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On Freedom and Constraints: A Critical View

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Abstract:

This thesis will examine shared presuppositions and assumptions made by a wide range of freedom theorists regarding what counts as a freedom-reducing constraint. In particular, it will focus primarily on 'intention-based' and 'responsibility-based' views of constraints. It will also look closely at theoretical positions regarding social freedom, broadness, ordinary language, and non-human caused constraints more generally. Following this, a general critique of the negative freedom theorists' positions will occur. The thesis concludes that the presuppositions and assumptions underlining the chosen negative theorists approaches to the question of constraints that cause unfreedom is limited, overly narrow, and flawed, and requires a new, broader, and more holistic approach. One that can make freedom a more useful concept within political theory.

On Freedom and Constraints: A Critical View

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Contents

For my Nana, Ena Williams. I wish you could have seen me get to this point.

<u>Introduction</u>

> Can you think of a more depleted, imprecise, or weaponised word [than freedom]?[1]

Freedom[2] as a concept has received a lot of attention in philosophical discussions, and the diversity of these discussions demonstrates its importance to philosophy. Some discussions focus primarily on free will vs. determinism debates, others focus on 'freedoms' as actualised through the law or human rights, whereas others prefer to focus on one specific kind of freedom, such as freedom of speech.

If we take a broader approach and begin to examine the simple question of 'what is freedom', we find ourselves in a camp whose debates began in earnest with Isaiah Berlin. Whilst freedom had been discussed prior to Berlin, and acknowledging that it was clearly an issue for even the ancient world,[3] Berlin's distinction between 'negative' liberty and 'positive' liberty set the stage for a series of debates about freedom that continues to this day. Simply put, Berlin distinguished between two types of liberty; negative liberty, which refers to lacking interference from others to my actions,[4] and positive liberty, seen as 'self-mastery', the desire for my decisions to depend on myself, and not on external forces of any kind.[5] This distinction has often been described as 'freedom-from' and 'freedom-to' respectively.

A great deal has been said since then, and various 'sub-debates' have spawned since. The subject of this thesis with focus on one of these particular sub-debates within primarily negative liberty, and that is 'what can be said to be a qualifying constraint that makes someone unfree?'[6] It may be easier to visualise this if we examine Gerald MacCallum's framework for freedom, which rejects the positive/negative distinction and instead encapsulates freedom as:

> …x is (is not) free from y to do (not do, become, not become) z, x ranges over agents, y ranges over such "preventing conditions" as constraints, restrictions, interferences, and barrier, and z range over actions or conditions of character or circumstances.[7]

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[1] Maggie Nelson, *On Freedom* (Penguin 2021), 3.
[2] The terms 'freedom' and 'liberty' will be used interchangeably. Furthermore, the terms 'constraints' and 'restraints' will also often be used interchangeably unless otherwise stated.
[3] Benjamin Constant, 'The Liberty of the Ancients Compared with That of the Moderns', in Biancamaria Fontana (ed), *Political Writings* (CUP 1988).
[4] Isaiah Berlin, *Four Essays on Liberty* (OUP 1969), 121-122.
[5] Ibid, 131.
[6] 'Unfree' is a bit of a cumbersome word which does not see much use in ordinary conversations regarding freedom, but it is used heavily in the literature, and as such I will use it. It means to be 'not-free' or in a state of not being free.
[7] Gerald MacCallum, 'Gerald C. MacCallum, Jr., from "Negative and Positive Freedom" (1967)' in Ian Carter, Matthew Kramer, and Hillel Steiner (eds), *Freedom: A Philosophical Anthology* (Blackwell Publishing 2012), 71.

I reserve judgment about whether I completely agree with MacCallum's analysis, but the above conception allows for us to visualise where our debate is occurring, and it is the 'y' condition.

More specifically, what this thesis will investigate is the relationship between 'being unfree', as opposed to 'being unable', alongside a more general discussion on how primarily negative freedom theorists seek to define a constraint. These two aspects interact closely, and can be best illustrated via a few examples:

1) Person A attempts to enter a building, and Person B blocks her from entering by jumping in front of her.

2) Person A attempts to enter a building, but Person B, not knowing A wanted to enter, locked the door when leaving, and therefore Person A cannot enter.

3) Person A attempts to enter a building, but a strong wind slams the door shut which breaks it, preventing entry.[8]

All negative freedom theorists (and positive ones for that matter) would consider case 1 to be a clear case of Person A being unfree to enter the building. Case 2 would also receive a fairly large amount of support from negative theorists, unless they subscribe to the idea that constraints must be intentionally brought about by other agents. Conversely, almost all of them would reject that Person A is unfree in case 3 and would instead say she is 'unable.' It should be noted that for case 3, I could have discussed if Person A was, for example, disabled via a genetic disorder and therefore could not enter, or perhaps lacked sufficient funds to pay for entry into the building. Those cases would gain some support as causing an unfreedom. However, if we took case 3 as solely having a restraint not attributable at all to a human caused action, the amount who would see it as an unfreedom would shrink still. To borrow a term from Ian Carter and Hillel Steiner, these later positions are known as a 'bivalent freedom-as-ability' conception of freedom.[9] This means you are free to do X if you can do X, and unfree to do X if you cannot do X.[10] The unfreedom aspect, therefore, could be caused by theoretically anything, even things beyond the control of another human agent. Put another way, an occurrence not brought about (intentionally, recklessly, etc.) by another human agent could make you unfree. Carter and Steiner acknowledge that some theorists do take this view, albeit only mentioning two (Philippe Van Parijs and Amartya Sen),[11] but the vast majority reject such a conception, and the negative theorists this thesis plans to discuss do reject it, for a variety of reasons. It should be noted that more than two

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[8] These examples are inspired from similar examples given in David Miller, 'Constraints on Freedom' (1983) 94 Ethics 66, Miller's examples will be discussed in more detail later.
[9] Ian Carter and Hillel Steiner, 'Freedom Without Trimmings' in Mark McBride and Visa AJ Kurki (eds), *Without Trimmings: The Legal, Moral, and Political Philosophy of Matthew Kramer* (OUP 2022), 240.
[10] Ibid.
[11] Ibid.

theorists do take the opposite view, and the view has much more credence and acceptance in the more classical 'positive liberty camp'; but overall, there is a divide, even the broader definitions of what a constraint is by negative freedom theorists draw the line here, so the question this thesis seeks to answer is a simple one: is it right to draw the line where it has been drawn by these theorists? This thesis aims to show that it is not, and that those who conceptualise constraints on freedom should be more open to taking a broader conception (an inability equals unfreedom view) that leaves open the possibility of non-human caused actions as creating inabilities and unfreedoms, and that the arguments they present to counteract this do not weaken our view of freedom.

It should be made clear that the line is blurred throughout the current literature, and considering that issues such as causation, actions and omissions, and various other complex and dense topics arise here, a clear-cut explanation that covers all the complaints of all the to-be-mentioned theorists would be ambitious at best. Therefore, my aim is to keep the discussions as close as possible to the reasoning and arguments from the philosophers I examine in depth, who can all be described as leading scholars within the realm of negative freedom. I also aim to keep the discussion as close to that of constraints as possible, but considering the nature of freedom, there will no doubt be moments where the discussion will become broader. I should also note that, since even constraints have its own sub-debates, my primary focus will be the 'source' of the constraint, rather than its 'weight', but the latter will no doubt make an appearance considering how interconnected this subject matter is.

Therefore, this thesis will have the following structure and will be split into two chapters. In Chapter 1, the 'strictest' form of constraint, that of the requirement that a constraint must be *intentionally* brought about by a human-agent, is addressed. The views of the theorists who take this view will be examined, and ultimately dismissed. We will then move onto looking at the next view, 'responsibility' views of constraints, which relates to the human-agent being causally or morally responsible for the constraint. Once again, the theorists' views will be explained, compared, and examined. In this first chapter, some other views such as coercion-based/non-prevention accounts and 'moralised' versions of freedom will be examined where it becomes appropriate. The ultimate aim of this first chapter is to give substance to the idea that we should define constraints in the broadest possible way, since that best encapsulates what we mean by freedom in this context, considering these theorists views' on ensuring that we do not fall into the realm of inability. The second chapter will then critically examine the exact reasons why these theorists believe constraints must be in some way attributable to human actions; or, in other words, why they reject the 'unfree to do X if you cannot do X' position. The primary reasons provided for this relate to concerns over 'broadness' (i.e., it makes the concept of freedom too broad) and that freedom should only be viewed as a social relation within the realm of political discussion, and that it is a relationship between human interaction only. Theorists who contend this view, or at least believe that ability as freedom and inability as unfreedom does have some merit, will have their arguments examined and critiqued, and their arguments against the views

expressed in Chapter 1 will be demonstrated. I will then build upon these arguments and bring it together with my own arguments regarding this issue to show why the arguments given to maintain the unfreedom/inability distinction are not strong enough to accept the distinction in its current form.

It is appropriate to note here that this thesis was initially heavily inspired by the section 'The Analysis of Constraints: Their Types and Their Sources' in the Stanford Encyclopaedia of Philosophy article written by Carter on negative and positive freedom,[12] and the structure and the theorists that he mentions has formed a fundamental inspiration to this thesis and how it flows.

The aim of this thesis is not to 'disprove' or disregard the theories of freedom that we discuss, I do believe that all these theories provide value to this tricky concept in some way. My hope is that this thesis opens up a usually quickly disregarded debate within freedom and allows for a better discussion of it. That discussion may lead to points I make being disputed, but I would still view this as a success, considering I believe that this particular debate is not given the necessary attention it deserves, and is often too quicky set aside or disregarded.

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[12] Ian Carter, 'Positive and Negative Liberty' (Stanford Encyclopaedia of Philosophy 2022) < https://plato.stanford.edu/entries/liberty-positive-negative/> accessed 19 November 2024.

Chapter One: Current Views of Negative Theorists

We will begin with an examination of some of the current theories regarding constraints from negative freedom theorists, with the stated aim to slowly unpack why we should be in favour of broadening the distinction, and to provide the necessary context for Chapter 2. However, those discussions regarding inability and human-caused actions can be assumed in Chapter 1. This can be done because many authors use it to justify their position, under the idea that their position ensures unfreedom does not collapse into inability or into non-human caused actions, and therefore, we can use it to unpick their positions as well, as will become clear. The intention here is to show that even with that assumption, and all the other positions we will discuss, the best arguments still lean towards sources of constraints being viewed in a broader manner as the most suitable. However, it should also be noted that the below positions can be evaluated and discussed comparatively between each other, and also on their own merits.

<u>Intention</u>

Intention-based accounts of constraints are almost certainly one of the strictest, due to them allowing for the least number of actions or omissions to be freedom-reducing when compared to the other accounts examined. I have chosen four theorists who take this view for closer examination.

Berlin, in his seminal work mentioned previously, mentions briefly a requirement for 'deliberate interference' of other human beings in regard to being coerced.[13] Furthermore, quoting Jean-Jacques Rousseau, he discusses the idea that "the nature of things does not madden us, only ill will does."[14] Taken together, this can be seen as an endorsement of, at least in some cases, an intention-based view of constraints. The reasons why Berlin believes this are on one hand explicit and on the other hand more implied.

Explicitly, Berlin has a long discussion of how this requirement ensures that 'mere incapacity' (inability) is not seen as affecting our political freedom, and that things outside of this area, such as poverty, are inabilities and do not affect freedom which requires prevention from other human beings.[15] The implied part is in regard to Rousseau's quote, and it is clear that it is used to demonstrate how there should be special considerations for actions which are intentionally caused because there is something uniquely wrong with intentional actions against another person to prevent their actions. The later view will be the primary focus here, especially considering that it is not necessarily fair to say that Berlin takes a full intentionality view, in other parts on the same page he seems to acknowledge it only requires the action of another human being. I have used it here to demonstrate

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[13] Berlin (n 4) 121-122.
[14] Ibid.
[15] Ibid.

parts which do appear to be relevant, whilst acknowledging and agreeing with authors such as Kristján Kristjánsson, that Berlin's account is better served to stimulate debate than provide a definite answer on his own views.[16]

Further to this, Friedrich Hayek discusses (also within the realm of coercion) the need to intend to bring about certain conduct.[17] This is elaborated as being a requirement in that, if the act by the other agent is not intent on making me do or not do certain things, or to intend to make me serve another person's ends, it does not affect my freedom in the same way a natural calamity does not.[18] Again, we see the reasoning behind this given as a desire to exclude inability due to it being 'naturally' caused.

Moreover, Patrick Day, declares (quite strongly in fact) that the true definition of liberty is that which involves intentional restraint of a person from doing something,[19] which he borrows from Jeremy Bentham.[20] To illustrate this, Day provides us with two example cases; B locks his premises and goes home, forgetting that his secretary (A) is still in the premises working late. He discovers this the next morning, and is mortified, and offers various modes of compensation to A for his mistake. In the same example, B intentionally locks A in under the belief that she has been slacking in her recent work, and in this scenario, A is furious the next morning (instead of forgiving him as she does in case one) and threatens to report him.[21] Day claims that the utterly different conduct of A in both these cases shows that in case one, B's unintentional conduct is a mere prevention and does not violate her 'moral and legal right to liberty' whereas in the second case, the intentional action restrains A from leaving and does violate her liberty.[22]

Finally, we can look at Richard Flathman, who for the most part makes a similar argument to the above theorists regarding the need for intention but also discusses the need for intention by identifiable agents.[23] Flathman's arguments link closely to an argument made by Hayek regarding a defence of free-market capitalism, in that it does not restrict our liberty. Primarily because the outcomes of that are not intended since there are millions involved in the creation of those outcomes, unlike in a different example where a single monopolist causes someone to be in poverty, in which case that is creating unfreedom.[24]Put another way, borrowing from Raymond Plant's discussions of Hayek, whilst the individual actions of those under the free market are intentional, and those individual actions may cause unfreedoms in the right context, the total aggregate 'end-state' of those

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[16] Kristján Kristjánsson, *Social Freedom: The Responsibility View* (CUP 1996), 8-9.
[17] Friedrich A von Hayek, *The Constitution of Liberty* (Routledge and Kegan Paul 1960), 134.
[18] Ibid, 137.
[19] Patrick Day, 'Is the Concept of Freedom Essentially Contestable?' (1986) 61235) Philosophy 116, 118.
[20] Douglas G Long, *Bentham on Liberty* (University of Toronto Press 1977), 54-55.
[21] Day (n 19) 118.
[22] Ibid.
[23] Richard Flathman, *The Philosophy and Politics of Freedom* (Chicago University Press, 1987), 17.
[24] Andrew Gamble, 'Hayek and Liberty' (2013) 25 Critical Review 342, 345.

actions of all of those individuals cannot be said to have been directly intended by any one individual present, and therefore an intentional constraint has not occurred, and therefore no unfreedom is created.[25]

When taken together, three avenues of argument are given by the above to justify an intention-based view of constraints. First, a belief that is it the only way to ensure we do not allow constraints to collapse into 'mere inability', or for it to be conflated with non-human caused actions. Second, that intention implies a certain level of malice or harm that elevates an intentional constraint to the level required for it to be a constraint on liberty, and third, a belief of needing to focus on the intentional action of individuals, since intention on a grand scale can very easily erode the intention aspect into mere unintended consequences. The third of these points is taking us slightly away from looking directly at intention, but it is relevant enough to intention to merit a discussion, especially since its argument is made by two of the defenders of an intention-based view.

The first objection can be left until Chapter 2, since that objection is shared far beyond just the 'intention' defenders; but even if we accept the first objection, it does not save them from not being able to justify this account, mainly due to their reasoning for believing intention ensures freedom is kept in its proper place particularly in relation to human actions. Regarding the second aspect, we can turn to a critique of this view forwarded by David Miller. This primarily focuses on Day's example, claiming a unique position should be held for intention due to its clearly worse effects on the victim of the constraint. However, as Miller points out, is it really fair to argue that only intentional actions can cause us great worry or distress. Miller contrasts a law passed with the direct intention to prevent me leaving the country, and another law that requires me to repay the cost of training, which he can only do by remaining in the country – surely here the effect is the same, he argues, in that: "Indeed I may rail more strongly against incompetent legislators who fail to foresee the consequences of their actions than against misguided legislators who act in the light of sincere...convictions."[26]

This position makes a lot more sense than the one forwarded by Day. On the one hand, Day's position relies upon an expected reaction of the secretary regarding intention instead of negligence, but this seems to be incredibly generous towards the boss. If I was locked in my place work by my boss, either by negligence or intention, I would of course be more furious at the latter, but I would still feel that my freedom had been curtailed by the action of another in the former, considering it was (assumingly) the boss's responsibility to lock up the building. Surely any actions that he then commits in doing this job can affect my freedom, negligently, by intention, or otherwise, especially since in both cases I am locked in and the boss was behind it in some manner in both cases. This is especially the case since Day's example relies entirely upon the secretary's reaction, if the boss had intentionally

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[25] Raymond Plant, *The Neo-Liberal State* (OUP 2009) 82.
[26] David Miller, 'Constraints on Liberty' (1983) 94 Ethics 66. 73.

locked me in, but had a change of heart later, and apologised the next morning as he did in case one, Day would be forced to concede a similar conclusion as in case one regarding freedom. Unless of course, he rejects the notion of the secretary's reaction and instead states it is the action itself that counts as creating the unfreedom, in which case Miller's objection continues to apply.

Day's example is a bit of a weak one in how it is constructed, and it does seem unfair to reject an intention-based model of constraints purely because of that, but the principle behind the critique can apply to any account of this type. Kristjánsson points out that, as assumed through the desire to attribute a human action as the cause of the constraint, the liberal thinker runs into a lot of problems by keeping a strictly intention-based account, since it completely ignores instances where someone is clearly responsible (thus meeting the first condition of human-attribution) but since it lacks intentionality it somehow cannot affect their freedom.[27] Matthew Kramer also espouses the untenability of such a position, stating that the intention/non-intentional position a) does not make sense since the clear distinction should be between human/non-human caused actions and b) it leads to scenarios where two people affected in the exact same way by a single actor has different effects on their freedom. This is explained via someone (person A) locking a room with the intention of locking person B in there, but unknown to A, person C is also in there. Under a purely intentional based account, person B has been made unfree-to-leave, and person C has not been[28] (either being just unable, or neither free or unfree to leave, depending on if you support a bivalent or trivalent account of freedom, but this is not particularly relevant here).[29] Again, person B's position may be worse than C's, purely in terms of malice against them, but both are constrained in some way by an action of another, and if that is what these theorists primarily care about, among other things, then the intention-based model of constraints is too narrow. This should especially be the case considering that we should be looking at the interaction between the agents and the actions of the constrainer (intentional or otherwise), instead of attributing undue weight as to whether one of the person's positions is worse than the others; as saw with Miller's critique above, that cannot always be kept clear regarding intention. A good way to illustrate this could be comparing murder and negligent manslaughter; whilst the former is almost certainly more serious, and warrants additional actions or condemnation, both have resulted in the killing of another human being, and with an attribution of responsibility to a human-caused actor. The position here then is to vary our level of condemnation and response, not, as an intention-based account of constraints would seemingly have us do, reject the notion that in the manslaughter case there was even a killing at all. This may seem a bit of a stretch, but I think it illustrates the issues intention-based accounts of constraints fall into.

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[27] Kristjánsson (n 16) 21-24.
[28] Matthew Kramer, *The Quality of Freedom* (OUP 2003) 134-135.
[29] see Carter and Steiner (n 9).

This can also apply to the other position (specifically related to Hayek and potentially to Flathman) about intention needing to be very specific, which means that institutions and/or unintended consequences brought about via intentional actions on a grand scale cannot be seen as limiting freedom. This is slightly removed from the more important discussion above, but regardless of this, I wish to turn to the concept of foreseeability to show that this position is not as strong as it may first appear. Whilst it can be argued convincingly that there are unintended consequences from intentional actions on mass, this does not remove the notion of foreseeability of a consequence. The individual actors, under free-market capitalism to take Hayek's argument, may not have intended certain consequences but they certainly could foresee the potential for their actions to have in some way caused the issues present.[30] It is not necessarily required to elaborate upon this point more, Hayek's potential responses to this would most likely involve some 'chain of causation' arguments, in that the original action and the consequence of it are too far removed from each other to be seen as connected, but this debate will be had more closely when examining responsibility-based accounts of constraints. It suffices for this section to simply state that there is clearly a way in which these 'unintended consequences' can still have some attributable human agency behind it and therefore can still be seen as affecting the freedoms of others.

The intention-based constraints position therefore cannot be maintained with the presumptions made regarding freedom in this context, because even if the presumptions regarding inability and human-causes, that will form the main target of critique in Chapter 2, are accepted, and in fact because of those presumptions, it is clear a broader account is needed to properly account for the objections raised by other theorists to the intention-based account. This broader position has already been hinted at in this section, and they are responsibility-based accounts of constraints.

A Sidenote on Moralised Accounts of Freedom

Before examining responsibility-based accounts of sources of constraints, it is an appropriate time to quickly discuss, and ultimately dismiss, 'moralised' accounts of freedom. It is important to make this distinction now before discussing responsibility because one of those accounts relates to 'moral responsibility', which is different to a moralised account of freedom.

Robert Nozick illustrates the concept of a moralised view of freedom in a useful and simple way and has been referred to by other theorists in this thesis as the primary defender of a moralised account of freedom, and as such his account will be relied upon heavily here. In the simplest possible terms, Nozick believes we possess a series of moral rights, such as the right to own property. Therefore, anyone that infringes upon that right to own property can be seen as affecting your freedom. So, hypothetically, if a society ensured that you could not own property (such as under a certain type of

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[30] Plant (n 25) 214.

socialist governance) then your freedom is affected. On the inverse of this however, you exercising your right to own property (or equivalent) cannot be seen as affecting the freedom of others in a meaningful way, since you have a moral right to do it.[31] This moralised account is thus called because it depends upon moral rights, and the right to exercise them, as being uniquely important to freedom discussions.

There is a great deal that could be discussed regarding Nozick's views on freedom, but for our purposes we can argue that a moralised account of freedom requires us to give up too much about freedom as a concept to be a worthwhile account to maintain. The best response to this comes from Gerald Cohen, who states that 'moralising' freedom in this way dilutes the concept of freedom entirely, since it makes it depend upon something external to the concept itself. It makes freedom not about freedom at all, but instead a discussion of what moral rights we have and how they should interact with each other. This makes philosophising about freedom a secondary concern to discussing moral rights. Cohen further states in counter to a moralised view that you are still unfree even with a justified interference, the discussion of whether you are free and whether it is justified or not are two separate questions.[32] This position has also been articulated by Carter, following Cohen.[33]

I find this point is mirrored in a similar discussion about freedom from JP Day, who makes a firm distinction between 'feeling free' and actually 'being free', and that the more objective latter account is what should concern political philosophers when discussing freedom, and that the feelings and desires of the agents involved should not bare weight in the discussion of whether they are free or not.[34] To illustrate this as Day does, I may be prevented from purchasing Novocain, and therefore (assuming the proper conditions are met) I am unfree to purchase it; whether I want to purchase it or not is completely irrelevant to the actual determination of my freedoms and unfreedoms.

The reason I mention this here, a point with which I agree, is again to illustrate the idea of being able to evaluate freedom as a thing within itself, as an objective occurrence against other agents. As soon desire, or moral rights, are factored in too strongly into an account of freedom, freedom just becomes a secondary occurrence, something which matters only because the other things matter. This can make freedom useless as a concept, since a moralised account leads to people who suffer great amounts of restriction being seen as free when it appears obvious that they are not, such as when they are prevented from entering other people's property,[35] or desire accounts which mean freedom is

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[31] Robert Nozick, *Anarchy, State, and Utopia* (Basic Books 1974).

[32] Gerald Cohen, *History, Labour, and Freedom: Themes from Marx* (Clarendon Press 1988) 295 - 296.

[33] Ian Carter, *A Measure of Freedom* (OUP 1999) 71.

[34] JP Day, 'On Liberty and the Real Will' (1970) 45(173) Philosophy 177.

[35] Cohen (n 32).

quantified by an individual's desires, which makes identifying what actions should be taken to reduce freedom too difficult (since it's too individualised).

I am not oblivious to the counter of this argument which suggests that freedom is merely a secondary concept to moral rights, and that freedom can only be properly understood through the lens of these concepts (a similar argument made as a retort to legal positivism from natural lawyers). I find this an unsatisfying response; freedom clearly occupies a distinct place within philosophy, as briefly discussed in the introduction, and considering it relates to the very fundamentals of actions and how we interact with ourselves and the world, it is valuable to be able to explore it as a concept that can stand on its own conceptual merits, diluting it down to simply moral rights loses a lot of the clear nuance that the concept can invite. I am also not oblivious that even discussing constraints or justifications after the fact as Cohen discusses could be seen as making freedom depend on a secondary concept, but these concepts are integral to freedom to even be understood, whereas moral rights are a thing within themselves external to freedom, and constraints and justifications could easily instead be argued as integral parts to constructing freedom as a concept in the first place, especially in regard to constraints. A great deal more could be said on this moralised account, but for the purposes of this thesis, this will suffice to show why we should move beyond it.

Therefore, moralised accounts of freedom can be set aside, primarily to be able to distinguish it from a moral-responsibility account of sources of constraints. This, alongside having dismissed intention-based accounts as too narrow, means responsibility-based accounts can now be examined.

<u>Responsibility</u>

A sizeable majority of the 'main' negative freedom theorists, when discussing sources of constraint that can make you unfree, usually take a responsibility-based approach. As Carter describes quite aptly, we are moving beyond a requirement for either intentional or unintentional actions and are instead looking at the ability to attribute it to another humans' actions.[36] A lot of nuance begins to form in this area, with questions such as what level of responsibility? Should we count omissions as well as actions? Should there be consideration for concepts such as coercion? Many more questions could easily arise. Since this is an area that could get incredibly broad, my focus will be distinguishing between two responsibility models of constraint, moral responsibility and causal responsibility. Both views will be explained, after which the key differences and debates between the two camps will be examined in more detail. Critiques will be offered to both accounts, under my general project of showing that views of constraint should be much broader than currently defined.

It should once again be noted for clarity that the theorists below also take the distinction between unfreedom and inability to be crucial, and they often use this as a justification for taking one view

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[36] Ian Carter, 'The Measurement of Pure Negative Freedom' (1992) 40(1) Political Studies 38, 38-39.

over the other, accusing the other camp of failing this criterion. Once again, this assumption will be assumed for the below section, under the general purpose of Chapter 1 being to show how despite this, there is still precedent for taking the broadest conception of a constraint possible, and that this is desirable since it accounts for the myriads of possible edge cases. Once this task is complete, then the underlining assumption of the distinction between unfreedom and inability can be examined, to see if this presumption accepted by the theorists discussed is tenable.

With that explained, we will begin with moral responsibility.

<u>Moral Responsibility</u>

To say that there is a fair amount of disagreement even within the camp of moral responsibility accounts of freedom would be an understatement, and as such I plan to work through some of the main accounts to establish the general positions and arguments, since the primary aim is not to decide what the best account of responsibility is, it is to evaluate some of the main assumptions and show why it leads towards a desire to take a broader view.

A key defender of this position is Miller, who has already seen some discussion above. Miller creates his view by first beginning with a long discussion of the need to distinguish unfreedom from inability, with a particular focus on removing ability from the conversation and making clear that naturally caused (non-human caused) actions do not affect freedom.[37] As mentioned, this will be examined in much closer detail later, so we can just take the assumption as a given for now, since it is in no way unique to Miller amongst all the theorists about to be discussed in this section. Following this, he begins to explain his view using the following 6 example scenarios:

> 1. I am working in my room. Y, knowing that I am inside and wishing to confine me, pushes the door shut.

> 2. Y walks along the corridor and, without checking to see whether anybody is inside, closes my door.

> 3. The wind blows the door shut. It is Y's job to check rooms at 7 P.M. each evening, but he is engaged on a private errand, and this evening he fails to do so.

> 4. The wind blows the door shut. At 6.30 P.M. I call to a passerby to unlock the door, but the passerby, who knows about Y's duties, is busy and pays no attention.

> 5. Y, whose job it is to check rooms, comes to my room and looks round it. I have concealed myself in a cupboard and he closes the door without having seen me.

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[37] Miller (n 26) 68-70.

6. The wind blows the door shut. There is no one assigned to check rooms, and no passerby within earshot.[38]

Miller then begins to describe which of these 6 cases would be cases of unfreedom and which would not be, using the conditions he previous described as necessary, such as the need to maintain a human/non-human cause divide, and also linking closely to the idea that the origins of an obstacle is linked closely to justification, claiming our language embodies a sense that humans should not obstruct others, and that when we say someone makes someone unfree, it is making a charge that needs a rebuttal.[39]

He declares 1 to be an uncontroversial case of unfreedom, and 6 to be an uncontroversial case of free but unable (there is a slight side debate about whether it's actually neither free or unfree, since being unable does not engage freedom at all, this will be briefly discussed later when we look at Kramer and non-prevention).[40] For cases 2 and 5, Miller argues that Y is responsible for the constraint in case 2, and in case 5 Y is not, due to 2 being negligent and in 5 having done everything that could reasonably be expected. This responsibility is 'morally responsible' rather than causal, since Y's role in both 2 and 5 is causal.[41] In 3, Y's omission is deemed to be enough to show moral responsibility, whereas in 4 the passerby is only causally responsible, not morally, and therefore Y's freedom is not affected (in proper relation to the timings given in both examples).[42]

Miller defends the above interpretation as follows; in words I will not seek to replicate due to their clarity:

> Notice that to say someone is morally responsible for a state of affairs is not to say that he is blameable for it, though it is to say that he is liable to blame if he fails to provide a justification for his conduct […] When we describe a person as unfree to do something we imply that an obstacle exists which stands in need of justification, and we are in effect calling upon the human race collectively to vindicate its behavior [*sic*] in permitting the obstacle to exist. At the same time we allow that such justification may be forthcoming: we distinguish unfreedom from un justified unfreedom.' This suggests very strongly that the appropriate condition for regarding an obstacle as a constraint on freedom is that some other person or persons can be held morally responsible for its existence.[43]

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[38] Ibid, 70-71.
[39] Ibid, 69.
[40] Ibid, 71.
[41] Ibid.
[42] Ibid, 71-72.
[43] Ibid, 72.

Miller then defends this interpretation against three potential counters, the first is that of intention-based accounts (for which we have already discussed Miller's objection and our own above), the second regarding a distinction between acts and omissions, and the third being that of causal responsibility. On the second point, his main claim is that the distinction between acts and omissions cannot be made in a clear way, and that instead attributing moral responsibility allows for attribution to be made in a clearer way, and the issue with causal responsibility is that it needs to be interpreted too broadly which makes the scope of mere inability vanish – since almost anything could be removed (constraints that is) from concerted human effort if they so desired, implying almost everything could be seen as a constraint on freedom.[44] It can also be noted here that Miller takes some time to explain that his view would still allow for collective responsibility attributable to individual action to be a cause of unfreedom, also providing another counter to the discussion we had regarding Hayek in the section on intention.[45]

Miller gives further reply to the causal view during a back-and-forth debate with Felix Oppenheim,[46] but this current discussion suffices for now to give a broad introduction to the moral responsibility view.

However, further expansion of the moral responsibility view has occurred, such as by Kristjánsson. Kristjánsson, whilst defending moral responsibility as well as Miller's general beliefs regarding unfreedom and inability, finds issue with Miller's account, under the belief that Miller's claims about linking justification and moral responsibility on one hand, and the idea of *prima facie* obligations on the other, as being wrong or trivial.[47] He then advances his own view, which is so defined:

> An agent A is morally responsible for the non-suppression of an obstacle O to B's choices/action when it is appropriate to request from A a justification of his non-suppression of O, and that in turn is when there is an objective reason, satisfying a minimal criterion of plausibility, why A, given that he is a normal, reasonable person, could have been expected (morally or factually) to suppress O-however easily overridable this reason is.[48]

Kristjánsson claims this elaboration of the view regarding moral responsibility solves both an issue between imperfect responsibility and no responsibility, but is also a way to help determine fundamentally when threats can constitute constraints on freedom.[49]

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[44] Ibid, 72-74.
[45] Ibid, 80-81.
[46] David Miller, 'Reply to Oppenheim' (1985) 95(2) Ethics 310.
[47] Kristjánsson (n 16) 74.
[48] Ibid.
[49] Ibid, 75-76.

This test is then even further expanded upon as inadequate by Ronen Shnayderman, the reasons for this are not completely relevant; what is important is Shnayderman's new account creates yet another set of conditions for determining moral responsibility, this accounts states, "when she is appropriately considered susceptible to either blame or praise" for creating an obstacle, and the method of determining this is (following Philip Pettit)[50] written into the architecture of our psychology, regarding some of our most basic reactions regarding blame, harm, benefit, gratitude, etc.[51] The most interesting aspect of this account is that Shnayderman goes against the two predecessors here in claiming that only actions, and not omissions, affect freedom, stating clearly that only obstacles which other people are morally responsible in virtue of their actions are sources of unfreedom, yet another qualification to the above.[52]

Andreas Schmitt is another author who combines multiple aspects of the moral responsibility view into what is described as the distributive view of freedom, which keeps the blame and praiseworthy aspects of the above account by Shnayderman but adds an additional qualification regarding abilities and their distribution. This is meant to act as a method of soothing some of the complaints of those who place more emphasis on ability (such as myself).[53]

The above provides a simple and accessible overview to the moral responsibility view of constraints. It is acknowledged, as it will be with causal responsibility, that this is by no means a fully elaborated account by any stretch. What the above account seeks to demonstrate is the key principles behind this view, which is required to be able to demonstrate issues with this view later to help build into our primary discussion regarding unfreedom and inability. With this complete, causal responsibility can now be examined before moving onto a broader discussion about the pair.

Causal Responsibility

Oppenheim, in a reply to Miller's above account, explains what he believes to be a causal responsibility account of freedom. It is worth noting now than Oppenheim does appear to make an error regarding Miller's account by failing to fully realise a distinction (as we discussed before) between a moralised account of freedom and a moral responsibility account. This is pointed out by Kristjánsson, who shows that Oppenheim seems to conflate blameworthiness (which could relate more to moral rights) with moral responsibility.[54] I do not wish to use this line of critique to show the

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[50] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Clarendon Press 1997).
[51] Ronen Shnayderman, 'Social Freedom, Moral Responsibility, Actions and Omissions' (2013) 63 Philosophical Quarterly 716, 730-731.
[52] Ibid, 737.
[53] Andreas Schmidt, 'Abilities and the Sources of Unfreedom' (2016) 126 Ethics 179.
[54] Kristjánsson (n 16) 32.

issues with the moral responsibility view, but it is important to make clear Oppenheim's small misstep here.

Oppenheim's main issue with Miller is Miller's belief that judgments about freedom cannot be wholly value neutral, with the supposed value presumedly being if someone is morally responsible through his justification metric.[55] He expressly accepts a proposal Miller rejects, in that any obstacle which human agents are in some way causally responsible for is regarded as a constraint on freedom.[56] He applies this to Miller's 6 cases, and believes in cases 1, 2, and 5 that M's freedom has been restricted by Y. Miller agrees with 2 but because of negligence, not as Oppenheim does in simply that Y's locking the door is the direct cause (causal responsibility) of M's confinement. For Miller, 5 is not a cause of unfreedom because Y bares no moral responsibility, whereas Oppenheim sees Y as the direct cause of M being restrained and therefore unfreedom is created. The other major distinction is on case 3, where Oppenheim believes there is no unfreedom when Y fails to check the room, whereas Miller deems him morally responsible and therefore causing an unfreedom.[57]

It appears to me the primary distinction here for Oppenheim is on a similar line to acts and omissions, claiming we should focus on constraints only in relation to preventing, not those of failure to enable.[58] Kristjánsson further confirms this, discussing that Oppenheim's causal model depends upon an acts/omissions distinction, unlike the moral mode.[59] It also depends upon a closer examination of a chain of causation, whereas Miller focuses on moral responsibility to determine if the constraint in question is 'close enough' to the person whose freedom we are evaluating, Oppenheim relies upon the length of the causal chain linking the action and the incapacity, the longer the chain, the less likely it effects the recipients 'social freedom', as he puts it.[60]

It can also be noted here that Shnayderman provides a concise encapsulation of the causal responsibility view – in that a constraint is a source of unfreedom if and only if other people are causally responsible for its existence, in that they created it or refrained from preventing its creation or from removing it after it had been created.[61]

Having looked at the Oppenheim/Miller debate, it is appropriate to now examine the most prominent contemporary defender of a causal responsibility view, Kramer. Kramer's view relies heavily upon an

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[55] Felix Oppenheim, ''Constraints on Freedom' as a Descriptive Concept' (1985) 95 Ethics 305, 305.
[56] Ibid, 306.
[57] Ibid.
[58] Ibid, 306-307.
[59] Kristjánsson (n 16) 21-22.
[60] Felix Oppenheim, 'Social Freedom: Definition, Measurability, Valuation' (2004) 22 Social Choice and Welfare 175, 179.
[61] Shnayderman (n 51) 720.

acts/omission's distinction, which allows for us to consider his view alongside that of causal responsibility. The main focus of this is his infamous U postulate:

> A person is unfree to φ[62] if and only if both of the following conditions obtain (1) he would be able to φ in the absence of the second of these conditions; and (2) irrespective of whether he actually endeavours to φ, he is directly or indirectly prevented from φ-ing by some action(s) or some disposition(s)-to-perform-some-actions(s) on the part of some other persons(s)[63]

Kramer uses the 'but for' test as the decider for the second part of his U postulate, but for person A's actions would the restriction on B have occurred?[64] This is further qualified by stating that the way to demarcate regarding someone's inability (again, Kramer accepts the inability/unfreedom divide), we simply have to ask if the actions or dispositions-to-perform actions of any person are but for the cause of that inability, if that is true, then that inability is an unfreedom, and no further discussion is needed, such as engaging in the prominence of an action or similar.[65] Kramer directly counters Miller's 'tree example'[66] by claiming that even though the human action was made long before the occurrence of the rockslide, it is enough of a contribution to create unfreedom for the trapped person.[67] This is then followed by even more 'distant' examples on the causation chain to fully prove his commitment to this point.[68]

Thus, the causal responsibility view has been elaborated out in as much detail as needed, and now after this necessary descriptive section, we can begin to examine them both critically.

<u>Moral and Causal Responsibility – An Evaluation</u>

A complete comparative account of the distinction between moral and causal responsibility views of constraints will take us too far beyond the primary aim of this thesis. To reiterate, the examination of these views (alongside our look at intention) was to serve the purpose of showing that, even under the completely agreed upon point by these theorists of why inability and unfreedom should be separate, and even under their current presuppositions and justifications provided, these collective views when properly evaluated continue to trend toward a broader view of constraints being the best course of action. It also serves to show how these views are ultimately inadequate, and that the solution rests on

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[62] The symbol φ denotes 'any action'.
[63] Kramer (n 28) 3.
[64] Ibid, 278.
[65] Ibid, 323.
[66] Miller (46) 312-13; in this example, Miller states it is ludicrous to claim that a person who throws away an apple seed, which after many years grows into a tree that then causes a rockfall that then traps a person in a cave causes the person who is trapped to be unfree, because it is too far removed from the original action of throwing the seed. This is used to defend his justification for a moral responsibility view here, which would deem the person in the cave merely unable.
[67] Kramer (n 28) 337.
[68] Ibid, 341-342.

being more amicable to an unfreedom/inability position as advocated for by some authors. With this in mind, both responsibility positions will be examined.

To give a brief overview, the issue I believe that causal responsibility runs into is its complete disregard for the possibility that omissions may be a cause of unfreedom. Moreover, my issue with moral responsibility views is that the qualifications it puts onto determining moral responsibility are either 1) too vague or 2) are qualified by another condition which is too difficult to determine accurately. I believe the moral responsibility view is unnecessarily complex, leaning on Kramer and Oppenheim's critiques that moral responsibility views insistence on the need to provide a value-judgment regarding freedom is misplaced, and that a more descriptive view is preferred.

Let us therefore begin by looking at moral responsibility theorists' responses to causal responsibility theorists, which in turn helps us show why a causal responsibility view as advocated for by Kramer specifically is preferable in the context of actions at the very least. What is particularly interesting to note is that the primary way in which these two camps clash is by accusing the others position of failing the preposition that they all value so highly, ensuring their theory does not allow for 'mere inabilities' to be classified as unfreedoms, a position advocated by others as we shall soon see in Chapter 2.

Shnayderman articulates two issues he finds with Kramer's position. According to Shnayderman, the but-for test, which can encapsulate so many actions, commits the very thing Kramer wanted to avoid, which was to avoid inabilities slowly creeping into his definition of unfreedom. Shnayderman claims that almost all self-inflicted (as well as 'natural') inabilities are caused, in part, but someone else's action – to cut myself while making a salad is in some senses the fault of the knife-maker.[69] Leaving aside the discussion of Kramer disliking 'self-inflicted' inabilities as being seen as unfreedoms, Shnayderman is articulating the most common critique against causal responsibility views. As echoed with Miller's tree example, in that it allows any contribution of a human action (at least Kramer's does, Oppenheim attempts to put what Shnayderman describes as a threshold to prevent this critique,[70] but I personally do not believe Oppenheim needed to do such a thing) to affect freedom. This is seen as untenable, since the above examples are so far removed on the chain of causation to merit in any sense being seen as creating an unfreedom. Therefore, the moral responsibility view is preferred, in order to ensure that we keep the proximity of actions close enough to the constraint itself which allows for, as many of these theorists deem necessary, the action that demands justification, as well as ensuring that non-human caused actions are not counted.

Beyond believing that 'collapsing into inability' is not necessarily something that should be feared, I do not believe that this critique makes moral responsibility more desirable than causal responsibility

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[69] Shnayderman (n 51) 724.
[70] Ibid; Oppenheim (55).

views. Primarily because the causal responsibility view has something that the moral responsibility view does not, and that is conceptual clarity. Under the causal responsibility view, determining if a constraint reaches the threshold required to create an unfreedom, you need only look for any human action along the causation chain. This stands in stark contrast to the increasingly complicated methods employed by the moral responsibility view. Miller begins with a fairly straightforward concept of actions that are deemed to need justifications, but even that is open to a wide interpretation. Kristjánsson, who was explored above, was unsatisfied with the conclusions of some of the edge cases that Miller's theory could not account for, and added new conditions regarding plausibility and reasonableness, which any student of law will know are frighteningly difficult to define and determine accurately.[71] Then Shnayderman, once again unsatisfied with some of the edge cases that Kristjánsson's theory could not account for, adds an even further level of complexity by introducing concepts such as if an action is worthy of 'blame' or 'praise'.[72] Schmitt then also adds further complexity, by adding additional qualifications.

Overall, a picture is beginning to form of a position that cannot quite keep up with the premises it has set for itself. It should not be a surprise that the new levels of complexity that have formed on top of each subsequent moral responsibility view have been due not to a belief on a necessarily stronger foundation, but instead to solve an 'edge case' that a previous theory 'could not account for'. Usage of terms such as justification, reasonableness, blame, and praise, and the various other loaded terms that are thrown in just add further levels of conceptual difficulty and therefore issues with accurate definition.

This should be seen as deeply problematic for a theory that seeks to identify something like freedom, since it adds too many levels of evaluative complexity that are not required. Kramer explains this well, agreeing with Miller that freedom discussions will inherently have a 'moral-political' element, and that freedom is clearly a discussion of evaluative judgments in the sense that it is clear people will want to use freedom to decide certain courses of action in a polity. However, to then jump to the conclusion that Miller and his contemporaries do of stating that freedom has this inherent evaluative moral element is not necessary and is actually harmful. What is preferable is for a broader and more conceptually straightforward account (such as his causal responsibility view), after which the moral-political evaluative judgments can be made regarding blameworthiness and justification. To add this moral evaluative element at the first step will make, to quote Kramer: '…the focus of our subsequent debates less sharp.'[73] This argument will appear once again when we talk about inability, but it is worth noting that it touches at the heart of a misstep in the moral responsibility view, the belief that the justificatory element has to come at the initial source of the constraint (in the 'identification' stage

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[71] Kristjánsson (n 16) 74.
[72] Shnayderman (n 51) 730-731.
[73] Kramer (n 28) 340-341.

of determining an unfreedom, if you will) when it can, and in fact does a lot more for the actual purpose of requiring a justification, at the stage of 'action' regarding an unfreedom, where we determine the severity, weigh it against other specific freedoms, and decide a course of action in a political context. This second element is vitally important as all the theorists above identify, but they have put it too early in their considerations, much like the moralised view, and in doing so have created a series of tests for the source of a constraint that are too complex and too dependent on solving edge cases to be useful, since determinations are too dependent on highly contested terms. The causal view allows for us to have conceptual clarity in the identification and sets a path for the next course of action in a clearer light. It is why Kramer justifies a causal responsibility view, and it is sound reasoning.

However, does this then mean that Kramer, and causal responsibility theorists more generally, are then correct to disregard omissions? I do not believe so, for reasons arguably very similar to the ones above. If we look at Kramer's misgivings about omissions, one of his primary arguments relate to omissions presenting a particularly unique challenge to the conceptual clarity he values as discussed above. Claiming this issue as a problem of 'speculativeness', he states that because omissions are infinitely broad to society, and the fact that the level of calculation that would be required to determine if an omission could actually be solved by human action is very high, would completely obliterate freedom into the inability/unfreedom position he cannot condone. As an example, he claims that if it could be determined that we have the resources to travel to Mars, and that we just do not allocate them correctly to do so, that would mean every human being is unfree to go to Mars. This could apply to variously large amounts of scenarios, and could require eyewatering resources, but because it may be possible, it would affect your freedom.[74] This is untenable to Kramer, since it creates unnecessary conjectural requirements on determining unfreedoms, and also makes our reasoning more difficult due to the large number of imponderable scenarios. This is alongside the critique alluded to above that it would also allow for any self-inflicted constraint to count as an unfreedom, since, technically speaking, any other person could have averted that constraint, hypothetically speaking.[75]

Interestingly, I do think Kramer's own arguments regarding causal responsibility views in the realm of actions apply here as well; his primary worry regarding omissions being too infinitely broad and difficult to accurately determine reflects exactly Miller and Shnayderman's arguments against having a causal responsibility view with no threshold (as Kramer's does). If Kramer's concern is the calculation of whether or not an omission can be seen as meriting a justification for reducing freedom, surely, we can apply his argument of conceptually clarity and freedom/unfreedom attribution being

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[74] Ibid, 347-349.
[75] Ibid, 350-351.

seen as a first step in a longer process of deciding both if a freedom has been affected and *then* what actions are taken regarding it, based on a lot more evaluative factors. Put another way, if we recognise that omissions can cause unfreedom, we gain the pleasure of conceptual clarity, and then determination can be made as to whether it merits action or whether it does not. This could also apply quite easily to self-inflicted omissions, since I believe it can be recognised that in some cases (such as when someone cannot take care of themselves or perhaps very young children in the complete responsibility of parents) that self-inflicted omissions merit being considered as causing unfreedom because of the incredibly active role of the potential source of the constraint, that being the omission of a responsible adult or other person.

Now, Kramer may respond that this only works for actions because actions are easier to identify than omissions, but I do not think that is necessarily true. Whilst it is easy to argue that, on average, we commit a lot more omissions than we do actions each day (by a very large factor) the argument for conceptual clarity and having a 'double-tier' system to this if you will, what I deemed an identification stage followed by an action stage, is particularly relevant here and I do not see why it should not also apply. This is especially the case since I agree with the moral responsibility theorists who argue that sometimes an omission is so closely related to the restraint suffered that it can only be seen as meriting being classified as an unfreedom-causing constraint (see above examples). Obviously, a large debate could begin on what even is an action and an omission, and if that distinction can even be made, but I am reluctant to fall too deeply into that considering the arguments above do not necessarily require it and can be made on the terms Kramer sets.

I also want to discuss some scenarios raised by Peter Morriss. It should be noted that Morriss makes, arguably, a very similar argument to all of the above regarding constraints, in that he clearly believes it is important to have a constraint on freedom be seen as one when the constraint 'insults you', in that, it is caused by another and demeans you because of it.[76] However, he does raise some interesting hypotheticals, in which a situation where a naturally occurring event has trapped someone in a cave by a boulder, and a farmer comes along, and asks the person how he became trapped, and when the person asks why does it matter, the farmer declares he has just read Kramer, and believes strongly in preventing unfreedom, but not mere inability, and therefore does not help him. However, paradoxically, as he leaves, then it is causing an unfreedom, but when he returns, he seemingly has made the person only unable again, and this repeats forever.[77] Morriss uses this to both ask freedom theorists to justify why freedom should be seen as more important that power (ability) in all cases, and also states that this shows the primary distinction between the two ideas, with unfreedom affecting our dignity and ability merely injuring us since we cannot do something.[78] I want to read this critique

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[76] Peter Morriss, 'What is Freedom if it is Not Power?' (2012) 59 Theoria 1.
[77] Ibid, 3-5.
[78] Ibid, 16.

however in a slightly different light and alongside a discussion from Shnayderman regarding omissions. Shnayderman, regarding omissions, states:

> Consider a person (P) who lives by himself on a desert island where the main source of food is coconuts. P is unable to climb coconut trees and hence lives on the verge of starvation. P s inability to eat coconuts reflects the physical properties of the coconut trees and his own limited capacities. Suppose now that one day another person (Q arrives at the island. Unlike P, Q) is able to climb coconut trees but refuses to do so (say, he is allergic to coconuts and does not care about P). Given that mere inability is a matter of natural facts about agents and their physical environment, can it be said that Q's refusal turns P s mere inability to eat coconuts into an unfreedom? The answer is clearly negative. Qs refusal does not affect the relevant natural facts about P and his physical environment.[79]

The primary point I take from both this and from Morriss is to defend why we should be more willing to discuss omissions as potentially causing unfreedom, and it is the fact that the mere presence of this extra person whose omissions surely affect the material circumstances in such a way that merits consideration. I find Shnayderman's conclusion that this scenario is implausible to also be implausible. If Shnayderman had instead merely made a general declaration about the appearance of anyone who could change P's position, it would make more sense and at least align more with Kramer's discussions. However, the mere fact that Q has arrived and is there, or the fact that the farmer is there, creates a situation that is clearly absurd as discussed by Morriss, how can we say that this person does not change the facts and conditions in such a way as to merit a level of responsibility that can be seen to fulfil the criteria we see as vital for a constraint to be classified as an unfreedom causing one. Now, Morriss makes a distinction here and states that sometimes ability (power) is merely more relevant or important, which continues to defend Kramer's view. However, considering the active potential role of the extra person in both situations, which as discussed clearly changes the material background for the situation, it does not seem instinctively correct to maintain a distinction regarding omissions, since the potential for someone to now intervene is clearly affecting how you are viewing the situation. This position by Morriss will be discussed in more detail in Chapter 2.

All of the above theorists claim that the reason human-caused actions should be seen as so important to freedom is because it reflects the inherently social relation of freedom as a relationship between persons, a blanket refusal to acknowledge that any omission could be a constraint on freedom seems to ignore, in a way that the moral responsibility theorists rightly accept, that omissions clearly can rise to such a level where it merits being seen as a qualifying constraint to affect someone's freedom.

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[79] Shnayderman (n 51) 736.

Sometimes an omission is just too closely tied to a responsibility or to the way we socially interact for them to be ignored.

This section has demonstrated that both the moral responsibility view and the causal responsibility view of constraints have some key limitations, the first of which was the moral responsibilities general view of creating moral-political thresholds on what counts as a constraint, that lacks conceptual clarity and ignores some clear restraints on freedom, whereas the causal responsibility views' general disregard for omissions is untenable when considering omissions; both in their position socially and their potential role in situations but also through the lens of these theorists own propositions. Much more could be said on this, in fact an entire book could be dedicated to it, but for the purposes of our discussion, this has led us nicely down the trail of demonstrating why constraints on freedom should be viewed more broadly to now take us to Chapter 2 of this thesis. It is now time to examine in detail the idea that inability does not mean unfreedom, and the idea that only human-caused actions can be seen as a constraint on someone's freedom. However, before we do that, a final brief word needs to be had on the idea of what is a 'prevention' and how it relates to concepts such as coercion.

A Sidenote on Prevention and Coercion

An argument that has been alluded to in this thesis but has not been directly addressed relates to the idea of the 'weight' of a particular constraint. The view that dominates the theorists in this thesis comes from what has been described in the literature as 'the impossibilist view' or 'impossibility view', or sometimes 'the pure account of negative liberty'. This view is subscribed to by some authors who have been mentioned already, such as Kramer, Carter, Steiner, and Cohen. The view is relatively simple, in that you are only made unfree if the action (or equivalent) you we are going to do is made impossible by the action of another. As Cohen explains quite well in summarising the reasoning behind this view, it is inherently counter intuitive to state that that you are unfree to do something that you can actually do.[80] This view can be articulated, following Steiner, as follows: if someone pointed a gun at you and said 'your money or your life', you are free to give the person who pointed a gun at you your money, since you are actually able to do that, and no one is actually stopping you.[81] Now, a lot of nuance comes into play here, the main one being the discussion of 'combinations of actions', in that whilst you are not prevented from giving the person with the gun money, you are prevented now from keeping your money and also not dying by gunfire,[82] but generally speaking the argument is how I have described it.

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[80] Cohen (n 32).
[81] Hillel Steiner, *An Essay on Rights* (Blackwell 1994).
[82] For a sophisticated discussion of this, see Michael Garnett, 'Prevention, Coercion, and Two Concepts of Negative Liberty' in in McBride M and Kurki VAJ (eds), *Without Trimmings: The Legal, Moral, and Political Philosophy of Matthew Kramer* (OUP 2022).

A counter to this could be seen in coercion-based views, advocated by those such as Hayek and Michael Garnett,[83] and discussed at length by theorists such as David Zimmerman, Nozick, and Alan Wertheimer.[84] Once again, the discussion leads to the opposite belief, that in some cases coercion (an overcoming of the will of another, to borrow Hayek's words)[85] is enough to be seen as a constraint on freedom. So, in our robbery example, you are clearly coerced into giving your money, and therefore freedom is reduced.

Generally speaking, the impossibility view favours itself due to ordinary language, in that it is strange to say you are unfree to do something you actually do, and also conceptual clarity (it is easier to determine a preventing action). Whereas coercion or alternative views claim that the impossible view leads to absurd or untenable results (see the robbery example) and therefore misses some key dimensions of freedom-based discussions. This is clearly an important debate, and I direct readers to Garnett for a fairly recent discussion of the view in relation to Kramer's position specifically; however, for the purposes of this thesis, I believe this debate would side-track us too greatly away from the primary discussion we have had regarding the source of a constraint, as detailed in the introduction.

The way in which I write mostly centres on the impossible view, but I take a wider approach to it that could include coercion and acknowledges that sometimes whilst you are not prevented, the forcing into a smaller set of choices should definitely be seen as causing unfreedom, a view which could be defended from either angle. I do not necessarily see what is to be gained from defining my position any more strongly than this, since my primary discussion centres on the *source* of a constraint, not necessarily the weight of it. However, it would be amiss to not at least acknowledge the existence of this debate here, before moving onto the discussion regarding unfreedom and inability.

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[83] Hayek (n 17); Ibid.

[84] David Zimmerman, 'Coercive Wage Offers' (1981) 10 Philosophy and Public Affairs 121; Nozick (n 31); Alan Wertheimer, *Coercion* (Princeton University Press 1987).

[85] Hayek (n 17) 21, 131.

Chapter 2: Inability is Unfreedom – An Examination

Ability has already begun to make its way into our discussions, as demonstrated in Kramer's F postulate; in that you are only free to do something if you are actually able to do it.[86]Therefore, if you are unable to do something, freedom does not even become a discussion for Kramer, you are simply neither free nor unfree to do it. Cohen holds a similar position, and Schmitt gives special consideration towards abilities and particularly their distribution in his theory of freedom.[87] This position is not without its critics, with Carter and Steiner finding fault with this 'trivalent' view of freedom.[88] However, even with these necessary movements towards acknowledging abilities role in freedom, for the vast majority of negative theorists, there is a hard line drawn between acknowledging that any inability is also an unfreedom, regardless of its source. Obviously, this is not always the case, certain authors such as Sen, Cohen, and Van Parijs have expressed a desire to favour identifying ability with freedom and inability with unfreedom. To quote from an anthology on this matter:

> For such authors, any form of obstacle to the performance of any action constitutes a
> constraint on the freedom to perform that action – not only interference by others, but also a
> lack of means, such as knowledge, personal abilities, and economic and social resources.[89]

Now, this does not necessarily mean the position is as clear as that. As also noted, many authors, in particular Cohen, have constructed theories with a broad enough view of constraints to encapsulate a lot of the above (lack of means, etc.) as actually being an actively caused constraint from another human-being, such as via the maintenance and creation of particular social and economic conditions.[90] The primary aim of the above section was to demonstrate, at least in part and by implication, the merits of such a view and of expanding the notion of constraints to allow for such a view, and that this argument can be defended with reference to the discussions these theorists are having.

However, I want to go a step further. Negative freedom theorists are a lot more willing in recent years to at least acknowledge the existence of such an argument as inability equalling unfreedom, going from Berlin outrightly rejecting it without much discussion,[91] to now at least an acknowledgment of its existence as a position and seeing that others have defended the view.[92] However, the underlining arguments negative theorists generally make against the position have remained fairly consistent. The aims of this chapter are, therefore, split into broadly two parts. First, I want to discuss in detail the views of theorists constantly referred to above as holding this view (inability as unfreedom), and to

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[86] Kramer (n 28) 3.
[87] Schmitt (n 53).
[88] Carter and Steiner (n 9).
[89] Ian Carter, Matthew Kramer, and Hillel Steiner (eds), *Freedom: A Philosophical Anthology* (Blackwell Publishing 2012), 353.
[90] Ibid, 354.
[91] Berlin (n 4) 122-124.
[92] Carter and Steiner (n 9); Carter (n 12).

examine how their arguments hold up against negative theorists' positions. This section will also look at the positions of Lawrence Crocker, a positive liberty theorist, and some other positive liberty theorists. Crocker will be the primary spokesperson for positive liberty, since he is also referred to a fair bit in the literature of negative theorists. Whilst I am cautious of not wanting to make this into a pure 'positive vs. negative' debate, reasons for which I will explain below, it would be missing a key aspect to not explore at least Crocker and a few of those who express similar views in that camp. Second, I wish to elaborate upon my own views in direct discussion with the negative theorists' views on this matter, and to address their concerns. However, many of my arguments will begin in earnest in the section 'counterviews' which contains the views of the theorists I am borrowing from and therefore seeking to build upon. Before all of this, however, the actual arguments need to be established, which will allow us to group these views into some more manageable categories for us to discuss later.

<u>The Negative Theorists' Views on Inability and Unfreedom, and on non-human caused constraints</u>

Both aspects of inability and unfreedom and the idea of non-human caused constraints interact closely, it should be assumed that when I mention one, I am discussing both. Lots of views are presented by the theorists discussed so far, so we shall begin where it all started, with Berlin.

Berlin claims, following both Rousseau and Helvetius, that negative freedom focuses closely on the deliberate actions of other humans. The fact that we cannot fly like an eagle has nothing to do with our freedom, further stating that if poverty, as an example, was a disease (assumingly a naturally occurring one) no one would believe it would affect our freedom.[93] JP Day furthers this, discussing that if a tree fell naturally into someone's path, it does not affect their freedom, but if it was deliberately put there to block the path, then it does affect it.[94] Oppenheim continues, stating very plainly that 'unfreedom is not synonymous with inability'[95] once again stating clearly that the inability must be caused by another person, either jointly or individually, either deliberately or not. This later point effectively covers the critique regarding responsible actions created by groups of people (such as economic conditions, which was discussed in the intention section).

Miller expands upon this a great deal as well, giving some more elaboration than those previously mentioned, discussing how the primary issue is the need to make the unfreedom inability distinction. Freedom is a relationship between persons, the way to differentiate is to attribute a human cause to the obstacle. This is because of the presumption of demanding a justification for an impediment as a core aspect of Miller's view of freedom, and social freedom specifically presupposes humans are free and responsible for actions, hence others have license to complain when they intervene on them. Miller

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[93] Berlin (n 4) 122 – 124.
[94] Day (n 34).
[95] Felix Oppenheim, *Political Concepts* (Basil Blackwell 1981) 53.

then clarifies that this is why freedom is relevant politically, in that it is very much a discussion about human interaction, and that it appears wrong to obliterate this distinction on political grounds alone.[96] Kristjánsson further concurs, going as far to describe believing that unfreedom equals inability is akin to 'the house of delusion...'[97] Kristjánsson further explains the reasoning for the distinction through the lens of justification, and explains this following JP Day, stating that a man with a broken leg must be said to be free to run, but if there was a law against running, then we would be unfree in addition to being unable (and in fact, the later may be an even greater insult despite his inability), claiming that even if this goes against ordinary language usage, it makes sense to trim the usage in that case.[98] He further expands that there is value in making this distinction between the two in our language, and that to not do so would be the equivalent of calling both cars and bicycles 'cars'. He then also adds a side point that social freedom can only be raised by beings who are autarchic, in that they have the minimal capacity to choose, again stating certain examples, such as that of a robber who is not autarchic, such as if they are working under hypnosis or suffer from a mental health condition affecting his choice abilities.[99] In this example, the robber is not changing the social freedom of his victim.[100]

This trend continues; Steiner believes that whilst inability is clearly important, we cannot confuse liberty and ability, liberty is a social relationship, a relationship between persons. Restraints imposed by nature are clearly important, but more relevant to the doctor and the physicist than the political philosopher.[101] Carter states there may be a discussion about constraints from natural origins rather than of other agents, but states those such as Oppenheim and Kristjánsson would refer to it as going beyond social freedom,[102] and in general continues to elaborate about this debate, whilst ultimately not discussing it in much depth himself. He saw it as not completely relevant to his concerns regarding the measurement of overall freedom.[103]

Kramer says more still and engages with the arguments in ways that provide a little more for us to discuss. First, Kramer does acknowledge room for ability, in the statement that 'every freedom is an ability of a person, but not every inability of a person is an unfreedom.'[104] This links to the discussion

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[96] Miller (n 26) 68 – 70.
[97] Kristjánsson (n 16) 19.
[98] Ibid, 127.
[99] Kristjánsson uses the word 'insane' here, which I do not think is a useful word to use considering its negative connotations and lack of specificity in definition, so for our purposes we will assume he means a mental health condition that renders the choices of the human agent not necessarily free ones in the realm of multiple choices.
[100] Ibid, 128-129.
[101] Hillel Steiner, 'How Free: Computing Personal Liberty' in Phillips Griffiths (ed), *Of Liberty* (CUP 1983) 74-75.
[102] Carter (n 33) 24.
[103] Ibid, Chapter 8.
[104] Kramer (n 28) 273.

above, in which to Kramer (and others such as Cohen) you need to be able to do something to be free or unfree to do it, if you are unable, you are neither free nor unfree to the action. Whilst he rejects some of the arguments raised to defend a position of rejecting non-human caused constraints, such as stating that claiming the divide should be based on remendability or irremediability does not hold up, and neither does the distinction between constraints that bring resentments and those that do not.[105] Whilst acknowledging this and seeing the potential for only circular arguments, the main thesis is that we should single out human-caused constraints primarily because our questions regarding overall freedom are those that are in the realm of social and political philosophy - not the realm of physics and engineering.[106] Furthermore, to commit to this 'wildly impossible thesis' as he puts it, of not separating inabilities and unfreedoms undermines the entire project of measuring and comparing freedom, rendering it impossible, and hence it is untenable to include constraints vis-a-vis the natural world.[107]

This lengthy descriptive section should prove my point of the prevalence of this view, but it should be noted that other theorists that have been discussed, such as Shnayderman, Morriss, Schmitt, and Hayek all subscribe to a similar view with similar arguments. To attempt to sum up this argument, I turn to a paraphrase of Murray Rothbard, who stated that whilst we are limited by the human condition (nature), via the way we can organise ourselves we can make ourselves truly free.[108] I also turn to the following from Carter and Steiner:

> However, that identification [unfreedom as inability, non-human caused, etc.] fails to capture what political and social philosophers have in mind when they refer to unfreedom, explicitly or implicitly, as an interpersonal relation. If the phenomenon we are interested in is social unfreedom—unfreedom as an empirical relation between persons—then we should say that a person is unfree to do x if x is prevented, actually or hypothetically, by the behavior [*sic*] of others.[109]

Whilst the view is in some ways homogenous, it is in other ways disjointed. The primary position is 'social freedom', and the prominence and general desirability of looking at interactions between persons and believing this constitutes a separate type of freedom. Hence, this grouping will be referred to as 'the argument from social freedom' or just 'social freedom' below. Some claim it from the lens of measurement of freedom, others claim it from the justification positions put forward by Miller, others simply think that considering our political world is due to interactions between humans it makes sense to focus on them since that is what political philosophers should care about, and others

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[105] Ibid, 363-364.
[106] Ibid, 367.
[107] Ibid, 44.
[108] Murray Rothbard, *The Ethics of Liberty* (Humanities Press 1982).
[109] Carter and Steiner (n 9) 240-241.

combine both or simply claim the position without much elaboration. The below two points that are used to justify the inability unfreedom distinction tend to stem from this argument, yet they are distinct enough to merit separate discussions.

The next argument has already been alluded to in the above sections regarding responsibility, so I will not state too many of the same details, but will instead provide a brief summary. As we will recall, a primary point of disagreement between the causal and moral responsibility view was to do with the worry that allowing any causal action, or allowing omissions, would 'collapse' unfreedom into mere inability, since it would allow a sub-section of actions that would make the number of things that have to be considered as a source of a constraint on freedom infinitely large. Therefore, the idea of freedom is obliterated due to this infinitely long potential string of actions. Kramer discusses this in more detail by arguing that with regard to measuring freedom, counting mere inabilities as unfreedoms would render the variables that need to be considered for measuring freedom 'infinitely large', which is untenable since he believes in the inherent value of measuring freedom.[110] This links to his above point about caring about freedom in a social and political context, it is an attempt to place a threshold, in the same way Oppenheim felt necessary.[111] This view can be described as 'the argument from broadness' or just 'broadness', which refers to a desire to curtail unfreedom as inability because it would make the potential pool of sources of constraint infinitely large, which is seen as untenable because it either damages measurability or damages the concept as a thing within itself, making it meaningless since it can apply to too many things. The later point of which is where the majority of my discussion regarding broadness will be aimed.

Finally, I refer to an argument that I will define as 'ordinary language' arguments, or 'the argument from ordinary language'. I am referring here, in the broadest possible sense, to when authors make grand appeals to how freedom is understood in 'ordinary language', and how that presupposes against considering inability and unfreedom as congruent. This was seen with Carter and Steiner referring to the ordinary language of how freedom is understood in various linguistic contexts.[112] Hayek also refers to this early in the *Constitution of Liberty* regarding how the term freedom has been used to mean various things in political contexts.[113] Bruno Leoni, whose views can be grouped with Hayek, also claims that words such as 'constraints' have been seized by theorists to change the ordinary language usage of the term, which coincidentally matches his view of what a constraint should be.[114] Shnayderman also refers to this, referring to Miller and Kristjánsson, stating that language generally embodies a presumption against interfering against others as a justification for imagining freedom

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[110] Kramer (n 28) 273.
[111] Oppenheim (n 55).
[112] Carter and Steiner (n 9) 240-241.
[113] Hayek (n 17) Introduction.
[114] Bruno Leoni, *Freedom and the Law* (Nash 1961) 52-58.

through the lens of human-caused actions regarding moral responsibility.[115] This argument can become more general as well, such as stating that when someone describes themselves as 'now free' to do something, it doesn't necessarily mean they are talking about freedom in this precise, philosophical context.

These three arguments, taken together, form the foundation of the arguments presented by primarily negative theorists regarding why we should make a firm distinction between inability and unfreedom, and disregard 'naturally-caused' actions. Obviously, some internal nuance remains, but these three broad thematic categories serve our purposes well. With this established, we can examine some of the theorists who are considered to take an opposing view and see how their arguments fair against these arguments and potential counter arguments.

<u>Counterviews</u>

Crocker (and a few mentions of other positive freedom theorists)

Crocker is mentioned extensively in the citations of the above authors as someone who stands against the view mentioned above, albeit the recent literature makes primary reference only to Sen and Van Parijs. Crocker is a positive freedom theorist, taking a broadly left-libertarian stance regarding freedom, which I applaud. However, what is relevant here is not necessarily his broader theory, but what he specifically states regarding the source of constraints. Crocker also allows for us to springboard nicely into some other more general positive freedom theory accounts.

Two sections of Crocker's work are particularly relevant here, the first being his examination of constraints under the negative liberty account, and the second being his discussion of social liberty in a later chapter. Regarding constraints, Crocker's general argument is that tying the freedom/unfreedom distinction to a distinction between restraint or incapacity will inevitably lead to paradox.[116] Whilst I do think this statement may have some merits generally, Crocker's arguments unfortunately seem to miss the mark slightly, which may be indicative of the age of the work in relation to current writings.

Crocker claims the issue lies, seemingly by implication, in threshold issues. First, he acknowledges a degree of distinction, arguing that the key to the positive-negative distinction is if an account of liberty can be worked out that includes restraints, but not inabilities.[117] He begins with a discussion that appears to show the issues of intention in regard to a theory of restraints, using an example of someone putting joke handcuffs on someone, knowing that they can get out and not intending for

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[115] Shnayderman (n 51) 730.
[116] Lawrence Crocker, *Positive Liberty* (Martinus Nijhoff Publishers 1980) 15.
[117] Ibid, 12; it should be noted Crocker uses the phrase 'incapacity', but it is used in the same way that inability is used in the wider literature.

them to be restrained beyond the joke, but then a fire breaks out that renders the person handcuffed unable to do the simple trick to remove herself. A further example involves someone erecting a fence to keep a 2-year-old out of the kitchen, but A, due to dizziness, can now also not get over the fence into the kitchen, is this a restraint or just a mere incapacity?[118] He further continues on this issue by imagining someone being trapped on an island by someone, so they are clearly restrained, but if the natural born citizens, upon meeting this person, then desire to leave and cannot, does that affect their freedom? What about the ancestors and children of the person who was originally restrained, and they also restrained or now merely unable?[119] He adds further considerations, such as if merely causing pain is enough to cause restraint, and concludes that the attempt to make a distinction 'between what is merely inability or not' is always going to lead to these paradoxical situations.[120]

Going further, he adds later a little about social liberty, stating in quite apt terms:

> No one would doubt that it is impermissible to pass and enforce a law requiring an (innocent) individual to wear a blindfold in everyday life. I contend…that it is equally a blot against social liberty to permit a blind person, curable with a moderate expenditure, to go uncured.[121]

This comes from a position on social liberty related to the fact we live in a deeply connected society, and that therefore freedom is inherently a political issue; because of this, that should encapsulate both acts and omissions as part of our social connection.[122] He further notes, in regard to a critique of positive freedom that it tends towards making the concept meaningless because it is too broad, that the achievement of perfect freedom is seldom the aim. The aim is to merely increase freedom, and that because of this there is no reason not to include impossible (inabilities that cannot necessarily be overcome) undertakings on the list of unfreedoms. They do not make the concept irrelevant, they can just be safely ignored whilst we can work on the possibilities, which saves us from the difficult distinction of drawing a clear line between inabilities and unfreedoms, which Crocker deems not necessary.[123] To finish Crocker's position, we can turn to his view that claiming there is a unique cruelty in direct human caused restraint, as opposed to merely a failure to enable, turns on purely psychological reactions, and whilst we can roughly approximate this, it is too uncertain to be a death blow to his account, since it can fluctuate widely depending on various factors (e.g., sometimes an omission could be seen as cruel or damaging as an action).[124]

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[118] Ibid, 13-14.
[119] Ibid.
[120] Ibid, 15.
[121] Ibid, 69.
[122] Ibid, 66.
[123] Ibid, 86.
[124] Ibid, 101.

Crocker's account gives us a great deal of interesting and crucial points, whilst also unfortunately falling short in some key issues. First, it can be seen here, as it is becoming more apparent as the thesis goes on, that whilst there is not perfect congruency between omissions and inability, they are clearly related, since a desire to close off omissions from affecting freedom is often seen as akin to closing off incapability or inability, since a solution to an inability is usually demanding someone correct an omission. This observation explains Kramer's apprehensions on omissions.

Specifically regarding Crocker, his discussions regarding social liberty echo my discussions regarding responsibility. On the one hand, we still see Kramer's argument regarding the difficulty of determining if an omission (in this case, curing the blind) can be corrected. However, as Crocker points out adequately, there is clearly, in the social political context, an injustice that mirrors the counter example of forced blindfolding. Considering the above theorists place emphasis on caring about freedom within that very same social political context, this is particularly relevant. It once again mirrors my argument of the issues encountered regarding omitting all omissions from freedom discussions; it is simply untenable on social-political grounds when it is clear that omissions can bare enough of a responsibility on the part of agent(s), collective or otherwise, to then do something, lest someone's freedom is reduced, since sometimes an omission and a restraint are so clearly related that it cannot be ignored regarding unfreedom discussions. Now, this may once again engage the critique raised against 'positive' liberty more generally, in that it creates obligations on society, but to use that as a reason to then disregard what is mentioned here as ever affecting freedom is too high of a price to pay. The two discussions, one being whether freedom is affected and the other regarding the necessary secondary political actions to take regarding the created unfreedom, should be kept separate, otherwise we find ourselves in the realm of conceptually murkiness, where we are excluding certain actions and/or omissions in untenable ways in a social-political context, which again, is the context we care about.

Obviously, this may lean us towards a more left-wing egalitarian position, but I do not think this is a concern, both because of the merits of this position but also because it should be a separate consideration. Further, Crocker strengthens this discussion with his denouncement of broadness concerns, claiming there is no reason to disregard impossibilities, both because we can always discount them after the fact, and also that often times 'the impossible' isn't necessarily impossible at all, and delimiting the line between the two is too difficult to create clarity. Now, someone may respond that if we are to disregard it after the fact, why not disregard it all together in our discussions? My response to this is that the issue is once again of clarity, the discussion of what freedoms we should care about and solve, especially in the context of them all interacting in one big mess of freedom and unfreedom, we will always have, as Kramer puts it, moral-political considerations that are too difficult to identify consistently and accurately. So, this conceptual worry should not come at

the first point of identification of freedom and unfreedom, it should come after, and an easy way to do this is to justify an unfreedom as inability position.

Unfortunately, whilst the above definitely does provide some counters to the justifications for why the theorists we discussed in Chapter 1 limited constraints in this way, other parts of Crocker's discussions unfortunately do not provide a resounding critique. This is seen especially in his 'trapped on an island' example and the examples mentioned prior to this one. It does a lot to show the issues with moral responsibility views but does little to quell worries regarding the causal responsibility view of Kramer and his contemporaries, since Crocker's examples all fit neatly into the causal view, and hence Crocker's final position regarding the paradox unfortunately falls flat.

Therefore, we can see at least outside of the direct consideration of constraints, some interesting points raised by Crocker that starts to poke holes in the negative view, which I plan to expand upon later in my own discussions to fill the gaps which Crocker unfortunately misses. He only deals closely with broadness, with a slight discussion of social liberty, but both of his views can be expanded to present a stronger position.

It would be unfair to say that Crocker encapsulates the positive liberty position perfectly. As Garnett notes, positive liberty is simply too diverse to box into one concise view, with views related from everything to capabilities, to self-mastery, to collective self-determination and more.[125] However, many other authors in the 'positive' liberty camp do espouse ideas that endorse a similar position. Michael Quante discusses Karl Marx and how our social institutions and goals are generally always impossible aims, mirroring Crocker's discussions regarding perfect freedom being unattainable and instead a focus on increasing freedom as a justification for allowing impossibilities in unfreedom discussions.[126] David Ingram discusses how Berlin's account of negative freedom, and his desire to defend it, presupposes liberal political institutions for it to be useful, again alluding to the position articulated that freedom gains its merit from political action and how it's used.[127] There is also discussion regarding the distinction between freedom and ability, or as it's often referred to, confusing freedom with power, and how this discussion is not necessary - that the merging of the concepts is not unheard of, and that in social-political settings this is very much the case, going beyond the restrictive nature of negative liberty.[128]

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[125] Michael Garnett, 'Unity and Disunity in the Positive Tradition' in John Christman (eds), *Positive Freedom: Past, Present, Future* (CUP 2021) 10.

[126] Michael Quante, 'Positive Liberty as Realising the Essence of Man' in John Christman (eds), *Positive Freedom: Past, Present, Future* (CUP 2021) 36.

[127] David Ingram, 'Recognition and Positive Liberty' in John Christman (eds), *Positive Freedom: Past, Present, Future* (CUP 2021) 86-7.

[128] Carlo Gould, 'Reframing Democracy with Positive Freedom: The Power of Liberty Reconsidered' in John Christman (eds), *Positive Freedom: Past, Present, Future* (CUP 2021)148-149.

I state the above in shortform for primarily two reasons. First, whilst acknowledging that positive liberty is an incredibly broad subject, I do believe the key arguments that are relevant for the discussions here are stated by Crocker and defended by the above theorists. We have already discussed Crocker's contributions to the critique of the negative view regarding inability, unfreedom, and now as we can see, omissions. The discussion points above regarding positive liberty more broadly simply adds more of the same to this, with some slight variation. Second, I am reluctant to fall too deeply into making this a strictly negative vs. positive division. Setting aside the debate about whether that distinction exists and whether it is useful to keep the distinction in place for certain theoretical discussions,[129]the unfortunate fact is that an over focus on positive liberties critiques of negative liberty opens up the floor to making the debate much broader than this thesis intends, and focuses the attack not on the specific arguments regarding constraints, but more upon positive freedoms apparent, as Berlin discussed heavily, worrying implications.[130]I seek, for the most part, to meet negative freedom on its own terms, by focusing as much as possible on the specific arguments that they make in support of their positions regarding constraints, which is why I spent a great deal of time establishing how they have reached their positions and the justifications for it, in order to be able to critique it as narrowly as possible without falling into a general 'positive liberty' attack. I believe this is why Crocker is mentioned so much by negative theorists, since he very precisely acknowledges negative freedoms exact positions and arguments, rather than just generally decrying them. Therefore, whilst positive freedom's arguments no doubt influence my arguments, as we have seen above and will see below, I seek to distance myself from the claim that I am merely applying positive freedoms general distaste for negative freedom here, and instead advocate that I am precisely dissecting the exact arguments of negative freedom to present flaws.

Therefore, Crocker and some related positive theorists provide the beginnings of some arguments against the negative freedom positions on constraints, particularly with concerns regarding broadness, and the beginnings of some worries about how they define social freedom. However, the exact arguments Crocker makes against constraints does not justify the inability is unfreedom position strongly, and unfortunately falls short in some key areas. With that in mind, we can move onto a theorist who is mentioned by both positive and negative theorists in this debate, and that is Sen.

Sen

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[129] MacCallum (n 7) is the obvious example of someone who tries to show that the negative and positive liberty distinction may not be as clear or as needed as first thought and that the two differing ideals of liberty actually discuss the same components, but other authors have defended the distinction as still worthwhile, even just to facilitate discussions regarding freedom, for a recent example of this kind of defence, see Maria Dimova-Cookson, *Rethinking Positive and Negative Liberty* (Routledge 2020).
[130] Berlin (n 4).

Sen's views are expansive, and a complete account of his work is beyond our needs here, but his general overarching theories regarding freedom through the lens of capabilities presents an interesting counter-view of freedom that can serve as, if anything, a tonic to the overly narrow view of negative freedom that seeks to avoid nature's influence.

The key to Sen's discussion of freedom rests upon understanding functionings and capabilities. Functionings are 'beings and doings', this could include many things, such as being well-nourished, or being illiterate, or being housed. Capabilities, are a person's 'real freedoms or opportunities' to achieve functionings, so whilst travelling is a functioning, have the real opportunity to travel is the capability associated with that functioning.[131] Sen places a lot of discussion on well-being, and therefore situates the above as 'functionings achieved' being related to the achievement of well-being, and capability to function being related to the freedom to achieve well-being.[132]

This outlines the basic position, with Sen believing that a person's well-being can be seen primarily in how that person can function in regard to capabilities.[133] Sen then goes further to discuss themes more relevant to the discussions we have seen in this thesis, discussing a contrast between freedom as effective power, which refers to achieving a particular outcome and having their choices respected, and that of procedural control, which relates to exercising control of the choice itself, where success is irrelevant when compared to the agent actively choosing in the procedure of decision and execution.[134] The following example is used to illustrate this:

> Your friend is injured in an accident and is unconscious. The doctor says that either treatment A or treatment B can be used and one would be just as effective as the other, but that your friend would suffer less from A […] However, you happen to know that your friend would have chosen treatment B, […]. He would, in fact, agree that treatment A would have been better for his well-being, but as a free agent he would have nevertheless chosen treatment B, if he were given the choice. If you now decide to ask the doctor to give your friend treatment B, you are giving your friend effective power even though he is not exercising the control himself. And your ground for choosing treatment B for him is surely not his well-being (he too agrees that A would be better for that), but his freedom (in the general form of agency freedom).[135]

[131] Ingrid Robeyns and Morten Fibieger Byskov, 'The Capability Approach' (Stanford Encyclopaedia of Philosophy 2023) <https://plato.stanford.edu/archives/sum2023/entries/capability-approach/> accessed August 28 2024.
[132] Amartya Sen, *Inequality Reexamined* (HUP 1992) 50.
[133] Amartya Sen, 'Well-being, Agency, and Freedom' (1985) 82 Journal of Philosophy 169, 197-198.
[134] Ibid, 208-209.
[135] Ibid, 209-210.

Sen states two further things to this. First, that the majority of the literature on freedom in political philosophy has focused on control, stating that the control version is usually combined with a constraint-based approach, related to not interfering with other people's control over specific matters, and Sen then states that this view is unacceptably narrow.[136] Sen justifies this through the lens that many issues regarding freedom, like the example he gives above, are not always contingent or even possible on an attribution of procedural control.[137]

As a final note, Sen also places particular emphasis, as alluded to just now, on actually achieving certain things under his view of freedom. In that freedom must have instrumental importance as a means to other ends, claiming this is obvious.[138]

To say that more could be said on this would be an understatement, but this presents the basic picture which allows for an engaged discussion. The general approach advocated by Sen is also not unique to himself, other theorists such as Martha Nussbaum have written extensively on the 'capabilities approach', and the theory has been applied in various ways.[139] However, once again, Sen's arguments above give us all we need to examine his views on freedom.

The most interesting difference between Sen and all the other theorists mentioned in Chapter 1 is that his framing his fundamentally different. Sen is primarily an economist, focusing on development, and therefore his theories of freedom are approached from this angle as opposed to the more traditional political philosophy route. This means that Sen engages very little with those who are mentioned above, with the only notable exceptions being Nozick and Cohen. Some may take this as fatal and argue that whilst Sen's ideas of freedom may be interesting, his language use and framing means he is fundamentally talking about something different to what we are discussing here, which therefore leads to issues with the cross-compatibility of Sen's ideas and the negative theorists mentioned in Chapter 1. However, Sen is clearly aware of his position in the debate, and we can explain his ideas through the lens we have seen above.

It is clear that functionings can refer to both abilities and inabilities, since it discusses as examples both things such as illiteracy (an inability to read) but also being able to travel. Functionings take on an 'inherent' quality, implying they apply to all potential inabilities. Capabilities refer to being actually able to achieve those functionings, and therefore measuring a person's actual capabilities can be seen as their real freedom, the freedom to actually achieve certain functionings. To break this down further into the language we have been using, if a person has an identified functioning but lacks the

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[136] Ibid, 209.
[137] Ibid, 210.
[138] Amartya Sen, 'Freedom of Choice: Concept and Content' (1988) 32 European Economic Review 269, 270.
[139] See Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (HUP 2011).

corresponding capability, to borrow Sen's example the functioning to travel from point a to point b but lacking the real opportunity to do that, that person is unfree.

Therefore, the inability unfreedom distinction is gone, and by implication that any constraint or lack of a capability to achieve a certain functioning creates a state of unfreedom. Sen refers to 'basic functionings' such as not being hungry,[140]which appears to be analogous to basic needs.[141] This clearly shows that even 'naturally-caused inabilities', which in this case can be seen as the biological need to eat, are seen as functionings, which if they lack a capability can be seen as creating a loss of freedom. It also creates a significant scope for omissions causing unfreedoms, implying that if society at large does not allow for certain capabilities to achieve certain functionings, that should be seen as a state of unfreedom.

Sen's defence of such a position stems from his power and control discussion, and also his emphasis. First, the idea that power has been neglected in freedom as opposed to control hits at the heart of the discussion of constraints and their sources. For Sen, it is clear that it is irrelevant to discuss constraints sources, what matters is your functionings and if you can achieve them, and to only focus on the former is to narrowly restrict freedom, which in the realm of political discussion should care about what we can actually do and achieve. Especially since the focus only on constraints, which Sen sees as control, does not account for all aspects of freedom.

Some of this seems reminiscent of positive freedom, in that there is a focus on actually achieving certain things as opposed to merely being free of constraints, and I can recognise that there are potential flaws to that position, mostly related to lacking conceptual clarity in deciding what functionings people actually have or should have. Furthermore, capabilities focusing so much on omissions may lead to the issues Kramer discussed regarding identifying when we can actually intervene and when we cannot. Omissions and why they deserve to be included has already been discussed at length. Regarding functionings, it could simply be seen as a different framing regarding freedom. Whilst directly knowing all functionings may present challenges, some of them are clear and important (basic needs such as food) and as such it is correct to at least include them in our current theories of unfreedom, rather than a blanket exclusion, since it allows for freedom to be used in a more beneficial way for meeting people's needs and functionings, which are clearly instrumental in them being able to enjoy the 'social' world that theorists of freedom believe is vital.

Unfortunately, Sen does not always directly address the arguments presented by negative theorists like Crocker and others have done, but I do believe Sen touches on something interesting regarding 'social freedom' which begins to show some of the cracks in the position held by the negative theorists.

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[140] Sen (n 133) 217.
[141] Sen is apprehensive to list these basic functioning's, whereas Nussbaum (n 139) does create a list.

To paraphrase Sen, as quoted above, freedom has instrumental importance as an ability to achieve certain ends. It is not difficult to expand this out to a broader political view, in that freedoms purpose is served by allowing for us to achieve certain ends via identifying unfreedom and desiring to rectify it. Now, the obvious retort here is 'what ends?', and even Sen, in refusing to define specific functionings, appears to acknowledge a level of ambiguity here. However, I do not think it is unreasonable to argue that there are certain specific functionings that are clear, such as the need to eat, or have shelter, that apply universally to all human beings. This universal level of base-need is clearly fundamental for how human beings interact with one another.[142]Therefore, surely a robust theory of 'social freedom' that cares about interactions between human beings has to at least have a level of recognition regarding how the natural world and inabilities impact humans, which therefore impacts the entire social-political context they are in. This seems to be at the heart of Sen's theory; a focus on well-being, and actually having the opportunity to doing certain things that are important to you. This not only places his view of freedom in a much stronger position for actually caring about socio-political discussions, since it recognises humans interactions both with others and the environment as important, but it also establishes why the current constraints model and the unfreedom inability distinction is too narrow, since it misses out on this vital aspect of our political world. Again, some may retort that we are sacrificing conceptually clarity, but if we continue to apply Crocker's analysis regarding why it is not fatal to include a broad range of inabilities (even impossibilities) because of freedoms role as identifying and not necessarily 'solving' the issues raised, we can avoid that retort.

This raises a fundamental distinction between approaches which I think allows for favour to be cast more heavily to the inability is unfreedom view. The current negative theorist narrow constraint view seeks to exclude as much as possible (inabilities, omissions, etc.) and then philosophise edge cases which they deem untenable to not be included as unfreedoms. Whereas the alternative view seeks to include as much as possible, and then factor out afterwards what may be seen as more important, or less important, or more solvable, or less solvable, in a political context. The latter not only seems to be more relevant to the social and political questions that are raised by negative theorists in defending their 'social freedom' model, but it also situates freedom in a position of greater conceptual clarity, since it includes as much as possible and then works backwards. Furthermore, this distinction is well

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[142] Here I was reminded of a quote by Engels, from Frederick Engels, 'Frederick Engels' Speech at the Grave of Karl Marx' (Marxists.org 1993) < https://www.marxists.org/archive/marx/works/1883/death/burial.htm> accessed 28 August 2024: "...so Marx discovered the law of development of human history: the simple fact, hitherto concealed by an overgrowth of ideology, that mankind must first of all eat, drink, have shelter and clothing, before it can pursue politics, science, art, religion, etc.; that therefore the production of the immediate material means, and consequently the degree of economic development attained by a given people or during a given epoch, form the foundation upon which the state institutions, the legal conceptions, art, and even the ideas on religion, of the people concerned have been evolved, and in the light of which they must, therefore, be explained, instead of vice versa, as had hitherto been the case.".

encapsulated in Sen's power/control example mentioned earlier, which demonstrates how an over focus on control and framing freedom via that lens not only ignores, as Sen states, times where freedom can be ensured without control, but also shows how control views, that are synonymous with negative liberty, miss some fundamental aspects of our socially interconnected world, which is apparently what the theorists discussed at the beginning of the Chapter care about.

Now, some discussion may be had about whether this simply creates the same problem as the constraint view, because now the question comes 'who decides or how is it decided what is more important or less important, or what omissions can be solved, etc.' in the realm of Kramer's concerns, but as demonstrated, the negative theorist view has the exact same problem in attempting to narrow down constraints. Considering freedom is, fundamentally speaking, a discussion about what we can do, how we do things, and whether or not we can or cannot do or not do something; it is baffling to me to be concerned about it being overly broad; it is always going to be broad, it relates to some very fundamental parts of our being. The position should therefore not be one that restricts, it should be one like Sen, which includes inabilities and acknowledges their place in our social framework beyond just mere human interaction, instead of an overly restrictive one that is more and more removed from the very thing it is supposed to be useful for, and that is political action. Some problems in this discussion, as we can see, are clearly inherent, and because of this, I think Sen's framing as political action and achievement, focus on beings and doings, and an acknowledgement for the human condition in the context of societal considerations, presents an interesting retort to the 'social freedom' argument discussed above, and gains more than it loses.

With this established in Sen's context, Van Parijs' views can now be examined.

Van Parijs

In a similar vein to Sen, Van Parijs focuses on what we can actually do, not necessarily just what restrains us, as being fundamental to the question of freedom. In his work, he broadens the scope of what can count as an unfreedom widely, claiming that both a person's purchasing power and even their genetic set-up is directly related to their freedom and could be seen as a restraint of some kind.[143] The key is that this affects someone's real freedom, whereas formal freedom relates to a more classical negative view.[144] He claims that real freedom unifies three key components; security, self-ownership, and opportunity, and that opportunity is the key aspect, in that it encompasses situations such as being too poor to be really free to join a cruise, as an example.[145]

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[143] Philippe Van Parijs, *Real Freedom For All: What (if anything) can Justify Capitalism* (OUP 1995) 4.
[144] Ibid.
[145] Ibid, 22.

Van Parijs acknowledges that his view represents taking the broadest possible definition of freedom restricting obstacles (constraints). Any restriction of the opportunity set affects our freedom, you lack the real freedom to swim a lake not only if the private owner of the lake stops you, but also if you are unable to swim across due to lung capacity or weak legs, and that applies regardless of whether human beings caused your issue regarding your lungs, or whether they could do nothing to remove it.[146]

There is acknowledgement that this may fail to capture an important distinction, between prohibitions (constraints) and incapacities. Van Parijs outlines the argument in that it is not only appealing to the language of freedom, but that the objection appeals:

> To the observation that what we are concerned with here is the institutional characterization [*sic*] of a free society, and that an institutional set-up is just a way of distributing 'mays' not 'cans'. Hence, stretching the concept of freedom to encompass both the permissions dimension and the capacity dimension of the opportunity-set is pointless anyway, since it is only the former that is relevant to our enterprise.[147]

This appears to be referring to the idea that it is only that which we can solve in the context of 'human interaction' that affects freedom (permission), if we remember back to Crocker's arguments regarding impossibilities, it is similar, and Van Parijs makes a similar counter-argument. He claims that this position does not render abilities irrelevant. He claims that many abilities and inabilities, in that what you can or cannot do, is systematically linked to what you may or may not do, such as whether I even survive day-to-day is affected by my entitlements to food, drink, and shelter. Thus, the permission dimension may be the only one affected by institutional set-up, but it is too closely linked to abilities to dismiss them entirely.[148] He further continues in a footnote that some inabilities cannot be abolished, such as those that go against physical laws, but that does not mean they should be excluded from being seen as creating unfreedom, since the aim for Van Parijs is the freest possible society and not perfect freedom, and that society is not expected to do anything about those unfreedoms that are unsolvable.[149]

The later of the points Van Parijs makes regarding impossible to solve inabilities is similar to Crocker's, so I will not reiterate that argument here again; it is safe to say that they both make the same contention in regard to it. To summarise, they both explain why it is not an issue to include them, and also why it is not an issue to include inabilities generally, since as Van Parijs rightly points out, many of them can be solved and the question is actually solving the ones we can, to achieve the

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[146] Ibid, 23.
[147] Ibid.
[148] Ibid, 24.
[149] Ibid, Chapter 1 Footnote 49.

freest possible society, and not getting hung up on creating a complex framework to exclude impossibilities when we can just include them (thus maintaining conceptual clarity, which aids in definition) and then remove them later from our political 'action' discussions. It once again skirts around Kramer's issue with omissions by actually focusing on fixing inabilities as unfreedoms and if they could be solved rather than initially excluding them. Whilst it is obvious that this is a difficult thing to achieve, that difficultly does not necessarily lead to saying we should exclude it entirely from unfreedom discussions; if anything, it implies once again that including it may allow for us to get around some of the major issues of trying to exclude them, such as lack of clarity, and then allows for the normative debate to happen in a more honest way, instead of attempting to get around it by excluding it from freedom discussions entirely. Again, Van Parijs, like Sen, has a focus on actually solving people's inabilities to do certain things that are clearly vital, and this framing has led to a broader theory of freedom which is more applicable to the social-political context freedom finds itself in and also a theory that can better help the oppressed. It is therefore no surprise that Van Parijs acknowledges the similarity to Sen's theory in his work.[150]

We can look a bit broader and see that Van Parijs touches upon an idea in the realm of social freedom that is not necessarily unique but is seemingly a charge against the overly narrow negative theory view regarding constraints. He explains how his 'real freedom' seeks to actually give power to the word of freedom; in that it actually looks at what people can and cannot do and places a charge on society to fix this (the constraint). He quotes various authors to discuss this, in that there is no such thing as freedom in the abstract, that it inherently involves what you have the power to actually do, and that various things are so clearly linked to freedom, lack of means, education, etc., that the link between freedom and capacity has to be made.[151] This contrasts with views of certain negative theorists. Van Parijs discusses theorists such as Berlin, who acknowledges that in a society where many peoples minimum conditions are not met, it seems irrelevant to them if they possess negative liberty, for what are these rights if they lack the power to implement them? Whilst still acknowledging there is not anything to gain from confusing terms.[152]

This hits at the heart of the issue here, what use is a theory of freedom that both a) seems to care about the social-political context of freedom and b) then excludes inabilities in favour of direct human interaction when they are both clearly equally important in the context we care about. Freedom is an all-encompassing term whose use is always going to have political dimensions. To exclude inabilities as being unfreedoms is a clear move to remove some of the power freedom could have, and that is to

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[150] Ibid, Chapter 1 Footnote 45.
[151] Ibid, Chapter 1 Footnote 46; the authors Van Parijs cites for this view are: Richard Tawney, *Equality* (Allen & Unwin 1952); Richard Norman, 'Does Equality Destroy Liberty' in Keith Graham (eds), *Contemporary Political Philosophy: Radical Studies* (CUP 1982); Andrew Levine, *Arguing for Socialism: Theoretical Considerations* (Routledge & Kegan Paul 1984).
[152] Ibid; Berlin (n 4) xlv-xlvi.

aid societies most vulnerable in achieving, if we borrow Sen's terms, basic functionings, among other things. If this is seen as untenable because it places omissions in the realm of constraints and that then creates difficulties, I struggle to see how these difficulties are not mirrored in justifying the opposite, the only difference here is that by including inabilities we are at least having the conversation that these people who are clearly suffering (despite being insultingly lowered to 'merely unable') in a society that could help them are unfree, and that seems a much better use for the term in the 'social' context than the abstract philosophising that appears to be happening for the negative theorist view on constraints. Even if there is still a concern, as Van Parijs, and Sen, and the others cited here have pointed out, almost all inabilities can in some way be traced back to human involvement (actions, omissions, or otherwise, since so many things we can or cannot do are due to social conditions that are maintained by human action and omission), so surely it is worthy of at least consideration. Furthermore, as discussed by Crocker and Van Parijs, certain things can always be excluded later (such as impossibilities), but we at least gain the conceptual clarity at the first stage, something that Kramer seemed to value greatly for justify a causal responsibility view of actions regarding constraints, but then seemingly seemed completely against regarding omissions, despite using very similar arguments, as discussed above.

Van Parijs' view works well with Sen's, and now we can move onto the final theorist of the four planned to be examined, and that is Cohen.

Cohen

An extensive writer, Cohen's writings on freedom have already been discussed above regarding his debates on moralised views of freedom, but what we will focus on here is his brief mention of the discussion at hand, and that is the inability unfreedom distinction. Cohen discusses the idea that inability is a necessary condition for unfreedom, since an interference can only count as an interference on my freedom if it takes away my ability to do it, and thus, 'interference itself is never sufficient for unfreedom because lack of means is always necessary for it.'[153] To illustrate, he contends that a prisoner who is not free to leave a prison cell is not free because he cannot overcome his prison bars, whereas if we could, he would be free to leave.[154] This both relates and contrasts to the idea mentioned in Chapter 1 of ability being a prerequisite of freedom, and that if you lack the ability to do something, you are neither free or unfree to do it, whereas Cohen here extends this to simply mean you are just unfree to do it, which is a better logical conclusion. He continues this by claiming that some, such as Berlin, may retort that you are not unfree to walk if your legs are broken, since no one would stop you if they were, hence interference is not sufficient for unfreedom, but it is

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[153] Gerald Cohen, 'Two Addenda to "Freedom and Money"' in Michael Otsuka (ed), *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy* (Princeton University Press 2011) 194-195.
[154] Ibid, 195.

necessary.[155] Cohen dismisses this as 'riding roughshod over what appear to me to be banal truths.'[156] He justifies this with the following example and discussion, which I will not attempt to replicate:

> Many think that losing a means means losing a freedom only if a *person* causes the deprivation of that mean. If you take away the key to my car, I am deprived of a freedom, but, if I just *lose* my key, I do not, on this view, lose a freedom. […] But the distinction mooted here is *wildly* implausible. If you despair of finding your key you won't refrain from saying that you're no longer free to drive it unless and until you've discovered that the key was stolen or purloined. So the contrast between means and ability, in general, on the one hand, and freedom on the other, is a right-wing myth, Whether or not the Left sometime strain against ordinary language […] the Right, and those who accede to their insistences, twist the ordinary meanings of word, in this domain.[157]

An interesting note here is Cohen claiming that the 'Right' are twisting ordinary language to suit their own purposes. Whilst Cohen does seem to show why this is the case in the above, it is not too difficult for critics to simply say the same to Cohen, since invoking 'ordinary language' is almost always done with little evidence beyond simply stating that it is the case. It seems that Cohen's best contribution here then is twofold. First, explaining the issues of relying purely on an interference to discuss if you are made unfree, and showing the necessary issues of excluding inability, and second, showing that many things that some would regard as inabilities (such as lack of money) can actually be easily shown to be constraints, since a lot of these 'natural inabilities' are caused by direct interference and intervention by people, groups or otherwise, under broader socio-economic-political conditions.[158] The later of these points marries well with all of the three theorists mentioned above, under a general project of showing the merits of extending out a view of constraints.

A lot more could be said on Cohen, but I believe the above contribution does the best to encapsulate his view, which pairs well with points already made, especially since this position is a significant change of opinion for Cohen, who used to hold the exact view advocated for by negative theorists at the beginning of this Chapter.[159] Therefore, with all of these theorists views elaborated upon, a more precise examination of the arguments put forward by negative theorists for justifying a distinction between unfreedom and inability, and demanding that human-caused actions are a requirement for an interference on freedom, can begin.

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[155] Ibid, 196.

[156] Ibid.

[157] Ibid, 197.

[158] This is the primary argument of Gerald Cohen, 'Freedom and Money', in Michael Otsuka (ed), *On the Currency of Egalitarian Justice: And Other Essays in Political Philosophy* (Princeton University Press 2011).

[159] Cohen (n 153) Footnote 61.

<u>A Precise Examination</u>

The above four theorists, regularly cited by negative theorists as espousing the views that this thesis seeks to defend, have each aptly contributed to the discussion as to why the negative position in its current form is lacking. The above four theorists are not a monolith, with some of them even discussing one another and offering criticisms of each other,[160] but the above has begun to demonstrate where their critiques apply to the positions given by negative theorists to justify their views as discussed at the beginning of this chapter.

As such, there will be some repetition in this part from the above, but the aim of this section is not to make unnecessary repetitions, but to attempt to unify the above discussions, alongside my own observations, into examining the three primary arguments given by the negative theorists to justify their view regarding constraints; that is, social freedom, broadness, and ordinary language. Any significant overlap is therefore simply to restate how that argument applies directly, and as such I will make references to arguments made above to do this. This section therefore seeks to be concise in its statements, but naturally, significant explanation may be required, as well as consideration for any counter arguments.

It should also be reiterated, as I have noted previously, that whilst I have attempted to distinguish the three arguments from one another, there will no doubt be some overlap, which is unfortunately unavoidable when the arguments are so interlinked. Furthermore, whilst the focus is still very much on negative theorists' views of constraints, discussions will naturally broaden due to the nature of their arguments for justifying their views and the relevant counter-arguments.

With this established, we can look at the argument from social freedom.

The Argument from Social Freedom

The primary view here is that social freedom is an interpersonal relation; there can be no freedom discussion beyond the realm of human interaction, since that interaction is what creates our political environment. This is the only freedom we should care about, seemingly because it is the type of freedom that applies to our political relationship, and therefore, it is the only type of freedom that can inform our socio-political institutions, which seemingly, is what we care about, since that directly effects how we live.

I discussed the above point in regard to Sen and Van Parijs briefly, but I will try and condense it together now. It is a mistake to argue that social freedom, through the lens above, should not have regard to human's interactions with the environment, and a broader consideration of inabilities, since

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[160] See Gerald Cohen, 'Sen on Capability, Freedom, and Control' in in Michael Otsuka (ed), *On the Currency of Egalitarian Justice: And Other Essays in Political Philosophy* (Princeton University Press 2011).

including these aspects creates a more accurate account of freedom within the social political context that is the key criterion for the theorists discussed.

My discussions regarding Sen and Van Parijs illustrate this point well, as well as Crocker to an extent. They all point to a broader appreciation for what humans actually can and cannot do in regard to freedom, what Sen calls functionings and what Van Parijs refers to as opportunities under real freedom. This repositioning on the human subject itself as what it can and cannot do, in the wider context of interactions with each other, is particularly relevant here. It acknowledges an inherent aspect of the human condition, that being our relationship to the environment and how that influences our social interactions with others in similar ways to constraints. I quoted Engels's discussing Marx's theories to demonstrate a version of this, but we can also turn to Sen's discussions regarding basic functionings, and how these being fulfilled via capabilities is the basis for the very foundations of our social existence. Discussions by theorists such as Judith Butler are also enlightening here, who discussed an idea of us having inherently precarious lives because of our fragile condition, and that this informs almost everything about our social conditions as well, since we cannot escape its influence.[161]

All of this demonstrates that, contrary to the position forwarded by negative theorists, that if the reason we care about freedom is due to its value in discussing our social and political lives, and to therefore demonstrate what we can and cannot do in that context, it is vital to include a broader consideration of constraints that does not completely remove the possibility that inability can affect our freedom, since the way in which we interact with our environment, and what 'naturally caused constraints' do to us clearly affects our subsequent social interactions.

This can be coupled with some of the arguments used by causal responsibility quite nicely. It can already be demonstrated that a lot of the things that we have previously called inabilities, such as lack of education, or lack of money, or lack of food, or even other things such as disability, are actually almost always a result of a particular socio-economic-political framework which is, either directly or by foresight of consequences, a deliberate creation by the work of various human beings and maintained via their acts and/or omissions. Rarely do these inabilities spring out of mere nature; humans are such an interconnected species that this complete separation is almost always not present, and therefore, an extension to include all of these 'lack of means' also better encapsulates why the social freedom argument should have a better appreciation for these 'inabilities'. Cohen in particular makes this argument passionately.[162]

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[161] Judith Butler, 'Precarious Life, Vulnerability, and the Ethics of Cohabitation' (2012) 26 The Journal of Speculative Philosophy 134, 148.
[162] Cohen (n 158).

This can also extend to omissions. Crocker discusses this idea briefly in his discussion regarding the blind, and a broader desire that there should be more emphasis on providing aid to our fellow human.[163] It is clear to me that often, the most vital aspects of our social interactions are not caused by actions, but omissions. Think of the injustice felt when our representatives continue to allow the hungry to go hungry or the homeless to be homeless. To argue that omissions do not play as much of an important role as actions in our social interactions is an untenable position to me, at least on principle, since they can be almost as important to how we interact with each other and society more broadly. I am aware that once again this may rest upon defining what an omission is, but even if it is rejected that omissions are a distinct entity from actions, the argument still stands. Due to our dedication to a position of clarity of identification, it is irrelevant how omissions are defined under this lens, since our arguments still stand on other points and on its own merits.

Now, perhaps because of the theorists I have used, and due to the arguments I have made about needs and basic functionings, I could be accused of politicising freedom in a way that distorts the concept almost as much as the moralised versions do. First, I think when I cover the argument from broadness, I can show that this argument can hold firm even without these arguments necessarily. Second, freedom *is* a political concept, regarding how we should organise our society. If we claim to see freedom, and being free, and a social good, it is inherently a political concept. As pointed out by Nancy Hirschmann and Gould, writers such as Berlin have clearly formulated their theories to present negative liberty, with its overly individualistic and focus on direct human influence, and maintaining a sphere of personal control, as having political motivations to present capitalist social standards as superior.[164] In a perfect summary regarding my discussions, Gould states that Berlin was wrong to separate freedom from its's conditions, and that his view is overly individualistic.[165] Freedom in the social context of interaction is built upon many things, that includes our environment and our place within it, the human condition, omissions, etc. and this all needs to be included, and to then argue that that is making freedom as a concept too politicised is hypocritical at best and downright negligent to how political freedom is as a concept at worse. It instead shows clearly how the constraint theories from Chapter 1 are lacking, since it ignores the conditions that give rise to the social conditions these constraints clearly exist in.

An obvious counter position here is that the theorists discussed at the beginning of this chapter are talking about social freedom, a different kind of freedom to say, the 'real freedom' theory of Van Parijs, or 'freedom as capabilities' from Sen. Social freedom, with its focus on only human interaction (ignoring how the way that is interpreted is untenable as explained above) is different to the freedom

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[163] Crocker (n 116) Chapter V: Social Liberty.
[164] Nancy Hirschmann, 'Towards a Feminist Theory of Freedom' in David Miller (ed), *Liberty Reader* (Routledge 2006).
[165] Gould (n 128) 146.

they discuss, and therefore its position on unfreedom not being inability, and ignoring human-caused constraints, is justified. However, following the discussion of Morriss regarding power above, and also of Sen, if 'social freedom' as currently defined ignores inability and all of the injustice that comes with it, if it often ignores in certain interpretations, the plight of the disabled in our society,[166] or the oppression of women,[167] or the homeless,[168]or of those in poverty and lacking money, reducing it all to 'mere' inability, an insulting monicker for such a restraint, then what use is that theory of freedom?[169] This is linked to Morriss and the Kramerian farmer, and how in that situation the inability is more important that the unfreedom if you keep the distinction. We will remember that Morriss attempts to maintain this distinction by claiming it is unfreedom when caused by another because it insults us, mirroring previous arguments from those such as Miller regarding justification and the inherently worse nature of a constraint that is intended or caused by a human than a natural one or an omission. However, as demonstrated, this distinction is based on a purely subjective interpretation, and it is clear to me that any restriction, inability or otherwise, to being able to do something can make you feel indignant. I have no doubt that if we ask the disabled in our society, or the poor, they would feel equally upset at their condition regardless of whether they thought it was imposed by humans (which as stated above merits its inclusion anyway) or was not, but the omission of society or others to solve it is an equal disgrace to them that merits it being classed as an unfreedom. If this means that freedom places obligations on society, as Crocker discusses,[170] then so be it. I do not think this should be seen as something inherently bad for such a socially and politically relevant term as freedom, and I think to broaden freedom (a net social good) to those who have been historically oppressed is a good thing and makes the term infinitely more useful for improving society, especially considering its weight in political discourse as a term. It also situates the term much better in the context of social interaction, as discussed above in relation to why expanding the term actually defines it better in a social context.

A second retort to this, moving beyond different types of freedom, is to say that inabilities (naturally caused or otherwise) are important, even perhaps important politically, and that we should care about them, but that does not mean that inabilities are unfreedoms. It links to the discussion regarding this being under the purview of doctors and physicists, or Berlin's discussion above regarding freedom perhaps being irrelevant to those lacking ability to do certain things such as eat, but that we should not confuse the terms. I already discussed why this view is worrying in the Van Parijs section and just

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[166] Nancy Hirschmann, 'Disability and Positive Freedom' in in John Christman (eds), *Positive Freedom: Past, Present, Future* (CUP 2021).
[167] Hirschmann (n 164).
[168] Jeremy Waldron, 'Homelessness and the Issue of Freedom' in Jeremy Waldron, *Liberal Rights: Collected Papers 1981-1991* (CUP 1993).
[169] Cohen (n 158).
[170] Crocker (n 116) Chapter V: Social Liberty.

now above. However, to reiterate, the position that 'we should care about both freedom and ability, but the terms should be separate' I think is untenable in that it has been shown above why the justification for that distinction on the socio-political lens makes very little sense, so the only reason to make the distinction has to be for some conceptual reason, which relates closely to the broadness concerns, which will be discussed next.

The Argument from Broadness

Expanding unfreedoms to include non-human caused constraints, or inabilities, or omissions, will make the concept meaningless, since it will include far too many possible variables to consider, which means freedom will necessarily apply to almost everything, rendering it a concept that has no use. This is how the position goes, once again, for justifying not accepting inabilities as unfreedoms in the realm of identifying constraints.

Fundamentally, I do believe where the line is drawn here has some political motivations, which is not necessarily a bad thing, but I do think it should tend towards a position of including more than including less. However, setting that aside, I do not think broadness concerns about making freedom a useless concept necessarily hold up.

Strangely, when first considering this argument, I thought of JAG Griffith, and his writings about the UK Constitution, where he stated, quite famously:

> The constitution is no more and no less than what happens. Everything that happens is constitutional. And if nothing happened that would be constitutional also.[171]

Setting aside what this means in debates regarding the UK constitution, it sums up quite well how I view freedom. Freedom is, as discussed, something that relates at its base level to what we can and cannot do and finding the preventions to that. It is strange to box that into such a narrow lens as some negative theorists do, not only because it appears contradictory to the unique position of freedom in our political discourse, but also because we have seen the relevant issues that are created in trying to unnecessarily place thresholds on constraints. We need only look to the spirals that the moral responsibility theorists fall into in attempting to justify where they draw their line because they continually find edge cases that merit inclusion, to the point where they have so much moral-political weighting in the identification of unfreedoms that the theory becomes beyond complex to be useful to the social-political discussions freedom occupies.

This is, primarily, what broadness can give us, and that is conceptual clarity. Kramer makes this point in a way that I have greatly praised throughout this thesis regarding his defence of causal responsibility. To briefly restate this, he justifies including all actions caused by humans, regardless of

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[171] John Aneurin Grey Griffith, 'The Political Constitution' (1979) 42(1) MLR 1, 19.

remoteness, as causing unfreedoms primarily because it allows for clarity in discussion. He discusses how the moral responsibility positions, Miller in particular, are inserting a moral-political discussion too early in the constraint discussion. The justification stage can occur later, since it is inevitable that a moral-political discussion will occur (in discussing blame, justification, sanction, weighting constraints and freedoms against each other, etc.). However, at the initial stage of looking at constraints, there is value in keeping it simple, and hence including all possible positions.[172]

This same position can, and should, be applied to seeing all inabilities as unfreedoms and therefore widening our scope of constraints. It allows for the greatest amount of conceptual clarity at freedoms 'identification' stage. I use this phrase to refer to when an individual seeks to identify an unfreedom. From here, any discussions regarding if it can be solved, if we need to weigh it against other freedoms, level of blame, etc. this can occur, as they inevitably will in the political context, after the conceptually clear identification. This relates closely to the discussions raised above by Crocker and Van Parijs. In that, the aim is not necessarily complete and total freedom for the individual, the aim is to create the greatest possible amount of freedom for them in a given society, and therefore inabilities that are unsolvable, or ones that need to be ignored in favour of fixing other unfreedoms, can merely be ignored – related to Crocker's discussion of impossibilities.

This links closely to how I think freedom should be viewed - as a grounded political term that can have actual benefit beyond mere philosophising. The questions that follow identification are obviously complex and politically loaded, but that is a job for other debates on different matters. Is it not best, as Kramer does, to allow for as much clarity in this first step to delay this complexity? Lest we fall into untenable debates regarding whether something is a constraint on freedom or merely a constraint on ability, which renders freedom completely unusable in many cases where it cannot justify all edge cases that clearly need including under the umbrella of freedom, as all the theorists above so desperately try to do.

It is for this reason I find it confusing to remove omissions from accounts of constraints. Surely the same exact argument applies. To argue we should remove omissions not only ignores the relevant benefits we get from broad conceptual clarity at this stage, but it also contradicts the reasons given to allow for causal responsibility to include so many actions. To argue we should remove all possible reasoning as to having a threshold for actions due to conceptual clarity at the identification stage, surely it also applies to omissions, especially since we can, and have, shown instances where it is obvious that omissions deserve some recognition in our account of unfreedoms. This is alongside our discussions regarding omissions in earlier sections.

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[172] See Section on Responsibility in this thesis.

A final note will be given here to the idea of 'measuring' overall freedom. Carter, Steiner, and Kramer, in their works cited in this thesis, all make particularly strong reference to its benefits and why they wish to do it, especially Carter, who has dedicated an entire book to the subject.[173] Setting aside the debate on whether it is actually possible to measure freedoms, or just logically possible, it appears to me that it relates to a particular contradiction between myself and those who wish to measure freedom. On a measuring freedom view, creating thresholds makes a lot of sense because it reduces the number of variables that are needed to be measured. However, my view of freedom relates much more to being able to identify and then solve said specific unfreedoms. In short, I do not think it is particularly necessary to discuss at length the merits of measuring freedom or not, since I think my arguments above about why we should broaden the scope of what we count as a qualifying constraint to cause an unfreedom apply regardless of whether you wish to measure freedom or not, and if measurers of freedom need to sacrifice the positions I have discussed above to create a threshold for their measurement, I think that price is too high, especially when I do think the benefits of a broader scope of freedom, that acknowledges it through the lens of conceptual clarity before the necessary stage of discussing solvability, etc., in the same vein as Sen, Crocker, and Van Parijs, makes a lot more sense and creates a much better position than the alternative.

The Argument from Ordinary Language

This point is brief, and it is that 'appeals to ordinary language' being used to justify a position on freedom, on either side of the debate including the theorists I agree with, is a widely useless exercise if given too much weight. Whilst I can understand where there can be some relevance in mentioning it, primarily through the context of explaining how as a term itself it has received widespread usage as a social good, as an important political term, and perhaps in historical discussions of the term's usage - I think beyond that it does not create strong arguments. To say, 'the ordinary language usage of freedom suggests X' and to also conversely say 'the ordinary language usage of freedom suggests Y' both carry equal weight when they are merely stated based on the authors perceptions. Almost all of the authors above, on both sides, have done this and I always find myself confused as to the intention behind such an argument, since it is particularly weak. It is almost always stated without any real basis beyond the authors own view, and as such, it feels right to state that arguments that depend solely upon this should be viewed as having fundamental weaknesses unless they can somehow show its relevance.

In isolation, the three arguments above only deal with certain specifics, but when all three are taken together, it serves to demonstrate a precise counter to the exact arguments presented from negative theorists regarding distinguishing between unfreedom and inability, and about excluding non-human caused constraints. The focus here was on specifically the arguments the theorists used in Chapter 1 to

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[173] Carter (n 33).

justify their narrow concepts of constraints, so any adjacent discussions and debates away from a direct focus on constraints was due to wanting to focus on the specific kinds of arguments used to justify their position, as well as the relevant counter-arguments, which all take on a broader scope.

It demonstrates that taking the opposite view, which calls for a broader conception that sees inability as unfreedom, has multiple advantages, including conceptual clarity, better applicability to the social-political context, ensuring that historically forgotten and marginalised groups under freedom are not ignored, and allowing for freedom to serve a particular 'identification' function in political discussion, to then springboard into the broader ideological considerations. Almost all of the arguments made are not necessarily unique, them being heavily inspired by Crocker, Sen, Van Parijs, Cohen, and various others; and it is by bringing together all of their respective positions and applying it specifically to the arguments established at the end of Chapter 1 and the beginning of this chapter that we have created this current position.

<u>Conclusion</u>

The aim of this thesis was to directly address and dismiss the arguments raised by negative freedom theorists to counter the 'bivalent-ability-as-freedom' position, which states that ability is freedom and inability is unfreedom, and that naturally occurring constraints can be constraints on freedom. All of the discussions above have been to demonstrate this point, show that the arguments raised by the negative theorists this thesis discussed are inadequate, and to ensure any broader arguments were addressed.

To achieve this, I began with discussing intention-based views followed by responsibility-based views of constraints on freedom. Whilst this primarily served as creating the necessary context for our debate in Chapter 2, it also provided an independently useful discussion on the relevant merit and shortfalls of these positions. From there, we established the specifics of the position of negative freedom theorists regarding excluding inability and non-human caused constraints from causing unfreedom. This led to an in-depth discussion of theorists who challenged the prevalent negative freedom view, and their views and subsequent discussions led to us demonstrating a position that challenges the current negative view on this topic, as well as presenting more valuable alternatives. That position being that the broadening of the position to include inability and 'naturally-caused obstacles' as creating unfreedom leads to greater conceptual clarity, ensures historically forgotten groups and positions are included in freedom discussions, makes freedom a more useful term within social and political discussions and decision making, and allows freedom to serve a particular 'identification' function in political discussions to then springboard into broader concerns.

As previously stated, the hope is that this has allowed for debate to be had more directly on this fascinating and important sub-debate of freedom. The above conclusions can lead to more important and politically relevant discussions to be had regarding freedom. An example could include examining exactly which naturally-caused constraints that create unfreedom merit action (mirroring some discussions had by Sen), or debates on the relevance of the negative/positive freedom distinction in light of my conclusions (which appears to transcend both camps). I have no doubt that in a topic as broad and complex as freedom, so much more could and should be said on this topic, and the conclusions above provide both for an underexamined sub-debate of freedom to be given greater spotlight, but to also provide a springboard for more interesting discussions about what freedom can be used for; such as how Van Parijs' freedom theory led to him using it to justify Universal Basic Income. I endeavoured to keep the discussion as focused as possible, in the hope that it allows for such a debate to be had.

As freedom continues to be an incredibly volatile and debatable concept in political philosophy, this thesis has sought to challenge a position that has held back freedom as a concept from being as accurate, useful, and liberatory as it should be. It has paved the way for a better and clearer

understanding of constraints on freedom, which allows for freedom to have greater and clearer applicability to the key political questions of our age.

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