

LIBERTY, EQUALITY, FRATERNITY

Paul Spicker



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Preface

This book discusses the concepts of liberty, equality and fraternity, and considers how they inform social policy. The principles are chosen partly because they traditionally stand together, partly because they are interesting in their own right, and partly because, when they are considered together, they offer distinctive insights into socialist and radical thinking.

The approach is theoretical. The main principles are separated into a range of distinct elements, which are discussed systematically and then inter-related. Each of the concepts is applied to practical examples, which are intended to show how the principles relate to practice. This kind of practical application is fundamental to work in applied theory. The selection should help to bring the subject to life, to show how the concepts work, and to show where the difficulties are. Any real-life example brings in more practical and normative issues than can comfortably be considered, and examples are necessarily dealt with very selectively. In some cases, there are interesting examples which raise a clutch of related issues, and these are considered in separate sections. Even in those cases, though, the material has to be abbreviated.

The discussion of theoretical issues is partly descriptive. The book explains a series of propositions about the core concepts, and tries to understand the positions that different writers adopt. The emphasis on application to examples means that some of the descriptions and classifications of ideas are new, but that should help to make the material more effective as a description. Beyond description, however, the book is also prescriptive. There are several points in the argument where I begin with a proposition and proceed to defend it, rather than gradually working my way to a balanced conclusion. To a large extent, those prescriptions reflect my own values: I have tended through much of the book to favour social and communitarian applications over individualist ones. However, the effect of outlining broadly based, and sometimes conflicting, concepts is to argue for awareness of different points of view, consideration and balance.

The book brings together material from political theory and social policy. From the perspective of political theory, the book:

- discusses key concepts;
- uses practical examples;

- introduces new approaches to concepts, with categories based on policy; and
- tries to develop an insight into the understanding of radical politics.

For political theorists, much of the subject matter should be familiar terrain. The main exception is fraternity, which has not really had the attention it merits. However, the book was conceived as an original contribution to the theoretical literature, and some elements are new.

In the first place, the arguments are presented within an ordered, thematic framework. Many of the subcategories and dimensions of the argument have been shaped by the need to address the issues in policy. The conventional characterisations of liberty stand up well to the test and this makes the discussion of that field less directly innovative, even if some sections are new. By contrast, I had to extend and develop the categorisations of both equality and fraternity to make it possible to apply them effectively. If there is an equivalent treatment of either topic, I have not seen it.

Second, the book draws on a rich seam of original examples, drawn primarily from social policy. Many of the principal works of contemporary political theory have very little relationship to social or political issues; they are based either in purely formal reasoning or in invented, imagined examples. Bob Goodin once launched a scathing attack on the use of fantasy, or ‘crazy cases’, in political theory. Extreme examples are sometimes used to point to issues that in real life become dark, muddy and confused, but Goodin argued that the main effect of outlandish examples was to disorient readers, and to distort our moral perceptions.¹ Some thought-experiments in the literature are immediately identifiable as such, like the spaceship travellers in Ackerman’s bizarre discussion of social justice.² However, when well-respected books maunder about ‘the right to walk on my hands’³ or whether we can have a library in our back yard,⁴ I have to curb my exasperation. It is not as if there is any shortage of examples of restricted rights, or of problems in the public distribution of goods. The failure of these authors to relate their work to real life, or to address the arguments generated by the practical issues, excites the suspicion that they are inventing examples because they do not know what the issues really are. Ignorance of the conditions people experience, and of the relevant arguments, is a poor basis for theoretical examination. I have tried throughout the book to apply the theory to real, rather than imagined, problems.

From the perspective of social policy, the book:

- considers the political and moral dimensions of social policies;
- offers a normative analysis of several policies; and
- offers an alternative mode of discourse to the analysis of the subject.

The arguments are much less familiar in the field of social policy than they are in political science. I first discussed issues of liberty and equality, in a much shorter space, in *Principles of social welfare*.⁵ Although studies in social policy have paid increasing attention to ethics and principles in recent years, much of the literature in the subject is still bound by conventional interpretations, particularly in terms of ideologies.⁶ Beyond that, the disciplinary basis of the field is increasingly influenced by sociological interpretations, where normative analysis has traditionally been regarded with some suspicion, and the methods applied in moral and political philosophy are unusual. The value of examining general principles is partly that they make it possible better to understand the political and moral dimensions of policy, and partly that they help the development of techniques for normative analysis; but they are also important in their own right, and it is hard to understand social policy adequately without them.

A personal note

George Orwell once commented that writing a book is like having a long illness. This has been true of most of my books, given the combination of obsessive and repetitive behaviour, waking up with ideas in the middle of the night, and fretting over presentation. By comparison this one has been much easier to bear, and really no worse than a mild dose of the flu. While I have been writing this book, I have been the director of a research unit, and have worked on a wide range of different projects. These have included studies of police complaints, a review of anti-poverty strategy, the safety of minority ethnic groups, community planning, housing allocations, complexity in benefit systems, money advice, training for homeless people, the design of schools, benefit receipt in South Africa, educating health professionals, participative research on poverty, and a consultation on civil partnership registration. The chance to write about theory at my own speed has been a refuge from highly pressurised deadlines for applied research, while the engagement with practical projects has fuelled my interest in the general principles.

Liberty, equality, fraternity

Thanks are due to Mark Aspinwall, Peter McLaverty and Geraldine Wooley for comments.

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- Stigma and social welfare* (Croom Helm, 1984)
- Principles of social welfare* (Routledge, 1988)
- Social housing and the social services* (Longman, 1989)
- Poverty and social security: Concepts and principles* (Routledge, 1993)
- Social policy: Themes and approaches* (Prentice Hall, 1995)
- Planning for the needs of people with dementia* (with D S Gordon, Avebury, 1997)
- Social protection: A bilingual glossary* (co-editor with J-P Révauger, Mission-Recherche, 1998)
- Social policy in a changing society* (with M Mullard, 1998)
- The international glossary on poverty* (co-editor with D Gordon, 1999)
- The welfare state: A general theory* (Sage Publications, 2000)
- Policy analysis for practice: Applying social policy* (The Policy Press, 2006).

Introduction

The discussion of liberty, equality and fraternity has been a major influence on political thought since the time of the French Revolution. The case can be made for a much longer historical perspective on each – the libertarianism of religious dissenters, the egalitarianism of the Levellers, and the fraternity of the guilds – but the effect of the Revolution was to make these principles central to radical approaches. The French Revolution marked the triumph of ‘the people’. It pronounced, in 1789, the *Declaration of the rights of man and of the citizen*.⁷ In theoretical terms, many of the ideas were ill worked out. For example, the revolutionaries proclaimed the rights of man, but women were largely excluded from the process.⁸ In practical terms, revolutionary zeal turned to fanaticism, and the Revolution turned on itself.

The influence of the Revolution has played a major part in shaping the way that people think about their society. Two hundred years ago, the principles of liberty, equality and fraternity were seen as radical, challenging and iconoclastic. In modern societies, although there are many differences in interpretation and approach, it has become hard to find people who do not accept the ideas to some extent. Political arguments from across the spectrum have come to accept at least part of the principles on which the revolutionary arguments were based. The ideal of a free society is generally acknowledged, even if it is not universally respected. Although the principle of equality is often seen as contentious, the revolutionary argument for an open society, allowing people to move across the boundaries of class, caste and race, is widely accepted. The idea of fraternity is less directly accepted, but the principles of collective action and social responsibility are widely recognised. This general agreement is as true of the right wing as of the left. The president of France, Jacques Chirac, recently began a speech when he described the principles of the French republic in these terms:

It is on the basis of liberty, guaranteed by the primacy of the law on individual interests; on equality between men and women, equality of opportunities, rights, and duties; on fraternity between all the French, whatever their condition or their origin.⁹

The radicals of the 18th century were talking about unrealised ideals. In the present day, by contrast, governments produce documents with titles like *Inequalities in health*¹⁰ or *Pensions tomorrow: A contract between the generations*¹¹ (the French government's review of pensions). The concepts of liberty, equality and fraternity have become part of the everyday discourse of politics, and the principles have become a routine influence on policy in practice. Many of the ideas around liberty, equality and fraternity are radical, in the sense that they represent a challenge to existing patterns of social relationships. They are also central to contemporary political debates, in the sense that they address core perceptions of people and society.

Social welfare

This book focuses mainly on the relationship between these concepts and social policy. Social policy is a field of study concerned with social welfare and the social services. The main focus is not policy for society in a general sense, but the specific patterns of provision made for people in respect of states of dependency, such as old age, childhood, sickness and unemployment.¹² Social welfare provision depends on a complex constellation of political, economic and legal provisions, conventionally (if sometimes unhelpfully) described in terms of 'welfare states'. The alternative idea of 'social protection' is increasingly used in Europe to refer to the elements of social welfare provision, both within and beyond the remit of the state, which offer security and services to people in states of dependency. This book is concerned only with a small part of a vast subject area, although the principles and ideals discussed in it cut across many other issues.

Almost all governments with developed economies have some sort of system of welfare provision. The reasons why that is true are complex; they depend on the interplay of historical, organisational, economic, social and cultural factors.¹³ It would be difficult, though, to understand much of what happens in welfare provision without some reference to political values – whether to those on the right who have stood for social responsibility and religious duty, or those on the left who have been committed to collective action and working-class movements. The focus in this book on three principles – liberty, equality and fraternity – is not intended to be an account of every ideal which relates to welfare or provision. But the principles are important in their own right. The circumstances of welfare offer an insight into those concepts. Equally, I think, the concepts open a window onto different ways of thinking about welfare and social protection.

Part One

Liberty

Liberty

Liberty is commonly represented in terms of ‘negative’ and ‘positive’ approaches. Negative freedom refers mainly to freedom from restraint. People are free if no one is interfering with them, or preventing them from doing what they are able to do. Positive freedom can refer to the freedom to act, or to self-determination. In the first sense, positive freedom is about power; people who are unable to do things are not free to do them. In the second sense, positive freedom is about being able to make decisions, and to choose.

Although the distinction is widely used, it does not make a great deal of sense. The negative idea of freedom seems to require only that other people should not intervene. Isaiah Berlin, who popularised the concept, argued that people do not cease to be free because they are unable to do something, but only if someone is interfering with them.¹⁴ It is possible, if that is accepted, for people to be left in a position where they are unable to act, but are still free. If, for example, there has been an earthquake, and people are physically trapped under the rubble, they have not ceased to be free. (This argument, or at least one very like it, was made by Hayek.¹⁵) It follows that a rescuer from the emergency services who tries to release survivors without obtaining prior consent is interfering with their circumstances, and that must be an infringement of their freedom. This is silly, and it takes a particular kind of academic cleverness to convince oneself that it should be taken seriously. Conversely, the positive idea of freedom, certainly as it is represented by Berlin, seems to suggest that all that matters is whether people are able to act, and not whether they are free from constraint. If people are being directed, but the constraint is one they might reasonably agree to, they are still free; and people can, in Rousseau’s notorious phrase, be ‘forced to be free’.¹⁶ This is just as ridiculous, and it does violence to the very idea of freedom.

The ideas of negative and positive freedom have taken root because they are, at least, partly right. All freedom, MacCallum argues, has three elements: it has to be freedom of a person; the person must be free from restraint; and the person must be free to do something.¹⁷ That means that both negative and positive concepts are relevant to any consideration of freedom. Many writers have tried to put their arguments in terms of negative and positive freedom, even if they do

not quite reflect what the writers mean to say. The following discussion begins with those ideas, but it cannot finish with them, and other dimensions of the arguments are considered subsequently.

Negative freedom

The private sphere

The classic statement of negative freedom is found in John Stuart Mill's book, *On liberty*.

The object of this Essay is to assert one very simple principle.... That the only purpose for which power can rightfully be exercised over any member of a civilised community, against his will, is to prevent harm to others.... The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute.¹⁸

Discussions of this principle usually focus on the first half, concerning the prevention of harm to others.¹⁹ I will return to that issue shortly, but I want at the outset to focus on the second half, which is the core of the idea of 'independence'. De Tocqueville had written in 1835:

In everything concerning the duties citizens owe to each other, [the individual] is subject. In everything which only regards himself, he remains master: he is free and has to account for his actions only to God.... This doctrine is universally admitted in the United States.²⁰

The same view is still widely held there. Mill's understanding of freedom depends, like this, on the idea that there are private areas of action which only concern the individual – areas which are no one else's business. Personal independence, by this account, consists of freedom of action in the areas that are unique to the person affected.

If anything is private, one might argue, it should be the things one does where other people are not involved. There are not many actions which are private in these terms. Even in societies which value liberty, like the developed economies of the West, there are many things we are not allowed to do with our own bodies.²¹ This is especially true in public places, where we cannot do several things we can do in private

– like displaying ourselves, touching certain parts of our body, or having sex. But control over the body is not confined to the public sphere. Apparently personal and private acts like eating, washing, going to bed or going to the toilet are not fully ‘independent’. They have to be taught, as any parent can testify, and they are hemmed in by elaborate social rules. People learn to do things in the accepted way before they become independent. People who do not learn them, for example because they have learning disabilities, can find it difficult to gain full independence. Adults can disregard the rules within limits, but when they do they are likely to be shunned socially. There are some things we are not allowed to do to our bodies in private, like taking narcotics. Some are governed by social rules: people are not free to have extreme pain inflicted on them, even if they agree to it.²² And some rules are governed by other principles: people are not in general allowed to undertake serious self-mutilation, such as self-wounding, because even in jurisdictions where this is not directly and explicitly illegal it will be taken as evidence of unsound mind. There are also dilemmas when vulnerable people live in ways that are not socially acceptable. For example, some people are dirty. In UK law, section 47 of the 1948 National Assistance Act allows for old people to be removed from their home if they are living in ‘insanitary conditions’ and they are in need of ‘care and attention’. This typically means removal to hospital for a short period, enough to allow for the person to be cleaned up. The provision is rarely used, however. It is much more likely that old people will be treated under the Mental Health Acts or the incapacity legislation as incompetent to manage their affairs, which is a much more serious limitation of a person’s freedom.

As a description of the human condition, the widespread belief in a private sphere is difficult to sustain. In *The concept of mind*, Gilbert Ryle criticises the idea that there is something about the way our minds work which gives us privileged access to thoughts that no one else can share. We learn to express and understand ourselves, Ryle argues, through a shared set of social processes. We know what we think and feel by comparing it with what we learn about ourselves and other people.²³ In a very real sense, we are social animals. The very idea of the private sphere is a social construction: we learn that there are things we are allowed to do with others, things we are allowed to do by ourselves, and things we are not allowed to do even if we are by ourselves. It is questionable whether people can be seen as independent individuals, completely at liberty when they are left alone. Many people accept that moral conduct does not extend to private thoughts, but even that is uncertain; thoughts may not be punishable,

but if they breach moral codes we are still likely to feel a sense of guilt or shame about them. (People who fail to respond in those terms are liable to be treated as mentally disordered.²⁴) Privacy is not a good enough reason to think or do whatever we please.

Non-interference

Negative freedom consists of freedom from coercion, but ‘coercion’ can be taken in more than one sense. First, it refers to interference and constraint by other people. Berlin describes coercion as ‘the deliberate interference of other human beings within the area in which I could act’.²⁵ Second, in its stronger sense, coercion is not just about interference: it implies that other people are seeking to direct our actions. Both interpretations are important for an understanding of negative freedom.

The presumption of non-interference has played a crucial role in defending freedom. For Mill, the essential conflict lies between the individual and society. In European liberalism, the defence of personal independence was stated more broadly. Benjamin Constant extended the principle to defend not just individuals, but groups, communities and countries. If there is an area in the life of each person which is private, that means that in the affairs of two people, there would be an area of activity which was distinctive and private to those two people. The same applies to neighbourhoods, communities, townships, regions and nations.²⁶ The idea of ‘national self-determination’ is linked to liberal thought through the view that people do not have a right to interfere in the affairs of others. The essential point this shares with Mill is the idea of an independent sphere of action, an area where no one else has the right to interfere.

In everyday life, other people constantly impinge on our freedom of activity – in the home, in the street, in our interactions with others. There is a constant process of negotiation and compromise of the area where free action is possible. The protection of freedom means that the freedoms of each person have to be circumscribed, so that they do not infringe the freedoms of other people. The first part of Mill’s ‘very simple principle’ – whether or not actions cause harm to others – is one of the tests. But if it is not acceptable to infringe other people’s liberty, causing harm cannot be the only test – it is also not acceptable to infringe liberty by trying to do good. Feinberg suggests that the proper test is whether an activity invades the interests of another person.²⁷

One popular construction of freedom has it that our freedoms end

at the point where they interfere with other people. This is largely right – clearly, there are points at which people’s freedoms will impinge on other people’s, and there have to be limits on how far this is acceptable. But it is not wholly right, because there are many circumstances in which we can legitimately act to restrict the actions of others. People in families are notorious for interfering with each other’s freedoms: it is part of a caring relationship. A business competitor who puts small shopkeepers out of business is limiting their choices, their livelihood and possibly threatening their houses (many small businesses are financed by mortgaged property), but it is all done according to longstanding conventions, and many people would argue that it is a sign of freedom rather than a limitation of it. A religious teacher who tells people when they can eat or what position they should sleep in is certainly limiting their choices, but freedom of religion is one of the most fundamental rights protected in the liberal governments of the western world.

The implication of these arguments is that, even if there is a presumption of non-interference, there are exceptions to the general principle. If there is a rationale for the exceptions, it seems to be that they take place within defined social contexts – where the character of the relationships, and the substance of the intervention, reflects on what is acceptable, and what is not. One way of interpreting these issues is the idea of ‘sphere sovereignty’, associated with Dutch Calvinism. Kuyper argued that there are spheres of human activity – spheres such as government, religion, arts, family, business – where different rules apply.²⁸ The proper role of the church in religion is not applicable to the role of the state in making law, and vice versa. Even if intervention can be justified in one area, like industrial relations, it cannot necessarily be justified in another, like domestic arrangements. The interference of family members in the domestic sphere, business competitors in the field of business, or a religious leader in religious affairs, is legitimate; but the interference of business in politics, or the state in religion, would not be. The idea is initially appealing, because it seems to make it possible to maintain the principle of independence in a private sphere in a world where people do not actually live on desert islands. The problem is that the boundaries between spheres are necessarily fuzzy. Dooyeweerd, in developing Kuyper’s ideas, argued that although the state was limited to the regulation of inter-relationships, this could be taken to affect issues like financial support in families, or even issues like domestic violence.²⁹

Another way of interpreting the exceptions is through ‘communitarianism’, which puts all moral principles in the social