

Two Fundamentally Different Views of “Liberty”

How the founders built liberty as a system, and how modern operatives sell its replacement

Every Fourth of July, Americans post about freedom. Almost nobody says which freedom they mean, and that one omission explains two hundred and fifty years of argument. Beneath the single word “liberty” sit two fundamentally different ideas, opposites in fact, and everything from the founding to your county courthouse turns on which one is in charge.

The two views

The first view says freedom means being left alone. No censor silences your speech, no official confiscates your property, no bureaucrat dictates your trade or your worship. The test is a single question: is anyone stopping you? A man with empty pockets and no obstacles in his path is fully free, on this view, to build a business; whether he succeeds is his own affair. Philosophers call this **negative liberty**; the plainer name is *liberty as protection*. Government exists to protect your rights and otherwise stand aside. This is the liberty of the Bill of Rights, written almost entirely as a restraint on government: “Congress shall make no law.”

The second view says freedom means being provided for. Its test is a different question: can you actually do it? By this measure, the same man with empty pockets is not free at all, however open his path, because he lacks capital, training, or care, and freedom now requires that someone supply them. The only someone large enough is the state. Philosophers call this **positive liberty**; the plainer name is *liberty as provision*. (Philosophers use the term more broadly, to include self-mastery and rational autonomy; this essay addresses its political form, the one that arrives with a budget.) Housing, healthcare, income, education: under this view they are not goods to be earned but components of freedom itself, which government must deliver. Freedom becomes something the state supplies rather than something the state respects.

Protection or provision: hold onto those two words, because they build opposite governments. A government of protection restrains power; its whole vocabulary is prohibition. A government of provision requires power; someone must tax, administer, and distribute the means being promised, and that someone grows with every promise. Every fight over healthcare, housing, welfare, and schools is these two definitions colliding, whatever the argument is called that year. One view ties the government's hands. The other fills them.

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The founders chose the first. They also knew it could not stand alone, a truth they stated plainly and their heirs forgot. Which brings us to the next step in understanding liberty.

The system the founders built

Ordered liberty is that next step: the founders' answer, and the biblical one. It is not a third view of freedom competing with the other two, and it is not merely a moral foundation poured underneath the first. It is the *moral structure of a free people*, a living standard rather than a legal theory, in which freedom is not the absence of law but the presence of rightful authority: authority limited by natural law, bound by the Constitution, and accountable to truth and justice. Edmund Burke said men are qualified for civil liberty in exact proportion to their disposition to put moral chains on their own appetites. John Adams said our Constitution was made only for a moral and religious people and is wholly inadequate for any other. They weren't decorating the argument. They were stating its terms.

A note on the term: ordered liberty has a long pedigree, but it has been bent in modern use. The phrase entered case law in Palko v. Connecticut (1937), where Justice Cardozo made it the test for which rights are “fundamental” enough to bind the states. The case itself expanded no one's freedom; the Court rejected the right Frank Palko claimed, and Connecticut executed him. But the method outlived the man: judges deciding which liberties count. What follows is my argument, offered as argument and not as settled law: that method reversed the founding order. Once liberty's content is determined by courts, liberty is no longer a pre-political given the state must respect; it becomes a grant the state dispenses, the logic of positive liberty wearing a judicial robe. In the decades since, that elastic test has been used to mint rights, deny rights, and centralize what the Constitution left local. I use the term in its original sense: the sense the founders inherited from Scripture, common law, and centuries of Christian political thought, before any court needed a phrase for it.

One more definition, because the vocabulary collides. Positive law is not the same thing as positive liberty. Positive law is simply man-made, enacted law (statutes, rulings, regulations) as distinct from natural law, which precedes and judges it. The error called legal positivism holds that enacted law is valid merely because it was enacted, whatever its moral content. Ordered liberty rejects that flatly: a law's authority comes from its justice, not its enactment, and an unjust law loses its moral binding even when it is procedurally flawless. The two “positives” are distinct errors, but they feed each other. A court that treats liberty as whatever it declares will soon treat liberty as whatever it dispenses: positive law hands the court its tools, positive liberty hands it its mission, and natural law is what gets buried.

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Ordered liberty is the moral structure of a free people: freedom exercised within just law, sustained by conscience, and bound by the Constitution. It is not the absence of restraint but the presence of rightful authority. The individual is restrained by conscience, the citizen by law, and the government by both. Liberty without order becomes license; order without liberty becomes tyranny. Ordered liberty is the only framework in which the two survive each other, and under it, liberty is a duty as much as a right.

The covenant

So how do negative liberty and ordered liberty relate? As clause and covenant.

Ordered liberty is a two-way moral covenant that governs three relationships at once, and each carries duties of its own:

The individual and himself. Self-government comes first: conscience, discipline, moral agency. A citizen who cannot govern his own appetites will be governed by someone else's law, and a people who abandon internal restraint will get external restraint whether they vote for it or not.

Neighbor and neighbor. Liberty is not a possession asserted in isolation; it is a shared trust. Citizens owe one another ethical restraint (not exploiting another's vulnerability, not weaponizing liberty against the common good) and owe each other accountability and lawful redress when wrongs occur. This civic trust is what lets a free people flourish without constant surveillance or coercive control. No statute can supply it.

The citizen and the government. This is the constitutional covenant. Citizens give voluntary obedience to just law, obedience rooted in conscience rather than fear. In return, government carries affirmative duties: protect rights it did not create, restrain crime and maintain public order so lawful citizens can exercise their freedoms without fear, enforce law impartially, preserve avenues of redress, and restrain its own power. The terms bind both directions under one standard: moral parity. No person is beneath the law's protection, and no official is above its restraint.

Read against that structure, negative liberty finds its true place: it is the government's clause of this covenant: the duty of restraint, the "shall make no law." It is real, and it is binding. But it is one clause, not the whole document. Ordered liberty also binds the government to duties restraint alone cannot describe (impartial enforcement, equal protection, public order, redress) and binds citizens and neighbors to duties no government can perform for them. Read only the government's clause and you mistake a covenant for a muzzle.

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And do not confuse those affirmative duties with positive liberty. Securing rights is not supplying goods. A government that punishes theft is performing its duty; a government that promises to provide what you might otherwise earn is rewriting the covenant. The first protects your liberty. The second purchases it.

And the covenant can be breached from either side. When citizens abandon their duties, liberty decays into license, and license generates the public demand for control. When government abandons its duties, whether by overreach or by the quieter betrayal of selective enforcement and shielding lawbreakers, authority decays into oppression and forfeits its legitimacy. Either breach unravels the same covenant, which is why ordered liberty judges the mob and the magistrate by one standard.

The founders built exactly this. The Constitution does not create liberty; it orders liberty. It presupposes a people already free by nature and establishes a government whose only purpose is to secure that freedom. Its machinery is negative (enumerated powers, restraints, muzzles) because that is government's side of the bargain. But the men who wrote it were nearly unanimous that the machinery only runs on a virtue it cannot manufacture. Washington's Farewell Address calls religion and morality "indispensable supports." Madison called liberty without virtue in the people a chimerical idea. A negative-liberty government inside an ordered-liberty covenant. That was the deal, and it was signed by both parties. The old maxim compresses it to five words: *Constitutio a Virtute Populi Sustinetur*: the Constitution is sustained by the virtue of the people.

Federalism is the covenant's architecture. The founders did not trust any single government with the whole of the state's side of the bargain, so they divided it vertically: a national government of enumerated powers, and everything else reserved to the states and to the people (U.S. Const. amend. X). Dual sovereignty gives the citizen two governments bound to the same covenant, each positioned to check the other's breach, and the principle runs further down: to the county, the township, the school board, the household. Problems belong to the level closest to the people who own them. Notice what that structure implies about provision. Positive liberty cannot tolerate fifty answers; a right to be provided for demands one provider, one standard, one administrator. Every step toward provision is therefore a step toward centralization, which is why the growth of the welfare state and the death of federalism are the same story told twice.

The replacement on offer

Positive liberty is not a clause in this covenant. It is a replacement contract. When the covenant frays, the state makes an offer: surrender moral parity, and we will provide. But a provider cannot be your equal. The moment freedom becomes something

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government supplies, the two-way covenant of mutual restraint becomes a one-way contract of administration, and citizens become clients of the power they were meant to bind.

It always arrives sounding generous. Isaiah Berlin, who drew the classic distinction between the two liberties, meant something richer by positive liberty than welfare checks. In his account it begins as self-mastery: the rule of one's higher self over one's appetites, a thing no Christian should object to. His warning was about what happens when that idea leaves the individual soul and is claimed by an authority. Some party, class, or state declares itself the agent of your true self and coerces you for your own liberation (Berlin, 1969). Provision politics is the domesticated, retail version of that same move, and either way the mechanism is identical: once freedom means having the right capacities, someone must decide which capacities count and supply them, and that someone acquires power over you in the process. The road from “we will free you” to “we know what's good for you” is very short. Every regime of the twentieth century that enslaved its people did it in the vocabulary of liberation.

This is not theory. Wherever the covenant has frayed and the state has stepped in to “provide” freedom, the sequence has ended the same way. The record is long; five entries will do.

The record

The Soviet constitution of 1936 guaranteed more positive rights on paper than any document in human history (Constitution of the USSR, 1936, ch. X): the right to work, the right to rest, the right to housing, healthcare, education, and material security in old age. Every one of them was real, and every one was delivered by a state that therefore owned your job, your home, your doctor, your school, and your children's future. The rights were the leash. People who lived under it, including the family in every refugee story you've ever read, escaped a country where freedom-to was total and freedom-from did not exist.

FDR's Four Freedoms (1941) is the American pivot point. To freedom of speech and worship, both of them negative liberties and restraints on government, Roosevelt added “freedom from want” and “freedom from fear” (Roosevelt, 1941). Those sound like the first two but are their opposite: they are claims *on* government, and government can only satisfy claims by taxing, regulating, and administering. The administrative state we now live under, the unelected fourth branch that writes more binding law in a year than Congress does in a decade, is, in my reading, the permanent machinery that “freedom from want” required. Defenders of the New Deal will dispute the causation; the growth

itself is not in dispute. We traded a visible king for ten thousand invisible ones, each with a rulebook.

The Great Society promised to supply the poor with the means of freedom. Since 1964, government at all levels has spent more than twenty trillion dollars on means-tested welfare (Rector & Sheffield, 2014), yet the official poverty rate, which settled between eleven and fifteen percent within a few years of the programs' launch, has stayed inside that band for half a century (U.S. Census Bureau, 2024). The money changed less than promised. The covenant in poor communities changed far more. The programs subsidized the dissolution of the very relationships ordered liberty runs on: marriage, fatherhood, church, neighborhood, the neighbor-to-neighbor duties no agency can perform. When welfare rules made a household better off without a father in it, the state wasn't providing freedom. It was renting out the covenant and calling the rent compassion.

Housing as a “right” shows the mechanism at retail scale. The moment shelter becomes something government provides rather than something citizens build, government acquires the power to decide where you may build, what you may build, and what your neighborhood must look like, and the price of the subsidy is compliance with the conditions attached to it. Federal housing money never arrives alone; it arrives with strings that reach into local zoning, local schools, and local governance. Federalism dies by purchase long before it dies by decree. He who pays for the road decides where it goes.

And closest to home: the property tax is positive liberty's local franchise. The theory is that government must guarantee services (schools, districts, districts within districts) and so it takes a permanent claim on your land to fund them. Legal title remains with the homeowner, but practical ownership is made conditional by the state's permanent power to tax and to seize for nonpayment. In effect, an Idaho family holds a perpetual lease from the county, revocable for missing the payment. A man whose paid-off house can be taken from him to fund services he never asked for is experiencing liberty-as-provision from the receiving end.

It doesn't feel like freedom. It feels like a landlord. And the county has a master key.

The pattern

Run the five entries side by side and the same sequence appears in each. It never varies:

Step 1: A real hardship occurs.

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Step 2: The state offers to supply the means of freedom.

Step 3: The fine print requires administering lives.

Step 4: Dependency sets in: the bureaucrat and the recipient both vote to protect the program.

Step 5: The hardship persists or worsens, becoming the justification for expanding the program.

Positive liberty is the only product ever sold whose failure is the sales pitch for buying more.

And underneath the sequence runs the deeper damage: every duty the state absorbs is a duty the covenant no longer exercises. Families that don't have to provide, don't. Churches that don't have to care for the poor, won't. Neighbors who owe each other nothing, give it. Communities that don't govern themselves, forget how. The state doesn't just crowd out virtue's work; it crowds out virtue's practice, and virtue only exists as practice.

What to do with this

None of this means hardship is fake or that neighbors shouldn't be helped. Scripture commands provision for the poor, but it commands it of persons, families, and congregations, as covenant obligation, not as an entitlement administered by strangers with a budget line. Gleaning laws left the corners of the field to the poor; they did not send Boaz's harvest to a regional office for redistribution. The command was designed to bind neighbor to neighbor: to build the covenant, not to replace it with a bureau.

So when a politician offers you freedom, ask one question: **freedom from him, or freedom through him?** The first kind restrains his power. The second kind grows it, every single time, without exception, by definition. The founders knew the difference. The Soviet constitution's authors knew it too. The only people who can afford not to know it are people who've never had to escape the second kind.

Negative liberty is the government's side of the covenant. Ordered liberty is the whole covenant: self, neighbor, and state, each restrained, all judged by one standard. Positive liberty is the offer to relieve you of the covenant entirely, politely at first, and then not.

This Fourth of July, when you celebrate freedom, ask which one you're living under: the covenant the founders signed, or the contract the operatives are selling.

The covenant is still on the table. It has never needed new signers more than it needs them now.

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