CHAPTER FOUR

Equality and Liberty as Complements

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THE IDEALS OF EQUALITY and liberty are twin pillars of modern democratic attitudes. We believe they underwrite our commitments to our cherished political institutions and our relations among ourselves as citizens. Yet it is not so obvious that these pillars stand together. In a perfectly free world, some of us would no doubt fare well whereas others would not. Even if we begin with equal amounts of wealth, given the differences in our abilities and enterprise, the freedom to do what we wish with it will threaten that equality. And a world in which each of us was assured a roughly equal degree of material welfare would require massive constraints on our liberty. The broken promises of twentieth-century socialism suggest that if equality is used to justify political institutions, liberty is quickly extinguished.

Is it then right to see equality and liberty as in tension with each other? If we want to avoid that conclusion, we might begin by suspecting that we have got hold of the wrong conceptions of either liberty or equality, or both. Perhaps material equality is not the form of equality that is of greatest moral and political value. Perhaps, on the other hand, the freedom to do what you wish with

what you have is not the most important notion of liberty. The right conceptions of both ideals might eliminate the tension between them. So I will suggest in this chapter.

But what conceptions are the right ones? In what follows I survey some of the candidates that philosophers and theorists have offered in the brief history of modern democracy. That history is littered with problematic conceptions of equality and liberty. I will suggest that the most promising approach (though one in need of much development itself) is one proposed by Immanuel Kant—a revered figure in moral philosophy, but unjustly overlooked as a source of political insight.

EQUALITY AS A VALUE

Equality figures greatly in our understanding of what is politically sacrosanct. The Declaration of Independence takes as a "self-evident" truth that "all men are created equal," and in doing so it lays claim to an ideal that we have tried valiantly to realize. But in what way are we equal? What kind of equality should matter for political institutions?

It patently cannot be equality of any sort of natural attribute. There is simply no denying that we differ from each other in more ways than we can count, but these differences do not affect our conviction that we are equal in some important sense. Equality must be a normative, not a descriptive, ideal; it must be a matter not of what we are like, but rather of how we ought to treat each other. The claim of the Declaration of Independence is that people should be treated as equals, not that people are equal in any biological sense.

But what does it mean to treat people as equals? How are political institutions capable of reflecting or embodying such an ideal? These are the questions that advocates of the ideal of material equality of various sorts—egalitarians—themselves disagree about.

Equality of Welfare

We might begin with the idea that treating people as equals means ensuring that, by and large, they live equally well, or have equally valuable or desirable lives. Some, indeed, have argued that political institutions ought to be arranged to ensure equality of welfare or equality of condition. We can appreciate the motivation for this idea by recognizing the role of brute luck in how desirable our lives are. My life is a much better one, given the time and circumstances of my birth and the parents to whom I was born, than it would have been had I been born a century before, or born into severe poverty. In one important sense it is just my luck that I was not. And there is something attractive about the idea that one job for human beings in community—in particular as part of their political organization—should be to minimize these unfair results of nature's crapshoot. As John Rawls, a prominent proponent of one form of egalitarianism, puts the point, a just society is one in which "men agree to share one another's fate"[1] by attempting to counteract the arbitrary natural distribution of advantages and disadvantages in our institutions. And one way to do this is to distribute the goods we produce so as to equalize the conditions in which we live our lives. The aim is to ensure that all of us live roughly equally well.

Plausible as this proposal sounds initially, it confronts two significant problems. First, such a proposal must include an account of how such welfare or well-being is to be measured, if we are to equalize it. This is a sizable problem. Is there some objective list of things we can check off and sum up for each person to arrive at a measurement of how well each is living? What would go on such a list, and who decides that? Consider a good as fungible as financial wealth. If we were to equalize the wealth of Bill Gates and the

1. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

Dalai Lama, would that make them equally well off? By whose standards? It seems doubtful that financial wealth matters to each of them in the same way. In general, it is hard to imagine any objective list of things to measure the desirability of lives that would command consensus. Though there are certainly broad areas of convergence (most of us would rather have more money than less), there is also great difference among the standards we use to judge how well our lives are going.

One way of avoiding that problem is this: instead of equalizing people's holdings in some fixed list of good things (which people may or may not value, or value to differing degrees), focus instead on equalizing the degree to which they have what they do value—the degree to which their own preferences are satisfied. Given this interpretation of equality of welfare, it does not matter that Bill Gates and the Dalai Lama do not have the same amount of money. What matters is that each has what he wants to a roughly equal degree, though what that is for each is very different.

But this approach too has its drawbacks. What if what I want is prohibitively costly? What if I can be happy only if I have uninterrupted opportunity to gaze on original Renoirs and will be deeply unhappy otherwise? Does a commitment to equality require that I be ensured uninterrupted access to the paintings? What if my preference is something less bizarre but more perverse, such as the reinstitution of slavery? Is there the slightest reason for our political system to be designed so that I get equal satisfaction of that preference? Presumably not. Clearly not just any preference I have should count for purposes of measuring my well-being, and thus for equalizing my well-being with that of my fellow citizens.

Moreover, my claims to the satisfaction of my preferences are even weaker if I have deliberately cultivated those preferences. If they are my doing (so to speak), the fact that I could have cultivated other, less costly or less perverse, preferences further undermines my claim on society for their satisfaction. This brings us to the

second serious problem for equality of welfare of which I spoke earlier, and egalitarians differ deeply as to how to deal with it. Whether and how our responsibility for our preferences matters is a specific case of a more general worry: how are we to reconcile equality of welfare with the idea that each of us must be thought to bear (some) responsibility for how well our lives go? We are not just victims of fate with respect to our well-being. We are agents who act to make our lives better or worse, and we hold each other accountable for much of how well we live. These facts matter for our thinking about equality.

For example, suppose we think that society ought to be ordered so that each person fares equally well (by some metric or other) in their lives, and we distribute goods accordingly. But someone, call him Burt, loves to gamble. Unfortunately (for Burt) he is not good at it, and consequently he loses money as fast as he can get his hands on it. If we attempt to give him more money for food, clothing, housing, and so on to bring his welfare up to a level of equality with others, he will just lose it gambling. Does a commitment to equality require that we keep funneling money to Burt in an effort to maintain his level of welfare at par with the welfare of others?

Equality of Resources

Proponents of egalitarianism deal in different ways with the idea that we bear some responsibility for our own well-being. One way is to insist that, instead of aiming for equality of welfare as an outcome, political institutions should provide for equality of resources, leaving individuals to bear the responsibility for how they deploy those resources and consequently for what level of well-being they achieve.[2]

2. Ronald Dworkin is among the most prominent proponents of this ap-

According to this approach, each of us is to have something like an endowment we value equally to the endowment of each other person. It will be up to each of us how we dispose of the resources with which we are endowed. We can invest them wisely and build on them, dispose of them foolishly (perhaps gamble them away), or something in between. The point is that in this conception of the ideal of equality, we are equal in terms of our entitlement to resources with which to live our lives. Society owes us no more. If we squander our entitlement, there is no obligation in terms of equality for society to restore what we have lost.

This way of thinking about the value of equality has the virtue of accommodating our intuitions about our responsibility for our own lives. Yet it does not square properly with other intuitions, even those held by other egalitarians. One complaint is this: if we are really concerned about leveling out the effects of the "natural lottery" that bear on our prospects for living desirable lives, equalizing resources fails to come to grips with a major way nature determines those prospects, in not attending to our individual capacities to utilize the resources we have. For example, a blind person, or a mentally impaired person, will simply not be able to accomplish as much with some resources as will persons with normal sight and normal cognitive capacities. What matters, for critics of resource egalitarianism, is not what resources we have, but what we are able to do with those resources.

There is a natural way for the resource egalitarian to respond to this objection, of course, and that is to insist that we ought to count such handicaps or limitations (or, better, the absence of them) as part of the total package of resources with which each of us is endowed—and which is to be equalized to the endowments of others. But this response is itself problematic. For one thing, the

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proach. Ronald Dworkin, *Sovereign Virtue* (Cambridge: Harvard University Press, 2000).

notion of resources now reaches beyond what we have, to include what we are. Moreover, how are we to assess how much such limitations (or the lack of them) should count as part of our endowments? We can make reasonable accommodations for some handicaps, but for others we cannot. Even for those we can to some degree accommodate, this only mitigates inequalities, rather than equalizing the resources each of us has. How much more land, money, or other resource should go to a blind person to compensate for his or her handicap?

The resource egalitarian may instead bite the bullet and insist that each of us is responsible, not only for making the best of the share of resources we receive, but also for shaping our preferences in response to what our capabilities allow. My natural abilities (or lack of them) may prohibit me from ever playing third base in the major leagues, but the right thing is not for society to compensate me for that limitation, but for me to learn to work around it, to develop different ambitions more in keeping with what I can do. Persons with more severe handicaps, likewise, need to do the same. Blindness may prevent one from being an airline pilot, but it is not society's responsibility to compensate for that. Blind people, like everybody else, are responsible for finding ways to live well with a share of resources equal to the shares of everyone else.

Equality of Opportunity

At this point, critics of resource egalitarianism insist that the approach has lost touch with the intuitions that motivate egalitarianism in the first place. Not all our preferences are plausibly chalked up to choices we make and may rightly be held responsible for. Cases of severe impairment prevent the satisfaction of needs and desires that are common to any plausible conception of a good human life. The sensible thing to do is to recognize that, in focusing on resources themselves, this form of egalitarianism has somehow

missed the point. What we care about is, roughly, having equal chances at living well. Although we are responsible for that to some degree, the best way to capture what we want to equalize is our opportunity for living well. Our opportunities are determined not only by what we have but also by what we are capable of doing with what we have. Those opportunities are the appropriate focus of egalitarian concern, and they are what our political institutions should attempt to equalize.[3]

Yet this approach brings with it its own problems. It needs ways of measuring not only welfare but also opportunity. If you and I both have the opportunity to become bankers, but you also have the opportunity to be a grocer, arguably you have greater opportunity than I. But what if, instead of being a grocer as an alternative, I could be a cashier or a schoolteacher? How do we go about measuring the opportunities people have, except in the rough way we judge that a well-educated child of a wealthy and well-connected family has more opportunity than a poorly educated child living in poverty? Is it possible to arrive at anywhere near enough precision in comparing the opportunities people have, to be able to fix on what an equal amount of opportunity would be?

A further problem is that once we begin assessing lists of options as a measure of opportunity, we have introduced the idea that it is not only welfare, or even the opportunity of improving on it, that we care about, but the liberty to determine for ourselves how we shall proceed from among a number of options. This way of thinking about the value of equality threatens to convert it into a way of thinking about the value of liberty.

Moreover, the idea that we deserve equal opportunity for welfare forces us to confront once again the problem of specifying

3. Richard Arneson has been a noted proponent of this form of egalitarianism. Richard Arneson, "Freedom and Desire," *Canadian Journal of Philosophy* 15 (1985): 425–48.

exactly what is going to count as welfare. This was a problem averted, to some degree, by the focus on resources, but here it returns in full flower. If both you and I could become bankers, but you would detest such a career whereas I would like nothing better, do we have equal opportunity for welfare? Apparently not. But what if nothing would give you the satisfaction I can get from banking except being a world-champion ice skater? How can we equalize our opportunities for welfare under such conditions?

The problem, once again, is that we ourselves have a great deal of say in how well our lives go, and in how much satisfaction we can get from them, and many egalitarians are not comfortable with the thought that society ought to be hostage to the way we dispose of our responsibilities for our own well-being. What is wanted is a conception of what should be equalized that is objective enough to resist the vagaries of perverse or expensive preferences and desires, but which has enough flexibility to reflect the fact that differences in individual abilities to take advantage of resources are important determinants of how well people live. Is there such a thing? Egalitarians certainly aspire to specify it. But even if they do, there is another important element of the picture that has not yet been accounted for: we have paid insufficient attention (in fact no attention at all) to where those resources come from.

The Production Problem

How can a fundamental commitment to equality as a political value allow for the fact that it takes people and effort to produce the goods that go into our calculations about equal distribution? Some egalitarians offer answers to this question, but they are less than satisfactory.

One gambit is to refuse the question. The egalitarian might insist that equality is an ideal to be applied at whatever level of goods may be available in a given society, at a given time. If the commit-

ment to equality results in fewer goods being available to be divided—and thus a lower level of welfare than could be realized by at least some people if inequalities were allowed—then so much the worse for welfare. Equality is so important that it justifies bringing everyone down from the level of well-being they could enjoy if inequalities were tolerated.

But this is to bite a bullet that many egalitarians do not want to bite. A more plausible reply is to insist that what needs to be divided equally are not merely the benefits that social cooperation affords but also the burdens of effort and work necessary to realize those benefits. It would be a mistake to focus merely on the goods enjoyed by citizens as a result of productive activity; that activity itself needs to be counted as part of our endowments. We need, that is, to balance the benefits each of us has against the burdens it takes us to produce them, and to ensure that for each of us that balance comes out roughly the same.

This proposal introduces new difficulties. Some are simply complexities. Should labor count as a benefit or a burden? Some labor is obviously burdensome, at least to some people, whereas other labor is pleasurable, at least to some people. Perhaps most forms of labor have moments of both. Is there any hope for an adequate objective measure of the degree of benefit or burden a given form of work involves? If not, perhaps a focus on subjective preferences and reactions to labor is necessary. But once again, the introduction of public accommodation of subjective preferences brings concerns about perverse or expensive preferences—as to the burdens of labor just as with the benefits of goods.

But in any event the unpleasantness of labor is only remotely connected with the production of the goods and services that contribute to the benefits egalitarians want to distribute equally among us. If it matters to us that our society produces adequate wealth for all to live well, questions about how much suffering is involved in producing that wealth, or how that suffering is distributed, cannot

be our only concern. What we also must care about is that people's energies are directed in ways that are productive of those goods and services, and this is what the proposal to equalize benefits and burdens does not address.

Egalitarians whose focus is material wealth and its distribution may insist at this point that they are not promoting such equality as the exclusive political value, that they expect it to be balanced in the design and aim of political institutions with the pursuit of other values, including liberty and perhaps the sheer production of wealth in goods of all kinds, to be distributed according to egalitarian norms. So, they might argue, it is not a problem that the value of equality itself does not take into account problems of sponsoring and promoting production; that problem is to be attended to as part of a comprehensive political theory, not as part of a narrow concern with understanding the value of equality as a political ideal.

But this response will not fly. Goods and services are produced by deploying resources (land, raw natural materials, etc.), which become goods through their deployment. Resource egalitarians are straightforwardly confronted with a tension between the values of wealth creation and equality of resources because these represent competing alternatives as to how resources should be allocated. Should political and legal institutions be shaped so that resources are directed to the uses most productive of the goods that contribute to good human lives? Or should they be allocated so that no person can legitimately envy the resources allocated to another person? There is no obvious reason to think these ways of dividing resources would coincide, and if they do not, the defender of resource egalitarianism must confront the question of whether equality is valuable enough as a political ideal to justify the loss in production of goods that equality of resources would engender.

The problem is only a bit less acute for welfare or opportunity egalitarians. There is no real difference between goods that are deployed to make lives go well (consumer goods) and goods used

to produce those goods (capital goods). Both kinds of goods draw on resources and labor for their production; more consumer goods can be produced only at the cost of producing fewer capital goods (and, thus, eventually fewer consumer goods in the future). Principles of distribution for the goods that contribute to welfare, or the opportunity for it, thus inevitably limit the productive possibilities of those goods, and once again there is no obvious reason to suppose that a division of goods to equalize welfare or opportunity for it (assuming we could figure out what that would be) will even approximate a division of goods that builds wealth. One does not have to be committed to the idea that building wealth should be the exclusive or even primary goal of political institutions to worry about this. Wealth is what allows us to live lives most of us find better than the lives of people a millennium or even a century ago, and it is the accumulation of wealth that proponents of equality of welfare, resources, or opportunity are concerned to divide. Any egalitarian whose primary concern is the material condition of our lives must confront the degree to which his or her preferred conception of equality is worth the sacrifice of well-being, not only of those who are best off but also of those who are not.[4]

Of course, committed proponents of material equality may be willing to bite even this bullet. In any event, our rehearsal of conceptions of equality has not shown that equality as a political ideal is useless or a mistake, only that our intuitions about the value of equality are heterogeneous and perhaps confused. Certainly there is reason to wonder whether equal treatment of our fellows is best thought of as bringing about equal conditions, whether of welfare, resources, or opportunity. Any such proposal runs into complications arising from the fact that we are to a large degree responsible for the conditions we make for ourselves, that we have different

4. This is an issue John Rawls explicitly seeks to address in his second principle of justice. See Rawls, *A Theory of Justice*.

attitudes about what will make our lives go well, and that we cannot focus only on what we get but must also attend to how goods will be produced as well. This does not mean equality is an empty ideal, but it does suggest we might profit by looking elsewhere in trying to understand it. We will return to this suggestion after considering to what degree, if any, liberty as a political value is in any better shape.

LIBERTY AS A VALUE

Why do we care about liberty? The question may not seem that difficult, but the answer may help us understand what kind of liberty matters. We want to be able to decide for ourselves what we will do. The choices we make shape our lives, and nobody ought to be able to determine how our lives will go but us ourselves. Threats to liberty are constraints on the things we can viably choose to do, and it matters vitally to us that those choices are left up to us.

Negative Liberty

This is the way some defenders of the value of liberty (e.g., John Stuart Mill[5]) have understood it. We might think that what matters is that our range of choices be as unconstrained as possible. On this negative conception of liberty, our legal and political institutions ought to be designed to protect our basic rights against harm and interference and within those parameters allow each of us to choose to live how we will. We are more free when our fellows leave us more options, less free when they leave us fewer.[6]

As good as it sounds, this conception of liberty quickly gives rise

5. See J. S. Mill, *On Liberty* (1859; Reprint, Indianapolis: Hackett Publishing Co., 1978).

6. Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969).

to problems that redirect our attention away from the issue of limiting the interference of others.

The first problem is that if liberty is valuable because it is good to have lots of options from which to choose, maybe political institutions should focus on providing lots of options for people, rather than protecting their liberty. The poor, the sick, the incapacitated, do not enjoy the range of options the wealthy and healthy do. If having options is what matters, arguably providing them to those who have the fewest options is more important than protecting the options of those of us who already have our share and more.

Positive Liberty

This line of thought leads to a positive conception of freedom: the ability to set one's own goals and achieve them. I am positively free to the extent it is within my power to make of myself and my life what I will. The challenge of positive liberty is especially acute if we believe, as many do, that we should have equal liberty. Most of us think it is not right for some people to be guaranteed, as a matter of law and policy, more liberty than others. Freedom, like justice, loses something, if not everything, if one person has it only by depriving another of it. But if this intuition is right, then interpreting freedom as the possibility of choice among options takes a strongly egalitarian twist. Equalizing freedom then means equalizing the options that people have to choose from. We have turned from equality to liberty, only to make liberty over into equality.

A related problem awaits us if we think that liberty is important because it is instrumental to our capacity to achieve our goals. We might be tempted to think that liberty matters because we need it to get the other things worth having. But this way of thinking about the value of liberty quickly leads us down the same problematic path. If others interfere with us, that may indeed prevent us from achieving what we deem worth achieving. But the interfer-

ence of others is hardly the only thing that may prevent us from doing so. Nature deprived me of the possibility of being a major-league third baseman or a concert pianist. Sheer poverty deprives people of the resources to undertake what they would most like to undertake. Lots of things may prevent us from achieving our aims, so it seems a mistake to focus on liberty as the essential element in being able to aspire to what we will.

What Is Missing

But this way of thinking about the value of liberty misses something important. There is a moral difference between my being unable to be a big-league ballplayer because I do not have the skills, and being unable to do so because, even though I have the skills, someone threatens my life if I try to play. Although it is too bad if I lack skills, that is not a moral issue; if someone forces me not to play, that surely is. Liberty does matter because of what we can do when we are free, but it may matter more because of what it signifies about how people are treating each other. The Kantian outlook I will propose takes very seriously this line of thought, and we will return to it later.

There is yet another problem with understanding liberty as having options from which to choose. How should we measure liberty so construed? We face a problem similar to the problem faced by the opportunity egalitarian. Suppose we consider two persons—one as free as any of us normally are, except that his thumbs are bound up in splints. The other is imprisoned, bound head and foot, and left with only the freedom of movement of her thumbs. But she still has indefinitely many options as to what to do with her thumbs, just as the first person still has indefinitely many options. We want to say that the first person is freer than the second, but is this due to the number of options he has open? How could we go about counting the number of options each has open? And would

our count really be getting at our reasons for thinking the first has more freedom than the second? Does not something like the value of the options open to the respective persons matter in our thoughts about how much liberty they have?

Of course, we are now headed right back to the territory we just left—thinking not about what options are opened or closed, but about what value there is to the options we have. Something important about the moral point of freedom has been lost in the shuffle. Moreover, this way of thinking about liberty justifies gross intrusions on our commonsense conception of liberty. Suppose I kidnap you, imprison you, immobilize you, and force you to submit to a brainwashing regimen that consists of electric shocks and drugs. The effect of this regimen, however, is that all you can think about is a cure for cancer. I have so focused your brain activity that not only can you think of nothing else, but you do not want to. You want more than ever to think about this noble goal; it matters to you more than anything else. And you are free to do so. Does that mean I have not deprived you of freedom? The value of your sole remaining option is great on any account, even your own. But the fact that your only option is valuable does not seem to mean you are any the less unfree as a result of my actions.

I am not suggesting that there are not ways of tinkering with these conceptions of freedom to reduce their problematic consequences. But it is not clear that tinkering will yield a clear and compelling conception of freedom in the long run. The problems with our ordinary conceptions of freedom have led some thinkers to the conclusion that freedom is a useless concept for political theorizing. We do not have one concept, we have several, and they stand in uneasy tension with each other, incapable of being harmonized.[7]

7. This is Arneson's conclusion in "Freedom and Desire," *Canadian Journal*

But this conclusion is as premature as the comparable conclusion about equality. Presumably we want to reduce or eliminate the tension between the ideals if we hold out hope for political institutions that do not sacrifice one cherished ideal for the sake of another. What is true is that if we want a conception of equality that is compatible with the value we place on liberty, we actually have two problems, rather than one. But we appear to be as much at sea as to how to think about liberty as a political value as we were about equality. Perhaps the problems need to be solved together. That is the promise of the approach to which we now turn.

KANTIAN EQUALITY

We have seen that it is difficult to formulate precisely our ideals of liberty and equality. Not only may liberty and equality be in tension with each other, but also there seem to be internal tensions to our thinking about each of them as values.

One way of trying to resolve the tension has been to understand equality as formal equality. Roughly put, formal equality requires that equals be treated as equals, and unequals be treated as unequals. This is a simple and powerful form of justice; it is hard to argue with it, but for just that reason it does not get us very far. It leaves unspecified what are the pertinent ways in which we are equal or unequal, and what is to count as being treated as equally or unequally. Formal equality is as compatible with any of the forms of egalitarianism we have considered as it is with libertarian approaches that reject them.

Some have suggested that, for political purposes, formal equality is a demand for the rule of law—the idea that each person is to be

of Philosophy 15 (1985): 425–48. I borrow the comparison of the people with bound and free thumbs from him.

equally accountable to standards of legal justice.[8] But here too guidance is limited. Is a law that prohibits civil suits against a sitting president consistent with the rule of law? Any system of law distinguishes between persons in virtue of their office, if nothing else. How are we to know which distinctions are legitimate and which not? The problem is not that the idea is bad, it is that we need more direction to understand what it might mean for political institutions.

I suggest a different way of understanding both liberty and equality, a way that not only resolves their tension with each other but also fixes on an aspect of each ideal that seems to be at its heart. I will refer to this conception as *Kantian equality* for sake of simplicity, but it specifies a form of liberty as a political ideal just as it specifies a form of equality.

The view is found in the political writings of the great eighteenth-century German philosopher Immanuel Kant. Kant is best known for his ideas on the nature of the world and how we know it, and for his moral theory, which we will consider in a moment. But he also was a provocative political theorist, and at the foundation of his political philosophy is what he refers to as the Principle of Right:

> Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.[9]

Kant understands freedom, in the politically relevant sense, as "in-

8. This is Friedrich Hayek's suggestion. He says, "Equality of the general rules of law and conduct . . . is the only kind of equality conducive to liberty and the only equality which we can secure without destroying liberty." See Friedrich Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), p. 85.

9. Immanuel Kant, *The Metaphysics of Morals*, trans. Gregor (Cambridge: Cambridge University Press, 1797/1991), p. 56.

dependence from being constrained by another's choice," and says our "innate right to freedom" includes *innate equality*, which is "independence from being bound by others to more than one can in turn bind them."[10] In other words, Kant believes that his idea of freedom entails or includes an important form of equality, and his idea of the form of equality that is politically relevant includes an important form of liberty. How can we understand these two ideas in a way that makes this so?

The Moral Foundation

The key to understanding Kant's view is grasping an idea that is at the heart of his moral theory. Kant's fundamental moral concern is with human beings as moral agents, as creatures that have the capacity to exercise will in choosing what to do. Of the first importance to Kant is how we do so, as reflected in the principles we elect to act upon. When it comes to our relations with others, Kant believes that we must also recognize others as having these same capacities, and respect them accordingly. We must see others' capacity for rational willing as giving them dignity, and as removing them from the realm of objects we may use as instruments in advancing our own projects and achieving our own goals. We must, as Kant puts it, see them as ends in themselves, never merely as means for us to dispose of as we will.

The focus in Kant's moral theory is thus on the relations we have with each other as willing beings. It does not, as in some theories, focus on human beings as subjects of pleasure or pain, happiness or unhappiness. What matters is not trying to advance the greater good. What matters is that we understand our capacity to choose what we will do and how we will live, and that we recognize and respect that capacity in others.

10. Ibid., p. 63.

This recognition underlies the Principle of Right in Kant's political theory. Political institutions are to be established so as to protect each person's willing capacities from the depredations and control of others. The principle of freedom Kant defends is one that attends not to the choices we have—to their number or scope—but to the interference of others with the range of choices we have. He is less concerned that we have such choices than that others do not arbitrarily deprive us of them. In this sense, the Kantian conception of freedom is like the negative conception we considered earlier. In fact, it constitutes a negative conception of freedom, but the rationale for it is not that it matters that we have choices, but instead that our choices not be limited or forced by others in arbitrary ways.

But of course anytime we act, we restrict the choices of others. If I buy the last maple bar at the doughnut shop, nobody else has the option of eating it. So do I violate their freedom in Kant's sense by taking it? There are at least two ways of trying to address this problem.

One is Kant's. In his moral theory Kant maintains that "good willing" is willing according to principles that could be universal law. If I consider taking the last maple bar as the practical expression of a principle that any rational being could accept, I see that even if I preclude you from taking it, I do not violate your freedom. After all, if the last maple bar is to be eaten at all, somebody has to eat it, and when they do, nobody else can do so. So the moral issue turns on the basis on which the somebody who gets that last maple bar is determined. And provided the system by which I am justified in taking it is rationally warranted (perhaps it is just a matter of being the next customer willing to pay for it) in Kant's sense my doing so violates nobody's freedom.

A different way of thinking about the problem is to consider my object or aim when I take the maple bar. Intuitively, there is a big difference between the objective of getting something tasty to eat

and the objective of depriving someone else of something tasty to eat by taking it first. This way of thinking about the issue dovetails with Kant's proposal for thinking about willing. What we will is a function not just of the things we choose to do, but of our reasons for choosing to do them. If I deliberately aspire to frustrate your will, that manifests a lack of the kind of respect for you as a willing agent that Kant thinks is morally required of me. Certainly a principle that permitted deliberately frustrating the wills of others, merely for the sake of frustrating them, would not be a principle rational agents with wills of their own could accept. They could not rationally will both that they act purposively and that their wills are frustrated deliberately.

Political Implications

Kant's view of political institutions is that they should be designed to afford us the maximum degree of freedom from the latter sort of constraint, that is, having our own wills subordinated to the wills of others arbitrarily.[11] This idea emerges clearly in his conception of the politically relevant form of equality. Consider once again how Kant formulates that conception: "independence from being bound by others to more than one can in turn bind them." The suggestion here is that in cases of control by one person over another, there is an inequality in the degree to which the parties are subject to the other's will. One is subject to the other to a degree greater than the second is subject to the first. What is wrong in this condition is the inequality in the control of one person over an-

11. The requirement for maximum equal freedom is important. We could equalize freedom by allowing no freedom from the constraints of the wills of others. Kant is clear not only that equality is required but also that the equal freedom of each person from the constraints of the wills of others is to be as great as possible.

other. This is the notion of equality Kant thinks matters for political institutions.

In what sense might there be equal control between parties? To capture this idea, Kant borrows from Rousseau the concept of a general will. Although the details of this concept are complex, for our purposes its point is straightforward enough. The general will is, roughly, the united expression of will of every person who is subject to that will. The general will is an expression of all and only those things that each person subject to it can rationally accept. This means the general will is both a constraint on political institutions and is itself constrained by the wills of the governed.

This double-edged constraint works by imposing a test on legislation: to be permissible a law must command the endorsement of each member of society. Unless a proposed legal measure is rationally acceptable to each and every citizen, it may not acquire the force of law. This provides a protection against depredations in the name of the common good. Under Kant's concept of political Right, the common good is that which is acceptable to everyone subject to the laws. Citizens have rights against having their interests sacrificed for the interests of others.[12] Nor are the pet projects—even the projects with commendable motives and ends—of particular citizens entitled to support or endorsement from legal or political institutions. The particular commitments citizens may have do not provide reasons for legal constraints. Instead, the job of legal institutions is to secure freedom for citizens to pursue and honor their commitments as best they can without forcibly subordinating the wills of others to their own. The general will is constrained in that it can reflect only an equality of control of one citizen over another.

12. Here I depart a bit from the way Kant himself interprets the implications of these principles. For whatever reason, Kant believed they were consistent with a constitutional monarchy and strove to reduce any explicit conflict between his political principles and the government of Frederick the Great.

(Notice that this conception of the relation between freedom and equality has the virtue of explaining what is important about formal equality and the rule of law. We worry about violations of either because, when they occur, one person is arbitrarily exempted from the legal constraints by which others are bound.)

We might wonder whether the machinery of government can work under such constraints. If there are legal institutions at all, some people are going to be able to bind others more than they are subject to being bound by them. A judge, for example, exerts a degree of control over a convict's life to a far greater degree than the convict has control over the judge's life. How is this kind of inequality compatible with Kant's notion of innate equality?

One response would be to rely on a sort of hypothetical rational agreement. The idea would be that the criminal being judged is there by an act of his or her own will, so to speak, given that he or she must rationally will that crimes (of the sort he or she committed) be punished. This approach would obviously raise the bar as to what could count as a crime deserving of punishment. Because the specification of crimes is a function of the general will, only acts that command universal disapprobation could be criminalized; a single rational dissent is thus all that is required to disqualify something from being a crime. Perhaps this demanding standard for what can count as crime would be a good thing.[13] But the appeal to a sort of hypothetical rational agreement here ought to give us pause. As the story runs, what matters is not what the criminal does agree to, but what he or she should agree to given certain rational constraints on his or her judgment. But opinions as to what the criminal should agree to are a dime a dozen. Should we ground law on such an unstable basis?

13. Defenders of jury nullification argue that having juries judge the law as well as the facts in practice means that only one of twelve jurors in a criminal case need find the law unjustified or unjust in order to acquit, so that conviction would be possible only for crimes against which there is virtually unanimous sentiment.

A better approach, I think, is to grant that such exercises of unequal control are problematic for the very reason Kant says they are and thus are justifiable only if they are essential for the bare survival of the political society. Again, this is an extremely demanding condition. There are only a few governmental functions for which such a case can be made genuinely. But Kant's principle of right is a demanding principle. It puts genuine bite into the demand for liberty, understood as freedom from unequal degrees of constraint by others.

Even if these problems can be solved, further serious challenges for this proposal remain. First, if the principle demands being bound by others only to the degree that we can bind them, we need some way of measuring the degree to which one person binds (or can bind) another. If we have no way of measuring this, of course we have no way of equalizing the degree to which each person is bound. We ran into similar problems earlier when we considered opportunity egalitarianism and conceptions of freedom that focus on options. We should learn from those cases not to try to measure degree of control in terms of the number of options or choices that are given or taken from one person by another. But it is far from obvious what alternative avenues for characterizing equality of constraint might be more successful.

That is a problem in understanding precisely what the theory proposes, and how it should inform the structure of our legal and political institutions. But even if we were to get that cleared up, a further question remains, one that for many might represent an even more serious obstacle to accepting this as a theory of equality. Does it really capture what we think is important about our impulses toward equality? Is Kantian equality really the most important form of equality?

Answering "Yes" to this question means agreeing with Kant that what matters morally in our political institutions is fundamentally not how things turn out—in terms of how many people, or which

people, lead desirable lives. What matters is how those institutions require or allow us to deal with other people as moral agents. Kant's radical proposal is that what matters is not the outcomes of our treatment of others, but the principles on which we act, and those principles must above all see others as rational beings whose choices we must respect.

Modern egalitarians will respond that either the proposal cannot be made sense of, or that once we do make sense of it, we see that it requires one of the forms of egalitarianism we have already found problematic, because this is what respecting the rational natures of others comes to. Some egalitarians (e.g., John Rawls) make this claim explicitly.

Careful argument will be required to meet this challenge, if it can be met, but Kantian equality offers the prospect of thinking in a different way about equality as a political value: not as a matter of distributing the goods we have, but as a moral relation among citizens that goes beyond the rule of law in explaining what matters in our treatment of each other. Kantian equality has not been the subject of much careful scrutiny, either by proponents of equality or by its critics; a distinctive and thorough development of this approach is yet to be seen. Given the problems with the alternatives, and given the Kantian clarion call for focus on respect for others, the problems of specifying what equal control between people really comes to and of defending the moral significance of this form of equality merit dedicated attempts at response. Kant's proposal is a way of thinking about both equality and liberty that bears further investigation.