

## A DEFENSE AGAINST ATTACKS ON NEGATIVE LIBERTY

STUART T. DOYLE

**ABSTRACT:** Isaiah Berlin made the distinction between negative liberty and positive liberty. Since then, prominent contemporary philosophers including Charles Taylor and Martha Nussbaum have declared negative liberty insufficient or incoherent. This is a critique of those declarations, which have been unduly accepted to a large extent. The critique primarily focuses on Taylor, who made the most direct and complete argument against negative liberty. His argument is shown to be ineffective. And further, his conception of positive liberty is shown to be incoherent.

Many conceptions of freedom have been formulated over the centuries. As Isaiah Berlin (1969, 4) pointed out, there are two basic contrasting categories into which most of these conceptions may be seen to fit: theories of negative liberty and theories of positive liberty. Negative theories define freedom exclusively in terms of the independence of the individual from interference by others. Lockean theories are prominent examples. In contrast, the positive theories contend that freedom resides at least in part in collective control over common life toward some positive goal. Theories descending from Rousseau exemplify this category.

In the decades since negative and positive liberty were clearly delineated, the most lauded contemporary philosophers, such as Charles Taylor and Martha Nussbaum, have categorically denounced all concepts of negative liberty. In an essay titled, “What’s Wrong with Negative Liberty,” Taylor argues that a negative definition

---

Stuart Doyle (stuartdoyle1@gmail.com) is in the US Marine Corps and holds a M.S. degree in criminology from the University of Pennsylvania.



of freedom cannot be adequate and that we should understand freedom as a positive ability to fulfil our purposes. Nussbaum has not dedicated an entire writing to the topic per se, but in her book *Creating Capabilities* she declares the idea of negative liberty to be “incoherent” (Nussbaum 2011, 65). Though she does not form an argument in support of this claim, I bring it up only to emphasize a blind spot needing attention. Denouncing negative liberty seems to have become so fashionable that when it is done in a work of philosophy apparently no substantiating argument is needed. This is a strange state of affairs considering that the best arguments which have been made against negative liberty are severely defective. I see Taylor’s essay as the most prominent example. So, my goal here is to show that Taylor’s conception of freedom is incoherent. After we briefly observe the conspicuous absence of Nussbaum’s argument, I will address Taylor’s argument, which seems to have made philosophers comfortable in dismissing negative liberty out of hand.

Nussbaum writes:

Fundamental rights are only words unless and until they are made real by government action. The very idea of “negative liberty,” often heard in this connection, is an incoherent idea: all liberties are positive, meaning liberties *to do or to be* something; and all require the inhibition of interference by others. This is a point that must be emphasized particularly in the United States, where people sometimes imagine that government does its job best when it is inactive. (Nussbaum 2011, 65)

After this claim about negative liberty being incoherent, the passage reads with the cadence of justification, as if the next clause gave reason to believe the claim, but it does not. It merely endorses the antithesis: positive liberty. We are supposed to just see the incoherence of negative liberty once it has been gestured at. But counterexamples come too easily for that. From the Bill of Rights: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated... Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted” (U.S. Const., amend. IV and VIII). It would take significant rhetorical writhing to rephrase these as positive freedoms. Rather than freedom from search and seizure, would it be freedom to privacy? How does one “do” privacy except by simply *not* being searched? Maybe one could construct a satisfactory positive reformulation of these freedoms, but it would certainly be ugly and inelegant compared to the easy coherence of the negative formulations.

So a quick bit of examination shows that on a topic of monumental importance, Nussbaum has made a strong assertion, which is not self-evident and is not justified by any subsequent reasoning. But, to my knowledge, this has been widely accepted as exemplary work in philosophy. Maybe certain arguments against negative liberty have silently become consensus, so that we can all now just assume that negative liberty is wrong. But such a consensus would be premature. The arguments against negative liberty have not been so effective. I will now show that the vanguard essay attacking negative liberty, Taylor's "What's Wrong with Negative Liberty," fails completely.

Taylor's argument is as follows. We care more about some freedoms than we do about other freedoms. For example, we care about freedom of religion more than we care about the freedom we lose at a traffic light. And there must be some reason that different freedoms have different importance. According to Taylor, freedoms get their differing importance from the differing importance of the purposes they serve (Taylor 1979, 217). Thus purpose is said to be inexorably tied to freedom. And purposes are positive things, which we can fail to fulfill, even if the government does not set up any obstacles that would hold us back from their fulfillment. Taylor writes of how internal obstacles such as our own baser desires or fears can prevent us from fulfilling our important purposes (*ibid.*, 215). Since those purposes are supposedly necessarily tied to freedom itself, our own baser desires and fears make us unfree when they foil the fulfilment of our important purposes. And so, by Taylor's reckoning, freedom necessarily entails positively overcoming our own baser desires and fears and fulfilling our important positive purposes. Like Nussbaum's assertion, Taylor's claim is not merely that some positive liberties should exist, but that no negative liberty can ever coherently exist. Taylor opens the possibility that a government which is supposed to guarantee freedom may be required to structure society in a certain way that would enable us to positively fulfill our purposes. But he leaves this application an open question.

Taylor's argument goes wrong in its crude taxonomy of freedoms. He contrasts the nature of the freedom we lose at traffic lights to the nature of freedom of religion (Taylor 1979, 218). He means to show that the two kinds of freedom differ in quality, nor merely in quantity. He needs to establish the notion that there are differing inherent levels of importance in freedoms in order to establish the notion that freedoms vary in qualitative kind, which he needs in order to argue that the

different freedoms serve different positive purposes. Some freedoms do seem more important than others. But in order to establish difference in quality, Taylor must rule out difference in quantity as the relevant variable. To do this, he compares crude counts of freedom. He says that many people only practice their religion once per week, while many people lose freedom at red lights multiple times per day. Thus by Taylor's count, traffic lights are a quantitatively greater loss of freedom than the loss of religious freedom. But since our care is greater for loss of religious freedom, the difference must be qualitative, not quantitative, by Taylor's reasoning.

This crude accounting fails to notice that freedom of religion is a collection of many freedoms. Religion can be totalizing. Imagine a country which required us all to be Amish. This would entail loss of freedom of transportation, communication, hairstyle, clothing style, profession, education, and artistic expression, to name a few. All of these freedoms would be lost at all hours of every day. Most religions even require that certain types of thought be practiced or avoided at all times. Likewise, a mirrored loss of many freedoms is suffered by those who very much wish to be Amish where it is prohibited. By looking just a little more closely at the rough bucket of classification called "religion," Taylor's analysis starts to crumble; loss of religious freedom entails a much greater sheer quantity of lost freedom than does the imposition of multiple daily stoplights. Even the agnostic or the casual practitioner who attends worship once per week or less fears the loss of religious freedom because of the potential for totalization. Freedom of religion has at times been thought not so important; communist revolutions sometimes preceded with a popular lack of concern for freedom of religion. From the later stages of such cases, many of us have gained an appreciation of the potential for totalization when freedom of religion is lost. These days, many of our judgments are affected by fears of potential totalization, as they should be. Freedom of religion always includes a huge quantity of freedoms for some people, and its loss always includes the potential loss of a huge quantity of freedoms for everyone.

So, to make a more valid comparison between freedom of religion and traffic light freedom we should imagine a quantitatively totalizing traffic light. Suppose you had to wait for a red light to change before you took each step, or before you moved any part of your body in any direction at all. And suppose that rather than thirty seconds, the light could remain red for an hour,

or a day. It is easy to imagine a red light that would make Taylor beg to give up his freedom of religion if he could just be free of waiting at the red light. Simple quantity changes everything. If red lights were a category that we knew to have realistic potential for quantitative totalization, we could easily care more about freedom from red lights than we care about freedom of religion.

This means that Taylor has not ruled out quantity as the important variable in his example as he needed to. He has not given us any reason to believe that different freedoms get their legitimacy from different purposes, and so he has not made an effective argument for positive purposes being intrinsic to freedom. Not only does Taylor's argument fail, but the positive freedom which he goes on to describe is incoherent.

I mentioned that Taylor focuses on how our freedom could supposedly be foiled by our own baser desires and fears. His conception of positive freedom describes the times when we overcome those undesirable desires: we have more important and less important desires. For Taylor, to be free means that we must act in accordance with our more important desires. He says that "we can speak of freedom or its absence without strain" in this sense (Taylor 1979, 221). But normally acting in accordance with one's more important desires is called discipline or will power. And when labeled as such, it seems normal to say that freedom means being free to exercise discipline or not. We can certainly "speak of freedom or its absence without strain" in this sense too. But Taylor's view of freedom necessarily entails not being free to exercise or not exercise discipline. There seems to be a contradiction, but it gets worse. Taylor's positive freedom demands that we always act righteously. He at first seems to allow leeway by individualizing our important purposes and desires; each person's self-actualization may be different. But Taylor needs to show that some of our desires are more significant than others. And once he has elevated our significant desires to the status of "import-attributing" (Taylor 1979, 226), he cannot allow the individual to be trusted with deciding which of his desires are important, for he could easily get it wrong. As an example of getting it wrong, Taylor offers the case of Charles Manson, who had long-term desires and purposes which imparted a sensation of importance. He had a sense of fundamental purpose (Taylor 1979, 227). Clearly, Taylor and I agree that Manson's sense of purpose was wrong. But for Taylor this implies that Manson was not

free, because he could not act in accordance with his *true* significant purpose. And Taylor's point here is that, for all we know, any one of us could be like Manson: incorrect about our *true* significant purposes. So none of us are to be the arbiter of our own right purpose. The standard of rightness must necessarily be external to the individual if Taylor's point is to mean anything at all. So, in order to be free at any moment, we must act righteously, as determined by some externally imposed standard. This turns freedom into its opposite; freedom cannot mean strict compulsion to act in a prescribed way.

We can easily say that Charles Manson was wrong in his desires and perceived purpose. And we can agree that each of us has certain purposes we should try to fulfil. But these evaluations are just not part of freedom. I have not ruled out that a government could be right in instituting some kind of promotion of righteous virtue, which would promote the fulfilment of good purposes. But this would likely be a tradeoff with a loss of freedom. Desirable values can conflict in such tradeoffs. When conflicting values such as freedom and righteousness are mashed together into a single concept, the conflict becomes a self-conflicting incoherence, like Taylor's positive freedom. Being free includes being free to act in a less than perfectly righteous, honorable, or self-actualizing way. Otherwise, freedom entails a single, extrinsically prescribed course of action, which is a nonsensical idea of freedom. Taylor's conception of positive freedom contradicts itself, and his argument against negative freedom fails. If this is the kind of position on offer from the critics of negative liberty, then assertions such as Nussbaum's are wildly unfounded. This is a simple critique, without any full theory offered as an alternative, but it is an absolutely necessary step toward identifying or constructing a better theory of freedom.

## REFERENCES

- Berlin, Isaiah. 1969. "Two Concepts of Liberty." Pp. 1–54 in *Four Essays on Liberty*. Oxford: Oxford University Press.
- Nussbaum, Martha. 2011. *Creating Capabilities*. Cambridge: Harvard University Press.
- Taylor, Charles. 1985. "What's Wrong with Negative Liberty." Pp. 211–29 in *Philosophical Papers: Volume 2, Philosophy and the Human Sciences*. Cambridge: Cambridge University Press.