RECAPTURING MORAL FREEDOM

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I/RECAPTURING MORAL FREEDOM

In liberal democratic societies, an alarming consensus has developed around one understanding of freedom which is often described as negative, or, perhaps due to the unchallenged hegemony it has enjoyed in this era, modern. The consensus around a particular understanding of freedom has certain undeniable virtues, not the least of which has been its ability to sustain liberal democracies by furnishing them with an apparently unshakeable philosophical and political core. However, this unquestioning acceptance of one understanding of freedom, which in many ways has proved itself to be an inadequate and unsatisfying account, may threaten the very freedoms that liberal democratic societies profess to hold most dear.

Despite the recent, and purportedly ultimate, triumph of the liberal democratic system of government of the West over the communist system of the East, many citizens of liberal democracies sense that somehow, in spite of all the rhetorical flourish that accompanied it, the victory is hollow. Although we may sing the praises of the system of freedom which has been accredited with preserving us from some of the tragedies historically endured by the East, the reality is that we only pay lip-service to a distant, increasingly inadequate, and essentially meaningless ideal.

Despite this fundamental vacuity, a strong consensus remains amongst political theorists around one understanding of freedom which has consequently continued to predominate and remain essentially unchallenged in modern liberal democratic societies. At least since Isiah Berlin penned his seminal essay entitled "Two Concepts of Liberty", in 1956, modern liberal democratic freedom has been known as negative liberty, in contrast to positive liberty. Now, at this historical juncture of such tremendous significance, as the Communist system that at one time dominated so much of the world has crumbled, more than ever we owe it to ourselves, if not to others, to reexamine our fundamental ideals, and in particular, since it is the concept around which the battle has supposedly been waged, to revisit, and perhaps revive, our understanding of freedom.

I am not suggesting that the concept of negative liberty that has informed modern liberal democracies should be wholeheartedly rejected, but, rather, that the unsatisfactory understanding of people and society which develops out of that concept should be critically reexamined. I propose to do this by revisiting the initial influential dichotomy between negative and positive liberty which Berlin outlined and by taking up certain ideas which constitute the concept of negative liberty, or, at least, have, for good reason, come to be associated with it. By examining alternative understandings of freedom, I hope to highlight some elements of freedom that are lacking in the

concept of negative liberty, and, to some extent, to retrieve them.

I specifically want to address three issues, interrelated in a complex way, on which, I believe, the model of people and society that has developed out of the concept of negative liberty is most clearly inadequate. First, I want to argue, in contrast to many negative libertarians, that freedom requires a moral horizon or framework in which to be meaningful. I will review Dostoevsky's "Legend of the Grand Inquisitor" in this regard, since, in my opinion, it most poignantly illustrates this precondition to meaningful freedom. Second, I want to suggest, again in contrast to Berlin and modern proponents of negative liberty, that freedom is intimately interconnected with the important but largely forgotten good of political self-determination, and that the public realm itself provides one important realm for participation, thereby making freedom meaningful. I will illustrate this point primarily through a discussion of an alternative dichotomy between ancient and modern freedom, proposed in the 19th century by the French thinker Benjamin Constant, which demonstrates the importance of participation in a public space. Finally, since modern negative freedom has become so one-sidedly identified with the private realm, and with a morality that is rigidly separated from political life, I want to demonstrate how freedom can be, and is, embodied in the public institutions that define the political

arena. Since law is the most obvious public constraint on freedom of choice and action, I want to demonstrate how law can, in fact, make us free. I propose to do this by demonstrating, using language as a primary example, how some obvious constraints, such as laws, actually enhance freedom by enabling us to live and work more productively together.

Through this examination of the concept of negative liberty, as well as the model of people and society which has come to be associated with it and some alternative visions of freedom, I hope to highlight some of the inadequacies of the popular Western liberal-democratic understanding of freedom. My ultimate purpose is not so much to critique one concept of freedom, but to examine our understanding of freedom and, hopefully, to enhance its significance to moderns.

II/MODERN NEGATIVE FREEDOM OR INDEPENDANCE: BERLIN'S TWO CONCEPTS OF LIBERTY

Berlin's seminal essay, which delineates "Two Concepts of Liberty"1, has had a tremendous influence on the formation of the modern liberal understanding of freedom 2. Coming out of the

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1 Isiah Berlin, "Two Concepts of Liberty", as in Four Essays on Liberty, (Oxford: Oxford University Press, 1969), pp. 118-172.

2 As this thesis is written at least partially in response to this seminal essay by Isiah Berlin, and as he uses the words freedom and liberty "... to mean the same ..." (p. 121) in that work, those words will also be used interchangeably in this paper.

tradition of Karl Popper's The Open Society and its Enemies and Talmon's Origins of Totalitarianism, and written, as it was, during one of the frostiest moments in the Cold War era, this renowned work essentially established the contours of the debate, as well as the terms of the discourse, around the concept of freedom for an entire generation.

A. BERLIN'S DISTINCTION BETWEEN POSITIVE & NEGATIVE LIBERTY

In his essay, Berlin identifies and distinguishes between negative and positive freedom. He notes that the former can be discovered in the answer to the question "... 'What is the area within which the subject ... is or should be left to do or be what he is able to do or be, without interference by other persons?'"[emphasis added]3. In contrast, he maintains that positive freedom can be identified in the answer to the question "... 'What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?'"4. It should be noted that Berlin recognizes that the borders between the concepts are somewhat fuzzy and, while he maintains that these two questions are clearly different, he also acknowledges that "... the answers to them may overlap"5.

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3 Ibid., p. 121-122.

4 Ibid., p. 122.

5 idem

In the way he delineates the first of these questions, Berlin makes a distinct and noteworthy association between negative freedom and non-interference. Referring to the philosophies of Hobbes and Bentham 6, for example, Berlin identifies freedom and non-interference; the "... wider the area of non-interference, the wider my freedom"7. He thus explicitly recognizes the negative character of this concept of freedom claiming that "... liberty in this sense means liberty from ..."8. Berlin notes that by this concept, I am

> ... said to be free to the degree to which no man or body interferes with my activity. Political liberty in a sense is simply the area within which a man can act unobstructed by others 9.

Berlin remarks that one lacks what he calls political liberty or negative freedom only to the extent that one is prevented from attaining a goal by other human beings. He further emphasizes the connection between negative liberty and non-interference by, rather dramatically, identifying the "... deliberate interference of human beings in an area in which I could otherwise act"10 as coercion.

It is worth noting here the direct opposition thus

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6 Ibid., p. 123 in note 2.

7 idem

8 Ibid., p. 127.

9 Ibid., p. 122.

10 idem

established between this understanding of freedom and government or laws of any kind. Some political theorists who oppose the hegemony of the negative understanding of freedom in modern liberal democracies have perspicaciously recognized that, in this vision,

> ... [f]reedom is not even the nonpolitical aim of politics, but a marginal phenomenon - which somehow forms the boundary government should not overstep unless life itself and its immediate interests and necessities are at stake 11.

In defining negative liberty as freedom <u>from</u>, Berlin identifies it as the "... absence of interference beyond the shifting, but always recognizeable frontier"12. Unfortunately, one of the great problems evident in the concept of negative liberty, as illuminated by Berlin, as well as his followers, is precisely that this "shifting frontier" has been, contrary to Berlin's suggestion, persistently unrecognizeable, and in the works of most modern negative libertarians, altogether forgotten. Despite its elusive nature, it should be noted that Berlin evidently recognized the importance of this frontier.

To fully understand Berlin's negative liberty, it is vital to attempt to pin down this shifting frontier which demarcates the area of total non-interference or, in Berlin's typology,

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11 Hannah Arendt, "What is Freedom?" as in <u>Between Past and Future</u> (New York: Penguin Books Ltd., 1977), pp. 143 - 171 at p. 150.

12 Berlin, op. cit., p. 127.

total freedom, from the other arena of necessary interference. Berlin, in conjunction with the "classical English philosophers" who reckoned that liberty "... could not, as things were, be unlimited, because if it were, it would entail a state in which all men could boundlessly interfere with all other men", maintained that such "natural freedom" would surely lead to social chaos and the rule of the strong 13. Noting that these classical thinkers "... put high value on other goals, such as justice, or happiness, or culture, or security, or varying degrees of equality"14, Berlin accepts that they were "... prepared to curtail freedom in the interests of other values and, indeed, of freedom itself" in order to "... create the kind of association they thought desireable"15. So, the shifting frontier somehow indicated that free action could be limited by law as long as "a certain minimum area of personal freedom" was on no account violated, so that natural faculties could be developed and ends pursued 16.

One of the most obvious and important implications of Berlin's understanding of freedom as the preservation of a minimum personal area is that it necessitates the drawing of a firm boundary line between private life, where one is free, and

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13 Ibid., p. 123.

14 idem

15 Ibid., p. 123-124.

16 Ibid., p. 124.

public authority 17. As Berlin acknowledges, individual liberty "... in this sense is principally concerned with the area of control, not with its source" and is thus not incompatible with some kinds of autocracy or the absence of self-government 18. Democracy and individual liberty are here only tenuously or incidentally connected 19.

Berlin insists that it is in the juxtaposition of the two questions "Who governs me?" and "How far does government interfere with me?" that the great contrast between positive and negative liberty rests 20. Although Berlin affirms that the desire for self-government may be "deep" and historically older than the desire for a "free area for action", he insists that "... it is not a desire for the same thing"21. This is indisputably an important insight, but in identifying the latter alone as freedom and in jettisoning the former from the constitutive elements of that concept, Berlin distorts the significance of the distinction he has drawn.

Berlin attacks the idea that a sacrifice by one woman of her freedom can be a gain for another, and rather identifies it as an

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17 idem

18 Ibid., p. 129.

19 Ibid., p. 130-131.

20 Ibid., p. 130.

21 Ibid., p. 131.

"... absolute loss of liberty"22. He maintains that "... a sacrifice is not an increase in what is being sacrificed, namely freedom, however great the moral need or the compensation for it"23. Although this argument has an undeniable intuitive appeal, it seems to be in contradiction with Berlin's own professed sensitivity to the philosophies of the classical English philosophers such as Mill, as well as his appreciation of Constant and De Tocqueville. As discussed above 24, and as Berlin's own essay records, all these thinkers believed that freedom defined as an area of personal non-interference must be limited in the interests of other values - recall that shifting but always recognizeable frontier - even in the interests of freedom itself 25.

The "natural freedom", limitless as it is, which reemerges and dons the mantle of negative liberty at this point in Berlin's essay, is consequently unsatisfactory as an account of freedom, even by Berlin's own standards. A personal freedom from interference which is unlimited would engender social chaos, as Berlin himself has acknowledged, would utterly fail to satisfy basic social needs, and would clearly lead to the liberties of the weak being suppressed by the strong. But these consequences

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22 Ibid., p. 125.

23 idem

24 See discussion at bottom of p. 9 and top of p. 10.

25 Ibid., p. 124.

- a loss of order, the failure to minimally satisfy basic human needs, and the suppression of one group by another - are either so inherently antithetical to the notion of freedom as to be its nemisis, or their opposities - order, minimal satisfaction of needs and group flourishing - must themselves be recognized as elements of freedom.

These other elements of freedom, however, are recognizeable, if at all in Berlin's schema, only in his understanding of positive liberty. Berlin associates the positive in the phrase positive liberty with the "... wish on the part of the individual to be his own master"26. The impulse here is for self-dependance and self-direction by one's own rational will.

As Berlin points out, the desire for self-mastery which he associates with positive liberty has often resulted in a bifurcation of the self into a dominant self with a higher, truer or more real nature and a lower self usually associated with irrationality, heteronomy and desires. The real problem with this self-diremption for Berlin is not the inaccurate picture of the self that it portrays. The problem is rather the monstrous impersonation which it allows the state to perpetrate. Through this division into higher and lower selves, the state can place itself in a position where it can ignore the actual wishes of individuals or groups and bully, oppress or torture them in the

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26 Ibid., p. 131.

name of their "real selves"27.

Although Berlin's evident outrage at this political leger de main is understandable and even justifiable, the necessary and intimate connection that he maintains exists between this trick and "... all political theories of self-realization"28, and the polemic he launches against these theories goes too far and, at least to some extent, in the wrong direction. While Berlin acknowledges that this "magical transformation" can "... no doubt be perpetrated just as easily with the 'negative' concept of freedom"29, and as noted above has recognized negative freedom's own intimate interrelationship with the notion of control, he asserts that as a matter of "... history, of doctrine and of practice ...", the positive conception has "... lent itself more easily to this splitting of personality into two ..."30. In grounding the philosophical dichotomy he is examining on a sense of "history" which is blithely posited but never explored, Berlin seems to abdicate his own intellectual purpose and the raison d'etre of this essay; investigating the interrelationship between concepts of liberty and the realization of freedom.

Berlin proceeds, after laying out this dichotomizing

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27 Ibid., p. 133.

28 Ibid., p. 133-134.

29 Ibid., p. 134.

30 idem

framework, to examine the two major forms of "the desire to be self-directed"31 which he has identified, however ambivalently, with positive liberty. These two forms are self-abnegation and self-realization through total commitment to and identification with a specific principle or ideal.

The former, self-abnegation or "retreat to the inner citadel" approach, is familiar from the tradition of the ascetics, Stoics and Buddhists. In modern times, it enjoyed somewhat of a revival in the theory of Immanuel Kant which put a radical emphasis on the strength of the will as the instrument by which freedom, understood as self-direction, could be achieved. However, Berlin rejects this Kantian moral notion of freedom as self-direction, and Mill's similar working definition of negative liberty as "... the ability to do what one wishes ..."32, since even if one could do little or nothing they wished to do they could always retreat inside, contract or extinguish those unfulfilled wishes and thereby, at least by the Stoic definition, be made free.

Self-realization, in Berlin's theory, is more positively associated with a knowledge or understanding which gives one the power to change or at least control the world 33 to some extent.

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31 idem

32 Ibid., p. 139.

33 Ibid., p. 142.

When this knowledge or understanding, with its attendant acceptance of the limits of our powers, is assimilated into our persons, we are free 34. Berlin identifies this with "... the positive doctrine of liberation by reason"35.

Despite its profound legacy, the bulk of Berlin's article has very little to do with the freedoms he outlines and characterizes as negative and positive and a lot to do with these two notions of freedom as rational self-direction or as self-realization. It seems that his real concern is with these notions and the damage that they have inflicted in practice, particularly in the transposition of these ideas from individual to society. The idea that engages him and which he challenges is that to force ourselves "... into the right pattern is no tyranny, but liberation"36. However, it is clear that in the archetype of the vision he opposes, "... liberty coincides with law: autonomy with authority"37.

The particular philosophers he paints with the brush of this intellectual crime are Rousseau and Kant. He questions how Kant's "severe individualism" transformed itself into "... something close to a pure totalitarian doctrine ..."38.

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34 Ibid., p. 144.

35 idem

36 Ibid., p. 148.

37 Ibid., p. 149.

38 Ibid., p. 152.

Similarly, associating Rousseau's desire for collective sovereignity with positive freedom, Berlin rejects it as potentially too threatening to many of the negative liberties held sacred 39.

Berlin further decries the confounding of liberty with equality and fraternity 40 and the craving for status, or reciprocal recognition that this engenders 41. This value, Berlin insists, while often called "social freedom" and entailing the negative freedom of the entire group, is not really freedom at all but more closely related to "... solidarity, fraternity, mutual understanding, [and] need for association ..."42. However, he does acknowledge that the "... craving for status is, in certain respects, very close to the desire to be an independant agent"43. Even given Berlin's own deconstructive analysis, it is thus not entirely surprising that this social freedom is often thought of as a type of freedom.

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39 Ibid., p. 163.

40 Ibid., p. 154.

41 Ibid., p. 157.

42 Ibid., p. 158.

43 Ibid., p. 159.

B. BERLIN'S PREFERENCE FOR NEGATIVE LIBERTY

Having established this bipartite classification, Berlin proceeds to illustrate how negative freedom is really the only possibility, since positive freedom, the only other option allowed for in his dichotomy, will invariably lead to totalitarianism, and hence is not really freedom at all. In fact, Berlin decidedly rejects this notion of positive freedom which he sees, as Talmon and Popper do, as inextricably intertwined with totalitarianism. Indeed, from the modern experience, and Berlin's own association of this concept with the "... positive self-mastery by classes, or people's, or the whole of mankind"44, this conception seems to be defined negatively, more as the antithesis of freedom than as any possible alternative form of it.

By identifying "pluralism" with negative liberty, and describing it as a "... truer and more humane ideal than the goals of those who seek in the great, disciplined, authoritarian structures the ideal of 'positive' self-mastery by classes, or peoples, or the whole of mankind"45, Berlin and his followers have implied that a prizing of diversity is not consistent with, and is indeed threatened by, any positive, or, by association, ancient, conception of freedom. Negative freedom, he concludes

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44 Ibid., p. 171.

45 idem

is a "truer and more humane ideal" because "... it does, at least, recognize the fact that human goals are many, not all of them commensureable, and in perpetual rivalry with one another"46.

Berlin insists that what is fundamental is the ability "... to choose ends without claiming eternal validity for them, and the pluralism of values connected with this ..."47. Again, however, his obvious implication is that this ability to limit ourselves to the non-eternal and non-absolute assertion of values requires a degree of moral and political maturity unavailable to anyone who believes in any form of positive liberty. Positive liberty and pluralism are set up in his essay as incompatible.

In his concept of positive liberty, Berlin apparently rejects not only the ancient variant of an unquestioning unreflective freedom, or a freedom only known in and through the state and later the church, but also the very possibility of any meaningful or moral notion of freedom. In committing himself so wholeheartedly to negative liberty and pluralism, the legacy of modern subjectivism, Berlin dismisses too easily the value systems, as well as the important distinctions on which they rest, that themselves originally made negative freedom worth prizing.

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46 idem

47 Ibid., p. 172.

C. IMPACT OF BERLIN'S PREFERENCE

Although the import of Berlin's essay may, even on a close reading, be difficult to discern given the wide-ranging discussion he engages in after laying out his core dichotomy, it is that dichotomy, those "Two Concepts of Liberty" and particularly Berlin's preference for the negative model, and not the textured philosophical analysis in which it is embedded, that has been seized upon and embraced by modern negative libertarians. In favouring the negative to the positive variant of freedom, Berlin situates himself within an extremely powerful philosophical tradition grounded in the works of such philosophical luminaries as John Stuart Mill, Alexis De Tocqueville and Benjamin Constant. Berlin, armed with this formidable liberal philosophical arsenal, not only distinguishes negative from positive liberty but also decidedly rejects any manifestation of the latter variant of freedom.

The impact of Berlin's essay and his dichotomy while powerfully influential, however, has also been ambivalent in one sense. He really fails to distinguish adequately and, more significantly, clearly between negative and positive liberty. The lengthy discussion which is appended to the dichotomy itself, ostensibly a further investigation into two major forms of the desire to be self-directed 48 which has itself only been

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48 Ibid., p. 134.

ambiguously and not exclusively (even in the terms of this dichotomy) associated with Berlin's notion of positive freedom, switches back and forth between negative and positive, traversing the few points of reference which Berlin has previously given the reader on his philosophical map. This lack of clarity is complicated by the fact that it is impossible to discern from Berlin's analysis where these major forms of the desire to be self-directed fit in on Berlin's or any other philosophical canvass. The complications are further magnified as Berlin launches into discussions of other philosophical dichotomies such as "the one and the many" and "liberty and sovereigneity" without ever explaining how they fit into his larger framework.

However, the impact of this essay on modern understandings of freedom, despite its confusing structure, should not be underestimated. Essentially, it has set the contours of the discourse to which most other discussions of freedom, however unwittingly, invariably conform. Paradoxically, the problem with this essay from this point of view stems not from Berlin's failure but rather from his success. By delineating this bifurcation in concepts of freedom, Berlin created a potential monster that has, to some extent, escaped from his control. It is the dichotomy, usually in its barest and probably consequently most inaccurate form, that has been remembered and relied upon. Similarly, it was Berlin's decisive rejection of positive liberty in whatever form it took that earned the often

seemingly unreflecting conversion of a generation of theorists. Berlin's ideas on freedom, his analysis and understanding of that concept, fell victim to his more easily packaged and marketable dichotomy, and its one-sided resolution.

D. INADEQUACY OF BERLIN'S CATEGORIES & DISTORTIONS THEY ENGENDER

In reading Mill's philosophy as well as other's through this dichotomizing lens, and fitting them into predetermined categories, Berlin's essay inevitably distorts to some extent the true nature of these philosophers and their works, and in particular tends to obscure their explicit commitment to certain goods. By so effectively establishing this bipartite classification and categorizing philosophers and their works within one or other branch of his dichotomy, Berlin created a seductive and effective, if simple, analytical tool. However, the legacy of Berlin's essay has been to deprive those so classified of the subtlety actually inherent in their theories, as well as to encourage a new generation of philosophers to expound upon the virtues of negative liberty without even acknowledging that these subtleties are lacking.

Berlin's too expansive notion of positive liberty, as well as his inadequate conception of negative liberty, results in the failure of this seminal and highly influential work to accurately comprehend and categorize the variety of theories of

freedom that are perhaps unwittingly swept up in its classifications. As a result, Berlin fails to adequately delineate the differing traditions of thought and the thinkers in his categories, and thus misclassifies certain authors by associating them with a very limited understanding of freedom inconsistent with the rich development of that concept in their own works.

The dichotomy itself is misleading. Not only are the images of negative and positive liberty that Berlin has generated unclear and, to some extent, internally inconsistent, but, more significantly, the former is not the only alternative to the totalitarianism that Berlin identifies with the latter. Although Berlin's association of certain of the features of those understandings of freedom which he labels positive with totalitarianism may offer important insights, it, unfortunately, has obscured the nature of freedom as much as it has illuminated it. However, Berlin himself, while laying out the "Two Concepts of Liberty" and choosing negative freedom, has demonstrated that the range of possible theories of freedom is much wider than his dichotomy allows. Indeed, he has even highlighted one type of freedom which is either ignored in his dichotomy or has been tainted with the brush of totalitarianism.

Berlin makes several references in this essay to, and even seems to be modelling it in some ways on, Benjamin Constant's

1829 piece entitled "De la liberté des anciens comparée a celle des modernes". In that address, given at a time when Constant's native France was in the throes of forging a political role for modern subjectivity, Constant also draws a powerful dichotomy of two types of freedom. As the title suggests, he calls them ancient and modern freedom. Although a close analysis of this dichotomy will illustrate many of the same problems that Berlin experiences with his own, the more significant point of the comparison is the two models of freedom that Constant delineates. Although Constant's modern freedom finds some resonance in Berlin's negative freedom, Constant's ancient and participatory freedom, despite the profound attractiveness it obviously has for Constant himself, as well as for some of his modern readers, is either buried beyond recognition in Berlin's positive freedom, or completely forgotten. In paying so much attention to Constant's dichotomy, Berlin thus highlights one important inadequacy of his own.

In ignoring important moral and epistemological distinctions which many of the authors he classifies insist upon in their own writings, Berlin treats all positive liberty as tending toward totalitarianism. He sees all elements of positive, or moral liberty, as monistic, in opposition to pluralism, and notably fails to recognize the "agonistic" or conflict-prizing emphasis of the moral freedom advocated by certain authors who might be

collectively described as members of a Civic-Humanist tradition.

In totally jettisoning the insights of this tradition, many modern thinkers, including Hayek, Nozick and Friedman, among others, have exalted negative liberty to unprecedented heights, which probably Berlin himself, and almost certainly Mill, would have questioned due to their more refined sensitivities to other goods. It is apparent, however, that the understanding of freedom advocated by these "negative libertarians", as well as much of their intellectual pedigree, stems from their implicit foundation in Berlin's influential essay and the almost exclusive, if doubtful, claim it gives them over the powerful philosophical tradition Berlin situated his seminal dichotomy within.

The essential flaw then in Berlin's bipartite analysis of freedom, a flaw which has been exaggerated by its less discriminating modern adherents, is that is mixes up, fuses or elides separate conceptions or traditions of freedom within its category of positive liberty and then in its vigour, perhaps without fully recognizing this, rejects all of these as leading inevitably to totalitarianism. Under positive liberty, Berlin groups together essentially and by implication from his dichotomous design, whatever understandings of freedom do not fit within his denuded and radically incomplete model of negative liberty. All that he has preserved under the label of negative

freedom is the bare image he presents in the valuable, yet incomplete, modern notion of freedom as radical human subjectivity.

By identifying these two over-arching types of freedom, and by clearly preferring the negative to the positive variety, Berlin provided an important and useful framework for the analysis of liberty, as well as some important insights into its nature, but depicted his dichotomy more starkly and authoritatively than was warranted. It is not that Berlin was mistaken in drawing the dichotomy that he did, or even that he incorrectly preferred one type of liberty to another, but rather that, with the benefit of hindsight, it has become apparent that the ideas which generally cluster around the concept of negative liberty stem from an inadequate and unsatisfactory model of freedom.

The most dramatic example of this flaw in the model of negative freedom that Berlin presents, or a least in its implications, is his identification of John Stuart Mill as the quintessential exponent of negative liberty. While it is undoubtedly true that Mill placed a very high priority on individual freedom and self-direction, and as such was a "modern", there are many elements of Mill's philosophy that illustrate that his understanding of freedom goes far beyond Berlin's denuded negative understanding of freedom as freedom

from. While this fuller understanding of freedom may have only become truly evident in Mill's later works, perhaps due in some measure to the influence of Harriet Taylor, it is clear that his mature understanding of freedom is infused with what are generally considered to be Romantic notions of self-expression and self-realization which find little philosophical justification in the impoverished understanding of freedom from interference by others.

However, it is this fuller Romantic notion of freedom in Mill's philosophy which Berlin specifically rejects as inappropriate 49. Berlin associates the desire to be self-directed or to achieve self-realization with the positive variant of liberty and thus renounces this powerful modern form of freedom. But, many thinkers, including Berlin himself, have associated the idea of self-direction particularly, and to a lesser extent self-realization, with the notion of freedom from interference, control or direction by others or by any external forces. Consequently, while classifying Mill as an exponent of negative liberty may in some sense depict his true philosophical priorities, it is an inadequate and inaccurate representation of his full understanding of freedom.

For the purposes of my examination of Berlin, however, I want to focus on three more significant problems with the essay.

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49 Ibid., p. 139.

From this point of view, one significant flaw with Berlin's negative liberty is that it presents a model of freedom which is amoral, or, at least, divorced from any moral context. Freedom is understood as the independance of the individual, and is consequently perceived as "free" from any moral conditions whatsoever. Berlin's distaste for placing any moral conditions on freedom is particularly apparent in his critique of Kant's positive notion of freedom as self-abnegation. Placing moral conditions on freedom, valuing some kinds of freedom as higher or better than others, in Berlin's mind opened the door to controlling others in the name of freedom. Although this is only implicit in Berlin's understanding of negative liberty, it has been an important characteristic of many of the modern theories which espouse negative liberty.

The second specific flaw that I want to focus on in the model of negative liberty that Berlin presents is related to the first in that it presents one example of a possible, and indeed vital moral horizon, the political or public realm. In rejecting the idea that freedom is subject to moral constraints, and in associating freedom almost exclusively with individual independance, Berlin and other negative libertarians have neglected political self-determination, and hence participation, the distinguishing feature of the ancient understanding of freedom, as a distinct and important good.

Berlin's classification of De Tocqueville and Benjamin Constant as exponents of negative liberty is misleading in this regard. Although both of these thinkers were unquestionably "moderns", having embraced the subjectivist premise of the Enlightenment, they were also acutely aware of the value of tradition and authority, the importance of participatory citizenship, and the possible role of the state in enhancing freedom and the opportunities for its exercise. Yet, Berlin's denuded concept of negative liberty leaves no room for these substantive values.

The final important flaw in the model of negative liberty that Berlin presented and many others have usurped, again, is, in some degree, an extension of the first two. Not only is negative liberty presented as without any moral conditions, divorced from a moral context, and not only is it decidedly apolitical rejecting at least this one possible and some would argue vital moral horizon, but it also, in some measure through these first two characteristics, deprives freedom of its significance. The significance of freedom is so intimately interconnected with the moral horizons which negative liberty has been by definition stripped of that even though individual independance and the negatively free action which it results in is still called freedom it has all but lost its flavour in this stew. Not only has freedom been stripped from the moral horizons which once gave it significance, but negative liberty is now identified precisely

with this negative freedom from.

Although this third flaw is less obvious, partially due to its dependance on a recognition of the other two, it has nonetheless resulted in a powerful modern form of what has been collectively labelled "procedural liberalism", since it rejects all positive or substantive inputs as intrusions on individual independance. While some theorists of procedural liberalism advocate a form of moral freedom, they are united in their belief that the private realm is the only possible space for the realization of freedom. Consequently, actors in the public realm are relegated to the role of policemen or nightwatchmen, patrolling the boundaries of individual action to ensure that individuals remain free from and untrammelled by unwanted interference. The public realm is thus not any living space for the realization of freedom, and a society instead measures its freedom by the extent to which public actors refrain from interfering with individual pursuits.

The concurrence between modern procedural liberalism and Berlin's negative freedom is clear. As Berlin himself outlines it, negative freedom is more concerned with the process of decision-making, the rational agent determining rationally what to do, than with the outcome of that decision-making, what course of action that rational actor ultimately chooses. Although the importance of the process of free choice, as independant and

individual decision-making, should not be forgotten, this recognition does not require nor justify an outright disregard for the content of choice. It is in failing to offer any insight into this substantive consideration of what our choices are, what outcomes rational self-direction actually results in, that Berlin's negative freedom displays itself as an impoverished and inadequate understanding of liberty.

Two philosophical procedural formulae, consistent with Berlin's negative freedom, have been developed which help to illustrate how individuals can rationally and independantly choose the best course of action. These are briefly the utilitarian variant, which uses a maximizing calculation, such as testing whether a decision is consistent with the greatest good for the greatest number, and the Kantian variant which requires the individual's choice to meet a universalizing criterion; that is, is this decision one that I could be content allowing all individuals to make. While these formulae provide decision-making procedures, neither one offers any explanation as to why we should be committed to them, nor any insight into the unacknowledged and unarticulated good that informs the priveleging of any particular procedure. Since they are incapable of making any substantive discriminations between outcomes and their variable moral worth, procedural ethics can only distinguish the right choice from the wrong one by demarcating one from the other with an arbitrary line dictated by

some formal procedure.

However, as Berlin himself seems to acknowledge, these procedural ethics of freedom are not necessarily any less absolutizing nor any less averse to the assertion of eternal values than substantive or positive understandings of freedom. The difference between the two lies not in the fact that either one is necessarily more accepting of the pluralistic human condition, but rather in the fact that while the former universalizes a procedure, a means to an end, the latter universalizes substance, an ideal or principle, the end itself.

Thus, although Berlin perspicaciously isolated and highlighted what he perceived as one notorious characteristic of certain regimes - an inability to recognize and accept the inherent limits imposed on man by the very nature of the human condition -, he inaccurately identified this characteristic with positive liberty, and more particularly with all theories of self-realization. However, this refusal to accept limitations on human endeavours, it could be argued is more, or just as, characteristic of the modern as opposed to the ancient period which has often been associated with positive liberty. To a great degree, this attitude of the unlimited nature of human power stems both from the very modern rejection of authority, whether it be that of the church or the state, and a concomitant embracing of the idea of the unlimited power of human reason.

In a sense, the radical freedom attributed to the individual's rational will replaced God as the object towards which faith was directed. Man, as rational agent, was recognized as being more God-like and less governed by instinct, desire or inclination; less like animals. However, in stressing man's similarities to God as a creature capable of existing in the noumenal realm, modern rationalists ignored the extent to which humans necessarily function in the phenomenal.

III/OTHER IMPORTANT CONCEPTS OF LIBERTY - INADEQUACY OF THE NEGATIVE MODEL

It should be evident from the above discussion that there are many theories of freedom which can not, without distortion, be classified as fitting either of Berlin's "Two Concepts of Liberty". Indeed, there are many important understandings of liberty which Berlin's bipartite categorization neglects to consider. Furthermore, the preference for negative liberty expressed in Berlin's seminal essay and the unreflective assumption of that denuded understanding of freedom by many modern liberal theorists has resulted in the predominance of an inadequate account of human freedom.

In particular, there are three points on which, in my opinion, the model of people and society that has developed around the concept of negative liberty is especially flawed. First, I want to argue that freedom requires a moral horizon or

framework in which to be meaningful. I propose to do this through an analysis of Dostoevsky's "Legend of the Grand Inquisitor" which poignantly illustrates this neglected precondition to meaningful freedom. Second, I want to suggest that freedom is intimately interconnected with one particular moral horizon; political self-determination in the public realm. In this regard, I propose to discuss Constant's dichotomy between ancient and modern freedom which recognizes the importance of participation in the public realm to the realization of freedom. Finally, I will discuss a third, related, area in which the model of people and society connected with negative liberty proves itself to be inadequate: the separation of morality and politics.

A. MORAL FREEDOM - THE LEGEND OF THE GRAND INQUISITOR

Perhaps with more insight than any philosophical treatise ever written, "The Legend of the Grand Inquisitor", a story created and related by one of Dostoevsky's most memorable characters, Ivan Karamazov, reveals the quintessential human predicament and the quixotic and paradoxical nature of human freedom in the modern world. The tale illustrates the divisive self-awareness of moderns which opens up both the possibility of an absolute, total and terrifying freedom, as well as the possibility of an equally absolute, total and terrifying bondage. Dostoevsky's vision of moral freedom, freedom defined by moral

horizons, is shown to be the only freedom suited to the human condition; a freedom for neither gods nor beasts.

According to Ivan Karamazov's "literary preface", his story takes place in the sixteenth century in Seville. "He" appears and all recognize His grace. The Grand Inquisitor, an old man almost ninety, has the guards lead Him away, without a whisper from the assembled throng who had only moments before collectively genuflected in awe and admiration before Him. That night the Inquisitor comes to His cell and tells Him he will condemn Him and tomorrow burn Him at the stake as the "worst of heretics"50. Through this story and the vehicle of the Inquisitor, Ivan, ostensibly on behalf of all moderns, confronts Christ and rejects the freedom of faith he offers in favour of earthly happiness. He accuses Christ of "... having tragically overestimated the stature of man or his ability to bear the agonies of free will", and insists that men "... prefer the brute calm of servitude"51. The Inquisitor, in the name of the Church and all mankind, rejects the bread of heaven, conscience, in favour of real bread, security and happiness. The Grand Inquisitor emphasizes the superiority of the end of human happiness, and mere survival, to a romantic notion of freedom out of place in the real modern world. This wizened old man is thus

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50 Fyodor Dostoevsky, The Brothers Karamazov, trans. by Constance Garnett, (New York: The Modern Library, ?), p. 307.

51 George Steiner, Tolstoy or Dostoevsky: An Essay in Contrast (Boston: Faber & Faber, 1959), p. 338.

set up as the defender of mankind "... against the violence and paradox of grace, a justifier of the ways of man to a remote and incomprehensible deity"52.

Like his creator Ivan, the Inquisitor "hands back the ticket", refuses to ride the freedom train fraught as it is with metaphysical anguish, doubt, and the radical freedom of knowing good and evil and being able to, and indeed having to, choose between them. Rather than burning Christ at the stake for this crime, however, the Inquisitor releases him. Throughout the Inquisitor's challenge Christ remains silent and still, and only kisses the Inquisitor as he finally leaves the cell.

In order to understand the significance of "The Legend of the Grand Inquisitor" in the context of a discussion of concepts of freedom, it is important to examine not only the meaning internal to the story itself, but also its meaning as a dialogue between the two brothers, Ivan and Alyosha Karamazov. In fact, the latter level sets the context for the former. "The Legend" itself achieves its full import only when its characters are foiled in those of the brothers themselves.

In the novel, Ivan, Alyosha and Dmitri, a third brother, could be said to represent the three aspects of man: intellectual, spiritual and sensual, respetively. Ivan's

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52 Ibid., p. 335.

literally consuming intellect 53, or rationality, leads both to his rejection of God and the burdensome freedom he incarnates, as Ivan "hands back the ticket", as well as to his fervent and indeed irrepressible yearning to have faith. Alyosha, on the other hand, has faith, having chosen the church as his vocation, and placed himself under the tutelage of a Monk, Father Zossima. However, despite his religiousity and the sympathetic treatment he receives at Dostoevsky's hands, Alyosha is a somewhat unsatisfactory, uninspired character, particularly in comparison with Ivan. One is left with the distinct impression, that although Alyosha, due to his spiritual life, is in some sense the hero of the novel, even for Dostoevsky something is lacking in this redeemer. While Dostoevsky does not clearly explain this lack, or the reason for it in the novel, it may be that Alyosha's faith, while genuine, is not fully the product of walking through the "fires of hell", or experiencing the doubt and resulting radical critical reflexivity that torments his brother, Ivan. Thus, Alyosha's faith while pure is not as freely (read consciously) given nor consequently as strong as Dostoevsky would like, and Ivan would require. For this reason, while Ivan might provide an adequate foil for the Inquisitor, it should be noted that Alyosha only dimly understands Ivan's story and, unlike the

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53 In a manner equalled only in Dante's "Inferno", the characters in The Brother's Karamazov suffer a fate which is the allegorical equivalent of their crime. Dmitri, the sensualist, for example, is separated from Mother Russia, the prime object of his attachments and affections, by exile. Similarly, Ivan, the intellect, is consumed by brain fever and dies.

silent and passive Christ-figure, questions Ivan's Inquisitor and is enraged by him.

When Ivan's story has concluded, however, Alyosha offers some insight into the freedom Ivan and his Inquisitor have rejected. Alyosha cries, "But the little sticky leaves, and the precious tombs, and the blue sky, and the woman you love! How will you live, how will you love them? ... [Y]ou can't endure it!"54. To Alyosha, believing in God is necessary to live, to endure, and to love - whether it be loving life itself, "the sticky little leaves", or other people. Ivan, however, maintains that "...there is a strength to endure everything ... the strength of the Karamazov baseness"55. Ivan relates to Alyosha his plan to "escape" when he is around thirty in the "Karamazov way". This evident reference to the possibility of suicide, the ultimate human challenge to God and his authority, leads Alyosha to object, "'Everything is lawful', you mean? Everything is lawful, is that it?"56. Although he scowled and "... all at once turned strangely pale", Ivan agrees "'everything is lawful"57. In his bitter denial of God, and the precious gift of freedom he offers, Ivan condemns himself to "... destroy the idea of God in man", to believe there is no God and no

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54 Dostoevsky, op. cit., p. 322.

55 idem

56 Ibid., p. 323.

57 idem

immortality and thus that 'everything is lawful'. In Ivan's vision, there are no limits on what the human agent can potentially do.

"The Legend of the Grand Inquisitor", in the context of this great novel, can be read as a profound allegory of the confrontation between two world views. It illustrates the ultimate challenge of the Enlightenment, of reason and science, of the modern era, to faith. Like the Grand Inquisitor, Ivan cannot bear the suffering that is so omnipresent and definitive a characteristic of the phenomenal world and more importantly cannot believe in a God that allows such suffering, particularly suffering of the innocent, to continue. He is tormented by the poor child's groans 58. The existence of evil and affliction in the world stimulates an "... intoxication of cruelty"59 and arouses Ivan's moral indignation against "... the curse of the knowledge of good and evil"60. Ivan, defying God in a Promethean gesture of liberation, rejects the higher freedom He offers because "... too high a price is asked for it", and "returns the ticket" thereby heralding the death of God.

Ivan's rebellion against God is an intellectual one: he demands to know why God allows such suffering. A defiant child

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58 Ibid., p. 297.

59 Ibid., p. 296.

60 Ibid., p. 318.

of the Enlightenment, a vehement proponent of the scientific age and instrumental reason, he cannot be pacified by some intangible sense of spiritual well-being but rather insists on the creation and realization of justice on earth. Incarnating the demands of the Enlightenment, Ivan cries "I must have justice" or "... renounce the higher harmony altogether"61. As for Ivan, the Enlightenment project is then to reform, to replace the terrible burdens of freedom with happiness and the obedience it requires in the name of the love of humanity and truth. Like the Inquisitor, he longs for certainty, a firm foundation for setting the conscience of man at rest forever", and not the obscurity and doubt that Christ offers in free belief.

Ivan, and his Inquisitor, are both tragic if archetypal incarnations of the Enlightenment. While tormented by memories or at least glimpses of Eden in blissful moments of aesthetic joy where he can love with a full heart the "sticky little leaves" 62, Ivan cannot accept these joyous flashes within the context of a senseless and suffering world. Rejecting God, in favour of rational logical principles, moderns, like Ivan, have tasted the fateful fruit of the tree of knowledge, accepting the power that knowledge offers over the earthly material domain, while condemning themselves to perdition and alienation from the rest of creation because of this hard-won but ultimately overwhelming

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61 Ibid., p. 299.

62 Ibid., p. 322.

self-consciousness.

The figure of Christ in the story, if only through his silence in the face of the Inquisitor's attack, offers another understanding of freedom. It is obvious, however, that the type of freedom that Christ represents to Dostoevsky does not easily fit within Berlin's categories of positive and negative freedom, and similarly cannot be said to be ancient, in opposition to a modern freedom advocated by Ivan and the Inquisitor, although this might seem the natural association.

The notion of freedom advanced by Dostoevsky through the Christ-figure could be characterized in some aspects as quintessentially modern. It is a modern freedom in that it is radically subjective, based on individual choice, and the direction of that ind vidual's will in the face of radically incommensurate possibilities. Dostoevsky's vision is founded on a modern understanding of the self which incorporates a radical critical reflexivity. The dialogue between, the Inquisitor and Christ, as well as that between Ivan and Alyosha, are "... dialogues between the self and soul exteriorized"63; dialogues inconceivable to the ancients who knew no such internal division since they had no such self-consciousness.

The freedom the Christ-figure offers is a freedom of

63 Steiner, op. cit., p. 289.

conscience and choice. Indeed, as mentioned above,

> Dostoevskyan theology and Dostoevsky's science of man were founded on the axiom of total freedom. Man is free - wholly and terrifyingly free - to perceive good and evil, to choose between them, and to enact his choice. Three exterior forces - the trinity of the Antichrist, which offered itself to Jesus in triple temptation - seek to releive man of his freedom: miracles, the established churches ..., and the state 64.

Miracles, mystery and authority do not allow humans the freedom to believe, but rather command it. If God were to appear on earth and identify himself as such before all of us, we would no longer have the freedom to believe, or not. Our belief in, or, more accurately, our knowledge of, God's existence would be a foregone conclusion. As Dostoevsky himself recorded in some of his final notes, the "... Saviour did not descend from the cross because he did not wish to convert men through the compulsion of an outward miracle, but through freedom of belief 65". In "The Legend of the Grand Inquisitor", the Inquisitor berates Christ for not having accepted these temptations, for not using "miracle, mystery and authority" to conquer and hold captive the conscience of these impotent rebels for their happiness 66. Like Ivan, the Inquisitor wants to releive humans of the terrible burden of this freedom, the "... fearful burden of free choice"67.

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64 Ibid., p. 294.

65 Ibid., p. 262.

66 Dostoevsky, op. cit., p. 313.

67 idem

In Dostoevsky's vision of moral freedom, the vision that the silent Christ incarnates, humans must face and even endure the fires of hell to some extent in order to experience real freedom. Miracles, the church, and the state do not allow for freedom, but rather attempt to provide happiness and complacency in return for obedience. But this denies freedom since

> ... man is free, only if neither exterior wonders nor ecclesiastical dogmas nor the material achievements of the utopian state have shielded him from the assaults of God.... Without evil there would be no possibility of free choice and none of the torment which impells man toward the recognition of God.... If the freedom to choose God is to have any meaning, the freedom to refuse Him must exist with equal reality. Only through the chance of committing evil and experiencing ... [can their be freedom]. The pilgrimage towards God can only have real significance so long as men may choose the way of darkness. Only those who can come to terms, in the very marrow of their being, with the paradox of total freedom and the omnipotence of Christ and of God will be able to live with the knowledge of evil. 68

Moderns, incarnated by Ivan and his Inquisitor, yearn for but can never recover the ancient or original unity - the unreflective acceptance of God - and the freely accepted purposiveness that accompanied it. With critical reflexivity, they have won through to a new and higher level of freedom where the particular subject is no longer merely required to accept or deny God but must also reinvent the framework or order that makes that God possible, or indeed impossible. This quintessentally modern freedom of the subject can be terribly onerous, but also

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68 Steiner, op. cit., p. 296.

offers the potential reward of an unprecedented radical freedom.

However, in Dostoevsky's vision of freedom, despite his unprecedented radical subjectivist stance, there are also elements which could be associated with ancient freedom. For example, he reorders the traditional Enlightenment priorities by preferring the miracle of Christ and the freedom he offers to the dictates of reason and Truth. Dostoevsky asserted that, "... in the event of any contradiction, Christ was infinitely more precious to him than either truth or reason"69. Similarly, his emphasis on faith, one of the great sources of authority against which the Enlightenment was fought, gives his radical subjectivism a decidedly different twist. Dostoevsky's vision of freedom is completely moral, ethical, even religious. It could also be characterized as substantive, since freedom is based on discovering a natural order within the self which is in some strong sense determinative of what the radically free agent does.

In addition, the centrality of Good and Evil in Dostoevsky's vision, as the objects of human choice, betrays an understanding of freedom which goes beyond a radical subjectivity insisting simply on non-interference. Good and evil, as the objects of human choice, as our possible ends, provide a substantive if skeletal framework for the Dostoevskyan vision of freedom. He prizes the radical subjectivity of the modern human

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69 Ibid., p. 291.

agent and her ability to reflect critically so highly that even those who ultimately, incorrectly, choose evil, are seen as closer to God than those who never confronted evil, since only those who have truly known both good and evil and have critically reflected on them can truly freely choose. For Dostoevsky, there is a special proximity of demons to God since their next step is either to freedom or into the abyss. Thus, like "... the protagonist of a morality play, Dostoevskyan man is poised between the ministrations of grace and the subversions of evil"70.

The suffering and evil in the world that Ivan and the Inquisitor found impossible to bear has an important role in Dostoevsky's concept of freedom. They are equally necessary to human salvation and human freedom. It is human vulnerability, human exposure to suffering and the crises of conscience that compells us to face the dilemma of God 71 and freedom. It is in this way that the mystery of the Kingdom of God can be seen as central to the conflict in political philosophy around theories of freedom. If one has faith in a Kingdom which exists beyond mortality, if one believes that there is a redemptive judgment, then it is possible to accept the persistence of evil in this world. Only in this way is it possible to find it bearable that our present lives do not exemplify perfection, total justice, or

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70 Ibid., p. 297.

71 Ibid., p. 289.

the inevitable triumph of moral values. Only if one has faith can evil be understood as a necessary adjunct of human freedom. Once we abandon faith it becomes necessary to achieve reform by whatever means in order to establish paradise on earth 72.

Furthermore, Dostoevsky resurrects elements of ancient freedom by introducing the modern world and the modern mind to a tragic vision of experience, as Goethe had done before him. In this tragic vision, action and the goal toward which it tends are inextricably intertwined. Ends and means are not rigourously separated as in the modern procedural model of freedom. Consequently, the dialogue between the characters and Ivan's story can be seen as being charged with the utmost moral significance. Some agon or tragic conflict inspires each character and their story. It is human freedom and the evil which it makes possible that provide the only access to God as well as the conditions of potential tragedy. The possibility of false choice and the denial of God and freedom is always at hand 73. This is Dostoevsky's "... tragic revealation and yet it is this revealation which alone may carry us beyond the tragedy"74.

While Dostoevsky's vision of freedom is reminiscent in many ways of what Berlin has classified as the self-realization and

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72 Ibid., p. 257.

73 Ibid., p. 299.

74 Ibid., p. 308.

even the self-abnegation variants of positive freedom, as a modern he was equally conscious of its negative, individual and critical, counterpart. Dostoevsky's genius, perhaps most evident in **"The Legend of the Grand Inquisitor"**, was in prophetically discerning and graphically illustrating the alliance between the idea of social reform and the ideal of social perfectibility, a modern theology built on reason and individualism, and the desire to eliminate the suffering, tragedy and paradox from the human experience. In challenging the popular association of this alliance with freedom, Dostoevsky engaged in a "... lifelong polemic against the 'crystal palace' of socialism, against Rousseau ... and all the positivists who believe in the reality of secular reform and who preach justice at the expense of love"75. By juxtaposing modern positivism with an ancient view of tragedy and with faith, Dostoevsky introduced a different dichotomy and a battle between world views which is a battle between freedom and power.

B. A RIVAL DICHOTOMY - CONSTANT'S ANCIENT AND MODERN FREEDOM

In recognizing the value and the necessity of preserving the modern understanding of freedom as radical subjectivity and the strong individualism this requires, Berlin went too far and foreclosed the possibility of meaningful citizenship and the very real experience of freedom that can accompany it. By not

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75 Ibid., p. 295.

disassociating the ancient, quintessentially positive, understanding of freedom from the modern understanding of liberty, Berlin assumes that the denial of subjectivity and self-direction in favour of the polis evident in the ancient model will necessarily be perpetuated in any modern manifestations of positive freedom or theories of self-realization. However, in contrast, certain modern theorists, notably Benjamin Constant and Alexis De Tocqueville, who are both referred to in Berlin's essay, have argued that the participatory freedom experienced in the ancient polis can and must be preserved, albeit with important modifications, in the modern age.

In an insightful address in 1829 entitled "De la Liberte des Anciens Comparee a celle des Modernes", Constant, foreshadowing Berlin's dichotomy, identified "... two distinct and irreducible types of freedom, popular self-government and private independance"76, and called them ancient and modern freedom, respectively. His conclusions are in some ways similar to Berlin's because he suggests that while the latter type of freedom is the aspiration of all moderns, any "... attempt to revive ancient liberty in modern society can lead only to political brutality and terror"77. However, despite the apparent similarity between Berlin's and Constant's dichotomies, and their judgments on the future progress of freedom, Constant's

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76 Robert Hale, "Benjamin Constant" p. 19.

77 idem

categories, formed as they were in the infancy of the "modern" era, can be used as an illuminating foil with which to juxtapose these four concepts of freedom and discover their similarities and differences. In addition, Constant's own analysis offers some insights into a different and fuller understanding of freedom than the bare notion of Berlin's negative freedom from interference. Indeed, Constant argues that participation is intimately interconnected with freedom, and that citizenship and activity in the public realm provide one important and unique moral horizon - a requirement for meaningful freedom.

1/Ancient Freedom

Ancient freedom is associated with and believed to have been most fully realized in the ancient Greek city-state or polis, particularly, according to Constant, in Sparta. In this model, freedom is seen as a direct result of citizenship. According to Constant, the "... liberty of ancient times was whatever assured citizens the largest share in the exercise of social power"78. As such, freedom could be said to be "... an active and continuous participation in the exercise of collective power"79. A man was, thus, free "... dans la mesure ou il se confondait

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78 Ibid., p. 31.

79 idem

avec sa cite ..."80.

According to Constant, the ancient governments that conform with this model of freedom include those of Sparta and Rome, but significantly not Athens. In this model, the state, for example the five elected ephors that governed Sparta, were to do more than merely constrain the powers of the Spartan king. Thus, while their power was limited, they were recognized as constituting a potential tyranny in their own right. While this was less true in Rome, due to the existence of political rights and the representative powers of the tribunes, to the extent that social power was essentially unlimited in the ancient polis, "... l'individu s'était en quelque sorte perdu dans la nation, le citoyen dans la cité"81.

Constant's vision of ancient freedom is obviously highly political and is thus often associated with the phrase political liberty. As Constant notes, this liberty consisted in the collective and direct exercise of power, in deliberation in the public space, in the creation of laws and the pronouncement of judgments collectively. In distinct contrast to the highly individualistic modern variant, ancient freedom was compatible

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80 Alexis de Tocqueville, Democracie en Amerique V. I, (Paris: Flammarion, 1981), p. .

81 Benjamin Constant, "De La Liberté des Anciens Comparée a celle des Modernes", as in De l"Esprit de la Conquete et de l'Usurpation, (Paris: Flammarion, 1986),pp. 265 291 at p. 270.

with "... l'assujettisement complet de l'individu à l'autorité de l'ensemble"82. Thus, virtually every aspect of individual life was subject to a "surveillance sévére"83 and the concomitant level of regulation. The laws "... reglent les moeurs, et comme les moeurs tiennent à tout, il n'y a rien que les lois ne reglent"84. The political liberty of the ancients meant that "... l'individu, souverain presque habituellement dans les affaires publiques, est esclave dans tous ses rapports privés"85.

For Constant, the modern, the problem with ancient liberty was its relative neglect of the individual. This neglect of the individual was, according to Constant, to some extent a function of the small size of the various city-states and the constant state of war which was the characteristic feature of their collective history. Necessity compelled these ancient republics to make their security, their independance, indeed their very existence, which was incessantly threatened, their most important goals. War made total social unity essential. However, despite this understandable committment to the social whole, Constant recognized that the "... danger de la liberté antique était qu'attentifs uniquement a s'assurer le partage du pouvoir social, les hommes ne fissent trop bon marche des droits et des

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82 Ibid., p. 268.

83 idem

84 Ibid., p. 269.

85 idem

jouissances individuelles"86.

2/Modern Freedom

In contrast to the ancient and political freedom of the city-state, the modern model prizes a highly individualistic and personal notion of freedom. According to Constant, while "...[l]e but des anciens etait le partage du pouvoir social entre tous les citoyens d'une meme patrie ... [et] ... c'etait là ce qu'ils nommaient liberté", the goal of moderns is '... la securité dans les jouissances privées; et ils nomment liberté les garanties accordées par les institutions a ces jouissances"87. In this vision then, modern freedom is "... the peaceful enjoyment of individual or private independance"88.

This personal freedom is often measured by the degree to which one's private pursuits and pleasures remain untrammelled by political or legal interference, and as such it is reminiscient of Berlin's negative freedom. This understanding of freedom is remarkable for its decidedly non-political character. In fact, in this model

> ... freedom is not even the nonpolitical aim of politics, but a marginal phenomenon - which somehow forms the boundary government should not overstep unless life

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86 Ibid., p. 289.

87 Ibid., p. 276.

88 Hale, op. cit., p. 31.

itself and its immediate interests and necessities are at stake 89.

The apolitical nature of modern liberty was for Constant the "... normative counterpart to the distinction between state and society"90; the public/private distinction which has permeated so profoundly the modern psyche. Not only has this public/private distinction exposed new and competing forms of vita activa alongside the traditional sphere of politics, in particular commercial activity, but it also "... gives citizens a set of instruments with which to fend off the pretensions of powerful officials ..."91, individual rights.

It is this "double function", identifying alternative forms of public engagement and private powers which, in Constant's mind "... makes the state/society distinction an indispensable precondition for the emergence of modern freedom" 92. The desire for freedom from government and individual independance is only intelligible to or possible for someone who has already significantly distanced herself and her very identity from the political life of the state. Commerce, according to Constant, replaced war as the major source of the new individualistic

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89 Arendt, op. cit., p. 150.

90 Hale, op. cit., p. 53.

91 Ibid., p. 72.

92 Idem

identity, the predominant means for attaining what was desired, and a uniform tendancy toward peace, marking the demise of the city-state and its raison d'etre, became evident.

Although it is irrefragable that Constant prized this modern freedom very highly, and indeed gave this address in the hopes of ensuring its survival, he realized that it also was flawed and perhaps inadequate as a complete understanding of freedom. He himself pointed out that the danger of modern freedom "... c'est qu'absorbés dans la jouissance de notre indépendance privée, et dans la poursuite de nos interets particuliers, nous ne renoncions trop facilement à notre droit de partage dans le pouvoir politique"93. In contrast to citizens of an ancient polis, a modern "... indépendant dans sa vie privée, n'est meme dans les Etats les plus libres, souverain qu'en apparence"94. The sovereignity of the modern, Constant notes is "... restreinte, presque toujours suspendue ...", and is usually only exercised in its abdication 95. Perhaps unwittingly commenting with a profound insight into the modern condition of alienation, Constant records that today, "... [p]erdu dans la multitude, l'individu n'apercoit presque jamais l'influence qu'il exerce"96.

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93 Constant, op. cit., p. 289.

94 Ibid., p. 269.

95 idem

96 Ibid., p. 276.

3/Ancient versus Modern Freedom

One real difference between these notions of ancient and modern freedom is the nature and role of action and the field where it unfolds. Constant realized that the ancients had "... an overriding need for action; and the need for action is easily reconciled with a vast increase in social authority"97. Moderns, in contrast in Constant's view, neither crave this action nor expressly provide the public space for its realization, but rather crave its opposite - peace and enjoyment. For moderns, peace "... can only be found in a limited number of laws that prevent citizens from being harassed ... [and] ...[e]njoyments are secured by a wide margin of individual liberty"98.

However, it is around this idea of enjoyments or happiness, the apparent goal of modern freedom, that another difference between these two types of liberty, which demonstrates Constant's committment to ancient freedom, becomes evident. After praising the virtues of representative government, Constant exhorts his audience to not abandon their political liberty completely to these representatives. He further specifically repudiates the modern notion that "... le bonheur ... soit le but unique de l'espece humaine"99. The work of the legislator, according to

97 Hale, op. cit., p. 31.

98 idem

99 Constant, op. cit., p. 289.

Constant, is not complete when the people are "tranquille" or even when they are "content"100. Recognizing a higher purpose than happiness alone, Constant insists that

> ... cette partie meilleure de notre nature, cette noble inquiétude qui nous poursuit et qui nous tourmente, cette ardeur d'etendre nos lumieres et de développer nos facultés; ce n'est pas au bonheur seul, c'est au perfectionnement que notre destin nous appelle; et la liberté politique est la plus puissant, le plus énergique moyen de perfectionnement que le ciel nous ait donné 101.

It is political liberty then, which Constant has explicitly associated with ancient freedom and not the prized individual independance of the modern, which

> ... soumettant à tous le citoyens, sans exception, l'examen et l'étude de leurs intérets les plus sacrés, agrandit leur esprit, anoblit leurs pensées, établit, entre eux tous une sorte d'égalite intellectuelle qui fait la gloire et la puissance d'un peuple"102.

Constant thus attributes the institutions which "... achevent l'éducation morale des citoyens"103 to the exercise of political liberty.

Consequently, while individual liberty is the true liberty of the modern, "... [l]a liberté politique en est la garantie; la liberté politique est par conséquent indispensable"104. Constant

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100 Ibid., p. 291.

101 Ibid., p. 290.

102 idem

103 Ibid., p. 291.

104 Ibid., p. 285.

recognizes the importance of civil liberties and the guarantees these rights assure including the right to consent to the laws, to deliberate regarding our interests, and to be a member of the social whole 105. However, modern government or authority, is now obliged to respect the independance of individuals more and always comport itself with wisdom and a "light touch" in order to avoid the despotism that was possible in ancient times.

In this essay, Constant presents an image of what is, in his mind, a reasonable admixture of these two freedoms. For him, Athens stands apart from all other ancient republics since in it the individual was not completely subjugated to the social whole 106, and, in this way, Athens most resembled the modern state 107. In addition, Athens was more a product of commerce and trade than any of its ancient counterparts and this generated amongst its citizenry an excessive love of individual independance, uncharacteristic of the age. However, while the independance of the individual co-existed to some extent along with features of ancient liberty in the Athenian state, it is clear that for Constant, since there were no legal guarantees for freedom and gross inequalities, individual independance and consequently modern freedom were not adequately realized even there 108.

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105 Ibid., p. 286.

106 Ibid., p. 268.

107 Ibid., p. 270.

108 Ibid., p. 275.

4/Differing Dichotomies

Constant's dichotomy is in many ways reminiscent of Berlin's "Two Concepts of Liberty" presented above. The subjective freedom of the modern was a product of the Enlightenment and was politically first realized in the French Revolution. Constant's vision of modern freedom as individual independance, not surprisingly since it draws on this background, has much in common with Berlin's notion of negative freedom. Indeed, the concepton of freedom which Berlin identifies as negative consists largely in the virtue of independance from interference. Berlin's understanding of negative freedom also finds its origins and its genesis in the Enlightenment. The imperative of the central importance of human subjectivity to modern freedom was whole-heartedly embraced by both thinkers.

However, there are several important distinctions between Constant's modern freedom and Berlin's negative freedom. Unlike Berlin, who endorses negative liberty as the only way to avoid totalitarianism, Constant recognizes significant flaws with, and dangers in, the modern model of freedom. The two most important and seemingly interrelated dangers that he identitifies are that moderns who are so engaged in pursuing their private interests will too easily relinquish their right to participate in and share political power, and in doing so will mollify themselves with the "bonheur" and "jouissances" promised them by their

representatives without even seeking the "perfectionnement" or moral education possible through higher pursuits.

Although Berlin's understanding of positive freedom has often been associated with the freedom that existed in the ancient polis, ancient and positive freedom are clearly not coterminous. In fact, in recognizing the dangers inherent in a commitment to modern freedom solely, Constant manifestly embraces many of the characteristics of Berlin's positive notion of freedom. Certainly, Constant's understanding of freedom goes beyond mere freedom from interference and some of its positive contours become more evident through a close examination of his essay.

Constant's understanding of freedom contains both political as well as individual dimensions and the former, in fact, are seen as necessary to the very preservation of the latter. Political liberty is the guarantee of individual liberty 109. Thus, although moderns will not abide the complete sacrifice of individual liberty for political liberty as in the ancient polis, some more limited compromise between these two forms of freedom, in Constant's theory, is required.

However, political liberty certainly means more to Constant than a mere safeguard for individual liberty. His notion of the

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109 Ibid., p. 285.

possibility of "perfectionnement" and moral education through political liberty, through public institutions and participation in government, is a recognition and an expression of the significance he attributes to self-realization and human flourishing. This appreciation of self-realization, "... cette noble inquiétude qui nous poursuit et qui nous tourmente, cette ardeur d'étendre nos lumieres et de développer nos facultés ..."110, however, has very little in common with Berlin's description of theories of self-realization as based on the separation between the higher or rational and the lower self. Indeed, Constant's description of this desire, albeit brief, appeals as much to the passions of the supposedly lower self as to the rationality of the higher self.

In addition, while Berlin charges that confounding "... liberty with her sisters, equality and fraternity, leads to ... illiberal conclusions ..."111, Constant accepts their evident interconnection. For example, it has been noted that the "... relative importance Constant ascribed to public and private spheres was a direct function of the modern demand of citizenship for all"112. In his view, the value of equality requires a certain kind of liberty. Similarly, political liberty establishes amongst citizens "... une sorte d'égalité

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110 Ibid., p. 290.

111 Berlin, op. cit., p. 154.

112 Hale, op. cit., p. 32.

intellectuelle qui fait la gloire et la puissance d'un peuple"113.

Berlin disparages the aspiration toward status and reciprocal recognition as leading to the "... most authoritarian democracies ..."114. By contrast, Constant, while not using these specific terms, in praising political liberty suggests the importance of "... à etre partie intégrante du corps social dont nous sommes membres"115. For this reason, he overtly prizes the public space and the institutions which allow for deliberation and other forms of popular participation within that space.

5/Constant's Fuller Understanding of Freedom

In Constant's refined and sensitive analysis of freedom, neither the ancient nor the modern model can be uniformly or exclusively preferred as the definition of freedom and both must somehow be combined in the institutions of a truly free state 116. Constant identifies "... two diametrically opposed dangers: overpoliticization and overprivatization"117 which threaten modern society. He perspicaciously realizes that too "... much

113 Constant, op. cit., p. 290.

114 Berlin, op. cit., p. 157.

115 Constant, op. cit., p. 286.

116 Ibid., p. 291.

117 Hale, op. cit., p. 20.

and too little civic spirit are equally destructive of both freedom and social order"118.

Constant used the image of the ancient participatory democracy as a warning to modern citizens about the dangers of choosing civil liberty, or modern negative freedom, alone 119. He concluded that the

> ... participation of citizens in public debate and electoral politics, and the participation of their representatives in the control of policy, is one form of freedom. The protection of citizens from police harassment and enforced orthodoxy is another. Although mutually distinct, these two freedoms are in reality mutually reinforcing. Just as civil liberty presupposes political liberty; so political rights are meaningless without a guarantee of personal independance. Limited government and self-government sustain one another 120.

It is, perhaps, due to this realization that, Constant's less rigid dichotomy stands, despite certain superficial similarities, in marked contrast to Berlin's bifurcation and polarization of freedom into two mutually exclusive concepts. Whereas in Constant's mind, self-government and limited government are mutally sustaining, in Berlin's vision "... there is no necessary connexion between individual liberty and democratic rule"121. For Berlin, by contrast, as discussed above, the

> ... answer to the question 'Who governs me?' is logically distinct from the question 'How far does government

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118 idem

119 idem

120 idem

121 Berlin, op. cit., p. 130.

> interfere with me?' ... [and it is] ... in this difference that the great contrast between the two concepts of negative and positive liberty, in the end, consists 122.

For the French thinker, these questions could not have been so rigidly separated.

C. THE SEPARATION OF MORALITY AND POLITICS

The malaise in modern liberal democratic societies has been attributed in some measure by various thinkers to the profound moral and political inadequacy of the modern understanding of freedom 123. The third significant way, perhaps most evident to moderns, in which the model of people and society that has evolved out of or, at least, is centred around, the notion of negative liberty has proved to be inadequate, is in the rigid separation it imposes between morality and politics. While Dostoevsky's "Legend of the Grand Inquisitor" demonstrated the importance of moral horizons for freedom, and some modern theorists, following Immanuel Kant predominantly, embrace this moral freedom, like Kant, and in contrast to Benjamin Constant, they believe that moral freedom should be realized exclusively in the private realm. They see the state and its laws as merely negative, a limitation (and in this Berlin concurs with Jeremy Bentham) or an external constraint.

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122 idem

123 Charles Taylor, "Legitimation Crisis", as in Philosophy and the Human Sciences: Philosophical Papers 2, (Cambridge: Cambridge University Press, 1985), p. 276.

If the state has any positive role it is simply as as an equal facilitator of individuals' goals, in no way espousing its own view of the good, or right and wrong, so long as individuals' goals do not impinge on the goals of others. Consequently, the moral self-realization of the individual takes place in the private realm, and the state and its laws merely provide a minimal backdrop.

There is a group of modern theorists who, sometimes following Kant but also Berlin, forcefully argue that freedom, even when it is conceived of as moral self-realization, belongs solely in the private realm, and that the state and its laws have no role to play, other than as a negative or external constraint, in the realization of freedom. Their theories have been collectively labelled procedural liberalism. Although many of these theorists owe a great deal to the philosophy of Immanuel Kant, his own preoccupation with the moral character of freedom often takes second place among theories of procedural liberalism to maintaining a rigid separation between morality and politics. It is in this emphasis on the all-important boundary between freedom and the public space that procedural liberals owe a debt to Isiah Berlin's association of positive freedom and totalitarianism and the profound legacy of his essay on "Two Concepts of Liberty".

For many moderns, however, the ultimate insights of this freedom rational self-directing agents determining their own individual ends through the application of a largely procedural formula - has resulted in an unsatisfactory account of the human condition, and, more particularly, of human freedom. Dividing human experience into hermetically sealed realms of morality and politics, or law, private and public, not only contradicts some of our most basic intuitions, but also reinforces a narrow focus on the determinants of action alone, and an understanding of practical reason as purely procedural. Reason here is mere rational direction and the essence of modern dignity is that when the rational self directs this mode of calculation, it confers its own order on the world, setting its own ends. However, the highest end set by this modern calculating human agent, to will rationally, fails to inspire those who do not recognize themselves and their needs and concerns in the abstract, disengaged and noumenal alone.

Those who adhere to this modern understanding of freedom and human agency, and the ethical scepticism it engenders, particularly those who suggest it is the only possible interpretation of freedom and back up their theory with the spectre of totalitarianism, effectively obscure the moral nature of human freedom, while denying its public dimension. This modern understanding of freedom produces an ethic of rules, a panoply of obligations detailing how the moral agent should

behave, but utterly fails to explain why we should be committed to them.

Identifying the moral not with the outcome of an act, its substance, but rather with a form of reasoning or procedure that leads to it, procedural liberals then exacerbate their misplaced emphasis by drawing a firm boundary around the procedure. This boundary is defended fiercely since it segregates what is understood to be questionable, variable, or culturally relative - the political realm from what is taken to be universally valid since it is dictated by rationality, the untainted product of reason. The procedural ethic, since it is incapable of allowing for substantive discriminations with regard to variable moral worth, can only make distinctions by drawing a rigid boundary line around the various parts of human experience. Consequently, it bifurcates public and private, the good and the right, reason and desire, and thus generates a diremptive and inaccurate picture of the human condition.

Proponents of modern negative liberty insist on a separation between law or politics and morality because the dictates of the former are considered to be external while those of the latter are internal. By this reasoning,

> ... the essence of the moral is in the quality of motivation. It is not the outcome that makes an act moral, but the motivating ground. And what makes an act

moral also makes it free 124.

In contrast to this Kantian separation of obligations, motives, negative injunctions, if you will, defined by the external or internal nature of the demand, from fulfillments, acts, or positive demands which flow from qualitative distinctions and are defined in terms of the excellence which this life form exhibits, the central notion of an alternative and political tradition, civic humanism, in which one could place Benjamin Constant, for example,

> ... is that men find the good in the public life of a citizen republic. In the definition of this ideal, action and motive are inextricably intertwined. This is utterly incompatible with Kantian dualism 125,

which, as discussed, requires a rigid separation between morality and politics. For Kant, since the quality of motivation, compliance with the rules of behaviour out of the right motive, cannot be coercively enforced, since it is internal and private - within the conscience of the individual - morality and hence freedom do not belong to and must indeed be separated from the realms of law and politics.

One glaring problem with this analysis, however, is that modern democratic societies that are largely founded on ideas of negative liberty are societies where the citizens are self-

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124 Charles Taylor, "Kant's Theory of Freedom", as in Ibid. p. 327.

125 Ibid., p. 335.

governing. If the citizens elect their own representatives to engage in political action and consent to laws of their own creation, neither politics nor law can be seen as completely external or coercive. The externality of law or politics is reduced to a mere function of their phenomenal, as opposed to their noumenal, character. This "... aspect of modern societies as self-governing" which derives from the immanentization of law "... is of central significance to the understanding of the good which is constitutive of modern society"126.

An alternative interpretation of motive and action, obligation and fulfillment, morality and politics or law, as intimately interconnected accords with the tragic vision of experience that Dostoevsky, among others, resurrects. You will recall the earlier discussion which noted the centrality of the conjunction of action and motive to tragedy. The unifying understanding which informs this tragic vision manifests itself in a different, moral, conception of freedom.

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126 Charles Taylor, "Alternative Futures: Legitimacy, Identity, and Alienation in Late Twentieth Century Canada", as in Alan Cairns & Cynthia Williams (eds.). Constitutionalism, Citizenship and Society in Canada, (Toronto: University of Toronto Press, 1985), p. 188.

IV/ANOTHER CONCEPT OF LIBERTY - ENHANCING MORAL FREEDOM THROUGH LIMITATIONS

Charles Taylor's ideas of freedom and moral agency, while inescapably informed in some measure by modern understandings of freedom are, at least in attributing great import to participation and citizen self-rule and finding alternative moral sources in these practices, also informed by the ancient, or civic humanist, theory of freedom, grounded in a tragic approach to experience, which has philosophical roots as far back as Aristotle. Indeed, Taylor's work is informed by a desire to unite what is best in ancient and modern freedom, expressive fulfillment and radical subjectivity; a desire which he himself attributes to Hegel 127.

Charles Taylor understands freedom as a capacity for signficant action. This formulation takes him beyond what Kant identifies as the moral life, the product of rational self-determination alone, in several ways. Freedom in this formulation is not merely the preserve of the noumenal realm, but is also experienced in the phenomenal realm through deliberation, action or participation. Freedom consists not only in the abstract and autonomous quality of motivation, but in the possibility of engaging in a significant act. An act attains its significance, its meaning, not in a mind, in private, but rather

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127 Charles Taylor, Hegel & Modern Society, (Cambridge: Cambridge University Press, 1979), passim

in and through the public space and the mutual recognition in other that is possible there.

This reflects an understanding of freedom based on a notion of situated subjectivity. Unlike Kant or even Rousseau, who hold that freedom is self-dependance, a definition which in its fullest realization would result in the virtual abolition of all situation, "... what is common to all the varied notions of situated freedom is that they see free activity as grounded in the acceptance of our defining situation"128; or, as Hannah Arendt has forcefully put it, in accepting the human condition.

The realization of freedom requires embodiment. The internal can only find expression, be made manifest, by taking on an external form. Morality and freedom are only realized when they are concretized, made substantial, in the external form of law, or politics, for example. In this way, internal becomes external, the rational becomes the real, and sollen becomes sein.

This is Taylor's, as well as Hegel's, objection to Kantian moral theory which is only applicable to man as an individual, defined in contrast to nature, in endless opposition to what is 129. Kantian moral theory is relegated to the edge of the life that humans experience and share, always an abstraction without

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128 Ibid., p. 160.

129 Taylor, ? p. 178.

content. By contrast, Hegel and Taylor advocate situated subjectivity and embodiment as necessary features of a more meaningful modern freedom.

Such a moral and public understanding of freedom would not allow for so rigid a separation between action and motive, nor between law or politics and morality, nor between the public and the private or the good and the right. A moral freedom would first and foremost be a vision of freedom which is not abstract but rather situated within a context or framework which shapes it, informs it and gives it meaning.

A. THEORETICAL FOUNDATIONS

To understand a theory of moral freedom which is enhanced through limitations, certain theoretical foundations, not intuitively obvious to moderns, must be recognized. First, human freedom must be recognized as existing within a framework or within horizons. Secondly, it is necessary to approach human knowledge as contextual.

1/Freedom within Horizons

An essential distinction between ancient and modern freedom, as well as between Berlin's categories of positive and negative freedom, is the relationship between the understanding of freedom

and its context; whether it is understood within a framework or horizon of experience 130. Whereas the concept of a framework is inevitably problematic for the modern radically free subject, such a horizon remained unquestioned for the ancients. Not surprisingly, one of the reasons that Berlin rejects positive freedom is, at least partially, because he believes it has been used as a justification for forcing multitudes into one such particular framework or ideology.

Thus, whereas modern negative freedom is in some senses based on the elimination of traditional frameworks, ancient and positive freedom share with the Romantic understanding of freedom a recognition of the importance of horizons to a meaningful or moral notion of freedom. Nietzsche's proclamation that 'God is dead', like Ivan's assertion that 'Everything is lawful', is an attempt to wipe away virtually every horizon, any frameworks that might stand in the way of the radical freedom of the human subject.

The consequences of this nihilistic approach to the realization of freedom is perhaps most movingly portrayed in Hegel's disappointed description of the French Revolution and its aftermath. Hegel recognized, in that world-shaking event, both the ultimate realization of freedom and, paradoxically, its utter

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130 Charles Taylor, Sources of the Self: The Making of Modern Identity, (Cambridge: Harvard University Press, 1989), p. 16.

annihilation. The revolution which had been fought for the express purpose of attaining the fullest self-expression, absolute radical subjectivity, the realization of reason, turned into an irrational orgy of self-destruction and Terror.

In Hegel's philosophy, this historical event marks the ultimate triumph and simultaneous self-destruction of a negative freedom which has successfully eliminated its context - virtually all horizons or frameworks. The absolute liberty achieved through this revolution was overtly demonstrated to be in reality completely empty. Since each will was conceived of as sovereign, defined in its subjectivity in opposition to any limitation, no constraints of any kind or degree were justifiable. The revolution turned on itself and, to Hegel's horror, began to devour its own children. Instead of achieving its proclaimed goals of liberty, equality, and fraternity, the Terror that followed in the revolution's wake encouraged the use of force, and engendered subordination, alienation and destruction. The radical freedom of the individual subject without horizons displayed itself to be empty, inherently incapable of creation, or any positive act. The battle of the wills did not result in the anticipated reign of moral law, but rather in the quintessentially amoral triumph of might.

As Hegel's understanding of the French revolution illustrates, a moral notion of freedom is inextricably

intertwined with the existence of some framework, horizons, boundaries or limits which provide the context, the meaningful order, if you will, in which human actions take place. Frameworks allow us to make sense of our lives, providing the "... background, explicit or implicit, for our moral judgements, intuitions, or reactions"131. Frameworks provide humans with an "orientation to the good"132, an "orientation in moral space" which they take as ontologically basic 133, as defining commitments and identifications, and enabling the discrimination of what is good, valuable, and just from what is evil, unjust or objectionable.

In this sense, acting within recognized horizons entails functioning with some sense of qualitative distinction, since the horizon or the framework incorporates and assumes this. Thus, "[t]o think, feel, judge within a framework is to function with a sense that some action, or mode of life, or mode of feeling is incomparably higher than the others ..."134, and should command a special status and respect. Such strongly qualified horizons are constitutive of human agency 135, and thus human freedom, and cannot be dismissed without eliminating the context in which

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131 Ibid., p. 26.

132 Ibid., p. 33.

133 Ibid., p. 29.

134 Ibid., p. 19.

135 Ibid., p. 27.

human freedom can alone be meaningful and hence valuable.

One problem with modern negative freedom has been that its impetus has been in the direction of eliminating all such horizons and frameworks because of the ostensible limits they impose on the realization of human subjectivity. The universalization of claims of freedom, through the idea of equality, has meant that frameworks or horizons which by definition are not shared by all have been the target of a devestating deconstructivist critique. Modern freedom been won at the expense of traditional structures of authority, especially those constituting church and state, but also, more fundamentally, by simply prioritizing "basic reasons"136 above the necessary qualitative distinctions that alone allow us to orient ourselves in moral space by outlining the contours of the good life. Instead, our procedures provide us with a determination of which action we are obliged to undertake in any particular situation, but leave us oblivious as to why this particular process of decision-making should command our unquestioning adherence.

Resurrecting the idea of frameworks and recognizing their profound importance to a moral understanding of human freedom, and the public dimension they necessarily reintroduce to freedom, however, does not logically entail collectively committing

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136 Ibid., p. 79.

ourselves to any one ideology or principle, as in the ancient republics, or the totalitarian states. However, recognizing that it is not possible, nor desireable, to return to the unreflective stance upon which ancient freedom was grounded, and not necessary to force recalcitrant moderns into any particular ideological mode, the vacuity of modern procedural liberalism and its largely negative vision of freedom, illustrates the necessity of nonetheless preserving some horizons for freedom.

2/A Contextual Epistemology

This unifying understanding of moral freedom, embedded as it is in the idea of context, is not surprisingly based on a different epistemology from that which informs Berlin's negative freedom or theories of procedural liberalism. Despite its seemingly unchallenged reign in the modern age, the procedural is not the only possible epistemological account of practical reason. For example, civic humanists do not see practical reason as the application of a procedure, but rather as an inarticulate art or moral sense. Aristotle, the earliest identifiable member of this tradition, understood *phronesis* as being attuned to the order of things, as understanding one's own place in that order, and as knowing how to prioritize the goods or activities in one's life according to the guidelines presented by this discovered order.

Unlike Aristotle's other categories of knowledge, sophia or philosophic wisdom and techne or expertise, phronesis is not governed by the dictates of instrumental rationality. For the phronimos, the means and the end are inextricably interconnected. Thus, "... deliberative praxis ... does not have 'an end other than itself': good action (eupraxia) is itself an end" 137. Similarly, since this knowledge is of the type that belongs to human beings qua human beings and concerns our own actions and our understanding of them, it is qualitiatively different from "... the knowledge we may gain of the objects we scrutinize"138. In contradistinction to the knowledge characteristic of sophia or techne, a phronetic understanding is consequently non-objectifying and non-reifying. It distinguishes between men and things in both intention and results.

Thus, whereas sophia and techne purport to deal with universals, and seek to "... discern universal (and necessary) truths, practical wisdom claims only to have apprehended truth relative to the particular (and contingent) situation of men in contexts of action"139. Any truths deciphered from human experience are established intersubjectively. Virtue is

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137 Ronald Beiner, Political Judgment, (Chicago: University of Chicago Press, 1983), p. 94.

138 Charles Taylor, "Hegel and the Philosophy of Action", as in David Lamb & Lawrence S. Stepelevich (eds.), Hegel's Philosophy of Action, (Atlantic Highlands: The Humanities Press, 1983), p. 184.

139 Beiner, op. cit., p. 92.

practiced by a *phronimos* by approaching duties "... not 'from the outside in' (on the basis of codified principles of right conduct), but 'from the inside out' (on the basis of a tacit understanding of what it is to live virtuously)"140.

The *phronimos*, or man of practical reason, exhibits a well attuned sense or feel for what is right and wrong, but can never make this fully explicit or articulate since such a sense draws on both human capacities of intellect and desire, *orektikos nous*, in making a decision or judgment. In this form of 'adverbial reason', the whole life plan of the *phronimos* is motivationally present to her at any given moment, and informs every decision.

While *phronesis*, unlike Aristotle's other categories of knowledge, *sophia* or *techne*, can only make limited claims to cognitive validity, since it requires justification and is incapable of proof, it is this limited character that makes this understanding of knowledge uniquely suited to the human condition and human freedom; that is, to freedom in the context of plurality. In the realm of human affairs, where demonstrable and univocal proofs are impossible since originative causes inevitably vary, only justification, which is a pluralistic, and multivocal account of the truth, as it is known at that time, is possible. *Phronesis* does not compell agreement through proof, or transcendant, meta-ethical propositions, 'commanding our awed

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140 De Tocqueville, *Democracie*, op. cit., p. 349.

consent' like the dictates of the categorical imperative, but rather seeks to persuade through deliberation and interchange in the hope of moving toward an eventual higher agreement.

B. THEORETICAL DEVELOPMENT: PLURALISM IN CONTEXT

The moral understanding of freedom is predicated to some extent on an understanding of the need for limitations on human agency. The importance of such limits is evident in each of the visions of freedom discussed above. While Berlin seems to fear the unlimited or totalizing possibilities in positive freedom, both Constant and Dostoevsky clearly believe in, and advocate through their discussions of freedom, a necessary role for limitation. For example, Constant recognizes the political importance of limits both on the arbitrary power of man, but also on the power of laws themselves. Similarly, Dostoevsky, through Alyosha as well as the Christ-figure, protests against the idea that "Everything is lawful"; that there are no limits. It is inconceivable to these thinkers that "... le pouvoir de tout faire..."[141] should be accorded to any human being, or worse yet any principle or abstract rule, since in this vision it is acknowledged that even "... les lois doivent avoir leurs limites"[142]. Furthermore, they share an understanding that "Freedom in a positive sense is possible only among equals, and

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141 Idem

142 Constant, op. cit., p. 291.

equality itself is by no means a universally valid principle but, again, applicable only with limitations and even within spatial limits"143.

The clearest explanation of how frameworks can concurrently limit and enhance our freedom, by constraining its negative expression and encouraging its positive one, can be found in Hegel's seminal work on political theory, The Philosophy of Right 144. In that rich treatise, the abstract rights of personality, which have been classified as akin to negative freedoms 145, are overcome or subsumed in the higher stages of moralitat and sittlichkeit.

At the level of morality, the individual rights of personality are cancelled and preserved by a universal right of self-determination mandating a principle of equality. This principle acts as a limitation on abstract right or negative freedom by constraining it to the extent necessary to make possible the equal freedom of all.

Limitation in this dialectical movement, however, is not

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143 Hannah Arendt, On Revolution, (New York: Penguin Books Ltd., 1963), p. 275.

144 G.W.F. Hegel, The Philosophy of Right trans. by T.M. Knox, (Oxford: Oxford University Press, 1952).

145 see for example, Ernest J. Weinrib, "Law as a Kantian Idea of Reason" (1987) 87 Columbia L. Rev 472.

necessarily negative, nor a detriment to freedom. On the contrary, limitation compells the moment of self-distinguishing and so, like pain or want, while explicitly negative, is implicitly positive 146. Since the limitation is of an abstract identity, it determines that identity to an extent, and, thus, concretizes freedom, making it real, determined, throug limitation. However, because this limitation is initially external, proceeding from a relation to others or an other, and not yet internalized in or returning to the self, it appears, at first, to be a constraint.

1/Mediation: Recognition of a Pluralistic Context

The moral will, however, is aware of itself but only as a unit whose moral agency is as yet unmediated by the society in which it lives. In this sense, the moral will remains unaware of the identity of the universal with itself and so is unaware of what it is implicitly 147; an embodiment of the good. Thus, the duty to others that the universalization of Kant's categorical imperative implies appears as an abstract universal; a duty "... to do the right, and ... to strive after welfare, one's own welfare, and welfare in universal terms, the welfare of

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146 Greene, "Cognition as an Act of Freedom", as in Lamb & Stepelevich, op. cit., p. 12.

147 G.W.F. Hegel, The Phenomenology of Spirit, trans. by A.V. Miller, (Oxford: Oxford University Press, 1977), p. 334-335 (Trans note to para. 106.2).

others"148.

The universalization of claims to negative freedom, as Constant himself recognized, freedom from interference with choice transformed to free self-determined or conditioned choice, yields implicit rights to positive freedom. Informing an understanding of choice as absolutely free from interference with the "imperative of otherness" constrains choice externally by the necessary respect for otherness and the plurality of distinct selves that its universalization implies. Not only does an individual have a right to choose and to "... transform existence in light of a project self-consciously grasped"149, but that right is paradoxically threatened by the self since the individual at the same moment must recognize the right of all others to do the same. Recognition of this apparent contradiction compells the realization that

> ... the self-determination of the agent is not by itself the foundation of right. That it cannot be is precisely revealed in the self-contradictory destruction of private ordering that its absolutization entails. The ground of right is rather the objective Good that, in order to be actual, distinguishes within itself a sphere of formal right from which its priority is hidden, as well as a sphere of positive rights wherein the good nascently reasserts itself. Right inheres only in this differentiated whole, not in any of its elements taken singly ...150.

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148 Ibid., p. 89 (para. 134).

149 Alan Brudner, "The Crisis of Private Law", 10 Cardozo Law Review 949 at 971 (in note 160).

150 Alan Brudner, "Professor Weinrib's Coherence", unpublished, p. 1.

Sittlichkeit, the unity of abstract right and morality, is the highest stage where the rights to self-determination are finally truly realized. It is the whole within which abstract right and morality are found as subordinate parts. This concrete universal is, however, not merely a realm where the rights delineated at the first and second stage of Hegel's analysis, the stages of abstract right and Moralität respectively, return unaltered. Rather, this unification of parts into the whole necessarily refashions or remodels its constituent elements.

In Sittlichkeit or Ethical Life, the perceived constraint attributable to equality as distinction at the level of morality, is mediated through society and interiorized in concrete freedom. Limitation becomes explicitly positive and identity is fully determined. The limitation is internalized as the self that was distinguished through the other returns home. However, through this process from identity to distinction or limitation and finally to the recognition of a deeper identity which encompasses distinction, the self which returns is no longer the atomistic, abstract self of Abstract right, but is rather the concrete universal self of Ethical Life. The equality here is the equality of the particular as embodying and realizing the universal. We are all equal and identical as particular, and hence different, embodiments of universal substance.

Abstract right and morality mutually limit each other in a coherent way in Sittlichkeit. It is only when one realizes that the universal will must be mediated by the particular conscientious convictions of the subject, a particular will, that duty becomes internalized, valid according to subjectivity, as well as embodying the Good. Ethical Life is then the social articulation of the Good and knowing this allows us to understand the significance of the rules which define right.

The importance of the contextual epistemology, phronesis, discussed above, to the process of mediation must be highlighted. While the idea of mediation between wills brandishing a universal truth is, even theoretically, problematic, mediation between judgments or opinions is not. Opinion, unlike rational Truth, makes a limited claim to cognitive validity. It is not absolute and can change. Hence, the "... shift from rational truth to opinion implies a shift from man in the singular to men in the plural", an attempt to live with the human reality and not remake it.

In developing the concept of mediation, Hegel moves beyond Kant by showing how the concrete content of duty is deduced from the very idea of freedom itself, and consequently showing why we should be committed to a particular procedure for reasoning, such as the one that Kant himself had only posited. While morality posessess conscientiousness, the form of all genuinely moral

action, "... it lacks a content to correspond with this form. Sittlichkeit is the concrete morality of a rational social order where rational institutions and laws provide the content of conscientious conviction"151.

Mediation is as important a concept to the moral understanding of freedom as limitation is. Moral freedom requires mediation. The mediator acts as a middle term, a buffer, if you will, between extremes. Its presence and role is to ensure that each extreme can recognize the other without self-loss. In this way, the universal, society for example, can recognize the particular, the modern independant individual, because it sees itself as embodied in and indeed in some part constitutive of that individual and their orientation toward the good.

Likewise, the universal requires recognition and confirmation from the particular in order to become the actual end of that particular. The private and the public realms while distinct are interrelated in this way. The private realm can appreciate and even needs the public realm since the latter provides the necessary conditions for the realization of the individual negative freedom of all and the public realm can do so without corruption to its own internal unity because the particular individual wills the universal as the very content of

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151 Hegel, Phenomenology, p. 310 (Trans. note 75).

its own rights. Laws of universal application consequently are not perceived as coercively or externally imposed since particulars or individuals realize that they can only become what they are objectively (ie. to others) through the mediation of the universal. Similarly, the universal presupposes the particular to become what it inherently is. Each pole implicitly contains the other.

2/Differentiation within Unity: Preserving Pluralism

One of Berlin's most notable concerns with positive theories of freedom and one of his prime justifications for rejecting all such theories is that they are identified as involving a total commitment to a single ideal or principle, and are consequently juxtaposed with pluralism. However, there is no necessary reason why a moral, or positive, theory of freedom in the sense discussed here is essentially incompatible with pluralism. In making this hasty and exclusive connection between negative freedom and pluralism, Berlin failed to recognize many moral theories of freedom, such as those discussed above, which provide for differentiation within a greater unity.

It is not theories of moral or positive freedom but rather theories based on unlimited sovereignity, including the unlimited sovereignity of the radical subjective will so prized by negative libertarians, that leads to the totalitarianism Berlin so greatly

feared. Where most of his contemporaries only saw the external differences between them, Hegel had a rare insight into the common denominator underlying absolutism and republicanism. Both these systems of government

> ... by invoking the idea of unlimited sovereignity ... end up with a state as a machine 'with a single spring'. That the one bases its legitimacy on royal absolutism whereas the other sees itself as legitimized by popular sovereignity is immaterial to the common trait shared by both systems: the utter subordination of social activity to the power of the state, the attempt to stifle every and any voluntary form of association 152.

This is the threatening monism which can characterize any regime based on either negative or positive freedom, and any regime which claims to govern in the only correct manner. Consequently, it seems evident that differentiation on a social as well as an individual level within the state through intermediary association and interaction is vital and should not be neglected. However, with such intermediary identification, there will inevitably be a level of conflict which most modern societies, particularly liberal democracies, have consistently worked hard to avoid.

The moral freedom herein described, because of its limited claims and contextual character, on the contrary, can prize such conflict, differentiation or distinguishing within the greater unity of the state. This spirit of <u>agon</u>, contest, or competition, fosters moral freedom by training individuals in the

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152 Shlomo Avineri, <u>Hegel's Theory of the Modern State</u>, (Cambridge: Cambridge University Press, 1972), p. 48.

practice of liberty. As individuals become members of groups, they affirm their more general over their more particular interests and thereby generate forms of social solidarity and a social consciousness. This brings particular to universal, which with the "... simplicity of an archetypal idea can be recognized, like a mirror, only in the manifoldness of appearances"153, whether that be in many other individuals who rise above their particularity or in social associations which more naturally do. According to Hegel, such differentiation "... is the necessary condition for the infinite to be"154.

Whereas totalitarian ideologies press men together spatially and temporally, devouring past and future the agonistic paradigm secures freedom by seeing politics as embracing both "... autonomy and teleology, involving the pursuit of natural ends mediated by the distanced plurality of autonomous bearers of dignity"155. Agonistic theorists, such as those in the civic humanist tradition, glorify differentiation, believing that "... a real unity, such as a polis, must be made up of elements which differ in kind". While our self-esteem may be based on differentiating characteristics, since that is what makes it self-esteem 156, differentiation and recognition of the self does

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153 Wilhelm von Humboldt, ? p. 97.

154 Drucilla Cornell, op. cit., p. 1595.

155 Charles Taylor,"Alternative", op. cit.,

156 Robert Nozick, Anarchy, State & Utopia, p. 213.

not necessarily entail losing sight of the greater social whole.

To Aristotle, for example, moral life and the realization of freedom are intimately interconnected with the activity of deliberation in a community, particularly a polis. The Greek philosopher's vision of the "good life" consisted of the greatest possible development of the moral and intellectual faculties. The two constitutive elements that he considered as necessary for such a life were lexis, or speech, and praxis or action. The importance of lexis or speech is for Aristotle as obvious as it is paramount. The original meaning of the word lex is "intimate connection" or relationship - that is, something which connects two independant things which external circumstances have brought together 157. From these elements, the realm of human affairs, the polis, could arise.

The polis is the ideal location for pursuit of the good life as Aristotle perceives it, since it

> ... offers a more adequate field than its predecessors to moral activity, a more varied set of relations in which the virtues may be exercised ... [and] ... it gives more scope for intellectual activity; a completer division of intellectual labour is possible, and each mind is more fully stimulated by the impact of mind on mind 158.

In the Aristotelian system, all man's higher virtue, such as justice, "... which is his salvation, belongs to the polis; for

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157 Arendt, Revolution, op. cit., p. 137.

158 Sir David Ross, Aristotle, (London: Methuen & Co. Ltd., 1930), p. 239.

justice, which is the determination of what is just, is an ordering of the political association" 159.

Aristotle insightfully realized that it is because of the faculty of language that man alone, in comparison with the rest of the animal world, "... posesses a perception of good and evil, of the just and the unjust, and of other similar qualities; and it is association in [a common perception of] these things which makes ... a polis". Man is thus by nature a creature suited to a bios politikos, and he "... who is unable to live in a society, or who has no need ..., must be either a beast or a god".

Hannah Arendt's vision of the moral life, while highly reminiscent of Aristotle's, differs by design in her emphasis on action or praxis. However, she also clearly values action because of its relationship with speech. Arendt's emphasis on action can, perhaps, be explained to some extent by her overwhelming desire to further the actualization of freedom, as opposed to the largely theoretical freedom which the almost exclusive modern emphasis on the will engenders. As Arendt protests, it "... is as though the I-will immediately paralyzed the I-can, as though the moment men willed freedom, they lost their capacity to be free"160.

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159 Ernest Barker (ed. & trans.), The Politics of Aristotle, (Oxford: Oxford University Press, 1958), p. 111.

160 Arendt, "What is Freedom?", as in Between, op. cit., p. 167.

Recalling the insightful if controversial legacy of the great Florentine theorist Machiavelli, Arendt insists that action, "... not only has the most intimate connection with the public part of the world common to us all, but it is the one activity which constitutes it"161. Stressing with Machiavellian emphasis that "... to be free is to act ...", and recognizing the "demonstrative virtuosity" of the public space 162, Arendt makes freedom as realized through action dependant on the presence of others.

As Aristotle, Arendt recognizes the absolutely vital role of the polis in the realization of freedom, since "... without a politically guaranteed public realm ..." in which to act, "... freedom lacks the worldly space to make its appearance" 163. The public realm is the space that "... relates and separates" 164, the living space of freedom. It is through free action in the public space that man both creates and finds his place in reality and history, by joining with others in collective deeds which win immortal remembrance 165.

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161 Arendt, "Freedom", op. cit., p. 160-161.

162 Hannah Arendt, The Human Condition, (Chicago: Chicago University Press, 1958), p. 198.

163 Ibid., p. 154.

164 Ibid., p. 149.

165 Arendt, Human, op. cit., p. 22-23.

De Tocqueville, on the other hand, prized the element of agon more specifically than either Aristotle or Arendt in the experience of political life. To realize freedom, De Tocqueville insisted that "... la pratique est plus en honneur que la theorie"166.

Montesquieu similarly prized the political realm specifically as the arena where freedom could be realized. Profoundly aware of the inadequacy of the modern conception of freedom as sovereignity and its apolitical nature, he distinguished between philosophical and political liberty. Political freedom, he maintained, in contradistinction to the philosophical freedom of the will,

> ... consists in being able to do what one ought to will. ... For Montesquieu, as for the ancients, it was obvious that an agent could no longer be called free when he lacked the capacity to do -- whereby it is irrelevant whether this failure is caused by exterior or interior circumstances 167.

Aristotle's understanding of agon in deliberation, Arendt's vision of agon in action, as well as the role of agon in political life recognized by both De Tocqueville and Montesquieu, illustrate their shared commitment to differentiation and the prizing of some level of conflict which this commitment in

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166 De Tocqueville, Democracie, op. cit., p. 339.

167 ? p. 328.

practice necessarily entails. Moral theories of freedom can allow for, indeed can require such conflict, for their full realization because they acknowledge that discrimination and identification, differentiation and mediation, are one and the same thing 168, moments in a dialectical relation.

C. REALIZING MORAL FREEDOM THROUGH LIMITATIONS

In order to better understand what seems to modern like a counterintuitive notion that freedom can be enhanced, and indeed be made meaningful through limitation it will perhaps be useful to examine how moral freedom is realized in practice. I have chosen language and law as two common elements of human experience through which to illustrate how such limitation enhances freedom.

1/Language

The individual, or particular, universalizes herself through language and thereby cancels and preserves, or overcomes, the necessary moment of separation which gave modern man subjective insight. Using language necessarily implicates the individual in a grammatical form and structure and a set of meanings conditioned by universal, or at least community-wide, practices. In this way, it can be said that the individual both constitutes

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168 Beiner, op. cit., p. 154.

and is constituted by language.

This understanding of the role and importance of language owes much to the philosophy of Aristotle and the ancient polis that he studied. The Greek philosopher himself noted that it is language that

> ... serves to declare what is advantageous and what is the reverse, and it therefore serves to declare what is just and what is unjust. It is the peculiarity of man, in comparison with the rest of the animal world, that he alone possesses a perception of good and evil, of the just and the unjust, and of other similar qualities; and it is an association in [a common perception of] these which makes a family and a polis 169.

The characteristic feature of the polis for Aristotle was that it was the realm where decisions were made on the basis of words and persuasion and not through the force and violence 170. As Constant noted, outside the polis, the strong did what they could and the weak suffered what they must 171. This force had no place, however, within the confines of the polis, since force is merely power used in violation of its social meaning 172.

In addition to Aristotle, other thinkers, sometimes collectively labelled civic humanists, have also recognized the

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169 Barker, op. cit., p. 6.

170 Arendt, Human, op. cit., p. 26.

171 Arendt, Revolution, op. cit., p. 12 per Thucydides.

172 Michael Walzer, Spheres of Justice: A Defense of Pluralism and Equality, (New York: Basic Books Inc., 1983) p. 282.

intimate relationship between freedom and language. Montesquieu, for example, commented that "... pour jouir de la liberté, il faut que chacun puisse dire ce qu'il pense"173. This ability to speak one's mind freely is further connected in the literature with a collective ability to create meaning. It has been recognized that the expression of many opinions, this "... inexhaustible richness of human discourse ... is infinitely more significant and meaningful than any one Truth could ever be" 174. Indeed, it seems that whatever a person thinks, experiences, or does, "... can make sense only to the extent that it can be spoken about" 175.

However, interpretation requires not only an object or field of objects about which one can deliberate, a particular text, but also distinguishes between the sense, coherence, or intelligibility of that object and its embodiment in a particular field of carriers or signifiers 176. Meaning admits of more than one expression 177 which must be by and for a particular subject 178. In trying to make ourselves understood, however, we "...

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173 Louis de Secondat, Baron de Montesquieu, De l'Esprit des Lois, (Paris: Flammarion, 1979), p. 479.

174 Arendt, "Truth and Politics", Between, op. cit., p. 234.

175 Arendt, Human, op. cit., p. 1.

176 Charles Taylor, Philosophy, op. cit., p. 15.

177 Ibid. at 16.

178 Ibid. at 17.

cannot escape an ultimate appeal to a common understanding of the expressions, of the 'language'"179 and its 'meaning'.

Clearly, something more than mere convergence is required for common meanings. It is necessary that a shared value also

> ... be part of the common world, that this sharing be shared. But we could also say that common meanings are quite other than consensus, for they can subsist with a high degree of cleavage; this is what happens when a common meaning comes to be lived and understood differently by different groups in society 180.

Thus, it is important to note that in addition to merely expressing ourselves we also appeal in that expression to a universal or community forum, a public space. We do this seeking the recognition and indeed the judgment of others in accordance with some shared community standards 181. Acknowledging the irreducible character of this shared or intersubjective dimension of human experience is a "... crucial step out of [the] atomism"182, formalism and dualism, that inform Kant's philosophy and the negative understanding of freedom he advocates. Aristotle's understanding of language illustrates the interdependance of a shared language, shared meanings, shared institutions and practices, and the shared laws that govern society.

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179 Idem

180 Taylor, "Hegel" in Lamb & Stepelevich, op. cit., p. 39.

181 Hegel, Phenomenology, p. 663.

182 Charles Taylor, "Irreducibly Social Goods", unpublished, p. 7.

2/Law

Law, as language, provides an otherwise unmediated account of negative liberty with a context, thereby generating and embodying a moral understanding of freedom. Similarly, law is also informed by a recognition of the irreducibility of the intersubjective dimension of human experience. As an expressive embodiment or manifestation of human inter-subjectivity, law

> ... like speech and action has the two fold character of equality and distinction. If men were not equal, they could neither understand each other and those who came before them nor plan for the future and foresee the needs of those who will come after them. If men were not distinct, each human being distinguished from any other who is, was, or will ever be, they would need neither speech nor action to make themselves understood, signs and sounds to communicate immediate identical needs and wants would be enough 133.

The larger order embodies and recognizes both equality and distinction. It respects the abstract identity of persons but also recognizes their difference. Similarly, while Hegel, one theorist of moral and public freedom, preserves the necessary appearance of abstract right and morality as separate moments within the totality of Ethical life, which inform its structure and the law it is expressed through, he never loses sight of the whole and the insight that justice entails a sensitivity to both the universal and particular sides of the human condition.

As Hannah Arendt has perspicaciously noted, our

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133 Arendt, Human, op. cit., p. 175 176.

understanding of justice differs from our understanding of equality and our desire to treats like alike in its respect for the particular and its aversion to aggregation. Referring to a notorious perpetrator of injustice, who was discussed earlier, she remarked that the

> ... sin of the Grand Inquisitor was that he, like Robespierre, was 'attracted toward les hommes faibles', not only because such attraction was indistinguishable from lust for power, but also because he had depersonalized the sufferers, lumped them together into an aggregate.... To Dostoevsky, the sign of Jesus' divinity clearly was his ability to have compassion with all men in their singularity, that is, without lumping them together into some such entity as one suffering mankind 184.

Law, a characteristic expression of this paradoxical plurality of unique beings 185, embodies both the universal element of equality or identity, that, to some extent, characterizes ancient freedom, and the individual element of particularity and distinction that characterizes modern subjectivity.

Hegel's critique of the insatiable greed of subjectivity and its manifestation in the modern state, through social contract theory or an emphasis on opinion and agreement or consent, illustrates just how different his own understanding of law and its role in society is from the formalist or Kantian account. He complains in the preface to the Philosophy of Right that

> ... what is right these principles locate in subjective aims and opinions, in subjective feeling and particular

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184 Arendt, Revolution, op. cit., p. 85.

185 Arendt, Human, op. cit., p. 176.

> conviction, and from them follows the ruin of the inner ethical life and a good conscience, of love of right dealing between private persons, no less than the ruin of public order and the law of the land. 186

For Hegel, mere agreement and consent, the universal form of willing, mere intentionality, was not sufficient as a basis for law, since from this subjective will by itself followed the ruin of the inner ethical life, good conscience, a love of right dealing between private persons, as well as the ruin of public order and the laws of a community. For Hegel, unlike for Kant then, right is not merely universal form but also the universal content, these particular manifestations of the Objective Good. Hegel recognized that mere agreement and consent was empty and thus could endorse or legitimize anything, however insane or evil 187, including the horrific crimes of a Robespierre.

Hegel overcame the contradiction between autonomy of the subject as an independant capacity for choice and the necessary dependance of that subject on an external content or substance in the act of choosing by having the subject make that content his own by embracing it. The dichotomy between internal and external, self and other, while retained as a moment in the Hegelian whole, is overcome. The individual universalizes herself by accepting the legal system, letting it constitute her, as well as by creating it through legal acts, so that she

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186 Hegel, Phenomenology, op. cit., at 9 (preface).

187 Ibid., p. 157 (para. 258).

constitutes it. In participating in the legal system, an individual fulfills a role which only has meaning within this society. The individual is necessarily and profoundly implicated in the universal through the mediation of this trans-subjective and thus uniquely human normative practice.

Since right is inwardly informed and constituted by the Good, the laws, in this view, are "... the common repository of the citizens' dignity"[138], the objective Good in which the right is grounded. The implications of Hegel's understanding of right as a differentiated whole which embodies both the right, as it is conventionally conceived, and the good are profound. The will, as it is enforced through the law, is a part of a larger social whole and is regulated and determined by the nature of the order of which it is a part.

Law, in this vision, is not something which is opposed to or hermetically sealed off from morality. It is not necessarily coercive in spite of its apparent externality in relation to the individual human agent. Law is rather necessarily external to any particular agent because it is the phenomenal embodiment, expression or manifestation of the highest norms of the community. However, Law is not external in any coercive sense. It has been transformed, at least theoretically, in democratic

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138 Charles Taylor, "Hegel's Ambivalent Legacy for Modern Liberalism", (1989) 10 Cardozo Law Review 857 at 861.

societies, from an external stage in which it governs human actions, requiring an unquestioning obedience to regulations which are neither known nor understood, to an internalized or immanentized law which limits human agency according to the confines of a particular situation which citizens of a community recognize and accept as orienting their choices. Law becomes direction by a meaningful situation, and is no longer an externally imposed, if rational, order.

Ethical Life takes account of the external implications of self-determination for actual interaction and thereby modifies morality and the rights of self-determination just as they previously modified abstract right. Hegel, thus,

> ... revises abstract right at the stage of ethical life by incorporating into it procedural rights of insight (for example, the right to the publicity of laws and of court proceedings, the right to full process and to trial by jury) generated at the level of morality, rights by which corrective justice validates itself in the participating knowledge and assent of the parties. 189

Thus, Abstract right differs significantly from private law as it is realized in Hegel's civil society at the stage of Ethical Life, and the difference stems from modifications to right wrought by the process of realization. The true essence of the notion of right which permeates our understanding of law then is not "... an abstract universal unmediated by reality ... but the universal that contains mediation within it"190. At the level of

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189 Brudner, "Coherence", op. cit., p. 7.

190 Hegel, Phenomenology, op. cit., p. 8 in note 13.

Sittlichkeit, what is important is that "I will this society which is nothing but my greater self". The subjective will actualized in morality is now only realized to the extent that it accords with the objective Good.

Men's actions are not governed by external laws following patterns not adequately conceived or willed by anyone, apparent limitations, but rather are governed by the laws derived from their situation, a situation which they at least partially understand and which to some extent orients their choices 191. In this way, the subject is no longer separated and distinct from the objects of its will, but at least partially constitutes them and is constituted by them. Determination or realization derives not from laws externally imposed but from a meaningful situation of which the moral agent is both cause and constitutive. The laws are not merely ends or results of action but rather products of making 192. The Universal or

> ... l'esprit n'est pas seulement la substance des individus, il est encore leur oeuvre, c'est pourquoi la conscience de singuliere actualise la substance en faisant son oeuvre, et inversement la substance, qui n'est d'abord qu'un en soi, l'esprit universel abstrait, devient effective et vivante dans l'action ethique. Ainsi se realise 'l'unite du Soi et de la substance'"193.

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191 Taylor, Modern Society, op. cit., p. 149.

192 Arendt, Human, op. cit., p. 194-195.

193 Jean Hippolyte, Genese et Structure de la Phenomenologie de l'Esprit de Hegel, (Paris: Flammarion, 1946), p. 333.

Similarly, the laws themselves are embedded in a context. It is this context, ethical life, this background set of shared meanings, which constitutes and is constituted by individual assertions of right, that gives law its legitimacy. This context, our often unarticulated notions of justice, provides laws with normative significance in the sense of explaining why we, as citizens, should be committed to them. In this way, Hegel's understanding of the normative significance of law does not merely depend on its intelligibility and internal coherence. Although this provides the law with a certain internalist type of normative significance, this significance is meaningless unless it is grounded in and informed by a larger order which justifies it. Hegel's understanding of the normative significance of law thus overcomes the inadequate purely internalist account "... of a formalism that, while preserving private law in its account, never explains why we should be committed to it"[194].

The idea of property for Hegel, for example, in which nature is appropriated to an individual man but is preserved and recognized as such by others, illustrates the essentially trans-subjective character of law. The importance of recognition by others demonstrates its character as not an individual but rather a social attribute and an unconscious product. Property's essential character is social. There is no contradiction in the idea that property does not exist in and of itself. This is why

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194 Brudner, "Crisis", op. cit., p. 954.

Hegel insists that the right of property must be more concretely grounded [195] and he finds more solid grounding in the intersubjective recognition accorded to it.

Similarly, but even more explicitly, contract is grounded on the notion of intersubjectivity. A contract is the embodiment of the common will which is characteristic of morality. In it, two individuals seek to realize outwardly an inner purpose which is shared. In this sense, the particularity of the individual will is transcended in contract by the creation of a common will. In the process of contracting, the coming home of self mediated through an other and the development of a common will, our freedom is the realization of the inner purposes of a self as member of a whole. However, this freedom is radically different and almost unrecognizable in the understanding of autonomy a negative libertarian or Kantian insist that contract requires. The characteristic feature of that autonomy is its independance from determination. But such autonomy can by definition never be realized since actualization entails determination. Although Kant may have believed in the primacy of unconditioned thinking, Hegel manifestly did not accord abstract thought such primacy. While the latter thought of this moment of freedom as radical autonomy as a conceptually prior one, he also realized that it was inadequate and should be overcome in the later stages of

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195 Charles Taylor, Hegel, (Cambridge: Cambridge University Press, 1975), p. 371.

right.

Right, then, is not merely the abstract essence or intelligibility of posession or exchange, but rather their existence in regimes of property and contract, and actual physical possession and interaction through exchange. These regimes of property and contract inform and are informed by a mode of equality that is more developed than the abstract equality, or identity, characteristic of personality. This understanding of equality contains distinction within a greater whole. This movement, the "... self-conscious recognition of the 'we that is I and the I that is we', the coming home to one self through the other, is not only a description, but also a normative practice embodied in the institutions of right themselves" 106.

As a society, a larger whole, we share in this sharing by enforcing this common will. Although only the parties to the transaction are realizing inner purposes in this exchange, our collective legal system both constitutes and is constituted by the expression and realization of this particular shared purpose. As a society, we are thus concerned with ensuring that this particular expression of a common will is consistent with the larger order in which the rights it seeks to enforce are grounded. Thus, while Hegel justifies and interprets property

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106 Cornell, op. cit., p. 1573.

and contract as abstract forms, these forms must be consistent with the actualization of relations of mutual recognition or reciprocal symmetry 197.

Sittlichkeit has been called a "... common allegiance to the particular"198. In focussing on the exemplary validity of the particular, as one unique manifestation of the universal, it enshrines the most comprehensive notion of the will as the integration of universal and particular. This particular will is thus situated in or mediated by the universal context. Unconscionability doctrine is one mode in which contract law expresses this shared respect for the particular. By declaring otherwise legal acts "unconscionable", it recognizes that no universal rule will be valid for all situations, and calls on a judge to not merely subsume the particular circumstances under the general principle, but rather to find in those circumstances the normative significance of individual acts. By affirming the particular, judges call upon individual agents to justify their conduct and thus require them to participate in and be responsible to the normative practices embedded in our legal institutions.

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197 Cornell, op. cit., p. 1593.

198 Taylor, "Ambivalent", op. cit., at 864.

V/CONCLUSION

Although the above discussion has exposed the reader to many theorists and even more theories of freedom, hopefully, it has succeeded in illustrating both the inadequacy of negative liberty and the model of people and society which has developed out of it and the possibility of recovering another rich understanding of freedom which will not expose liberal democracies to the menace of totalitarianism. The distasteful choice between a denuded concept of freedom as freedom from and totalitarianism that Berlin's **"Two Concepts of Liberty"** seemed to impose on liberal democratic thinkers was a false one. Although an alarming consensus has developed around negative liberty and its model, a consensus recently claiming validation because of the "victory", or at least the survival, of the liberal system over the communist one, the false dichotomy presented by Berlin's essay must no longer be accepted as defining the contours of the discourse around the all-important concept of freedom.

Negative liberty and the ideas that have clustered around its banner provide a decidedly unsatisfactory account of human freedom. Although Dostoevsky's **"Legend of the Grand Inquisitor"** demonstrates the emptiness of a freedom divorced from horizons or frameworks, negative liberty and its model purports to provide a neutral procedure, independant of and without making a judgment on any context, that distinguishes right from wrong. In

addition, negative libertarians reject one particularly important moral horizon, the political or public realm, which Benjamin Constant and De Tocqueville, among others, clearly prized as a necessary space for the realization of freedom. In doing so, Berlin and his followers deny the importance of and the justification for the widely-recognized and quintessentially liberal good of political self-determination. Furthermore, negative liberty and its model is founded on a rigid and untenable separation between law or politics and morality. Relegating the latter to the private realm and allowing for the realization of freedom only in that confined space, negative libertarians have obfuscated and distorted the inextricable interrelationship between morality, law and politics, and freedom on which liberal democratic societies were originally based.

Negative liberty and the model of people and society which has grown up around it is not the only non-totalitarian account of freedom. Dostoevsky provides an account of a moral freedom which, although similar in some ways to Berlin's positive liberty, cannot be said to lead to totalitarianism. Constant recognizes the value of political freedom even as a necessary feature of modern freedom, as do De Tocqueville, Montesquieu and Arendt, without falling into the trap of totalitarianism. Hegel, whose theories are made more accessible in the modern account provided by Charles Taylor, overcomes the unnatural bifurcation between law or politics and morality, and does not prescribe a

totalitarian system either.

I have occasionally labelled these theorists, along with others, throughout this paper as civic humanists. For my purposes, the important theoretical tie that binds their work, and also prevents their association with totalitarianism, Berlin's greatest fear, is what I have referred to as "limitations" on freedom. Accepting limitations on human freedom means accepting our pluralistic context as a fact of existence in human society. Mediation and differentiation within a higher unity are ways in which limitations are recognized and made acceptable within a democratic and pluralistic society. Language and law provide examples of how such limited moral freedom is realized in practice.

While the idea of limitations is most evident and most fully developed in the complicated system described in Hegel's Philosophy of Right, and this is why I have focussed on that work, it is also clearly important to the other theorists discussed herein. When Dostoevsky's Alyosha objects to Ivan's statement that "Everything is lawful", he objects to a vision of human reason that knows no limits. Likewise, Constant's refusal to prize modern over ancient freedom, and his attempt to preserve what is valuable in both, an attempt also evident in Hegel's and Taylor's works, requires a recognition that the individual freedom of a man must be limited by the freedom all men.

Rather than requiring a choice between individual and society as Berlin's dichotomy seemingly does, civic humanists see individual and community as intimately interrelated and mutually dependant. Recognizing that it a "... natural impulse ..." for humans "... to desire to live a social life"199, this tradition of thought has a more complex understanding of freedom involving "... an intersubjective process of reciprocal recognition ..."200, and not merely freedom from. Among other common features which define civic humanism as a tradition in its own right then is the shared understanding of freedom becoming real or actual only within the context of a community. While certain elements ofthis understanding of freedom can and have been manifest in non-modern or subjectivity-denying states, as in the ancient polis, this is not a necessary by-product of finding freedom within community. Furthermore, since the state and the individual are not radically bifurcated or juxtaposed in this tradition as they inevitably are in Berlin's bipartite classification, mediation between these realms is possible and may just provide the space and the institutions in which a more meaningful notion of freedom can be realized and exercised.

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199 Ernest Barker, The Politics of Aristotle, (Oxford: Oxford University Press, 1958), p. 111.

200 R.D. Winfield, "Freedom as Interaction" as in David Lamb & Lawrence S. Stepelevich (eds.), Hegel's Philosophy of Action, (Atlantic Highlands: The Humanities Inc. Press, 1983), p. 184.