

TRACK SEVENTEEN:

LIBERTY - A DANGEROUS ALLY OF HUMAN RIGHTS

Human rights are about achieving freedom for all, not protecting it for the few

It is time to tackle freedom.

- Does support for human rights mean that we should all be free?

If so

- What does freedom mean? Is freedom the same as liberty?

And if it is

- Is liberty the same as license?

The notorious occultist [Aleister Crowley](#) once famously said

‘Do what thou wilt shall be the whole of the law.’

Was he a human rights activist?

And then there is the whole question, following on from this, of where the state fits.

- Can laws control freedom/liberty/(license?)?

If so

- On what basis?

And

- Are such laws infringements of our human rights or necessary to secure and/or protect them?

The television personality Jeremy Clarkson has strong opinions about speed cameras and semi-hysterical views about [destroying them](#). Maybe like Aleister Crowley he is a human rights activist?

There is this running tension in our subject, rival views of what it entails, which we can no longer avoid.

How does the idea of human rights connect with individual liberty?

PAST TRUTHS

Our subject originates in the 17th Century, with [Hobbes](#). Of course his idea that we all had rights to everything (everything that it took to keep us alive) led him to the conclusion that the only way to preserve ourselves was to give up our freedom, to hand it all over to a Leviathan state to protect us from the anarchy of our indefinite but disastrous freedom: the famous [frontispiece](#) of Hobbes's book captures well what the theme of that book is.

Hobbes left no room for human rights – nor any for liberty for that matter.

A generation or two later, [John Locke](#) came along and his line was different. True, he took many of his themes from Hobbes, especially the idea of a government that has been set up through a [social contract](#) made by people for whom submitting to a government is much more agreeable than the freedom of the state of nature that precedes it. But unlike Hobbes, Locke saw people keeping their natural rights – indeed the purpose of the government created by the social contract was to **better protect**, not **destroy**, their rights.

So government was a kind of deal – a way of **protecting individual freedom** rather than **transcending such freedoms through the exercise of a collective will** (as others, most famously, the Swiss thinker [Jean- Jacques Rousseau](#) were later to argue).

Why do any of these old thinkers matter? How do they influence what we think to be human rights today.

More and more I believe this:

It is not what famous philosophers from the past have thought that makes them original. Of course they work hard, read a great deal, push themselves, get on with their patrons and so on.

But it is not the inherent brilliance of their minds that makes the key difference. Rather it is their good luck in having their ideas come along at the right time. If the conditions happen to be right their views are taken up, embedded in culture and become the norm.

What drives these 'conditions'?

How well the ideas being discussed fit with the underlying political and/or economic power of the day is my (pessimistic? cynical? realistic?) answer.

Hobbes becomes famous because as he said himself his work 'fights on behalf of all kings and all who, under whatever name, hold regal rights' – telling the powerful it is morally right to be absolutist is bound to make you popular among the influential. (I have written a long paper about his malign influence - [Escaping Hobbes](#).)

And Locke works because he tells people that government cannot invade their basic rights, and those basic rights are their individual rights to life, liberty and estate – their inalienable freedoms.

As subsequently understood this becomes a belief that somehow as individuals we are free, over and above government

- No discussion of what being free amounts to in practice
- No sociological sophistication – no appreciation that for some economic disadvantage means such freedom is an irrelevance
- No inclination to subject ‘freedom’ of this sort to any kind of critical scrutiny, to peer behind it to ask how the contemporary status quo (with its masses of (in practice) differently free people has come to be constituted)
- Feeds an inevitable suspicion of government as a constant threat to individual freedom and liberty

Now I am exaggerating the implications of the theories that underpin contemporary [libertarianism](#). But the point is not so much what the great minds make of an idea so much as what those on the hunt for a moral basis for their good fortune do with it, since these are the people who matter.

For the rich and the powerful, those who have everything to gain from leaving things exactly as they are, this theory is perfect. The state must protect their wealth and makes sure the agreements they make are enforced (Locke demands all this) but it must not do anything else. More interference than this is a breach of liberty, a denial of freedom!

Even income tax is a concession, with redistributive taxation being morally illegitimate (as one of the most famous proponents of this position [Robert Nozick](#) argued, to the delight, no doubt, of well-educated tax-evaders everywhere).

Jeremy Clarkson’s clarion calls for freedom and the decision by leading Conservative David Davis to fight a [by-election](#) on the issue of liberty are all echoes in public discourse of this fundamentally libertarian line.

So when, for example, Davis recently so strongly opposes votes for prisoners that he forces a government [climb down](#) on the issue or when he [slams the Human Rights Act](#), he is being perfectly consistent.

For him and libertarians generally freedom and liberty are **not** the same as human rights.

They are right.

A DIFFERENT VIEW OF FREEDOM

The human rights idea does not of course disown the idea of freedom, or that of liberty.

Rather it gives both concepts a different spin and as a result smaller (but still significant) places in the overall ethical scheme which human rights entail.

What is confusing is that freedom and liberty have two meanings in human rights, the first general, the second rather narrow.

Let's take each in turn.

First the more abstract of the two.

- For human rights freedom is about equality of esteem for all: see [track one](#) and much of common tracks [one](#) and [four](#) as well.
- The subject is universalistic down to its bones: it is concerned with *securing* for all a successful, flourishing, ethically responsible life.
- That word *securing* is important. Human rights protagonists do not just accept whatever the status quo happens to be. The idea is a transformative one, willingly embracing change where this is likely to increase the capacity of unlucky, the poor, the disregarded, the weak to enjoy better lives, to make use of the platform for ethical success that it is the job (and moral imperative) of human rights to build.
- In the pursuit of this rich version of freedom, the human rights idea embraces the state. Of course there needs to be directed action from the centre to get the right things done. And of course this may sometimes require those with more than enough for the enjoyment of their freedom to give up some of their wealth to those who have none – the resources of the world are not infinite and individual accumulation cannot but come at a cost to others: equality of esteem entails at least this.
- As we saw in [common track two](#), civil and political rights fit easily within the world of human rights because they are the means through which a government rooted in equality can be constructed.

On this version of our subject, the state is the friend not the enemy of human rights. Freedom is what we must work to secure for all, not the name we give to the luckily-enjoyed luxuries of the few. And freedom is not *freedom from government interference* as such – it is the *freedom to lead a successful life* which an effectively functioning human rights culture can provide better than most other models of government (or indeed any other?).

So can government do whatever it wants in the name of freedom and the delivery of human rights? Is Rousseau's [general will](#) (with its incendiary idea that we can be 'forced to be free') to rule the roost?

LIBERTY MUST KNOW ITS PLACE

This is where the second, and narrower meaning of freedom and liberty kicks in.

According to the human rights idea, interferences with our *individual* freedom need to be justified. This is because its starting (but not end) point is that the individual is the best judge of what he or she needs to do to live a successful life.

Some interferences will never be justified.

The state needs never to torture a person, or enslave them, for example.

How do we know this?

Because the test of 'need', the basis for legitimate interference with individual freedom, is itself rooted in the idea of human rights: is this interference essential to provide for a richer human rights environment for all. In the words of one of the most famous charters of rights ([the European Convention on Human Rights](#)) is this restriction on individual freedom 'necessary in a democratic society'.

'No' to torture and slavery, obviously.

But often 'yes' to regulation of property, confiscation even – see [track eight](#)

And quite possibly yes as well to regulation of speech (racial hatred; [religious hatred](#); pornography), and to 'infringements' of privacy where the greater (human rights) good demands these (fingerprinting; breathalysing suspected drunk-drivers; warrants to search private property when a crime is suspected; prohibitions on dangerous drugs).

Yes too to legal proceedings against people who want the freedom to be racist, or sexist or homophobic ('No blacks'; 'No Irish'; [no same-sex couples](#))

And some issues which are of vast importance to libertarians come much lower down in the priorities of a proponent of human rights – speed cameras on the roads, CCTV cameras on the streets, identity cards – the issue for human rights is whether the powers are fairly exercised, not whether they exist at all.

Inevitably, so far as human rights are concerned, the issue is one of balance, and of justification.

SO WHO DOES THE BALANCING?

The primary judge must be the elected body, the collective common sense of the community at large, guided (we would hope) by the principles that underpin a human rights approach to the world.

Judges are good too at sorting out priorities within the parameters set by the people. This is where democratic human rights laws like the UK Human Rights Act can be very useful.

And there is a role for conscience as well, where the laws may get the balance between liberty and human rights utterly wrong, perhaps because the attitude of law-makers has been contemptuous of freedom right from the start.

But this is a very different discussion than one propelled by a belief in freedom outside the law to which all laws must be subject.

The human rights ideal has no scope for such selfish distortions of what freedom truly means.

SOME CONCLUDING QUESTIONS

- am I too harsh on libertarianism?
- Do I run the risk of not taking individual liberty seriously enough? Am I revealing that I am after all a closet statist...?

And a topical one on which I am conflicted and would relish advice:

- Should the media be able in the name of political freedom to publish what they want without government control? (I am not sure what I think of Wikileaks... is this political freedom or liberty transformed into license?)