

Negative Liberty

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NEGATIVE LIBERTY

D. M. WHITE

I

There exist many accounts of what it is for a person to be negatively free—being let alone, the absence of external impediments, the absence of perceived external restraints, the absence of interference with a person's activity or his rights, his not being prevented by others from doing what he wants to do, and so on.¹ This paper does not advance yet another account, but rather examines and attempts to specify some conditions under which it is appropriate to say that a person is negatively unfree to do or not do, to be or not be, or to become or not become something.² This manner of procedure is adopted because, to be at all realistic, discussions of liberty must begin, not with an abstractly conceived account of what it is to be free, but with awareness of, and attendance to, the kinds of pressures, restraints, constraints, etc., to which human beings are, or can be subjected.

The major preoccupation of those who write about liberty has quite properly been with questions about the proper limits of liberty, about the grounds which justify infringements of liberty, and so on. However, a full examination of questions about liberty must include some discussion of the conditions under which there is an infringement of liberty (this being independent of whether the infringement is legitimate). This matter has usually been treated rather cursorily. It is the more important that it should be treated adequately at a time when methods

for controlling, molding, and constraining human behavior are becoming more sophisticated and indirect, and less overt.

It will be contended in this paper that a necessary condition of a person being negatively unfree to do something is that this thing should be either impossible for him to do, or in some measure not eligible to him. Arguments for this contention are to be found in the second and third sections. In these sections, various kinds of impossibility and noneligibility, along with various ways in which they can arise, are examined; and on the basis of this, some sufficient conditions of a person being negatively unfree to do something are laid down.

The first, and the most basic, question which an analysis of freedom must be concerned with is 'what is it for a person to be free (or unfree) to do some particular thing?' This, as has been indicated, is the major question under consideration in this paper. The notion of being free to do something in general (e.g., being free to acquire property, as distinct from a particular piece of property), and the notion of being a free man (or nation or whatever), are both derived from the notion of being free to do something in particular.

A person is free to do something in general to the extent that he is free to do any of the particular things that fall within the relevant class. For example, a person would be free to acquire property in general (in a given country) if he were free to acquire any particular piece of property in that country.

It also makes good sense to say that a person can be more or less free to do something in general, depending partly on how many of the particular actions falling within the relevant class he is free to perform, partly on how significantly he is deprived of liberty in the cases in which he is deprived of it ("significant" in the sense specified below), and, presumably, partly on various qualitative rather than purely quantitative factors. For example, whether a person is more or less free to attend church may be thought to depend, not merely on the number of churches he is free to attend, but also on the kinds of churches (e.g., in terms of denominations) which he is free to attend. To the extent that qualitative considerations are invoked, evaluative connotations are inevitably introduced. It is appropriate that evaluative elements should enter into an account of what it is to be free to do something in general, although (as emerges below) they are best excluded in talking of what it is to be (negatively) free to do something in particular.

Such notions as being a free man, being a free people, or nation, or class, and so on, are still more complex. Whether a man is free depends in some way on the range of things he is free to do. Whether a nation, etc., is free similarly depends on the range of things its members, either individually or in concert, are free to do. I take it that to be a free man, a man would have to be free to do many things in general (or at least to be more rather than less free to do them). And the notion of being a free man (or a free people, etc.) is also evaluative in an additional way—not merely must the man be free to do many things in general; there are certain special classes of things that he must be

free to do. However, different people would regard different classes of things as being special in the relevant way. For some, a free man would at least have to be free from threats by the government to speak his mind on political issues; for others, a free man would at least have to be free from selfishness and other passions to spend his life serving others.

It is appropriate to note two distinctions which give some indication of how this paper is to be linked with the evaluative questions which are the main concern of those who write about liberty. The first is the distinction between what I shall call important and unimportant deprivations of liberty, and the second between what I shall call significant and insignificant deprivations of liberty. While people differ as to what is important in this context, and also about the proper grounds for making judgments, some examples bring out the general character of the distinction. Most people would say that if a person is rendered unfree to park his car in a certain spot, although he is free to park it fifty yards away, he is unimportantly deprived of liberty. On the other hand, most would say that if a person is rendered unfree to make a speech in a traditional public forum, he is importantly deprived of liberty. However, the person might be *genuinely* deprived of liberty in both cases. The two cases cannot be distinguished except in terms of the values that people attach to certain liberties, that is, liberty to do certain things. (Important deprivations can be more or less important, and unimportant ones can be more or less unimportant. A person would make these judgments in terms of the hierarchy of his values.)

It might be objected that since the

notion of freedom is ordinarily evaluatively loaded, the distinction just drawn is unnecessary: that we should speak of deprivations of liberty only when a person is, in terms of this distinction, *importantly* deprived of liberty. But because people hold different values, the adoption of such a usage causes confusion. The point of the distinction is to make it possible to avoid this confusion by separating those aspects in usages of freedom which do involve evaluative judgments from those which do not. In view of this, any departure from ordinary usage that this distinction involves is justified.

The distinction between significant and insignificant deprivations of liberty can also be broadly characterized by examples. (This distinction avoids confusion and makes it clear that deprivations of liberty are not all equal in degree.) We would normally say that a person is deprived of liberty to do something that the law forbids on pain of the threat of punishment. Such a threat may be more or less severe; and when a threat is not severe, we should say that the person concerned is deprived of liberty, although not significantly.³ Thus, if the penalty for murder is death, a person is significantly deprived of freedom to commit murder, but if the penalty is a fine of a thousand dollars (or five hundred or two hundred dollars), a person would not be significantly deprived of liberty, especially if he were wealthy. It is also appropriate to talk of more or less significant (and insignificant) deprivations of liberty. A person is most significantly deprived of liberty when he is not free to do something because it is impossible for him to do it. Furthermore, whether a threatened penalty (or whatever) is a significant deprivation of liberty depends to

some extent on the character of the course of action to which it is attached—a fine of a thousand dollars may involve an insignificant deprivation of freedom to commit murder, but it would probably be a significant deprivation of freedom to park a car in a certain spot.

It is appropriate to make some explanatory comments about the use of the term 'negative liberty,' especially in view of G. C. MacCallum's paper "Negative and Positive Freedom."⁴ MacCallum suggests that freedom should be regarded "as always one and the same triadic relation."⁵ He says, "whenever the freedom of some agent or agents is in question, it is always freedom from some constraint or restriction on, interference with, or barrier to doing, not doing, becoming, or not becoming something. Such freedom is thus always *of* something (an agent or agents), *from* something, *to* do, not do, become, or not become something; it is a triadic relation."⁶ MacCallum's view is that negative and positive liberty are neither different kinds nor different concepts of liberty.

It is unnecessary to enter on the merits of MacCallum's discussion here. For his contentions do not entail that the notion of negative liberty should be wholly abandoned. Freedom as something negative is to be explicated in terms of the character of that which the freedom is *from*. Speaking broadly, a person may not be free, on the one hand from external constraints, pressures, etc., and on the other hand, from internal constraints, etc. For example, a person who cannot do something because someone has bound and fettered him is subject to an external constraint, whereas a person who cannot do something because his conscience forbids it is subject to an internal constraint. The

notion of negative freedom is used here (as it is commonly used) to indicate a concern with external constraints, pressures, etc.

Liberty—and more especially negative liberty—is a social and political concept. This point has important implications which bear some examination. A person who is negatively unfree to do something would normally, although not always, have been *deprived* of liberty. And he would generally have been deprived of liberty by means of political or social (including economic) activity. While we do talk of deprivations of liberty in purely interpersonal relationships (e.g., a man who locks up his wife while he is away would be restricting her liberties) this kind of usage involves some extension of the primary meaning of the term “liberty.” When we say that a person is *deprived* of liberty, we imply that it is possible to impute responsibility (in some sense) for his not being free (where he once was free). When we say that a person is unfree to do something (and not that he is deprived of freedom to do it) we imply that it is not possible to impute such responsibility. In the light of these points, it can be seen that liberty is a social and political concept, not in the sense that a loss of liberty must be due to social or political activity, but rather in the sense that it has application only in situations (or contexts) which are in some way amenable to political or social action. The exact force of this emerges in the course of the second and third sections of this paper. However, it is appropriate to point out here that it is the crucial factor in determining which varieties of impossibility and noneligibility are sufficient conditions of a person being negatively unfree.

Saying that liberty is a social and

political concept makes necessary some comment on the terms ‘social’ and ‘political.’ They are both used in a very broad sense, but it would be inappropriate to attach a precise (and therefore tendentious) sense to them here. On the one hand, they are open-textured terms, a fact which is significant, as the second and third sections reveal. On the other hand, there are ineluctable disagreements as to what they refer to. From this flow some of the differences as to the general area of application of the term ‘liberty.’⁷ In view of their source, it appears unlikely that these differences will ever be eliminated. Furthermore, it seems that any analysis of liberty will inevitably reflect, in some measure, the writer’s conception of what matters are to be regarded as political and social.

In the second section, various kinds of impossibility are examined, and in the third section, various kinds of ineligibility. I begin with impossibility, not because it is the more important notion (it is, if anything, less important) but because it is less complex. As has been indicated, my main concern in these sections is to set down some conditions under which a person is negatively unfree to do something.

II

There are clearly some cases in which we would say that a person is unfree to do something because it is—or has been made—impossible for him to do it. Perhaps the most obvious cases are those in which a person has been locked in a cell, or securely bound with chains. All must agree that such a person is, for example, unfree to associate with his friends. And it is because it has been made impossible for him to do so that he is unfree to do so. However, we do

not always say, when it is impossible for a person to do something, that he is unfree to do it. We sometimes say no more than that he is unable to do it. We would not say that a man is unfree to jump over the moon because it is impossible for him to do so, but only that he is unable to do so. Similarly, we would say that a man is unable, but not unfree, to run a mile in one minute.⁸ In the light of this, various kinds of impossibility must be examined.

First, there are the cases in which it is logically impossible for a person to do something. For example, it is logically impossible for a married woman to commit fornication. In these cases, it is appropriate to take the view that no questions about liberty arise: a married woman is neither free nor unfree to commit fornication. Ordinary usage does not invoke the notion of freedom in such cases, nor does there appear to be any reason to do so. By political or social action (e.g., by making all marriages null and void) a certain course of action (e.g., committing adultery) may be made logically impossible for a person. But inasmuch as the cases in which this can be done are rare and recondite, and inasmuch as the impossibility is purely formal, and not substantive, it would be pointless and undesirable to raise questions about liberty in connection with these cases.

Second, there are cases in which it is impossible for a person to do something because of normal human limitations. Thus it is impossible for a person to run a mile in a minute, to jump over the moon, to jump even ten feet in the air, and so on. It has already been suggested that it would be inappropriate to take the view that a person is negatively unfree to do these things. There is nothing in the nature of an external con-

straint which makes them impossible. And these courses of action are neither impossible because of political or social activity nor could any such activity make them possible.

It might be contended that no questions about liberty, and a fortiori about negative liberty, arise with cases of this kind (i.e., that people are neither free nor unfree to do such things). While there seem to be no conclusive reasons for or against this view, there are three considerations which argue against it. The first consideration presupposes acceptance of MacCallum's general line. While there are no external constraints in these cases, it makes good sense to say that there are internal constraints, namely, physical limitations or inadequacies. Thus people are not free from constraints of *some* kind to do whatever is in question. The second consideration stems from the point that the capacities of normal human beings change. It is easy to imagine that previous generations of philosophers would have talked of the impossibility of humans jumping seven feet into the air, or of their running a mile in four minutes. If one takes the view that no questions about freedom arise in connection with courses of action that are impossible because of normal human limitations, one could be committed to saying that questions about liberty sometimes do arise in connection with certain courses of action and at other times do not. While such a position may be tenable, it is best avoided unless it is inescapable simply because it is paradoxical. The third (and the strongest) consideration is that it is worthwhile to distinguish between cases in which it is impossible for a person to do something simply because of natural human limitations, and cases in which, because of external con-

straints, it would (presumably) have been impossible for him to do it anyway. And it seems not inappropriate to draw this distinction in terms of negative freedom. Thus one might say that it is not only impossible for a man who is bound and fettered to jump twenty feet in the air (because of natural limitations) but also that (because of his fetters) he is negatively unfree to do so.⁹

In view of these considerations, the desirable usage is that a person is free to do something if it is because of natural human limitations that he cannot do it. However, no substantial issues are involved; and with the usage recommended, it must be borne in mind that to say the person is free is to say no more than that he is not subject to any external constraints with respect to the relevant course of action. It is appropriate to point out that this usage does not imply that there would be many (or any) occasions when there would be any point in *saying* that the person concerned is negatively free.

Third, there are cases in which it is impossible for a person to do something because he is subject to some more or less distinctive personal limitation. For example, it might be impossible for a man who is lame, or who has a broken leg, to run a mile; it might be impossible for a man who is blind to form a concept of colors; it might be impossible for a man who has a prejudice against Negroes to think rationally about the color problem; and so on. Putting aside the cases in which the relevant limitation results from human intervention—these will be examined subsequently—it seems clear that there is no deprivation of negative liberty in cases within this class. For there is nothing which can possibly be construed as an external

constraint. However, since the three considerations mentioned above apply to these cases as well, it should be allowed that questions about liberty can arise with them; so a person who cannot do something simply because of a personal limitation is to be deemed negatively free to do it.

Fourth, there are cases in which it is impossible for a person to do something because of what I shall call a natural state of affairs. For example, it is impossible for a person to walk from England to France, because of the English Channel. In these cases, the natural state of affairs does, in a sense, constitute or impose an external constraint. However, since the constraint is in no sense social or political, and since the impossibility appears to be in no way amenable to political or social action,¹⁰ it would be inappropriate to say that the person concerned is negatively unfree to do whatever is in question. Whether it should be allowed that questions about liberty can arise with cases of this kind is again unclear and unimportant. Only the third of the considerations advanced above¹¹ would favor saying that such questions can arise. The second consideration has no application. The first, if anything, would indicate that such questions cannot arise, for since it is admitted that there is an external constraint, it would be odd to say that the person is nevertheless negatively free. Despite there being no decisive consideration, I would again argue that it is a desirable usage to say that questions about liberty can arise in connection with the question because of the weight of the third consideration. This usage implies that a person is free to walk from England to France if the only reason why he cannot do so is that the English Channel lies between them.

Fifth, there are cases in which it is impossible for a person to do something because of what I shall call a natural occurrence. I shall use this notion in a broad sense. Thus certain activities may be made impossible by fires, floods, or droughts, by fallen trees, by savage watchful dogs, by recalcitrant horses,¹² and so on. (Cases in which the natural occurrence is manufactured or engineered by human beings are not under consideration here.) There is obviously some kind of external constraint in such cases; and as these constraints are not standing conditions of nature, the relevant capacities can be gained or lost. However, it would be rather odd to say that the person concerned is unfree in such cases. We would normally simply say that he is unable to do whatever is in question.

It is difficult to assess what usage is desirable in these cases, and there do not appear to be any grounds for firmly adopting any particular usage. I would be inclined to say that if the occurrence is purely accidental and if there was nobody who was in any position to avert either the occurrence of the event or the ensuing impossibility, then the person concerned should not be said to be unfree. But if somebody (an individual, a private organization, or a governmental authority) was in a position to have averted either, then there may be some point in saying that the person concerned is negatively unfree. Suppose, for example, that because of a drought, a farmer is unable to plough. Suppose further that a governmental authority has failed to carry out its task of ensuring that irrigation is available during droughts. The farmer might legitimately impute to the government the responsibility for his inability to plough. For the matter is (or was) amenable to

social or political action, and the government has presumably accepted the responsibility to eliminate some of the effects of droughts. This being so, there could be some point in saying not just that the farmer is unable to plough, but that he is unfree to do so. Saying that he is unfree would bring out the point that his inability to plough is in some measure attributable to the government. Whether one adopts the kind of usage that this sort of remark implies is a matter of choice, a choice which is largely arbitrary. Several related but different usages are possible, depending on whether the relevant inability must be attributable to the government, or whether it is enough that it be attributable to a private organization or an individual; on whether the government, or whatever, must have undertaken to eliminate the inability, or whether it is enough that it could (or should) have done so; and so on. It should be noted that because any usage of this kind would be extremely wide, (the inability being not a direct result of an action, but an indirect result of an omission), it could cause confusion.

Sixth, there are cases in which it is impossible for a person to do something because of human activity or intervention (including forbearances). Cases of this kind are obviously much more central in connection with liberty than those which have been considered so far. In some cases of this kind, we would certainly say, and quite properly, that the person concerned is negatively unfree. But we would not say that whenever a person is unable to do something as a result of human activity he is negatively unfree to do it. For example, we would not say that a person is negatively unfree because he cannot park his car in a place which is already occupied.

It is therefore necessary to provide some grounds for discriminating. Many distinctions can be drawn in relation to cases of this kind, distinctions which to some extent crisscross each other.

There are distinctions between the cases in which it is made physically impossible for a person to do something and the cases in which it is made impossible for him because of his psychological characteristics; between the cases in which it is made impossible by the activity of one person and those in which it is made impossible by the activity of a group of people, or some kind of institution; between the cases in which it is made impossible by political or social activity and those in which it is not; between the cases in which the activity is intended to make it impossible and those in which it is not;¹³ (and, if this is distinguishable, between those in which it is foreseen that the activity will make it impossible and those in which it is not); between those in which it is reasonably foreseeable (although not foreseen) that the activity will make it impossible and those in which it is not; between those in which the activity makes the kind of action in question a long-standing impossibility (either for one person, for some people, or for all) and those in which it does not; between those in which the activity which makes it impossible is remote in time and those in which it is not; between those in which the impossibility is a relatively direct result of the activity and those in which it is not; and so on.

If the activity is intended to make the relevant course of action impossible for the person concerned, then it would be common to say that he has been rendered unfree to do it. This is a desirable usage, and so it is appropriate to draw out and discuss its implications. If a

person is bound and fettered with the intention of making it impossible for him to do something, then he is clearly rendered negatively unfree to do it: this appears to be a paradigm case. It does not appear to matter whether the act of binding him is political, or social, or whether it is a personal act (as distinct from one that is engineered by an organization). An organized political act of this kind is the primary case. But since all incapacities resulting from this kind of act are amenable to political or social action (the state may prevent a man from locking up his wife), it is appropriate to say that there is a genuine deprivation of liberty in every case.

The intention is significant in such cases. For example, taking again the case in which one person, A, has bound another person, B, it is because of the intention that A (or those whose agent he was) is undeniably responsible for B's inability to do whatever is in question: B has undeniably been *deprived* of the ability to do it and of liberty to do it. If a person became enmeshed in a trap that had been set to snare game, we would at least hesitate to say that he was deprived of liberty, precisely because the relevant intention was missing.

In the case cited the impossibility is physical, it is a relatively direct result of the activity in question, and there is presumably only a small time lag between the activity and the impossibility. These factors appear to me to be immaterial to whether a person is negatively unfree to do something if it is, with intention, made impossible for him to do it. How it is made impossible does not seem to matter. The fact that the person who caused the impossibility laid long-term plans to do so, or the fact that he laid complex plans, or the fact

that he used psychological methods, should not be held to make any difference. The impossibility will be amenable to social or political action, regardless of what technique is used to produce it; and this is the decisive test.

There is some complication when the impossibility of a certain course of action is the intended result, not of a person's activity, but of his forbearing to do something. For example, a man might make it impossible for his son to go out by not handing over the car keys. In cases of this kind, it seems appropriate to say that there has been a deprivation of liberty if there were rational grounds for expecting that the person would not forbear to act, or if the relevant course of action was impossible without some human activity only because of some human arrangement. I shall illustrate these two conditions in turn. First, suppose that a man generally gives his son the car keys, and that the son has reason to suppose that his father will continue this practice on a given evening. In this situation, we would say that the son was deprived of liberty to go out (assuming it was impossible for him to go out without the car, and that the father forbore to give him the keys with the intention of making it impossible.) The major reason for saying so is that a person's environment is made up of patterns of human behavior as well as of natural states of affairs and events. If these patterns of behavior change, then the environment is altered, and a forbearance of the kind in question can therefore be properly regarded as giving rise to an external constraint. Second, suppose that a law is introduced which makes it impossible for a person to leave his country without a travel permit. If the appropriate official forbears to give a permit to a

particular person, with the intention of making it impossible for him to leave the country, we would quite properly have no hesitation in saying that the official's forbearance renders him unfree to leave.

If neither condition is satisfied, there is no decisive reason for taking the view that the person either is or is not unfree to do what is impossible for him as a result of a forbearance. However, I would be inclined to take the view that he is not unfree to do it. For this appears to be the most convenient place at which to draw a line between human omissions which can, and those which cannot be construed as making a course of action impossible for a person—and such a line must be drawn somewhere.

I shall now discuss some hypothetical cases, partly to illustrate what has already been said, and partly to elucidate and examine some additional points.

1. Suppose that an elector who has a deep-rooted anti-Negro prejudice has decided, after reading all the manifestos, that he will vote for a certain candidate in an election. A third person, intending to prevent him from voting in this way, and knowing of the man's prejudice, informs him that this candidate is a Negro. As a result, the elector is quite unable to vote as he had decided: that is, no matter how hard he tries to adhere to his decision, and no matter how much he wants to do so (because of the superiority of the relevant manifesto), he simply cannot do so.¹⁴ Inasmuch as the third person imparted the information with the intention specified, he should be deemed to have deprived the elector of liberty to vote for the Negro; there is no relevant difference (so far as voting for the Negro is concerned) between this case and the case in which it is, with inten-

tion, made physically impossible for the elector to cast his vote. That which makes it impossible for him to vote for the Negro is in a sense internal. But since the impossibility has been externally induced, it is legitimate to talk of the case in terms of negative liberty.

Whether the elector had decided to vote for the Negro or whether he would have voted for him anyway is really immaterial. The general view that a person can only be deprived of liberty to do something that he wants to do (or at least something that he would otherwise do) is unduly restrictive and unnecessarily awkward to apply. It implies that the notion of a range of options between which a person can make a choice has no place in a discussion of liberty, and this is surely unsatisfactory. In addition, one wants to be able to say that a person might be unfree to do something whether or not he wants to do it and regardless of whether he would otherwise do it. And one sometimes wants to be able to say that a person is unfree to do something, although one does not know what he wants to do, or what he would otherwise do.

2. Suppose that A is a master of persuasion, and that he uses his skills to change B's attitudes so that B will, because of his new attitudes, be incapable of doing something, X. This kind of case raises some questions about what it is to say that it is impossible for a person to do something. Part of what we mean when we say that a person could not do something "being the sort of person he is" is that he will not do it because he would not want to, or because he would not think it right to do so, or something of the kind. There is no suggestion that if he were to put himself to do it, he would not do it; nor is there any suggestion that he would be unable

to put himself to do it if he were to try. The notion of impossibility should not be used in such a way as to imply that it is impossible for a person to do something when such factors as these obtain. It would be inappropriate here to attempt to specify in general terms the criteria of impossibility—if only because the cases in which one would wish to refer to them are rare. However, the fact that there may be room for disagreement over what counts as impossibility should not be overlooked.

3. Suppose that, because B has infringed the law, A has confined him to a prison cell with the intention of making it impossible for him to repeat his crime. B's confinement will also make it impossible for him to commit other crimes. One may ask whether it can or should be held to be a part of A's intention that each of these other courses of action is made impossible. This is an empirical question, whose answer depends largely on A's state of mind at the time. He must have been aware that by confining B to a cell he was making many courses of action impossible for him. If this awareness was very much at the back of his mind, it would be inaccurate to say that it was his intention to make them impossible. But if the awareness was at the forefront of his mind it would make good sense to say that it was his intention to make them impossible. This would be so even if he had only thought of them in a general way, without characterizing them to himself. For it is often appropriate to talk of general intentions.¹⁵ (The notion of a general intention is also apposite in relation to cases in which a course of action has been made impossible for a class of people without thinking of each person individually.)

The cases in which a person is unfree

to do something because it has, with intention, been made impossible for him to do it are the most central cases.¹⁶ However, there are several other classes of cases (albeit classes which are more closely qualified) which one would certainly want to say involve deprivations of liberty, and several more in respect of which this might defensibly be said. If A intends to make X ineligible to B, and he in fact makes it impossible for him, then we would want to say that B has been rendered unfree to do X. Or if A uses the principle of double effect, saying that he permits, but does not intend that it is impossible for B to do X, then B has been made unfree to do X. For example, if the suspect in a murder case is jailed we would say that he has been rendered unfree to commit murder, even if the authorities maintained that their only intention was to give reassurance to a frightened community. Or if A does something with the intention of making X impossible for B, and if it is obvious that doing this will also make other things impossible for him, then B should be regarded as unfree to do these other things, even if A had not actually thought of them. For example, if B is jailed to make it impossible for him to murder, he is thereby made unfree to rob. This class of cases is somewhat imprecise, since there will sometimes be differences of opinion about what is obvious.

The fact that A foresees that something he does will make X impossible for B does not necessarily mean that A makes B unfree to do X. It would be very odd, for example, to say that because a father realizes that a consequence of his not putting his son's name on the M.C.C.'s¹⁷ waiting list at birth (or of his having the name removed) will be that it will be impossible for his

son to become a junior member, the father therefore deprives his son of freedom to become a junior member. A large part of the reason why we do not talk of such matters in terms of freedom is that they are purely private and not of political or social concern.

There is no rigid distinction between what is and what is not a matter of social concern (or between what is and what is not amenable to social or political action). If a motor mechanic's slovenly work prevents a motorist from reaching his destination, that is a private matter. But if all (or most) motor mechanics came to work in a slovenly way, the matter may no longer be private but may become a matter of social concern, and perhaps of social action. And if it assumed such proportions, it might well come to be discussed in terms of liberty.

When it is impossible for a person to do something because of governmental action, or indeed because of any organized activity, the notion of intention appears to be much less important than it is with private activity. For, in contrast to most private activity, governmental activity is generally, and indeed almost necessarily, directed at regulating the lives and the behavior of citizens. Thus, to give an example, if a law intended to prevent one category of people from entering a country is framed in such a way that it also prevents another category of people from entering, then both categories are equally made unfree to enter. However, when intention is absent, the directness of the causal connection between the governmental activity and the impossibility of a person doing something becomes significant. Suppose that one consequence of a war that a government undertakes is that, twenty years later, a certain man

becomes blind and therefore incapable of holding his job. Because the causal link is so indirect it would be inappropriate to say that he had been made unfree to hold his job.¹⁸ While one can say that the causal link must be relatively direct for the person to be unfree, it seems to be apparent that no general account of what is to count as a relatively direct causal link can be provided. The concept of liberty is, and should be seen to be, opentextured at this point. It should be noted that the impossibility must be a result of governmental activity and not something that is actually involved in it. This distinction is generally workable, although there may be some controversial cases. For example, by buying a certain property at an open auction, the government does not make a private person unfree to buy it. On the other hand, it may be argued that by compulsorily acquiring a man's property the government does deprive him of certain freedoms.

The main kinds of considerations that are relevant in determining when a person who is incapable of doing something is therefore unfree to do it have now been discussed. While this discussion has not been exhaustive (an exhaustive discussion would be endless), it has laid down some sufficient conditions of a person being negatively unfree to do something, and it has, to some extent brought out the kinds of considerations in terms of which other cases (those in which these conditions are not satisfied) should be examined.

III

Just as a person is sometimes, but not always, unfree to do something when it is impossible for him to do it, so he is sometimes, but again not always, unfree to do something when it

is not eligible to him. If murder is a capital offense, those who value their lives are not free to commit murder. But a man is not unfree to take a stroll on a chilly evening because he would catch cold if he did. It is necessary to explore some of the forms which non-eligibility may assume, and some of the ways in which it may arise, in order to formulate the relevant sufficient conditions of a person being negatively unfree to do something.

A course of action that is wholly unacceptable to a person is of course *not* eligible to him, although what we would say is that it is *ineligible* to him. (The character of the distinction between what is not eligible and what is ineligible is specified below.) More generally, a course of action is not eligible to a person if it is in some way unattractive to him; it is not necessary that it should be unacceptable to him. A course of action whose eligibility is lessened does not necessarily thereby become not eligible. It may still be eligible, even highly eligible. It should be noted that questions about whether or not a course of action is eligible to a person can only arise if it is possible for him to do or to attempt it. That this is so is brought out by the point that we can, and do, discuss whether something would be eligible if it were possible.

I shall now elaborate the forms which noneligibility may assume. First, a course of action may be not eligible to a person simply because certain features are intrinsic to it. Thus murder would not be eligible to a pacifist because it involves taking human life; the abolition of private property would not be eligible to a free-enterprise political party; the desecration of a church would not be eligible to a believer; revolutionary activity would not be eligible to a man

of conservative habits or disposition; marrying a Negro would not be eligible to a white racist; and so on. These examples reveal that a course of action may be not eligible to a person either because certain of its features would make it inconsistent either with some belief (or principle) which he holds, or because they would make it inconsistent with the general style of his life. In such cases as these (where the relevant features have not been made intrinsic to the course of action by human beings) it would be inappropriate to say that the person concerned is negatively unfree to do whatever is in question. There is nothing in the nature of an external constraint which militates against his doing it, although the person himself, or an observer, might feel that some kind of internal constraint is operating. Furthermore, the matter is not amenable to political or social action—except perhaps in an indirect way, for example, the noneligibility of abolishing private property to a free enterprise party could only be eliminated by altering the fundamental character of the party.

Sometimes a feature is intrinsic to a course of action because of human activity, using this notion in a very wide sense. For example, being a professor in an Australian university involves serving on a good many committees; watching most television programs involves watching advertisements; being a member of certain professional associations involves charging certain fixed rates; and so on. These features are not logically intrinsic to the activities in question, for example, universities could be organized in such a way that professors did not have to do committee work. They are nevertheless in some sense intrinsic, since their removal would, to an extent, alter the character of the activi-

ties.¹⁹ Since such features are present because of human activity, the question of whether any noneligibility that is pursuant to them involves a loss of negative freedom is best considered under the general heading of noneligibility due to human behavior.

Second, a course of action may be not eligible to a person because certain consequences, or more generally, concomitants, are naturally attendant on it. Thus jumping off a tall building would not be eligible to a man who does not want to break his ankles; walking from Alice Springs to Darwin would not be eligible to a man who dislikes hot and dusty conditions; to run a mile in four minutes would not be eligible to a man who does not have the inclination to train regularly; and so on. As these examples bring out, concomitants of a course of action may precede it, accompany it, or come after it. It would be inappropriate to say that a person is unfree to do something when it is not eligible to him because of natural concomitants.²⁰ These concomitants do, in some sense, constitute external constraints, granted that the person has the beliefs, attitudes, values, etc., that he does. But these constraints are not social or political, nor are they amenable to social or political action. It would perhaps be possible, by means of government works, to alter the environment in such a way as to eliminate concomitants which are now natural. But to regard such projects as social or political activity would imply an unduly extended usage of these notions.

Third, a course of action may be not eligible to a person because, owing to human behavior, in the broadest sense, certain unattractive or unwelcome concomitants are, or are likely to be, attendant on it. The term 'concomitants' is

used because the phenomena in question may precede the undertaking of a course of action, or accompany it, or come after it. For example, the following concomitants of making a speech might be unattractive or unwelcome to a person—the fact that he would be assaulted while making his way to the podium, the fact that he would be pelted while he spoke, and the consequence that he would be jailed for speaking. I shall attempt to show that a person is sometimes negatively unfree to do something because, unattractive concomitants being attached to it as a result of human behavior, it is not eligible to the person concerned; and I shall attempt to establish some sufficient conditions of a person being thus unfree.

The kinds of concomitants in question are described as “unattractive” or “unwelcome” because these words appear to be more general than similar words such as “unwanted,” “undesirable,” “disagreeable,” “displeasing,” and so on. It does not matter which word is chosen, so long as it is borne in mind that the one chosen is being used as the most general of such words as have been listed, and in the widest possible sense. Whether a concomitant is unattractive to a person depends on that person’s values, desires, attitudes, etc. There is some idiosyncrasy in this matter. For example, a penalty of imprisonment for practicing a certain religion may not be an unattractive concomitant to a person who wishes to be a martyr for that religion; and the prospect of financial reward for doing something may be an unattractive concomitant to a person who has a great fear of being corrupted by money. However, there is usually an overwhelming community of feelings as to whether a concomitant is unattractive.²¹ The empirical problem

of determining whether a concomitant is unattractive may be difficult or even insoluble, but that is inescapable.

The fact that concomitants which are unattractive to a person are attendant on a course of action does not necessarily mean that it is not eligible to him. For example, the fact that the penalty for fraud is a fine of five thousand dollars may be an unattractive concomitant to a person who has in mind the commission of a certain fraud, and it may make this act less eligible than it would otherwise be; but the fraud would probably still be eligible if it would yield ten thousand dollars.

It has been said that whether a concomitant is unattractive to a person depends on the person—and also that the term “unattractive” is used in the widest possible sense. (As emerges subsequently, the basic reason for this usage is that the method whereby a person’s behavior is controlled is immaterial in determining whether he is unfree.) Since the word “unattractive” is used in this sense, it is unnecessary to give an account of what it is to say that a concomitant is unattractive to a person. Whether a course of action is or is not eligible to a person also depends on the person. But it is necessary to give an account of what it is for a course of action to be not eligible for a person.

In general, a course of action is not eligible to a person if that which is attractive about it is outweighed, or balanced, by what is unattractive about it. (In this context, its concomitants are to be deemed a part of it.) We would say that a course of action is ineligible if what is attractive is outweighed, or perhaps heavily outweighed, by what is unattractive about it. There are two kinds of noneligibility. A course of action may not be eligible either in the

circumstances or in isolation. With the former, the merits of the other options open to the person are brought into consideration. Thus something that is quite attractive in itself may yet be less attractive than something else. With the latter, the only factors to be considered are the qualities of the particular course of action, abstracted from other possibilities. Such abstraction is not in principle impossible, since it is conceivable that a person should have no alternative but to do, or not do, one particular thing. As is argued below, it is noneligibility of the latter kind that is relevant in connection with negative liberty.

It was suggested above that if a person values his life, and if murder is a capital offense, then he is negatively unfree to commit murder. This appears to be a paradigm case. More generally, we usually have no hesitation in saying that people are unfree to do what the law forbids on pain of fines, of jail sentences, and so on. They are unfree, not just because the relevant actions are forbidden by the law, but because the law imposes sanctions. If the law were to reward people for doing what it forbids, then it would be absurd to say that people are unfree to do what it forbids. In view of this, it can be seen that the presumption that people are unfree to do what is legally forbidden on pain of legal penalties itself rests on the assumption that people do not, in general, regard legal penalties as rewards. Furthermore, if legal penalties were not usually exacted, we would certainly hesitate to say that people are unfree to do what is legally forbidden. If a person is told that, because of a law, he is unfree to do something, he rebuts the point by replying that the law is not enforced.

All this suggests that we say that a person is (negatively) unfree to do something that is illegal because, owing to the legal penalties, it is not eligible to him. However, my concern is not to characterize the ordinary usage of freedom, although any philosophical usage should be closely linked with it. My concern is rather to lay down some sufficient conditions which constitute the basis of a desirable usage of freedom. To do this, it is necessary to talk in detail about several classes of cases.

If something is not eligible to a person because of human activity, and if this activity was intended to make it not eligible to him, then he should be deemed negatively unfree to do it. Such activity may take many forms. I shall discuss some of these, and in doing so, raise a number of general points.

There is a strong presumption that when something is forbidden by a law backed by sanctions it is the intention of the law makers to deter people from doing whatever is in question; and on the basis of this, an intention to make it not eligible to people may be imputed to them. When a policeman orders a person to desist from something he would normally be intentionally making it not eligible, for his order is presumed to have the resources of the law behind it. A person may also be rendered unfree to do something by private activity: an employee might be threatened with dismissal if he dresses eccentrically; a shopkeeper might know that he would face a price war if he cut prices; a prospective parliamentarian might be told that if he runs for office the campaign will be made dirty; a witness of a crime might be told that he will be assaulted en route if he goes to report the matter to the police; and so on. In all these cases, the intention of making

the relevant course of action not eligible may be presumed. It should be noted that a person may be rendered unfree, not merely to do something, but also not to do it. Thus a man who is being robbed at gunpoint is unfree not to hand over his money.

In all the kinds of cases that have been exemplified, that by virtue of which the course of action is not eligible is clearly an external constraint. These external constraints either result from, or are in some way amenable to, social or political action.

It seems that the method by which something is intentionally made not eligible is immaterial. Doubtless threats are the most common method, but other methods (such as erecting obstacles) are also available, and are sometimes used. And there seems to be no reason why new methods should not be dreamed up. It is because of this that it was said that the relevant kind of noneligibility may be due to any unattractive concomitants resulting from human behavior. Only by using "unattractive"—the broadest term, taken in its broadest sense—can the sort of conditions (of a person being negatively unfree) that are being laid down accommodate the point that the means of intentionally making something not eligible are immaterial. It was said above that since the word "unattractive" is the broadest term, used in the broadest way, it is unnecessary to give an account of what it is to say that a concomitant is unattractive to a person. It is, however, appropriate to consider whether the activities of persuading, and of bribing (or more generally, of offering rewards), should be regarded as ways of attaching unattractive concomitants.

Where bribes are concerned, the basic question is whether the fact that

a person will be given a bribe if he does one thing is to be deemed an unattractive concomitant of his doing something else. It would be inappropriate to deem it an unattractive concomitant, since the fact of his not receiving the bribe will not make him in any way worse off. It may be added that this accords well with the view that it is the noneligibility of a course of action taken in isolation that is relevant in connection with liberty. Two further comments are in order here. First, the withdrawal of an offer of a reward may be regarded as an unattractive concomitant if there had been a rationally grounded expectation that it would be offered. Second, if a bribe to do something is genuinely irresistible to a person, then he is presumably unfree to do anything else: but this would be because it is impossible for him to do anything else. The use of persuasion is not to be regarded as a way of attaching unattractive concomitants to a course of action. Persuasion may lead a person to see a course of action (or some of its concomitants) in a new light, or it may give him an awareness of certain aspects of it that he had not perceived. But it cannot affect the actual character of a course of action, and so it is not a method of attaching concomitants to it. (Irresistible persuasion would, of course, make it impossible for the person concerned not to comply.)

Whether activity which is intended to make something not eligible for a person actually does so depends on the person. The threat of going to jail (where he will at least be fed) may not result in theft being not eligible to a starving man. If a person has much to gain from doing something, and if there is only a risk that the relevant unattractive concomitants will be pursuant on

his doing it (it is very rarely certain that they will ensue), then it may very well remain eligible to him, in which case he remains negatively free to do it. And, as has been indicated, concomitants which are intended to make a course of action not eligible may not be unattractive to the person concerned: a man who wishes to be a martyr may be pleased when the opportunity for martyrdom arises; a man whose family is threatened may hate his family; and so on.

The fact that a person is forbidden to do something never, of itself, makes him unfree to do it. The mere fact that something is legally forbidden, for example, does not necessarily make a person unfree to do it. This point requires some discussion. If somebody who has no authority or power forbids a person to do something, we would not normally say that the person concerned thereby becomes unfree to do it. This usage really needs no justification. To say that the person is unfree in such circumstances would involve an unduly extended use of the term. By analogy, I would say that if a legal prohibition has no authority for a particular person, and if it is abstracted from its sanctions, then it does not make the person unfree either. Legal prohibitions do, per se, have authority for some people. For such people, the fact that it would be illegal to do something would be an unattractive concomitant of doing it. (While it may be said that this would be more in the nature of an internal constraint, it may be replied that attempts are often made to inculcate a respect for law.) So this is entirely consistent with the point being made here. It is perhaps worthy of note that a non-legal prohibition may, in the same manner, have authority for a person. For

example, a man may desist from doing something simply because the rules of his club forbid it.

The point just made provides the basis of the contention that a necessary condition of a person being negatively unfree to do something is that it should be either impossible for him to do it or in some measure not eligible to him. There are two lines of objection to this contention. The main one is that a person may be unfree to do something if he is simply forbidden to do it, or more generally (and more plausibly) if he is not allowed to do it. It has been shown that the mere fact that he is forbidden to do something is never, by itself, a sufficient condition of his being negatively unfree to do it. The notion of 'not being allowed' is certainly important in relation to liberty, especially negative liberty. But it is a very broad notion. It is often by virtue of the fact that something has been made impossible, or not eligible to a person, that he is not allowed to do it, such as when a passport is withheld, or when there is a threat of dismissal from a job. However, there is one usage that requires consideration. A person sometimes says that he is not allowed to do something (and that he is unfree to do it) on the grounds that he is not authorized to do it. For example, a civil servant might say that he is not allowed to make public statements (and that he is unfree to do so); a magistrate might say that he is not allowed to send a certain offender to jail; and so on. In some cases it is impossible for the person to do what he is not authorized to do; the magistrate is very likely in this position. And in some cases it is not eligible for him to do it; if the civil servant values his job, he is very likely in this position. However, it need not

be impossible, or not eligible, for a person to do something he is not authorized to do. If the civil servant did not value his job, and if there was no other penalty, and if doing what he was not allowed to do was not unattractive to him, it would certainly not be impossible for him to make a public statement, and it would not be not eligible for him to do so. He would nevertheless not be allowed to do so. In such a case, it seems to me that it would be inappropriate to say that he is negatively unfree to do so. For the fact that he was not allowed to make a public statement would not, in these circumstances, constitute an external constraint.

The second line of objection is that one might be said to make a person unfree in certain respects by keeping him in ignorance of certain possibilities. For example, a policeman who is questioning a man, and who keeps him ignorant of the fact that he is entitled to legal advice, might be said to render him unfree to obtain such advice. Keeping the man ignorant of his rights in this matter might be just as effective as denying him access to a telephone. While it might be just as effective, it seems to me that to say it raises questions about liberty would involve using the notion of negative liberty in an unduly extended way. I would argue that ignorance has no place in discussions of any kind of social and political liberty. But since ignorance is not an external constraint, and since it is not externally induced, it certainly has no place in a discussion of negative liberty.

It was said above that in connection with negative liberty, it is the noneligibility of a course of action taken in isolation that is relevant. I shall discuss an implication of this view, and shall thereby attempt to justify it. It is pos-

sible, according to this view, that a man should do something that he is negatively unfree to do. This could occur in several ways. First, the person might be acting unconsciously when he does it. For example, a person who is under house arrest, and who is given to walking in his sleep, might leave his house while he is asleep. Second, he might not realize what it is that he is doing. For example, a man for whom selling adulterated milk is not eligible (because of the penalties of doing so, the offense being one of strict liability) might, in fact, sell adulterated milk without knowing what he is doing. This kind of case brings up the question of whether a course of action (regarded either abstractly or concretely) can be not eligible to a person if he is unaware of the fact. It appears to me that the desirable usage is to say that it can be: that a course of action is not eligible to a person if, when he considered it along with its concomitants, he would hold it to be not eligible. The strongest reason for adopting this usage is the operation of the legal principle that ignorance of law never excuses. It may be added that in view of this principle, it is important that the notion of freedom be used in such a way that a person should be able to do some things that he is unfree to do.

Third, a person might be weak willed, and so do something that he is not free to do. A habitual thief who has formed the view that the game is not worth the candle might yield to a temptation to steal without changing his general view that stealing is not eligible. Fourth, a person who has to choose between evils might choose as the lesser evil something that he is not free to do. For example, a person who has to choose between walking (with the result that he will be late for an appointment) and

stealing a car (with the result that he will be on time) may choose to steal the car, even though, because of the legal penalties, this course of action is not eligible to him.

Fifth, a person might have to choose between two actions, each of which he is unfree to perform. Suppose that killing is a capital crime, and that duress is no defense; suppose further that a person who values his life is threatened with being tortured and shot unless he kills somebody. In this situation, it is surely appropriate to say that he is both unfree to kill, and unfree not to kill, and so it is inevitable that he will do something that he is unfree to do. Since such cases exist, or are at least conceivable, it must be the noneligibility of a course of action taken in isolation that is relevant in connection with negative liberty. Furthermore, it is desirable that the word "freedom" should be so used that one can say that a person is negatively unfree to do something, although one is unaware of what other options are open to him.

It has been argued that a person is unfree to do something that has, owing to human behavior and with intention, been made not eligible to him. If it has been made not eligible as a result of human activity, but not with intention, then whether the person is unfree depends on other factors, such as whether the noneligibility has resulted from governmental or private activity, whether it was foreseen, and so on. These factors have already been discussed in relation to impossibility due to human activity, and the general points that were made in that context also apply, *mutatis mutandis*, in the present context. Thus any noneligibility due to governmental activity should be held to involve a deprivation of liberty; noneligi-

bility which results from activity which was intended to cause impossibility involves a deprivation of liberty; and so on. It is unnecessary to enter into the detail again. It is sufficient to conclude this section with the general point that while intentionally occasioned noneligibility is the central kind which involves deprivations of liberty, there are several other related kinds which also involve such deprivations.

IV

The matters that have been considered in this paper are prolegomena to the main questions about liberty. The main questions are mostly evaluative ones—questions about what it is for a society to be free; about the proper limits of liberty, that is, about the extent to which the state may properly infringe people's liberties and about the ways in which it is most appropriate to infringe their liberties; about the extent to which the state should interfere to guarantee liberty; about the significance of liberty as a political ideal; and so on. Some of the main questions are partly evaluative and partly empirical—questions about which actual societies are free; about the relations between power and liberty; about the kinds of freedom that are possible in a complex industrial society; about the congruence of liberty with such things as equality; and so on. It is clear that questions in the second of these categories cannot possibly be answered except on the basis of a specific understanding of what it is to be, or not to be, free. And the character of the questions in the first category cannot be properly perceived except in the light of such an understanding. Inasmuch as this paper is concerned only with negative liberty, inasmuch as it only formally outlines the

distinction between significant and insignificant deprivations of liberty, and inasmuch as it is almost exclusively concerned with the conditions of a person being negatively unfree to do something in particular, it is not a full discussion

of what it is to be, or not to be, free. But it is hoped that it provides the basis of the understanding that the main questions of liberty presuppose.

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NOTES

1. See, for example, Sir Isaiah Berlin, *Two Concepts of Liberty* (New York, 1958), p. 7; H. J. McCloskey, "A Critique of the Ideals of Liberty," *Mind* 74 (1965):485 and passim; Christian Bay, *The Structure of Freedom* (Stanford, Calif., 1958), pp. 88 ff.; D. G. Ritchie, *Natural Rights* (London, 1894), p. 138; Thomas Hobbes, *Leviathan*, chap. 21. It should be noted that Hobbes makes it clear that he counts as 'impediments of motion' only such impediments as make motion literally impossible.

2. I refer hereafter only to a person being free or unfree to do something. *Mutatis mutandis*, what is said of this can also be said of a person being free or unfree not to do, to be or not be, or to become or not become something.

3. If what is threatened is in no sense an evil to the person, then he is very likely not deprived of liberty at all. This point is taken up below.

4. In the *Philosophical Review* 76 (1967):312-34.

5. *Ibid.*, p. 312.

6. *Ibid.*, p. 314.

7. I do not, of course, mean differences about the proper limits of liberty.

8. There are comments below as to whether a man should be deemed free to jump over the moon, etc.

9. Furthermore, there may be cases in which, because a person is not allowed even to try to do something, there is no way of knowing whether he would be able to do it. For example, we do not know whether any South Africans would have been able to win gold medals at the 1968 Olympic Games. It is being assumed that there is a difference between being free to do something and being free to try to do it.

10. The impossibility of walking from England to France might be eliminated by bridging, draining, or tunneling under the English Channel. But

doing any of these things would be a purely technical accomplishment; it would not be social or political action.

11. That is, in connection with the second kind of impossibility.

12. This is K. J. Scott's example (see his "Liberty, License and Not Being Free," in *Political Studies* 4 [1956]:183).

13. I shall not undertake any analysis of the notion of intention, but some comments on particular points are made below.

14. How it can be established that a person is psychologically incapable of doing something is not at issue here.

15. C. F. Anthony de Crespigny, "Power and Its Forms," *Political Studies* (June 1968), p. 195.

16. That is, of those cases in which the course of action is impossible for him.

17. The Melbourne Cricket Club, which has a waiting list of about twenty years.

18. One might add that part of the reason why it is inappropriate to say that he is unfree is that there is no possibility of redress. In general, whether there is any chance of eliminating the impossibility of a course of action is relevant to whether it is appropriate to say that the person concerned is unfree.

19. It is unnecessary here to specify in general terms what is to count as a feature that is intrinsic to a course of action. The general character of the notion is clear, and the borderline cases do not constitute a significant problem.

20. There are borderline case problems about which concomitants are natural, but the category is sufficiently clear in the present context.

21. The fact that a person's values determine whether something is or is not attractive to him does not imply that evaluation is involved in describing something as unattractive to a person.