

Freedom in the Workplace?

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For Eli

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Freedom in the Workplace?

Introduction

Most of us in the United States will spend our adult lives working for a living. During that time you will probably face important decisions. You might, for example, have to decide whether to accept a job offer or remain a full-time student. You might be conflicted about accepting a very low-paying service job just because it cannot be outsourced abroad. Or you might want to reject an offer because the employer does not provide health insurance or day care for your children. As an employee you might think twice about joining a labor union if your employer might fire you and it would be difficult to find another job in the current labor market.¹

These decisions are made in what many thinkers (such as philosophers and social scientists) call a “free market.” Of course, they acknowledge that our capitalist market is not completely free. Workers, for example, are prohibited by law from violating contracts with their employers, and

employers are not legally free to discriminate by race and sex.

However, it is said by many thinkers that despite some limitations workers in our capitalist labor market enjoy great freedom. They are free to accept or refuse employer offers, and as employees they are free to remain in a job or quit.

It is true that some workers are fortunate enough financially to exercise such freedom. But a great many do not have that freedom. Put yourself in the position of these individuals:

1. An employee wants to blow the whistle on the owner of his plant who violates the Occupational Health and Safety Act (OSHA). The employee knows that conditions in the plant are harmful to those who work there, but he also knows that if he were to report the violation, the owner would (illegally) ensure that he is blacklisted in the industry. The worker's family depends on his wages, and he knows that he would have practically no chance of obtaining another position.
2. An impoverished, unemployed worker is offered a job that barely pays enough to feed himself and his family. The employer tells him, "Take it or leave it. Plenty of people would take this job." The unemployed person accepts the offer as the lesser evil to continued joblessness.

3. An ailing worker remains in her exhausting job because she and her diabetic children desperately need the health insurance the job provides.

Many thinkers would disagree as to whether the workers in these three cases are free or unfree. And how would the workers involved feel about their freedom or unfreedom?

Take the worker who is threatened with being black-listed if he blows the whistle on his employer. Given that his family depends on his wages, is he free to blow that whistle? The worker would not think so and neither do I. Yet there are some philosophers who would disagree.

What of the impoverished, unemployed person who is offered a job that barely supports his family? The unemployed person surely would regard himself as unfree to refuse this offer and I agree with him. Yet the fact is many philosophers would regard him as free to do so.

The ailing worker who remains at her exhausting job for the health insurance she needs for her diabetic children surely believes that she is unfree to leave her position and I agree with her. Yet there are some philosophers and social scientists who would regard even her as enjoying the freedom found in capitalist society.

What workers themselves believe about their own freedom or unfreedom may not be the whole truth of the matter, but it is often closer to the truth than the views held by many theorists.

Important ethical issues are at work here. I shall suggest that the unfreedom of the three workers discussed above—and many like them—is wrongful. You may find yourself in situations where, contrary to some philosophers, you think of yourself as unfree and forced into a certain action. In the following pages, I shall explore such situations in depth. Let us begin with the meaning of freedom itself and then go on to forcing, using examples to show the reality of both.

CHAPTER I

The Obstacle Concept of Freedom

When is a person free or unfree to do (or not do) something?*

Let us follow the lead of Gerald C. McCallum Jr. He suggested that a person is free to do something (or not) when there are no obstacles, such as constraints, restrictions, or interfering conditions, which prevent her from doing something (or not). A person is unfree when there are such obstacles. (Hereafter, I refer to this as the *obstacle* concept.)¹ If the obstacle is not mentioned, it is usually understood from the context.

No one is simply free or unfree. One is free *from* an obstacle preventing someone from doing something (or not). One is unfree to do something (or not) because an obstacle prevents someone from doing it (or not).

* The concept of freedom and unfreedom developed here has no bearing on the metaphysical concept of free will.

Take the women production line workers at a Nabisco plant who were *unfree* to use the restroom. The obstacle to such use was a three-day suspension. Ordered to urinate in their clothes, they resorted to wearing diapers, incontinence pads, or less expensive toilet paper and Kotex—"protection" that is harmful when drenched with urine.

Workers at the plant, including men with serious kidney problems were *unfree* to use the restroom without permission. The obstacle to such use without first getting permission was suspension.²

Becoming Free

Suppose that the lack of day care at time t_1 is an obstacle that renders a mother unfree to work. But day care becomes available to her at a later time, t_2 . Day care removes the obstacle to her working and she *becomes free* to do so. Her becoming free at time t_2 implies that she was unfree before at time t_1 .

Suppose at time t_1 , a supervisor threatens a woman employee: if she complains about his sexual harassment he will not recommend her for the pay raise she badly needs to support her children. At time t_1 the prospect of no pay raise is an obstacle that makes her unfree to complain. But at time t_2 , her union informs the employer about the

supervisor's threat. Because of the union action on her behalf at time t_2 , she *becomes free* to complain about his sexual harassment. The union action *freed* her from the obstacle of the supervisor's threat.

Before 1964 blacks were unfree by law to sit at lunch counters with whites in the South. But in 1964 the Civil Rights Act freed them from that legal impediment. They became legally free to do so.

Active and Inactive Freedom and Unfreedom

A person's freedom and unfreedom shifts with time, as obstacles appear and disappear. For example, an obstacle to someone's living outside of a forced labor camp is created when she is brought into the camp. She is unfree to live outside the camp. If she is released the obstacle is removed and she becomes free to live on the outside.

It seems that, according to my view, I am free and unfree relative to countless obstacles. For example, travel to distant solar systems is physically impossible. Am I unfree to do so? Yet such travel has no relevance to my life. It seems odd to include it in a list of my unfreedoms.

Suppose such travel becomes physically possible. If I become free to engage in such travel at t_2 , I must have been unfree before at t_1 . Yet such freedom and unfreedom at t_1 had no significance for me.

Let us distinguish two kinds of freedom and two kinds of unfreedom: *active* and *inactive*. My unfreedom now to travel to distant solar systems is inactive since such travel is not relevant to my life. (Relevance to my life includes relevance to my desires, wants, plans, and obligations.) If traveling to distant solar systems becomes physically possible and relevant to my life then my unfreedom to do so would become active. Of course, if I were now a space explorer who yearns to do the impossible—travel to distant solar systems—such travel, even if impossible, would be relevant to my life and I would be actively unfree to do so.

In what follows, unless otherwise specified, freedom and unfreedom are active.

Free and Unfree

One may be free and unfree at the same time to do a specific act relative to different obstacles. Suppose, for example, an employer asks his observant Jewish employee to work on the Sabbath. The worker may be free, relative to the nation's law, to work on the Sabbath but unfree relative to his religious prohibitions.

The fact that one may be free and unfree at the same time to do a specific action, relative to different obstacles is, as we shall see, important.

Kinds of Freedom and Unfreedom

A person may be physically unfree when her unfreedom is due to a purely physical obstacle. Thus a miner working in a cave is physically unfree to leave if the only exit is blocked by a naturally caused avalanche. My main focus in subsequent chapters, however, is not on physical but on *social freedom* and *social unfreedom*. In such cases the relevant obstacles significantly involve persons.

Whether social freedom or unfreedom is political, legal, or economic corresponds to the type of obstacle. Thus legal freedom to do something is the absence of legal obstacles to doing it. A worker is legally free to organize a union if there is no law such as the National Labor Relations Act prohibiting it. (Later I shall claim that the NLRA is a “toothless” law.)

Freedom as Morally Good

Is freedom always morally good?

Not always. The freedom of a murderer to escape, given the consequences of such freedom, is usually morally bad. The freedom of a person to express her opinions is usually morally good.

To determine whether a person’s freedom is good or bad, we have to look at the context and consequences of such freedom.

CHAPTER II

Criticism of the Obstacle Concept of Freedom

Criticism of the obstacle concept of freedom might be made by two different kinds of philosophers, and I call their views Narrow Interference and Broad Interference.

Narrow Interference

Suppose that an immigrant worker is locked in a van by a human agent, called a “coyote,” who is transporting him. The agent has made it *physically impossible* for the worker to leave. This kind of unfreedom in which a *person* makes it physically impossible for someone to do something is called *restraint*. According to Narrow Interference philosophers, restraint is the only kind of unfreedom.¹

Broad Interference

Suppose an employee worked over forty hours and is therefore entitled to additional pay for overtime. Her employer

threatens to fire her unless she alters her time card to show less than forty hours worked. Because she needs her job desperately in order to support her children, she agrees. (For discussion of actual cases of shaving time, see pp. 25–26.)

Note that it is not physically impossible for her to refuse to comply with her employer's threat. She is not restrained by anyone. Hence, according to Narrow Interference, she is free to say no.

But Broad Interference philosophers would disagree. They would claim that, since she is coerced—threatened—she is not free to say no.² According to Broad Interference philosophers, both restraint and coercion create unfreedom. Only restraint and coercion render individuals unfree.

How might these two kinds of philosophers—Narrow and Broad Interference—criticize the obstacle concept of freedom developed in the previous chapter? Let us focus on two cases:

First, at time t_1 a miner, Joe, is trapped in a cave by an unforeseen, naturally caused avalanche that prevents him from leaving.

Second, at time t_1 , an impoverished farm worker, Nita, lacks the means—sufficient money—to support her family decently.

According to the obstacle concept, although the avalanche is a purely physical obstacle, it renders the miner unfree to leave. Note that this miner is not restrained as no person has made it physically impossible for him to leave

the cave. Nor is he coerced (threatened) into remaining in the cave. Thus, according to both Narrow and Broad Interference, while at time t_1 he is incapable of leaving, he is free to do so.

I suggest that contrary to both Narrow and Broad Interference, the trapped miner inside the cave, Joe, is unfree to leave at time t_1 . Here is why. Suppose that at time t_2 , the obstacle—the avalanche—to his leaving is removed. Hence, at time t_2 , he becomes free to leave. If he becomes free at t_2 , he must have been unfree to leave before at time t_1 when the avalanche blocked his exit.

It may be argued that the trapped miner is neither free nor unfree. But in that case what are people doing when they *free* him? Note also that such purely physical unfreedom has moral implications. At least some people (rescue workers) are morally obligated to rescue him.

I conclude that, contrary to Narrow and Broad Interference, a purely physical obstacle may render a person unfree.

Let us turn now to the impoverished farm worker, Nita, who lacks the means—sufficient money—to support her family decently. Her poverty is not due to restraint or coercion—her employer is not threatening her—but to the low-wage policy of her employer's agribusiness. Also, Nita has no chance of a better job.

According to the obstacle concept, Nita is unfree to support her family decently. The obstacle to such support

is lack of money. But a Narrow Interference philosopher would note that no person has restrained Nita—making it physically impossible for her to support her family. A Broad Interference philosopher would add that Nita is not coerced either since no person has threatened her. Hence, according to both Narrow and Broad Interference views, Nita is not unfree to support her family. They claim that lack of the means—sufficient money to support her family decently—does not exemplify unfreedom to do so.

Contrary to both Narrow and Broad Interference, I suggest that Nita is unfree to support her family. Here is why. At time t_1 , Nita cannot support them. But, suppose that at a later time t_2 , she gets a better job. Nita now has the means to support her family decently. This acquisition of the means at t_2 to do so frees her, liberates her from her t_1 poverty. At t_2 she becomes free from her t_1 poverty. Hence, contrary to Broad and Narrow Interference, she must have been unfree at t_1 when—although not coerced or restrained—Nita lacked the means to support her family.

Let us turn now to other concepts of freedom that are different from the obstacle concept.

Moralized Concepts of Freedom

According to David Miller, “Constraints on freedom are those obstacles for which other human beings can be held *morally* responsible”³ (emphasis added). However, as I have

argued above, the miner trapped in the cave is rendered unfree to leave by an avalanche, although no human agent is morally responsible for this purely physical constraint on his freedom.

Robert Nozick holds a different moralized view of freedom: "Other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary [unfree] depends upon whether these others had the [moral] right to act as they did."⁴

However, as G. A. Cohen points out, Nozick's moralized account, "has the absurd upshot that if a criminal's imprisonment is morally justified, he is then not forced to be in prison."⁵

Freedom as Available Choice

Some philosophers argue that being free to do something means having an available choice to do it. Being unfree means having no available choice to do so.⁶

But suppose an individual is unfree by law at t_1 to leave the country. A legal obstacle—a law—prevents her from leaving. If the legal obstacle is removed at t_2 she becomes free to leave. Thus when the obstacle to her leaving is removed she acquires an available choice to leave.

Hence, if a person is free to do something she does have an available choice to do it. But she has that available choice because no obstacle prevents her from doing it.

CHAPTER III

Social Forcing

We are all familiar with the claim that a person is forced to do something (or not). Most people are forced to work because they need their pay. But there are different kinds of forcing.

Let us look at one type of forcing: *restraint*.

Restraint

Here is an actual case: poor young women worked over eighteen hours a day in a Los Angeles suburban sweatshop whose employer ordered the door locked and the yard encircled with a twelve-foot fence topped with razor wire. Hence, it was physically impossible for the women to leave. They had no choice but to remain inside.¹

Generally speaking, when a person renders it physically impossible for another individual to do something (or not), then that individual is *restrained* by the person who did so.

Note that a human being—the employer in the sweatshop case—is significantly involved in restraining these workers. Hence, the kind of forcing that this restraint case exemplifies is social forcing.

In what follows we shall focus our attention on cases of social forcing. In all of these cases, unless specified otherwise, the persons involved in doing or creating such forcing are able to choose not to do so.

Most philosophers agree that persons who are restrained are unfree. However, such agreement does not exist for a different kind of social forcing.

Social Forcing with Alternatives

Suppose a retail store supervisor, Phillip, tells Maria, an employee who suffers from chronic bronchitis, to accept lower pay for the same work or be reduced to a part-time assignment. As a part-time worker she would lose her health insurance, which she needs desperately. (Like temporary workers, part-time employees usually lack employer-sponsored health insurance.)² For Maria, the loss of health insurance is a greater evil than the alternative of reduced full-time pay. Hence, she complies with her boss's threat. The alternatives facing Maria are a lesser and a greater evil. She has no choice but to accept the lesser rather than the greater evil.

In cases of social forcing with alternatives, the individuals who are so forced are rational. They have only two alternatives because other alternatives are either worse than the ones they are facing or because the probability of achieving them is close to zero.

Recall that in the Los Angeles sweatshop, which exemplified restraint, it is physically impossible for the fenced-in young women to leave. In social forcing with alternatives, however, it is not physically impossible for these individuals to act on either alternative. Thus it is not physically impossible for Maria to refuse to accept the full-time work with reduced pay or to accept the transfer to part-time work.

There are two kinds of social forcing with alternatives. The first, *proposal forcing*, is illustrated by Maria's situation, in which she is forced to comply with her employer's threat rather than lose her health insurance.

A second kind is *systemic forcing*, which we shall examine later in chapter 5.

Proposal Forcing

In proposal forcing, an individual receives a proposal from an identifiable person, such as an employer (or employer's agent), which that individual is forced to accept as the lesser evil to a greater evil alternative. Proposal forcing can be either *strong* or *weak*.

Strong Proposal Forcing

The case of Maria illustrates *strong* proposal forcing because her alternatives are either transferring to part-time work without health insurance (the greater evil) or remaining full-time with reduced pay (the lesser evil). The greater evil results in an unacceptable level of hardship, so the individual is forced to accept the lesser evil. This type of strong proposal forcing is called a hardship case. Hardship refers to one of the following: serious adversity, privation, lack of access to necessary means of life, misery, suffering (mental or physical), harm or the risk of harm, or significant sacrifice for the self, dependents or loved ones. I shall, for the sake of simplicity (possibly despite ordinary language), include the prospect of death as a hardship.

Another type of strong proposal forcing case is the *rights* case.

Rights Cases

For example, an employer orders an employee, George, to “stop organizing a union in my plant or I’ll cut your wages.” George is resentful because he believes his employer has no right—moral or legal—to stop him from organizing a union, an act which is unrelated to his job performance. But George cannot support his children on

lower wages; hence, he complies with his employer's threat. For George, compliance is the lesser evil compared with the greater evil of reduced wages.

Such threats in violation of the National Labor Relations Act (NLRA) are common in industry today (see page 21). I shall refer to both hardship and rights cases as lesser evil cases, in which a person such as George has no choice but to accept the alternative that exemplifies the lesser rather than the greater evil. I shall assume, unless otherwise specified, that in lesser evil cases people such as George have a right to accept the lesser evil. (Later in this chapter, I shall indicate the laws and policies that contribute to the vulnerability of workers to strong proposal forcing.)

Weak Forcing

In *weak* proposal forcing a person does not choose between two hardships. For example, a person from a well-off family is only weakly forced to work as a CEO because he wants the status. But being forced to work is not usually weak. For most people work is a hardship they endure because it is not as bad as the hardship of starvation.

There are, of course, varieties of forcing that are between strong and weak forcing, but we shall not pursue them. In the following, unless specified otherwise, we shall consider only strong forcing.