

## Four Conceptions of Liberty as a Political Value

*Duncan Ivison*

### I

It is often supposed that discussions of liberty (or freedom) are ultimately reducible to considerations of freedom of the will. This renders it primarily a metaphysical question. There is some truth to the thought that it has hard to avoid metaphysical questions whenever we talk about freedom. However, taken (too) strictly, this assumption can sometimes elide the distinctly political dimensions of liberty, and the role it plays in relation to key concepts in political philosophy – such as those of power, authority, and legitimacy (Williams 2011). I am not suggesting metaphysical questions cannot also be political ones. But liberty understood as a distinctly political value requires grasping its close relation to particular kinds of disagreements in politics, especially those about the justification and legitimacy of exercises of power. These disagreements include many other things too. But power and legitimation are central. And different political traditions will assemble the relevant conceptual materials in varying and often conflicting ways.

The connection between liberty and legitimacy will be a key focus of this chapter. I will argue that we should maintain a distinction between the legitimacy of a political order and its ultimate justness. Although I will not address it in detail here, an underlying issue for our discussion is consideration of the legitimacy of a political order in light of what Jeff Spinner-Halev (2012) has called the legacy of “enduring injustices.”<sup>1</sup> Can the state (or the “basic structure” of

society, in Rawls's phrase [2001]) exercise power over citizens without dominating them, given such historical legacies? How should we conceive of the kind of liberty individuals and groups can and should be able exercise in such contexts? I shall return to this question in the final section.

This concern trades on the more general question: how should we understand the nature of the legitimacy of a political order? Does it reside ultimately in the justice of that order, or in the extent to which it enables or maximizes the freedom of those subject to it? What is the difference between these two approaches? I shall attempt to provide an answer to this question, drawing on James Tully's work, among others.

In addition to the legitimacy challenge, another key element of grasping liberty as a political value is related to what I see as a response to – among other things – the high liberalism of the late twentieth century and a recent return to humanism. The dominance of Rawlsian and Habermasian political theory (in Anglo-American contexts at least), has resulted in a desire for more realistic and political political theory, brought down to earth from the Kantian heavens of ideal theory (Geuss 2008).

What would it mean to have a suitably realistic account of political liberty? On the one hand, we cannot properly understand liberty without an underlying account of personhood or agency.<sup>2</sup> In making sense of liberty, we need to ask what kind of agency does it presuppose or promote? What kind of independence do we care most about? What does it mean to exercise control, or to be self-guiding, in the kind of world we live in today? At the same time, a conception of moral and political personhood needs to be appropriately realistic: its account of human psychology and motivation should not be overridealized (or oversimplified), nor demand more (or less) than can be reasonably expected, given the kind of creatures we are (O'Neill 1996; Scheffler 1994).

One response to these challenges and our current social and political context, of course, is to embrace a kind of antihumanism; to claim that the regulative ideals of human agency underpinning our dominant conceptions of freedom today rest on an ultimately illusory, essentialist humanism. I do not want to explore that critique in any detail here. However, there has been a kind of return to humanism in recent years, on at least two fronts. First, to a corporeal or "mortalist" humanism, grounded in our shared mortality

and vulnerability to suffering (Murphy 2011). And second, to an “agonistic humanism,” grounded in a contestatory stance towards that which is claimed to be in our nature, or as normative for us (Honig 2013). All I claim here is that a key element of any conception of the political is the idea that politics constitutes not only a distinctive mode of collective human activity, but also of agency, and a domain in which power and disagreement are central to any proper understanding of it. Thus, grasping liberty as a political value is also to explore the different ways in which we want this value to shape our practices and institutions.

These two broad themes – the role of conceptions of liberty in evaluations of the legitimacy of a political order (including in the context of ~~deep~~, “enduring injustices”), and the extent to which our conceptions of liberty presuppose certain conceptions of the person and “practices of the self” – are at the heart of much of James Tully’s work. I believe he offers an important alternative framework for thinking about the nature of political liberty in contemporary political theory that deserves closer critical attention. This chapter is an attempt to begin to outline the elements of this alternative approach, in dialogue with some of the leading approaches in the field.

## II

A good starting point for understanding liberty as a political value is essentially Rousseau’s: how can we “be both free and forced to conform to wills which are not [our] own” (2004, IV, ii, 7)? Or even more succinctly: how can I be free and yet also subject to coercion (state based or otherwise)? How can we be both agents and subjects, simultaneously?

Two familiar and powerful answers immediately present themselves: Rousseau’s answer (freedom 1), in ~~which is that~~ I am free to the extent that I obey laws of which I am also the author. And second (freedom 2), Locke’s, and to a ~~greater or~~ lesser degree, Hobbes’s: I am free to the extent that I am subject to a political order that also protects my rights, which forms part of ~~the~~ justificatory legitimacy of that order. This has been a ~~deeply~~ influential view and continues to be so today. I will return to this ~~point~~ below.


But there are at least two other answers, one provided by Philip Pettit, and another ~~developed~~ by ~~James~~ Tully, among others. ~~It~~ ~~at~~ ~~deserves~~ ~~more~~ ~~critical~~ ~~attention~~.

Pettit's answer to Rousseau's question (freedom 3) is that we are free to the extent that we enjoy "freedom as non-domination," defined in terms of the ability (potential and actual) of other's to arbitrarily interfere in my actions and choices (1997).<sup>3</sup> Thus freedom is not freedom from interference per se, but only from arbitrary interference, where arbitrariness is tied closely to interference that involves obstructing, coercing, deceiving, or manipulating my choices in ways I cannot meaningfully check, or which are not reasoned in the appropriate sense. Note that on this moralized conception of the constraint-absence conditions of freedom, there will be morally permissible constraints – beyond those required for any kind of political or social order whatsoever – that do not count as freedom restricting.

Tully's answer (freedom 4) is to tie liberty ~~very~~ closely to action, and as much to what we might call "freedom *in*," as opposed to "freedom *from*," or "freedom *to*." Freedom understood in this sense is not a matter primarily of the will, or intellect, but is related fundamentally to action, or to practice. I am free to the extent that I can act in certain ways. An example of this ideal, drawing on insights from Wittgenstein and Foucault, is what Tully refers to as "the freedom of acting and speaking differently": "[t]he games humans play with concepts are not everywhere bound by rules, and the rules themselves are not fixed unconditionally. As a result, the conditions of being 'rule-bound,' the requirement for normative and predictive theory being about actual games over time, is constantly subverted in practice" (2008, 139; see also 125).

As I understand it, the freedom that matters on this account is one that, among other things, enables us to be particular kinds of agents. According to this view, we are free to the extent that we are capable of acting on those forces acting on us, including not only physical forces, but those in relation to what we might call the "space of justifications" – the capacity to question and criticize the structures of justification that determine the space of public reasoning (Forst 2014a, 2014b, 179–81). But this freedom is grounded not on the basis of an independently derived conception of practical reason (as it is for Kantians), but rather a conception of what we might call a situated, practical agency. And since this account rejects conceiving of freedom in causal terms, or in terms of the condition of my will, it keeps freedom closely related to power, both conceptually and practically. In fact, power and freedom are correlative: you cannot have

one without the other. I am free to the extent that I can act on those actions acting on me, which in turn, are always open to yet further counteractions.

~~In my view,~~ The republican (freedom 3) and practice (freedom 4) conceptions of freedom are worth bringing into closer dialogue with each other. One reason  to provide a richer alternative to the dominant conceptions of liberty in our actual politics today. But before doing so, let me say a bit more about what I mean by a “political conception” of liberty.

### III

I take Rousseau’s problem as capturing very clearly the demands of articulating a distinctly political conception of liberty; that is, of trying to reconcile liberty with authority, or indeed with coercion. Recall that for Rousseau, politics is fundamentally relational and transformative – it involves a form of self-realization through politics and through participation with others. But unlike Kant, for Rousseau, a state is legitimate to the extent that it reflects the general will of all (which reflects both my freedom as a self-determination, and my not being dominated by others’ wills), not when it accords with a priori principles of reason.

Thus political legitimacy concerns the way people actually relate to the political order under which they live and through which other political goods – like social justice – are realized. As a result, we need to distinguish between the justice of a social and legal order, and its political legitimacy. Social justice pertains to the character or content of the social and legal order. Political legitimacy pertains to how the coercive imposition of that order relates to the people on whom it is imposed. Legitimacy must have some normative content, to be sure. But it is a more normatively minimalist concept, as opposed to that of distributive or social justice.

The republican and practice conceptions overlap, to a certain extent, on this point. Both Tully (2008) and Pettit (2012) argue for more democratically centred and open-ended approaches to questions of political legitimacy and substantive justice, albeit for different reasons. However, they both recognize the extent to which these different elements often combine in an uneasy alliance. The uneasiness is caused by the extent to which citizens are meant to be able to both democratically shape the basic structure that acts on

them, as well having those processes held up against principles or ideals of social justice that stand independently of those very extant processes of legitimation.

So both Pettit and Tully's approach keeps legitimacy and justice apart, at least analytically speaking, and embrace a freedom-centred approach to the legitimacy of a political order. However, against Pettit, I do not think we should say, therefore, that there is no loss of liberty when we live in a state that protects our freedom as non-domination, however much we need to distinguish between different kinds of interference. In other words, we should reject any kind of moral exemption clause for some constraints (beyond those minimally required for any kind of society). There is no conceivable democratic society, for example, that does not involve compromising some individuals' interests – however much a non-dominating democracy, on Pettit's terms, ought to track the “common avowable interests” of its citizens (Pettit 1997, 156). Freedom 4 (Tully) helps us to critically reflect on freedom 3 (Pettit) in this regard. I will return to this below.

Before doing so, I want to consider another conception of legitimacy and liberty that Pettit, in particular, sees as the main opposition against which his argument is posed. This is freedom 2, and especially its Hobbesian variant.

#### IV

It is a striking feature of the recent republican revival that Hobbes plays such a central role in their story.<sup>4</sup> However, he is cast very much as the central villain in the piece, rather than its hero. It is Hobbes, and those who followed him in the eighteenth and nineteenth centuries, who are deemed responsible for crowding out alternative views of liberty, and especially the neo-Roman conception of freedom as nondomination (see especially Skinner 2008; Pettit 1997, 2008). Both Quentin Skinner and Pettit argue that this neo-Roman conception of freedom offers a powerful antidote to the Hobbesian-inspired neoliberalism so dominant today.

Recall the basic conception of freedom as nondomination: a free person, like a free state, is one who is at liberty if and only if they are not subject to external constraint and can act according to their own will, in pursuit of their chosen ends. In a body politic, the will of the citizens – its general will – chooses and determines the ends to

be pursued by the community as a whole. The distinctive claim made by the republican conception, however, is that the mere presence of arbitrary power has the effect of undermining political liberty, understood in this sense. The very presence of arbitrary power within a civil association has the effect of rendering its citizens as slaves. So what it means to live in servitude is to live under the arbitrary power of another; that is, to live in such a way that one is dependent on another not choosing to interfere with you, or to exercise control over you, even though they could.

This is a powerful and attractive conception of liberty. But we need to consider the use of Hobbes's conception of liberty in the construction of the argument more closely, since the various contours of it are often taken for granted.

First, there are elements of Hobbes's conception of freedom that remain obscured in Skinner and Pettit's account that are worth bringing out more clearly. In particular, I am interested in the relation between Hobbes's conception of what I will call corporeal liberty and what he calls the "government of opinion," or the passions.

Second, I believe something like a corporeal conception of liberty remains an interesting and important resource for thinking about freedom today, and this bears on our consideration of liberty as a political value. To put it somewhat differently: I want to recover Hobbes's conception of corporeal freedom from the now dominant republican reinterpretation of Hobbes's political thought.

## V

The broad outlines of Hobbes's conception of liberty are well known, so I shall summarize it here very briefly.

For Hobbes, people can subject themselves to others either via corporeal or contractual constraints. According to the latter, we make a "voluntary offer of subjection," which is compatible with acting out of fear (1994, chap. XIV, para. 27). In doing so, we waive some of our natural rights to resist the sovereign and in the process incur an obligation. Voluntary actions, for Hobbes, are completely consistent with acting out of fear, since acting on the basis of one's will is to act on the basis of the interplay between aversion and appetite. Voluntary slavery is not an oxymoron for Hobbes. Indeed, its possibility is a key aspect of his argument. In both cases, a master has dominion over his slave, albeit through different kinds of bonds:

the corporeal slave is obliged through chains and “forcible custody,” whereas the contractual slave is bound by the “verbal bonds of the covenant” (ibid., chap. XVII, para. 13; see also the discussion in Pettit 2008, 115).

This analysis provides the structure for the solution to the problem of the exercise of unrestrained liberty in the state of nature, which results in a state of war. To establish peace, it is necessary for people to establish a commonwealth as sovereign over them. The subjection of the members of a commonwealth to the sovereign is analogous to the subjection of contractual slaves to their master. This means that members of the commonwealth are absolutely subject in a contractual sense, but not necessarily in a corporeal sense. In the *Elements*, Hobbes puts this in terms of the master leaving “at liberty” the bodies of his slaves, allowing them to act as they please in that domain. There should be no prohibition without necessity, and so only what is necessary for the good of the commonwealth (see also 1994, chap. XXI, para. 1.2; chap. XXI, para. 6).

For Hobbes, then, freedom understood in the republican sense is literally nonsense. Recall that to enjoy freedom as nondomination, I must be protected against both private and public domination. I am free only to the extent that no one can arbitrarily interfere with me, or even has the potential to do so. But according to Hobbes, by definition, the sovereign exercises domination over me. That is how we escape from the state of war, which everyone should rationally desire. As Skinner has brilliantly shown, between the *Elements* and the *Leviathan*, Hobbes seems to move from a kind of eliminativism about freedom, to offering a fully-fledged alternative account of political liberty. In fact, Hobbes argues, citizens in a commonwealth are genuinely free, in the proper sense of the term; that is, as subjects who have contractually bound themselves to the commonwealth. In subjecting themselves in this manner, they have alienated one kind of freedom – the freedom to decide between different options – to the sovereign. But they retain the freedom to enact a decision, which can only be constrained by actual physical and corporeal impediments. So where there are no such impediments to an agent’s action, he is free in the “proper” sense of the term; this is what it means to enjoy the “liberty of subjects” (ibid., chap. XXI, para. 6). And this is exactly what subjects of a commonwealth possess: “If we take liberty in the proper sense, for corporeal liberty (that is to say, freedom from chains and prison),” argues Hobbes, “it was very absurd for



men to clamour as they do for the liberty they so manifestly enjoy” (ibid., XXI.vi). Citizens in a commonwealth are bound contractually, not corporally, and are at liberty to act on their choices, free of contractual ties, in the “silence of the law” (ibid., XXI.xviii).

## VI

So, we have two distinct conceptions of liberty at play; republican freedom as nondomination, and Hobbesian corporeal liberty. One reason why Pettit and Skinner are so keen to contrast the republican conception with the Hobbesian one is that it is meant to demonstrate the extent to which he shrinks the conceptual space of liberty such that only actual physical violations of liberty count. This narrow conception of liberty, in turn, argues Pettit, has been translated by neoliberals today into a deep suspicion of all forms of especially state interference in liberty (however much neoliberalism and Hobbesianism, in other ways, make for strange bedfellows). A crucial test of this difference is to contrast the Hobbesian and republican approaches to the link between liberty and law.

For the republican, law provides the infrastructure of freedom: it provides the structure within which a citizen is able to enjoy both private and public nondomination. However, in making this argument, Pettit and Skinner seem to overlook another dimension to Hobbes’s conception of the relation between liberty and law. Pettit, in particular, argues that Hobbesian liberty entails an essentially negative conception of law. I want to examine this claim more carefully as a means of raising some issues about Pettit’s overall normative argument. If Hobbes is the forerunner of neoliberal conceptions of negative freedom, then he is also a harbinger of the way these conceptions of freedom always also project distinctive forms of (“positive”) power as well.

What is striking about Hobbes’s argument, especially in *De Cive*, *Leviathan*, and *Behemoth*, is the extent to which subjects need to be properly disposed to grasp the connection between obedience and protection. In fact, this is the conceptual key to the entire argument of *Leviathan*. The reason why is because in the end, civil society – made possible by the institution of the commonwealth – is extraordinarily fragile. Laws bind in the artificial world of the commonwealth in ways that “no strength to secure man at all” in the natural world but can be made to seem to so bind (ibid., XVII.xxi).

And this insight into the fragile connection between obedience and protection applies equally to the sovereign, since it is the obedience of his subjects that literally enables him “to do his office” (1990, 144). So if the sovereign governs badly – by which Hobbes means, not that he violates his subjects’ rights (other than their right of nature), but makes their lives miserable, he may provoke disobedience, and by doing so promote “intestine disorder” (1994, chap. XXIX). The sovereign is thus in many ways even more dependent on his subjects than they are on him. In fact, Hobbes makes this explicit: “When ... our refusal to obey, frustrates the End for which the Sovereignty was ordained; then there is no liberty to refuse; otherwise there is” (ibid., XIV, XXI.xx).

But what is it that laws actually do in Hobbes’s political theory? Crucially, the world of law is the world of artifice – a reality created by the institution of the commonwealth. Collecting together the different references in the *Leviathan*, for example, laws are said to bind, restrain, constrain, scare, punish, oblige, and direct. So the law binds or restrains people from acting, as well as obliging and directing them to act. Moreover, the power to make laws is part of the authority granted to a sovereign to “forme the wills” of subjects to “peace at home and mutual ayd against their enemies” (ibid., XVII).

Thus to say, as Pettit does, that Hobbes has an essentially negative conception of law is too simplistic. In fact, Hobbes provides a definition of what a good law is: a good law is not a “just” law, since no law can be unjust (i.e., no command of the sovereign can be unjust), but that which is “needfull, for the good of the people, and withal perspicuous.” It is “needfull” for the good of the people since it is not meant “to bind the people from all voluntary actions; but to direct and keep them in such motion, as not to hurt themselves by their own impetuous desires, rashness or indiscretion.” This is “the true end of law” (ibid., XXX). Thus, punishments are not about the “discharge of choler,” but the “correction, either of the offender, or others by his example” (ibid.). A law is perspicuous when its justification and meaning is clear, reducing the “multiplication” of meanings and thus contention and civil conflict. Though a sovereign might have every right to promulgate comprehensive laws covering every aspect of human conduct, Hobbes recommends against it. In fact, good laws are contrasted with “unnecessary laws,” which are “traps for Mony” and inefficient (ibid.).

But Hobbes is also concerned with what he calls – in both *Leviathan* and the *Behemoth* – “the government of Doctrines” and their effect on popular opinions about sovereignty and political order. This is primarily about the education of the passions. The sovereign needs the capacity to regulate the “conduits” through which ideas about politics are promulgated and shape the uptake of those ideas by citizens (*ibid.*, XVIII, XXX).

How does this work? Generally, Hobbes speaks of the law shaping the passions in at least three ways.


First, the force of law is tied to a superior understanding of what is in an individual’s best interest. A rational individual will, ex hypothesi, recognize that obedience to such a law is in their best interest. Second, laws can direct individuals as part of a set of governmental actions brought to bear on the population of a state. Laws concerning the teaching of doctrines, for example, can shape the passions and thus values people have in the first place (given Hobbes’s account of moral psychology). This is especially true of the universities: “It is ... manifest that the instruction of the people dependeth wholly on the right teaching of youth in the universities.” [In the Latin *Leviathan* this passage concludes with: “Therefore, before all else the universities are to be reformed.”] Third, given that people are short sighted and driven by their passions, laws can provide the right structure of incentives and sanctions that help override the destructive passions and guide self-interest, now properly understood.<sup>6</sup>

Hobbes says famously that the “passions of men are commonly more potent than their reason,” and thus fear is “the passion to be reckoned upon” to “forme the wills” of subjects (1994, XIV). But in fact, he knows that fear, ultimately, cannot provide a long-lasting foundation for the commonwealth. This is true for two reasons.

First, the state cannot always effectively deter all those who are determined to cause “intestine disorders,” whatever the consequences (*ibid.*, XLVII; this is a key theme of *Behemoth*). Hence the importance of the “well government of opinions” (especially opinions about the nature of sovereignty), in which “consisteth the well governing of mens Actions in order to their peace and concord” (1994, XVIII, XXX; see also 1990). It is not only a sovereign’s duty to instruct the people in the “essential rights of sovereignty,” but is also to his “benefit ... and security against the danger that may arrive to himself in his natural person from rebellion” (1994, XXX. vi). If men are “remissely governed” in this regard, then they become

too easily duped or induced into taking up arms to defend uncivil opinions: they “live, as it were, in the procincts of bataille continually” (ibid., XVIII). The “terror of legal punishment,” he makes explicit, is not always effective at making clear the “grounds of these rights of sovereignty” (ibid., XXX).

The second reason is even more powerful: if men are always prepared to revert back to the exercise of their right of nature, save for fear of the terrible consequences this might bring, then they have not really left the state of nature in the first place. To be poised to reclaim one’s natural liberty at a moment’s notice is to place the foundations of civil society on very shaky footings indeed. On the other hand, if the transformation of man’s thinking (and acting) in civil society is so complete that he no longer even considers doing so, then it is not clear why the sovereign needs the powers it has been granted.<sup>7</sup>

The rule of law then, along with good government, is required to provide not only an infrastructure for freedom (even if mainly a negative freedom), but a degree of socialization that encourages the internalization of the norms of virtuous behaviour – now redefined by Hobbes as human conduct that is conducive to peace. What is required is that people are brought to reason properly about their long-term interests. In civil society, no one has the right to break the sovereign’s laws unless it has  do with their inalienable rights, and not just any set of desires. The problem is that this deep connection between protection and obedience is potentially lost amongst doctrinal and ideological disputes. The passions can overwhelm reason. Even for threats to be effective, subjects must come to have the right “opinions” about the consequences of their actions. They must be brought to engage in a form of reasoning that makes certain kinds of norms salient to them. The artificial chains of civil law, along with the “arts of government” must work to shape individuals in particular ways to help secure the benefits of political order. But there is no guarantee that they will. As Hobbes writes in the *Leviathan*, almost wistfully, “nothing is more easily broken than a man’s word” (ibid., XIV, quoted in Skinner 2008, 173).

## VII

I am not trying to redefine Hobbes in Spinozan (or Rousseauian) terms. There are clear limits to the kind of transformation the state can generate through law. Biology is indeed a kind of destiny for

Hobbes that no amount of legal or governmental regulation can overcome. Instead, I am trying to bring out different aspects of his conception of liberty that are often elided in the republican story.

Recall that for Pettit, Hobbes seems to miss the important connection between liberty and law, insofar as he thinks noninterference is a necessary and sufficient condition for political liberty. For Hobbes, argues Pettit, the relation between law and liberty is a purely extrinsic one, and the law is not primarily focused on the promotion or securing of freedom. I have argued, however, that Hobbes does, in fact, think law is crucial for liberty. The liberty of subjects, as he calls it, is a lawful liberty and thus law helps “forme the wills” of subjects. Of course, these powers, as we might call them, are not on par with the external obstacles Hobbes defines as the genuine limits to corporeal liberty. They leave corporeal liberty intact. They help “form” will, as distinct from “forming” it.

But this points to a broader issue with the republican account. It is a signal feature of that argument that interference, in itself, does not constitute unfreedom (as it does for Hobbes). Law, in particular, does not always entail a loss of liberty, since it might be necessary in order to secure either private or public nondomination. In one sense, Hobbes agrees, despite what Pettit thinks: liberty, in the proper signification of the term, is only ever genuinely constrained by physical impediments. As Hobbes puts it in *De Cive*, anyone so constrained (by civil law) from doing what he wants to do is “not oppressed by servitude; he is governed and maintained” (1983, 9.9).

But there is a danger, as the republican account might have us do, in losing sight of the idea of corporeal liberty – and if not the value of liberty as noninterference, then liberty as counterinterference. To paraphrase something Michel Foucault once said, institutions and laws, on their own, never fully secure liberty. We need a conception of liberty that counts more than simply physical impediments to our freedom, but one that does not dissolve the constraints involved in law, for example, entirely into freedom. My freedom can be justifiably constrained for the sake of others’ freedom. But we should not shy away from claiming that it can still entail a loss of liberty. In fact, to return to my earlier discussion of liberty as a political value, it is actually crucial that we capture these aspects in our disputes about liberty. They form the basis of some of the most important political disagreements we have about the nature of liberty and legitimacy.

Another reason for trying to capture what Hobbes means by corporeal liberty is that it remains a valuable conception in and of itself, and not only in the way republicans have criticized it. Interestingly, returning again to Foucault, it turns out that he endorses something like a corporeal conception of liberty – or so I would argue. Perhaps this is one reason why he was so interested in Hobbes (Ivison 2008).

For Foucault, I am free to the extent that I can exercise my capacities in such a way so as to modify the actions of others on my actions. Freedom is tied very closely to action and is a kind of corporeal freedom. But that corporeal freedom is itself conditioned by various social, political, and historical forces, as well as the interpretive frameworks through which an agent comes to understand her actions. Thus, Foucault's conception of corporeal freedom is far richer than Hobbes's, given his genealogical account of the nature of human bodies and their capacities. It is not merely a natural body seeking to maintain itself in motion and satisfy its appetites and repel its aversions. Instead, Foucault's conception includes a dynamic account of the constitutive interaction between bodies, knowledge, and power. Thus, as he put it in a late interview, the only guarantee of freedom is ... freedom: "If one were to find a place ... where liberty is effectively exercised, one would find that this is not owing to the order of objects, but, once again, to the practice of liberty" (Foucault 1984, 245).<sup>8</sup> Hobbes might well agree.

## VIII

Bringing together our discussion of the republican and practice conceptions of liberty, what then would be a suitably realistic or more genuinely political conception of liberty?

It might be tempting, on this analysis, to say that we should dispense with the illusion of political liberty altogether and treat it as nothing more than a kind of empirical claim, akin to descriptions of an organism's action within a basically closed biological system. Three thoughts should militate against this temptation.

First, it is difficult to avoid evaluative language when grasping and interpreting political concepts, just because it is woven so deeply into our discursive and political practices. The desire for a more political or realistic picture of politics is, after all, itself motivated by various

normative concerns to do with underlying conceptions of value in relation to human agency and concern – something often missed by some of the most enthusiastic realists in political theory today.

Second, even if we think we could do without the fiction of political liberty altogether, then we would still be left with trying to make sense of what it would mean to never resent or resist forces that frustrate our desires, projects, and values. What attitude would one have to have towards those forces (and indeed oneself) that exercised power over us in this way – and especially political power – for these kinds of questions to never arise? It is hard to disconnect our conceptions of liberty from our conceptions of the person, or of human agency. They *seem* are inextricably linked.

Finally, central to just about any form of politics is the notion that legitimate power is not simply effective power; that might is not simply right. In other words, that whenever power is exercised there always needs to be some kind of legitimation story (though not necessarily the same kind of legitimation story in every context). And however great the range of disagreement and variation across time and place, our engagement in various collective social and political practices almost always includes the possibility of taking a critical stance towards (at least certain aspects) of those legitimation stories. This is one way of making sense of the idea of a practice conception of liberty.

What is the best way of characterizing this kind of liberty? Recall that for Foucault, I am free to the extent that I possess the actual capacities and self-understandings to act on those relations of power acting on me. Those capacities and self-understandings are, of course, themselves the products of various practices and relations of power in which I am already enmeshed. The kind of agency that Foucault and Tully are interested in is not causal, but historical. Thus, the practice conception of freedom is a particularly radical version of what Ian Carter (1999) has called the “specific freedom thesis”: individuals and groups are not to be understood as free as such, or free in some nonspecific sense, but free to do particular things and pursue particular ends.

This characterization of political liberty brings with it a range of familiar objections. How can we be both free and yet subject to a dense field of power relations? How can we gain the kind of critical distance on the legitimation stories to which we are subject if they help constitute the very structures within which we act as citizens?

However, to conclude, rather than pursue these familiar lines of critique, I want to summarize Tully's (and Foucault's) conception of freedom as practice as it has emerged from our comparison with republican conceptions of legitimacy and freedom. This will hopefully provide a fresh perspective on some of the established conventions for thinking about freedom in contemporary debates.

For Tully (2014), the capacity to test the acceptability of a norm to which we are subject, and to negotiate what would count as following that norm and to be able to modify it *en passant*, is internal to the very practice of rule following and norm following in the first place. The possibility of (and in) the renegotiation and reinterpretation of at least some of the terms of each and every social and political relationship we are enmeshed in is the ground of what he calls "civic freedom." Where there is no room for maneuver whatsoever, there is not a genuine human practice, nor even a relation of governance, but rather straightforward domination. Thus, in being governed, in being both subject to power and exercising power, one is always also an active agent, faced with choices, options, and responses within a (always limited) field of possibilities. It is this freedom of and in practice that constitutes civic freedom: the freedom to respond, ignore, negotiate, divert, and even conform to a public script, while also being free to think otherwise.

One upshot of this argument then, as applied to Pettit's republican theory, is that there is no way of neutralizing the apparently arbitrariness-busting mechanisms of a republican social and political order from being potentially dominating. Any social and political order involves relations of power acting on the actions of those subject to it and in ways that can be potentially dominating.

In short, despite Pettit's attempt to link the conditions for non-domination to the presence of a "contestatory" form of law and democracy (2012), the rule of law (as one set of "norms of mutual recognition" among others) remains a form of rule that cannot be completely inoculated from possible domination (and this is particularly the case given Pettit's concerns with unfettered populism). Nor can it be free of ongoing negotiation and contestation in terms of the best way of interpreting what counts as a move within the practice itself. The rule of law then is not so much the pre-established architecture of freedom, but always itself subject to ongoing critique and counteraction. In fact, this points to a broader challenge for the republican account that I alluded to above. How can we best




address the structural asymmetries of power that come from historical legacies of domination – such as colonialism or slavery – that can shape the “basic structure” of society in fundamental ways, even when justified with reference to liberal conceptions of rights and the rule of law? One concern is that freedom as nondomination offers less scope for addressing these kinds of structural inequalities and asymmetries, given its focus on depoliticizing political institutions as a means of ensuring nonarbitrariness.<sup>9</sup>

This kind of critique is, of course, familiar from Foucault’s classic account of discipline (and governmentality) operating above and through the formal, juridical structure of the rule of law. The rule of law, even when oriented by a concern with promoting nondomination, can never be immunized from arbitrariness, since citizens always stand in a relation of power to it. This is also one of the deep insights of the postcolonial critique of the enduring injustices characteristic of many liberal democratic societies today.

But then what would satisfy the “basic legitimation demand” and “critical theory principle” of a liberal political order – the idea, as Bernard Williams has put it, that “the acceptance of a justification [for the legitimacy of the political order] does not count if the acceptance itself is produced by the coercive power which is supposedly being justified” (2011, 6–7)? At the very least, what is required is the presence of liberty, exercised and practiced by those subject to the structures and norms that constitute that political order, but never wholly dominated by it. James Tully’s work helps us understand the ways in which human beings constantly find new ways to be free.<sup>10</sup>

#### NOTES

- 1 I have also tried to address e of the issues in *Postcolonial Liberalism* (2002).
- 2 This has been one of the persistent and important claims made by Charles Taylor (1989).
- 3 For a different but related and helpful taxonomy of freedom see List and Valentini (2016).
- 4 In the next three sections I draw on work previously published, but now rethought in light of new scholarship and the theme of this volume focused on Tully’s work (see Ivison 1998, 1999, 2008).
- 5 See Curley, *Leviathan*, p. 225.
- 6 For a broader discussion of the history of self-interest, see Holmes (1995).

- 7 For a brilliant exploration of this theme, see Brett (2003).
- 8 See also and especially “The [Concept of Power](#)” (1982). This is one of Foucault’s clearest and most comprehensive discussions of the relation between liberty and power.
- 9 But see Cécile Laborde (2008) for an attempt to extend freedom as nondomination in the direction of critical theory.
- 10 I am grateful to audiences in Montreal, Sydney, and Melbourne for valuable comments and questions about earlier versions of this chapter. Above all, I am deeply indebted to James Tully for his support, encouragement, and the example of his scholarship over many years.

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