

Compare and contrast Hayek's and Mill's accounts of liberty

The notion of liberty is generally considered as being possibly conceived in two different ways which were expressed by Isaiah Berlin. In this essay, I will apply his categories of negative and positive liberty to the accounts of Hayek and Mill which show similarities and differences. First, I will outline Berlin's account in order to define the two categories of liberty under study. Then, I will analyse the work of Hayek through the lens of Berlin's with regard to his ethical and political means by which he upholds his account. I will draw upon Berlin's concern for deontology, empirical selves, and coercion. Also, Taylor's notion of opportunity and Pettit's resilient non-interference. By examining the rule of law, tradition and progress, I will show how this works in practice. I will then compare and contrast Hayek with Mill through analysis of the latter via Berlin's concern for consequentialism and 'dominant' self, Taylor's notion of exercise, and McCallum's triadic relation, to suggest that the categorisation of this account is problematic. By examining the harm principle, freedom of speech and the interferences of society, I will show how this works in practice. I will then attempt to make sense of the similarities and differences via McCallum's triadic account, which suggests that it is possible to go beyond Berlin's taxonomy. This will lead me to argue that McCallum's response is unsatisfying, drawing upon Baldwin's work which upholds the former distinction.

I shall begin with outlining Isaiah Berlin's categories of liberty. He presents the questions of obedience and coercion of individuals within society as having been the "central questions of politics" (Berlin, 1969, 121). He distinguishes two ways of considering these notions, which determine two conflicting conceptions of liberty: negative and positive. Negative liberty is defined by Berlin as the ability to act without deliberate interference from other human beings. In other words, it is to be free from coercion. In this way, he does not hold as equals political freedom, the notion of capacity and the one of choice. Not being capable of doing something does not equate lack of freedom as long as this action could have been accomplished without interference. Drawing on the observation that people may have competing desires of action, complete and equal freedom within a society is not achievable. Thus, Berlin emphasises the necessity to define a sphere of non-interference delimited by law. A negative conception of the word would question the extent of the government's interference

while a positive one, Berlin states, would focus on the source of control asking the question: “Who governs me?” (Berlin, 1969, 130). In fact, positive liberty is said to be rooted in rationalism. It is the freedom *to* act according to one’s own way. In other words, a positive conception of the term advocates for self-mastery, in order to be able to take control of one’s own life. Positive liberty supposes the ability of each human being to determine through reason certain actions that are preferable for them in the long run, and others that are not (Berlin, 1969, 132). Thus, this leads to a proactive conception of liberty which can be modestly defined as *freedom to*, as opposed to *freedom from* of the negative understanding.

I am now going to expound Hayek’s account of liberty through the lenses of Berlin, Pettit and Taylor’s analyses. Hayek’s account of liberty is grounded in a deontic approach towards respect for persons. According to this perspective, people shall be treated as ends in themselves rather than means to other people’s ends. Thus, Hayek defines liberty as the absence of coercion (Hayek, 1994, 24) and meets Berlin’s claim. Indeed, people should be able to act according to their own plans based on the knowledge available to them. Coercion is understood by Hayek, like Berlin, as only emanating from the action of other human beings (ibid., 18). Moreover, Hayek excludes from his definition of liberty the notion of possibility (ibid. 21). In the sense that freedom cannot be gauged according to the range of options open to choose, or the possibility to fulfil our desires. The author follows an empirical reasoning which leads him to make a crucial assertion to his exposition. He claims that human intelligence is incapable of containing all the knowledge available in society (ibid., 30-1). It follows that people are necessarily subject to ignorance regarding the multiple requirements necessary to lead to a certain end with certainty. Also, this observation leads to the claim that individuals are unique in the sense that they possess different values and plans. Berlin recognizes this point, pointing out the fact that those desires that people seek to pursue do not harmonize within society, necessarily leading to conflict (Berlin, 1969, 123). What is meant is that following the logic of negative liberty where freedom is conceived as the absence of coercion, unlimited area of individual freedom for everyone within society is unreachable. Therefore, the degree of freedom can vary but its nature remains the same (Hayek, 1994, 18). Nonetheless, the two men diverge insofar as Berlin supposes that people may value other “goals” such as justice, equality etc. (Berlin, 1969, 123). According to Hayek, individual liberty is not a value among others, but the very source and condition of the other values pointed out by Berlin (Hayek, 1994, 14).

Therefore, for Hayek, the right is prior to the good insofar as what people might consider as good is up to them, according to their unique selves and to determine what is good for everyone goes against treating individuals as ends in themselves. Alike Berlin, Hayek emphasises on the necessity to determine an area of individual freedom by law, for people to make use of their knowledge to plan freely, secured from potential interference (ibid., 24-5). For him, the only way to guarantee such private spheres of freedom is to threaten to make use of coercion via law enforcement. Potential coercion from the state based on predictable and non-arbitrary rules is therefore recognized as being necessary to avoid greater coercion in society. Moreover, it is the very condition for people to be secured from interference and therefore, to be free. This point comes close to Pettit who considers that freedom can be achieved by the law. He introduced the notion of resilient non-interference which distinguishes between two situations. There is a difference, he states, between not being interfered with in the course of our life and not being interfered with, while being also protected from potential interference (Pettit, 1993, 17). Both authors recognize the important of the law for people to access freedom. Additionally, Hayek considers the role of the rule of law as crucial to protect those spheres of non-interference defined by the law. The rule of law is expected to guarantee universality, generality, non-retroactivity and impartiality of their application (Galeotti, 1987, 165; Hayek, 1994, 155-6). Pettit refers to the rule of law as a ‘technology’ for resilient non-interference (Pettit, 1993, 18-9). For Hayek, the rule of law is also a means to prevent the State from violating people private spheres by abusing its power. Its role must be limited to the enactment and enforcement of laws to create suitable conditions for the market mechanism to be efficient. Where competition does not operate, the State is expected to intervene (Hayek, 1985, 35). Hayek also recognizes the importance of tradition. First, it is the result of a social evolutionary process which emanates from social interaction in time. Individuals’ experiences within a group lead to the unplanned establishment of informal rules of conduct which have unconsciously appeared to be the most successful in creating an order that brings people closer to the realisation of their plans, by increasing predictability (Galeotti, 1987, 171-2; Hayek, 1994, 62). Hayek adds that these rules of conduct often constitute the “experimental stage” of a practice which will likely constitute future enacted laws (Hayek, 1994, 107). Therefore, it can be said that tradition both favours and derives from the respect of the rule of law according to Hayek. In a society where individual liberty is guaranteed by the rule of law, progress can emerge. First, because it enables the irruption of unpredictable events which, if they are considered as good by some, will perpetuate in time and favour not only the originator of this event, but also others who did not have the opportunity to make it happen (ibid., 30-2). As a matter of fact, Taylor relates the notion of

negative freedom to an opportunity-concept, “where being free is a matter of what we can do... whether or not we do anything to exercise these options” (Taylor, 1985, 213). Second, through the right of private property and the free market. Indeed, the free market is an area where people can make use of their unique set of knowledge to achieve their own ends according to their own plan. In a competitive market, people are able to make fuller use of their knowledge than in a planned economy. In the end, the total knowledge contained in society has better chances to generate progress (Hayek, 1945, 520-1) with a free market.

Now, I will expound Mill’s account of liberty by comparing and contrasting it with the one of Hayek. This second author’s account is grounded into the consequentialist doctrine of utilitarianism. The Greatest Happiness Principle defines the principle of utility on which Mill’s conception of liberty is built. This principle states that “actions are right in proportion as they tend to promote happiness, wrong in proportion as they tend to produce the reverse of happiness” (Mill, 2013, 5). Thus, the utility that results from an action determines its moral degree. Therefore, maximizing pleasures and minimizing pain is considered as good. Unlike Hayek, Mill considers the good as prior to the right insofar as the reasons of action must be driven towards the maximization of utility. In addition, Mill draws a qualitative distinction between pleasures (Mill, 2013, 6). For him, the employment and development of the faculties of the mind enhance the flourishing of the self which produces more utility than other kinds of pleasure do. Like Hayek, Mill recognizes the uniqueness of individuals. However, the latter advocates the development of individualities towards their most eccentric form. Indeed, self-mastery is considered by Mill as being the best way to maximize utility. In his explanation of positive liberty, Berlin also differentiates two kind of selves which can be distinguished through reason. On the one hand, a dominant self or ‘ideal’, ‘autonomous’ or ‘real’. A self which “calculates and aims at what will satisfy it in the long run”. On the other, an ‘empirical’ or ‘heteronomous’ self which pursues immediate pleasures (Berlin, 1969, 132). According to Berlin, to take this differentiation into account and to legitimate coercion based on the rational realisation of people’s ‘true self’ may lead to the idea that one individual might know better than others what is best for them. Thus, it may legitimate any action, even the worst, on behalf of people’s ‘true self’ (ibid., 133). Nevertheless, in order to create the best conditions for individuals to reach their real selves Mill invokes the harm principle. It states that the “only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill; 1879, 10). In this way, he defines a sphere

of non-interference where people are sovereign over themselves and can dedicate themselves to experiences in living. This statement seems to be in accordance with Taylor's exercise-concept according to which "one is free to the extent that one has effectively determined oneself and the shape of one's life". For Taylor, to be free to self-realize, or in other words to have the opportunity to do so, implies that one is already free according to his exercise-concept. Insofar as having the opportunity to self-realize implies that one has already realized himself to a certain extent, in order to be able to go beyond internal constraints such as fear etc. (Taylor, 1985, 213). Therefore, Mill's account is related to positive freedom according to Taylor.

Going back to Berlin's categorisations of liberty, we can say that Mill does not fit exclusively in one or the other. Like Hayek, Mill emphasises the importance of defining a sphere of non-interference as the harm principle shows. Under this principle, people are *free from* potential harm unless they threaten to harm others themselves. Nonetheless, the ultimate goal of protecting people from interference is to maximize overall utility in society. Indeed, freedom is understood by Mill as being the ideal condition for people to develop their individuality. By doing so, individuals maximize utility through accessing higher pleasures. Therefore, it can be said that Mill advocates a *freedom from* interference, in order to achieve self-mastery and consequently, maximize utility in society. This way of considering Mill's account corresponds to McCallum's triadic relation. He argues that this relation enables to go beyond the traditional two categories of positive and negative freedom by expressing all cases of freedom with a single relation based on three features namely the agent(s), constraint(s) and end(s) (McCallum, 1967, 314-318). Unlike Hayek and Berlin, Mill includes in his reasoning the potential interference of society over the individual (Mill, 1879, 7). For instance, Mill talks about the negative domination of the ruling class' morality that can expand in society through compliance with customs (Mill, 1879,8). This tyranny, together with the one of majority and opinion, is considered by the thinker as deplorable insofar as it may deviate individuals from the pursuit of their own individuality which is done by way of self-mastery. Thus, contrary to Hayek, Mill sees tradition as a potential obstacle because of its potential interference on people's self-realization. Additionally, Mill points out the beneficial aspect of the harm principle applied to speech. He states that the capacity for people to express their opinion freely, as long as it does not harm others, brings mankind closer to the reach of truth (Mill, 1879, 36-7). Indeed, it enables to avoid missing a true statement that could have been silenced otherwise. Also, even the expression of a false statement actually enables to sharpen what people hold for being the truth. Finally, truth can arise from the diversity of perspective within society. Like Hayek, Mill sees progress emerging from diversity. Nevertheless, instead of focusing on individuals as the

only beneficiaries, Mill seems to go beyond and consider also humanity as a whole to benefit. A similar difference in scale is pointed out by Berlin who argues that the 'positively' free self may be "inflated into a super-personal entity – a state, a class, a nation, or the march of history itself" (Berlin, 1969, 134). This shift concerning the subject towards which coercion is legitimated may lead it to be regarded as more 'real' than the empirical self. Thus, legitimating all power of coercion to the holder of the 'truth' regarding what is best for all humans.

In this third part, I am going to make sense of the similarities and differences between the two accounts previously expounded. Previously, I stated that Mill's account can be categorised both as positive and negative following McCallum's line of reasoning. However, as Baldwin argues, positive freedom is a specific concept of one particular condition: "the attainment of a certain end made possible by the absence of certain constraints". While negative freedom is generic and concerns many freedoms. To be considered as both negative and positive, a freedom must satisfy the conditions displayed by Baldwin (1984, 130). However, Mill's freedom according to which (1) people are free from (2) interference (i.e. harm) to (3) self-realize do not meet the fifth condition of Baldwin according to which "even when no constraints obstruct an agent's attainment to an end, it is not required that this agent attain that end" (ibid., 135). As a matter of fact, Mill considers that freedom necessarily leads people to self-realize. This end is not an opportunity-concept insofar as, to rephrase Baldwin: "an agent who is free does not merely have an opportunity for 'developing its individuality', he must 'do so'" (ibid., 135). Both thinkers consider that progress can only be achieved by people being free. While being free from coercion, people can compete in making use of their available knowledge and pursue their own plans which leads, according to Hayek, to progress (Hayek, 1945, 521; Hayek, 1994, 30). On the other hand, Mill considers that when individuals are free from harm, people can develop their individuality which leads to overall progress in society. For instance, I have explained how Mill explains how mankind gets closer to truth in a society with free speech. However, the notion of tradition is for Hayek a reason for progress insofar as first, it ensues from non-rational 'natural selection' through time from which emerges social rules that create social cohesiveness which in turn enable the coordination of many plans (Galeotti, 1987, 172). Second, through the sustain of the rule of law which, according to Hayek, is necessary to ensure individual liberty. On the other hand, Mill sees progress as "antagonistic to the sway of Custom". For him, progress stop when people stop possessing individuality anymore (Mill, 1879, 48-9).

McCallum argues that partisans of each category of freedom tend to link 'their' freedom to other social benefits that are said to be opposingly linked by the opposite category (McCallum, 1967, 313), serving as a critic. However, it can be argued that in the case of progress, both accounts link it to the presence of diversity. It is the means through which this is attained that diverges. Thus, McCallum definitely fails to accommodate all forms of liberty within a single formula.

To conclude, the categories of liberty developed by Berlin provide a mitigated base to compare and contrast Hayek and Mill's accounts. Hayek fits undoubtedly in the negative category. He follows a deontic approach and defines liberty as the absence of coercion. Moreover, he advocates a delimitation of private spheres by law in which people can be free from interference. Also, for the rule of law in order to guarantee those private spheres. This point has been analysed through Pettit's concept of resilient non-interference. Then, the way in which negative freedom leads to progress has been lightened by Taylor's opportunity-concept, which emphasises the fact that progress emerges from individuals' ability to choose whether to act or not while free, making counter-progressive any attempt to rationally plan other people's activities. On the other hand, Mill does not fit as clearly in one category. Indeed, he expresses his principle of liberty based on a rule of non-interference. However, the objective of the private sphere thereby defined is to enable people to meet their 'true' self, which tempts us to categorize it on the positive side. McCallum's triadic relation seemed satisfying at first because it proposes a third way that goes beyond any taxonomy. However, Taylor's exercise-concept then used by Baldwin led us to conceive it as a positive account, for more precise reasons.

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