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Gruesome Freedom: The Moral Limits of Non-Constraint

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Our world does not gladly accommodate itself to our projects or relationships.[1] We have to contend with unfriendly forces on every scale, from minor bacterial infections, to the vicissitudes of an unpredictable climate. And we have to do so with limited resources, while satisfying a range of unrelenting needs, in full view of our own inevitable bodily decay. But of all of the challenges we face, something sets apart those that manifest in our relationships with other people. Something seems to distinguish the interpersonal from the non-personal—to distinguish, for instance, coercion from mere constraint.

In analytic political philosophy, this commonsense distinction has played a significant role in the justification of a further distinction between freedom (as a social and political ideal) and generic ability.[2] This latter distinction manifests in intuitive interpretations of a host of cases. Consider two. Cliff fishes for a living, and so depends for his livelihood on his access to the sea. Lana recently moved her family to a new neighborhood, with good schools, good grocery stores, and good infrastructure. But both ultimately abandon their homes, in spite of the advantages that these homes seem to offer. Cliff does so in order to escape a punishing hurricane season. Lana does so because she has been receiving increasingly frightening notes that promise violence if she does not leave. While neither is able to remain safely in their home, only Lana's choices manifest the malign influence of other people.[3] Intuitively, while a harsh climate might severely constrain

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2. The distinction might be similar in certain respects to Philippe Van Parijs' distinction between *formal* and *real freedom*, but Van Parijs' account has enough idiosyncratic details that I am hesitant to say that the distinctions are one and the same. See (Parijs 1997).

3. To be sure, some versions of Cliff's case may be more like Lana's than others. (Can we attribute his vulnerability to the weather to the negligence of his government?) However, I assume that some versions of Cliff's case should be sufficiently unlike Lana's in the relevant respects, and I ask the reader to focus her attention on those versions.

Cliff's choices, this need not yet show that he is to any extent unfree. In order to show that, we would need to show something about Cliff's relationships with the other members of his community: about their powers over him, about the ways in which they are likely to deploy these powers, or about the ways in which this deployment might affect his options.

Of course, there is significant disagreement among philosophers about *how* other people's powers or activities might affect a person's freedom. But for many, this disagreement has played out against a backdrop of significant consensus: Many take it for granted that freedom contrasts with constraint, and that the special significance of the interpersonal manifests in the kinds of constraints that make a person unfree.[4] We are made unfree, on this approach, not whenever we face constraint, but only when other people interfere in our activities. Following Isaiah Berlin, we might name those conceptions that contrast freedom with interference "negative liberty".

However, I argue that a commitment to the distinctive significance of the interpersonal stands in tension with the assumption that freedom contrasts with constraint. The interpersonal is of distinctive significance to freedom, I argue, because our concern for freedom (in its essentially interpersonal sense) derives from our interest in one another's respect — itself a distinctively interpersonal concern. A concern for others' respect, unqualified by a concern for non-constraint, would focus our attention on the social norms effective in our communities, which confer on us our various social statuses, making us (for instance) owners of property, employers, employees, spouses, guardians over children, and voters. These social norms are apt to serve our interest in respect by making those statuses we wanted respected recognizable to the other members of our communities. And we can build a useful conception of freedom by targeting these social norms directly. On this approach, we are unfree when the social norms effective in our communities do not afford our neighbors the resources necessary for the recognition of our moral rights. This approach illuminates paradigmatic cases of unfreedom by connecting them directly to our underlying concern for respect. In contrast, negative liberty directs our attention toward considerations that are at best irrelevant (and plausibly hostile) to our concern for respect. We may well have a legitimate interest in non-constraint, but negative liberty unifies it imperfectly with our concern for respect. In doing so, it carves away significant aspects of both while yielding no clear conceptual payoff. It is a gruesome conception of freedom.

In Section 1, I clarify the boundaries of negative liberty, and highlight its special concern for the interpersonal. In Section 2, I argue that the best explanation for this concern is that only people can disrespect one another, either by failing to recognize one another's statuses, or by failing to regulate their activities appropriately in light of their status relations. In Section 3, I sketch a conception of freedom that specifically targets the conditions in which social norms make people's morally legitimate statuses recognizable to their neighbors. I confront one important objection to this approach to interpersonal freedom in Section 4 before concluding.

1. Negative Liberty

The term "negative liberty" has proven remarkably evocative, and so has gained something of a foothold in popular discourse. As evocative as it may be, however, it is a term of art that theorists have attached to diverse families of concepts or conceptions. In this section, I clarify the ways in which I will be using the term in my discussion: A conception of freedom counts as a version of negative liberty if and only if it both contrasts freedom with constraint, and focuses our attention specifically on those constraints that are in some way the product of human activity.

I should emphasize, first, that I do not mean to be doing any analysis in this section. In particular, I do not mean to make any claims

4. There are notable exceptions, of course. For instance, neo-republicans like Quentin Skinner and Philip Pettit have been particularly vocal in their critiques of this kind of conception of freedom. While I do not provide a full-throated defense of neo-republicanism in this paper, my conclusions are at least broadly compatible with its spirit.

about our ordinary usage of the word "freedom",[5] or to make any moral claims about the concepts that best capture our concerns. All I mean to do is to characterize a very broad way in which we might choose to structure our language, so that in later sections we might explore the assumptions underlying that choice. Moreover, the family of conceptions that interests me is remarkably diverse, and the unifying features on which I focus provide us with at most the barest skeletal structure for a conception of freedom. We would need to address a number of pressing questions in order to make any member of this family viable. While I mention some of these questions in the main text and allude to others in footnotes, they will not be relevant to my argument in Sections 2 and 3. I target the family as a whole.

(a) The primacy of the particular. All versions of negative liberty take on a common structure. They begin with the analysis of claims about *particular* freedoms or unfreedoms — that is, claims of the form "S is free to ϕ" or "S is unfree to ϕ". This might seem a natural enough place to begin. After all, we might think that if either Cliff or Lana is unfree, it is because there is something in particular that he or she is unfree to do — for instance, to remain safely in his or her home. On these frameworks, whether someone is free or unfree to engage in some activity[6] depends, not on whether authoritative norms like morality or law permit her to do so, but on whether something prevents her from doing so (Kramer 2003, 31).[7] This, too, might seem appropriate, especially in light of cases like Lana's or Cliff's. After all, no authority forbids them to remain in their homes. Diverse factors merely prevent them from doing so.

In order to talk of freedom in *general* terms, on this approach, we aggregate over particulars. On one (very crude) approach, aggregate or overall freedom might vary directly with the breadth of one's particular freedoms: The more things one is free to do, the freer one would be; or, conversely, the more things one is unfree to do, the less free one would be. (It is worth noting that, on this approach, overall freedom is a scalar concept. If Cliff or Lana were to complain that they are unfree, not to remain safely in their homes, but *full stop*, we might read this as shorthand for the claim that they are less free than they ought to be, or than are other people in their communities.)

In principle, we could construe freedom as *generic* non-constraint. For instance, we might say that a person S is free to ϕ if and only if nothing prevents S from ϕ-ing — that is, if and only if S is able to ϕ. In order to measure someone's overall freedom, we simply would need to gauge the breadth of her abilities.[8] I expect that this language, when suitably developed, could be quite useful to us. To be sure, we may want to tailor this language in various ways. We may want to distinguish "internal" constraints — the products of psychological conditions like phobia or addiction, or of our own vices or virtues — from "external" constraints like hurricanes or droughts. And we may wish to pay attention to the quality of our options, as well as to their breadth.[9] But setting these questions aside, something in this ballpark is of obvious

5. In fact, for methodological reasons, I attempt to resist appeals to ordinary usage throughout this paper. This is in part because I do not share some of the central intuitions to which proponents of negative liberty appeal. But it is also motivated by a pragmatist approach to moral philosophy: I am less interested in the ways in which we use those concepts into which we have been educated, than in identifying the vocabularies that will best equip us to discuss understand our underlying concerns.

6. Though I talk exclusively of particular freedoms and unfreedoms "to engage in an activity", some proponents of negative liberty argue that we can be free or unfree to undergo various processes (Kramer 2003; contrast Carter 1999; Steiner 1994).

7. There is some debate among proponents of negative liberty over whether the constraint must make ϕ-ing impossible (Steiner 1974; see also Day 1977, 259; Kramer 2003, 404–14), "ineligible" (Benn 1988, 146–8), or simply more difficult (Miller 1983, 80; Kristjánsson 1996, 45–6). This is one controversy on which I wish to remain neutral.

8. In fact, G. A. Cohen seems to defend just such a view: "Who could deny, other than someone in the grip of an ill-considered philosophical theory, that having a car at my disposal that I know how to drive enhances my freedom to get around London, and that lacking one, or lacking the ability to drive one, diminishes it? …So the contrast between means and ability, in general, on the one hand, and freedom on the other, is a right-wing myth" (Cohen 2011b, 196–7).

9. Compare (Arneson 1985; Taylor 1985; Sen 1990; Sen 1991); contrast (Carter 1999, chap. 5).

importance. Nevertheless, the construal of freedom as generic ability may not be adequate to all of our purposes. We need language with which to recognize the things that cases like Cliff's and Lana's have in common, and the ways in which they differ. The question is, how — if at all — should these differences manifest in our conceptions of freedom?

(b) A focus on the interpersonal. Proponents of negative liberty propose an answer, arguing that we should focus specifically on the ways in which other people's activities constrain our own. A concern for negative liberty differs from a concern for generic ability, not in substance, but in scope: We still focus on constraints, but on a particular subset of those constraints under which we live and labor, which we might call "artificial constraints".

On the crudest version of negative liberty, first, we might say that a person S is unfree to ϕ if and only if another person prevents her from ϕ-ing (or would prevent her from ϕ-ing, were she to attempt to ϕ).[10, 11] For instance, if Lana's neighbors force her out of town, then Lana will be unfree to live there, or to reap the benefits that a safe life in that town might offer. (On the other hand, while the persistent threat of devastation by hurricane renders Cliff unable to remain safely in his home, he is not unfree to do so.) Second, as before, we measure overall freedom or unfreedom by aggregating over particulars. We might measure S's overall unfreedom by aggregating over her particular unfreedoms: The more things she is unfree to do, the less free she is.[12] Presumably, Lana's unfreedom to remain safely in her home significantly and adversely affects the range of options available to her, severely compromising the extent of her overall freedom.

As I have said, this is a crude, skeletal version of negative liberty that needs further specification on a number of points. I have mentioned several in footnotes, but one bears explicit mention. Any workable conception will need to focus our attention further, not on *any* constraint derivable from other people's diverse actions and omissions, but on those constraints traceable to some limited aspect of their activities. If we were to count as "artificial constraints" *any* constraint that owes its existence to human activity, then the remaining, *non*-artificial constraints would be just those inevitable limitations about which nothing can be done. The distinction between generic ability and negative liberty would lose its practical significance. In narrowing their focuses, many theorists invoke a distinction between action and omission, and focus only on people's active interference (or dispositions to interfere) in one another's activities (Steiner 1994; Kramer 2003; MacCallum 1967, 320–21).[13] However, the generic focus on the interpersonal does not entail this more precise focus, and some have defended alternatives. For instance, some argue that we should focus on those constraints for which other people are morally responsible, including those which result from certain omissions (Benn 1975, 111; Miller 1983;

10. For the classic statement of this view, see (Berlin 1997).

11. I start with a characterization of particular unfreedoms, rather than of particular freedoms, because there are several ways in which the proponent of negative liberty might construe particular freedoms. In broad strokes, we might take either "the restraint view", on which one person is free to ϕ if and only if no person prevents her from ϕ-ing; or we might take "the ability view", on which one person is free to ϕ if and only if she is able to ϕ. If we take the ability view, then we will need to decide what we should say of someone who is neither able to ϕ nor constrained by another person from ϕ-ing. We might, for instance, say that she is neither free nor unfree to ϕ, but simply "not free" (Kramer 2003, 3, 42; see also Schmidt 2016, 187). The choices that we might make on these matters are not relevant to the argument that I advance in this paper, so I set them aside.

12. Proponents of negative liberty disagree about the appropriate manner in which to aggregate across particulars. For instance, instead of representing overall freedom as inversely related to the breadth of one's particular unfreedoms, some represent overall freedom as a ratio between the breadth of one's particular freedoms, and the combined breadth of one's particular freedoms and unfreedoms (Steiner 1983, 74–5; Steiner 1994, 43; Carter 1999, 171–2). Kramer's measure of overall freedom takes account *both* of artificial and non-artificial constraints (albeit in different ways) (Kramer 2003, 3). Although he bucks the trend among proponents of negative liberty by making non-artificial constraints relevant to overall individual freedom, his view falls within the scope of my argument in this paper, because he remains committed to a construal of freedom as non-constraint, and to a distinctive (if non-exclusive) focus on the interpersonal.

13. It is worth noting that, as Cohen has argued (Cohen 2011a; Cohen 1995, 55–6), a focus on active interference does not logically entail a concern for classically liberal or libertarian rights to private property.

Kristjánsson 1996). In taking the generic focus on the interpersonal, rather than a focus on any particular aspect of the interpersonal, as my standard, I hope to target conceptions lying on all sides of this and other internecine feuds.

(c) Summary. Since freedom and constraint seem to contrast so naturally, many seem to have taken it for granted that we must construe freedom as non-constraint. As such, they have assumed that negative liberty stands or falls with the distinctive significance of the interpersonal, because negative liberty folds a focus on the interpersonal into a conception of freedom as non-constraint. Where else could this distinctive significance manifest, if not in the specification of those constraints that compromise individual freedom? But in the next two sections, I argue that negative liberty does not stand — not even with the distinction between the interpersonal and the non-personal. In order to show this, I first argue that the distinctive significance of the interpersonal manifests a legitimate concern for other people's respect, before unearthing the tensions at negative liberty's heart.

2. Justifying the Focus on the Interpersonal

Those who argue that we should construe freedom as negative liberty, rather than as generic ability, bear a justificatory burden: They must explain why we ought to focus distinctively on those constraints that people impose on one another. In this section, I argue that the best explanation is that our interest in freedom derives from our interest in respect. After all, only people are liable to disrespect one another when they fail to recognize their morally legitimate status relations, or to regulate their interactions appropriately in light of these relations. I argue by what we might call an "inference to the best justification", so I begin and end with brief discussions of alternative justifications.

(a) Doing without a justification. First, some who construe freedom as negative liberty deny that we need any justification for our focus on the interpersonal. They argue that a concern for the ways in which people constrain one another's activities is essential to the context of social and political philosophy, and so needs no further defense within this context. Kramer, for instance, claims that social and political philosophy "is in part distinctively about the extent to which the latitude of [human activity] is hemmed in by constraints that are attributable to the actions of other people" (Kramer 2003, 368). It is (he alleges) "[p]recisely because our 'how free' question" assumes a distinction between the interpersonal and the non-personal that "it arises within the realm of social and political philosophy rather than solely within the realm of physics and engineering" (Kramer 2003, 367).[14] And he concludes on this basis that this licenses practitioners of social and political philosophy to distinguish humanly imposed constraints from natural constraints.

But the context of social and political philosophy does not appear *ex nihilo*. It reflects our sense of what matters. I expect that, for the most part, we social and political philosophers take up our distinctive focus on the interpersonal only because we think that human interaction is of distinctive significance. If it were to turn out that we were wrong, then surely we ought not rest content with our idiosyncratic preoccupations, or invoke these preoccupations in the defense of particular policies or institutions. Rather, we should revise our practices to focus on what is significant and meaningful. We resist this revision because we believe that the interpersonal is of distinctive significance.

And if we are right, then the concepts that we deploy within social and political philosophy should reflect the nature of that significance, and not just the bare fact of it. I emphasized in Section 1 that there are numerous questions we would need to address in order to make any conception of negative liberty viable. Should we focus only on

14. Hillel Steiner first articulated this defense (Steiner 1983, 74–5; Steiner 1994, 44), which Carter echoes in his entry on capability and negative liberty for the *Stanford Encyclopedia of Philosophy* (Carter 2016).

I have to admit that I find it hard to know what to make of these claims about the context of social and political philosophy. The contrast with physics and engineering, in particular, seems puzzling. It is hard to imagine domains of inquiry less alike than social and political philosophy, on the one hand, and physics or engineering, on the other. Abandoning the focus on the interpersonal would hardly suffice to turn the latter into the former. What is this contrast supposed to tell us?

those constraints that others, by their *actions*, place in our paths? Or should we attend also to some constraints that others allow to come into existence by their omissions? We need to think about why the interpersonal matters, not only in order justify our focus on the interpersonal, but also to ensure that our answers to these questions properly accommodate our underlying interests (see Shnayderman 2013, 725). Kramer's brute insistence that a focus on the interpersonal needs no justification in the context of social and political philosophy affords us none of the resources we need for this task.

(b) Toward a new proposal. Kramer defers to the context of social and political philosophy in order to justify the distinction between the interpersonal and the non-personal, because he denies that we can find any independent justification (Kramer 2003, 362). He reaches this conclusion after a survey and critique of alternative proposals, one of which, while inapt, suggests a more productive possibility.

We might think (Kramer suggests) that we resent all and only other people's interference, and that this justifies a distinctive focus on the interpersonal. Kramer successfully dispatches this proposal. He observes, first, that we do not always resent human interference — in fact, we are sometimes positively grateful for it. We might be glad of the railing that prevents us from tumbling over a cliff. And second, we sometimes resent non-human animals' activities (or inactivity), or the forces of nature themselves (Kramer 2003, 365–6). Since we do not resent all and only human interference, facts about whom (or what) we do and do not resent cannot help us to justify the distinction between the interpersonal and the non-personal.

As implausible as the proposal is, there is a kernel of insight in it. Kramer goes wrong by focusing on epiphenomena. We should ask, not (only) toward what or whom do we direct our resentment, but: Why are people particularly apt objects of resentment?[15]

15. Shnayderman responds to Kramer's concerns along similar lines (Shnayderman 2013, 731). But as my discussion of Shnayderman's view later in this section should make clear, we take the argument in different directions.

Resentment is what P. F. Strawson called a "reactive attitude": Unlike, say, sheer disappointment or frustration — but like admiration, indignation, gratitude, or forgiveness — resentment finds its natural home in our evaluations of one another's characters and actions in the course of our interpersonal relations. Typically, these attitudes express our judgments about the ways in which people measure up to the standards inherent in these relationships (Strawson 1968, 75–6). And the expression of these judgments can serve as a way of influencing another's behavior "indirectly", through a particular kind of engagement with her capacities for practical reason. Through this expression, we might call on her to recognize that she has violated a claim we have against her, and to attempt to make amends.

This suggests a crucial distinction between the interpersonal and the non-personal. Only those possessed of practical reason are able and obligated to recognize the norms inherent in their relationships with one another, and to regulate their interactions as these norms require. And this, in turn, suggests a plausible justification for our distinction between interpersonal freedom and generic ability: We have a legitimate interest in the ways in which people represent us in their deliberations. In particular, we have an interest in their respect.

Respect has many different senses, but the kind of respect on which I focus here is akin to what Stephen Darwall calls "recognition respect" (Darwall 1977). A concern for respect in this sense depends on our senses of ourselves as social beings, possessed of status relations with the other members of our communities. For instance, you may own a particular car. And as Kant emphasized (Kant 1996, 6:261), legal ownership is not only a relationship between the owner and the thing owned; rather, it inheres in the relationship between the owner and the other members of her legal community. It standardly involves (circumscribed) prerogatives to use one's property as one pleases, and (limited) claims against other people's interference in the use of one's property. In order for me to respect you as an owner of the car, I must regulate my interactions with you (and with your car) appropriately in light of these prerogatives and claims. I disrespect you as an owner

of the car if I take the car without your permission, because in doing so, I fail to regulate my activities as your claims against me require.[16] Now, people can respect (or disrespect) one another as bearers of social statuses like ownership in a car, because people possess cognitive capacities with which to recognize one another's status relations, and deliberative capacities by which to regulate their own activities in light of these status relations. Hurricanes, which lack the relevant cognitive and deliberative capacities, just tear through everything in their path. That is why other people can commit theft, while hurricanes, for all their destructive force, cannot.

Of course, it is not true that, for any social status we might bear, we have a legitimate interest in others' respect for us as bearers of *that* status. People have borne countless social statuses through the course of history, most of which have been morally illegitimate. Eighteenth century contempt for the aristocracy in Europe may have manifested an admirable, revolutionary commitment to the moral equality of all. Those who worked the Underground Railroad heroically disrespected American slave owners' legal property rights in human beings. But we have a legitimate interest in other people's respect for us as bearers of *some* status (or bundle of statuses). Even if we ought not respect people's senses of themselves as aristocrats or slaveholders, it is important that people respect one another's claims against assault, their rights to private property, their rights of guardianship over their children, and so on. And our interest in others' recognition of, and respect for, these statuses seems an apt object of political concern. Moreover, this concern provides a wedge with which we might drive apart cases like Lana's and Cliff's. Unlike Cliff, Lana is vulnerable to violations of her legitimate claims against assault, theft, property damage, even murder. And it is in virtue of these vulnerabilities that Lana decides she must leave town.

Which further cases are like Lana's, and which are like Cliff's, will depend on which statuses merit people's respect. And there are myriad controversies here. Do we have a legitimate moral interest in, say, legal claims on the public provision of a basic income? What about legal claims against racially discriminatory hiring and firing practices, or against sexual harassment in the workplace? When do we earn morally legitimate claims on guardianship over a particular child? A number of familiar standards suggest themselves. Quite a few political philosophers have relied heavily on a concern for equal status or dignity.[17] Others invoke a concern for generic ability, sometimes focusing specifically on our abilities to engage in the kinds of activities and relations that are essential to human flourishing. These formulations are too vague to do much work for us here, but they suggest the kinds of things we would need to pay attention to as we map what I will call our "moral personhood", constituted by those statuses respect and disrespect for which are of legitimate moral interest.

Fortunately, we do not have to specify the structure of our moral personhood here.[18] Our morally legitimate interest in others' respect gives us some important content on its own, independently of the particular statuses that we want respected. It involves a concern that our moral personhood (whatever form it takes) bear on the ways in which

16. Legal ownership standardly involves various further status relations, too, including a variety of legal powers — for instance, powers to lend, sell, rent, or bequeath one's property to others. And it is possible to disrespect someone as an owner of property, not by violating her claims, but by failing to recognize these powers. Say that you offer to lend me your car, but I decline the offer. You're a married woman, and I want to know first whether your husband would approve the loan — even though you insist (truthfully) that he has no legal rights of ownership in the car. In this case, I allow my sexism to distort my representation of your power to loan the car out, and in doing so, I disrespect you. I take these kinds of disrespect to be quite important, and I focus on the prerogatives and claims typical of ownership in the main text only for ease of exposition.

17. See especially (Anderson 2012; Pettit 1997; Ripstein 2009; Waldron 2012; Van Der Rijt 2009).

18. Of course, if we wanted to define our moral personhood by appeal, say, to our interest in interpersonal freedom, then we would risk falling into a vicious circle, in which we first justify our distinctive interest in the interpersonal by appeal to our interest in respect, and then define the statuses we legitimately want respected by appeal to our concern for interpersonal freedom. This is a serious objection to the proposal on offer, but we do not yet have the resources with which to confront it. I return to it in Section 4.

our neighbors represent us, and on the ways in which these representations figure in their practical deliberations. The fact that we have a legitimate interest in the ways in which other people represent us, *however* we would like them to represent us in particular, suffices to justify the distinctive focus on the interpersonal, since only people are possessed of capacities for practical reason.

Justifying the distinctive focus on the interpersonal by appeal to our legitimate interest in respect would allow us to accommodate the complex patterns of human resentment to which Kramer calls our attention. First, we do not have claims against all kinds of interference. Sometimes, much to our chagrin, all of the tables at our favorite restaurant are reserved. But it would be inappropriate to resent this kind of interference in our dinner plans, since we have no claims against it.[19] Second, we need not even resent the violation of our claims. Resentment is only one response available to us, and it may be up to us to decide whether we deploy it. Third, when we resent uncooperative animals or natural phenomena, that is sometimes because we represent these animals or phenomena as though they could respond to our resentment — as though the animals were sentient, or as though the natural phenomena manifested the will of a demon who might stand in *some* kind of normatively structured relationship with us. Even when we do not consciously represent the natural world as possessed of a mind of its own, we might sometimes construe resentment at the world's obstructions as symptomatic of a kind of arrogance, in which we inappropriately imagine that the world were somehow "for us" (Frye 1983, 67–72). When we curse the insubordination of our faulty appliances, it can sometimes help to remind ourselves that, after all, these gadgets owe us nothing. Sometimes things just go wrong. So although we aptly direct our resentment only toward those with whom we stand in interpersonal relations, it should be no surprise that we do not resent all or only other people's interference in our activities.

19. To be sure, many arrogant people have an inflated sense of their own status, and so would readily resent those who get in their way — even when they have no claims against the putative offenses.

I propose, then, that we might explain the distinctive significance of the interpersonal by construing our interest in freedom as derivative of our morally legitimate interest in one another's respect. However, as I said at the beginning of the section, an inference to the best justification succeeds only if the justification on offer compares favorably against its competitors. How does our proposal measure up against alternatives in the literature?

(c) The responsibility approach. I will focus on one prominent tradition, which some have come to call "the responsibility approach". On the responsibility approach, we distinguish the interpersonal from the non-personal because only people can be responsible for their actions. Call this *the responsibility thesis* (RT).

An immediate problem for the responsibility approach is that RT alone does not provide significant explanatory power. It is hard to see the *explanans* on offer as much more than a restatement of the *explanandum*. At best, we have only pushed things back a level. We might well ask, why distinguish those constraints for which someone is responsible from those constraints for which no one is responsible? There are any number of dimensions along which we might distinguish various kinds of constraints. Why should this particular dimension warrant the prominence it enjoys within social and political philosophy? It is hard to see this as much more than a restatement of our original question. Nor is the answer to this new question obvious. By way of illustration, consider fire. Some fires occur naturally, while others are the products of intentional action. But we have no need for a concept that picks out all and only artificial fires, lumping campfires, oven fires, and controlled brush fires together with the arsonist's blaze. We certainly do not need to measure the frequency of all and only artificial fires, given this variety. How does constraint differ from fire in this respect? RT lacks significant explanatory power, because it leaves us with the very same questions with which we began. However, there are two main ways in which proponents of the responsibility approach might answer this challenge.

First, some versions of the responsibility approach seem to answer this challenge by invoking a concern for respect: It matters to us when responsible agents might interfere in our activities, because it matters to us that responsible agents respect our moral personhood. S. I. Benn (who in many ways inaugurated the tradition) makes this move explicitly, connecting his conception of freedom with a concern for "respect for persons" (Benn 1975, 120–1). He argues that people have general, though defeasible, entitlements against other people's interference in their activities, and it seems natural to understand these entitlements as (moral) status relations — and in particular, as (defeasible) claims against others. After all, in Benn's framework these entitlements serve to distribute burdens of proof among interacting agents: If I interfere in your activities, Benn argues, then the burden is on me to show that my interference is justified. Similarly, claims typically travel with the power to *make* claims, to demand one's due in the face of disrespect (see Feinberg 1970). And this power typically involves the standing to demand that those who trespass against us account for themselves. Benn even associates utterances of the form "S is unfree to ϕ" with expressions of grievance or resentment (Benn 1975, 109), expressions through which people characteristically make claims against one another. It seems, then, that Benn's version of the responsibility approach gains its explanatory power largely by invoking our interest in respect. As a result, it does not constitute a genuine alternative to the proposal I developed above.

(There is one important caveat, though: Benn's approach does package a concern for others' respect together with a particular theory of moral personhood, on which people have general, though defeasible, claims against interference. However, the latter assumption is extraneous to the justificatory task at hand. In order to justify a distinction between the interpersonal and the non-personal, we need only invoke the fact that we have a legitimate concern for respect. We do *not* need to define the particular claims we want respected, and so need not assume that people have general claims against interference.[20] This is no argument against the assumption that we do have general claims against interference, but it does mean that the justification I offered above is compatible with other conceptions of our moral personhood.[21])

Some proponents of the responsibility approach resist Benn's appeal to our interest in respect. In particular, Kristjánsson and Shnayderman argue that it is a desideratum of any theory of freedom that it afford us adequate resources with which to determine the extent of people's freedom *before* we make any assumptions about the morally legitimate distribution of rights (see Shnayderman 2013, 726). One way to defend RT as an explanation for the distinctive significance of the interpersonal, in spite of its limited explanatory power, would be to argue that building a theory of freedom around RT would allow facts about freedom to remain appropriately independent of facts about moral rights, while apparently plausible alternatives — and in particular, those that invoke our interest in others' respect — would not. (Indeed, this is precisely how Shnayderman, following Steiner, argues against Miller's version of the responsibility approach (Shnayderman 2013, 726–7; see Steiner 1994, 15; Miller 1983).)

We might meet this defense of RT in two ways. First, we might argue that the putative desideratum is *not* a desideratum after all: Facts about freedom may appropriately depend on facts about moral rights. I will argue this point, but not until Section 4; the argument will depend on resources to which we will gain access only in Section 3, once we actually build a theory of freedom around our interest in respect. For now, it is enough to show that neither Kristjánsson nor Shnayderman actually achieve the putative desideratum themselves.

20. I suspect that Andreas Schmidt's conception of freedom is akin to Benn's, except that Schmidt ascribes to people claims on certain distributions of abilities, instead of general claims against interference (Schmidt 2016).

21. I should mention that I find this an implausible conception of moral personhood. I expect that what we are inclined to count as interference reflects preexisting judgments about people's rights, and not the other way around (see Richardson 2002, 30). But that is an argument for another time.

They cannot avoid making facts about people's freedom dependent on facts about people's rights. The problem is that, *contra* Kristjánsson and Shnayderman, we will need to invoke facts about people's rights in order to determine whether anyone is morally responsible for the existence of some constraint. If we cannot avoid invoking facts about rights in order to determine whether someone is responsible for the existence of some constraint, then RT gets us no closer to the putative desideratum than does the proposal I developed above. What we would lose in justificatory power by opting for RT would come with no theoretical gains.

Kristjánsson argues that one person is morally responsible for a constraint on another's activities if and only if it would be appropriate to request from her a justification for its existence; and that (he argues) requires only that there be some (perhaps defeasible) reason she could have been expected not to create it (or not to allow it to persist or to come into existence) (Kristjánsson 1996, 74). But distributions of rights seem to bear directly on distributions of standings to request justifications. Say that I want to grow zucchini and butternut squash, but I only have enough space in my garden for one kind of crop. I call my neighbor and ask if I might plant the zucchini in her yard. When my neighbor says no, I ask: "Why not?" I might ask this question as a prelude to pitch, hoping to call to her attention the advantages of allowing me to grow zucchini in her yard. While that might annoy her, it might be acceptable behavior among neighbors, depending on our relationship. But it would be strange for me to ask the question simply in order to request a justification. She owes me none, and she might be perfectly at ease responding that it is none of my business; it is her yard, after all. In citing her rights of ownership, she does not justify her refusal to allow me to plant zucchini in her yard. Rather, she points out that it was inappropriate of me to request a justification in the first place. And it might be inappropriate even if she had good reason to allow me to grow zucchini in her yard. The decision is hers to make, which means (in part) that it is hers to make badly.[22] Questions about the distribution of standings to request justifications, then, sneak a concern for the distribution of rights in the back door.

Shnayderman's approach, too, requires that we pay attention to facts about people's rights in order to determine whether someone is morally responsible for the existence of a constraint on another's activities. He argues that someone is responsible for some constraint on another's activities if and only if they could appropriately be considered susceptible to praise or blame for its existence. And he claims that "the answer to the question of when someone is appropriately considered susceptible to blame or praise is written… into the architecture of our psychology, into some of our most basic reactions to one another as well as to ourselves" (Shnayderman 2013, 730; see also Pettit 2001, 11–4). But in fact, we must look beyond "the architecture of our psychology" to the distribution of rights within our community. Say that I cannot get into the philosophy department at my university because I rely on a wheelchair, and the building is accessible only by stairs. The university is responsible for the fact that I cannot get into the building, but that is because the university has an obligation to make its buildings accessible. Those who deny that universities bear any such obligations would argue that I cannot access the building, not because the university failed to include elevators or ramps in the building, but because I cannot climb stairs. (If they speak the language of negative liberty, they would say that I am unable, but not unfree, to enter the building.) And they would hardly think that the university is susceptible of praise or blame, let alone blameworthy, for the fact

22. Kristjánsson might respond that it is acceptable to request a justification from the state that enforces these property rights (see Kristjánsson 1996, 76, n. 13). But this is a dangerous strategy. That is because, in enforcing *one* rights regime, the state necessarily fails to enforce infinitely many alternate rights regimes. For any legal subject S and any action ϕ, if there exists some possible rights regime such that, were the state to enforce it, S could ϕ, would it be appropriate for S to request a justification for the state's failure to enforce this rights regime? If so, then by Kristjánsson's standards, there would be infinitely many things any individual is unfree to do. That would threaten the usefulness of Kristjánsson's conception of freedom.

that I cannot climb stairs. Those who advance this kind of view incorrectly locate the source of the constraint in my body, rather than in the university's choices, because they rely on an inadequate conception of people's moral rights and obligations. We discover that their view is wrong, and that the university is responsible for the fact that its buildings are inaccessible, only once we attend to the fact that the university has an obligation — or, we might say, a responsibility — to construct accessible buildings. So the patterns by which we attribute responsibility are not written into our psychologies alone, but reflect our judgments about people's rights and obligations.

So whether we follow Kristjánsson or Shnayderman, we will need to invoke facts about our rights and obligations in order to distinguish unfreedom from mere inability. If they cannot avoid folding an implicit appeal to individual rights into their theories of freedom, they have no reason to resist justifying a distinctive focus on the interpersonal by appeal to our concern for respect. And given the justificatory power of such appeals, they ought to allow us to do so.

(d) Summary. In this section, I have advanced one justification for the distinctive focus of the interpersonal, and I have critiqued a family of alternatives. The burden is now on the proponents of negative liberty to critique the proposal that I offer here, or to advance another that is more plausible. I am skeptical that they can do so. So in Section 3, I take it for granted that we should justify freedom's focus on the interpersonal by casting our interest in freedom as derivative of our interest in one another's respect.

The good news is that we have saved negative liberty from the charge that it distinguishes the interpersonal from the non-personal arbitrarily. But in doing so, we have made it vulnerable to another, more damning critique: Its two core commitments are at war with one another.

3. Against Negative Liberty

In Section 1, I characterized a cluster of conceptions of freedom that share two core commitments: to a construal of freedom as non-constraint, and to a distinctive focus on the interpersonal. In this section, I argue that the construal of freedom as non-constraint stands at odds with our concern for respect, and that we have no good reason to unite these commitments under a single concept. Rather, these commitments manifest two distinct concerns that do not fit naturally together.

(a) The social conditions of respect. Our concern for respect focuses our attention on two things: first, on particular interpersonal interactions; and second, on the social contexts in which these interactions occur. Negative liberty does not pick out phenomena relevant to either of these.

First, to a significant extent, our concern for respect focuses our attention on particular interactions, for instance, on violations of our claims. And a concern for negative liberty tells us very little (if anything) about these particular instances of disrespect. "Theft" and "assault" name particular modes of interaction, instances of which may share some typical range of effects, but which are not cleanly reducible to these effects. While theft or assault can, and typically do, impose new constraints on our activities, the conflation of theft or assault with these constraints would do serious damage to our conceptual vocabularies. (It is even possible that some particular theft or assault might widen the range of options available to the victim.) Since negative liberty directs our attention exclusively toward the range of activities that these interactions close off to us, and not toward the interactions themselves, it detaches significantly from this aspect of our concern for respect.

Second, a concern for respect focuses our attention on the social conditions within which we interact with our neighbors. In particular, it focuses our attention on the social norms effective in our communities. These norms arise from our practices and conventions, and structure the ways in which we represent our status relations with one another. Legal norms are among the most visible social norms; by conferring on on us complex bundles of legal obligations, prerogatives, powers, liabilities, and immunities, the law may make us legal owners

of property, members of legally recognized families, participants in legally structured markets for labor, and so on. But legal norms hardly exhaust the genus. Another class of norms, which we might call informal norms, arise over the course of myriad individual interactions from the representations that we express though these interactions. Some informal norms come to count as law, at least in the sense that courts invoke them in their interpretations of law. Others remain external to law, and yet give significant and pervasive structure to many aspects of our lives. These norms confer on us the standing to claim a spot in line, or to store goods in our shopping carts before we pay for them. They extend family relations beyond their legal forms and construct market relations in extralegal economies.

A concern for respect directs our attention to these social norms for two reasons. First, social norms are apt to provide solutions to coordination problems that are likely to arise as we attempt to respect one another's moral personhood. And second, they are apt to secure us in the general respect of our neighbors, even while we remain vulnerable to particular instances of disrespect. (I should emphasize that when I say that social norms are apt for these tasks, I do not mean that they are likely to perform these tasks well; I mean only that they are uniquely suited to that performance.)

First, social norms satisfy necessary conditions on people's recognition of one another's moral personhood. I have remained relatively agnostic about the structure of moral personhood, but whatever it looks like, it is likely far too abstract on its own to pick out precisely which actions or omissions count as disrespectful of our moral personhood — for instance, which acts will count as trespass or theft. There is only so much that moral considerations on their own can tell us about how we should structure (for instance) our rights to private property, or to square these rights with (say) our rights to housing, to an education, or to healthcare. If we had to rely on moral considerations alone, we would in many (if not all) cases lack adequate resources with which to determine whether one act counts as stealing someone else's property, as borrowing her property, or as laying claim to that property for oneself. The indeterminacy of our moral personhood creates a kind of coordination problem: There may be a variety of determinate standards we might adopt, but which standard each of us *should* adopt depends to some extent on which standards the other members of our communities *do* adopt. If you and I were to adopt two distinct standards, either of which could in principle render our moral personhood determinate, there could be cases in which our distinct standards would grant us conflicting claims against each other.[23] Social norms provide us with shared standards, making abstract moral statuses determinate, and so affording us the resources we need to recognize one another and to regulate our interactions as respect requires. (Of course, different communities may solve their moral coordination problems in different ways, and this opens up room for some degree of relativism. But there will be limits to this variation, beyond which social norms will cease to render people's moral personhood determinate.)

Even if social norms afford us resources with which to recognize one another's moral personhood, this does not force us to respect one another. Respect requires that we regulate our own activities as the relevant norms require. And mundane ignorance, partiality, weakness of will — not to mention outright animosity — can corrupt or misdirect our practical reason, rendering others to some extent vulnerable to our disrespect. But social norms do not merely provide us with resources with which to negotiate isolated, one-on-one interactions. In addition to making our moral personhood determinate, social norms also regulate third-party responses to our interactions with one another, and so locate these interactions within a broader social fabric. For instance, stolen goods remain ours even while we do not control them in part because our legal norms establish courts of law, and assign them obligations and powers to affirm our continued ownership of these goods.

23. This is the core of Kant's defense of an obligation to join a civic community in the Doctrine of Right (Kant 1996): When we have no shared standards against which to adjudicate our claims against one another, we are in a state of war. Our duty to seek peace requires that we exit this state of war by subjecting ourselves to a sovereign (see Waldron 2013).

As a result, even though we cannot count on everyone's recognition and respect at all times, the practices that define our social norms secure us in the general respect of our peers.

Call those conditions in which social norms make our moral status relations determinate, and define third parties' appropriate responses to instances of disrespect, "the social conditions of respect". Just as a concern for negative liberty came apart from our concern for particular instances of disrespect, so a concern for negative liberty comes apart from a concern for the social conditions of respect. Let's say that we aim to maximize Lana's negative liberty by minimizing the number of actions that her neighbors, by their activities (suitably specified), prevent her from performing. We could achieve this by a variety of means: by locking her neighbors in small cells, by subjecting them to Pavlovian conditioning in order to turn them into pliable idiots, by placing shock collars around their necks that zap them when they are on the verge of interfering with Lana's activities. Out of a concern for Lana's negative liberty, we might prefer any option that minimizes her neighbors' interference (suitably characterized) in her activities. I will not argue that a concern for Lana's negative liberty would actually give us reason to endorse illiberal methods. The deeper problem simply is that negative liberty frames Lana's neighbors, not as practical reasoners, but merely as possible sources of constraints. It takes no interest in the way in which her neighbors represent her. Even if a concern for Lana's negative liberty would, miraculously, justify the establishment of a legal (and broader social) system that appropriately defines Lana's relations with her neighbors, it would do so for reasons that have nothing to do with Lana's concern for respect. Just as negative liberty fails to focus on individual instances of disrespect, so too negative liberty focuses on phenomena that are tangential to our interest in the social conditions of respect.

(I should emphasize that it would do no good to reply that the proponent of negative liberty could resist illiberal methods by taking an interest, not just in Lana's negative liberty, but in *everyone's*. The problem is that, even before we turn our attention to distributive questions, we seem to have misunderstood Lana's own interest in freedom. After all, if her interest in interpersonal freedom depends on her interest in respect, and if her interest in respect requires the establishment of social norms that determine her moral personhood, then we achieve a connection between interpersonal freedom and social norms even before we take an interest in other people's freedom — a connection that negative liberty obscures.)

Here is the situation, then. Negative liberty, as a conception of freedom, assumes a distinction between the interpersonal and the non-personal. We justify that distinction by appeal to our interest in others' recognition and respect, but negative liberty picks out nothing that is relevant to that interest, and quite a bit that is plausibly antithetical to it. It simultaneously focuses our attention on the interpersonal, and ignores the very interest that made the interpersonal worth our attention.

(b) Paradigm cases. This should already make us uneasy about negative liberty's bona fides as a concept worth deploying in social and political philosophy. But the final defense of any moral concept is, as they say, in the eating: How much work can it do in the organization and interpretation of our experiences and concerns? And here, negative liberty fails its most important test. Attention to the social conditions of respect can help us to illuminate paradigmatic instances of unfreedom in a way in which attention to negative liberty cannot.

For instance, as neo-republicans have long argued,[24] proponents of negative liberty seem to mischaracterize the condition of enslavement. Intuitively, enslaved people are unfree simply because they are enslaved. And they would remain enslaved (and so unfree) even if, for whatever reason, the slaveholder were vanishingly unlikely to interfere in their activities — that is, even if they were to enjoy considerable negative liberty.

To be sure, the appeal to counterexamples is rarely conclusive on its own. After all, our interlocutors might well undermine the

24. See (Skinner 1998; Skinner 2002; Skinner 2008; Pettit 1997; Pettit 2001; Pettit 2012).

counterexample's implications by explaining our intuitions away. What we really need are compelling theoretical resources that illuminate the case, helping us to see *why* enslavement constitutes a form of unfreedom in itself, independently of its typical effects on negative liberty.[25] We now have such resources: Enslaved people do not bear the status relations constitutive of moral personhood in anything other than a strictly moral sense. The other members of their community do not respect their moral personhood, because socially (and in particular, legally) they are not persons, but are merely the animate property of those who own them.[26] The members of their communities (even the kindest among them) would not be able to recognize them as victims of theft (for instance), because no legal order would make their rights of private ownership adequately determinate, and because no legal order would confer on the courts obligations to affirm their rights in the face of disrespect. The most that enslaved people could hope for would be compassion and mercy, not respect. Their liberation would require legal and social reform that would confer on them determinate claims against assault, rights of ownership, prerogatives to live where they will, and they like. In the absence of such reform, they remain unfree, however limited their constraints. Attention to negative liberty misleads us about this case — and others — because it only pays lip service to its foundational concern for respect. But attention to the social conditions of respect affords us abundant resources with which to make sense of it.

Are there any cases in which the tables are turned – that is, in which attention to negative liberty yields more insights than does attention to the social conditions of respect? We might think so: A justly imprisoned convict is obviously unfree (Kristjánsson 1996, 72), even if the legal processes under which she was convicted took care to recognize and to respect her moral personhood.[27] Similarly, a slave might celebrate his freedom as he escapes captivity, even though he remains a fugitive in an unjust state. But the convict enjoys the social conditions of respect, while fugitive slave does not. Don't our intuitions on these cases plainly require that we invoke resources that go beyond our concern for respect, and focus on the particular constraints that the convict bears, or that the fugitive slave has escaped? In order to save our intuitions on these kinds of cases, might we feel some pressure to resist the approach I have described in this section?

We can alleviate this pressure if we acknowledge the diverse senses of "freedom" that merit our attention. The justly convicted prisoner's condition is complex, in that she suffers two distinct kinds of loss. First, she loses a significant range of abilities, including the ability to eat any food that the prison cafeteria does not serve. In Section 1, we named these abilities "particular freedoms", but let us now call them (more precisely) "particular *non-normative* freedoms". Second, the justly convicted prisoner also loses some particular status-properties. For

25. In his attempts to make sense of the case, Pettit argues that dependence on another's benevolence has harmful psychological effects, and can force dependent parties to act in ways that ingratiate them to the people on whose good will they depend (Pettit 2012, 60). In response, Pettit's critics have sought to show that we can address these phenomena without abandoning a conception of freedom as negative liberty (Kramer 2008; Bruin 2009, 433–8; Lang 2012, 281; see also List and Valentini 2016, 1051–8). While I expect that Pettit does identify typical effects of domination, I also think that he has missed something more essential, which I attempt to clarify in the main text.

26. To be sure, actual enslaved people often make considerable efforts to develop and maintain social norms within their communities, possibly achieving some aspects of their moral personhood in spite of their oppression. The cultivation and maintenance of these normative relations may constitute a significant mode of resistance in some contexts. This is worth emphasizing, in light of the extent to which white histories and sociological studies of people of color in America — even those penned by sympathetic scholars — have tended to paint black culture as utterly devastated by slavery, and so to underemphasize black slaves' persistent agency in the face of oppression. We should not ignore the local, informal norms that slaves establish for themselves, and the ways in which these norms may have distributed status relations within enslaved communities. But even once we recognize the relations that slaves develop amongst one another, the norms constituting them often mean little or nothing to the members of the community at large, and it is for that reason that black slaves were unfree.

27. I do not mean to assume anything about the justice of imprisonment here. Though I do suspect that there is some role for prisons in a modern system of criminal justice, I am open to abolitionism. In the main text I only mean to explore the *conditional* claim: If the justly convicted person is justly imprisoned, then she is to some extent unfree.

instance, she loses certain prerogatives and claims, including prerogatives to travel beyond the prison's walls, and claims against the guards' interference in her attempts to do so. We might call these status-properties "particular *normative* freedoms". These two kinds of loss — of abilities, and of status-properties — lie on opposite sides of a boundary. On one side, the interpersonal is not of distinctive significance: Anything can limit one's abilities. On the other side, the interpersonal is of distinctive significance: Only people can bear status relations with one another.

There may be meaningful conceptions of overall freedom that lie on both sides of this boundary. I remain open to the idea that it might be useful to construct a vocabulary that casts freedom as generic ability, for which the interpersonal is not of distinctive significance. Freedom as generic ability might stand in contrast with confinement, enclosure, or constraint; and one person might well become less free in this sense as she loses particular non-normative freedoms. Interpersonal freedom, though, contrasts with essentially social conditions like domination, subjugation, or oppression.[28] And we cannot infer that someone suffers such conditions simply by showing that she lacks particular *normative* freedoms. One's status as a free person does not ebb and flow with every change in one's status relations. If I promise you that I'll buy our tickets to the game tonight, I lose my prerogative *not* to buy those tickets, but that does not make me unfree (in this essentially interpersonal sense). Similarly, so long as social norms cast the justly convicted prisoner as a moral person and define her rights appropriately, she remains free in this essentially interpersonal sense. To be sure, she loses significant particular normative freedoms, but she is not the victim of domination, subjugation, or oppression. Her condition is complex, and it will be worthwhile to maintain language with which to acknowledge this complexity. Parallel considerations hold for the fugitive slave, who sheds some weighty chains, but remains severely oppressed.

Since negative liberty *both* contrasts freedom with constraint, *and* insists in the distinctive significance of the interpersonal, it seems to be a hybrid of these two senses of freedom. It is useful only if we have good reason to invoke such a hybrid. But there is no obvious reason to unite these separable concerns under a single concept, except, perhaps, to satisfy a desire for theoretical simplicity.[29] And while there is little to gain by the development of such a hybrid, I hope to have shown that there is quite a bit to lose. We should abandon the language of negative liberty.

4. Rights Definitions of Freedom: An Objection and a Reply

One objection to the conception of freedom I have sketched above merits extended treatment. This conception is a version of what Cohen has called "rights definitions" of freedom (Cohen 2011a; Cohen 1995, 59–62; Cohen 1988, 227). On a rights definition of freedom, we cannot determine whether someone is free or unfree until we know facts about her moral rights. In order to determine whether the state's enforcement of our neighbors' claims against trespass on their land makes us at all unfree, we would need to know, for instance, whether people legitimately enjoy rights of ownership in land. If these rights pass moral muster, then the fact that we are unable to camp in our

28. At this point, my argument dovetails with a traditional republican inclination to afford theoretical primacy, not to particular freedoms, but to the concept of the free person. See especially (Pettit 2003; Larmore 2004).

29. One might argue that Kramer's framework achieves maximal theoretical unification. As I mentioned in n. 12, he respects the distinction between being unfree (that is, constrained by other persons) to ϕ and being unable to ϕ. And yet he constructs a measure of overall freedom that incorporates *both* interpersonal unfreedom and non-personal inability. This seems to combine apt discrimination with elegant unification.

I do not in principle oppose the construction of a single measure that reflects both the extent of our inabilities and the extent of our interpersonal unfreedom. The argument of the main text does not target the formula by which Kramer measures overall freedom, but the way in which he defines one variable within that formula: namely, U, his measure of interpersonal unfreedom. Kramer should not define U as constraint by other people, because to do so is to distinguish the interpersonal from the non-personal while ignoring the very concerns that justify that distinction.

neighbors' fields uninvited without risking legal repercussions does not show that we are at all unfree. Cohen has argued that rights definitions of freedom are unworkable.[30] On the contrary, I argue in this last section that there is important work that we can do with a conception of freedom that targets the social conditions of respect.

The argument against rights definitions of freedom has two stages.

First, as Cohen argues, some people assume a rights definition of freedom, and simultaneously defend particular distributions of moral rights by appeal to a concern for freedom.[31] That is, they make facts about freedom depend on facts about individual rights, and they defend their views on individual rights by appeal to their concern for freedom. Of course, this traps them in a vicious circle. So, Cohen concludes, we cannot both (i) defend a rights definition of freedom and (ii) appeal to a concern for freedom, so construed, in the defense or critique of particular distributions of legal and informal rights.

We can concede Cohen's point here without abandoning a rights definition of freedom, though. For all that we have said so far, we might escape Cohen's challenge either by abandoning a rights definition of freedom, *or* by abandoning any appeal to a concern for freedom in the characterization of a moral distribution of rights. But some find this latter move so counterintuitive as to be "unpalatable" (Carter 1999, 73). And in any case, as Cohen argues, it would carry significant theoretical costs. We might have thought that part of the point of articulating a clear, informative conception of freedom was to deploy this conception in the elaboration and defense of particular rights regimes. By insisting on a rights definition of freedom, we foreclose that very project, and (Cohen concludes) freedom "falls out of the picture" (Cohen 1988, 296). That seems a compelling reason to resist a rights definition of freedom.

But the costs of adopting a rights definition of freedom are not as daunting as they might seem. Three points should make this clear.

First, as I mentioned in Section 2, there are a variety of concerns to which we might appeal as we investigate the morally appropriate distribution of legal and informal rights, including concerns for equality and for the breadth and quality of our options. Nothing requires that interpersonal freedom, in particular, play this role. In fact, Cohen himself appeals to a concern for generic ability, since he rejects negative liberty's distinctive focus on the interpersonal (Cohen 1988) (see n. 8).[32]

But this need not mean that interpersonal freedom "falls out of the picture". The second (and more important) point is that there are other roles for a conception of freedom to play in social and political philosophy. An inquiry into the social conditions of respect is distinct from an inquiry into the content of the moral rights we want respected, and it is a worthwhile inquiry in its own right. It might direct our attention toward questions about what law needs to look like if it is give our moral rights determinate, accessible content. (A number of legal philosophers have done interesting and innovative work in this domain (see, for instance, Fuller 1981; Waldron 1999; Luban 2010).) Or it might direct our attention toward the ways in which current concepts of (for instance) race, gender, sexuality, or disability may distort others' representations of our rights. Feminist investigations into the ways in which gender concepts affect our interpretations of one another's resentment fit neatly within this inquiry (see, for instance, Frye, 1983). A rights definition of interpersonal freedom, then, does not make freedom a worthless concept. It only assigns it a different role within social and political philosophy than Cohen supposed it might play.

30. This is part of the reason that some people, like Kristjánsson and Shnayderman, regard it as a desideratum on any theory of freedom that it make facts about the extent of people's freedom independent of facts about their moral rights, as I mentioned in Section 3(c).

31. Cohen focuses in particular on Nozick's libertarian conception of freedom, but as Carter points out, the argument applies as well to a variety of non-libertarian conceptions (Carter 1999, 72–3).

32. In *A Measure of Freedom*, Carter, too, seems at least amenable to construing freedom as generic non-constraint (Carter 1999, 6), so perhaps we need not offend his palate too badly, after all.

Together, these two points should already alleviate the pressure of Cohen's critique. But the final point should seal the deal: Whatever the force of Cohen's argument, it will not save negative liberty. After all, even if a rights definition of freedom is not apt for the derivation of our moral rights, this does not on its own count as a point in favor of negative liberty unless negative liberty is better suited for the job. And it is not, for reasons that this paper's central argument should make clear. If some concept (like freedom or equality) is to provide us with standards by which to defend or critique particular distributions of rights, then that concept must pick out something that merits our concern. And negative liberty does not, because its distinctive focus on artificial constraints either is arbitrary, or depends on concerns to which negative liberty itself is tangential at best.[33] If we insist on invoking freedom in *some* sense in the derivation of our moral rights, then we ought to invoke a different sense of freedom — perhaps a concern for generic ability, suitably specified. Unless we allow the language of interpersonal freedom to serve in a different kind of role in social and political philosophy, it truly will fall out of the picture.

We might put the point this way. Cohen's argument does not force us to choose between (on the one hand) embracing a rights definition of freedom, and so allowing freedom to "fall out of the picture"; or (on the other hand) embracing negative liberty. Rather, it forces us to choose between (on the one hand) insisting that a conception of freedom must play *one* kind of role in social and political philosophy — a role for which neither rights definitions nor negative liberty are apt; or (on the other hand) allowing that a conception of interpersonal freedom might be apt to play a different role altogether. On the assumption that there is some sense of freedom that specifically targets our interpersonal interactions and relationships, we should remain open to this last possibility. And, of course, we should prefer to cast freedom in this distinctively interpersonal sense, not as negative liberty, but as a concern for the social conditions of respect.

33. There are other, technical problems with the appeal to negative liberty in the articulation of a theory of justice. For instance, Richardson charges that "It would extend the term beyond usefulness to regard individual freedom as shifting in extent with every change in the set of options available to them" (Richardson 2002, 24; see also Christman 2015, 174).

5. The Way Forward

In sum, then: A concern for interpersonal freedom depends on our legitimate interest in others' respect, but negative liberty unites this concern with an independent concern for non-constraint. In doing so, negative liberty distracts us from the kinds of phenomena relevant to respect. At the same time, an immediate interest in the social conditions of respect gives us all of the resources we need to make sense of paradigmatic instances of unfreedom. We should abandon negative liberty in favor of a conception of freedom that targets these social conditions.

I should emphasize again that I have explicitly avoided offering any arguments about the content of moral personhood. And there is room for significant disagreement here. For instance, certain kinds of classical liberals or libertarians might argue that people are free when and only when social (and in particular, legal) norms confer on them rights against assault and robust rights to private property. Progressives may argue that free people must bear *further* legal rights to the public provision of basic goods, including (for instance) access to healthcare, education, and housing. Theorists of multiculturalism might argue that we have rights to an education into particular traditions — for instance, into the languages spoken by our parents and grandparents. Theorists within any of these camps may construe a concern for freedom as a concern for the social conditions of respect. But, to a significant extent, they address our attention toward difficult questions about the content of the statuses we want respected. And it is to these questions that we must direct our attention in our further investigation into the meaning of freedom as a social and political ideal.

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