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REPUBLICANISM

A THEORY OF FREEDOM AND GOVERNMENT

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INTRODUCTION

Ideas and politics

It would be utopian to think that what happens in politics is a function of the normative ideas that circulate in and around the political world. The form that institutional policies assume, and the shape in which institutional patterns stabilize, are determined as much by the interests of the parties involved, and by their views on empirical questions—by their views, for example, on what is electorally and institutionally feasible—as it is by their ideas as to how things ought ideally to be.

Yet normative ideas are of the first importance in political life. For it is only possible for politicians and public officials to gain support for the policies they pursue to the extent that they can represent them as legitimate: to the extent that they can represent them as policies that are motivated by this or that agreed, or more or less agreed, commitment. Even the secret police of Eastern European societies couldn't keep communist regimes in place once it became a matter of common recognition that the ideals associated with those regimes were not well conceived, or at least not well targeted, and that few continued to believe in them.

The normative ideas that circulate in and around political life are rarely as coordinated, of course, as the ideas that permeated communist systems. In today's advanced democracies they come in different currents that swirl and eddy around the prominent policy-making issues. Sometimes these currents move together and create a momentum in support of one or another policy direction; sometimes they pull against one another and generate a chaotic and unpredictable pattern.

The main currents that wash around our policy-making rocks are easy to identify. One is the current of economic ideas about the importance of satisfying the preferences, whatever they are, that people bring to the social world and about the need to devise efficient disciplines—usually market-like disciplines—for ensuring maximal preference-satisfaction. Another is the current of ideas about people's universal rights, whether these rights be conceived in a thin or a rich fashion, and about the requirement that political institutions respect and foster the enjoyment of those rights. Yet another is the current of ideas that gives prominence to issues of welfare or fairness or
equality—or that focuses on corresponding grievances like poverty or exploitation, subordination or oppression—and that argues for a system which delivers this or that set of valued outcomes. And another, of course, is the current of democratic ideas that associates legitimacy, more or less exclusively, with whatever policies and patterns derive from the will of the people, as majority opinion is described in this tradition, or at least from the will of the people's elected representatives.

These currents in the whirlpool of contemporary politics are often represented, usefully enough, as rival languages or discourses of legitimation. They are languages or discourses—and not, for example, theories or ideologies—because they allow those who speak them to disagree and debate with each another on matters of detailed policy. They consist in shared assumptions that are abstract enough to leave room for differences and germane enough to act as constraints on debate about those differences; they make conversation possible without predetermining its direction. While they share many common idioms—one, as we shall mention, is the idiom of freedom—they are sufficiently distinct to be cast as rival systems for the political criticism and legitimation of institutional arrangements.

Political philosophy

Granted that politics is inevitably conducted in normative language: in the language, now of this current of ideas, now of that. Granted, in other words, that politics always has the aspect—the partial aspect—of a conversation. What does this say about the role of the normative political theorist: or, if you prefer, the political philosopher?

It implies that whatever else the political philosopher may do, one obvious project is the examination of the languages of political discussion and legitimation, the critique of various of the assumptions from which those languages start, the exploration of how far the languages cohere with one another and with the languages of other times and places, and the search for new and broader terms in which to frame political debate.

This is both a humdrum and an exciting task. It is exciting to the extent that it challenges the philosopher to step back and examine matters that pass without notice in the hurly-burly of engaged debate. It holds out the possibility of making the language in which you choose to discuss political issues truly your own. You can become aware of the presuppositions it carries, and mould them to your own mind, rather than being carried along in a medium of debate and thought that commits you in ways that systematically escape notice. To the philosopher's eye the unexamined language, whether it be a language of politics, or ethics, or free will, or consciousness, is not worth speaking: it may introduce too many unwanted assumptions. The excitement of the task described here, like that of any philosophical task, is the excitement of mastering your medium, assuming a degree of control over thoughts that will otherwise control you.

But the task described here is also humdrum. For whatever the individual philosopher achieves in the way of insight and mastery, all that he or she can ever hope to represent is one contribution, at one specific time, in one specific forum, to a conversation that is destined to outrun any efforts they may make to direct it. The conversation of politics, such as it exists in today's advanced democracies, is constantly evolving and shifting, as now one language, now another, comes to the fore, and as the debate turns now in this direction, now in that. No one individual, and so no one philosopher, can expect to do more than play a very humdrum part. They can expect to make their voice heard only in a small circle, and if they reach other audiences that will almost always be because others happen to be saying related things: they are part of a conversational cascade.

It is very important that philosophers recognize this limitation on what they may hope to achieve. If a philosopher comes to the business of political conversation with the ambition of providing the political philosophy to end political philosophies—the philosophical voice to drown out all other voices—then they are bound to be disillusioned. And such disillusion can breed an attitude of despair and scepticism towards the possibilities of conversation in general. It can lead theorists to imagine, as so many contemporaries like to imagine, that there is no real conversation in politics, only the play of naked power: that political argument and exchange never amounts to anything more than the ceremonial waving of flags. Finding that they cannot bend the public conversation to the grain of their own reason, they conclude that there is no reason there at all: not even the sort of reason that is never quickly implemented, never perfectly implemented, never implemented under just its own impetus, and never implemented on all fronts at once.

Such theorists look at developments over the last two hundred years, for example, and refuse to see any signs of conversationally motivated agreement or influence. They fail to notice the long, broken, but still influential debates that took place in various countries on such issues as the abolition of slavery, the reform of pocket boroughs, the
provision of compulsory education, the extension of the franchise, the admission of women to parliament, the provision of social security, the systematic organization of hospitals, and the development of public health schemes. They make it a badge of professional insight to find grounds for cynicism about the value of any such development or about its having occurred as the result, even in part, of reasoned demand or reasoned outrage.

But to say that no one individual philosopher can expect to do much alone is not to say that political philosophy as such does not achieve anything significant. The prospect of political conversation coming entirely adrift from the reflection of political philosophers is a bleak and chilling scenario. For it is mainly by virtue of the work of such theorists that the terms of political conversation are systematically interrogated and interrelated, and occasionally renewed or replaced. A conversation without any corner for sustained reflection of this kind would quickly run to ground in a babel of dogmatic assertion and counter-assertion. If political philosophers did not exist, we would have to invent them.

The republican turn

So much on the nature of politics—or at least on the conversational aspect of politics—and on the role of political philosophy. What, then, do I intend to achieve by my efforts in this book?

I want to remind my colleagues in political philosophy—and, ideally, in the more general audience that the discipline sometimes attracts—of a sort of grievance, and a sort of ideal, that has not been given enough attention in contemporary debates. I want to articulate the grievance in question as a complaint about being dominated and the ideal in question as a vision of being free. I want to show that this language of domination and freedom—this language of freedom as non-domination—connects with the long, republican tradition of thought that shaped many of the most important institutions and constitutions that we associate with democracy. And I want to argue that there is very good reason to find a place again for this language in contemporary political discussion. Thinking about politics in terms of the demands of freedom as non-domination gives us a very full and persuasive picture of what it is reasonable to expect of a decent state and a decent civil society.

The grievance I have in mind is that of having to live in a manner that leaves you vulnerable to some ill that the other is in a position arbitrarily to impose; and this, in particular, when each of you is in a position to see that you are dominated by the other, in a position to see that you each see this, and so on. It is the grievance expressed by the wife who finds herself in a position where her husband can beat her at will, and without any possibility of redress; by the employee who dare not raise a complaint against an employer, and who is vulnerable to any of a range of abuses, some petty, some serious, that the employer may choose to perpetrate; by the debtor who has to depend on the grace of the moneylender, or the bank official, for avoiding utter destitution and ruin; and by the welfare dependant who finds that they are vulnerable to the caprice of a counter clerk for whether or not their children will receive meal vouchers.

Contemporary thought suggests that individuals in these positions retain their freedom to the extent that they are not actively coerced or obstructed. But whether or not they avoid interference, they certainly have a grievance. They live in the shadow of the other’s presence, even if no arm is raised against them. They live in uncertainty about the other’s reactions and in need of keeping a weather eye open for the other’s moods. They find themselves in a position where they are demeaned by their vulnerability, being unable to look the other in the eye, and where they may even be forced to fawn or toadily or flatter in the attempt to ingratiating themselves.

It turns out, so I argue here, that under an older, republican way of thinking about freedom, individuals in such a dominated position are straightforwardly unfree. No domination without unfreedom, even if the dominating agent stays their hand. Being unfree does not consist in being restrained; on the contrary, the restraint of a fair system of law—a non-arbitrary regime—does not make you unfree. Being unfree consists rather in being subject to arbitrary sway; being subject to the potentially capricious will or the potentially idiosyncratic judgement of another. Freedom involves emancipation from any such subordination, liberation from any such dependency. It requires the capacity to stand eye to eye with your fellow citizens, in a shared awareness that none of you has a power of arbitrary interference over another.

The older, republican tradition of which I speak is the tradition associated with Cicero at the time of the Roman Republic; with Machiavelli—the divine Machiavel of the Discourses—and various other writers of the Renaissance Italian republics; with James Harrington and a host of lesser figures in and after the period of the English Civil War and Commonwealth; and with the many theorists of republic or commonwealth in eighteenth-century England and
America and France, I focus most often on the 'commonwealthmen' who dominated English and American political thought in the late seventeenth and in the eighteenth century. The commonwealthmen were devoted to the ideal of freedom as non-domination—freedom as an escape from the arbitrary—and they helped to shape habits of political reflex and thought that still survive today. Their distinctive refrain was that, while the cause of freedom as non-domination rests squarely with the state and its officials—it is mainly thanks to the state and the constitution, after all, that people enjoy such freedom—still those officials are also an inherent threat and people have to strive to 'keep the bastards honest'; the price of liberty is eternal vigilance.

When traditional commonwealthmen and republicans hailed the ideal of freedom as non-domination, they only ever imagined that it was an ideal for an elite of propertied, mainstream males; they were all men, after all, and men of their times. But there is every reason why we should reappropriate their ideal and reintroduce it as a universal ideal for the members of a contemporary society. That, at any rate, is my own conviction, as will become clear in the course of the book. I believe that the notion of freedom as non-domination fits with many of our agreed preconceptions, that it picks up important desiderata that are already inscribed in many of our institutions, and that it can serve to articulate a compelling account of what a decent state and a decent civil society should do for its members.

I said earlier that there are many languages of legitimation present in the world of democratic politics today. One of the striking features of those languages, however, is that all of them, at one point or another, invoke the notion of freedom; all of them share a common idiom of freedom or liberty. The language of economics directs us to the free market and to the freedom to make whatever contracts we will with one another; the language of rights focuses on rights of free thought, free expression, free movement, and the like; the language of welfare and fairness and equality, or of poverty and exploitation and subordination, claims to articulate the requirements necessary for enjoying freedom or for making freedom effective. And the language of democratic legitimation harps on the legitimacy of what a free people freely decide, and on the way in which individual persons share in that collective freedom.

This overlapping idiom of freedom gives an indication of the importance that all of us, or at least all of us who identify with western-style democracies, naturally assign to the notion of freedom. However we interpret it, the notion has mantric standing in our thought. The fact of this status means that my argument about the republican ideal of freedom has more than antiquarian or analytical interest. I maintain that the traditional, republican ideal of freedom supports and unifies a compelling manifesto of political demands, and that if a state and a society looks after the freedom as non-domination of its members, then most other desiderata will look after themselves. Whatever may be said of this claim, the centrality of the notion of freedom means that it should at least command attention. It may be mistaken but it surely isn't boring.

Neither, I should say, is the claim idiosyncratic. I am not alone in finding the republican tradition of thought a fruitful source of ideas and ideals. Historians like John Pocock (1975) and Quentin Skinner (1979; 1983; 1984) have not only made the tradition visible to us in the past couple of decades; they have also shown how it can give us a new perspective on contemporary politics. Skinner in particular has argued that it can give us a new understanding of freedom and my own argument builds on this, as I indicate in the first chapter. Legal thinkers like Cass Sunstein (1990a; 1993a; 1993b), on the other hand, have gone back to the republican tradition in its distinctively American incarnation in the late 1800s, and have made a strong case for the claim that the tradition suggests a distinctive way of interpreting the US Constitution and, more generally, that it gives us an insightful overview on the role of government. I make a variety of connections with Sunstein's work in the later part of the book. Criminologists and regulatory theorists like John Braithwaite, with whom I have actively collaborated, find in the republican tradition a set of compelling ideas for articulating both the demands that we should place on a regulatory system—say, the criminal justice system—and the expectations that we should hold out for how those demands can be best met (Ayres and Braithwaite 1992). And these are just a few thinkers among many commentators who have begun to chart republican connections, and sometimes to draw actively on republican ideas, in recent years.1

Republicanism, populism, liberalism

When thinkers like Skinner, Sunstein, and Braithwaite describe themselves as republican, and when indeed I describe myself in that way, I

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should mention that the tradition with which we identify is not the sort of tradition—ultimately, the populist tradition—that hails the democratic participation of the people as one of the highest forms of good and that often waxes lyrical, in communitarian vein, about the desirability of the close, homogeneous society that popular participation is often taken to presuppose (Philip 1996). The republican tradition that is characterized in this book is not inherently populist in this way and indeed, as we shall see later, not particularly communitarian.

Republican freedom is a communitarian ideal, in a sense explicated in Chapter 4, but the ideal is compatible with modern pluralistic forms of society. And while the republican tradition finds value and importance in democratic participation, it does not treat it as a bedrock value. Democratic participation may be essential to the republic, but that is because it is necessary for promoting the enjoyment of freedom as non-domination, not because of its independent attractions: not because freedom, as a positive conception would suggest, is nothing more or less than the right of democratic participation.

This point is important to stress because the term ‘republican’ has come to be associated in many circles, probably under the influence of Hannah Arendt (1958, 1973), with a communitarian and populist approach (Virola 1992: 286–7). Such an approach represents the people in their collective presence as master and the state as servant, and suggests that the people ought to rely on state representatives and officials only where absolutely necessary: direct democracy, whether by assembly or plebiscite, is the systematically preferred option. The commonwealth or republican position, by contrast, sees the people as trustor, both individually and collectively, and sees the state as trustee: in particular, it sees the people as trusting the state to ensure a dispensation of non-arbitrary rule. For this position direct democracy may often be a very bad thing, since it may ensure the ultimate form of arbitrariness: the tyranny of a majority. Democratic instruments of control will certainly be desirable and indispensable, but they are not the be-all and end-all of good government.

So much for the populist alternative to republicanism. What now of the relationship between the republican tradition, as I envisage it, and perhaps the more salient alternative that is represented by the liberal conception of politics?

The republican tradition, as I shall argue, shares with liberalism the presumption that it is possible to organize a viable state and a viable civil society on a basis that transcends many religious and related divides. To that extent many liberals will claim the tradition as their own. But liberalism has been associated over the two hundred years of its development, and in most of its influential varieties, with the negative conception of freedom as the absence of interference, and with the assumption that there is nothing inherently oppressive about some people having dominating power over others, provided they do not exercise that power and are not likely to exercise it. This relative indifference to power or domination has made liberalism tolerant of relationships in the home, in the workplace, in the electorate, and elsewhere, that the republican must denounce as paradigms of domination and unfreedom. And it has meant that if liberals are concerned with issues of poverty, ignorance, insecurity and the like, as many are, that is usually because of some commitment independent of their commitment to freedom as non-interference: say, a commitment to the satisfaction of basic needs, or to the realization of a certain equality between people.

Liberalism, as I construct it here, is a broad church (Ryan 1993). I think of liberals as those who embrace freedom as non-interference. I distinguish between left-of-centre liberals, who stress the need to make non-interference an effective value, not just a formal one, or who embrace values like equality or the elimination of poverty in addition to the value of non-interference, and right-of-centre liberals—classic liberals or libertarians (Machan and Rasmussen 1995)—who think that it is enough to establish non-interference as a formal, legal reality. But I should mention that many left-of-centre liberals will be unhappy with this way of casting things (Larmore 1993: ch. 7; Holmes 1995). They will see their liberalism as having more in common with the republican position than with the libertarian (Ackerman 1991: 29–30) and they would probably want to give up the taxonomy of populism, republicanism, and liberalism in favour of an alternative like populism, republicanism/liberalism, and libertarianism.

There is something to be said for this alternative. I mentioned that, where the populist image of government represents the people as master and the state as servant, the republican or commonwealth image depicts the people as trustor, the state as trustee. Left-of-centre liberals would almost certainly endorse this trustor–trustee image also, and one attraction in the proposed taxonomy is that libertarianism can be linked to a third and different image of the relationship between people and state. Self-described libertarians tend to think of the people as an aggregate of atomized individuals—an aggregate without a collective identity—and they represent the state as ideally nothing more than an apparatus for accommodating individuals in the pursuit of their atomized concerns. The model is not that of master and servant, nor that of trustor and trustee, but rather that of an aggregate of
individuals and an apparatus for ensuring their individual satisfaction. For those who like taxonomies that go deep on a number of dimensions, the best available may be: populist, republican/liberal, and libertarian.

But this consideration notwithstanding, I intend to stick with my presentation of liberalism as a broad church that encompasses both left-of-centre liberals and libertarians. The reason is that my primary focus is on how different theorists think of freedom, and I believe that most of those who describe themselves as liberals—most, not all (see Gaus 1983; Raz 1986)—think of freedom in the negative way as non-interference; certainly they do not think of it in the republican fashion as non-domination. Left-of-centre liberals will find the republican line advanced in this book attractive in its institutional implications. But I think that most of them should be ready to admit that the line is supported here from a distinctive base. It may be a base that was familiar to those in the commonwealth tradition that they admire—it may have been familiar to the likes of Harrington and Locke, Montesquieu and Madison—but it is not a base that is generally recognized in self-consciously liberal writing.

Some historians of thought will baulk at the breezy way in which I speak here and later of the republican as distinct from the liberal or populist traditions, and a word of qualification is required. While this book starts from a notion of freedom with a distinctive historical provenance, and while I have emphasized that aspect of things in this introduction, the book is not essentially tied to many controversial theses in the history of ideas. Perhaps republicanism is not deserving of the name of a tradition, for example, not being sufficiently coherent or connected to be treated in that way. Perhaps there is such a break in the new seventeenth-century concern about the power of the state—the power of the state as distinct from that of the powerful—that we cannot see a single tradition spanning that rupture (Pasquino, forthcoming; see also Michelman 1986; Manent 1987). Or perhaps there are other grounds for subdividing what I present as one tradition into different periods or strands. I do not have to commit myself on these detailed sorts of questions.

All that I strictly need to claim is that the representation of freedom as immunity to arbitrary control is found in many historical authors, that it is a distinctive and challenging conception of the ideal, and that it is worthy of consideration in contemporary political philosophy. I go further than that, of course, in the story that I tell about republican thought. I treat the belief in freedom as non-domination as a unifying theme which binds together thinkers of very different periods and very different background philosophies. And I suggest that the commitment to this theme generates shared institutional concerns among such thinkers: concerns about the character of law and government, about the checks and controls on public authorities, and about the cultivation of virtue and the avoidance of corruption. But this historical aspect of the book is secondary. If historians of ideas find it misleading, then they should regard the more substantive historical suggestions as simplifications that are justified only by the colour that they give to my philosophical claims.

The case for republicanism

Why should I expect populists and liberals, whether liberals of a rightist or a leftist bent, to give a hearing to the republican approach? Every grand approach to politics gives us an axiom or set of axioms from which judgements on more particular institutional matters are meant to flow; the axioms need not represent a unique base of justification, as in a foundationalist scheme, but they do claim to be a good starting-point for organizing intuitions. Any such approach is bound to be judged, then, on two fronts: one, for the attractions of the axiom or axioms, both in themselves and in the organizational role that they are allotted; and two, for the plausibility and adequacy of the theorems that are derived from those axioms. The picture fits with John Rawls's (1971) method of reflective equilibrium, as described later in this book.

Republican theory should recommend itself to all competitors, I believe, in the axiom from which it starts. The republican conception of liberty should appeal to liberals, in so far as it focuses on people's individual power of choice and thus has much in common with the negative notion of freedom as non-interference. And it should appeal to populists in so far as it requires, as I argue, that non-dominating government has to track the interests and ideas of ordinary people; this is the idea that lies behind the positive, populist notion of freedom as democratic self-mastery. The central axiom of republican thought is not a newfangled notion, and is not even a notion, like justice or equality, that depends for its attraction on the acceptance of a controverted vision. It is traditional and modest enough, in itself, to make a claim on the attention of all comers.

But though republican theory is organized around a modest and traditional starting-point, it is extremely fruitful and challenging in the
theorems about government institutions which it enables us to derive. It does not leave us with the sparse and heartless sort of government with which rightist liberals pretend to be satisfied. And it does not support the interventionist, majoritarian rule—the potentially tyrannical sort of rule—which populists have to countenance. It points us in a direction that is closest to that embraced by left-of-centre liberals, as the book exemplifies, offering a rival axiomization of many of their intuitions. But the rival axiomization has two advantages. First, it starts from a base that is less contentious than the base which leftist liberals generally espouse; it offers a common ground on which to argue, for example, with their rightist opponents. And second, the republican axiomatization develops even shared intuitions in a highly distinctive and yet compelling way. As will become clear, for example, it offers an attractive way of justifying egalitarian and even communitarian intuitions. And it supports an exciting way of rethinking democratic institutions, in which the notion of consent is displaced by that of contestability.

The plan of the book

And so finally to the plan of the book. Chapter 1 tells the story of how the republican notion of freedom emerged and stabilized, and of how it was eclipsed at the very moment of its most conspicuous success in the debates surrounding the American Revolution. It was at this time that the notion of freedom as non-interference took over from that of freedom as non-domination, so I suggest, and that liberalism replaced republicanism as the dominant political philosophy. Chapter 2 gives a philosophical articulation of the notion of freedom as non-domination, regimenting the idea formally and displaying its points of contrast with freedom as non-interference. Chapter 3 argues for the capacity of freedom as non-domination to serve as a guiding ideal for the state. And then Chapter 4 charts the connections between freedom as non-domination and the values linked with it in the French trio of liberté, égalité, fraternité; this chapter is designed to display the egalitarian and communitarian character of freedom as non-domination, and to show the appeal that it should have as a political ideal.

Those first four chapters are followed by four that look at the institutional ramifications of organizing a state and a civil society so that the cause of freedom as non-domination is served as well as possible. Chapter 5 looks at what is going to be required of a modern state if it is to guard against the arbitrary sort of interference that individuals and groups may practise against one another in virtue of having different levels of resources, different levels of dominium. And then Chapter 6 looks at what is necessary if such a republican state is to promote non-domination successfully, and is not itself to represent a form of domination associated, in a twin term, with imperium (Krieger 1995). Where Chapter 5 describes the aims of the republican state in controlling dominium—the causes with which it should identify, the policies which it should sponsor—Chapter 6 describes the forms that the state must assume if it is to control imperium: in particular, it describes the sort of constitutionalism and democracy required to guard against this danger. Chapter 7 looks at what can be done to make the realization of such republican aims and forms resilient or stable, providing regulatory checks against shortfalls and abuses. And Chapter 8 rounds off the discussion by arguing that if the republican state is to achieve its ends in relation to dominium and imperium, it must connect with a form of civil society in which republican values are firmly entrenched: it cannot expect to work such wonders on its own. Although this connection with civil society is left until last, it is of the utmost importance. Someone who reads just the first seven chapters of the book will miss one of the most significant aspects of the republicanism it defends.
CHAPTER 1

Before Negative and Positive Liberty

I. Negative and positive liberty

Contemporary discussions of social and political organization are dominated by a distinction which Isaiah Berlin (1958) made famous. This is the distinction between what he, following a late-eighteenth-century tradition (Lind 1776), describes as negative and positive liberty.

Negative liberty, as Berlin conceives of it, involves the absence of interference, where interference is a more or less intentional intervention of the sort exemplified, not just by the physical coercion of kidnap or imprisonment, but also by the coercion of the credible threat ('Your money or your life'; 'Your money or the bailiff'). I am negatively free 'to the degree to which no human being interferes with my activity' (Berlin 1958: 7): to the extent that I enjoy unimpeded and uncoerced choice.

Positive liberty, according to Berlin, requires more than the absence of interference, more than just being let alone by others. It requires the agent to take an active part in gaining control or mastery of themselves: the self with which they identify must take charge of the lesser or more partial selves that lurk within every individual. I am positively free to the extent that I achieve 'self-mastery, with its suggestion of a man divided against himself' (Berlin 1958: 19).

Berlin shaped the allegiances of contemporary theorists in marking out negative liberty as a sensible ideal and in raising serious doubts about the credentials of positive. The self-mastery ideal of positive liberty may seem attractive, he argued, but it easily gets interpreted in an ominous fashion: say, as the ideal of becoming able, perhaps with the help of state discipline, to master one's lower self; as the ideal of transcending the divided, atomistic self by assimilation to the greater whole of the national spirit; or as the ideal of suppressing
decentralized, individual will by becoming part of a self-determining polity which reveals and realizes what is in the common interest.

Berlin did more than make negative liberty look attractive, positive liberty ominous. He also managed to insinuate that, while most modern, down-to-earth thinkers have taken liberty in the negative sense, the positive construal of liberty was associated with earlier, more suspect sources. He finds the negative conception in 'the classical English political philosophers', like Hobbes, Bentham, and Mill, in luminaries of French enlightenment like Montesquieu, Constant, and de Tocqueville, and in American heroes like Jefferson and Paine: in short, in the pantheon of modern liberalism. He associates the positive conception, on the other hand, with continental romantics like Herder, Rousseau, Kant, Fichte, Hegel, and Marx; with religious and quasi-religious groupings of Buddhists, Christians, and Stoics; and with radical, even totalitarian, political thinkers like Jacobins and communists.

In advancing this scenario of heroes and anti-heroes, Berlin made contact with the tradition of distinguishing ancient from modern liberty (Spitz 1995a). The clear suggestion is that, whereas positive liberty is something of the past—the liberty of the ancients—negative liberty is a truly modern ideal. While negative liberty is an enlightenment value with which we can all now identify, so it is suggested, positive liberty is the sort of ideal that appeals only to such celebrants of pre-modern times as the romantic aficionados of counter-Enlightenment. The ancient-modern distinction had been brought to prominence early in the last century by Benjamin Constant (1888) in a famous essay on 'The Liberty of the Ancients and the Liberty of the Moderns'. Constant's modern liberty is Berlin's negative liberty, and his ancient liberty—the liberty of belonging to a democratically self-governing community—is the most prominent variety of Berlin's positive conception. Modern liberty is being left to the rule of your own private will, ancient liberty is sharing in the rule of a public, democratically determined will. The modern ideal is characteristically liberal, the ancient characteristically populist (Riker 1982).

I believe that the negative-positive distinction has served us ill in political thought. It has sustained the philosophical illusion that, details aside, there are just two ways of understanding liberty: in one, freedom consists in the absence of external obstacles to individual choice; in the other, it involves the presence, and usually the exercise (Taylor 1985: essay 8; Baldwin 1984) of the facilities that foster self-mastery and self-fulfilment: in particular, the presence and exercise of those participatory and voting facilities whereby the individual can unite with others in the formation of a common, popular will.

The negative-positive distinction has sustained a historical narrative to go along with this philosophical dichotomy of private and populist liberty. Under that story, the concerns of those who speak of liberty in premodern times are almost always concerns with democratic membership and participation and the fulfilment that such belonging allegedly brings; they are concerns of the kind that would have been perfectly fulfilled for the citizens of classical Athens, for example, at least as Athens appears in the soft, nostalgic focus of the counter-Enlightenment (Arendt 1973; MacIntyre 1987; contrast Finley 1973; Fustel de Coulanges 1920). The concerns of moderns, on the other hand, are seen as the product of a changing, more individualistic society that spurns the ideal of public participation in favour of the ideal of a private sphere of activity in which each individual can get their own way. If democratic participation is supported within this philosophy of liberty, that is not because it is a good in itself, but rather because it serves a useful purpose in the protection of the individual.

I believe that these philosophical and historical oppositions are misconceived and misleading and, in particular, that they conceal from view the philosophical validity and historical reality of a third, radically different way of understanding freedom and the institutional requirements of freedom. I describe this third approach as republican, and my aim in the present chapter is to inscribe republicanism on the map—the historical and philosophical map—of available alternatives (see Spitz 1995b).

In speaking of republicanism, I refer to the long republican tradition—and, indeed, the broad republican tradition—that has become the focus of interest for a recent school of historical scholarship (Fink 1962; Raab 1965; Baron 1966; Pocock 1975; Skinner 1978; Pagnia 1987; Oldfield 1990; Bock et al. 1990; Fontana 1994). This tradition had its origins in classical Rome, being associated in particular with the name of Cicero. It was resurrected in the Renaissance, featuring powerfully in the constitutional thinking of Machiavelli, and it played an important role in the self-conception of the northern Italian republics: the first modern European polities. It provided a language which dominated the politics of the modern West and had a particular salience in the Dutch Republic, during the English Civil War, and in the period leading up to the American and French Revolutions.

The big names of this more modern republican tradition include Harrington, Montesquieu, and perhaps de Tocqueville; they also include Rousseau, of course, though they should only do so, by my lights, if his work is interpreted in a non-populist way (as in Spitz 1995a). The tradition often received its most trenchant applications,
however, not in the works of well-known writers, but in texts like Cato’s Letters (Trenchard and Gordon 1971) and the Federalist Papers (Madison et al. 1877). The first of these texts was associated with the so-called commonwealthman tradition that survived in England from the period of the English Revolution through until the late eighteenth century (Robbins 1959; Fink 1962; Raab 1965). The second of the two texts, and of course the one better known, was an outstanding formulation of the associated transatlantic ideology: the ideology that lay behind the American Revolution (Bailyn 1967).

The republican tradition was unified across time, partly by a deference to the same textual authorities, partly by a shared enthusiasm for the ideals and the lessons of republican Rome, partly by an emphasis on the importance of having certain institutions in place: for example, an empire of law, as it was often put, not an empire of men; a mixed constitution, in which different powers serve to check and balance each other; and a regime of civic virtue, under which people are disposed to serve, and serve honestly, in public office. The most important unifier of the tradition, in the end, may be the habit of conceptualizing liberty in a distinctive fashion. But that is something which should emerge here, not something that I want to take for granted at the beginning.

Anti-monarchism was often a feature of the republican tradition, particularly during the English Civil War and again after the American and French Revolutions. But republicans were anti-monarchists only so far as they considered that a monarch would inevitably seek absolute power and would offend against the sort of liberty they prized. Thus they were happy with the constitutional monarchy that they found in eighteenth-century England: ‘a nation’, in Montesquieu’s (1989: 70) unmistakable reference, ‘where the republic hides under the form of monarchy’ (Rahe 1992: 524). And not only that. Many of those whom I would have to count as republicans did not describe themselves, whether for strategic or other reasons, in such terms. Like Montesquieu himself, they preferred to don less radical colours.

Republican themes found a particularly friendly climate when they began to appear in England in the seventeenth century. As the courts and the common law had developed from the middle ages in England (Berman 1983), they had assumed a decentralized, non-voluntaristic form and had given rise to firm assumptions about people’s rights under the law—people’s ancient rights, as they were often described—even their rights against the powerful; they had provided people with a sense that they lived under a constitution, an empire of law, of ancient and unquestioned standing (Blackstone 1978: 127–8; Pocock 1987; cf. Blom 1995: 49). This legal background may have been as important in the development of the eighteenth-century commonwealthman tradition as the independent republican ideas for which it provided such a nurturing climate. It meant that the newer republicanism always had a juridical cast in which a central place was given to the notion of rights—customary, legal, and constitutional rights—as bulwarks against absolute power (Tully 1993: 261–2; see also Ingram 1994).

The remaining discussion in this chapter is in six sections. In Section II I show that there is philosophical space left unoccupied by the distinction between negative and positive liberty, and that we can see room there for a third and distinct approach: the conception of freedom as non-domination. In Section III, I introduce the republican conception, arguing in line with recent scholarship—and against the traditional orthodoxy—that it is not an example of the positive approach. Then, in Sections IV and V, I provide evidence for thinking that it was precisely the conception of freedom as non-domination, not the negative conception of freedom as non-interference, that was embraced among writers in the republican tradition. In Section VI, I show how the conception of liberty as non-interference came to replace the received republican notion at the end of the eighteenth century. And in Section VII I outline some considerations that played a role in undermining the republican way of thinking and in ensuring the triumph of the new conception.

The story I tell has a twist. It suggests that the originators of the negative, purportedly modern idea of freedom as non-interference were not those who welcomed the American Revolution, and the bright new age that it seemed to announce, but rather those who opposed that revolution and sought to defend the interest of the British crown. Those who welcomed and defended the revolution were moved, on the contrary, by the republican conception of liberty as non-domination which the modernist idea eventually came to replace.

II. A third conception: liberty as non-domination

The best way of introducing freedom as non-domination may be to observe that Berlin’s taxonomy of positive and negative liberty forecloses a more or less salient third possibility. He thinks of positive liberty as mastery over the self and of negative liberty as the absence of interference by others. Yet mastery and interference do not amount to the same thing. So what of the intermediate possibility that freedom
have a master; I enjoy non-interference to the extent that that master fails to interfere.

As I may suffer domination without interference, so I may undergo interference without being dominated: without relating to anyone in the fashion of slave or subject. Suppose that another person or agency is allowed to interfere with me but only on condition that the interference promises to further my interests, and promises to do so according to opinions of a kind that I share. Suppose that the person is able to interfere in the event of the interference satisfying that condition, but that otherwise they are blocked from interfering or are subject to a deterrent penalty for attempting interference. It may be that a third party polices the person's performance or it may be that I am in a position to contest it myself. In such a case it is not possible to see the interference as an exercise of domination; the person interferes with me but not on an arbitrary basis. The person envisaged relates to me, not as a master, but more in the fashion of an agent who enjoys a power of attorney in my affairs.

As we can have domination without interference, then, so we can have interference without domination. The first possibility is illustrated by the non-interfering master, the second by the non-mastering interferer. Domination can occur without interference, because it requires only that someone have the capacity to interfere arbitrarily in your affairs; no one need actually interfere. Interference can occur without domination, because interference need not involve the exercise of a capacity for arbitrary interference, only the exercise of a much more constrained ability.

Given that interference and domination are different evils, non-interference and non-domination are different ideals. The difference between them is summed up nicely in the different ways they would rank the four scenarios to which we are directed as we imagine that there is or is not interference and that there is or is not domination. Where there is neither interference nor domination, the two ideals will endorse the situation. Where there is both interference and domination, the two will disapprove. They come apart, however, when one evil is realized but not the other. If there is domination but no interference, as in the case of the non-interfering master, only the ideal of non-domination will find anything to denounce. If there is interference, but no domination, as in the case of the non-mastering interferer, only the ideal of non-interference will see anything to criticize. This counterpointing is a little glib, as we shall see in later chapters, but it may serve usefully as a first presentation of the difference between the ideals. Here it is, in summary form.
No interference, no domination: good under the two ideals. Both interference and domination: bad under the two ideals. Domination but no interference: bad only under the non-domination ideal. Interference but no domination: bad only under the non-interference ideal.

There is a second way of bringing out the difference between the ideals and it may also be worthwhile mentioning this (Pettit 1993a; 1993b). To enjoy non-interference is to escape coercion in the actual world. For a relevant range of possible choices no one coerces you to choose one way or another; were you to face one of those choices, you could make your choice without hindrance, threat, or penalty. What will it take, then, for such a non-interference world to be a non-domination world? In one way it will take less: it will not compromise the fact of non-domination that you suffer some interference, provided that the interference is not perpetrated by an agent on an arbitrary basis and does not represent a form of domination. But in another, crucial way, it will take more for that non-interference world—specifically, the world without interference by arbitrary powers—to be a non-domination world; the world must be a non-interference world of that kind, not by accident, but by virtue of your being secured against the powerful.

You might enjoy the non-interference in the actual world, because of a quite precarious contingency: say, because it happens that certain powerful individuals have a liking for you or it happens that you are able to keep out of the way of such individuals or ingratiate yourself with them. In this sense, you might enjoy non-interference in the actual world but not enjoy it with any degree of security against the powerful: not enjoy it robustly or resolutely. Let this or that condition vary—let you become less likeable, less lucky, or less cunning—and immediately interference, in particular interference on an arbitrary basis, follows: the powerful begin to coerce you in any of a variety of ways. You enjoy non-interference from the powerful in the actual world, as we might say, but you do not enjoy it in the range of readily accessible worlds—a range of nearby possible worlds—where this or that contingent condition is varied; you do not enjoy it resolutely.

Where the ideal of non-interference involves this inbuilt contingency, the ideal of non-domination avoids it. For if you are not dominated by anyone else, if you are not subject to a capacity for arbitrary interference by anyone else, then it follows that the non-interference you enjoy in the actual world, you enjoy with a certain resilience or security. In the scenario just envisaged, the non-interference you enjoy is non-secure, precisely because there are powerful individuals about who can interfere with you: if they do not interfere, that is because they happen to like you, or you happen to be able to avoid them or placate them. But the most crucial difference between enjoying non-domination and enjoying mere non-interference is precisely that no individuals have this sort of power over you. Were other individuals to take against you—were you to become less likeable, less cunning, or whatever—still that would make no difference to the non-interference you enjoy; you would be protected against any interference that they might come to contemplate.

When you are not dominated, then, you enjoy the absence of interference by arbitrary powers, not just in the actual world, but in the range of possible worlds where contingencies of the kind mentioned have a different, less auspicious setting. Those who are attached to the ideal of non-interference value the fact of having choice—the fact of non-interference—whether the choice is dominated or not; those who embrace the ideal of non-domination value the fact of having undominated choice, but not necessarily the fact of having choice as such. They do not mind the lack of choice that results from non-arbitrary interference and they may despise the sort of choice that you enjoy by grace of your own cunning or charms or ingratiation, seeing it as a demeaning and despicable bequest. The first group focus on the quantity of choice available, no matter what kind of choice is involved; the second are interested only in choice of the right, undominated quality.

So much for my argument that the dichotomy between the ideals of non-interference and self-mastery leaves space, and indeed saliently leaves space, for a third possibility: the ideal of non-domination. But one further question. Is it plausible to think of this as an ideal of freedom or liberty: as an ideal, specifically, of political and social liberty? In particular, is this plausible for someone who is prepared to describe the conditions of non-interference and self-mastery as ideals of freedom?

The plausibility of describing non-domination as an ideal of liberty appears in the fact that, as there are structural commonalities in the rival conceptions of free will (O’Leary-Hawthorne and Pettit 1996), so there is a structure in common to the conception of political liberty as non-domination and the negative conception of political liberty (see MacCallum 1967). When a person is free in the sense of negative liberty they are exempt from interference in the things they do—exempt from intentional coercion or obstruction—where exemption means that they enjoy the absence of such interference. When a person enjoys non-domination, they are exempt from arbitrary
I conclude that not only is there a third alternative that is intermediate between the ideals of non-interference and self-mastery. It is also perfectly plausible to think of this alternative condition, like the others, as an ideal of political and social freedom. With these points established, it is now time to return to the republican tradition, and to see why that tradition should be associated with this third conception of liberty and not with either of the other two.

III. The republican conception of liberty is not a positive one

The standard way of reading the republican tradition, in conformity to the Berlin-Constant framework, is as a tradition that prizes positive liberty above all else, in particular the liberty of democratic participation. But while the republican tradition places a recurrent, if not unerring, emphasis on the importance of democratic participation, the primary focus is clearly on avoiding the evils associated with interference. This is a theme that has been developed recently in the work of Quentin Skinner and some other historians of thought. We need to look into it before going on to raise the question of whether the stress on the evils of interference went with a belief in freedom as non-interference or, as I believe, with a belief in freedom as non-domination.

The emphasis on the evils of interference was there already in the originating, Roman conception of libertas. A number of writers make the point (Wirszubski 1968; Nippel 1994) but perhaps Hanna Pitkin (1988: 534–5) is the most emphatic. The Roman plebeians struggled not for democracy but for protection, not for public power but for private security. Of course they sought public, institutionalised guarantees of that security. But libertas... was “passive”, “defensive”, “predominantly negative.” This refrain appears in the fact that while libertas, or freedom, was equivalent by all account to civitas, or citizenship (Wirszubski 1968: 3; Crawford 1993: 1), the Romans found no

1 When someone is subject to natural or non-intentional obstacles, they may be described under the conception of freedom as non-interference as not free—if you like, as non-free—to do the things that are blocked, even though they are not strictly unfree to do them; they do not suffer interference (Pettit 1989b). And when someone is subject either to such obstacles or to corresponding forms of non-arbitrary interference, then under the conception of freedom as non-domination, as we shall notice in the next chapter, they can also be said to be non-free—non-free but not unfree—in regard to the options in question.

2 The point was first defended at any length by Skinner (1983; 1984), when he insisted that republicans like Machiavelli did not have a positive conception of liberty but rather one of a distinctively negative stamp (see too Spitz 1995b: ch. 4; Patten 1996). But for Skinner’s work I would never have thought to look to the republican tradition for the third conception of liberty. My argument that republicans were concerned with non-domination fits well with the spirit of that work, even if he expresses his view of Machiavelli and other republicans by saying that they were concerned with liberty as non-interference under distinctive assumptions about what that cause required. I am indebted to Skinner for drawing my attention to the writings of Price and Priestley on which I rely heavily in developing my argument; indeed, he also directed me to Paley’s writing about liberty which figures importantly later in the chapter.
difficulty in acknowledging that people in distant colonies could be citizens, and could enjoy the freedom of citizens, without being able to vote: these were known as cives sine suffragio, citizens without the vote (Crawford 1993: 110).

The focus on the evil of interference remains in place in the work of Machiavelli, the principal architect of republican thought in the early modern world (Colish 1971: 349). The point has been argued trenchantly by Skinner (1983; 1984) and supported by other recent scholars (Guarini 1990). As the Roman plebs, according to Pitkin, sought protection or private security, so in general, Machiavelli says, people's eagerness for freedom comes of a desire, not to rule, but rather not to be ruled (Machiavelli 1655: 204). A small part of them wishes to be free in order to rule; but all the others, who are countless, wish freedom in order to live in security. For in all republics, in whatever way organised, positions of authority cannot be reached by even forty or fifty citizens' (Machiavelli 1656: 237).

What is the benefit to a person of living freely, living in security? Machiavelli (1656: 236) answers: 'the power of enjoying freely his possessions without any anxiety, of feeling no fear for the honor of his women and his children, of not being afraid for himself'. This benefit may be best secured for Machiavelli under democratic conditions (1656: 315) but he is clear that it may also be attained in monarchies, as when he invites the contemporary prince to survey the times when things went well in post-republican Rome.

In those governed by good emperors, he will see a prince secure in the midst of his secure citizens, the world full of peace and justice; he will see the Senate with its authority, the magistrates with their honors, the rich citizens enjoying their riches, nobility and virtue exalted; he will see the utmost tranquillity and the utmost good, and on the other side all hatred, all license, corruption, and ambition wiped out; he will see golden days, in which every man can hold and defend what opinion he wishes. (Machiavelli 1656: 222; see also Colish 1971.)

This focus on avoiding interference rather than on achieving participation remains in place in the later republican tradition which Machiavelli did so much to shape. While James Harrington follows Machiavelli in regarding democratic controls as important for liberty, he clearly sees people's liberty as consisting in something distinct from participation in government. When freemen or citizens 'attain unto liberty', he says, what they achieve is 'to live of themselves' (1992: 75; see also Maitland 1981: 109–10; Nippel 1994: 21). Sometimes Harrington actively downplays popular democracy. 'The spirit of the people is no wise to be trusted with their liberty, but by stated laws or orders; so the trust is not in the spirit of the people, but in the frame of those orders' (Pocock 1977: 737). The distrust evinced in this remark is echoed in contemporary republicans such as John Milton, who actively shuns 'the noise and shouting of a rude multitude' (Worden 1991: 457) and, a little later, Alberon Sidney (1990: 189) who says of 'pure democracy': 'I know of no such thing; and if it be in the world, have nothing to say for it.'

The emphasis on the importance of avoiding interference and attaining personal independence recurs in the writings of the commonwealthmen that Harrington influenced, including those who inspired and championed the American Revolution. A good expression of the emphasis is in Cato's Letters.

True and impartial Liberty is therefore the Right of every Man to pursue the natural, reasonable, and religious Dictates of his own Mind; to think what he will, and act as he thinks, provided he acts not to the Prejudice of another; to spend his own Money himself, and lay out the Produce of his Labour his own Way; and to labour for his own Pleasure and Profit. (Trenchard and Gordon 1971: ii. 248)

In the later commonwealthman tradition, there is a growing stress on the importance of democratic decision-making: quite rightly, as I shall argue in the second part of the book. A Whig defender of the American cause, Richard Price (1991: 25), argued that, if those in government 'are subject to no control from their constituents, the very idea of liberty will be lost and the power of choosing representatives becomes nothing but a power, lodged in a few, to choose at certain periods a body of masters for themselves and for the rest of the community'. But neither Price nor anyone in this camp defined liberty by participatory access to democratic controls. It is true that Joseph Priestley, a close friend of Price's, described the democratic power of voting as political liberty; but he distinguished between political and civil liberty and argued, like Price, that such a power was a means, and not necessarily an indispensable means, to civil liberty: 'the more political liberty a people have, the safer is their civil liberty' (Priestley 1993: 33; cf. 141).

As it was for Priestley and Price, so it was for others. 'Republican government', Tom Paine (1989: 168) wrote in 1792, 'is no other than government established and conducted for the interest of the public, as
well individually as collectively. It is not necessarily connected with any particular form, but it most naturally associates with the representative form, as being best calculated to secure the end for which a nation is at the expense of supporting it. The authors of the Federalist Papers built representative democracy into the definition of a republic (Madison et al. 1987: 126). But they too insisted that democratic representation was only one of a number of ways of furthering 'civil liberty'; like the separation of powers they placed it in the catalogue of 'powerful means by which the excellencies of republican government may be retained and its imperfections lessened or avoided' (Madison et al. 1987: 119).

The important point to notice, then, is that the writers at whom we have been looking, the writers who identify with the broad republican tradition of thinking, take liberty to be defined by a status in which the evils associated with interference are avoided rather than by access to the instruments of democratic control, participatory or representative. Democratic control is certainly important in the tradition, but its importance comes, not from any definitional connection with liberty, but from the fact that it is a means of furthering liberty.

One qualification. While it is true that republican thinkers in general regarded democratic participation or representation as a safeguard of liberty, not as its defining core, the growing emphasis on democracy did lead some individuals away from traditional alignments and towards the full populist position of holding that liberty consists in nothing more or less than democratic self-rule. However republican and attractive his views in other respects (Spitz 1997a) (Rousseau) is probably responsible for having given currency to such a populist view. The populist twist was a new development, and attained its full form only when the ideal of democratic self-rule came to be held up as the main alternative, or at least the main alternative among notions of liberty, to the negative ideal of non-interference. To think of the republican tradition as populist, as of course many have done, would be to sustain the very dichotomy that has rendered the republican ideal invisible.

In an early work, unpublished during his lifetime, the great historian F. W. Maitland told a story of the rise of the democratic emphasis which reinforces this claim nicely. He argued that the rising commitment to democracy from the seventeenth century on - the conventional theory of government, as he described it - was motivated by a concern to remove arbitrary power from the state, but that it tended to lead, ultimately, to an affirmation of majoritarian democracy which was inconsistent with such a concern.

If the conventional theory leads to an ideally perfect democracy - a state in which all that the majority wishes to be law, and nothing else, is law - then it leads to a form of government under which the arbitrary exercise of power is most certainly possible. Thus, as it progresses, the conventional theory seems to lose its title to be called the doctrine of civil liberty, for it ceases to be a protest against arbitrary forms of restraint. (Maitland 1981: 84).

IV. The republican conception of freedom as non-domination: the liberty-versus-slavery theme

So much by way of arguing that the main figures in the republican tradition were not concerned primarily with liberty in the positive sense of democratic participation but rather with liberty in a sense opposed to interference. We come now, however, to the crucial question. Did the republican emphasis on the importance of avoiding interference come of a belief in freedom as non-interference or of a belief in freedom as non-domination? I shall argue that it came of a belief in freedom as non-domination.

There are two grounds for thinking that the conception of liberty as non-domination is the view of liberty that we find in the republican tradition. The first is that in the republican tradition, by contrast with the modernist approach, liberty is always cast in terms of the opposition between liber and servus, citizen and slave. The condition of liberty is explicated as the status of someone who, unlike the slave, is not subject to the arbitrary power of another: that is, someone who is not dominated by anyone else. Thus, the condition of liberty is explicated in such a way that there may be a loss of liberty without any actual interference: there may be enslavement and domination without interference, as in the scenario of the non-interfering master.

In the present section I explore this ground for thinking that the conception of liberty as non-domination is the republican view. I turn to the second ground in the next section. The second ground is that liberty is explicated within the republican tradition in such a way that not only can liberty be lost without actual interference; equally, interference may occur, under the scenario of the non-mastering interferer, without people being rendered thereby unfree. The non-mastering interferer envisaged by republicans, as we shall see, was the law and government that obtains in a well-ordered republic.

The republican tradition is unanimous in casting freedom as the opposite of slavery, and in seeing exposure to the arbitrary will of
another, or living at the mercy of another, as the great evil. The contrary of the liber or free person in Roman, republican usage was the servus or slave. Whereas the slave lived at the beck and call of a master, the free person enjoyed a status at the other extreme. The free person was more than a servus sine domino, a slave without a master, who might be picked upon by anyone; the liber was, of necessity, a civis or citizen, with all that that implied in the way of protection against interference (Wirszubski 1968). This opposition between slavery or servitude on the one hand and freedom on the other is probably the single most characteristic feature of the long rhetoric of liberty to which the experience of the Roman republic gave rise (Patterson 1991). It is significant, because slavery is essentially characterized by domination, not by actual interference: even if the slave's master proves to be entirely benign and permissive, he or she continues to dominate the slave. Contrasting liberty with slavery is a sure sign of taking liberty to consist in non-domination rather than in non-interference.

Machiavelli is one of those who gives pride of place to the liberty–servitude opposition, identifying subjection to tyranny and colonization as forms of slavery (Colish 1971: 333). We find him contrasting those cities that live in freedom, for example, and those that live in slavery. All cities and provinces that live in freedom anywhere in the world, he says, make very great gains.

They do so because their populations are larger, since marriages are freer and more attractive to men, and each man gladly begets those children he thinks he can bring up, without fear that his patrimony will be taken from him; he knows not merely that they are born free and not slaves but that by means of their abilities they can become prominent men... The opposite of all these things happens in those countries that live as slaves. (Machiavelli 1965: 33)

But it is in the English and American developments of the republican heritage that the polarized language of freedom and servitude, freeman and slave, really comes into its own. James Harrington (1992: 269) marks the contrast in the context of stressing the need for a person to have material resources if they are to be free: 'The man that cannot live upon his own must be a servant; but he that can live upon his own may be a freeman.' For Harrington, the ultimate in unfreedom is having to live at the will of another—the arbitrary will of another—in the manner of the slave; the essence of freedom is not to have to endure such dependence and vulnerability. He uses this language to mark the contrast between someone who lives in Turkey, subject to arbitrary rule, for example, and the citizen of republican Luca: 'the greatest bashaw is a tenant, as well of his head as of his estate, at the will of his lord, the meanest Lucchese that hath land is a freeholder of both' (Harrington 1992: 20). The crucial phrase here is 'at the will of his lord': no matter how permissive the lord is, the fact of depending on his grace and favour, the fact of living under his domination, entails an absence of freedom.

The commonwealthman tradition that Harrington influenced gave a large role to the freedom–slavery opposition. Thus, Algernon Sidney (1990: 17), could write in the 1680s: 'liberty solely consists in an independency upon the will of another, and by the name of slave we understand a man, who can neither dispose of his person nor goods, but enjoys all at the will of his master.' And in the following century, the authors of Cato's Letters could give a characteristically forceful statement to the theme.

Liberty is, to live upon one's own Terms; Slavery is, to live at the mere Mercy of another; and a Life of Slavery is, to those who can bear it, a continual State of Uncertainty and Wretchedness, often an Apprehension of Violence, often the lingering Dread of a violent Death. (Trenchard and Gordon, 1971: ii 249-50)

This theme was repeated, not just by others in this Whig tradition, but even in the work of Tories like Lord Bolingbroke. Whether for sincere or strategic reasons, he invoked most of the Whig themes in criticism of the Whig government of Sir Robert Walpole (Skinner 1974; Fagden 1987). Prominent among those themes was the insistence that the history of liberty is the history of enslavement and emancipation. As Quentin Skinner (1974: 117) writes in exposition of Bolingbroke: 'to study the cause of liberty and its loss is inevitably to study the history of the various European countries which have passed from a state of popular freedom into the slavery of absolutism.'

Most commonwealthmen in the early eighteenth century used the rhetoric of liberty and servitude in celebrating emancipation from Stuart absolutism and in criticizing the domestic machinations of government. It did not matter to the commonwealthman that the government he attacked was Whig; power was always dangerous and power always needed to be watched (Robbins 1959: 120). But as the eighteenth century developed, a new cause of commonwealthman concern came into view: the cause of the American colonies, and in particular their claims against taxation by a government over which they had no control. Here, clearly, were people who lived at the mercy of an alien and potentially arbitrary will: the will of the British Parliament. Here, as the votaries of the tradition saw it, were people in the chains of slavery, a people unfree.
One of the more moderate spokesmen for this point of view was Joseph Priestley. Here is his statement in 1769 of the American complaint against new proposals for certain duties.

Q. What is the great grievance that those people complain of? A. It is their being taxed by the parliament of Great Britain, the members of which are so far from taxing themselves, that they ease themselves at the same time. If this measure takes place, the colonists will be reduced to a state of as complete servitude, as any people of which there is an account in history. For by the same power, by which the people of England can compel them to pay one penny, they may compel them to pay the last penny they have. There will be nothing but arbitrary imposition on the one side, and humble petition on the other. (Priestley 1993: 140)

If Priestley’s statement seems extreme, it pales beside the writings of Richard Price, and beside the comments on the American side of the Atlantic. Price (1991: 85) saw the situation of the Americans in the most lurid of colours, contrasting it with that of free citizens who are subject to no arbitrary controls. ‘Like cattle inured to the yoke, they are driven on in one track, afraid of speaking or even thinking on the most interesting points, looking up continually to a power creature who is their master, their powers fettered, and some of the noblest springs of action in human nature rendered useless within them.’

What Priestley and Price were writing in England was complemented in full, and in the full-dress imagery of freedom versus slavery, in America (Bailyn 1965; Reid 1988). One passage must suffice to illustrate the theme; it is an instruction voted by the town of Boston in May 1772.

An exterior Power claims a Right to govern us, and have for a number of Years been levying an illegal tax on us; whereby we are degraded from the rank of Free Subjects to the despicable Condition of Slaves. For its evident to the meanest Understanding that Great Britain can have no Right to take our Moneys from us without our consents unless we are her Slaves. (quoted Reid 1988: 92)

This discussion of the liberty-servitude theme in the republican tradition should serve to support the claim that freedom is conceived of there as non-domination, not as non-interference. For it is a commonplace of the tradition that masters may be kindly and may not actually interfere with their slaves. Algernon Sidney (1990: 441) could write, for example, in the late 1600s that ‘he is a slave who serves the best and gentlest man in the world, as well as he who serves the worst’. And Richard Price (1991: 77–8) could add in the century following: ‘Individuals in private life, while held under the power of masters, cannot be denominated free, however equitably and kindly they may be treated.’ But if even the slave of a kindly master—the slave who suffers no interference—is unfree, then freedom must require the absence of domination, not just the absence of interference.

This line of thought is more or less explicit in the complaint that Priestley brings on behalf of the American colonists. It is a proof of the unfreedom of the Americans, as he puts it, that the Parliament of Great Britain could arbitrarily tax them for their last penny, even though it now only taxes them for one penny and even though, he might have added, it is unlikely ever to try and tax them for their last penny. The mere fact of being exposed to such a capacity on the part of others, the mere fact of being dominated in that way, meant for Priestley that the Americans were unfree (see too Paine 1989: 24–5).

V. The republican conception of freedom as non-domination: the law-and-liberty theme

I have been arguing that under the republican conception of liberty, in particular under the republican way of contrasting liberty with slavery, it is possible for liberty to be lost without actual interference. This is a first ground for thinking that the conception casts liberty as non-domination, not as non-interference. We turn now to the second ground for holding by that view. This is that under the republican conception of liberty it is equally true that interference can occur without any loss of liberty. In particular, interference occurs without any loss of liberty when the interference is not arbitrary and does not represent a form of domination: when it is controlled by the interests and opinions of those affected, being required to serve those interests in a way that conforms with those opinions.

Where the domination-without-interference theme is associated with the republican belief in the domination exercised by the non-interfering master, the interference-without-domination motif comes out in the republican emphasis on the fact that while the properly constituted law—the law that answers systematically to people’s general interests and ideas—represents a form of interference, it does not compromise people’s liberty; it constitutes a non-mastering interferer. Republicans do not say, in the modernist manner, that while the law coerces people and thereby reduces their liberty, it compensates for the damage done by preventing more interference than it represents. They hold that the properly constituted law is constitutive of liberty in a way that undermines any such talk of compensation: any such talk
of taking one step backwards in order to take two forward. According to the earliest republican doctrine, the laws of a suitable state, in particular the laws of a republic, create the freedom enjoyed by citizens; they do not offend against that freedom, even in a measure for which they later compensate.

The line taken by republicans comes out in their conception of freedom as citizenship or *civitas*. Citizenship is a status that exists, of necessity, only under a suitable regime of law: as one commentator on the republican tradition says, 'the main feature of the *civitas* is the rule of law' (Viroli 1990: 149). But citizenship and freedom are represented as equivalent to one another by all republicans, under the established Roman precedent: 'at Rome and with regard to Romans full *libertas* is coterminus with *civitas* ' (Wirszubski 1968: 3; see too Crawford 1993: 1). And so freedom is seen in the republican tradition as a status that exists only under a suitable legal regime. As the laws create the authority that rulers enjoy, so the laws create the freedom that citizens share.

The laws only do this, of course, so long as they respect people's common interests and ideas and conform to the image of an ideal law: so long as they are not the instruments of any one individual's, or any one group's, arbitrary will. When the laws become the instruments of will, according to the tradition, then we have a regime—say, the despotic regime of the absolute king—in which the citizens become slaves and are entirely deprived of their freedom. Each of them lives, in Harrington's phrase, 'at the will of his lord'; each of them is wholly dominated by the unconstrained power of the individual or group in command.

The republican view that the laws create people's freedom makes sense if freedom consists in non-domination. Good laws may relieve people from domination—may protect them against the resources or *dominium* of those who would otherwise have arbitrary power over them—without themselves introducing any new dominating force; without introducing the domination that can go with governmental *imperium*. The political authorities recognized by the laws represent potential dominators, but the recurrent republican idea is that these will themselves be suitably constrained—they will have no arbitrary power over others—under a proper constitution: say, where suitable mechanisms of representation, rotation of office, separation of powers, and the like are in place (Oldfield 1990). While the law necessarily involves interference—while law is essentially coercive—the interference in question is not going to be arbitrary; the legal authorities will be entitled and enabled to interfere only when pursuing the common interests of citizens and only when pursuing these in a manner that conforms to the opinions received among the citizenry.

It is not only the republican equation of freedom with citizenship—and the view, therefore, that the laws help to create freedom—that makes good sense if freedom is non-domination. So does the associated republican claim that the conditions under which a citizen is free are one and the same as the conditions under which the city or state is free (cf. Harrington 1992: 8). Suppose the laws and customs suffice to constrain those within and without a society who would wield arbitrary power over others; and suppose that they do not introduce arbitrary powers in their own right. We may say that those who live under that dispensation are free. Or we may say, with equal justice, that the dispensation represents a free polity, a free mode of organization and government. It is perfectly intelligible why the concern of republicans should as often focus on how to achieve the free body politic as on how to achieve freedom for individuals.

The republican view that law is or can be creative of liberty was forcefully challenged in the seventeenth century by Thomas Hobbes. While he belonged to an absolutist tradition that had been developing for some time, Hobbes found a way of countering republican ideas that was quite original and, in the long run, influential (Tuck 1993).

Hobbes begins by presenting freedom, not as non-domination, but rather as non-interference. 'A Free-Man', he wrote in *Leviathan*, is he, that in those things, which by his strength and wit he is able to do, is not hindered to doe what he has a will to' (Hobbes 1968: 262). People are hindered and rendered strictly unfree for Hobbes only so far as they are physically coerced. But he allows that there is also a sense in which people are rendered unfree by bonds that coerce by threat, not by physical means: these are 'made to hold, by the danger, though not by the difficulty of breaking them' (Hobbes 1968: 264). The upshot, then, is that liberty consists in the absence of coercion: liberty proper in the absence of physical coercion, liberty in the broader sense—the liberty of subjects, as he calls it—in the absence of coercion by threat (on Hobbes on liberty, see Skinner 1990a).

This way of conceiving of liberty—and it was a great novelty in its time—led Hobbes to argue that law is always itself an invasion of people's liberty, however benign in the long term. He observes that freedom in the sense of non-coercion—freedom, as he sees it, in the relevant sense—is always invaded by the coercive laws imposed by a state, whatever the nature of that state. The upshot is that people only have freedom in the silence of the laws; they have freedom only where law does not intrude. 'The Liberty of a Subject, lyeth therefore only in
those things, which in regulating their actions, the Sovereign hath pretermitt’d' (Hobbes 1968: 264).

This observation enabled Hobbes to ridicule the republican idea that there is some special sense in which the citizen of a republic is free and the subject of a despotic regime is not, or indeed a special sense in which the republic is a free body politic, the despotism an unfree one. In each of these two sorts of state, the subject has freedom in the same sense: in the sense of not being entirely coerced by the law. And each of these two sorts of state is itself free only in a shared sense: in the sense of being free to resist or invade other states. Hobbes makes the points in setting up a contrast between republican Lucca and despotic Constantinople.

There is written on the Turrets of the city of Luca in great characters at this day, the word LIBERTAS; yet no man can thence inferre, that a particular man has more Libertie, or Immunitie from the service of the Commonwealth there, than in Constantinople. Whether a Commonwealth be Monarchical, or Popular, the Freedome is still the same. (Hobbes 1968: 266)

Hobbes issued a powerful challenge to the republican tradition of thinking in setting out this understanding of freedom, and this implication for the relation between law and liberty. His own ultimate end was the defence of authoritarian government, and he served his purposes well to argue that no set of laws was particularly associated with liberty; it meant that the laws of an authoritarian Leviathan could not be faulted on traditional republican grounds and that his case for such a state could be given a decent hearing: it would not be laughed out of court. Hobbes was widely read over the following century or so, but it is striking that most of his readers stuck with the republican way of thinking. The most outstanding exception is another authoritarian thinker, though one of a different stripe from Hobbes. Sir Robert Filmer held that perfect liberty would require the absence of laws, ‘for it is no law except it restrain liberty’ (Filmer 1991: 268). ‘But such liberty’, he then argued, ‘is not to be found in any commonweal, for there are more laws in popular estates than anywhere else, and so consequently less liberty’ (p. 275).

The challenge thrown out by Hobbes was taken up with confidence and gusto on the republican side, both by Harrington and by others (Gwyn 1965: 12). Harrington addressed it a few years after the publication of Leviathan in his Oceana. Having quoted the passage about Lucca and Constantinople, he goes on to ridicule what he took to be Hobbes’s argument:

The mountain hath brought forth and we have a little equivocation! For to say that a Lucchese hath no more liberty or immunity from the laws of Lucca than a Turk hath from those of Constantinople, and to say that a Lucchese hath no more liberty by the laws of Lucca than a Turk hath by those of Constantinople, are pretty different speeches. (Harrington 1992: 20)

For Harrington, liberty in the proper sense is liberty by the laws—this is liberty in the sense of citizenship—whereas liberty from the laws is something of little significance. We can speak of liberty from the laws with any government whatsoever, he says, but we can speak of liberty by the laws only with some states: only, in effect, with republics and their like. He underlines his message with a contrast to which we have already drawn attention: ‘it is known that whereas the greatest bashaw is a tenant, as well of his head as of his estate, at the will of his lord, the meanest Lucchese that hath land is a freeholder of both, and not to be controlled but by the law.’ The idea is that in Lucca the law makes a citizen free, by ensuring that no one has arbitrary power over them; and this in stark contrast to what happens with the subject, even the bashaw, in Constantinople.

But what if the law of Lucca itself represents the imposition of arbitrary will? Harrington supposes, in the favoured, republican phrase, that the law of Lucca is an ‘empire of laws, and not of men’ (Harrington 1992: 8). More specifically, as he goes on to stipulate, it is a law ‘framed by every private man unto no other end (or they may thank themselves) than to protect the liberty of every private man, which by that means comes to be the liberty of the commonwealth’.

Harrington does two things in this added stipulation. First, he makes clear that if there is freedom by the laws in Lucca, then that is because the laws are framed by individuals for the protection or liberty of individuals: this, or they only have themselves to blame; this, in his own words, or they may thank themselves. And second, he makes clear that when we speak of the freedom of the commonwealth of Lucca, we do not mean, pace Hobbes, that the commonwealth is free to resist or defend other states, but that it is a state where the laws are fitted to create freedom for their citizens.

The Whig or commonwealthman tradition, and the tradition that led ultimately to the American Revolution, came down decisively on the side of Harrington in this exchange with Hobbes. In that tradition, as we have seen, it is domination or slavery, not just any sort of coercion, that is presented as the opposite of liberty. And in that tradition, as a consequence, there is little or no suggestion that law necessarily reduces the liberty of those who live under it; on the contrary, the right sort of law is seen as the source of liberty.4

4 One apparent (and perhaps only occasional) dissident is Algernon Sidney. He sees liberty in the republican vein as ‘an independency upon the will of another’ (1992: 17) but he
John Locke is a good representative of the commonwealth tradition, though the originality of his rational, contractarian perspective gives him a special status (Robbins 1959: 58–67; Tully 1993). And Locke is clearly on Harrington’s side in the debate about law and liberty. He argues for a ‘freedom from Absolute, Arbitrary Power’ as the essential thing, and the thing that marks the contrast with slavery (Locke 1965: 325). And in explicit opposition to Filmer, he sees law as creative of freedom: ‘that ill deserves the Name of Confinement which serves to hedge us in only from Bogs and Precipices . . . the end of Law is not to abolish or restrain, but to preserve and enlarge Freedom’ (Locke 1965: 348).

Richard Price (1991: 27) is particularly forthright on the theme of law—or, more generally, government—and freedom. ‘It is the end of all just government, at the same time that it secures the liberty of the public against foreign injury, to secure the liberty of the individual against private injury. I do not, therefore, think it strictly just to say that it belongs to the nature of government to entrench on private liberty. And again: ‘Just government, therefore, does not infringe liberty, but establishes it. It does not take away the rights of mankind but protect[s] and confirm[s] them’ (p. 81). Price explicitly connects this view on the relation between law and liberty with the view of liberty as non-domination. ‘It is not . . . the mere possession of liberty that denominates a citizen or a community free, but that security for the possession of it which arises from such a free government as . . . takes place, when there exists no power that can take it away’ (Price 1991: 82).

Price’s views on liberty and law, or more generally liberty and authority, were commonplace in eighteenth-century England and America. The general opinion was that without law there was no liberty—no liberty in the proper, civil sense—and that the legal dispensation under the received constitution of England was especially well suited to the production of liberty. Caleb Evans (1775: 20) put the point nicely. ‘Such is the excellent nature of the British constitution that the voice of its laws is the voice of liberty. The laws of England are the laws of liberty’. Evans’s sentiment would have been second nature to anyone familiar, as many were, with Montesquieu’s comments on appears to think that social life invariably compromises the sort of independency available outside of society (p. 31); this, perhaps, because he is unusual among republicans in holding that all governments have an ‘arbitrary power’ (p. 570).

While Locke shows signs of being moved by the republican consideration mentioned in the text, his view that law does not infringe liberty may also be influenced by the view (a) that being free is being subject to reason and (b) that the law ideally represents the rule of reason.

England, published in the 1740s: ‘the one nation in the world whose constitution has political liberty for its direct purpose’ (Montesquieu 1989: 156). Montesquieu was widely read in eighteenth-century England and America, and he had deeply influenced the canonical commentary on the laws of England that Sir William Blackstone had published in the 1760s. Blackstone (1789: 126) himself wrote: ‘laws, when prudently framed, are by no means subversive but rather introductory of liberty; for (as Mr Locke has well observed) where there is no law there is no freedom.’

VI. The rise of liberty as non-interference

So much for the argument that the republican tradition conceived of liberty as non-domination, not as non-interference. Proponents of the two conceptions of freedom will agree that people are unfree where there is interference and domination and they will agree, equally, that people are free where there is neither interference nor domination. The cases that distinguish them are those in which interference and domination diverge: first, the non-interfering master scenario, where there is no interference but there is domination; second, the scenario of the non-mastering interferer—the ideal law—where there is interference but no domination. What we have observed in the argument of the last two sections is that republicans view both scenarios in the way that fits with freedom as non-domination. The kindly master does deprive subjects of their freedom, dominating them without actually interfering. The well-ordered law does not deprive subjects of their freedom, interfering with those subjects but not dominating them.

We have seen that Hobbes was the first to identify freedom, not with non-domination, as in the republican tradition, but with non-interference: with the absence of physical coercion and coercion by threat. And we have seen that, by doing this, he was able to challenge the republican idea that liberty is the product of republican—or if not republican, certainly non-authoritarian—laws. But I have mentioned only one person who followed Hobbes in this line of thought: another authoritarian, Sir Robert Filmer. So when did the Hobbesian notion of liberty gain popular currency? When did freedom as non-interference displace the ideal of freedom as non-domination?

The notion of freedom as non-interference first became prominent, so I suggest, in the writings of a group of thinkers who had an interest, like Hobbes and Filmer, in arguing that all law is an imposition and that there is nothing sacred from the point of view of liberty about
Republican, or even non-authoritarian, government. The group I have in mind were all opposed to the cause of American independence and, in particular, to the republican rhetoric in which that cause was articulated.

Perhaps the best example of someone who took this line is John Lind, who worked in the mid-1770s as a pamphleteering defender of the Prime Minister, Lord North. Lind argued systematically against the cause of American independence in a number of publications, including an attack on the views of Richard Price, published anonymously as Three Letters to Dr Price (Lind 1776). Although he does not mention Hobbes, his starting point is the central Hobbesian assumption that liberty is 'nothing more or less than the absence of coercion' (p. 16), where coercion may be physical or moral: may involve physical restraint or constraint, or the restraint or constraint associated with the threat of some painful event' (p. 18). Lind is quite clear that understanding liberty in this fashion means replacing the liberty-slavery opposition that he finds in Price's work with a quite different contrast between liberty on the one hand and restraint or constraint—in a word, interference—on the other.

The Hobbesian conception of liberty leads Lind, as it led Hobbes, to maintain that all law infringes on people's liberty. 'All laws are coercive; the effect of them is either to restrain or to constrain; they either compel us to do or to forbear certain acts. The law which secures my property, is a restraint upon you; the law which secures your property, is a restraint upon me' (p. 24). The supreme power in a free country—the legislature—protects the liberty of each, according to Lind, but only so far as it restrains or constrains others; by such restraint or constraint it gives each liberty 'against all other subjects upon whom the law does operate' (p. 70).

Hobbes used his conception of liberty to argue that the subjects of his Leviathan are going to be no worse off in terms of liberty—he thought they would be much better off in other terms—than the citizens of republican regimes; people in each dispensation would have freedom in the one and only sense of being left some areas of discretion by the law. And now Lind uses the conception to argue, in similar vein, that British subjects in the American colonies are no less, and no more, free than their counterparts in Britain itself. There is nothing inherently opposed to freedom in a colonial system of law.

He maintains that, in the American case, 'We are not enquiring into the authority which one state may exercise over another state, but into the authority which one part of a community, called governors, may exercise over another part of that same community, called subjects' (p. 112). And he then points out that, far from its being the case that Americans are in the position of slaves, subject in Price's words to 'a dreadful power', that they can in no way control, they are in exactly the same pass as people in Britain itself. 'Dreadful as this power may be, let me ask you, Sir, if this same power is not exercised by the same persons over all the subjects who reside in all the other parts of this same empire?—It is' (p. 114).

Consistently with not making slaves of the American colonists, of course, British rule might not have done very well by those colonists; it might not have produced much security or happiness, as Lind observes (p. 73). But on this front too he is sanguine. He insists that British rulers have interests in common with American subjects, and that 'the interest of the British subjects, residing in America, must be as dear to the members of the British parliament as the interests of the British subjects, residing in Britain' (p. 124).

Lind was not the only pamphleteer to argue in such terms against Richard Price and, more generally, against the cause of American independence (see Hey 1776). But where did the ideas originate, given the dominance of the commonwealth tradition, and given the fact that Hobbes was not a favoured authority: that Harrington had triumphed decisively over him in that respect?

The problem of origin may not be as dramatic as we have made it seem. It was customary in the eighteenth century, even within the republican tradition, to distinguish proper, civil liberty from natural liberty: from the liberty that people would enjoy in the state of nature with which Hobbes and Locke had made people familiar (Blackstone 1978: 125–6). It would have been easy for most commonwealthmen to admit that law restrains and thereby reduces natural liberty, because natural liberty was not regarded as liberty proper; on the contrary, it was associated with something taken to be inimical to the realization of liberty proper: viz. licentiousness (Reid 1988: 34). The availability of the category of natural liberty, however, may have made things straightforward for those of a Hobbesian bent. It meant that they could argue their point of view by identifying liberty with natural liberty and by sideling talk of civil liberty. Let liberty be associated with natural liberty and Lind's line of argument becomes readily available.

But whether or not this observation is correct, it is worth noting that Lind and others were directly influenced in their anti-American writing by exposure to someone who thought that he had made a great breakthrough in coming to see liberty as the absence of coercion. This is Jeremy Bentham, who was himself an opponent of the American,
and later the French Revolutions (Hart 1982: essay 3). Referring to ‘a very worthy and ingenious friend’ (p. 17), Lind acknowledged Bentham’s influence on his conception of liberty, and did so as a result of a complaint from Bentham that he had failed to mention him in an earlier article of April 1776. Douglas Long (1977: 54) has drawn attention to a letter from Bentham to Ladd in which he asks to be recognized as the author of that conception of liberty, on the grounds that the conception is ‘the cornerstone of my system’.

It may have been half a year or a year or more, I do not precisely recollect the time, since I communicated to you a kind of discovery I had made, that the idea of liberty, imported nothing in it that was positive: that it was merely a negative one: and that accordingly I defined it the absence of restraint: I do not believe I then added ‘and constraint’: that has been an addition of your own.

The fact that Bentham could think his conception of liberty a kind of discovery, and the fact that the conception appeared at a time when it could serve an important ideological purpose—the critique of the cause of American independence—suggests strongly that we were right in saying that Hobbes’s notion of freedom had little influence prior to the late eighteenth century: that up to then, the republican notion of freedom as non-domination reigned more or less unchallenged in the English-speaking world. It is as if the Hobbesian notion had been put on the shelf of historical curiosities, only to be reclaimed at a time when suddenly it promised to do important, ideological work: to help in silencing complaints of servitude and domination—complaints of unfreedom—from those in Britain’s American colonies.6

6 Hobbes’s notion of freedom may have been influential outside the political domain, as it certainly was in the work of Abraham Tucker, for example. Writing in the 1760s on matters of philosophy and theology, Tucker resorted to a Hobbesian conception of liberty—though he does not mention Hobbes by name—in order to try to overcome the problem of how ‘the dominion of Providence’ can be consistent with human freedom. Since liberty consists in the absence of ‘restraint or force’, he argues, it is consistent with divine planning and foreknowledge; such divine intervention does not represent the sort of coercion that is inimical to freedom (Tucker 1834: 541 ff.). This argument is reminiscent of Hobbes himself, (1668: 263), when he urges that there is no problem with free or unimpaired action having been rendered necessary by its causal origin. Tucker’s use of the Hobbesian notion of freedom may have influenced Bentham and Paley, who are discussed below; he was a proto-utilitarian, after all, and he is recognized as a forerunner, even an authority, by Paley (1825: pp. xv–xvi).

VII. The triumph of freedom as non-interference

If the story so far is correct, then liberty as non-interference first appeared in the writings of authoritarians like Hobbes and Filmer and then achieved a certain popularity in the tracts of Tories who were opposed to American independence. Hardly an auspicious debut. But if the notion had relatively sordid origins, it quickly attained a respectable status, not just among authoritarians and reactionaries, but also among those who saw themselves as advancing the cause of democracy and freedom.

One source of respectability, of course, would have been Bentham himself. For as Bentham became more reformist and more progressive in his thinking, as he came to shape radical English political thought and as he came to think more positively of American independence, he retained his conception of liberty as just the absence of coercion; he may even be the one who did most to establish it as the modernist notion. As Douglas Long (1977: 43) notes, ‘Bentham was to argue that there was a sense in which a sovereign might enhance the value of subjects’ liberties by his acts of regulation, but he was never to lose sight of the fact that every act of regulation emanating from a sovereign was destructive of liberty.’ Bentham remained emphatic on the point. ‘As against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore ... and in particular all laws creative of liberty, are “as far as they go” abrogative of liberty’ (Bentham 1843: 503).

A second figure who would have been responsible for giving currency and respectability to the new notion of freedom as non-interference was William Paley, another utilitarian thinker who had great influence in the nineteenth century. Paley may have been the only writer in his time to recognize clearly the shift that was taking place, the shift indeed for which he argued, from the received notion of freedom as non-domination, freedom as security against interference on an arbitrary basis, to freedom as non-interference. He sets out his view with admirable clarity in The Principles of Moral and Political Philosophy, first published in 1785 (Paley 1825).

Paley recognizes in this work that the usual notion of civil liberty, the one that agrees with ‘the usage of common discourse, as well as the example of many respectable writers’ (p. 357), is that of freedom as non-domination. ‘This idea places liberty in security; making it to consist not merely in an actual exemption from the constraint of useless and noxious laws and acts of dominion, but in being free from the danger of having such hereafter imposed or exercised’ (p. 357; original
emphasize). He says that writers who understand liberty as security in this way tend to focus on the question of how best to guarantee against the relevant danger and, in rehearsing the possible answers, he provides us with an overview of contemporary republican thinking (pp. 358–9; cf. Madison et al. 1987: 119).

Instead of this received notion of civil liberty Paley defends a view that is clearly in the Benthamite camp. Laws are a restraint of private will, he says, though some laws are better than others, doing more for the public happiness: ‘the laws of a free people impose no restraints upon the private will of the subject, which do not conduce in a greater degree to the public happiness’ (p. 355). Thus Paley holds out a picture of liberty—or at least ‘personal liberty’, as he likes to say—in which liberty requires nothing more or less than the absence of restraint, in particular intentional restraint. He acknowledges that law is needed for advancing such freedom overall, as it is required for furthering freedom as non-domination, but he makes quite clear that when law furthers liberty it does so despite itself taking liberty away. He argues: ‘1st, that restraint itself is an evil; 2ndly, that this evil ought to be over-balanced by some public advantage; 3rdly, that the proof of this advantage lies upon the legislature; 4thly, that a law being found to produce no sensible good effects, is a sufficient reason for repealing it’ (p. 355).

What are Paley’s grounds for defending the view that liberty—personal liberty at least—is opposed to restraint of any kind, and that law as such represents an invasion of such liberty? The question is worth asking, because his book was so widely read in the nineteenth century and because the considerations he raises were clearly influential with others as well.

One line of argument used by Paley is that those who take the alternative view, those who see liberty as security against arbitrary interference, are confusing means and end: ‘they describe not so much liberty itself, as the safeguards and preservatives of liberty’ (p. 359). This echoes a complaint of Bentham’s in one of his manuscripts: ‘That which under the name of Liberty is so much magnified, as the invaluable, the unrivalled work of Law, is not liberty, but security’ (Long 1977: 74).”

7 In the course of defending a view of liberalism under which it encompasses the commonwealth tradition—see the Introduction—Stephen Holmes (1995: 245) argues that the idea of physical and psychological security was important to liberals, and quotes Bentham (1871: 97) to the effect that liberty is ‘a branch of security’. But the context from which Holmes quotes makes it quite clear that Bentham is not there defending the view of liberty as non-domination. ‘By creating obligations,’ Bentham (1871: 94) writes in that context, ‘the law to the same extent trenches upon liberty’ (p. 94). Some liberals, Bentham included, may have been concerned with security of non-interference in the probabilistic sense of wanting to increase expected non-interference rather than in the modal sense discussed here: in the sense of wanting to increase people’s immunity against (arbitrary) interference, even against the sort of (arbitrary) interference that the potential interferer—the person who is not blocked from interfering—is unlikely to practise. They may have been concerned with security in the sense of wanting to reduce involuntary risk—see Mill (1977: 294–5) for example—but not in the sense of wanting to reduce exposure to the power of another. This issue will come up again later.
to the law—to a non-dominating law—in the cause of making those changes. But I disagree so far as I think that the state—the contemporary state, not the sort of state that existed in his time—is well up to the task of realizing such an ideal.

The density of the ideal of freedom as non-domination would not have been a problem for premodern republican thought, since it went without saying among premoderns that the state could aspire to realize the ideal only for a small elite of males: the property-holding, and indeed mainstream, males who made up the citizenry. Harrington (1992: 269) was quite clear on the point: 'The man that can live upon his own must be a servant; but he that can live upon his own may be a freeman.' But the density of the ideal of non-domination must have seemed to represent a problem, as it came to be a more and more general assumption in the eighteenth century—the century of Enlightenment—that human beings are equal and should be equally well served by their social and political institutions.

How could anyone expect the state to ensure that employees—servants, as they were—would enjoy a non-dominated status, when the prevailing notion of employment or service entailed a subjugation to the master's will? The prevailing notion is well caught in a remark of Sidney's (1990: 548–9) in which he reveals why a servant cannot hope to enjoy non-domination: 'He must serve me in my own way, or be gone if I think fit, tho he serve me never so well; and I do him no wrong in putting him away, if either I intend to keep no servant, or find that another will please me better' (Sidney 1990: 548–9).

How could anyone expect the state to ensure that women would enjoy such an non-dominated status when the received view was that women were subject to the will of their father or husband (Pateman 1988)? How, for example, to meet the problem that Mary Astell (Hill 1986: 76) raised for republicans in the seventeenth century?

If all Men are born Free, how is it that all Women are born Slaves? As they must be, if the being subjected to the inconstant, uncertain, unknown, arbitrary Will of Men, be the perfect condition of Slavery? And, if the Essence of Freedom consists, as our Masters say it does, in having a standing Rule to live by?

John Lind unwittingly emphasizes these points when, in criticizing Richard Price's ideal of freedom as self-legislation—essentially, the ideal of not being subject to the arbitrary will or legislation of another—he argues that it would have absurd results for women and servants. Arguing that Price cannot mean women to be 'degraded to slaves', he draws what seems to him to be a reduction of Price's position: that women too must legislate for themselves: 'Every woman is her own legislatrix,' as he puts it in a mock slogan that is meant to mark the absurdity of the proposal (Lind 1776: 40). And in another context he points out that for Price, absurdly, servants must count as slaves: must count as subject to the domination of their masters and governors, and therefore unfree. 'According to your own principles, what are servants but slaves?' (Lind 1776: 156). What indeed?

For thinkers like Paley and Bentham it would have been axiomatic that all human beings are equal, even if in practice they did not draw the full implications of this equality. 'Everybody to count for one, nobody for more than one', in the slogan ascribed to Bentham by John Stuart Mill (1969: 257). Given such an assumption of equality, any ideal for government would have to present itself as a universal ideal, not just as an ideal for an elite citizenry. And the ideal of universal non-domination, the ideal of securing a non-dominated status for every adult, might well have seemed a fantasy to thinkers who took for granted the subordinate status of women and employees.

Perhaps this explains in some part why the ideal of non-domination lost its place in the work of Bentham and Paley and, later, in the work of those who would have claimed the new name of liberal. As these thinkers enlarged the compass of their concern to include more and more people as citizens, it must have seemed less and less realistic to stick with the rich old ideal of freedom as non-domination. Much better to thin out the ideal of freedom and to orientate the state by the light of the new, modernist ideal, or by the light of some other goal entirely. Even securing the greatest happiness of the greatest number—the goal shared by Bentham and Paley—would have looked much more tractable and attractive than securing freedom as non-domination; it was taken to require the reduction of many forms of interference—and, in those ways, the furthering of freedom as non-interference—but it would not necessarily have seemed to require that no one be subject to the arbitrary will of another.

We have been looking at how the modernist ideal of liberty as non-interference came to achieve a respectable status via the work of Jeremy Bentham and William Paley: how it came to transcend its origins in the ideologically driven attempt to mock American complaints of slavery and 'unfreedom'. The considerations which weighed with Paley in embracing freedom as non-interference must have weighed also with others of his ilk in the years that followed. For there is no doubt but that this notion did rapidly take over among those who
identified with the cause of liberty and described themselves as liberals.

Liberals are a broad church, as emphasized in the introduction, but most of them unite in endorsing the modernist conception of liberty. Right-of-centre liberals who worry only about the formal realization of liberty focus fairly explicitly on non-interference; certainly the majority of them do so. And those on the left—those who embrace a concern to make liberty effective or to realize equality or welfare as well as liberty—generally seem to have their eyes on non-interference too. John Rawls (1971: 302) manifest a concern for liberty as non-interference, for example, when he writes: 'liberty can be restricted only for the sake of liberty.' Rawls's assumption is that law always represents a restriction of liberty, and reveals a conception of liberty that is directly continuous with that of Hobbes and Bentham (Skinner 1983: 11–12; see also Feinberg 1972: 23–4 and Spitz 1994).9

Not only did the conception of freedom as non-interference displace the republican idea in the new liberal tradition. It apparently succeeded in staging this coup d'état without anyone's noticing the usurpation that had taken place. When Constant delivered his lecture on the liberty of the ancients and the liberty of the moderns, he saw only the alternatives of positive liberty, in particular the liberty of democratic participation, and negative liberty: liberty as non-interference. And when Berlin came to present his own retrospective musings on these matters, he could suggest that those not attached to positive liberty allied themselves invariably with the Hobbesian tradition. 'Law is always a “fetter”,' he said in exposition of the approach, 'even if it protects you from being bound in chains that are heavier than those of the law, say arbitrary despotism and chaos' (Berlin 1958: 8). Liberty as non-domination—republican liberty—had not only been lost to political thinkers and activists; it had even become invisible to the historians of political thought.

9 F. A. Hayek sometimes suggests that the interference of a certain sort of law—a law that has been produced by a certain process of evolution, or a law that is inherently justifiable in a certain way—does not remove liberty (see Gray 1986: 61; Kukathas 1989: 132). For Hayek, then, freedom will not be the absence of interference as such but rather the absence of interference by agencies other than those favoured laws. It will be close to the sort of liberty that is sometimes described in the French juridical tradition as public liberty: liberty, as that is assured under the law (Morange 1979). Rawls can sometimes be read as endorsing a similar view of law and liberty, in which case the comments in the text would have to be revised; but this is not the place to go into such issues of interpretation.

CHAPTER 2

Liberty as Non-domination

The last chapter gave us a historical introduction to a conception of liberty—a distinctively republican conception, as I believe—that fits on neither side of the now established negative–positive dichotomy. This conception is negative to the extent that it requires the absence of domination by others, not necessarily the presence of self-mastery, whatever that is thought to involve. The conception is positive to the extent that, at least in one respect, it needs something more than the absence of interference; it requires security against interference, in particular against interference on an arbitrary basis.

I believe that this republican conception of freedom, this conception of freedom as non-domination, is of the greatest interest in political theory, and that it is important to put it back on the table in current discussions. My aim in this book is to try to identify the main features of freedom as non-domination, to show what it would mean to take the ideal as a political cause, and to indicate the institutional impact of organizing things so that the ideal is advanced. The book is an exploration of what a neo-republican politics would involve.

This chapter takes a more philosophical line on the material that we covered in a historical way in the last. I want to look in some detail at what is involved in construing freedom or liberty as the absence of domination by another (see Pettit 1996a). First, I discuss what domination, as I understand it, comes to. Next, I go on to look at what the absence of such domination—what freedom as non-domination—
would require. And then in the third section I return to Paley’s three objections to construing freedom in this way and show why we need not be disturbed by them.

I. Domination

A definition

One agent dominates another if and only if they have a certain power over that other, in particular a power of interference on an arbitrary basis (Weber 1978; Connolly 1983). They have sway over the other, in the old phrase, and the sway is arbitrary. It is time now to try to give a more explicit account of what such domination, such arbitrary sway, involves.

In giving this account, I shall often speak as if there are just two individual persons implicated in cases of domination, but that is only for convenience. While a dominating party will always be an agent—it cannot just be a system or network or whatever—it may be a personal or corporate or collective agent: this, as in the tyranny of the majority, where the domination is never the function of a single individual’s power. And while a dominated agent, ultimately, will always have to be an individual person or persons, domination may be often be targeted on a group or on a corporate agent: it will constitute domination of individual people but in a collective identity or capacity or aspiration.

There are three aspects to any relationship of domination. Putting the aspects starkly, and without yet adding glosses, someone has dominating power over another, someone dominates or subjugates another, to the extent that

1. they have the capacity to interfere
2. on an arbitrary basis
3. in certain choices that the other is in a position to make.

We need to look at this account of domination, clause by clause. What is it to interfere, then, in the manner postulated in the first condition? Interference cannot take the form of a bribe or a reward; when I interfere I make things worse for you, not better. And the worsening that interference involves always has to be more or less intentional in character: it cannot occur by accident, for example, as when I fall in your path or happen to compete with you for scarce goods; it must be at least the sort of action in the doing of which we can sensibly allege negligence (Miller 1990: 35). Were non-intentional forms of obstruc-

tion also to count as interference, that would be to lose the distinction between securing people against the natural effects of chance and incapacity and scarcity and securing them against the things that they may try to do to one another. This distinction is of the first importance in political philosophy, and almost all traditions have marked it by associating a person’s freedom with constraints only on more or less intentional interventions by others (Spitz 1995a: 382–3).

But interference, as I understand it, still encompasses a wide range of possible behaviours. It includes coercion of the body, as in restraint or obstruction; coercion of the will, as in punishment or the threat of punishment; and, to add a category that was not salient in earlier centuries, manipulation: this is usually covert and may take the form of agenda-fixing, the deceptive or non-rational shaping of people’s beliefs or desires, or the rigging of the consequences of people’s actions (Pettit 1989b; Lukes 1992: 995).

The variables relevant to an agent’s choice are the range of options presented as available, the expected payoffs that the agent assigns to those options, and the actual payoffs—the outcomes—that result from the choice. All interfering behaviours, coercive or manipulative, are intended by the interferer to worsen the agent’s choice situation by changing the range of options available, by altering the expected payoffs assigned to those options, or by assuming control over which outcomes will result from which options and what actual payoffs, therefore, will materialize. Thus physical obstruction and agenda-fixing both reduce the options available; the threat of punishment and the non-rational shaping of desires both affect the payoffs assigned to those options; and punishment for having made a certain choice and disruption of the normal flow of outcomes both affect the actual payoffs. Where the removal of an option from the range of available alternatives is an on-or-off matter, of course, the other modes of interference come in degrees: the expected or actual costs of certain options may be worsened in a greater or a smaller measure.

Context is always relevant to determining whether a given act worsens someone’s choice situation, since context fixes the baseline by reference to which we decide if the effect is indeed a worsening. This contextual sensitivity has important implications for the extent to which interference occurs. It means that acts of omission, for example, may count in some circumstances as forms of interference. Consider the pharmacist who without good reason refuses to sell an urgently required medicine, or the judge who spitefully refuses to make available an established sentencing option involving community service instead of prison. Such figures should almost certainly count as
guard against, of course, because of the future dangers it represents. But it does not yet constitute the central evil to which they are opposed.

The second clause requires that the person have the capacity to interfere on an arbitrary basis if they are to dominate the other party fully. What makes an act of interference arbitrary, then—arbitrary, in the sense of being perpetrated on an arbitrary basis? An act is perpetrated on an arbitrary basis, we can say, if it is subject just to the arbitrium, the decision or judgement, of the agent; the agent was in a position to choose it or not choose it, at their pleasure. When we say that an act of interference is perpetrated on an arbitrary basis, then, we imply that like any arbitrary act it is chosen or not chosen at the agent’s pleasure. And in particular, since interference with others is involved, we imply that it is chosen or rejected without reference to the interests, or the opinions, of those affected. The choice is not forced to track what the interests of those others require according to their own judgements.

Notice that an act of interference can be arbitrary in the procedural sense intended here—it may occur on an arbitrary basis—without being arbitrary in the substantive sense of actually going against the interests or judgements of the persons affected. An act is arbitrary, in this usage, by virtue of the controls—specifically, the lack of controls—under which it materializes, not by virtue of the particular consequences to which it gives rise. The usage I follow means that there is no equivocation involved in speaking, as I do speak, either of a power of arbitrary interference or of an arbitrary power of interference. What is in question in each case is a power of interfering on an arbitrary, unchecked basis.

Under this conception of arbitrariness, then, an act of interference will be non-arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference. Or, if not forced to track all of the interests and ideas of the person involved—these may make inconsistent demands—at least forced to track the relevant ones. I may have an interest in the state imposing certain taxes or in punishing certain offenders, for example, and the state may pursue these ends according to procedures that conform to my ideas about appropriate means. But I may still not want the state to impose taxes on me—I may want to be an exception—or I may think that I ought not to be punished in the appropriate manner, even though I have been convicted of an offence. In such a case, my relevant interests and ideas will be those that are shared in common with others, not those that treat me as exceptional, since the state is meant to serve others as well.
as me. And so in these cases the interference of the state in taxing or
punishing me will not be conducted on an arbitrary basis and will not
represent domination.³

The tradition of thinking which we discussed in the last chapter
took a distinctive view of what is required for an act of interference—in
particular, an act of legal or government interference—to be non-
arbitrary, and I follow that tradition in giving this account of
non-arbitrariness. Consider Tom Paine's (1989: 168) complaint against
monarchy. 'It means arbitrary power in an individual person; in the
exercise of which, himself, and not the res-publica, is the object' (cf.
power, as this comment makes clear, is that the power be exercised in
a way that tracks, not the power-holder's personal welfare or world-
view, but rather the welfare and world-view of the public. The acts of
interference perpetrated by the state must be triggered by the shared
interests of those affected under an interpretation of what those interests
require that is shared, at least at the procedural level, by those
affected.

When is an interest or idea likely not to be shared with some mem-
ers of the population and likely to be an inappropriate guide for state
action? The operational test suggested by the tradition is: when it is
sectional or factional in character. But how to test for what is sectional
or factional? The only possible means is by recourse to public discus-
sion in which people may speak for themselves and for the groups to
which they belong. Every interest and every idea that guides the action
of a state must be open to challenge from every corner of the society;
and where there is dissent, then appropriate remedies must be taken.
People must find a higher-level consensus about procedures, or they
must make room for secession or conscientious objection or some-
thing of that kind.

This is to say that the identification of a certain sort of state action
as arbitrary and dominating is an essentially political matter; it is not
something on which theorists can decide in the calmness of their stud-
ies (Young 1990). But though it is political, I should stress that it is not
essentially value-laden. There is a fact of the matter as to whether or
not the state is effectively forced to track non-sectional interests and
ideas when it interferes in people's lives. Politics is the only heuristic
available for determining whether the interference of the state is
arbitrary or not, but the issue for which it provides a heuristic is still
an issue of fact. What has to be established is whether people really are
dominated, not whether domination is visible from within some privi-
leged evaluative standpoint. As the facts of the matter, including facts
about local culture and context, determine whether a certain act counts
as interference, so the facts of the matter determine whether a certain
act of interference counts as arbitrary.

Arbitrariness, as we have defined it, may be more or less intense, and
this draws attention to the fact that the domination associated with
a power of arbitrary interference may be more or less intense too.
Suppose that an agent can interfere in the life of another more or less
at will: they can act just as their own whim or judgement leads them;
they can act at their pleasure. Suppose, moreover, that the agent is
subject to no particular difficulty or cost in exercising this capacity to
interfere with someone: there is no prospect, for example, of suffering
retaliation. And suppose, finally, that the interference in question is
the most effective available: it can remove any options that the agent
does not like or it can impose unbearable costs on the person's choice
of those options. Such an agent will enjoy an absolute power of arbi-
trary interference over that person. The only brake on the interference
that they can inflict is the brake of their own untrammelled choice or
their own unchecked judgement, their own arbitrium.

Such an absolute power of arbitrary interference may have been
available to slave-holders over their slaves in certain dispensations—
certainly not in all—and it may have been accessible in some regimes
to despotic potentates over their subjects. But it is not likely to be real-
ized in many contexts. Such power is often approximated, however, at
lower levels of intensity, even in rule-governed societies. The husband
who can beat his wife for disobeying his instructions and be subject, at
most, to the mild censure of his neighbours; the employer who can fire
his employees as whim inclines him and hardly suffer embarrassment
for doing so; the teacher who can chastise her pupils on the slightest
excuse or pretence at excuse; the prison warden who can make life hell
for inmates, and not worry much about covering her tracks; all such
figures enjoy high degrees of arbitrary power over those subject to
them. They may not be as common in some societies today as they
once were. But they are not as unfamiliar as the slave-holders or poten-
tate, and even where they do not survive, they have often left some-
what less powerful, but still recognizable, progeny in their place.

There are two generic sorts of constraint that we might expect to call
on in trying to reduce arbitrariness: that is, in forcing a powerful agent
like the state to track relevant interests and ideas. The first sort would put preconditions of action in place which make sectional interference much more difficult: this, say, in requiring government to follow certain parliamentary procedures or to meet certain legal conditions in the way they act. These constraints are designed to filter or screen out unsuitable acts; they mean, where they are effective, that the agent does not interfere at will. The other sort of constraint would put penalties in place rather than filters: penalties which mean that any agent who perpetrates certain types of interference—violence, fraud, and the like—or who perpetrates otherwise legitimate types of interference under certain conditions—as when a public official has an undeclared interest in the outcome of their decision—can be called to account and punished. These constraints are designed to expose unsuitable acts of interference to sanction, rather than screening them out; they mean, when they are effective, that the agent cannot interfere with a guarantee of impunity.

And so, finally, to the third clause in our characterization of domination. The main thing to notice about this clause is that it mentions certain choices, not all choices. This highlights the fact that someone may dominate another in a certain domain of choice, in a certain sphere or aspect or period of their life, without doing so in all. The husband may dominate the wife in the home, the employer dominate the employee in the workplace, while that domination does not extend further—not, at least, with the same level of intensity.

We saw in the discussion of the second clause that domination may be more or less intense: a dominating agent may be able to interfere on a more or less arbitrary basis, with greater or lesser ease, and in a more or less severe measure. We see here that domination may also involve a greater or lesser range; it may vary in extent as well as in intensity. This variation in extent will be important insofar as it is better to be dominated in fewer areas rather than in more. But it will also be important insofar as domination in some areas is likely to be considered more damaging than it is in others; better be dominated in less central activities, for example, rather than in more central ones (see Taylor 1985: essay 8).

**Common knowledge**

The three conditions given are sufficient, as I see things, for domination to occur, though perhaps only in a limited measure, and perhaps only over a restricted domain. But if the conditions obtain to any noticeable degree in a world like ours, for a species like ours, then a further important condition is likely in many cases to be fulfilled too. This is that it will be a matter of common knowledge among the people involved, and among any others who are party to their relationship—any others in the society who are aware of what is going on—that the three base conditions are fulfilled in the relevant degree. The conditions may not be articulated in full conceptual dress, but the possibilities involved will tend to register in some way on the common consciousness. Everyone will believe that they obtain, everyone will believe that everyone believes this, and so on. And so on, at least, in the following pattern: no one will disbelieve that everyone believes this, no one will disbelieve that this is not disbelieved... (Lewis 1983: 166).

Why is the obtaining of the three conditions likely to mean that it will be a matter of common knowledge that they do in fact obtain? Some plausible empirical assumptions support it. The question as to whether such conditions obtain is going to be salient for nearly everyone involved, since it is of pressing interest for human beings to know how far they fall under the power of others. And the fact that the conditions obtain, if they do obtain, is usually going to be salient for most of the people involved: this, since the kinds of resource in virtue of which one person has power over another tend, with one exception, to be prominent and detectable. There is a salient question, then, and a salient basis for answering the question. And this means, plausibly (Lewis 1969: 56), that in cases where the answer is 'Yes'—in cases where the conditions for subjugation are fulfilled—there is a basis for common knowledge, or at least for something approaching common knowledge, that they are indeed fulfilled. Everyone will be in a position, not just to see that the conditions are fulfilled, but to see that everyone else is in a position to see that they are fulfilled, and so on.

The resources in virtue of which one person may have power over another are extraordinarily various: they range over resources of physical strength, technical advantage, financial clout, political authority, social connections, communal standing, informational access, ideological position, cultural legitimation, and the like. They also include the resource of being someone—say, being the only doctor or police officer around—whose help and goodwill the other may need in various possible emergencies. They even include the resource of perceived
intractability—at the limit, perceived irrationality—that enables someone to drive a hard bargain.

I said that with one exception such resources tend to be prominent and detectable by those to whose disadvantage they may be deployed, and that this helps ensure that where one person has any dominating power over another, in virtue of an inequality in such resources, it is a matter of common knowledge that that is so. The exception is the case where one person or group is in a position to exercise backroom manipulation, whether manipulation of the options, manipulation of the expected payoffs, or manipulation of the actual payoffs (Lukes 1974; Geuss 1981; Meyerson 1991; Philp 1985; Wartenberg 1990; West 1990). Where domination is achieved by such means, it will not be a matter of common knowledge, unlike most other cases, that in this respect some people fall under the power of others.

When I say that the existence of a certain sort of domination between two parties is going to be a matter of common knowledge amongst them, and amongst their fellows, I should mention that this does not entail that they will evaluate it negatively; it does not entail that they will be aware of the domination as something on a par in any way with slavery. It is possible for those who do the dominating, for example, to take their superiority so far for granted that it does not ever strike them that the parties they dominate may bristle under the yoke. Think of Helmer Thorvald, the husband in Ibsen’s play A Doll’s House. He is clearly aware of dominating Nora, his wife, and indeed clearly believes that this domination is good for her. But he is absolutely blind to the fact that this domination could come to seem irksome and demeaning to Nora herself. No problem there; and no challenge to the claim that such domination is generally a matter of common knowledge. The lesson is that, even where domination exists and is recognized, it may not be seen for what it is when the dominated parties cannot speak for themselves.

Given that the fulfilment of the three original conditions—their fulfilment in any noticeable degree—is generally going to be a matter of something approaching common knowledge, the domination to which the conditions bear testimony will have an important subjective and intersubjective significance. Domination is generally going to involve the awareness of control on the part of the powerful, the awareness of vulnerability on the part of the powerless, and the mutual awareness—indeed, the common awareness among all the parties to the relationship—of this consciousness on each side. The powerless are not going to be able to look the powerful in the eye, conscious as each will be—and conscious as each will be of the other’s conscious-

ness—of this asymmetry. Both will share an awareness that the powerless can do nothing except by the leave of the powerful: that the powerless are at the mercy of the powerful and not on equal terms. The master–slave scenario will materialize, and the asymmetry between the two sides will be a communicative as well as an objective reality (Ball 1993).

Conscious of this problem, John Milton deplored ‘the perpetual bowings and crinnings of an abject people’ that he thought were inevitable in monarchies (Worden 1991: 457). And a little later in the seventeenth century Algernon Sidney (1990: 162) could observe that ‘slavery doth naturally produce meanness of spirit, with its worst effect, flattery’. The theme is given a particularly interesting twist a century later, when Mary Wollstonecraft deplores the ‘littlenesses’ and ‘sly tricks’ and ‘cunning’ (Wollstonecraft 1982: 359) to which women are driven because of their dependency on their husbands: because of their slavery, as she also calls it (p. 354). ‘It is vain to expect virtue from women till they are, in some degree, independent of man; nay, it is vain to expect that strength of natural affection, which would make them good wives and mothers. Whilst they are absolutely dependent on their husbands they will be cunning, mean, and selfish’ (p. 299, cf. p. 309).

What contemporary relationships might illustrate the domination of some by others, with the associated effects on subjectivity and status? We have already got some sense of examples. In the absence of a culture of children’s rights and appropriate guards against child abuse, parents individually or jointly will enjoy subjugating power over their children. In the absence of a culture of equal rights that is supportive of battered wives, husbands will enjoy such power over their spouses. In the absence of other employment opportunities and appropriate controls—say, those that a vigilant union might guarantee—employers and managers will enjoy subjugating power over their workers. In the absence of countervailing powers, creditors will often enjoy dominating power over their debtors (Ransom and Sutch 1977: ch. 8). In the absence of possibilities of appeal or review, bureaucrats and police will certainly enjoy that power over members of the public. And in the absence of some forums and procedures for dealing with minority grievances, a mainstream government may well dominate those in various marginalized groups.

Consent and contestability

It is important to notice that some of the relationships that I mentioned in illustrating domination will have originated historically in
consent, while others will not. Whether a relationship sprang originally from a contract or not, whether or not it was consensual in origin, the fact that it gives one party the effective capacity to interfere more or less arbitrarily in some of the other's choices means that the one person dominates or subjugates the other (Spitz 1995a: 362–3, 397–8). Other considerations apart, this would have given traditional republicans a good reason to be hostile, as they were consistently hostile, towards the slave contract: towards the contract whereby someone, for whatever gain, voluntarily submits to the domination of another (Locke 1965: 325).

The fact that consent to a form of interference is not sufficient as a guard against arbitrariness means that no one who is concerned about domination can be happy about two developments that gathered momentum about the turn of the nineteenth century. One development was the growth of the populist idea, as we described it in the last chapter, that provided the majority rules, all is well. Majority rule may seem to be blessed by its consensual character, but it can clearly involve the domination of minority groups, and no one who resists domination can endorse unconstrained majoritarianism.

The other development that opponents of domination must deplore is the rise of the doctrine of free contract. This is the doctrine that the freedom of contract means the freedom to decide on the terms of a contract, not just the freedom to enter or refuse to enter into a contract, and that the free contract legitimates any treatment of one by another that the parties agree to accept. The law of contract was rapidly evolving and consolidating about the turn of the nineteenth century (Stoljar 1975; Attiyah 1979). The development of the doctrine saw freedom of contract invoked in defence of some fairly appalling contractual arrangements, as people ignored the consequences for domination—as they ignored the asymmetries of power established under the contract—and argued that a contract that was not actively coerced was free (MacDonagh 1980; Cornish and Clark 1989; Horowitz 1977). This development is highly questionable from the point of view of anyone who is worried about domination. It could never have materialized, in all likelihood, had people remained focused on that evil, in particular, had they continued to think that freedom required the absence of domination, not just the absence of interference.

But though consent to interference is not a sufficient check against arbitrariness and domination, is it likely to be a necessary one? Should we hold that any act of interference is arbitrary to the extent that those affected have not consented to the exercise of that sort of power? The belief in the necessity of consent for the legitimacy of government has spawned dubious doctrines of implied or virtual or tacit consent. It would be good if we did not have to think of the consent of those affected by certain acts of interference—say, by acts of law and government—as necessary for the non-arbitrariness and legitimacy of the interference. For that would mean that we did not have to look to such doctrines in the attempt to legitimate ordinary political realities.

Happily, a little reflection shows that what is required for non-arbitrariness in the exercise of a certain power is not actual consent to that sort of power but the permanent possibility of effectively contesting it. The state will not interfere on an arbitrary basis, by our earlier account, so far as its interference has to be guided by certain relevant interests and ideas and those interests and ideas are shared by those affected. This does not mean that the people must have actively consented to the arrangements under which the state acts. But what it does mean is that it must always be possible for people in the society, no matter what corner they occupy, to contest the assumption that the guiding interests and ideas really are shared and, if the challenge proves sustainable, to alter the pattern of state activity. Unless such contestability is assured, the state may easily represent a dominating presence for those of a certain marginalized ethnicity or culture or gender. The point is familiar from what is now often known as the politics of difference (Young 1990), and I make much of it in discussing democracy in the second part of the book.

**Domination without interference**

There are two final points about domination or subjugation that I want to stress, since they connect closely with themes in the last chapter. The first is that the possession by someone of dominating power over another—in whatever degree—does not require that the person who enjoys such power actually interferes, out of good or bad motives, with the individual who is dominated; it does not require even that the person who enjoys that power is inclined in the slightest measure towards such interference. What constitutes domination is the fact that in some respect the power-bearer has the capacity to interfere arbitrarily, even if they are never going to do so. This fact means that the power-victim acts in the relevant area by the leave, explicit or implicit, of the power-bearer; it means that they live at the mercy of that person, that they are in the position of a dependant or debtor or something of the kind. If there is common knowledge of that implication, as there usually will be, it follows that the power-victim cannot
enjoy the psychological status of an equal; they are in a position where fear and deference will be the normal order of the day, nor the frankness that goes with intersubjective equality.

Does this point mean that no difference is made by the fact, if it is a fact, that the power-bearer is benign or saintly? That depends. If being benign or saintly means that the person acknowledges that they are subject to challenge and rebuke—if it means that they make themselves answerable in the court of certain considerations—then that entails that they cannot interfere with complete impunity; they can be quoted, as it were, against themselves. Suppose that a power-bearer acknowledges a code of noblesse oblige, for example, or just aspires to be a virtuous person. That is going to mean, in itself, that the power they have over someone else is at least less intense that it might have been; there is a certain reduction in the domination they represent, by virtue of their being exposed to the possibility of effective rebuke. This observation is relevant to my argument in the final chapter that the virtue of others represents an indispensable element in the set of safeguards that protects a person from domination.

If, on the other hand, being benign or saintly simply means that the person happens to have inclinations that do no harm to anyone else—in the actual circumstances, they do not lead to interference with anyone—then it will not entail a reduction in the domination of those who are under this person's power. It will remain the case that the person can interfere on an arbitrary basis and that anyone under their power lives, and lives by common knowledge, at that person's mercy. Even when a dominating agent is benign in this sense, of course, the likelihood of interference will be that much lower. But it is important to see that domination goes with the accessibility of arbitrary interference to another, and that improbability of the kind in question here does not make for inaccessibility. Someone can be in a position to interfere with me at their pleasure, even while it is very improbable that they will actually interfere.

The observation that there can be domination without interference connects with the theme highlighted in the last chapter, that slavery and unfreedom is consistent with non-interference: that it can be realized in the presence of a master or authority who is beneficent, and even benevolent. As Richard Price (1991: 77-8) stated the point: 'Individuals in private life, while held under the power of masters, cannot be denominated free, however equitably and kindly they may be treated.'

Interference without domination

The second point I wish to emphasize about domination is that while the enjoyment of dominating power over another is consistent with never actually interfering, it is equally true that one agent may actually interfere with another without dominating that person. The public official or authority who interferes with people in a way that is forced to track their interests and ideas fails to enjoy subjurgating power over the person affected. The official is subject to such screening and sanctioning devices, at least in the ideal, that they can be relied upon to act on a non-factional basis: on a basis that is supported by non-sectional interests and ideas. They interfere, since they operate on the basis of coercive law, but their interference is non-arbitrary.

The parliament or the police officer, then, the judge or the prison warden, may practice non-dominating interference, provided—and it is a big proviso—that a suitably constraining, constitutional arrangement works effectively. The agent or agency in question may not have any discretion in the treatment of a person affected, so that they cannot interfere at will, only under constitutionally determined conditions. Or if they have certain areas of discretion—for example, in the way in which the judge may have some discretion in sentencing—then their ability to exercise it to the intentional detriment of the person is severely limited: their actions may be subject to appeal and review, so that they are exposed to sanction in the event of using that discretion in a way that is not properly controlled by non-sectional interest and judgement.

Suppose that a constitutional authority—say, a judge or a police officer—operates under discriminatory laws and suppose that those laws severely constrain such agents in how they act. Do we have a complaint to make in the case of such constitutional discrimination? We certainly have. The fact that the laws are discriminatory means that they do not track the relevant interests or ideas of the group against whom discrimination is practised. Those who implement such laws, therefore, act on an arbitrary basis from the point of view of the group in question. It is true that they may have no option but to act in that way; by hypothesis they operate under severe legal constraint. But the fact that they are forced to interfere on an arbitrary basis with members of the group is consistent with their being able to interfere in that way; the fact that they are under a legal obligation to interfere on an arbitrary basis is consistent with their having the capacity to interfere on that basis.  

5 An alternative line would be to say that while the constrained agents do not dominate members of the group, the legislators who make the laws or who are in a position to change the laws certainly do; they are the principal whose wishes are carried out by the constrained agents.
Like the first point made, this second one connects directly with the discussion in the last chapter. It bears on the question of whether law itself represents an abrogation of liberty: a restriction on people’s pre-existing liberty which is justified by the effect it has in realizing a greater liberty and happiness overall. It should be clear that the law need not itself represent a form of domination, under the account of domination advanced here, and that the relation of law to liberty need not be represented in Hobbesian or Benthamite terms. There will be systems of law available, at least in principle, which are entirely undomining and entirely consistent with freedom: not only will they inhibit potential dominators and reduce unfreedom, they will do so without representing a form of domination in their own right. And equally there will be systems of law that do introduce arbitrary control at some point and that do thereby embody domination and unfreedom: systems that are more or less authoritarian, in the fashion of Hobbes’s Leviathan, or America’s British legislature. These, in the old republican phrases, will represent the empire of men, not the empire of law (Harrington 1992: 8).

II. Non-domination

The absence of domination

The absence of domination may mean the absence of domination in the presence of other people: the status associated with living among other people, none of whom dominates you. Or it may mean the sort of status that can also be realized through the absence of other people: through living in isolation from society. Non-domination, as that is valued in the republican tradition, means the absence of domination in the presence of other people, not the absence of domination gained by isolation. Non-domination is the status associated with the civil role of the liber: libertas is civitas, in the Roman way of expressing the idea; liberty is civil as distinct from natural freedom, in the idiom of the eighteenth century. It is a social ideal whose realization presupposes the presence of a number of mutually interactive agents (Pettit 1993a: ch. 3); we return to the point in the next chapter.

In this respect, freedom as non-domination contrasts in an interesting way with the alternative ideal of freedom as non-interference. That ideal is linked to the notion of natural rather than civil liberty. And the linkage suggests that it may be enjoyed in isolation from society, so that non-interference means the absence of interference, whether in the presence of other people or in their absence: whether by design or by default. Where freedom as non-domination represents the freedom of the city, freedom as non-interference tends to represent the freedom of the heath: ‘the right of common upon a waste’, in a nice phrase from Paley (1825: 355).

Non-domination in the sense that concerns us, then, is the position that someone enjoys when they live in the presence of other people and when, by virtue of social design, none of those others dominates them. Such a status, as we shall see, may come in one or another degree, but it will often be convenient to speak as if it were an on-off matter. Someone enjoys non-domination, we can say, when they live among others and when no other satisfies the conditions discussed in the last section; no other has the capacity to interfere on an arbitrary basis in their choices.

Strategies for achieving non-domination

How might we enable a person who is in danger of being dominated to achieve non-domination? What social designs might help to advance non-domination? There are two broad approaches conceivable. One is the strategy of reciprocal power, as we might describe it, the other the strategy of constitutional provision.

The strategy of reciprocal power is to make the resources of dominator and dominated more equal so that, ideally, a previously dominated person can come to defend themselves against any interference on the part of the dominator. If each can defend themselves effectively against any interference that another can wield, then none of them is going to be dominated by another. None is going to be subject to the permanent possibility of interference on an arbitrary basis by another.

The strategy of reciprocal power is rarely going to be available in this ideal, defensive form. Usually the only thing feasible will be to enable each of the parties involved, if not to defend themselves against interference by another, at least to threaten any interference with punishment and to impose punishment on actual interferers. But such punishment and threat of punishment are themselves forms of interference, as we know, and forms of interference that do not track the interests and ideas of those who are affected. Thus, under this non-ideal version of the strategy, arbitrary interference and domination may be reduced, but it is not ever going to be eliminated.

The strategy of constitutional provision seeks to eliminate domination, not by enabling dominated parties to defend themselves against arbitrary interference or to deter arbitrary interferers but rather by
introducing a constitutional authority—say a corporate, elective agent—to the situation. The authority will deprive other parties of the power of arbitrary interference and of the power of punishing that sort of interference. It will thereby eliminate domination of some parties by others and if it does not itself dominate those parties, then it will bring an end to domination. The reason that the constitutional authority will not itself dominate the parties involved, if it does not dominate them, is that the interference it practises has to track their interests according to their ideas; it is suitably responsive to the common good.

Suppose we are starting from a position where one party dominates others. Is it really plausible that the strategy of constitutional provision could work here? Given the original difference of power, is not the dominating party going to believe that any inhibiting authority, no matter how it is elected or constituted, fails to track their particular interests, as they were served in the status quo?

If the previously dominant party does believe this, then under a regime that is genuinely non-dominating, it has to be possible for them to voice their complaint and to contest the interference of the authority in their affairs. And if they are not satisfied with the judgement that the interference which inhibits them is not dominating, then it has to be possible for them to withdraw from the arrangement and encounter the authority, under a balance-of-power scenario, just as an agency for defending others against interference and for deterring interference by threatening and imposing punishment on interferers. Otherwise it is indeed the case that the arrangement, however well it serves the previously dominated parties, will not serve the interests of the previously dominant one: it will be a dominating form of interference from that agent's point of view.

This concession need not worry us at this stage, since we are merely illustrating ways in which domination can be reduced and perhaps eliminated. But it is worth remarking that actually it is not entirely outlandish to think that the previously dominant party might accept the constitutional arrangement. After all that arrangement is going to be justified in response to contestation by the claim that everyone is capable of becoming vulnerable to others, and that they each have a common interest in being protected from others in a constitutionally assured manner. The stronger party can reject that claim only to the extent of believing that their current advantage is more or less assured and that they are not as other men and women. And that belief is hardly compelling, especially since henceforth the authority is going to protect others by all the defensive and deterrent means at its disposal.

Non-domination as a form of power

Whether it is furthered by courtesy of constitutional provision, or in virtue of an equal distribution of relevant resources, it should be stressed that non-domination is itself a form of power. It represents a control that a person enjoys in relation to their own destiny and such control constitutes one familiar type of power: the power of the agent who can prevent various ills happening to them (see appendix to this chapter).

Another way of stressing the power-involving aspect of non-domination, to return to a theme of the last chapter, is to emphasize that non-domination involves a sort of immunity or security against interference on an arbitrary basis, not the mere absence of such interference. Suppose that for a certain range of choices I happen to enjoy the absence of all interference by arbitrary powers in the actual world: no one with such a power gets in the way of my making my preferred choice, and no one of that kind would get in the way had I chosen differently among the relevant options. It is possible, consistently with this supposition, that the non-interference I enjoy is extremely insecure and that I am a relatively powerless individual. I may enjoy it only for the very contingent reason that while there are agents around who dominate me—agents with an arbitrary power of interference—it happens that they like me and leave me alone; or it happens that I am able to ingratiate myself with them and placate them as they become ill-disposed towards me; or it happens that I am cunning and manage to keep out of their way when trouble is brewing; or whatever. In such a world, the price of my liberty is not eternal vigilance but, as Gore Vidal once said, eternal discretion.

To enjoy non-domination is to be in a position where no one has that power of arbitrary interference over me and where I am correspondingly powerful. It is to be possessed, not just of non-interference by arbitrary powers, but of a secure or resilient variety of such non-interference. Let the agents in question take against me; let me fail to be good at toadying to them; let me lose the cunning required to keep out of their way. None of this matters if I really enjoy non-domination: if I really benefit from the reciprocal power or the constitutional provision required for non-domination. It will still be the case that I enjoy non-interference at the hands of the agents in question, for that blessing comes to me securely, and not just by courtesy of one of the contingencies mentioned. I will count by any criteria, then, as a relatively powerful individual; I do not have to depend on my luck for avoiding the relevant sort of interference.6

6 To enjoy non-interference is not to be interfered with in the actual world where I choose
Common knowledge

We have seen that non-domination comes about through the absence of domination in the presence of other people: through living among other people none of whom satisfies the three conditions for domination in your regard. And we have seen that non-domination in this sense may be realized via the strategy of reciprocal power or the strategy of constitutional provision, but that in either case it involves a positive control over your own life: a security in the possession of non-interference. There is one more point that I need to make by way of general introduction to the idea. This is that wherever someone comes to enjoy non-domination, this is something of subjective and intersubjective significance. As domination or subjugation usually becomes a matter of common knowledge among those who are party to the relationship, so non-domination will also tend to connect with common awareness.

We saw in the last section that if the three conditions for subjugation are satisfied in any noticeable degree then, in most cases, it is going to be a matter of more or less common knowledge amongst parties to the relationship that the conditions are satisfied. This argument started from the fact that it is always a salient question whether one person has dominating power over another—whether the three conditions are fulfilled—and that the inequality of resources that gives rise to such power is usually going to be a salient datum: the exception will be the case where resources of covert manipulation are used to make people incapable of registering, for example, that others deprive them of certain options.

Suppose now that measures are put in place to defeat the conditions for domination in some relationship. Suppose that the measures help to ensure that neither of two parties has dominating power over the other or, equivalently, that each enjoys non-domination in relation to the other. The question of whether either has dominating power over the other will remain a salient issue. And the measures taken to redress the imbalance of resources that gave one such power over the other—including, now, measures designed to control manipulation—will almost certainly constitute a salient datum. Thus, by the style of argument mentioned before, we may be sure that it will be a matter of nearly common knowledge among parties to the relationship that the conditions for domination fail, and that non-domination rules. Or at least we may be confident that this will happen when other things are equal: when there is no concerted attempt, for example, to persuade people of the opposite.

This point is of the greatest importance, because it connects non-domination with subjective self-image and intersubjective status. It means that the enjoyment of non-domination in relation to another agent—at least when that agent is a person—goes with being able to look the other in the eye, confident in the shared knowledge that it is not by their leave that you pursue your innocent, non-interfering choices; you pursue those choices, as of publicly recognized right. You do not have to live either in fear of that other, then, or in deference to them. The non-interference you enjoy at the hands of others is not enjoyed by their grace and you do not live at their mercy. You are a somebody in relation to them, not a nobody. You are a person in your own legal and social right.

The association of freedom with subjective and often intersubjective status—the association of freedom with a feeling of independence and immunity—goes back a long way in the republican tradition (Wirszubski 1968: 159). It is even there in Machiavelli, who is more tolerant of coercion and terror than most writers. ‘The common benefit gained from a free community’, he says, ‘is recognised by nobody while he possesses it; namely, the power of enjoying freely his possessions without any anxiety, of feeling no fear for the honor of his women and his children, of not being afraid for himself’ (Machiavelli 1665: 236). Montesquieu (1989: 157) seems to offer a gloss on Machiavelli when he writes, over two centuries later: ‘Political liberty in a citizen is that tranquility of spirit which comes from the opinion each one has of his security, and in order for him to have this liberty the government must be such that one citizen cannot fear another citizen’ (see too Spinoza 1951: 259).

John Milton stressed the intersubjective rather than just the subjective aspects of enjoying republican freedom. ‘They who are greatest’, he says of the ‘free commonwealth’, ‘walk the streets as other men, may be spoken to freely, familiarly, without adoration’ (Worden 1991: 457). This theme assumes rhapsodic dimensions in the writings of Richard Price (1991: 84–5) and Joseph Priestley. I quote Priestley (1993: 35–6) at length, though his references are unfortunately (and, I believe, unnecessarily) sexist.
A sense both of political and civil slavery, makes a man think meanly of himself. The feeling of his insignificance debases his mind... On the other hand, a sense of political and civil liberty, though there should be no great occasion to exert it in the course of a man’s life, gives him a constant sense of his own power and importance; and is the foundation of his indulging a free, bold, and manly turn of thinking, unrestrained by the most distant idea of control. Being free from all fear, he has the most perfect enjoyment of himself, and of all the blessings of life.

The subjective and intersubjective aspect of freedom as non-domination marks a contrast with the way in which freedom as non-interference is normally construed within the liberal tradition. Far from being associated with any particular psychological profile, freedom is contrasted within this tradition with the feeling of freedom and, more generally, with subjective or intersubjective status. Berlin (1958: 43) expresses the point forcefully.

When I demand to be liberated from, let us say, the status of political or social dependence, what I demand is an alteration of the attitude towards me of those whose opinions and behaviour help to determine my own image of myself... Yet it is not with liberty, in either the ‘negative’ or in the ‘positive’ senses of the word, that this desire for status and recognition can easily be identified.

Many liberals worry about the good involved in feeling free, but the point is that they think of that good as something detachable and detached from the good of liberty itself, as that is ordinarily understood (Weinstein 1965: 156-7; Shklar 1989: 28; but see Holmes 1995: 245).

It is understandable why liberals should detach non-interference from the common recognition of non-interference. I cannot escape domination without the presence of protective institutions that testify to my non-domination. But I can escape interference, I can escape even the likelihood of interference, without the presence of such eloquent devices. The actual or expected non-interference that I enjoy may come to me by good fortune alone: the good fortune, for example, of being vulnerable only to agents who like me or only to agents whom I am able to outwit. And such good fortune will not tend to be a matter of common recognition.

We saw at the beginning of this discussion that the ideal of freedom as non-interference is not generally taken as a social ideal; it is represented as a status that can be enjoyed, not just in the presence of people, but also in their absence: not just by design—institutional design—but by default. We see now that, equally, the ideal is not usu-

ally depicted as a subjective or intersubjective ideal, but as something whose realization may or may not have psychological significance. In both social and psychological dimensions, then, it contrasts with the ideal of freedom as non-domination.

III. Paley’s objections

This analysis of what domination and non-domination involve should give us a good appreciation of the ideal of freedom as non-domination. But while Paley, as we saw in the last chapter, made three widely supported objections to defining freedom as non-domination. It will be useful for us, in conclusion, to see how far the ideal of freedom as non-domination can be made proof against those complaints.

The means–end objection

The first of Paley’s objections was a charge of confusion: those who espouse liberty as non-domination ‘describe not so much liberty itself, as the safeguards and preservatives of liberty’ (Paley 1825: 359). If seeking non-domination involves seeking a certain sort of security against a certain sort of interference, then of necessity it involves a concern for how to safeguard and preserve such non-interference. Paley’s view is that republicans lose sight of the value of non-interference and fetishize the institutions that are meant to promote it. They focus on the means—the devices for securing non-interference—when they should really have their eye on the end: as he sees it, the non-interference itself.

But Paley misrepresents in two ways the tradition that we have been discussing. First, the theorists of freedom as non-domination seek security against only a certain sort of interference: that which materializes, whether to good or ill effect, on an arbitrary basis. Second, and more important, what those theorists seek is a specific sort of security against that interference, in particular the sort of security which means, not just that people with a power of arbitrary interference probably will not exercise it, but that the agents in question lose that power: they are deprived of the capacity to exercise it or at least their capacity to exercise it is severely reduced.

This second point needs emphasis. Republicans do not value the absence of arbitrary interference that is achieved by courtesy of an ‘indulgence’, as Richard Price (1991: 26) puts it, or ‘an accidental mildness’. Trying to secure the absence of arbitrary interference, then, is
not trying to promote it by no matter what means. After all, it might just happen that the most effective means of promoting non-interference by certain powerful people would be to devise institutions that flatter them and give them reason to think that those with whom they might otherwise interfere regard them as paternalistic deities. Trying to secure the absence of arbitrary interference means trying to promote it, then, but only under this important constraint: that none of the means adopted, no matter how unlikely they would make arbitrary interference, can leave the threatening agents with the unhindered capacity to interfere. The point is not just to make arbitrary interference improbable; the point is to make it inaccessible.

The best explanation of Paley’s misrepresentation of republicans may be that there is an ambiguity in the notion of safeguarding or securing something. Trying to secure a good may mean acting so as to maximize its expected realization. In this usage ‘secure’ has a purely probabilistic sense and is equivalent to ‘promote’. Alternatively, trying to secure a good may mean trying to ensure that no one can take it away from you; trying to devise things so that others are not able to deprive you of it. In this usage ‘secure’ does not mean ‘promote’, since the means of maximizing the expected realization of the good may involve leaving control of the good in the hands of another. Rather what it means is something like ‘protect it against others’. Paley’s mistake may be to imagine that when republicans speak of wanting to safeguard or secure non-interference—in particular, to secure the absence of arbitrary interference—they mean that they want to promote it, not protect it.7

The black-or-white objection

Paley’s second complaint against the ideal of freedom as non-domination is, in effect, that it comes only in black or white, at a maximum or at a minimum: that it does not admit of degrees in the way that we would expect. He complains of absolutist talk of free and enslaved peoples when such expressions ‘are intelligible only in a comparative sense’ (Paley 1825: 356). This complaint might have been justly entertained under the sting of the rhetoric employed by Richard Price and others, for it is certainly true that they painted their pictures in stark black and white. But the question is whether the complaint tells essentially against the conception of freedom as non-domination.

I think that the discussion in this chapter makes it clear that it does not. We saw in the first section that the domination of one person by another may vary both in intensity and in extent. On the one side, the interference of which the dominator is capable may be more or less arbitrary, the cost and difficulty of interfering may be more or less great, and the interference accessible may be more or less severe. And on the other side, the dominator may be able to interfere in the affairs of the dominated across a wider or narrower range of activities, and in more or less important areas.

These variations in the intensity and extent of domination ensure that there must also be differences in the intensity with which someone can enjoy non-domination, and in the extent of the non-domination enjoyed. Such differences will appear with differences in the extent to which, and in the intensity to which, domination is reduced. People will enjoy more and more non-domination both as dominators come to dominate them less intensely and as they come to dominate them across a smaller extent.

Nor, crucially, is that all. The furthering of non-domination is not strictly equivalent to the reduction of domination, whether that be a reduction in its intensity or a reduction in its extent. We can expand non-domination, not just by reducing existing domination, but by novel extensions of the area over which, and the ease with which, a subject can exercise undominated choice, at whatever level of intensity. We can introduce or facilitate undominated choices in areas where they do not currently exist or are very costly. The choices may be unavailable because the relevant options are not culturally accessible—not accessible in the way reading is not accessible in a non-literate culture—or because the options are curtailed by an excessively constraining law or because the hard facts of life put them beyond reach.

Suppose I am a physically handicapped person for whom getting around my home town is impossible or difficult. My non-domination would be increased, at whatever level of intensity, by my being provided with the means of locomotion, for I would thereby be facilitated in the enjoyment of certain undominated choices. And my non-domination would be increased, even though no one currently dominates me on matters of where I go; it is just that I am unable to go anywhere.

The expansive way of increasing the extent of people’s freedom as non-domination can be nicely identified in terms of a distinction between factors that compromise liberty and factors that condition it.
Freedom as non-domination is compromised by domination and by domination alone. But while my freedom is not compromised, therefore, by a limitation in my ability to exercise it, that limitation is still significant; it conditions the freedom that I enjoy. We can increase the intensity and extent of people's freedom as non-domination by reducing the compromises to which they are subject: that is, by reducing domination by others. But we may also increase the extent of people's freedom as non-domination by reducing the influence of conditioning factors and by expanding the range or ease of the undominated choices that they enjoy. As we may say that someone is unfree so far as their freedom is compromised by domination, so we may say that they are not free in this or that respect—they are non-free, though not strictly unfree (Pettit 1989b)—insofar as their freedom is subject to certain conditioning factors.

The claim that we need to think about reducing the influence of conditioning factors parallels an assumption that is often made by adherents of freedom as non-interference. Many such theorists take it for granted that in advancing the cause of freedom as non-interference it is important, not just to reduce the interference that people suffer in their given range of choice, but also to increase as far as possible the choices available to them by liberating them from unnecessary natural or social limitations; it is important not just to make freedom as non-interference a formal reality, as it is said, but also to make it effective.⁸

The assumption that more choice is always better than less, or that easier choice is better than harder, has rightly been questioned, and the questioning needs to be internalized in discussions of freedom as non-domination as well as in discussions of freedom as non-interference (Dworkin 1988: ch. 5). But the point is that the two conceptions of freedom are on a par in each arguing that, other things being equal, we ought to expand the range or ease of favoured choice as well as its intensity: we ought to try and reduce influences that condition freedom as well as influences that compromise it. The difference between the conceptions is that they draw the boundary between compromising and conditioning influences at different points. For the conception of freedom as non-interference, only non-intentional influences such as those of natural obstacles condition rather than compromise freedom. For the conception of freedom as non-domination, intentional interferences that are non-arbitrary are similar to natural obstacles in conditioning but not compromising freedom. Thus the first conception puts law on the compromising side of the compromising/conditioning divide, while the second conception holds that a non-arbitrary law belongs on the conditioning side.

If we endorse the ideal of freedom as non-domination, to return to Paley's objection, we are not committed to thinking that all is fair or all is foul: that freedom is fully realized or entirely frustrated. We may advance non-domination in incremental stages, by reducing the degree to which a dominator can interfere on an arbitrary basis, or by restricting the range of choice across which the dominator may exercise control, or by resorting to the expansive sorts of measures just canvassed. There will be difficulties in measuring the progress achieved in such partial stages, of course, as there are difficulties in measuring progress achieved in advancing the cause of freedom as non-interference (Pettit 1989b); there will be issues to do, for example, with how intensity should be traded off against extent—more on this later—and with whether liberation in some areas of activity is more important than liberation in others (Taylor 1985: essay 8). But there can be no doubt that there is progress to be won in such incomplete steps. The discourse of freedom as non-domination is not inevitably tied to the dichotomous rhetoric of total emancipation or complete enslavement.

The too-hard objection

Paley's last and most important objection was that the ideal of freedom as non-domination is too demanding to be sensibly given to the state: that it would 'inflame expectations that can never be gratified, and disturb the public content with complaints, which no wisdom or benevolence of government can remove'. What have we to say in answer to this, if we choose to embrace the ideal and treat it as a universal value?

We certainly have to admit that there is a charge to answer. There are two respects in which our expectations of the state are going to increase greatly if we think that the state should be designed to
advance freedom as non-domination, not freedom as non-interference. The ideal of targeting only forms of dominating interference, not interference as such, means that we are going to be relatively well-disposed towards giving the state considerable power; we are going to look more fondly on state interference, provided that such interference can be bound by constraints that make it non-arbitrary. And the ideal of targeting all forms of domination, not just those in which there is actual interference, means that we are going to be relatively ill-disposed towards tolerating relations of domination, even relations of domination where the stronger party may usually be expected to stay their hand; we are going to look less fondly on the traditional relationship of husband to wife, for example, or employer to employee.

The shift from freedom as non-interference to freedom as non-domination is going to have two effects, then, that might have disturbed Paley and that might have motivated his third criticism. The shift is going to make us potentially more radical in our complaints about the ways in which social relationships are organized. And it is going to make us potentially less sceptical about the possibilities of rectifying those complaints by recourse to state action.

But does this increase in social radicalism and this decrease in social and political scepticism give good ground for rejecting the republican approach and for embracing instead the modernist, liberal ideal of freedom as non-interference? The remainder of the book can be read as an argument in favour, precisely, of being more radical in relation to policy, less sceptical in regard to the state. It can be seen to that extent as an extended response to Paley's final objection. What I have done so far is to identify and articulate the republican notion of freedom as non-domination. What I shall be doing in the chapters to come is to make the case for treating that notion as a political ideal, and to examine the institutional significance of establishing it as an ideal. I hope that the upshot will be a vision of public life in which the republican ideal does not have the destabilizing, subversive effects that turned the likes of Paley away from it.

APPENDIX: DOMINATION AND OTHER FORMS OF POWER

It may be useful to relate dominating or subjugating power, as we have characterized it here, to the other, very different conceptions of power that are found in political theory (Clegg 1989; Wartenberg 1990; Patton 1994; Hindess 1996). Those who are not interested can move directly to the next chapter.

All conceptions of power, roughly speaking, make different choices at the choice points—the points marked by 'OR'—in the following schema.

1. Power is possessed by an agent (person/group/agency) OR by a system
2. so far as that entity exercises OR is able (actually or virtually) to exercise
3. intentional OR non-intentional influence,
4. negative OR positive,
5. in advancing any kind of result whatever OR, more specifically, in helping to construct certain forms of agency OR shape the choices of certain agents.

This schema allows us to see what unifies the different conceptions of power deployed when we speak at one extreme of the power of the effective agent to make things happen or, at the other, of the power of the system to keep revolutionary options off the agenda and so perpetuate itself. Our schema even lets us see how it is possible to think of power on the model that makes it as inescapable as gravity; there is always some factor that exercises or is able to exercise some influence on the sorts of agent we are or on the sorts of thing we do.

Most importantly from our point of view, however, the schema allows us also to situate subjugating or dominating power relative to such alternatives. Power of this general kind exists when there is

1. an agent, personal or corporate
2. that is able (actually able) to exercise
3. intentional influence
4. of a negative, damaging kind
5. in helping to shape what some other person or persons do.

Dominating power in this sense is interactive, because it requires an agent as bearer and an agent as victim (clauses 1 and 5). It is capacity-based, because it is able to exist without being exercised (clause 2). It is an intentional sort of power, because the things which the bearer can do are things that the bearer can be blamed or praised for doing; they are not beyond the agent's control, as we say (clause 3). And it is a negative kind of power, insofar as it is a capacity to damage the victim, not a capacity to improve the victim's lot (clause 4). The conception contrasts in one or more of these dimensions with the other forms of power that political theorists countenance.