

# Another Look at the Revisionist Challenge to Liberty

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## I

*The Morality of Freedom (MF)* has become so well known for philosophical doctrines on a range of different issues—the nature of authority and its justification, the argument against the exclusion of ideals, the interest theory of rights, the rejection of egalitarianism—that it is easy to lose sight of the overall argument of the book, and the role these individual doctrines play in supporting it. This is, of course, to defend a conception of political freedom within the liberal tradition, which is neither individualist in nature nor anti-perfectionist in spirit, and which is rooted not in a concern about limiting the ability of governments to interfere in the lives of their subjects, but rather in a recognition of the intrinsic value of personal autonomy, and the fact that governments may sometimes have the duty to promote it. The ideal of personal autonomy presented may be summarized roughly as the ideal presented by one who is the author of their own life.

In this short note, I wish to discuss one aspect of Raz' theory of political freedom, which is the extent to which it succeeds in meeting what he calls (pp. 6–8) the “revisionist challenge” to theories of liberty. Raz locates the revisionist challenge in the work of Ronald Dworkin and John Rawls (p. 6).<sup>1</sup> It has two separable aspects. The first is to deny that liberty is intrinsically valuable, and to claim rather that “those who wrote and talked of the value of liberty really cherished not liberty but something else,” such as justice or equality (p. 6). The second is to claim that this “something else” need refers not to one particular value, but rather to a “complex of values” (p. 7), such as might be captured by Rawls' list of the basic liberties. The claim here is that the content of political freedom is exhausted by a list of rights (such as those of freedom of conscience, of expression, and of association), which are a familiar part of the liberal tradition, but that these rights are not unified by some deeper

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<sup>1</sup> He refers in particular to Dworkin's essay “What Rights Do We Have?” in *TAKING RIGHTS SERIOUSLY* (1977).

value. To use helpful terminology that Raz himself introduces later in the book (pp. 168–70), the second kind of revisionist would claim that there is no “core” right to liberty as such from which these more particular liberties can be derived; rather, the individual liberties may be justified in different ways in different cases.

Raz’ ultimate goal is to defend a conception of personal liberty on which it is intrinsically valuable, and so at least to meet the first revisionist challenge (p. 17). He also wishes to reject the idea that the basic liberties should be given disparate justifications: the ideal of personal autonomy, he claims, can also serve to preserve “the unity of the idea of political freedom” (p. 246).<sup>2</sup> This is how the second revisionist challenge is to be met.

Despite the denial of revisionism, Raz is careful to acknowledge the strength of the revisionist challenge, which he locates in two problems. The first might be called the problem of discrimination. Any account of political liberty must provide resources for explaining “which freedoms are important, which are not, and why” (p. 11). An unqualified assertion of the value of liberty as such does not allow us to see, for instance, why a concern for religious freedom should matter more than, say, the freedom to be cruel to animals (p. 11). The revisionist takes this to show that freedom does not matter as such (p. 13). Grounding the importance of political liberty in terms of the value of personal autonomy solves the problem of discrimination—for not all freedoms are important elements of personal autonomy (pp. 373–81). In particular, personal autonomy is valuable only when the options protected by these freedoms are morally acceptable (pp. 378–81). This is one reason why the theory is a perfectionist one.

The second source of the revisionist challenge, according to Raz, is posed whenever we ask what counts as a restriction of freedom (p. 13). The challenge—what we shall call the problem of freedom restriction—is posed by a series of questions:

Forcing someone to act in a certain way seems to qualify as a denial of freedom. But if the law requires me to wear a seat-belt when driving my car does it force me to do so? If not, does it restrict my freedom in some other way? Does need force a person to accept employment for a very low wage? If so does it mean that anyone has restricted his freedom? Is it his current employer, or his previous one who dismissed him and created his need, or the government which made the laws under which such events occur? . . .

Put in this way, it is not immediately clear what is being challenged, in what the challenge consists, or how it reinforces the revisionist account of freedom (perhaps it does so because it does not seem easy to find a unified way in which

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<sup>2</sup> Raz does not, however, think that the relation of these liberties to the ideal of personal autonomy is the relation between derivative and core rights, because he does not think that there is a *right* of personal autonomy (pp. 246–47). This part of the argument need not detain us.

to answer these questions). But minimally what is being posed is a constraint on any acceptable theory of freedom—that it must tell us what count as restrictions on freedom, which restrictions are morally important, and why. On Raz' view prohibitions on coercion do not exhaust the idea of freedom. In particular, the protection of negative liberty by restricting coercion is morally important only insofar as it serves personal autonomy (pp. 408–10). Thus, only those freedom restrictions are important which undermine or invade personal autonomy.

Raz' account of coercion and freedom is presented in a less self-contained manner than other portions of his theory, and this might be one reason why it has been the object of less systematic study than, e.g., his theory of rights. Another reason is that the philosophical study of coercion has tended to be dominated by a certain style of conceptual analysis which Raz himself would find beside the point (p. 16).<sup>3</sup> I will not try and reconstruct the account fully, but rather describe those elements of it which are relevant to the questions of discrimination and restriction.

## II

How does the theory of personal autonomy presented in *MF* solve the problems of discrimination and freedom restriction outlined above? Let us begin with the ideal of personal autonomy itself. Raz distinguishes two senses of autonomy, one in which it is construed as an achievement, another in which it is construed as a capacity (p. 204). In the first sense,

An autonomous person is part author of his own life. His life is, in part, of his own making. The autonomous person's life is marked not only by what it is but also by what it might have been and by the way it became what it is (p. 204).<sup>4</sup>

In this sense of autonomy, what is judged as autonomous or not is in the first instance a life, on the basis of how it has come to be lived (p. 371). This contrasts with a more familiar sense of autonomy, understood as a capacity of an individual at a time—for instance, the power to determine which acts to perform (p. 371). Autonomy in this sense requires that certain conditions obtain, some having to do with the state and mental capacities of the individual concerned, and others having to do with his or her circumstances—for instance, in the availability of an adequate range of options, a topic on which Raz has a good deal to (pp. 204, 371–78).

For one who takes autonomy to be constituted by rights, it is the second sense of autonomy, which is relevant—what matters morally speaking is

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<sup>3</sup> Raz makes this point in a section entitled "The Inadequacy of Linguistic Analysis" (pp. 14–16) As he puts it, "One can derive a concept from a theory but not the other way round." (p. 16).

<sup>4</sup> Elsewhere, Raz describes it as "the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives." (p. 369).

whether the conditions for an autonomous life obtained, regardless of whether the individual in question made use of them to become the author of their own life (pp. 204–05). For Raz, the order of priority is reversed. The capacity is valuable only because its exercise is valuable (p. 372).

Despite the fact that the value of autonomy in the “capacity” sense is for Raz of secondary importance, a significant part of the doctrine of political freedom derives from a rich account of the conditions of autonomy (he uses the phrases “capacity for autonomy” and “conditions of autonomy” interchangeably). It is here that his “moralistic” doctrine of political freedom is given content, though the full doctrine requires an account also of duties to protect or promote the conditions of autonomy, duties which go well beyond the traditional focus on non-interference (p. 408).

Raz distinguishes three components amongst the conditions of autonomy: appropriate mental abilities, an adequate range of options, and independence from coercion and manipulation (pp. 372–81). The mental abilities required are the familiar ones of rational competence, the ability to plan, and a certain degree of self-awareness; these are not described in detail. The real action, so to speak, is in the analysis of the adequacy of options.

One important aspect of this analysis need not detain us here. This is the suggestion that at least some options are constituted by collective goods such as the existence of certain social conditions (pp. 203–07). There are many professions that are constituted at least in part by certain forms of social and institutional recognition: one can design buildings regularly without being an architect (p. 205). What is true of professions is also true of other social roles, such as that of being married. To cohabit with another person is not the same as being married to them; the latter involves involvement in a social framework that is not available in the first case.<sup>5</sup> This is one aspect of the theory that is involved in the rejection of an individualistic outlook (p. 206). It is also part of the rejection of the view that freedom is constituted by an individual right against coercion, since personal autonomy is constituted in part by the provision of such collective goods.

Amongst the criteria of adequacy of options is that they should include both “longterm pervasive consequences” such as the choice of friends or careers, as well as trivial short-term ones such as when to comb out hair (p. 374). The famous examples of the Man in the Pit and the Hounded Woman are meant to illustrate the limits of adequacy, in both directions—the Man in the Pit can choose only amongst trivial options, while the Hounded Woman can think of nothing but how to safeguard her life. Neither is autonomous.

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<sup>5</sup> The struggle for recognition of gay marriage in a context that permits civil unions is an example of what Raz has in mind.

There are two further conditions on the adequacy of options. The first is a matter of variety: the range of options must be such as to enable a person to “sustain throughout his life activities which, taken together, exercise all the capacities human beings have an innate drive to exercise.” These include the drives to move around, engage our imagination, and occupy our mind (p. 375).

The second condition of adequacy of options is that they do not require choices that are dominated by the need to protect the life one has—one’s options are inadequate if all except one make the continuation of the life one has unlikely (p. 376). A threat to break a pianist’s fingers unless he complies with instructions reduces options in such a way as to make them inadequate, even if he could go on to lead a satisfactory life as a non-pianist. (p. 377).

A life can be autonomous without being valuable, because autonomy is valuable only when it is exercised for the good; Thus the non-availability of options to do evil does not diminish a person’s autonomy in any morally important way (p. 381).

We now have an elegant solution to the problem of discrimination, deriving the relative importance of different freedoms from the extent to which they contribute to personal autonomy, understood as an ideal. Since cruelty to animals is immoral, the freedom to be cruel to animals contributes nothing of value to the pursuit of autonomy. Nevertheless, personal autonomy constitutes a distinctive ideal, for it can be described without committing to any particular complex of options or ways of life (p. 395).

Similarly, the value of an autonomous life (understood as an achievement) is in part a function of the value of the goals and projects that constitute it; the ranking of value in this dimension can determine the relative importance of the different freedoms necessary to achieve that life. This is how Raz can explain why the freedom of religious worship is less valuable than the freedom, say, to “spend a fortnight at the summit of Ben Nevis” (p. 11).

### III

Let me turn now to the problem of freedom restriction. To appreciate Raz’ solution to this problem, we must examine the last of the three components of personal autonomy, independence (pp. 377–78). The notion is described rather briefly, but it seems to amount to an absence of coercion and manipulation: these involve the subjecting of one person’s will to another’s, and in that respect are inconsistent with autonomy. Two choice situations may be identical except for the fact that in one case it is the result of an intentional interference with another’s life, and in the other it is the result of natural

conditions. The former always involves the invasion of autonomy, while the latter need not (p. 155).

One notable aspect of the theory is that the reduction of options plays a secondary role within it: one can invade another person's autonomy without reducing their options (for instance, when one manipulates them), and the reduction of options by means of coercion is not always in itself problematic—for instance, when the options are so trivial as to be unnecessary for personal autonomy (p. 410), or when this reduction is necessary in the service of promoting personal autonomy, as in the case of many paternalistic measures (p. 422).

The moral significance of coercion is explained in part by its relational component. Coercion—unlike other ways of reducing a person's options—is an intentional action that may express a certain kind of insult or affront to the person coerced, by treating them as a non-autonomous agent (p. 156). This is so even when the consequences of coercion (in terms of the options it reduces) are not very great. This kind of wrong is particularly salient in cases where the making of choices has acquired a certain symbolic status, as expressive of a person's autonomy. It is against the background of such a social convention that coercion might be seen as expressing disregard or contempt (p. 378). But not all instances of coercion will be like this—coercion by an ideal liberal state guided by a public morality committed to the protection of personal autonomy will not express insults to the autonomy of individuals (p. 157). And the significance of having certain options may be a culturally relative matter: for instance, the symbolic significance of the right to vote may vary from country to country. (p. 410).

A focus on the relational aspect of the theory of coercion should not take away from those aspects of the theory which *are* connected with the reduction of options. On Raz' view, for a person to be forced to act in a certain way requires that his situation be such that his actions are justified or excused (p. 152). One principle governing excuses is that one is excused for performing actions in order to preserve the life they have, as long as it is not immoral or not worth having (p. 152). Raz calls the conditions necessary to have the life they have or have embarked upon "personal needs." A life which is dictated by personal needs is not autonomous (p. 155). But not all threats have to involve such serious consequences to count as coercive: if the threat would justify a coerced action, then it would count as coercive even if the consequence threatened does not imperil a personal need.

The outlines of a solution to the problem of freedom restriction should now be clear. We need not ask in the abstract whether or not an intervention counts as a restriction of freedom, for linguistic or conceptual analysis will not be able to settle the question in a way that responds to the needs of a moral or political theory (pp. 15–16). A theory of freedom restriction must follow a moral theory

of the kind advocated by Raz. On Raz' account, the restriction of freedom matters morally speaking only if it invades personal autonomy. It might do this in two ways: by expressing relational disrespect or contempt, or by reducing a life to one dictated by personal needs. In one sense, the challenge of freedom restriction is met by presenting a moral theory that characterizes which freedom restrictions are morally important. But if the source of the revisionist challenge is that the problem of freedom restriction is that it shows that the concept "freedom" is confused or ambiguous, then the challenge is met by rejecting the demand to provide a theory-independent account of freedom, that is what the revisionist is asking for. As Raz puts it, "[o]ne can derive a concept from a theory but not the other way round" (p. 16).

#### IV

So far I have sketched what I take to be one part of Raz' solutions to the revisionist challenges insofar as they are motivated by the problems of discrimination and freedom restriction. In a way, the full response to the challenges is presented by a book as a whole, though even here one might wish for a more detailed analysis, for instance, of how the basic liberties are unified in terms of the ideal of personal autonomy.<sup>6</sup> Indeed, one of the pleasures of reading *MF* is the gradual appreciation of the interlocking of its seemingly disparate parts, and how they together form the foundation for a liberal political morality. But even if the vision is unified and consistent—as I think it is—I am left with the nagging suspicion that it does not fully account for revisionist doubts about the unity and value of freedom. Let me describe three kinds of ways in which a revisionist might find it unsatisfactory.<sup>7</sup>

One kind of revisionist would agree with Raz that accounts of freedom should not be framed in the abstract, but in the light of a broader moral theory. They would also agree with Raz' point that the choices that a theory of freedom might seek to protect can be fruitfully characterized by their normative consequences (p. 151). But they would point out that the normative consequences of coercion-claims are quite diverse, and suggest that this diversity might reflect an underlying disunity in the idea of freedom.<sup>8</sup> One such view was expressed by Alan Wertheimer (1987) in his classic book *Coercion*.<sup>9</sup>

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<sup>6</sup> Presumably, the account would run through the ways in which the exercise of these liberties is valuable to a life as a whole—though it is not clear to me how their contribution to value runs through the ideal of personal autonomy as opposed to other aspects of a person's well-being.

<sup>7</sup> I make no claim that the revisionists whom Raz addresses—primarily Dworkin and Rawls—would endorse these objections.

<sup>8</sup> I am here taking a theory of coercion to be at least one part of a theory of freedom.

<sup>9</sup> The point is also made by MITCHELL BERMAN, *The Normative Function of Coercion Claims*, 8 *LEGAL THEORY* 45, 45–89.

The first part of the book is spent in examining a variety of legal contexts in which the notion of coercion is invoked: among others the law of contracts (to determine when contracts are void or voidable for coercion), marriage and adoption law, blackmail, forced confessions, plea-bargaining, and the defenses of duress and necessity in the criminal law.

Having conducted a survey of the legal position, Wertheimer asks: is there a single theory of coercion which can account for the role it plays in all these different contexts? He suggests not. The claim that A has coerced B may have the normative consequence that B is not bound by a contract she has been coerced into signing, or that B is excused from a morally bad act because she has been forced to perform it. But though “coercion” is invoked in both these contexts, whether or not A *has* coerced B might depend upon the context in question. In some situations, informal pressures may be enough to coerce; in other cases, for instance, those having to do with moral responsibility, the threshold may be much stronger. The difference is to be explained by some further moral principles linking the situation of A and B to the specific normative consequence in question: it is these principles which will determine whether or not the consequences obtain.

It is difficult in the space of a short comment to go through Wertheimer’s arguments in any detail: they depend upon surveying the moral concerns raised in terms of coercion across a number of different contexts. For the moment let me simply state Wertheimer’s conclusion, which is that “the truth of a coercion claim is largely the *result* of a moral inquiry rather than the *ground* of a moral conclusion” (Wertheimer, p. 309). He goes on to explain:

... Should experiments with prisoners in exchange for rewards be prohibited on the grounds that, given the conditions of incarceration, such blandishments constitute coercion? Should the sale of bodily organs by the poor be prohibited on the grounds that poverty coerces? The form of these questions implies that we can first determine whether such rewards constitute coercion and then go on to say whether the practice should be prohibited. On my view, however, the interesting question is not whether the offers are, in some sense, coercive. The interesting questions are these: Can persons in such conditions make intelligent judgments about their interests? Does society have an obligation to provide them with better alternatives? If society has not provided better alternatives, should such persons be allowed to improve their positions anyway? And, I suggest, *no* account of coercion should be prohibited without answering just these (sorts of) questions.

In many respects, this sentiment will be congenial to the position articulated in *MF*: Wertheimer shares with Raz a scepticism about the role of conceptual analysis in the solution of substantive moral problems; both are also sensitive to the role of quite fine-grained empirical issues (regarding people’s capacities, for instance) in the solution of some of these problems. And at least some of the questions above might be re-framed in Razian terms—for instance, one

might ask whether denying someone the opportunity to sell bodily organs involves a restriction of personal autonomy.

But I think one can extend Wertheimer's position further in ways that reveal a further tension with the position in *MF*, by considering a wider range of examples. Take the case of plea-bargaining, also discussed by Wertheimer. To what extent does the permissibility of plea-bargaining depend upon whether criminal defendants are free to decide whether or not to plea-bargain? One can certainly frame the question in terms of freedom restriction, and appeal in the background to a principle that says that plea-bargains should be accepted only if they are entered into freely. One would then have to ask: does the prospect of a lengthy sentence reduce freedom? Does it do so equally for the innocent as well as for the guilty defendant?

What such an enquiry seems to leave out, or bring in only through the back door, are important moral questions in the theory of criminal justice. For instance: to what extent should the allocation of suffering by a system of punishment be affected by whether or not a defendant is inclined, or has good reasons, to choose to the certainty of a lesser amount of suffering over a smaller but still significant probability of suffering a great deal more, regardless of actual guilt or innocence? *This* question seems to be about fairness in criminal justice, not about freedom. This, I think, is one sort of issue that might motivate the first kind of revisionist challenge.

The second kind of revisionist challenge—that concerns framed in terms of freedom might reflect a range of heterogenous underlying values—can be motivated by reflecting on the role played by fact that a criminal defendant makes a decision to accept a plea-bargain under the shadow of a threatened penalty. Does the shadow of a penalty play the same role in explaining, for instance, why actions performed under duress are sometimes excused? The latter exercise involves a substantive theory of moral responsibility—perhaps one on which an act performed under duress is not reflective of an attitude of indifference or ill-will toward the victims of the act. It would be no surprise if the threshold governing how serious the penalty must be in order to render a plea-bargain void is different from that governing when an act is excused; this would reflect a difference in the underlying theories. So while the questions of whether a plea-bargain is acceptable and whether an action is excused might both be phrased in terms of the freedom of the agents involved, there does not seem to be an underlying unity of explanation. The move to personal autonomy does not seem to help: perhaps one can construct a theory of fairness and criminal justice out of such an ideal, but I do not see how it will help underly a theory of moral responsibility.

The form of the revisionist challenge here is to explain just how the reduction of freedom in some context has some particular normative consequence.

The problem arises in another guise when one considers that at least some of the normative consequences of acts performed in constrained choice-situations are explained not by the fact that the choice-situation is constrained but by facts about how it is brought about. A familiar example is the contrast between (a) the person who hands over money to a gunman in fear of his life, and (b) the person who hands over money to a surgeon in order to perform a life-saving operation.

In both cases, the money is handed over in the belief that it is necessary to save one's life; but the recipient has a valid claim on it only in (b). What explains the difference? Presumably the facts that, first, the gunman has brought about the choice situation whereas the surgeon (we may assume) has not; and second, that the gunman acts wrongfully in demanding the money while the surgeon (we may assume) has not. Raz recognizes the second distinction in his discussion of consent (p. 89), and presumably the Independence condition is intended to account for the first distinction. It is on this basis that Raz could account for the difference between the two cases, and claim that the gunman invades his victim's autonomy but that the surgeon does not invade his patient's autonomy; and further that the relevant normative consequence—whether or not there is a valid transfer—depends upon whether personal autonomy has been invaded. This would require a theory of property founded on the notion of personal autonomy, but perhaps that can be provided.

I think, however, that the problems raised by this kind of case go deeper and might apply just as well to a theory founded on the importance of personal autonomy. The central question here is why personal autonomy should be invaded by wrongful threats but not by other proposals that are not wrongful to make, though they leave the recipient in the same choice situation. (One answer might lie in the difference in what such proposals express, but I do not think that is the relevant issue here.)

Let us take as an example the freedom of contract. Any theory of freedom of contract must explain how contracts are vitiated by force and fraud. For the sake of variety, consider the case of fraud, though one could make a parallel argument in the case of force.<sup>10</sup> Imagine an art dealer who sells a client a fake Vermeer at a price that would be fair if the painting was genuine; the client discovers that it is a fake and demands his money back, on the grounds that his consent has been vitiated. Why should that be so? On one traditional analysis—the sort a revisionist might oppose—the question is to be answered by asking whether the consent was voluntary, where the voluntariness of consent (here used as a proxy for whether the consent was given freely) is a condition of the

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<sup>10</sup> The following example is taken from an unpublished paper entitled "The Significance of Consent," in which I attempt to draw lessons for the study of so-called cases of "rape by fraud." A compressed version of the argument as it applies to both force and fraud can be found in JUDITH JARVIS THOMSON, *THE REALM OF RIGHTS*, pp. 310–13 (1990).

agent consenting, constituted by her options, beliefs, and mental capacities. The background normative principle might be that only voluntary (freely given) exchanges are valid.

On such an “agent-centred” account of the voluntariness of consent, it should not matter, normatively speaking, just how the client’s false belief is brought about: what matters is that it is false. But this cannot be right. Whether or not the art dealer gets to keep the money surely depends upon considerations of relative fault as well as considerations about the appropriate duties of disclosure and the appropriate allocation of the burden of making a mistake. When the art dealer deliberately sets out to defraud the client, and the client has carried out duties of due diligence, it seems clear that the money should be returned.

But what if the art dealer were blamelessly mistaken about the painting, and the client negligent or reckless in ignoring independent advice to the effect that the painting was a fake? Or a situation of mutual mistake? Here it less clear just what the normative consequences are—how the equities are to be balanced. But it also seems unclear how a theory of voluntariness can do the job. In order to determine what these duties of disclosure and diligence are, we need to examine questions such as: who has access to information or the resources to get this information in the art market (e.g., whether prospective buyers will be “sophisticated” or not), what sorts of behavior we wish to encourage in such a market, how we would wish to apportion the risk of mistake, and so forth.

Some of these questions—e.g., about the prior distribution of talents and resources—will be empirical, while others—e.g., that it is not fair to make an unsophisticated customer (such as the proverbial old lady who wants to buy a present for her niece) pay for a mistake when the dealer has access to material information—will be normative; this might in turn derive from a wider principle to the effect that one should not benefit from one’s own wrongdoing. Considerations of this sort will allow us to make very fine-grained distinctions between the duties owed by art dealers to fellow dealers and the duties they owe to infirm aunts. They will also allow us to make fine-grained distinctions between the duties owed by sellers in markets for different sorts of goods: the standards of disclosure in the art market may be quite different from, e.g., the standards relevant in the housing market, depending on differences about what is at stake, and differences in informational asymmetries between these two markets.

These features seem to have little to do with freedom—that is to say, considerations of freedom do not seem to play any direct role in the explanation of why the relevant normative consequences obtain. Should we really see these duties as grounded in our obligations to protect and promote other people’s autonomy? It seems to me that they would exist in a moral system that placed no weight at all on people being the authors of their own life. At the very least,

it calls for some heavy-duty moral theorizing to explain how considerations of relevant fault are to be incorporated into a theory of personal autonomy. A more full-fledged defense of the “Independence” condition on the adequacy of options might do the trick, but more needs to be said to make it convincing.

A final example of a revisionist challenge, this time with respect to the problem of freedom restriction, is given by paired cases such as the following:<sup>11</sup>

- (1) If you don’t come to work on time I’ll fire you from your job.
- (1’) If you don’t sleep with me I’ll fire you from your job.
- (2) If you don’t honor your campaign promises I won’t vote for you.
- (2’) If you don’t pay me \$10,000 I won’t vote for you.
- (3) If you don’t stop your affair I’ll tell your wife about your affair.
- (3’) If you don’t give me a job I’ll tell your wife about your affair.

In each pair of cases, we are faced with identical penalties, which we may assume are equally weighty and remove an important option from the recipient (that of keeping a job without having sex with a superior; or getting a vote without having to spend \$10,000). The normative consequences of making the proposals are however different within each pair—it is morally acceptable to make the first kind of proposal, but not morally acceptable to make the second. The challenge for the freedom-theorist is to explain why. One explanation is that the wrongful proposals are wrongful because they reduce freedom, in which case what must be explained is why freedom is being reduced in the wrongful proposals but not in the acceptable. The other is to formulate some independent moral principle to explain the differences within each pair—in which case the challenge is to explain what these principles have to do with freedom.

Let me suggest an explanation along revisionist lines, i.e., one which does not invoke the idea of freedom, and in which the underlying moral principles are themselves domain-specific, appealing to norms internal to the activities and institutions in question (employment, democracy, and sexual relations in these examples). For the sake of brevity, I will focus on the examples involving employment and democracy: the form of the explanation will be easy to generalize.

Take the employment context first.<sup>12</sup> There are good reasons for wanting some hierarchical employment structures in which people higher up in the hierarchy have discretion over the careers of people lower down in the hierarchy: reasons having to do with efficiency, for instance. This hierarchy confers two powers upon the superior: the power to affect the subordinate’s well-being by firing her, promoting her, changing her pay-scales, and so forth; and the

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<sup>11</sup> I discuss these cases in an unpublished draft entitled “Coercion and Moral Explanation.”

<sup>12</sup> This explanation is substantially the same as that presented by THOMAS SCANLON, *MORAL DIMENSIONS* (2008), pp. 83–86.

power to influence her by giving incentives, e.g., by threatening to demote her or fire her, or offering promotions conditional on superior performance.

The former power is granted to the superior by the institutional hierarchy in place. The latter power depends upon the subordinate's believing that the superior (i) has the former power and (ii) is willing to exercise it in the manner indicated; and upon her desire to avoid the threatened penalty or to gain the offered reward. The exercise of both these powers is governed by certain moral constraints. Some of these constraints derive from the underlying rationale for having such hierarchical structures to begin with.

Here is a plausible norm describing this constraint in an employment context: that the exercise of these powers is justified only on the basis of considerations having to do with abilities connected with the job. In the situation we are imagining, this norm is not violated by the act of firing her for being late; nor is it violated by the act of threatening to fire her if she does not come into work on time. But it is violated by the act of threatening to fire her unless she sleeps with you—this exercise of the power to influence has nothing to do with abilities connected with the job.

Now consider the case of democracy. The right to vote confers the power of affecting another's well-being, but it also confers a power of influence. This power of influence is not incidental to the system of voting from which it derives: there would be little point in a system which allowed people to vote for or against various candidates, but which did not allow them to announce in advance the conditions under which they would so vote. It is precisely by means of making these threats that voters hold their politicians accountable for their actions and promises.

But the range of permissible incentives that voters can give their potential representatives is restricted to those which have some internal connection with the right that is the ultimate source of this power—they must in some sense be appropriate to the roles and responsibilities such politicians have by virtue of their office.

When I threaten not to vote for someone unless they fulfill their campaign promises, I am trying to influence them in ways that are internally related to the very point of having a system of democratic decision-making. The point is that the right to vote is valuable because it gives rise to a power to influence the policies and performances of candidates running for office. While it also gives voters the power to influence candidates in other ways—for instance, to influence them to pay money in exchange for the vote—exercising that power in this way is a violation of the norms governing the exercise of democratic pressure. This is why the threat not to vote for the candidate is exercised permissibly in the first case, but not in the second.

On the face of it, the principles explaining the difference in permissibility makes reference to quite different considerations having to do with different institutional norms; to the extent that there is an underlying unity, it might

have something to do with the general idea that one should only exercise institutionally generated influence for purposes sanctioned by the institution in question. But it does not seem to have anything to do with freedom.

Once again, Raz' account of personal autonomy may be able to capture the differences within each pair. If the wrong of coercion is in part to be explained in terms of the attitude it expresses, then threats to exact institutionally defined penalties may not be coercive when aimed at bringing about institutionally sanctioned activities; Raz makes a similar point when discussing justifiable coercion by the State (p. 157). One might add that threats of the first kind in each pair promote autonomy by providing an incentive to lead a morally valuable life, while threats of the second kind do not; this too may explain the differences within each pair. The question, however, is not whether Raz' theory has the resources to make the relevant distinctions, but whether the theory accounts for the morally significant differences in the right way. My instinct is to say that it does not, and so to prefer the alternative explanation that points to an underlying disunity of the relevant norms.

## V

In presenting the revisionist challenge as I did above, three points are worth re-emphasizing. The first is that the revisionist challenges are not intended as reconstructions of the actual challenges (those posed by Rawls and Dworkin) to which Raz was responding. I have rather taken the challenges to be defined by Raz' own characterization of them in chapter one of *MF*, and which might be expressed in terms of the problems of discrimination and restriction, respectively. What I have attempted to do is articulate, in a speculative way, why one might wish to be a revisionist about freedom in the ways described.

Second, it is crucial to note that Raz would find many of the revisionist challenges to freedom quite congenial, because they present a constraint on any conception of political freedom. The failure of traditional accounts to satisfy these constraints only adds support to his own theory. And certainly one lesson from the challenges (which I did not draw expressly) is that any account of freedom that aims to respond to them will be "moralized": they will depend upon a background of substantive moral principles which require independent defense. This is also one of the lessons of *MF*.

Finally, I do not claim to have proved that the revisionist challenges apply with exactly the same force to freedom understood as personal autonomy. As I indicated above, many elements of Raz' theory might be brought to bear on the examples presented. Furthermore, the doctrine of freedom presented in *MF* is only a fragment of a liberal political theory, one that is addressed primarily to the authority of the State over individuals. Other elements—such as a theory of liberty of contract—will of necessity appeal to other substantive moral

principles which *MF* has no need to cover. My hunch is that explanations of the relevant phenomena in terms of the theory of personal freedom will be less satisfactory than the alternatives I present. But the point of these remarks might be regarded more modestly as an invitation to fill out these additional elements of a liberal political morality.