

Chapter One

Freedom: Possession or Process?

INTRODUCTORY QUESTIONS

What Is Freedom?

The walls of my local post office are adorned with the legend "Land of the Free, Home of the Brave." Below that a sign reads "No Loitering, Police Take Notice." Are those two signs at odds with each other? You might think that in a free country a public building would allow citizens to take shelter from inclement weather, but not our post office. Here you need to have post office business; you need to come in and do what you need to do and then leave. *No loitering*. Although some people are offended by this sign, many would defend it. You do not want people living in the post office lobby because the rent on their apartment is overdue. You do not want the place to be overrun by the homeless, drunks, or addicts. You cannot do whatever you choose in the post office just because it is a public building.

Discussion Question

Is there an inconsistency between saying that ours is the land of the free and the "No Loitering" sign in the post office? Give reasons for your answer.

In our national anthem, we describe our country as "the land of the free." We are accustomed to describing ours as "a free country" and to hearing this country referred to as "the leader of the free world." We say that "we have freedom" and think not only that we are fortunate but also that, having freedom, we are better than those who do not. Nothing symbolizes our sense of being securely in possession of freedom as clearly as the monumental Statue of Liberty in New York harbor. Emma Lazarus's poem inscribed in its base

refers to immigrants as “huddled masses yearning to breathe free.” It conveys the image of immigrants passing the Statue of Liberty and coming through Ellis Island to the United States where, henceforth, they will be free. Using these images we think of freedom as firmly in our possession, freedom as something we do not need to worry about, and as something we have come what may. Just as we rely on the love of our parents and the loyalty of our friends, we count on the permanence and solidity of freedom. Parents and friends will be with us through thick and thin. They will forgive us when we falter and give us a helping hand to rise again. Our freedom, we believe similarly, will always protect us when we are in need. It will always stand as a wall between us and overly ambitious government functionaries or fellow citizens who are bullies. Our freedom, we believe, is secure.

The national anthem, a Fourth of July speech, or comments made when we unveil yet another memorial to soldiers who died in a foreign war, are not the places to develop a complex understanding of freedom. In those contexts it is all right for us to say that we are free and dispense with all the qualifications. But we must not allow these patriotic occasions and the rhetoric appropriate to them to mislead us into thinking that our freedoms are immune to controversy, that we can always count on them protecting us, and that we all agree with each other on what they are. Distracted by pious patriotic phrases, we fail to see that we do not clearly understand or agree with one another what freedom is or even less where it is threatened by our immediate neighbors, the community, or the government.

Americans are proud to live in the land of the free but they do not always reflect carefully about their freedom. The idea of freedom is not as simple and clear as we often assume. In this chapter we will examine some aspects of freedom and the many interesting questions they raise for us. Here is a commonplace example of the problems freedoms raise for us.

Conflicts over the Limits of Freedoms

A few years ago, a Texas dentist invested his savings in a large piece of land at some distance from downtown. As the town grew in the direction of his land, the dentist was getting ready to develop that acreage, but then scientists at the local university discovered that his property was home to a rare insect, which, just an eighth of an inch long, had never been found anywhere else. With this discovery, the federal Endangered Species Act of 1973 came into play. For the sake of preserving this rare and endangered species of small insect, the government prohibited any further site preparation and construction. The development came to an abrupt halt. The fact that the endangered animal was barely visible to the naked eye made no difference. The dentist, pre-

vented from cashing in on his investment, went to court and the case began winding its way up to the Supreme Court where the entire Endangered Species Act will be challenged by the plaintiffs.

Discussion Questions

Did the Endangered Species Act limit the prospective developer's freedom? If so, does he still live in the "land of the free"?

How can the government justify its interference with the developer's freedom?

Give reasons for your answer.

This is an ordinary example of the conflicts that freedom brings with it. We say that freedoms are never unlimited: my freedom ends where its exercise harms my neighbors as a group or individually. Although that is easily said, as our story illustrates, in real cases the limits between the freedom of one person and that of another is difficult to fix and is rarely fixed without serious controversy.

"The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. . . . the only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others." Thus wrote John Stuart Mill, the great English philosopher and defender of individual liberty in his essay *On Liberty* in 1859. I am free to use my property as I please unless my sound system keeps my neighbors awake at night, my septic system pollutes a neighboring stream, or my dogs terrify children passing on the sidewalk in front of my house. It ends where, as in the dentist's case, my use of my property conflicts with the requirements, as determined by Congress, of conserving rare species.

None of these limits are so obvious that no one would quarrel with them. None of them are immutably set in stone. They are all open to negotiation and may be changed. Today, there is pretty widespread agreement that no one should be allowed to make excessive noise, especially at night, but in neighborhoods adjacent to college campuses conflicts over loud parties often go on for many years. The precise limits of the freedom of the neighbors to sleep peacefully and the students' freedom to party remain to be negotiated in each place, over and over again. There is agreement that no one should be allowed to discharge raw sewage into streams, but the owners of antiquated septic systems struggle against state mandated improvements that cost them thousands of dollars. The details of how to clean up our waterways and, especially, who will bear the financial burden remain to be negotiated. There is less agreement whether my neighbor may have his lawn treated with pesticides and

chemical fertilizers, even when those chemicals will run off into the nearby pond. There the fertilizer encourages the growth of weeds harmful to fish. I live close to that pond by choice because I am an avid fisherman. But now there are fewer fish in the pond; my neighbor indirectly interferes with my interests as a fisherman. Nevertheless, his use of chemical fertilizer on his lawn is, so far, widely regarded as a legitimate exercise of his freedom, but I do not agree with that.

All of these limits change over time, as the consequence of study and negotiation between conflicting interests. Regulations of septic tanks have become much more stringent in recent years as have been concerns about the preservation of endangered species. Federal legislation—the Endangered Species Act—has empowered the Secretary of the Interior and the Secretary of Commerce to prohibit development of the habitats of endangered species of plants and animals for housing or for growing crops. But the extent of this sort of government regulation is not yet settled. Court cases are still being filed as a means of negotiating the precise limits of governmental regulation to protect the environment and the limits of the rights of private property. On the other hand, there is so far limited regulation of chemical lawn treatments.¹

> The examples show us that, contrary to what we often think, freedom is not a settled possession. The citizens of a free country cannot quietly enjoy the blessings of liberty but are, precisely because they are free, embroiled in fairly steady streams of controversy, disagreement, debate, and judicial and political conflicts. The life of a free society involves endless disagreements of different sorts. Being free is work that involves disagreements, reflection, and political action. Imagine, by contrast, an authoritarian country where police are always ready to admonish citizens with their batons. Their job is to keep the peace, and they take that seriously. Disagreements are not tolerated; missing is precisely the freedom to make claims for yourself against others. Harmony prevails at the expense of freedom.

The Texas dentist whom the government prevented from developing his property did not lose his freedom, not even his freedom to own property, and to use it in all legal ways as he pleases. He encountered a specific controversy about the limitations of his freedom of property imposed by a particular law, the Endangered Species Act, and the specific conditions of his property. It is not useful to say that “we have freedom”; it is better to say that we have many different freedoms and where they impinge on the freedoms of others is often a source of disagreement and conflict. Freedom is no more than a collective name for many different kinds of freedoms.

> This chapter is devoted to explaining these basic features of a free society. It will discuss such questions as

- Is freedom a secure possession of U.S. citizens?
- Who shall be free?
- Do the freedoms of different groups conflict?
- What is equal opportunity?
- What are legitimate limits on free speech?
- Is the freedom of some citizens ever a threat to the freedom of others?
- How do we argue for liberal principles?
- What is the role of government in a free society?
- What is philosophy?

FREEDOM AND EQUALITY

Is everyone free in the land of the free or only some? For most of our history, some citizens had a good deal of freedom and others little. One of the most profound struggles in our history has been the attempt to assure equal freedom for all, and that struggle is not yet over.

Who Shall Be Free? A Brief History of the United States

The land of the free came into existence by usurping the land of other peoples. The early English settlers came to Massachusetts to escape religious repression, but they were not prepared to extend religious tolerance to anyone else. Not even fellow immigrants were allowed to deviate from the official orthodoxy. Roger Williams and Anne Hutchinson were expelled from the Massachusetts Bay Colony for advocating religious tolerance. Mary Dwyer was hung by the Puritans in 1660 for being a Quaker. The American Indians were considered “savages” and “heathens.” Converting them to the one true faith was one of the official justifications of settling in the New World.²

American Indians

Seventeenth-century Europeans thought of the Indians as primitive people—that is, nomads who did not practice agriculture and had no governmental institutions. They believed that the Indians roamed the land, never settling anywhere for long, unfamiliar with the institution of private property. The immigrants from England brought those beliefs with them to the New World. The indigenous people they encountered there were, however, quite different. The Mayflower arrived in Massachusetts in November of 1620. The people who had survived the voyage were not prepared to grow crops for themselves, and anyway, it was not the season for planting. Those who survived owed

their life to the corn and other staples they either stole from or were given by the Indians. It must have been quite clear that their preconceptions about the nomadic native inhabitants were mistaken. The people whose land they invaded were by no means nomads. Their agriculture flourished and yielded enough of a surplus to sustain themselves and the newcomers through the harsh New England winter.

LOCKE -
PROPERTY

Self-interest may have encouraged the settlers to maintain their European preconceptions about the American Indians. If land was not owned or improved by anyone, it was there for the taking. The new settlers need have no scruples about taking the land they found, as long as they could maintain their preconceived belief that no one was working the ground and growing crops on it. Although their experience contradicted them, they had a strong interest in holding on to their ideas of the Indians as primitive nomads who had not settled, let alone improved, the land by their own work.

The new immigrants from England were rigid in their religious beliefs. Notwithstanding their own suffering from religious intolerance back home, they were inflexibly narrow-minded. In the background of that intolerance stood the five-hundred-year struggle European Christians had won against the Muslims with the expulsion of Muslims and Jews from Spain—a process completed just before Columbus left on his voyage to America. For centuries in the crusades to take back Jerusalem from the Muslims, in the persecution of the Jews in Europe, in the Inquisition that rooted out heresy with torture and public burnings of its victims, and the wars and upheavals occasioned by the Protestant reformations, Europeans had murdered, raped, and pillaged in the defense of the one true God—theirs. Religious intolerance anchored in a sense of divinely ordained superiority to other nations was deeply ingrained in the European view of the world. The American Indians bore the brunt of that.³

To a considerable extent, the collapse of Indian cultures was the result of the terrible accident that American Indians had no autoimmune defenses against the diseases that traveled with the Europeans, such as hepatitis A, the plague, and measles—diseases which had not previously existed on the American continent. As a consequence of early contacts with European fishermen around Newfoundland, or with Dutch and French fur traders, whom they supplied with the coveted pelts, Indians experienced a series of epidemics in the early years of the seventeenth century. Populations shrunk by up to 95 percent in some estimates. It was more difficult, therefore, for the new immigrants to understand that the American Indians had a complex culture that included their own methods of agriculture, as well as hunting and fishing, because that culture was, at the time, quite precarious. The Europeans' lack of curiosity about the native inhabitants was encouraged by the enormous devastation wrought by the epidemics in the Indian population. Most of the English settlers never

discovered that the American Indians had developed forms of democracy unknown to the English immigrants. Each band of families had its own leader, but that leader's decisions needed to be ratified by the members of the band. England was to take important steps on the road to democracy in the seventeenth century. But the American Indians were clearly ahead of the European immigrants with respect to democratic political institutions.

Arguably, American Indian civilization was ahead of the Europeans in other respects. Indians were clean; some of the English and French immigrants had not taken a single bath in their entire life. They plainly smelled bad. Indian children were treated less harshly than European children. Indian children were free to roam the countryside and explore their world until marriage.⁴ Europeans put their children to work at age seven. Other differences between the Indians and the English settlers caused serious debates between settlers and native inhabitants. Indians were willing to go hungry for short periods in the depth of winter when food was scarce. Snug in their tepees with the snow piled up high on the outside they went without food for a few days when hunting was poor and their supplies of corn had run out. They were willing to put up with that for the sake of not working quite as hard as the Europeans during the rest of the year and for the sake of being able to have mobile dwellings that could be pitched near their corn and squash fields in the summer and then be moved to winter quarters when the days got cold. Europeans settled, as they had in England, in houses. They stored food for the winter. They were more susceptible to starvation.⁵ For that, they needed to work dawn to dusk in the spring, the summer, and the fall.

Greed for land, the religious intolerance bred in Europeans by centuries of religious warfare, the collapse of the Indian cultures due to disease, all conspired to leave American Indians as outcasts from the new nation that arose in the seventeenth and eighteenth centuries on this continent. The majority of Europeans never surrendered their image of the "savage"—noble in the eyes of some Europeans, but regarded as inferior by others. American Indians needed to be civilized or exterminated.⁶ The same majority was not prepared to share the land they had invaded. To justify that, the American Indian needed to be excluded from the U.S. culture that was developing in the seventeenth and eighteenth centuries. To this day, American Indians have to struggle for the freedoms of other Americans. If ours is the land of the free, its original inhabitants are not included in our free institutions.

African Slaves

The first Africans were imported into the continental United States in 1619, to the Virginia colony of Jamestown (although their status as slaves only developed

over a period of years after their first arrival in Virginia). In the South and in other parts of the United States, the bulk of the hard labor to produce food and staples was done by slaves for 250 years or more of our history. These slaves, too, aspired to freedom but their petitions went unheard; their uprisings were suppressed ruthlessly. There were major slave revolts in 1712, 1739, 1741, 1800, 1811, 1815, 1816, 1822, 1836, and 1839, and many more minor skirmishes in the war between the slaves and their masters. If they could not rise up, they damaged farm equipment, tore down fences, and made other kinds of mischief, such as stealing sheep and chickens. Many slaves ran away. In portions of the slave south, the flight of slaves was enough of a problem for plantation owners that they patrolled the roads nightly to watch for slaves attempting escape. Their first emancipation was incidental to the issues between North and South during the Civil War. But ten years after the end of the Civil War, a new regime of racial oppression was imposed by state laws, and enforced by the power of the various states and the terrorism of lynchings. A second emancipation needed to be fought for bitterly and is still not complete. The freedom of white America came at the expense of the freedom of the enslaved African Americans and of American Indians.

Women

Until the twentieth century, women were not just second-class citizens. They were not citizens at all. They were not voters, and until the middle of the nineteenth century they could not own property — whatever they may have earned was the property of their fathers or husbands; they were excluded from the public and political sphere because they were confined to their homes, by law as well as custom. They had fewer educational opportunities and could with few exceptions not live as independent adults as men could. (For more details, see chapter 4).

Only a minority of the inhabitants of the land of the free enjoyed freedom, and those who did could not have enjoyed their freedom had it not been for the work and the deprivations of the unfree. The freedom of citizens existed at the expense of the lack of freedom of the majority of the people.

Discussion Question

Considering our history of depriving the majority of Americans of elementary freedoms, what do you think now about our description of our country as “the land of the free”? Give reasons for your answer.

Other Debates about Who Shall Be Free

Now new debates about who shall enjoy our freedoms are rising up with respect to persons whose sexual choices are not those of the majority. Should all couples be free to marry and have their unions officially recognized and legitimated by the state, or should that freedom be restricted to heterosexual couples? Freedom is not a secure possession; it is instead the source of endless controversy, conflict, and unrest. A different debate is coming up about immigration. Are the freedoms Americans claim for themselves, but withheld from many of their fellow citizens, *American freedoms* that only we are entitled to, or are they *human freedoms* that should be open to everyone? I believe, as I shall discuss in chapter 3, that everyone is entitled to a minimal decent level of life. Are Americans the only ones entitled to that, or should the same right be extended to Mexicans and other Latin Americans, to people in Africa and Asia? Our answer to that question will have obvious implications for the policy we advocate with respect to legal immigration and the treatment of illegal immigrants.

Discussion Questions

1. *List arguments for and against allowing gay couples to get married.*
2. *Assemble different views about immigration from the Internet. What do you think is the most just immigration policy for the United States? Give reasons for your answer.*

THE MANY FACES OF EQUAL OPPORTUNITY

We agree that ours is a free country to the extent that all citizens have equal freedoms. We regret the past in which freedoms were restricted to limited groups such as white male property owners, or all white men, and we deplore the present where equal freedoms still are not accessible to all. But what are equal freedoms?

"That's simple" you say. "We have equal freedoms when all of us are able to participate in government or all are able to enjoy their property securely." In the past, slavery was protected by law and the law took the side of the slave owners against the slaves' legitimate strivings for freedom. The disenfranchisement of women was enshrined in the law and enforced by the police and the courts. So were the laws against working people organizing themselves to improve their working conditions. Equal freedoms exist only when the laws apply equally to all and when they allow the same range of activities to all