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## Understanding the right to free movement: value, justice and rights in the context of contemporary mobility injustice

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# Understanding the right to free movement:

value, justice and rights in the context of  
contemporary mobility injustice

by

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to obtain the degree of

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in

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## 1

## Introduction

Freedom of movement seems like a central basic right that every person has been and deserves to be granted. Since early political philosophy, freedom of movement is considered constitutive of liberty itself. Assessing the right's content more in-depth, especially if set in the everyday context of commuting, paradoxes arise that seem to take away from its value. It becomes apparent that movement itself is not necessarily valuable and more movement does not lead to a better life, more liberty or justice. In fact, among transport scholars, movement is seen as something that must be overcome in order to reach one's desired destination. As such, the related debate around movement and around mobility justice regards the ability to reach a destination as what is valued, and not movement itself. On top, not always is movement the result of a free choice but is considered necessary for citizens to fulfil their duties which raises the question around how 'free' movement then really is. Other considerations show how the space-bound nature of movement and the way space has been transformed for certain forms of movement distort the entire debate around free movement and mobility justice.

This thesis focuses on the question of the understanding the right to (free) movement and its role in contemporary mobility justice. Specifically, I will assess the question "To what extent does the right to free movement need to be reformulated in the context of contemporary forms movement and related injustices?". While traditional analyses of mobility justice are concerned with what level of mobility for people can be considered just, in this thesis it will be assessed how and why movement injustices occur and how the right to movement must be understood to be constitutive of justice. The main claim of this thesis is that the right to freedom of movement should be re-conceptualised as the freedom from arbitrary (inefficient) movement as it otherwise seems to be without value for political freedom and justice. The main way of supporting this claim is showing that movement itself is mainly instrumentally valuable and in contemporary society, certain, traditionally privileged, forms of movement dominate and limit others. This clash cannot be resolved or properly understood through the lens of the right to free movement as it currently is understood. However, the conflict of different movement claims can be resolved by reformulating it and setting the specific context for each movement form. The issue of rights and freedoms will be analysed by looking first at rights on a human rights level as well the state's duties in enabling freedoms in the last chapter. Differences in the concept of individual freedom and political freedom will be touched upon and related to the right to free movement and mobility injustices.

The main question will be answered by first evaluating the form of the right to free movement according to the Hohfeldian framework of rights. Specifically, the form of how the right to free movement is traditionally understood is assessed, which is liberty. Different definitions of freedom that match the Hohfeldian framework will be utilised, to show that there are nuances in between Hohfeld's clear categories. It will then be outlined what the function of the right (as a liberty-right) is and what counterintuitive consequences it has if the right to freedom of movement is merely understood as such. Next, it will be discussed under which circumstances it could be understood as more than a liberty-right and why it needs to be differentiated between different forms and qualities of movement. Lastly, it will be justified why different forms of movement should be granted different freedoms instead of being treated the same, as it is currently done.

# 2

## Context and Analysis

This chapter will first give an overview of what the purpose of rights in general is and what makes them necessary or useful. The conceptual difference between civil and human rights will also be outlined. Next, the Hohfeldian framework of rights which is used to analyse the right to free movement is explained. Lastly, the dimensions along which movement can be analysed are presented and their meaning for the subsequent analysis of the right to free movement is assessed.

### 2.1. The purpose of rights

Conceptually, there is a difference between civil rights and human rights. The latter are rights recognised by specific states for their citizens, while human rights are considered to hold for any person, because they are human. Those rights are generally considered central for any human being to be enabled to live a satisfactory life. The right to free movement is generally understood as a human right, and thus should hold for any human (O'Neill, 2016; Steiner, 1994; Steiner et al., 2008). Hence, it is not bound or relativised by a specific context and their function of enabling a satisfactory life should hold at all times.

There are two main perspectives on rights, and specifically human rights. One is the idea that rights are static, natural, and pre-political while the other is the idea that rights are constructed and ever-changing with the conventions of a specific society. Prominent defendants of the idea that rights are pre-political and natural are Hobbes (1994), Locke (1967) or Steiner (2012). In this understanding, human rights such as the right to free movement are pre-political and thus irrespective of the norms and customs of any society.

The other view is more dynamic and in that way more demanding of rights and argues that they constantly need to be renegotiated to fit the needs of the current society they are supposed to function within. Defendants of that view include Nett, (1971), Stammers (1999) and Gregg (2011). Again others question the usefulness of a declaration of rights without then also having a declaration of duties (see e.g. O'Neill, 2016). In a way, it can be stated that the natural, pre-political conception of rights is more conservative and 'expects less' of rights and the duty-bearer of a right.

The right to free movement will be assessed from the perspective of rights being pre-political and static. That is, because the claim that the right needs to be reconstructed to fulfil its purpose in contemporary society would be redundant within the perspective on rights as something that constantly needs to be reconstructed. This shows that even if the least demanding definition of the purpose of a right is considered, the right to freedom of movement does not fulfil that in the context of contemporary society. Hence, the purpose of rights according to a contemporary scholar, who states that rights are pre-political, namely Steiner will be outlined next.

Steiner (2012) argues that rights should help devise who should do what in the face of disagreement that cannot easily be resolved. In other words, when two disagreeing parties' preferred actions clash and one carrying out their action would hinder the other one from carrying out theirs. Rights then facilitate to

decide who may act out their desired action, without resolving the disagreement. "Rights supply adversaries with reasons to back off from interference, when they have no other reason to allow the performance of the actions they are interfering with" (Steiner, 2012:398). This course of action hence does not need resolving of clashing values or motivations, because if this was possible, there would not be the need for rights (Steiner, 1994; Steiner, 2012; see also O'Neill, 2016). Parties could just determine what to do by deliberating and discussing. Thus, Steiner argues, rights have to be independent of value systems and merely "demarcate domains" (Steiner, 2012:399) in which individuals can make choices that are not to be interfered with. This comes down to understanding rights mainly as "normative allocations of freedom" (Steiner, 2012:399). In this interpretation, duties mainly mean non-interference. Nevertheless, Steiner (2012) also states that although someone might hold a liberty to do something, this does not mean that their doing something does not constitute a wrong. Thus, even if one holds right to property, not giving to those in need is wrong. In essence, one holds the right to do wrong.

## 2.2. Hohfeldian analysis of the form of rights

The Hohfeldian framework is used generally to analyse the form of a specific right. The form refers to the internal structure of a right which can be understood as how the right is built logically from basic components. Understanding the form of a right facilitates understanding what holding that right means. Hence, this step is relevant in the overall analysis because after having established that rights in general should help people live a better life by demarcating each and everyone's boundaries of freedom (in the natural, pre-political view by scholars such as Steiner (2012)) and not let there be a state of nature where the strongest may dominate and dictate others' freedoms, it is now necessary to assess how the right to free movement is specifically understood. After assessing what the right to free movement does for those who hold it (its function), it is then necessary to evaluate to what extent this function matches the general purpose of rights outlined above.

The Hohfeldian rights framework is useful to understand and analyse the meaning and implications of any right. Hohfeld's categorisation of different elements of rights to assess their form is widely accepted. According to this, there are four main elements that a right can entail, which are 'privilege', 'claim', 'power' and 'immunity'. Thus, one first needs to assess which of the four following positions a right enables the right-holder to be in to understand its implications..

Powers and immunity are both so called second-order rights and are irrelevant to this assessment of the right to free movement.

According to Hohfeld (Steiner, 1994), being in the position of 'claim' amounts to someone having a right which corresponds to a duty to be fulfilled by another party. Thus, if one has a claim to a certain thing or action, someone else has the duty to provide one with this thing or enable this specific action. Most often, the government is considered the duty-holder, as for example with the right not to starve. Nevertheless, there can also be rights with multiple duty-holders, such as the right to not be bodily harmed. Everyone around a person with this right has the duty not to harm them. The right not to be bodily harmed is also a classic example for a right that is considered not only a civil but a human right.

Contrastingly, having a liberty to do something means that one is free of the duty not to do this thing. Thus, one both may do it and one is not interfered with doing it, one is free (not) to do it. Put differently, it means that one is not interfered with doing *a* if one is said to have a liberty to do *a*. Freedom of speech is a typical liberty example, where I am free to express myself but nobody has a duty to help me find the right words. Having a right in the form of a liberty thus means that nobody must assist one in achieving what one wants to do which is the central difference to a right of claim-form.

## 2.3. The right to free movement

It was first established that the standpoint of analysis was seeing rights as pre-political demarcations of freedom that would enable people to live a satisfactory life and help resolve conflict. Then, the Hohfeldian framework of rights was introduced as a tool of analysis for the form and function of the right to free

movement specifically. Following, the characteristics of contemporary movement are introduced which are considered to make this right different to others and necessitate a more in-depth analysis.

### 2.3.1 What is movement

While movement can be understood as different forms of physical movement, such as dance, physical activity or gesturing, this thesis assesses movement in its function as enabling people to move across space in an every-day context. One can thus also speak of mobility. Generally speaking, mobility means moving through space in time, with a purpose, and with a destination. It is clear, that mobility is set in space and time as there can be no movement that is outside of space and/or time. Many scholars even claim that mobility can be understood as the making and remaking of space and time (Pereira et al., 2017; Sheller, 2018). By being set in space and time, mobility of one leads to immobility of another. It is thus a dynamic concept in which mobilities and immobilities are connected (Kern, 2021). It is political in the sense that some people are prioritised at the expense of others. While this can either be set in the context of arbitrary discrimination, as is the case in the analysis of movement policies by Kotef (2015), it can also be connected to allowing certain travel modes exclusive access to infrastructure.

#### 2.3.1.1 Spatio-temporal boundedness: spatio-temporal nature of movement

The spatio-temporal nature of movement is one of the main defining aspects of movement as well as one of the main aspects that set it apart from other right-acts, such as speech, expression or thought. The right to free movement is a perfect example of a right that holds the potential to clash as it is not merely abstract and is bound in space and time (Pereira et al., 2017; Sheller, 2018). The more people want to enjoy the same movement (in terms of itineraries), the more difficult and problematic this will be for all the people in this movement process. Everyday traffic jam during rush hour is the perfect example for the limit of the right to free movement. This thought can be developed even further in terms of entire mobility systems. Sometimes, the shortest way for one person to travel is not the shortest once hundreds of people want to travel it. If some travelled different itineraries from their initially desired itinerary, everyone would be better off in terms of travel time. This issue is the paradox of the system optimum versus the individual optimum and a perfect example for the spatio-temporal clash of multiple people acting on their right to movement. It will be further elaborated in chapter 3 why the spatio-temporal nature of movement is pivotal in assessing the function of the right to free movement.

#### 2.3.1.2 instrumental value of movement:

In understanding the right to free movement and its meaning, it is crucial to clarify that the action of movement in itself is intrinsically not valuable although the potential for it is (Sager, 2014; Sheller, 2018; Kern, 2021; Bersch and Osswald, 2021). This means that while there are some physical benefits one may experience when being physically active, such as improved health, being connected to one's body and possibly also an improved understanding of the physical geographic environment one lives in and strengthened feeling of belonging (Bauman and Bull, 2007), apart from that movement does not have significant intrinsic value. Besides there being little philosophical to no work done on 'the value of (physical) movement', 'what movement is good for', in the professional sphere of transport planning, movement is even valued negatively (Sager, 2014; Van Wee and Geurs, 2011; van Wee and Mouter, 2021; Verlinghieri and Schwanen, 2020). In her assessment of mobility justice, Sheller outlines that movement is essential as an enabler for many other human and civil rights, such as autonomy, the right to assembly, or the right to protest (Sheller, 2018). On top, until teleportation becomes reality it is necessary to reach desired places as well as places one is expected to reach (but may not desire to be at) such as one's place of work or a health care facility (Sheller, 2018; Sager, 2014).

In a rather different context than everyday movement, Stierl argues that the value of freedom of movement consists in a fulfilled desire to be at a different place of freedom (Stierl, 2020). Moreover, the freedom in that is manifested by the ability to move others and enable them to reach their desired places as well. Unfree or illegal movement, whilst beyond the scope of this thesis, thus shows that movement without freedom is also possible, such as in the case of contemporary illegal border crossings or in the case of enslaved people escaping their captors.

Another point in favour of movement solely being valuable instrumentally is that certain kinds of (contemporary) movement are forbidden if they do not serve the purpose of getting to a specific destination. For example in Germany, motorized travel modes are restricted to be used as a way to get to a destination. Specifically, one is not allowed to just 'drive around' in a car (compare §30, Abs. 1, Sentence 3 StVO).

#### 2.3.1.3 different ways/modes of movement

Another characteristic of contemporary movement that warrants an in-depth assessment of the right to movement is the multitude of modes one can travel by. Not all modes are equal – depending on the mode, one travels faster or slower, more or less safely and puts others at more or less risk. The existence of different travel modes is arguably the largest challenge in assessing the role of the right to free movement in political context. In relation to this, a claim uttered by van Parijs regarding freedom is that "freedom is the freedom to do whatever one might want to do" (Van Parijs, 1995:19). This definition is problematic in relation to mobility in the sense that certain infrastructure needs to be provided for specific mobility desires and thus not all movement desires are facilitated equally. The issue of the implied ease to travel with different modes and different levels of disvalue is assessed in chapter 4.

#### 2.3.1.4. necessity of movement to fulfill civil duties (free choice)

Again others see only movement without destination as actually free, and any instrumental value of movement as necessary to fulfill civil duties. This claim will be assessed in more detail in chapter 3.

#### 2.3.2.5. negative externalities of movement

Lastly, not only are modes of movement not equal in what they do for those who use them in terms of ease of travel, comfort and safety. They also have differing negative effects on those who do not use them, such as noise, whether or not they pose a physical threat to others and space requirements. What thus distinguishes the right to free movement from other rights and what seems to necessitate for it to be treated accordingly is that if it is acted out a certain way (e.g. by going by car or by plane), it has negative effects. Those effects are of pollutive nature, such as toxic emissions or noise but also social. On top of that, traffic safety and spatial affects such as city densification are also elements of specific modes of movement only. Therefore, not all movement is the same. There is extensive work done on the injustices stemming from the fact that safety and health has a price when it comes to certain forms of transport (Pereira et al., 2017).

## 2.4. Intermediary Conclusion

In this chapter, the general purpose of rights was established as well as the standpoint of analysis as rights being pre-political was introduced. The tool of analysis, the Hohfeldian framework of rights was introduced and the main dimensions of movement along which the subsequent analysis will focus on were outlined. In the following chapter, the claim that the right to free movement merely amounts to a liberty will be assessed in depth and what consequences that has will be outlined.

## 3

## Freedom of movement as a liberty

As mentioned in the previous chapter, according to the Hohfeldian framework, the right to freedom of movement could amount to a mere liberty-right. In that sense, everyone holds this the right that nobody may be interfered with when attempting to move somewhere. Thus, it is not a right *to* movement, it is merely a right to non-interference of movement. In this chapter, the claim for freedom of movement to be a liberty will be assessed in detail and it will be outlined what the function of the right to free movement would be, were it understood only as a liberty-right. From this it will follow why understanding the right to free movement like this allows for mobility injustices and associated problems to occur. Further, the issue of freedom of movement as a supposed result as well as vehicle towards political freedom is explained. The central claim of this is that the way free movement is framed often seems to be the equivalent of political freedom itself. Thus, there is a paradox where freedom of movement and high levels of movement indicate political freedom but at the same time there can be movement without political freedom (for example when refugees flee in order to seek political security and freedom). Also, high levels of movement may have nothing to do with free choice or political freedom.

### 3.1. Arguments in favour of it being a liberty

For the assessment of freedom of movement as a liberty, common arguments in favour of this will first be presented. For that, the differentiation of naked and vested liberties is necessary. Steiner adds to the Hohfeldian analysis the differentiation of protected liberties (i.e. vested liberties) and non-protected liberties. He calls the latter 'naked' liberties. In conceptualising the right to free movement as a liberty, it should be assessed whether the liberty to free movement is a naked or rather a vested liberty. Steiner describes the difference between the two rather literally. A vested liberty is one that is protected by others' duties, whereas a naked liberty is one that has no protection and may be infringed upon by anyone (Steiner, 1994).

Steiner himself uses the example of travelling somewhere to demonstrate how one should understand the notion of a naked liberty. Put simply, given that it is nobody's duty to ensure anyone's movement, it can be stated that freedom of movement is a naked liberty. If you want to transport something from A to B, you may do so, but it could be that there is a protest on the way or that the road is blocked due to maintenance work. You have no claim to take that specific road to get where you would like to be.

This classification needs to be examined in more depth. While you do not hold a claim on the road you take or the mode you do have some claim on your desired destination. This is exemplified by a court case analysed by Baldwin (2006). While as in most countries, also in the US the right to free movement is recognised and protected as a constitutional right, in a US court ruling, which dealt with a citizen being unable to afford travelling to Europe by plane it was stated that this matter "is unfortunate but not unconstitutional because 'a poor man may walk'" (Baldwin, 2006:250). Leaving aside the fact that many rights and freedoms in a capitalist society are to be afforded first in order to be enjoyed, one notices that although this ruling disregards the fact that no man is able to walk to Europe from the US, the fact that the court did not suggest that the poor man could have walked to Mexico instead underlines the man's right to decide the destination of his freedom of movement (Eichenauer, 2021; Baldwin, 2006). This seems to support the claim that the right to free movement implies something about the free choice of destination of that movement rather than the fact and value of movement itself. Thus, the movement from A to B could

be argued to be neither a protected liberty, nor a claim-right but the choice of destination seems to be. This will be taken up in section three of this chapter. For now, it should be noted that the right to free movement is traditionally understood as a mere naked liberty.

Understanding the right to free movement as a naked liberty is in line with scholars such as Locke who see the right to free movement as equivalent to a right not to be in chains (see e.g. Steiner et al., 2008; Steiner, 1994; Stierl, 2020). Locke also argues that freedom of movement is among those rights that humans hold even in the state of nature (Steiner et al., 2008). Elsewhere this is called having negative freedom. Negative freedom is generally understood as a freedom from being obstructed to do something (Van Parijs, 1995; Sager, 2014; Hayek, 1960; Simhony, 1991; Berlin, 2017). For Hayek, liberty must not be confused with not power or wealth and may even exist in the absence of the two (i.e. for an individual who has neither power nor wealth). Buchanan takes this even further, by claiming that even the ability to undertake an action is irrelevant to whether someone has the liberty to undertake that action. As long as there is no coercion, one can be claimed to have liberty (see e.g. Van Parijs, 1995, Buchanan, 1975).

Another argument in favour of the right to free movement to merely be a naked liberty, is the issue of compossibility. Steiner assesses the compossibility of rights in the following way. According to Steiner (1994), certain rights (i.e. claims) cannot be realised when combined. Generally speaking, rights in the form of claims that correspond to activities set in space and time as well as claims that require a limited set of resources are not compossible. If they physically overlap, they are said to have extensional overlap (Steiner, 1994: 91). Thus, given that movement is inherently set in space and time as well as deals with limited resources, a claim-right to it naturally cannot be granted for different people. This also has to do with the aspect of free movement's dependence on naked liberties, such as the lack of guarantee that one can use a specific road or path. One could thus argue that this impossibility of multiple people's movement rights shows that there cannot be such thing as a claim to freedom of movement in a world in which people make use of different kinds of movement that overlap in their necessary action space (Steiner, 1994: 93).

The aspect of physical clashes, or extensional overlap is taken by scholars such as Steiner to argue that "all rights in a set of compossible rights may be regarded as property rights" (Steiner, 1994: 94). There is, however, extensive criticism in this regard by scholars such as van Parijs. He states that this view leads to a "moralized conception of freedom" (Van Parijs, 1995:15) which would state that only rights violations are restrictions to freedom. With this line of argumentation, the role of freedom of movement somehow seems to be implied in a circular logic. It seems that it is necessary as a physical component of movement but it is also granted as a right but that right is unprotected as a naked liberty, thus making it depend on property that is not actually guaranteed or promised. So, one might be free in the abstract sense (i.e. free to make the decision and not be obstructed to hold property that will transport one places) while not actually being able to get anywhere because one might lack the physical means necessary for this movement. Even if one was to be physically impaired to move, according to Steiner's conception of the right and the idea(l) of freedom, one would have freedom of movement.

As it could be seen from the section above, it can be argued that the right to free movement can be understood as a mere liberty in the Hohfeldian framework. In this sense, it would mainly correspond to a negative freedom, as Locke defined it, thus merely as the right not to be chained. The reasons brought forward in defence of this view mostly follow the line of thought of stating that it just cannot be considered as a claim-right because that would be too demanding and not work due to extensional overlap. When it comes to movement, however, it is debatable to what extent two people ever really claim the exact same time-space components of their movement desires and to what extent the movement right can be convincingly argued to concern movement rather than arrival. Moreover, if understood as a mere liberty, the function of the right to free movement is minimised to being permitted to just any movement. That could even mean that one is mainly allowed to walk around in their room or on their property. To what extent that is enough if related to contemporary levels (and necessities) of movement, and whether that even enables a basic level of mobility necessary to navigate contemporary needs and duties will be assessed next.

## 3.2. Problems with movement as a liberty

The following section will outline what problems arise from understanding the function of the right to free movement as a mere liberty along the dimensions presented in the previous chapter (spatio-temporal nature; instrumental value; negative externalities; different modes; necessity of movement in duty fulfilment). It will become obvious that the right to movement as a liberty can, put bluntly, be claimed to be useless.

### 3.2.1. Accessibility rather than mobility: lack of value of mobility

Movement levels have been increasing steadily over the past decades (Bastiaanssen et al., 2020; Handy, Weston, and Mokhtarian, 2005). For long, transport planners and scholars have focused on enabling more movement in the transport networks and taken more movement as something desirable. Rather recently, the focus of transport planners has shifted from focusing on mobility towards focusing on accessibility (Handy, 2020; Bastiaanssen et al., 2020; Miller, 2018; Geurs and Van Wee, 2004; Vecchio and Martens, 2021). Focusing on mobility in transport planning over the past decades has led to aiming for people moving further and faster in their everyday lives. This was especially achieved by enabling more car transport and building more car infrastructure (see e.g. Schwanen et al., 2004). Nevertheless, movement itself and especially having to move through space-time is not intrinsically valuable but arriving at the desired destination is. This shift has also been marked by the emergence of the concept of motility which means having the capabilities to realise one's travel and arrival desires rather than travelling itself (Kaufmann et al., 2004; Bernier et al., 2019; Sager, 2014).

In connection with other land use strategies that were common across the Western world especially in the second half of the 20th century (Handy, Cao, and Mokhtarian, 2005; Schwanen et al., 2004; Maat et al., 2005; Pot et al., 2023; van de Coevering, 2021; Bastiaanssen and Breedijk, 2022), enabling more movement, such as more car travel, contributed to an increase in so called transport poverty. This concept describes the issue of people not having sufficient means of transport or access to transport to participate in everyday life. While those that owned a car and had the financial means to use it were thus helped to better infrastructure, those that were dependent on other modes were left behind. The way those movement-focused policies were formulated was very much in line with the ideal of the right to free movement as a liberty and more movement signifying a better and freer society. By not facilitating people's access-desires and aiding them in getting to places, the overall movement level was increased, thereby missing out on the actual value of movement - arrival. By now it is also widely known that enabling more movement, by for example building more streets with more lanes, increasing the speed limit and so on does not help with traffic congestion and make people travel faster and more comfortably. More investments in car infrastructure go hand in hand with less investments in other transport infrastructure, such as public transport and active mode infrastructure. The better the options to travel by car and the more this is portrayed as the 'normal' way to travel, the higher the demand for exactly that transport mode which subsequently increases congestion again. Chapter 4 will assess in depth what differences in quality of travel and different effects on other travellers different modes have. The argument to be made here is that appreciating and facilitating movement as an activity and not focusing on enabling people to arrive at desired destinations has been practised in most of the 20th century in policy making and planning. This is in line with seeing movement as a liberty and enabling more of it in the name of liberty. It does, however, not take into account different realities and abilities of travellers and been disregarded as a planning aim in applied transport studies. In the professional sphere, there has thus been a shift away from more movement towards the ideal of a city that necessitates as little movement as possible (see e.g. Bastiaanssen and Breedijk, 2022; Bernier et al., 2019; Sager, 2014)

Therefore, guaranteeing a mere unprotected liberty not to be in chains is not of use for everyone as the movement itself is not appreciated but the arrival is. Recalling what was outlined in chapter 1, that human rights are supposed to be valuable and guarantee what is necessary for any human to live a good life, it thus seems that the function that the right fulfills if conceptualised as a liberty is not what is needed. Especially in contemporary society and living in cities that have been designed and built for cars for the past decades, being able to walk does not get one very far anymore.

### 3.2.2. Freedom of choice of movement

It is crucial to assess the reasons for which people travel. While there is travel that is supposed to serve people's pleasure when travelling, most travel is, in fact, for other purposes, such as work or doing tasks like the groceries or going to see a doctor. Going to work (and thereby paying taxes) is considered a central duty as a citizen. Neither the journey to get there nor the task itself is intrinsically valuable for the person doing them (Krygsman, Dijst, & Arentze; 2004). Instead, they are expected by the state to do these things. It can, hence, be argued that given the instrumental nature of (necessary) movement and its connection with other civil duties (e.g. work, partake in democratic processes), there is a claim to movement in the sense that there is a right to access basic amenities. If I have a right to medical treatment, I must be able to reach the medical facility. Similarly, if I am expected to work and pay taxes, I need to be able to reach my workplace. Given that access to places other than one's home is not possible without physically moving there, movement seems implied as a necessity to be enabled/supplied by the state.

The role of free choice in assessing whether or not movement happens out of free will is debated in migration literature and the debate may serve the assessment of movement in everyday life as well. Stierl (2020) states that being trafficked does not constitute free movement. While it becomes apparent that physical force or intimidation plays a very significant role in understanding movement by e.g. being trafficked, the aspect of force might also be less salient. Just as structure functions like force, so do environmental circumstances. Given that movement in the sense of everyday travel behaviour does not consist in a vacuum of rights or context, people who are expected to take on long and tedious travels to fulfill e.g. their duty to work or any other civil duties in capitalist society, also cannot be said to do so out of free will (Young, 2008). This is not to say that flight from war or political reasons is comparable to having to travel to work, but one can easily construct the argument against free choice. People who cannot afford to live in the city centre or to own a car cannot be argued to travel to work for over an hour by public transit out of free choice (Kern, 2021; Sheller, 2018). And if it is not free choice for someone to travel to work but it is expected by society and the state, how come there cannot be a claim made for the movement and arrival there. One's physical appearance in certain places and at certain times seems expected to such an extent that one can speak of a duty. I have a duty to be at my work place, both for my employer as well as for the state who expects me to work and pay taxes if I can. There thus seems to be a mismatch between the expectations in form of duties to people to physically appear at places and the naked (unvested) liberty of people to exercise the movement necessary to appear at places.

This claim can be developed further into a more radical claim, namely that movement for work is never free. Movement in contemporary society is mainly used to fulfil roles, to fulfil tasks, so movement is not a freedom or a right, but it is a forced part of our everyday lives set in capitalist society. In contemporary capitalist society, it could be argued that not moving and moving as little as possible is a sign of freedom. Self-ownership is not fulfilled by someone else demanding that I travel somewhere (Van Parijs, 1995; Young, 2008). If I am demanded to travel to my workplace, my movement aids the capitalist exploitation of my working powers. In that moment, my movement facilitates my exploitation (Young, 2008). Stating that movement that is necessary to get to a workplace which possibly pays barely enough to cover living costs and costs for transport is freedom is a perversion of the concept of freedom (Young, 2008; Berlin, 2017; Anderson, 1999). Debating access to basic amenities and especially jobs does not help in the assessment of freedom of movement, it contributes to the normalisation of a seamlessly efficient capitalist society.

Moreover, it needs to be understood that formal (negative) freedom of movement is necessary for and prior to forced movement. One could ask, who benefits most from this freedom and who really owns this freedom. Arguably, it is not the citizens who have the freedom. Rather, it is those that benefit from freely moving workers. One could go so far as to state that the movement of certain workers is necessary for a capitalist economy to function. The necessary movement of certain people does not imply any freedom or liberties on their part. In the age of humans as the commodity (as in the case of service economies), human commute is but cargo being moved (see also Stierl, 2020).

A useful vehicle for analysis to illustrate this point is the concept of real freedom. Van Parijs (1995) outlines real freedom as more than freedom from coercion and autonomy ('security and self-ownership'). What is necessary on top is that an individual also has the opportunity to perform a certain action, that they are supposedly 'free' to do. Thus, real freedom is strongly connected to having the ability, the capability to perform an action (Van Parijs, 1995; Berlin, 2017; in the context of transport see also e.g. Vecchio and Martens, 2021 and Pereira et al., 2017). It could thus be argued that real freedom of movement is impossible as long as movement is an (unpaid) instrumental part of enabling a capitalist economy. The movement itself, as well as the time is mostly dictated by what is necessary (and when) to reach one's workplace. The freedom one has lies in what form of travel one chooses which is also restricted by where one can afford to live and what modes of transport one can afford or is physically able to use. The fact that one has to commute is thus out of question and not a freedom. Only the way and form of how one travels is. It thus seems that a case for coercion can be constructed in the context of commuting to work (Berlin, 2017; Simhony, 1991; E. S. Anderson, 1999; Young, 2008). Beyond this, it can be argued that the fact that one must travel, must commute, must move is not a choice but a necessity shows that the mere negative freedom to move does not enable a 'good' or 'worthwhile' or 'happy' life but it enables a life, it enables one to fulfil the tasks that one has as a citizen, as a person. The freedom that one can be argued to have is in the form and quality of movement that enables arrival, although that is also restricted by other circumstances.

On top of movement for civil duties, movement for leisurely reasons has received more attention in recent times as issues such as social exclusion prove to be threatening the foundation of democracy (Lucas, Bates, et al., 2016; Lucas, 2012). Thus, when assessing how to interpret movement in contemporary society and political context, one first needs to understand that there is such movement which is necessary and expected and therefore cannot be free by definition and there is movement out of free choice. The latter is assessed less frequently as this kind of movement does not fulfil as much a role in contemporary capitalist society as does commuting to work. In the last decade or so more scholars have paid attention to leisure movement behaviour as well (see e.g. Lucas, Bates, et al., 2016), stating that social exclusion of certain groups is detrimental to democratic legitimacy. That is due to the fact that people who cannot afford to travel into the city and partake in social life much will not have the same experiences as people who either live closer to the city centre or travel there frequently. This contributes to a segregation-like social makeup of leisure activities in the cities and will seem as though the people who can afford to partake are the only ones who will. Lucas (2012) assesses the issue more in-depth. The argument to be made from this empirical issue is that it seems to be a central aspect of democracy that everyone is enabled to partake in society and democratic decision-making. If people are not able to do so due to transport related social exclusion and/or transport poverty, the state has a duty to enable them to do so beyond merely building roads for cars.

### **3.3. Freedom of movement as political liberty**

Many scholars, such as Kotef, Arendt, Hobbes or Locke, do not assess the purpose of movement to establish its value but see movement as an equivalent to freedom (Kotef, 2015; Sheller, 2018; Sager, 2014; Hobbes, 1967; Locke, 1994). In that, they neither assess its instrumental nor intrinsic purpose or value but claim there to be an inherent connection between the political subject and its ability to move freely. Kotef (2015) states that movement can be understood as the materialisation of liberty. For some (e.g. Arendt or Hobbes) freedom of movement is considered the oldest and most elementary liberty (Kotef, 2015; Sager, 2014). Kotef even claims that "the liberal subject is essentially a moving subject, and her first and most fundamental freedom is freedom of movement — at least as far as political freedom is concerned." (Kotef, 2015:58). Early thinkers assess the meaning of liberty of movement in the context of the inherent need for humans to be free rather than in the context of the inherent need of humans to move (Mill, 1859/2003; Nozick, 1974; Miller, 2005; Wellman 2016). For Hobbes, the actual movement itself is not what is necessarily valuable, rather freedom of movement describes the "relation between the body's natural ability to move and the available possibilities to actualise it" (Sager, 2014:468).

The relation between movement and political freedom can be understood in two ways. On the one hand, movement may enable freedoms, by enabling individuals who have the capacity of movement to leave certain situations or to get to other places (push/pull factors)(Stierl, 2020) or even to participate in political processes (Lucas, Bates, et al., 2016; Lucas, 2012). This is especially relevant in cross-border movements when it comes to the ability to leave or reach certain political entities, but that is beyond the scope of this thesis. In this context, although one might not be granted the freedom to movement, by taking it, one is enabled to reach a place that does indeed allow for freedoms. On the other hand, understood in the everyday movement context that this thesis is set in, movement can also be understood as an enabler. Specifically, movement may enable someone to e.g. reach their work place or education or place of medical assessment. In that sense, movement is an enabler to any freedom to do something that necessitates the physical presence of an individual at a different place than where the individual currently is. In this conception, freedom of movement is necessary to access other political freedoms and does not constitute a specific form of freedom itself.

Stierl states that a longing for freedom can be enacted through movement (Stierl, 2020:468). In that sense, movement is not equivalent to freedom. Instead, movement may enable freedoms. Here it is important to differentiate between physical movement and movement between (political, social) systems one is subjected to. In a similar line of thought, movement can be understood to be an enabler to someone living a self-determining, free life (McKeown, 2021). In everyday life, the movement ability to choose a job freely, to leave one's house to socialise or to partake in public life enables a certain (political) freedom over one's own life. While the first freedom is a systemic, political one (the general ability to move, i.e. non-interference), the second one is an individual, bodily freedom (the ability to realise that movement, i.e. positive freedom).

The general relation between movement freedom and political freedom can be explored from two perspectives. First, one can assess the role of actual physical movement and the ability to reach places as relevant to political freedom (see e.g. Steiner et al., 2008). This may also mean that movement is central to reaching a place that offers political freedom (Stierl, 2020). Secondly, freedom can be understood in a more abstract way, as the potential and power for autonomous decision making (see e.g. Van Parijs, 1995). This differentiation is also known as masculine and feminine definitions of freedom, state-focused (i.e. abstract, high-level, political, formal) and body-focused (i.e. individual, lived, real) (see Tickner, 1992). For proponents of the latter definition of freedom, self-ownership plays a central role. Not only self-ownership, however, but also control over external objects (i.e. property) and the autonomy of choosing the destination of movement necessary to carry out desired actions is necessary for that freedom (Steiner, 1994; Van Parijs, 1995). It is noteworthy that this conceptualisation of freedom of scholars such as Stierl (2020) and Van Parijs (1995) differs from the previously presented freedom definitions by Steiner (1994). While the latter are negative freedom definitions (i.e. freedom from something), the former define freedom broader (i.e. freedom to something). When movement freedom is used synonymously for political freedom, this materialises more as positive freedom (i.e. freedom to something) rather than negative freedom (i.e. from something). The next section will assess the connection between political freedom and movement freedom more by relating it to (in)justice. This assessment will show that understanding freedom of movement as a negative freedom results in no added value for an individual who is granted that freedom as opposed to one who does not have negative freedom of movement.

### **3.4. Disvalue of the lack of freedom of movement**

Assessing the basic assumption that in a just society, people have more freedom of movement than in an unjust society, one can first look at the interpretation of freedom of movement as (political) liberty. Taking the interpretations of movement as constitutive of liberty literally, this would come to mean that more movement means more liberty. At least scaled up, this seems to hold true. Societies in which there is more potential movement and thus also actualised movement are generally considered 'freer' than those in which movement is maximally limited (Sager, 2014; Kotef, 2015). In practice, however, even in free societies, on the individual level movement is considered as something to be minimized, something

unpleasant. As established in chapter 2, movement can even be considered to have negative value or instrumental value but not necessarily any intrinsic value. Thus, more movement does not equal more freedom or a 'better' life, in fact, it is quite the opposite. Having to travel exceptionally long travel times or distances is not considered desirable, although it involves much movement. Nevertheless, no freedom of movement, and hence, no movement at all also is not desirable as it amounts to life in chains. Neither of the two scenarios help in the assessment of the value of the right to free of movement. Therefore, in order to assess to what extent the lack of freedom of movement constitutes an injustice, the different realities of what it means *not* to have freedom of movement need to be assessed. It will become apparent that when the right to free movement is understood and granted as a mere liberty, a lack right would not bring about more injustices than are present already.

At first sight, it seems rather obvious that an act of controlling and restriction limits a person's (negative) freedom of movement and thus leads to disvalue for this person. Nevertheless, in this section I will show how respecting negative freedom does not necessarily lead to a state of real, valuable freedom for people and does not help with understanding mobility injustice. Moreover, I will show how a state of high levels of movement does not mean much freedom or value either. Thus, this section will show how understanding freedom of movement as a negative freedom is inadequate for understanding real-life injustices.

I will thus analyse the status quo, which is much criticised as non-ideal and assess how the right to free movement would need to be understood or reformulated to contribute to a more just situation<sup>1</sup>. By showing that when respecting the negative freedom to movement injustices still occur it is proven that the right to free movement needs reformulating. Thus, non-ideal theory is utilised to understand mobility injustices in the context of freedom. "Non-ideal theory starts from a non-ideal state and seeks solutions to the problems identified in that state" (Anderson, 2009:135). Ideal theory is not as promising when assessing movement as that is an action inherently set in a pre-built environment. Many have struggled defining an ideal state of movement opportunities because in a world of already built cities not everyone can have the same movement patterns or opportunities (see e.g. van Wee & Mouter, 2021). However, assessing the problems with the status quo and proposing an ideal based on a hypothesised solution to this status quo is more promising. If one thinks of an ideal state without anticipating certain injustices (such as the fact that although all people have equal negative freedom of movement, the different forms of movement people can travel by skew how much freedom each and everyone actually has), one "may even allow that injustice to be unwittingly incorporated into the ideal state." (Anderson, 2009:135). Therefore, issues with movement as we see it in contemporary society are analysed and solutions formulated which will later be merged to propose a changed interpretation and formulation of the right to free movement.

### **3.4.1. Control over movement**

Movement can be understood as something that can be controlled or policed. Movement understood as something to be controlled means understanding it as something that is given by an authority and not something that is held naturally by an individual. When movement is controlled, it does not only mean that movement is minimised but that access to a desired destination is controlled. It could also mean that more movement is required to get to a desired destination because the fastest road is blocked (see e.g. Kotef, 2015). While the absence of control results in more freedom, it does not necessarily mean more movement. Likewise, the lack of movement as well as high levels of movement could be a result of unfreedom, whereas the minimum required movement necessary to reach a destination correlates to the most uncontrolled movement, and thus the 'most free' state.

When it comes to controlling movement, there are three different aspects of control. One could either control access, exit or even the itineraries that are spatio-temporally constrained. These three dimensions are made up of the basic aspects of any movement activity (Sager, 2014; Kotef, 2015; Pereira et al., 2017). As movement is necessarily set in space and time, any movement starts somewhere, ends somewhere

and covers a specific route from the starting to the end point. Analysing these three dimensions of control (and freedom) of movement, one needs to ask who can enter, who can leave and who can use the infrastructure when and how.

The conceptualisation of movement freedom as negative freedom (Steiner et al., 2008; Steiner, 1994; Hayek, 1960) only guarantees one of those three dimensions, namely the 'exit'. Freedom of movement merely understood as non-interference means that anyone can leave wherever they are to start a journey to wherever they want to be. Whether they can actually get to where they desire to get and whether they can actually make the journey *when* (and potentially how) *they would like* is entirely irrelevant. However, as established in chapter 2, movement is mainly valuable in its instrumental function. Thus, being able to leave a specific location without being able to get to another location or without being able to use the road to get to that other location is basically pointless (Sager, 2014; Baldwin, 2006). For movement to be fully valuable, all three dimensions need to be possible and not controlled.

### Direct control

In an extreme case of movement over control, Hannah Kotef (Kotef, 2015) shows how both infrastructure planning and access to it function as degrading, dehumanising and taking away autonomy and self-determination. Other forms of direct control over movement include how movement can take place (i.e. regulations on speed and safety), how safe it can take place and when it may take place (i.e. curfews at airports) (see e.g. Pereira et al., 2017). Van Parijs (1995) argues that restricted movement is one factor of a lessened depth of self-ownership and a less free society. In this definition of self-ownership, van Parijs focuses on the decision-making freedom (freedom of choice). While this is a rather obvious way of restricting freedom of movement, I argue that there are also more covert ways of limiting certain people's travel abilities.

### Structural control

Beyond overt forms of control, such as actual access restriction (see e.g. Kotef, 2015), one can also regard structural issues such as a general lack of access for certain groups of people as forms of structural control (see e.g. Sheller, 2018; Kern, 2021; Young, 2008; McKeown, 2021). While there might then not be an overt act of control "freedom, agency and intention" (Stierl, 2020:459) which are necessary to create a situation of 'real' free choice (see also Van Parijs, 1995) are limited. The most common way of structural, indirect control debated in contemporary Western society is that of infrastructure design choices. Control over infrastructure materialises in different forms. The most criticised are the different modes being prioritised in planning, leading to modal advantage or disadvantage (see e.g. Handy, 2020; Martens, 2012; Vecchio and Martens, 2021). There can also be control over access to certain infrastructure and this can be either based on the individual or on the type of vehicle (mode) someone travels with (Pereira et al., 2017).

A well-documented and assessed way of structural control by design choices are planning inequalities with regards to different modes. Especially Western cities have long been planned for car use and thus cities were designed and built accordingly. While, theoretically, anyone is free to acquire a car, a license and thus use the infrastructure, practically, cities designed for cars lead to categorical disadvantages (and thus injustices) for people who cannot afford a car, cannot drive (yet/anymore) or are not physically able to do so. As Nett (1971) states, if motion is understood as a primary function necessary to enable human life, access to it is part 'of the structure of opportunity' present in a given society (Nett, 1971:217). Accepting that for most people, arriving at the desired destination has more worth than travelling there, it seems that any inequalities in this ability are fundamentally unjust because they alter the 'structure of opportunity' in which certain groups of people are structurally disadvantaged.

What makes modal differences so grave is also the fact that use of modes such as public transport in comparison to car use is gendered, racialised and classed (see e.g. Cain et al., 2022; Kern, 2021; Sheller, 2018; Chowdhury and Van Wee, 2020; Pedersen, 2020; Loukaitou-Sideris and Fink, 2009; Dunckel Graglia, 2016; Lubitow et al., 2020; Ding et al., 2020; García et al., 2022; Eichenauer, 2023). This means that while it is not a form of active control over certain groups, the fact that certain groups use a mode more than

others and that those are often already disadvantaged, shows how interests of certain groups (those who can afford a car) are prioritized over the needs of groups who cannot. Research shows that travelling with public transit, especially at nighttime, is not an experience that is looked forward to. Rather, these groups either avoid public transit, choose for other options (e.g. travel at a different time, travel with someone else, pay extra for a different mode of transport, such as taxi or ride-hailing) and if there are none, they do not travel. Although the growing body of research shows that there is (increasing) awareness of the different levels of how freely certain people can travel, their immobilities are seldom regarded as such. This becomes apparent by ongoing investments in car infrastructure at the expense of public transit infrastructure (see e.g. Latz & Hasselmann, 2022; Grüne Berlin, 2024) and plans to invest in new technology rather than safety-measures. For example, against advice of multiple studies that show how merely installing cameras neither results in less safety incidents nor heightens the travellers' perceived safety, and that the only thing that does make travellers feel safer is the presence of staff, certain operators are planning on operating fully autonomous vehicles (see e.g. VHH's autonomous bus project in Hamburg, VHH.mobility, 2021). While the staff member that would normally operate a vehicle could be used as a safety staff, this is not planned. Rather, costs are cut by not having any staff on board at all. These actions can be understood as structurally disadvantaging the freedom of movement of specific groups. While the real freedom of car-owners is furthered, the real freedom of public transit users is decreased. Given that these groups are already disadvantaged generally in society (see e.g. Anderson, 1999; Anderson, 2009; Young, 2008; McKeown, 2021), this seemingly small decision regarding transport modes results in the upholding of structural injustice.

Structural control by infrastructure design can also disadvantage specific people rather than modes. This is the case with the disregard of certain people that diverge from the average traveller and would need assistance to fulfil their movement needs. This is an injustice widely acknowledged in the professional realm of transport planning. This can be the case for people who are physically or mentally impaired and need more for freedom of movement than the mere 'absence of chains'. The decision by politics and planners not to assist those in need of assistance can thus be interpreted as a way of controlling movement. The disregard of anyone who is not an 'able-bodied male' is widely analysed and documented by scholars such as Sheller (Sheller, 2018), Kern (Kern, 2021) and others. While this is not an act of specifically targeting and policing certain groups of people, the sheer ignorance of others' needs cannot be seen as merely a passive act of omission but an active act of disregard and exclusion (Young, 2008; Lucas, 2012). As empirical research in Western countries such as the Netherlands shows, these excluded people are often those that belong to already marginalised or oppressed groups which leads to their exclusion being even more grave (Young, 2008; McKeown, 2021). Especially when it comes to transport justice, the problem of long travel times or tedious journeys are understood as structurally disadvantaging those that cannot afford fast modes of transport in the context of accessibility (Pereira et al., 2017, Verlinghieri and Schwanen, 2020; Weiss et al., 2017).

A central problem of the aforementioned injustices lies in the structure of movement patterns and who exhibits these patterns. In a world built for cars the claim that people who do not drive cars voluntarily choose not to do so and thus disadvantage and limit themselves shows that the car is the default option to move. As Anderson (2009) points out with regards to the structure of work opportunities, "the remedy here lies not with the more equal distribution of already defined opportunities, but in overcoming the" (here) car-centric "template for defining opportunities" (Anderson, 2009:134). This issue will be taken up again in chapter 4, when it is argued that the right to free movement is already understood by car-drivers as a claim-right while other forms of movement are understood as mere liberty-rights, leading to unjust inequalities. For now, the following section will assess how a lack of freedom of movement can materialise as too much movement and thereby show that the right to free movement cannot simply be understood in a free/unfree dichotomy.

### **3.4.2. Lack of freedom of movement: inefficient/long movement**

An issue that does not come to mind instantly when considering limited freedom of movement is the issue of too much movement. Movement becomes 'too much' either when the entire endeavour of movement

and arrival was not freely chosen or when the movement necessary to arrive at the desired destination is made longer because of arbitrary disadvantage (as assessed in the previous section). The former issue stems from the aforementioned argument that movement to fulfill duties is not free, and if there is no free choice involved in where one goes, when and how, one can speak of forced movement and a lack of freedom altogether. This may happen while one technically has negative freedom of movement. Regarding the latter issue of arbitrary disadvantage, research (see e.g. Lucas et al., 2018; Bastiaanssen et al., 2020; Maat et al., 2005; van de Coevering, 2021; Schwanen et al., 2004; Eichenauer, 2023) shows that especially socio-demographically disadvantaged groups have little choice in where they live or how they can travel. Specifically when it comes to necessary travels such as commuting to work or doing groceries, certain groups would have to travel very long and tedious journeys. For some, this restricts their ability to find work (Bastiaanssen et al., 2020). While this is due to an interplay of factors such as land-use factors and housing allocation, so called transport poverty is a serious issue for those who are already socially disadvantaged. Moreover, many even face being excluded from non-necessary activities because travelling for example to the city centre is rather expensive in terms of costs or time, leading to transport related social exclusion (Van Wee and Geurs, 2011; Lucas, Mattioli, et al., 2016; Lucas, Bates, et al., 2016; Lucas et al., 2018; Lucas, 2012). These issues are especially prevalent in countries of the West, in which land-use strategies have mainly focused on enabling more car travel over the past decades (Schwanen et al., 2004; Handy, 2020; Handy, Cao, and Mokhtarian, 2005; Sager, 2014; Sauter, 2003). Interestingly, the people that endure transport poverty face the problem that they would have to endure too much movement at a too high cost (or personal risk), so it results in no movement at all.

This phenomenon can be related to a concept from migration studies and cross-border movement analysis. Scholars such as Stierl (2020) wonder whether it is "possible at all to maintain clear-cut differences between movements understood as consented to throughout the journeys and movements that imply (elements of) coercion?" (p. 457) and they pose the question "What really does intentionality and voluntariness mean?" (p. 458). It seems, in the context of migration, modern day slavery and human trafficking, the conditions of movement determine to some extent its level of voluntariness. 'Being trafficked', or 'being transported' is thus no equivalent to 'moving' or 'movement', even though the individual that is moving has initially consented to being moved. Stierl (2020) brings forward the example of the "crammed conditions of migrant boats" (p. 458) and how it is obvious that if people had a real choice, they would not choose this kind of movement. In everyday movement this seems to play a big part as well. Those who have no choice travel in the least safe and least comfortable forms of movement, while others risk their very lives by driving ever bigger cars in the name of free movement.

Thus, while whether an individual can *arrive* at a desired destination indicates whether or not they have any freedom of movement (and capacity as well as means to realise it), the way someone travels there indicates the (quality of their) movement freedom. It might thus become a matter of weighing one's desire to get away from where they currently are to a different place against the safety risks one might encounter on the journey there. This issue becomes even more pressing when one considers the aforementioned issue of people not even intrinsically desiring to be at a specific place (as in the case of being expected to commute to work). If one does not intrinsically desire to be at that other place and also does not have the means to choose the safest mode of transportation, it is questionable to what extent this act may be called free (Berlin, 2017). Merely reasoning that travellers are not interfered with travelling and thus are free downplays the lack of choice and neglects specifically that they do not even have negative freedom (Berlin, 2017) <sup>2</sup>.

Another point in this regard is made by Sager (2014). It is stated that if movement is associated with freedom, there is the risk of overlooking compelled movement. He argues that "compelled movement creates problems for an ideology that associates mobility with freedom" (Sager, 2014:472) specifically in

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<sup>2</sup> Berlin (2017) argues "If my lack of material means is not due to my lack of mental or physical capacity, then I begin to speak of being deprived of freedom (...). If in addition, I believe that I am being kept in want by a specific arrangement which I consider unjust or unfair, I speak of economic slavery or oppression" (Berlin, 2017:170). Chapter 4 presents in more depth how the continuous maintenance and care for car-travels deprives travellers of other modes of their freedom, even in the negative freedom conception.

the context of cross-border movement and the inability of certain refugees or immigrants to settle somewhere safe. People who are compelled to be on the move or leave the place they would call home are not said to do so freely and if they had a choice they would probably not have to move that much. Stierl (2020) argues that such instances of unfree movement can be called forced. Similarly, in everyday life, people that have to travel very long times to work to be able to afford life, for instance because they cannot afford faster modes of movement, cannot be said to do so freely. Labelling them as free and thus stating that their travels is a valuable activity fails to recognise that their movement is not the result of free choice. If people have no other choice but to travel long or tedious journeys, this should be recognised as such. Given the mere instrumental value of movement, moving much should not be something a society aspires for its individuals. While having to travel long periods of time or long distances is not as severe as travelling in unsafe ways, it shows how the concept of movement is multidimensional and not all movement is equally (dis-)valuable. There are comfortable ways of movement and uncomfortable ones, safe and unsafe, fast and long, easy and complicated and so on.

### 3.5. Intermediary Conclusion

In this chapter it was first argued why the right to free movement has traditionally been understood and treated as a liberty-right. On the one hand, this was due to practical reasons, such as the fact that not everyone's movement desires can be fulfilled. Scholars such as Baldwin (2006), Steiner (2012) and Steiner (1994) argue that it would be too demanding on the duty-bearer (the state) and that it is physically impossible (i.e. impossible) (Steiner, 1994; O'Neill). Another line of reasoning was that simply not more is needed to enable sufficient freedom (Steiner, 2008; Sager, 2014; Hayek, 1960; Simhony, 1991; Buchanan, 1975).

Next, issues with understanding the right to free movement as mainly a liberty that is not to be interfered with were outlined. It was shown that this leaves no room to understand injustices stemming from a lack of access to certain types of 'higher-quality/value' movement. It treats all forms of movement as similar, no matter if it is necessary or leisurely, fast or slow. If all there is to the right to free movement is non-interference, any mobility injustice such as transport poverty, lack of accessibility and systemic (modal) disadvantage is permissible. It was shown by analysing what the lack of free movement would mean that this is the status quo for many. Thus, by utilising non-ideal theory, it became apparent that what is necessary for free movement to be valuable is not merely granting it as a liberty right. Chapter 4 will discuss what it would mean for the right to free movement to truly be valuable and why that entails for certain modes of movement to become claim-rights.

# 4

## Discussion – understanding freedom of movement as a claim

As argued and demonstrated in the previous chapter, understanding movement mainly as a liberty rather than a claim, as it has been done in the past decades has led to movement as something that, in fact, not everyone has equal access to in the amount necessary for them. This was shown from the standpoint of rights as pre-political. While the right to free movement could initially be taken as meaning ‘freedom from chains’, both its abstract purpose to enable political freedoms as well as its practical purpose of enabling moving around are not fulfilled anymore. That is because both political and the physical context of movement have changed, and different forms of movement challenge this pre-political meaning of freedom. In this discussion, the different freedoms of movement for different modes will be assessed and related to one another. Specifically, it will be shown and argued that freedom of car travel limits freedom of other traffic participants’ travel and thus distorts the entire context of the debate around free movement.

### 4.1. States should enable more than negative freedom of movement

In order to set the stage for the discussion, one needs to recall the general purpose of rights presented in chapter 2. It was stated that rights should help individuals lead a good life and allocate boundaries of individual freedom in cases of conflict. In chapter 3, the argument was made that enabling everyone’s movement desires would be too demanding for a duty-bearer (i.e. ‘the state’), however, it was shown that a mere negative freedom to movement is too little and that in times of different forms of movement, it does not even achieve the bare minimum. The first argument to bring forward in support of the general endeavour of showing that freedom of movement must be more than a liberty-right, I will first argue that states have the duty to enable more than basic negative freedom of movement to their citizens.

Recalling the concept of real freedom as defined by Van Parijs (1995), an individual’s opportunity to perform and follow-through with a desired action is necessary to speak of real freedom. This is opposed to formal freedom which mainly constitutes the rule set one is legally provided with. Van Parijs also claims that “in a free society, the person with the least opportunities has opportunities that are no smaller than those enjoyed by the person with least opportunities under any other feasible arrangement” (Van Parijs, 1995:25). Thus, a state that aims at enabling a free society should aim at a maximin-like opportunity set distribution. Since movement functions as an enabler to opportunities, a mere non-interference does not achieve that.

Moreover, according to O’Neill (2016) human rights are always necessarily understood as moral claims that humans can make either on one another or on states and institutions. While the Universal Declaration of Human Rights (UDHR) leaves room for interpretation for individual cultures or states, they must be defined and understood more specifically in each state in order to have any positive effect on the lives of people living within these societies or states (Stammers, 1999; O’Neill, 2016). It is therefore a valid argument that states can be expected to ensure more than the minimum negative freedom of the ‘free movement’ right in order to have a positive effect on its citizens’ lives.

Steiner (1994) as well as O'Neill (2016) argue that the best way to distribute rights is in an equal way, so that they can guide everyone fairly in situations of deadlock. Hence, every person should enjoy the same rights. As mentioned earlier, in the case of freedom of movement, translating this ideal meaningfully into practice is impossible due to the spatial nature of movement. That is because formulating a movement right that is available to everyone to the same extent could not go further than granting non-interference as spatial realities of people differ significantly and cannot be changed to be the exact same. Chapter 3 presented in-depth why simple non-interference still allows for lack of freedom. Without actual duties to enable movement, the duty as non-interference is simply not enough when it comes to movement. The right to movement understood as a mere liberty without further constraints leads to no significantly extended opportunity set as opposed to a world in which there would be no such right (given that in this world all other human rights hold, such as the right to liberty<sup>3</sup>). This is because liberty as defined in chapter 3 entails freedom from physical coercion. Also, guaranteeing merely freedom to movement adds nothing to a person's life conditions as was argued above. It thus follows that the right to free movement should entail and guarantee more than merely non-interference.

On top, the mobility-related injustices presented in chapter 3 occurred although formal freedom of movement was granted and thereby show that the formal (negative) freedom of movement is simply not enough to be given by the state. Due to movement being extensional in space, it is always dependent on the context it is set in. A pedestrian should be granted the right to move, the fact that publicly built and owned infrastructure restricts that movement and gives others permission to take up more space and limit this person's movement shows that even the minimal 'boundaries of free action space' assigned to everyone in the ideal of negative freedom are not assigned evenly. Since it is not like we find ourselves in a blank space and all have the same negative freedom, we have different starting points depending on where we live and what mode we can afford. As is criticised in other fields, basic enablers to social and political life, such as health care access, education but also movement should not be something that is not available to everyone in the amount necessary for them (Kern, 2021; Sheller, 2018). Therefore, adequate quality of movement should be provided by the state rather than just not inhibited.

Additionally, analysing the context the right to free movement is set in in most contemporary societies, it becomes apparent that the liberty to free movement does not add any value to the rights-context of a person. As was shown in chapter 3, movement can be a way for people without certain basic political freedoms to get to those freedoms (Stierl, 2020). Once they have reached this place of political freedoms, however, there is no added value from granting negative freedom of movement. In a state in which one is protected from harms, and is granted the human right to liberty only granting freedom of movement as positive freedom, as a claim-right, would add more value.<sup>4</sup> Therefore, given that rights should be part of an overall system that needs to 'make sense' (Nett, 1971:213), the right to free movement would need to be a claim in order to make sense once one is granted all other freedoms.

The conception of freedom of movement as a claim-right rather than a liberty-right resembles the understanding of freedom as being enabled to do something (Van Parijs, 1995; Sager, 2014; Berlin, 2017; Simhony, 1991). When movement enables access to other basic needs that a state grants and provides to their citizens, the guarantee to arrive there is implied. So if the state grants the right to medical treatment for all its citizens, it needs to grant the right to arrive at a place that offers medical treatment. As shown by Bastiaansen & Breedijk (2021) this right to accessibility is not granted equally to all citizens as access to medical care can be difficult to reach for those without a car. If one needs a car to reach medical treatment, arguably, medical treatment is not available to all equally. Just because someone has the right not to be interfered with to get to the hospital quickly for medical treatment, they are not directly enabled

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<sup>3</sup> it thus seems like a paradox. In a situation with no basic freedoms, one is less likely to have freedom of movement and thus has to 'illegally/forcefully' take it to get to a place that guarantees basic negative freedoms. Once one has arrived there, the basic negative freedom of movement is irrelevant because that is most likely already granted by combining all the other negative freedoms that are granted in this place of negative freedom once fled to.

<sup>4</sup> it thus seems like a paradox. In a situation with no basic freedoms, one is less likely to have freedom of movement and thus has to 'illegally/forcefully' take it to get to a place that guarantees basic negative freedoms. Once one has arrived there, the basic negative freedom of movement is irrelevant because that is most likely already granted by combining all the other negative freedoms that are granted in this place of negative freedom once fled to.

to get to the hospital in time for medical treatment. By mainly granting a (naked) liberty to movement, this basic right is not fulfilled.

Lastly, granting a liberty, a kind of state of nature in mobility was created. The fastest, strongest and most resourceful dominate and dictate the mobility of the weaker ones (García, 2021; Berlin, 2017; Sheller, 2018; Kern, 2021). Recalling the general purpose of rights, this specific state of nature within the movement domain should be prevented by a right to free movement and hence, the right to free movement needs to adapt to the changed circumstances. The following section will continue to go into detail about why the difference in modes in contemporary mobility makes such a 'state of nature' especially problematic.

## **4.2. Discussing the implications of different movement forms**

One of the main arguments brought forward in chapter 3 for the right to free movement to be merely understood as a liberty is the practical issue of compossibility because it is impossible for everyone to be able to claim their preferred movement path. I would like to argue, however, that the fact that movement can be 'acted out' in different qualities by making use of different modes sets movement apart from other rights and helps solve the compossibility issue. This will be argued along the lines of the three main forms of movement that are used for commuting in everyday life - car, public transit and active modes such as walking and biking. In comparison, a car takes much more space than a person or even a bike and is much less flexible in its movement choices. While a bus, tram or train takes more space, it is also much more space efficient and transports many more people than cars do. It is therefore much less of an issue for pedestrians or cyclists to clash in their movement desires. Space-efficiency is the core idea of public transport and the concept of merging people's movement desires and carry them out together perfectly solves the compossibility issue in terms of extensional overlap. This section focuses on other arguments setting aside different qualities of movement and argues that car movement has long been treated as a claim-right which distorts the context of analysis for the other movement forms.

### **4.2.1. Car movement as a claim-right**

Generally speaking, it can be argued that the car's domination politically and in transport planning limits other traffic participants' freedom (Sager, 2014; Sauter, 2003). Undoubtedly, different modes of movement clash in terms of negative effects, actual physical accidents, as well as infrastructure and city design. A city that is built for pedestrians will not easily be navigated by cars and vice versa.

This domination has led to a vicious cycle in which car-drivers have come to believe that their movement is, in fact, a claim-right. Cities are designed for cars and car users (Handy, Cao, and Mokhtarian, 2005; Saedizand, Franssen and Boussauw, 2022; Van Wee, De Vos and Maat, 2019). Those who own a car and have the financial means to use it whenever they desire to come to believe that movement is something that they can always 'access' and 'practice'. They can go wherever, whenever and it thus may seem as if car-movement was a claim-right. Streets are expected to be maintained well so that cars can use them, car-drivers are outraged if parking fees are increased or street-space is taken away from them (see e.g. Kartschall, 2023). This also becomes apparent with the outrage of car-drivers that are blocked in their movement by, for instance, climate-activists. Theoretically, those travellers have the liberty to travel at a later time or to travel somewhere else or to walk but the fact that they cannot continue their journey in their chosen mode of transport at their chosen time angers them. Because they feel like they have a right to choose when they travel where and by what mode (i.e. have control over all relevant dimensions of movement, not just the 'exit' one, as explained in chapter 3). They are not physically detained or kept from moving anywhere else, so theoretically they have negative freedom. What is indeed not given in such a moment is real freedom to move exactly how and when they want to and arrive where they want to.

The resulting problem from this is that car drivers have come to learn that public car infrastructure is a given and that it is their right to have access to it. It can be argued that the rationale is that they pay taxes for their car and thus assume they 'have the right' to have sufficient infrastructure. In that line of reasoning, car users have come to learn that using the car is a claim-right, that once it is paid for, must be accommodated and served by the state. This claim-right is different from other kinds of movement and

can be argued to be created by custom (see e.g. Nett, 1971). This claim is supported by outcries of car-drivers over stricter speed limits or higher taxes on fuel (Maue, 2021; Bürgerinitiative pro Tempo 50, 2023). Although the negative environmental effects of excessive car driving are widely known and scientifically proven and it is also a known fact that cars pose a danger for other traffic participants such as pedestrians, bikers and also the car drivers themselves, there is often little agreement to limiting the speed or the areas cars can go to (see e.g. this citizen initiative ‘against speed limit 30’ Bürgerinitiative für Tempo 50 und Gegen-Tempo-30, 2023). Although, it needs to be highlighted, that these forms of limiting car movement would not infringe on car drivers’ freedom of movement in the conception of negative freedom, as that conception of free movement does not guarantee any quality of movement (i.e. ‘they may walk’). This is on top of the fact that car infrastructure is enabling a specific freedom of movement, as good highways (and paved streets altogether) grant a freedom to fast travel. The fact that infrastructure is built and maintained by the state shows that the state does indeed grant some sort of positive movement freedom to its citizens.

Meanwhile, those who neither own a car nor have the means to buy or use one rely on public transit infrastructure or active mode infrastructure (i.e. pedestrian and bicycle infrastructure) to get to where they desire to be. If they rely on public transit infrastructure they can only travel when there is service and only from and to the areas that the service covers. They might have to transfer vehicles or modes of public transit, they might have to first walk to the stop at which they board and from which they alight to where they want to be. The connection they want to take might not arrive on time, or not at all. As outlined in chapter 3, they might feel unsafe, uncomfortable and it might altogether be inconvenient (see also Sheller, 2018; Kern, 2021; Cain et al., 2022). They frequently are annoyed but they do not claim it is their right to get public transit service from, to and when they desire it (see e.g. Sommerlad, 2024).

While one part of the population thus thinks they have bought the streets and the right to movement on them, the other part of the population does not have enough access to efficient, high-quality movement (Guzman et al., 2021; García, 2021). On top, the movement the former part of the population physically harms and puts at risk the latter half of the population. This vicious cycle, however, also leads to the car becoming the norm as that is what is most accommodated for by the state. The benchmark created for a ‘good life’ has become to be able to afford a car and drive around ‘freely’. Thus, as more people want a car because it’s easiest to move around and get to places with one, it will increasingly be seen as the default option to be accommodated by the state, reinforcing this cycle. As car movement is not as compossible as e.g. movement by public transit or active modes, this leads to congestion and further issues which seem to necessitate even more car infrastructure, taking away more space that could otherwise be allocated to other kinds of movement.

#### **4.2.2. The negative effects of car infrastructure and car use**

The growth in recent decades of scholarship on accessibility and transport poverty shows that the right to movement cannot mainly be a liberty-right because that is not sufficient (anymore). That is because before that the aim was to accommodate even more and more cars by building more and bigger roads, thereby spending resources on enabling car travel while taking away more and more public space and funding for other modes. It is thus not possible to look at the right to free movement without context and analyse it in a vacuum of meaning. It is and was not the free choice of any pedestrian of today that the cities they find have been designed and built for cars for more than a century. It is not the free choice of pedestrians that people drive in cars and are willing to take the risk of physically hurting them but this does limit their ability.

In fact, the more the car-infrastructure grows, the less a pedestrian is even able to travel anywhere without being interfered with by car-infrastructure or cars. A pedestrian’s movement freedom in reality is much more interfered with than a car driver’s. Hence, it can be argued that the movement freedom of cars significantly limits the freedom of pedestrians, bicycle users or those who walk to and from public transport. Car infrastructure needs more space than pedestrian’s and it tends to be exclusive, as is for example the case with high-speed infrastructure, such as highways. Exclusive infrastructure for cars covers much more space than exclusive pedestrian infrastructure, thereby offering more potential ways

to travel and arguably more freedom (Sager, 2014; Berlin, 2017; Simhony, 1991). What is problematic about this is, however, that if nobody travelled by car everyone would be safer and had more freedom. But because some can afford and desire to travel at higher quality (i.e. faster, more comfortably, relatively safer<sup>5</sup>), those that choose (or have no choice) not to have a car or travel by it are less safe and have less freedom.

On top of the fact that more car use puts non-car users at risk, it must be stated that car infrastructure has a specific aesthetic, experiential effect on people. Streets, highways, traffic lights, on-/off-ramps and even roundabouts but also places such as airports and railway stations are so called non-places or liminal spaces (Huang et al., 2018; Bauman, 2013; Alkayyali et al., 2011). Those are spaces that hold no specific cultural meaning for people and are merely used to pass through. Liminal space is an in-between space, something intermediate that must be overcome, something without meaning or sense on its own (Alkayyali et al., 2011). These spaces will never be destinations in themselves and are not designed or intended to spend time at. While some hold aesthetic pleasure to a certain extent, they are mainly designed and built to be functional, they do not seem lively and they are not natural. Often, they are characterised by the use of lots of concrete and very dull-looking. Masses of car infrastructure thus means that masses of non-places and liminal spaces are created, at the expense of places with meaning and value, such as parks. While exclusive rail infrastructure can also be argued to qualify as liminal space, it is much more space-efficient in terms of how many people make use of it than car-infrastructure. Non-places or liminal spaces are inherently connected to movement as they have no meaning beyond facilitating travel, they would never be a destination or a goal in itself because they are only functional. They are free from meaning because they merely need to be passed by (Huang et al., 2018). As travel and movement is often something that has to be overcome rather than is enjoyed on its own (see chapter 3 on different qualities of movement), the more and faster movement is facilitated without thereby creating meaningful interactions, the more the world becomes an agglomeration of non-places and places to merely pass.

As for the argument that movement can be but a mere liberty, as it would be too demanding for the state who would then be the duty-bearer (Stammers, 1999; O'Neill, 2016), the aforementioned efficiency of certain forms of movement, such as public transport is brought forward. Moreover, as was outlined above, when it comes to basic infrastructure such as streets, it is expected that the state constructs and maintains them, as though that was part of a positive freedom to movement in the status quo. Taking into account the vast negative effects of individual motorized travel, enabling a freedom to movement forms such as biking, walking and public transit seems not that much more demanding after all.

Lastly, it can even be claimed that movement carried out with help of technology and machines (i.e. by car) is transportation rather than movement. Movement understood as being transported signifies movement that happens without actual bodily movement. In that sense it can be understood as a body being transported rather than a body that moves. Being transported has the sole purpose of arriving or leaving and does not enjoy any of the intrinsic values of movement listed in chapter 2. Much of contemporary movement and mobility can be understood merely as being transported. Transport, in the form of motorised travel, necessitates additional resources such as energy (often in the form of fuel) and specific infrastructure. Specific infrastructure is often exclusive (e.g. highways, airports), which provokes the aforementioned questions in terms of justification. Moreover, if in being transported the body itself does not move, this warrants the question of whether the bodily movement itself is even part of movement. If transportation is understood as movement, this would mean that movement is mainly understood and defined as the process of getting to places by transversing space and time. This definition would include the right to access and the guarantee of getting to a desired destination, which was specifically excluded in the previously mentioned definition of (negative) freedom of movement. This would not be in line with the original conceptualisation by e.g. Hobbes, Arendt or, Berlin (Berlin, 2017; Kotef, 2015). Therefore, a claim to free movement does not necessarily imply a claim to free transport.

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<sup>5</sup> It is important to state that while a car driver is less safe driving a car in a world where nobody were to drive a car, in comparison to a pedestrian, any car driver is safer.

### 4.2.3. Building the argument against the freedom to car-movement

Generally, in a world that is mostly already built, there cannot be true equality of movement. It is obvious that no person can always have potential access to every possible item in a world that is shared with other people. Similarly, no person can always have potential access to any space in a world shared with other people. In that sense, that there may then never be full real freedom (Van Parijs, 1995; Steiner, 1994). Thus, this definition of freedom must be rejected as too demanding. As van Parjs argues, with collectively, or publicly owned items there is more such claim to freedom than there is in a world in which most items are privately owned. Relating this to movement, it can be argued that a world with more publicly accessibly means to movement is more free than a world in which individuals own items, such as cars, privately. In practice this would mean that a world with only public transport would be freer under van Parijs' definition of it than the current world is. Putting this into practice, however, leads to contradictory actions to take. For all means to be publicly owned, those who currently enjoy the benefits of privately owned means of transport were to experience a loss in their freedom. Apart from losing their privately owned vehicles, their movement quality would very likely be reduced. Thus, as people with cars can currently travel freely in terms of choice of destination, speed, choice of itinerary and so on, they would lose all this in a world in which there was only public transit. The other way around, however, is the current status quo. In a free society under libertarian ideals in which the aggregate of individual freedom is maximised, not every individual's freedom is (Van Parijs, 1995).

For those that see freedom as inherently connected to self-ownership and ownership of external objects, it seems inevitable to invoke claims over property and also oneself (Van Parijs, 1995; Steiner, 1994; Simhony, 1991). This, however, leads to another mobility-freedom-paradox with regards to car-movement. As was shown, extensive infrastructure for privately owned motorized travel (such as car) unjustly restricts the movement freedom of those that do not own a car. Thus, in order to grant more freedom to those people, nobody should be enabled to own a private car. But this would restrict current car-owners' freedom significantly by taking away their property. What seems permissible would be to restrict car-mobility to the extent that it cannot be used anywhere, at any time and in ways that put other users of public infrastructure at risk. Thus, one could devise specific car travel zones, times and more extreme speed limits. This, however, would imply that the dimensions of time, space, and quality of travel are not part of freedom of movement, and only the movement is. As was shown above, especially in the way car-mobility is understood in contemporary society, it seems as though these elements are indeed part of the understanding of freedom of movement. Then, it is clear that it would go against the aforementioned definition of freedom to restrict car mobility, if that entails taking actions against those dimensions of freedom of movement (Van Parijs, 1995; Steiner, 1994). These deductions lead to the following actions as permissible (and arguably necessary) to firstly restore equal freedom to movement (of whatever form):

Assuming that freedom of movement is merely a liberty right that would allow for speed limits and other ways of restricting car travel to such an extent that it does not clash with or limit other traffic participants. If freedom of movement is understood as a claim-right, the same restrictions to car movement would be permissible as car travel is impossible with all other forms of movement. In a more extreme version of it, the claim for re-allocation of resources to make all modes equal would even demand re-allocation of space to modes such as active modes or public transit, thereby taking away from the vast car infrastructure existing. Concluding, irrespective of how the right to free movement is understood, the way car travel is currently being treated in comparison to other modes is not justified and it should be regulated and restricted more so to enable other traffic participants.

### Intermediary conclusion

The arguments brought forward above show that the right to free movement can be understood and formulated as more than a liberty-right if different forms of movement are assessed. Specifically, one must not assume that all forms of movement are of equal quality or worth. Those forms of movement that offer less disvalue (i.e. more quality while travelling) are more impossible than those forms of movement that have less quality. The unjust circumstances that restrict free choice of form (and thereby)

quality of movement support the argument for the need for a claim-right, for a) for the specific and thereby most basic forms of movement to enable b) arrival at basic amenities as well as workplace and leisure activities. The last section of this chapter will assess in-depth what it means for a right to be de- and reconstructed and to what extent that should happen and is already happening with regards to the right to free movement.

### 4.3. Reformulating the right to movement

As was shown above, the right to free movement needs to be differentiated according to type/quality of movement. While the more efficient forms of movement, such as public transit and active modes have been less prioritised in planning and been treated at best like a liberty-right, car-movement has been actively accommodated and treated like a claim-right. In order to re-align these forms of movement and fulfil its role in enabling all people similarly (i.e. justly), it can be argued for a change in both applications of the right to free movement.

In general, it needs to be re-conceptualised as a claim-right for people to arrive at desired destinations without unnecessary or arbitrary movement. While the complicated spatio-temporal nature of movement make specific movement-claims impossible, arrival-claims are not. For someone to travel 15 minutes to their job and someone to travel 60 minutes to their job does not mean that they have the same freedom or that the one who travels 60 minutes is freer. It is clear that guaranteeing a general positive freedom to all movement is too demanding. Thus, strictly speaking, there should be both a freedom from arbitrary or unnecessary movement and a freedom from being chained. The right to free movement would therefore not need to be reformulated but needs to be added to, making it a right to free and efficient movement. It therefore seems sensible to define arrival to basic amenities, one's workplace as well as leisure activities on top as a claim-right to be enabled by the most basic and least harmful forms of movement. Further, arbitrary and unnecessary movement should be limited. Travellers who travel tedious or prohibitively long journeys should be enabled to travel in more efficient or direct ways whereas travellers who use forms of movement that unnecessarily harm the environment and have negative effects should be limited.

By reformulating the right in this way, it shifts away from being a mere liberty and includes a claim to efficiency. This claim then correlates to a duty to the state to enable efficient movement. As empirically proven, efficient movement can be achieved if more attention and funding is given to modes of mass transport, such as bus, rail and tram but also to active modes as they are more space-efficient and come with fewer negative externalities. It should have also become obvious that contemporary car-travel and the public debate about it is not in line with granting only negative freedom non-car travellers as it goes beyond. At the same time, it infringes on non-car travellers' free movement rights. Conceptualising the right to free movement in a system-efficient way in which more people are enabled to realise their travel desires (within all the travel dimensions) will enable more people to truly be 'free from chains' in that way in which freedom of movement was originally conceptualised.

## 5

## Conclusion - Making sense of movement in contemporary society

In this thesis, the form and function of the right to freedom of movement were assessed and related to contemporary mobility injustices by using the Hohfeldian framework and different definitions of freedom.

It was outlined that freedom of movement is generally understood and treated as a liberty-right for practical reasons. It was argued that fulfilling everyone's movement desires would be too demanding on the duty-bearer (i.e. the state) and that this would be physically impossible due to the impossibility of the movement desires. Moreover, certain libertarian scholars argue that providing more than a negative freedom is simply not necessary. Next, practical issues that can be observed in contemporary societies, so called mobility injustices, were outlined in brought into relation with understanding the right to free movement as a liberty. Broadly, they relate to the fact that arriving is what is valuable about movement, that freedom of choice of movement is not guaranteed and that movement is necessary to fulfil civil practical duties. It was also argued that in capitalist societies in the case of commuting to work, the freedom of movement is especially valuable to the employer and the state rather than the worker commuting. Countering the arguments that not more than negative freedom is necessary for political freedom, it was argued that the case of transport poverty that leads to a segregation of who can participate in social life and who cannot shakes the pillars of democracy. In line with this, an argument by van Parijs was brought forward to show that negative freedom of movement in the contemporary circumstances does not enable real freedom to more opportunities. Next, the role of freedom of movement in political freedom was assessed, leading to the conclusion that either movement can enable basic political freedoms in cases in which people are not granted any political freedom (the thus 'take' movement even without having the freedom to it), or if people are already granted all basic freedoms, the liberty to movement is already implied in all other rights, so a mere negative freedom to movement does not add to the opportunity set a person has.

Since the analysis of status quo with people being granted the liberty-right to movement did not conclusively show what the actual value of that right is, it was turned to non-ideal theory to analyse what disvalue the lack of the right to free movement would have. Different forms of the lack of free movement were assessed. It became apparent that a lack of free movement was somehow already present in situations in which it was formally granted, for example by structural control through leaving out certain people's needs in transport planning. Furthermore, 'over-movement' was argued not to be the result of a free choice and could be a deterrent to movement, thereby paradoxically restricting the freedom to move.

In the following discussion, those assessments were used as a basis to argue that states do indeed have the duty to enable more than negative freedom of movement. Especially the fact that different forms of movement enable different qualities of movement and different contexts of movement show that some have been enabled more than others. By treating all forms of movement as equal, a certain state of nature is enabled. As the car has traditionally been favoured in planning, however, it is now a generally privileged mode. That in and of itself shows that the right to free movement has technically not actually only ever been treated as a liberty-right only. This was discussed more in-depth, and arguments to restrict car

movement have been brought forward, mainly focusing on its negative effects and inefficiency. It was even argued that car movement could be argued not to be movement as the body inside the vehicle does not actually move (one could even be chained in a car and yet move).

Concluding, the initially formulated guiding question “To what extent does the right to free movement need to be reformulated in the context of contemporary forms movement and related injustices?” was answered by arguing that it is indeed necessary in contemporary society to reformulate the right to free movement so that it includes a claim to efficiency to arrive at one’s desired destination. Thereby, the other dimensions of movement, other than mainly the ‘exiting’ part are considered. Also, the difference in quality and value of different forms of movement should be considered. What needs to be realised, however, is that car movement and car infrastructure can and should justly be restricted in order to enable more efficient forms of movement and limit the negative effects this form of movement has. Thus, in a first step, the ‘playing field’ would have to be levelled, reversing how the car has been treated as a claim-right. Then, those with the least real freedom of movement should be enabled to the least inefficient forms of movement. As a consequence, this would result in a more public-transport focused mobility with more accessibility for those with the least accessibility levels. Those who previously enjoyed (almost) unlimited car freedom will, however, have less freedom of (car) movement as a result.

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