# PRINCIPLES

## FOR A FREE SOCIETY SECOND EDITION

Study guide on the principles
for a free society by
DR. NIGEL ASHFORD
commissioned by the
Jarl Hjalmarson Foundation

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Hjalmarson was involved in foreign and security policy. His debate in the Parliament in 1959 against the Social Democrat Prime Minister Tage Erlander has been noted as one of the most vehement and important debates about Swedish security policy in the post-war era.

# Principles for a Free Society

**Second edition**

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# Civil society

*"Among the laws that rule human societies there is one which seems to be more precise and clear than all others. If men are to remain civilised or to become so, the art of associating together must grow and improve in the same ratio in which the equality of conditions is increased."*
Alexis de Tocqueville

**What is civil society?**

Civil society is all those voluntary organisations that exist between the individual and the state such as the family, churches, sports and music clubs, and charities. The idea of civil society is a product of civilisation. What Tocqueville called the art of association is a result of the modern practice of men co-operating with others they do not know for the purpose of achieving their ends. This need simply did not exist in the hunter-gatherer societies of our ancestors, where everyone was known to one another and the survival of the species was dependent upon communities sharing a common aim. With the advent of the division of labour and a society of laws in which people could use their separate property for their particular purposes, that art of association became the foundation of peace and prosperity among men. The concept of civil society is inseparable from the idea of freedom. It is a common mistake to suppose that an individual existing alone can be free, and that freedom is the absence of restraint. The theory of civil society reminds us that a state of freedom is one in which just restraints are applied to men and that it is by their association with one another that the condition of each is improved.

A French thinker, Benjamin Constant, articulated the meaning of civil society when he pointed out that the idea only made sense in the modern world, where the individual exercised only an imperceptible influence on his fellow man. In a speech outlining two different types of liberty of the ancients and of the moderns, Constant argued that it was the freedom to associate with one another, rather than the freedom to participate in government that marked out man's most important freedom as an invention of the modern world. This idea of civil association, and the institutions to which it gave rise, was discussed systematically by an Irishman, Edmund Burke, and a Frenchman, Alexis de Tocqueville as they observed the workings of England and America in their time. The great insight of Tocqueville was that progress in society was a by-product of human co-operation which in turn could not take place unless society was free, ruled by what the Enlightenment thinkers had called "a government of laws, not of men."



While Tocqueville described the myriad ways which Americans had developed the art of association on his travels there in the 1830s, Burke articulated the role of intermediary institutions - the product of that association - in the affairs of men. He gave them the name of little platoons. These mediating institutions of family, church and community assisted the functioning of society as a whole. As Burke wrote: "To be attached to the subdivisions, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in the series by which we proceed towards a love to our country and to mankind." For Burke, these institutions played a key role in shaping human personality and by fulfilling a deep human need to belong gave rise to a vast network of associations which strengthened the ties that bind us together.

**The ties that bind**

It is in these little platoons, what the conservative philosopher Michael Oakeshott later called civic associations, that we find the instincts and the spirit which form and shape the communities of men which are the building blocks of society. By easing the path of social co-operation, these civic associations allow us to benefit from, and so to cherish, the existence of those who are closest to us. The loyalty we feel towards family and friends, local community and nation are nurtured by our need to associate with others. Civil associations are therefore part of the social glue that holds society together. Far from the atomised individuals of which the critics of free societies speak, civil associations strengthen our ties to the heritage and common interests we share with others and makes society as a whole stronger as a result. The civil society is a humane society because it enhances and encourages our human feelings of sympathy for our fellow man.

## Government versus civil society

The enemy of civil society is not individual liberty, but government. Government tears up the bonds that connect us to each other because it collects and centralises power and resources, and undermines our civil loyalties by making demands on our time, our money and our compassion. These demands loosen the ties that bind us together by depriving us of the material and emotional resources we would normally invest in one another. When Tocqueville visited America from Napoleonic France, he was initially surprised by the proliferation of voluntary associations which supported every conceivable cause and point of view. His native France which laboured under a centralised government could not support such a patchwork of individual effort because so much more human energy was absorbed by the needs of the state. This is the basic reason why communities flourish in conditions of freedom. Government creates barriers to the art of association because it disempowers individuals. In totalitarian societies, the state stops individuals co-operating with each other to achieve common ends, because all of society's ends are directed towards achieving the aims of the state.

## The wheels of commerce turn civil society

Commerce promotes civility. Montesquieu credited trade with the spread of sweet manners to the people of Northern Europe whom the Romans had once called barbarians. David Hume promoted the idea that the spread of commerce was critical to the refinement of society and the advancement of the arts and sciences. Because commerce made it possible to "do a service to another without bearing him real kindness," he argued it created a society in which it was in the "interest even of bad men to act for the public good."

Traders require the trust and confidence of those with whom they trade, and so contribute to a climate in which promises are kept. Francis Fukuyama has demonstrated the significance of trust in successful societies and the contribution of trade and exchange in creating the trust that allows civil society to develop.



## Altruism and self-interest

The American economist, Ronald Coase has described how various individuals, stockholders, workers, customers and others come together to create what we call the firm. But whereas self-interest motivates these disparate groups to co-operate, altruism, concern for others, is the basis of other forms of social co-operation, such as the family. Whilst appropriate in different spheres, we know that our altruistic impulses would not get us very far in business, just as selfishness achieves little in family life. The strength of the intermediary institutions of civil society lies precisely in their ability to nurture and develop our human instincts where they can be used to best effect. Civil society channels our feelings to their appropriate outlets where otherwise they may cause much harm.

## The family as a subversive institution

Of all the institutions of civil society, perhaps the most important is the family. Its role as an educator, provider and rearer of children is unequalled by any other institution. The family is such a unique source of moral values and focus for human feelings that Ferdinand Mount has labelled it a subversive institution. It stands between humanity and the nightmare vision of Brave New World, or even of Plato's republic in which children are wards of the state. As a transmitter of values from generation to generation, the family with its strong claim on human feelings is a far more powerful moral teacher than the most pervasive propaganda of a totalitarian state. The family is the place where future citizens learn to distinguish right and wrong. It is in those societies where the family is strongest, where decisions are made by families rather than the state, that its members have the greatest appreciation of the difference between right and wrong. Families in free societies have that advantage because their adult members are not treated like children by government.

## A buffer zone between the individual and the state

A key function of civil society in free societies is to act as a counterbalancing force to the power of government. Where individuals are atomised and not accustomed to the ways of human co-operation they are easier prey for the totalitarian temptations of those who of-

fer security in place of freedom. These little platoons stand in the way of tyrannical government because they lay claim to the loyalties of their members, in opposition to the demands of totalitarians for the un-conditional loyalty of citizens to the state. The family, religious affiliations, private enterprises, voluntary organisations and free trade unions undermine that loyalty and transmit values that are antithetical to the obedience and acquiescence required by totalitarians. That is why every totalitarian society ever created by man has attempted to undermine them, and it is also why the degree to which these institutions thrive and prosper is an indication of how safe our freedoms are.

**The enemies of civil society**

It is no accident then that fascist and communist regimes throughout history have declared war on the family, and tried to set children against parents, wife against husband, and generation against generation. The reason for this is that the state wants access to information to serve its own purposes and needs to claim a prior and higher loyalty than that which people naturally feel to their family. These institutions are subversive in such societies because the affection and allegiance which they create is productive of resistance to the demands of the state. A strong civic society acts as a barrier against tyranny because it maintains a moral order which protects and sustains the values of freedom. By undermining civic institutions, big government strips the individual of protective layers which stay the hand of intrusive government. When those layers between government and individual are shed, the individual is left defenceless against the enemies of the open society who would subordinate the freedom of the individual to the authority of the state.

**A complex web of mutual obligation**

This network that sustains social power by restraining political power creates a web of reciprocal rights and duties that allow society to govern itself. Society is a great compact between not only each of its members, but those who are no longer alive and generations as yet unborn. We act in the interests of others whom we do not know and in some cases cannot know because we are driven by a moral sense that tells us what we must do. These moral instincts push us to



perform roles better and to greater mutual benefit than any government ever could. Parents and children have both rights and responsibilities towards each other. Each generation has a responsibility to those that have gone before it, and those which will come after it. Marriage, friendship, and even man's relationship with the animal kingdom are governed by these obligations, which give birth to the bonds of society and guide us to fulfil our duties to others as we hope and believe they will be done to us. It is because the state cannot replace this network that cruelty results when it tries.

**Rebuilding civil society**

There is perhaps no more vital task today than rebuilding the civil order in those societies where the omnipotent state has left that order in ruins. It would be an error to suppose that government can achieve that task. Civil society is the result of the spontaneous human actions of a free people. It requires that government get out of the way of people's endeavours and leave them free to associate with one another. It is easier for the moral fabric of society to be destroyed than it is for it to be carefully built up and passed down through the generations. There can be no doubt that freedom will not last long unless that task is begun. That means that the people must be free, in their economic affairs, in their religious activities and in their family lives.

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**Questions for thought**

1. Why is a strong civil society valuable?

2. To what extent can civil society fulfil many of the responsibilities of government, for example, in helping drug addicts or the poor?

3. How should government try to encourage civil society?



# Democracy

*"Many forms of government have been tried and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time."*
Winston Churchill

**What is democracy?**

Democracy is now the wave of the future, as more and more nations adopt democratic systems. This is a development to be welcomed. However the word democracy did not always have positive connotations. 'Democracy' comes from the ancient Greek, 'rule by the people', and they used the term as a system to be avoided. Democracy was contrasted with monarchy (rule by one), oligarchy (rule by a few) and aristocracy (rule by the best). For the Greeks, democracy was associated with three major defects: the majority could use their power to oppress the minority; the people could easily be swept along in a wave of emotion and passion, and not guided by reason; and the people might be motivated by their own special interests at the expense of the interests of society as a whole. A specific form of democracy, called liberal, representative democracy, therefore was developed to seek to combine the advantages of democracy whilst avoiding or minimising the potential dangers. It is this form which is sweeping the world.

Abraham Lincoln provided the classic definition of democracy in his famous Gettysburg address during the American Civil War. Democracy was "government of the people, by the people and for the people." His definition raises four questions, which liberal democracy answers in a particular way.

**Who are the people?**

The obvious answer is everyone in a society. The ideal therefore would be that decisions should require the agreement of everyone. However this would be extremely difficult to achieve, would be very time consuming, and would give a great deal of veto power to one person. Liberal democracy usually adopts the principle of majority

rule, that the people are best represented by the votes of a majority, 50% plus one. In liberal democracies certain major decisions may require super majorities (such as two thirds). However there is a recognition that simple majorities could be oppressive to minorities, so some form of protection for minority rights usually exists. Liberal democracy has sometimes been described as 'majority rule and minority rights.'

**Government of the people**

The second question involves "of the people": over what should the people rule? Which decisions should be taken by the people as individuals, families, firms and associations, and which should be decided by the state collectively? If all decisions would be democratically decided by the collective, then there would be no freedom. Society would be under a totalitarian regime which ruled everything. It would be a 'totalitarian democracy,' to use J.D.Talmon's phrase. In a liberal democracy, the role of the state is limited, with most decisions being left to the private realm. So liberal democracy believes in limited government. The majority should not be allowed to decide whatever it wishes. Liberal democracy therefore opposes unlimited rule by government, even so-called democratic ones.

**Government by the people**

The third question is on "by the people": how should the people rule? Some argue that the people should rule directly. This could be done in a referendum, or a general meeting, or in a form of participatory democracy. In theory it would be possible to provide every citizen with a computer in which they could register their vote on every issue and the majority of voters could decide government policy. However, the state should exist to serve the people. The people do not exist to serve the state. In a direct democracy, people would have to spend their whole lives researching, debating and voting on every collective decision. They would have no time to make decisions about their own lives. Therefore in a liberal democracy, the voters elect representatives to a legislature (and sometimes the executive) to make decisions on their behalf. These representatives should have the time, ability and character to consider collective decisions, debate



the merits and demerits of particular actions, and make a decision on behalf of the interests of the people as a whole.

Accountability of these representatives is achieved through regular elections. If the representatives neglect the interests of the people they can be removed from office. The goal is to obtain a balance between representative and responsible government: representative of the interests and opinions of all the people, and responsible to consider the long term consequences of government actions in a spirit of calm and reasoned debate. Liberal democracy is sometimes described as representative democracy, or indirect democracy. In some liberal democracies referendums may be held when changing the nature of the constitutional system, or the basic rules under which the people are governed.

**Government for the people**

The fourth and final question is: how to decide what is "for the people?" How does one identify the interests of the people? Everyone's interests should be considered in making decisions, although not all can be satisfied. However the goal should be to identify those interests which are general for the population, for example peace and prosperity, and not to adopt policies which favour particular groups in society. One problem is that groups will promote their own particular or 'special interests', which all deserve consideration. However policies should reflect a wider or general or 'public interest'. Representative democracy allows that all groups should have the opportunity to express their interests and opinions, but decisions should not simply be a reflection of these special interests. Another problem is how to identify interests when views may be based on emotions and passions. A considered and thoughtful identification of the general interest is required. So in a liberal democracy interest groups are encouraged to present their interests and opinions, but they should not themselves be the decision makers. That should be left to elected representatives who are accountable to the people as voters.

**Democracy protects freedom**

Political power is always open to abuse by those who exercise it. Democracy is the system most likely to defend the natural rights and

liberties of the people, and prevent such abuse. Aristotle asked the question in response to Plato's call for rule by the wisdom of philosophical guardians. "Who shall guard the guardians?" How can we ensure that the rulers do not use their power for their own interests rather than that of the people? The strongest safeguard against abuse is that the people have the power to remove those in office through elections. It is the knowledge that they can be removed from positions of power that acts as the strongest check on the abuse of power by rulers.

The people themselves however can also be a threat to freedom. The French thinker Alexis de Tocqueville described the greatest danger from democracy as coming from "the tyranny of the majority". The Founding Fathers of the USA were fully aware of the threat to freedom from all who possess power. Alexander Hamilton wrote in The Federalist Papers in 1787, "Men love power ...Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many."

Lord Acton, the British historian, identified the same fault in democracy. "The one pervading evil of democracy is the tyranny of the majority, or rather that of the party, not always the majority, that succeeds, by force or fraud, in carrying elections." Liberal democracy is therefore limited democracy, which places limits upon the powers of government even when exercised with the consent of the majority. The rights of minorities, and the individual, should be protected.

**Democracy promotes the interests of the people**

How does one ensure that the interests of the people are promoted and not just those of the rulers? By regular elections, the politicians know that, if they neglect the interests of the people, they will be ejected from office. Jeremy Bentham was the inventor of the concept of utility, now the basis of modern economics. He wanted "the greatest happiness of the greatest number." He became an advocate of democracy as he saw it as the only means to ensure that the interests of the people would be served. Democracy seeks to ensure that interests are maximised. Although not all can be satisfied, all interests will be considered because everyone is a potential voter that can contribute to the retention or winning of elective office. "As the happiness of the people is the sole end of government, so the consent of the people is the only foundation of it, in reason, morality and the natural fitness of things," claimed John Adams, one of early US Presidents.



**Realistic political participation**

Most people are not very interested in politics. They have better things to do with their lives: earning a living, spending time with their loved ones, or enjoying the pleasures of life. Democracy does not require the people to give more attention to politics than they wish. The minimum is the exercise of the vote. Voters are encouraged to follow political debate but are not required to do so.

However for the minority interested in politics, the attentive public, there is plenty of opportunity to become involved. Democracy provides for participation through public debate and discussion, the exercise of the vote and by standing for office. John Stuart Mill thought that political participation was highly desirable because it fostered in those involved intellectual development, moral virtue, and practical understanding. Politics is undertaken by those with the time, interest and energy to devote to politics. The problem with direct or participatory democracy is the same as that expressed by Oscar Wilde on socialism: it takes up too many evenings. However ordinary voters can take advantage of the debate amongst the politically conscious when they wish and when exercising their vote. The value of political education was extolled by Thomas Jefferson, US President and author of the Declaration of Independence. "I know no safer depository of the ultimate powers of society, but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it away from them, but to inform their discretion by education."

**Reason, not passion**

The Greek scepticism towards democracy was partly based on the fear that the demos. the uneducated masses, were the least qualified to take decisions. The masses would be driven by passions, emotions and instincts, such as envy and anger, rather than reason and thoughtful deliberation. Representative democracy is designed to

ensure that, before decisions are taken, the implications and consequences are fully considered. The public should consider the issues carefully and present their various opinions. The elected representatives should have the time, the education and the wisdom to debate and consider laws and decisions made on behalf of the people. This is why democracy should be representative and not direct.

This is also why the elected official is a representative and not a delegate, bound by the opinions of his voters. Edmund Burke expressed this in his speech to the electors of Bristol. "Your representative owes you not his industry only, but also his judgement, and he betrays, instead of serving you, if he sacrifices it to your opinion." A parliament should not act as a Congress of Ambassadors representing various interests but " is a deliberative assembly of one nation, with one interest, that of the whole." Representatives are there to consider the interests of the society or nation as a whole and not only the interests of those who have elected him or her.

**Stability and legitimacy**

Political systems require stability, with the ability to make decisions over the long run. Stability is best achieved through legitimacy, the authority to make decisions, or 'the right to rule'. The state needs the acceptance of its rule by the people, even when they disagree with a particular decision, and especially acceptance by those out of power. The people do not need to consent to every decision, but to how decisions are taken, the process, not the result. Liberal democracy is more likely to provide legitimacy then any other system because power is exercised with the consent of the people. Everyone has the opportunity to present their opinions and interests, to participate in the process, and seek to obtain power. Consent is provided by regular and open elections. Democracy is more stable than any other regime because it has legitimacy in the eyes of the people.

**Characteristics of liberal democracy**

Democracy involves more than one person, one vote. It requires certain characteristics to be a functioning democracy.

Almost everyone should have the vote, universal suffrage. If one is to ensure that the interests of everyone are at least considered, then



everyone is entitled to the vote. Any exceptions must be justified with strong arguments, for example children.

There must be free, open and periodic elections. The elections must be free in that voters should be able to exercise their vote without undue pressures. This is why the ballot is usually secret. It must be open, in that anyone should have the opportunity to be a candidate for election and to present their appeals to the voters. It should be periodic. There should be elections every 3-5 years, to provide a balance between ensuring responsiveness, so not too long a period between elections, and responsibility, so that the results of government actions should have the opportunity to be revealed to the people before they exercise their verdict on the performance of the government.

There must be a choice of parties. Despite the claims of some communist and African countries, there cannot be a one-party democracy. If parties are to be made responsive to the wishes of the voters and tyranny avoided, then it is essential that the voters should have the opportunity to remove the parties in office and replace them with another party. A choice of parties also ensures that the weaknesses of all the parties are discussed and available to the public before exercising the vote. There is a central role for constructive opposition.

There must be freedom of speech and association. Everyone should have the opportunity to express their views. How else are the representatives to be able to decide what is in the interests of the people? Anyone should have the opportunity to combine with others to forward their opinions and interests, so there must be freedom to form parties and interest groups.

There must be checks and balances. To avoid the danger of majority or minority tyranny, power should not be concentrated into the hands of any one individual or institution. Therefore in a liberal democracy, checks and balances are in place to prevent the concentration of power, especially in the executive. The legislature must make the executive accountable for its actions. Legislatures are usually bicameral, with two chambers chosen in different manners. The judiciary should be independent of the executive. There should be strong local government.

There must be a constitution which sets out the rules and procedures of government. Usually this is done in a single document, but every system is based on a mixture of written rules and implicit understandings or conventions. There should be the rule of law, and not the rule of men, so that everyone could know the rules by which they are governed. Liberal democracies usually avoid having too detailed a constitution which is inflexible, nor one that prescribes policies, which can become dated.

**Representative and responsible government**

Liberal democracies are imperfect because they seek to balance representation and responsibility, to be responsive to the wishes and interests of the voters while ensuring good decisions with positive long term consequences. Inevitably that balance will never be fully achieved. However there is no other political system which shares these two objectives. The price of democracy is eternal effort to ensure both representative and responsible government.



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**Questions for thought**

1. Should elected politicians pursue policies supported by the majority of the people, as reflected in opinion polls, regardless of what they think is right for the country?

2. How do we prevent the tyranny of the majority?

3. Should we ever have referendums, and if so, when?

# Equality

*"All men have equal rights but not to equal things."*
Edmund Burke

**What is equality?**

Equality is the principle that people should be treated the same or equally. Yet people are obviously not the same or 'equal' in most of their characteristics, in talents, abilities, looks or preferences. No one believes that every human being is the same, so in what sense are people equal? The debate about equality is about when it is, and is not, right to treat people the same. At least five different types of equality can be identified: moral (or formal) equality, equality before the law, political equality, equality of opportunity, and equality of outcome. The first three types are desirable; the last is highly undesirable; and the value of equal opportunity depends upon how it is interpreted.

For most of the history of the world, equality was ignored as a moral principle, or viewed as inconceivable and incompatible with reality. It was considered normal that people should be treated in different ways, such as different laws for barons and peasants. An early statement of equality can be found in Aristotle when he proclaimed that no distinction should be made between men who are equal in all respects relevant to the issue in question, which of course raises the question of 'what is relevant?' Christianity preached the principle that all souls were equally worthy in the sight of God.

Thomas Hobbes claimed that men were equal in the state of nature, but it was such an undesirable state of affairs, in which life was "solitary, nasty, brutish and short", men were eager to surrender this equality for order under a strong ruler, the Leviathan. As so often in the history of modern philosophy, a decisive break occurred under John Locke. He maintained that men had equal rights in the state of nature, but retained them under political rule. These rights to life, liberty and property belonged to all human beings. It was in this sense of equal rights that the American Declaration of Independence declared that "all men are created equal." Its author, Thomas Jefferson, elsewhere strongly denounced those who felt there was a



natural hierarchy and that people should know their place in society. "The mass of mankind has not been born with saddles on their backs, nor a favoured few booted and spurred ready to ride them legitimately by the grace of God." The nineteenth century was a period of struggle to establish the implications of equal rights in the abolition of slavery, the provision of the principle of equality before the law, and political equality in which all citizens were entitled to an equal right to vote,. However, women did not receive the vote in many countries until the early twentieth century, and blacks and coloureds were denied equal political and property rights in the South Africa of apartheid. It was in that century, with the rise of socialism and communism, that equality became commonly associated with material equality or 'equality of results'. The principle of equal opportunity also gained ground in that century but then was transformed into a different principle, almost identical to that of equal results.

**Moral equality**

Every human being is morally worthy of consideration, with the right to make choices about their lives. This arises from their existence as a human being, and is based on the belief that there are certain things which every human being has in common with every other human being (notably natural or human rights) and that made them worthy of respect. Just because someone is of a different religion, or nationality, or gender, does not mean that they do not matter. As a human being, one has the right to live one's life as one chooses, provided one does not invade the lives of others. This is why such beliefs are in opposition to, and would seek to ban, slavery, as the slave is forbidden the right to live his own chosen life. Immanuel Kant developed a rule following from this presumption of formal equality, sometimes called the categorical imperative: "do unto others as you would have done to you."

This is not of course to say that everyone is morally equal in their behaviour. Clearly there are some people who behave better than others, and some who commit evil acts. However, their lives remain of value. Unfortunately there is no agreed consensus on the correct term to use for this sense of equality. Various terms include formal

equality, moral equality, equality of status, equality of worth, and equality of respect; none of them truly capture this principle.

### Equality before the law

The most important political consequence of the acceptance of moral equality is best identified in the principle of legal equality or equality before the law. This states that the law should treat people impartially, regardless of irrelevant characteristics, such as nationality, ethnic group, wealth, class, gender, religion, or race. This is why justice is 'blind' to all factors other than those directly related to the case. Legal equality is thus strongly linked to the principle of the rule of law. Equality before the law was the basis for the early claims of the women's rights movement that women should be entitled to the same legal rights as men, such as the right to own property and to vote.

The Roman orator Cicero noted the moral distinction between different types of equality. "While it is undesirable to equalize wealth, and everyone cannot have the same talents, legal rights at least should be equal among citizens of the same commonwealth." The French Declaration of the Rights of Man in 1789 stated that the law "should be the same for all...and all being equal in its sight, are equally eligible to all honours, places and employments, according to their different abilities, without any other distinction than that created by their virtue and talents."

### Political equality

Moral equality is also the source of political equality, in the sense that everyone is entitled to vote unless there is a valid and legitimate reason why that person should be denied it. As the interests of all humans are worthy of consideration in the making of common decisions, so all should have the vote to ensure that their particular interests were considered by the elected politicians. Exceptions might be children, the mentally handicapped and convicted criminals, who are either incapable of identifying their own true interests or are felt to have forfeited that right as a result of their failure to obey the laws. Thus there is a presumption of equal political rights, which one should be very reluctant to betray.



### Equality of opportunity

Equality of opportunity is based on the view that individuals should have the opportunity, or chances, available to them to succeed in life, as they interpret success. This is usually conveyed by the use of sporting metaphors, such as an equal start in life, or an equal playing field. There should be an equal start in the race of life but with an unequal finish. Margaret Thatcher described this as "the right to be unequal." The goal is that careers should be open to the talented and promotion should be by ability, not due to family, sexual or political connections.

Such a society would be a meritocracy, or rule by the able and talented, who achieved their positions through merit. Merit has been defined as ability plus effort. Equality of opportunity is about removing unfair obstacles to achievement. Social position should be based on individual effort and ability. This is strongly linked with the idea of education for all, so that everyone can develop themselves to their full capacity. Advocates and opponents of meritocracy both acknowledge that the consequence could be quite major differences (or inequalities) in results. This view is based on the idea of equal liberties.

However, it might be better to describe this as the principle of maximum opportunity. In practice, it is never possible to achieve equal opportunity, and it would indeed be undesirable. One of the greatest sources of unequal opportunity is the family, when there is a difference between warm, loving parents who care deeply about their children, and in different parents who care more about their own selfish desires. It is impossible to ensure that every parent is kind and loving, so the strict application of the principle of equal opportunity would require taking the children away from their parents and bringing them all up together collectively. This would be unacceptable to anyone who believes in the value of the family. A full commitment to erasing any differences in opportunities would require a totalitarian society in which the state was able to control every aspect of life to ensure that no one obtained an 'unfair ' advantage such as a better teacher.

**Positive discrimination**

The idea of equal, as distinct from maximum, opportunity is behind the drive towards positive discrimination, or disproportionate but favourable shares to groups as a means of redressing past and present inequalities of treatment. This can take at least three forms: outreach, encouraging minorities to pursue positions; preferences, in which one group is preferred over another; and quotas, where equal opportunity is said to exist only when the same proportion is employed or represented in a body as their percentage in the population. Originally the idea meant outreach, making minorities aware of the opportunities available and encouraging their pursuit. This is unobjectionable. However the idea has come to mean preferences and quotas, which is objectionable.

Positive discrimination should be opposed and is itself a denial of the four types of equality identified above. First, groups are favoured on irrelevant grounds. The benefits of discrimination are often directed to the relatively educated and successful members of the groups. Second, unjust treatment of individuals in the past is not rectified by favourable treatment of totally different individuals today who happen by an accident of birth to belong to the same group. Thirdly, any discrimination causes a backlash against the new privileged. Instead of being recognised as having achieved their position on grounds of merit, the assumption is that they were favoured in some way, and this reduces the confidence and trust of the rest of the population. Fourthly, it is unfair to the members of the majority group that they should be treated unequally. Most important of all, it is fundamentally a denial of the principle of formal and legal equality as people are treated not on the basis of their own virtues and faults, what Martin Luther King called "the content of our character," but on irrelevant characteristics such as gender or race.

**Equality of outcome**

This is the most frequently used sense of equality, best described as egalitarianism, which is that there should be equal shares for all. Instead of being concerned with the conditions in which people participate in society, this is concerned with results, with the end of the race, a move from opportunities to rewards. All runners will finish



the race together or will receive the same rewards whether they were first or last. Equality of outcome is concerned with material equality or equality of living conditions. This requires redistribution from the better off to the worse off, where the primary goal is to eliminate the gap.

Egalitarians often invite confusion as to whether they mean equality of income or wealth. Even if two people received the same income, inequality of wealth would quickly ensue, as one carefully saved part of his income or spent it on long term benefits, such as improving his home, whilst the other spent all the money on goods with only short term benefits, such as smoking, and saved none. Very soon, the first person would be much wealthier than the second, although they both received the same income.

Together with most proponents of moral equality, one should reject equality of outcome as a desirable goal. First, it is unnatural. The natural condition of man is to have inequality of material possessions. It requires unnatural and coercive acts to change it. Individuals left to their own devices will rapidly achieve differences in incomes, wealth and living standards. Second, it would require a massive denial of individual liberty and massive state interference in people's lives. Third, it would be highly inefficient as it would reduce incentives to work and produce. Why work if you know that you will receive the same benefits regardless of your behaviour? Fourth, it is unjust as people are entitled to receive the benefits for which they have worked. Fifth, wealth has to be produced. Egalitarians are so concerned with redistributing wealth, that they rarely consider the link between production and distribution. If one produces and then discovers that, without your permission, part of your wealth is given to others, you will reduce your wealth production. You will respond to incentives. The consequence is the loss of wealth to society as a whole. It is an illusion to believe that distribution can be changed with no effect on wealth creation. Finally, 'who will equalise the equalisers?' Some one or body has to have the power to decide who gets what. The members of this elite will have considerably greater power than any one else and will use that power in their own favour. While members of the communist nomenklatura often had wages similar to others, they were able to use their political power to im-

prove their own conditions. To achieve equality of results would require massive inequality of political power.

**For equality, against egalitarianism**

A just political system would therefore show respect for: equality before the law, to develop a legal system which treats equally all who come before it; equal political rights, when all are entitled to the vote and the right of free expression; and equal opportunities in the sense of careers open to the talented. However a free and just society would reject positive discrimination, redistribution and egalitarianism.



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**Questions for thought**

1. Is the gap between the wealth of the richest and the poorest in society a problem?

2. Do you believe that all your citizens are treated equally before the law?

3. How can we maximise economic and social opportunities?

# Free enterprise

*"To be controlled in our economic affairs is to be ... controlled in everything."*
Friedrich Hayek

**What is free enterprise?**

Free enterprise is the economic system based on the voluntary exchange of goods and services, in which the people determine their own economic affairs, by deciding where they work, or invest, how to spend or save the fruits of their labour, and with whom they trade. The people are free to make these decisions in a free enterprise society because a framework of law allows citizens to own property, to exchange what is theirs (including their own labour) and to enter into legally binding contracts. This governance of laws allows individuals to co-operate to their mutual benefit by forming legal associations to conduct their commerce, including corporations, partnerships and not-for-profit organisations. Government has a role to play in protecting people's property and enforcing their contracts so that people may trade with one another with confidence, but in a free enterprise society, that role is strictly limited. Economic barriers to free enterprise, such as taxes, regulation and government spending, are kept to a minimum in this society.

Trade and exchange have been an integral part of every human civilisation, and a limited recognition of the value of these activities was a key factor in how the West grew rich. It was in those areas where the power of church and state waned and where there were competing sources of authority, that a degree of economic freedom allowed people to prosper and their numbers to grow. In the Italian city-states of the Renaissance, in the seventeenth century Dutch Republic and above all in England and her American colonies, the people's relative economic liberty made these nations centres of commerce. It was not until the final quarter of the eighteenth century, however, that a Scottish economist named Adam Smith pioneered a systematic theory of how free enterprise worked. In a book entitled *The Wealth of Nations*, Smith sought to explain the prosperity that had grown up in England since the advent of its limited, constitutional monarchy in



1688. The book went into print in 1776, the same year as the War of American Independence and greatly influenced the founding fathers of the United States, whose rebellion Smith supported.

This idea of an economy which largely ran itself, without the supervision of a centralised government in time, transformed economic thinking in the West. Smith's new theory challenged the economic practice of the day — a system of mercantilism by which monarchs and ministers closely directed the economy. The old economic order was based on the idea that the source of a nation's wealth lay in its stock of gold, silver and precious metals. Commerce was thought best conducted by granting monopolies to guilds and corporations. Laws were passed to suppress wages and keep prices high, and a complex web of high taxes and duties were levied to finance the military adventurism which governments pursued to plunder the resources of other nations, and enslave their people. Smith turned these ideas on their head, demonstrating that the wealth of nations was derived from a division of labour which allowed people to specialise at providing the consumer with what he wanted. Money, he argued, was only of value in terms of what it could buy. Competition increased purchasing power and therefore created prosperity.

**Free enterprise raises workers' wages**

The ideas that led Adam Smith to advocate free trade, cheap government and open markets, are still raising the living standard of working people today. It is the nations that embraced these ideas, such as the USA, which have enjoyed the greatest latitude that worker's wages have risen to the highest levels on Earth. By contrast, those nations that have experimented with government planning have failed to lift people out of poverty and hunger. Free enterprise raises worker's wages by stimulating people's willingness and ability to produce that which their fellow man requires. That is the principal reason why it takes fewer man hours to earn enough money to buy a television, an automobile or a personal computer in the USA than it does in Russia. It is productivity, not hard work, that matters. People in poor countries usually labour long hours but their ability to provide the consumer with what he wants and their rewards for doing so are limited by the intervention of government. Free enterprise

raises people's real wages because there are powerful incentives to serve consumers who can easily communicate what they want.

**Free enterprise satisfies consumers**

In a free enterprise economy, people are able to serve customers thanks to the price mechanism. This vast communications network of rising and falling prices tells workers and investors where consumer demand is increasing and where it is decreasing. Higher consumer demand for a particular product pushes up prices, increasing profits to investors. These increased profits attract more investment, and push up wages to attract more workers into that line of work. So society produces more of what the consumer wants, and as the supply of a particular good or service increases, the long-term price to the customer will fall. The built-in incentives of the free enterprise system ensures that society's resources are diverted to satisfying the wants of consumers, and away from those areas of production that are meeting less urgent needs. In this system, the consumer is sovereign, dictating where and how society's resources are used, by deciding how his income is spent or saved. That income, in turn, will be higher to the degree to which that individual is supplying society with the goods and services that it demands.

**Free enterprise cuts the cost of living and creates new products**

Free enterprise is a discovery process which allows people to discover what the customer wants. The freedom to buy and sell allows goods and services to come onto the market, that people are then free to embrace or reject as they like. Free enterprise allows entrepreneurs to innovate with new ideas for new products and to refine existing products. The price mechanism then signals to workers and investors whether these new products are wanted or not. Initially, new products like Video Cassette Recorders, microwave ovens or cellular telephones are expensive, and only accessible to the rich, but as products are tried, tested and modified, and as more capital is invested in their development the price falls. This way, the luxuries of the wealthy few become the necessities of the many. And as a free enterprise society produces an ever increasing array of goods and services, so the price of those products as a proportion of people's income falls, cutting the cost of living.



**Free enterprise encourages productivity**

The incentives inherent to the free enterprise economy also foster productivity by tapping into people's willingness to serve others better than any other economic system that has yet been devised by man. Because people are free to keep the fruits of their labour and take risks in a system of free enterprise, the rewards for serving the consumer are greater than in alternative economic systems. A system of slavery, in which the individual is forced to labour for others, or a planned economy, where government organises production, destroy the incentives to produce. Taxes perform that function too. Taxes are like prices; they are the price - or penalty - paid for engaging in economic activity. The more government taxes investment and work, the lower the rewards for work and investment will be. And if the rewards for work and investment fall, there will be less work and investment as a result. Taxes are an economic barrier that limits the number of people taking part in the activity that is taxed. Taxes on work and investment will also exclude some people from working or investment altogether. Regulation has the same effect. By raising the costs of production, prices are artificially raised, increasing living costs and placing goods out of the reach of the poor.

**Free enterprise lifts people out of poverty**

Far from enriching a wealthy few, the dynamism of the free enterprise system can be seen most vividly in the way it eliminates poverty more rapidly than other economic system. Whilst economic freedom does inevitably lead to a degree of inequality in people's incomes and wealth, attempts to go further and to redistribute income and wealth from the wealthy to the less well off shrinks the economy, destroying economic opportunity for those who need it the most. Attempts to use government to determine people's incomes and wealth creates an arbitrary society in which access to political power determines people's income and wealth. This sort of inequality is more harmful to the poor than inequalities of wealth and income under free enterprise, because free enterprise rewards people with high incomes only as long as they serve the customer better than others. It allows people to serve their own interests only insofar as they use their property and labour to serve the interests of others. Free

enterprise maximises the opportunities of the poor to get out of poverty and makes society a cheap place to live in.

**Free enterprise creates jobs**

Critics of free enterprise often point to business cycles in the West in which periods of economic expansion are interrupted by recessions which cause unemployment to rise. The fluctuations of the business cycle played a key part in communist propaganda during the Cold War, but it should be noted that the communist world only avoided such cycles by maintaining a permanent economic stagnation which left living standards far lower than those achieved in the West. In fact, economic recessions and depressions are caused by inflation resulting from government expanding the supply of money and credit faster than the growth of the economy. Increasing the supply of money relative to the supply of goods and services eats away at the value of money, causing inflation which increases unemployment when people discover that the currency is losing its value. The solution is not to do away with free enterprise, but rather to take the supply of money out of the hands of government. Some unemployment is caused not by inflation, but by taxes and regulations on work which cause a mis-match between the supply of labour and consumer demand. In a free enterprise economy there is always work available because the demands of consumers are never exhausted.

**Free enterprise guards the environment**

Just as free enterprise has multiplied the range of goods and services available and brought them down in price, so it has increased the supply of nature's resources and made the world's energy and resources cheaper over time. This effect is the key to understanding why air and water quality is improving in economies like that of the USA whilst communism left societies scarred by pollution and despoliation. It is also an important reason why those people who enjoy the most economic freedom have a longer life-expectancy at birth. Wealthier is healthier. The free enterprise system has created the wealth which has made possible the discovery of new sources of energy and more efficient uses of natural resources. The private ownership of natural resources has also protected and enhanced the environment because private owners have an interest in the long-term



preservation of resources and are therefore better stewards than the state. Free enterprise has maximised the freedom of the ultimate resource - mankind - to solve the problems created by new technologies, and it has also enabled billions more people with their ingenuity and creativity to live and prosper in a world which once could only support a fraction of their number.

**Without free enterprise, there can be no democracy**

Finally, free enterprise is a necessary, although not a sufficient, condition for democracy and the civil liberties which we associate with political freedom. This is because you cannot control an economy without controlling people. Once economic decisions are taken out of the hands of the millions of individuals who work, invest, save and spend and are instead made by a central authority, it becomes necessary to coerce individuals to fit in with the state's plan. The power that this places in the grasp of government makes it possible to punish those who do not do what those in authority require. The fact that power is concentrated in the state means that opposition to the government's plans is extremely difficult and dangerous. In a free enterprise society where the means of production are privately owned, there are always alternative employers and privately funded trade unions, political parties, pressure groups, newspapers, radio and television stations and places of assembly and worship. As Leon Trotsky explained: "When the state is the sole employer opposition means death by slow starvation."

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**Questions for thought**

1. Why is the free market superior to state socialism?

2. How can you make free markets more acceptable?

3. How can you extend markets in your country?



# Freedom

*"The only freedom that deserves the name is that to pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it."*
John Stuart Mill

**What is freedom?**

Freedom means that one should be able to choose to act without interference by others. One should be able to decide how one wants to live one's life, unless the action interferes with the liberty of others. Liberty is another word (or synonym) for freedom. To protect freedom is one of the primary purposes of government.

The moral value of freedom is now recognised as a major feature of the modern world, but it was not always so. For most of the history of mankind, it was thought that the purpose of government was to promote virtue, the good life and the good society. Humans were expected to work towards a common good decided by society and to subordinate their own interests and wants to a higher good. Originally freedoms or liberties were specific rights or entitlements given to particular groups or individuals, such as a baron or a guild. There was no general right to freedom. The idea of freedom as a general condition belonging to all was a development of the 18th century and associated with Hobbes and Locke. Locke stated "The end of law is not to abolish or restrain, but to preserve and enlarge freedom." The purpose of government was to protect the freedom of individuals. This became one of the themes of the nineteenth century, the rise of freedom as the primary political value. In the twentieth century it came under threat from two sources: those who argued that freedom was a minor value that should be subordinated to the achievement of a higher goal, such as communism or a racially pure state, and from those, such as socialists, who sought to change the concept of freedom to justify a more extensive interference in people's lives by government.

### The right to live one's own life

Freedom is often expressed in the language of rights. I have a right to decide where I live, or where I work, or with whom I live my life. No one should force me or stop me from doing what I wish, provided I respect the rights of others. This comes from the natural rights tradition of Locke. Liberty means acting within one's rights, whereas it is not freedom to impinge on the rights of others. That would be an abuse of freedom, or 'licence'.

Freedom is identified with limited government and the free market. The role of government is to provide the rules or framework that enables everyone to be free, to protect them from infringements on their freedom by others. The free market is associated with economic freedom or freedom of choice: the freedom of the consumer to buy, the freedom of the trader to fix the price of his goods and services (and of the consumer to accept or refuse to pay it), the freedom of the worker to choose his job or profession, and the freedom of the producer to produce what he wishes and to employ whom he chooses. This freedom can only exist in capitalist societies.

### The individual is the best judge of his own interests

Only the person himself has the knowledge of his own wants, preferences and desires, his goals in life, and therefore his interests. It implies that man has free will, and his choices are not simply determined by his circumstances or social background. He can use his reason and understanding of morality to make the right choices for him. Only the individual knows his own wants and preferences. Others may have their own ideas about what is right or appropriate for someone else, but none of them can have the same degree of knowledge as the person himself. Freedom means a rejection of paternalism, that others are in a better position to make decisions affecting one's own life.

### Freedom promotes the interests of all

There is no conflict between freedom and order, or the common good or the interests of others. Freedom operates in the long-term interests of all. The utilitarians were great supporters of freedom because it



maximises interests. The result of a free society will be, as Jeremy Bentham described it, "the greatest happiness of the greatest number."

Adam Smith developed the idea of 'the invisible hand', or what is sometimes described as 'spontaneous order'. Each individual left to his own devices was "led as if by an invisible hand to promote an end which was not part of his intention." Individuals left to be free to purse their own interests will be led to cooperate with others for their mutual interest and for society as a whole, promoting the common good. One has to satisfy the wants of others in order to satisfy one's own wants. In *The Wealth of Nations* Smith claimed, "It is not from the benevolence of the butcher, the brewer or baker that we expect our dinner but from their regard to their own interests." Many of the benefits in society arise from the unintended consequences of the actions of others, "the result of human action, but not of human design" in the words of Adam Ferguson.

### Freedom leads to the growth of knowledge

John Stuart Mill argued for toleration, a willingness to allow all to think, speak and act in ways of which we disapprove. The other person may indeed be right, or we can improve our own views and understanding by trying to understand that of others, or we can change the other person by persuading him and others of the errors of his ways. "I detest what you say, but I will defend to the death your right to say it," is a phrase associated with the French philosopher Voltaire. In a free society a variety of opinions and beliefs will be expressed and tested in the competition of ideas. Truth will drive out falsity. The Austrian philosopher Friedrich Hayek described one consequence of a free society as the growth of knowledge, and knowledge which cannot be located in one place or body but is widely dispersed in the minds of every individual. Liberty allows for the unforeseen and the unpredictable. Central planning, and forcing individuals to fit in with a certain end goal, prevents new ideas from emerging and experiments from being conducted.

### Positive "liberty" is not liberty

However some use the term freedom in a very different sense, not in the traditional sense of 'did someone prevent me from doing some-

thing?,' but the ability to act, or the power to obtain my desires. This identifies a difference between a higher and a lower self, real from apparent interests. This was the source of Marx's concept of 'false consciousness', that people did not recognise what was in their true or real interests, the overthrow of capitalism. Only Marxists and the Communist party were truly understand that and therefore should be given the power to do so. This highlights one problem with this idea: it is abused by rulers who claim to know what is in everyone else's best interests rather than ask the people themselves. Jean Jacques Rousseau used the term freedom to mean obedience to the General Will, or the common good. Any dissidents therefore should be "forced to be free". This, of course, from the common understanding of liberty is nonsense.

The Oxford philosopher Isaiah Berlin labelled the first concept 'negative liberty' and the second 'positive liberty' in a famous essay 'Two Concepts of Liberty'. He defined negative liberty as "an area with which man can act unobstructed by others". Freedom is thus the realm of unhindered actions. Hayek described it as "the absence of coercion." Berlin defined 'positive liberty' as "being one's own master". He argued that the second was not liberty at all, but 'power'. The denial of liberty involves an intention to prevent an action. The false concept of liberty is another word for the lack of power. The difference is between being unable to buy a book because the state has banned it, and because the book-shop does not have a copy. The first is a denial of freedom; the second is not.

Positive liberty also implies that the individual should direct himself to a particular end. Thus the individual appears to exist not for himself but to satisfy the purposes of collectivities such classes, nations and races. We exist to serve some higher end, chosen by others rather than our own purposes and goals. Margaret Thatcher challenged this. "Choice is the essence of ethics: if there were no choice, there would be no ethics, no good, no evil; good and evil only have meaning so far as man is free to choose."

**The harm principle**

Law by its nature constrains individuals from exercising their freedom, by threatening punishment if they act in certain ways. People



are expected to conform and obey. When is it appropriate for the law to be used in preventing liberty? John Stuart Mill, in his book *On Liberty*, provided a classic formula: 'the harm principle.'

"The sole end for which mankind are warranted.... individually or collectively, in interfering with the liberty of any of their number is self-protection. That the only purpose for which power can legitimately be exercised over any other member of a civilised community against his will is preventing harm to others. His own good, either physical or moral, is not a sufficient warrant."

In other words, people should be prevented by law by acting as they wish only when those actions harm another person or persons. Of course friends and family and even strangers may seek to convince someone to behave in a different manner: to live somewhere else, to marry someone else, to work somewhere else, but these are not areas where the law had a place.

**A freedom agenda**

As freedom is the right to make choices about every aspect of your life, provided it respects the equal freedom of others, it is impossible to list every freedom. There are some liberties which have received particular attention.

Freedom of conscience, thought and expression. There should be toleration for different and diverse opinions. The media should be allowed to publish what they wish. Every religion should be allowed to be practised. Every individual should be allowed to express their own opinions without punishment. People have the right to criticise the views of others but not to prevent them from expressing those opinions. Truth will emerge from the competition of ideas and beliefs.

Freedom of contract. One should able to trade with whomever one chooses. There should be freedom to buy and sell with whomever one wishes at whatever price can be mutually agreed. This also means freedom between employer and employee to agree the terms of their cooperation. The state has the role to ensure that such agreements are genuinely voluntary and does not involve force or fraud.

The state also exists to ensure that contracts are kept by providing courts to enable disputes about those contracts to be peacefully resolved.

Freedom of association. One should be able to associate or cooperate with whomever one wishes for whatever purpose, unless it conspires against the freedoms of others. There should be freedom to marry or have intimate relations with whom you choose, provided it is by mutual consent. One should be able to combine with others who share mutual interests, whether these are political, forming political parties and interest groups, economic, through business groups or trade unions, or social, such as stamp collectors or folk dancers.

Freedom is the most precious of values because it is the basis of all other values. It gives them meaning. It allows us to live our own lives as we choose. But it also requires the restraint not to interfere in the lives of others. Every individual, every society, and especially every state, finds this difficult to achieve.



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**Questions for thought**

1. Why is freedom good?

2. Should the law impose any regulations on whom you work for, how much you work for, and how many hours you work?

3. Should drugs be legalised?

# Human rights

*"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that amongst these are life, liberty and the pursuit of happiness."*
Thomas Jefferson

**What are human rights?**

Human rights are rights that belong to every human being. A right is something someone ought to have, that is a moral entitlement, and is much more than a want or desire. Human rights are moral rights, different from those rights that are recognised by the state, known as 'positive' or 'legal rights', which may or may not be human rights. One of the major goals of the human rights movement is to turn human rights into legally recognised rights. 'Human' means that these rights belong to all human beings, regardless of nationality, religion, gender, ethnic group, or sexual orientation. This means not only that they apply to every person throughout the world, but that they belonged to every human being that has ever existed and will exist.

Widely recognised as human rights are the right of life (not be killed, tortured or crippled), freedom of expression, freedom to own justly acquired property, freedom of movement, and freedom of religion. Slavery, torture and arbitrary detention are all denials of human rights. These are best viewed primarily as limits upon the state, that the state shall not interfere with the rights of individuals within their territory. The state's role is to ensure that these rights are embodied in their laws, that is become 'legal rights'. The concept of human rights also creates an obligation by all not to interfere with the rights of others, the principle of reciprocity.

Any human right has to meet three criteria. First, it must be universal, belonging to everyone throughout time. There can be no special rights attributable to only some. Second, it must be absolute. It cannot be legitimately limited by calls of public interest or cost. Only when human rights come into conflict with each other can those rights be limited. For example, a terrorist, who kills others and thus denies them their right to life, may be denied his right to life through capital punishment or his freedom by time in prison. Third, it is inalienable. It is not possible to surrender that right; for example it is not possible to sell yourself into slavery.



**Natural rights**

An early identification of the existence of these rights came in *Antigone* by the Greek playwright Sophocles, in which Antigone buried her dead brother against the orders of King Creon, and justified her actions on the grounds that the laws of the Gods were higher than the laws of Kings. This idea was advocated by the Greek Stoics who believed these laws were to found in nature and by the use of reason, and echoed by the Roman orator Cicero. "There is a true law, right reason, in accordance with nature; it is unalterable law". Christianity proclaimed God's law as superior to that of the secular rulers, notably expressed in the work of St. Thomas Aquinas. These natural rights could be discovered either by revelation from God, or through reason, " the laws of nature and of nature's God".

The English philosopher John Locke had the greatest influence on modern thinking in this area. He proclaimed as a fundamental law of nature that "no one ought to harm another in his life, health, liberty or possessions". These rights to life, liberty and property implied the duties not to harm the life, liberty and property of others. These rights and duties existed in nature and were not granted by rulers. Government was created in order to protect these rights. Any political regime that failed to carry out that function could be removed and replaced with one that did, suggesting that the people had a right of rebellion against tyrannical regimes.

These ideas were highly influential in the Americans' fight for independence from Great Britain. The author of the Declaration of Independence, Thomas Jefferson, explicitly drew from Locke with the claim that men were born with rights, that they included life, liberty and the pursuit of happiness, and their betrayal by King George III justified the rebellion and independence from England. The French Declaration of the Rights of Man during the French Revolution asserted that "the purpose of all political association is the conservation of the natural and inalienable rights of man; these rights are liberty, property, security and resistance to oppression."

### From natural rights to human rights

In the twentieth century these ideas became more commonly known as human rights. There was, and is, an attempt to provide international mechanisms to recognise these rights and see that they are respected in every regime. In 1948 such rights were recognised in the UN Declaration of Human Rights. In 1950 the Council of Europe adopted a European Convention of Human Rights in which member states could be taken to a European Court of Human Rights in Strasbourg by their own citizens when they felt that their rights had been abused by their government. Trying to build on the widespread support for human rights, some groups have sought to broaden the definition of human rights beyond its original meaning to include economic, social and group rights. This has been highly controversial, and served to detract from the pursuit of natural rights.

### Marxist hostility to human rights

Marxists have usually denied the existence of human rights. Karl Marx dismissed them as "bourgeois rights," regarding appeals to the rights of man as another means of protecting and promoting the interests of the propertied classes. Such rights only perpetuated class differences, he thought, and gave additional protection to the rich and the bourgeoisie. Communist regimes refused to accept there was any universal standard to apply to their regimes. Their denial was based on the claim of 'no interference in the domestic affairs of another state', which they interpreted as meaning that no one should criticise any communist regime. The Soviet Union refused to sign the Declaration of Human Rights in 1946. Communists were right to be reluctant to accept the principle of human rights, because when they did so in the Helsinki Declaration in 1975 it was effectively used against them by human rights activists such as Orlov.

### The right to life

Every human being has a right to live. This means, above all, that one should not be killed either by other people or by the state. Indeed it is the primary responsibility of the state to protect its citizens from the foreign invader and the criminal. Some base this right to life on the concept of self-ownership, that each individual owns his own body



and therefore it should be not be interfered with by others without their permission. So the right to life extends beyond not being killed to a right not to be tortured or physically abused. These are recognised in the UN Declaration in Article 3 that "Everyone has the right to life, liberty and the security of person," and in Article 5 that "No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Self-ownership also is incompatible with slavery, the ownership of one person by another (Article 4).

### The right to liberty

The right to liberty means that one should be able to live one's life as one chooses, subject only to respecting that right in others. The French Declaration of Man of 1789 stated: "Political liberty consists in the power of doing whatever does not injure another. The exercise of the natural rights of every man has no other limits than those which are necessary to secure every other man the free exercise of the same rights."

Because freedom involves doing whatever one wishes subject to that limitation, it is impossible to enumerate ever right that exists. The UN Declaration identifies some that it considers particularly important, such as the free movement of people within and beyond their country (13), the right to marry and have a family (16), the right to freedom of thought, conscience and religion (18), freedom of expression and opinion (19) and the right of peaceful assembly and association, and non-association (20).

### The right to property

The ability to live one's own life in freedom, to pursue happiness in one's own way, requires property. As the philosopher David Boaz explains, "Property is anything that people can use, control or dispose of. A property right means the freedom to use, control or dispose of an object or entity." Without that right, it would be impossible to live, to occupy land, to produce goods and services, to trade with others. Socialist attempts to abolish property has simply meant the transfer of control from the person who justly acquired it to a government official who decides to whom that property should be allocated.

Article 17 of the UN Declaration recognises that "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of this property." However it has neglected any provision for the protection of that right, preferring to allow governments to arbitrarily allocate property as the rulers see fit. The US Bill of Rights provides for a 'takings' clause (5th amendment), that property can only be taken by government for just cause and with full compensation. Even in the USA this has been neglected.

**Protecting rights**

Many so-called human rights are really mechanisms to protect rights, rather than human rights themselves. The UN Declaration recognises the rights to legal recognition (6), the prevention of arbitrary arrest and detention (9), effective remedies when their rights are abridged, a fair trial, a presumption of innocence (11), asylum (14), and nationality (15).

One political right that is frequently presented as a human right is the right to vote. Article 21 declares the right to participate "in periodic and genuine elections...by universal and equal suffrage." However, democracy should be seen as one means of protecting those rights, but is not such a right itself. It would be nonsense to talk of democracy for a prehistoric man. The case for representative democracy is empirical rather than moral: the historical evidence suggests that liberal democracies are more likely to protect those rights than dictatorships. However, democracies themselves are also great deniers of those rights, especially when democracy becomes the tyranny of the majority. It is possible to have an illiberal democracy which mistreats and denies human rights to individuals and groups within that democracy.

**Social and economic rights are not human rights**

Articles 21 to 30 are 'economic, social and cultural rights' and have characteristics totally different from the liberty rights traditionally recognised as natural. The worst example is Article 24, 'the right to rest and leisure, including...periodic holidays with pay'! Other so-called 'rights' include those to social security, work, just and favourable conditions of employment, equal pay for equal work, just and fair remuneration, an adequate standard of living, housing and medical care, education, and the right to enjoy the arts. These are also enshrined in the 1966 UN Covenant on Economic, Social and Cultural Rights. It is also behind t he EU Charter of Fundamental Human Rights.

These may or may not be desirable, but they are not human rights. They are claims to 'welfare rights' rather than 'liberty rights'. They were included in the UN Declaration at the insistence of the Soviet Union who hoped to use them against the West. The West accepted them in the hope that the Soviet Union would sign the declaration, although in the end it abstained.

The case against these 'welfare rights' as human rights is first, that they are not universal. For example, 'holidays with pay' can only belong to employed workers, and excludes the self-employed, the unemployed and homemakers. Second, they are not absolute, because they depend on relativities, such as the vast differences that exist with regard to an adequate standard of living from country to country and historical era to era. The ability to satisfy those so-called rights vary greatly from state to state. This is acknowledged in Article 22 on the right to social security, which is qualified by "in accordance with the organisation and resources of each State." Third, they are not inalienable. For example, someone may wish to surrender his 'right' to rest and leisure in order to increase his income. People make trade-offs between desirable but conflicting goals. So such claims fail to meet the necessary three criteria. A fourth argument is that an 'ought' must involve a 'can', but these 'welfare rights' are dependent on available resources, with most societies now and throughout history lacking the necessary means to satisfy these aspirations. Fifth, they demean natural rights: human rights are moral imperatives that can be respected now, not economic and social aspirations that might be satisfied in the future. Sixth, economic rights are an attack on liberty rights in order to achieve these welfare rights. A meaningful right to medical care would create an obligation on the medical profession to provide that care, regardless of the wishes of doctors and nurses, thus denying them freedom. Welfare demands are not human rights.

## Group rights are not human rights

The UN Covenant of Economic, Social and Cultural Rights began in Article 1 with the statement that "all peoples have the right to self-determination." Article 25 declared "the right of all peoples to natural wealth and resources." This was echoed in the Organisation of African Unity's Charter on Human and People's Rights in 1981 that "all people's have a right be equal". UNESCO declared "the right of all...people's to preserve their cultures". The 1957 UN Convention on Indigenous and Tribal Populations declared that "special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations". UN Conferences on Human Rights are usually dominated by the assertion of these group rights.

The case against group rights begins when they fail to meet the three necessary criteria. First, they are not universal because they are claims by particular groups such as women or aboriginals, which means by definition that they cannot belong to all humans. Second, they are not absolute as one group is pitched against another, as in the right of self-determination in Bosnia, and ethnic cleansing is encouraged with the emphasis on group or cultural identity instead of respect for the rights of others. Third, they are not inalienable, as immigrants frequently prove when they willingly surrender their former identity in order to embrace something new, as thousands of new American citizens do every day, as do black British and integrated Jews. Fourth, the natural rights tradition holds that human rights must belong to individual human beings and cannot belong to any collective. Cultures, languages, tribes, and nations are not rights-bearing entities. Fifth, cultural rights deny the equal rights of every human being, but become an instrument for the special treatment of certain groups, for example in positive discrimination.

It is important to recognise that certain groups within society such as ethnic minorities, women and gays have been denied their human rights, but the goal is to ensure that everyone has the same rights respected, not that certain groups are entitled to special rights because of their mistreatment in history.



## For real human rights

We should believe in the protection and promotion of human rights, but we should be concerned at the way the idea has become abused and at the lack of sensitivity in its application to varied conditions. First, the concept should not come to embrace every demand, every wish and every desire. Human rights are so precious they deserve special consideration and priority. Second, the promotion of human rights should show some respect for different cultures, histories and conditions. The way in which these rights should be respected may vary from society to society and one should not assume that what is appropriate for America, or Sweden, or Germany, can and should be transplanted to Belarus, Estonia, Argentina, or Nigeria.

A clear understanding of the concept of human rights is vital for their protection and promotion, especially for all those who are denied them daily. Not all that is desirable is a right. Not all rights are human rights. It is an obscenity to equate torture- such as giving electric shocks through a person's genitals- with not having a paid holiday. Every government should be held accountable for its failures in protecting genuine human rights.

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**Questions for thought**

1. Does the right to life include the right to be fed?

2. Do national minorities have rights, or only individuals?

3. How can we protect genuine human rights?



# Justice

Justice is "*to live honestly, to injure no one, and to yield to each their own*".
Greek philosopher Ulpian

**What is justice?**

Justice is about the rules that distribute rewards and punishments, that each person should be given their due. This covers not only material goods, but also anything that can be distributed, such as freedom and rights. Justice is not to be confused, as it often is, with the morally good or right. Someone may behave in a manner that others might consider immoral but would not be claimed as unjust. Norman Barry gives the example of polygamy- consensual marriage with several wives or husbands- where the language of justice is inappropriate. The crucial distinction is that justice is about rules and how they are implemented.

Two questions arise from the concept of justice: What is due to someone, or what are the appropriate rewards and punishments to that person, the principles of distribution? And which principles are appropriate for which good? The rules may be very different if we are discussing the distribution of wealth or of love or of punishment. Traditionally justice has been procedural: about the protection of people's freedom and how to punish those who fail to respect the freedom of others.

Justice as historically understood is currently threatened from two directions. The first attack come from judicial activism, when judicial decisions simply reflect the preferences and prejudices of the judges, their personal view of what is right or wrong. This is the rule of men, not of laws. The second attack comes from the attempt to redistribute income and wealth on the basis of the vague, but superficially attractive, principle of 'social justice,' which is concerned with 'who has what' rather than how they obtained it. While justice has been concerned with issues such as freedom, order and laws, the new approach is concerned with material redistribution. Whether someone has earned their income and wealth through just means, such as hard work, is irrelevant to social justice.

## Philosophers on justice

Plato and Aristotle were absorbed by the issue of justice, which they considered central to a good society. Plato defined justice as "to render to each their due." For them justice was tied to establishing the worth of human beings. Not surprisingly as an intellectual Plato believed that worth was associated with intellect, which led him to favour rule by the wisest, the philosophical guardians. Since then it has been the constant refrain of intellectuals that they do not receive the respect and power which they deserve. Judicial activism is but one of the contemporary manifestations of the claim that intellect provides the best basis on which to judge what is just.

That justice is about rules is exemplified by the refusal of Socrates to allow a vote in the forum in Athens on whether to execute generals who had failed to rescue shipwreck survivors. His grounds were that any man could not be condemned and punished until after a fair trial. Only after evidence for the accusation had been presented and the opportunity for defence of their actions could their worth be assessed. The Roman Emperor Justinian, who drew up one of the earliest legal codes, defined justice as to "give each man his due." In the Middle Ages justice was seen as the greatest of political virtues as societies would be peaceful and prosperous if their rulers were just.

The Scottish Enlightenment focused on discovering and articulating the rules of justice with respecting people's rights. John Locke identified justice with the protection of life, liberty and property. David Hume believed that one could only survive and prosper in cooperation with others. The problem was how to avoid, or at least minimise, conflict with others. That led to the necessity for establishing clear and respected rules that all would follow because they accepted them as just. Hume's rules of justice for property were: the peaceful acquisition of property, transfer by consent, and the performance of promises. Justice was demonstrated by showing respect for the freedom and property of others. Adam Smith noted that "Mere justice is, upon most occasions but a negative virtue, and only hinders us from hurting our neighbours." We act justly when we do no harm to others. Injustice occurs when we harm others. The failure to respect the rights of others, through acts such as violence or robbery, could justify the legitimate use of force, such as imprisonment or fines, by government in order to achieve justice.



## Justice as rules

Justice is most frequently used in the context of the legal system which is concerned to apportion punishments and rewards as the result of wrong doing, viewed as the breaking of justice, and to allocate compensation for injury or damage. The judiciary is said to be concerned with the administration of justice. The law itself is not necessarily just. Laws can be criticised as being unjust, as not treating people fairly. Campaigns to change the law are frequently based on the grounds that current laws are unjust. The justice system is concerned with identifying and applying widely accepted procedural rules. These rules are identified under the rule of law. The judicial system has the power to treat people in ways that would in other circumstances be considered unjust; for example, denying them their freedom by putting them in prison or taking money from them in the form of fines. Because of the dangers inherent in such powers, the process itself must follow strict rules. One example is judicial neutrality, that judges should not be biased or partial to one side of the other in a case.

Procedural justice is concerned with respecting rules. It is about how decisions are made, not the fairness of the content. A fair outcome is one which arises from following the rules. In a sports race the result is fair, provided certain rules are followed, such as everyone runs the same distance, is given the same time and the officials (or judges) are impartial. That one runner wins the race this week and a different runner another week, or that the same runner wins every week, is not grounds for claims of injustice.

## Judicial activism

Judicial activism as a threat to justice occurs when judges look to their view of what is just, rather than refer to the written rules in constitutions or legislation, or to widely accepted rules of natural justice (see the rule of law). Supporters of judicial activism believe that the role of judges is 'to do right.' They measure decisions in terms of the consequences rather than the method by which they are arrived at.

There is concern that judges, from the lowest courts in Europe up to the European Court of Justice of the EU, are following this approach. It is a threat to justice because it undermines the rules of justice as commonly understood. It reduces the predictability of how courts will decide any conflicts. Justices who base their decisions on judicial activism are imposing their own values, preferences and prejudices, abusing their power and lack of accountability. The trust and confidence of the people that courts provide justice will be severely and dangerously undermined.

**Entitlement theory of justice**

The most rigorous attempt to apply the rules of justice to the distribution of income and wealth was made by the Harvard philosopher Robert Nozick in his book *Anarchy, State and Utopia*. He wrote a devastating critique of theories of social justice. He provided a modern version of the traditional view, which he called 'the entitlement theory of justice.' He claimed that the distribution of property is just if it arose from the fair acquisition and transfer of property involving neither force or fraud. If no rights have been denied, justice is served. Thus there is no moral justification for the extensive redistribution of income and wealth, provided it has been fairly obtained. You are entitled to that which you have produced or obtained voluntarily. A true 'socially just' society could involve any number of property distributions because the crucial question is how the distribution arose, whether rights were respected or not. It is a procedural theory, based on our historical understanding of justice.

Thus a society with a large gap between the richest and the poorest could be just. So could a society with almost no difference between the richest and the poorest. Information about the distribution of wealth and income tells us nothing about the justice of that society. We need to know how that distribution came about. The society with a great gap could be just if the richest obtained their wealth by providing the goods that the poor willingly purchased. The latter could be unjust if the comparative equality was achieved by some stealing from others.

Nozick identifies two additions to his clear and simple principle of voluntary acquisition. First is the principle of rectification, the correction of past injustices. For example, property should be returned to those from whom it was stolen, and those who inflicted damage should compensate those whose property was damaged. The goal is the restoration of the situation before the rights were abused, the status quo ante. Secondly, he accepted the Lockean proviso, named after John Locke, that the acquisition of property should not deprive someone of something which is essential to life, such as water in a desert. With these exceptions, any distribution is potentially just.



**What is social justice?**

As Thomas Sowell has stated, all justice is 'social' in the sense that it involves interaction between more than one person. However the demand for social justice makes a much stronger claim. Indeed Sowell argues it is 'anti-social' justice because it ignores the costs to society of accepting the demands. Social (or 'distributive') justice, as used politically, implies that there is only one morally justified distribution of material goods, and that it does not exist in the current society. Therefore it is justifiable for the state to redistribute income and wealth from those who have it to favoured groups to achieve that moral distribution. It is claimed that the distribution arising from the market of freely chosen exchanges is immoral, which is contradicted by the entitlement theory of justice. Social justice is now a popular slogan in politics because it would give power to the state and those who control it to decide who had what. The alternative principles on which wealth would be distributed are rarely clearly expressed. 'Social justice' is more a slogan to increase dissatisfaction and obtain power than an appraisal of how it could be achieved.

**Social justice as a mirage**

Friedrich Hayek dismissed the whole concept of social justice as a mirage, intentionally designed to evade and mislead. He reached the conclusion that, within a free society, the phrase 'social justice' has no meaning whatsoever. When men are allowed to freely exchange, then the consequent distribution is the result of a process of freedom, and not created by the intentions of anyone. The first problem with the idea is that justice applies to human conduct and only human actions can be just or unjust. However the distribution of rewards in a free society is not the result of anyone's intentions but of millions of

decisions taken every day by millions of people. Who is supposed to have acted unjustly to obtain the so-called unjust distribution? Secondly, as there is no agreement as to what is a just distribution, applying the principle of social justice would require everyone contributing to a redistribution of wealth reflecting someone else's values, the opposite of freedom. To achieve one person's view of social justice would be to create a distribution others would perceive as unjust. Most people would be dissatisfied with any particular enforced distribution. A third problem is that society is so complex and in constant flux that it is impossible to create and retain any particular distribution. As in a game, it is impossible to play to a predetermined outcome. Fourthly, redistribution damages prosperity because everyone would seek to maximise their income by satisfying whatever the imposed criteria for receiving income would be instead of seeking to satisfy the demands of consumers. Fifthly, redistribution will reflect the political power of those sectional interests which are able to influence the decision makers into accepting that they deserve more. It would be political power that would be decisive, and government would become the source of wealth.

**Social justice as totalitarian**

Nozick condemned social justice as a totalitarian principle because it assumed that wealth was a common property, which the state could freely distribute as it wishes. No recognition was given that people have a claim upon that which they have produced. It assumes collective ownership. It divorces production from distribution. What gives the state the right to control the product of free individuals? It treats us as social instruments who exist to satisfy the demands of the state. This is a denial of Kant's principle of the categorical imperative: that people should be treated as ends in themselves and not solely as a means to the achievement of the goals of others. It is this principle which bans slavery. Social justice thus has totalitarian implications because it implies that we are all slaves of the state.

**Contradictory principles**

Advocates of social justice are usually vague as to what it means. They hope their listeners will assume that it is their particular view of 'who should have what' which is meant, even though that is incompatible with the conception of the other members of the audience. When forced to explain the principle, defenders have preached three contradictory and inconsistent principles: equality (see equality), needs and merit. They are all unjust.



**Social justice as equality?**

Egalitarians believe that the only moral distribution is equality of income and wealth. While they are rarely so explicit, their presentation of unequal distribution as evidence of injustice implies precisely that any disparities in income is due to injustice. They assume that equality is the natural condition and any deviation from it must be explained and justified. The reality of course is that inequality is natural, and it is movement towards equality which must be justified. The case against equal outcomes is examined under equality. Note however that the condition of equal outcomes is manifestly unjust, because it takes no account of effort or production or the satisfaction of the wants of others. It would mean equal rewards to everyone however lazy or feckless they behaved. Many egalitarians proclaim that they do not mean total equality, only more equality but how much equality is necessary to satisfy their view of justice? How did they conclude that their degree of equality was the only one that meets the standard of justice when other egalitarians will have a totally different standard?

**Social justice as needs?**

A second school argues that wealth should be determined on the basis of need. A need is a necessity, without which one cannot live. It is much more than wants or desires. Someone in need lacks something essential for survival, such as food, clothing or shelter. These are considered so important they are viewed as an entitlement, not just desirable. Needs would thus have priority over wants. The basic needs of everyone should be satisfied first, before the wants of others. The logic of a philosophy of needs is global redistribution, that wealth should be forcibly taken from prosperous people in richer countries to poor people in poorer countries. The needs principle would require taking from the vast majority in richer countries, including those who consider themselves poor but do not lack basic needs. No one would be allowed to improve their home, buy fash-

ionable clothes, go to a movie, or buy a compact disc, as long as someone somewhere in the world is starving. By this logic, no one should be allowed to buy the books written by the advocates of the needs principle but their money should be given to those in need. Those advocates would have to refuse offers to travel in the world to promote their ideas while the needs of others were unsatisfied. The fact that they do not apply the own principle to themselves should say something about its flaws.

There are several problems with the standard of needs. Firstly, it is impossible to agree on a definition of needs. Are they objective or subjective? Indeed needs are continually redefined so that it will never be possible to achieve the satisfaction of needs. Secondly, it ignores historical context. What is considered a need varies considerably within societies, between societies, and in different historical periods. Thirdly, the existence of a need does not by itself create an obligation on others to satisfy that need. Take the example of someone who needs a kidney in order to survive. While someone may be willing to voluntarily surrender one of their two kidneys to save another person's life, it would be considered unjust if someone was forced to surrender a kidney to another. Our obligations to others vary considerably depending on whether the other is family, friends, neighbours, fellow citizens or total strangers.

**Social justice as merit?**

This is based on the idea that people should receive what they deserve or merit. This has a superficial similarity to the idea that people should get what is their due. This is based on the belief that action, efforts, skills, deeds, results justify the economic worth of a person. It can be disappointing when we see someone who has worked hard fail in her business, or someone we personally dislike being successful. However the idea that effort should be rewarded rather than that which is produced is absurd. That would mean that you would pay someone who digs a hole and then refills it with great effort should receive more money than someone who produces something valuable but with little effort. It is desirable that things are produced with minimum cost and effort; that is efficiency and maximises wealth. The merit principle is thus a dangerous belief and a threat to prosperity. It is close to Marx's false labour theory of value.



Friedrich Hayek stated that 'value to society' is not the basis for justice. Firstly, it assumes that society has a common purpose and everyone can be measured by the degree to which they contribute to that common goal. But society is made up of individuals with a wide variety of different goals. Secondly, there is no agreement on what is the value to society of every job or occupation. Should a nurse get more that a soldier, a butcher more that a teacher? Members of society will value the same action or service very differently. There is no objective standard of value, as value is purely subjective. A service can only have value to a particular person. Thirdly, much of what is desired is the result of natural ability or characteristics, not effort or moral worth. Someone may be born with a fine voice or great looks that others appreciate. This tells us nothing about the moral character of the singer or actor. A society based on merit would make no provision for the demand for their services. The worth of a good is not related to the quality of the supplier. Fourthly, it would give tremendous power to those who would decide who deserved what. What they conceive of as meritorious would be rewarded, and other views ignored.

According to Hayek, "It is neither desirable nor practicable that material rewards should be made generally to correspond to what men recognise as merit and that it is an essential characteristic of a free society that an individual's position should not necessarily depend on the views that his fellows hold about the merit he has acquired."

Desert or merit is an important factor in determining value, probably the most important. Those who work harder or more productively, who sacrifice to achieve a good education, are usually rewarded. But intelligence, looks and luck, unconnected with moral worth, are also factors. Their role is impossible to measure. As Herbert Spencer, one of the founders of modern sociology noted, supply and demand determines value in a free society, but no individual or group determines that value. The market place does through the millions of decisions taken by consumers, workers and employers every day.

**Social justice as rights?**

If there is such as thing as social justice, then it must be based on rights. As Nozick argued, justice is historical, based on how particu-

lar individuals obtained their wealth. Justice cannot be concerned with the end state or patterned distribution that is the goal of theories of social justice. Thus the theory of justice that applies to material distribution is based on the same principles as justice elsewhere. It is about following fir rules. It is a procedural theory of justice that allow individuals to pursue their own wants and needs as they understand them, provided that they show the same respect for the rights of others.

### Defending justice

The Greek philosophers were right to believe that justice was the foundation of a good society. It is therefore understandable that collectivists of all parties should seek to use the language of justice to promote their own desire for power and redistribution. Demands for social justice are a grave threat to true justice and a free society and must be firmly resisted. A commitment to justice requires a rejection of the idea of social justice.



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### Questions for thought

1. How just is your society?

2. Is the distribution of income and wealth in your society just?

3. Should wealth be redistributed from richer countries to poorer ones?

# Peace

*"When goods don't cross borders, then armies will."*
Frederic Bastiat

**What is peace?**

Peace is one of the three great values of liberal civilisation, along with freedom and justice. Just as freedom can be defined as the absence of coercion, and justice as the absence of injustice, so peace can be defined as the absence of war. Peace should not be confused with pacifism, the refusal to ever use force, however, as it refers to a condition that exists between nations, not a policy of peace at any price. We value peace, as we value freedom or justice, because it allows us to get on with our lives, rather than as an end in itself. This common hope of peace is shared by people right across the globe and yet in the long course of human history, this state of affairs has been the exception rather than the norm. To those who have not been touched by the hand of war, peace may seem an unremarkable and commonplace state of affairs, but history shows that it has in fact been more difficult to achieve than war. It is the bloody futility of war that marks out peace as one of the highest and noblest aspirations of man.

In the ancient world, war was so much a part of everyday life that the thinkers of ancient Greece and Rome saw conflict and combat as part of the natural order of human society. Generals such as Alexander the Great led armies to conquer foreign peoples and prized power over peace. They concurred with the Greek philosopher who declared that war was the father of all things. The Spartans, and later the Romans, in particular saw war as essential if society was to prosper and progress. Many intellectuals, including Plato and Aristotle, feared for the future of mankind should the absence of warfare cause human civilisation to decay into indolence and stagnation. They believed that the virtues of the warrior, such as bravery and self-sacrifice, would be lost without the militarisation that war and preparation for war required. The idea of peace owes its genesis to different traditions, with roots in the Judeao-Christian and Islamic religious traditions and in the Enlightenment of the eighteenth century.



The power of the idea of peace lay in the material, cultural and spiritual benefits that man could derive from the absence of war between nations. Throughout most of human history, nations had sought to maximise their wealth and influence in the counsels of the world by a policy of imperialism. Like the Persians and Romans before them, the great powers of Europe began a new age of discovery and expanded the frontiers of the known world from the sixteenth century onwards. First the Portuguese and Spanish, then the English and Dutch and later the Germans, Italians, Russians and the Japanese sought material riches and military power through empire. The thinkers of the Enlightenment thought that it was un-realistic to expect the great powers to voluntarily yield their colonial acquisitions but nonetheless founded an increasingly influential doctrine that peaceful co-existence and free trade would multiply national wealth and pre-eminence. Trade and exchange had the power to turn an enemy into a friend. The modern world was being born.

This modern idea of the human benefits of peace seemed heretical to the elites of the old order. David Hume, one of the great thinkers of the Enlightenment, railed against the conventional wisdom that held that international relations were a negative sum game, that one country's gain was of necessity another's loss. "Not only as a man, but as a British subject, I pray for the flourishing commerce of Germany, Spain, Italy and even France itself." Thus his policy even recommended trade with Britain's traditional enemies. These ideas later found expression in John Stuart Mill in Britain, Frederic Bastiat in France and Wilhelm von Humbolt in Germany. Britain adopted a policy of unrestricted free trade in 1846 when the Conservative ministry of Robert Peel abolished the corn laws by which powerful landowners in parliament kept cheap bread out of the cities by taxing imported grain. Two British parliamentarians, Richard Cobden and John Bright, founded the Anti-Corn Law League in 1838 to agitate for free trade and claimed it would bring a new era of peace to the peoples of the world. Cobden even called the British Empire a gigantic system of outdoor relief (welfare) for the aristocracy.

**Free trade creates one world**

The legacy of these ideas was the long period of peace in Western Europe from the end of the Napoleonic Wars to the outbreak of the

First World War almost one century later. A key to this peace was the steady advance of free trade not only in Britain but also in France, Germany and, to a lesser extent, the United States in the second half of the nineteenth century. Free trade made peace more secure by making the great powers interdependent on each other. As international trade grew, nations could specialise in those areas of production where they had the greatest competitive advantage without wasting resources by manufacturing items domestically which were cheaper to import. Free trade also brought new contact with unfamiliar cultures and broke down narrow, chauvinistic nationalism, creating a popular climate more conducive to peace than the rivalry of the pre-capitalist era. Commerce, which had once divided nations, now brought them closer together in peace.

**Free movement of ideas**

Idealists on the left sometimes suppose that enlightened government and diplomacy are the keys to peace, but this view is based on a mistaken understanding of the economic incentives that foster peace. Freedom not only makes nations more interdependent on each other, it also acts as a valuable conduit to exchange ideas and give people who live under the darkness of oppressive regimes a glimpse of what life is like in a free society. The free flow of information and sources of power that are beyond a tyrannical government's reach have raised people's hopes and expectations in many places around the world. The freedom in some countries, that allows institutions such as the BBC World Service and Radio Free Europe to broadcast, and the fact that foreign technologies are beyond the state's reach, was a key factor in the demise of the Soviet Empire and turned the nations that were once communist colonies and enemies of the West into allies.

**Peace through strength**

This predisposition towards peace should not be confused with weakness in the face of aggression. The aggressive policies of totalitarian dictators have posed the greatest threats to peace throughout the twentieth century. From the Soviet Union (1917-1991), Nazi Germany (1933-1945), to the dictatorships of today in Libya, Syria, Iraq and North Korea, these militaristic regimes have challenged peace



often with deadly weapons. Defenders of peace have often been divided about how to respond to these threats, and often sought an accommodation with its threatening neighbours. History has generally shown this to be a mistake, however, confirming President Ronald Reagan's observation that "strength, not weakness, is the surest guarantee of peace."

The West made the mistake of appeasing the Nazis in the 1930s, following Hitler's decision to annexe Austria and invade Poland. Czechoslovakia, Denmark, France, Hungary, Norway and Russia and world war soon followed. The West made the same mistake with the Soviet Union when it allowed the Soviets to occupy Eastern Europe, where they remained for over forty years. This error was repeated in the 1970s, when the West sought to negotiate arms reductions with the Soviet Union, and a massive Soviet military build and the invasion of Afghanistan followed. The reason why a policy of appeasement failed, and why the West's decision to build up its defences in the 1940s and the 1980s was successful, is that nations which seek to expand their power through military might respect military strength and take advantage of military weakness. This is because when a nation's course is determined not by ballots, but by bullets, the checks and balances that a democracy exercises on foreign aggression are absent. Lack of funds may limit the capacity of a dictatorship to pursue an aggressive foreign policy, but public opinion cannot because the people cannot change the government.

**The road to war**

Societies which are organised on the principle of government planning tend to adopt aggressive foreign policies because they concentrate power in the hands of the state. This leads to demands for strong leadership as government cannot tap into the multiple sources of information that power a market economy, and as people in the bureaucracy attempt to pull government in different directions. It is important to remember that in these societies that the creation of wealth is strictly controlled, and so power is the only thing worth having. Historically, there have been no shortages of candidates to exercise that power; and indeed the less principled among us tend to be more attracted to positions of power in collectivist societies than the average citizen. Once a strong leader like Hitler, Stalin, Saddam

Hussein or Gadaffi arises, it is difficult to stop him. At this point even leaders who have come to power loudly trumpeting socialist ideals of internationalism, become nationalistic and imperialistic as they have no desire to see the resources they have striven to gain control of passed around to nations outside their control.

The militaristic instincts of collectivism are a product of the value which such societies place on the individual and his freedom. If the activities and choices of the individual must be directed from the centre to achieve national goals, then coercion must be used to force people to fit in with the state's plans, and dissent and resistance must be dealt with ruthlessly. The nature of such a society is that it requires as well as attracts men who are prepared to break every moral rule that the people who live in that society have come to value. It was Lenin who in 1920 famously declared that morality was subservient to the needs of world revolution. When such men are at the helm of an entire society, obscenities like the Nazis' Final Solution, the Soviet Gulag, Mao's Cultural Revolution and the Killing Fields of Cambodia follow. Information about free societies is suppressed. Democratic means of changing the government are removed from conversation as well as the constitution. The state has a free hand to conduct its relations with other nations as it wishes.

**The fallacy of the idea of world government**

Many suppose that the cause of peace and global unity is best served by supra-national institutions that can bind nations together in solemn agreements and work as a forum where governments can iron out their difficulties. Throughout our war torn century, institutions have been set up with the aim of ensuring that hostilities between nations never break out again. The League of Nations, the United Nations and the European Union were all founded with this noble aim in mind. In fact, it is not governments which create the network of economic, cultural and spiritual links that are necessary to preserve peace, but rather it is their people. Even democratic states where public opinion will not long stand war not based on the needs of national defence or on a just cause, tend to get in the way of this network being built. By imposing tariffs and quotas on trade and by making foreign aid payments to corrupt states which mismanage their own economies, governments obstruct the free-flow of goods



and services, ideals and beliefs that create a common interest in peace. Dictatorships which restrict the inflow of foreign investment and ideas, of course, place even greater blocks in the way of this progress. Supra-national governments are only as good as the governments who make up their number, and where dictators and autocrats hold the majority, as at the UN, they can harm the cause of peace.

**A peace agenda**

Peace can best be achieved by promoting three principles: free trade, liberal democracy and military strength. The greatest cause of war is autocratic regimes which believe that they can expand their power and wealth at the expense of others. Free trade creates a positive-sum game, where all benefit. War would destroy the wealth of your enemies and so also damage yourself. Free trade is a necessary but not sufficient basis for peaceful relations between countries. Second, historical evidence shows that liberal democracies are unlikely to go to war with each other. There is no example in history of two liberal democracies going to war with each other. Third, liberal societies must maintain military strength, either individually or collectively. The object is to demonstrate to any potential aggressor that they have nothing to gain from war. As President Teddy Roosevelt recommended, "Speak softly, but carry a big stick."

**The case for peace**

The carnage and devastation of two world wars and the terror of nuclear holocaust that haunted the world throughout the cold war serve to remind us that there is no law of history that says that the human condition must progress. The prizes for answering the ancient prayer for peace are great. And many nations are coming together in free trade unions and building on the system of free trade that has kept the peace for the last half century. All of humanity would gain from the un-hindered co-operation of the people's of the Earth as the coming together of people in trade would unleash a new era of prosperity and peace. Prosperous nations would benefit too, but not as much as the millions who do not know freedom or security and do not have enough to eat.

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**Questions for thought**

1. Should one seek peace at any price?

2. When, if ever, should one intervene in wars in other countries?

3. How can one promote peace?



# Private property

*"Private property creates for the individual a sphere in which the individual is free of the state. It sets limits to the operation of the authoritarian will. It allows other forces to arise side by side with and in opposition to political power. It thus becomes the basis of all those activities that are free from violent interference on the part of the state."*
Ludwig von Mises

**What is private property?**

The human institution of property divides objects into things which are exclusively owned, whether by an individual or a group like a married partnership, an enterprise or the state. Whilst some objects, such as the air and the sea have not historically been divided into separate property, technological progress has made it possible to apply the institution to an ever wider range of objects. The rights which owners exercise over their property do not merely apply to tangible things; the right to sell one's own labour, and to the fruits of that labour is no less a property right than the ownership of land or of a factory. The rights of ownership are inalienable; they transcend the time and space of the property of others. The owner of property remains the owner regardless of whether his property is located inside that of someone else. In a free society, property rights allow the individual to freely acquire and dispose of property, and to the unhindered use of that property.

Private property is as old as human civilisation itself. The institution of property marks out humanity from the other species who live on the Earth. Adam Smith wrote "nobody ever saw one animal by its gestures and natural cries signify to another, this is mine, that is yours: I am willing to give this for that." This contrivance of man has been a key factor in his civilisation; the two have grown up together. Our earliest knowledge of the acceptance of a person's right to own and dispose of property comes from the Mediterranean area — a right which made possible a great network of trade between many port and sea-based communities. Naval commerce flourished beyond the reach of local rulers. The first recognition of the link between property and freedom was made in ancient Greece. We know that the framers of the Crete constitution had "taken it for granted

that liberty is a state's highest good and for this reason alone make property belong specifically to those who acquire it, whereas in a condition of slavery everything belongs to the rulers."

The roots of the idea of private property were never firmly established by the ancients. The Spartans, who long resisted the development of commerce in the Mediterranean, did not recognise individual property and permitted and even encouraged theft. Plato and Aristotle yearned for a return to Spartan practice and the might of Imperial Rome was later to crush the emerging centres of private property with the sacking of Corinth and Carthage. The ancient world is littered with examples of the birth pangs of new civilisations based on a recognition of private property, followed by decline based on government and military attacks on private property. The Islamic jurist Ibn Khaldoon described this process as it caused the rise and fall of Egyptian civilisation. "At the beginning of the dynasty," he wrote, "taxation yields a large revenue from small assessments. At the end of a dynasty, taxation yields a small revenue from large assessments."

It was not until governments turned from the direction of the use of property to the protection of the property of private people that the foundations for modern trade and exchange were laid. The first modern spokesman for this institution was John Locke, who declared that "where there is no property there is no justice" since property rights were the source of all other rights. Injustices are an infringement of property rights. Locke made the claim that "every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his." This was not merely a political theory, but also an attempt to describe eighteenth century England and Holland, nations under whose authority property was respected to a greater degree than anywhere else. David Hume went further a century later and his *History of England* attributed England's greatness to the respect for property rights there. Hume also made a famous observation on how the absence of ownership depleted society's resources. In *The Tragedy of the Commons*, Hume famously observed that common ownership had ruined land through overuse as no-one had a commercial interest in its long term preservation.



**Without property rights, there are no human rights**

The freedom of the individual to use his own knowledge and skills to pursue aims that are distinct from others is dependent upon the institution of private property. Without the private ownership of property, the aims of every individual would be controlled by the state. Some say that human rights take priority over property rights, but this is based on a misunderstanding. Property rights are not the rights of property, but human rights to property. In fact since the most fundamental human right is the right to own one's own body, property rights are the source of human rights. The individual is morally entitled to the fruits of his or her own labour. The rights that the authors of the American Declaration of Independence enumerated, the right to life, liberty and the pursuit of happiness, are all dependent upon property rights, including the right to own ourselves. The right to own property is recognised by the UN Declaration of Human Rights in Article 17.

**Free speech requires private property**

Where there is no private property, there can be no free expression. Without the right to hire a meeting hall, for example, or to express one's opinion in print or on the internet, there would be no free speech. Our freedom to speak is dependent upon private ownership, of our person and of the material resources in society. In 1930s Britain, the government owned radio broadcasting. The BBC, on orders from the government, stopped Winston Churchill broadcasting his views about the threat from Nazi Germany. State suppression of private property always and everywhere means suppression of free speech. Private property underpins our civil liberties and political freedom; without any claim to ownership of property, individuals can be silenced by those in authority. There is no free speech in communist countries because there is nowhere to speak from.

**A sphere of independence for the individual**

The unhindered use of private property creates a space for the individual in which he can live, make his own choices and determine his own destiny, while enhancing his sense of identity and self-worth. Without that space, he would be subject to the arbitrary will of oth-

ers, and therefore unable to plan for the future with any certainty. This institution of private property enables people to live side by side, on a planet with scarce resources without impinging on the rights of others. It is a unique institution that makes society possible, simply by assigning control over things to a particular person or group. It solves disputes about such matters that may otherwise only be settled by violence and subordination to the strong. As such it is inseparable from civilisation and of man's humanity to his fellow man.

**Where there is no property, there is no justice**

The principle of property is the opposite of a society where might is right. Justice, which government must enforce if it wants to ensure social co-operation between men, cannot exist without private property. Because property establishes our rights, over our body, our labour and our possessions, an invasion or violation of those rights is an injustice. These rights simply cannot be defined let alone protected unless the rights of the individual to legitimately acquire, use and dispose of property are respected. A judge or a jury could not determine who was right and who was wrong if plaintiff and defendant owned no property. Our concepts of murder, theft, and even fraud and libel depend upon notions of ownership and the rules that govern and delimit the transfer of that ownership between one another. Ideals of a fair trial, the presumption of innocence, and the judgement of our peers would be meaningless if we were not free to own, use and exchange property. Without justice society would disintegrate into anarchy.

**Private property gives people a stake in society**

Private property is the foundation of a free society as well as the just society. The wide (as opposed to equal) distribution of property in a free society creates incentives that encourage social stability and individual responsibility. This distribution of property makes society more stable because it gives people a vested interest in keeping society free, as they own a part of that society. The fact that people care more about that which they own means that a free society is tended to by millions of separate hands, avoiding the dereliction and decay that is the fate of societies that do not divide up land, housing and



capital into private ownership. Private ownership also connects people to the consequences of their actions. If they neglect that which they own, it is they who must pay the financial price. It encourages the good stewardship of scarce resources which would otherwise be wasted or spoiled if there were no private property rights, or if those rights were periodically attacked.

**Private property is essential for moral as well as economic progress**

Private property is a prime mover of economic progress because of the incentives to work and invest that it creates. Security of property, therefore, is an essential condition for economic progress. Back in the fourteenth century, Ibn Khaldoon described this process. "Attacks on people's property remove the incentive to acquire and gain property. The extent and degree to which property rights are infringed upon," he wrote, "determines the extent and degree to which the efforts to acquire property slacken." David Hume identified the rules of property as the motor of economic progress. These he determined as the 'stability of possession,' the 'transference of property by consent' and the 'performance of promises,' by which he meant the honouring of contracts. The restoration of property rights is therefore a key element in economic reforms to boost economic performance. If all three of Hume's rules are recognised, property will be owned by the best stewards and not merely by those to whom the state has transferred its property. By making social co- operation a necessity for economic progress, private property brings mankind closer together and shapes man's work so that it benefits his neighbour.

**Private property benefits those who do not own as well as those who do**

Private property is often misunderstood as benefiting only its individual owners. In fact, the benefits to society of the private ownership of property are far greater than those which accrue to the individual. If a landowner is to receive an income as a farmer, he must feed those who do not own land and who may live in far away cities. He must also cultivate the countryside, and be a good environmental steward if he is to secure his income into the future. If he is a poor farmer, he will not be able to earn an income and so be forced to sell his land to a better steward of the land. Whilst private property does

confer gains on its owners, the gains to society are greater as the institution enables millions to work and live who do not own the tools of their trade. By transmitting prosperity around society in this way, it allows individuals to accumulate capital and one day go into business for themselves. In the long run, the proportion of mankind who can live on the proceeds of the ownership of property alone rises as private property is protected.

**The role of government is to protect private property**

It is important to remember that a society based on private property is very different from the crony capitalism which has replaced communism in much of the former communist world. The corrupt transfer of property from the state to the mafia could not take place in a society where private property was respected because individuals who live by the use of force may not own unjustly acquired property in a free society. Private property is not a social privilege, but an institution which ensures that its owners are stewards who can serve society better than their peers. The role of government is to protect private property, not only in known objects, but in the new frontiers of intellectual property in cyberspace. The private ownership of property is a human right, essential for democracy, vital for personal identity, a source of political stability, and efficient at producing wealth. The benefits of property are the benefits of civilisation.



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**Questions for thought**

1. Why is private ownership of property desirable?

2. Should the state be able to tell you what you can do with your own home?

3. Can private property rights protect the environment better than state ownership?

# The rule of law

*"Intelligent beings may have laws of their own making; but they also have some which they never made."*
Charles-Louis Montesquieu

**What is the rule of law?**

Law is commonly used to described those rules adopted by legislatures or governments which all are expected to obey. The Rule of Law however means that there is some higher law to which 'laws,' usually legislation, should follow. Legislation and government orders can be measured against a set of moral principles known as natural law. Among these principles of the rule of law are equality before the law, the principles of natural justice, general and abstract rules, and an independent judiciary. The purpose of these rules is to protect the freedom of the individual against the state.

The idea of law as something that is discovered rather than simply a product of human will has deep roots. Even in classical Athens at the height of its democracy, it was not possible to alter the law by a decree of the assembly. Roman law was almost entirely found by jurists rather than by the decrees of emperors and senators. A major principle was established: 'an unjust law is no law,' 'lex injusta non est lex'. The codification of this body of laws by the Emperor Justinian was largely an attempt at articulating laws that already existed in this way and were recognised and obeyed. It did not involve the creation of new laws.

In the Anglo-American world this developed as common law, discovered as a result of cases and precedent. So the British Parliament was able to evoke the common law against the power of monarchs, as Sir Edward Coke did against King James I. The American colonists demanded that the colonies be ruled by the traditional laws and liberties of Englishmen against the 'laws' passed by the British Parliament. On the continent of Europe this tradition followed a different path known as the Law State or 'Rechtsstaat', which recognised that all government actions were subject to laws. Every action of government has to be justified by identifying the law which legitimates the government action. This can be seen in every law adopted by the



European Union, that some reference must be made to the authority to act or legislate in a treaty of the EU. The UN Declaration of Human Rights recognises some of these principles in Articles 7-11. The European Convention of Human Rights similarly upholds higher laws over national legislation.

**'A government of laws, not men'**

The rule of law is contrasted with the rule of men. Of course laws are made by men, but they should follow or be judged by a higher or fundamental law. These laws or rules prevent the exercise of arbitrary power. "In this sense," said the English constitutionalist A.V. Dicey, " the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint". Rulers and legislators are themselves bound by certain rules. Government cannot exclude itself from the laws. In many countries government actions are immune from prosecution that would be illegal if carried out by a private individual.

This means that man's relationship with man should be determined by general principles embodied in a system of law and not subject to the arbitrary dictates of monarchs, ministers and rulers. A society in which some men are not accountable to the law is not a free society. The state governed by law, the Rechtsstaat, means that rulers are subject to the law as much as anyone else. The state cannot do as it likes but must obey the law and can be held to account if it fails to do so.

**Equality before the law**

The law is no respecter of persons. The law must apply equally to all, regardless of status or political position or power. The naming of individuals in legislation, for example, is incompatible with this principle, either to punish or exempt them. A common symbol of justice as the blindfolded figure carrying two scales also conveys this sense of an impersonal system of rules that applies equally to all. The law must be impartial or neutral between persons, ignoring their class, religion, political opinions, gender or sexual orientation. True justice is not concerned with who has done what, but what has been done.

Law in this sense is not and cannot be the tool of the state to destroy those in opposition to it, or to grant favours to those who support it.

**General and abstract laws**

The philosopher Hayek claimed that laws must be general and abstract, addressed to all, and cannot be addressed to particular persons or groups. They must be universizable, apply equally to all and without discrimination between groups and individuals. They must meet three standards: consistency between similar cases; impartiality, they apply to oneself as well as to others; and moral neutrality, they do not distinguish between different conceptions of the good life.

"If all that is prohibited and enjoined is prohibited and enjoined for all without exception (unless such exception follows from another general rule) and if even authority has no special powers except that of enforcing the law, little that anybody may reasonable wish to do is likely to be prohibited," claimed Hayek.

A planned society is incompatible with the rule of law. Government planning requires that people and property be deployed in particular places at particular times. Such a system cannot cope with individuals making their own decisions about where to work and live. In planned societies government needs to identify and command particular people or groups. A free society only requires law to enforce contracts and protect individual freedom, so free markets require a framework of law to function. The absence of this law has been a major obstacle to the creation of free markets in many former communist regimes. Without such a framework, powerful groups like the mafia will have a licence to exploit others.

**The rules of natural justice**

There are certain rules of natural justice, which all lawmaking should follow. They include certainty, predictability, exclusion of retroactivity, clarity, stability, no laws requiring the impossible, and the presumption of innocence.

Certainty allows us to plan our lives with the knowledge that, if our rights are not respected by others, we can turn to the law or seek redress. Corporate law, for example, would tell us what we must do to set up and trade as a company. If someone owes the company money, or if that company breaks a contract, the parties involved have recourse to the law because it is a legal entity whose directors have legal rights and responsibilities. Hayek doubted "whether the significance of which the certainty of the law has for the smooth and efficient working of economic life can be exaggerated, and there is probably no single factor which has contributed more to the greater prosperity of the Western World.... than the relative certainty of the law which in the West had early been achieved".



If persons are to make decisions on the basis of the law, they must be able to predict what actions will infringe the law. If the laws are so unclear or subject to a high level of discretion, that they are unable to act with certainty of whether they are breaking the law. In a story called *The Incredible Bread Machine*, a baker is prosecuted for charging higher prices than his competitors on the grounds that he was cheating his customers; for charging lower prices on the grounds that he was seeking to drive out his competitors; and for charging the same price, on the grounds that he had conspired with other bakers.

Laws can only apply to future actions, not those of the past. Someone cannot be prosecuted retrospectively, that is for carrying out an action that was at the time not against the law. Someone should not be punished for failing to carry out an act that was itself impossible.

The concept of an individual's innocence until proven guilty is a fundamental principle of natural justice. It is important that no person can be regarded as guilty, even in the most incriminating of circumstances, as it requires the authority to prove guilt, as opposed to the fabrication of charges common in dictatorships.

**An independent judiciary**

One of the functions of the judiciary is to enforce laws against the government. Therefore the judges must be politically independent of the rulers. This leads to the principle of the separation of powers: that different bodies should be responsible for the making of legislation (the legislature), the enforcement of legislation (the executive), and the adjudication of legislation (the judiciary). The independence

of the judges is protected by the process by which judges are appointed, and the system of security of tenure, which makes it difficult for rulers to remove them. Restrictions are placed on the political activities of judges to prevent their subordination to others or subject them to political influence. Judges should operate on the principle of neutrality, that their political views or interests should not intrude on professional behaviour. It is in this sense that law should be separate from politics.

**Constitutionalism and limited government**

The rules that bind governments can be found in several places. Judges should have the powers of judicial review, to examine the government's actions and legislation to ensure that it has met the standards of the rule of law. Judges can look to three sources to evaluate such actions. One source is the written or codified constitution, so advocates of the rule of law are usually also proponents of written constitutions. Alexander Hamilton, one of the founding fathers of the US Constitution and an author of *The Federalist Papers* declared, "A constitution is in fact and must be regarded by judges as a fundamental law." Constitutions place substantive limits on what governments can do. Another source is common law. Such law is not merely the establishment of rules via a set of precedents; these only illustrate the law, they do not make it. As an 18th century British judge wrote, the British common law "does not consist of particular cases, but of general principles, which are illustrated and explained by these cases". The common law applies general principles to particular cases in a way that the arbitrary decisions of a dictator need not. A third source is the philosophical understanding of the natural law, which is why so much legal debate is philosophical in nature.

The purpose of the rule of law is to protect the individual. Nothing more clearly distinguishes a free society from an unfree one than the rule of law. The difference between the rule of law and arbitrary power is as great as the difference between a signpost telling us which way we must drive in order to reach our destination and a government edict which restricts our freedom of movement by telling us where and when we may travel.



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**Questions for thought**

1. Why is the rule of law valuable?

2. Can legislation ever be illegal?

3. How do we protect the independence of the judiciary?

# Spontaneous order

*"Many human institutions are the result of human action, but not of human design."*
Adam Ferguson

**What is spontaneous order?**

Order has been a central pre-occupation of political thinkers and philosophers throughout the ages. It is widely understood today as a state of harmony between people or social peace. In the pre-modern era, however, the concept was understood as the maintenance of a stable, hierarchical order that was pre-ordained by God or nature or both. Order can also be seen as the existence of regularity and predictability in human affairs, the absence of chaos. Although no longer associated with a rigid society ranked by privilege and power, the idea of order is still highly valued. This is because it allows people with different interests and values to live together in society without resorting to discord, conflict or civil war. This is the modern idea of spontaneous order.

The first thinker to articulate this modern concept of spontaneous order was Bernard de Mandeville, in a book called *The Fable of the Bees*. This work discussed the paradox that "private vices" such as individual self-interest could lead to "public benefits" from which the whole community benefited. He observed that the sum of individuals acting from separate motives produced a commercial society that was no part of any one person's intention. This idea that the evolution of human institutions allowed individuals to serve others, even though their motive may be self-interest, was at the core of the Scottish Enlightenment that grew up around Adam Smith, David Hume and Adam Ferguson. They sought to apply this idea to a whole range of human institutions, including commerce but also law, language, human morality, and even mores and customs. Far from a narrow theory of economics, Smith argued in *A Theory of Moral Sentiments* that morals evolved with those which enabled humanity to flourish and prosper slowly accepted by the community and standing the test of time.



These men were fascinated at how these values and institutions grew up to greatly benefit mankind despite being the idea of no single mind. Adam Ferguson's observation that human action produced a superior form of order in society to that conceived by human design was to echo in the thoughts of an Austrian thinker, Friedrich Hayek, two centuries later. Hayek took on the ancient idea that institutions were divided between those which are 'natural' and those which are 'artificial.' A third group of things existed, Hayek said, and these were social institutions. As these are regular and orderly, people suppose that they have been invented by humanity and can therefore be altered or restructured at will. Hayek pointed out that this notion was mistaken because the human mind and society had evolved together. Tearing down the institutions that kept society together and building anew, as socialists advocated, would destroy the order that made society work.

**Order without commands**

Spontaneous order keeps the wheels of society turning without the need to issue commands from the centre. A free society is orderly not because people are told what to do but because the evolving traditions and inherited institutions of human society allow individuals to pursue their own ends and, by so doing, meet the needs of others. People's behaviour follows certain patterns because they have been accepted by society initially as they allowed the groups which adopted them to prosper. It is no accident, says Hayek, that the sharpest differences in material welfare can be seen in the Third World where the city meets the countryside and complex, rule-guided societies meet intimate communities where the rules appropriate to the smooth-running of that society are very different. The rules that allow a complex social order like a city or the global economy to function are not orders in the sense that term is usually understood. Rules which prevent individuals injuring others or engaging in theft or fraud or breaking promises in fact give people a great deal of latitude in their behaviour. They tell people how to do things, but they do not tell them what they should do.

## The evolution of morality

The moral framework for human society is not set in stone, but rather it is constantly changing as new rules are discovered that allow the social order to function better. The problem is that we do not know in advance which rules will work and which will not. Our existing laws and customs show us what has worked to get us to the development of society that we have now, but innovation and trial and error are required if we are continue to discover new rules that will allow society to work of which we were previously ignorant. Social institutions that keep society orderly- institutions, customs, traditions and values- are like tools. They contain the knowledge of generations before us about how to act and behave, and will be modified by the rising generation and then passed on to the next. Groups that adopt these rules benefit from having done so, without necessarily knowing why. The institutions that transmit information about them are the product of human action, but not necessarily the result of human design.

## The transmission of rules

There are three categories of social rules, according to Hayek. The first which we design ourselves, such as parliamentary legislation. The second, which has been called 'tacit knowledge,' rules that we all follow such as a sense of fair play or injustice that we all understand but cannot put into words. Finally, there is a third group of rules of beneficial behaviours which we can observe and write down, but our attempts at codification only approximate the principle which we have observed. The Anglo-Saxon system of common law is an example of this third type of rule, as it has evolved with different cases and judgements adding to the body of law over centuries which has been gradually refined and is open to modification in the future. We learn from these rules and contribute to them even though we often cannot fully explain them. And it is the second and third categories which have the power to create a complex order that utilises more knowledge than can ever be known by a single human mind.

## Why we need freedom

Complex social orders require freedom to work because the information and knowledge which makes them work can never be amassed



by a central authority. Attempting to use the first category of rules - legislation - to change the second and third categories of spontaneous order will fail because it is the sum total of human knowledge that has allowed people in society to live with one another and brought us to the levels of prosperity and population that we now enjoy. This was seen in the old socialist states of the Soviet Empire in which government attacked and undermined traditional morality and justice and fair play whilst relying on the economies of the West to keep living standards falling below subsistence levels. Freedom is critical to the process of achieving spontaneous order in society because we do not know in advance which rules will work, because liberty is essential to the trial-and-error process of finding out what works, and because the creative powers of man can only be expressed in a society in which power and knowledge are widely dispersed. To impose a pre-designed pattern on society would make society cease to function as a creative force. Progress cannot be commanded.

## The dispersion of power

Essential to the progress of an orderly society is the distribution of power amongst its citizens, as opposed to the concentration of power in the hands of the state. This allows society to experiment in the rules and mores that govern its behaviour. Whilst this process of trial and error limits the impact of mistakes to a small segment of society, it also allows for rules which work to be observed and imitated, and, if successful, absorbed into the social framework of a free society. Risk-taking and rule-breaking are virtually impossible in small intimate rural societies and yet they are essential to maintaining the numbers who live in the vast impersonal societies of modern life. These valuable activities cannot take place unless power is dispersed amongst the population rather than concentrated in the hands of a centralised government.

## As if by an invisible hand...

In a free society, people's lives are subject to a minimum of coercion by the state, but it is not anarchic. In fact, life in a free society can be hard because it forces individuals to adjust to the needs of others. The free society works because it co-ordinates these conflicting desires by creating incentives for people to satisfy their own wants by

satisfying those of others. This is the opposite of an anarchic state in which one can only achieve one's aims at the expense of others. We are moved to serve the needs of others, whilst pursuing our own self-interest, as Adam Smith suggested, as if by an invisible hand.

This complex order which harmonises and synchronising the conflicting desires of people who are very different from one another can be confusing at first, but it is essential to look beyond that initial confusion if we are to see how a free society works. When Alexis de Tocqueville first disembarked in New York in 1831, he heard what he described as "a confused hum." That great chronicler of American society wrote, "No sooner do you set foot upon American ground than you are stunned by a kind of tumult; a confused clamour is heard on every side, and a thousand simultaneous voices demand the satisfaction of their social wants." Simply trying to work out how society works by watching it and listening to it tells us little. It would be like trying to understand how a clock works by telling the time. It is how people must interact with each other that allows the clockwork of society to keep ticking.

**Freedom promotes harmony**

The hum of commerce eases the path of social co-operation in a free society in part because it offers man opportunities by serving others which are simply not available by acting alone or in a state of war of all against all. These incentives allow us to co-operate with each other even though our views on political issues or our religious beliefs may radically differ. When people supply goods and services or buy them from others, they do not know with whom they deal. Protestant, Catholic, Jew and Muslim all benefit from the commercial activity of each other in a free society without altering their fundamental beliefs. Their security and prosperity is dependent on that of each other and in free societies far surpasses that of those nations where conflict marks differences of faith. These differences are resolved peaceably and profitably in a free society, because the benefits of these values have been passed down thorough society and become part of the moral framework. The absence of this mechanism for transmitting moral values in non-free societies is one of the reasons why religious strife and social discord mark societies that have never known freedom.



**Freedom creates order**

One key institution that makes the co-ordination of a free society possible is the law. In a free society, law is not the same as the arbitrary government of totalitarian and autocratic societies nor is it the same as the legislation of Western parliaments. It is, as we have seen, a code which has evolved not at the hands of politicians but in the decisions of judges. Tocqueville in *Democracy in America* described how laws keep order in a free society. He observed that "the spirit of the law which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society, where it descends to the lowest classes, so that at last the whole people contract the habits and tastes of the judicial magistrate." The law is respected in a free society not by the use of force, (although governments do reserve the right to use force to protect freedom), but because it is based on rules which have grown up and been tested in real life, and the values, or the spirit of the law, are closely connected to the moral values of the civilisation. Over-government undermines that respect by imposing controls on society which do not conform to people's inherited sense of right and wrong. Freedom creates order in society. The institutions of a free society give people an interest in keeping the peace, better than any police state or concentration camp.

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**Questions for thought**

1. Why is order necessary?

2. Does moral behaviour require laws?

3. Can order exist when humans pursue their self-interest?



# Toleration

*"All men are liable to error."*
John Locke

**What is toleration?**

Toleration is the belief that one should not interfere with behaviour or actions of which one disapproves. It has two essential characteristics: disapproval of particular behaviour and a refusal to impose one's views on others. Someone cannot be described as tolerant of something of which he approves. It must be distinguished from moral indifference, when one has no interest in the moral consequences of the actions of others, or moral relativism, a belief that one morality is as good as any other. Parents who ignore the misbehaviour of their children would not be displaying tolerance. Neither is someone refusing to condemn the mistreatment of women, such as the forced binding of feet to make them smaller, on the grounds that to do so would be 'western cultural imperialism.' Toleration requires some moral principles, in order both to disapprove of actions and to justify forbearance from interfering. Because toleration still involves disapproval, minority groups, such as gays, often feel that toleration is not enough, but seek acceptance that there is nothing wrong with their actions. Some forms of interference may be legitimate, such as moral persuasion and the use of reason and argument, but not coercion or force. For example, one may try to encourage a friend to stop smoking, but one would not call for a ban on smoking or steal his cigarettes. Toleration may take a passive form, a reluctant necessity in order to enable people to live in harmony with each other, while a more positive toleration may revel in the benefits of diversity. It is one of the foundations of a civilised society; that one can live with others of very different values and beliefs.

Threats to toleration come in two forms. From totalitarians of the extreme left and right, who are fundamentalists in their beliefs. They entertain no doubts about the truth of their convictions and therefore feel no compunction in using power to suppress immorality. The second threat comes from political correctness, which believes that many views, whether true or not, cause offence and pain to others,

such as racial, religious and sexual minorities, and therefore should be banned.

**Philosophers on toleration**

The concept of toleration is relatively new as a guiding principle for society. Most societies in the ancient world and the middle ages believed that a society in order to function and maintain order required a high degree of homogeneity. Heretics and minorities had either to be converted or expelled. The history of Europe was one of religious wars where it was thought necessary that all should worship God in the same way. Even when the authority of the Catholic church was challenged by Protestantism, it was often done by religious dissenters who wished to replace the church's authority with a new one arising from their own beliefs.

**Freedom to write**

One of the earliest philosophical calls for tolerance was by the English poet John Milton, who protested against censorship in his pamphlet *Areopagatica* in 1644. He was opposed to a parliamentary bill to require every printing press to be licensed by the government. Censors could refuse to licence a press which published unorthodox or subversive material. They had the power to ban "false, forged, scandalous, seditious, libellous and unlicensed papers, pamphlets and books to the great defamation of religion and government." Milton was one of the first thinkers to provide a principled defence of the freedom to write and publish.

Milton argued against print censorship on a series of grounds. Firstly, in order to be virtuous, one must know vice. Secondly, one cannot trust censors to make such decisions unless they are incapable of error, and no person is. Thirdly, truth is stagnant if belief is justified solely by claims to authority. Fourthly, one should refute and not silence wrong opinion. Fifthly, the government may censor the truth by mistake.

**Religious toleration**

Freedom from persecution in the area of religion was the theme John Locke in his *Letter Concerning Toleration* (1689). His argument was



essentially that if the role of the state was to protect life, liberty and property, then it had no right to meddle in the area of men's souls. "The toleration of those that differ from others in matter religion" is both consistent with, and required by, Christian teaching based on love and charity. Religious beliefs cannot be secured by coercive means. Coercion operates on a person's will through penalties, but belief and understanding are not subject to a person's will and therefore one cannot acquire it by pretending to believe. "What is gained in enjoining by law what a man cannot do, however much he may wish to do it? To believe this or that to be true is not within the scope of our will." He made it clear that his call for toleration was not based on scepticism or doubts about the existence of God or the true method of worship. He held no subjective view of morality.

He had three main arguments. Firstly, intolerance is unchristian. No one can be a true Christian who does not practice charity. To persecute others because of their heretical beliefs is necessarily uncharitable, so such persecution is unchristian. Secondly, he accused them of inconsistency. The persecutors proclaim their goal is to save souls, but there are many worse sins-Locke identified "whoredom, fraud and malice"–which are not prosecuted with the same zeal. In a contemporary example, gays note that their opponents frequently portray them as a threat to the family, but the threat comes from young single parents and divorce. Yet much less effort is directed towards these issues, which may lead one to doubt that 'pro-family' campaigners are indeed motivated by concern about the family. Thirdly, he saw it as based on irrationality. Beliefs cannot be changed at will as they are based on one's conception of what is true of reality, which cannot be changed by force, as the Catholic Inquisition sought to do.

**Experiments in living**

John Stuart Mill in *On Liberty* sought to obtain toleration for a greater range of speech and lifestyles than religion, as part of his wider defence of freedom. He defended what he called "experiments in living" which would allow competing ideas of the good life to be lived and compared. In particular he provided a famous defence of free speech. Like Locke, as it was beyond the ability of force to change people's genuine convictions, he doubted the rationality of those who would even seek to try.

## The case for toleration

First, toleration is one important expression of a commitment to individual freedom, where one follows one's own vision of the good life, which may be very different from that of most other people. Individuals should be autonomous, exercising control over their own lives and circumstances. Second, truth can only be discovered through the free competition of ideas. The individual can determine truth only by listening and considering a range of different arguments and opinions. Personal truth cannot be imposed. This is still based on the idea that there is such a thing as truth, but knowledge of it can only be imperfectly grasped, and continually needs to be improved. Third, there is a vital distinction between public and private life. Individuals should be allowed to believe in the most absurd ideas- that they were kidnapped by aliens- provided it does not interfere with others. Fourth, personal and moral development requires individuals to make choices, both in order to have a better understanding of themselves and to recognise the consequences of their actions. Mill in particular feared the dangers of conformity in which conventional opinion would dissuade people from experimenting with new ideas. Fifthly, economic and social progress is dependent on individuals presenting unconventional ideas and new ways of thinking, most of which will turn out to be foolish or mistaken, but some of which will provide the dynamism for society. Alexander Graham Bell would have been dismissed as totally eccentric or even mad when he first suggested that one could talk with others through what became the telephone.

## Freedom of speech

Freedom of speech demands the right to print, publish, and broadcast anything, provided it did not directly harm anyone, however offensive it might be. Racist, sexist, revolutionary, pornographic, homophobic language and ideas should be allowed and, if necessary, criticised. Muslims were deeply offended by 'The Satanic Verses' by Salman Rushdie but were wrong to seek to ban the book and execute the author.

John Stuart Mill wrote the most famous defence of free speech in *On Liberty*. "If all mankind minus one were of one opinion, mankind



would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind…. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error."

The right to freedom of speech is based on four arguments. Firstly, the fallibility argument accepts that we might be wrong. As humans we are all fallible in our reason and instinct. If we suppress a view it might emerge later that the view we suppressed was true. We could only be sure that it is not true only if we assume we can never make a mistake. Even the fact that a view is held by the overwhelming majority of people, or the most educated, is not sufficient to justify suppression. Views that were held to be firmly true by almost everyone have later been found to be incorrect. Galileo was persecuted by the church for his claim that the earth revolved around the sun, and not the sun around the earth as was the common belief at the time. Only later was it demonstrated that Galileo was correct, and the Copernican theory accepted. Secondly, even ideas that are largely false may embody partial truths. Since opinions are rarely, if ever, completely true, the only way we can discover what is missing is to allow largely false opinions to be presented, from which a fuller truth may emerge.

Thirdly, even if current opinion is the truth, if it is not challenged and criticised, the understanding of the truth will wither and die. The reasons for its truth will be forgotten, and its acceptance based on prejudice rather than thought. Unless ideas have to be vigorously defended they will fall into disuse and misunderstanding. "However unwilling a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma and not a living truth," wrote Mill. "Both teachers and learners go to sleep at their post as soon as there is no enemy in the field." Fourthly, truth will not lead to action if it not challenged. People may accept the established opinion but it will not be a deeply held conviction and therefore will have little influence on their actions.

### Limits of toleration

However toleration should not apply to every action. When someone else is directly harmed by another's action that should be condemned and perhaps punished. A demagogue calling for foreign immigrants to be killed and their homes burned should be prosecuted for encouraging violence. Coercive acts such as rape should be punished. Sexual acts between adults and children, even if voluntary, should be forbidden because young children are incapable of understanding the consequences of their actions. There are also limits to how much forbearance is justified. There is a considerable difference between the use of government force and power and the personal expression of disgust and offence. It may be appropriate to criticise someone who has failed to be faithful to their spouse but it would be wrong to fine or imprison the faithless spouse.

One may wish to condemn boxing as a violent and inhumane sport but as long as those who participate do that voluntarily and in knowledge of the potential dangers, boxing should not be banned. A Roman legal principle is particularly apposite here: "to one who consents, no injury is done." The same principle applies to sado-masochism.

### The fundamentalist threat

One source of intolerance is fundamentalism, the assumption that one cannot be wrong. This is at the core of the belief system of totalitarians of the left and right, communists or fascists. This need to be intolerant of intolerance is used to justify a ban on extremist parties in Germany. There is a ban in both Germany and France on anyone claiming that the Jewish Holocaust - in which 6 million Jews as well as homosexuals, gypsies and Jehovah's witnesses, were killed - never happened. The historical evidence is overwhelming that it did and those who make such claims appear to be driven by anti-Semitism. However the principle of free speech would defend the right of anti-Semites to express such opinions and then demonstrate that these claims are false.



### Political correctness

Political Correctness (PC) is the use of language about socially sensitive matters, such as race and gender, in a way designed not to offend and would seek to ban the expression of ideas that would give offence. As a matter of politeness, one should always try to avoid causing unnecessary offence. But PC language manages to create offence to others by restricting their freedom of speech, so it is self-defeating. It seeks to censor thought and expression either through the law or through a high degree of social pressures, delegitimating as unspeakable certain ideas.

However offending others is sometimes necessary and desirable. Jonathan Rauch shows how political correctness is usually driven by humanitarian considerations, but the consequence is to protect only certain sorts of speech and actions. It can be as authoritarian in it's own ways as totalitarianism. In the search for increased respect for minorities it creates a new group of the oppressed, the silenced. The search for truth is largely conducted through criticism, which the philosopher of scientific knowledge, Sir Karl Popper, called falsificationism. As Rauch claimed, we have a right to offend and a responsibility to check and be checked.

### Toleration as civilisation

In order to live with others in a diverse and pluralistic society, respect for the rights and liberties for all to lead their own lives is a necessity. One of the central features of civilised behaviour is that one should not use violence to solve conflicts. However that does not absolve one of the responsibility of criticising the immoral behaviour of those with whom one disapproves. It is only limits the methods that one can use. Humility and an acceptance of human fallibility must be combined with a search for the truth and disdain for those who refuse to allow their ideas and behaviour to be open to criticism.

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**Questions for thought**

1. Are there any forms of sexual behaviour that should be prohibited?

2. Is it ever justifiable to ban something from being published or spoken, including racist, sexist and homophobic remarks?

3. Should boxing be abolished?



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"Democracy is about minority rights
as well as majority rule."

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"Equality of income conflicts
with equality before the law."

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