

On Liberty: A Dispute with György Márkus

János Kis

Serious thinkers tend to have a single central concern that determines the entirety of their work. Márkus's central problem is the Enlightenment. By Enlightenment we do not refer exclusively to the intellectual movement of the mid-eighteenth century, but to the much older philosophical tradition that underlies it. Márkus, however, is not inspired by the content of the tradition itself but by its internal dilemmas. He has scrutinized the contradictions of the Enlightenment at least as thoroughly as the authors of the counter-Enlightenment did. Yet he is not one of them. He does not want to abandon the program of modern philosophy; he does not even think such a turn would be at all meaningful. The question he poses is this: how can one cogently criticize the Enlightenment tradition and at the same time retain at least certain parts of it? What is it that makes the fundamental ideas of the Enlightenment rationally defensible even in the face of all the well-known objections?

I

Márkus is concerned first of all with the antinomies of modern culture.¹ There are but few occasions when he digresses into the domain of political theory; nevertheless, the treatise I examine here concerns politics. It analyzes the modern conception of liberty. Its main insights may be summed up in three theses.

First of all, the modern notion of liberty has three basic characteristics: *universality*, *inalienability*, and *indivisibility* (274–75). Universality signifies that one may rightfully claim only such liberties against the government or other people that may at the same time be granted to everyone else as well. Thus, liberty must not be the privilege of few. The traditional notion of inalienability refers to the claim that there are certain rights which even their bearers cannot transfer either to other individuals or to the government. Márkus, too, has this notion in mind when he uses the term. Yet there is more to it than that; Márkus holds that no one should be denied the opportunity (for whatever collective benefits) to choose autonomously the course of his or her life. To put it otherwise, personal liberty should have primacy over all other values, either individual or collective. Since the latter interpretation has far-reaching significance in his argument, I shall in most cases use the term “primacy” instead of “inalienability.” By indivisibility, Márkus means that the rich variety of liberties may be deduced from some kind of common ground; that is, every particular liberty represents a certain quantity

of the same measure. It seems more appropriate to use the term “commensurability” here.

To this description a fourth characteristic may be added; as the moderns conceive it, liberty is *neutral* (275). By neutrality Márkus refers to the following: members of a modern society adhere to mutually exclusive sets of values; however, provided that they allow for identical quantities of liberty, the concept of liberty is neutral with respect to these competing values, regardless of the individual variations of goals and ideals.

Upon closer scrutiny one may discover that the features enumerated above are not of the same rank. Universality and primacy of liberty are fundamental properties which express the moral essence of the modern notion of liberty. Neutrality and commensurability are, on the other hand, derivative. Neither of these two properties is valuable in itself; they owe their significance to the fact that without them, the universality and primacy of freedom would not be safe. Let us see why.

If the requirement of neutrality is not met, something that one person does not regard as a restriction of her liberty may very well be considered by someone else as a serious constraint. Likewise, it may happen that what is viewed by one as a minor intervention is seen by someone else as gross unfairness. Hence, in this case whether we consider one’s liberty to be a privilege or a universal right depends on the very set of values he or she has chosen. Furthermore, the lack of neutrality poses a risk to the primacy of liberty as well, because if liberty is not a neutral idea, certain citizens may adhere to values which do not attribute primacy to liberty over all other values. Both dangers are avoided, however, if the theory underlying the absolute primacy and universality of liberty is neutral in the dispute between different sets of values (276).

Like neutrality, commensurability, too, is a necessary prerequisite to defend other theses. First of all, commensurability makes the measure of justification and refutation neutral in conflicts between competing values. For if all forms of liberty may be expressed as multiples of the same common denominator, then any given amount of liberty denotes the same quantity of opportunities whatever value different people may attach to one or another opportunity. Furthermore, commensurability accounts for the fact that liberty may serve at all as a measure for justifying or criticizing the rules of a social order. Different liberties of different people may turn out to be in conflict with one another and in such instances one must choose between them. For the decision to be rational, however, we must be able to rank mutually exclusive liberties. If different cases of freedom are commensurable, we may in principle be able to tell which of two alternative social rules admit more freedom. Thus, we may be able to make the claim of universality (i.e., of equality of freedom) meaningful. So much about the first thesis.

Márkus’s second thesis holds that the idea of liberty described in this way is not coherent; moreover, it cannot even be made coherent. This applies not to one or another particular theory of liberty, but to all its possible modern interpretations.

True, some of Márkus's arguments are directed against the early liberal conception of freedom, which identified the realm of liberty with maximum freedom from government intervention. Yet he also argues against classical republicanism, the rival of early liberalism. For our purposes republicanism is identified here with the view that liberty is coterminous with the maximum extent of collective decisions made about the conditions of private life. Márkus's main arguments are vastly general; if they are tenable they render all possible interpretations of the modern idea of liberty (and not just the two extreme variants) incoherent.

The main line of Márkus's argument is clear even though his reasoning is far-reaching. Most decisively, it demonstrates that the conditions of neutrality and commensurability cannot be satisfied. From this Márkus infers that liberty cannot be universal and may not have primacy over other values in the strict sense of the term. If he is right, he asserts, liberty is not able to accomplish its vocation. It is incapable of supplying a rational measure for the political battles of modern societies. It is illusory to the core. Yet it is a necessary illusion; Márkus's third thesis asserts that modern societies cannot be sustained without the Enlightenment idea of liberty. We need a conception of liberty that claims it as a universal, neutral, and commensurable value which has primacy over all other values. My question, then, is why one should retain this idea even in its illusory character and how it is possible to do so.

I shall proceed as follows. First, I reconstruct the modern notion of liberty as Márkus conceives it (II). Then I examine his specific objections against the conceptions of early liberals and their republican rivals (III). I go on to outline Márkus's main thesis claiming that the modern notion of liberty is desperately incoherent even if one rejects both early liberalism and classical republicanism (IV). I then examine Márkus's reasons for claiming that it is neither desirable nor possible to abandon the modern notion of liberty even in light of its irremediable incoherence (V). I argue that Márkus has failed to justify the claim that liberty may serve, despite its illusory character, as a criterion of justification and critique. I therefore propose to reconsider the whole issue, not to argue that although liberty is indefensible it is indispensable, but rather to refute the arguments that claim it to be incoherent. Since the main points of Márkus's reasoning closely resemble my own, I first summarize and interpret his major tenets (VI). Finally, I try to demonstrate that the view of liberty attributed to Márkus may prove defensible in the face of Márkus' objections (VII).

Our dispute concerns highly abstract issues. However, the conclusion of my study tries to show that there is more at stake here than mere speculation. The notion of liberty outlined here has direct practical consequences, which may be demonstrated by applying it to contemporary Hungarian politics.

II

The commensurability of liberty does not entail the claim, Márkus argues, that modern societies cease to harbor a variety of liberties. All we presume here is that

if the condition of commensurability is satisfied, it is possible to express different kinds of liberties with the same measure. However, the vocabulary of freedom abounds in specific compounds. We speak of freedom of religion, freedom of conviction, freedom of speech, freedom of association and assembly, freedom of privacy, and many other freedoms... Thus, the modern world is characterized at the same time by a normative claim to unify freedom and by an irreducible variety of liberties. In Márkus' account, this duality underlies the illusory character of our modern notion of liberty (285). He demonstrates the way this duality undermines the consistency of freedom through the concepts of negative and positive liberty.

The distinction between negative and positive liberty covers a range of dichotomies. In most cases, however, it is meant to refer to the following. Freedom has two complementary aspects. When we ask whether someone is free or not, we inquire whether or not his or her activities are restricted by external constraints. Moreover, we ask whether he or she is capable of autonomous action at all. The first question asks whether someone is free *from* something or not; this is what we mean by negative liberty. The second inquires whether he or she is free *to* do something; this is called positive liberty. Liberty in the first sense denotes an immunity, while liberty in the second sense refers to an ability.

The ability to be free depends partly on internal and partly on external conditions. It requires personal attributes like intelligence, grasp, devotion, prudence, strength, determination, etc. However, external resources are also required. We need an appropriate cultural environment which enables us to acquire the necessary abilities for autonomous action. Economic means are also indispensable; they liberate people from the necessity of sustaining themselves and give them a chance to make sovereign decisions about the course of their lives (284).

Negative and positive liberties thus conceived supplement one another. Both are required for a human being to be free to do or to refrain from doing something. Someone who is not forbidden to perform a certain act but is not able to make an independent decision does not act freely. Someone who is capable of independent decision-making but is restricted in his or her movements by external constraints is not free, either. We may consider a person free only if his or her actions are free in both respects.

However, there are cases when a relation of exchange exists between the two types of liberty, when one may be increased only at the expense of the other. Let us assume that Peter has daily difficulty providing himself with food. Let us further assume that his situation may only be improved by giving him resources that belong to Paul. Finally, let us assume that this is achieved not by Paul's voluntary donation but through government redistribution. Redistribution would increase Peter's positive liberty but it would at the same time diminish Paul's negative liberty, since redistribution consists in an external intervention which restricts Paul from disposing freely of the portion of his goods being redistributed.

Before going on to examine another and, for Márkus, more important

dichotomy between positive and negative liberty, one that distinguishes between two aspects of freedom from government intervention, it is worthwhile pointing out an important sub-case within the concept of positive liberty outlined above. Even though Márkus does not treat it separately, it constitutes an essential link between the above definition and the ones that follow. Assume that Peter is an alcoholic. Yet he not only desires alcohol desperately but also wishes not to desire it. He wants to control his desire for alcohol, and so he avoids possible drinking company, never carries too much money on him so as not to be able to buy himself a drink, and so on. He restricts his desire for satisfaction from alcohol. Does Peter's self-restraint constitute a free act? According to the negative concept of liberty, self-restraint restricts freedom because it excludes certain alternatives from our range of choices. However, in this case it is Peter who imposes restrictions upon himself; he follows his own will when he is faced with external constraints. A lack of constraints would deprive him of his liberty to accomplish his goal in a positive sense. He acquires freedom by observing self-imposed restrictions. Even though he restricts the *range of his choices* he does not restrict his *freedom* to accomplish his goal; to the contrary, he liberates himself through self-restraint.² This is the narrower meaning of positive liberty, on which I shall rely when I try to elucidate Márkus's thoughts about the various aspects of freedom from government intervention.³

Let us first take a step further. Imagine that Peter lacks the will-power necessary for self-restraint and therefore is unable to accomplish his goal by himself. His lack of will-power may be remedied if Paul prevents him from drinking. Now, let us imagine that somebody says, "Paul does not restrict Peter's freedom." How should one interpret this proposition? We may conceive it as a redefinition of restricting freedom: since Paul's intervention serves Peter's well-being, it does not constitute a restriction of liberty. This would amount to a rejection of the modern notion of liberty because one of the latter's fundamental underlying hypotheses is that someone who is forced by others for his own well-being is not free. If we reject this understanding, we must assume that the statement hints at certain hidden information. It either implies that Paul ceased to act as a caretaker of Peter (negative liberty) or it means that, even though Paul prevents Peter from drinking, he does so at Peter's explicit request (positive liberty). The constraints are imposed by another person and thus Peter's range of choices is restricted by external constraints. Yet the other person executes Peter's own request; thus Peter follows his own will when he is constrained. This concept of positive liberty will be necessary for our understanding of freedom from government intervention.

Government is an institution which relies on the use of force. It restricts interactions among individuals by way of law and threatens lawbreakers with violence. Everyone, save anarchists, accepts to some extent that large and complex societies need governments. Official coordination and a variety of authoritative rules enable individuals to form a well-ordered society. This implies that the ability to live in a society presupposes an element of constraint. Thus a

government restricts the negative liberty of its citizens, but this restriction is a prerequisite of their positive liberties. The question therefore inevitably arises: in what sense may one assert an individual's freedom from government intervention?

Let us suppose that the law-making process that enables social coordination is indifferent. In this case the bare fact that laws enhance cooperation among individuals makes legal restriction a case of promoting positive liberty.⁴ But let us now assume that the question of the political mechanism of law-making is not indifferent and that the democratic order of collective decision-making is in itself (and not only because of its consequences) better than any kind of authoritarian or totalitarian order. Then the above question leads us to another understanding of positive liberty, which extends the approach inherent in the Peter-Paul situation to the relation between a state and its citizens. In this sense positive liberty from government intervention means that individuals are limited by such official constraints as may be considered to have been created with their own participation (281).⁵

In which cases, however, may we declare that an individual participates in the introduction of public constraints? Political decision-making is a multilateral operation. Even in an ideal case it cannot be asserted that citizen Peter has individually authorized civil servant Paul to intervene in case Peter breaks a law. As for positive liberty from government intervention, we need further criteria that can determine when individuals may be regarded as makers of a law that applies to their own actions even though they do not personally make laws nor even participate directly in the law-making process. Márkus states the above conditions are met when an individual has "the real, concrete capacity to influence effectively the activity of the state" (281). It indeed seems to be an all too narrow definition if "effectively influencing" is supposed to mean that collective decisions are significantly altered whenever Peter changes his mind. The vote (and, in most cases, even the word) of a single citizen has but a marginal impact on collective decisions in communities of hundreds of thousands or millions of people. Furthermore, voters do not usually vote on laws but elect representatives and authorize them to make laws. Therefore, either the political concept of positive liberty denotes a marginal, infinitely remote situation, which we cannot even aspire to, or we must reconsider the meaning of Márkus's statement.

In my view the latter strategy better suits the spirit of his essay. I propose the following understanding. One may declare that laws restricting the activities of citizens constitute a condition of their positive liberty when two criteria are satisfied. First, these rules should be necessary in order that members of society be able to cooperate with each another; it should enable them to perform activities which otherwise would fall beyond their capacities. Second, every citizen should have equal (or at least not disproportionately unequal) opportunity to take part in the decision-making process.

The latter requirement entails the equality of political rights – and something

else as well. Equality of rights does not necessarily entail equality of abilities necessary for actual participation. Those who strive day after day for self-preservation and therefore lack the cultural background necessary for political orientation cannot participate in public affairs even if they are granted the right to do so. Thus, positive liberty from government intervention depends on a distributional condition, namely on the fair distribution of political resources; Márkus seems to share this understanding. But how are we to understand fair distribution? One may discover the following criterion in his text: the distribution of political resources may be regarded fair if the system “safeguards for all mature individuals those external and internal resources which are necessary and sufficient for the fulfillment of the function of the politically active citizen of a democratic state” (283).

If the order of distribution enables all citizens to participate in voting and in public debates about laws, then every citizen has the opportunity *to* participate in the legislative process. Positive liberty from government intervention consists precisely in this. In this special sense the realm of negative liberty coincides with the private sphere and the domain of positive liberty with the public sphere. We are free in our private lives if we have immunity *from* government intervention. In the public realm we are free if we have a fair opportunity to take part in collective decisions and if we, as equal members of the political community, possess, together with others, the power *to* influence the government.⁶

Márkus states that negative and positive liberties as defined above are complementary. Without a sufficiently large private sphere one cannot live one’s own life; without collective self-governance and the possibility to participate in it, one cannot take part in forming the social environment. A relation of exchange holds for these specifically political aspects of negative and positive liberty. An action cannot possibly be the object of an individual’s exclusive decision and at the same time the object of collective decision. It is either the individual or the public authority that decides. The more severe the restrictions are on privacy in order to secure everyone’s opportunity to participate in public affairs, the narrower the realm of negative liberty becomes, and vice versa. It was Benjamin Constant who first demonstrated this correlation by pointing out that one cannot at the same time enjoy the liberty of the “ancients” (the liberty to participate in public affairs) and that of the “moderns” (the liberty of being independent from public authority).⁷

III

How should one, then, distribute individual freedom between positive and negative liberties? In the present contradistinction the question concerns the location of the dividing line between the private and public spheres. In principle, there are three possible solutions. One strategy maximizes negative liberty (that is, the private sphere exempted from government intervention). It limits government intervention to the smallest possible range necessary in order to ensure every citizen’s largest

possible (negative) liberty within the limits of everyone else's equal liberty. Another strategy maximizes positive liberty by extending the range of collective decisions to all possible cases. At the same time it grants fair opportunity to every citizen to participate in the process of decision-making and limits the sphere of privacy to the rest. A third alternative draws the line somewhere in between.

The first solution is identical with the "minimal state" heralded by early liberalism. The solution would be tenable, Márkus argues, only if it could answer a serious objection. Left to itself, a market economy provides no guarantees against inequalities of unacceptable proportions. The life of the most wretched may be degraded to a hopeless struggle for mere self-preservation, which deprives them of the conditions of positive liberty in the first sense, that is, of personal autonomy (279–80). Therefore, if members of society are entitled to at least a minimum of positive liberty as defined here, the strategy to maximize negative liberty cannot be justified.

Proponents of "minimal state" have two ways to meet this objection. One of their arguments is based on the view that the order of liberty corresponds to a theory of just distribution, in which justice is not a statistical characteristic of the present distribution of goods but a feature of the way in which distribution is achieved. Distribution is not just or unjust depending on its being more equal or less equal. Distribution is just if it was achieved under procedural conditions that satisfy the requirements of freedom and if it has its origins in a just initial situation. On the other hand, distribution is unjust, regardless of its statistical characteristics, if the procedure that brought it about does not satisfy the requirements of freedom. To put it differently, distribution may not be considered unjust solely by referring to the *consequences* of free market operations if the *rules* of operation are just and if these rules were not broken in *practice*.⁸

The other argument is based on a moral distinction made between action and non-action. Exponents of this thesis assert that the case of someone unable to perform an action (even though they have all necessary abilities) because they are restricted by external constraints is vastly different from that in which they are not restricted by others, but lack the necessary abilities to perform the action. True, such an individual might be enabled to perform the act in question with the help of other people, e.g., if they provide him or her with the necessary resources. However, actively preventing one from doing something is not of the same rank as failing to give somebody the help necessary to do something. Individuals have a supreme moral claim against intruders; one can expect others not to restrict them from enjoying their liberty. But one cannot raise such claims against those who failed to be helpful, except by referring to an earlier intervention by which the latter caused the former's present inability. Avoidance of intervention is a universal duty while giving help is usually not a duty but a praiseworthy act. Thus, a claim for negative liberty is binding both on other individuals and on the government. By contrast, a claim for positive liberty cannot serve as a basis for obligation but may at best appeal to sympathy and generosity.⁹

Márkus's answer to the first argument is as follows. Negative liberty is valuable only for those who can live with it. Those who are unable to perform an action cannot appreciate that if they had been able to do something they would not be prevented from doing so. That is why there is an inherent contradiction in saying that the order of distribution is just when it is based on respect for freedom, regardless of the distribution of abilities necessary for free action (277).

I summarize Márkus's answer to the second argument as follows. Let us assume that there is indeed such an indisputable moral distinction between performing an action and refraining from it as proponents of early liberalism believed. The distinction dissolves the moment the focus of our attention shifts from an individual to the whole of society. From our individual point of view, constraints on another person's ability to act may usually be regarded as external conditions; in most cases, we did not impose them. From society's viewpoint, however, constraints upon the opportunities of any of its members are not merely given but, at least in part, are the results of innumerable interactions between people. If the rules were different or people confined themselves to the rules more strictly, the situation of the underprivileged would be different. Consequently, one cannot declare that society as a whole has no responsibility whatsoever for the distribution of resources necessary for free action.

This is a sweeping argument which can be further strengthened. The thesis stating that the protection of negative liberty has primacy over claims for positive help assumes that we can tell beforehand what to regard as an intervention restricting negative liberty and what to take as help extending positive liberty, regardless of the social distribution of rights and duties. But this is incorrect. Let us recall our earlier example: the government imposes a tax on Paul to ease Peter's needs. We assumed that this restricted Paul's negative liberty (since it deprives him of goods which he could otherwise dispose of) and extended Peter's positive liberty (for it supplies him with resources and thus increases his ability to act). But why did we say this? Because we assumed that Paul has an exclusive right to dispose of redistributed goods; we accepted the existing system of proprietary rights as self-evident. Let us now suppose that society defines proprietary rights in the following way: the owner has an exclusive right to dispose of his capital and its profits, except for the portion of his income which is needed to help the poor. In this case we might say that the government protects Peter's negative liberty when it supplies him with goods pertaining to him. Furthermore, it does not violate Paul's negative liberty inasmuch as the government does not take from him more than is needed to help Peter. By way of analogy, let us imagine that Peter himself takes some of Paul's goods but the government obliges him to give them back. If proprietary rights are so defined that a portion of Paul's goods pertains to Peter and Peter has a right to take that portion but the government forces him to give it back, it (unlawfully) restricts Peter's negative liberty and extends Paul's positive liberty. By contrast, if Paul has an exclusive right to his property then, in our case, Peter infringed on Paul's negative liberty while the

state protected it and also prevented Peter from (unlawfully) extending his own positive liberty. Only if one already knows what kind of primary distribution of rights may be justified can one declare what sort of action constitutes refraining from restricting negative liberty and what constitutes assistance that extends positive liberty.

Thus, the idea of “minimal state” cannot be justified. On the other hand, the idea of “maximal state” is not defensible either. The maximal state consists, as we have seen, in extending the range of collective decisions to all possible cases. In addition, it grants every individual the right to participate, to an appropriate degree, in decision-making.¹⁰ What may one expect from such a situation? Where negative liberty is maximized, the range of social effects that emerge unintentionally and unpredictably from innumerable individual decisions are maximized, too. Individuals decide for themselves about the use of their resources, but the conditions of their decisions are determined by an interplay of impersonal forces which they cannot control. By contrast, if they do not strive to dispose of their resources individually, under conditions determined by impersonal forces, they may acquire the capacity to determine all fundamental conditions of their actions collectively. Though not individually but collectively, they can nevertheless themselves determine antecedently all important details of production and consumption, say the proponents of maximizing positive liberty. An individual may acquire, as a member of the community, control over the social conditions of his or her existence. Together with others, he or she may accomplish a just distribution of scarce resources among members of society.

We shall disregard the question whether a system, in which so many collective decisions are made day after day, could survive at all. Let us assume that it could. We still have to face the following difficulty: when such a bulk of decisions are made collectively, individuals cannot acquire the independence necessary to contribute to collective decisions as independent and freely deliberating persons. But if participants of collective decisions are not autonomous persons, their common decisions do not embody positive liberty but express impersonal processes, in which individuals are mere means to certain ends. Thus, positive liberty in the political sense is not meaningful without a reasonable amount of negative liberty. There must be a certain realm exempt from collective decisions.

This realm is protected by the *rights* of individuals. When we assert that someone has a right to speak or freedom of religion we claim that everybody else *must* refrain from restricting any activities considered to belong to the practice of these liberties. Rights lend special normative force to the liberties they protect. Let us suppose that one of our liberties (say, our liberty to listen to the radio wherever and whenever we want at whatever volume) is not protected by our rights. Let us further imagine that this liberty is in conflict with the interests of other people (say, to have peaceful rest). In this case it is a matter of consideration whether our liberty or their interests should be given priority. But if we have a right to one or

another form of liberty (for example to express our views to anyone who is willing to pay attention) there is normally no place for consideration.

Now, Márkus regards it as acceptable to restrict individual rights in order to assure a fair distribution of political participation but immediately adds that such restrictions “cannot affect the substantive kernel of these rights” (283). In other words, “there is a normative substance of individual rights expressed in their general concepts which these acts in principle cannot override and which is not at the disposal of the democratically formed will of the community” (283). Thus, the maximization of positive liberty cannot be justified.

We are left with but one alternative, namely, to draw a dividing line between private and public spheres somewhere between the two extremes. Márkus, however, holds this to be an unattainable goal, since the boundary must be specified by the theoretical devices of liberty, which are not suitable for the job.

IV

This statement may imply two distinct contentions. It may either mean that the claim for negative liberty unequivocally determines the minimum extension of private sphere while the claim for positive liberty determines the minimum extension of public affairs and the two realms overlap, so that there is an identifiable region claimed by both public and private spheres. Or it may mean that neither claim implies unequivocal boundaries and both are underdetermined. In the first case, the theoretical apparatus of liberty would be of no help in finding a justifiable social order. It would lead to a fundamental normative conflict. (True, first it must be demonstrated that the conflict is irresolvable.) In the second case, liberty is no help because it does not establish any firm normative claim. Márkus holds the latter view.

First, he points out the indeterminacy of claims based on negative liberty. He argues that the various branches of negative liberty are not commensurable. For them to be commensurable, one would have to find a common measure in which all of them may be expressed, and there is no such measure. What are the conditions for finding such a measure? We must first identify what may be called an elementary action and then we must define the restriction of freedom. The measure we are looking for must be identical with an elementary act the execution of which is not restricted.

Márkus does not straightforwardly raise the problem of defining elementary actions.¹¹ However, we shall soon discover that he need not raise this question. Even if we assumed that it is possible to describe every particular action as a sequence of repetition of the same unit, it would not make the problem any easier. The worth we attribute to any given act does not depend on the length or complexity of the sequence of its hypothetical units. As Márkus observes, we ascribe value to actions and this value differs from action to action. Reasonable traffic regulations are not regarded as restrictions of liberty even though they do constrain our movements. On the other hand, the smallest infringement of our liberty to practice

our religion constitutes a serious restriction. This may be explained by the fact that the details of traffic regulations have no intrinsic worth for us while religion is of the utmost significance for believers.¹²

Márkus calls our attention to three important consequences. First, if we rank different liberties according to their worth, our criterion is not liberty but some external good. If freedom is a neutral and commensurable quantity, its worth must be the same in all its manifestations. Its various instances may acquire different worth only if we disregard the value of liberty (of unrestricted freedom of action) itself and consider some further value which is somehow connected to the practice of freedom (e.g., the worth of the freely exercised *activity* itself or the worth of the *result* of that activity). Thus, even if our values could be ordered into a unified hierarchy, to rank actions according to their worth amounts to abandoning our original claim that liberty must provide normative criteria for justifying the rules of social coexistence.

Second, our values cannot be ordered into a unified hierarchy. Modern society is characterized by a plurality of values. On the one hand, one cannot realize all values simultaneously; on the other hand, one's values cannot always be unambiguously ranked into a hierarchy. Values, therefore, do not always provide a unified measure to guide our decisions.

Márkus's most important objection is this: values that guide members of modern society are not simply incommensurable but often controversial as well. Something held by one worldview to be valuable is viewed by another as contrary to its values. Furthermore, our arguments are often not decisive and so we cannot settle our controversies. The Enlightenment promised a political order in which all individuals could live in accordance with values chosen by them even if their ways of life were rejected or condemned by others. Philosophers thought such an order to be possible because freedom offers neutral spaces for human actions. Thus, where human coexistence is regulated by equal liberty, everyone may pursue their own demon as far as they do not constrain others from doing likewise. However, if the hierarchy of liberties depends on the worth one ascribes to each of them, the neutrality of freedom is lost. One person's minor restriction one may be someone else's fundamental moral injury, and there is no impersonal, external viewpoint from which to deliver an incontestable verdict (278).

In other words, the ranges of possibilities pertaining to different liberties are incommensurable. Moreover, in Márkus' view even if they were commensurable, this would not make the idea of negative liberty any more useful. To make the conception meaningful it is necessary to define *restriction* of spaces of action unambiguously. However, the concept of restriction of freedom is ambiguous.

The concept of constraints on freedom, Márkus argues, makes us face the following dilemma: we may either confine the concept of restricting freedom to cases where physical obstacles to performing an activity make its execution impossible. Or we may consider freedom to be restricted when an activity is prohibited and thus the estimated costs of performing the act are higher. In the

first case the definition is unambiguous but too narrow. It does not include cases of the utmost significance for relations between governments and citizens, e.g., when the government prohibits certain activities and penalizes the breaking of these prohibitions.¹³ In such cases, prohibition does not by itself make the execution of a given act impossible but it simply increases its costs. Therefore, it is impossible to restrict freedom by law if only physical hindrances (which prevent certain activities) are regarded as restrictions of individual liberty. By contrast, if our definition of restricting freedom includes penalized prohibitions, it is too inclusive. In fact, it does not exclude anything. For, Márkus argues, one cannot draw a clear-cut distinction between penalized prohibitions and promises.

Let us assume that the government declares, "Taxes must be paid!" The claim might be given emphasis in two distinct ways. The government may either threaten to put citizens in prison if they do not pay or it may promise to give them benefits as compensation for their losses. In the first case, the government makes tax evasion too risky. In the second, it increases the advantages of taxpaying to an extent that it becomes attractive. In both cases, the government tries to influence individual decisions by modifying cost-benefit proportions. "What is the difference?" Márkus asks; if we regard one case as a restriction of our liberty, why not regard the other as such, too? Once we consider threats as restrictions of our liberty, we must hold the same for promises as well. One cannot, however, stop at this point. For if promises may be regarded as restricting liberty, it is not clear why any kind of deliberate influence should be exempted. And what remains then? To put it another way, the concept of restricting liberty is either too narrow or too broad; it cannot be defined in a way so as to be meaningfully applicable.

The concept, Márkus argues, is incoherent in yet another way. The concept of restriction entails our ability to distinguish between a case in which one is able to perform a given action but is prevented from doing so, and a case in which one cannot perform an action even though there are no physical hindrances. We have seen, however, that this distinction cannot be maintained, at least not with regard to the relation between the whole of society and its members. Both cases may serve as the basis of moral claims and both may be considered as restricting our freedom. The conceptual framework of negative liberty, therefore, is not capable of distinguishing between justified and unjustified moral claims of freedom against the government or other citizens.

If we accept this argument, the right to freedom from government intervention cannot determine the limits of government authority over citizens: "the concept of negative liberty is unable to ground precisely what constitutes the radical novelty of the modern idea of freedom: its independence from power over others" (24). This insight would not in itself raise serious difficulties. Lacking the theoretical basis of demarcation, any solution may prove right if it was selected by a fair procedure. The procedure of selection may be regarded as fair if all members of the community have an equal or at least not disproportionately unequal chance to

participate in it. Under such conditions no one could claim that the boundaries established through collective decisions are unjust.

Nevertheless, we have seen in section II that the commensurability of opportunities is not granted by the fact that each citizen has one and only one vote and that everyone shares the freedom of speech, the right of assembly and of association. It also requires that everyone have the necessary resources for independent public action. Difficulties begin here, Márkus asserts. Necessary resources must not be defined in terms of biological needs. The content and extent of a "social minimum" depends on the actual historical situation as well as on the cultural traditions of a given society. But then the "social minimum" necessary for political participation is not only a variable quantity, but its content and extent are open to dispute. Well-structured societies do not usually hold a single, unified view as to which of its citizens are unable to participate equally in public affairs and what the luckier members of society owe them. In this case, Márkus holds, the fact that a decision was made in a democratic manner by a given community cannot entirely legitimate its result. We are not able to specify in general terms the redistributive conditions of political participation or of positive liberty.

To sum up Márkus's thesis, the line of demarcation between private and public spheres is underdetermined from both sides. The modern concept of liberty cannot provide us with rational principles of justification for social organizations. It cannot satisfy the requirement of commensurability; thus, its neutrality and universality also become questionable. It does not give us universally valid measures by which we could accept as just or reject as unjust the rules and redistributive relations which were shaped by the power and influence of competing pressure groups, as well as by their relations with government agencies.

V

Yet Márkus argues that even after discovering the illusory character of the modern idea of liberty we must not abandon it. It is deeply embedded in our fundamental modern institutions and is necessary for maintaining them. It has a dual function. On the one hand, it has a stabilizing role inasmuch as the modern world order would collapse if struggles between interests were not regulated by the universal idea of liberty. On the other hand, it has a vitalizing effect insofar as it does not permit the crystallization of social structures that are alien to the ideas of the Enlightenment. Even though its final aspirations cannot be fulfilled because its inner inconsistencies lead to ever recurring conflicts with itself, the apprehension of failure itself urges people to search for new norms. The conflict itself, the struggle between rigid viewpoints, helps us reach ever more universal solutions, which will themselves subsequently be transcended.

What makes the modern universal notion of liberty stabilizing? Márkus says that modern society must face two constant threats. One is that the struggle of interests results in fluctuating and unstable coalitions, which make politics

unpredictable and the state ungovernable. The other is that ever more areas of life become political battlegrounds; larger and larger realms become susceptible to government intervention and bureaucratic regulation while the government itself becomes more and more uncontrollable. Both phenomena cause harms and provoke the resistance of those concerned. When resistance is expressed in sheer policies of venting grievances it merely exacerbates the crisis. Social cohesion can be maintained only if individual injuries can be transformed into claims based on the universal idea of freedom. If this transformation takes place, the unstable alliances of pressure groups may be replaced by solid, predictable, and controllable processes. Furthermore, the extension of government regulation can be contained through the extension of individual rights (286).

As to why the modern notion of liberty has a vitalizing effect, Márkus answers that even though the ideal of equal freedom cannot be attained (moreover, attempts to realize it wholly and immediately usually have fatal consequences), its prevalence has a beneficial impact. Underprivileged groups gradually come to realize the injustice of their situation and make the rest of society recognize it as well. Each injustice that is overcome makes yet another injustice manifest. This is the very reason why motion can never stop. The ideal of equal liberty constantly recedes, yet this urges us to realize it more and more. In Márkus's view, this never-ending movement is what remains of the program of the Enlightenment, which can and must be retained.

The conclusion is moderately pessimistic or optimistic depending on one's point of view. In my opinion it offers the best paraphrase of the program of the Enlightenment. In the next section, I argue that this program is the best available. However, I am not quite certain whether Márkus's attempt to defend this more realistic Enlightenment program is successful. His defense allows two distinct readings, both of which are problematic.

On the first reading, the alleged function of the modern notion of liberty does not coincide with its actual function. Its alleged function is to unmask arbitrary restrictions of liberty and to promote the progress toward larger and more justly distributed freedom. In Márkus's view this function is illusory. Yet the illusion is effectual. The myth of liberty corresponds to real needs, though not exactly to the ones people have in mind when they claim universal freedom for themselves. It helps to prevent the disintegration of modern institutions. Its real significance is revealed not in the quantity of liberty it achieves, but in survival of the modern world.

After the emergence of free market, bureaucracy, the territorial state, and the theoretical-experimental sciences, no acceptable social coexistence is possible without these achievements. This is so primarily because ours is the only social order able to secure the self-preservation of the world's population, which has increased exponentially over the last two centuries.¹⁴ Like it or not, conditions of modern life have become mankind's destiny. The only alternatives are the most inferior forms of struggle for survival, which would destroy even the most

elementary framework of moral norms. Thus, the modern notion of liberty is one of the guarantees of the stability of our modern institutions; we must not abandon it even though we know it to be illusory.

This argument is cogent but is susceptible to two major objections. First of all, like all very abstract sociological explanations, it merely makes plausible a positive correlation between our modern idea of liberty and the stability of modern institutions. It does not, however, prove the existence of such a correlation. Predicted consequences depend on the contingent facts that are present in the scheme. Under certain circumstances the fluctuating alliances of pressure groups may prove to be destabilizing and the transformation of political conflicts into matters of principle might, indeed, promote stabilization. The contrary case, though, is equally conceivable. Political conflicts consisting purely of interest struggles may be open to compromises. Furthermore, the constant flux of coalitions may prevent any of the parties from gaining disproportionate predominance; thus, under certain conditions the struggle of pure interests may be stabilizing. On the other hand, battles between principles may prevent bargaining and result in excessively watertight frontiers. The politics of principle may thereby undermine institutional stability.

Therefore, the functional correlation of our modern notion of liberty with the stability of modern institutions is not free from contradictions. If we try to justify our defense of liberty on these grounds, our devotion to it will be weak and unstable. It will be sufficient if the correlation is positive, but we may abandon it where there is no or a negative correlation. It seems that to defend the ideal of freedom as a *means* to further certain other values is not as convincing as to demonstrate that freedom must be considered as something valuable *in itself*.

Furthermore, even if we are able to demonstrate a functional correlation between the modern idea of liberty and the stability of modern institutions, it is not entirely clear what can be inferred from this correlation. If we glance backward to the past we may conclude that our ancestors fortunately fought their political battles in the name of modern liberty, and thus preserved the stability of society. But to persuade our contemporaries to paraphrase their conflicts of interests in terms of equal and universal liberty it is not sufficient to say that this is an appropriate way of preserving the stability of our fundamental institutions. Why not? Because the moment philosophers address the disputing parties, they no more simply describe disputes but participate in them. Suppose that a philosopher proposes that the parties choose liberty as the criterion of their collective decisions. This would be possible, however, only after they have reached an agreement as to what the principle which they are to adopt actually means. One who proposes freedom as a normative criterion must first show how freedom settles disputes and why it is appropriate to settle disputes in this way. According to Márkus, there is no rational answer to this. There is no notion of liberty that could successfully distinguish between justifiable and arbitrary solutions. But in this case participants in the debate cannot but go on struggling however best suits

them. Either there is a defensible theory of equal liberty or we must abandon the tradition of the Enlightenment. There is no third alternative.

The latter objection leads to the second reading of Márkus's thesis. For what Márkus asserts is not simply that the modern notion of liberty is stabilizing; he contends that our society owes its vitality to it, too. He claims that the constantly receding limiting value of equal liberty makes us continuously criticize and correct the most flagrant inequalities. It keeps the forces of ever more complete justice in motion. But this assertion can be maintained only by someone who is able to distinguish between larger and smaller degrees of freedom and larger and smaller degrees of justice in the distribution of freedom. Without such distinctions we cannot meaningfully speak of progress toward greater and more equal freedom. We cannot, without contradicting ourselves, maintain at the same time that the program of Enlightenment "is not only practically unattainable but is theoretically incoherent as well" (27) and that "the whole history of the modern world is nothing but a recurrent attempt gradually to eliminate various particular limitations, injustices, and injuries and to realize the ideal of freedom" (28). There may either be no definite and defensible content of the ideal of liberty, in which case no one can speak of realizing it to an ever larger degree, or there may indeed be a motion related to an (ever receding) ideal, but then there must be a definite measure on the grounds of which it is meaningful to speak in terms of progress or regress.

VI

I propose to rethink the whole issue. Márkus's argumentation consists of two decisive steps. In the first phase he makes substantial objections to the two extreme theories of freedom (which I have called the theories of "minimal state" and "maximal state"). Then he proceeds to demonstrate that the concept of liberty cannot be coherently applied to the area between these extremes. I shall follow his first step, but choose another strategy in the second phase. I will try to highlight the hypotheses underlying the critique of the "minimal state" and the "maximal state" and to demonstrate that the case thus made might be defended in the face of Márkus's doubts.

The political theory I wish to outline holds that the legitimacy of a government depends on how it treats its own citizens. First of all, it must treat them as *autonomous* individuals; it must allow them to define themselves, to choose what kind of people they wish to become and what form of life they want to adopt out of those available. Second, it must secure their *independence* from public authority so that they are able to take part in collective decisions through independent consideration and argument. Third, it must respect their human *dignity*. It must treat them in a way that does not diminish their self-esteem. Finally, it must treat them as *equals*. Particular differences between citizens do not justify paying more attention to some than others in respect of their autonomy, independence, dignity, or any other dimension of their well-being.

These criteria may be met by a government when it grants liberty to its citizens. On the one hand, it must prohibit citizens from interfering with one another's activities or interfering with protected activities. Similarly, the government itself must refrain from interfering with protected activities or from unjustifiable interventions (negative liberty.) On the other hand, it must provide citizens with the conditions that enable them to enjoy the liberties thus established (positive liberty.)

When I assert that freedom is a necessary condition of autonomy, independence, dignity, and equality, I do not mean that the latter are independent values while freedom is merely a means to accomplish them. I speak of a constitutive and not of an instrumental correlation; I argue that neither autonomy, independence, nor dignity and equality make sense without liberty. Our question then is how to demarcate the amount of liberty a government *must* protect. At this point the critique of the "minimal" and "maximal" state is of some use.

Márkus's objection to the program of "maximal state" is this: not everything may become an object of collective decision. There are certain things individuals must decide for themselves; otherwise collective decisions cannot be the aggregates of the members' decisions. The usual procedures of collective decisions, however, cannot even specify what these things are. The domain of individual decisions is defined by the fundamental rights of individuals and not even the most democratic governments may restrict the essential content of these rights. Let us call this the thesis of *fundamental rights*.

Márkus's considerations against the "minimal state" are as follows: early liberals held that any distribution of resources is fair insofar as it derives from a just initial situation and results from actions which do not hurt anyone's rights. However, to hold negative liberty valuable, one must assume that we are also able to enjoy our unrestricted opportunities. Therefore, if the program of "minimal state" is justified by the fact that it realizes the maximum amount of negative liberty, it is justifiable only insofar as negative liberty is distributed in such a way that it is valuable to everyone. If a series of actions that in themselves respect our fundamental rights results in a situation where some of these rights are of no value to certain individuals, the protection of fundamental rights is not a sufficient condition of justice. Let us call this the *distributional thesis*.

The thesis of fundamental rights relies on the insight that the "maximal state" (defined as the program of positive liberty over the state) is immanently indefensible. If people do not bear moral rights in their relations with the government, they do not possess the independence necessary for collective decisions to be regarded as the result of their competent and independent decisions.

The distributional thesis is derived from the proposition that the program of "minimal state" is also immanently incoherent. Proponents of "minimal state" argue that if all individuals have the same rights and individual decisions are constrained only by other individuals' decisions and rights, then social processes consist entirely of voluntary actions. Thus, every individual acts freely within the

conditions of a free market. However, the normative conditions of the free market entail more than the protection of fundamental rights. They also entail the requirement that participants of business transactions have commensurable bargaining positions, that no one is deprived of information that is vital with respect to the transactions concerned, and that no one is in a psychologically or materially defenseless position. A transaction in which one of the parties makes use of the other's defenselessness is not the result of their voluntary agreement. Voluntary transactions require the fulfillment of both the thesis of fundamental rights and distributional thesis. However, the protection of fundamental rights does not necessarily entail just distribution. Even if the original situation fulfills both conditions, it is conceivable that a series of transactions respecting our fundamental rights could result in a situation which does not meet the distributional criterion. Some of the market agents might be at the mercy of others.

In other words, the theory of expectable liberty relies on two independent prerequisites. One is that no social interaction should interfere with our basic liberties. The other is that the system of interactions should not result in situations that are unbearable for anyone. When both requirements are fulfilled, the distribution of freedom is just and no one should have claims against other individuals or against the whole of society on the grounds that he or she is not sufficiently free. If someone is able to demonstrate that one of the requirements is not fulfilled in their case, they may justifiably object to their situation. If the first condition is not met, the injustice lies in an unlawful restriction of their liberty. If the second condition is not met, the injustice lies in not having a fair amount of resources necessary to take part in social processes.

Our reasoning so far has led us to the conclusion that the distributional requirement and the requirement of fundamental rights are of the same rank as criteria of evaluation. The ideal state of affairs requires that both conditions be fulfilled. Our conclusion would make us assume that the two requirements also have the same status as *regulative principles of action*. This, however, is not the case. Let us assume that the actual state of affairs does not coincide with the ideal one. The government's duties and possibilities in its attempt to realize the ideal state are not the same when the deficiency consists in infringements of rights as when it consists in a distortion of the order of distribution.

This argument is not self-evident and requires detailed analysis. A claim for fundamental rights evolves from the fact that identifiable persons have performed actions which they should not have performed and for which they are responsible. They may be private persons or the representatives of public authority; in both cases, the claim is that they must refrain from unlawful conduct. Nevertheless, the person whose rights were violated raises claims against the whole of society (or against the state as the representative of society). He or she expects the government to force those who break the law to abandon their unlawful conduct. However, the latter claim is based on the former, and thus lacks any meaningful content without it.

Distributional claims are of an altogether different nature. The objectionable situation here is the result of an impersonal aggregation of actions which in themselves are not necessarily unlawful. A person in such a situation makes claims directly against the whole of society and not against certain individuals, groups, organizations, or institutions. The rest of the people are responsible for his or her situation collectively, by way of the government. Here the government's responsibility is not based on the responsibility of identifiable (natural or legal) persons and it does not involve forcing identifiable persons to abandon their unlawful activities.

The difference outlined here would not raise difficulties if society as a whole directly possessed the resources which are at its disposal. However, resources are owned by individuals, groups, organizations, and institutions. Therefore, the whole of society cannot be made to bear directly the burden of correcting unfair distribution. The burden must be distributed among its members. Hence come the difficulties – but what are they precisely?

On the early liberals' account, the difficulty is that none of the primary owners are responsible individually for the morally objectionable order of distribution. It cannot be demonstrated that they themselves, either voluntarily or involuntarily, performed acts which contributed substantially to the relations of distribution. Therefore, claims based on disadvantages inflicted by impersonal mechanisms are void because they have no identifiable object.

This reasoning relies on the implicit hypothesis that one person has special obligations to another only when he or she made a voluntary commitment (made promises, received services, etc.). But this hypothesis is wrong. There are obligations which have their grounds not in our actions but in the fact that we are in certain relations with others. It is not necessary that the relation be the result of our own decisions. We cannot choose our parents and we cannot choose to have parents at all, yet we have obligations towards our parents. Similar moral obligations exist between citizens. Most people do not choose their own nation and nobody is ever able to choose all their fellow citizens. Nevertheless, we have special obligations to one another due to the fact that we are citizens of the same nation and belong to the same political community. As members of a community we share the responsibility of the whole towards each of its members. If the government is responsible for regulating economic processes so that none of its citizens is in an unacceptable situation, the luckier citizens must share this common responsibility. Therefore, the mere fact that in the course of accumulating one's wealth one has not violated the rights of others does not by itself justify the amount of one's share. For one's share to be regarded as just, it is necessary that the system of social interactions, by which he or she acquired it and which is regulated by the government, does not force anyone into unacceptable situations.

Hence, if the government redistributes part of our income to provide others with the opportunity to take part in social interaction, it is not a valid objection that we individually did not violate anyone's rights. We cannot claim that the

government violates our rights if it obliges us to bear part of the burden of other people's self-preservation. We must pay our taxes just as we must observe the law prohibiting the violation of other people's rights. Yet there are differences between our positive and negative claims. The contention that our positive claims are protected by rights as well as the negative ones may initially sound plausible, but it too is wrong. On closer scrutiny it will turn out not to be particularly attractive, either.

Fundamental rights distribute advantages and disadvantages among members of society. They grant their bearers equal status with all individuals in the political community. Fundamental rights, at the same time, oblige others (who have the same rights) to bear the subsequent costs. One who respects other people's rights must abandon some of his or her own goals and must find indirect fulfillment for some others. Put this way, the recognition of rights has a price which coincides with the obligations of others towards the bearer of rights. Violating one's rights is forbidden; we are morally obliged not to do so. If those subject to this responsibility break this rule, the government must intervene with its coercive apparatus.

Advantages and disadvantages are distributed, too, in the course of realizing the just order of distribution. However, here the costs do not necessarily coincide with the burdens the luckier citizens must undertake to help their poorer fellow citizens. Let us assume that the government imposes taxes on the income of its more successful citizens to remedy unfair inequalities. In this case citizens have more alternatives than simply paying or not paying their income taxes. They may decide to reduce their economic activity if they find that their net income after taxation is not worth the effort. If their pre-tax incomes do not diminish and yet they do not pay their taxes, they break the law and the government is right to punish them. On the other hand, they must not be obliged to maintain the level of activity they had prior to the imposition of taxes, regardless of the changes in their balance of costs and benefits. Everyone has a right to choose his or her own level of activity. Those who decide to reduce their efforts do not break the law but simply enjoy their fundamental rights.

The government does not infringe on anyone's rights when it decides to impose a certain amount of tax on incomes above a given level in order to maintain a "social minimum" for all its citizens. In this case the regulation merely defines the level of income one might enjoy with a given amount of effort if the system of social interactions is not to treat others unjustly or if the political order is to correct certain intolerable distortions of economic processes. Since no one can legitimately claim advantages that result from the unjust operation of the system, income taxes do not infringe antecedent rights. However, the government does infringe on our rights if it sets a level of income the wealthier citizens must maintain. In this case the government does not provide information about the level of net income which corresponds to the effort they choose to make; rather, it deprives them of the right to determine their level of effort.¹⁵

By contrast, let us assume that a large group of people reduce their economic activity in the face of an income tax, so that the new tax does not necessarily increase the sum to be redistributed. Public incomes could remain on the same level or even diminish because the increased tax is paid on a diminishing national product. Thus the government must help a possibly rising number of have-nots from a possibly decreasing amount of resources. If this were a real possibility and if the government were not allowed to force citizens to maintain their pre-tax level of activity, the claim of the poor does not constitute a right.¹⁶

Whenever we find distribution to be unjust, the government is obliged to create more appropriate conditions. Yet it cannot prevent economic actors from making contrary moves. Instead of *forbidding* conduct that hinders the realization of its program it must design the program with an eye to possible counter-measures. The government must seek techniques to correct intolerable inequalities and to increase the chances of integration for those who belong to the underclass. This obligation, however, concerns the reducing the *sum total* of inequalities and diminishing the *proportion* of the poor. The government cannot be meaningfully obliged to provide every single person with the minimal conditions of social existence as an *individual right*. (This would be possible only if each and every successful citizen could be obliged to raise his or her taxable income to the necessary level.) Furthermore, techniques for realizing a “social minimum” must be regarded as variable and not as fixed principles. One must choose the technique likeliest to produce the best results in light of existing economic strategies. These techniques include direct redistribution of incomes as well as special educational and employment assistance for the poor or a rational regulation of employment rights and insurance policies. It may even include tax cuts for the wealthiest if the resulting economic boom has a better impact upon the situation of the poor than direct redistribution.

The government is not obliged to adopt one or another particular policy, regardless of its prospects. It may be obliged, however, to consider the situation of the poor when it adopts a policy and not the position of the most powerful and most influential groups. Only in this case can it declare that the poor are equal and equally important members of the political community.

VII

These are the broad outlines of a theory of liberty which I think is defensible and able to provide moral standards for evaluating rival political proposals and claims and also for judging the direction of changes that consist in innumerable distinct actions. The argumentation is rather sketchy and has at least one tender point: I claim that no one has a right to advantages which are based on the operation of an unfair system, yet I do not define unfair disadvantages. In Márkus’s terms, I speak of a “social minimum” without further defining this norm. The characteristics of the “social minimum” are specified by the theory of equality and I am not

prepared to express my views concisely on this subject. I therefore confine myself to what was written in the previous section. I must, however, briefly address the difficulty Márkus raised about the idea of “social minimum.” With this problem I arrive at the last section of my study, where I argue that the proposed theory may be defended in the face of Márkus’s objections.

Márkus says that “social minimum” is not a universal quantity but depends on historical circumstances. Now, why is it necessary that it be a universal quantity? Márkus implies that without this universality, particular facts could determine what can and what cannot be claimed in the name of liberty. But the requirement of universality may be interpreted in two different ways. It could either mean that the normative conditions of freedom must be the same *under all possible circumstances*, or it could mean that they may vary in accordance with particular situations, but not arbitrarily. If in a given situation it is justifiable to define them in a certain way, the definition must be the same in situations that are *similar* in all relevant aspects. It must be noted that only the latter case can be meaningfully identified with the requirement of universality.¹⁷ The modern notion of liberty has the reservation that it must be compatible with the liberty of everyone else. “Everyone” here signifies a set of properties: it means every individual; within the multitude of people it refers to persons in possession of all ordinary abilities; and so on. The emergence of the modern notion of liberty coincided with an extraordinary extension of the range of subjects. The (as yet unfinished) progress of modern philosophy points toward the equality of all people as bearers of the same fundamental rights; it holds that differences in rank, religion, ethnic identity, race, class, etc. are irrelevant. It does not, though, entail that there should not be differences (varying according to the form of liberty in question) that may be justified by critical inquiry. (The exclusion of children from suffrage is a limitation just like the exclusion of women, yet the latter is arbitrary while the former has rational and sufficient reasons.) The requirement of universality does not entail that all conceivable liberties should be extended equally to all conceivable beings. Rather, it means that the demarcation of the range of subjects of any given liberty must be justifiable and that the forms of justification must be applied consistently to all cases.

On this basis, the variability of the “social minimum” does not raise theoretical problems. What must be demonstrated is that, together with changes in the general conditions of life, the indicators of “social minimum” are modified as well. In other words, the characteristics of the “social minimum” in a given situation must be chosen according to a method that demonstrates that these characteristics must be the same in all similar situations.

Some of Márkus’s objections to the modern idea of liberty are deeper than this. First of all, he asks, what kind of measure could liberty provide if it is not a measurable quantity? Our knowledge of liberty as a valuable thing is useless if we are unable to tell when we have more and when we have less of it. Can liberty have any role in our choices between alternative political institutions if it consists of incommensurable quantities?

My answer is positive. We do not need any quantitative definition of liberty unless we hold that the solution to be preferred is always the one which creates the *largest number* of alternatives. This view prevailed among early liberals. They held that just institutions must (in Kant's words) grant members of society "the largest amount of freedom."¹⁸ We may recognize, however, that they were wrong. To strive for an attainable maximum of freedom is not a rational collective aspiration. Worth of liberty is related to the values of autonomy, independence, and dignity, and is closely connected to the value of equality. Freedom's worth consists in it being a constitutive element of other basic political values. Furthermore, it is not the *largest possible number* of alternatives that ensures an individual's ability to choose the course of his or her life autonomously, to participate in politics as an independent citizen, or to have dignity and equal treatment. What is required is *sufficiently valuable* and reasonable alternatives. If the range of available alternatives is sufficiently wide, an increase in the number of alternatives is no longer necessary for an individual to lead an autonomous life.

Respect for our fundamental rights means that individuals are protected from attempts to reduce their space of action. Furthermore, fair distributional relations grant that each of us have a range of possibilities which we may justly claim in a given economic situation. Since we are considering relatively developed societies, it may be assumed that even the poorest people's amount of liberty must be acceptable; it must enable them to shape their lives independently through reasonable choices. Therefore, if the requirements of fundamental rights and just distribution are met, the regulative principle of collective decisions need not be the increase of freedom because all citizens already have "sufficient liberty." Furthermore, the concept of "sufficient liberty," unlike that of "the largest possible amount of liberty," does not presuppose a common denominator of the various instances of liberty. It is not necessary that we be able to tell which of any two cases represents the larger amount of freedom; we need only be able to make rough comparisons in cases of glaring inequalities. This may be accomplished without any common denominator. We know without any measure that the liberty enjoyed by a millionaire is larger than that of a beggar.

But one could assert, pushing Márkus's line of argument further, that if a society may be called just if it protects our fundamental rights and maintains a fair order of distribution, it is not clear what function is left to liberty in justifying or rejecting our social institutions. The structure of fundamental rights, the argument might continue, is defined by such values as autonomy, independence, dignity, and equality. Indicators of the "social minimum" depend on the form of life one needs in order that one's fellows accept one as a peer (or fellow citizen) in any given society. What is the role of freedom here?

This objection would seriously affect the modern idea of liberty if the latter were inseparable from the claim that freedom must have priority over its rivals. True, early liberals tended to phrase the requirement of universality in such a way

as to indicate that the restriction of an individual's liberty would be justified only if it protected other individuals' similar liberties.¹⁹ On this view, the fulfillment of universality indeed depends on whether or not liberty has priority over all other values. The condition of universality, however, can be easily separated from this indefensible view. Universality does not require that freedom be restricted by freedom alone, but only that no one's liberty is protected by rights that are not granted to everyone else as well.

In this form, the requirement of universality is compatible with the view that freedom belongs to a larger and mutually dependent group of values. Furthermore, it is compatible with the claim that the content and extent of fundamental rights must be defined by this ordered group of values as a whole and not just by any one of them. Our question then concerns the possibility of establishing an interrelated and consistent theory of these mutually dependent fundamental values which must be maintained *simultaneously* and of which liberty is one.

It is true that liberty alone is incapable of defining the list of fundamental rights and minimal resources which everybody may justly claim. But this fact does not raise any difficulty for us. Liberty does not become a mere ornament if we claim that our liberties are determined by other values. When our society recognizes the fundamental liberties of religion and conscience it is not out of respect for the inherent worth of free choice. Rather, it acknowledges that our convictions have a major role in defining our identity; therefore, to infringe on them would hurt our autonomy and dignity. On the other hand, it is not the adoption of any particular belief or conviction that is protected by these rights. To the contrary, our *freedom* to express our reasonably formulated views in questions of religion and world-views is respected. It is our *freedom* to determine our wholeheartedly accepted faith and our *freedom* to decide whether we do or do not want to form associations with those holding the same views that is protected. Finally, it is our *freedom* to make our views public or keep them to ourselves that is at stake.

But can we define liberty, the exact measurement of which, we argued, is unnecessary? We defined (negative) liberty as the domain of unconstrained possibilities. This formulation entails our capacity to identify cases of restriction. In Márkus's view, the latter is possible only if by restriction of liberty one means physical constraint. For if we include penalized prohibitions it is not clear why persuasion combined with proposals (or, for that matter, any form of influence) should not be regarded as a restriction of our liberty. I think this objection can be answered. If Márkus were right, threats and proposals would differ only in their form of expression. Indeed, linguistic differences disappear altogether if one fully analyzes their respective contents. The content of the phrase, "Your money or your life!" may be expressed as the conjunction of the two following hypothetical clauses: "If you do not give me your money, I will kill you. If you give me your money, I will not kill you." The phrase, "My kingdom for a horse," may be expressed with the same conjunction: "If you do not give me your horse, you will not get my kingdom. If you give me your horse, you will get my kingdom." Yet

we are able to distinguish between the contents of the two phrases. A person threatened by someone has worse alternatives than before the threat was posed. By contrast, the addressee of a proposal has better alternatives than he had before the proposal. Regardless of its linguistic form, we speak of a threat if the message worsens our position and of a proposal if it improves our position.²⁰ Threats, therefore, constitute constraints while proposals do not.

But can we make morally relevant distinctions between cases where freedom is restricted and cases where there is an inability to make decisions? Early liberals made a very sharp distinction between such cases. They held that while restriction of freedom may serve as a basis for moral claims, such claims cannot be based on a lack of ability. Márkus demonstrates that the distinction is untenable: a lack of ability may also be the ground of moral claims, which means that there is no morally relevant difference between restriction of freedom and a lack of abilities.

By contrast, I think that even though both cases may be the bases of moral claims, the nature and the normative force of such claims are not identical. I went to some length in the previous section to show that the two basic conditions of a just distribution of liberty (fundamental rights and a fair distribution of resources) establish different kinds of obligation with respect to other citizens and the government. If so, it is possible to make a moral distinction between a restriction of freedom and a lack of ability, though not exactly the way early liberals conceived it.

Finally, Márkus raises two objections which do not directly spring from the analysis of the notion of liberty, but nevertheless have a serious impact on it. These are the theses of value pluralism and the pluralism of worldviews. The importance of various liberties depends for us on the value of the activity or state of affairs with which they are concerned. Since competing values are often incommensurable (i.e., we cannot rank them), one cannot decide, Márkus argues, which of two liberties should be given priority over the other. Furthermore, our value judgments give rise to serious divisions. What one worldview respects as a value is rejected by another. Quite often, there are no conclusive arguments to settle our disputes. One must assume that the same is true for the value of liberty. It seems, then, that we are not always able to distinguish between just and unjust cases of restriction of freedom.

It seems to me that these objections in themselves do not refute the contention that our modern idea of liberty can guide us in our choices between various social institutions. Let us first consider the problem of value pluralism. One who discovers a difficulty in ranking certain values may make two different propositions. He or she may either say: here we have two values the ranking of which seems uncertain. Or he or she may assert: we know that it is impossible to rank these two values. The latter view excludes any rational attempt to rank our values; the former does not. The fact of uncertainty itself urges us to discuss our values, to analyze them, and to examine how they might fit into our larger value system. It

urges us to try to demonstrate the priority of one or another of our values until we reach a definite conclusion. Therefore, Márkus must hold the stronger view. But this view requires stronger arguments than the mere observation that the ranking of certain values is ambiguous.

The same holds for the pluralism of worldviews. Let us take the case where there is no consensus (and in the light of well-known arguments it is not even necessary to have consensus) about whether a pregnant woman should have the right to an abortion or a racist should have the freedom to express views that offend the self-esteem of others. In this case one may make two propositions. One may either say that there cannot possibly be one single correct answer to such questions; therefore, there is no hope of eliminating controversy by rational argument. Or one may hold that the controversial character of an issue does not prove that there cannot be a correct answer; therefore, it is reasonable to enter into disputes. If we take the former position, we must accept that where our fundamental convictions are concerned, political decisions cannot but be irrational. But to reach this conclusion it is not sufficient merely to recognize the absence of universal agreement. It must be demonstrated that rational arguments are altogether useless in such debates. Márkus fails to demonstrate this, and so he cannot hold the former view. In this case, however, the recognition of our discord entails nothing more than the necessity of arguing until differences between our views are reduced.

True, political decisions cannot usually be delayed until an agreement is reached about the ranking or recognition of values. The demarcation of rights and the distribution of freedom are usually carried out under circumstances of inevitable uncertainty and irresolvable controversy; they raise complications even if the settlement of the debate is not entirely hopeless. Yet, if we hold it rational to enter into debate, the difficulty can be remedied in the short term. The political establishment of constitutional democracies can be conceived as a practical solution to the problems of value pluralism and the pluralism of worldviews.

Decisions made in the course of debates divide society and majority decisions are usually less controversial and less unfair. Therefore, it is acceptable as a general rule that majority decisions be obligatory even for those who do not agree with them. Yet the more fundamental the convictions concerned, the less acceptable it becomes to make simple majority decisions. The use of the majority principle must be limited by further principles to guarantee that majority decisions do not infringe on the deepest convictions of minorities. This type of limiting principle states that questions of fundamental convictions do not belong to the government's sphere of competence. Another such principle is that the government should refrain from interfering with our personal lives. When it must interfere with our privacy, it must seek neutral justification for its actions. If the decision cannot be justified neutrally and inevitably injures one of the parties, the government must take into account which party would be affected more seriously by the

decision. The more collective decisions adhere to this rule, the less they depend on controversial views in matters of conviction.

The fulfillment of these conditions requires that collective decisions concerning our fundamental convictions be made by bodies obliged to justify their decisions publicly and to confine themselves to strict procedural criteria. Finally, the deeper a moral division is, the more important it becomes to retain the possibility of initiating a revision of decisions. The right to initiate revisions should be open to individuals as well.

The sum of these considerations implies an institutional order in which ordinary controversies are settled by the legislative branch of government by majority vote. Deeper divisions require a qualified majority and such decisions must be subject to judicial review. This system of constitutionally limited majority government does not provide guarantees against unfair decisions. However, it does provide the best means to correct unfair decisions and the best odds that corrections will be influenced by public debate. Under such conditions, the political community treats all its members as equals, including those whose convictions are opposed to collective decisions. No one may claim that his or her views are not taken into consideration or that he or she is denied the right to appeal. This is the maximum that deeply divided communities may offer.²¹

VIII

The backbone of Márkus' arguments is the statement that liberty is not a commensurable and neutral quantity. It can therefore not be universal, nor can it have priority over other values. The essence of my answer consists in two modifications in the interpretation of universality and priority. I argued that priority is not a universal criterion of freedom, but only of those special liberties that are protected by rights. Further, I held that when the requirements concerning fundamental rights and fair distribution are satisfied, increasing freedom is no longer a privileged collective undertaking. I wished to demonstrate that, in the light of these modifications, commensurability and neutrality are not necessary for the idea of freedom to be a reasonable criterion of evaluation and a regulative principle of action.

My reasoning was, like most philosophic arguments, rather abstract. This may give the impression that we occupied ourselves with an esoteric intellectual *tour de force*: one philosopher confronted another with a problem to see whether he or she is able to solve it or not. Whatever the outcome, one might be tempted to say, it will not concern the lives of other people. However, this is not the case. The thoughts expressed here have definite political character. On the ideological map of our age, it may be located between free market conservatism and welfare socialism. It may be distinguished from the former by the fact that it acknowledges poverty as a ground for moral claims against the community. It may be distinguished from the latter in that it conceives these claims not as individual

rights, but as the government's obligation to reduce the sum total of unfair inequalities. In my view these two propositions demarcate the domain of modern liberalism.

When I mentioned the political character of my views I did not refer to certain abstract convictions. The theory of liberalism as defined here has definite consequences. Like most insights derived from philosophy, they are only indirectly applicable to practical political controversies. On certain occasions, though, they point to direct political conclusions. These rare occasions are especially important because they reveal the practical significance philosophic arguments might acquire. I here describe such an occasion to illustrate my point.

In 1996 there was a controversy in Hungary as to whether the final text of our constitution should or should not contain social claims against the government and, if so, how these should be formulated. One of the parties insisted on "social rights" while the other wanted that the government's social responsibility to be regarded as "government objectives." The theory outlined here explains why it is wrong to define claims concerning distribution of resources as "social rights." The logic of rights entails that it is obligatory to respect them, yet taxpayers cannot be obliged to fulfill claims related to distribution. Furthermore, my theory makes it plain why it is insufficient to treat conditions of fair distribution as mere "government objectives" without institutional guarantees. Conditions of fair distribution are not mere wishes. If they are not satisfied, a society may not be regarded as just or as forming a political community. My theory implies a formulation in which the social responsibility of the community constitutes an *obligation* for the government. This obligation, on the other hand, does not entail each individual's right to the minimum conditions of life; it implies an obligation to reduce the sum total of unfair inequalities. True, the terminological distinction is meaningful only if institutional procedures (distinct from those of the enforcement of rights) may be associated with it.

How are we to conceive such procedures? To illustrate my case I rely on yet another political controversy between the government and the Constitutional Court about financial restrictions. In 1995 the Court overruled parts of the government's financial measures on the grounds that they infringed on the constitutional guarantees of social security. However, the court itself admitted that it was a matter of opinion whether constitutional guarantees were violated or not. In its view, the question to be considered is whether the government had sufficient reason to introduce such measures. But then the question to be raised is this: who is competent to decide about reasons for financial restrictions? If the government has the right to decide, then the Minister of Finance is the one to define constitutional criteria protecting social security. If the Constitutional Court is to decide, it must also define the central indicators of the annual budget. In either case, the intertwining of different branches of government is imminent. Either the Court must make the budget or the government must interpret the constitution. So long as social claims against the government are conceived in terms of rights, it is

impossible to separate spheres of competence. By contrast, if they are defined as mere “government objectives,” the separation is accomplished but the social responsibility of the government is not secured by constitutional guarantees. However, if we define these claims not as individual rights but as governmental obligations, it becomes possible to find another method to separate branches of government. It implies that the government has the right to decide about cuts in public spending, but it must observe the Constitutional Court’s reservations in the process of decision-making. The Court must supervise the budget and declare whether it injures basic interests whose infringement may be justified only in extreme situations. However, the Court’s recommendation does not affect the government’s right to justify the measures it takes.

This was merely a description of our task. But it makes clear the kind of constitutional procedures we should look for if the above analysis is defensible. We should look for procedures that make possible a desirable interplay between various branches of government and yet retain the government’s independence in matters that belong to its competence. Furthermore, they must force the government to take the Court’s reservations seriously into account.²²

The conception outlined here is controversial, as is the whole of modern liberalism. Yet the occurrence of theoretical differences makes rational debates possible and necessary. Sheer power and mere compromises are thereby limited by the burden of justification proper to the philosophical examination of moral and political principles. This is exactly the point of philosophical inquiry.

But are they able to live up to the expectations? Márkus quotes Hegel at the end of his paper: “Wie sich die zeitliche, empirische Gegenwart aus ihren Zwiespalt herausfinde, wie sie sich gestalte, ist ihr zu überlassen und ist nicht die unmittelbar praktische Sache und Angelegenheit der Philosophie.”²³ The lines immediately preceding this phrase make it clear that Hegel meant it literally: “Die Philosophie ist in dieser Beziehung ein abgesondertes Heiligthum und ihre Diener bilden einen isolierten Priesterstand, der mit der Welt nicht zusammengehen darf und das Besitzthum der Wahrheit zu hüten hat.”²⁴ But Márkus cannot consistently hold this view. True, the ruse of history applies to the philosopher as well. The words of the philosopher meet not only other philosophic arguments but also a multitude of unforeseen expressions and events, so that they can have results quite different from the ones the philosopher intended. But this is not a sufficient ground for Hegel’s claim that philosophy should withdraw from present practical controversies. Philosophy can provide participants of debates with means to justify their claims against others and it can confront them with the justification of other claims. It may do so not because it possesses infallible and final knowledge but because its vocation is to analyze, criticize, and justify our beliefs about final questions. As long as the need for criticism and justification is maintained, the sheer operation of power can be confronted with the requirements of rational argumentation. This is remarkable even though the actual outcome of history may take even the philosopher by surprise.

NOTES

1. Cf., his book *Kultúra és modernitás* (Culture and Modernity) (Budapest: T-Twins, 1992) and his essay "A »kultúra« antinomies of 'culture' ") to be published in the *Magyar Lettre*. I gave a comprehensive account of the development of Márkus's views in my study "Felvilágosítók szépunokája," *Holmi* 12 (1992).

2. In his famous essay "Two Concepts of Liberty," Isaiah Berlin rejects this understanding because it assumes that a hierarchy might be established between the goals of an individual (in the present case, between his desire for alcohol and his desire to be able to abstain). This would, on Berlin's account, give way to the totalitarian abuse of the idea of liberty. (*Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 132.) It is not clear, though, how one could make a distinction between a sound and a distorted personality if one rejects the importance of a hierarchical relation between primary preferences (the desire for alcohol) and secondary preferences (the desire not to desire alcohol). Moreover, to acknowledge a hierarchy does not entail the government's right to decide which of the individual's desires should be approved.

3. This description brings us very close to what Immanuel Kant meant by the ethical concept of freedom. Kant regarded actions driven by inclinations as unfree or heteronomous since their source is not the rationally deliberating person but the inclinations which determine him. On Kant's account, an action may be properly said to be one's own only if its motive is that one's inclination may be approved by rational arguments, that is, when one is driven by a maxim and not by inclinations. And one may morally approve an action only if one can (without contradicting oneself) approve someone else following the same maxim in a similar situation. In this case the maxim of the action is a universal rule or a law. Yet this law is imposed upon us by ourselves because we acquire it through rational insight. If we follow a self-imposed law we are free. (*Groundwork of the Metaphysics of Morals*, Section One)

4. This is how John Locke understood the relation between laws and liberty in his *Second Treatise on Government*, §22 and §57.

5. This notion of political freedom has its origins in Rousseau's *The Social Contract*, bk. II, ch. 4.

6. "Private" and "public" as defined here do not coincide with the regular use of these terms. For example, we have the right to negative liberty in the sphere of public activities as well. For instance, the government must not intervene in our political expression.

7. B. Constant, *La liberté chez les anciennes et les modernes*.

8. Cf. R. Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974), 150.

9. Cf. J. Naverson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988), 13. Márkus mentions a third argument applied by Hayek which may be summed up as follows: only those interventions restrict our liberty which restrict the individual's range of choices in order to satisfy another person's arbitrary needs. The laws of a state (or at least the ones which satisfy the requirement of non-discrimination) establish impersonal and abstract rules of behavior and thus do not restrict liberty. This argument is too specific to concern us here. Cf. F.A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), 133.

10. It was Rousseau who went farthest this way. See *The Social Contract*, bk. III, ch. 15.

11. Here we face two difficulties. First, different types of action cannot be divided into units which are present in all of them and yet constitute meaningful actions in themselves. For example, for a Christian, two hands touched at the height of one's nose and mouth is the sign of praying. By contrast, raising either the right or the left hand does not mean half of the praying but is (in itself) meaningless. The waltz consists of a series of harmonious steps, but these constitute dance steps only in a periodical sequence; performed separately, they are meaningless. Thus, the operation which would be the common measure of praying and dancing is not a meaningful action. Moreover, the smallest meaningful unit is not identical in the cases of praying and dancing. There is no single homogenous unit of action from which any act could be reconstructed.

The other source of the problem is this: when we speak of (negative) liberty, according to a

widely held analysis, we make propositions like this: “a certain person is not restricted in performing a given action by constraints imposed by other people.” On closer scrutiny, however, it turns out that it is not one single act that is permitted by the lack of constraints. Propositions about an individual’s liberty refer not to actually performed acts but to potential ones which the individual may or may not perform if he or she is not restricted. Liberty is a range of opportunities. It cannot be described by a finite enumeration of possibilities. Let us imagine a large park surrounded by a high stone wall with only one gate. He who has a key to the gate is not hindered by the wall to enter the park. But there is more to it than that. If once he has succeeded in entering the park, he has a range of opportunities which one who is left outside is not free to do. He can sleep on the ground, he may run here and there, he may collect flowers, listen to the birds, he may turn cartwheels, he may sing operas without being disturbed by others. The sum of hypothetical activities is an open set: it is impossible to tell exactly what it entails. But if we cannot tell what sort of possible activities belong to two (negative) liberties, how could we compare the extension of the two?

12. Cf. C. Taylor, “What is Wrong with Negative Liberty,” in A. Ryan, ed., *The Idea of Freedom* (Oxford: Oxford University Press, 1979).

13. In chapter 21 of the *Leviathan*, Hobbes defines restriction of liberty as physical obstacle. However, in the subsequent paragraphs his attention shifts to legal prohibitions. In *On Liberty*, J.S. Mill considers even the pressure of public opinion as a grave and compensable constraint on freedom.

14. Cf. G. Márkus, “A rendszer után: a filozófia a tudományok korában,” *Magyar Tudomány* 8 (1992).

15. In *Anarchy, State and Utopia*, Robert Nozick denies the meaningfulness of this distinction (167–174). In his view, to impose extra tax on someone and to force him or her to perform extra work are the same. Both are cases of forced labor. I argue that Nozick is wrong and that there is a real difference between these cases. To define the level of gross income one must achieve in order to acquire a certain level of net income does not infringe anyone’s autonomy if the extra burden is of a justifiable proportion. To prescribe the amount of money with which one must contribute to the self-preservation of others regardless of one’s intentions does restrict our autonomy.

16. It may be objected that the costs of both protecting rights and maintaining a fair system of distribution consist of two components, one of which I have not taken into account. This component derives from the fact that the protection of rights and the redistribution of income make government necessary. Moreover, the operation of government has its own costs. It must collect taxes to finance its operation; this is true with respect to the distributional organizations as well as to the police and the legal establishment. Furthermore, our economic strategy in relation to taxes is indifferent to the purposes they serve; the only thing it considers whether our net incomes and efforts are proportional or not. But in this case, if we have no right to a social minimum, my opponent could argue that the protection of negative liberties, however important they may be, does not constitute a right either.

But this argument is wrong. It is true that the operation of government has its costs, but they do not consist solely in the protection of fundamental rights. Moreover, it is not clear whether protecting our rights is more costly than violating them. Freedom of press is less costly than the substantial control of newspapers because the former makes censorship useless. Freedom of religion is cheaper than the prosecution thereof because the former makes the Office for Church Affairs useless. Freedom of assembly is cheaper than a state monopoly on assembly because the former makes secret police as a means of intimidating citizens unnecessary. True, such statements cannot be simply generalized. For instance, to protect our rights that are related to public security is more costly than to ignore them. Yet even these costs are incomparably smaller than those of granting a “social minimum” to everyone. In 1995 the aggregate public costs of police, prosecution, courts, and prisons amounted to 1.5% of public spending in Hungary. By contrast, social spending amounted to 22% of the budget. A 10% increase or reduction in the cost of protecting our liberties concerns a relatively insignificant 0.15% of the budget. A 10% change in public spending amounts to 2.2% of the budget, which affects the balance of incomes and spending considerably.

17. Richard Hare claims that we should distinguish between the universality and the universal-

izability of a moral principle. A principle is universal if it is valid for all possible cases and it is universalizable if it is valid for all cases that are similar in all relevant aspects. (*Freedom and Reason* (Oxford: Clarendon, 1963), 10.) In Hare's terms the requirements of liberty must be called universalizable and not universal. It must be added, however, that the relevant set includes all competent people (or all citizens of a state).

18. See Kant, *The Critique of Pure Reason*, Subsection II, Book I, Section I.

19. See H. Spencer, "The Proper Sphere of Government," in *The Man Versus the State* (Indianapolis: Liberty Classics, 1982), 191.

20. True, it is not always easy to decide which is the case. Think of the following example: the German army invades Hungary in March, 1944 and forces the Jews to move to the ghetto. Deportations begin; then, an SS officer meets Manfred Weiss and tells him: "If you pay us one hundred thousand Marks you and your family will not be deported." Is it a threat or a proposal? Manfred Weiss's situation is clearly better after the conversation than it was before it. Yet it is undoubtedly worse than it was before the German invasion. The question is, then, which of the situations should serve as the basis of comparison. At first glance, it would seem obvious that the basis of comparison is the situation immediately preceding the conversation, since that is the one which was given at that time. If a bankrupt company is offered a loan at high but realistic interest rates, it would not occur to us to consider the proposal in the light of an earlier situation when the company was still prosperous. (Except if the creditor first destroys the company and then goes on to offer a loan, making use of the other's situation). The case we have cited above is exactly like this one: Hungary was occupied by the *Wehrmacht*; the establishment of the ghetto and the deportations were supervised by the SS. Therefore, our choice of the basis of comparison depends on normative hypotheses. It depends on which of the original situations is *expectable*. It indeed constitutes a significant difficulty but it does not mean that we are not able to make distinctions between threats and proposals. See A. Wertheimer, *Coercion* (Princeton: Princeton University Press, 1989).

21. I examine these issues in details in chapter 1 to 3 of my book, *Az állam semlegessége* (Atlantisz, 1997). See especially the essay entitled "Az állam semlegessége."

22. I have outlined such a procedure in my article, "Összefonódó hatalmi ágak," *Népszabadság*, 15 July 1995.

23. G.W.F. Hegel, *Vorlesungen über die Philosophie der Religion*. Hegels Sämtliche Werke (Jubiläumausgabe). Stuttgart, Fr. Frommans Verlag, 1959, p. 356.

24. *Ibid.*