

### 1. What is *liberty*?

- A person is at liberty with respect to some course of action just in case other people do not interfere with that person's conduct.
  - ✓ *Negative*: liberty is *non-interference by others* with my choices.
  - ✓ *Choice-based*: others interfere with liberty by *limiting choices*, which is different from preventing me from getting what I most value.
- So why is there a basic right to liberty?

### 2. What is *fundamental right to liberty*?

- Basic idea: not that liberty is absolute (it couldn't be), but that any restriction on individual choice, whatever the content of the choice—any restrictions on *liberty as such*—must meet **high burden of justification**.
- Content of the right can be specified in terms of acceptable reasons for restricting liberty (the ways that regulations may meet the high burden of justification).
  - ✓ Permissible to restrict choice if the restrictions help *to protect liberty overall*: e.g., criminal law, protection of property, enforcement of contract restrict choices, but help to protect liberty of others (25-27).
  - ✓ Permissible to restrict choice to *promote general welfare*, but only when benefit is large and alternative means of provision are unlikely to succeed (27-32).
  - ✓ Paternalism is permissible for those who are unable to provide reasonable guidance for themselves, but *impermissible to impose paternalistic restrictions* on people capable of regulating their own conduct (33-34).
  - ✓ *Impermissible* to enact policies that restrict choice in the name of *equality*, beyond formal equality of opportunity: absence of legal barriers to mobility.
- Ensuring right to liberty requires relatively unregulated market economy.

### 3. Why a fundamental right to liberty?

- Welfarist reasons not sufficient: liberty is only one means for improving welfare.

- Instead, right is founded on an idea of the *dignity* of human beings associated with the human capacity for self-government.
- Hypothesis: To show respect for autonomy and acknowledge the special dignity of beings who have capacity for it, we must acknowledge their right to liberty.

#### **4. Why are restrictions of choice in the name of the general welfare ever permissible?**

- Law justified on grounds of the general welfare restrict liberty, but they are not designed to better protect liberty overall. So why legitimate?
- Consider public goods: (i) goods that are desired by all; (ii) if available to any, then available to all (non-excludable); (iii) no additional cost to greater use.
- Problem: rational to take a free ride on contributions of others (market failure).
- Government sometimes advances the general welfare by limiting liberty: when it requires individuals to contribute to the provision of public goods through the tax system. Friedman: taxes to support antipoverty programs (191), education.
- Limiting liberty to provide public goods is permissible because *no insult to dignity*:

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

- Focus on economic (in)equality.
- Four sources of inequality in a market economy:
  - ✓ *Inherited starting positions*: two people who are in all other respects the same may fare differently because of differences in resources they are born into.
  - ✓ *Natural talents*: two people with same inherited resources and values might end up unequal because one has highly valued natural gift that the other lacks.
  - ✓ *Preferences/values*: two people with identical inherited wealth and natural endowments might end up unequal because they have different preferences/values that lead to different job choices or labor/leisure decisions.
  - ✓ *Option luck*: two people with identical inherited wealth, natural talents, and preferences/values people may end up unequal because of results of chance processes that they have equal chances of undertaking.
- Which of these four are legitimate sources of inequality?

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

- Not unannounced interferences with choices, but of setting the rules of the economic game (property, contracts, taxes, transfers, regulations).
- Ways to “limit inequalities” via rules: (i) limit inequalities that come from inherited starting positions via inheritance taxes, or education and training, or distribution of some assets at age 21; (ii) limit inequalities that come from differences of natural endowment via taxes and income transfers.

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

- One answer is “*capitalist ethic*”: requires *formal* equality of opportunity—eliminating *legal* barriers to social mobility—but accepts as legitimate inequalities that have any of the four sources.
- Another answer is “*equality of treatment*,” which has two variants: (i) “starting gate equality” (SGE): inequalities are unjust if they trace to differences in inherited starting position; (ii) “democratic equality”: condemns inequalities from differences of natural talent or inherited starting position (Rawls).

## 8. Why does Friedman reject SGE in favor of capitalist ethic?

- SGE distinguishes inequalities that result from inherited resources and those that result from natural talents: but this distinction is “untenable” on “ethical grounds” (164). Inherited starting position and talents are ethically on a par.
- More broadly, SGE is demeaning because it arbitrarily places welfare of some above the choices of others.

## 9. Should we accept choice-based libertarianism?

- Conflicts with the intuitively attractive idea that two people ought not to face different prospects in life simply because of the different social classes they are born into.
- Merely formal equality is unstable: capitalist ethic rejects legal barriers to mobility but permits effective barriers that do not have the form of legally enforced barriers.
- We can accept Friedman’s incoherence argument against SGE without rejecting equality of treatment by opting for democratic equality.