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Legal and Political Concepts as Contextures

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1 Introduction

The role concepts play in our world is indispensable. Our institutions, juridico-political systems, ideologies and interpersonal relationships are shaped by concepts and get re-structured under the influence of concepts. But our understanding of them is riddled with difficult problems. Metaphysics, contemporary philosophy, political science, law, psychology, neuroscience and linguistics have all made important contributions in this area, but more probing questions need to be asked in order to gain an insight into the nature and operation of concepts.
Most disciplinary accounts treat concepts as mind constructs[1] (thought categories) characterized by generality or abstraction which make realities intelligible.[2] It is widely held that human beings need to categorize things, experiences and practices. They assemble ideas, order them, identify constants and generalize, that is to say, they reason from the particular to the general. By doing so, they form abstract ideas or general notions. In other words, the recept (what we see) becomes a percept through the intervention of the mind and, following reflection and imagination, a concept.[3]

Beyond a general agreement on the abstract or general character of concepts, however, there is considerable divergence in thinking about them. Concepts remain 'black boxes'. In the Platonic world, concepts were conceived as universal ideas and changeless forms, unaffected by specific realizations. They originated in the mind and had an ontological status.[4] Aristotle discerned an essential core in them. This essential core made them singularities. Gallie, on the other hand, described certain concepts as essentially contested[5] and proceeded to demonstrate the seemingly inconclusive disputes over their proper definition by elaborating on art, democracy and the Christian tradition. Influenced by Gallie, Dworkin also referred to contested concepts 'like fairness or liberty or equality' which are susceptible to different conceptions.[6] He commented on judges' attempt to

1 Its etymological roots lie in the Latin term *conceptum*.
2 Frege deviates from this in so far as he conceives concepts as abstract objects; see his 'Sense and Reference' [1892]. For a discussion, see C. Thiel, *Sense and Reference in Frege's Logic* (Dordrecht: D. Reidel, 1968).
3 See W. James, *A Pluralistic Universe* (New York: Longmans, Green and Co, 1909), 217 and L. Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell Publishing, 2001 [1953]).
4 See D. W. Ross, *Plato's Theory of Ideas* (Oxford: Clarendon Press, 1951).
5 W. B. Gallie, 'Essentially Contested Concepts', *Proceedings of the Aristotelian Society*, Vol. 56, (1956), 167-198.
6 R. Dworkin, *Taking Rights Seriously* (London: Duckworth and Co Ltd., 1977), 103 *et seq*. See also *Law's Empire* (Cambridge, MA: The Belknap Press of Harvard University Press, 1986), 31 *et seq*.

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understand the appeal of a concept and to construct some general theory of the concept.

Poststructuralists, on the other hand, drew on Levi-Strauss' notion of floating signifiers in order to focus on the political process of filling them with meaning. Accordingly, they viewed them as empty signifiers onto which human beings and collective actors could project their thoughts and intentions.[7] Cognitive linguistics, a perspective that emerged mainly in the 1980s, eschewed the Platonic conception of concepts as innate ideas and the Aristotelian assumption that concepts have a clear definitional structure. By linking language to processes of cognition, cognitive linguistics sought to understand how human beings think,[8] create grammar, conceptualize and construct meaning through discourse. By transcending Wittgenstein's notion of 'family resemblance' and examining how human beings form conceptualizations with different levels of abstraction,[9] Ray Jackendoff and Gilles Fauconnier, among others, worked on the construction of meaning, semantics, conceptual mappings and on conceptual integration. The latter term captures the mapping of two or more domains onto a new blended space which has its own dynamic structure and meaning.[10] Jackendoff focuses on the mental representations which make the acquisition of meaning and musical cognition possible.[11] He suggests that by decomposing concepts into smaller parts (conceptual primitives) which are then combined, meanings are created.[12] This body of work invites us to view concepts in relation to other concepts and to see meaning as the creative outcome of a combinational process.

In this article, I would like to make a case for a different approach and to argue that juridico-political concepts should be viewed as contextures. The closest mental picture of the latter would be a polymorphous tapestry combining many threads and depicting many scenes. This perspective differs radically from the notion that concepts are singular entities with a clear definitional structure and a core, which contains all the necessary features for membership in the referent class. Unlike the notion of concepts formed around 'cores', concepts-as-contextures invites us to appreciate conceptual relationality and interweaving. In other words, it reveals conceptual impurity, extension, linkages, improvisation and the

7 See, for example, E. Laclau and C. Mouffe, *Hegemony and Socialist Strategy* (London: Verso, 1985) and E. Laclau, 'Why do Empty Signifiers Matter to Politics?', in *Emancipation(s),* ed. E. Laclau (London: Verso, 1996), 36-46.

8 G. Fauconnier and M. Turner, *The Way We Think* (New York: Basic Books, 2003).

9 L. Tlamy, *Toward a Cognitive Semantics* (Cambridge, MA: MIT Press, 2000).

10 Fauconnier and Turner, *The Way we Think*, *supra*.

11 Ray Jackendoff holds the Seth Merrin Chair in the Humanities at Tufts University. He has developed a 'cognitive semantics' framework for understanding language and meaning and has made contributions to musical cognition; *Foundations of Language: Brain, Meaning, Grammar, Evolution* (Oxford: Oxford University Press, 2002); *Language, Consciousness, Culture: Essays on Mental Structure* (Jean Nicod Lectures) (Cambridge, MA: MIT Press, 2007).

12 R. Jackendoff, *Semantic Structures* (Cambridge: MA, MIT Press, 1990); *Foundations of Language: Brain, Meaning, Grammar, Evolution* (Oxford: Oxford University Press, 2002); *Language, Consciousness, Culture: Essays on Mental Structure* (Jean Nicod Lectures) (Cambridge, MA: MIT Press, 2007).

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incorporation of new elements into the conceptual contexture. The significance of this approach for legal interpretation cannot be underestimated. We could develop learning models based on concepts-as-contextures and use them to describe the dynamics out of disequilibrium or conflicting interpretations. Such a perspective, as I argue below, also holds the key to resolving a considerable number of socio-political and legal disagreements about the meaning of concepts and to understanding their evolution over time.

When we think about, and use, concepts we draw on ideational maps, other concepts and a variety of cognitive and cultural resources and experiences. In discussing democracy, for example, consciously or unconsciously, we call up the concepts of tyranny, state authoritarianism and oligarchy and draw on informational resources about democratic or undemocratic systems and practices.[13] Similarly, the concept of the rule of law is interwoven with liberalism, democracy, justice, natural law and natural rights and the idea that law ought to rule in a polity, as opposed to rulers' commands or wishes.[14] But in order to capture conceptual connectivity, interweaving, combination and decomposition as well as contestability within a concept, as opposed to different applications of a concept in various contexts,[15] it is important to abandon the view that concepts are singularities.
In section 2 below, I develop the argument about concepts-as-contextures and then use it to re-appraise Gallie's 'essentially contested concepts' thesis (section 3), which is still dominant in both academic literature and official discourse. In section 4 I test my argument by examining the concept of liberty. I show, there, that the different, and seemingly contested, definitions of liberty are the product of mixed articulations within the 'contexture' of liberty and of associative discursive links. Understanding liberty as a contexture and, more generally, what we need to do when we handle concepts opens up space for dealing with jurisprudential puzzles, constructive dialogue and understanding and for conflict resolution. A reflection on the implications of my argument is included in the concluding section.

13 Gallie, *Philosophy and Historical Understanding*, *supra*, 169. I should note here that I do not subscribe to Oppenheim's solution of adopting 'value-free' descriptive language in order to resolve disputes about the proper application of concepts because I do not believe that facts are value-free; see F. Oppenheim, '"Facts" and "Values" in Politics', *Political Theory* 1, (1973): 54-78, 56. I also do not share John Gray's conjecture that 'essentially contested concepts occur characteristically in social contexts which are recognizably those of an ideological dispute'; J. Gray, 'On the Contestability of Social and Political Concepts', *Political Theory* 2, no. 3, (August 1977): 331-48, 333.

14 See J. Waldron, 'Is the Rule of Law an essentially contested concept (in Florida)?', 21 *Law and Philosophy*, (2002): 137-164; *The Dignity of Legislation* (Cambridge: Cambridge University Press, 1999).

15 I am grateful to the reviewer for prompting me to elaborate on the difference between concepts-as-contextures and conceptual contextualism, that is, the concept in context approach.

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2 Juridico-political concepts as contextures

In contrast to concepts-as-singularities having cores and penumbras, the notion of concepts-as-contextures accommodates both pluralism and malleability. The word contexture denotes the action of weaving together, texture as well as the weaving together of words, sentences, and so on in a connected composition.[16] Therefore, a contexture unlocks pluralism within concepts; that is, it allows us to discern plurality, multiplicity, interweaving, superimposition and so on within a concept.[17] For it is the unity of the plurality that gives a given socio-political concept both breadth and depth.

True, the central idea of a concept gleams within the contexture, but one can also discern many links with other concepts, sub-concepts of varying weight and substantive content, ideas and perspectives more closely or loosely within the contexture. These conjunctions increase the logical range of concepts and enrich them. Individuals can unlock a wealth of information by examining a conceptual contexture closely. Conversations about a concept would resemble conversations taking place in front of a painting or a tapestry exhibited in an art gallery. Parties in such a conversation are not interested in 'winning the argument' or 'attaining a widespread agreement' about the (correct) meaning of the concept. Rather, they seek to understand it by uncovering plurality, conceptual interweaving and dissonance within a given concept. Concepts-as-contextures thus can accommodate conceptual extensions, nuanced understandings and new articulations while retaining the origin-al ideas underpinning them.

This is because the concept-as-contexture perspective is underpinned by the following:

a There exists complexity within a concept. Different conceptual threads are entangled. These can pass information throughout the ages about one another and about base pairs.

b The existence of different conceptual threads gives rise to the possibility of dissonance. But dissonance within a concept does not equate to disagreeable noise.

c Nor does the existence of dissonance require some form of 'conceptual harmonization', that is, the elimination of contradictions or the placing of two (or more) ideas or definitions or meanings of the concept together.

d It thus follows that one does not need to eliminate dissonance, incoherence and contradictions in order to conduct conversations or to reach generalized agreements about the meaning or use or the function of a concept.

16 *The Shorter Oxford English Dictionary on Historical Principles*, revised and edited by C.T. Onions (3rd edn) (USA: Book Club Associates, by arrangement with Oxford University Press, 1990).

17 It is thus consonant with structural linguistics since it puts emphasis on the creative process of conceptualization and the embeddedness of a concept within the specific environment of its users; W. Croft and D. A. Cruse, *Cognitive Linguistics* (Cambridge: Cambridge University Press, 2004); E. Vyvyan, *A Glossary of Cognitive Linguistics* (Edinburgh: Edinburgh University Press, 2007); G. Fauconnier, *Mappings in Thought and Language* (Cambridge: Cambridge University Press, 1997).

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Applying these presuppositions, the key points of the concepts-as-contextures perspective emerge as follows:

a Concepts are complex constructions. They are compound-like and it is possible to discern the assemblages and to construct routes and maps showing how they have evolved over time.
b Various elements, ideas, relations and so on are weaved together in the contexture because they share a common basic idea or element. This binds them together and guides the proper or improper use of the concept in various settings. It will also exert influence on possible conceptual mutations and the extension of a concept.
c The conceptual components do not always need to be discussed together; they can be either applied separately or discussed in succession.
d There is space for incoherence and contradictions within the contexture, if the associating links are broken and, therefore, the various components of concepts are discussed separately or become 'ideal types'.
e Postulating a 'definite' and 'fixed' conceptual meaning might result in an artificial reduction of the internal complexity of concepts.

Indeed, it could be argued that conceptual reductivism is responsible for conceptual collisions and arguments. Suppose, for example, that the rich tapestry of a concept (c), or its multidimensionality, is reduced to a part of it (p) and that it is justified with reference to it. Accordingly, p is presented as the full instantiation of c (the concept) thereby making all other parts less weighty and dispensable. If participants in a conversation are reductivists and believe that their favoured or chosen part is the true instantiation of a concept, then antagonism will ensue. Each party would demand the recognition of their favoured part as the authentic meaning of the concept.

But let us suppose that we invited reductivists to reflect on the weaknesses of the above approach by performing the following exercise. Each party could be asked to confirm if a given concept would retain its full meaning and logical range, if everything else, that is, the meanings put forward by other reductivists, were bracketed and only the meaning chosen by the party existed. If the 'bracketing exercise' yielded a less nuanced concept, then the part would be recognized to be less than the whole (the concept). Parties would then conclude that any chosen p is only an aspect of c, a part of the associative complex, notwithstanding the fact that it might be an important or central aspect. Accordingly, the concept would reveal itself as more complex and wider than p, albeit connected to it.

Suppose further that all the participants in the exercise recognized this and were invited further to examine whether their ps involved other things as well, such as either a superimposition of one concept on another, or a correlation or a differentiation or a contiguous relation among them. This simple exercise would bring into light quite clearly the complexity of the contexture. Once the complexity of the concept was revealed, participants could be asked to identify which aspect of the contexture concerned them, thereby making it the subject matter of discussion.

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The above hypothetical exercises show that our understanding of concepts is more often than not handicapped by the perspective within which we operate or the mental model we use. If the mental picture of a multi-coloured tapestry guided our thinking of concepts, we could easily grasp both variety and dissonance within concepts. For dissonance cannot be concealed by a conceptual contexture; it is an integral part of it. Within any concept, one can find dimensions or components which might be dissonant in content, but could also be associatively coherent. This is because a contexture is an articulation, an associative complex.
But if the concept-as-a-contexture notion is replaced by the concept-as-singularity notion, then concepts appear to be essentially contested. When a particular notion/aspect of the concept is removed from its associative background and is given a distinctive value or is treated as the substitute for the whole complex (contexture), then contestation ensues. The destruction of links creates the impression that the part stands for the whole.[18] The different parts become contenders for the 'proper meaning' of the whole and stand in opposition to one another. Their interdependence and connections to the whole are sidestepped.

What are the implications of the above argument for juridico-political life? Given the strife associated with disagreements about the meaning of central socio-political and legal concepts, if parties in these disputes accepted variation and plurality within a concept and engaged critically with discussion of its part(s) *qua* part(s) or of their links, then discussions would be constructive and beneficial. Evidently, some parts may be more central to the meaning of the concept and cannot be eliminated without a loss in the richness of the concept. Others may be more peripheral and, with the passage of time, can be shaken off without compromising the meaning and the richness of the concept. On the other hand, other notions, new ideas and links stemming from new experiences, socio-political practices and reflection may also enter and coalesce in the contexture, thereby

18 This does not mean that the links should remain intact; circumstances outside the concept itself may determine that a certain dimension of it might be apposite in certain contexts.

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increasing it breadth.[19] Their initial 'encroachment' will eventually become part of the concept's contexture and could even cause a conceptual reformation or a deformation under certain circumstances. Evolution in a concept and evolution of a concept therefore take place because the boundaries of the contexture are elastic and its 'texture' is multi-threaded. But such a perspective invites the reappraisal of Gallie's 'essentially contested concepts' thesis.

3 Essentially contested concepts?

In March 1956 Gallie (1912-1988) delivered a paper at the meeting of the Aristotelian Society in London in which he argued that certain concepts are essentially contested. His 'essentially contested concepts thesis'[20] was based on the observation that certain abstract conceptual categories are subject to controversial interpretations. Their use 'involves endless disputes about the proper uses on the part of their users'.[21] Their criteria of correct application thus compete among one another thereby preventing us from assigning priority to one of them. Democracy, art, science, justice and religion (Christianity) were the concepts mentioned by Gallie.[22]

Since the publication of Gallie's article, many more concepts have been included within the ambit of essentially contested concepts. Power, authoritarianism,

19 My argument, here, differs from Sartori's 'ladder of generality'. Giovanni Sartori made an important contribution by developing the notions of conceptual travelling and conceptual stretching. Conceptual travelling refers to the migration of concepts to new areas of application while conceptual stretching denotes the distortion that occurs in an attempt to provide a fit between an existing category with a given meaning and new cases. Sartori developed this schema with a view to addressing difficulties in comparative research and the problems that arise in the process of the adaptation of categories to a different context of inquiry. The basic premise of this thinking was that the extension of a concept to new cases is accompanied by a process of intension, that is, a change in the set of meanings that define this category to the degree necessary to fit the new contexts (conceptual stretching). He drew thus the coordinates extension and intension (he called this 'the ladder of generality') and showed that a high degree of extension is accompanied by a high degree of intension. This unavoidably makes broad comparative research difficult and thus researchers should display sensitivity to contexts. See G. Sartori, 'Conceptual Misformation in Comparative Politics', *American Political Science Review* 64, (1970), 1033-1053; G. Sartori 'Guidelines for Concept Analysis', in *Social Science Concepts: A Systematic Analysis,* ed. G. Sartori, (Beverly Hills: Sage 1984). Sartori's argument was refined by Collier and Mahon who argued that there exist family resemblance categories that mitigate the difficulties identified by Sartori. They also identified radial categories, drawing on Lakoff's work, where the overall meaning of a category is anchored in a central sub-category which corresponds to the best case or prototype of the category and suggested that by adding an adjective to radial categories, such as democracy, a researcher could avoid conceptual stretching; D. Collier and J. E. Mahon, 'Conceptual "Stretching" Revisited: Adapting Categories in Comparative Analysis', *American Political Science Review* 87, no. 4, (December 1993), 845-855. See also G. Lakoff, *Women, Fire and Dangerous Things: What Categories Reveal about the Mind* (Chicago: University of Chicago Press, 1987).

20 W. B. Gallie, 'Essentially Contested Concepts', *Proceedings of the Aristotelian Society* Vol. 56, (1956), 167-198.

21 Gallie, *ibid.*, 169.

22 W.B. Gallie, *Philosophy and Historical Understanding*, (London: Chatto and Windus, 1964), 156.

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democracy, interest, liberalism, freedom, the rule of law, autonomy, sovereignty, republicanism, rights and equality have been noted.[23] In fact, since the critique of essentialism postulated by post-structuralism and post-modernism in social sciences in the 1990s, almost all abstract concepts could lend themselves to endless contestation and incommensurable interpretations.[24]

Gallie believed that essential contestation is an inevitable consequence of the normative and empirical scope of abstract ideas. He pointed out that philosophical enquiries have always had an agonistic character, manifested in competing arguments and explanations,[25] and used the metaphors of 'championship' and 'champions' in order to capture this. This imaginary sport model[26] led him to formulate five necessary criteria which essentially contested concepts must display; namely, a) they must be appraisive in the sense that they signify or accredit some kind of valued achievement; b) this achievement must be of an internally complex character; c) the accredited achievement must be initially variously describable; d) the achievement must be modifiable, that is, open in character and, finally, e) each party recognizes the fact that its own use of it is contestable and that other parties might use different criteria in applying the concept. In anticipating the criticism that the meaning of a concept might be radically confused, he added two further criteria; namely, that the concept derives from an original exemplar whose authority is acknowledged by the parties and that the contestation enables the sustaining or development of the original exemplar's achievement.[27] He argued that these conditions 'embody a historical approach to, and an appreciation of,

23 Kekes added more examples, such as, *inter alia*, logic, morality, culture, rationality, philosophy and so on. See J. Kekes, 'Essentially Contested Concepts: A Reconsideration', *Philosophy and Rhetoric* 10, no. 2, (1977), 71-89. Interestingly, Gallie excluded the concepts of science, law, government and freedom from the ambit of 'essentially contested concepts'. The reasons he gave are not clear; he argued that 'he was doubtful whether any one of these concepts can be brought satisfactorily under the framework of ideas by means of which [he] I defined essentially contested concepts' and this is because 'they seem to be tied to more specific aims and claims', while essentially contested concepts are 'achievement' concepts; *ibid.*, 190. He added 'in general, I would say, it is in those fields of human endeavour in which achievements are prized chiefly as renewals or advances of commonly accepted traditions of thought and work that our concepts are likely to prove essentially contested'; *ibid.*, 190.

24 Clarke distinguished between contestation applying to the concept itself (contested concepts) and contestation applying to some underlying non-conceptual disagreement (contestable concepts); see B. Clarke, 'Eccentrically Contested Concepts', *British Journal of Political Science* 9, no. 1, (January 1979), 122-26, at 123-24. However, MacIntyre referred to the contestability of social concepts and distinguished between the application of a concept in normal circumstances and in abnormal or radically new situations; A. MacIntyre, 'The Essential Contestability of Some Social Concepts', *Ethics* 84, no. 1, (October 1973), 1-9.

25 W.B. Gallie, *Philosophy and Historical Understanding*, (London: Chatto and Windus, 1964), 153-156. For a more nuanced explanation of political disagreements, see A. Mason, 'On Explaining Political Disagreement: The Notion of an Essentially Contested Concept', *Inquiry* 33, no. 1, (March 1990), 81-98, at 89 *et seq*.

26 These are Gallie's own words; *Philosophy and Historical Understanding*, 158-160.

27 *Ibid*., 168.

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the special character of essentially contested concepts and enable us to understand how they came to be usable in a rather unusual way'.[28]

Although understanding how one uses a particular definition of a concept and the changes in its meaning over time is important, the notion of 'achievement concepts' is problematic. Gallie assumed equivalence between the definition of an abstract concept and its concrete use in various discursive articulations,[29] thereby bracketing the fact that different uses of a concept in discursive articulations do not *necessarily* demonstrate that there exists an unavoidable disagreement about the meaning of a concept. Discursive articulations may contain a number of elements, such as different components of a given concept, causes, consequences, implications, evaluative judgments, different factual situations and different ideological points of view, which would have to be unpacked carefully in order for one to understand how and why a concept is used in a particular way.

Arguably, the links between a concept (x) and a discursive articulation which includes concept x (abcdx) might be associatively coherent, in that we recognize elements of x in it, but they could be substantively incoherent thereby precluding us from associating abcdx (the discursive articulation) with the meaning of concept x.[30] To use an association or a discursive articulation as a proxy for a concept and to infer from different, and often competing, uses of a concept the existence of an essential contestation about its meaning is incorrect. Nor would it be wise to underestimate the 'internal complexity' of a concept and to confine it one of its components: democracy, for example, cannot be reduced to either 'increased equality' or 'self-government' or 'the power of the majority of citizens to choose (and remove) governments'.[31] It encompasses all of them and many ideas and dimensions. It is a contexture and not a singularity. The same applies to other key juridico-political concepts, as I demonstrate below with respect to liberty.

4 The liberty contexture: an illustration of concept-craft

In this section I wish to substantiate further my argument by examining the *contexture* of liberty. Unfortunately, space limitations do not permit me to include

28 *Ibid.*, 168.

29 The term discursive articulation is broader than the notion of instantiation or realization of a concept. This is because it can capture usages of a concept which could not classify as concrete realizations. In this respect, my argument is different from Dworkin's distinction of the concept of fairness and conceptions of fairness; 'The Jurisprudence of Richard Nixon', *The New York Review of Books* 18, no. 8, (May 1972), 27-35.

30 Hume furnished this insight in his *Enquiry Concerning Human Understanding*; , ed. L.A. Selby-Bigge (Oxford: Oxford University Press, 1902).

31 *Philosophy and Historical Understanding*, 178-180. See also W. Connolly, 'Essentially Contested Concepts in Politics', in *The Terms of Political Discourse*, ed. W. Connolly, (Lexington: Heath, 1974), 10-44, 14.

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more concepts. I chose liberty (or freedom)[32] as a case study because it has been one of the most 'contested' concepts in political and legal theory as well as in political discourse.[33] It has invited multifarious definitions and interpretations over time, and has given rise to seemingly irreconcilable splits. Attempts to reduce the conflicting interpretations have manifested themselves in the drawing of typologies of freedom and the formulation of a synoptic theory of freedom.[34] Following the argument put forward in the previous section, if I could demonstrate that the different, and seemingly contested, definitions of liberty are due to the blending of aspects of liberty with other added 'external' or 'internal external' considerations and thus to the development of associative discursive links, then Gallie's thesis would have proven to be incorrect.

In this exercise, discovering (or uncovering) the meaning of liberty shared by most definitions of it[35] is far from a simple exercise. Although liberty has been praised as the worthiest and holiest thing in human beings[36] and an expression of human dignity,[37] it has been defined in various ways. 'Old' definitions of it refer to an unimpeded motion or some form of action. The ancient Greek word for liberty, eleutheria, was etymologically derived from the verb 'elauno' which means

32 I use the terms interchangeably. Most of the literature on this subject does so too; A. Ryan, *The Idea of Freedom: Essays in honour of Isaiah Berlin* (Oxford University Press, 1979). See also Milton, *Aeropagitica* (1644); J. Locke, *Two Treatises of Government* (1690); *Essay Concerning Human Understanding* (1690); J. S. Mill, *On Liberty* (1859); H. Laski, *Liberty in the Modern State* (New York: Harper and Brothers, 1930); A. Meiklejohn, *Political Freedom* (New York: Harper and Brothers, 1960); H. J. Muller, *Issues of Freedom* (New York: Harper and Brothers, 1960); C. Bay, *The Structure of Freedom* (Stanford: Stanford University Press, 1958); O. Handlin and M. Handlin, *The Dimensions of Liberty* (Cambridge, MA: Harvard University Press, 1961). But compare, here, Hannah Arendt who defines liberty as the absence of restraint while freedom is viewed to be a positive opportunity to engage in action; H. Arendt, *What is Freedom?* (New York: Penguin, 1993). See also P. Birmingham, *Hannah Arendt and Human Rights: The Predicament of Common Responsibility* (Indiana University Press 2006), 61. Compare also H. Pitkin, 'Are Freedom and Liberty twins?', *Political Theory* 16, (1998), 523; G. MacCallum, 'Negative and Positive Freedom', *Philosophical Review* 76, (1967), 312-34.

33 R. Dworkin, *Justice for Hedgehogs* (Cambridge, MA: The Belknap Press of Harvard University Press, 2011), chapter 7; E. Nelson, 'Liberty: One concept Too Many?', *Political Theory* 33, no. 1, (2005), 58. On freedom as an essentially contested concept, see R. Grafstein, 'A Realist Foundation for Essentially Contested Concepts', *The Western Political Quarterly* 41, no. 1, (March 1988), 9-28. See also Connolly, *The Terms of Political Discourse, supra*, 140. Connolly also describes it as 'slippery'.

34 See R. McKeon, 'Philosophic Differences and the Issues of Freedom', *Ethics* Vol. LXI, no. 2, (1951), 125. For a review, see V. J. McGill, 'Conflicting Theories of Freedom', *Philosophy and Phenomenological Research* 20, no. 4, (June 1960), 437-451, 437 *et seq*. For an interesting perspective on the utility of essential contestability, see J. Gray, 'On the Contestability of social and political concepts', *Political Theory*, *supra*, 344-346.

35 On this point, I concur with J. Gray; see his 'On Liberty, Liberalism and Essential Contestability', *British Journal of Political Science* 8, no. 4, (October 1978), 385-402. See also Christine Swanton's reflections on conceptual cores; 'On the "Essential Contestedness" of Political Concepts', *Ethics* 95, no. 4, (July 1985), 811-827.

36 G. W. F. Hegel, *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford University Press, 1942).

37 J. Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Oxford University Press, 2011), 221.

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'to walk' thereby linking it with an ability to move forward without any obstacle or impediment or interference by others. If one is unable to move or to act, either literally or metaphorically, then (s)he lacks self-direction or self-determination. (S)he is unable to control his/her self,[38] actions and destiny.[39] In this respect, (s)he cannot achieve self-realization or self-fulfilment.[40]

Unimpeded movement or action towards something or someone is very important since 'life without liberty is like a body without spirit'.[41] According to Hobbes, 'liberty, or freedom, signifieth properly the absence of opposition'.[42] The latter referred to 'external impediments of motion'.[43] A free person thus 'is he that in those things which by his strength and wit he is able to do, is not hindered to do what he hath the will to do.'[44] Although Hobbes focused on external impediments,[45] we now recognize that there are internal impediments to free action, such as, a phobias, addictions or simply a weak sense of self-esteem or confidence or, indeed, ignorance.[46] There also exist what might be termed 'external internal' impediments: the external environment effectuates changes in the individual psyche thereby leaving human beings feeling disempowered and demoralized and thus unable to function properly.

Individuals suffering from depression feel incapacitated; they are unable to do basic things and plan their future actions. It is as if one lacks a pair of legs. The same could be said about those in situations of abject poverty; individuals feel unable to experience freedom, make choices and plan their future. Undocumented migrants experience the same 'unfreedom'; living in fear of being apprehended by the police and being deported at any time creates a real sense of

38 This is Plato's notion of freedom. See R. Stalley, 'Plato's Doctrine of Freedom', *Proceedings of the Aristotelian Society*, New Series, Vol. 98 (1998), 145-148.

39 Raz argues that the capacity to choose for oneself freely is what makes a person; *The Morality of Freedom*, (Oxford: Oxford University Press, 1st edn, 1988), 190. See also M. H. Kramer, *The Quality of Freedom* (Oxford: Oxford University Press, 1st edn, 1988).

40 Some would argue that one is free in order to promote his/her general happiness; W. K. Weinstein, 'The Concept of Liberty in the Nineteenth Century English Political Thought', *Political Studies* 13, (1965), 145.

41 K. Gibran, *The Vision: Reflections on the Way of the Soul* (White Cloud Press, 1st edn, 1994). According to Raphael, freedom from restraint is the 'common sense approach to liberty', D. D. Raphael, *Moral Philosophy* (Oxford, Oxford University Press, 1994), 83.

42 T. Hobbes, *Leviathan*, first published 1651 (Penguin, 1985); L. Haldenius, 'Liberty, Law and Leviathan: Of Being Free from Impediments by Artifice', *Theoria: A Journal of Social and Political Theory* 59, (2012), 1-20; D. Van Mill, 'Hobbes's Theories of Freedom', *Journal of Politics* 57, no. 2, (1995), 443.

43 *Leviathan*, *supra* 129.

44 *Ibid.*, chapter 21.

45 Pettit has criticized Hobbes's definition of freedom on the ground that it presupposes an initial ability of the agent to carry out an unimpeded action at the initial stage of pre-obstruction. In this respect, he argues that one's inability to walk due to a disability does not imply that one's freedom has been restricted. I disagree with Pettit; 'Liberty and Leviathan', *Politics, Philosophy and Economics* 4, (2005), 131, 138. Compare also his article entitled, 'Freedom as Antipower', *Ethics* 106, no. 3, (1996), 576.

46 On ignorance, see T. Aquinas, *Summa Theologica*, Part I-II, Q.6, A.2, 8.

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entrapment and restriction.[47] Such unfreedom gives rise to mental and psychological stress; individuals have a real sense that nothing changes and feel that they are condemned to a hopeless fate.

The preceding discussion was based on conjunctions, and not oppositions or dualisms, such as negative liberty versus positive liberty. Freedom from (the absence of an impediment and constraint on motion) served as a prerequisite for freedom to,[48] that is, the freedom to think, act and to choose among options (self-determination). Both, in turn, became prerequisites of self-actualization or self-fulfilment. In fact, one might argue that the latter is the true freedom while the former two sides of freedom (i.e., positive and negative), are its conditions of possibility. Accordingly, the conditions, or prerequisites, of freedom cannot be elevated into constituents of freedom or be made equivalent to freedom. This means that the positive versus negative liberty debate omits the crucial dimension of 'freedom for'. The latter refers to the purpose of freedom – a dimension aligned to a more spiritual understanding of the human existence. As Matthew Arnold, the English poet, put it very clearly, 'freedom is a very good horse to ride, but to ride somewhere'.[49]

But let us suppose that one attempted to break the above conjunctions thereby turning the various elements into 'ideal types'. Then contrasting conceptualizations of freedom would emerge: if one increases the gravity of unimpeded motion or action, then s(he) finds herself/himself within the realm of Mill's notion of the absence of restraint. If, on the other hand, one highlights the element of action towards something, then 'freedom to' (positive freedom) emerges as the main definition of freedom. Here, Oakeshott's notion of acting in a way that allows one to take control of his/her life,[50] that is, the ability to make life-defining and life-improving choices becomes more important than unimpeded action.

Once again, a focus on life-defining choices brings forth the relation between freedom and morality, thereby leading us to a different part of the contexture. Since, as Berlin noted, the self is divided between a lower self-enslaved by passions and a higher self guided by reason,[51] one is 'practically' free if his/her free will is disentangled from 'necessitation through sensuous impulses'.[52] In fact, it

47 I am indebted to the doctoral thesis of Mr. Charles Gosme on Limbo Spaces between Illegal and Legal Stay (Institut d'Etudes Politiques de Paris, Sciences Po, 2014).

48 This argument was also made by Lon Fuller in 1955. In 'Freedom – A Suggested Analysis' he criticized what he saw as the deterioration of freedom manifested as a shift of interest away from the notion of 'freedom to' in favour of 'freedom for', but he also noted that 'freedom for' may be necessary to make 'freedom to' meaningful; *Harvard Law Review* 68, no. 6, (1955), 1305-1325, 1313.

49 Cited in R. Williams, *Culture and Society, 1780-1850* (London: Chatto and Windus, 1958), p. 118.

50 H. Pitkin, 'Michael Oakeshott's On Human Conduct', *Political Theory* 4, no. 3, (1976); E. Podoksik, 'Oakeshott's Theory of Freedom as Recognised Contingency', *European Journal of Political Theory* 2, (2003), 57.

51 I. Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press: 1969), 122.

52 Immanuel Kant, *Critique of Pure Reason*, trans. M. Weigelt (Penguin 1st edn, 1997).

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has been suggested that it is this moral freedom that marks an individual's self-determining will. Acting as a moral being is the pathway to freedom.[53]

Engaging in the process of taming passions and realizing one's higher self[54] was also the basis of the Hegelian notion of freedom. Being a free and reflective individual is thus a question of self-determination – the opposite of subjection. But since for Hegel freedom can only be achieved in an ethical community, which is state-centric, self-determination implies a self qua member of a historical institution. In this way, freedom becomes rooted and historical. But it can also easily become an unfreedom since the individual is subjugated to the commands of the state which represents the general will.[55] Passive compliance and conformism become prioritized at the expense of individual self-determination, notwithstanding the Hegelian theoretical construct of the merger of one's own higher will and the will, or the objectified mind, of the state. Through submergence to the state, conceived of as 'the actuality of the ethical idea', the individual takes part in the maintenance of the existing institutional order. In the Hegelian schema, 'real freedom' and authority/compliance co-exist, thereby concealing the contradiction between the two.

What one notices, here, is the leap from the question of 'what freedom is' or 'what freedom is for' to the more juridico-political question of how freedom can be realized. This brings to the foreground the relation between freedom and the law as well as the relation between freedom and the wider political order. If one focuses on the relationship between law and freedom, then Mill's ingenious solution of adding a 'harm' test to legitimate state interventions culminating in the restriction of liberty becomes relevant. Building on the harm principle and Mill's non-paternalist belief that an individual's physical or moral good does not warrant a restrictive state intervention, the discussion proceeds to examine the relation between liberty and paternalism.[56] But this debate is not about the meaning of freedom per se, but about how, and under what circumstances, it is possible to

53 Nelson Mandela espoused this. See also R. Bassett, *The Essentials of Parliamentary Democracy* (New York: Macmillan, 1935), 10.

54 'Being one's own master' according to Berlin, *supra*, 131.

55 G. W. F. Hegel, *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford: Oxford University Press, 1942); P. Franco, *Hegel's Philosophy of Freedom* (New Haven: Yale University Press, 1999); F. Neuhauser, *Foundations of Hegel's Social Theory: Actualising Freedom* (Harvard: Harvard University Press, 2000); S. Dyde, 'Hegel's Conception of Freedom', *The Philosophical Review* 3, no. 6, (1894), 65.

56 B. Baum, 'J.S. Mill on Freedom and Power', *Polity* 32, no. 2, (1998), 187. It has been pointed out that paternalism 'tends to degrade people, to delay their growth and self-development, and to put obstacles on the discovery of the truth'; R. Cohen-Almagor, 'Between Autonomy and State Regulation: J. S. Mill's Elastic Paternalism', *Philosophy* 87, no. 4, (2012), 557, 573; F. A. Hayek, *The Constitution of Liberty* (Chicago: Chicago University Press, 1960).

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realize freedom,[57] thereby shifting the attention to a different part of the (liberty) contexture.

Similarly, an incorporation of considerations about the nature of society and the capitalist system of socio-economic relations would add another important dimension to the debate, namely that of equality. The contexture of liberty thus becomes more complex and richer as equality considerations are selectively mapped onto it. Freedom, as the absence of constraints and interference from others, makes little sense to those lacking socio-economic resources.[58] If one ventures into the realm of economics and the capitalist mode of production, then (s)he witnesses the transformation of freedom into an 'opportunity concept'.[59] Freedom to choose, freedom to consume goods and thus the freedom to realize one's self by satisfying one's materialist desires become possible through the unfreedom of others, that is, the subjection of human beings to exploitative chains of productive relations. These considerably increase the freedom(s) of the owners of the means of production and of the beneficiaries of the capitalist market economy. They can also legitimize their wealth acquiring practices by focusing on the system's production of goods and services which filter down to working classes thereby satisfying their needs and thus enhancing their freedom as well. In this way, freedom can be used to legitimize systemic inequalities and the maintenance of privileges and power for the holders of wealth.

The foregoing discussion shows that there exists no essential contestability in liberty itself. Instead, we have an appearance of contestability as various dimensions of it are stretched, become connected with other notions and considerations, be they, law, equality, morality, rationality, economics and so on and are thus integrated into wider, but also different, discursive articulations which inevitably alter liberty's meaning and contextual application.[60] Questions of what freedom might mean become normative questions about how best to realize it and juridico-political questions about what kind of rules, frameworks and culture are needed in order to make it effective. Here, political ideologies and historical traditions associated with distinctive political cultures contribute to creating special variants of freedom.

57 Compare, here, John Locke's belief that the end of law is not to restrict freedom or to abolish it, but to help maintain it and increase it; G. Smith, *The System of Liberty: Themes in the History of Classical Liberalism* (Cambridge: Cambridge University Press, 2013), 138. Compare also P. Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), 90.

58 Compare Van Parijs's notion of 'real freedom'; P. Van Parijs, *Real Freedom for All, What (if anything) can justify capitalism*? (Oxford: Clarendon Press, 1995).

59 C. Taylor, 'What is Wrong with Negative Liberty?' in *Contemporary Political Philosophy,* eds. R. E. Goodin and P. Petit, (Oxford: Blackwell, 2006), 388.

60 D. Raphael, 'Tensions Between the Goals of Equality and Freedom', in *Equality and Freedom: International and Comparative Jurisprudence*, ed. G. Dorsey, (Dobbs Ferry: Oceana, 1977).

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The same applies with respect to the so-called third dimension of liberty, that is, the freedom to realize oneself in a world shared with others.[61] The liberty contexture, here, centres on the links between liberty and the (social) self which develops and grows.[62] This means that negative and positive liberty could become instrumental goods even though the categories of 'intrinsic' and 'instrumental' are shifting.[63] As Cooley commented, 'the good self must be what Emerson called a crescive self' who must mark across the 'waste abyss of possibility' and lead out the energies to congenial exertion.[64] Self-development is a continuous process and this process of anthropoplassy requires an understanding of the self and the other as well as respect for the self and the other. As Dewey put it, 'our idea compels us to seek freedom in something which comes to be, in a certain kind of growth'.[65]

But given that the personal and the social are aligned, any adjustment and development of the self which leads to the formation of a better self cannot but affect the community as a whole. Liberty is thus important in the process of a simultaneous betterment of oneself and of society.[66] For Green, individual self-realization and contribution to the common good were complementary goals. Freedom is to be enjoyed in and through the community. There is always a mutual relationship between the individual and the community in which the individual lives.[67]

61 Quentin Skinner coined this term in order to distinguish self-realization from self-mastery in Berlin's work. See Q. Skinner, 'A Third Concept of Liberty', in *Contemporary Political Philosophy*, eds. R. E. Goodin and P. Pettit, (Oxford: Blackwell, 2006); W. J. Waluchow, *Free Expression – Essays in Law and Philosophy* (Oxford: Oxford University Press, 1st edn 1994); D. Priel, 'Lon Fuller's Political Jurisprudence of Freedom' (Osgoode Research Paper No. 55, 2013); L. Green, 'What is Freedom For?' (Oxford Legal Studies Research Paper No 77, 2012).

62 J. Dewey, *Outline of a Critical Theory of Ethics* (New York: Greenwood Press, 1969 [1891].

63 For example, if my email communications are intercepted by my employer without my knowledge and consent, then my freedom of expression, which strikes at the core of my right to privacy and to the confidentiality of my communications, is restricted and, in highlighting my injury, I would have to defend it as an intrinsic good. Emerson made this point in the 19th century by arguing that liberties can take both forms. When a liberty is not restricted and thus it is not necessary to elevate it into an intrinsic good in order to correct an injury inflicted by the state or a third party, it then serves as a means of attaining the good society and realising the self. See his essay on 'Self-Reliance' in Emerson's Essays (Boston: Fields, Osgood, 1869). Compare T. Scanlon, 'A Theory of Freedom of Expression', *Philosophy and Public Affairs* 1, no. 2, (Winter 1972), 224-226. See also Habermas's conception of individual rights, contra the liberal conception of political life, as co-original with democratic self-rule in that without them the exercise of popular sovereignty would be rendered impossible; J. Habermas, *The Inclusion of the Other: Studies in Political Theory* (Cambridge: MIT, 1991); C. Larmore, 'The Moral Basis of Political Liberalism', *The Journal of Philosophy* XCVI, no. 12, (December 1999).

64 C. H. Cooley, *Human Nature and Social Order* (New York: Charles Scribner's Sons, 1902), 367.

65 J. Dewey, L. A. Hickman & T. M. Alexander (eds.), *The Essential Dewey: Volume I: Pragmatism, Education, Democracy* (Indianapolis: Indiana University Press, 1998), 311.

66 P. Pacheco, 'T.H. Green: a modern revival of positive freedom', *UCL Juris. Review* 8, (2008), 155-176; *T H Green Lectures on the Principles of Political Obligation* (Cambridge: Cambridge University Press, 1986), 115; W. L. Weinstein, 'The Concept of Liberty in Nineteenth Century English Political Thought', *Political Studies* (1965) 145-62.

67 Dewey believed that the 'naked individual' is a deliberate and false construction of the 17th and 18th century thinking; *Individualism Old and New* (Amherst: Prometheus Books, 1999).

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Cooley presented an even more complex picture by noting that the groups to which individuals belong interlace with one another so that several of them may pass through the same individual.[68]

For several decades we have been accustomed to believe that freedom is an essentially contested concept. Rival notions of freedom compete for prevalence and it is thus impossible to reach an agreement on a single, and correct, definition of it. The foregoing discussion showed that there is an alternative way of looking at freedom and at other concepts, in general. This is the notion of concepts-as-contextures. In a contexture, a number of ideas, considerations, sub-concepts and links with other concepts and considerations coalesce. This coalescing does not result in producing orderly and fully coherent conceptual articulations, as shown above. The incoherence and contradictions become clearly visible when the links among the elements of the contexture are broken and any part of it is given more weight or is seen to capture the 'true' meaning of freedom. In such a case, freedom is construed as a singularity and the reality of the contexture is pushed into the background.

5 Conclusion

In the foregoing section I sought to avoid reductionism and refrained from criticizing the 'rival' conceptions of freedom. Nor was my intention to argue that our thinking about freedom has been shaped by incorrect beliefs and that, unless these are corrected or abandoned, we will not be able to comprehend the 'real' meaning of freedom. Rather, my aim has been to show how some rather undertheorized assumptions about the essential contestedness of freedom could lead to intellectual cul-de-sacs and that much is to be gained by the perspective of freedom as contexture. By changing the mental model we use, we can change how concepts are perceived and interpreted. In judicial interpretation, once the full scope of a concept is revealed, its weight or the weight of any of its parts can be fully appreciated and balanced. In our everyday life, too, as we think with, and argue about, concepts, if we disassemble a conceptual contexture, identify the meaning of its part that is relevant to given context and clearly communicate what we mean by invoking freedom or democracy or another concept, acknowledging at the same time that there is much more in them, meaningful discussions and agreement are possible.

Conceptual contextures are complex and polymorphous. They contain various ideas and prescriptions sprang from human experience and reflection, links with other concepts as well as considerations derived from their application in various factual contexts. Like rich tapestries, they are neither simple nor internally homogenous (sections 3 and 4 above). Their polymorphism manifests itself in the presence of elements and linkages which, if dismembered, could be substantively

68 G. H. Mead, 'Cooley's Contribution to American Social Thought', *American Journal of Sociology* 5, XXXV, 693-706.

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incoherent while they are associatively coherent (see the discussion above on the variants of freedom). In addition, they are characterized by incompleteness. As the world changes, scientific enquiries evolve and the contexts of their application increase, concepts as contextures become richer, broader and more diverse. It is, perhaps, inevitable that conceptual contextures expand and obtain more threads, linkages and elements of radically different types. They would not be able to serve human beings in society otherwise.

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