chapter iii.: the meaning of civil liberty. -
Francis Lieber, On Civil Liberty and
Self-Government [1853]


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chapter iii.

THE MEANING OF CIVIL LIBERTY.

LIBERTY, in its absolute sense, means the faculty of willing and the power of doing what has been willed, without influence from any other source, or from without. It means self-determination; unrestrainedness of action.

In this absolute meaning, there is but one free being, because there is but
one being whose will is absolutely independent of any influence but that which he wills himself, and whose power is adequate to his absolute will—who is almighty. Liberty, self-determination, unrestrainedness of action, ascribed to any other being, or applied to any other sphere of action, has necessarily a relative and limited, therefore an approximative sense only. With this modification, however, we may apply the idea of freedom to all spheres of action and reflection.\(^1\)

If we apply the idea of self-determination to the sphere of politics, or to the state, and the relations which subsist between it and the individual, and between different states, we must remember that the following points are necessarily involved in the comprehensive idea of the state:—

The state is a society, or union of men—a sovereign society and a society of human beings, with an indelible character of individuality. The state is, moreover, an institution which acts through government, a contrivance which holds the power of the whole, opposite to the individual. Since the state then implies a society which acknowledges no superior, the idea of self-determination applied to it means that, as a unit and opposite to other states, it be independent, not dictated to by foreign governments, nor dependent upon them any more than itself has freely assented to be, by treaty and upon the principles of common justice and morality, and that it be allowed to rule itself, or that it have what the Greeks chiefly meant by the word autonomy.\(^1\) The term state, at the same time, means a society of men, that is, of beings with individual destinies and responsibilities from which arise individual rights,\(^1\) that show themselves the clearer and become more important, as man advances in political civilization. Since, then, he is obliged and destined to live in society, it is necessary to prevent these rights from being encroached upon by his associates. Since, however, not only the individual rights of man become more distinctly developed with advancing civilization, but also his social character and all mutual dependence, this necessity of protecting each individual in his most important rights, or, which is the same, of checking each from interfering with each, becomes more important with every progress he makes.

Lastly, the idea of the state involving the idea of government, that is, of a certain contrivance with coercing power superior to the power of the individual, the idea of self-determination necessarily implies protection of the individual against encroaching power of the government, or checks against government interference. And again, society as a unit having its objects, ends, and duties, liberty includes a proper protection of government, as well as an efficient contrivance to coerce it to carry out the views of society and to obtain its objects.

We come thus to the conclusion that liberty, applied to political man, practically means, in the main, protection or checks against undue interference, whether this be from individuals, from masses, or from
government. The highest amount of liberty comes to signify the safest guarantees of undisturbed legitimate action, and the most efficient checks against undue interference. Men, however, do not occupy themselves with that which is unnecessary. Breathing is unquestionably a right of each individual, proved by his existence; but, since no power has yet interfered with the undoubted right of respiration, no one has ever thought it necessary to guarantee this elementary right. We advance then a step farther in practically considering civil liberty, and find that it chiefly consists in guarantees (and corresponding checks) of those rights which experience has proved to be most exposed to interference, and which men hold dearest and most important.

This latter consideration adds a new element. Freemen protect their most important rights, or those rights and those attributes of self-determination, which they hold to be most essential to their idea of humanity; and as this very idea of humanity comprehends partly some ideas common to men of all ages, when once conscious of their humanity, and partly other ideas, which differ according to the view of humanity itself which may prevail at different periods, we shall find, in examining the great subject of civil freedom, that there are certain permanent principles met with wherever we discover any aspiration to liberty; and that, on the other hand, it is rational to speak of ancient, medieval, or modern liberty, of Greek or Roman, Anglican and Gallican, Pagan and Christian, American and English liberty. Certain tribes or nations, moreover, may actually aim at the same objects of liberty, but may have been led, in the course of their history, and according to the variety of circumstances produced in its long course, to different means to obtain similar ends. So that this fact, likewise, would evolve different systems of civil liberty, either necessarily or only incidentally so. Politics are like architecture, which is determined by the objects the builder has in view, the materials at his disposal, and the desire he feels of manifesting and revealing ideas and aspirations in the material before him. Civil liberty is the idea of liberty in connection with politics, and must necessarily partake of the character of, or intertwine itself with, the whole system of politics of a given nation.

This view, however correct, has, nevertheless, misled many nations. It is true, that the system of politics must adapt itself to the materials and destinies of a nation; but this very truth is frequently perverted by rulers who wish to withhold liberty from the people, and do it on the plea that the destiny of the nation is conquest, or concentrated action in different spheres of civilization, with which liberty would interfere. In the same manner are, sometimes, whole portions of a people, or even large majorities, misled. They seem to think that there is a fate written somewhere beyond the nation itself, and independent of its own morality, to which everything, even justice and liberty, must be sacrificed. It is at least a very large portion of the French that thus believes the highest destiny of France to consist in ruling as the first power in Europe, and
who openly say that everything must bend to this great destiny. So are many among us, who seem to believe that the highest destiny of the United States consists in the extension of her territory—a task in which, at best, we can only be imitators, while, on the contrary, our destiny is one of its own, and of a substantive character.

At the present stage of our inquiry, however, we have not time to occupy ourselves with these aberrations.

All that is necessary to vindicate at present is, that it is sound and logical to speak of eternal principles of liberty, and at the same time of ancient and modern liberty, and that there may be, and often must be, various systems of civil liberty, though they need not, on that account, differ as to the intensity of liberty which they guarantee.

That Civil Liberty, or simply Liberty, as it is often called, naturally comes to signify certain measures, institutions, guarantees or forms of government, by which people secure or hope to secure liberty, or an unimpeded action in those civil matters, or those spheres of activity which they hold most important, appears even from ancient writers. When Aristotle, in his work on politics, speaks of liberty, he means certain peculiar forms of government, and he uses these as tests, to decide whether liberty does or does not exist in a polity which he contemplates at the time. In the Latin language Libertas came to signify what we call republic, or a non-regal government. Respublica did not necessarily mean the same as our word Republic, as our term Commonwealth may mean a republic—a commonwealth man meant a republican in the English revolution— but it does not necessarily do so. When we find in Quintilian the expression, Asserere libertatem reipublica, we clearly see that respublica does not necessarily mean republic, but only when the commonwealth, the system of public affairs, was what we now call a republic. Since this, however, actually was the case during the best times of Roman history, it was natural that respublica received the meaning of our word republic in most cases.

The term liberty had the same meaning in the middle ages, wherever popular governments supplanted monarchical, often where they superseded aristocratic polities. Liberty and republic became in these cases synonymous.

[1] It will be observed that the terms Liberty and Freedom are used here as synonyms. Originally they meant the same. The German Freheit (literally Freehood) is still the term for our Liberty and Freedom; but, as it happened in so many cases in our language where a Saxon and Latin term existed for the same idea, each acquired in the course of time a different shade of the original meaning, either permanently so, or at least under certain circumstances. Liberty and Freedom are still used in many cases as synonymous. We speak of the freedom as well as the liberty of human agency. It cannot be otherwise, since we have but one adjective, namely
Free, although we have two nouns. When these are used as distinctive terms, freedom means the general, liberty the specific. We say, the slave was restored to freedom; and we speak of the liberty of the press, of civil liberty. Still, no orator or poet would hesitate to say freedom of the press, if rhetorically or metrically it should suit better. As in almost all cases in which we have a Saxon and a Latin term for the same main idea, so in this, the first, because the older and original term, has a fuller, more compact, and more positive meaning; the latter a more pointed, abstract, or scientific sense. This appears still more in the verbs, to free and to liberate. The German language has but one word for our Freedom and Liberty, namely Freiheit; and Freithum (literally freedom) means, in some portions of Germany, an estate of a Freiherr (baron). In Dutch, the word Vryheid (literally freehood) is freedom, liberty; while Vrydom (literally freedom) means a privilege, an exemption from buidens. This shows still more that these words meant originally the same.

[The greater part of this note, relating to the derivation of several words signifying free, and a note a little farther on, relating to the connection between frei and friede (free and peace in German), have been omitted, since much of what is said is not sanctioned by etymologists of the highest repute. Dr. Lieber derives the Greek ἐλεύθερος from the root ελύθ, come, or go—a derivation which J. Grimm and G. Curtius accept, while Benfey, Kirchhoff, and Corsen prefer to connect the Greek word with the Latin liber. Liber, again, seems to have nothing in common with the German leib, body, as Dr. Lieber supposed, but is connected by G. Curtius with Λιφ in λιπτομαι, a rare Greek word denoting to long for. There must be a common root, as Grimm thinks, in liber, libet, l bet, and in German lieben, our love. Frei, free, does not seem to belong to the same root with friede, peace. Comp. Grimm's Deutsch. Wörterb. Whatever the derivation of this word may be, we may well suppose, as Grimm suggests, that the notion of peace is derived from the earlier one of fence, defense, protection. Comp. einfrieden, to fence or hedge in.]

[1.] Autonomeia is literally translated Self-government, and undoubtedly suggested the English word to our early divines. Donaldson, in his Greek Dictionary gives Self-government as the English equivalent for the Greek Autonomy, but, as it has been stated above, it meant in reality independence of other states, a non-colonial, non-provincial state of things. I beg the reader to remember this fact, for it is significant that the term autonomy retained with the Greeks this meaning, facing as it were foreign states, and that Self-government, the same word, has acquired with ourselves, chiefly, or exclusively, a domestic meaning, facing the relations in which the individual and home institutions stand to the state which comprehends them.

[1.] The fact that man is in his very essence at once a social being and an individual, that the two poles of sociality and individualism must forever determine his political being, and that he cannot give up either the one or
the other, with the many relations flowing from this fundamental point, form the main subject of the first volume of my Political Ethics, to which I would refer the reader.

[1.] The republic—if, indeed, we can say that an actual and bona fide republic ever existed in England—was called the State, in contradistinction to the regal government. During the Restoration under Charles II., men would say, “In the times of the State,” meaning the interval between the death of the first Charles and the resumption of government by the second. The term State acquired first this peculiar meaning under the Presbyterian government.

[2.] It is in a similar sense that Freiligrath, a modern German poet, begins one of his most fervent songs with the line, Die Freiheit ist die Republik; that is, Freedom is the Republic. On the other hand, I find that Prussia, at the time of Frederic the Great, was called, on a few occasions, the Republic, manifestly without any reference to the form of government, and meaning simply the common or public weal or concern.