

A Third Concept of Liberty

Professor Quentin Skinner FBA delivered the inaugural Isaiah Berlin Lecture at the Academy on 21 November 2001. The title of his lecture was 'A Third Concept of Liberty', referring to Isaiah Berlin's famous essay propounding two concepts of liberty, positive and negative. In the edited extract below he illustrates the long history of a third concept, that living in subjection to the will of others places limits on our liberty.

When Berlin first introduces his view of negative liberty, he rightly observes that 'this is what the classical English political philosophers meant' by freedom, and he specifically refers to Hobbes's definition of a free man in *Leviathan*: 'a free man' is someone who 'in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to.' What he misses, however, is the fiercely polemical character of Hobbes's analysis. When Hobbes announces, in words that Berlin echoes closely, that our liberty consists of nothing more than 'absence of external Impediments' to the exercise of our powers, he is attempting at the same time to discredit and supersede a rival and strongly contrasting understanding of negative liberty that had risen to prominence in English public debate in the early decades of the seventeenth century, and that seemed to Hobbes to be extremely dangerous as well as confused. What prompted Hobbes to articulate it was his sense of the need to respond to the 'Democratical Gentlemen', as he called them, who had deployed their very different theory to promote the cause of Parliament against the crown and to legitimise the execution of King Charles I.

It was the view of these critics of the prerogative that, to the extent that they were obliged to live in dependence on the power of the king, and obliged in consequence to rely on his goodwill for the continuation of their rights and liberties, they were living in a state of servitude. The basic contention of these critics, in other words, is that freedom is restricted not merely by actual interference or the threat of it, but also by our awareness of the mere fact that we are living in dependence on the goodwill of others. These writers are not making the obvious point that the possibility of such arbitrary interference renders our liberty less robust or secure. They are claiming that the mere existence of an arbitrary power capable of interfering in our activities, without having to consider our interests, serves in itself to limit and undermine our liberty. Knowing that we are free to do or forbear only because someone else has chosen not to stop us is what reduces us to servitude.

The immediate inspiration for this way of thinking appears to have stemmed from a number of

medieval common-law texts, above all those of Bracton and Littleton. These were the authorities that Sir Edward Coke and his followers in the early Stuart Parliaments loved to invoke, and proceeded to quote with so much reverence that they acquired an authority they had never before enjoyed and have never subsequently lost. Henry de Bracton in his *De Legibus et Consuetudinibus Angliae* of c. 1260 distinguishes in his opening chapter between free persons and slaves, and proceeds to define as a slave anyone who 'lives in subjection to the dominion of someone else'. Sir Thomas Littleton's fifteenth-century treatise, *Un lyver de exposicion de parcell de les tenures*, draws a very similar set of distinctions between freemen, villeins and slaves, and repeats that a slave is someone whose lack of liberty is such that his person – and not merely, as with a villein, his property – is *sub potestate*, within the power or at the mercy of someone else.

The most striking feature of these definitions (although the common lawyers did their best to ignore the fact) is that they owe their phraseology entirely to the analysis of freedom and slavery at the outset of the *Digest* of Roman law. There we are first informed that 'the fundamental division within the law of persons is that all men and women are either free or are slaves'. Then we are given a formal definition of slavery. 'Slavery is an institution of the *ius gentium* by which someone is, contrary to nature, subjected to the dominion of someone else'. This in turn is held to yield a definition of individual liberty. If everyone in a civil association is either bond or free, then a *civis* or free subject must be someone who is not under the dominion of anyone else, but is *sui iuris*, capable of acting in their own right. It likewise follows that what it means for someone to lack the status of a free subject must be for that person not to be *sui iuris* but instead to be *sub potestate*, under the power or subject to the will of someone else.

While these distinctions are definitively summarised in Justinian's *Codex*, they had by that time been the common coin of Roman political theory for generations, having been propagated in particular by such leading historians of the constitution as Sallust, Livy and Tacitus. This being

so, it is a fact of singular importance that it was in the generation immediately prior to the disputes between crown and Parliament in the early seventeenth century that these works were all translated into English for the first time. Henry Savile's version of Tacitus's *Histories* and *Agricola* appeared in 1591, with Richard Greneway's rendering of the *Annals* and *Germania* following in 1598. Two years later Philemon Holland issued his enormous folio containing the whole of the extant sections of Livy's *History*, while in 1608 Thomas Heywood published his translations of Sallust's *Bellum Catilinae* and *Bellum Iugurthinum*.

If you turn to any of these authorities, you will find it argued once more that what it means to possess your liberty is, as Livy puts it, not to be subject to the power of anyone else. When, for example, Livy describes the surrender of the Collatines to the people of Rome, he stresses that they were able to take this decision because (as Holland's translation of 1600 puts it) they were 'in their owne power', and hence 'at libertie to doe what they will'. The same view emerges still more clearly from the later passage in which Livy

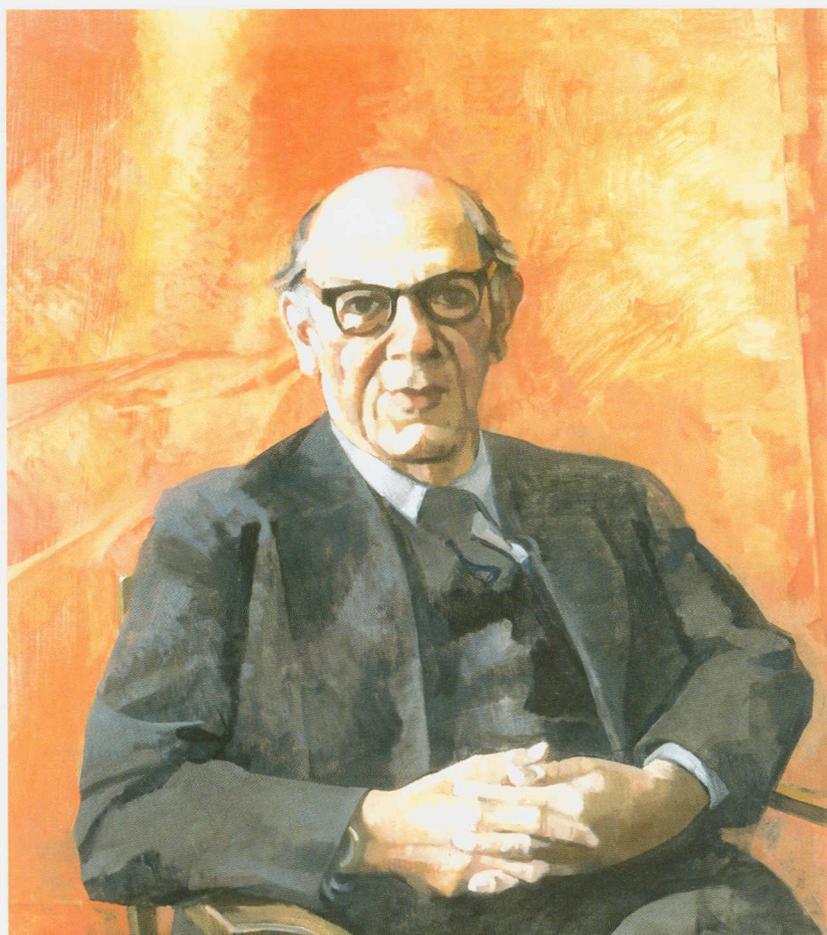
discusses the efforts of the Greek cities to restore their good relations with Rome. To be able to enter into such negotiations, one of their spokesmen is made to say, presupposes the possession of 'true libertie', that condition in which a people 'is able to stand alone and maintain itselfe, and dependeth not upon the will and pleasure of others.'

It was this understanding of political liberty that a number of spokesmen in Parliament began to deploy in criticism of the crown in the early decades of the seventeenth century. We first find them drawing on these assumptions in their defence of a number of specific liberties against what they took to be encroachments by the royal prerogative. One aspect of this campaign has of course been extensively discussed, and forms the cornerstone of the traditional 'whig' explanation for the outbreak of the English civil war in 1642. The government was repeatedly accused, most conspicuously in the Petition of Right of 1628, of forcibly interfering with a number of fundamental rights and liberties. Charles I was charged with compelling and requiring his people to make loans to him, and with imprisoning and even executing subjects without due cause being shown. These actions were taken to constitute an obvious violation of rights and liberties, since they involved (in the words of the Petition) molesting large numbers of subjects contrary to the laws and franchise of the land.

As the Democratical Gentlemen make clear, however, what troubles them even more is the view of rights lying behind this understanding of the prerogative. To maintain that our basic liberties are subject to being taken away with impunity is to declare that they do not have the status of rights; it is to say that they are mere licenses or privileges. This is the insight that prompts these critics to reach for their Bracton – and indeed their Livy and Tacitus. To accept, they retort, that we hold our rights and liberties at discretion is to accept that we are living in a state of subjection to the will of the king. But to admit that we are living in such a condition of dependence is to admit that we are living not as free citizens but as slaves. It is our awareness of the mere existence of such prerogatives that undermines our liberty and leaves us in servitude.

The exploration of this argument had been one of the leading preoccupations of the classical writers I have singled out. We encounter the argument above all in the Roman historians who focused on the transition from the alleged freedom of the republican constitution to the servitude of the

Sir Isaiah Berlin FBA
(1909–1997) by Sir Lawrence
Gowing. By Courtesy of the
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principate. If we turn to Sallust, and above all to Tacitus, we find them offering an agonised analysis of the psychological impact of slipping into a state of subjection to arbitrary power. It was this analysis that in turn exercised perhaps the most formative influence on the Democratical Gentlemen who went on to challenge the government of Charles I and to institute the first and only English republic. So far.

As the classical writers stress, there are two contrasting ways in which you will be constrained by your knowledge that you are living in dependence on the goodwill of an arbitrary prince. You will find in the first place that there are certain things you are not free to say and do. As Sallust and Tacitus both emphasise, you will need above all to make sure that you avoid saying or doing anything that might be construed by your ruler as an act of emulation or reproach. Sallust explains the need for this caution in a passage from the *Bellum Catilinae* that the English republican writers of the seventeenth century loved to cite. In the words of Heywood's translation of 1608, 'absolute Princes are alwaies more jealous of the good, then of the badde, because another mans Vertue (as they take it) is a diminution of their respectivenesse, and therefore dangerous.' The moral is that, if you are a person of great talent or virtue living under such a prince, you will have no option but to keep those qualities hidden from view as much as possible. You will otherwise be only too likely to discover that, as Savile puts it in translating Tacitus's description of the reign of Nero, such qualities can be 'the readie broade way to most assured destruction'. Sallust and Tacitus are even more concerned about the long-term psychological impact of this form of self-constraint. When a whole nation is inhibited from exercising its highest talents and virtues, these qualities will begin to atrophy and the people will

gradually sink into an abject condition of torpor and sluggishness. Tacitus draws the moral when speaking about the German tribe of the Tencteri and their failed uprising against Rome. As Savile's translation expresses it, 'even wilde beasts shut up forget their accustomed valour and vertue'.

The other way in which you will find yourself constrained by your awareness that you are living under absolute power is that you will lack the freedom to abstain from saying and doing certain things. When confronted by an absolute ruler and required to offer counsel and advice, you will find yourself constrained to agree with whatever he says and to endorse whatever policies he may choose to pursue. Tacitus dramatises the predicament in his *Annals* when describing the conduct of the political classes under Tiberius, and his tone of withering contempt is finely caught in Grenewey's translation of 1598:

But those times were so corrupted with filthie flatterie: that not only the chiefest of the citie were forced in that servile maner to keepe their reputation; but all such as had beene Consuls; the greatest part of such as had bin Pretors; & also many pedary Senators rose up & strove, who should propound things most base and abject. It is written, that as *Tiberius* went out of the Curia, he was woont to saie in Greeke. O men ready to servitude! as though he, who could of all things least suffer publicke libertie; did yet abhorre such base and servile submission: falling by little and little from unseemely flatteries, to lewder practises

As Tacitus makes clear, the senators were not acting under any direct or coercive threat; the mere awareness of their dependence was enough to make them do whatever they felt was expected of them.

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