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A Measure of Freedom

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JAMES W. NICKEL

BOOK REVIEW

Ian Carter, *A Measure of Freedom* (Oxford: Oxford University Press, 1999). Hereinafter pages references will be made parenthetically in the text.

This review essay discusses Ian Carter's excellent book, *A Measure of Freedom*. Those interested in philosophical issues about liberty will find this book very worthwhile. It is long, dense, and complex, but bristles with interesting ideas, arguments, and perspectives. There are illuminating discussions of topics such as the intrinsic value of freedom, autonomy ("self-mastery"), constraints on freedom, and the practical problems of trying to measure freedom.

Carter's key idea is that freedom has "independent" or "non-specific" value, where this is contrasted with the "specific value" of the freedom to do particular things. It follows, he thinks, that we should be concerned with how much freedom we have overall, not merely with whether we have certain specific freedoms that are highly valuable. Carter argues that "the love of liberty" is more than "just the love of being free to do certain specific things" (32). It is rather a love for all sorts of freedoms, even if one cannot list them all and does not have in mind specific uses for them. Carter defends the claim, denied by Dworkin and Kymlicka, that our freedoms "have value *independently of the value we attach to the specific things they leave us free to do*" (33, Carter's italics).

Carter claims that we implicitly conceive of freedom in two different ways:

The basic idea running through this book is that we implicitly conceive freedom in a non-specific way as well as in a specific way. When we think of freedom in a specific way, we have in mind the freedom to do a specific thing or set of things. When we think of freedom in a non-specific way, we have in mind freedom as a quantitative attribute – as something an agent has more or less of in an overall



sense – without concentrating on any one specific thing that the agent is free to do. (4)

One of the most valuable features of Carter's book is its clear explanation of how freedom can be *nonspecifically valuable* or *valuable as such*.¹ If the value of a thing cannot be described wholly in terms of the good brought about by a specific instance of that thing, or a specific set of instances of that thing, then it has non-specific value (34). Money, for example, is non-specifically valuable. Its value to me is not exhausted by the expenditures I can currently identify as ones I need or would like to make. Non-specific value can be but is not necessarily intrinsic value. Something has non-specific instrumental value if and only if it is, without regard to the nature of its specific instances, a means to some other valuable phenomenon (44). To value money non-specifically one does not have to value it intrinsically. It is because of our ignorance of the future, and of the value of various options, that we value freedom non-specifically (45).

Carter believes that concern for overall freedom must be expressed quantitatively; it must allow for at least vague comparisons of the degree to which overall freedom is available in two different societies or times. He thinks that we can in principle make such comparisons.

This essay will first consider Carter's idea that we have two distinct ways of talking and thinking about freedom. After that I will consider Carter's proposal about how we can, in principle, measure overall freedom.

I. TWO WAYS OF TALKING ABOUT FREEDOM

As we saw, Carter claims that we have two separate ways of thinking about freedom. One is the discourse of specific freedoms such as freedom of conscience, speech, assembly, and movement; the other is talk about quantities of overall freedom. He thinks that both forms

¹ Joel Feinberg made an earlier attempt to do this in the section on "The Interest in Liberty on the Scales" in *Harm to Others* (New York: Oxford University Press, 1987). For a good discussion of Feinberg's account see Lawrence Haworth, *Autonomy* (New Haven: Yale University Press, 1986), 136–147.

of discourse are useful and should be preserved (290). One way of estimating the freedom available in a country involves assessing whether the basic liberties – or, more broadly, liberties that we value specifically – are respected. The other involves measurement of overall freedom. Carter opposes the avoidance of talk and thought about overall freedom, and suggests that “attributions of overall freedom, understood in purely empirical terms, are a matter of great moral and political importance” (289).

Suppose that we agree that there are these two ways of thinking and talking about freedom. We then need to know how important overall freedom is to dealing with the just distribution of freedom. Carter claims that overall freedom plays a “fundamental role” in plausible theories of distributive justice, and hence that we need to be able to measure overall freedom to formulate and apply a view of distributive justice (68, 289). But if an adequate set of specific freedoms is recognized, respected, and protected, how important is it that a high degree of overall freedom also be promoted, respected, and protected? Perhaps our concern for specific liberties such as liberty of thought, expression, assembly, and movement will do most of the work, and we will not need to give much consideration to overall freedom. This is Rawls’ view. He holds that the basic liberties are the imperative requirements of justice. But he allows that non-basic liberties are politically significant, and sees them as protected by a general liberty principle which contains “a general presumption against imposing legal and other restrictions on conduct without sufficient reason”.² Unfortunately, Carter focuses on the more extreme views of Dworkin and Kymlicka and gives too little attention to Rawls’ more moderate version of a “basic liberties” approach.

The answer to whether most of the value of liberty is captured by our conceptions of specific liberties and their value cannot be independent of the development and sophistication of understandings of liberty within our political culture. If our views of specific freedoms and their value are very primitive, overall freedom will be very important. But if the understanding within our political culture of

² John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996): 292. On Rawls’ view of liberty see James W. Nickel, “Rethinking Rawls’ Theory of Liberty and Rights,” *Chicago-Kent Law Review* 69 (1994): 763–785.

the specific freedoms and their value is extensive and sophisticated then overall freedom may be of little importance.

Perhaps Carter would respond that action-space is so large and people's interests in regard to areas within it so diverse that we will never have a fully adequate cultural understanding of which areas within it are worth exploring. But even if this response is correct it does not evade the claim about importance. Consider an analogy. Earth is well mapped, and we have a good idea of where on earth people mainly want to go. Suppose we represent those places by the main routes of airlines, ships, trains, and motor vehicles, as well as by the main footpaths. Places on these routes would have high specific value as destinations and as conduits, and volume of travel (as indicated by the thickness of the lines and dots) would indicate roughly how valuable these destinations and conduits are from a general point of view. We would recognize, however, that some people want or need to get off these beaten paths occasionally, and that there is value in being able to go to unexplored places. We can also recognize that our shared maps may not represent small areas of movement – one's path from one's kitchen to one's living room, for example.

If our mapping of freedoms is extensive and up-to-date, the value of unrecognized freedoms will be small in comparison to the value of culturally recognized freedoms. Carter might object that my analogy does not portray the way we represent the value of specific freedoms in our political culture since we only represent the value of "basic" or "fundamental" liberties. In the analogy all the main destinations and conduits of movement are represented: San Francisco gets a larger dot on the map than does Sultana, California, but both are shown. By comparison, freedom of religion gets all the attention and the freedom to smoke or to wear funny clothes gets almost none. But it is probably easier to remedy this by giving more attention to middleweight and lightweight liberties than to develop and gain cultural acceptance for the sort of empirical discourse of overall physical freedoms that Carter proposes.

In addition to focusing on valuable areas of freedom, our cultural "map" of liberty tends to focus on liberties that are sometimes or frequently threatened and hence gives less attention to areas of liberty that are important but little threatened (such as the liberty

to breathe). This seems to be a way of economizing on words and memory capacity by mainly focusing on areas of action-space where threats to important freedoms are present. Our discourse of freedom tends to be contextual and practical. It is far from obvious that the alternative way of looking at freedom that Carter proposes would be as workable or would go a better job of getting at the main value of liberty. I think that Carter overemphasizes the importance of overall freedom in cultures with well-developed understandings of the value of specific freedoms.

II. IS OVERALL FREEDOM MEASURABLE IN PRINCIPLE?

Carter is not mainly concerned with the practical problems of trying to measure freedoms, although he has a chapter on this topic. He is mainly concerned with the worry that it does not make sense in principle to compare degrees of freedom because freedoms cannot be individuated in ways that are sufficiently stable to support quantitative comparisons. Liberties are defined on areas of action-space, and that space does not seem to have a natural metric. It seems indefinitely divisible and redescribable.

This is a worry that Rawls, for example, took seriously. He accepted Hart's point that "it is only in the simplest and least significant cases that the criterion of greatest extent [of liberty] is both applicable and satisfactory".³ In consequence, Rawls abandoned the formulation of the First Principle of Justice that spoke of "...the most extensive liberty compatible with a similar liberty for others ..."⁴ and moved to a formulation in terms of "A fully adequate scheme of basic liberties ..."⁵ Carter's goal in *A Measure of Freedom* is to persuade us that we do not have to follow Rawls here. He thinks that we can make sense of quantities of freedom in the abstract.

Carter tries to make empirical sense of these quantities by conceiving action-space as *physical* action-space. He proposes that we restrict ourselves "to spatio-temporally specified descriptions of

³ John Rawls, *Political Liberalism*, 331.

⁴ John Rawls, *A Theory of Justice* (Cambridge, Mass: Harvard University Press, 1971): 60. See also 302.

⁵ John Rawls, *Political Liberalism*, 5.

actions” (183). If we think of actions as physical occurrences in the world, we can use a space-time grid to individuate and count them.⁶ We move our bodies from place to place, and use bodily movements to cause changes in other physical states of affairs. These movements and changes are just as measurable as other physical events. The degree of a person’s freedom depends on “how ‘extensive’ the actions available to her are” (184; see also 270). Thus freedom may be more extensive because one is free to move to and spend time in more places, or because the kinds of things one is free to do involve making bigger changes in the world. Since physical actions are real physical events, giving them additional descriptions does not make them more numerous. The unlimited redescribability of actions does not make it impossible to individuate or quantify them.

The idea that the size of liberties is determined by the physical dimensions of their component actions lacks appeal. It is hard to think of any plausible use for the idea that since Los Angeles is twice as far from Boulder as Albuquerque, my freedom to travel from Boulder to Los Angeles is “twice as big” as my freedom to travel from Boulder to Albuquerque. For another example, the fact that watermelons are larger than onions doesn’t seem to imply anything about the comparative sizes or weights of the liberty to slice watermelons and the liberty to slice onions. And the fact that freedom of movement has larger physical dimensions than freedom of speech does not imply anything about the size or importance of these liberties.

Carter insists that our ways of enumerating actions and comparing amounts of freedom should be independent of values and morality (291). Freedoms to do evil things are counted along with freedoms to do good things, and actions that no one will ever want to do (such as eating ten pounds of sand for lunch) are to be counted just as much as options that are culturally recognized or “meaningful”.

⁶ Physical space and time may not have a natural metric. Carter allows that he “would not like to bet on space and time really being granular” (185). But he somehow thinks that this is not much of a problem: “we need to *think of* space and time *as* granular in order to produce measurements of the ‘extensiveness of available action’” (185, Carter’s italics).

I believe that Carter's conception of physical action-space is both too narrow and too broad as a representation of the realm of overall liberty. It is too narrow because it leaves out intentions and purposes. And it is too broad because it includes vast domains that are of no interest from the perspective of overall personal liberty.

A. Too Narrow

Purposes and intentions play a central role in individuating human actions, but Carter's framework does not admit them. Consider the action type: human bodily movement causing a human death. Sometimes we can identify instances of this type of action within physical action-space. The trouble with trying to use this physical action type for purposes of counting freedoms is that it does not – and within Carter's framework cannot – represent the purpose or intent of the killing. It is in terms of purposes that we classify killings as accidents, suicides, mercy killings, killings in war, executions, killings in self-defense, or murders. Carter's framework for representing overall liberty has no way of drawing these distinctions. There is little reason to think that killings in self-defense are physically distinguishable from other killings. Instead of having the problem of indefinite redescribability, Carter has a problem of underdescription, of inadequate resources for distinguishing action types.⁷

We need a way of getting purposes and intentions into the picture, yet we know that once they are present they will greatly complicate the counting of individual actions. Carter opts for easier counting, but at the cost of severe limits on descriptive capacity.

B. Too broad

On Carter's view, the action-space for liberty includes all possible physical actions. The attraction to Carter of this broad perspective is that it covers all possibilities and leaves nothing out. But this area is so large as to be unmanageable for purposes of counting numbers of liberties.

⁷ Intentions and purposes may also be relevant to what counts as a restriction or infringement of liberty. Zoning restrictions that apply to all buildings including churches are unlikely to be seen as infringements of religious liberty unless they are thought to have hidden anti-religious purposes.

Consider smoking as an example. Currently there are (to my knowledge) six things that people deliberately smoke: tobacco, cloves, marijuana, cocaine, heroin, and opium. The liberty to smoke pertains largely or entirely to these options. But there are endless possibilities of other things to smoke such as leaves, flowers, dried fruits and vegetables, wood, bark, rubber, fabrics, and combustible chemicals (I recall experimenting with smoking as a child by lighting and smoking a short segment of dry grapevine cane). Perhaps there are 10,000 things a person could possibly – if not enjoyably – smoke. Carter wants us to think about the liberty to smoke in relation to all 10,000 of these, not just in relation to the six things that people commonly smoke. If a society permitted smoking tobacco and cloves but prohibited smoking marijuana, cocaine, heroin, and opium, I'd say that the ratio of free to total possible actions in the area of smoking was 2/6. Carter would say that it was 9996/10,000. Carter's approach gives the wrong impression by suggesting that most forms of smoking are permitted. Further, it requires us to deal with extremely large numbers of action-possibilities where the vast majority are of no interest because they have no chance of ever being chosen and enacted.

Carter's objection to focusing only on options that have some chance of being considered is that this fails to consider the possibility of innovation and change. In criticizing Kymlicka's view that the instrumental value of freedom is focused on culturally meaningful actions, Carter says:

... this objection surely assumes too static an understanding of what is 'meaningful' ... [W]hy should the relevant list of options be restricted to those that different agents at present see as meaningful? Is not one of the reasons we see freedom as valuable the fact that free social intercourse, together with the 'experiments in living' talked of by Mill, lead new meanings to be created? How are we to say which options human creativity might in the future lead individuals to judge to be meaningful? (54)

In order to provide for the possibility that new smoking options will be discovered, we do not need to use a framework that covers all logically or technologically possible options. There are two other – more manageable – things we can do. One is to update regularly the list of significant options we are using as new developments occur. We can add new options to our assessments of liberty as they arise;

we do not have to provide for them in advance. Suppose that in 2010 a genetically-engineered plant is developed that has smoke with the flavor of tobacco but no bad health effects. If people start to smoke the leaves of this plant, then we'll have seven options for smoking and our discussions of freedom to smoke will have to reflect that. If smoking this plant is legally permitted, along with tobacco and cloves, then the ratio of free to total possible actions in the area of smoking will change to 3/7. The other thing we can do is to follow Mill, Rawls, and many other theorists in recognizing a presumption against restricting conduct without good reasons. This principle will require us to leave unrestricted conduct whose pros and cons are not well understood and to tailor restrictions on conduct narrowly rather than broadly.

Thus I doubt that our interest in freedom to do new things must lead us to use in thinking about freedom an extremely comprehensive conception of action space. Even if we have a nonspecific interest in freedom, it can be defined within the action space given by our current and foreseeable practices and interests. When new options emerge we can change our conception of the action-space for liberty.

Perhaps a system for measuring overall liberty could be modeled on the Consumer Price Index.⁸ We would identify a representative "basket" of perhaps 200 liberties large and small. These would be liberties that people frequently or occasionally want, need, or value, and that are sometimes restricted. We would then send out investigators to estimate the actual degree of freedom to perform these 200 representative actions in different regions or jurisdictions. Instead of investigating the price of a bottle of wine, we would investigate the actual degree of freedom to buy (or drink) a bottle of wine. If we can find a plausible way of assigning weights to these liberties, then we can construct an overall "Liberty Index."

⁸ For information on the Consumer Price Index see the website at: <http://stats.bls.gov/cpihome.htm>.

III. CONCLUSION

Ian Carter has written an interesting and provocative book that attempts to renovate the idea of overall freedom and the idea that freedom as such is valuable. Carter's perspectives and arguments are immensely worthy of consideration. But his claims about the great value of overall freedom and its importance in thinking about distributive justice are less than completely persuasive. And his proposals for understanding overall freedom in physical and empirical terms are interesting but fundamentally untenable.

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