

*For Lovett and Sellers, eds, Oxford Handbook of Republicanism*

## **Republican Freedom in Choice, Person and Society**

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### ***Introduction***

Our topic is social or political freedom as distinct, on the one side, from metaphysical freedom—if you like, freewill—and on the other from ethical freedom: that is, freedom in the sense in which it is reduced, for example, by weakness of will. We focus on social freedom in what has come to be designated as a republican or neo-republican conception, because of its linkages with the republican tradition of thought from the time of the Roman republic down to the republican revolutions in seventeenth-century England and eighteenth-century America and France. The aim is to reconstruct that way of thinking about freedom, explain its appeal and show its implications for social and political life today.

Social freedom is predicated of at least three distinct subjects: societies, persons, and choices. While the republican tradition of thought focused in the first place on what it was to be a free person (Skinner 1998; Pettit 2007a), we may begin with the now more common focus on freedom in choice. That will enable us later to turn to a consideration of the freedom of a person and indeed the freedom of a society.

In thinking about our topic, we should distinguish between two different criteria by which to judge any philosophical theory (Pettit 2019). If a theory is to offer a theory of freedom, by our common understanding of the term—if it is not to change the subject—then it should satisfy at least a bunch of the assumptions that we take for granted in our ordinary talk and thought about freedom. If a theory failed to vindicate such assumptions, it would not be analytically or conceptually unacceptable; it would not be a theory, intuitively, of freedom.

But rival theories of freedom may be equally acceptable in analytical terms, as we shall see. So how should we judge between them? This is where a second set of criteria, substantive rather than analytical, become relevant. They require, not just that a theory of freedom should not change the subject, but that it should explain why freedom is important

in human thought and practice: for example, in the assessment of social and political institutions. It should identify the referent of the term 'freedom' with a property that is significant for human beings and demanding enough to impose serious constraints on human institutions. As we shall see, the republican approach identifies freedom with the property of not being dominated: not being subject to the will of another, even a benevolent other.

In the first section of the paper, we look at three theories of freedom in choice that are analytically acceptable, at least on the face of it, and then identify reasons of a substantive kind for preferring the republican conception of freedom as non-domination. In the second section, we extend the republican theory of free choices to free persons, looking at what it means to say that a person is undominated and free. And then in the final section we turn to a consideration of free societies, looking at the demands made by the ideal of the undominated person on, first, the relations among citizens and, second, the relation between citizens and their state.

While there are many strands and variations in the recent rethinking of neo-republican freedom, I offer the conception presented here only as that which I find personally most useful, not as a conception that is shared in every detail with others who identify as neo-republicans. And not, I should add, as a conception embraced in such detail by the main historical figures in the republican tradition. Figures like Polybius and Cicero, Machiavelli, Harrington and Sidney, the authors of Cato's Letters or the Federalist Papers, vary in the precise understanding of freedom that they propound or presuppose.

The theory I sketch is broadly faithful to that tradition, however, and it is broadly similar to the approach taken by other neo-republicans, whether or not they call themselves by that name. But I present it in the shape in which it has evolved in my own thinking under the sculpting influence of many colleagues and friends, some critical, some supportive.<sup>1</sup> I cannot hope to trace the contributions of the many others who have

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<sup>1</sup> From the very beginning I was deeply influenced by Quentin Skinner's now classic work on the foundations of modern political thought (Skinner 1978), and by his articles from the 1980's on Machiavelli and other republican authors: many of these pieces are reprinted with revisions in (Skinner 2002). John Braithwaite and I invoked a version of the

endorsed similar ideas to those tracked here and I hope I will be forgiven for writing as if in a social and historical void.<sup>2</sup>

## **1. Free choices**

### *Background assumptions*

There are a bunch of assumptions that I think any theory ought to satisfy if it is to count by received assumptions as a theory of what makes a choice socially free and if in that sense it is to be analytically acceptable. The choice will be defined by the options—mutually exclusive, jointly exhaustive options—that it puts at the disposal of the agent. And the assumptions I shall privilege here are that the freedom of any choice will be reduced just by external or environmental hindrance to the choice; that if the hindrance is to count as hindering, it should not be subject to the agent’s own will; and, perhaps more

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republican conception of freedom in our work on criminal justice (Braithwaite and Pettit 1990), equating it with the enjoyment of dominion; I outlined a somewhat reformulated conception of freedom as anti-power in (Pettit 1996); and in (Pettit 1997) I gave this the name of freedom as non-domination, connecting the idea with some historical sources and exploring its policy implications. The idea of freedom as non-domination underwent some significant clarification and development in my own later thinking, as evident in (Pettit 2012) and (Pettit 2014). This was driven by continuous interaction with allied authors like (Skinner 1998), (Laborde 2008), and (Lovett 2010; 2022) and with the allies and critics who figure in (Laborde and Maynor 2007), (Niederbeger and Schink 2012) and (Elazar and Rousseliere 2018). As a result of this interaction and later rethinking, I was led after (Pettit 1997) to introduce or clarify a number of ideas prominent in this paper: for example, the primacy of the ideal of a free person, the need for criteria like the eyeball and tough-luck tests in applying the ideal, the distinction between the breadth and depth of a free person’s freedom, and the distinction between agential and structural domination.

<sup>2</sup> Those broadly allied with the approach from whom I have learned are too many to list but certainly include Richard Bellamy, Samantha Besson, John Braithwaite, Robert Brown, Victoria Costa, Richard Dagger, Yiftah Elazar, Rainer Forst, Dorothea Gädeke, Alexei Gloukhov, Alex Gourevitch, Lena Halldenius, Tom Hickey, Iseult Honahan, Des Jaggmohan, Annelien de Dijn, Oleg Kharkhordin, Jun-Hyeok Kwak, Cecile Laborde, Christian List, Frank Lovett, Jose Marti, John McCormick, Fintan O’Toole, Will Roberts, Genevieve Rousseliere, Miriam Ronzoni, Deborah Russell, Patrick Savidan, Philipp Schink, Tim Sellers, Ian Shapiro, Quentin Skinner, Nic Southwood, Jean-Fabien Spitz, Jamie Susskind, Laura Valentini, Maurizio Viroli and José Luis Rodríguez Zapatero.

controversially, that a hindrance will reduce the agent's freedom even if it is morally or legally appropriate, and even if it happens to be personally welcome.

The theories considered here all satisfy these assumptions. But they also vindicate other, received assumptions that are not germane to our interests, though they may contribute to the analytical acceptability of the theories. These include the assumption that freedom is something that people generally want in their choices, that it is distinct from happiness, and that as it is reduced by the hindering of options so it is expanded by the addition of any significantly different option (Sugden 1998).

### *Taxonomizing theories*

The hindrance-centered assumptions are important because the theories to be presented differ on the nature of the sort of hindrance that is taken to reduce an agent's freedom in a choice. There are three distinct ways in which a theory of freedom in choice may vary in its construal of relevant hindrances and, as we shall see, our theories display this variability.

The first variable in how a hindrance to free choice should be understood turns on whether the hindrance must block or prevent the selection of an option or whether something less than prevention is allowed. Where prevention would remove an option from the choice other plausible conceptions of hindrance would include the replacement of an option by something else, or the misrepresentation of an option in some way. An option X will be misrepresented if the agent is misled about its availability or character, whether in straightforward deception or in manipulation of how they perceive or understand it. An option X will be replaced if its selection is subjected to a penalty or cost that changes the identity of the option, turning it into a distinct option, X-minus; this will be a distinct option insofar as the agent is not indifferent to the cost or penalty introduced.<sup>3</sup>

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<sup>3</sup> For this way of individuating options, see (Pettit 1991); and for a related approach, see (Broome 1991). The offer of a reward to an agent, being rejectable, will not replace an existing option, X, but merely add the further option of X-plus: doing X and accepting the reward. But non-rejectable offer, however welcome, would reduce the agent's freedom in the same way as a penalty.

The second variable in the construal of a hindrance turns on what option it must affect, whether in a preventive or other manner. On one construal, the hindrance must affect the option that the agent prefers and is disposed to choose. On the other, it may affect any of the options that define the choice, even an option that the agent has little or no inclination to select. The idea in this construal is that while such a hindrance may have no impact on what the agent actually chooses, still it will have an impact on the architecture of the choice and on what they might have chosen instead.

The third variable in the construal of a hindrance bears on whether the hindering of a choice must consist in another agent's having a power of control over some option in the choice or whether it is enough that any constraint be imposed on an option, whether by another human being, a social arrangement, or a natural obstacle. If a theory stipulates that an unfree choice should be subject to the control of another agent, individual or corporate, it will require that agent to be able to impose a constraint on the choice. If it does not stipulate a need for agential control, it will allow any constraint, however accidental in character, to make the choice unfree.

The notion of control requires some comment. One agent will control another in a choice to the extent that they can choose at will to hinder the other's selection of a relevant option; we set aside the question of whether the hindrance must be preventive or whether the option must be preferred. They will control the other actively if they hinder the selection of that option in advance or would hinder it if it were selected. They will control the other in a virtual or standby manner, however, even if they do not actively impose such a hindrance, insofar as they have the power of hindering the choice should they want to do so; if the agent chooses as they wish in such a case, they will make such a choice only because the standby controller allows them to do so.

### *Three theories of freedom in a choice*

Our three variables will give us eight possible theories of free choice, depending on whether or not the hindrance that makes a choice unfree is required to prevent the selection of some option, to affect the agent's preferred option, and to mediate the control of another. Most of those theories have not had a presence in the literature but three of

them are particularly salient, being associated respectively with Thomas Hobbes, Isaiah Berlin and, as I reconstruct it here, the neo-republican way of thinking.

All of these theories satisfy enough received assumptions about freedom to count analytically as more or less satisfactory. They each take the external hindrance of choice to be essential for the reduction of social or political freedom, distinguishing it from freedom in a metaphysical or ethical sense. They assume that the hindrance of free choice must materialize on an independent basis, not in response to the agent's own wishes or will. And they all opt for a non-moralized understanding according to which the hindrance that reduces freedom of choice may be morally good or obligatory or may even be a form of hindrance that the agent welcomes. But while they are all analytically satisfactory for these reasons, they differ in their substantive merits, as we shall see. They vary in how far they make freedom into a demanding and potentially important property.

I describe the theories respectively as equating freedom with non-frustration, understanding this in a Hobbesian way; with non-interference, understood on the lines favored by Isaiah Berlin; and with non-domination in a neo-republican sense. It may be useful to represent them in the following matrix. The first column in the matrix indicates whether the theory requires a hindrance to be controlling; the second whether it requires it to be preventive; and the third whether it requires the option affected to be one that the agent prefers.

Hobbes, Berlin, and neo-republicans differ insofar as they respectively rate a choice unfree just when a hindrance:

	<i>Is control needed?</i>	<i>Prevention?</i>	<i>Preference?</i>
frustrates it	by imposing any constraint	that prevents	a preferred option
interferes with it	by imposing a (willed) constraint	that affects	any option
dominates it	by giving control to another agent	over	any option

### *Comparing the theories*

Taking up the first of the issues in the columns, is the control of another agent needed to make a choice unfree? Hobbes (1994, Ch 21) thinks not, holding that any external constraint, even one imposed by a natural obstacle, takes away the freedom of a choice. Berlin stipulates that on the contrary only a constraint willed and imposed by other

agents reduces freedom. Republicans agree with Berlin to the extent of taking control to require that such a constraint be available to a controller. But where he makes his requirement a matter of stipulation, they argue that theirs derives from the more fundamental principle that it is only the control of another agent that makes a choice properly unfree (Lawless 2018).

Does a theory that rejects Hobbes on this first issue have to hold that the capacity of an agent to make a choice, which is typically fixed by non-agential factors, is irrelevant to issues of freedom? If such a theory did have to take this line, then it would make freedom relatively undemanding and unimportant. But happily, it does not have to adopt that view.<sup>4</sup> Thus, according to neo-republican theory, if someone is so constrained by natural or other influences that they are not capable of taking one or more of the options in a choice, they will not even be a candidate for enjoying freedom in that choice. This is because the question of whether an agent's choice is controlled by another presupposes that it is otherwise unconstrained and within their capacity.<sup>5</sup>

Turning now to the second issue in the matrix, is prevention needed to make a choice unfree? Hobbes (1994, Ch 21) is also on his own in thinking that yes, a hindrance must prevent the choice of an option, removing it from among the alternatives available in a choice as distinct from merely replacing or misrepresenting it. This approach offends against the natural intuition that changing the options an agent faces, or inducing a misunderstanding of their nature, surely reduces the agent's freedom in that choice and by

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<sup>4</sup> Surprisingly, Berlin (1969, 122) sometimes seems not to take freedom to presuppose capacity, which makes for another difference from republican theory. But it is unclear why he holds that line. To the extent that the republican conception does take freedom in a choice to presuppose capacity, it requires it to be effective or real, not merely formal (cf Van Parijs 1995).

<sup>5</sup> In the language I used in (Pettit 1997), the theory will assume with any free choice that there is nothing to *condition* the freedom of the choice—nothing to remove or reduce the agent's capacity—although what makes it properly free is that there is no form of control or domination to *compromise* its freedom: to make it properly *unfree*. In the language of (Pettit 2012) there must be nothing to *vitiating* the person's freedom in the choice, even if the choice will be properly free, not for that reason, but because no one *invades* it in the sense of exercising control over it. As we note later, some constraints of the conditioning or vitiating kind may be doubly objectionable insofar as they facilitate the domination of the individuals constrained.

ignoring those effects, it seems to make freedom a less demanding and important ideal. While it has been defended by a number of contemporary authors, we cannot take time over it here (Steiner 1993; 1994; Carter 1999; Kramer 2003).<sup>6</sup>

Finally, to the third issue in the matrix. Does the option hindered in an unfree choice have to be the agent's preferred option? Hobbes (1994, 21.2) is on his own again in supposing that yes, a hindrance will make a choice unfree only if it blocks the agent from satisfying their preference: only if it hinders the agent from doing 'what he has a will to'. Perhaps Hobbes's only supporters on this front are those economists who fail, as Amartya Sen (2002) has argued, to distinguish between freedom of choice and preference-satisfaction. This is the weakest assumption in the Hobbesian theory, as demonstrated by a devastating objection that Berlin (1969) brings against it, though without apparently recognizing that Hobbes is a defender.

The objection is that if I am made unfree by the fact that my preferred option in a choice is hindered then I can liberate myself just by adapting my preferences. If I am in prison and wish to escape, for example, I can make myself socially free by working on my preferences and getting to appreciate the benefits of prison life. This is a devastating criticism. It may suggest that the Hobbesian theory is not even analytically satisfactory but it certainly indicates that it is substantively questionable: it will not give social freedom its due importance, making it into an ideal that the unfree can achieve by virtue of adapting their preferences. A better version of freedom as non-frustration would take hindrances to free choice to include hindrances to any option in the relevant choice, not just hindrances to the preferred option.

Berlin's (1969) theory of freedom scores decisively above the Hobbesian view on this third issue, allowing that a hindrance that reduces the freedom of a choice may do so in virtue of affecting any option, not just that which the agent prefers, and thereby making freedom more demanding. Highlighting this feature, Berlin describes his theory as an open

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<sup>6</sup> Contemporary defenders appeal to the idea that to replace or misrepresent someone's option in a choice may reduce their 'overall freedom' insofar as it would prevent them from taking that option while escaping such replacement or misrepresentation. For exchanges on how far that idea works, see the papers in (Laborde and Maynor 2007).



doors view of free choice. The idea is that all the options before the agent in a free choice must be open doors, not just the option that the agent prefers: not just the door they push on. The republican theory also supports this open-door view, since it too denies that a hindrance that reduces freedom must affect the agent's preferred option.

The Berlinian and neo-republican theories make freedom more demanding and important than the Hobbesian and score above it substantively, if not analytically. While holding that only agential intervention can make a choice unfree, they can allow for the importance of other constraints as well—and thereby make freedom as demanding as on Hobbes's view—since these affect the agent's capacity. And on the other two fronts they give freedom a more demanding and potentially important role than the Hobbesian approach. They allow freedom to be undermined by other forms of intervention besides prevention and to be undermined by interventions that affect any option in a choice, not just that which the agent prefers.

But how do these two theories compare with one another? The only variable on which they break figures in the first column, where the issue is whether a freedom-reducing hindrance has to give another agent control over how the agent chooses. Berlin never suggests that it is the control that interference might mediate that affects the freedom of an agent; for him it is interference as such that does the damage. And that reveals a significant weakness in the view.

The weakness shows up in the following case. Suppose that there is no actual hindrance imposed on the agent so that, in Berlin's metaphor, all the doors in the choice are open. It still may be the case that there is a doorkeeper—if you like, a bouncer—who is able at their own discretion to shut the door against the agent. And in that case, the non-interference enjoyed by the agent does not amount to much. Even if the agent manages to choose whatever they wish in such a scenario, still their ability to choose as they wish depends on the will of the doorkeeper. It is the doorkeeper who is ultimately in charge, enjoying standby control over how the agent chooses.<sup>7</sup>

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<sup>7</sup> While Berlin's official theory does not require the absence of a doorkeeper, it may be that he would have found the neo-republican conception of freedom appealing, had he

Because of requiring that there should no such power loom over the agent in a free choice, the republican theory makes freedom more demanding and potentially more important. Just as someone may be deprived of freedom in a choice without having their preferred option frustrated, so they may be deprived of freedom in the choice without suffering any actual interference with one or another option. The choice will be unfree to the extent that there is someone who controls how the agent makes it, even if that controller does not actually interfere: even if their control is of a standby character. Let the freedom to speak your mind require non-domination, for example, and it will mean that you must be able to choose as you wish among the options—you must be able to say nothing or say what you think—regardless of what you yourself prefer to do and regardless also of what anyone else prefers that you should do. Each choice should be an open door, as Berlin requires, and in addition, there should be no doorkeeper in a position to close any door.

The possibility of choosing without interference is certainly a recognizable ideal and is relevant in many cases: say, comparing two regimes that score equally well or badly on republican grounds. But the ideal of choosing without domination—with or without interference—is of greater substantive significance since, as will appear, it supports rich and demanding ideals of freedom for persons and societies. Freedom as non-domination is not the only value that we may wish to endorse in ethics or politics. But it may be all that we need to endorse in political philosophy insofar as it supports a theory of the just state that scores very well overall: this, by my own view, because it promises to satisfy John Rawls's (1971) requirement that such a theory be in reflective equilibrium with our considered judgments of justice.

### *Neo-republican theory*

The idea that freedom in a choice requires the absence of another's control, even the control of a non-interfering, perhaps benevolent other, amounts to nothing more or less

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identified it as such. If I am to be free, he writes at one point, there must be 'room within which I am legally accountable to no one for my movements' (Berlin 1969, 155). Even a non-intervening doorkeeper would introduce accountability, perhaps indeed legal accountability.

than the neo-republican idea that such freedom requires non-domination. Roman republicans already emphasized the need for the absence of any control over someone who chooses freely. They took it for granted that the slave who is subject to the control of a *dominus* or master, even a kindly master, is still in a relationship of *dominatio*, as they called it, and that this relationship—this domination—makes them unfree in the choices they take (Arena 2012).

There are obvious contemporary parallels to the case of the slave with a kindly master. Consider the husband who lives in a culture or under a law where they have accepted powers not available to their spouse. Or consider an employer—perhaps an individual, perhaps a corporate body—that operates in the presence of a law that allows them to fire an employee at will. No matter how benevolent or indulgent the husband or master, still the existence of their power—perhaps a power that they wish they didn't possess—means that their spouse or employee must depend on their will remaining a goodwill if they are to choose as they wish. If they do manage to choose as they wish in a given choice, that will only be because the master-figure wants them to be able to choose as they wish. It is that master's will that is in ultimate control, not their own.

On the republican account, the paradigm hindrance that makes someone unfree in a choice consists in the external control of another agent, individual or corporate. But it is important, as many contemporary republicans have emphasized, to recognize the complex contours that control and domination may assume.

Thus, to introduce a point of particular significance, some instances of control may be contingent on a temporary opportunity or superiority that the dominator enjoys—say, that which the burglar or mugger may enjoy—while others may be grounded robustly in natural or social asymmetries (Gädeke 2019). Asymmetries deriving from infirmity or ill-health may make someone prey to the control and domination of others, as may those deriving from poverty and other forms of disadvantage, or sexist or racist norms, or arrangements that give bargaining advantages to employers over workers, corporations over communities, financial institutions over their debtors. Such impersonal factors, norms or arrangements exercise a sort of structural domination over the individuals they disadvantage; they do this insofar as they facilitate or program for domination by other

individual and corporate agents. They more or less ensure that in standard, relatively inescapable forms of relationship, individuals on the disadvantaged side will be dominated by agents on the other (Pettit 2012; 2014).<sup>8</sup>

## **2. Free persons**

### *From free choices to free persons*

This gives us an idea of the neo-republican approach to freedom of choice, or at least one version of that line. But how to think about the freedom of the person, an ideal that is much more prominent in the long tradition (Skinner 1998; Pettit 2007a)? One possible approach would be to let a person count as free to the extent that they enjoy freedom as non-domination in their choices, or at least in a privileged set of choices like the basic liberties discussed below. But if persons are free in virtue of the quantum of free choice they enjoy, that is going to undermine the traditional idea that to be a free person is to be equally free with others. That problem argues for the approach adopted here, which is to hold that persons are free, not because of how high they score in enjoying undominated choice, but because of enjoying a status that helps make them proof against domination.

It is worth noting in any case that the quantum approach raises a problem of measurement. This arises because free, undominated choice can vary in several dimensions and, in each of those dimensions, to various degrees. The variations possible are noted by the superscripts in this formula.<sup>9</sup>

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<sup>8</sup> For approaches that allow structures—in addition or instead—to count as dominating on other grounds, see (Gourevitch 2014) and (Roberts 2017). One complaint that might support such a view, although not clearly endorsed by those authors, is that any impersonal factors that constrain people are objectionable—and ‘dominating’ in that independent sense—insofar as they are not resisted and taken in hand by the human beings affected. The complaint is implicit in the Freudian aim for psychoanalysis: *Wo Es war, soll Ich werden*; where there was an *It*, there shall be an *I*. In the social realm, this complaint is quite implausible. It would argue, for example, that people ought to regulate unchosen shifts of language in the manner of the *Académie Française*.

<sup>9</sup> The formula may help to combat the criticism, already voiced by William Paley (2002, Ch 5) in 1785, that the republican approach defends a wholly on-off conception of free choice.

*A person is dominated in a given choice just to the extent<sup>1</sup> that another agent has the ability—temporally or enduringly present<sup>2</sup>, actually exercised or not<sup>3</sup>—to interfere with the choice in one or another mode<sup>4</sup>, on a relatively discretionary basis: i.e., with little or no difficulty or danger<sup>5</sup>.*

The superscripts identify distinct ways in which the interference available to the other agent may vary.

1. The agent's ability to interfere with the person may vary, depending on how psychologically congenial they find intrusion.
2. The agent may enjoy the ability only in virtue of a lucky opportunity, as we already noted, or in a robust fashion, based on an enduring asymmetry of power.
3. The agent may enjoy control over the choice without ever exercising that ability in actual interference.
4. The agent may be able to interfere by removing an option, by replacing it with a more or less heavily penalized alternative, or by misrepresenting it.
5. The relatively few hurdles to interference that the agent faces—the relatively low costs they have to risk—may vary in number and kind.

Variations in these dimensions mean that the judgment as to how far someone is free by republican criteria in a single choice, let alone in the choices they face overall, is much more complex than it would be, for example, on the Hobbesian view that freedom is lost only when the choice of the preferred option is actually prevented.<sup>10</sup> The status approach adopted here avoids that problem. It prioritizes the freedom of a person over freedom in choice and defines it in relation to free choice in such a way that two or more people may count equally as free persons—may equally enjoy the undominated status of free persons—while varying in how precisely they fare at the level of choice. This will become clear as we go along.

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<sup>10</sup> This, plausibly, is what makes the prevention approach attractive to thinkers like Hillel Steiner, Ian Carter and Matthew Kramer. For approaches within the republican camp that tackle the problem of measurement see (Ingham and Lovett 2019), (Lovett 2022, 58-60) and (Côté Forthcoming).

The figure of the free person bulks large in republican tracts down the ages, being taken as the person with a social status that enables them to stand and walk tall amongst their fellows. This is the image of the *liber*, as *libertas* was understood in ancient Rome, where *libertas* or freedom was taken to be equivalent to *civitas* or citizenship, and the *liber* was nothing more or less than the *civis* (Wirszubski 1968, Ch 1). In later versions, it is the *freeman* of seventeenth-century England and the *citoyen* or *citoyenne* of revolutionary France. Collectively taken, such free persons compose ‘we the people’—this, as distinct from ‘we the subjects’—in the preamble to the 1787 constitution of the United States.

What should the ideal of the free person require at the level of choice, if we conceive of it as a status people may equally share? What constraints should it impose on the free, undominated choices that someone ought to enjoy if they are to count as a person equally free with others in their society? There are two constraints it is bound to impose, one of breadth, the other of depth, as in the following formula.

*And individual will be a free person amongst others just in case they enjoy freedom as non-domination in an adequate, equal breadth of choice and enjoy it in virtue of an adequate, equal depth of safeguarding against domination (Pettit 2014).*

The requirement of breadth is that choices adequate for free personhood—although not perhaps all choices—are equally available to all. And the requirement of depth is that safeguards adequate for free personhood—although not perhaps all safeguards—are also equally available for all. But on what basis might we judge that someone has such a range of choice and such a level of security that they have the status of free persons in their society? It might be possible in principle to quantify the range and level required but in practice we can do perfectly well by relying on an intuitive criterion that reflects the status traditionally accorded to the *liber*, the free citizen, in republican thought. This criterion is implicitly invoked by a number of traditional thinkers and may be usefully described as the eyeball test.

#### *The eyeball test and the question of breadth*

According to the eyeball test, someone will count as a free person, enjoying a free status adequately and equally with others, just to the extent that they are able to look

others in the eye without good reason for fear or deference; or at least without good reason deriving from an imbalance of interfering power.<sup>11</sup> This test picks up the traditional idea that the free person can stand and walk tall amongst others. While the reference to looking others in the eye may be specific to cultures where that is not treated as impolite or in other ways improper, the possibility of being able to look others in the eye stands in for a possibility of mutual respect that ought to appeal across the species (Pettit 2021).

What range of undominated choices ought free persons to be able to enjoy, if they are to satisfy the eyeball test? Plausibly, for starters, they must be able to enjoy the same choices as one another without exposure to domination.<sup>12</sup> And, plausibly, those choices ought to satisfy two broad constraints. They ought to constitute a set such that it is possible for anyone to exercise one of them regardless of how many others are exercising a choice in the set at the same time. In that sense, they ought to be co-exercisable. But they ought also to be co-enjoyable. Each of the choices should be such that its being exercised by a number of individuals does not mean that it loses its natural appeal for each.

Just to illustrate these ideas: it can't be open to a free person to take possession of whatever they wish, or to travel on whatever side of the road they wish, since such choices would not be co-exercisable. And it can't be open to a free person to speak whenever they wish to an assembled audience, since no one would enjoy doing so if others were doing that at the same time (Hart 1973). The choices that are to be available to each must be crafted by norm or law to be co-exercisable and co-enjoyable and ought to be established in common awareness as choices that free persons can each exercise at will. Thus, the rules of the road might serve that purpose in the first case, and an arrangement like Robert's rules of order might serve it in the second.

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<sup>11</sup> Someone too timid to savor free status will still not be dominated insofar as they have no good reason for fear or deference. Someone too defiant to embrace a lack of free status will still be dominated insofar as they have good reason for fear or deference. Good reason will be gauged by local standards.

<sup>12</sup> In principle, it might be possible to allocate different packages of choices that enabled all parties to pass the test. But it is hard to see how in practice this might be made to work.

The undominated choices that free persons ought to be able to enjoy equally, according to the eyeball test, are those that are adequate according to that same test to ensure their free status. What is adequacy likely to require?

Suppose that the set of choices that are safeguarded within a society do not include further co-exercisable, co-enjoyable choices that might also be safeguarded; suppose, in other words, that the set of choices is unnecessarily restricted. In that case the breadth of safeguarded choice will surely be inadequate. The safeguarding will be so narrow that some will be able to dominate others in the choices missed, and those others will be unable to look their dominators in the eye without reason for fear or deference.

The range of choices that ought to be safeguarded for free persons may be described as fundamental or basic liberties. In using articulating those choices, we can ignore choices that are downstream from other basic liberties; we may concentrate on maximally upstream choices only. If you have the basic upstream liberty of communicating what you think then you will have the downstream liberty of conveying any more specific message about your thoughts, provided that conveying that message is consistent with people's enjoyment of their basic liberties overall: provided, for example, that it does not constitute a prohibited form of hate speech. Thus, the basic liberties to be identified in a society need only include liberties like that of communicating what you think, assuming that it is not downstream from any other basic liberty. Presumptively the basic liberties to be defined and defended, then, will be traditional paradigms like freedom of thought and religion, speech and association, as well as freedom of local and social movement, the freedom to own and trade under accepted property rules—their acceptability will be determined by the eyeball test too—and the freedom to change occupation and employment.

These observations indicate in a schematic way what the eyeball test implies for the basic liberties that individuals, as free persons, ought to be able to exercise and enjoy without domination. It will be up to each society, however, to identify in its norms and laws the liberties that obtain there and this choice may reflect cultural differences between the societies as of course it will reflect their technological state of development. The basic liberties that a free person in ancient Rome might have expected to enjoy will be very different from those that someone in a contemporary, technologically advanced society



might want to claim. Intuitively, they ought to be the liberties that are essential for a person to function properly in their local society (Sen 1993; Nussbaum 2011).

*The eyeball test and the question of depth*

In order to count as free persons, so we saw, individuals not only ought to enjoy a suitable breadth of undominated choice. They ought also to enjoy a suitable depth of security in making those choices: specifically, they ought to be equally safeguarded at an adequate level in the exercise of the basic liberties. But what level of safeguarding should count as adequate and equal?

Once again, the eyeball test directs us towards a plausible answer. It suggests that the safeguarding will be adequate and equal insofar as it is enough to enable people to look one another in the eye without a reason for fear or deference that derives from imbalances in interfering power. If people are equally secured under a system that enable them to relate as equals in that sense, then it is hard to see why anyone would have a complaint about the safeguarding they enjoy in the exercise of their basic liberties. As the range of safeguarded liberties will be suitable by the eyeball test, so by that test will be the level of safeguarding provided.

But it is time to note a qualification. The equality that free persons will enjoy in virtue of the arrangement supported is consistent with inequality in other regards. For example, each may have the secure liberty to travel wherever they wish within their country: this, as specified under the rules of the road. But only some may be rich enough to be able to travel in a chauffeur-driven car or on a private airplane or yacht. Again, each may have the secure liberty of speaking their minds, under the rules of legitimate speech. But only some may be influential enough to be able to speak their minds on the mass media; and this, even if free personhood requires that there be some constraints on who controls those media.

Still, the possibility of differences in influence or wealth does not imply that the equality and level of safeguarding required under the eyeball test is insignificant. On the contrary, a high level of resourcing and redistribution—or indeed pre-distribution (Thomas 2017; Gardels and Berggruen 2019)—is likely to be necessary if people are to

pass the test; more on this in the next section. The equality prized within the approach is equality in people's enjoyment of a certain sort of relationship and while this requires a degree of equality in influence or wealth or whatever, the two egalitarian ideals are distinct. In contemporary language, neo-republican theory is relationally rather than distributively egalitarian (Anderson 1999; Scheffler 2005). It picks a certain relationship—that of non-domination—and argues that, by the measure of the eyeball test, it ought to be enjoyed adequately and equally across the citizenry.

To return finally to a point made about the definition of free persons, this discussion indicates that the property of being a free person in the neo-republican sense, the status of free personhood, is multiply realizable at the level of choice. In other words, people with different choices or different resources of choice may count equally as free persons. Thus, free persons may differ within limits in how many resources they command. Free persons may differ in how far they suffer criminal interference, provided that they stand to benefit equally from the system of security against domination. And free persons may differ in whether they have been convicted of crimes and have to endure a term in prison, provided prisoners continue to live under the same security system as others, albeit one that they have prompted to restrain them.<sup>13</sup>

### **3. Free societies**

#### *The idea of a free society*

The discussion in the last section shows that the ideal of a free person is defined only relative to a given society. In principle, that might be a worldwide society but the differences between countries ensure that in practice it will have to be a society of a more or less local character. There are global or international issues that are usefully formulated and addressed within a republican approach, but we put them aside in the current context.<sup>14</sup>

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<sup>13</sup> On republicanism and criminal justice, see (Braithwaite and Pettit 1990).

<sup>14</sup> I address this issue myself, and cite some other approaches, in (Pettit 2014; 2015), where I argue that peoples ought to live under an international order that grants them freedom as non-domination in relation to one another and to multi-national bodies. For an excellent

A society will be free, we may assume, to the extent that it enables its members—at least its adult, able-minded, relatively permanent residents—to assume the status of free persons. And it will play that enabling role insofar as it properly defines and defends their basic liberties, by the criteria implied in the ideal of a free person. So how is a society to do this?

*The role of norm, law and state*

Clearly it must rely on laws and associated norms to identify the choices that are given the status of basic liberties, whether it does this in explicit stipulations or on the basis of assumptions written into the structure of the law overall. Laws and norms will ensure not just that there is some determinacy about what are and are not basic liberties but also that the identity of those liberties is manifest to all; everyone is aware of the choices that count, aware that others are aware of this, and so on.

But how is the society to safeguard citizens in their enjoyment of those basic liberties? Clearly it must operate on two fronts. First, it must ensure, so far as possible, that those choices are not blocked by impersonal factors like a lack of health or resources or information that would undermine their capacity to make those choices; it must try to ensure that they are available as choices in which they may hope to enjoy non-domination. Second, and even more saliently, it must ensure that people are not unfree to exercise those choices: that they are not subject to the control of others in how they choose to make them. It must introduce laws to remedy or compensate for disadvantages in the first category, and in the second category it must define the basic liberties of each and defend them against the domination of others, in particular against the robustly available domination grounded in natural or social disadvantage or lack of power.

This is to say that the society must establish a state or polity that makes suitable laws for resourcing and protecting people's basic liberties, guarding them against the control and domination of others: other individuals acting individually or jointly as well as the corporate bodies, commercial or otherwise, that such individuals may form. But that

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recent paper, see (Laborde and Ronzoni 2016). Other broadly republican authors tend to take a more cosmopolitan approach. See for example, (Bohman 2007) and (Marti 2015).

arrangement will raise the age-old question of who will guard people in turn against their guardian. Any state with the ability to resource and protect citizens against domination is likely to have power sufficient to dominate them itself. What is needed, therefore, is a body that guards its citizens against personal domination by other individuals and bodies, first of all, and that does so, secondly, without itself perpetrating domination of a public sort.

The traditional republican line on questions like these, in particular the question about public domination, is that the answer lies in recourse to the mixed form of constitution that Polybius and Cicero took Rome to exemplify, that was celebrated by Machiavelli and Harrington and Sidney, and that bulked large in the thinkers associated with Cato's Letters and the Federalist Papers. But while they all agreed in rejecting the idea of rule by a single individual or a single corporate body, they differed greatly in how they thought that mixture should be achieved. Hence the proposals that follow are meant to illustrate what the republican notion of the free society would seem to require, not to be a statement of received doctrine, or anything of that kind.<sup>15</sup>

#### *Enabling people to enjoy personal freedom*

To take up the first issue raised, what laws might serve to guard citizens against private domination? In order to ensure that they are not hampered by lack of resources from accessing the basic liberties, there must be laws that ensure a basic level of resourcing for all. This might be taken to argue for a universal basic income (Van Parijs 2001), as some have argued on republican grounds (Pettit 2007b; Raventos 2007). But it certainly argues for laws that provide security against disadvantages that would restrict people's abilities to access their basic liberties and might even make domination possible and likely. How much

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<sup>15</sup> Contemporary writers like John McCormick (2011) and Camila Vergara (2020) distinguish between authors, traditional and contemporary, who are 'aristocratic' and those who are 'plebeian' in their view of the mixed constitution. They hail Machiavelli in particular as the model of a plebeian proposal that gives great power to ordinary people as distinct from those in the elite. I take this approach to mark an important distinction, and to make an important contribution to institutional debates, but not to mark a divide between two radically different versions of the tradition. If there is a radically distinctive form of republicanism with which to contrast the orthodoxy it is Rousseau, who embraces freedom as non-domination but rejects the mixed constitution in any form (Pettit 2016)

security is needed? Again, enough to take people to a level where they can satisfy the eyeball test.

Thus, the law should provide for the social security of all, since those who are homeless or hungry, or in urgent medical need, will be restricted in their ability to enjoy certain basic liberties and might have to depend on the philanthropic or exploitative offers of others, being thereby exposed to domination. It should also provide for people's epistemic security, ensuring access to a basic education, to re-training in new essential skills, to reliable information about the society and state, and to measures for reducing epistemic disadvantage of any kind (Fricker 2007). And it should provide for judicial security, with access to reliable counsel in the event of being charged with crimes or having to defend against civil charges, as well as in the event of having justiciable complaints against others.

But apart from resourcing citizens in this way, the laws would also have to protect them against salient forms of interference, giving them a suitable level of non-domination in the exercise of their basic liberties. There are four areas, broadly, in which the law should provide such protection for people against the danger that some of them may be dominated by other individuals or by the corporate bodies that individuals form: churches, corporations, associations, and the like. The four types of protection the law should provide against that danger are, in a rough taxonomy explained below: general and direct; general and indirect; specific and direct; and specific and indirect.

The law will provide a general, direct form of protection of people insofar as it criminalizes various offences against basic liberties, for example, regulates activities that may jeopardize the enjoyment of those liberties, and guards against possibilities of discrimination that may undermine it. The law will provide a general, indirect sort of protection insofar as it enables people, individually or in class action, to charge others with breaches of tort or contract law that affect their basic liberties. The law will provide a specific, direct form of protection insofar as it gives status rights to those in particularly vulnerable positions vis-à-vis others, for example as spouses, workers or consumers. And the law will provide a specific, indirect form of protection insofar as it gives certain powers of self-protection to such people, say by enabling spouses to seek divorce, workers to

unionize, and consumers to bring class actions in defense of their rights. We may sum up the picture in this matrix:

Protection:	Direct or	Indirect
General or	Criminal law...	Tort and contract law...
Specific	Family, workplace, consumer law...	Laws allowing divorce, unionization...

### *Enabling people to enjoy public freedom*

So much for the sorts of laws required to protect people against private domination. But what now of the state that is needed to frame and impose such laws? How are people to be guarded against public domination by their own polity?

We may assume, contrary to the contractarian tradition of Hobbes, Locke and Rousseau, that the state does not dominate its people agentially just in virtue of existing. This is because the worldwide system that makes the state inescapable is not maintained in existence, as it was not brought into existence, by any agent or agency; it is a historical necessity that has emerged and stabilized as the unintended consequence of independent actions and adjustments (Pettit 2023). The state will raise a problem of domination, however, if the way it chooses the particular laws it frames and imposes—the way it exercises its power as a state—gives it or the government that runs it a dominating power of control over others. How then to guard against such control?

The only possible answer is, by containing the exercise of political power, so that the government and the state operate, not according to a discretionary will—in the seventeenth century sense, an arbitrary will—but on terms that the people as a whole lay down and enforce. The people will not be controlled and dominated publicly to the extent that, while they must accept the state as the source of laws under which they live, they can themselves control the state's decisions about what laws to make and about how to impose those laws.

### *The tough-luck test*

The eyeball test provides a benchmark for determining whether relevant laws guard people adequately and equally against personal domination: it requires those laws to

enable people to look one another in the eye without reason for fear or deference. A parallel test would provide a similar benchmark for determining whether constitutional and political arrangements guard people adequately and equally against public domination. We may call it the tough-luck test. Where the eye-ball test determines whether decision-taker laws are satisfactory—the laws that are imposed on all citizens alike—the tough-luck test would determine the suitability of decision-maker laws: that is, the laws that determine who are to be the decision-makers and how they are to operate.

Whatever decision-taker laws are imposed by the state, they are always going to be unwelcome in one or another sector of the society: this is because people differ in their interests and in their views of what form the laws should take. Decision-maker laws would presumably guard against public domination if they ensured that even those who find a decision-taker law or policy unwelcome, as some always will, need not conclude that it reflects the power of a will that is hostile or indifferent to their interests. The decision-making arrangements in place will give them reason, however defeasible, to think that it may have been tough luck that the decision affected them negatively: it need not be a decision that justifies resentment or indignation on their part (Strawson 1962).

What constraints on the power of decision-makers would enable those who are disappointed about a law that the state imposes to view the imposition without a presumption that resentment or indignation is justified? Presumably, laws that force lawmakers to impose laws under a system of popular, equally shared control that deprives them of a discretionary fiat; we may assume that no one can resent having to live on equal terms with others and having to share control with them. If decision-makers were subject to such control, then those opposed to any law would have reason to think that, however disappointing, the law emerged under a system of control that was not rigged against them: a system of control that was adequately responsive to them and those of their interests or opinions, and as responsive to them as to any other group in the society.

The tough-luck test depicts the project of combating public domination as a realistic but still exciting ideal. It contrasts on the one side with an exciting but unrealistic ideal like the empowerment of a supposedly general or popular will (Rousseau 1997); and on the other with a realistic but less exciting ideal like that of equalizing political resources and

guarding against the subordination of some individuals to others in the society (Kolodny 2014b; a; Viehoff 2014).

### *A framework of control*

Decision-maker laws will guard against public domination, then, and satisfy the tough-luck test, if they are designed to give people an equally shared form of adequate control over the decisions taken by the authorities in the name of the state. But how in practice might decision-maker arrangements do this? Plausibly, by virtue of providing people with a framework that enables them to impose disciplinary, contestatory and selectional forms of control over those in office. And, more specifically, by providing them in an un-dominating way with such a framework of control.

In order for a framework to be provided in an un-dominating way, it must be capable of amendment by the people themselves, but only under the proviso that no subgroup is thereby enabled to assume power over others. Amendability under that proviso requires that the extension of the citizenry be so fixed that no members—no elite or cultural group—can exclude others or deny them equal power under the framework; all must share equally in that power and do so on a basis that makes the arrangement effectively or even formally un-amendable. And amendability under the proviso requires, in addition, that while various other elements in the framework should be amendable, they should only be amendable under constraints that guard against one group acting to reduce the access of others to control over government. Such constraints would require the entrenchment of basic liberties such as freedom of thought, communication and association among individuals. And they would also require protection for the systems of disciplinary, contestatory and selectional control that are in place. Thus, those elements in the framework might be amendable only in a popular referendum that guards against the effects of ordinary majoritarian politics; the referendum might impose a super-majoritarian requirement, for example, on the introduction of any change.<sup>16</sup>

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<sup>16</sup> (Pettit 2012) argues that it ought to be possible also for citizens acting with general support to challenge and overthrow that framework by extra-constitutional, ideally peaceful means; this may be necessary to challenge a corrupted or ineffective system. This popular power, as outlined in (Pettit 2023, Ch 4), would not give the people a dominating



How will the framework of control established by decision-maker laws give people disciplinary, contestatory and selectional control over government?

*Disciplinary control*

It will give them disciplinary control insofar as it introduces a rule of law, a rule of checks and balances, a rule of entrenched rights and a rule of common reasons akin to something deliberative democrats support (Cohen 1989; Habermas 1995). Such measures would all have the effect, if well designed, of limiting the powers of those in office in a fashion that makes officials more susceptible to control by people in a contestatory or selectional manner. Where contestatory and selectional measures would arm the people against their government, these disciplinary measures would disarm the government, reducing its capacity to resist popular control.

The rule of common reasons is perhaps the most surprising of these proposed devices. It would require the measures taken in making, administering and adjudicating law—and indeed also in contesting law—to be justified by reference to considerations that are considered relevant on all sides; and, where rival candidates score equally well on that score, to be adopted under tie-breaking procedures supported by such considerations (Pettit 2012). Common reasons will often derive their omni-lateral relevance from the fact of reflecting elements in the popularly maintained framework: say, a presumption of inclusion in recognizing citizens, and a presumption of equality in their claims on the state. But they will more generally appear in the course of democratic debate and decision, as it gets to be established as a matter of public acceptance, for example, that separate is not equal, that the state should play a role in establishing public health measures, or that the victims of natural catastrophe in one locality should have a claim against the community as a whole (Pettit 2018).

*Contestatory control*

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control over individuals, pace (Simpson 2017; 2019), since it could only muster the general support it requires in marshalling complaints against government; see too (Ingham and Lovett 2019; Lovett and Pettit 2019).

Moving to contestatory power, the framework of decision-maker laws will give ordinary people contestatory control over government insofar as those laws establish freedom of communication and association, and maintain a regime under which people have information about government performance and have access to avenues of challenge in the courts, the media and the streets. Such arrangements would require an independent media as well as agencies like a bureau of statistics or a budget office, and would enable the formation of non-governmental organizations for the marshalling of challenge and opposition. They might also be enhanced by measures requiring government to consult people on various issues: say, by means of a citizen assembly (Perse and Warren 2007).

### *Selectional control*

The third requirement that decision-maker laws must satisfy if they are to have any hope of enabling popular control of government bears on how agents are selected to serve in government. The more regular arrangement—I put lottocratic possibilities aside (Guerrero 2014)—would allow for the popular election of domain-general authorities, legislative and perhaps administrative, and for the appointment under suitable constraints of transparency and accountability of authorities in specified, restricted domains. Domain-specific authorities will include the courts, of course, but also the relatively independent authorities often set up by the legislature and administration. These may be established to ensure the reliability of public data and information, as with the bureau of statistics or budget office; to monitor and review domain-general authorities, and indeed one another, for conformity to financial, legal and ethical guidelines; and to discharge roles where election is likely to create a conflict of interest: these include regular judicial office, the organization and scrutiny of elections, and the determination of interest rates.

It is almost certainly best to have domain-specific authorities appointed under constraints of transparency and accountability, rather than exposing them to election. It should be clear what is in the presumptive public interest in each specific domain, and suitable constraints would promise to dictate fidelity to the relevant brief. Exposure to election would introduce factional incentives for those in office, such as the desire to please

certain supporters or win a particular group's favor, and they would likely go against the public interest and dilute the control of people as a whole.<sup>17</sup>

Why prefer the election of domain-general authorities to their appointment by any other mechanism? Not, as some have suggested, because it is likely to identify the best candidates for office; it may do only moderately well, and sometimes very badly, on that count. Elections are important in reminding people of their power and prompting them to see the authorities as ultimately their servants (Chapman 2022). And, perhaps even more crucially, elections commit sincere participants to defending the freedom of information, communication and association on which they must rely (Schumpeter 1984). Liberties in these areas need to be recognized, celebrated and entrenched in any effective democracy; let them be compromised and people are likely to lose much of their control over government, whether of a disciplinary, contestatory or selectional kind.

### ***Conclusion***

There may be a number of theories of free choice, indeed of freedom more generally, that are analytically acceptable, as we noted in the first section. They will be acceptable on this front insofar as they vindicate enough received assumptions about freedom to count as properly theories of freedom, not of anything else. But among those theories the republican theory of freedom as non-domination must rate as substantively without par, for it gives as a supreme degree of importance to freedom in political philosophy. There are certainly values other than freedom as non-domination but, as our observations suggest, this ideal alone is sufficient to guide the just state.

Freedom in this sense is socially demanding enough to constitute a significant theory of justice among citizens and politically demanding enough to underpin a significant theory of justice between citizens and their polity. It requires in social justice that the citizens of a republic should benefit equally from an adequate regime of individual security and in political justice that they should share equally in an adequate system of collective control over that regime. This arrangement should support their personal liberty on the

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<sup>17</sup> For an argument in favor of depoliticizing sentencing policy, insulating it from such incentives, see (Pettit 2002).

first front and their public liberty on the second, reflecting various considered judgments of justice, in accord with Rawls's (1971) test of reflective equilibrium.

The theory of freedom as non-domination contrasts particularly sharply with the view we associated with Isaiah Berlin, according to which it is enough for freedom that a person should escape interference or coercion. It makes decision-taker law central to the constitution of personal freedom, contrary to the Jeremy Bentham's (1843, 503) claim, foundational to classical liberalism, that 'all coercive laws ... are, as far as they go, abrogative of liberty'. And it makes decision-maker law central to the constitution of public freedom, contrary to the view of William Paley (2002, 314), one of Bentham's associates, that an 'absolute form of government <may> be no less free than the purest democracy', and contrary indeed to Berlin's (1969, 130) own view that 'there is no necessary connection between individual liberty and democratic rule'.

While this connection with law is distinctive and essential, however, it is worth noting in conclusion that freedom as domination cannot survive without its embrace by ordinary people. Law will not suffice on its own to give people an undominated status, since there will always be ways for people to dominate others that law cannot usefully contain, as in the domination that gossip or bullying or mockery can mediate. And, more important, law cannot play its particular role in combating domination unless people are brave enough to banish timidity, defiant enough to assert their rights under law, and cooperative enough to do all that sharing in popular control requires.<sup>18</sup>

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