modern period were more interested in questions about the freedom of the will and the inner freedom of the mind. Martina Reuter focuses in Chapter 4 on Descartes’ examination of the free-will controversy, arguing that his defence of the equal capacity of human beings to reason derives from his account of the will and its capacity to judge freely. As Reuter shows, this commitment helps to explain how Descartes came to endorse, in his own idiom, the well-established theological belief that ‘the mind has no sex’. In Chapter 1 Annabel Brett considers a specific implication of the idea of free will associated with the Jesuit philosophers of the early modern period. Francisco Suárez argued that one of the powers of the human will consists in its ability to generate ‘moral entities’, including not just property and jurisdiction but freedom itself, which Suárez construed as a power over our own actions susceptible of being alienated just like any other piece of property. With Pufendorf’s discussion of *entia moralia* in his *De iure naturae et gentium*, as Brett illustrates, this analysis eventually entered the Protestant tradition as well.

While those who meditated on freedom of mind often differed in outlook from those who focused on freedom of action, they shared a fundamental

4. Hobbes 1996: ch. 21, 145.

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interest in the attainment of inner-directedness and self-mastery. We need finally to note, however, that a number of early modern writers rejected all such ideals of autonomy, treating them as nothing better than fictions designed to deceive ourselves. As Freya Sierhius shows in Chapter 3, such writers were generally led to this conclusion by way of espousing a distinctively neo-Stoic conception of reflection and self-scrutiny. For these writers, among whom Justus Lipsius was the most prominent, the possibility of freedom depends on our capacity to use our reason to control our passions, thereby preventing our liberty from degenerating into mere licence. Faced with this demand, however, many responded that the enslaving power of passion is so overwhelming that any sustained commitment to rational purposes is sure to fail. The project of self-mastery was rejected as a psychological impossibility.

Modern European conceptions of freedom and citizenship have largely been fashioned out of the traditions I have been surveying, so that each strand of thought examined in the chapters that follow can be shown to have left some mark on our contemporary world. At the same time, however, we find that the contours and complexities of these inherited patterns of argument have been flattened and simplified. We hear little nowadays about freedom as independence,⁵ and even less about freedom as a project of self-realisation based on self-mastery. We largely identify the possession of liberty with nothing more than an absence of interference with our desires. But as the following chapters richly illustrate, this commitment has involved an abridgement and arguably an impoverishment of our intellectual heritage. This being so, a reading of the following chapters can hardly fail to have at least two salutary effects. One is to supply us with a comprehensive understanding of the intellectual materials out of which we have constructed our contemporary world of individual liberty and rights. The other is to provide us with a means of reflecting on whether some of the materials discarded along the way may not be worth picking up and reusing to produce a better edifice.

5. But this may be changing. For efforts to reinsert this conception into contemporary political theory see Pettit 1997, Skinner 1998, Laborde and Maynor 2008, Lovett 2010.

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Excerpt

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Part I

Free persons and freedom of action

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1

Human freedom and Jesuit moral theology

ANNABEL BRETT

It is well known that Jesuit theologians of the late sixteenth and early seventeenth centuries defended, against their theological rivals (Calvinists, Lutherans, and their fellow-Catholic Dominicans), a strenuous conception of the natural freedom of the human will. In this chapter we are concerned not so much with the theological controversy but with the implications of this conception of intrinsic human liberty for freedom in the economic and political domains. As we shall see, it underpinned a particular understanding of the moral world, that is, the world in which human beings do not simply act or not act with a freedom that is natural to them of their essence as such, but are additionally involved in a series of relationships (for example, of property, of contract, of subjection to jurisdiction) which alter the moral quality (the goodness or badness) of those same free actions. The moral metaphysics they developed to support this world allowed Jesuit theologians an enormous subtlety and flexibility in analysing the increasingly complicated commercial transactions of early modern capitalism as well as the demands and limits of political obligation, with the overall end of guiding and protecting the conscience of economic agents and political subjects. As we shall see further, however, for some of its exponents this sophisticated metaphysical toolkit did not come without its own danger, that of making the moral world purely self-referential and losing its connection with natural good and evil.

It is a common feature of late scholastic action theory that the freedom of any external action (in scholastic terminology, an *actus imperatus*, for example taking a walk) is dependent on the freedom of the precedent act of will (an *actus elicitus*, in this case the choice to take a walk).¹ It is central to this view that the human will is, of its nature, free to act or not act, although

1. Pink 2003.

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certain circumstances may intervene to compromise or even negate this freedom. The free operation of the will, together with the activity of reason in presenting to the will the good which it may or may not choose, gives a human being command or mastery, *dominium*, over his own actions. This latter idea goes back to Aquinas and was inherited by the Jesuits through the mediation of their sixteenth-century Dominican predecessors, in particular, perhaps, Domingo de Soto, whose treatise *On Justice and Right* fundamentally influenced Luis de Molina and other later Jesuits. On this conception, to have *dominium* over one's own actions just is to be able to act freely. It is what differentiates the human freedom of a man walking down a road from the animal unfreedom of (say) a cow, which, although it may appear to be doing the same thing, has no command over whether it walks down the road or not. It is this internal self-command or *dominium* of human beings which allows them to have *dominium* as an external relation both to goods and to other persons.² Thus, the spheres of both economics and politics are premised upon the understanding of a human being as a free being in this strong sense of a self-commander.

In the course of the sixteenth century, the issue of the alienability of liberty – in particular, the alienation involved in voluntary slavery – put a certain pressure on this inherited language of human freedom. Soto conceded that a human being may, in the most extreme of circumstances (that is, for the sake of life itself), sell himself into slavery. It is possible because liberty, as a case of *dominium*, is alienable just as is all *dominium*.³ This concession assimilates liberty to *dominium* in the sense of property, and the implication was pursued by Molina, who explicitly argued that a human being is the owner (*dominus*) of his own liberty.⁴ During the late sixteenth and early seventeenth centuries, the idea that human beings have ownership of their liberty became a central tenet of Jesuit moral theology. It influenced both their casuistry of conscience, supporting an assumption of the moral freedom of individuals to act as they chose in cases of doubt, and their understanding of freedom of contract in the economic sphere.⁵ Nevertheless, it demanded a refinement in the inherited terminology. The liberty that is like any other piece of property and can be alienated as such cannot be the same as the intrinsic liberty of the human being that differentiates him from an animal such as a cow. In the case of voluntary slavery, it is alienated by a free act of will and the slave remains a human being, intrinsically capable of acting

2. Tierney 2006; Seelmann 2007. 3. Soto 1566: lib. IV, q. 2, a. 2.

4. Molina 1614: tract. II, disp. 30, n. 14; Kaufmann 2007: 219–20.

5. Schüssler 2006; 2007; Decock 2009a.