

In a 1958 lecture entitled *Two Concepts of Liberty*, Isaiah Berlin developed a distinction between what he called 'negative liberty' and 'positive liberty'. In Berlin's definitions, negative liberty regards the question "What is the area in which the subject—a person or group of persons—is or should be left to do or be what he is able to do or be, without interference by other persons?" Positive liberty regards the question "What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?" While related, these are clearly distinct ideas of liberty, perhaps summarized as "freedom from" and "freedom toward."

Negative liberty is typically the position of a liberal polity for the last couple of centuries, and it is what is generally intended in common speech. Bruno Leoni succinctly stated this view: "'freedom' and 'constraint' in ordinary language are antithetical terms" (*Freedom and the Law*, Liberty Fund, 1991, 48.) It is broadly left to the individual to develop and exercise the positive freedom to determine how to pursue her life, including career, housing, diet, and so forth. Milton Friedman expressed it this way: "in a society freedom has nothing to say about what an individual does with his freedom. Indeed, a major aim of the liberal is to leave the ethical problem for the individual to wrestle with" (*Capitalism and Freedom*, 40th Anniversary Edition, University of Chicago Press, 2002, 12.) Less libertarian figures than Leoni and Friedman, though perhaps more moderated, still tend toward a high individual liberty and personal determination of one's own ends.

Wolterstorff briefly analyzes the idea of liberty in a footnote: "a liberty to which one has a right is a combination of a permission-right and a claim-right" (251n7.) That is, one's right to the freedom to walk down the street is at once the permission-right to walk down the street and the claim-right against all others from impeding one from walking down the street. While this might seem to entail both the negative and positive concepts of liberty, in my view it only includes negative liberty, or the lack of coercion from others that might impede one were one to choose to walk down the street. It does not seem to me to include positive liberty; one may be free (permission-right) to walk down the street, but permission rights only open a space for the expression of positive liberty; positive liberty is that one may choose, or not, to walk down the street, or that one may choose another mode of transportation, such as riding a bicycle.

Wolterstorff defends his view of justice as rights against the charge that it can lead to possessive individualism; surely anyone familiar with contemporary society is familiar with the sometimes shrill demands about one's rights. His response is that this one-sided demand is a distortion of justice as rights, focusing on one's claim-rights against others while overlooking others' claim-rights—perhaps identical—against oneself. He traces the source of possessive individualism to two sources; here an extended quote seems appropriate.

An ethos of possessive individualism employs the language of rights for its own purposes. But, for the origin of the ethos we have to look elsewhere: to modern capitalism, to that understanding of liberal democracy that says that the governing idea of such a polity is that everyone is to be ensured equal freedom to act as he or she sees fit. And deeper: to the dark side of the human self, to the flaws that afflict all of us and always have, to our inveterate inclinations to pride and to self-preoccupation and to hardening our hearts to the plight of the other. We twist the

culture of rights to our malign impulses. (388)

As described above, the dominant contemporary political view is that of negative liberty, or freedom from constraint on one's choices how to live one's life. As discussed in the first part of this post, this seems consistent with Wolterstorff's analysis of the social requirement account of obligation. In a system of justice as right order—which seems to me the current political system of justice—moral rights and obligations are conferred by the actions of a person or persons (e.g., as a legislative, regulatory, or judiciary body) acting properly in a political role, whether grounded in a positivist social construction or in a natural order. Crucially, in a social requirement account of obligation, *no moral obligation exists prior to its social establishment*. Relationships between citizens or members is mediated by social or political institutions and their conferred rights and obligations.

It seems to me that socially conferred rights and obligations are of the sort that would primarily alter one's negative freedoms, or the range of possibilities within which one is free to act without coercion. A social action might confer a social right on some or all of its citizens or members such that the scope of possible action within one's negative liberties are altered. Thus with the repeal of Jim Crow laws, one is no longer free to require separate water fountains and public facilities for whites and people of color. At the moment it seems to me that one's positive liberties, or the capacity to govern one's own actions and determine one's own ends, are less directly impacted by socially conferred rights and obligations, though one may be required to alter one's desired ends if those ends are removed from the scope of one's negative freedom.

Turning to consider Wolterstorff's conclusion, one should never treat another person with less respect than she merits. Grounded in the worth of the other, *moral rights and obligations can exist prior to any social action conferring them*; these rights and obligations exist that are prior to and unmediated by social or political institutions. "Natural rights resemble legally and socially conferred rights in that they have peremptory force. What a natural right adds to peremptory force is the fact that *to dishonor a natural right is to wrong someone*. ... That 'addition' makes natural rights highly distinctive" (387, emphasis mine.) The worth of the other entails a correlative obligation, or duty, of respecting that worth in one's dealings with another, and failing to fulfill that is to wrong the other.

It seems to me, subject to further consideration, that the standing rights and obligations of justice as rights are—at least largely, if not wholly—outside the usual scope of negative and positive freedom. Giving another his due respect does not merely alter the scope of one's negative or positive freedoms; that is, it is not simply that the range of unrestrained actions available—negative liberty—or that one's capacity to act to one's own ends—positive freedom—are altered merely by shifting the boundaries of possible action. Rather, giving another the respect due her entails an alteration in kind—not scope—of how and why one treats another.

Furthermore, respect for another is simply not within the definitions of negative and positive liberty; nothing within the usual definitions of negative and positive liberty entails that one treat another with respect. Additionally, respecting another seems outside the scope of social or

political policy or legislation; policy and legislation address one's behavior toward another, while respect addresses one's attitude toward another. The repeal of Jim Crow laws limited the range of negative freedoms of some whites by removing the possibility of enforced separations of people on the criterion of skin color; that whites come to respect people of color is a very different matter beyond the reach of political action. From the view of justice as right order, conforming to a change in the law may fulfill the obligation to the other; from the view of justice as rights, though one conform to the law, failing to respect the full worth of the other is to wrong him or her.

In conclusion, if my analysis is persuasive, justice as rights, grounded in the inherent worth of ourselves and others because of the sorts of beings we are, could radically alter our understanding of rights and obligations, and consequently our understanding of political freedom.

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