

1. What is *liberty*?

- A person is at liberty with respect to some course of action just in case other people do not interfere with that person's conduct.
 - ✓ *Negative*: liberty is *non-interference by others* with my choices.
 - ✓ *Choice-based*: others interfere with liberty by *limiting choices*, which is different from preventing me from getting what I most value.
- So why is there a basic right to liberty?

2. What is *fundamental right to liberty*?

- Basic idea: not that liberty is absolute (it couldn't be), but that any restriction on individual choice, whatever the content of the choice—any restrictions on *liberty as such*—must meet **high burden of justification**.
- Content of the right can be specified in terms of acceptable reasons for restricting liberty (the ways that regulations may meet the high burden of justification).
 - ✓ Permissible to restrict choice if the restrictions help *to protect liberty overall*: e.g., criminal law, protection of property, enforcement of contract restrict choices, but help to protect liberty of others (25-27).
 - ✓ Permissible to restrict choice to *promote general welfare*, but only when benefit is large and alternative means of provision are unlikely to succeed (27-32).
 - ✓ Paternalism is permissible for those who are unable to provide reasonable guidance for themselves, but *impermissible to impose paternalistic restrictions* on people capable of regulating their own conduct (33-34).
 - ✓ *Impermissible* to enact policies that restrict choice in the name of *equality*, beyond formal equality of opportunity: absence of legal barriers to mobility.
- Ensuring right to liberty requires relatively unregulated market economy.

3. Why a fundamental right to liberty?

- Welfarist reasons not sufficient: liberty is only one means for improving welfare.

- Instead, right is founded on an idea of the *dignity* of human beings associated with the human capacity for self-government.
- Hypothesis: To show respect for autonomy and acknowledge the special dignity of beings who have capacity for it, we must acknowledge their right to liberty.

4. Why are restrictions of choice in the name of the general welfare ever permissible?

- Law justified on grounds of the general welfare restrict liberty, but they are not designed to better protect liberty overall. So why legitimate?
- Consider public goods: (i) goods that are desired by all; (ii) if available to any, then available to all (non-excludable); (iii) no additional cost to greater use.
- Problem: rational to take a free ride on contributions of others (market failure).
- Government sometimes advances the general welfare by limiting liberty: when it requires individuals to contribute to the provision of public goods through the tax system. Friedman: taxes to support antipoverty programs (191), education.
- Limiting liberty to provide public goods is permissible because *no insult to dignity*:

5. Is it permissible to restrict choice in the name of equality?

- Focus on economic (in)equality.
- Four sources of inequality in a market economy:
 - ✓ *Inherited starting positions*: two people who are in all other respects the same may fare differently because of differences in resources they are born into.
 - ✓ *Natural talents*: two people with same inherited resources and values might end up unequal because one has highly valued natural gift that the other lacks.
 - ✓ *Preferences/values*: two people with identical inherited wealth and natural endowments might end up unequal because they have different preferences/values that lead to different job choices or labor/leisure decisions.
 - ✓ *Option luck*: two people with identical inherited wealth, natural talents, and preferences/values people may end up unequal because of results of chance processes that they have equal chances of undertaking.
- Which of these four are legitimate sources of inequality?

6. What kind of restrictions on liberty are under consideration?

- Not unannounced interferences with choices, but of setting the rules of the economic game (property, contracts, taxes, transfers, regulations).
- Ways to “limit inequalities” via rules: (i) limit inequalities that come from inherited starting positions via inheritance taxes, or education and training, or distribution of some assets at age 21; (ii) limit inequalities that come from differences of natural endowment via taxes and income transfers.

7. So what kinds of restrictions on liberty for equality are legitimate?

- One answer is “*capitalist ethic*”: requires *formal* equality of opportunity—eliminating *legal* barriers to social mobility—but accepts as legitimate inequalities that have any of the four sources.
- Another answer is “*equality of treatment*,” which has two variants: (i) “starting gate equality” (SGE): inequalities are unjust if they trace to differences in inherited starting position; (ii) “democratic equality”: condemns inequalities from differences of natural talent or inherited starting position (Rawls).

8. Why does Friedman reject SGE in favor of capitalist ethic?

- SGE distinguishes inequalities that result from inherited resources and those that result from natural talents: but this distinction is “untenable” on “ethical grounds” (164). Inherited starting position and talents are ethically on a par.
- More broadly, SGE is demeaning because it arbitrarily places welfare of some above the choices of others.

9. Should we accept choice-based libertarianism?

- Conflicts with the intuitively attractive idea that two people ought not to face different prospects in life simply because of the different social classes they are born into.
- Merely formal equality is unstable: capitalist ethic rejects legal barriers to mobility but permits effective barriers that do not have the form of legally enforced barriers.
- We can accept Friedman’s incoherence argument against SGE without rejecting equality of treatment by opting for democratic equality.