

Choice-Based Libertarianism

Like possessive libertarianism, choice-based libertarianism affirms a basic right to liberty. But it rests on a different conception of liberty. Choice-based libertarianism defines liberty in terms of choice, not in terms of a prior set of rights. The aim is to derive rights to specific liberties—say, rights to market liberties—from a basic *right to liberty as such*. Limits on collective power are associated with a conception of individuals as choosers, responsible for how their life goes, not from an idea of individuals as owning themselves. To explain, I will begin by sketching the account of liberty suggested in Milton Friedman's choice-based view.

Now Friedman's *Capitalism and Freedom* is not a philosophical essay, so we will need to do some interpretation to present the philosophical outlook it expresses. In particular, we need to start by addressing three questions: what is liberty; what is a fundamental right to liberty; and why is there such a right.

1. What is Liberty?

- First, then, Friedman seems to hold (roughly) that liberty is a matter of other people not interfering with choices among alternative courses of action. Thus a person is at liberty with respect to some action just in case other people do not interfere with that person's acting or not acting that way. I am at liberty with respect to drinking a cup of tea just in case others will not prevent me from

drinking it if I decide to drink it or prevent me from not drinking it if I want not to drink.¹ I want to emphasize two features of this account.

First, in a famous paper called "Two Concepts of Liberty," the philosopher Isaiah Berlin distinguishes *negative* from *positive* conceptions of liberty. According to negative conceptions, liberty is a matter of "not being interfered with by others" in doing what one might aim to do.² Positive conceptions of liberty see liberty not simply as non-interference by others but as control or mastery over oneself, one's actions and circumstances. The negative understanding finds liberty in the absence of interference by others; the positive conception identifies liberty as self-direction: with empowerment, not simply non-interference.

An example: suppose you are stranded on a desert island. You are unable to order others around, because no other people are on the island. Unable to eat chicken, because the island has no chickens. Unable to occupy yourself by doing mental multiplication because you lack the ability. And unable to live comfortably because that would require hard work and you lack the necessary strength of will. So you are limited in what you can do.

Still, according to the negative conception of liberty, your liberty remains unrestricted. True, your options are severely restricted relative to your aspirations. But *other people* are not the source of the restrictions. A positive conception of liberty would hold that greater resources and a stronger will would make you more free because you would then be more in control of your actions and circumstances.³

Second, the account of liberty is cast in terms of non-interference by others with a person's *choices*, and not in terms of non-interference with my doing or getting what I value most. These are different ideas. Thus, someone can restrict my choices without interfering with my getting what I most value; and someone can expand my choices and thereby interfere with my getting what I most value. Consider these points in turn.

First, I want to spend the day listening to music. After I lie down on the couch, unbeknownst to me, someone locks the door and is prepared to keep the music on by remote control if I try to turn it off. So I have no choice but to stay and listen: so my liberty is restricted. I am not at liberty with respect to staying, in that I will have to stay even if I choose not to. But I most value staying and listening. So restricting my choices does not interfere with my getting what I most value. Staying in the room is not a matter of choice—with the door locked, it is not up to me. But I most value being there.⁴

Second, you can hamper my getting what I value most by eliminating restrictions on my choices. I have a big appetite; I value my appearance, so my wife locks the refrigerator. If you stop her, you increase my liberty. But if I am overwhelmed by an urge, I lose what I really value—my appearance—by this expansion of my liberty.

- So Friedman says that I have a basic right that others not restrict my choices. But why is liberty, thus understood, a matter of fundamental right? My ability to get what I most value may be unaffected by the contraction of my choices, and indeed my ability to get what I most value might be reduced by an

expansion of my choices. Given the potential conflict between liberty and achieving what I value, why is liberty of such great value as to be a matter of basic right?

2. What is *fundamental right to liberty*?

That is an important question, and we will be helped in answering it if we first consider what it means to say there is a basic right to liberty.

- The idea of a basic right to liberty is not that restrictions on liberty are never justified. Laws criminalizing homicide abridge liberty in that they impose restrictions on choices by murderers, but they are presumably justified. The idea instead is that restrictions on choices must meet a "very high burden of justification." The choice-based libertarian holds that there is a strong presumption against interfering with individual choices, whatever the content or subject-matter of the choices. The choice-based libertarian holds that *liberty as such*—all choices, of all kinds—merits strong protection, and not simply that we ought to extend protection to, say, religious or political choices.⁵

- But what exactly does this mean: "*a high burden of justification on restrictions of choices*?" To see its force, consider the range of reasons in the name of which the government can legitimately restrict liberty, i.e. the range of reasons that are good enough to justify limiting the choices of some individuals. In particular, libertarians typically hold that:

1. Government can legitimately limit liberty in order better to protect liberty. Examples of such limitation include the criminal law and the

maintenance of a framework of economic choice—which the libertarian identifies with protecting private property, enforcing contracts, protecting personal security, protecting against fraud, and ensuring that markets remain competitive. In each case the law assures liberty to some by constraining the liberty of others. Protecting private property restricts the choices of those who are prohibited from using others' property. But the claim is that these restrictions are legitimate because they serve to maintain a framework of economic coordination through choice.⁶ The general principle is that choice may be restricted so that choice itself is better protected.⁷

2. Government may restrict choice to promote the general welfare.⁸ But while there is no “hard and fast line how far it is appropriate to use government to accomplish jointly”⁹ what we have trouble achieving through market exchange, it should do so only when the gains are large and alternative ways to promote the general welfare, less restrictive of choice, are unlikely to succeed.

3. Government can legitimately restrict choice for paternalistic reasons, but only when the agent in question is unable to provide guidance for herself (children, insane). In such cases, it is permissible to restrict liberty in the name of the agent's own welfare, but only because the agent has only in substantially diminished form the capacity for self-regulated conduct. With people capable of self-regulation, government should not limit choice to promote the welfare of the agent whose choices are limited. One aspect of the right to liberty, then, is a rejection of paternalism (and also, moralism and perfectionism).¹⁰

4. Government ought not to infringe liberty for reasons of *equality*.

- Stated very abstractly, then, the choice-based libertarian holds that choice generally—liberty as such—is to be protected except for sufficiently substantial reasons. Stated more concretely, the thesis is that certain reasons are weighty enough and certain reasons are not—in particular, reasons of equality. According to Friedman, this right to liberty condemns agricultural price supports, social security, minimum wage laws, and regulation of transportation, finance, and trade (35)—not merely as bad policy, but as impermissible restrictions of liberty. More broadly, the right to liberty lies at the basis of Friedman's defense of laissez-faire capitalism: both because competitive capitalism provides economic choice, and because its dispersion of economic power helps disperse political power and thus to preserve other, non-economic liberties. Alternatives to it are unacceptable because they can only be justified paternalistically, or in terms of equality.

3. Why the right to liberty?

Why, then, is liberty so important as to be the object of a fundamental, indeed the fundamental, right? Confining ourselves to a population of competent adults, why can liberty only be restricted for the sake of liberty, or to bring large gains in general welfare (when no less restrictive means are available)?

- One reason might be that we generally suppose that individuals themselves are in the best position to take care of their own well-being, both because they care more about what it is and because they are more likely to know what is required for advancing it. So the right to liberty would be defended

instrumentally, by reference to the equal moral importance of the welfare of each person. Since each person's welfare is of equal moral importance, and each person is, as a general matter, the best judge of how to achieve that welfare, each ought to be left free to pursue his or her welfare.

A utilitarian might find this argument attractive (Bentham did). But it is not the only reason for the libertarian's support for a right to liberty. For the instrumental argument also applies to all other conditions that advance a person's welfare—for example, a decent standard of living—and the libertarian does not endorse a right to a decent standard of living. Something else must single out liberty as meriting special protection

- An alternative is suggested by ideas that come to us from Immanuel Kant. In his *Groundwork of the Metaphysics of Morals*, Kant says: "everything has either a *price* or a *dignity*. If it has a price, something else can be put in its place as an equivalent; if it is exalted above all price and so admits of no equivalent, then it has a dignity." Dignity, then, is a special kind of higher worth—beyond mere price. But in virtue of what do human beings have this special worth? According to Kant, it is our *autonomy*—our power to regulate our own conduct—that lies at "the foundation of the dignity of human nature and of every rational nature."¹¹ The morally most fundamental feature of human beings is not the capacity to experience pleasure and pain, but the capacity to choose: to set ends for ourselves in light of our judgments of what is valuable and worth pursuing, to regulate our conduct in pursuit of those ends, and to revise that understanding on reflection.

- So perhaps the reason for by making liberty the object of a fundamental right is that, by protecting choice in this way, we thereby acknowledge the "dignity" of human beings as responsible agents with the capacity to regulate our own conduct in light of our aims. Protecting liberty with a basic right acknowledges the importance of our powers of choice and capacity to take responsibility for our conduct.

So here we have an hypothesis about the basis of the right to liberty: Friedman wishes to connect possession of the capacity for autonomous, self-regulated conduct with the right to liberty; to argue that we show respect for the dignity of human beings, as beings with a capacity for autonomous conduct, by acknowledging a fundamental right that choice not be interfered with: "The heart of the liberal philosophy is a belief in the dignity of the individual, in his freedom to make the most of his capacities and opportunities, according to his own lights.... Each man has an equal right to freedom" (195). Paternalistic abridgements of liberty, for example, are denials of our dignity; they are to be condemned because they rest on the demeaning idea that we know better than the person what their interests are and/or how to achieve them.

We now need to assess this hypothesis: Is it true that we show respect for human beings as self-governing by embracing the libertarian's idea of a fundamental right to liberty? In particular, we want to know why restrictions of choice in the name of equality are demeaning and in conflict with the fundamental idea of dignity rooted in the capacity to choose?

4. Why restrict choice in the name of the general welfare?

To approach this question, let's first consider the case of the general welfare.

- Recall the earlier point: Whereas the right to liberty condemns paternalistic restrictions on adults, it does not condemn restrictions in the name of the general welfare, though it does establish a presumption against such restrictions. Law justified on grounds of the general welfare restrict liberty, but they are not designed to better protect liberty overall. Let's consider why such restrictions might be legitimate at all. If autonomy is the basis of our dignity, why do they convey no insult to human dignity?

- To address this issue, we need to introduce an idea of the general welfare. And for this purpose I will sketch the notion of a "public good."¹²

Consider a community near a harbor. Assume that everyone in the community wants a lighthouse for the harbor in order to ensure safe navigation; because they do, the provision of a lighthouse will advance the *general* welfare, i.e. the welfare of each. Let's tighten this first assumption: assume more specifically that each person is sufficiently eager to have the lighthouse that if each person contributed what he or she is truly willing to pay, the costs would be covered. Assume, second, that it is very costly (let's assume impossible) to exclude non-payers from receiving the benefits produced by a lighthouse—a bright harbor and safe navigation.¹³ But third, there is no additional cost to its being used by nonpayers: the lighthouse doesn't lose any candlepower if it is used by more people. So here we have a pure public good: desired by all, non-excludable, and no added cost to use by larger numbers.

- The problem with public goods is that it is hard to get people to pay for them. Why? Because you cannot exclude people from the benefits, each person's best alternative is that everyone else pay for it; each person prefers to take a free ride on the contributions of others, to get benefits without paying.

Suppose now that everyone is at liberty to contribute or not as they wish. Then why should rational individuals contribute to the provision of the good? Each person may reason as follows: "If others contribute to the lighthouse, I will be able to benefit anyway because they cannot exclude me from the light and safety. So why pay the cost. If others do not contribute, then I have to pay the whole cost. But it is not worth it to me to pay the whole cost. So why pay anything." But if each person, then no one contributes, and there is no lighthouse. Still, they all want the lighthouse. So the choices of individuals will not promote the general welfare.

The case of the lighthouse illustrates a general problem. Whenever a good would benefit everyone—and in this sense promote the general welfare—and it is costly to exclude people from getting the benefits, then we may face troubles in getting the beneficiaries to voluntarily contribute to the provision of the good. In such cases, the invisible hand does not work the effects for which Adam Smith celebrated it. We have a market failure.

- The standard response to such market failures is for the government to provide the good and finance its provision through taxation. But this solution involves the abridgement of liberty: it requires interference with choices about how to spend money. And Friedman agrees that such government solutions

are permissible. But he does think that the state should act only when the expected benefits are *considerable*, and that it should use the means that are least restrictive of choice.¹⁴ Consider a striking example: He thinks it legitimate for government to act to eliminate poverty. Not because individuals have a *right* to a decent standard of living, or because those in poverty are not able to make good use of their liberties, but because the elimination of poverty is a public good. For poverty is, Friedman thinks, a blight; he is "distressed" by its sight, and so Friedman himself (and others who are not themselves poor) would benefit from the alleviation of the distress caused by the existence of poverty.¹⁵ He proposes to combat poverty via a negative income tax—essentially a guaranteed minimum after-tax income—presumably because this approach is less restrictive of choice than alternative anti-poverty measures. Similarly, Friedman favors government financing of at least basic schooling not because there is a right to a decent education, but because we all gain when children are educated: "A stable and democratic society is impossible without a minimum degree of literacy and knowledge on the part of most citizens and without widespread acceptance of some common set of values" (86). But because we can achieve this goal without government-administered schools, Friedman favors a government-financed voucher system in which vouchers can be used at private schools.

- So promoting the general welfare is acting to make citizens better off under conditions in which individual decisions would not have that desirable effect: they get what they most value (all are better off), but their choices are

restricted. But now recall that the basis for the right to liberty is that protection of choice respects the dignity of individuals; protecting liberty is not simply a means for ensuring the welfare of individuals. So in permitting the abridgement of choice for the sake of the general welfare, why isn't Friedman permitting the same insult to dignity that he thinks is involved in paternalistic abridgements?

The answer is that in providing public goods, the government does not deny that each citizen is competent to run his or her own affairs. In providing the good—e.g., the lighthouse—the government recognizes that individuals who are perfectly competent, entirely rational and responsible, and who understand their conditions and interests sometimes produce results that no one wants. But because the problem lies in their circumstances, and not in them as individuals, it is legitimate to restrict or regulate choice in the name of welfare.¹⁶ Restrictions in the name of the general welfare are legitimate (morally permissible), then. Not for the utilitarian reason that the general welfare is larger (more welfare) than a person's own welfare. Instead, such restrictions, unlike paternalistic regulations, can be justified without insult to our dignity, without denying our capacity for self-government.

5. Is it permissible to restrict choice in the name of equality?

Answering that question about restrictions in the name of the general welfare helps to focus our next question, which is: If restrictions on choice can be justified by considerations of the general welfare, why can't such restrictions also be justified in the name of equality?

- To address this issue, we need some account of the equality in the name of which laws and policies might be justified. The equality that I want to focus on is economic equality, equality with respect to income and wealth. But we need to be cautious here, because loose talk of “economic equality” may confuse matters.

- To get a more precise question, let's distinguish four sources of the observed inequality of income and wealth in market economies¹⁷:

1. Some inequalities in resources result from different *inherited starting positions*. Some people inherit the wealth of their parents or are the beneficiaries of large gifts of wealth. Others are not so fortunate. So two people who are in all other respects the same—e.g., who have the same talents and values—may nevertheless fare differently because of differences in the resources they are born into.

2. Other inequalities reflect differences in *skill*, which—assume for the sake of argument—are in part a consequence of differences in *natural talents* and the ways that those talents are differently valued by society. Here again, birth is important. Thus two people who inherit the same wealth, and who have the same values—so they attach precisely the same importance to work and social contribution—might nevertheless end up with unequal resources because one has a highly valued natural gift that the other lacks.

3. Inequalities might reflect differences in *preferences and values*. For example, suppose Jones devotes himself to running a successful business. He likes philosophy, too, but not enough to forgo the rewards of the business.

Smith, by contrast, does not value financial rewards so much, and devotes herself to becoming a philosopher. Smith would like to earn more, but she is unwilling to forgo philosophy and do what Jones does. Thus two people with the same inherited wealth and natural endowments might end up unequal because of their different preferences and values.

4. Finally, people who are in each of the respects considered thus far identical might nevertheless end up unequal as a result of *luck*. Now, you might say that “luck” covers differences in inherited starting position and talent. What I have in mind, then, is what Ronald Dworkin calls “option luck.” Suppose each person has a choice about whether to enter a fair lottery. Some win, and others lose. Two people with the same inherited wealth, natural endowments, and preferences and values might fare differently because of differences in the results of chance processes that they have equal chances of undertaking.

- Having disaggregated the sources of inequality in this way (though I do not want to deny that there are other sources of inequality, including discrimination), we can focus on the following questions: Suppose we can trace the differences in lifetime advantage to differences in inherited starting position. Is it legitimate to restrict choice to prevent such inequalities? Suppose we can trace them to differences in natural endowment. Is that just? And so on for each of the sources. So instead of asking very generally about equality and inequality, we ask whether inequalities arising from particular sources—whether inequalities with particular causes—are acceptable or not.

6. What kind of restrictions on liberty are under consideration?

Before addressing these questions, though, I need to make some remarks aimed at clarifying what is meant by "restricting choice" in this area.

- It is easy to be misled by the terminology into thinking that there is some sort of "economic police" at work who will take things away from people whose holdings are condemned by some favored conception of equality. That is the wrong picture. We are concerned here with the rules of the economic game—for example, taxes, transfer payments, rules defining the ownership and transfer of property. The issue is how to establish a system of rules that will help ensure that only inequalities with legitimate sources emerge.

- To clarify: suppose, for example, that we think that differences in inherited starting position—in the resources that people are born into—are not legitimate sources of inequality. Then we might favor (with Mill) a system of heavy taxes on inheritance and bequests, and we might also support large investments in education and training, since these measures will help to ensure that opportunities are not fixed by class background. Or we might simply favor giving everyone an endowment of assets, when they reach 21: say, \$80,000 to be used for any purpose, but essentially as a device for ensuring that inequalities do not reflect differences in social class background.¹⁸

Or if we think that inequalities should not be determined by differences in natural talents, then we might favor a system of taxes and income transfers that insures that when someone makes a productive contribution as a

consequence of his/her natural talents that everyone benefits from that contribution, regardless of their position in the distribution of talents.

7. So what kinds of restrictions on liberty for equality are legitimate?

That settled, let's now consider Friedman's view about these four sources of inequality. In his discussion of "equalizing differences," he implies that inequalities owing to preferences/values and those owing to option luck are permissible.¹⁹ But then he adds that "a large part [of income inequality] reflects initial differences in endowment, both of human capacities and of property. This is the part that raises the really difficult ethical issue" (163-4). So how does he handle the other sources of inequality?

- To address this difficult issue, Friedman distinguishes two ethical views about distribution (161-62). He calls the first the *capitalist ethic*. In effect this ethic calls for the elimination of *legal* barriers to social mobility, but takes all four types of inequality to be legitimate.

- He refers to the second ethic as "equality of treatment." Friedman's discussion of this second ethic actually focuses on a particular version of it: following Ronald Dworkin, I will call this version "starting gate equality" (SGE). According to SGE, no one should have a better life than anyone else just because he or she inherits or receives a gift that gives him/her a head start: this view seeks to avoid inequalities owing to differences in starting position. But it is permissible for one person to do better than another because of differences in luck, talent, or values.

Starting gate equality, then, goes beyond the capitalist ethic. The capitalist ethic condemns inequalities that result when laws restrict people's opportunities—it requires a *formal-legal equality of opportunity*, and condemns legal barriers to social mobility of a kind we associate with caste societies. Starting gate equality requires a more *substantive equality of opportunity*, expressed in the following principle: individuals who are equally talented and equally motivated should not fare differently in life simply because of their different social backgrounds.

I said that Friedman's discussion of equality of treatment focuses on one specific interpretation of it: starting gate equality. Consider, then, a second version which, following Rawls, I will call "democratic equality." This view condemns economic inequalities that result from differences in natural endowment as well as inherited endowments. Keep it in mind, and I will return to it at the very end of the lecture.

8. Why does Friedman reject SGE?

Friedman rejects equality of treatment in favor of the capitalist ethic. One reason for that rejection is that starting gate equality is an incoherent position.

- To see why, consider the two central claims of SGE: (i) it is illegitimate for Jones to have greater resources over the course of her life than Smith has over the course of his simply because Jones was born with more resources (inherited wealth); (ii) it is legitimate for Brown to have more than James because Brown is endowed with natural gifts that James lacks. "Inequality

resulting from differences in personal capacities, or from differences in wealth accumulated by the individual in question, are considered appropriate, or at least not as clearly inappropriate as differences resulting from inherited wealth.”²⁰

- But the distinction between the permissibility of the different sources of inequality, Friedman says, is "untenable" on "ethical grounds" (164). Inherited starting positions and natural talents are ethically on a par. Thus, consider why someone might think it objectionable for one person is better off than another because of her inherited starting position. We might point out that people are not *responsible* for their inherited starting positions. Now add in the general principle that it is objectionable for one person to do better or worse than another as a consequence of a condition for which they bear no responsibility. It follows that differences in advantage traceable to inherited starting positions are objectionable. But then the same is true for natural endowments. People may be responsible for what they do with their natural endowments; but they are not responsible for the endowment. So the general principle also condemns inequalities traceable to differences in endowment.

And this is precisely Friedman's contention: If we are troubled by inequalities that trace to differences in inherited starting position, then we have equally good reason to be troubled by inequalities rooted in inherited differences of natural talent. But starting gate equality distinguishes these morally equivalent sources of inequality. So it is unacceptable. And, since starting gate equality is allegedly the most plausible interpretation of the ideal

of equality of treatment, Friedman concludes that equality of treatment—while not without certain intuitive attractions—itself ought to be rejected.

- So equality of treatment is incoherent because the allegedly most plausible understanding of it—SGE—is incoherent. How then does this answer our question: why is it illegitimate to abridge liberty for the sake of equality? It is true that achieving starting gate equality might involve restrictions on efforts of parents to confer benefits on children (say, through inheritance taxes); or taxes to support schools that ensure equal chances for kids with different backgrounds. But why is that objectionable? Promoting the general welfare also restricts liberty, but is not always objectionable; indeed, Friedman supports taxation to support schools for reasons of the general welfare: we all benefit, he says, from providing at least a minimum level of schooling for all. So why does starting gate equality involve a denial of dignity?

The main burden of Friedman's answer is that starting gate equality draws distinctions where there are no reasonable distinctions to be drawn and therefore is not a principled position. And this leads to the suggestion²¹ that what really motivates a program of greater equality and the desire to use the power of the state on behalf of such equality is not an allegiance to ethical principle, but the naked desire to have more, coupled with a willingness to use political power to promote that desire. To interfere with the choices of some in order in order to promote equality (even starting gate equality), then, is to restrict the choices of some in order to satisfy the unprincipled desire of others for greater welfare. This is a demeaning denial of human dignity because it

arbitrarily elevates the welfare of some people above the choices of others.

Consider again the case of inheritance taxes: these interfere with parental choices about how to use resources in order to ensure that those who would not inherit are better off. By placing the welfare of some above the choices of others, it displays an insufficient appreciation of the value of choice and the dignity associated with the power to choose.

9. Should we accept choice-based libertarianism? Three issues:

This is a powerful position. But let's note some questions about it.

- Notice, first, that Friedman's argument requires that we reject an intuitively attractive account of equality of opportunity. To be sure, Friedman does (see F195) endorse one version of the requirement of equality of opportunity. But in endorsing the capitalist ethic, Friedman endorses a highly *formal* or legal understanding of equality of opportunity. That is, he thinks that the requirement of equality of opportunity is violated when the state imposes legal obstacles on citizens' liberties and opportunities—e.g., obstacles based on race, sex, social background, national origin, religious belief. But he accepts as legitimate those inequalities that result when a kid who is born rich has, by that very fact, greater opportunities for lifetime advantage than another child who is in all other respects identical. In short, he rejects measures that are designed to ensure that equally able individuals, but one born poor and the other born rich, have equal chances in life. And this runs up against an

intuitively attractive ideal that two kids ought not to face different prospects in life simply because of the different social classes they were born into.

- Second, the capitalist ethic seems to suffer from problems of coherence of a kind that Friedman locates in starting gate equality. Thus the capitalist ethic accepts formal equality of opportunity and rejects starting gate equality. But why should we accept formal equality of opportunity as opposed to a caste system with legal imposed barriers to social mobility? Why is it wrong to put legal barriers based on race, gender, or class in the way of people becoming lawyers, or doctors, or engineers, or professors, or construction workers? One important reason for opposing legal barriers is that we want to ensure that people are not *effectively* prevented from using their talents simply because of the situation into which they are born; social background seems irrelevant to job qualifications. The problem with legal barriers, in short, is that they are *effective barriers* that stand in the way of a person's use of her talents, and not simply that they are legal.

But if that is why we object to legal obstacles, then we ought to go further and embrace starting gate equality, since we ought to be troubled by non-legal barriers—poverty, lack of means, poor education—that effectively disadvantage people in the pursuit of social goods. Given the alternative of a system with starting gate equality, it seems objectionable for the law to officially include barriers *and also* for the law to enforce a system of property rights that effectively imposes such barriers. The capitalist ethic, in short, appears to reject one sort of obstacle, while permitting another that is morally on a par. So

we might accuse it, too, of being incoherent, unprincipled, and a device for masking a naked preference, though in this case the preference of those who already have more to keep what they have.

- But, third, we want to see if we can get past trading accusations. And doing that requires that we address Friedman's argument that equality of treatment is incoherent because starting gate equality incoherently distinguishes native endowments and inherited wealth, though they are in fact ethically on a par. This criticism has considerable force. Notice, however, that the criticism leaves us with two possible responses. We can endorse the capitalist ethic, or we can embrace the idea of democratic equality. And we don't yet have a reason for preferring the one to the other, inasmuch as both are coherent positions. So we don't yet have a reason to conclude that restrictions on choice in the name of equality are demeaning denials of dignity.

Endnotes

¹ This bilateral account of liberty is controversial. Thus it might be said that it is sufficient for me to be at liberty to drink the tea that others will not prevent me from drinking it should I want to drink it. Nothing in my discussion turns on whether the bilateral account is correct.

² See Berlin, p. 123. The demand for liberty is, as Hayek puts it, "a demand for the removal of all *manmade obstacles* to individual efforts." See Hayek, "Liberalism," in *New Studies*, 134.

³ Negative libertarians sometimes defend their own account of liberty by arguing that the positive conception of liberty is incoherent or an abuse of the word "liberty." Both claims seem implausible. But the negative libertarians need not rest their case on these implausible claims, because the central claim of negative libertarianism, as a political philosophy, is not about the concept of liberty. The libertarian may acknowledge that self-mastery is an attractive good, and that "liberty" may sometimes be used to refer to self-mastery. What the libertarian insists is that all we have a right to demand of others is that they refrain from interfering with our choices, and not that they ensure that we have the resources required to pursue our aspirations, or that they, in other ways, foster our self-mastery.

⁴ Notice what this means: if I can do everything I value to do, I may still not be free, and that makes sense: after all, my values might adapt to my restricted opportunities, and that doesn't make me free.

⁵ Sometimes this libertarian view is summarized in the claim that the central political norm is the elimination of "arbitrary coercion." But this is misleading. Coercion is arbitrary just in case it is not supported by good reasons, and no one holds that coercion ought to be exercised without good reasons. The real thrust of libertarianism, then is its view about what makes for sufficient reasons for the exercise of the coercive powers of the state: that with certain exceptions (indicated in 2 and 3), the only good (or non-arbitrary) reason for interfering with liberty is to ensure the protection of liberty itself: "If all are to be as free as possible, coercion cannot be entirely eliminated, but only reduced to that minimum which is necessary to prevent individuals or groups from arbitrarily coercing others." Hayek, "Liberalism," p. 133.

⁶ In *The Road to Serfdom*, Hayek says that "economic liberalism . . . regards competition as superior not only because it is in most circumstances the most efficient method known but even more because it is the only method by which our activities can be adjusted to each other without coercive or arbitrary intervention of authority." P. 35.

⁷ Friedman describes this as the role of government as "rule-maker and umpire." *Capitalism*, p. 25.

⁸ *Ibid.*, pp. 27-32.

⁹ *Ibid.*, p. 32.

¹⁰ *Ibid.*, p. 33.

¹¹ *Groundwork*, 434, 436.

¹² See Friedman's discussion of "neighborhood effects."

¹³ Also it is not clear what the benefit of exclusion is, since each person's consumption does not reduce the quantity of the good available for others. But put this to the side.

¹⁴ He sees no bright line dividing the cases in which such interventions are legitimate from cases in which they are not. *Friedman*, p. 32.

¹⁵ *Ibid.*, p.191. Other similar reasons of the general welfare might be offered for seeking to eliminate poverty, e.g. that eliminating poverty reduces crime or strengthens a country economically or militarily.

¹⁶ At the same time, however, respect for the value of liberty requires that we avoid such restrictions except when there is a clear showing that the restrictions produce a significant advance in the general welfare and that there is no less restrictive means for producing the result. Those conditions reflect the fact that the reason for avoiding the restrictions is not -- or not fundamentally -- that the government cannot be trusted to correct for the failings of the market: its that such actions involve restrictions of choice and as such carry a substantial burden of justification.

¹⁷ See F162-64.

¹⁸ See Ackerman and Alstott.

¹⁹ Pp. 162-63.

²⁰ P. 164.

²¹ See in particular the passage at p. 163 stating that progressive taxes are supported by those who think that they have drawn the blanks rather than the prizes in the lottery of life.