Negative and positive liberty and the freedom to choose in Isaiah Berlin and Jean-Jacques Rousseau

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Abstract: Berlin has made the famous distinction between negative and positive liberty. For many liberals, negative liberty is modern individual liberty manifested in markets, while interference by the State is a form of positive liberty. Berlin was also repelled by Rousseau's concept of the general will, which he considered as a form of collectivist holism. The paper argues that this philosophy is a mistaken interpretation of Berlin's two concepts of liberty and of Rousseau's general will. In a simple model of individual and collective choice under conditions of bounded rationality, it is shown that positive and negative liberty are interdependent. The collective choices made under positive liberty can be modeled as the stochastic version of Rousseau's general will, provided that liberal democracy enables the conditions of free public deliberation. In that case, the individual freedom cherished by Berlin is compatible with positive liberty.

Keywords: Positive and negative liberty, freedom, equality, rights, social contract, consensus, general will

Isaiah Berlin's distinction between negative and positive liberty has become a watershed for modern liberalism. It has led to the interpretation that only individual choices without collective interferences by the state and governments is proper freedom. It justifies deregulating markets and rolling back the state in the name of individual liberty. It has also rejected the norm of equality when restoring it would interfere with negative liberty. Social redistributive policies based on collective choice are then seen as a violation of basic rights. [1] The road to this neoliberal articulation of freedom was prepared by political philosophers like

Hayek (1944), Nozick (1974) and Friedman (2002), who all claimed that true liberty was negative liberty. However, they ignored that collective choices may reflect the general will of individuals - something Rousseau recognized but did not explain.

Negative liberty means 'leave me alone and don't interfere', and it is opposed to positive liberty, the freedom to design and choose my own preferences and actions. Implicitly, Berlin's distinction split off private spaces of negative freedom from the public sphere, where collective preferences are formed and governments issue laws. He declared: 'there is no necessary connection between individual liberty and democratic rule' [2]. This is what I wish to question in this article. I shall argue that positive liberty determines the space of negative liberty, so that the democratic liberty of regulating society through rights and laws is fundamental for the constitution of modern individual liberty.

Negative liberty

Berlin revitalized liberalism during the Cold War by defending liberal freedom against Communist totalitarianism. In that respect, his agenda was similar to Hayek's. But the purpose of Berlin's work on liberty was broader. He sought to restore individual responsibility for the choices we make against the tutelage of external masters (Berlin, 2002a [1996]). This endeavor meant, on the one hand, defining what is 'external', and on the other hand clarifying how 'mastery' and freedom are linked.

In the *Two Concepts of Liberty*, Berlin starts out with what he calls 'the central question of politics – the question of obedience and coercion'. [3] Coercion implies for Berlin 'deliberate interference of other human beings within the area in which I could otherwise act' (p. 169), so that 'the wider the area of non-interference the wider my freedom' (p. 170). Hence, what or who interferes with me is 'external'. Yet, liberty is a social relation. This poses a problem, for it means that liberty cannot be unlimited, 'because if it were, it would entail a state in which all men could boundlessly interfere with all other men', causing social chaos and anarchy, where the weak would be suppressed by the strong, and liberty destroyed.

Berlin's central question regarding coercion creates a bias in favor of negative liberty, which he distinguished from positive liberty. He says positive liberty responds to the question 'who is master?' (2002 [1969], p. 36), and self-mastery implies the question 'Why should I (or anyone) obey anyone else?' This leads him

to ask: 'If I disobey, may I be coerced?' and he concludes: 'To coerce a man is to deprive him from freedom'. But that raises the question 'over what area am I a master?' Hence, Berlin defines negative freedom as non-interference,[4] for I am my own master to the degree that no one interferes with my actions. But once we have defined liberty as the absence of what impedes us from acting, it becomes difficult to define what liberty stands for in a positive sense. The 'positive' question 'What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?' is logically not entailed in the 'negative' question of whether a person is controlled or interfered with by another person. By contrast, I shall argue that to be free entails the capacity to define what one wants. Democratic liberty is then positive liberty because it enables individuals to freely determine their collective preferences.

The space of individual freedom is defined by rights. In line with classic liberals like Locke, Mill, Constant and Tocqueville, Berlin (2002 [1957], p. 171) has argued that 'there ought to exist a minimum area of personal freedom which must on no account be violated', and this idea was later echoed by Nozick (1974) who casts rights as side constraints – protective barriers [5] around persons' freedom.[6] For Berlin the liberal view meant that 'human rights and the idea of a private sphere, in which I am free from scrutiny, is indispensable to that minimum of independence which everyone needs if he is to develop, each on his own lines; for variety is the essence of the human race, not a passing condition' (2002 [1962], p. 286). However, this opens a can of worms, for what determines the scope of human rights? Early thinkers derived human rights from pre-political natural rights. They first identified characteristics all human beings share, and then argued that human rights are grounded in them (Valentini, 2012). But for Berlin that does not work, for if variety is the essence of the human race, one cannot derive freedom from what makes humans the same. Berlin explicitly says (2002 [1969], p. 30) that political liberty, like freedom of choice, is not intrinsic to the notion of a human being. Hence, he claims:

> a frontier must be drawn between the area of private life and that of public authority.
> Where it is to be drawn is a matter of argument, indeed of haggling. Men are largely
> interdependent, and no man's activity is so completely private as never to obstruct
> the lives of others in any way (...) the liberty of some must depend on the restraint of
> others (2002 [1957], p. 171).

Thus, Berlin recognizes that externalities generated by individual actions are interferences into other people's spaces, but he remains silent on how these

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interferences ought to be regulated. Moreover, he sees negative liberty as a private, individual space; but if this space is the outcome of haggling, it is more than private – it is a social and political relation and where the limits for private liberty are drawn is a matter of public choice. However, public choice inevitably has a collective epistemic dimension, for individuals must agree on what they jointly choose. This acceptance of a collective purpose generates the transcendent epistemic holism that is at the root of Berlin's reluctance to define positive liberty as the political liberty of free and equal individuals. [7]

Positive liberty

The reason for cautioning against the positive conception of liberty as self-determination and favoring the negative account of freedom as the absence of constraints (Gray, 1995, p. 5) was Berlin's observation that the positive concept was more easily abused than negative liberty. However, he did not deny 'that belief in negative freedom is compatible, and (as far as ideas influence conduct) has played its part in generating, great and lasting social evils' (2002 [1969], p. 37). The neoliberal over-emphasis on negative liberty may well have played such part and distorted the project of modern liberty – not only because it has ignored the norm of equality, but also because it has stifled positive freedom.

In this context, Berlin mentions casually the distinction between freedom *from* and freedom *to*: 'For it is this, the "positive" conception of liberty, not freedom from, but freedom to – to lead one prescribed form of life – which the adherents of the "negative" notion represents as being, at times, no better than a specious disguise for brutal tyranny'. This distinction has subsequently taken a large place in the literature. However, Berlin always took care to explain that negative and positive liberty 'overlap' (2002 [1957], p. 169) or 'cannot be kept wholly distinct' (2002 [1969], p. 36), and he was perfectly clear that his two concepts of liberty have to coexist and cannot be substituted for each other: 'I am not offering a blank endorsement of the "negative" concept as opposed to its "positive"' twin brother, since this would itself constitute precisely the kind of intolerant monism against which the entire argument is directed" (2002 [1969], pp. 50, N. 1).

How are the two concepts of positive and negative liberty related? First of all, we can only express ideas and concepts of liberty in the form of discourses. By discourse I mean a structured set of speech acts which express individual mind states. Formulating a discourse is a realization of positive liberty. Such discourses

combine different norms into coherent claims. This means that successful discourses solve normative contradictions by hierarchical prioritization (Dumont L. , 1986). The general acceptance of such normative discourses entails then the acceptance of relative weights of specific norms. [8]

One approach toward integrating the two concepts of liberty was made by MacCallum (1967, p. 313). He argued that positive and negative liberty describe 'two fundamentally different kinds of freedom' and he proposed their integration by a triadic relation of the logical form 'x is (is not) free from y to do (not do, become, not become) z' ((p. 314). In this discourse, negative freedom is represented by the y variable and positive liberty by the z variable. Thus, for MacCallum as for Berlin, negative liberty is an absence of constraints, but they diverge on their views about positive liberty. MacCallum represents positive liberty as a goal-directed activity, which is very different from Berlin's agent-internal reflexive relation (Flikschuh, 2007, p. 43). However, the difference between the two authors goes further. MacCallum's triadic relation treats liberty as an economic allocation problem: z is a good that needs to be allocated to x at minimum transaction costs y. But liberty is not a good; it is a modality. Berlin has therefore rejected MacCullum's proposition:

> It has been suggested that liberty is always a triadic relation; one can only seek to be free from x to do or be y; hence 'all liberty' is at once negative and positive or, better still, neither. This seems to me an error. A man struggling against his chains or a people against enslavement need not consciously aim at any definite future state. A man need not know how he will use his freedom: he just wants to remove the yoke (2002 [1969], p. 37).

In other words, a free person has the status of being free because he or she has rights, which allow them to make the world fit their ideas by appropriate actions.[9]

Berlin derives the positive sense of liberty from the wish of the individual to be his own master.

'I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other men's, acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside.' (2002 [1957], p. 178).

This is a radically individualistic approach to liberty. It implies not only that I can do as I wish, but also that I am the designer and author of my wishes. Berlin

acknowledges Benjamin Constant for articulating modern liberty as individual liberty, which is different from the liberty of the ancients where the group as a whole but not necessarily *each* individual is free. Yet, although Berlin discusses ancient liberty in his text on the birth of Greek individualism (2002 [1998]), he remains focused on state interference and neglects the broader picture of what Oppenheim (1961) called social freedom – relationships between *any kind of actor*, namely individuals, government officials, and other groups.[10] As a consequence, Berlin amalgamates the regulation of interferences generated by the externalities of individual actions with the domination of moral and political authorities who demand the submission of individuals to the collective. Berlin rejects the ancient holistic articulation of positive liberty, but he does not discuss how positive liberty is compatible with modern individualism.

The distinction between holism and individualism has faded from political philosophy. I believe it deserves to be reviewed. The fundamental principles which distinguish ancient from modern liberty and traditional from modern societies are political holism and individualism.[11] Louis Dumont (1986, p. 279) has defined individualism as 'an ideology which valorizes the individual and neglects or subordinates the social whole' and holism as 'an ideology that valorizes the social whole and neglects or subordinates the human individual'. In traditional societies, the individual exists to serve the whole; in the modern world, society is there to empower individuals' emancipation and self-realization. For Popper (1995), political individualism defined 'open societies', holism closed them. Thus, the principle opposed to modern individual liberty is not just governmental interference, but political holism – the dominance of the collective, the submission to the group. Yet, while the normative framework of modernity is individualistic and distinct from the holistic values which dominate traditional societies, the two principles always coexist in any given society; what matters is which principle dominates.

What Berlin found objectionable in positive liberty was the holistic distortion of individual freedom. This becomes clear when we observe that he is less concerned with tyrannical governments, and more rebelling against Kant's moral imperative. If the positive sense of the word liberty derives from the wish on the part of the individual to be his own master, then, Berlin asks, 'Who is the master'?[12] and at this point, he observes a schism. My self, which wants to be the 'own master', splits into a dominant 'real self', which is identified with reason and my higher nature, and on the other side there is 'my empirical or heteronomous self', which follows

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irrational impulses and uncontrolled desires. While the *real self* may sound like the
Freudian super-ego, Berlin elevates this split to the political level:

> the two selves may be represented as divided by an even larger gap; the real self
> may be conceived as something wider than the individual (as the term is normally
> understood), as a socialwhole' of which the individual is an element or aspect: a tribe,
> a race, a Church, a State, the great society of the living and the dead and the yet
> unborn. This entity is then identified as being the 'true' self which, by imposing its
> collective, or 'organic', single will upon its recalcitrant 'members', achieves its own,
> and therefore their 'higher' freedom (2002 [1957], p. 179).

Berlin echoes here Popper's (1995, p. 100) description of political holism, and he
points out that the use of organic metaphors puts people into a position where they
justify the coercion of some men by others for their own good, ignore the actual
wishes of men or societies and bully, oppress and torture them in the name of their
transcendent real self. These are the distortions of positive liberty Berlin seeks to
avoid by concentrating on negative liberty. He quotes Kant approvingly who said
paternalism is the greatest despotism imaginable because 'nobody may compel me to
be happy in his own way' (2002 [1957], p. 183).

However, we must not confuse political holism with epistemic holism.[13] On
the one hand, Fodor and Lepore (2004, p. 2) explain that 'holistic properties are
properties such that, if anything has them, then *lots* of other things must have
them too'. Thus, if I have a belief and lots of other people have it, too, the belief has
the holistic property of being shared by many people. Epistemic holism emerges,
therefore, when a group of individuals accept the same discourse, for then they
share the same idea. This makes these ideas and discourses epistemically objective
(Searle, 2010). On the other hand, political holism and political individualism
are normative discourses about how individuals ought to behave and relate to each
other. For example, Constant's (1988) liberty of the ancients is an articulation of
political holism. When normative discourses are accepted by consensus, epistemic
holism is inevitable, but it says nothing about the *normative content* of the accepted
discourses which may articulate the norms of political holism or individualism.
Hence, we must distinguish the nature and logic of normative discourses which
constitute the concept of liberty, and the free choice of accepting or rejecting any
such discourse. Berlin was primarily concerned with the conceptual aspects of
liberty, but by amalgamating epistemic with political holism he had to reject the
political dimension of positive liberty which allows people to freely design and

choose the discourses they will accept. But if individuals are free to choose, they are exercising positive liberty in the context of political individualism.

Coercion, freedom of choice and freedom of the chooser

The possibility of individual choice stands at the core of modern liberty, and it entails both private and public choices. Individual choice has two dimensions. Sen (2002) has argued that one must distinguish between two irreducibly diverse aspects of freedom. One is the substantive opportunity that enables a person to achieve the things she values; the other is the freedom of a person to choose without being obstructed. The opportunity aspect takes into account the range of the opportunity set (the 'menu') from which a choice is made. I call this aspect *freedom of choice*, which exists, when there is a set of options from which individuals can choose. My freedom of choice is large when I have many options to choose from; it is restricted, if I have a limited choice set and I cannot do all the things I dream about. In this case, the lack of capabilities appears as lack of liberty. Thus, a poor man with no money has fewer choices and therefore less liberty than a rich woman. Augmenting his choice set, for example by giving him money and thereby increasing his access to resources, will increase his liberty. Sen (1999) has therefore spoken of *Development as Freedom*. As countries develop and get richer, their choice sets get larger and their freedom of choice increases. But, while freedom of choice is a necessary condition for modern liberty, it is not sufficient. For people will only become freer, if they are also free as choosers. For example, the reduction of poverty in the course of development will increase freedom of choice, but if wealth is exclusively controlled by small extractive elites, the freedom of choice is hardly increased for the many.

The second dimension of choice concerns process of choosing. I call it the *freedom of the chooser*. Given the set of options, my freedom as a chooser may be constrained either because some external interference prevents me from choosing, or because the denial of the right to choose prevents me from exercising my options. These two inhibitions are not the same. In the first case I am prevented from doing something because I have no control over things, in the second case because I cannot claim the right to do something. This distinction reflects the two concepts of liberal freedom as non-interference and republican freedom as non-domination. [14]

This leads us back to the concept of coercion. Berlin says 'to coerce a man is to deprive him of freedom' (2010 [1873], p. 168), but that is a tautology. I understand

coercion as either the reduction of my choice set or as the denial of my right to choose. For example, I may have the choice set of several options such as A = {A, non-A, B, non-B, A∩B, non-A∩non-B, A∩non-B, non-A∩B}. Note that these options and their combinations are constituted by normative discourses which articulate how I think the world ought to be. After evaluation in my mind, I may find some (bundle of) options more attractive than others. I prefer this option as worthy to be retained and be put into action. We define the degree or intensity of a preference as the probability of accepting the discourse as being worthy of being retained. If we have a range of different options, the probability distribution over the space of these options implies a preference ranking of these options.

Now, I am coerced and deprived of freedom of choice, if some external actor interferes with my choice set. As external agents impose constraints on the number of options in my choice set, the opportunity aspect of my freedom is reduced.[15] Assume, A means being alive, B having money, and by bad luck I am held up by a robber who says: 'your money or your life'. In this case the robber interferes and reduces my choice set to the new set A' = {A, non-A, non-B, non-A∩non-B, A∩non-B}, and clearly $A \succ A'$. My liberty is constrained even if, as Hobbes (1996) pointed out, I am still free to choose from the reduced choice set. Similarly, I am coerced if I am denied the right to choose. Take a society where women have no right to vote. Their choice set may consist of a number of candidates, of which they may prefer one, but they cannot exercise their choices. The choices are made by men. If the husband chooses what the wife prefers, she may be happy, but she is still not free because she has no right to choose. Thus freedom as non-coercion implies that individuals are free to choose, which entails that they have something to choose from and that they are able to determine themselves how they bundle their options. This capacity is self-mastery, or autonomy, and it makes individuals responsible for their choices.

The distinction between freedom of choice and chooser clarifies Berlin's concept of positive liberty, which responds to the question 'who is the master?' (2002 [1969], p. 36). To be able to *define options and to choose from them* means that I can *form my preferences* and live my life in accordance with my will. Because I have the freedom of the chooser, I am self-determined and autonomous. If someone else imposed the choice set on me and/or chooses for me, I would not be free and live in a condition of heteronomy. Clearly, autonomy is more than negative liberty, because it implies an active involvement with preference formation as well as with selection. Hence, if individual freedom is protected by rights, especially basic or

human rights, these rights must be more than side constraints à la Nozick; they must enable us to be choosers and this entails the capacity to *choose the context* in which we make choices. In other words, the process, by which epistemic objectivity is formed, is an integral part of positive liberty, because positive liberty implies that individuals are the authors of normative discourses which have epistemic objectivity.[16]

Rights, contracts and social contracts

We said rights define the space of individual liberty. Rights are, of course, part of the epistemic context in which choices are made. Following Searle, I understand rights as institutions which are constituted by speech acts in the form of declarations and of legal discourses in the form of laws.[17] Different kinds of speech acts are generating different kinds of rights and laws. *Control-rights* are the entitlement created by permissive commands issued by external authorities for the use and exercise of power over resources. Most laws and regulations create control-rights. Because they are commands, individuals have the duty to respect the authority. They must obey the law. *Claim-rights*, by contrast, are entitlements that justify making claims and they have the counterpart that someone is obliged to satisfy the claim – even though the obligation is voluntarily chosen. Claim-rights are generated by mutual promises and not by commands. They emerge from the practice of making contracts, because they are constituted by mutual promises which represent the voluntary acceptance to honor an obligation rather than by the submission to the dominium of someone else.[18]

Because control-rights are issued by an external authority, I am not the master of such rights but have to surrender to the law-giver. Claim-rights, by contrast, represent a contractual relation where either side of the deal is free to accept or reject the terms of the contract. This is what lawyers call freedom of contract. Hence, the freedom of contract constitutes the freedom of the chooser. I am, so to say, the autonomous master of my decision of negotiating, accepting or rejecting the agreement with my partner. However, this concept of liberty is only compatible with discourses of political individualism in modern societies, for the social relations in traditional holistic societies require the submission to the hierarchical status of higher authorities (Dumont 1980). Thus, political liberty opens the possibility for positive liberty that is coherent with Berlin's liberalism; what is inconsistent with modernity is political holism, because political holism does not

empower individuals to make contracts. Modern liberty of individuals emerges from contractual relations. 19]

Contracts are concluded between individuals, but rights entail collective recognition, which Searle (1995) called collective intentionality.[20] Yet there is an inevitable tension between individual liberty and the recognition by society. Starting with Hobbes, modern discourses of political individualism have tried to diffuse this tension by appealing to the idea of social contract. As Rousseau (1975 [1762], p. 243) put it:

> How to find a form of association which will defend the person and goods of each member with the collective force of all, and under which each individual, while uniting himself with the others, obeys no one but himself, and remains as free as before, this is the fundamental problem to which the social contract holds the solution.

However, the social contract is a fiction, or at least a metaphor (Cudd, 2013), for it is not clear who is promising what to whom. When two private parties conclude a contract, they are free to accept or reject its terms, although after accepting them, they are bound and obliged by the mutual agreement. The social contract is the opposite: individuals are born into the obligations resulting from the social agreements made by others. Berlin (2002 b, p. 45) was repelled by Rousseau's holism, which he described as a 'mystical moment in which Rousseau mysteriously passes from the notion of a group of individuals in voluntary, free relations with each other, each pursuing his own good, to the notion of submission to something which is myself, and yet greater than myself – the whole, the community'. For this reason, Berlin considered Rousseau an enemy of human liberty and he was highly skeptical of the social contract that 'begins with the harmless notion of contract, which after all is a semi-commercial affair, merely a kind of undertaking voluntarily entered into, and ultimately revocable also'. From there, he says, Rousseau moves to the General Will, something that is 'almost the personified willing of a larger super-personal entity, of something called "the State", which is now no longer the crushing Leviathan of Hobbes, but something rather more like a team, something like a Church, a unity in diversity, a greater-than-I, something in which I think my personality' (2002 b, p. 45). Thus, what Berlin clearly rejects in Rousseau is the discourse of political holism. However, Berlin and Rousseau lived in different ages and different socio-political contexts and I will show that their ideas are not as incompatible as Berlin thought.

However, there is something missing: *in a modern democracy, citizens are free to change collectively the terms of the social contract*, and that is not coherent with political holism. Where the idea of a social contract overlaps with private contract theory is that it is based on an agreement. In modern democracies citizens jointly design their collective preferences, but every individual has the right to accept or reject the deal when elections take place. It is this democratic freedom to renegotiate the terms of the social contract that constitutes positive liberty at the political level. This modern liberty is opposed to Rousseau's political holism, where 'we incorporate every member as an invisible part of the whole' (1975 [1762], p. 244). The collective acceptance of the norms of political individualism is not submission, for submission implies (the threat of) coercion by an outside will. Democratic decisions are legitimate because they are accepted by consent, not because they are coerced by force. Freedom creates democratic legitimacy.

Hence, it is possible to articulate the social contract in terms of political individualism, and this is the normative content of liberal democratic discourses. The crucial condition for political liberalism is that individuals must not surrender all their rights to the whole community, as Rousseau demanded, but that they maintain their autonomy as choosers, which includes their freedom to define the discourses they wish to accept or not. Again, this autonomy has two dimensions. On the one hand it implies that individuals remain free to accept or reject a discourse as valid for their own actions, and on the other hand the discourse must be written in such a way that it does not inhibit their capacity to choose. The first aspect is constituted by practices which generate contractual relations. Such practices prevail in the commercial and financial transactions of markets, which is why liberals insist on markets as a precondition for modern liberty. The second aspect emerges through democratic representation where the people are the principal and the government their agent. This second aspect is guaranteed when basic human rights are enshrined in the constitution of democratic states and protect political and civil liberties.

Choosing negative and positive liberty

I have argued so far that Berlin's negative and positive freedom are not rival and incompatible concepts, but two dimensions of the liberty of the moderns. These two dimensions appear clearly when liberty is placed in a broader context of choosing between discourses that articulate political individualism and holism. Berlin (1986,

p. 172) believed that liberty can be traded off against other values, for example against welfare, justice or equality: 'To avoid glaring inequality or widespread misery I am ready to sacrifice some, or all, of my freedom: I may do so willingly and freely; but it is freedom that I am giving up for the sake of justice or equality or the love of my fellow men'. Thus, I may have more equality, but less freedom, but it is not clear how this tradeoff can be quantified. What is the price of giving up liberty?

Liberals often discuss the tradeoff between liberty and equality. Yet, if we believe that all human beings are born free and equal, as the Universal Declaration of Human Rights proclaims, then liberty and equality are perfect complements, which means that accepting individual liberty always implies accepting the norm of equality, too. Having more liberty without having more equality would make no sense.[21] This is the normative core of political individualism. However, we may still trade off political individualism for political holism. For example, the desire for law and order and security may justify reducing freedom and equality. However, as we have seen, contradicting norms may be combined and coherently articulated by broader discourses. Thus, a discourse that combines the norms of freedom and security represents the coexistence of political individualism and political holism. The acceptance of such discourses implies a ranking and tradeoff between liberty and security that can also be seen as the weighted acceptance of political individualism and political holism.

To show how these aspects of liberty are interrelated, I propose a simple model of choice under constraint as frequently used in microeconomics. Such models assume that an agent has a choice between two options, and seeks to maximize her utility, subject to some constraints. I propose that utility is maximized for a discourse with the highest probability of being accepted. The trade-off is then between two discourses which articulate different terms of the social contract.

Economists deal with exchange relations of quantifiable objects, for example 3 apples for 2 oranges. In order to make qualitative discourses quantifiable, we look at preference intensities i.e. the degrees of acceptance of two discourses. Thus, if I am ready to sacrifice some freedom in favour of more welfare, justice, or security, I reduce the probability of accepting liberty discourses and increase the probability of accepting other discourses. The price of liberty is then the tradeoff ratio of these two probabilities.

To keep things simple, we will assume in our model that the choice is only between two exhaustive options.[22] Hence we are assuming that the probability of accepting liberty (PAL) is the complement of the probability of accepting security (PAS):

(1) $PAL = 1 - PAS$.

This is the overall constraint of our choice problem. Combining liberty and security will yield 'utility' in the sense of acceptability of discourses. We measure this utility – or rather its intensity - by the probability of accepting a particular discourse that combines liberty and security. We may also say that a person values different combinations of liberty and security to different degrees, so that the utility scale represents these degrees of acceptance of the discourse. I shall assume that the utility function is the geometric-weighted average between the probability of accepting liberty (PAE) and the probability of accepting security (PAS) and that it can be represented by a Cobb-Douglass function of the form:

(2) $U = PAL^{\gamma} PAS^{1-\gamma}$

Here, the coefficient $0 \leq \gamma \leq 1$ represents the weight a person is giving to the acceptance of liberty when she considers how happy she is by having both, liberty and security. The tradeoff can then be represented in a two-dimensional space, where we put the PAS on the horizontal axis and PAL on the vertical axis. See Figure 1.

It is clear that because of equation (1), the maximal feasible satisfaction from combining the two principles is shown by the straight line from $PAL = 1$ to $PAS = 1$. I call this the feasibility line for the acceptance of liberty and security. At the extreme points, a person will only accept liberty or security, but all other points on the feasibility line represent the certainty that an individual will accept a discourse that combines liberty and security to different degrees. Given our model assumption that liberty and security are exhaustive options, there is a tradeoff between the two, and it is not possible to accept jointly the two discourses with probabilities higher than on the feasibility line. But which point on this line will be chosen? Let us assume that a person gives equal weights to the benefits from freedom and security, i.e. $PAL = PAS = \gamma = 0.5$. This can be represented by a line that goes from the zero point to point B, with a 45° angle relative to the PAS axis. The point B is called the bliss point, because it is the highest degree of satisfaction a person can derive from the feasible combinations of liberty and security under the assumption of equal weights. Any point on the 0-B line indicates that the

50:50 combination of liberty and security is less acceptable than the point B. Alternatively, a person may give more weight to liberty and less to security, say 2/3 to freedom; his bliss point would be at L, where the 67.5° line crosses the feasibility line. Thus, a steeper line, with an angle larger than 45°, gives greater weight to freedom and less to security. Similarly, a holistic conservative may prefer more security and choose the bliss point S. Hence, as individuals assign different weights to freedom and security in their combined utility function, they aspire to different bliss points.

Figure 1.
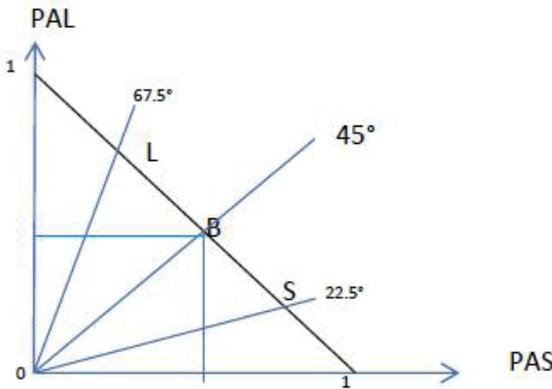
Source: own creation

The bliss points on the feasibility line are normative bench-marks for an infinite range of choices between liberty and security. By giving a weight to accepting liberty in her overall utility, a person chooses effectively one bliss point on the feasibility line.[23] Because a bliss point describes the maximal satisfaction achievable from the combination of liberty and security, lower levels are to the right of the feasibility line. They represent lower probability levels of accepting the discourse than they would at the bliss point. Such indifference curves represent lower levels of satisfaction, although a person is indifferent about more or less liberty or security on a given indifference curve. In Figure 2 these indifference curves are drawn as ellipses around the bliss point B, although we keep in mind that only points below

the feasibility line are reachable. The utility at point B' and any other point on this circle is lower than the satisfaction at bliss point B, and even lower at point B".

Figure 2.
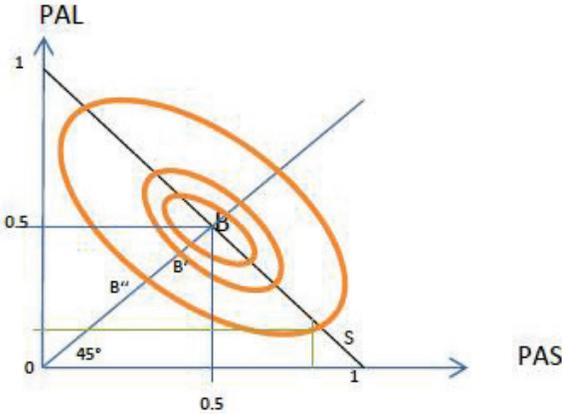
Source: own creation

Now, assume there is an individual *s* (for sovereign), who has a high priority for security and chooses point S as bliss point and let us assume that he is able to interfere, coerce, and impede individual *b* from achieving bliss point at B. He therefore reduces *b*'s freedom of doing what she wants, namely realizing her bliss point B. In this case, the bliss point of S lies on *b*'s lowest shown indifference curve going through B". If the holistic conservative's preferences for security prevail, the satisfaction for the freedom-loving political individualist is suboptimal – and inversely. Thus, unless both individuals assign identical weights to liberty and security, there will be dissatisfaction and preference frustration. If the sovereign has the power to impose his preference on *b*, the lack of freedom is defined by the distance B"B away from the bliss point. The greater the distance, the lower the probability that she will accept the discourse imposed by *s*. This is a measure for negative (non-)liberty, for it is generated by the sovereign's interference.[24] Obviously, negative liberty would be maximized at the bliss point.

It is also clear, that we now have a genuine tradeoff between liberty and security, as proposed by Berlin, for if individual b could manage to restrict the interference by s, say because she has rights that protect her individual choices, she might be able to return to a higher point or even to point B. Note, however, that given the distinct preferences of b and s, a reduction of b's dissatisfaction implies an increase in the dissatisfaction of s. Thus, if the sovereign can coerce b, her liberty is minimized. If b is a neoliberal, she will demand that the power of s is curtailed.

However, let us assume that s represents a group of citizens with identical preferences for security. s could be a military junta or the silent majority of the people. The reduction of the sovereign's power will then reduce the liberty of the sovereign and frustrate the citizens he represents. One way of dealing with this situation is making a compromise, for example by sharing frustration equally. In that case, b and s may choose a level of utility below their bliss points that represents their relevant indifference curves at the same utility level. The compromise would then be at the point where these ellipses of the two agents intersect. However, as this is only a compromise and not a jointly agreed bliss point, this solution is not a stable equilibrium. As soon as the opportunity arises, one of the two individuals will seek to shift to a higher utility level closer to his or her bliss point.

So far, our discussion looks as a simplified two-player game, where the two players have the stable and exogenously given preferences. Now consider alternatively the possibility that both players could agree on a jointly accepted bliss point, say somewhere between B and S (it really could be anywhere). In Figure 3 the consensual bliss point is shown at C, where both individuals will accept the discourse with certainty. We see that the two previous bliss points B and S are now on the indifference curve C', which represents lower satisfaction and acceptance than the bliss point C. The difference between the situation in Figure 2 and Figure 3 is, however, that in the first case the two individuals had chosen different bliss points and did not change their position. Their preferences were fixed. In the second case both individuals have jointly chosen what weight to assign to liberty and security in their utility function.

These two different solutions reveal the difference between positive and negative liberty. Negative liberty is represented by the distance to the bliss point; positive liberty reflects the process of defining a bliss point. Clearly, there is a difference between choosing how much weight we assign to liberty in our utility function and minimizing interferences with our liberty from external actors. Thus, the question

is what would generate a consensus for accepting the same weights for liberty and security? Such consensus would reflect what Rousseau (Rousseau, 1975 [1762]) called the *general will*.

Figure 3.

Source: own creation

Bounded rationality and the consensual choice of liberty

If our two actors agree on how much weight to give to freedom and security, they are choosing a common bliss point which would represent a stable equilibrium. No one would wish to deviate from it. This bliss point represents Rousseau's *general will* (1975 [1762]), where 'each individual, while uniting himself with the others, obeys no one but himself, and remains free as before'. However, the slightest deviation from this joint bliss point restores dissatisfaction and dissent because every person would seek to maximize utility at their individual bliss points, which Rousseau called the 'the will of the many'. Nevertheless the jointly chosen bliss point does not necessarily reflect the holistic submission of individuals to something greater than themselves; rather, they create something greater than themselves, because they choose something by themselves that others choose as well. This general will is a stable equilibrium of individual wills. [25]

Rousseau observed the existence of the general will, but he did not explain how it comes about. In our model this depends on the individuals' preferences for freedom

Collignon, Stefan (2018), 'Negative and positive liberty and the freedom to choose
in Isaiah Berlin and Jean-Jacques Rousseau', *The Journal of Philosophical
Economics: Reflections on Economic and Social Issues*, XII: 1, 36-64

and security at which a given discourse is accepted with certainty. These are preferences for norms, the relations of which are combined and articulated in social discourses. Thus, our utility function represents not only the degree of acceptance of discourses, but also the probability distribution over the acceptance of different normative principles regarding freedom and security. If every individual would accept the same discourse with certainty, we would get the general will; otherwise, there is dissent. The question is then, what would cause people to choose the same bliss point? Take the case where a liberal individualist may accept a discourse of freedom and equality with higher probability than the authoritarian holist, although she may change her mind, say under the experience of terrorism, and accept more security regulations. As a consequence, she will shift to the right on the feasibility line. Once the two individuals both accept liberty and security with the same respective probabilities, they agree on a common bliss point. This is a purely individual and rational assessment by each person.

However, as Simon (1987) has pointed out, human rationality is bounded by cognitive capacities. We cannot know everything, and we know it. One strategy to cope with knowledge uncertainty is to look at what other people think. We trust our friends, family or experts with good reputation. Trust means, we will accept the point of view of other persons with a certain degree of probability.[26] We also trust our own judgments to some degree, but if we are uncertain, we can learn from others and will adjust our own individual probability of acceptance to that of the people we trust. Thus, how much I will adjust my assessment depends on how much I trust my friends and colleagues to make a better assessment. Hence, my probabilities of accepting discourses of liberty and security will change, and the new probability will reflect the degrees of acceptance of my friends, weighted by the degrees of trust I have in them. But as I adjust my own assessment, my friends, who trust me, will also take my new confidence of accepting the discourses into account; they, too, will change their probability distribution of accepting the discourse.[27] Lehrer and Wagner (1981) have shown that provided there is a network of individuals connected by trust and that at least one individual has some degree of self-trust, a group of individuals will converge, ceteris paribus, to a consensual assessment of accepting a proposition or discourse. Under these conditions, rational disagreement is impossible (Lehrer, 1976). This agreement is a *stochastic consensus*.[28] It is a reflective equilibrium reached after a reasonable period of deliberation.[29] There will be unanimity between all individuals regarding the probability of accepting a discourse, not because they are obliged to accept the discourse, but because they have freely chosen to do so, *given their cognitive constraints*. Not however, that this is a

very weak concept of deliberation: it means we adjust our beliefs and preferences by taking into account what other people we trust believe and prefer and we do so because we know our limitations.

Stochastic consensus is not incompatible with dissent and conflict. In fact, dissent is the rule as long as information is not fully shared and the deliberative process has not yet converged to the long-run equilibrium vector of shared probability assessments. As individuals will seek to attain their individual bliss points, they live in conditions of what Rousseau euphemistically called 'natural freedom', but what resembles more crudely to Hobbes' 'warre of every one against every one', because without agreement of a common bliss point each individual will seek a personal bliss point, and that will push other individuals to lower indifference curves. Such *dissent* can be long lasting, but the theory of stochastic consensus says that ultimately agreement between bounded rational individuals will emerge. *Conflict*, by contrast, implies that the relation of trust has collapsed. In this case, no agreement is possible and a solution for settling contradicting preferences must be imposed by force and coercion.

The consensus will emerge because, given the constraint of bounded rationality, I will take into account what other people think and they will take into consideration what I think. As I change my mind, others will do so, too. The consensus is the general will that emerges as the mean of the probability distribution that we will accept certain discourses and the dissent is represented by the variance around this mean. Rousseau (1975 [1762], p. 371) described this logic somewhat more clumsily like this:

> There is often a great difference between the will of all and the general will; the latter looks only to the common interest while the will of all looks at private interests, and is only the sum of individual desires. But take away from these same wills, the pluses and the minuses which cancel each other out, the balance which remains is the general will.

Rousseau did not explain the general will as the outcome of a dynamic process, but if we put his idea into the context of a deliberative process, the general will becomes a theory for preference change.

The model of stochastic consensus also provides an alternative to Buchanan and Tullock's (1962) *Calculus of Consent*, for these authors study decision-making rules under conditions of given preferences, while stochastic consensus explains how individuals in a group will change their preferences. Thus, the coefficient γ in our

utility function (2) represents the degree of relative preference between liberty and security and the consensual bliss point is chosen when every member of a group agrees on similar weightings of liberty. As long as the preferences of two or more individuals diverge, their different gammas reflect dissent and imply necessarily preference frustration and reduced spaces of negative liberty. But, under conditions of bounded rationality, an *unconstrained deliberation process* will lead to a consensual choice of how much liberty and how much security this society wishes to accept. In other words, stochastic consensus causes b and s in Figure 3 to converge to the new bliss point C.

The necessary condition for a consensual weight for liberty is that the process of deliberation is unconstrained and information fairly spread. This will make positive liberty coherent with political individualism. Consensus is only possible if the freedom of choosers is ensured. Only if individuals can freely assign degrees of confidence and trust for accepting a discourse, can the process of deliberation correctly reflect the preferences of all individuals. Otherwise, some external authority, such as the state with the monopoly of force and violence, can impose greater weight to some specific options, and it will coerce everyone to accept this choice. This coercion reduces, of course, the opportunities of freedom of choice. Unconstrained deliberation requires fundamental rights of free speech, freedom of assembly, freedom for cultural and artistic practices, in short civil rights. These political liberties are the necessary context for positive liberty defining societies' bliss.

However, these rights are not a sufficient condition for preference consensus. They must also be applied. Collective agreement requires deliberation based on the *practice* of free speech, etc. In democracies collective deliberation about society's preferences is practiced by individuals choosing representatives as their governmental agents for a limited period of time. The social contract is then between the voters and their representative. Different promises are put forward by competing agents, and voters will ponder what weight to assign to them and which discourse to accept. Hence, contrary to what Berlin claimed, there is a necessary connection between individual liberty and democratic rule. The positive liberty of making an acceptable social choice is intrinsically linked to the democratic process under the protection of human rights.

One may be tempted to think that stochastic consensus emerges in communities and therefore does away with states and democracy as frameworks for political deliberation. Such argument may justify the neoliberal agenda of shrinking

government. However, statelessness does not guarantee freedom; in fact, the controls of communities are more constraining than those of democratic states, because they require the surrender to comprehensive doctrines which are not open to individual questioning. By contrast, democracy is the foundation for individual freedom when it grants people the liberty to deliberate freely together and to dissent on their collective choices. The liberty of the ancients required individuals to conform, as Constant, Berlin and many others have pointed out, but conformism and political holism are constraining deliberation. Thus, political holism is incompatible with positive liberty in the modern individualistic world and this positive liberty is constitutive of negative liberty. Liberal democracies combine the right to choose collectively with the individual rights of not being coerced and interfered with. They combine liberal and republican liberty, whereby liberal freedom is non-intervention and republican freedom is non-domination (Pettit, 1997). Non-domination implies having claim rights that are recognized by all as the generally accepted consensus. In the modern world such rights are articulated as human rights which are backed by the general will.

Conclusion

The problem with the hypertrophy of negative liberty and the reduction of the scope of the democratic state is that the spaces for free and unconstrained deliberations are reduced. As a consequence, negative liberty is curtailed, too. For, when individual preferences are seen as exogenously fixed and negative liberty is understood as freedom to act as I wish, then it becomes inevitable that the externalities of individual actions interfere with the lives and liberty of others. Powerful individuals push less powerful individuals to lower utility levels. The negative effects deriving from these externalities require then either suppressing the negative liberty, which is a condition for the emergence of these externalities, or, alternatively, eliminating the positive liberty of making political choices.

It is the paradox of neoliberalism that by scaling back the democratic state and therefore minimizing positive liberty, it is also reducing negative liberty. For, if the democratic deliberation for commonly accepted solutions is no longer available, the authority of the community must impose regulations and social controls to which individuals have to surrender. This is the return to the tyrannical state of the ancients. But when neoliberals reject the dominance of such regulative authorities, they must rely on moral norms and customs to which individuals must

conform – and this is the tyranny of the majority (Mill, 1972). Hayek has clearly recognized this logic when he wrote: 'a successful free society will always in a large measure be a tradition-bound society (1960, p. 61). Yet, conventional traditions can function as much as an external tyranny as the rule of a single dictator. This is why the mistaken separation of negative and positive liberty has opened the doors for authoritarian conservatism and political holism that stand at the opposite side of free and open societies.

Endnotes

[1] See Narveson, 2001 and Brennan, 2012 for the libertarian argument, and Flikschuh, 2007 for a discussion of right-wing versus left-wing libertarianism.

[2] Berlin, 2002 [1957], p. 171

[3] Berlin, 2002 [1957], p. 168

[4] Pettit (1997) has called this 'liberal liberty'.

[5] Similarly, Berlin (2002 [1962], p. 268) says that 'the notion of human rights which must not be trampled on is that of dams – walls demanded by human beings to separate them from one another'.

[6] This is the, as I find convincing, interpretation of Nozick by Katrin Flikschuh. In the opening phrase of his book Nozick (1974) declares: 'Individuals have rights, and there are things no person or group may do to them (without violating their rights)'. Flikschuh (2007, p. 69) argues that for classical liberals such as Locke, individuals enter the world as original rights-holders, while with Nozick's side-constraint view 'persons enter the world as ends'. In other words, for Locke individuals are free because they have rights, while for Nozick the have rights because they are free.

[7] For a discussion of epistemic holism, see Fodor and Lepore (2004). Berlin, as Popper and others of their generation, tends to confuse epistemic and political holism.

[8] Rawls (1999) has demonstrated this approach by presenting the difference Principle as a lexographic ordering.

[9] Thus, Berlin is closer to Locke than to Nozick. See endnote [6].

[10] Constant said (1988, p. 323): 'Individual liberty is the true modern liberty', and what guarantees individual liberty are rights: 'the aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures' (Constant, 1988, p. 317). Berlin echoes (2002 [1962], p. 283) this: 'in the modern world, a new idea – most clearly formulated by Benjamin Constant – makes itself felt, namely that there is a province of life – private life – with which it is thought undesirable, save in exceptional circumstances, for public authorities to interfere'. But if negative liberty is a province of life, positive liberty is the constitution that defines the province in the country of liberty.

[11] See Popper K. , 1995 and Dumont L. , 1980, Dumont L. , 1986. For a discussion of individualism, see (Lukes, 1971) and (Lukes, Individualism, 2006). I am adding the adjective 'political' to individualism and holism in order to set it apart from methodological individualism and epistemic holism.

[12] Berlin, 2002 [1969], p. 36

[13] The confusion may result from Popper's and Berlin's critique of historicism and Marxist discourses of inevitable laws of history. In *The Poverty of Historicism* (2002 [1957]), Popper criticizes the epistemic foundations of historicism, while in *The Open society and its Ennemies* (1995) the focus is on political holism.

[14] For this distinction see Pettit, 1997.

[15] This 'cardinality-based' evaluation of freedom is not without problems, but it is sufficient here to make the point of coercion. See Sen, 2002.

[16] Sen (2002, p. 583) emphasizes that the opportunity aspect and the process aspect in the choice concept of liberty overlap.

[17] See Searle (2010), Searle (1995), Searle (1998).

[18] For modern contract theory, see Fried (1981), Atiyah (1979), Benson (1996); for a discussion of domination in Roman law see Skinner (2003, p. 13).

[19] The two kinds of discourses can coexist in all societies, provided coherence is accomplished by hierarchical subordination. See Dumont (1980).

[20] Rawls (1999, p. 15) has emphasized that it is characteristic of contract theories to stress the public nature of political principles. This is certainly true for claim-rights, which are derived from contract relations.

[21] In this case the utility function is not a Cobb-Douglas function, but a Leontief function with rectangular indifference curves.

[22] We could also postulate tighter constraints, for example a constitution stipulating conditions which make the acceptance of liberty and security principles less likely. However, the overall constraint as per equation (1) helps to make the argument in the most general terms.

[23] The bliss point subject to the maximal satisfaction constraint is obtained by maximizing utility given γ subject to the liberty constraint: $\max(U|\gamma)$, s.t. $PAL = 1 - PAS$. The solution is: $PAS^* = \gamma$ and $PAL^* = (1 - \gamma)$.

[24] We may take the ratio $\dfrac{OB'}{OB}$ as the measure of negative liberty.

[25] Let me add that the *general will*, so defined, is not a Nash equilibrium which is a solution in non-cooperative games, in which each player is assumed to have different preferences and knows the equilibrium strategies of the other players. The general will reflects consensual preferences.

[26] Technically the degree of trust is the transition probability in a Markov process, which tells us the probability that a person will shift the probability of acceptance of a discourse from one state of deliberation to another in a single step.

[27] For a formal model of stochastic consensus see Collignon (2003, Annex 1).

[28] Formally, stochastic consensus can be represented as the result of a Markov process with infinite steps of deliberation, where the stochastic matrix represents the degrees of trust between individuals with respect to the degree of acceptance of a discourse (Collignon, 2003). The consensual probability distribution reflects the values of the first eigenvector of the Markov process, the dynamics of convergence and its speed depend on the value of the second eigenvector.

[29] See Lehrer and Wagner (1981, pp. 60-62).

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