

Conceptions of Freedom in the Use of the Open Public Space: The Foruen Eparantza in Oñati as an Illustration

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Abstract

Freedom is a mantle that covers all aspects of existence. Just as on a cold winter night, its absence is noticeable. But not only in the absolute absence of freedom must we think of it. Neither should we think of freedom in binary terms (there is or is not). Freedom is much more than a concept, we live, enjoy, exhaust, and suffer it. Freedom carries responsibility in the realm of the inner and especially in the public realm. This work suggests the study of freedom in the realm of the public and seeks to link it with the place where freedom is exercised. And being the public freedom the object of study of this work, I will review the great minds that studied it before, the norms that regulate it and the perception of the individuals that live in the town of Oñati. This dissertation unveils the amount, size, color, and texture of the Oñati idea of freedom.

Key words

Freedom; law; liberty; perception; public space; public sphere

Resumen

La libertad es un manto que cubre todos los aspectos de la existencia. Sólo en una fría noche de invierno, su ausencia se hace presente. Pero, no sólo en la ausencia absoluta de libertad debemos pensar en ella. Tampoco debemos pensar en ella en términos binarios (existe o no). La libertad es mucho más que un concepto, la vivimos, disfrutamos, agotamos y sufrimos. La libertad tiene aparejada la responsabilidad, en el reino de lo interno y especialmente en el reino de lo público. Este trabajo sugiere el estudio de la libertad en el reino de lo público y busca vincularla con el lugar en que es ejercida. Y, siendo la libertad pública el objeto de estudio de este trabajo, repasaré las grandes mentes que la han estudiado en el pasado, las normas que la regulan y la percepción de los individuos que viven en el pueblo de Oñati. Esta tesina revela la cantidad, tamaño, color y textura de la idea de libertad en Oñati.

To my parents who taught me to pursue my dreams. To my wife, Ana, who has followed me to the end of the World to reach them. Especially to my mentor and friend, Jorge Cerdio, whose advice, enthusiasm and support are printed in every word of this work.

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Palabras clave

Libertad; derecho; percepción; espacio público; esfera pública

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1. Introduction

D.A. Kerimov (1977) ensures that there is hardly another word in the world more lofty, noble and misunderstood as freedom. "In a sense, freedom is like the air we breathe. We do not ask what this air is, we do not spend time discussing it, arguing about it, thinking of it. That is unless we are in a crowded, stuffy room and find breathing difficult" (Bauman 1988, p. 1). Living in Mexico, a country mostly seen as free, I started feeling unfree a few years ago. Hence, I started wondering about the source of that feeling (or perception) of unfreedom, as a product of this suffocation. My first thoughts pointed to the government, as a source of regulation that forbids people to pursue their own way of life; also, blamed the society by being oppressive, especially to the working class. My inquiry led me to look at the security issues that have lessened the freedom of the inhabitants of the country. Following Zygmunt Bauman's opening words on his book *Freedom*, I never thought about freedom until I found breathing difficult.

The present dissertation aims to make a journey from the philosophical through the normative concept of freedom to land on the social perception of that concept. At the end, we will be able to understand what freedom is and, by understanding that, contribute to a better way to protect freedom for those that now feel that it is difficult to breathe. Aware of the complex nature of the subject, I circumscribe my study to the conception and perception of freedom in the open public space. Hence, the two research questions I will answer are: How is Freedom in Open Public Spaces conceptualized in the town of Oñati? And How is Freedom in Open Public Spaces perceived by Oñati townspeople?

The hypothesis is that the open public space has been conceived as a free space where people can develop their lives as they see fit, but in fact, the open public space has become the locus where multiple social actors struggle for control, thus framing the freedom that can be developed in the public space. The standpoint of the research is that western philosophical and legal tradition has enhanced the expansion of negative freedom, missing its positive dimension, i.e. freedom of being. Freedom is a comprehensive concept that cannot be understood as positive or negative, those are only emanations of the same phenomenon.

Sociologically -Bauman (1988) argues- freedom is itself a social fact, produced and endowed with the meaning it happens to carry at a particular society, time and place. The methodology of the dissertation will follow the interpretivist paradigm, usually associated with qualitative methods in social sciences, sociology being concerned with the understanding of social action and its consequences. "[T]he human world is a world of meaning in which our actions take place on the basis of shared understandings. To understand society, we need to understand people's motives and interpretations of the world" (Walter 2013, p. 17).

The dissertation carries out a document analysis that includes: (i) the study of a limited number of Authors that have studied liberty, freedom, public sphere, and public space from a philosophical and sociological standpoint; and, (ii) the study of the norms concerning the public space and freedom in the town of Oñati. The analysis then draws from a survey of a sampled limited number of residents in Oñati, which was conducted to unveil the perception of the freedom in the use of the Foruen Enparantza in the town of Oñati as an example of an open public space.

The dissertation is organized in three chapters. The second chapter, *Philosophical Understandings of Freedom and Public Space*, follows Gyan S. Sharma (1977), who holds that the literature of freedom is the expression of the values that presuppose freedom. In other words, literature about freedom is an expression of the reality or at least the perception of freedom in a given society. The chapter contrasts the concepts of (i) public sphere and public space; and, (ii) liberty and freedom. In the first part, I will analyze the concept of the public sphere, understood as an intangible phenomenon pertaining to the realm of ideas and political discourse. Public space is

unveiled as the factual space where freedom can appear, by distinguishing the public from the private. The second part of the first chapter will also distinguish between liberty and freedom and its positive and negative conceptions. I suggest there is a cognitive link between the concepts of public sphere and liberty and public space and freedom as pertaining to the political and social realm respectively.

The third chapter, *Socio-Legal Understandings of Freedom and Public Space*, makes a normative delimitation of freedom and the Open Public Space, tied to the positive conception of freedom made by the Spanish state as well as the local authorities. From this delimitation, a normative concept of the freedom in the use of the open public space unveils a rules inventory in this matter. The second part of this chapter analyses the results of the survey conducted in the town of Oñati to understand the perception of freedom in the use of the open public space, specifically the Foruen Enparantza. This is the chapter where the relationship between the normative conception of freedom and the social perception of freedom is unveiled and provides the necessary data to construct the matrix presented in the last chapter.

In the fourth and concluding chapter, I present a Matrix of Analysis that imbibes the data analyzed throughout the previous chapters. The matrix provides: (a) a normative concept of freedom; (b) a justification of the norms that define the open public space according to that freedom; (c) a normative definition of public space; (d) a positive conceptualization of public space; and, (e) a positive conception of users of the public space.

2. Philosophical Understandings of Freedom and Public Space

The main concern of this dissertation is the understanding of freedom as a live phenomenon, rather than that concept that is valid only in books. Cengiz Çağla (2014) proposes that liberty is not an instrument, but an end itself and those societies that never tasted it are not able to understand it on all its aspects. Hannah Arendt (2006) suggests that the Western philosophical tradition understands that freedom is an attribute of will and thought rather than of action, hence it begins where the individual abandons the political realm and can only be experienced in solitude. That is a very philosophical view of liberty: "Sociology breaks away from a picture of a man who is isolated, self-sufficient and defending himself from the impact of his environment; it shows him [the individual] linked with a group, with the society" (Borucka-Arctowa 1977, p. 55).

In addition to the social context in which we must speak of freedom, it is important to remember that "[f]reedom requires place: to be free to do something, one needs a place at which to do it" (von Hirsch and Shearing 2000, p. 84). The attempt done in this chapter is to discover where that place should be. From the plethora of options that can be chosen, from the private (with all its nuances) to the public, through the common space, I have opted for choosing the extremes that allow to clarify more easily the space most suitable for the development of freedom, this would be: (i) private space, or (ii) public space. Personally, I am inclined to think that the public space is the place where freedom can be fully developed. Hence the importance of delimiting the study of the concept of freedom to its use in the public space. To be able to develop such a conceptualization, a definition of the public space must be done first, as distinguished from the general concept of public sphere popularized by Jürgen Habermas (1996). Kerimov's argument is that freedom has a direct relation with public life, where relations must be "truly humane" (Democratic, favorable and benevolent) as a precondition for the free self-realization of the personality (Kerimov 1977).

2.1. From the Public Sphere to the Public Space

What is common to the concepts "public sphere" and "public space" is the term public. The easiest way to deal with the meaning of "public" is by contrast with "private". Don Mitchell (2003) says that private and public are defined and constrained by

gender, class and race and that can give us a clue on the definition of the public. The different labels created by society produce different scenarios in which individual or collective life can be developed. This thesis does not deal with the impact that differences of gender, race or socioeconomic conditions have in the public or private realms, but it is important to leave it as a reminder for future studies on the subject. The private and the public realm cannot be completely dissociated. Antje Gimmler (2001) argues that both (public and private realms) are mutually dependent given that the attitudes, interests, desires and motivations of the individuals emerge from their interaction with the public, but the public is created by the interaction of the different groups, individuals and authorities that create a complex network of interests.

According to Nancy Fraser (1992) the private sphere is not state-related, is accessible and to the concern of a few, is not pertaining to the common good but to a private property in a market economy and to the domestic or personal life with the consequent particular interests. "Freedom thus presupposes that the individual has some assured private sphere, that there is some set of circumstances in his environment with which others cannot interfere" (Hayek 1960, p. 13). The key issue that differentiates the private from the public is the power of exclusion that exists (or should exist) only in the private and "(...) creates an expanded ambit of personal choice. It permits the owner to decide with whom (if anyone) he wishes to share his space, and for what purposes and activities" (von Hirsch and Shearing, 2000, p. 82). This is a sphere that is appropriate for human liberty. "It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological" (Mill 1989, p. 15).

Nancy Fraser (1992) understands the public sphere as state-related, accessible and concerning to everyone, and pertaining to the common good or shared interest. The public is the place where everything becomes visible to all -says Jürgen Habermas (1996)- by being open to all, in contrast to the closed or exclusive places of the private realm. The public -according to Daniel Innerarity (2006)- is exposed to the gaze, judgment, and approval of the community. This conceptualization seems familiar to the one given by Hannah Arendt (1998) for whom the term *public* has two possible meanings (i) the realm where everything can be seen and heard by everyone; and, (ii) the world common to all, differentiated from our own being placed in it. This is what has been called the Agnostic Public Sphere (Benhabib 1992) and criticized as a model identified with the Greek conception of the polis, as a homogenous realm, whose homogeneity can only be possible by the exclusion of women, slaves, foreigners and in a wider sense everyone not pertaining to the dominant public.

One can understand the public sphere as a network of public spheres and counter-public spheres that compose a whole; it creates an intentional realm of freedom where opinion -and will- formation of all citizens can develop. (Gimmler 2001, p. 27)

Habermas identifies the public sphere, says Fraser (2007), with a national notion, identified mostly by the territory of the state, but also by the language, media, politics and economy. These correlations are not clear once you prove the facticity of the theory, but this will be evidenced afterwards in the second chapter of this thesis when analyzing the perception of freedom in the use of the public space. The idea that the public sphere cannot be completely identified with the state is also shared by Jos de Beus when he wrote that "[a] public sphere is a country like a collection of voluntary associations distinct from the state" (de Beus 2006, p. 76). The possible source of this confusion lies in the virtues associated with the public sphere, mostly with democracy's values and likewise related with the idea of the nation state. Hence the correlation between the nation state and the public sphere. Those virtues are tested

-according to Habermas (1996)- in the public sphere and there and only there do virtues receive recognition.

The connection between the public sphere and democracy is important, "(...) public sphere should correlate with a sovereign power. Together, these ideas -the normative legitimacy and political efficacy of public opinion- are essential to the concept of the public sphere in democratic theory" (Fraser 2007, p. 7). According to Fraser, public sphere requires the elimination of social inequalities so that subaltern counter-publics can dispute the dominant publics.

In its classical Habermasian form, the theory associates the idea of inclusiveness with the all affected principle. Applying that principle to publicity, it holds that all potentially affected by political decisions should have the chance to participate on terms of parity in the informal process of opinion formation to which the decision-takers should be accountable. (Fraser 2007, p. 21)

Using the all-affected principle, the society legitimates the creation of the public opinion where everyone potentially affected can participate in the creation of the public space by the modification of social and legal norms. These affected people can be identified with the idea of the civil society -Gimmler (2001) argues-, but (as will be unveiled later) that civil society is not usually identified with the entirety of the affectation holders, but with those who hold power, which eventually concerns sources of unfreedom. This is related to the liberal vision.

The public sphere comes into existence whenever and wherever all affected by general social and political norms of action engage in a practical discourse, evaluating their validity. In effect, there may be as many publics as there are controversial general debates about the validity of norms. Democratization in contemporary societies can be viewed as the increase and growth of autonomous public spheres among participants. (Benhabib 1992, p. 87)

The big question that must be asked is if the public sphere needs a place to attain existence or if on the contrary public sphere is an immaterial concept whose existence is not linked to the factual world but to the world of ideas. The answer to that question is not clear and seems like the public sphere is an immaterial concept, whose efficiency is linked to the factual world. Mitchell explains the distinction thus:

The public sphere in the sense that Habermas developed it and many of his critics have refined it is a universal, abstract sphere in which democracy occurs. The materiality of this sphere is, so to speak, immaterial to its functioning. Public space, meanwhile, is material. It constitutes an actual site, a place, a ground within and from which political activity flows. This distinction is crucial, for it is "in the context of real public space that alternative movements may arise and contest issues of citizenship and democracy" (in Howell 1993, 318). [Mitchell 2003, p. 134]

The public space is the place where affectation holders (state, market actors, political organizations, civil society, individuals) get the chance to be seen and therefore earn the majority acceptance and support. "The public domain came to constitute the network of locations (roads, parks, public squares, and like) that we now recognize as public spaces" (von Hirsch and Shearing 2000, p. 79). Mitchell (2003) imagines the public space as the site of political inclusiveness where individuals debate and interact around political interests. "The struggle over what gets included in the public agenda is itself a struggle for justice and freedom" (Benhabib 1992, p. 79). There is a structural correspondence -Daniel Innerarity (2006) argues- between the physical arrangement of things and its associated political practices, between public space and the public sphere. Hence, "(...) 'public space' is defined either as that space in which only a certain type of activity, namely action as opposed to work or labor, takes place, or it is delimited from other social spheres by reference to the substantive content of the public dialogue" (Benhabib 1992, p. 80). The public space enables the political activities of the public sphere, but also, being a factual space must enable people to move or not at will. "This space is 'public' in the sense that it is supposed to be available to any members of the public; such persons, it is assumed, need not

be required to account for their presence in such spaces to anyone" (von Hirsch and Shearing 2000, p. 79).

The right to hold public meetings (including processions, marches and demonstrations) has given rise to acute controversy in modern times and has also posed considerable problems for both the legislator and for the courts. Clearly, the state has the right to preserve public order, but this may frequently clash at critical points with the right of holding protest meetings. (Lloyd 1991, p. 146)

Innerarity (2006) thinks that the idea of public space is closely linked with the city and the values connected to it, by being a place for the strangers, where the physical proximity coexists with the social distance. Anonymity would thus be an essential value of the city and could be a source of freedom in the use of the public space. If the public space is identified with the city, what sort of city is Innerarity thinking about?

The Chicago School established, at the beginning of the twentieth century, three distinctive characteristics of the city that have already become commonplace: heterogeneity, thickness and large size. In the city all the elements -residents, buildings, and functions- are in narrow, «condemned» so to speak to reciprocal tolerance. This obligation, over the course of the centuries, has led to the set of rules we admire as a historical culture of the city. (Innerarity 2006, p. 97)

The first impression when arriving at a city, coming from a rural town, is often of fear, in the city, everything seems anonymous, uncontrolled, and heterogeneous. "Cities [a]re necessarily public - and therefore places of social interaction and exchange with people who [a]re necessarily different" (Mitchell 2003, p. 18). The heterogeneity and large size of the city create that perception of anonymity and turmoil, but the public space is created to provoke exactly the opposite. "More and more the spaces of the modern city are being produced for us rather than by us" (Mitchell 2003, p. 18). The public space is produced for us in the struggle of dominant powers, hence it is not "(...) erected for one and planned for the living only; it must transcend the lifespan of mortal men" (Arendt 1998, p. 55). Even if the public space is made for us, it is -Mitchell (2003) argues- socially produced through its use, meaning that regardless of the origin of the public space, it becomes public by the ongoing dialectical interaction of the people that participate on the space, those that before I called the affectation holders and the power holders.

The interest in being able to move about freely in public space may also rest also on ideas of membership in a free community. To move about unhindered in public spaces seems a basic entitlement of community membership: that if it is one's own country, then one should be able to go about in it and to observe and enjoy what its public spaces have to offer. (von Hirsch and Shearing 2000, p. 85)

Summarizing, public space is constituted by the network of places where social, political, cultural, and economic activity is developed. Public space cannot be understood without the existence of the public sphere as the realm where individuals and society merge and contest interests. Conceptually, the difference between the public and the private realm is clear, but the multiplicity of scenarios where the public and the private merge is endless and for that reason, authorities and society converge in the creation of places strictly designed to become public spaces. Public spaces, as a social construction, are created through its use to provide a safe place where the individual -acting by himself or on behalf of a group- finds her/his place in the world. It seems like the public space is the only place where freedom (as a social concept) can reach a true existence. An existence that -as I will try to prove later- cannot fully achieve freedom in the private sphere. "Without a politically guaranteed public realm, freedom lacks the worldly reality" (Arendt 2006, p. 147). That is the importance of the correlation between public space and freedom. "In public space, a person's options are ordinarily constrained to a modest degree by prohibitions of the criminal law. Such prohibitions, however, generally leave a wide residual ambit of free choice" (von Hirsch and Shearing 2000, p. 84). The amount of freedom left for the individual to act in the public space is also constrained by the physical space design and a wide

range of rules that can be social, legal, or moral. "The political realm, ordinarily developed in the public sphere, is where freedom has always been known as a fact of the everyday life" (Arendt 2006, p. 144).

2.2. From Liberty to Freedom

Until now, I have not introduced a very important distinction (and the most relevant reason for choosing English over Spanish as the language of this dissertation), the distinction is that between Liberty and Freedom. The distinction between liberty and freedom is not easy, and respectable scholars have advocated for the differentiation, only to end up using them as synonyms. An extreme example of this confusion can be seen at the definition given by Barnett when he wrote that "By liberty is meant those freedoms which people ought to have" (Barnett 1998, p. 2). To try to unveil their difference and use the terms correctly I propose the understanding of liberty as a wider philosophical term that, for now, we can identify as similar in terms of its semantic field of application to the already given to the public sphere.

Bauman (1999, p. 16) wrote -following Freud and his *Civilization and Its Discontents*- that the gift of civilization is security, meaning that civilization offers freedom from fear, but also by offering this emancipatory power, civilization requires the surrender of individual liberty. From that point of view, liberty and freedom could never be synonyms, the obtaining of one requires the delivery in the pledge of the other. The surrender of liberty in the name of security is problematic, not only conceptually, but practically, several cases of abuse that have been perpetrated in the name of the security -or its pretty face: freedom from fear- are countless and that relation must be dichotomized.

The English language has no regulatory body as the Spanish Royal Academy or the French Academy to decide about the meaning and use of the words, but some significative efforts have been made to provide definitions to the words that compose the English language.

Liberty's origin is "Late Middle English: from Old French *liberte*, from Latin *libertas*, from *liber* 'free'" (Oxford Dictionaries 2017b).

Liberty is "(...) the possibility of choice among a range of opportunities without interference from anybody" (Beachler 1992, p. 216).

Autonomy is a basic element of liberty. "Naturally the autonomous person has the capacity to control and create his own life" (Raz 1986, p. 408).

As pointed out before, liberty is a social value and a Democratic term. According to Çağla (2014), there is a dialectical relationship between liberty and equality. As a social value, liberty "(...) can exist only for an individual who lives among others and who is adequately protected against their interference" (Spitz 1994, p. 334). What is common to all social systems is liberty constraint in the name of several social aims (security, order, development, among others). Berlin (2002) identifies liberty as the area where others (inside or outside the social system) are not allowed to interfere with the individual's activity. "[Liberty] signifies a social relation, as asymmetry of social conditions; essentially it implies social difference -it presumes and implies the presence of social division" (Bauman 1988, p. 9).

"Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion" (Mill 1989, p. 14). Çağla (2014) argues that when liberty is equal for all, the democratic value expressed in liberty transforms equality (and not liberty) as the governing principle of democratic societies. That argument is supported by Bauman: "[t]he effectiveness of freedom demands that some other people stay unfree. To be free means to be allowed and to be able to keep others unfree" (Bauman 1988, p. 46).

If some people are kept unfree, that means that “[w]e must preserve a minimum area of personal [liberty] if we are not to ‘degrade or deny our nature’. We cannot remain absolutely free, and must give up some of our liberty to preserve the rest” (Berlin 2002, p. 173). Sen (1999) provides two reasons to contemplate in the importance of personal liberty: (i) the success of a society is evaluated by the substantive freedoms that every individual enjoys; (ii) the effectiveness that the social system must protect those liberties.

Bauman (1988) argues that social systems differ in the degree of liberty they offer and claim from individuals that conform society and to do so social system is designed by some setting a series of norms, while others are forced to follow, not only by coercion or fear but also in the name of the social objectives named before. Coercion and power are related to the harm principle formulated by Mill (1989) by saying that the only reason to coerce individuals is to prevent them to harm others and, in some exceptional cases, to themselves. Beachler (1992) derives a theorem by saying that the distribution or curve of power, is the same as the distribution, or curve of liberty, this is so because of the asymmetrical tension between a multiplicity of wills. The existence of a multiplicity of wills brings not only tension but conflict between the liberties that entitle them. “The difference between liberty and liberties is that which exists between a condition in which all is permitted that is not prohibited by general rules and one in which all is prohibited that is not explicitly permitted” (Hayek 1960, p. 19).

We could say that the definition of liberty can be made on a binary relation. Liberty can relate with the possibility of choosing the life that the individual aims to pursue (this has been called positive liberty) or the fact that the choosing process is not prevented by someone else (negative liberty). “By negative liberty, I meant the absence of obstacles which block human action” (Berlin 2002, p. 325). Positive liberty includes the removal of restrictions on my conceiving those desires in the first place. Luigi Ferrajoli (2008) introduced another distinction of two classes of liberty: (i) liberty of, and (ii) liberty for. That is a very important distinction because the first group protects the individual from the interference of the multiple sources of unfreedom (state, market, society, family, etc.) and allows that individual to pursue the life she/he pursues. The second group have as characteristic its nexus with the body. Seems like both distinctions presented are more or less the same. We could identify the Berlin's positive liberty with the Ferrajoli's liberty of, and the negative liberty could be identified with the liberty for. The great difference between those two distinctions is linguistic. Berlin's distinction results adequate for the trained minds, that after years of study of the liberty make no objection to its use. It is for the newcomer that the distinction seems not to be suitable. Talking about positive and negative brings some ideological connotations, and that is why I think we should adopt and adapt the notion of liberty of and liberty for.

Let me talk first about liberty *from* or negative liberty. García Amado (2006) thinks that it is not an absolute concept, but a gradual magnitude, meaning that the real importance of liberty *from* resides in the absence of limits to the decisions that the individual can make, increasing the range of choices that the individual actually has. Liberty *from* is: “(...) absence of interference beyond the shifting, but always recognizable, frontier. *The only freedom which deserves the name, is that of pursuing our own good in our own way, said the most celebrated of its champions*” (Berlin 2002, p. 174). A possible source of the understanding of liberty in its negative form is created by the idea that liberty is opposed to oppression. Liberty *from* is the original concept of freedom, and opposed to coercion and oppression, and it is valuable -Raz (1986) argues- to the extent that it makes possible the existence of positive freedom, generating autonomous individuals capable of deciding the ultimate end of their existence, as independent beings.

Liberty for or positive liberty is not an opposed conception to the liberty *from*. This conceptualization of liberty answers the question “What, or who, is the source of

control or interference that can determine someone to do, or be, this rather than that?" (Berlin 2002, p. 169). According to Raz (1986), positive liberty, or liberty *for*, is valuable by being a necessary condition to conduct an autonomous life. "The 'positive' sense of the word 'liberty' derives from the wish on the part of the individual to be his own master" (Berlin 2002, p. 178). This sense of the word liberty is the one that tells us about the amount of autonomy that the individual holds in the election process.

I have already pointed out the difference between liberty and freedom and studied the term *liberty*. *Freedom's* origin is "Old English *frēodōm* (see free, -dom)" (Oxford Dictionaries 2017a). Kerimov's opinion is that freedom's definition should include three components: (i) Cognition of necessity; (ii) Actions in accordance with that necessity; and, (iii) Actions in the interest of the society (Kerimov 1977). According to Hannah Arendt, freedom is a concept that was not studied by the ancient philosophy and "(...) it was the experience of religious conversion -of Paul first and then Augustine- which gave rise to it" (Arendt 2006, p. 144). Freedom is "the reason that men live together in a political organization" (Arendt 2006, p. 145). Berlin (2002) argued that in the ancient world the participation in the government was the constitutive element of freedom, hence, only free people could participate in public space (the way I argued at the beginning of the chapter) and create the social system that in apparent democracy created freedom, but only for those participating in politics in the public sphere.

History has shown us that individuals living in a society without freedom have no incentive to remain in that society, therefore tend to confront the status quo or try to find relieve the suffering caused by lack of freedom in a different society (with all the threats it entails), or the inner-self; however, an escape from whatever could be the cause of the unfreedom.

The experiences of inner freedom are derivative in that they always presuppose a retreat from the world, where freedom was denied, into an inwardness to which no other has access. The inward space where the self is sheltered against the world must not be mistaken for the heart or the mind, both of which exist and function only in interrelationship with the world. (Arendt 2006, p. 146)

Freedom is a social condition, otherwise, its essence fades. Freedom lies on the guarantee of security to exist, hence according to Hannah Arendt (2006) the ultimate aim of the government is to ensure freedom, providing security to its citizens. The reason freedom is important, in the words of Hannah Arendt:

We first become aware of freedom or its opposite in our intercourse with others, not in the intercourse with ourselves. Before it became an attribute of thought or a quality of the will, freedom was understood to be the free man's status, which enabled him to move, to get away from home, to go out into the world and meet other people in deed and word. This freedom clearly was preceded by liberation: to be free, man must have liberated himself from the necessities of life. But the status of freedom did not follow automatically upon the act of liberation. Freedom needed, in addition to mere liberation, the company of other men who were in the same state, and it needed a common public space to meet them -a politically organized world, in other words, into which each of the free men could insert himself by word and deed. (Arendt, 2006, p. 147)

Hayek proposes to distinguish the terms liberty and freedom by saying that personal freedom is "[t]he state in which a man is not subject to coercion by the arbitrary will of another or others. Sometimes the term "civil liberty" is used in the same sense, but we shall avoid it because it is too liable to be confused with what is called "political liberty" -an inevitable confusion arising from the fact that *civil* and *political* derive, respectively, from Latin and Greek words with the same meaning" (Hayek 1960, p. 11). Borucka-Arctowa (1977) adds to the Hayek proposal the idea that liberty could correspond to the positivization of some rights and freedoms, which means -following Berlin (2002)- that law limits free action, nevertheless maintaining (at least) a minimum area of personal freedom to allow the individual to pursue its own aims.

That personal freedom may, or may not be, a product of law, what is sure is that it is created through a social process, which involves two kinds of relation: "(1) social arrangements to expand individual freedoms and (2) the use of individual freedoms not only to improve the respective lives but also to make the social arrangements more appropriate and effective" (Sen 1999, p. 31).

Conversely, in a way we have already noted, we have freedom in the sense of normative liberty wherever no duty exists or applies. We are free to deliberate among whatever seems to us desirable courses of action, and in a large way, we are morally free to construct and periodically revise our own plan of life, just so long as we do not plan to infringe the basic duties. We are free to go ahead and carry out our decisions in fulfilment of plans and projects. (MacCormick 2008, p. 106).

Borucka-Arctowa identifies the term liberties with freedom or freedoms, but leaves a legal sense to the singular of liberty, composing liberty of a series of freedoms. "The challenge of the believer in liberty is to reconcile this widespread interdependence with individual freedom" (Friedman 1982, p. 13). Probably the most important contribution to the differentiation of the terms is given by Bellamy (1992) when analyzing the thought of Charles Taylor and identifying liberty as an opportunity concept and freedom as an exercise concept which involves not only the quantity of options available but also the quality of those ones.

The distinction previously made between liberty *from* and liberty *for* -usually identified as negative and positive respectively- is not valid when we are talking about freedom unless equality is given to the whole components of the society. "Freedom to [what we have called liberty for] without actual equality becomes the privilege of a certain group only" (Borucka-Arctowa 1977, p. 58). On the other hand, Berlin calls freedom from the wider sense of the term freedom when he wrote that "[i]n the larger sense, of course, freedom means freedom from the rules of a society or its institutions, from the deployment against one of excessive moral or physical force, or from whatever shuts off possibilities of action which otherwise would be open" (Berlin 2002, p. 326).

3. Socio-Legal Understandings of Freedom and Public Space

Until now I have developed a study based on the ideas of the greater minds about the public space and freedom, but those ideas (though valuable in themselves) cannot complete the aims of this thesis. This happens because we have already seen (See Chapter 1) that the public space is a social construction, even if we think of the public space as a natural park or some mountain, its definition as public is given by the social interaction. Freedom is also a social construction. "The freedom of man depends on the conditions under which he lives, works, and creates. The self-realization of the human personality takes place in a society and because of it" (Kerimov 1977, p. 298).

In this chapter, I will unveil the normative and factual nature of freedom in its relationship with the public space, first analyzing seven selected norms that can be applied to the use of the open public space. It is important to know the normative reality of the town of Oñati because there is a difference between freedom in philosophy and freedom in norms.

A philosopher would say that the law regulates every action of the citizen, prescribing in detail what is his duty to do from morning to night, there is no liberty left. Liberty, for the philosopher, implies choice of conduct, and liberty merely to do one's duty (as to pay taxes) is a poor kind of joke. The philosopher's use of the term is important and useful, but it is not the one generally needed by the lawyer. Once legal liberty is defined as the absence of a duty to act otherwise, it follows that there can be a liberty to perform a legal duty. (Williams 1992, p. 37)

A complex object of study like freedom cannot be understood only philosophically and normatively, a component of empiricism is required to fulfil the aims set at the beginning of this research.

Looking at sociology as an empirical-analytical science of the social, the discipline faces the problem of 'freedom' and 'equality' as follows:

1. Sociology depends on historical-social 'ideas' and 'concepts' (theoretical constructions) of 'freedom' and 'equality' for theme orientation.
2. Sociology does take up notions of 'freedom' and 'equality' as objects of analysis. The sociologist is asked to avoid confusion of this object-reference with material value positions he or she might have.
3. Therefore, the particular sociological level of analysis would refer to the following dimensions of 'freedom':
 - 3a. Freedom from whom? (Member of what specific group, organization, etc.).
 - 3b. Freedom in what areas of activity?
 - 3c. How is freedom guaranteed? (Laws, conventions, position in the power-structure, etc.) [Schmidt 1977, pp. 1120–1121]

3.1. Normative Understanding (conceptualization of freedom)

When thinking about freedom, especially freedom in the use of the open public space, to have a normative perspective is important. Spitz (1994) believes that freedom is a juridical situation where others are constrained to avoid the interference with my freedom and the legal system presents some mechanisms to protect that right. We could add to that the consideration that I also have the obligation to avoid the interference with others' freedom. Sharma (1977) also adds to the discussion that coercion is inherent in all norms and the problem is the degree to which that coercion is allowed by the society where the norm operates and that is the place -Ferry (1994) argues- where society recognizes its own conception of freedom. "The task of a policy of freedom must, therefore, be to minimize coercion or its harmful effects, even if it cannot eliminate it completely" (Hayek 1960, pp. 11–12).

To understand the conceptualization of freedom in the use of the open public space I chose the Foruen Enparantza in the Basque town of Oñati. The Spanish Constitution is the first normative body we must consult to frame the study to a specific society. Results revealing the table of contents of the Constitution. The Constitution consists of a total of ten titles, and title I is essential to this research.

It is entitled *Of Fundamental Rights and Duties* and is divided into five chapters: (i) *Of Spaniards and foreigners*; (ii) *Rights and Freedoms*; (iii) *Principles of social and economic policy*; (iv) *Guarantees of fundamental freedoms and rights*; and, (v) *The suspension of rights and freedoms*. The second chapter (*Rights and freedoms*) is divided into two sections, the first of which, *On Fundamental rights and public freedoms*, is directly relevant for this research.

What does the Constitution mean when talking about public freedoms? But first, we can ask if the Constitution is talking about public freedoms or public liberties. The normative spectrum covered by the constitutional norms makes one think that is talking about liberty, but the use of the term "libertades" in plural suggests that it is talking about freedoms, the way we discussed before (see Chapter 2).

Dennis Lloyd (1991) constructs a list of the main values expressed in legal freedom; as follows: (1) Equality and Democracy; (2) Freedom of contract; (3) The right of Property; (4) The right of Association; (5) Freedom of Labor; (6) Freedom from Want and Social Security; (7) Freedom of Speech and of the Press; (8) Freedom of Religion; (9) Personal Freedom; and, (10) The Rule of Law. Article 14 (first of Chapter Two, on rights and freedoms, and overarching both sections of the chapter) establish that "Spaniards are equal before the law, and no discrimination based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance may prevail" (Constitución Española 1978). The Spanish constitution seems to associate the idea of freedom with that of equality, matching with the first principle of justice

proposed by Rawls, i.e. that “[e]ach person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all” (Rawls 1993, p. 291).

Section One (*Fundamental rights and public freedoms*) guarantees the ideological and religious freedom, but this one is limited to the maintenance of the public order (Constitución Española 1978, Art. 16), personal freedom that the Spanish Constitution links with the security (Constitución Española 1978, Art. 17), freedom of residence and movement inside the Spanish territory (Constitución Española 1978, Art. 19), freedom of expression and academic freedom, limited to the respect of the rest of the liberties (Constitución Española 1978, Art. 20), freedom to participate in public affairs, that we can relate with the public sphere (Constitución Española 1978, Art. 22), freedom of association (Constitución Española 1978, Art. 28), freedom of enterprise (Constitución Española 1978, Art. 38), and the freedom of assembly, that is limited by the need to give prior notice to the authority when meetings and demonstrations are made in the public space (Constitución Española 1978, Art. 21). Chapter Five of the Spanish Constitution is of special importance given that it positivizes the possibility of suspending the rights and freedoms declared by the Constitution when a state of emergency is declared. The following table may be useful:

TABLE 1

FREEDOM	LIMITATION	ARTICLE
Academy	Respect of the rest of the liberties	20
Assembly	Give prior notice to the authority	21
Association	Limited in the public space (see freedom of meeting)	28
Enterprise	None	38
Expression	Respect of the rest of the liberties	20
Ideological	Maintenance of the public order	16
Movement	None	19
Participation in public affairs	Limited in the public space (see freedom of meeting)	22
Personal	None	17
Religious	Maintenance of the public order	16
Residence	None	19
Security	None	17
Suspension of freedoms when state of emergency is declared		55

Table 1. Freedom in the Spanish Constitution.

Freedom of assembly is the most important for our research. The Organic Law that Regulates the Right of Assembly “(...) tries to regulate the essential core of the right of assembly” (Ley Orgánica Reguladora del Derecho de Reunión 1983). The law allows public authority to forbid public manifestations whenever they think these

could be an alteration of the public order or danger to the people or goods. The authorities will suspend the demonstrations, according to the law (Ley Orgánica Reguladora del Derecho de Reunión 1983, Art. 5), when they are illicit, or public order is disrupted, and when the assistants are wearing paramilitary uniforms.

The law (Ley Orgánica Reguladora del Derecho de Reunión 1983, Art. 8) establishes the obligation to ask the authorities in a lapse of ten to thirty days for the permission to celebrate public reunions with more than twenty people and in extraordinary and serious causes the authorization can be asked with only twenty-four hours in advance.

TABLE 2

FREEDOM	LIMITATION	ARTICLE
Assembly	Alteration of the public order	Preamble
	Danger to public goods	Preamble
	Danger to the people	Preamble
	Illicit demonstration	5
	Permission granted by the authority	8
	Wearing of paramilitary uniforms	5

Table 2. Freedom in the Organic Law that Regulates the Right of Assembly.

The Organic Law of Protection of Public Safety is probably the most controversial Law in the last years. In Spain is better known as the *Gag law* because several freedoms limited on the benefit of the security of the inhabitants of the Spanish territory. The norm begins by stating that "(...) security is the guarantee that the rights and freedoms recognized and protected by democratic constitutions can be exercised freely by the citizens" (Ley Orgánica 4/2015, Preamble).

According to Article 1, the purpose of the Law is the citizen security, as a prerequisite for the exercise of public freedoms. "The protection of the free exercise of the fundamental rights and the public freedoms (...). The preservation of citizen security and coexistence (...). The peaceful use of roads and other goods of the country and, in general, spaces destined to the use and public enjoyment" (Ley Orgánica 4/2015, Art. 3) are the ends of the Law.

The Law entitles security forces to limit the movement and permanence in public places in the case that security is or could be altered (Ley Orgánica 4/2015, Art. 17). Even, as an extraordinary security measure, the authority can order the closure, prohibit the passage, and evacuate buildings or public spaces (Ley Orgánica 4/2015, Art. 21).

Section Two (*Maintenance and restoration of citizen security at meetings and demonstrations*) of Chapter Three of the Law is the most important one in relation to the aims of this thesis. "The authorities to which this Act refers shall take the necessary measures to protect the holding of meetings and demonstrations, preventing the disturbance of public safety. Likewise, they may agree on the dissolution of meetings in places of public transit and demonstrations (...)" (Ley Orgánica 4/2015, Art. 23).

The real dangers of the so-called *Gag law* lie in opening the possibility to the authority to limit or reduce (with varying degrees of temporality and gravity) the freedoms that can be exercised in public space. In addition to the possibility of limitation of

freedoms, the ambiguity with which the rule has been drafted is evident, allowing the administrative authority (other than the judicial authority) the normative interpretation, giving rise to abuses for the sake of security. This is very important in modern times where attacks on civilian targets have increased, which has allowed the reduction of freedoms both in the public sphere and in the realm of the private, where there is no army that convinces some people to feel free in the open spaces of large cities specifically.

TABLE 3

FREEDOM	LIMITATION	ARTICLE
Assembly	Security	23
Public Freedoms		1
Transit		17

Table 3. Freedom in the Organic Law on the Protection of Citizen Security.

Leaving aside the Spanish state's normative and penetrating in what concerns the town of Oñati I found the first clue on the use of the open public space in the town by analyzing the Ordinance for the Celebration of Civil Farewells or Tributes by Death in Oñati. "This ordinance regulates the performance of funerals or civil tributes by death as a social need to offer a dignified and personal ceremony to those citizens who have chosen to live without religion, according to how the deceased person conceived life" (Ordenanza para la Celebración de Despedidas u Homenajes Civiles por Fallecimiento en Oñati 2012). The funerals can only be celebrated in the Santa Ana Garden, as well as at the park in front of the cemetery (Ordenanza para la Celebración de Despedidas u Homenajes Civiles por Fallecimiento en Oñati 2012, Art. 2). Sadly, the Foruen Enparantza is not on the list of places where these activities can be developed, but we are getting closer. For now, this could be useful to understand how the Town Hall has designed public spaces for every kind of activities.

TABLE 4

FREEDOM	LIMITATION	ARTICLE
Assembly	Only certain places	2
	Permission granted by the Authority	

Table 4. Freedom in the Ordinance for the Celebration of Civil Farewells or Tributes by Death in Oñati.

An activity that is hardly seen in Oñati is the use of the public space for informal commerce. That activity is controlled by the Ordinance that Regulates the Street Vending in the Municipality of Oñati. Formally the commerce in the streets can be practiced under four schemes and none of them includes the commerce in the Foruen Enparantza.

The first scheme allows the commerce in the fairgrounds forbidding the commerce outside the designated place (Ordenanza Reguladora de la Venta Ambulante 1994, Art. 5) with a strict time table from nine to thirteen hours (Ordenanza Reguladora de la Venta Ambulante 1994, Art. 4) and strictly forbidding to sell merchandise to voices or to implement any sound system (Ordenanza Reguladora de la Venta Ambulante 1994, Art. 9).

Together with the previous scheme commerce can be developed in establishments for a period shorter than one month (Ordenanza Reguladora de la Venta Ambulante 1994, Chapter. 2), not constituting properly street vending. Also, during holidays, and sporadically, handicrafts or products of the region can be sold in the Foruen Eparantzta and other places designated by the Town Hall (Ordenanza Reguladora de la Venta Ambulante 1994, Chapter 3). "Street sales outside the fairground, through vehicles, or establishment of street stalls, and outside the holidays (...) is expressly prohibited" (Ordenanza Reguladora de la Venta Ambulante 1994, Chapter 4).

The normative effectiveness of the ordinance contested by the few street vendors that circulate daily the streets of Oñati carrying their products in a bag and offering them to anyone who is willing to pay attention. This is a use of public space that, despite not being regulated or even prohibited, exists without this means that it jeopardizes the stability or security of the public space.

TABLE 5

FREEDOM	LIMITATION	ARTICLE
Commerce	Noise production	9
	Permission granted by the Authority	5
	Time and place	4

Table 5. Freedom in the Ordinance that Regulates the Street Vending in the Municipality of Oñati.

The privatization of the public space or its semi-private use is a phenomenon intrinsically associated with the public space. That privatization is principally conducted by economic powers with the strength enough to bend the law, and that privatization can have a lot of nuances. The private use of the public space made by bars in the Foruen Eparantzta unveils this quandary. The Normative of the Use of Tables and Chairs in front of Bars (Normativa Reguladora del Uso de Mesas y Sillas frente a Bares 1992) regulates the commercial use of the Foruen Eparantzta as a special area of interest for the Town Hall.

The mayor, by reason of sports, cultural or other activities, may order the removal of tables and chairs when they may hinder the celebration of such activities and for as long as it is indispensable, all without right to compensation.

In the area of Foruen Eparantzta, this is the Plaza Mayor of the Municipality, and considering its nature as a cultural and tourist center, as well as the constructive characteristics of the buildings that make it up (especially the acoustic insulation), the City Council has decided to provide it with a special closing time, in the closing time of the establishment itself, and for which, the applicant must indicate if he has interest in such timetable because it will be established by an overload of the municipal tax of the order of 10% (Normativa Reguladora del Uso de Mesas y Sillas frente a Bares 1992, Art. 5).

TABLE 6

FREEDOM	LIMITATION	ARTICLE
Commerce	Cultural interest	5
	Noise production	
	Payment of extraordinary tax rates	
	Permission granted by the Authority	
	Timetable	

Table 6. Freedom in the Normative of the Use of Tables and Chairs in front of Bars.

The Ordinance on the Use of Roads or Pubic Places with Non-Commercial Advertising regulates the use of the public space for non-commercial advertising, as an effort to keep the public space as a place of adequate coexistence of the different interests of the Inhabitants of Oñati, securing the conservation of the public space. According to the ordinance, graffiti is forbidden (Ordenanza sobre la Utilización de Vías o Lugares Públicos con Publicidad no Comercial 1989, Art. 6), as well as placing posters and stickers on structural elements of the municipality (Ordenanza sobre la Utilización de Vías o Lugares Públicos con Publicidad no Comercial 1989, Art. 9). Placement of posters is authorized only during the election period, popular festivities, and those situations expressly indicated by the Municipality (Ordenanza sobre la Utilización de Vías o Lugares Públicos con Publicidad no Comercial 1989, Art. 10). This ordinance is another proof of the low effectiveness of the legislation before the social reality. Oñati, and in general the Basque country, is full of graffiti and posters that have found on walls, balconies, and bars a place for the expression of the most diverse political and cultural concerns. Basque society has taken the street as its own and regardless of what the normativity says, that expression cannot be sanctioned without there being sufficient reasons beyond the positive freedom to distrust an ascetic landscape and free expressions.

The regulation of public space necessarily regulates the nature of public debate: the sorts of actions that can be considered legitimate, the role of various groups as members of the legitimate public, and so forth. Regulating public space (and the people who live in it) "structures attention" toward some issues and away from others. (Mitchell 2003, p. 182)

TABLE 7

FREEDOM	LIMITATION	ARTICLE
Expression	Conservation of the public space	6
		9

Table 7. Freedom in Ordinance on the Use of Roads or Pubic Places with Non-Commercial Advertising.

3.2. Social Understanding (perception of freedom)

As has been anticipated, the understanding of the public space and the uses that, at least potentially, associated benefits the correct appreciation of the concept of freedom. Thus, associating the concept of freedom with the effective use of public space, we are in a position to determine whether philosophical judgments and normative dictates are actually linked to the factual use that is given to the public

space in the exercise of the freedoms that have been granted to the inhabitants of, in this case, the town of Oñati.

The extent of my freedom may depend on the following: a) how many possibilities do I have (although the method of counting them can never be more than a method based on impressions). The action possibilities are not separate entities such as apples, which can be enumerated exhaustively, b) how easy or difficult it is to realize these possibilities, c) how important they are, compared to each other, in the plan of my life, given my character and circumstances, d) to what extent they are open or closed by deliberate acts performed by men, e) what value they attribute to these various possibilities not only the one that will work, but also the general feeling of the society in which he lives. The consideration of these factors as a whole will obviously not give an exact or indisputable magnitude but only an approximate impression, but sufficient to counterpoise models and establish fund preferences. (García Amado 2006, pp. 76-77)

The perception of people can be measured by several methods. The chosen method was the survey. Maggie Walter (2013) claims that surveys are probably the most widely used research method and a basic tool for social researchers. The survey offers advantages as well as weaknesses, just as any other research method in social sciences. Hence, it is essential to keep in mind the reasons that lead us to choose the survey, maximizing its benefits, while noting its disadvantages. Walter (2013) lists five weaknesses: (i) Survey data are (mostly) snapshots; (ii) Survey data are self-report data; (iii) Relationship does not equal causality; (iv) Surveys cannot provide all the answers; and, (v) Surveys are relatively expensive.

Addressing the first weakness, I must say that it is completely true, probably could be much more interesting to develop a research that can account for the development of the phenomenon. Being this a research, whose period is limited (five months), trying to rectify this weakness, without incurring in worse evils could be problematic. The subjectivity of the data is an important asset for this research, one of the aims of it is to get to know the perception of freedom in the use of the public space as part of the dialectic process that was detailed in chapter one. Hence the perceptions and social context are fundamental to know how the normative conceptualization of freedom is received by the society. On the third disadvantage listed by Walter the answer is similar, the conceptualization of law's efficacy as a causal relationship between the realms of IS and OUGHT could be catastrophic. What I try to find are not causal relations between the regulation of the public space and people's behavior, but a clue to try to understand how regulation and perception (social or individual) modify the public behavior corresponding to the development of certain freedoms. In that sense, the survey is not looking for all the answers, is just looking for the candle that may enlighten the way to understand such a complex phenomenon as freedom.

I may add another disadvantage of the survey, probably the biggest of all, when studying closed societies. Such societies tend not to allow the stranger to explore what they consider a secret, a taboo or simply something deeply rooted in their identity. The big disadvantage is the lack of participation, sometimes disguised as apathy, anger or fear, but always resulting in huge headaches for the researcher that with every "No" sees his sample reeling like a sand castle that seemed perfect until it was tested before the changing tide.

Knowing the limitations of the method, a survey was conducted in Oñati between June 5th to July 31st. Considering that the total population in Oñati is 11,275 inhabitants (Euskal Estatistika Erakundea–Instituto Vasco de Estadística 2016), the elaboration of a survey that covered to them all in the period of time agreed for the fulfilment of this work was impossible. The survey was fulfilled in Spanish (but for reasons of convenience has been translated for this dissertation) and structured with six population control questions and fifteen questions for data analysis purpose. The first questions, identified here as population control questions were made because of the already mentioned difficulty to develop a probability sample. As we know "In probability sampling, samples are selected in accordance with the probability theory,

using a procedure that gives every member of the population a known probability of selection" (Walter 2013, p. 101). Oñati is a very small town, mostly isolated from the rest of the world and the people are not usually willing to interact with foreign researchers. Given the homogenous composition of the population, and the closed development of the society the decision was to make a non-probability sampling. At the beginning, the convenience sampling appeared as the best suitable method, but "its lack of representativeness constrains the validity of the results" (Walter 2013, p. 110). Hence, quota sampling was performed by selecting people by variables, specifically the ones identified with the questions three and four of the control section of the survey. Following the methodology detailed by Kerlinger and Lee (2000) a quota sample was developed, achieving representativeness by assigning quotas to interviewers. At the moment of the consultation of the Euskal Estatistika Erakundea, the data base divided the town population into four groups of age, divided by gender, as follows:

TABLE 8

AGE AND GENDER								
0 - 19			20 - 64			>= 65		
TOTAL	MEN	WOMEN	TOTAL	MEN	WOMEN	TOTAL	MEN	WOMEN
2,290	1,169	1,121	6,469	3,295	3,174	2,516	1,105	1,411

Table 8. Composition of the total population of Oñati.

Knowing the bias that can be introduced to the research by making a survey of underage people, the age group under nineteen years old was eliminated, leaving the total population to a total of 8,985 inhabitants of the town. The sample was made, willing for a trust level of 95% the sample must be of 101 residents of Oñati, to a maximum of 124 expecting a 9.7% of losses. The quotas remained as follows:

TABLE 9

QUOTAS			
LABEL	TOTAL	PERCENTAGE	SAMPLE
Men 20-64	3,295	37%	37
Women 20-64	3,174	35%	35
Men >=65	1,105	12%	12
Women >=65	1,411	16%	16

Table 9. Sample size by quotas.

After conducting the survey, the results were very close to what expected. The 100% of the male participants between 20 to 64 years old answered, as well as the females older than 65. The participation of women between 20 to 64 years old was remarkable, with an answer rate of 129% and the group of men over 65 was extremely reticent to answer the survey with an answer rate of only 67%.

FIGURE 1

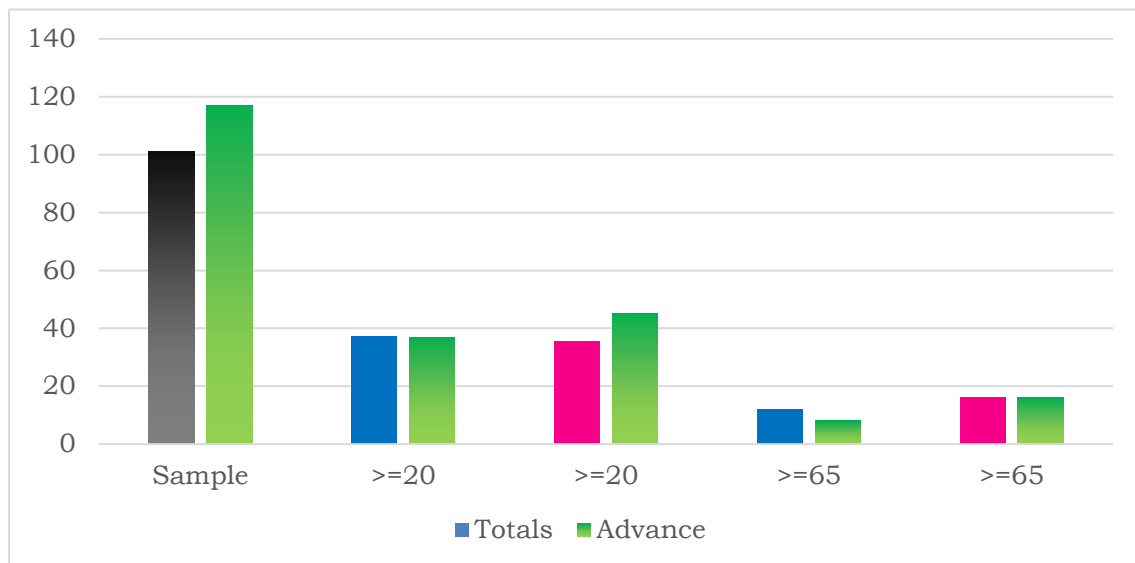


Figure 1. Response rate for the Survey.

The female participation was incredibly bigger than the one from males. Also 11 people under 19 years old answer the survey, leaving the participation rates as follows:

FIGURES 2 AND 3

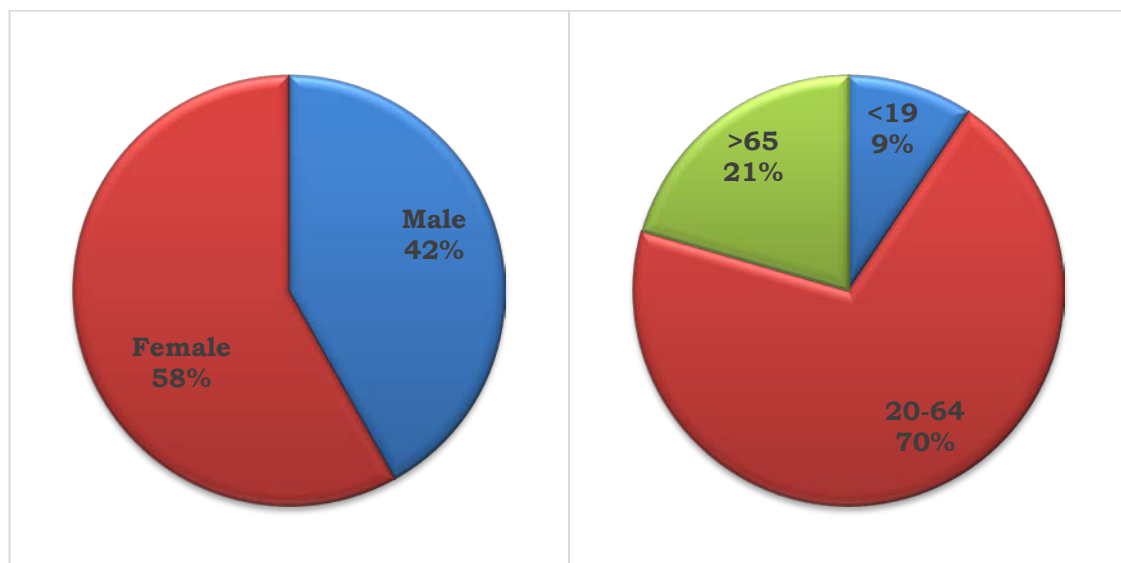


Figure 2. Participation by gender.

Figure 3. Participation by age.

The education level of the interviewees shows that most of them have a university education and no one is non-educated. Is also relevant the occupation of the people, given the wide range of answers obtained they were labelled in six categories. It is important to mention that no one answered that they are unemployed, especially being the unemployment rate in the 8.2% (Euskal Estatistika Erakundea-Instituto Vasco de Estadística 2016). Also, the number of professionals is related to the amount of people with college education, meanwhile most of the retired people have a lower level of education, given the conditions prevailing during their youth.

FIGURES 4 AND 5

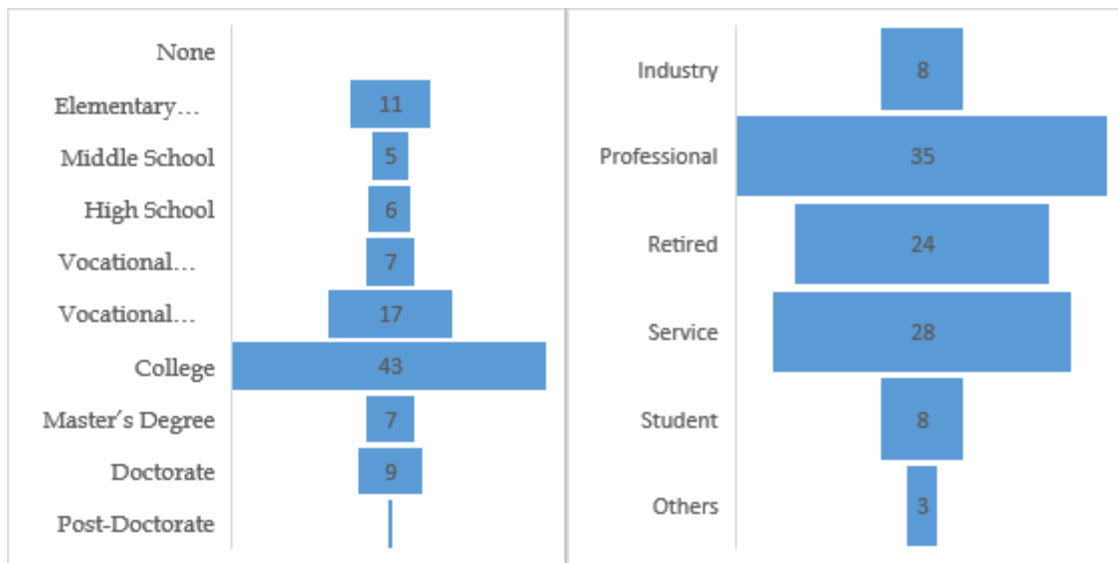


Figure 4. Education level.

Figure 5. Occupation.

When I asked people for their own description of the public space, I designed the question to be answered with one word. The reasons for doing so lie in Freud's ideas of the free association of ideas and the Jung's projective test:

The subject must respond to each as quickly as possible with a single word induced. The examination reveals, on the one hand, the psychological type of the subject (extroverted or turned to the outside world, introverted or turned to himself), on the other hand unconscious complexes (paternal, maternal, fraternal), sources of failure Associative (elongation of reaction time, absence of response, response in foreign language, repetition of the inductive word, stereotype of the responses). [Doron and Parot 2008, p. 63]

The idea behind the formulation of the question is to unveil the main idea associated with the public space, without the large and politically (or socially) correct answers. Most of the people related the public space with a particular place, but also with its characteristics and sensations that the public space produces in the interviewees. It is important to mention that 15 interviewees answered "freedom", making it the most common answer, only followed by "square" in the sense of plaza with 10 answers.

FIGURE 6

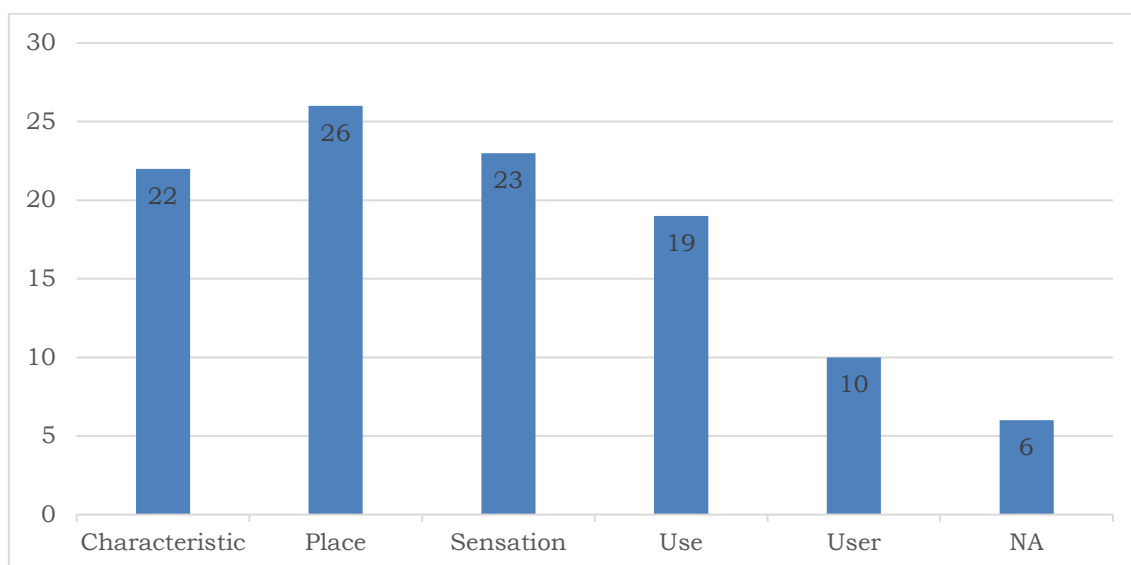


Figure 6. Description of the public space.

The 95% of the interviewees believe that the Foruen Eparantzta is a public space and a very similar proportion associates the public space with democratic values, but in a slightly smaller proportion think should be subject to rules, as shown in the following figures 7 and 8.

FIGURES 7 AND 8

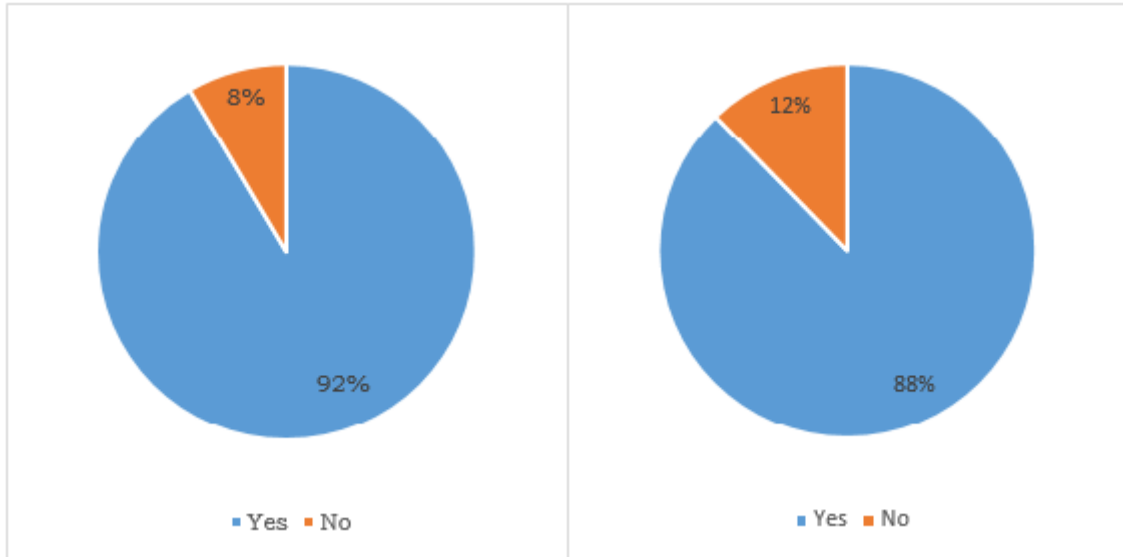


Figure 7. Public space associated with democratic values.

Figure 8. Regulation of the public space.

If the public space is perceived by the interviewees as democratic and regulated, is important to know if they associate the regulation with norms that allow or forbid activities, that can relate to their perception of the relation between the public space and freedom. Must of the interviewees think the regulation in the public space must allow activities, which we can relate with the freedom for.

FIGURE 9

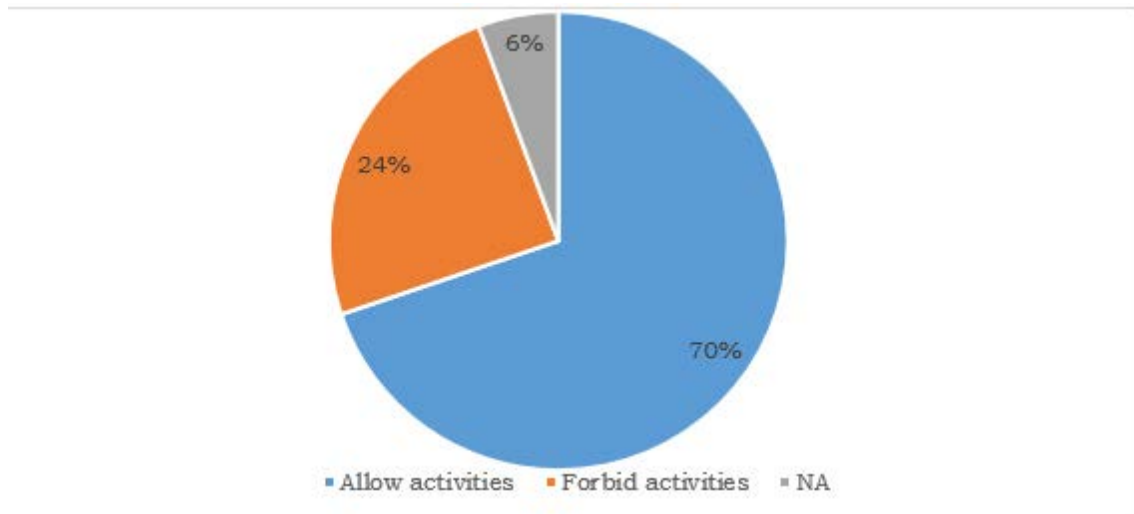


Figure 9. Regulative perception of the public space.

In Chapter 2, we discussed the place where freedom must be exercised, differentiating the private from the public space. Of course, freedom should be exercised in both realms, but it is in the public one where freedom, as a social phenomenon develops as a value that can influence lives of the components of the society. The interviewees have the same perception as the one defended in this dissertation, as shown in the following figure.

FIGURE 10

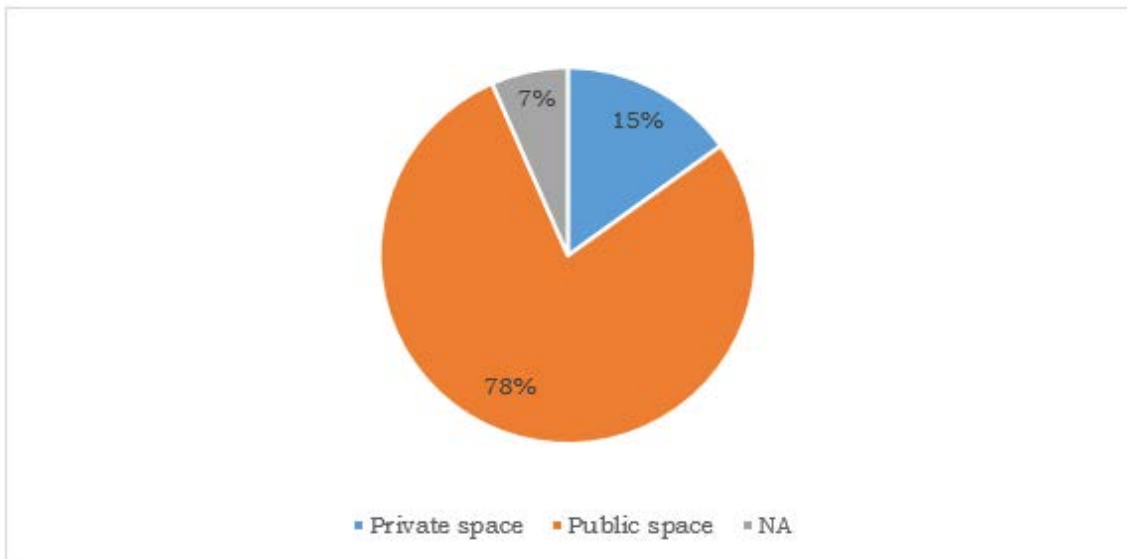


Figure 10. Place for the exercise of freedom.

Being the public space the place for the best exercise of freedom. Interviewees were asked about freedom. Again, the one-word answer method was used, for the reasons expressed before, and labelled according to its relationship with positive and negative freedom. More than 50% of the answers related to negative conceptions of freedom. Surprisingly, 21 of the interviewees answered “respect” as a value associated with freedom, only followed by “right” with 10 answers. The relation between freedom, respect, and rights is intrinsically related to the liberties or freedoms that should be protected or enhanced in the use of the open public space.

Figure 12 shows the negative freedom perspective in the minds of the interviewees, related with the relation of freedom and limits showed in figure 11. Being constraints intimately related with the conception of negative freedom, we are in a position to say that interviewees relate freedom with the negative conception of freedom (or freedom from). This was accomplished by asking if there should be limits to freedom.

FIGURES 11 AND 12

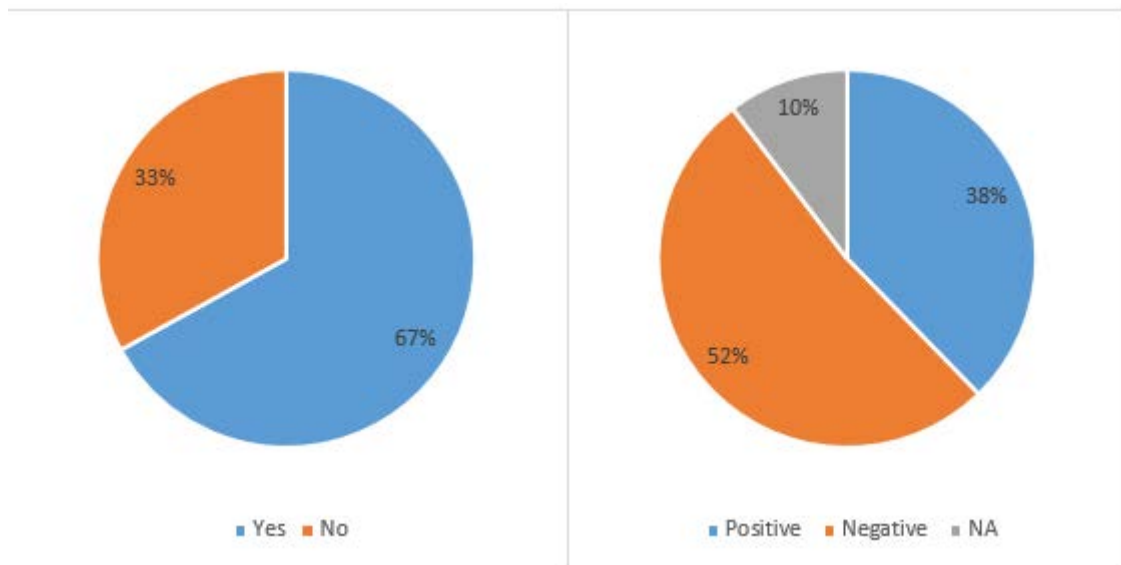


Figure 11. Freedom and limits.

Figure 12. Description of freedom.

If freedom can be limited, according to the perception of the interviewees, it is important to understand who they think curtails their freedom. Most of the

participants (42) said that society restricts their freedom, followed by the state with 27 answers. The following chart shows an inversely proportional relation between the different sources of constraint and the feeling of freedom, according to the survey's participants' answers.

FIGURE 13

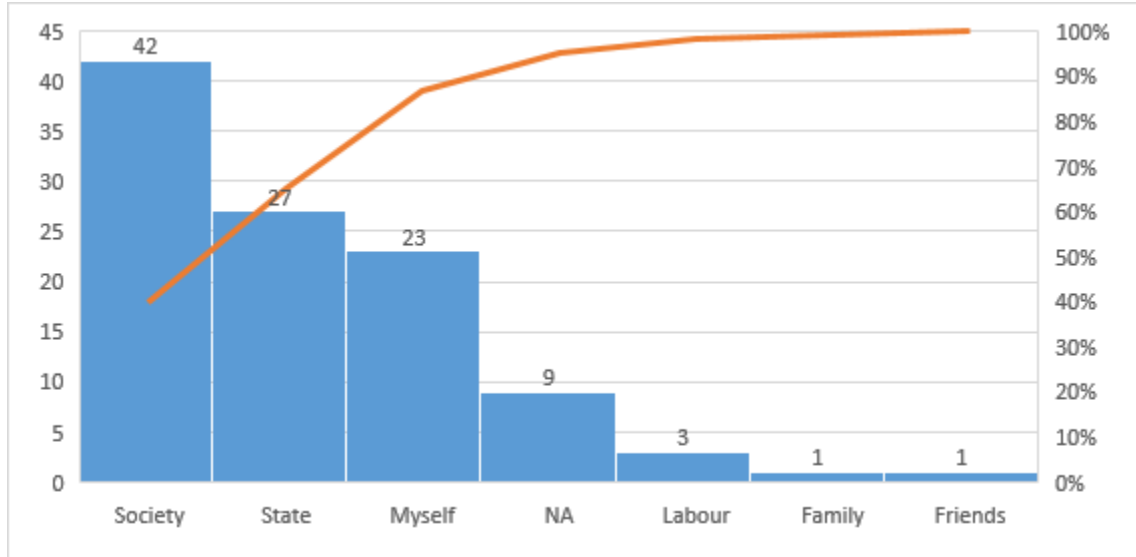


Figure 13. Relations between freedom and sources of constraint.

Freedoms given to choose to the interviewees were extracted from the human rights chart with an upstanding majority for the expression and opinion freedoms, that combined make 45 answers, followed only by the freedom of thought that we can relate with its exercise in the private realm.

FIGURE 14



Figure 14. Freedoms preferred.

After analyzing the general concept of freedom, I decided to prove it in its relationship with the factual space. When asked the interviewees if they feel free in Oñati, most of them answered positively. In the 82%, but that relationship was slightly shorter when the question was restricted to the feeling of freedom in the Foruen Eparantza by dropping 4 points. This can be shown in the following charts.

FIGURES 15 AND 16

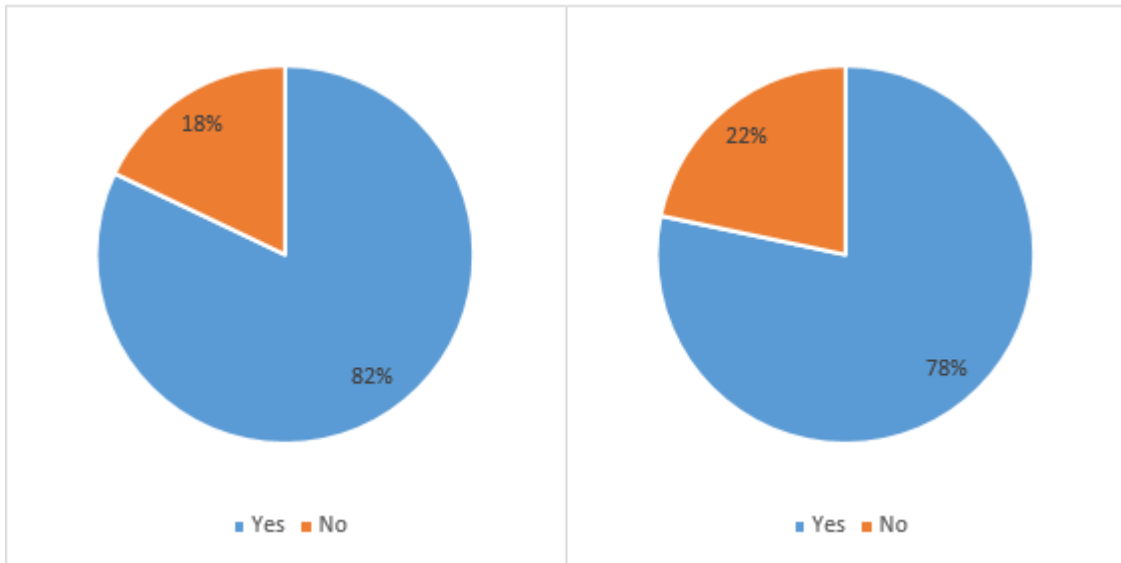


Figure 15. Do you feel free in Oñati?

Figure 16. Do you feel free in the Foruen Enparantza?

Knowing that 78% of the people interviewed feel free in the Foruen Enparantza, it is important to know what makes them feel free, what are the sources of that feeling of freedom. The inner feeling of freedom and space were equally answered, which is -at least- strange, being opposite conceptions of sources of freedom. The results were so heterogeneous that it is not possible to assess an individual diagnostic. Labelled the results, 65% related their sources of freedom with what we could call concepts associated with the concept of negative freedom. Being consistent with the rest of the research. By searching for the causes of unfreedom the answers were more homogenous, 50 interviewees answered that nothing constraints their freedom in the Foruen Enparantza, followed by being observed and critiques with 11 answers each. Once labelled, the proportion of positive conceptions of freedom remained the same, meanwhile, the negative one raised up to 71%.

FIGURES 17 AND 18

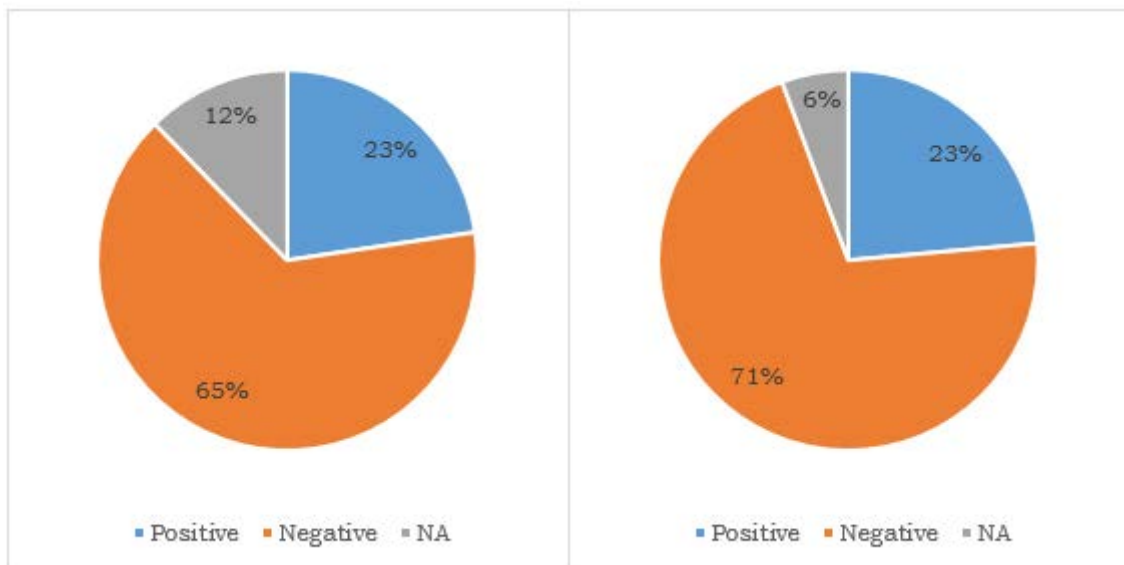


Figure 17. Sources of freedom in the Foruen Enparantza.

Figure 18. Sources of unfreedom in the Foruen Enparantza.

4. Matrix of Analysis

So far, we have explored four closely related concepts. These concepts, although linked, have been differentiated for purposes of qualitative analysis of the use of language for a better understanding of the socio-legal reality. For a better understanding, they have differentiated the concepts by their application in the philosophy, the normativity and the social reality.

TABLE 10

PUBLIC SPHERE	
PHILOSOPHICAL	Realm of the public, where decisions that affect the community are subject to debate and contestation. Governed by the principle of all affected. As a characteristic, it does not have a defined physical space for its development. It is more an activity than a place.
LEGAL	Set of normative dictates that ensure the political participation of citizens. Guided by the principles of democratic participation. Related to a set of rights rather than a place.
SOCIAL	Individual or collective perception of rights that allow social components to participate in common issues. Related to principles of equality and democratic participation in public affairs.

Table 10. Public Sphere.

The public sphere is intimately related to the public space. Public space requires the public sphere for its creation and use, but its use is not exhausted in it. On the other hand, the public sphere does not require the public space to develop, although public space is the best place in which this activity can be developed.

TABLE 11

PUBLIC SPHERE AND PUBLIC SPACE		
	PUBLIC SPHERE	PUBLIC SPACE
PHILOSOPHICAL	Realm of public and political discussion.	Place where people develop a public personality engaging in political affairs.
LEGAL	Rights that ensure the political participation of citizens.	Place created and administered by the authority in which citizens develop their public participation.
SOCIAL	Perception of the rights that allow political participation.	A place to participate in public affairs, being political or not.

Table 11. Public Sphere and Public Space.

Liberty is one of the pillar concepts of modern society. Liberty is a social and individual value that must be protected and enhanced. From whatever perspective, liberty generates positive incomes and deserves to be studied.

TABLE 12

LIBERTY	
PHILOSOPHICAL	The possibility of choice among a range of choices to conduct the owns life ends without the interference of others or interfering with others range of choices.
LEGAL	Positive normative statements to avoid state interference in the affairs of the individual.
SOCIAL	The possibility of choice without the interference of others. Liberty can only be exercised in the public to verify its effectiveness.

Table 12. Liberty.

The differentiation between liberty and freedom provides the basis for correctly analyzing the political discourse that presents us the words as interchangeable when they are not.

TABLE 13

LIBERTY AND FREEDOM		
	LIBERTY	FREEDOM
PHILOSOPHICAL	The possibility of choice among a range of choices.	Lack of coherence that enables the individual to follow the life he wants.
LEGAL	Rights against the interference of others in individual affairs.	Rights and mechanisms that ensure the ability of people to lead their lives according to their wishes.
SOCIAL	The possibility of choice without the interference of others.	Characteristics, actions, and sensations related to the possibility to develop a good life.

Table 13. Liberty and Freedom.

An important outcome of this analysis is the correlation that all the concepts keep within themselves. The public sphere is the realm where individuals have designed the freedom to be exercised in the public space, space that is not a safe place and suitable for the exercise of individual and collective freedoms. Freedoms must be not only idealized but positivized for their adequate protection. The social plan allows the testing of the freedoms scheme and the adequate implementation of public space design. May the following char be useful for better understanding of the said.

FIGURE 19

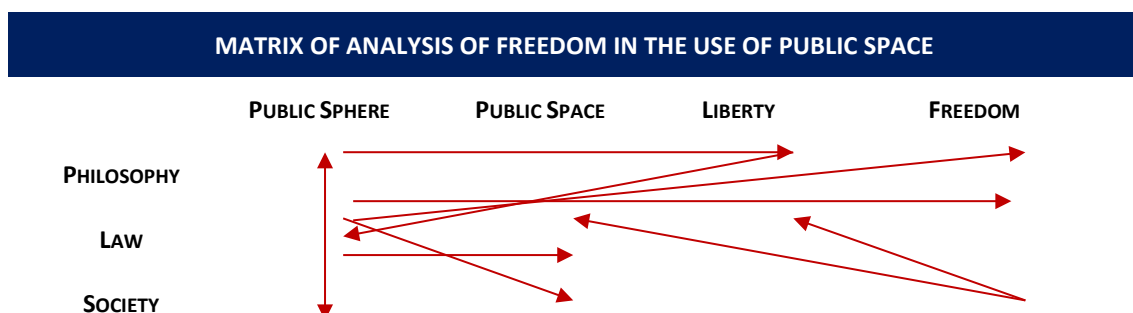


Figure 19. Relation between concepts.

The question we must ask, on the one hand, is whether the rules created by the Spanish state in general and the municipality of Oñati in the particular respect the

principles detailed by philosophy. Constitution does that by protecting liberty and creating the framework for the protection of the decision-making capacity of the inhabitants of the peninsula. On the other hand, it is important to know if the normative embodies the values that society values the most and if those values were not accepted by the regulations, then we would be facing two scenarios: (i) the regulation is inefficient; or, (ii) the rules are unjust.

In legal terms, the so-called *Gag law* is an example of an unjust rule, because it places a number of restrictions on freedom of expression and the use of public space. On the other hand, the Ordinance that Regulates the Street Vending in the Municipality of Oñati places a great number of restrictions on the use of public space, albeit with a relatively low level of efficiency. The Ordinance on the Use of Roads or Public Places with Non-Commercial Advertising is the clear example of a rule whose effectiveness is low, which is evidenced by the simple observation of the different political expressions that occur in the public spaces of Oñati. A very different case is that of the Ordinance for the Celebration of Civil Farewells or Tributes by Death in Oñati that allows the use of the public space for activities that expand the horizon of options available to the inhabitants of the town.

5. Concluding Remarks

The journey towards the discovery of the meaning of freedom is a long journey. Knowing in depth the concept involves reviewing thousands and thousands of pages of those who before us have embarked on the journey. The study of freedom implies not only a work of erudition but a comprehension of what the authors and the understanding of their time. Understanding the context in which the texts have been written brings the richness of understanding that what they wrote is the reflection of the reality they knew.

For now, if the reader has been able to empathize with the idea that freedom is not an abstract concept, but a living concept, this thesis has been a success. Freedom is one of the pillars of human existence, some would think that it is even comparable to life and it could be said that one cannot be conceived without the other. Freedom, being a factual value must be studied in the light of historical and contemporary thought, but also in the light of other factors.

Freedom needs a place to develop and although the private space seems a suitable place, where we can exclude others to exercise our individual freedom, that creates restrictions to the exercise of our freedom, such is the case of all those who, due to misfortunes of life, do not have a private space to withdraw. In this lies the importance of public space, understood as the common space in which the individual develops a wide range of freedoms for. In spite of the restrictions of the common space, it must assure the widest freedoms of, eliminating as many restrictions as possible on the development of the life of the individuals in the best way that they seem to them.

Some authors develop theories about the ideal space for the development of freedom, beyond the public-private divide. I consider the theory that the city is the ideal space for freedom to be inadequate. The ideal place for freedom depends on the assessments that the individual makes about the ends he pursues in life. It has been said that the city reaffirms the values of autonomy and anonymity, while rural life or smaller urban nuclei do not allow anyone to go unnoticed. It is clear that in Oñati that is the case, the participants in the survey point out that they perceive restrictions on their freedom in the use of public space by social criticism, although, on the other hand, it seems a much safer environment than that of the metropolis.

Each society must define its own concept of freedom and design appropriate safeguards for its protection. With the values that each social nucleus pursues, it will be the responsibility of the individuals that compose it to harangue and live according to those values or to look for in the individual place the ideal place to exercise them.

Probably the best way to clarify the values that govern a society is through the law. The norms that govern the life of the inhabitants must maintain a bond with the inhabitants of the territory in which they govern. When the rules do not conform to the concept of freedom that society pursues (and this is evident by the loss of efficiency or frank social rejection) must be modified to accommodate greater ranges of choice.

The society in Oñati seems like a free society, with public spaces well defined in the legislation and with a general perception of well-being. The possible sources of unfreedom are generated by conditions typical of any rural nucleus in which people cannot go unnoticed and have a sense of social pressure. Despite this, in the village there is an atmosphere of security and tranquility, with which we could say that in general terms the negative freedoms are protected, however, it is the very characteristics of the population nucleus that do not allow individuals to develop completely positive freedoms and that is also shown in the responses of the survey participants.

The future of research must be the comparison of different realities, in order to verify whether the concept of freedom and the freedoms perceived in different horizons are actually different, as we have proposed. Or, if on the contrary, we are in the presence of a homogenized liberty scheme, as the Western tradition makes us think. In the future, we must explore new horizons, different sizes of population nuclei, different legal traditions, different languages, in order to be able to truly affirm that freedom is not a universal concept, a mantle that covers everything, but different mantles of many colors and fabrics that can give shelter to the most diverse ideas about life. Only by understanding the scheme of different freedoms will we understand that individuals sometimes move from one country to another in the pursuit of society with the appropriate values for the complete development of their individual personality.

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Appendix I. Survey Questions

Population control questions

1. Date:

Referred to the date where the survey was answered.

2. Name:

Referred only to the first name of the participant.

3. Gender:

Four options were given to the participants:

- (i) Male;
- (ii) Female;
- (iii) Other; and,
- (iv) No Answer.

4. Age:

As will be explained below, the ages varied between the twenty to the hundred years.

5. Education level:

Ten options were given to the participants:

- (i) None;
- (ii) Elementary School;
- (iii) Middle School;
- (iv) High School;
- (v) Vocational Training Medium Degree;
- (vi) Vocational Training;
- (vii) College;
- (viii) Master's Degree;
- (ix) Doctorate; and,
- (x) Post-Doctorate.

6. Occupation:

Free answered.

Survey questions

1. Describe the public space, in a word:

Free answered, preferably one word.

2. Is the Foruen Eparantza in Oñati a public space?

Binary possible answers:

- (i) Yes; and,
- (ii) No.

3. Should the public space be a democratic place?

Binary possible answers:

- (i) Yes; and,
- (ii) No.

4. Should the public space be subject to rules?

Binary possible answers:

- (i) Yes; and,
- (ii) No.

5. The norms that regulate the public space must:

Binary possible answers:

- (i) Allow activities; and,
- (ii) Prohibit activities.

6. Freedom should be exercised preferably in the:

Binary possible answers:

- (i) Public space; and,
- (ii) Private space.

7. Describe freedom, in a word:

Free answered, preferably one word.

8. What freedom do you think is the most important?

Sixteen options were given to the participants:

- (i) Association;
- (ii) Chair;
- (iii) Circulation;
- (iv) Awareness;
- (v) Economical;
- (vi) Expression;
- (vii) Scientific investigation;
- (viii) Opinion;
- (ix) Cultural participation;
- (x) Political participation;
- (xi) Thought;
- (xii) Religion;
- (xiii) Residence;
- (xiv) Meeting;
- (xv) Syndication; and,
- (xvi) Labour.

9. Should there be any limit to the freedom of the people?

Binary possible answers:

- (i) Yes; and,
- (ii) No.

10. Do you feel free in Oñati?

Binary possible answers:

- (i) Yes; and,
- (ii) No.

11. Do you feel free in the Foruen Enparantza?

Binary possible answers:

- (i) Yes; and,
- (ii) No.

12. What makes you feel free in the Foruen Enparantza?

Free answered.

13. What does NOT make you feel free in the Foruen Enparantza?

Free answered.

14. Freedom is curtailed by:

Six options were given to the participants:

- (i) State;
- (ii) Society;
- (iii) Family;
- (iv) Friends;
- (v) Labour; and,
- (vi) Myself.

15. How do you say freedom in Basque?

Free answered.

16. Do you want to add something to the survey?

Free answered.

Appendix II. Labels

OCCUPATION					
PROFESSIONAL	INDUSTRY	STUDENT	SERVICE	RETIRED	OTHER
Academic	Crane operator	Student	Administrative	Early retirement	Autonomous
Administrative director	Machine operator		Bank technician	Pensioner	Single
Basque professor	Maintenance		Bartender	Retired	Working
Category manager	Operator		Clinic assistant		
Commercial director	X-Ray technician		Educator		
Communications Coordinator			Gardener		
Computer technician			Hairdresser		
Economist			Homemaker		
Human resources director			Manager of purchases and logistics		
Journalist			Mother-Doula		
Lawyer			Nursery assistant		
Librarian			Official		
Professor			Storer		
Salesperson			Technician		
			Waiter		
			Yoga teacher		

DESCRIBE THE PUBLIC SPACE, IN A WORD				
Characteristic	Sensation	Place	Users	Uses
Accessibility	Burden	Any	All	Connivance
Beautiful	Freedom	Bar	Children	Enjoyment
Clean	Friendly	Garden	Community	Interaction
Common	Interest	Mountain	Diversity	Meeting
Multi-purpose	Noise	Park	People	Service
Nice	Pleasant	Place	Of all and for all	Share
Open	Quiet	Square	Society	Union

Public	Respect	Street
Right		<i>Torrealde</i>
Social		
Spectacular		
Symbol		
Universal		
Wonderful		

DESCRIBE FREEDOM, IN A WORD:	
Positive freedom	Negative freedom
Autonomy	Allow
Being	Che Guevara
Brave	Connivance
Choice	Diversity
Coherence	Expression
Comfort	Fly
Decision	Make
Democracy	Outdoors
Election	Respect
Equilibrium	Right
Essential	Universal
Happiness	Will
Knowledge	Free
Love	
Need	
Peace	
Philosophy	
Power	
Principle	

Quiet
Responsibility
Subjective
Wellness
Askatasuna

WHAT MAKES YOU FEEL FREE IN THE FORUEN ENPARANTZA?	
Positive freedom	Negative freedom
Activities	Children playing
Be myself	Connivance
Democracy	Diversity
Enjoyment	Environment
Music	Everything
Opinion	Expression
Quiet	Integration
Share	Law
Trust	No restrictions
	Nothing
	Outdoors
	Pedestrian
	People
	Respect
	Security
	Space
	Traffic

WHAT DOES NOT MAKE YOU FEEL FREE IN THE FORUEN ENPARANTZA?	
Positive freedom	Negative freedom
Cameras	Abuse
Critiques	Bicycle
Feel observed	Censure
Tourists	Children playing
	Crowd
	Demonstrations
	Everything
	Hostile political environment
	Noise
	Nothing
	Privatized public space
	Prohibitions