What is Freedom?

Freedom in the Context of Constitutional Law and the Bible: Similarities and Differences

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Freedom is one of the basic concepts of both law and theology, and it is also a concept that has a common meaning: Everyone believes he knows what freedom is. After a brief reflection, however, the complexity of the issue becomes apparent: Freedom means something different for the law or for theology, and not only do different branches within the law ascribe different meanings to freedom but no uniform interpretation of freedom can be found even within a single branch of law. Freedom is typically a concept that constitutional law uses in its day-to-day operation but does not define. It should be noted at the outset that, in a philosophical sense, total freedom does not exist. One cannot disassociate oneself from the law of gravity (a physical limit), and one can postpone but not avoid death (biological limit) and so on. Freedom can therefore only be interpreted in the context of external factors. This seems so natural that we consider total freedom to be complete freedom within an environmental framework. In law, the concept of freedom is typically defined in terms of the subject (freedom for something) – producing a much more tangible, easier-to-use concept.

This essay will examine how the two defining ideals of our day, the Bible and liberalism, approach freedom. Contrasting Christian freedom with liberal freedom has become a popular topic in recent years. The reason for this is that the representatives of each trend are quite critical of the concept of freedom of the other, to the extent that they do not even consider it to be freedom. Critics of Christian freedom do not see Christianity as freedom at all, but as embarrassing compliance with well-intentioned, but anachronistic moral rules. On the other hand, critics of the liberal idea of freedom see it as the liberty to sin, the self-realisation of immoral ideas. This essay will argue that this contrast is wrong. I believe that the key difference between the two concepts of freedom in the biblical sense and those used in liberal law and used in constitutional law is not primarily a difference in content but a difference in the source and purpose of the two freedoms. In order to substantiate this hypothesis, I will first examine what concepts of freedom the Bible uses, from where Biblical freedom originates, what its content is, and what its purpose is. I will then analyse the meaning of the concept of freedom used in constitutional law, developed in the spirit of liberalism, and finally compare the two concepts of freedom.

I The concept of freedom in the Bible

The focus at this point is intentionally not on Christian freedom. The Bible is not merely a collection of moral teachings; it is more about God, man and the relationship between the two, from which a Christian ethic follows, although that is not the purpose of the Bible. The concept of freedom in the Bible is not one idea, teaching, or doctrine. The Bible speaks of freedom in (at least) two senses. One possible interpretation of freedom in the spirit of the Bible is free will, that is, that man is free to decide for or against God. It should be noted, although it is not the subject of this essay, that – according to the Bible – there is no third way. This meaning of freedom appears in the fifth book of Moses, in the Book of Deuteronomy: 'This day I call the heavens and the earth as witnesses against you that I have set before you life and death, blessings and curses. Now choose life, so that you and your children may live.'[1] Just before this verse, God describes what blessings the chosen people can expect if they follow His teachings and commandments, and what curses they will have to reckon with if they reject them. However, freedom of decision is given: God did not force His people to decide for Him. Another issue is that one's decision has consequences.

One manifestation of freedom, then, is that no universal, all-binding command can be deduced from the Bible that one should live under the authority of God. Even if Christianity at the same time took a different view of this, the Bible only offers entry into God's covenant – the freedom is that everyone is free to accept or reject it. Another aspect of freedom that is even more important to this subject is the freedom of the believer; that is, what the Bible says about what those who have already chosen God are allowed to do. Before analysing this in more detail, it is worth examining Jesus's words about freedom in the Gospel of John:

> To the Jews who had believed him, Jesus said, 'If you hold to my teaching, you are really my disciples. Then you will know the truth, and the truth will set you free.' They answered him, 'We are Abraham's descendants and have never been slaves of anyone. How can you say that we shall be set free?' Jesus replied, 'Very truly I tell you, everyone who sins is a slave to sin. Now a slave has no permanent place in the family, but a son belongs to it forever. So if the Son sets you free, you will be free indeed.'[2]

In this extract, Jesus is not speaking to humanity, not even to Judaism in general, but only to those Jews who believed in him (that is, who chose him on the basis of their freedom in the previous sense). Jesus tells them that 'the truth will set you free', about which they are baffled, saying we 'have never been slaves of anyone'. In this dialogue, Jesus's listeners identify freedom with the absence of captivity, to which Jesus responds by saying that he who commits sin is a servant of sin. Consequently, freedom requires 'liberation by the Son' (that is the assistance of a divine person).

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[1] 5 Moses 30:19.
[2] John 8:31–36.

Thus, based on this verse, freedom does not mean an opportunity for action but a state. This condition affects the options for action, but does not equate to them. It is instructive to examine what the source of this freedom is (where the freedom comes from), what its content is (what the freedom covers), and what its purpose is (whether freedom can be put to use for something). It also follows from the verse quoted earlier that the origin of biblical freedom is God: a free man is whoever is 'set free by the Son'. In other words, only He can set one free. According to the Bible, this freedom cannot be granted by anyone else, but neither can it be taken away. In connection with the sacrifice of Jesus's life, he articulates this freedom: 'No one takes it from me, but I lay it down of my own accord. I have authority to lay it down and authority to take it up again.'[3] The first feature of biblical freedom, then, is that, because it comes from God, it is independent of external circumstances. This explains how even those who are in bad circumstances can enjoy this freedom, even if they are hungry, humiliated, persecuted or imprisoned. Although their ability to act is limited, this freedom is not, as it is not an opportunity to act, but a state.

Second, Paul, the Apostle's words govern the content of freedom: '"I have the right to do anything", you say – but not everything is beneficial. "I have the right to do anything" – but not everything is constructive."'[4] Or as he writes later: '"I have the right to do anything", you say – but not everything is beneficial. "I have the right to do" – but I will not be mastered by anything.'[5] This is in line with Paul's exhortation to 'test them all; hold on to what is good'.[6] Freedom does not homogenise; believers may think differently, represent different views, positions and so on. In the wording used in legal language: Biblical freedom (also) gives autonomy of individual action. The content of freedom is not bound by external factors; Freedom is not an awkward compliance with external commands. What binds freedom is, in turn, its purpose. One of the most important ideas of the Bible is that freedom is not an end in itself. It is sufficient to refer to only a few of the many verses about this here: The apostle Paul advises, in his letter to the Galatians: 'You, my brothers and sisters, were called to be free. But do not use your freedom to indulge the flesh; rather, serve one another humbly in love.'[7] The apparent contradiction that freedom serves to serve someone else can be resolved by understanding the following verse: 'For none of us lives for ourselves alone, and none of us dies for ourselves alone. If we live, we live for the Lord; and if we die, we die for the Lord. So, whether we live or die, we belong to the Lord.'[8] Since the believer does not live for himself, he does not use his freedom at his own discretion but to glorify God and help his fellow men.

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[3] John 10:18.
[4] 1 Corinthians 10:23.
[5] 1 Corinthians 6:21.
[6] 1 Thessalonians 5:21.
[7] Galatians 5:13.
[8] Romans 14:7–8.

The purpose of freedom, then, is to carry out God's plan in an individual's life, and that is quite different from complying with religious commandments.

Summarising the biblical concept of freedom, we can state the following: On the one hand, the Bible gives man the freedom to choose for or against God, and on the other hand, the Bible delineates the freedom of the believer's life, which is (1) not a possibility but a state; (2) independent of external conditions; (3) unlimited in content but bound to a goal and (4) the exercise of freedom must be subordinated to God's goals.

II Freedom in liberal (constitutional) law

As in the Bible, several concepts of freedom exist in constitutional law. It should be added that liberalism is not the only trend of constitutional freedom; natural law is usually cited as a competing trend, with an emphasis on the relationship between freedom and responsibility.[9] However, the subject of this writing is a comparison of liberal freedom and biblical freedom, so the liberal concept will be analysed below.

Not only must liberty be explained but its derivation, 'liberal', also needs to be interpreted. This problem is raised by Ronald Dworkin, who describes how, until the 1960s and 1970s, liberals could be identified from the views they professed: Formerly, it was liberals who wanted greater economic equality, globalism, freedom of speech and the abolition of censorship; they called for the abolition of racial segregation, the sharpest possible separation of church and state, strong procedural guarantees for those subject to criminal proceedings and the decriminalisation of certain 'moral' crimes (for example, drug abuse). Based on British and American experiences, Dworkin concluded that after the Vietnam War, the classic liberal–conservative fault line had disappeared as more and more issues emerged whose support or rejection was not based on this division.[10]

In this essay, what I understand by the concept of liberal freedom is that which puts the individual at the centre of society, and hence seeks to understand the role of the individual and society from the starting point of the individual. This choice of definition is arbitrary, and not necessarily the same as what is considered liberal in today's political communication. I regard this as the starting point for freedom (in the legal sense), because it was this idealism that led to the paradigm shift that replaced absolutism in the eighteenth century: It is not man for the state, but the state for man. As the American Declaration of Independence stated in 1776:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government

[9] Péter Erdő, 'Szabadság és jog keresztény szemmel', in Gudrun Kugler and Péter Pásztor (eds), *Szabadság és hit* (Budapest: Polgári Magyarországért Alapítvány, 2012), 14.

[10] Ronald Dworkin, *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), 181.

> becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.[11]

That is, the state must serve the individual and the freedom of the individual, and if the state fails to fulfil this obligation, the government can be replaced.

Constitutional law uses the term 'freedom', and defines individual freedom in a socio-political sense. Socio-political freedom is the opposite of tyrannical systems and dictatorships. A society where there is no oppression is free. Freedom in this sense is also a political programme, a goal to be achieved. Political freedom is, of course, related to individual freedom, but the freedom of the individual is not guaranteed by the autonomy of the political community alone.[12] In general, it can be said that individual people are freer in a democracy than in a dictatorship. In a comprehensive analysis, however, political freedom does not necessarily entail individual freedom: In no democracy can it be said that everyone really lives freely. Political liberty is not an unlimited freedom, but a freedom guaranteed by the masses.[13]

Legal theory has defined the concept of individual freedom in several ways. According to Thomas Hobbes, '[b]y liberty, is understood, according to the proper signification of the word, the absence of external impediments: which impediments, may oft take away part of a man's power to do what he would; but cannot hinder him from using the power left him, according as his judgement, and reason shall dictate to him'.[14] In Hobbes's approach, freedom depends on external factors. When external impediments are 'far away' (not existing), there is freedom, while when external impediments are close, there is none. Furthermore, the content of freedom is that one can do what one wants to do, even if one cannot fully achieve it due to external obstacles. In essence, Immanuel Kant took a similar view: 'Freedom is independence of the compulsory will of another.'[15] In this approach, too, freedom depends on external factors: Man is free if he can free himself from the arbitrary coercion of others, or more simply if they cannot force him into what he does not want. It is worth exploring the origin, content and purpose of this concept of freedom. According to John Locke, freedom and equality are the natural state of man.[16] However, freedom is not absolute, for its exercise depends on external factors; freedom must be sacrificed in order for additional values to prevail. Examples of such an added value are security for Hobbes and equality for Dworkin.

On the relationship between freedom and security, Hobbes was of the opinion that, in the state of *bellum omnium contra omnes,* the unrestricted freedom of the

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[11] The unanimous Declaration of the thirteen united States of America.
[12] András Bragyova, 'Alkotmány és szabadság', *Fundamentum* 7, no 3–4 (2003), 5.
[13] Gábor Halmai and Attila G Tóth, 'Az emberi jogok eredete', in Gábor Halmai and Attila G Tóth (eds), *Emberi jogok* (Budapest: Osiris, 2003), 39.
[14] Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1998), 86.
[15] Immanuel Kant, quoted by Bragyova, 'Alkotmány', 5.
[16] John Locke, *Two Treatises of Government,* para 26.

individual ultimately leads to his or her vulnerability, since the unrestricted freedom of others endangers the preservation of his or her own property and personal integrity.[17] There was, therefore, a fundamental need for power in order to create order and predictability and to protect the property and person of the people, in short, to provide security. In this approach, security is a very complex and multifaceted concept, including on the one hand all the protection required to prevent an attack on a person or property, and on the other hand, the feeling of comfort that an individual does not have to expect such an attack for any reason.[18] In practice, it can be seen that the more an individual sees his or her security as a threat, the more he or she is willing to sacrifice his or her freedom, and vice versa: The more he or she lacks his or her freedom, the more he or she risks his or her security. In Hobbes's conception, there is no freedom without security, and to this can be added that without freedom there can be security, but it is meaningless as it does not realise the natural state of the individual.[19] In addition to the conflict between freedom and security, it has also become clear that the first two of the slogans of liberty, equality and fraternity of the French Revolution cannot coexist in an absolute way: The two principles compete with each other. As Dworkin writes: 'Unfortunately, liberty and equality often conflict: sometimes the only effective means to promote equality requires some limitation of liberty, and sometimes the consequences of promoting liberty are detrimental to equality.'[20] It can be seen, then, that the source (origin) of freedom is the natural state of man, that is, man is inherently free. However, one can only exercise one's freedom if there are appropriate external circumstances.

In terms of the content of this freedom, this entails autonomy of individual action. Individual freedom is the freedom to behave independently,[21] and, according to the liberal conception, the freedom of the individual is the first, but not the only, goal of the state.[22] András Bragyova added that, in a negative sense, freedom means the absence of a restriction, and in a positive sense, the provision of a specific opportunity for action.[23] Based on the autonomy of action, the individual is free to decide what behaviour to take, what position to form, how to live, and so on. Autonomy of individual action also means the free exercise of human rights, although not exclusively. This freedom is substantive in the sense that it can be restricted only in certain cases, such as in order to ensure the freedom of others, or to achieve other justifiable purposes. Although the exercise of freedom is entirely

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[17]   Hobbes, *Leviathan,* 160–162.
[18]   We cannot talk about security if the individual lives in constant fear that his or her property and physical integrity are in danger, even if the attack on them does not happen in the end.
[19]   Also to be welcomed is Benjamin Franklin's oft-quoted sentence: 'Those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety.'
[20]   Dworkin, *A Matter of Principle,* 188.
[21]   Bragyova, 'Alkotmány', 12.
[22]   Ibid. 5.
[23]   Ibid. 12.

left to the individual (who holds it), this concept of freedom does not include the view that the individual should have only his or her own personal interests in mind when exercising his or her freedom.[24]

There is also an economic and moral justification for 'taking the other into account'. According to the economic justification, market competition is of particular benefit not only to the economy but also to the participants in the competition: While competing with each other, they not only improve their own position but also contribute to the development of the competitor. As János Kis formulated it, people should be allowed to pursue their own benefit, but they can benefit others by allowing them to pursue their own benefit.[25] In economic terms, mixed-motivation games are typically non-zero-sum ones; players cannot only win or lose from each other, and in many cases, competition is the best way to develop effective cooperation.[26] The moral justification of liberal freedom means that freedom does not mean complete libertinage, the selfish enjoyment of goods. Morality plays an important role in the liberal way of thinking: The behaviours shown must be compared to the moral standard. Morality, of course, is not inherent in liberalism: Augustine of Hippo remarked that '[j]ustice being taken away, then, what are kingdoms but great robberies?'[27] The liberal conception, however, links morality directly to constitutional law: 'The "moral reading" therefore brings political morality into the heart of constitutional law.'[28] This concept of fundamental rights places the centre of gravity of law on constitutional fundamental rights, and one criticism of this argues that the direct moralisation of the legal system destroys law.[29]

The liberal conception, therefore, does not abandon morality, but makes it the standard of action. This morality is universal in the sense that, in general, at the abstract level, there can be a consensus on what is moral and what is not, and consequently on what behaviour is acceptable and what is not (for example, the pursuit of peace is a virtue, war is not, patience is a virtue, impatience is not, love is a virtue, hatred is not and so on). However, universal morality does not always help to assess the morality of a particular life situation objectively. It is easy, for example, for both warring parties to blame the other for the warfare, or for spouses to blame each other for the deterioration of the relationship. In such cases, the standard of conduct will not be universal morality, but everyone will have their own moral convictions; that is, they will ultimately set for themselves the moral standard to which their actions will be aligned in principle.

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[24] János Kis, *Az állam semlegessége* (Budapest: Atlantis, 1997), 191.
[25] Ibid. 191–192.
[26] László Mérő, *Mindenki másképp egyforma. A játékelmélet és a racionalitás pszichológiája* (Budapest: Tericum, 1996), 145 and 149.
[27] Saint Augustine, *The City of God,* Liber IV, caput 4.
[28] Ronald Dworkin, *Freedom's Law. The Moral Reading of the American Constitution* (Cambridge, MA: Harvard University Press, 1996), 2.
[29] Béla Pokol, *Jogbölcseleti vizsgálódások* (Budapest: Nemzeti Tankönyvkiadó, 1994), 8.

III A comparison of biblical and liberal freedom

After examining the characteristics of the Bible and liberal freedom, we can make the following comparison:

- According to liberalism, man is inherently free, and he has preserved that freedom, and as such he is able to live freely. According to the Bible, although man was originally free (God created him free), he lost that freedom with sin, so he is currently unable to live freely.
- It reasonably follows from the previous point that, according to liberalism, the source of freedom is human nature itself. According to the Bible, the origin and source of freedom is God; the free are whosoever are set free by the Son.
- According to liberalism, the exercise of freedom depends on external circumstances (arbitrary influences, security, equality and so on), according to the Bible, freedom is independent of external circumstances.
- In terms of the content of freedom, according to both liberalism and the Bible, freedom provides an opportunity to demonstrate behaviour stemming from individual beliefs.
- According to liberalism, the measure of the exercise of freedom is morality, its purpose is the realisation of the individual's interest, and according to the Bible, the purpose of freedom is to fulfil the will of God.

The differences and similarities are summarised in the table below.

Table 1 Differences and similarities of biblical and liberal freedom

	Liberalism	Bible
The original state of man	free	free but lost his freedom
The source of freedom	human nature	God
Dependence on circumstances	dependent	independent
Content	certification of conduct	certification of conduct
Goal or benchmark	moral	God's will

Source: Compiled by the author

This study sought to contribute to the comparison of Christian freedom and liberal freedom by analysing the difference between freedom in the biblical sense and liberal freedom. The author merely pointed out that the biblical view of freedom offers a different approach than one of the defining trends in constitutional law. The correctness or incorrectness of liberalism does not follow from all this, nor that, on a biblical basis, constitutional law should be based on a trend other than liberalism. The Bible cannot be used for any of its spiritual justifications, and ultimately not for any political orientation.

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