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COUNTERFACTUAL SUCCESS AND NEGATIVE FREEDOM

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Recent theories of negative freedom see it as a value-neutral concept; the definition of freedom should not be in terms of specific moral values. Specifically, preferences or desires do not enter into the definition of freedom. If preferences should so enter then Berlin's problem that a person may enhance their freedom by changing their preferences emerges. This paper demonstrates that such a preference-free conception brings its own counter-intuitive problems. It concludes that these problems might be avoided if the description of the constraints which specify an agent's lack of freedom include the intentions of those who constrain the agents.

1. INTRODUCTION

An important part of the philosophical analysis of freedom concerns how to define it. Rawls (1971: 5) derives a distinction from H. L. A. Hart between a *concept* and its *conceptions*. The concept of freedom refers to a general and broad description of what freedom is taken to be, whereas a conception of freedom is a particular instantiation of a more general concept. Following MacCallum's (1972) seminal criticism of the distinction between negative and positive freedom, most theorists adopt the view that any concept of freedom should refer to the absence of certain constraints as well as to the realization of some objective (Carter 1999: 15). Nevertheless, given such

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a general concept of freedom, we can still make a distinction between negative and positive conceptions of freedom by saying that the former define a person's freedom to x in terms of the absence of certain constraints rather than, as in the latter, on the actual ability and opportunity to x.

A welter of negative and positive conceptions has been defended. So many, in fact, that the problem of discussing freedom is not defining it, but struggling through the thicket of definitions already there. This paper focuses upon a recent value-neutral theory of negative freedom. It is value-neutral in the sense that it does not refer to specific moral values nor to the subjective value as described by a person's preferences. To say someone is free to do x is on this view a claim about the absence of certain conditions that may prevent the person from doing x. It does not say anything about the moral value of x or about the preferences or desires of the actor concerning x. Conceptions of freedom that are not value-neutral in this sense are, for instance, the view that freedom is restricted to the things 'a person has reason to value' or the view that freedom is about a person's ability to do the things she wants to do.

We shall not give a defence here of the value-neutral approach to freedom, but familiar arguments include anti-paternalism and fear of indoctrination in the name of freedom. We do not discuss whether such notions of freedom are in fact paternalistic or whether it is indeed problematic – as Isaiah Berlin believed – that on such accounts the freedom of individuals can be increased by changing their preferences. Instead, we take the desirability of a non-moralized and preference-free conception of freedom as given. However, we show that it fails to do what its defenders claim that it should be doing. In particular, we demonstrate that preference-free conceptions of freedom still entail that a person can increase their own freedom or that of others through a change of their preferences. We subsequently demonstrate that the problems are avoided if the constraints reducing a person's freedom include some specification of the *intentions* of those said to constrain.

In Section 2 we go into more detail about the conceptions of freedom that form the starting point of our analysis. We do so on the basis of a discussion of three useful dichotomies in the analysis of freedom: exercise versus opportunity freedom; intention- versus non-intention-based accounts of negative freedom, and value-neutral versus value-laden accounts of freedom. Taking a preference-based account of freedom as a particular form of value-ladenness, we can say that the conceptions of freedom that we are focusing upon are conceptions of opportunity freedom; are non-intention-based accounts of negative freedom; and purport to be value-neutral.

Section 3 discusses the *kinds* of arguments that can be used for adopting one definition of freedom or another. We argue that whilst logical consistency is a valuable criterion for a good conception of

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freedom, it must also fit with our normative intuitions and must not depart too far from everyday language. We identify three types of criteria by which to judge conceptions of freedom: semantic, normative, and methodological. Leaving semantic issues largely aside, we present the normative and methodological criteria by which value-neutral and preference-free accounts of freedom have been defended.

Section 4 then consists of detailed analysis of the value-neutral accounts of negative freedom. Using ideas from game-theoretic accounts of rights (Gaertner *et al*. 1992, Fleurbaey and van Hees 2000), we argue that the pure negative accounts of freedom are *not* value-free – because the notion of 'counterfactual success' plays an important role in these definitions and values and preferences can be determinative of such success. Pure negative conceptions of freedom thus encounter problems to which they were supposed to be immune. The described relation between freedom and preferences is causal rather than conceptual. However, since the normative and methodological arguments in favour of a preference-free account of freedom do not depend on the relation being conceptual rather than causal, these neutral conceptions of freedom fail by their own criteria.

On the basis of our analysis, we argue in Section 5 that these problems can be avoided by replacing a pure negative conception of freedom by a conception that is intention-based. Because it is intention-based it is weakly value-laden. That is, we present an adaptation of the value-neutral account of freedom by stipulating that relevant freedom constraints are always imposed intentionally by other actors; not any prevention by another will count as a freedom constraint. The resulting account of freedom is not completely value-neutral, since interpreting actions is itself a normative exercise. But, we argue, it is not open to the normative and methodological problems that arise from a fully-fledged value-laden account.

2. THREE DIMENSIONS OF FREEDOM

Before getting to the heart of the issues surrounding the non-moralized conception of negative liberty, we focus in this section on three general issues on which any conception of freedom must take a stance.[1] First is the important distinction between freedom as an exercise and as an opportunity concept (Taylor 1979). Freedom is an exercise concept when it refers to the *manner* in which subjects act; saying that a person acts freely is to use an exercise concept. Freedom as an opportunity concept refers to those conceptions of freedom that focus not on the way in

[1] The possible positions that are distinguished for each dimension are not, however, defined rigorously. In fact, one of the implicit claims of this paper is that it is virtually impossible to define these positions in a rigorous way.

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which individuals use their opportunities, but on the availability of those opportunities themselves.[2]

Debates on the notion of freedom of will are often discussions about freedom as an exercise concept. These notions of exercise freedom may be couched in terms of the causality of individual actions (a person acts freely if and only if his act is not caused in a particular way), but this need not be so. Saying, for instance, that an act is performed freely if, and only if, it is *endorsed* by the agent also constitutes a notion of exercise freedom, and yet such a definition need not refer to the causes of the action (or the endorsement).

What counts as a relevant opportunity distinguishes the various conceptions of opportunity freedom. Saying that an individual is free to perform an action if she will not be interfered with by others is one example of an opportunity concept; the agent's relevant opportunities are then defined as those actions of hers that others will not interfere with. Other examples are conceptions that refer to the possibilities as delineated by the law ('a person is free to perform x if x is not legally prohibited') or freedom as absence of external impediments ('a person is free to perform x if there are no external obstacles to doing x'). Sometimes conceptions of opportunity freedom may refer to the content of the decisions that are made (or that one is 'free' to make). An example is the view that an available opportunity only counts as a freedom if it is a valuable option (wherein the value can be defined independently from the agent's wants or preferences).

Exercise and opportunity aspects of freedom might not always be so neatly distinguished. A definition equating freedom with ability (e.g. a person is free to perform x if and only if she is able to do x) can for instance both constitute an exercise and an opportunity definition. If the ability refers to the absence of internal constraints, then it might be viewed as an exercise concept.[3] The drug addict may thus not be free to refrain from using drugs if his addiction is seen as such an internal impediment that he cannot refrain. On the other hand, if the ability to do something only refers to the availability of that option – where its availability is taken to be independent from the agent's psychological state of mind – it

[2] The distinction between exercise and opportunity freedom originates from Taylor. Note that our rendition of it differs from more recent usage. Carter (2004), for instance, takes the distinction to refer only to the distinction between having a certain freedom and exercising that freedom. In our interpretation of Taylor's terminology, however, one can lack an exercise freedom and yet be exercising a freedom (to wit, an opportunity freedom). For example, a person who votes in an election is clearly exercising his (opportunity) freedom to vote. Yet his voting may not be an instance of exercise freedom – he may for instance be pressured by his family to vote and therefore not be acting freely.

[3] But note that we do not claim that exercise freedom necessarily coincides with the absence of internal constraints.

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forms an opportunity concept. On that interpretation, the drug addict may well be free to stop using drugs. Moreover, it can be noted that some of the philosophical discussions pertaining to freedom are in terms of both an opportunity and exercise concept of freedom. For instance, David Hume famously argued that we can be free in a determinist world because freedom is about being able to do what one wants to do; he is not concerned with the causal mechanisms underlying our behaviour (Hume 1777, Section 8, Part 1). Such a position can be interpreted as proposing a shift from an exercise to an opportunity conception of freedom.[4]

The second distinction concerns the intentions of the actors. The intentions might be those of the actor whose freedom we are considering, but more often pertain to the intentions of those who might constrain that actor. Consider first the intentions of the person whose freedom we are assessing. Is a person free to do x when he does x accidentally? It might be argued that a person who accidently stumbles is not exercising a freedom. She only exercises 'the freedom to stumble' if she does so deliberately. Others maintain that intentions in this regard are not important in assessing freedom. In that sense whatever one actually does one is free to do – demonstrated by the fact of one doing it (Cohen 1979; Steiner 1994; Carter 1999; Kramer 2003).

The intentions of the constraining actors might also be relevant. So, for example, if person i is unable to do x because of the actions of person j, the intentions of j might be thought to be important in our assessment of i's freedom. If j locks a door so that i is unable to leave the room, whether i has been made unfree to leave the room might be taken to depend upon the intentions of j in locking the door. In some views, if j locked the door in order to ensure i could not leave the room, then j has made i unfree.[5] If, however, j was unaware that i was in the room, and perhaps could not be expected to know that i was in the room, then locking the door does not make i unfree but merely unable to leave the room. Under such a conception the intentions of the constraining actor need to be carefully examined in order to assess whether or not i has been made unfree. Thus if i was legitimately in the room and j should not have been locking it, even though as it happens j did not realize i was in the room, then it might be claimed that j made i unfree. However, if locking the door was a usual part of j's daily routine – say he is a security guard whose job is to secure all doors at the end of the day – and i should not have been there,

[4] For an important contemporary version of such a shift, see Scanlon 1998.

[5] In 'moral responsibility accounts' of freedom, an obstacle is taken to be a constraint on a person's freedom if other persons are morally responsible for those obstacles (Miller 1983; Kristjánsson 1996). Clearly, in assessing such responsibility the intentions of the others may come into the picture, although their presence need not be a sufficient nor a necessary condition for attributing responsibility.

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then it might be claimed that i has not been made unfree. Whatever one's judgement about such cases, bringing in intentions underlying actions – and inactions or omissions – becomes an important element of assessing freedom, though it also makes that assessment messier than conceptions of freedom that ignore intentions. If all we need to assess are the possibilities of doing x, rather than the intentions of those doing x and those who might constrain the doing of x, then freedom assessments become easier and less subject to disputation.

The third distinction is between neutral or value-free versus value-laden conceptions of freedom. A concept of freedom is neutral if the attribution of a freedom to an agent to do x is independent of the value of x. In a value-laden definition such a dependence is present.[6] Obviously, different types of value-ladenness are possible. Amartya Sen's view that freedom judgements pertain to things we have 'reason to value' refers to a more objective type of value than a Humean view according to which a person's freedom is constituted by the things the person wants and is able to do.

In recent years the value-laden/value-free distinction has played an important role in discussions about the measurement of freedom, particularly in the context of ranking opportunity sets in terms of the amount of freedom they offer. The debate concentrates upon the dichotomy between preference-dependent and preference-independent approaches. These preferences could either be the person's actual or potential preferences, or the preferences that 'reasonable persons' could have. In the first two interpretations, a preference-dependent approach is value-laden insofar as those preferences refer to the subjective values of the agent. Even though we may judge the preferences to be of no value at all (say they are the preferences of a sadist) we call such a measurement value-laden because preference-fulfilment will be of (some) value to the person whose freedom we are measuring. The 'reasonable person's interpretation' can be taken to aim at the incorporation of less subjective values. The preference-independent or cardinality approaches to measuring freedom suggest that an agent's freedom can be measured by some function of the number of items in an agent's opportunity set – in some measures simply by the number of items (such as Pattanaik and Xu's 1990 'cardinality rule'), in others by some function of the number of items one is free and unfree to do (Steiner 1983, 1994; Carter 1999). Preference-dependent evaluations of

[6] The dependence can be described as a (weakly) monotonic function – if x is more valuable than y and if one is able to do x as well as y (where the notion of ability is defined in identical ways), then to say that one is free to do y implies that one is free to do x as well. Clearly, such a necessary condition on the relation between the value of the options and the attribution of freedom is compatible with a wide range of different value-laden conceptions of freedom.

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an agent's freedom suggest that the agent's own evaluation of those items is also important in assessing the amount of freedom a person can be said to enjoy.

The distinction between value-laden and value-free conceptions of freedom cannot be made in a rigorous way. As Sugden (2003) has argued, any description of the options in an opportunity set presupposes a certain view of the world and thus involves values in some manner. The way we demarcate 'bits of the world' into items in an opportunity set already presupposes some evaluation of the world in terms of those 'bits'. We can, however, distinguish between conceptions of freedom that explicitly incorporate value considerations and those based on the idea that such references should be kept to a minimum. A Kantian conception of freedom, where a person's freedom consists of doing the right thing, is an example of the first type. On the other hand, specifying freedom only in terms of what one is physically capable of doing does not so tie the concept of a person's freedom to the rights and wrongs of the person's actions. Conceptions that rely upon examining the intentions of the agents in acting, and on the intentions of those agents constraining others are value-laden conceptions, though only in the weak sense that interpreting and deciding which intentions are relevant to measuring freedom are value-laden. Another weak – though we would argue stronger than an intention-based conception – form of value-dependence is encountered in republican accounts of freedom where the identification of freedom-constraining acts is taken to be the outcome of a process of public deliberation.[7]

In this paper we discuss and criticize conceptions of freedom that we shall call *pure negative* accounts of freedom: they are opportunity concepts, refrain from referring to intentions and purport to be neutral. Contemporary exponents of such a negative account of freedom are Hillel Steiner (1974; 1994), Michael Taylor (1982), G. A. Cohen (1979), Michael Gorr (1989), Ian Carter (1999) and Matthew Kramer (2003).[8] Historically, a pure negative conception of freedom is usually associated with Thomas Hobbes. The neutral view is also associated with preference-independent accounts of freedom in the social choice opportunity freedom literature (Pattanaik and Xu 1990). In the next section we shall turn to the kinds of arguments that have been given in defence of conceptions of freedom, in particular for the view that freedom should be defined neutrally.

[7] See Pettit (1997: 56). Note that Pettit adds that despite this dependence his conception of freedom 'is not essentially value-laden'.

[8] Though Kramer (2003) introduces preferences into his overall measure of freedom after he has conceptualized freedom in a preference-independent manner.

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3. CRITERIA IN CONCEPTUAL ANALYSIS

Given the three – roughly distinguished – dimensions of freedom, we can ask ourselves how to make a choice among the various possibilities. What *kinds* of argument can be given for adopting one definition of freedom rather than another? What kinds of argument do we consider relevant? Or, formulated differently, on the basis of what criteria do we say that one kind of conception of freedom is preferable to another? We shall distinguish three such criteria.

Firstly, according to the *semantic criterion*, we should strive to use a conception of freedom that accords with our everyday usage of the term. Saying, for instance, that a person's freedom consists of being able to exercise power over others may not be compatible with a widespread intuition that there is a distinction between power and freedom and thus fails to satisfy the semantic criterion. The ability to exercise power may well be a *consequence* of having freedom, but it is counterintuitive to say that such power is what *defines* freedom. An elegant rendition of the semantic criterion is given by Isaiah Berlin when he criticizes conceptions of freedom ('liberty' in his paper) which equate freedom with other values: 'Everything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience' (Berlin 1969: 125). Though we may strive to see to it that our philosophical terminology does not diverge too much from our everyday language, the semantic criterion is of only limited importance for the analysis of freedom. The reason is that there are so many conflicting intuitions about the nature of freedom that it is often not clear which, if any, of our semantic intuitions should be taken to be authoritative.[9]

The second is the *normative criterion* which is especially important in moral or political philosophy. It also refers to intuitions, but here the emphasis lies on our normative intuitions. The underlying idea is that having freedom is, at least *prima facie*, valuable. A convincing conception should therefore enable us to explain why *that* kind of freedom is thought to be valuable. Or, formulated differently, if enhancing a particular conception of freedom can have morally repugnant consequences, then such a conception should be rejected. Berlin's attack on conceptions defining freedom as the realization of a person's 'real' self is the most well-known application of the normative criterion. According to Berlin (1969: 133), to adopt such a conception of freedom entails that: 'I am in a position to ignore the actual wishes of men or societies, to bully, oppress, torture them in the name, and on behalf, of their "real" selves. Clearly, such an implication is to be rejected not only for failing to accord with our semantic intuitions but also for normative reasons. Berlin (1969: 140) also

[9] See Swanton (1992) for an overview of different intuitions about freedom.

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applies the normative criterion when criticizing a conception of freedom that is defined as the ability to do what one wishes: 'If I find that I am able to do little or nothing of what I wish, I need only contract or extinguish my wishes, and I am made free. If the tyrant ... manages to condition his subjects ... into losing their original wishes and embrace ("internalize") the form of life he has invented for them, he will, on this definition, have succeeded in liberating them.' In fact, this particular passage from Berlin's famous essay can be interpreted as applying both the semantic and the normative criteria. The first sentence of the quotation might be read as saying that it is at odds with our semantic intuitions that a person can be made free through extinguishing her wants. The second part follows a normative argument: such a definition not only deviates from our semantic intuitions, but also has undesirable implications.

The third criterion may not be as familiar as the first two, yet it often plays a role. We call it the *methodological criterion*, since it is about the method of research: it states that there should be a proper fit between the conception of freedom one uses and the research questions being addressed. The methodological criterion may not be as familiar as the other two because it is such a natural presupposition and because it is therefore rarely mentioned explicitly. When, for instance, we are examining the freedom that individuals should enjoy for a society to be just, it is obvious that we can ignore most conceptions of exercise freedom according to which a person's freedom is defined in terms of the absence of certain causal mechanisms: such conceptions of freedom are less relevant for the question at hand.[10] Similarly, when philosophers discuss the possible existence of freedom in a determinist world, it is not appropriate to equate freedom with, say, civil liberties.

Ian Carter's (1999) study of freedom is an important exception to the mainly implicit use of the methodological criterion. In discussing possible ways of *measuring* freedom, that is, of possible ways of deriving judgements about whether an agent has less, equal or more freedom in one situation than in another, he uses methodological considerations to defend the view that such a measure should not be a function of the value of the various options a person is free to do: the measurement should be neutral. As mentioned in the previous section, it is with respect to the measurement of freedom that most of the recent controversy surrounding the value-free versus value-laden distinction can be encountered. A

[10] Although, again, things are not as straightforward as they may seem. Suppose, for instance, that we say that the freedom in a just society consist of safeguards against the *coercion* of one individual by others. If coercion is – at least partly – defined in terms of the causal influence of the actions of others, then we do in fact introduce such an exercise conception of freedom.

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typical question that arises is whether a person's freedom increases if he obtains an utterly worthless extra option. Those defending a preference-independent approach would say that his freedom has increased even though that extra freedom may not be of any (subjective or objective) value. Defenders of the preference-dependent approach will argue, however, that a person's freedom is only enlarged if the extra options are of some worth.[11]

Carter now argues that a value-laden approach fails to capture an important part of freedom's value, to wit, its non-specific value. Freedom is valuable in terms of the specific things we are free to choose; but, according to Carter, freedom is also non-specifically valuable. Kramer (2003) puts the point succinctly: there is a difference between the value of the freedom to do x and the value of x. It is this non-specific value of freedom that we lose track of if we restrict our freedom judgements to valuable actions or doings only. To illustrate the difference between specific and non-specific value, take Raz's views on freedom of expression which, as he states it, forms a paradox: given that only a small minority of people actively engage in public discussions it seems to be true that many people attach relatively little value to publicly expressing their opinion (Raz 1994). Yet most of us *do* attach a great value to having freedom of expression. This value does not reside in the value of the things that we can do with it (the freedom's specific value) but in another part of its value (the freedom's non-specific value). Such a non-specific value might be instrumental. It may be that we value the freedom of public expression even though we do not attach much value to actually participating in, say, a political debate, because we recognize that governments might behave very differently towards us if we did not have that freedom. Exercising the freedom is not necessary in order to affect the behaviour of the government; having the freedom is sufficient to do so.

To conclude, of the three types of criteria, the normative and the methodological criterion are of particular importance for the defence of a value-neutral approach to freedom. A value-laden approach is said to have unwanted consequences and therefore fails to meet the normative criterion. Defining freedom in terms of values also fails to meet the methodological criterion. Somewhat paradoxically, the reason is that a value-laden approach does not do sufficient justice to the value of freedom. Having thus presented the various arguments against value-laden conceptions of freedom, we now turn to the analysis of the neutral conception of negative freedom itself.

[11] For the first position, see Carter (1999); Steiner (1994); Van Hees (2000). The latter position has been defended by Sen (1988, 1990, 1991).

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4. PREFERENCES AND COUNTERFACTUALS

In this section we first go into the question of when we can say that a person is negatively free to perform a certain action, where freedom is defined as an opportunity concept, is value-neutral (and thus preference-independent) and not intention-based. We present a specification – which we may describe as 'negative freedom as counterfactual success' – which can be used to check whether a person is free to do some x. We then show that there are important circumstances under which a strong *causal* link exists between preferences and negative freedom. We argue that such a causal relationship is problematic for the same reasons as a *conceptual* relationship between preferences and freedom is deemed problematic. That is, we show that in the described cases the neutral account will fail to meet the three criteria that its defenders themselves adopt in their rejection of value-laden approaches.

We take the canonical form of a neutral conception of negative freedom to be:

A person i is free to x if and only if i will not be prevented if he were to attempt to x.[12]

Clearly, this is a very general formulation which thus still leaves many questions open. It has been presented and defended as being an opportunity rather than an exercise concept; as being non-intention-based; and as being value-neutral and non-preference-based. In order to examine whether the general formulation has these qualities, we need to interrogate its form more closely.

We would like to derive a more detailed specification of the circumstances in which a person is negatively free to do x or not. The specification that we are looking for is a test of counterfactual success, that is, a person is said to be free to do some x if the person's attempts to do x are successful in a set W of relevant worlds.[13] The crucial question of course is what the relevant set W is. We assume, first, that the person is able to do x in all elements of W. I lack the skills to play the piano, and

[12] Steiner (1994) and Carter (1999). We do not explicitly state 'prevented by another person' in this definition, but we can take prevention here to refer to prevention through others' actions. An important difference from Kramer's (2003) definition of freedom is that for Kramer absence of prevention is a necessary condition for freedom but not a sufficient one. In Kramer's view, the necessary *and* sufficient condition for attributing freedom is that i has the ability to x. Since the definitions coincide for those situations in which an inability results only from preventions by others, our counterexamples will also apply to Kramer's view.

[13] As we shall see below, the actual world may also be such a relevant world. In that case it is not so much counterfactual sucess but rather actual success that shows whether a person is free or not.

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therefore any attempt of mine will be unsuccessful. Clearly, my lack of success in playing the piano in all those worlds in which I lack the skills to play does not entail that I lack the freedom to play the piano; after all, my lack of success does not follow from prevention by others.

Thus we only consider possible worlds in which i is able to do x and is attempting to do x. Should we consider all such worlds? No, what matters is not whether there *could* be some j who would stop i but whether there *is* some j (or set of js) who would stop him if he were to try to x. Indeed, for almost any action, we can conceive of a world where others could prevent us from performing it. Hence, when establishing whether i is free to x, we have to further restrict the set of all possible worlds in which i is able to do x and attempts to do so. Following the possible worlds semantics of modal logic, we assume that the further restriction is to the subset of worlds that are closest to the actual world. This yields the following specification of the negative conception of neutral and intention-independent opportunity freedom, or more concisely, of pure negative freedom:

[Pure Negative Freedom:] A person is free to do x if, and only if, he is doing x in each $w \in W$, where W consists of the worlds that are closest to the actual world in the subset of worlds in which i is able to x and tries to x.

We shall assume that W is always non-empty. Note that the set W consists of exactly one world – viz. the actual world – if i has the ability to x and tries to x in the actual world: in that case the actual world is itself the closest world that satisfies the two conditions.

With the help of this specification of the notion of pure negative freedom, we shall now argue that it leads to preference-dependency. Preferences are not explicitly mentioned in the definition and so it seems strange that there is a dependency. Yet in fact there are two such dependencies: (a) a person's freedom may depend on the preferences of others, and (b) a person's freedom may depend on her own preferences.[14]

The first dependency entails that a society could increase its overall *collective freedom* if people adapt their preferences. By collective freedom we mean the degree of freedom that can be attributed to a society as such, and which is a function of the amount of freedom that all the individuals in that society enjoy. Rather than trying to formulate the sufficient and necessary conditions for collective freedom judgements, we will only formulate a sufficient condition for saying that one situation offers more collective freedom than another. Since the degree of collective freedom existing in society is taken to be a function of the various freedoms that individuals enjoy, it is reasonable to assume that such a function is *monotonic*: if

[14] To simplify the presentation, we assume in the various examples that the individuals have complete information about the beliefs and preferences of the others.

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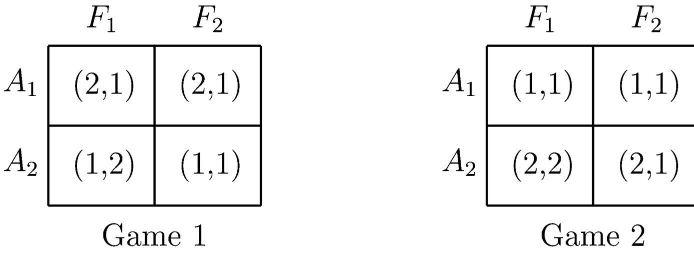

FIGURE 1. How a preference change can affect collective freedom

situation *A* differs from situation *B* only in the sense that some individuals have acquired extra freedoms, then *A* gives more collective freedom than *B* (Van Hees 2000).

Consider the following example. We want to know whether two individuals, Fred and Ami, have the freedom to read a particular book. The only available copy of the book is in the local bookstore. If they both try to buy the book, Ami will obtain it – the bookseller, say, has a crush on her. In what sense are they both free to read the book?[15] Clearly, Ami has the freedom to obtain the book regardless of her own preferences or those of Fred: in any closest possible world in which Ami is trying to obtain the book she will *ex hypothesi* be successful. Similarly, whenever she refrains from trying to obtain the book, she will not read it. Hence, she is also free *not* to buy the book. Now consider Fred's position. Clearly, he is free *not* to buy the book. Is he also free to buy it? This will depend on what Ami will do, and this will in turn depend on Ami's preferences. Suppose Ami has a strictly dominant strategy; she prefers to read the book regardless of what Fred is doing. Assuming that individuals will choose a dominant strategy when such a strategy is available, the closest possible world in which Fred is trying to obtain the book is one in which Ami is buying the book. Applying the definition thus shows that Fred is *not* free to read the book: if he were to attempt to obtain the book, he would be prevented by Ami's action from getting a copy and will thus also not be able to read it. The situation is described by Game 1 in Figure 1. (Ami (Fred) is the row (column) player, the higher number represents the more preferred outcome, and Ami's (Fred's) strategy of trying to buy the book is denoted by A_1 (F_1) and the strategy of not buying by A_2 (F_2).) Hence, in Game 1 Ami is free to read and not read the book, whereas Fred is only free not to read the book.

Now assume that Ami's preferences change. She develops a strong preference for *not* reading the book: Game 2 is the new situation. If we now

[15] To simplify the example, we assume that obtaining the book is sufficient and necessary for reading it.

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Game 3

	F_1	F_2
A_1	(2,1)	(1,2)
A_2	(1,2)	(2,1)

Game 4

	F_1	F_2
A_1	(2,1)	(1,1)
A_2	(1,2)	(2,1)

FIGURE 2. How a preference change can affect one's own freedom

apply the definition, and again assume that individuals choose a strictly dominating strategy, we see that Ami will not try to buy the book in the closest possible worlds in which Fred tries to do so. Hence, Fred is now free to read the book as well as free not to read the book. Since Ami's freedom has remained the same, we see that Ami's preference change leads to an increase in Fred's freedom without Ami losing a freedom herself: collective freedom is enlarged. Although the point is made through a very simple example, it can be readily generalized. Define a situation of scarcity as a situation in which under any allocation of a given number of private goods some individuals will miss out on some of the goods: there are more individuals than there are goods. Where there is scarcity and at least one person desires one of the goods, we can infer that – assuming that everybody knows the preferences of the others – collective freedom would be enlarged if everybody had no desire for any of the goods. Stated differently, in a situation of scarcity a 'stoic retreat' by all always entails the maximization of collective freedom.

Is such a 'stoic retreat' a problem for an account of freedom? It is one of those cases where intuitions are mixed. Certainly it seems odd that freedom is maximized when all have no desires to privatize any item. However, each person's freedom is maximized because of the preferences of the others, so that it is not the case that a person's own changing preferences increase their freedom.[16] For each person, their own freedom is maximized only by all others having no desires to privatize.

Can we also think of situations in which someone's change of preferences leads to loss or increase of *that* person's freedom? Assuming again there is a dependency between the beliefs of others and the preferences of the person whose freedom we wish to establish, we can indeed. Consider Games 3 and 4 in Figure 2 above. In Game 3 Fred is indifferent between getting the book or not; his only wish is not to do the same thing as Ami. On the other hand, Ami wants to do the same thing as Fred. Since Ami and Fred know each other's preferences they both

[16] Which, after all, characterizes Berlin's problem.

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make sure that the other will not have any knowledge about what they set out to do. It so happens that Fred sets out to get the book, whereas Ami does not try to get it.[17] Here Fred is successful in getting the book. Hence, given the definition, he is free to read the book (and of course also free not to read it). Next, suppose that Fred's preferences change. He now has a strong preference for getting the book, a preference that Ami knows of. Since Ami knows Fred's preferences she (correctly) expects that Fred will try to obtain the book. Her best strategy is thus also to try to obtain the book. Applying the definition to Game 4 we see that Fred's freedom has decreased; he is no longer free to obtain the book. Since Ami's freedom is the same in both situations, we see that one can lose a freedom simply because one's preferences have changed and without thereby affecting the freedom of others. We can also formulate the point in terms of an increase of a person's freedom: if we consider the transition from Game 4 to Game 3, we see that Fred's change of preferences leads to an increase of his freedom. The argument thus far has the character of a *reductio ad absurdum*. The attempt to define freedom in a preference-independent manner, together with a way of measuring freedom which takes into account the successful completion of any action, entails that the preferences of the individual are important in the measurement of that individual's freedom. It seems the paradoxical conclusion Berlin tried to avoid when removing preferences from the account of the degree of a person's freedom cannot be avoided. At least not in any account that depends upon the successful completion of actions that come within the scope of a person's freedom.

One response is to say that the relation that we reveal between preferences and freedom is *causal* rather than *conceptual*. Kramer (2003: 186-94) criticizes Van Hees who had earlier considered this argument (Van Hees 2000: 133-4) and who had rejected it for being irrelevant. However, in his defence of the argument Kramer only invokes semantic considerations. Given the limited usefulness of the semantic criterion, the relevant question is whether the normative and the methodological objection to preference-dependence apply here as well. First consider the normative objection. On Berlin's view, accounts of freedom positing a close relation between preferences and freedom have to be rejected because they lead to unwanted consequences. We could of course question whether Berlin was right in attributing these consequences to a preference-based account of freedom, but for our purposes the important thing to note is that *if* the argument is correct then it is immaterial whether the relationship between freedom and preferences is conceptual or causal. That is, if the normative criterion is adopted in defending a value-neutral approach to freedom, then the causal preference-dependency is indeed a problem. The same reasoning applies

[17] This could be explained game-theoretically: for lack of an equilibrium in pure strategies, Ami and Fred use a mixed strategy.

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to the methodological arguments for value-neutrality. In itself, it is not yet clear how the causal desire-dependence affects the application of the methodological criterion – can the pure negative accounts of freedom still be said to bring out freedom's non-specific value? However, the answer to this question does not depend upon the relation between preferences and freedom being causal or conceptual. There is thus again no reason to think that the implicitly value-laden account of negative freedom discussed so far will fare better than a concept of freedom that is explicitly value-laden.

5. BRINGING INTENTIONS BACK IN

There might be two ways we could approach a definition or measurement of freedom without taking into account success in the same way as the pure negative approach does. One way is to discount any reference to the way people actually make decisions. All that matters are the strategies available to people – their opportunities – and whether those strategies lead to the intended outcomes is not relevant for measuring freedom. We do not consider that possibility here, as it is rather far removed from general discussions of liberty.

The second way is to suggest that liberty is to some extent value-laden as we need to take into account some normative conditions on what is to count as a restriction. We shall here pursue this route by introducing *intentions* into the conception of freedom. That is, we only count the acts of preventions of others as freedom curtailing if the preventions are intentional, that is, were based on an intention to prevent the person from x-ing.[18] Since a person may not be successful in doing x and yet not be prevented intentionally by others, the definition is in terms of the presence or absence of preventions rather than in terms of success.

[Intention-Dependent Negative Freedom:] A person is free to do x if, and only if, there is no $w \in W$ in which he is intentionally prevented from doing x, where W consists of the worlds that are closest to the actual world in the set of worlds in which he is able to x and tries to x.

Before discussing the merits of the definition, let us apply it to the two types of preference-dependence discussed in Section 4. The first problem is enlarging collective freedom through a stoic retreat. We saw that maximal collective freedom for private goods would be achieved if no one had any interest in obtaining the scarce goods. Under the intention-dependent view of freedom such a freedom-enhancing stoic retreat is still possible. After all, the preferences for having one or more of the goods may follow from individuals' intentions to prevent others from obtaining the goods. Abandoning those intentions by suppressing the desires on which they

[18] We remain agnostic at this stage as to how conscious those intentions have to be.

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are based then also entails an increase of collective freedom. We say however, that this is not a major problem. After all the basic definition of negative freedom is the curtailment of the actions of one person by the actions of others. Adding intentions does not affect that basic definition but constrains the set of actions that are to count as curtailments. The stoic retreat is simply an extension of that basic definition to each person gaining freedom through the munificence of others.

Next consider the case of Fred affecting his own freedom by changing his preferences seen in the transition of Game 3 to Game 4. Fred is free to purchase the book in Game 3 only by happenstance where Ami mistakenly thinks he is not going to buy it. In order to work out if Fred is intention-dependently free in Game 4 we need to know the precise character of Ami's intentions. Fred's inability to buy the book is due to Ami's desire to do what he does, but in buying the book does she have any intention to stop him buying it, or merely to purchase it for herself? Given the set-up of the game, we need to know whether Ami can have the intention to do the same thing as Fred without also intending that Fred does not get the book. This refers to a difficult issue – the relation between beliefs and intentions – on which much ink has been spilled.[19] Fortunately for our purposes the problematic conclusion that Fred's freedom may decrease simply because of a change of his preferences does not occur. If Ami's decision to buy the book in Game 4 is based on an intention to do the same thing as Fred but not on the basis of the intention of preventing Fred from getting the book, Fred is free to obtain the book in Game 4 as well: his freedom has not been affected.

What about the case where Ami both has the intention of doing the same as Fred and of preventing Fred from reading the book? Here a simple rationality condition on a person's intentions shows that she would buy the book in the original situation. Let A and B describe the possible social states in which a person realizes intentions a and b, respectively. If a person only has the intentions a and b and could act so as to reach an element in the intersection of A and B ($A \cap B$), then she will perform that action. Why? Because in the original situation she could ensure that at least one of her intentions is fulfilled.

It might be objected that given Ami's 'intention-rationality', Fred would decide in Game 3 that he should stay at home. Since Ami can figure this out she may also stay at home. But in such a case Ami's intention of doing the same thing as Fred has priority over her intention of preventing Fred from getting the book since she risks Fred attempting to buy the book if he has reasoned that she will stay at home to match him after all.

[19] We here refer to discussions about whether a person can perform an action which she *knows* leads to x and yet not have the intention to realize x. The issue plays a central role in discussions about the principle of double effect (see Woodward 2001).

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If the intention of doing the same thing as Fred is indeed her 'effective intention' – that is, the intention that leads her to act in the way she does – then we should also say that her act of buying the book in the new situation is based on that intention, rather than on her intention of preventing Fred from buying the book. Hence, in the new situation Fred does have the freedom to get the book (even though Ami's action prevents him from doing so).

Thus bringing in intentions to the account allows us to avoid Berlin's problem (Berlin, 1969). We see that bringing in intentions reduces the normative problem that a person can increase his own freedom simply by changing his preferences. Moreover, it is less likely to be the case – although it still cannot be precluded – that a person increases the collective freedom by a mere change of preferences. Hence we conclude that the intention-based account of negative freedom satisfies the normative criterion in a more satisfactory manner than the 'pure negative accounts' that we have taken as our starting point.

However, there might be other normative considerations. A likely objection is that it might turn out that the poor are considerably more free on this conception than on the pure negative conception. Hayek, for example, argues that impersonal economic forces are humanly caused but non-intentional, hence the fact that the poor are not able to do many things does not make them unfree to do them. Those who like this conclusion will therefore find our conception appealing on the grounds of its normative congeniality. Others, notably egalitarians, will, on precisely the same grounds, reject the conception. Such egalitarians want to argue that the poor are less free than the rich precisely because they have fewer resources and are thus unable to do things the rich are able to do. However, it does not automatically follow that the plight of the poor is given less weight through the conception offered here. First, the poor might have more freedom on this conception but still have considerably less welfare; that is, a normative rejection of the differences between the poor and the rich not derivable from freedom considerations does not preclude the existence of other arguments against them. Second, it should be noted that different views are possible on when a prevention is 'intentional'. Thus far we have taken a strong interpretation according to which only those actions are intentional that are specifically aimed at preventing the action in question. On a weaker interpretation, however, it suffices that a person *could have* known that his action prevents the action of the other person. Such a weaker interpretation may remove the egalitarian normative concern.

Next consider the methodological criterion, of which we distinguished two uses. First, consider Carter's use of it in the context of the measurement of a person's overall freedom. As we saw, Carter promotes a value-neutral account of freedom because a value-laden one may prevent us

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from capturing an important part of the overall freedom's value, to wit, its non-specific value – that is, the value of a person's freedom that is independent of the value of the specific things someone is free to do. It should be noted that given the implicit value-dependence of the so-called pure negative approaches to freedom, it is not clear that the 'non-specific value' argument does entail that we should embrace those pure negative accounts of freedom. Stated differently, it may well be that our intention-based account of freedom does a better job of eliciting freedom's non-specific value. Addressing this question requires a precise formulation of the various ways in which freedom might be said to have non-specific value. For instance if we say that freedom's non-specific value resides at least partly in its contribution to a person's self-respect, then it may well be that the intention-based account of freedom does a better job than pure negative accounts. After all, we may conjecture that someone's self-respect will be affected negatively if the constraints that he experiences have been intentionally imposed by others. On the other hand, if we adopt a Millean argument (Miller 1983) and say that freedom's non-specific value resides in its contribution to a person's character, then the nature of the constraints may be less relevant (though there is no reason to suppose that the pure negative approaches do a better job). These considerations demonstrate that the extent to which a conception of freedom is compatible with the application of the methodological criterion is to a substantial degree an empirical matter and cannot be settled through theoretical arguments alone.

The other use of the methodological criterion is the demand that a conception of freedom should be appropriate for the context in which one uses it. Clearly, the pure negative accounts of freedom are conceptions of freedom designed for use in a social and political context, that is, for questions over the legitimate scope of state action. Given this political context, we believe our conception of freedom is in fact more suitable than the pure negative accounts. For example, consider the remark of the irascible Gramp Wiggins: 'Lots of people think the legislatures has taken your liberties away. It ain't done nothin' of the sort. It's only passed laws providin' that you go to jail if they catch you exercising those liberties' (Gardner 1943). Now obviously, Wiggins's claim makes sense. We know precisely what he means. He is saying that there are all sorts of actions which have been made illegal but which are still possible (proved by the fact that he does some of them). But the claim that the government has taken away one's liberties is referring to legal rights to perform certain acts and not to the physical impossibility of carrying out those acts. It is the misidentification of the legal rights and physical possibility that makes Gramp Wiggins' statement amusing. His conception of freedom fails the methodological criterion. Our claim is that the neutral definition of liberty

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fails the methodological criterion in a similar way. Whilst it is obviously true, in some sense, that a person is not free to buy a particular book from a bookshop because someone else has just bought it; and true that since no two people can inhabit the same spatio-temporal dimensions they cannot both be free to do so, the sense of freedom that is used here is not of the type that we deem relevant in discussions of social and political freedom. If a person is unable to carry out some act to which they are entitled – such as voting – there is a sense in which it might be claimed they are unfree to carry out that act. However, the reasons why they are unable to do so are important, we claim, in whether they have lost that freedom. So if a person fails to vote because they were caught in a traffic jam, then they have not necessarily been made unfree to vote in the relevant sense. If the traffic jam was a result of an accident, even if that accident was caused by some illegal act such as speeding, it would not constitute an infringement of freedom, unless the speeding motorist caused the accident in order to stop others from casting their ballot. Similarly, a failure to recognize legitimate voters by officials at polling stations infringes freedom depending on the intentions of the officials or those who set the rules for their behaviour (Dowding and van Hees 2003).

6. CONCLUSIONS

In this paper, we have focused our attention upon the claims for a pure negative (and thus preference-independent) account of freedom as suggested by writers such as Hillel Steiner, Ian Carter and Matthew Kramer. We argued that since the notion of success plays an important role in these accounts, preference-dependencies exist after all. The accounts therefore fail to do what they were supposed to do. We argued that at least some of these problems are avoided if intentions are introduced: specifically, we avoid Berlin's problem. We have not presented a full defence of an intention-based account of freedom, merely one that better satisfies the criteria we introduced for judging moral concepts than the preference-free conception. We do not attempt to demonstrate that no other conception of freedom can better satisfy those criteria. However, we do believe that an intention-based account of freedom is superior to the pure negative concept in terms of its appropriateness in moral and political contexts. Our view on the pure negative conception can perhaps best be described in terms of what Williams (2005) has called the 'proto-political concept of primitive freedom'.[20] The pure negative concept of freedom is proto-*political* since it refers to a basically political phenomenon, to wit the interdependency of human interaction and thus the possibility of conflicts

[20] However, note that Williams' primitive freedom differed from pure negative freedom since it was defined in a preference-dependent way.

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of interests. It is *proto*-political since it does not yet form a convincing political value itself. In our terminology, the pure negative concept may track well against some sense of physical possibilities but not against the normative and methodological criteria for social and political freedom. Indeed, in the construction of freedom as a political value, the pure neutral account may serve as useful starting point – it is not, however, the political value that we are looking for.

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