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1------------- WHAT IS CITIZENSHIP?

Citizenship is the status of a person recognized under the custom or law as being a legal member of a sovereign state or belonging to a nation. The idea of citizenship has been defined as the capacity of individuals to defend their rights in front of the governmental authority.[1] Individual states and nations recognize citizenship of persons according to their own policies, regulations and criteria as to who is entitled to its citizenship.

A person may have multiple citizenships. A person who does not have citizenship of any state is said to be stateless, while one who lives on state borders whose territorial status is uncertain is a border-lander.

Citizenship is based upon the Constitution of the Federal Republic of Nigeria, dated 1989. (UKC-Commonwealth Nation) Those born before or on the date of independence, October 1, 1960, whose parents or grandparents were born in Nigeria and who were legally residing in Nigeria at the time, are considered citizens of Nigeria. BY BIRTH: Birth within the territory of Nigeria does not automatically confer citizenship. BY DESCENT: Child, at least one of whose parents is a citizen of Nigeria, regardless of the child's country of birth. REGISTRATION: The following persons are eligible to become citizens through registration: A foreign woman who marries a citizen of Nigeria. Person who is of adult age (17), born outside Nigeria, any of whose grandparents is or was a citizen of Nigeria. A foreign child adopted by Nigerian parents. BY NATURALIZATION: Nigerian citizenship may be acquired upon fulfillment of the following conditions: Person is of full age (17), has resided in Nigeria for at least 15 years, is of good character, plans to remain in Nigeria, is familiar with Nigerian language and customs, has a viable means of support, and has renounced previous citizenship.

2------ History of citizenship

Many thinkers point to the concept of citizenship beginning in the early city-states of ancient Greece, although others see it as primarily a modern phenomenon dating back only a few hundred years and, for humanity, that the concept of citizenship arose with the first laws. Polis meant both the political assembly of the city-state as well as the entire society.[9] Citizenship concept has generally been identified as a western phenomenon.[10] There is a general view that citizenship in ancient times was a simpler relation than modern forms of citizenship, although this view has come under scrutiny.[11] The relation of citizenship has not been a fixed or static relation, but constantly changed within each society, and that according to one view, citizenship might "really have worked" only at select periods during certain times, such as when the Athenian politician Solon made reforms in the early Athenian state.

Historian Geoffrey Hosking in his 2005 Modern Scholar lecture course suggested that citizenship in ancient Greece arose from an appreciation for the importance of freedom.[13] Hosking explained:

It can be argued that this growth of slavery was what made Greeks particularly conscious of the value of freedom. After all, any Greek farmer might fall into debt and therefore might become a slave, at almost any time ... When the Greeks fought together, they fought in order to avoid being enslaved by warfare, to avoid being defeated by those who might take them into slavery. And they also arranged their political institutions so as to remain free men.

— Geoffrey Hosking, 2005

Slavery permitted slave-owners to have substantial free time, and enabled participation in public life.[13] Polis citizenship was marked by exclusivity. Inequality of status was widespread; citizens (πολίτης politēs < πόλις 'city') had a higher status than non-citizens, such as women, slaves, and resident foreigners (metics).[14][15] The first form of citizenship was based on the way people lived in the ancient Greek times, in small-scale organic communities of the polis. Citizenship was not seen as a separate activity from the private life of the individual person, in the sense that there was not a distinction between public and private life. The obligations of citizenship were deeply connected into one's everyday life in the polis. These small-scale organic communities were generally seen as a new development in world history, in contrast to the established ancient civilizations of Egypt or Persia, or the hunter-gatherer bands elsewhere. From the viewpoint of the ancient Greeks, a person's public life was not separated from their private life, and Greeks did not distinguish between the two worlds according to the modern western conception. The obligations of citizenship were deeply connected with everyday life. To be truly human, one had to be an active citizen to the community, which Aristotle famously expressed: "To take no part in the running of the community's affairs is to be either a beast or a god!" This form of citizenship was based on obligations of citizens towards the community, rather than rights given to the citizens of the community. This was not a problem because they all had a strong affinity with the polis; their own destiny and the destiny of the community were strongly linked. Also, citizens of the polis saw obligations to the community as an opportunity to be virtuous, it was a source of honour and respect. In Athens, citizens were both ruler and ruled, important political and judicial offices were rotated and all citizens had the right to speak and vote in the political assembly.

Soviet Union of citizenship:
The 1918 constitution of revolutionary Russia granted citizenship to any foreigners who were living within Russia, so long as they were "engaged in work and [belonged] to the working class." It recognized "the equal rights of all citizens, irrespective of their racial or national connections" and declared oppression of any minority group or race "to be contrary to the fundamental laws of the Republic." The 1918 constitution also established the right to vote and be elected to soviets for both men and women "irrespective of religion, nationality, domicile, etc. [...] who shall have completed their eighteenth year by the day of election."The later constitutions of the USSR would grant universal Soviet citizenship to the citizens of all member republics in concord with the principles of non-discrimination laid out in the original 1918 constitution of Russia.

Roman ideas of citizenship:

In the Roman Empire, citizenship expanded from small-scale communities to the entirety of the empire. Romans realized that granting citizenship to people from all over the empire legitimized Roman rule over conquered areas. Roman citizenship was no longer a status of political agency, as it had been reduced to a judicial safeguard and the expression of rule and law. Rome carried forth Greek ideas of citizenship such as the principles of equality under the law, civic participation in government, and notions that "no one citizen should have too much power for too long but Rome offered relatively generous terms to its captives, including chances for lesser forms of citizenship. If Greek citizenship was an "emancipation from the world of things",the Roman sense increasingly reflected the fact that citizens could act upon material things as well as other citizens, in the sense of buying or selling property, possessions, titles, goods. One historian explained:

The person was defined and represented through his actions upon things; in the course of time, the term property came to mean, first, the defining characteristic of a human or other being; second, the relation which a person had with a thing; and third, the thing defined as the possession of some person.

Modern Times of citizenship:

The modern idea of citizenship still respects the idea of political participation, but it is usually done through "elaborate systems of political representation at a distance" such as representative democracy. Modern citizenship is much more passive; action is delegated to others; citizenship is often a constraint on acting, not an impetus to act.Nevertheless, citizens are usually aware of their obligations to authorities, and are aware that these bonds often limit what they can do.

Commonwealth
The concept of "Commonwealth Citizenship" has been in place ever since the establishment of the Commonwealth of Nations. As with the EU, one holds Commonwealth citizenship only by being a citizen of a Commonwealth member state. This form of citizenship offers certain privileges within some Commonwealth countries:

Some such countries do not require tourist visas of citizens of other Commonwealth countries, or allow some Commonwealth citizens to stay in the country for tourism purposes without a visa for longer than citizens of other countries.
In some Commonwealth countries, resident citizens of other Commonwealth countries are entitled to political rights, e.g., the right to vote in local and national elections and in some cases even the right to stand for election.
In some instances the right to work in any position (including the civil service) is granted, except for certain specific positions, such as in the defense departments, Governor-General or President or Prime Minister.
In the United Kingdom, all Commonwealth citizens legally residing in the country can vote and stand for office at all elections.
Although Ireland was excluded from the Commonwealth in 1949 because it declared itself a republic, Ireland is generally treated as if it were still a member. Legislation often specifically provides for equal treatment between Commonwealth countries and Ireland and refers to "Commonwealth countries and Ireland". Ireland's citizens are not classified as foreign nationals in the United Kingdom.

Canada departed from the principle of nationality being defined in terms of allegiance in 1921. In 1935 the Irish Free State was the first to introduce its own citizenship. However, Irish citizens were still treated as subjects of the Crown, and they are still not regarded as foreign, even though Ireland is not a member of the Commonwealth. The Canadian Citizenship Act of 1947 provided for a distinct Canadian Citizenship, automatically conferred upon most individuals born in Canada, with some exceptions, and defined the conditions under which one could become a naturalized citizen. The concept of Commonwealth citizenship was introduced in 1948 in the British Nationality Act 1948. Other dominions adopted this principle such as New Zealand, by way of the British Nationality and New Zealand Citizenship Act of 1948.

The above explanation contains the history of citizenship and its various meanings... the main topic will be explained further below

EXAMPLE HOW CAN A LEBANESE RETAIN OR LOSE HIS OR HER NEWLY ACQUIRED NIGERIA CITIZENSHIP

LOSS
1- VOLUNTARY REUNCIATION : Voluntary renunciation of Nigerian citizenship is permitted by law. Contact the Embassy for details and required paperwork... A Lebanese may decide to call off his or her citizenship due to some reasons best known to such a person or maybe due to some issues that may have ocvured between both countries

2- INVOLUNTARY: The following are grounds for involuntary loss of Nigerian citizenship: Registered or Naturalized citizen voluntarily acquires the citizenship of a foreign country.
 Naturalized citizen, before seven years of residence, sentenced to prison for three years or more. Registered or Naturalized citizen is convicted of acts of disloyalty to the Federal Republic of Nigeria.

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Social contract theory is a theory that addresses the concept of the importance of personal liberty versus the rights of a government or any other moral or legal authority.

EXAMPLE OF SOCIAL CONTRACT THEORY

The people vs. the private coercion of liberty under neoliberalism

Balancing individual freedom with public order and safety..

The below mentioned theories are related to the social contract theory

Individual Liberty and the Rule of Law
Definitions of Liberty and Law

The first step toward under­standing and analysis is the devel­opment of working definitions of the concepts to be studied.

(1) Elements of liberty

A meaningful concept of liberty presupposes a living, purposive, choosing human being.4 An inani­mate object may be described as being in a "free state" and yet it would be singular to characterize it as possessing liberty in the sense that a man is free. A man, how­ever, imprisoned in Salem, cannot be in Paris or Rome or, indeed, in any place but his cell, so he is prop­erly described as unfree or re­strained.

The prisoner example indicates a second prerequisite for liberty: the human actor must have a meaningful range of alternatives. The choice between remaining in prison or being shot while attempt­ing to escape presents little real choice at all, but it remains a choice. It becomes viable if condi­tions in prison deteriorate to the progressively intolerable. How­ever, freedom does not presuppose an infinite variety of choices.5 One may live in London, or Paris, or Rome, but he cannot be present in all three places at the same in­stant, nor can he be on Saturn or Uranus (at this stage of space travel). Despite these limitations, an individual can be described as free. Man may be free despite his finity; one is not denuded of lib­erty merely because he cannot think like Albert Einstein, leap over buildings like Superman, or play basketball like Bill Russell.6

A third essential element of in­dividual freedom is a relationship to at least one other human being. A person is meaningfully free only where his choice of alternatives is unrestricted by deliberate human interference, notwithstanding his subservience to physical or bio­logical limitations. Robinson Cru­soe, alone on his island, is neither free nor restrained. Only when he encounters natives on his rustic shore will the question of freedom arise, because only then is there possibility of deliberate human in­terference with individual actions.

Fourth, some element of intern­al and external restraint adheres in the very definition of liberty;7 it is ineffective to equate liberty solely with the absence of restraint because such a definition could also apply to a state of lack of freedom. Robinson Crusoe could be subject to no deliberate human interven­tion when he subdued the inhabi­tants of his world and became ab­solute monarch, but he could not be styled free if he were subject to uncontrollable fits of passion or impulsive action which he could not restrain. Thus, the internal aspect of restraint, be it denoted self-control, morality, or conscience, is implied in the very defi­nition of liberty.8

Some thinkers have also recog­nized that unlimited power of hu­man action without external re­straint could result in license, an­archy, and civil chaos. In such a society, the "inferior" persons would have only the freedom of action permitted by their more powerful neighbors; the "superior" beings might virtually enslave their less fortunate fellows, but they, too, would be unfree to the extent that they were forced to devote their time to coercive, as opposed to creative, endeavors. To the extent that the predator must dissipate his creative powers in use of force upon others, he, too, is restrained, although his re-restraint is self-imposed and by his own choice.

Berlin’s analysis separates lib­erty into "positive" and "negative" aspects; negative liberty is con­cerned with the inquiry, "In what area is man left free to do what he wishes without interference by other men, singly or in the collec­tive?"9 Implicit in this question concerning liberty is the premise that some restraint on human ac­tion exists compatibly with free­dom. To the extent that this area of noninterference is contracted, the individual is coerced and un­free, but the very concept of an area of noninterference presup­poses some limitation.

The external restraint implicit in liberty is a recognition of free­dom of action as an equal right of all purposive beings in society.¹º The necessary implication is that liberty is not the total absence of restraint. The quest is for the per­missible limits of restraint. In the words of Bastiat, liberty is "the freedom of every person to make full use of his faculties, so long as he does not harm other persons while doing so… [and] the re­stricting of the law only to its ra­tional sphere of organizing the right of the individual to lawful self-defense….”¹¹ Thus, the workable ideal of liberty is a range of individual choice unhampered by deliberate human interference except insofar as intervention is necessary to assure equal liberty to all individuals.

Liberty has meaning because man possesses the power to choose, that is, the ability to observe, measure, test, evaluate, and select from alternatives.12 But this does not mean that choice is meaning­less unless liberty is also measured in terms of power to accomplish ends." The freedom to do some­thing does not imply success; it in­cludes freedom to try and fail. Freedom to undertake a venture may well be of profound impor­tance to the individual sans suc­cess in the ultimate endeavor. Hayek has wisely observed" that the concept of liberty cannot be re­stricted to areas where we know the result will be "good" because that is not necessarily freedom; freedom is required to attend to the unpredictable and unknown, and is desirable because the favor­able results will far outstrip the unfavorable. The libertarian¹5 is not utopian; he only asserts that liberty is the best condition for the realization of the multiple goals sought by purposive individuals. He would not impose his choice upon others; he merely asks that others not interfere with his vol­untary choice.

Individual freedom is the lack of formal or informal external re­straints imposed by one man or group of men upon another, save for the collective coercion aimed at preventing individuals from acting forcibly or fraudulently against their neighbors. It is the absence of human impediment to the vol­untary action of fellow human be­ings. The permissible limitation on free choice is the recognition of an equal ambit of choice to all other men.

(2) The elements of law

I do not propose here to isolate and analyze the phenomena de­noted "law." For the purposes of this article, it is sufficient to iden­tify several classes of law, well ac­cepted as such in the contempo­rary United States, and to limit our analysis accordingly. This in no way pretends that the proffered classification is exclusive.

In general, law is a method of control of human behavior, ordi­narily accomplished by policies, rules, orders, decisions, and regu­lations, operative within a given territorial unit; its ultimate au­thority resides in the monopoly of coercion possessed by the state.16 Coercion as an essential element of the legal system cannot be un­derstated, even where compliance with law may be secured either by mere threat of force or by subtle forms of coercion.

The law is coercive insofar as it delimits the range of alternatives otherwise open to the individual actor, whether the results of non­compliance are penal sanctions in the traditional sense, or the fore­closing of legal processes for re­dress to the noncomplying individ­ual. As indicated in the discussion of external restraints inherent in the definition of liberty, freedom not only presupposes a system of law but also could not survive in the absence of law.¹7 However, an equally valid proposition is that liberty may be destroyed by the misuse of law.10 Throughout the remainder of this article, by ex­ample and analysis, the interrela­tionship of law and liberty and the application of these two proposi­tions will be explored.

Law and the Ambush of Liberty

Analysis of the relationship be­tween law and liberty is compli­cated by the fact that laws which operate in society under the guise of liberty may, in fact, be inimical to the freedom ideal. All law actu­ally premised upon such masquer­ading concepts may obstruct in­dividual liberty, but the possibil­ity of erosion of the concept is so likely that it is necessary to unmask some of the most common interlopers.

(1) Strange bedfellows: Liberty, Equality, and Fraternity

When liberty is properly defined as the absence of human interfer­ence with the actions of a pur­posive individual except to the ex­tent required to assure like liberty to all other individuals in society, liberty and equality become singu­larly discordant companions. Lib­erty has long survived the grave­yard of dogma because the liber­tarian accepts man as he finds him, an extraordinarily complex, voli­tional being, capable of creation or destruction, searching for multiple goals;19 equality is curiously in­compatible with both liberty and the nature of man, because the egalitarian refuses to accept man as he finds him. The egalitarian all too often bottoms his view on the premise that mankind is es­sentially brutish and incompetent, incapable of betterment and unde­serving of salvation, although the same thinker may posit that man acting in the collective somehow achieves great creative powers.²º

Liberty is both a desirable and achievable goal; equality is nei­ther, unless equality means "equal­ity before the law," equal treat­ment of saint and sinner found in the same posture or circumstance.

This confusion of concepts is partially caused by the association of the word "equality" with the American and French revolutions of the eighteenth century, traditionally associated with the search for freedom. A literal application of the egalitarian concept may be utilized to level society by fitting men of varying potentialities to a Procrustean bed measured to the least fit. Those possessed of the least measurable potential might be made happier by this process, but the result would not be free­dom. Equality is consonant with liberty only in a limited sense; the equality comprehended by the Declaration of Independence and the libertarian tradition was equality of birth, without vested privileges provided by the state, and equality before the law, an equal liberty to utilize one’s facul­ties and potential to his own ends, to succeed or fail, to determine his own destiny without special favor of discrimination.²¹

Fraternity possesses a subtler but very real possibility of shroud­ing liberty. Berlin has clearly in­dicated that the cries of oppressed classes and nationalities for "lib­erty" often obscures their real de­sire, that of recognition by other men of one’s own human worth.22 This search for status may lead to the worst kind of demagoguery and oppression, since the individual sacrifices his liberty for the realization of group status, and in return receives recognition by the group. It is not the motive to be recognized by one’s fellow man which is wrong, for this is a very real human desire. Rather, it is the sacrifice of voluntary action in the name of liberty which results in illiberal acts committed in the name of liberty which is wrong; the submission of the individual to the group renders him less human by his escape from moral responsi­bility for his acts, placing re­sponsibility and choice in the hands of the will of the group, which normally means the will of the loudest or the most violent. The fallacy lies in the fact that fraternity consonant with true lib­erty cannot be enforced — it must be voluntary.23

(2) Liberty and self-government: Berlin’s positive liberty

Another concept masquerading as liberty is the natural desire to be self-governing, or "democracy." Berlin has analyzed the problem of liberty as confusing the ques­tion of "to what extent shall I be free in my actions from the delib­erate intervention of others?" with the inquiry, "To the extent that I am to be coerced by others, who should coerce me?"24 Cohen has taken issue with this analysis, terming it "academic, inflated and obscure."25 He argues that Berlin confuses the positive-negative lib­erty distinction with a distinction between individual liberty and public authority, and that the tra­ditional libertarian thought was identified not only with a search for "negative" liberty, but also with the development of self-gov­ernment.26

Despite these criticisms, there is a distinction between the form of the state and the area of nonin­terference.27 Democracy can be as subvertive of liberty as autocracy; 51 per cent of the electorate could vote to plunder and pillage the remaining 49 per cent; a progressive income tax obviously limits the freedom of those in the higher brackets for the alleged benefit of the majority who reside in the lower brackets. On the other hand, it is possible to hypothesize an ab­solute monarch who governs solely within a strictly limited sphere of state action, preventing fraud and violence, and providing for the set­tlement of private disputes.

Once this basic distinction is recognized, Cohen’s criticism is rendered less vital. To acknowl­edge the distinction between lib­erty and self-government, and to admit the possibility of perversion of democracy into mob rule of might-makes-right, is entirely dis­tinct from contending that self-government is undesirable or less favorable than another govern­mental system. Certainly libertar­ian tradition has consistently con­cluded that self-government not only fulfills the basic human de­sire to be master of oneself, but also provides the most likely form by which to secure the condition of liberty.

But, Berlin asserts a salient proposition that the desire to be master of one’s own self can de­generate into the worst kind of totalitarianism.28 The demented idealist glorification of the state influenced two vicious forms of state barbarianism in this century, national socialism and commu­nism. Yet this very idealism com­menced with the premise of a nat­ural desire to master one’s own destiny; it was perverted when it became hopelessly confused with the belief that the ends of each man, rationally measured, would always coincide with those of ev­ery other man. Therefore, the gen­eral will represented the "rational choice" of each member of society, although a given individual mem­ber might be blind to his "real self" and therefore his choice would have to be made for him by a master more rational than he. 29

This is, of course, the same tired argument of all tyrants, that the state must do for man what he cannot do for himself. Since the state is a coercive, not a creative, force, there is nothing it can do, except use force, that man, singly or in voluntary association, cannot do for himself. It may, however, do things a volitional individual would not do;³º  reveals an on a somewhat lesser, but no less pernicious, plane, the Fabian­ism sweeping the West31 today proceeds upon the same illogic, idolizing the expert and the plan­ner who know better than the cit­izenry what the latter "wants" done in a given situation. The lib­ertarian recognizes the vital truth that not only are the ends of man in potential conflict3²º but also that individual voluntary action is the only method by which one’s des­tiny can be completely and morally determined, even if the determina­tion so chosen might appear "ir­rational" to an observer.33 To be free is to be allowed to make one’s own mistakes deprive individuals of their property (tax­es) and enter into an uneconomic project — it is likely that this is the rational analysis of federal space exploration. See how private action can solve, and has solved, many problems which are posited as "necessary state action" in Wooldridge, op. cit., 20.

 (3) Liberty and security

Security, occasionally mislabeled "liberty," is a common end sought by man. Security might be said to be the barter of freedom in order to satisfy a desire to avoid choice, agreeing to acquiesce in the choice of another. Although liberty in­herently posits individual choice for oneself, it does not prevent the choice for "security" in all in­stances. Security is inimicable to liberty where one not only chooses not to choose, but his choice, or­dinarily in the collective with other similarly situated, operates by some sanction to force that choice upon another unwilling individual.³4 Man commonly desires to plan for his retirement or old age; it is not a perversion of lib­erty to choose to enter a voluntary arrangement whereby a private in­surer plans a retirement program for consideration. However, where 51 per cent of the voters choose a state-enforced program binding all present and future citizens, it is clear that the quest for security has resulted in a deprivation to the liberty of the unwilling who wish no program at all, or, more likely, wish to plan for the future in accordance with their unique situation.

An amazing example of confu­sion of terms in high places is the illogical shift in the infamous "four freedoms" speech.35 Coupled with the two accepted adjunct freedoms, expression and religion, are two interlopers, freedom from want and freedom from fear. More amazing still is the fact that these false freedoms have wormed their way into accepted political pro­grams without criticism, accepted as respectable as though they could be achieved in fact. "Freedom from want and fear" may repre­sent basic human desires but to call them freedom is foolish.36

(4) Enforced orthodoxy

Again, liberty may be confused with a system of enforced orthodoxy, sometimes signified the "con­sensus" fallacy, which provides for such a limited range of choice that the individual is not really free at all. Sunday laws are a common ex­ample of this concept, where re­ligious freedom means freedom to be religious in the manner recog­nized by the community. Compul­sory franchise laws, existent in both Eastern and Western nations, provide another example where a citizen must vote, although he may have a real, not a perfunctory, choice between candidates who may represent diverse positions. Freedom must include freedom to abstain or it cannot be freedom; to claim that the Soviet hegemony has free elections is a mockery. The most obvious example appears in the enforced othodoxy of con­scription, now under some sem­blance of attack in the halls of Congress.37 The concept of a con­script fighting for freedom could be humorous if the milieu were not so deadly serious. The cause of freedom has suffered much in making the world safe for democ­racy.

 (5) The question is: Freedom for whom?

Liberty achieves its true station when it is equally applicable to each individual in society;38  this is implicit in the definition of lib­erty as the absence of human in­terference with individual actions except as is necessary to insure equal freedom for all. Yet, an "un­equal liberty" may parade under the mask of liberty; this inter­loper may partake of some attri­butes of liberty, but only for a lim­ited group of persons. For ex­ample, a slave society might be found where the ideal of liberty existed for the ruling class alone; to the extent of slavery enforced by coercion, that society is re­strained, not free. In fact, the rul­ing class is itself less free, albeit by deliberate choice, in two senses:

(a)  it must allocate part of its re­sources to the continuation of slavery, instead of releasing these forces for creative endeavor, and
(b) to the extent that the enslaved class does not operate to its crea­tive potential because of the op­pression, the rulers suffer the loss of that potential out flowing of pro­ductivity.
When examining a restrictive norm allegedly enacted or adduced to advance freedom, a relevant inquiry is "freedom for whom?" If the law extends privileges to one group at the expense of others, and is not founded upon the legiti­mate state function of preventing fraud and violence and providing for the adjudication of private disputes, then it does not achieve liberty. 39

In our legitimate concern over the mistreatment of colored per­sons for two centuries, we now fail to see that the liberty of the employer is restricted when he is forced to hire a Negro applicant against his will, and the liberty of a storekeeper is limited when he is forced to serve those he does not wish to serve at his lunch counter. An entirely different inquiry is presented when white persons, singly or collectively, with or with­out authority of law, coerce col­ored persons and prevent them from voting, breach the doors of their church and harass their peaceful meeting, or fail to pro­vide an equal administration of justice for persons of all races by excluding qualified Negroes from the venire.

 (6) The divisibility fallacy

Statist philosophy often ob­scures the essential fact that lib­erty is indivisible. Failure to educe this element tends to lead the less sophisticated apologist for unwarranted state intervention to justify governmental extension on the grounds that "human rights take precedence over property rights." So stated, the proposition is clearly unsound and a negation, because of the identity of subject and object. "Property" possesses no rights, any more than air, or dogs, or cinnamon possess rights; rights inhere only in individual, volitional beings. Property rights are human rights.4º Thus, the con­tention really means that the lib­erty of some persons must be cur­tailed and in some mystical way the liberty of other persons will be expanded.

What those propounding this argument truly mean is that certain aspects of liberty should be restricted while others remain un­molested (for the time being), but emotive words are utilized to se­crete the true justification. Thus, while the United States currently witnesses a growing recognition and sanction of the constitutional­ly specified freedoms of speech, press, association, and religion, an over-all diminution of liberty oc­curs. 41

The clearest present deprivation of liberty is to be found in the market place where state interven­tion has whittled down the indi­vidual’s choice of alternatives. Be­cause of the artificial human rights-property-rights distinction, there has been acceptance of the tenet that freedoms of association, speech, press, and religion can somehow survive without economic freedom. This is preposterous: as the market becomes more con­trolled, these adjunct freedoms lose strength. Freedom of the press means little where the state controls the supply of newsprint; freedom of speech and association are fine unless the state owns all the available meeting places; free­dom of religion can be destroyed if land and building materials for the construction of structures of worship belong to the state, since the state affixes conditions of use to that which it owns or controls. The rights of freedom of speech, press, association, and religion are all dependent upon economic free­dom because, to be effective, they must utilize the product of the market, and where the state controls production and distribution, it controls ultimate use. Market control is not price control or rent control — it is people contro1.42

Liberty: Encouraged or Destroyed by Law

To ascertain the relationship between liberty and the various functions which law performs as a device for securing social order, it is desirable to separate several ob­vious types of laws and examine their peculiar relationship to lib­erty, noting how each class of law can either encourage or destroy individual freedom. 43

(1) Criminal duty-imposing rules

Criminal law provides for the redress of harm done to individ­uals when the harm is such that its existence threatens the very structure of society and all persons situate therein. Criminal laws are absolutely necessary to the ex­istence of liberty because their function is to protect the individ­ual, by deterrence and penalty, from infringements on individual liberty by those who would tres­pass upon the equal freedoms of others. if nothing else is achieved by the state, it should at least iso­late those who would forcibly and fraudulently deprive their neigh­bors of life, liberty, or property. It is difficult to imagine a system where liberty could flourish with­out institutions to prevent indi­vidual or collective force and fraud against one’s neighbors. Criminal laws restrict liberty to the extent that they inhibit the individual from his free choice. Thus, this limitation of liberty is necessary and desirable for liberty to survive.

It may seem curious to assert that criminal law, customarily so devoted to the equal protection of individual life, liberty, and prop­erty from the transgressions of others, could be perverted into a destroyer of freedom. However, a legal system which fostered plun­der of property by making individ­ual resistance thereto unlawful certainly would restrict liberty. Freedom is unduly inhibited where the criminal laws utilize and sanc­tion that which is proper human action, not interfering with the equal liberty of all, such as Sun­day laws, usury laws, consensual crimes between adults not in the public view, and minimum wage laws."

(2) Civil duty-imposing laws

The law performs another es­sential function by providing in­stitutions for civil recovery of individual restraints on human ac­tion, commonly denoted the "ad­ministration of justice." Conduct restricted may or may not also be criminal. For example, P’s free­dom is obstructed when D negli­gently strikes him with an auto­mobile, to the extent that P’s life may be shortened, his freedom of movement hampered by a broken leg, or his property taken for the payment of medical bills. There­fore, D’s freedom of action is justly restricted to the limit of taking some of his property at P’s instance to compensate P for his loss; D’s freedom of action is re­stricted but only by the conse­quences of his volitional act. There is no proper penalty for negligence; a restriction of lib­erty is valid only where D is at fault and that fault causes the deprivation of another’s freedom." If, however, D intentionally struck P, he might be both civilly and criminally liable; not only would D restrict P’s freedom of choice and action but also he would con­stitute a danger to society as a whole.

Civil-duty laws destroy liberty where liability is imposed upon D without any fault, or without any causal connection between his ac­tions and P’s injuries. Thus, laws providing for status or absolute liability," justified only on the basis of the "deep-pocket" doc­trine, or the theory of "enterprise liability," represent legally sanc­tioned deprivations of liberty, as does the trend toward state-en­forced insurance and compensation schemes. Where an individual is mulcted for results not of his mak­ing, where he is not "at fault," his liberty is unfairly restricted and the society falls short of the ideal of freedom. Where the individual is made to pay for the conse­quences of acts volitionally done (his fault), the lessening of lib­erty is justified.

(3) Laws channeling or confer­ring powers

Rules providing procedures by which the individual can achieve the results of his voluntary and consensual associations with other persons may augment the ideal of liberty. Law in the early United States, by the development of many of these rules, fostered the nineteenth century outburst of creative energy.47 Even a frontier society required a law providing for the recordation of land titles," and norms for enforcing individ­ual agreements voluntarily reached, as well as rules for the adjudication of private disputes.

Power-conferring rules restrict liberty when they deny enforce­ment procedures for individual action not following prescribed pro­cedures; they do not prevent vol­untary individual resolution of problems by other means if en­forcement is not required. There is no prohibition of a sale of Blackacre by oral agreement be­tween B and S, if both parties carry out their bargain — it is only when one party reneges that the statute of frauds prevents enforce­ment. Again, the law-conferring powers will not penalize B for fail­ure to record title to Blackacre, and if no other claimants appear, B’s title is secure. The power-con­ferring rules destroy liberty only when they are used to restrict hu­man endeavor, to allocate market resources, or to promote favorit­ism.

Curiously, many writers have considered the nineteenth century United States as a laissez-faire economy where freedom was given free rein, and the government per­formed only the functions of a night watchman. Proceeding from this naive premise, they draw the equally absurd conclusion that law must positively restrict individual freedom in order to prevent real or imagined evils flowing from the "libertarian experiment."

First, nineteenth century Amer­ica clearly enjoyed less restriction on human action than any earlier society in history; however, the claim that the limitations were only those of a policeman prevent­ing malum in se crimes ignores historical fact. Writing at mid-century, Bastiat indicated two particular areas of restraint, slav­ery and protective tariffs.5º To these can be added, by way of nonexhaustive example, the in­ternal improvement schemes of Henry Clay; the fostering of pub­lic education; the grant of monop­oly power to private groups in the "public interest"; national control of finance; licensing and regula­tion of navigation and improve­ment of harbors; and direct or indirect encouragement of trans­portation; not to mention state tinkering with money, coinage, and banking in relation to the finance powers.51 Moreover, the argument falsely focuses only up­on the Federal government, which, admittedly, was more concerned with the problems of federalism prior to the Civil War. One cannot overlook state and local restrictive activities, including commercial regulation, licensing, subsidies, and monopoly grants under an ex‑pending concept of the police power. 52

Second, the "Golden Age"53 ar­gument assumes that individual liberty was responsible for "abuses" of the nineteenth cen­tury, proceeding from the un­tenable tacit assumption that lib­erty was meant to be a panacea leading to utopia. The libertarian contention is only that volunta­rism is the best system for a fal­lible but improvable mankind.

Likewise, the conclusion that lib­erty caused abuse is untenable; empirically, most "abuses" were conditioned by law, not liberty, and flow from failure to properly provide sanctions against trespass on liberties or unwarranted inter­diction of human freedom, direct­ly or by delegation to private groups.

Third, the argument overlooks the positive function performed by the law in the nineteenth cen­tury; for example, the Federal judiciary under the Interstate Commerce Clause prevented the erection of internal barriers to free trade by mercantilist states at the behest of favored local busi­nesses, and the states followed a liberal policy of granting charters to associations and providing a remedy for failure of subscribers to a capital pooling venture to carry on their voluntarily entered bargains."

(4) Adjudicative laws

The development of individual freedom requires a body of law relating to the administration and settlement of private disputes. Without adjudicative rules, there would be great difficulty in effect­ing the rules imposing civil or criminal duties, or conferring powers, since there would be no organized institution of enforce­ment. Common examples of adjudicative rules are regulations relat­ing to the qualifications, selection, and tenure of a judge, conciliation commission or arbitrator, rules of evidence and procedure for guiding the presentation of the dispute and enforcing the official determination. 55

Adjudicative rules restrict indi­vidual liberty by narrowing the choice of alternatives in the choice of court, judge, procedure, and evidence, and excluding the choice of self-help, but they are justified on the ground of making choice meaningful. Absent the central administration of justice, civil chaos would reign. However, the ideal of liberty is perverted when adjudicative rules are used to dis­criminate against some persons seeking legal redress or where the law is used to unduly restrict lib­erty. For example, where colored people are customarily excluded from the venire, liberty is im­periled. Likewise, where the legal system no longer requires proof of fault or causation for civil re­covery, but only that the defendant possess a deeper pocket, and upon such proof authorizes and enforces recovery, the law is mis­used and reduces the defendant’s freedom.

(5) Laws for making laws

Closely related to adjudicative rules are the law-making laws; adjudicative rules make law in the sense of the law of the case and in the sense of precedent; law­making laws provide procedures and qualifications for the passage of general laws, limitations on law-making powers, and grants of law-making powers. Common ex­amples of law-making laws are those setting forth qualifications and tenure of public officials; local initiative, referendum and recall; home rule; rules of procedure within legislative, executive, or administrative bodies; rules of court; and the procedural appa­ratus for publicizing laws.

Law-making laws also include rules against potential laws and the abuse of law-making power by providing a line beyond which there is no law-making power extant. For example, constitu­tional prohibitions against taking property for public use without just compensation, impairing the obligation of contracts, and the whole gamut of provisions in the Bill of Rights contain absolute restrictions to protect the individual from collective interference.

Additional norms within the category of law-making laws are rules prescribing the proper func­tions of the state; here the great­est destruction of individual free­dom has occurred. Where restric­tions against state interference with individual liberty are per­verted by legislative fiat or judicial interpretation, so as to permit the state to become a producer in the market, as occurred in the devel­opment of the Tennessee Valley Authority or Social Security Pro­grams, individual liberty suffers as a consequence.56

The Value of Liberty and the Role of Law

To this point I have proceeded upon the major premise that a maximum ideal of individual liberty is desirable and the proper role of the law is to foster and protect that ideal. Some reasons for this premise follow:

(1) Only under conditions of individual liberty can man be a truly responsible moral agent.57 Choice presupposes responsibility and fosters it ; if a man is unable to choose because of restraint he is, to that extent, dehumanized. The choice not to choose at all but to pass that choice to a nonre­sponsible collective is a choice per se and the burden for the conse­quences of the allocation by the collective must rest, in last analy­sis, upon the ultimate choice-maker, the individual who refused or refrained from choosing. (2) Only with the conditions of maxi­mum liberty can man’s creative nature have full sway in the solu­tion of his problems; liberty is a singular concept, having no fixed ends in itself, and presupposing that ends are open and only ,the individual can best choose for himself.58 (3) With maximum liberty and the concurrent release of individual creative power, man will produce the greatest abun­dance of material, as well as spir­itual, wealth possible.59

In summary, then, what is indi­vidual freedom and what is the proper function of law? Liberty is the absence of human interven­tion with the endeavors of an in­dividual to utilize his life, liberty, and property (and all adjunct rights flowing there from) as he sees fit and for the ends he de­sires, limited only by the equal liberty of all other individuals in society. To accomplish this ideal of liberty, law must be restricted to its proper role ; prevention of use of force and fraud against any individual or group by any individual or group60 or by the state, except where necessary to prevent the actor from invading the equal freedom of another ; provision of processes and insti­tutions for adjudication and en­forced settlement of private dis­putes ; and, provision of reasona­ble channeling procedures through which private individuals may utilize their voluntarily chosen ends.

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The Rule of Law

The end of the law is, not to abolish or restrain, but to pre­serve and enlarge freedom. For in all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law; and is not, as we are told, a liberty for every man to do what he lists (For who could be free when every other man’s humor might domineer over him?) But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow I his own.

Key takeaways
The Court’s interpretation of the Eighth Amendment: In recent years, the Supreme Court has seen an increase in cases involving the death penalty, hinging on the question of whether certain uses of capital punishment violate the Eighth Amendment’s protection against cruel and unusual punishment.

The Court’s interpretation of cruel and unusual punishment has changed over time. In some recent cases, it has prevented states from issuing the death penalty to defendants who are minors or defendants who are legally judged to be mentally incompetent.

Balancing public safety and the right to bear arms: The debate over gun control and gun ownership is a topic of much controversy in the United States today. Some argue that the government should do more to protect public safety and prevent gun violence by passing legislation limiting access to certain weapons and issuing mandatory wait periods. Others argue that the government should not be allowed to infringe on a person’s right to own a gun.

Although state and local governments have sought to increase gun control legislation in order to protect public safety, the Supreme Court has recently ruled in support of the Second Amendment protection of an individual’s right to own guns, striking down gun control legislation in D.C. v. Heller (2008) and McDonald v. Chicago (2010).
Balancing public safety and individual protections from unreasonable search and seizure: Since the 9/11 terrorist attacks, the National Security Agency (NSA), along with the FBI and CIA, have increased their efforts to prevent terrorist attacks on US soil. The NSA is responsible for conducting surveillance to protect national security. To do so, they created a database of digital metadata from major phone companies like AT&T, Verizon, and BellSouth.

This practice came to light in 2013 when former CIA employee Edward Snowden released classified information to the world showing that the NSA had been monitoring the phone calls of leaders of allied nations. Snowden’s intelligence sparked a public debate about whether or not this collection of data was an example of unreasonable search and seizure.
NSA critics contend that the agency violated the Fourth Amendment because it neither had the appropriate warrants to collect this data, nor had it disclosed the fact it was doing so. The NSA’s defenders argue that the agency was doing what was necessary to protect public safety, and that the likely delays associated with getting a court warrant each time the government wants to monitor digital metadata could impede its ability to prevent future terrorist attacks.