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The Idea of Freedom in the Policy Debate on the Minimum Unit Pricing of Alcohol

ABSTRACT

At the heart of current debates in public health policy lie claims about curtailment of freedoms. The public regulation of lifestyle behaviours to prevent harms and promote desirable outcomes attracts charges of interference in the freedoms of individuals to choose how they live. Recent plans to introduce minimum unit pricing for alcohol (MUP) in the UK have met widespread opposition from alcohol producers and retailers. Their criticisms of MUP draw extensively on concepts of freedom. This paper considers whether the idea of freedom invoked by alcohol industry opponents of MUP is as straightforwardly friendly to their cause as they assume. It concludes it is not.

The Idea of Freedom in the Policy Debate on the Minimum Unit Pricing of Alcohol

Lynn Dobson and Ben Hawkins

INTRODUCTION

Measures that are claimed to curtail individual freedoms for the sake of the common good are at the heart of many current public health policy debates. In this paper, our topic is the proposed introduction of a minimum unit price (MUP) for alcohol in the United Kingdom and the normative discourse of those involved in the consideration and development of public policy in this area.

Unusually perhaps for a paper in a journal of theory, it has emerged from an empirical research study, carried out for other purposes, in an area of health policy. During this research, interviews with key participants in the MUP debates and analyses of policy documents revealed that many of the actors involved, especially commercial interests, draw heavily on ideas of freedom in arguing against the policy. These ideas and the claims they engender have wide currency and prominence in the political debates, and the positions they are claimed to support are certainly not *politically* uncontested, but the ideas themselves pass without *theoretical* scrutiny or challenge. Our paper steps into this gap. Its aim is narrow, limited, and modest: it is to identify and comment, in a way that is theoretically informed, on the particular idea of freedom animating resistance to MUP. We do not offer a defence of MUP, we do not provide a survey of what leading theories of freedom might have to say about it, and we do not stake out and defend a theoretical position deriving from any particular conception of freedom. Instead, having identified from the empirical materials the dominant theme of freedom circulating within the policy debates we ask whether it can be viewed as supportive of its proponents position(s), and reveal the tensions at work. Here, the role of the empirical research is not to verify theoretical claims; instead its contribution is to show us which claims to focus our attention on - if, that is, we wish to bring theoretical insight to bear usefully on the ideas actually driving policy development in this area of public policy. Although this

interdisciplinary approach reduces the theoretical ambition of the work, we think there is merit in attempting to bridge the gap between those who deploy concepts with persuasive intent in actually-existing political contests, and those who theorise them.

This rationale determines the conception of freedom on which we focus. While a variety of different ideas about freedom arose in interviews, not surprisingly they did so in ways that were not analytically distinct or complete. Although concepts such as autonomy or market freedoms were sometimes invoked, it is striking that the most frequent, mostly clearly articulated, and most coherent theme raised by actors in interviews and in written submissions was the importance to individuals of freedom of choice and the presence of options, and the threat posed to these by external interventions in pricing. Irrespective of the intentions behind these claims they are other-regarding claims which might, if found plausible, be expected to have persuasive force more generally and provide reasons counting against MUP. For that reason and their dominance in the debate, it is these aspects and the interplay between them that we scrutinise. However, concerns around both freedom of choice and issues of pricing in food and drink policy are of theoretical interest beyond the particular case we deal with here, and often comprise the content of normative appeals made within other debates. We hope that an examination of the degree to which actors' normative claims about freedom are helpful or otherwise to their case will contribute to a better understanding of the political theory of such policy.

Before beginning, let us acknowledge that when it comes to political and social choices, any overall judgement as to whether a particular measure promotes or hinders individual freedom needs to take a wider view than that of the specific and proximate freedom and attempt to identify more distant freedoms, or a more encompassing freedom, that might also be relevant to the judgement. The loss of a specific freedom by some cannot, by itself, settle the political argument about which

freedoms should be set aside, nor how any specific freedom's gain or loss affects overall freedom.^{1, 2} We do not aim to produce such a comprehensive assessment. Finally, in any matter of public policy a number of values are at play. Freedom is only one of them. Alcohol policy touches issues of equality, public order, public and individual health, domestic violence, social justice, and no doubt yet more areas of normative and practical concern. Our focus on freedom should not be taken to indicate that we hold other values in lower esteem. Clearly they are important, and would need to be adequately considered both in democratic reasoning towards a policy outcome and in any comprehensive normative assessment of alcohol policy. Within the constraints of this paper, however, we discuss only freedom. This is by far the value that most animates MUP's critics, and it is to their framing that we respond.

THE POLICY CONTEXT

In the United Kingdom, the 2010-2015 coalition Government, and the subsequent Conservative majority Government from 2015, have based public health policies for England and Wales around a series of Responsibility Deals,³ aiming to foster favoured individual lifestyle choices among citizens through partnerships with private enterprises in a series of self- and co-regulatory arrangements covering the food, alcohol and health and fitness industries. There is reason to believe that such this regulatory approach, which affords industry actors a significant role in policy making and implementation, may not always be the most effective policy response to public health issues.⁴ In respect of alcohol policy the international evidence base suggests that measures to increase the price of alcohol are amongst the most effective and cost-effective means of reducing alcohol-related harms.⁵ Forms of floor pricing have been introduced in Canadian provinces, and have been found to reduce both aggregate level consumption and harms.^{6, 7} Modelling by the Alcohol Research Group at the University of Sheffield, whose research has been influential in these debates, indicated that a minimum unit price for alcohol of over 40p would have significant beneficial impacts on public

health in the UK.⁸ A unit of alcohol is defined as 10 millilitres of pure ethanol and equates to half a pint of 4% alcohol by volume (ABV) beer or a standard 25ml measure of 40% ABV spirits (e.g. whisky or vodka). A standard 75cl bottle of wine at 12% ABV contains c.9 units. At the time the proposals on MUP emerged it was possible to buy alcohol in British supermarkets and other off-trade outlets (i.e. those selling alcohol for consumptions elsewhere) at less than the proposed minimum price.⁹

The proposal to introduce MUP represents a considerable shift in the UK, and indeed the global, alcohol policy debate. The adoption of whole-population measures by government represents a move away from the policy prescriptions laid out in previous alcohol strategies in Westminster and Edinburgh, which were widely criticised by public health actors as ineffective and as having adopting an industry- friendly approach.^{10, 11} Following the 2007 Scottish Parliamentary Elections, the Scottish Government announced attempts to introduce a minimum unit price (MUP) for alcohol sold, launching a consultation on this and a range of other alcohol control measures in 2008.¹² The Alcohol Etc (Scotland) Bill was passed by the Scottish Parliament in November 2010. The move towards MUP gave rise to widespread criticisms from vociferous sections of the alcohol industry and others opposed to the policy.¹³ (The alcohol industry is defined here as all actors involved in the production, distribution, sale and marketing of alcoholic beverages.¹⁴) Proposals to introduce MUP were removed following a sustained campaign by the alcohol industry. The 2011 Scottish elections returned a Government on a manifesto commitment to reintroduce MUP. The Alcohol (Minimum Pricing) (Scotland) Act 2012 passed in June 2012, but implementation has been delayed by a legal challenge by the Scotch Whisky Association (SWA) under European Union competition and single market law. The measures proposed by the Scottish Government are the first attempt by any government anywhere in the world to introduce MUP. In March 2013, the UK Government announced its intention to introduce price-based interventions in England and Wales in its alcohol strategy.¹⁵ In July 2013 it was further announced that these plans had been suspended, citing the need for additional evidence of the measure's effectiveness in reducing alcohol related harms.¹⁶ To

date no legislative proposals have been brought forward. If MUP is introduced, and proves successful in Scotland, it may be taken up as a policy approach beyond the UK.

During these developments freedom featured heavily in the arguments advanced against MUP by industry actors. Our knowledge of their stance(s) derives from analyses of the submissions made to the Scottish government's consultation on *Changing Scotland's Relationship with Alcohol*¹² and draws on thirty-five qualitative interviews conducted by one of us (Ben Hawkins) with industry actors, and a range of non-industry actors involved in the MUP debates – including NGOs, civil servants, parliamentarians and former ministers in both Edinburgh and London – identified through a stakeholder analysis of the alcohol policy community.^{17, 18} Interviews provided an opportunity to probe policy positions evident in publicly available documents in further detail and to explore the rationale for these positions.

The alcohol industry is not a homogenous entity, and policy positions on a range of issues, including MUP, differ between sectors.¹⁹ Despite this, significant and vociferous sections of the industry were strongly opposed to MUP and campaigned extensively against its introduction through interventions in the media and engagement with decision makers.¹⁹⁻²¹ Our sample included respondents from all sectors of the alcohol industry, and related trade-associations. Interviews were coded using Nvivo data analysis software and were triangulated with industry consultation responses, which are available on the Scottish Government's website. The detailed empirical findings of this project have been published in leading public health and public policy journals,^{13, 19-22} including further details of the methodology employed and its rationale,¹⁹ and have been summarised in an overview article.²³

Who should set prices?

Before moving on to our main focus, we should say something briefly about a line of enquiry we do not pursue here. From the interviews carried out, it appeared that industry actors had an underlying unease about what they saw as state intervention in pricing and believed that this in itself – i.e. the involvement of the state - was detrimental to freedom. Clearly, this issue engages multi-faceted, complex, and controversial questions and aligns with well-known ideological fault-lines; but no position on these debates need be adopted to note that whether a good is distributed via the price mechanism, and how that mechanism is allowed to operate, are matters which are always politically influenced at least indirectly. State or international regulation addressing employment rights, technical standards, taxation, competition (in the USA, anti-trust) law and in a myriad of other policy domains all influence prices, which are thus never set solely by the interplay of supply and demand in perfectly competitive markets. Political interference in pricing is pervasive. (To what extent, and how innocuous or otherwise, is of course subject to dispute.) In any matter of public policy we should attend not only to the substance of the arguments put by the various camps to the debate, but also to the procedures and context of the decision. When citizens freely exercise their freedoms politically, the outcomes of such political action will bear on freedom. Assuming a reasonably well-ordered set of political institutions and practices within which political choice is deliberated and coordinated, we can begin to conceive of the structure of freedoms and unfreedoms (or expansions and reductions of options) in a political community as a result of freedom itself. In a well-functioning democracy the way we distribute freedoms and unfreedoms ought to be the result of citizens' exercise of their political freedoms. So, even where the claim to freedom has some purchase in the debate, part of what we must attend to in any practical reasoning, in a democratic context, is the problem of how to deal with the consequences of that freedom's exercise and that may suggest prospective as well as retrospective means of constraint. In European countries it is not unknown for some goods – health services, housing, education – to be taken out of the price mechanism entirely or nearly so, and it is not unknown for some goods to have their prices raised through the imposition of good-specific taxes. Where these measures have been agreed by

democratic majorities through democratic procedures, then we can best see them as outcomes of exercises of citizens' freedom. Of course citizens, in exercising their freedom in this way, may infringe on freedom – so the mere fact of a measure's having been democratically decided does not settle whether or not it is freedom-enhancing or diminishing or, if diminishing, whether adequately justified by some other social good. What it does settle, however, is the actor question: whether a measure decided politically (within democratic constraint) is purely on that account more freedom-diminishing than that same measure decided by private actors. We see no reason to hold that a price set by a government as the outcome of due democratic process must necessarily, in virtue merely of who has set it, be more detrimental to freedom than a price set by commercial actors. For this reason, and because the concerns about freedom of choice we discuss in the rest of the paper were more openly and more clearly articulated by industry actors, our discussion sets aside the question of whether freedom is harmed by the fact of state intervention *per se* in favour of addressing the issues raised about options.

FREEDOM AND CHOICE

It is our view that action against alcohol misuse ... should respect current freedoms and availability of choice for responsible consumers (SABMiller).²⁴

The vast majority of our customers welcome and appreciate the great value and choice we offer; they have clearly told us that they would be concerned if Government initiatives were to put this at risk (ASDA).²⁵

We want our customers to be able to choose to enjoy quality alcohol products responsibly at sensible prices (Morrisons).²⁶

The Consultation Document appears to ignore entirely ... the value of making informed drinking choices (Chivas Brothers & Pernod-Ricard).²⁷

Choices and Options

As noted, interviewees often aggregated what theorists would regard as distinct notions or conceptions of freedom, but the most salient and widely-expressed was the idea of freedom of choice. (Since this is not an empirical paper we do not substantiate this claim here; readers unwilling to take it on trust may check it - and the representativeness of the quotations above with which we illustrate it – with the materials deposited with the Scottish Government noted on p.6.)

The theoretical account that matches the views enunciated in the MUP policy discourse most closely is the idea of freedom as the non-restriction of options.²⁸ This is a development within the theory of ‘negative’ freedom, initiated in Berlin’s move from the characterisation of negative freedom as the area within which one can act unobstructed or unprevented by others,²⁹ to the metaphor of doors being open or closed,³⁰ where one’s freedom is greater the more doors are open and the more open they are, and diminished by their closure or failure to open. If we think of ‘doors’ as ‘options’, we see that on this view, conditions of unfreedom may “restrict choice by making alternatives unavailable or ineligible”.^{28: 197}

In standard (grammatically correct) English usage, a ‘choice’ is an act of choosing, and what one chooses between are options. As Carter notes in his ‘Choice, freedom, and freedom of choice’, in making a choice we make a reasoned selection between options on a choice-menu. Accordingly he suggests the following definition of freedom of choice: “A person has freedom of choice iff she lacks constraints on the reasoned selection and performance of one or more of the items on an action-

menu.^{31, 32} (Why 'action-menu' here? Because Carter holds that options of choice are actions or events; even when we choose what appear to be commodities the choice resolves into actions involving the use of the commodities, e.g. eating apples.^{31: pp 69}) This definition usefully directs our attention to two questions: first, whether the menu of options is such as to provide for the possibility of a reasoned selection, and second, whether freedom-denying constraints are in place. These two elements seem to respond to the concerns expressed by industry actors (and represented in the quotations above) about MUP's effects on freedom of choice.

One matter is what counts as an option, of the kind that could feature on a menu among which a reasoned choice could be made. Part of the query relates to whether a putative option is sufficiently distinguished from other options to allow for its selection to be made on the basis of reasons, as distinct from its being merely 'picked'.³¹ In relation to MUP, the proposal sets a floor to the price per unit of alcohol that is above the current lowest price at which it is sold. Given that the costs of producing and marketing different kinds of alcohol differ, it could be that minimum pricing would alter the range or type of alcohol products offered by any provider, so that within the freedom to buy alcohol different options of drink or brand were available than hitherto. When they are offered together as objects of choice, conceiving of different brands or types of drink as options from which we may make a choice – beer or spirits? Red or white wine? - is not obviously eccentric or erroneous, but on the other hand, there is no particular reason to hold that the degrees of distinctiveness (from each other) of the different constituents on the alcoholic menu will necessarily be either less or more with MUP than without it. The issue is less clear cut if we think not of particular kinds of alcoholic drink but instead of alcohol *simpliciter* at different pricing points. Does alcohol at each pricing point represent a discrete option of the kind making possible a reasoned selection, so that alcohol at 18p per unit is sufficiently different to alcohol at 56p per unit for a menu containing these alternatives to provide freedom of choice? Industry actors appear to believe it is, since that is a premise of their objection to MUP. Since price is one of the factors that a consumer takes into account when choosing between options (consider Stella Artois, a beer that is

“reassuringly expensive” according to its famous UK advertising campaign) and may not only distinguish but also be decisive in the choice between options, it seems reasonable to indeed accept price as the kind of feature which can serve to distinguish options. If it is, then reducing the number of options available (by withdrawing pricing points) is reducing the freedom of choice. Or is it? Well, not necessarily, first because additional pricing points (beyond the MUP floor) could be added to expand the set in which case, on a bald counting of options, the consumer could have greater freedom of choice. In any case, totting up options as such is not helpful or morally significant; given the unimaginably vast number of potential options that might be opened or closed or remain unopened, most of which will be trivial, we should distinguish those options that are (most) significant for attributions of freedom and unfreedom.^{33: pp 219} What matters are options that are generally significant or valuable in some way, usually because they are themselves generative of freedom,^{34, 35} for example, the freedoms to choose from a wide range of options a life partner or a career. Insofar as a policy instrument affects the availability of a significant option, however that significance is determined, then it has affected one’s freedom in relation to it. However, it could be argued that the value to be placed on specific options is subjectively relative, so general significance is not the appropriate test. For a consumer who placed a high value on alcohol, the option to buy it would be significant in the relevant way. Consumers who place a high value on alcohol may do so for quite different reasons: some may be addicted to it, while others may value alcohol for its contribution to the good life, perhaps for its intrinsic hedonistic pleasures or instrumentally for the conviviality it gives rise to. Of course the minimum-pricing policy may be motivated by the view that some consumers - such as alcoholics - value alcohol too highly, but from the perspective of freedom the point at issue is whether the changes in the availability of an option affect one’s freedom more, the more subjectively-valued the option is. However we should reject the idea that the existence of a freedom is dependent on subjective evaluations of this kind, because accepting it raises the same kinds of problem that bedevil accounts of freedom that are desire- or preference-dependent.³⁴ They conflate being free with feeling free, and allow that one’s freedom may be

expanded or diminished simply by changing one's preferences (hence, the slave who is 'free' solely in virtue of having lost all desire for any state other than the one he is currently in). Such dependence is rejected, and there seems no good reason to accept its corollary here where subjective value takes the place of preference or desire. Either a specific measure bearing on a good affects freedom or it doesn't, regardless of how weakly or strongly one wants the good: if minimum pricing of alcohol does remove a specific freedom, then it removes the teetotaler's freedom just as it removes that of the addict. However, if we distinguish the presence or absence of a freedom from its worth, we can allow for differing subjective evaluations of the value of the freedom and the degree of annoyance caused by its constraint (for the teetotaler, none; for the addict, considerable).

Constraint

What of the other element of Carter's definition of freedom of choice, that dealing with constraint?

In the theory of negative freedom when we are free, what we are free from is (agent-caused) constraint, impediment, or burden.³⁶ On some readings interferences may count as detrimental to freedom even where they discourage rather than prohibit, so long as they effectively prevent.³⁷

Interferences other than physical obstruction operate on the practical reasoning of a person; they alter the incentive structure within which decisions to act, or to forbear to act, take place, encouraging some choices of actions and discouraging others. In relation to MUP, we should remember that the policy is not to remove the possibility of buying alcohol – it is very far from prohibition as practised in the United States a century or so ago. Under MUP the freedom to buy alcohol would remain intact. But price changes affect the incentive structure, so it may be that once we consider asset distributions the freedom looks less secure. Given any fixed budget, a rise in a good's price causes it to take up a greater proportion of the budget, unless the consumer reduces the amount of it purchased. If it takes up a larger proportion of the budget then there is less to spend on other goods, so that options with respect to those otherwise-possible purchases are

restricted. If MUP means that some consumers can no longer buy alcohol, or can buy only a smaller amount of it than they would be inclined to buy, or can buy it only by reducing or removing other items of spending, are they somehow unfree, or somehow less free than before? The clear inference to be drawn from the stated views of the commercial actors under discussion is that an individual's freedom is diminished by the raising of the price floor by MUP.

To understand how this argument might work we can call on Cohen's thinking. On this reading, price rises could result in the options to buy these goods being restricted or closed or unavailable. This would be due to the convention according to which one may take these things away from the supermarket in exchange for specified amounts of money, but if one takes them without offering up the required amount of money in exchange (or attempts to do so) then one can expect to encounter an obstruction or prevention or sanction of some kind – the store's security guard, legal penalties, and so on. So to have sufficient money to buy a good or service permits access to it without the constraints that would apply to such access in the absence of the money to pay for it. To have the money to buy something is to have a freedom (conceived as the freedom to act without interference) exercisable in relation to that thing, and to have money *simpliciter* is to have a kind of generalized freedom (to act without interference) which can be exercised non-specifically.

According to Cohen,^{38, 39} to have money is to have this freedom, and lack of money is a form of lack of freedom. To lack money makes one liable to interferences, to have money makes possible options without liability to interference. Money is a way (though not the only way) of structuring the distribution of freedoms and unfreedoms in a society. It structures, claims Cohen, social relations of constraint. Although this approach so far at least seems supportive of the claims about freedom being made by opponents of MUP, the adoption of a theory of freedom whose premise is that the assets deployed in a game are as important to its outcome as are its rules (and indeed may be an effect of them), has implications that profit-seeking private-sector actors might find

uncongenial. For a start, we might expect them to resist the notion that freedom and unfreedom are contingent on the price mechanism. For any good there is always a minimum price set by manufacturers and retailers, because there is a price below which it is unprofitable (and therefore, all else being equal, irrational) to produce or to sell a good, and they will not (except temporarily over short terms) make or sell below that price. If minimum pricing *per se* creates unfreedom, then providers of goods and services create unfreedom whenever they set a price below which they won't produce or sell. If raising a price (from 18p to 40p per unit, say) creates unfreedom, then providers of goods and services create unfreedom whenever they raise a price. Indeed, if we take seriously the claim that MUP adversely affects consumers' freedom of choice by restricting their options, where that restriction is not purely of the number of options available, we might find ourselves committed to the view that offering a good or service at a price – any price – simultaneously creates a freedom or non-restricted option (for those able to afford it), and creates an unfreedom or restricted option (for those unable to afford it). But this is not a commitment we expect MUP's commercial detractors to welcome.

Within the relevant policy debate, it has often been noted that a minimum pricing policy has differential impacts on people depending on their socio-economic circumstances. The wealthy, it is said, will be affected little or not at all by a floor price, since they probably do not buy the cheapest alcohol (whose price may be raised by MUP) and because any rises in cost to which they were exposed as a result of MUP would be a proportionately small part of their total spending. The poor by contrast are more likely to buy the alcohol whose price would rise under MUP, and the extra cost would take up a proportionately larger share of their total budget. Therefore, from the perspective of socio-economic equality, the policy would be regressive. This point seems persuasive at face value, although we believe any account of MUP from the perspective of socio-economic equality or social justice would have to consider also the possibility that the poor might receive a disproportionately large share of the benefit of the policy (e.g. in terms of health improvements). An overall conclusion as to whether MUP compounds or, alternatively, helps to remedy inequality

therefore awaits. What is of interest in the context of our discussion is whether MUP would affect freedom differentially, and on the reading of Cohen that we have adopted for a discussion of assets and their relation to options, we have to concede that it would – or more specifically, it would affect the freedom to buy alcohol differentially, so that people would be perhaps a little more unequal with respect to buying alcohol than they were prior to the policy's introduction. But this is simply because any price set for any good will, if money is tantamount to freedom, differentially affect people according to their different asset holdings. A price rise for good *x*, for any reason and made by anyone, will alter the distributional effects in such a way as to sharpen socio-economic inequality with respect to buying good *x*. In response to this, defenders of MUP may wish to argue that the reduction in or removal of a relevant specific freedom, for those whose freedom is affected in this way, is or may be compensated for by enhancement of other freedoms, or of freedom overall, but we do not make that argument – the point we wish to register is simply that the appeal to equality of freedom is not unproblematic for providers of alcohol, since it commits them to an understanding of their own role in the distribution of freedom and unfreedom that carries implications that are likely, from their perspective, to be unwelcome.

Characterised thus, it seems evident that MUP might well threaten freedom of choice. But before concluding so, it is worth considering Steiner's view that the punishability of an act does not make a person unfree to do it.⁴⁰ After all, it is always open to the person faced with a coercive interference to choose an option even though it carries a penalty. The penalty may well alter the desirability of the option to which it is attached, but to make an option undesirable is not the same as making someone unfree to choose it. The person facing such a choice is still free to act, even where that brings about bad consequences for him or her. If this point is accepted, then we might say that after the introduction of MUP consumers would be free to take alcohol off the supermarket shelves and take it home to drink even if they could not and did not pay for it, but could expect to face a legal sanction for doing so (given prevailing conventions of market exchange). Equivalently, sellers of alcohol would be free to sell alcohol at lower than the unit price even though they would likely

face legal sanctions for doing so. If they chose to preclude the imposition of sanctions by refraining from selling alcohol below MUP that is a choice they would be free to make. If they chose that option, and so no longer offered alcohol at below MUP for sale, then the option that individuals had to buy it at a lower price would have been closed. In effect, individuals' specific freedom to buy alcohol at lower than MUP would have been eliminated by industry actors' choice of a course of action in response to it. In short, in this scenario the state's intervention in sellers' choices would not have removed their (MUP-relevant) freedom, whereas sellers would have removed their consumers' (MUP-relevant) freedom by precluding an option. Now, that line of argument may strike the reader as a little harsh. It does not seem reasonable to expect sellers of alcohol, faced with penalties for selling it at low prices, to continue to sell it - perhaps in the cause of maintaining individuals' freedom of choice - at such prices despite suffering the penalties. However, reasonableness and unreasonableness are beside the point; our interest is in characterizations of freedom and unfreedom. We can agree that it would be unreasonable to expect a seller to offer a good at a certain price (e.g. a price that is unprofitable, or a price that attracts a penalty), while simultaneously holding that the seller's refusal to offer the good at that price adversely affects someone's freedom to buy it. There is no contradiction involved. Note that in describing this hypothetical causal chain we need not attribute moral responsibility to sellers for consumers' inability to access below-MUP alcohol options.⁴¹ But again, though this conclusion is compatible with the claims in industry actors' submissions, it is not a conclusion likely to find favour with them.

CONCLUSION

Invocations of freedom of choice are most consistent with negative theories of freedom, and we discussed several aspects of such an approach that respond to the policy context of the MUP and the criticisms of it made by its detractors (the price-setting actor, the number and quality of options, how assets affect access to options, interventions and constraints). None of these aspects proved

unambiguously supportive of the arguments against MUP, and in particular we concluded that insofar as MUP might be held to adversely affect the specific freedom to buy alcohol it did so in a way likely to be repugnant to those critics. We do not claim that any of these points or all of them taken together supply a knock-down argument. We claim merely to have shown that the appeal to consumers' freedom to choose is not as straightforward, nor as friendly to their cause, as is assumed by those who make it in these policy debates. On the contrary, it conceals pitfalls for them. Still, even if we were able to settle to general satisfaction whether or not MUP restricts consumers' freedom of choice in respect of buying alcohol we wouldn't, on that account alone, be very far forward in settling whether, all things considered, we should adopt or eschew MUP. The argument for freedom cuts both ways: since freedom can be exercised for good and for ill, merely upholding freedoms to buy and drink alcohol does not help us to decide how to weigh those freedoms against other freedoms put at risk by their exercise. Additionally, in any matter of public policy freedom considerations will not be the only considerations that are germane. Even if we found that on balance MUP created unfreedom, we might still believe it to be justified on other grounds. It has long been accepted by those suspicious of state intervention in markets that marketplace regulation can be justified on grounds of social utility - or, indeed, freedom (to protect the conditions of voluntariness).⁴² On the other hand, even if we found that MUP did not create unfreedom, we might wish to reject it on other grounds (such as equality).

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