FREEDOM IS POWER

Liberty Through Political Representation

Lawrence Hamilton

Freedom is Power

Using the history of political thought and real-world political contexts, including South Africa and the recent global financial crisis, this book argues that power is integral to freedom. It demonstrates how freedom depends upon power, and contends that liberty for all citizens is best maintained if conceived as power through political representation. Against those who de-politicise freedom through a romantic conception of 'the people' and faith in supposedly independent judicial and political institutions, Lawrence Hamilton argues that real modern freedom can only be achieved through representative and participative mechanisms that limit domination and empower classes and groups who become disempowered in the conflicts that inevitably pervade politics. This is a sophisticated contribution to contemporary political theory that will be of interest to scholars and students of history, politics, philosophy, economics, sociology, development studies and southern African studies.

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For Mairéad
Le grá agus buíochas

Libertas suis stat viribus Freedom is to be in one's own power

(Livy, *Ab urbe condita*, Book XXXV, Ch 32, 11.)

Er will unter sich keinen Sklaven sehn He wants no servants under him
Und über sich keinen Herrn And no boss over his head

(Bertolt Brecht, part of second verse of *Enheitsfrontlied* [1934/1935], in Bertolt Brecht, *Gesammelte Werke*, Vol. IV: *Gedichte* (Frankfurt: Suhrkamp Verlag, 1967), p. 653.

To be free is not merely to cast off one's chains but to live in a way that respects and enhances the freedom of others.

(Nelson Mandela, *Long Walk to Freedom: The Autobiography of Nelson Mandela* (London: Macdonald Purnell, 1995), p. 617.)

Without representation, no democratic politics.

(F. R. Ankersmit, *Political Representation* (Stanford, CA: Stanford University Press, 2002), p. 115.)

The only prerequisite [for demanding the right courses of action from those in decision-making positions in the economy] is that you are willing to remove those rose-tinted glasses that neo-liberal ideologies like you to wear every day. The glasses make the world look simple and pretty. But lift them off and stare at the clear harsh light of reality.

(Ha-Joon Chang, *23 Things They Don't Tell You About Capitalism* (London: Allen Lane, 2010), p. xvi.)

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and selections of earlier versions of Chapters 1, 2 and 4 appeared as 'Real Modern Freedom', *Theoria: A Journal of Social and Political Theory* 60.4 (2013), pp. 1–28. I am very grateful to Sage and Berghahn for permission to reuse this material.

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Introduction

This book is the result of a desire to answer a pressing, practical and often articulated question: are South Africans now free twenty years after apartheid? But it only provides a partial answer and it does so in a very roundabout way. A more direct answer might have been possible had the various accounts of freedom on offer in the political theory and philosophy literature been more realistic and more concerned to deal with the concrete, substantive issues the question throws up. In the main they are not. So, as a political theorist, I had to revert to type: as the work now stands it does not marshal a sustained argument in response to this question, but rather it is an attempt to develop a more comprehensive understanding of freedom under modern conditions that could deal comprehensively with the question of whether South Africans are now free. This is therefore a theoretical book, but it makes liberal use of South African history, politics and economics; and thus, along the way, I do provide some sort of an answer: in short, 'not yet'.[1] However, in order to do so, I have, as it were, had to change the conceptual framework through which scholars, politicians, freedom fighters, activists and ordinary citizens would normally have understood the question. This has involved engaging with all the major contemporary theoretical debates around freedom, making forays into the history of political thought, and referring to a number of other contexts and problems, such as Brazil, the United States of America, the United Kingdom and the global economic crisis that began in late 2007 and still bedevils all of us today. Therefore, while *Freedom is Power* was inspired by conditions within South Africa, it stands or falls, I would hope, on the extent to which it provides an apt conceptual, theoretical framework for answering this kind of *practical* question regarding freedom not only in South Africa now but also in other places and times.

[1] I give a more comprehensive, direct and empirical answer in *Are South Africans Free?* (London: Bloomsbury, 2014).

That this question has plagued me since at least the mid-2000s may seem like the height of ignorance or impudence: since the early 1990s in South Africa the odious and tyrannical regime of apartheid has been demolished peacefully and her people liberated. Not long ago South Africans all around the world were celebrating the twentieth anniversary of the release from prison of Nelson Mandela and then, soon thereafter, in late 2013, they and the world mourned his passing and celebrated his life and leadership. These celebrations were not only about the life, and long walk to freedom, of this one iconic individual but also the liberation of an entire country. South Africans live now in a true republic as opposed to a republic by name alone, a republic that reduced the majority of its population to non-citizens, strangers in their own land, without formal political power and generally impoverished. In 1994 South Africans were granted equal rights to elect their political representatives, to be treated equally before the law and to move, associate, love and worship as they see fit. But does that make them free? If we conceive of freedom in more realistic and substantive terms than is the norm, we get a very different answer from the one normally given by those who view contemporary conditions in South Africa through the rose-tinted spectacles of contemporary conceptions of formal freedom (and rights).

My political concern is with South Africa, but my main problem in this book is theoretical; and, fortunately for me, the case of South Africa provides a vividly illuminating lens through which to view the various dimensions of freedom under modern conditions. In particular, it brings into sharp focus two related components of freedom and the fact that the *relations* between them are poorly expressed in both 'ancient' and 'modern' accounts of freedom. These are that to be free is (a) to live in a free state in which one is a member of a (or a set of) collectively free group(s) and (b) *to have the ability* to act or be as one would choose to act or be. Moreover, and more importantly, the South African context highlights well a second set of claims I defend in this book: (a) that both these components of freedom depend on citizens having the *power* to determine *who* governs and *how* they govern – in particular, the power to ensure that one's economic and political representatives in general and one's political rulers in particular skilfully formulate and effectively implement economic policy that secures 'the enjoyments of a voluntarily chosen personal life';[2] (b) that freedom therefore depends upon representation;[3]

[2] J. Dunn, 'Liberty as a Substantive Political Value', in *Interpreting Political Responsibility* (Cambridge: Polity, 1990), pp. 61–84, at p. 81.

[3] With some important exceptions, referred to in particular in Chapter 5, contemporary normative political philosophy is marked by an aversion to representation in general and

(c) that the degree of a citizen's freedom depends upon the power of their various formal and informal representatives; and (d) that freedom depends on the citizen's having power to counter what I call, following Foucault, 'states of domination' via effectual political participation and meaningful control over political representatives.

The South African context is helpful in the way that any particular context is helpful in understanding politics: it enables us to think about our beliefs, opinions, interests, values, ideals and power relations as framed by the political institutions and practices that have generated them or have been produced by them.[4] However, the experience of South Africa is of particular interest for a full understanding of freedom and power for another reason. Categorised crudely, accounts of freedom occupy two main camps: (a) those who think of freedom as having little or nothing to do with politics or, more exactly, the nature of the political regime under which one lives; and (b) those who think that it is uniquely about the form of the regime under which one lives. Good examples of the former position can be found in Stoic, Christian and other forms of religious doctrine, as well as some forms of liberal thought (see below) within which freedom is not only a matter for the individual but, more importantly, a matter for the individual mind or soul, irrespective of the prevailing material or political conditions. In fact, for philosophers and prophets such as Epictetus, Jesus Christ, Gautama (later known as Buddha) and Seneca, freedom is primarily freedom from the prevailing material conditions: that is, freedom is fully realisable only under conditions in which one has freed oneself from the necessities imposed on one by nature and politics – *from* one's body, one's desires and one's engagement with other selves. Freedom in this sense is therefore *reduced* to a state of the mind or 'mental state', and it follows from these sorts of arguments that one can therefore supposedly even be free as a prisoner or a slave.[5] For

the link between representation and freedom in particular. This is particularly true of radical democrats, anarchists and deliberative democrats. See, as respective examples of each, B. Barber, *Strong Democracy: Participatory Politics for a New Age*, twentieth anniversary edn (Berkeley: University of California Press, 2004); R. P. Wolff, *In Defense of Anarchism* (Berkeley: University of California Press, 1998); and the essays in J. Bohman and W. Rehg, *Deliberative Democracy* (Cambridge, MA: The MIT Press, 1997).

[4] For more on these mechanisms and relations, see L. Hamilton, *The Political Philosophy of Needs* (Cambridge University Press, 2003), pp. 116–133.

[5] See, for example, Seneca the Younger, *De Tranquillitate Animi* [*On Tranquility of Mind*], x. 1–5, in Seneca, *Moral Essays II*, Book IX, trans. J. W. Basore (Cambridge, MA: Harvard University Press, 1932 [*c.* 63 AD]), pp. 250–252. As Karl Marx and Friedrich Nietzsche have argued, it is therefore unsurprising that religion in general, and Christianity in particular, are not short on messages that teach acquiescence to the 'natural' order of things, which include extant political power relations. See, in particular, Marx's famous 'religion is the opium of people' argument in his *Critique of Hegel's Philosophy of Right*,

proponents of the other extreme, by contrast, the condition of slavery is the archetype of unfreedom and is the direct result of living within an unfree state. This form of argument is common to both republican and liberationist accounts of freedom, in which liberty depends upon the acquisition of political freedom or the nature of one's regime: to be a free person is to live in a free state, for to live in a free state is to live in a situation of non-domination (the one republican version). Freedom in this second variant is therefore *reduced* to the form of one's state or what is sometimes called 'regime type'.[6]

South Africa's recently acquired political freedom and the current social and economic conditions – high levels of inequality, poverty, unemployment, crime and corruption – bring into stark relief the inadequacy of both forms of thinking about freedom. First, the experience of living in the manifestly unfree state of apartheid South Africa highlights how difficult it is to be free in such a state – that is, it points to the multiple inadequacies of the first group of arguments regarding liberty, that freedom is reducible to a 'mental state'. The South African context also exposes the deep problems with a related, and even more theoretically prominent, way of thinking about freedom, as a purely 'physical state', the account of freedom first proposed most trenchantly by Thomas Hobbes and later stylised as 'negative' freedom by Jeremy Bentham and, most famously, Isaiah Berlin. Today this has been reconceived by libertarians as 'pure negative' freedom, in which freedom is disconnected entirely from the form of an individual's political regime and has to do with whether or not the individual is impeded or constrained in their choices and actions.[7] However, the experience of acquiring political freedom in the relatively recent past and the fact that this in itself has yet meaningfully to free most South Africans points to the flaws in the second group of arguments, that liberty is reducible to 'regime type': even with formal civil and other freedoms (rights) safeguarded for all in a free state (within a constitutional bill of rights) most do not have the means – that is, the

ed. and trans. A. Jolin and J. O'Malley (Cambridge University Press, 1970 [1843]), and Nietzsche's critique of Christianity in his *Genealogy of Morality*, ed. K. Ansell-Pearson and trans. C. Diethe (Cambridge University Press, 2007 [1887]).

[6] The arguments of both camps, with full references, are elaborated upon at length in Chapters 1 and 2 below; and, as I also note with various references at the start of Chapter 1, I will follow Hobbes and most other writers on the topic by using 'liberty' and 'freedom' interchangeably.

[7] As Hobbes famously puts it: 'Whether a Common-wealth be Monarchicall, or Popular, the Freedome is still the same.' T. Hobbes, *Leviathan*, ed. R. Tuck (Cambridge University Press, 1996 [1651]), p. 149. For an example of a modern libertarian reformulation, see M. H. Kramer, 'Liberty and Domination', in C. Laborde and J. Maynor (eds.), *Republicanism and Political Theory* (London: Routledge, 2008), pp. 31–57.

power – to realise these freedoms let alone the means to feed themselves and their families.

The fact that South Africa's political freedom is a recent and precarious achievement coupled with the everyday effects its existing political and economic institutions and practices have on the lives of the majority of its citizens provide an excellent prism with which to assess freedom and power under modern conditions. Having the religious or psychological means to free oneself from one's material conditions – or, as Seneca put it, to have a 'mind that is placed beyond the reach of fear, beyond the reach of desire': that is, to be psychically invulnerable or indifferent to all 'earthly' concerns,[8] or being formally physically free as safeguarded by the law – may both be component parts of being free, but they surely come to very little if one is materially unable to act as one would otherwise like to, or one's representatives do not have the power to enable such action, or any such actions are not able to overcome a state of domination within which one lives. The most that can be said of these reductive arguments for freedom is that they express what may be component parts of freedom; but freedom is clearly not reducible to any version of them. So too with freedom as reduced to 'regime type': political freedom or the achievement of formal non-domination may be a component part of freedom, but freedom is not reducible to it. Formal, equal citizenship in a free state is only meaningful if, as a citizen, I have the power, the capacity, to enact my rights and freedoms as a citizen. So, in other words, although Hobbes may have gone too far in arguing that freedom could be acquired in any state, or at least in a monarchy or a popular republic, he was right to question the republican argument that all that mattered for freedom was the acquisition and maintenance of political freedom.[9] And, as we will see, like Machiavelli, Marx, Nietzsche, Lenin, Fanon, Foucault, Dunn, Geuss and other realistic political thinkers, he was right to think about freedom in terms of power. South Africa's recent historical change and the way in which the effects of political and economic power are still etched onto the lives and bodies of most South Africans would leave any realistic observer with little doubt about this relation.

Yet, it is partly because South Africa looms large in this introduction and as a contextual and imaginative context for me that I should state unequivocally early on that everything I say as regards freedom as power – and even as regards many of the conditions, causes and consequences

[8] Seneca the Younger, *De Vita Beata* [*On The Happy Life*], iv. 1–v. 2, quote at iv. 3, in Seneca, *Moral Essays II*, Book VII [*c.* 58 AD], pp. 108–113, quote at p. 108/109.

[9] And, as will be discussed in Chapter 1 below, this is all despite being the progenitor of the current predominant, but inadequate, account of freedom as 'absence of constraint or impediment'.

of South Africans' current predicaments – is not specific to the South African case. Obviously some of the empirical material I bring out in Chapter 5 regarding South Africa's political economy is specific to South Africa, but the more general arguments I make on the basis of them regarding the relations between power, freedom and representation all apply beyond the South African case (as, of course, do the general arguments I make regarding power, freedom and representation in general). South Africa just happens at this historical juncture to be a good lens with which to view freedom, but it is far from being the unique case study in this book. Other countries, histories and conditions are utilised throughout, as is the history of political thought. Moreover, the institutional proposals identified in the conclusion are proposed as means of thinking about and applying (though not necessarily applying unaltered) radical changes in any context and at any time to the functioning and goals of representation and participation in politics. I see no reason why the aspiration to universality should remain the unique property of purely normative, context-independent political theory. The attempt in this book to enable understanding of one of the most important concepts for politics by means of reference to the real world of politics does not mean that what I have to say about that concept is only applicable to these contexts. Human societies, economies and polities all over the globe grapple with similar concepts, problems and conditions; and sometimes especially where contexts are very different from one another, conceptual and theoretical insights can be the most brilliant precisely due to this lack of familiarity. They enable perspectives on problems from unique, unfamiliar and previously absent angles, which is also why the study of ancient contexts is so enlightening for the present. It just so happens that at this particular historical moment South Africa's recent history and current conditions illuminate the concept of freedom quite well, or so I argue – nothing more, nothing less.[10]

In defending this account of freedom I will argue that 'freedom is power' in a sense analogous to that adopted by Stuart Hampshire in his *Justice is Conflict*.[11] For Hampshire, justice is conflict not in the sense that justice is equivalent to or identical with conflict, but rather that justice always involves and requires conflict. Likewise, I submit that freedom is not equivalent or identical to power, but rather that power is an essential component of freedom. Power is integral to freedom. Conservatives, pragmatists, Marxists, Jacobins, those involved in liberation struggles

[10] I am grateful to one of Cambridge University Press's anonymous readers for pushing me on this point.

[11] S. Hampshire, *Justice is Conflict* (Princeton University Press, 2000).

the world over, some republicans and even some liberals have correctly thought that it is ridiculous to discuss freedom except relative to power. Here I will draw from some of their insights and argue that to be free must finally mean 'to be able to *X*', and a person may fail to be able to *X* either because of obstacles that she does not have the power to overcome or because she simply lacks the power to carry out an action.[12] And 'obstacles' and 'lack of power' may be variables that depend upon either or both of the following: formal material or psychological constraints and abilities or disabilities of various forms; and equally material power relations that can leave one or one's group in a state of domination – that is, in a position of subordination or prey to power relations that favour the interests or concerns of other individuals or groups.

This is not the normal way of thinking about the relationship between freedom and power. When many people think of 'power' they tend to think of the power or powers that act against them, that make them act or live in a certain way – for example, they think of 'the power of government', 'the power of the courts' or the 'the powers that be' – and when they think of freedom they think of their own ability (or lack thereof) to do what they want in the face of the constraining power of individuals, states and institutions that 'lord it over' them. In other words, if anything, power is normally associated not with freedom but with unfreedom or constraints on freedom. Hence the commonly held flipside of this, the notion that if power and freedom are associated at all it is not in the way I am suggesting here but rather the converse: that power is freedom; that is, if I am all powerful I am free. But, as I argue, this simply reduces freedom to individual power, which fails to get us very far towards the goal of understanding the freedom of inescapably inter-dependent modern individuals within complex social, economic and political power relations and groups. There is, of course, something in this though, as it captures an important component of what modern individuals value in freedom: not being told what to do or being able to do what one likes in the face of the power of government or other groups or individuals. But, as I will argue, this is far from the whole story: power is a much more complex phenomenon than this assumption of a 'command–obedience/resistance' model allows, and the same is true of liberty and the relations between freedom and power. Liberal and republican political philosophers, theorists and policy-makers, however, think these common intuitions regarding freedom and power are, more or less, correct; in fact, they build complex theories and forms of political

[12] R. Geuss, *History and Illusion in Politics* (Cambridge University Press, 2001), p. 97.

practice upon them.[13] Liberals think of freedom in negative terms, as absence of constraint. To be free, they argue, is to act in the absence of impediments or obstacles, in particular those that result from conscious deliberate human action. To see this, they maintain, one first has to distinguish as sharply as possible between what belongs to the content of the concept of freedom itself and what belongs only to the conditions under which freedom can be effectively exercised, and then, second, one must remember that politics ought to have to do only with maximisation of freedom and not the implementation of the conditions under which freedom can be utilised.[14]

I take issue with both parts of this claim. I argue that the sharp distinction between the 'content of the concept' of and the 'conditions' for freedom distorts rather than clarifies our understanding of freedom. It does so because it results in a conception of freedom that focuses exclusively on external impediments or obstacles to action to the exclusion of the power one has either to carry out the action in the absence of obstacles or the power one has or does not have to overcome any existing obstacles, as well as an assessment of the conditions for that power. Liberals are concerned with external obstacles because they think it is better to have *more* possible courses of action rather than fewer. That is obviously true of some situations, but it is not clear that it is true of all; but whether or not it is always a good thing to have more rather than fewer options open, the number of options open depends not merely on the presence or absence of obstacles, but the conjunction of one's power and the internal or external obstacles that stand in one's way. Moreover, whether or not a person, act or institution constitutes an obstacle will itself often depend on my relative power and my position within existing power relations and groups, and the power of my and my groups' representatives.

[13] The idea that the appropriate point of departure for understanding ethics and politics is *our* intuitions (about what is just, fair or right, for example) is a very common, if flawed, assumption within contemporary philosophy. Why place so much weight on our intuitions? What if our intuitions have their source in skewed power relations or states of domination, or are sustained by ideology? Or what if they themselves are ideological? Surely, if one wants to start with intuitions, one should at least think about where these intuitions come from, how they are maintained, what interests they serve, and so on. Geuss, *Philosophy and Real Politics* (Princeton University Press, 2008), pp. 7–8, 59–60, 90.

[14] See, for example, I. Berlin, *Four Essays on Liberty* (Oxford University Press, 1996 [1969]), p. xlii: 'Freedom is an opportunity for action' not a power to act or 'action itself'; or, in other words, freedom is understood as an 'opportunity concept' rather than an 'exercise concept'. See also C. Taylor, 'What's Wrong with Negative Liberty', in A. Ryan (ed.), *The Idea of Freedom* (Oxford University Press, 1979), pp. 175–193; R. Geuss, 'Freedom as an Ideal', *Proceedings of the Aristotelian Society*, supplementary volume, 69 (1995), pp. 86–100; A. Sen, *Rationality and Freedom* (Cambridge, MA: Harvard University Press, 2002).

Thus I begin the book, in Chapter 1, 'Freedom From Politics', with a reformulation and critique of the predominant notion of 'negative' freedom, or freedom as absence of impediment. I argue that it is better described as freedom within a putative 'private' sphere, where the freedom of individuals is allegedly protected from coercion in general and political interference by the actions of others in particular. As such, I argue, it is characterised by four problems as an account of individual freedom under modern conditions. I end the chapter by considering Marx's diagnosis of the predominant conception of modern freedom that he suggests builds upon the similar one provided a century earlier by Rousseau. I counter Marx's claim with regard to this and assess both of their criticisms of the predominant modern conception of freedom, showing how Marx's misreading of Rousseau has deleteriously affected the work of many modern anarchists and deliberative democrats.

Then, in Chapter 2, 'Freedom Through Politics', I consider five responses to this 'privatised' account of freedom, all of which come out of the history of republicanism in one interpretation or another, and all of which share the idea that freedom is found through politics or political action. I argue that these too are inappropriate for understanding freedom under modern conditions: by never fully escaping the ancient and early modern conceptions and institutional arrangements that inspire them they over-emphasise the significance of political agency for freedom. Nevertheless, one of them, the approach to freedom proposed by Niccolò Machiavelli, is instructive because he reminds us that class conflict constitutes a necessary component of and safeguard for freedom, especially if institutionalised in a manner that properly empowers the representatives of opposing classes. There are now two main interpretations of freedom in his *oeuvre*, one that emphasises non-domination, the 'common good', *virtù* and depoliticised legal institutions (as in the writings of Quentin Skinner, Philip Pettit and Maurizio Viroli) and the other that emphasises class conflict, partisan interests and partisan political institutions (for example, in Claude Lefort's and John P. McCormick's works). In the second half of the chapter I analyse and criticise these two schools of interpretation, although ultimately I side with the latter. I then show, however, that both interpretations inadvertently highlight problems with adopting 'neo-roman' or 'republican' freedom for modern purposes.

Yet it is Machiavelli's more realistic focus on class conflict, power, control, representation and partisan political institutions as constitutive of freedom, bolstered by a few other thinkers, that leads to the first step in the main argument of the book: a proposal and defence of what I call 'real modern freedom', an alternative conception to both 'freedom from

politics' and 'freedom through politics', based on a substantive account of freedom as power. Modern conditions – characterised as they are by high levels of specialisation, interdependence, class and group differentiations, large complex states, multifaceted inter-relations between polity and economy, and numerous kinds of associated representation – require an alternative account of freedom that does not look to the purely private or exclusively political (or some mix of both), but rather the manifold conditions for *freedom of action*, which involves power and control over various social, economic and political domains, more often than not mediated by representatives. This account of freedom is therefore quite distinct from both the liberal and republican mainstream in the sense that it does not *reduce* freedom to one defining feature, be that mere absence of (external) impediments, the ability to decide for oneself what to do (self-determination) or active citizenship within a free state.[15] I submit here a realistic rather than a minimalist conception of freedom that identifies freedom with real and effective power and control across four domains. My freedom of action is relative to my power to: (a) get what I want, to act or be as I would choose in the absence of either internal or external obstacles or both; (b) determine the government of my political association or community; (c) develop and exercise my powers and capacities self-reflectively within and against existing norms, expectations and power relations; and (d) determine my social and economic environment via meaningful control over my and my groups' economic and political representatives. Freedom is therefore power in the sense that it depends upon my power, control and self-control across these four dimensions. So real modern freedom here is identified *with* and *as* power in that it conceives of freedom as a *combination of my ability to determine what I will do and my power to do it – that is, bring it about*. This is the main argument of Chapter 4, 'Real Modern Freedom'. Towards the end of the chapter this alternative conception of freedom is contrasted with Pettit's 'updated' republican account of freedom, which, against the

[15] These are Isaiah Berlin's 'negative' and 'positive' conceptions of freedom and the rival republican account respectively. Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty*, pp. 118–172; Q. Skinner, 'The Idea of Negative Liberty: Machiavellian and Modern Perspectives', in *Vision of Politics*, Vol. II: *Renaissance Virtues* (Cambridge University Press, 2002), pp. 160–185; Skinner, 'Machiavelli's *Discorsi* and the Pre-Humanist Origins of Republican Ideas', in G. Bock, Q. Skinner and M. Viroli (eds.), *Machiavelli and Republicanism* (Cambridge University Press, 1993), pp. 121–141; Skinner, *Liberty Before Liberalism* (Cambridge University Press, 1997); Skinner, *Hobbes and Republican Liberty* (Cambridge University Press, 2008); P. Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford University Press, 1997); and Taylor, 'What's Wrong with Negative Liberty'. However, an important corollary of my argument here is that these distinctions are a lot less helpful than is often assumed.

grain of Machiavelli, defends a 'depoliticised' account of freedom and democracy.

The groundwork for this realist account of freedom as power is set in Chapter 3, 'Power, Domination and Human Needs', where I discuss power relations, states of domination and human needs. In essence I combine an account of power and domination initiated by Foucault with the account of needs, interests and institutional critique I developed in *The Political Philosophy of Needs.* More exactly, to continue to blaze Foucault's trail with regard to the provision of *practical* means of distinguishing between power relations that do and those that do not generate states of domination, and assessing political institutions in terms of whether they enable or disable citizens' attempts to overcome domination, I maintain that it is best to combine his insights with two related conceptions of politics, power and domination: (a) my genealogical, inter-subjective and contextualist account of the determination and satisfaction of human needs;[16] and (b) the thought of realistic thinkers such as Machiavelli, Marx and Geuss, who unabashedly conceive of politics as being ultimately about agency, concrete power relations and interests, and the relations between them, and thus, by extension, which institutions would empower citizens not only to identify states of domination but to overcome them. The pivotal relations between agency, power relations and interests are captured neatly by Lenin's famous formula 'Who, whom?' – who has power, for what ends do they use it, and who gains and suffers in consequence? This was recently aptly extended by Geuss to 'Who <does> what to whom for whose benefit?'[17] In other words, politics involves judgements within a particular concrete context of power relations about priorities, benefits and penalties, and the needs and interests they would satisfy.[18]

En passant, I criticise the tendency amongst most contemporary political theorists and philosophers to propose theoretical solutions to political problems that assume or defend the necessity for parity of power, equality, discursive consensus or complete absence of domination. Not only

[16] This may surprise many, given Foucault's avowed mistrust and deep scepticism for concepts such as 'needs' and 'interests'. But this scepticism was directed towards a universalising humanist account of human nature and needs, which my account of needs avoids. See N. Chomsky and M. Foucault, 'Human Nature: Justice Versus Power', interview in A. I. Davidson (ed.), *Foucault and His Interlocutors* (University of Chicago Press, 1997), p. 130. This interview originally appeared just prior to the original publication of Foucault's *Discipline and Punish*, in F. Elders (ed.), *Reflexive Water: The Basic Concerns of Mankind* (London: Souvenir Press, 1974).

[17] V. I. Lenin, *Materialism and Empirio-Criticism* (Beijing: Foreign Languages Press, 1972 [1909]); and Geuss, *Philosophy and Real Politics*, pp. 25ff.

[18] Hamilton, *Needs*, pp. 1–20, 140–153.

do these ideals rest on highly unrealistic assumptions about the nature of politics, but I submit that they also, by assuming the possibility of universal, impartial theoretical solutions, miss the all important point that states of domination are best overcome in practice by means of institutions of participation and power that take seriously the *partisan* nature of needs, interests and states of domination; and that therefore it is necessary to propose political institutions that act as counters to existing economic and political power balances in society and associated states of domination.

Thus, in Chapter 3, I bolster Foucault's insights regarding domination and empowerment by defending an account of how needs and interests form the basis of determining, on a continuum, the extent to which relations of power generate states of domination. This is but the first step in a process that ends in the book's concluding chapter with a set of institutional changes, some partisan, that would empower citizens in a number of positive and negative ways: power over legislation in district assemblies, real control over representatives by means of a revitalised consiliar system, decennial constitutional plebiscites, and the power to veto or repeal legislation and revise the constitution.

I argue in this book, therefore, that freedom depends on the institutional power to determine one's needs, interests and liberties in context and in situations in which states of domination are kept to a minimum – in particular situations in which one group or set of groups dominates another or set of others. This means that it is probably impossible to give a single universal account, or axiomatic calculus, of the relations between freedom and power. How these relations ultimately play themselves out in practice is a contextual, concrete matter to be determined by circumstance and real evaluation of needs and institutions. However, it does not follow from this that we cannot specify generally applicable features of how these relations play themselves out within existing empirical reality, partly because most current social, economic and political contexts have a great deal in common with one another. I defend the claim that the best way of getting a handle on the existing relations between power and freedom is to focus on the main states of domination that can arise given the prevalence of power relations in any polity or between polities. This is therefore a contextualist and realist account of power, needs and freedom that nevertheless enables an objective and general account of real modern freedom.[19]

[19] It is this book's focus on concrete power relations, interests and values (via concepts such as needs) that makes it an instance of realism in political theory. For more on the important topic of 'realism' in political theory, see Dunn, 'Practising History and

The account of freedom as power that I defend in this book therefore incorporates aspects of 'negative', 'positive' and 'republican' liberty, but transforms them within an account of real modern freedom. I elaborate these component parts and domains of freedom via a discussion of empowerment, representation, resistance and control in Chapter 4, as it is these four component parts of citizen power that map onto the four dimensions of freedom as power as defended here; and, as is argued at length in the remainder of the book, due to the complexity of modern conditions it is representation, or more exactly freedom as power through representation, that constitutes the main claim in *Freedom is Power*.

Freedom is power in the sense therefore that it depends upon my power, control and self-control within the four domains noted above, with special focus on representation, as summarised below. That is the full extent of the claim defended in this book. I do not propose an exhaustive account of freedom, mainly because given the complex realities of inter-dependent human existence I take that to be an unattainable and undesirable theoretical endeavour. The account of liberty in terms of power and representation defended here allows for the possibility that individual freedom may only be fully accomplished by the individual, and that may vary depending on the individual in question. Freedom for some might be about being true to oneself whatever the demands, obligations and expectations of others, while freedom for others may be about being embedded and determined by these duties and ties, and for others again it might even be the life of the ascetic. Moreover, given the affluence and consumption levels in the developed 'global North' and the poverty and aspiration to 'develop' towards this state of affluence and consumption in the 'global South', coupled with the increasing degradation of the planetary environment, there is much to be said for inducing individuals throughout the world to show greater austerity, self-control and self-discipline with regard to their consumption and its effects on the environment. These very real problems have led some to suggest that as a consequence we are at the end of the era of freedom, at least in its bourgeois form.[20] While I agree that in its bourgeois form freedom has little to offer us, I maintain that freedom still has a significant role to

Social Science on "Realist" Assumptions', in C. Hookway and P. Pettit (eds.), *Action and Interpretation: Studies in the Philosophy of the Social Sciences* (Cambridge University Press, 1978), pp. 145–176; I. Shapiro, *The Flight From Reality in the Human Sciences* (Princeton University Press, 2008); Geuss, *Philosophy and Real Politics*; Shapiro, *The Real World of Democratic Theory* (Princeton University Press, 2011); and for more on the difference between 'realism' and the 'realistic spirit' in politics, see Z. Emmerich, 'Political Realism, Commerce and Moral Psychology', *Theoria* 119 (2009), pp. 81–112.

[20] R. Geuss, *Politics and the Imagination* (Princeton University Press, 2010), p. xiii.

play, particularly for those with little or no power and especially in the form defended here, where liberty accommodates this emphasis on self-control and self-discipline: given current conditions, these are aspects of the control necessary for freedom as power.

This book therefore rescues freedom from its theoretical etiolation within the liberal and republican traditions not by giving an exhaustive account of full individual human freedom, but by defending the basic claim that, whatever liberty for any particular individual may involve, under the precarious and inter-dependent nature of existing conditions it will depend on the power and control individuals are able to exercise within the four dimensions of freedom outlined above. The concern is therefore with the basic necessary requirements for freedom as power, or, in other words, the main claim I defend is that individual power and control within these four dimensions are necessary (but not sufficient) conditions for freedom.

The case of South Africa also illuminates another oft-forgotten component of freedom as determined by the politics of large, complex states: that our individual freedom is determined to a significant degree by the material conditions and power of the groups or classes that we find ourselves (or in some cases choose) to be members, and that the power of each group is determined itself by the power of its representatives, which given the nature of power relations is itself heavily determined by the nature and relative access they have to their polity's formal political representatives. The unemployed and working class in South Africa, who constitute a large group, lack freedom to a great degree not only because they are poor but also because they are either unrepresented or very poorly represented, and thus are unable to affect the macropolitical and macroeconomic policies that determine the extent to which they are able to meet their vital and agency needs and avoid states of domination. However, that is not the end of the story. Under these conditions – that is, if the representatives of some groups in a society remain marginalised or, worse, in states of domination – this affects not only their degree of freedom, and thus the degree of freedom of their constituent members, but also that of the society as a whole. As is argued in Chapter 5, 'Freedom and Representation', this is still clearly the case in South Africa: the stubbornly large group of impoverished and unemployed South Africans are much the worse off as regards freedom as power; but, contrary to what many assume, their dire lack of liberty, brought about mainly through non-existent or poor political representation, affects the degree of freedom of all South Africans. The argument elaborated in the chapter articulates a reality felt across the polity, irrespective of class and comfort: a lack of freedom brought about by the

ill-effects of high rates of poverty, inequality, unemployment, crime and poor political representation, all exacerbated by the fact that the ruling party, the African National Congress (ANC), continually claims exclusive representation of 'the people'. And, as I argue, this is a tragic irony, for the more one of the main forces of liberation in South Africa attempts to identify itself with the state and 'the people', the more South Africa slides towards tyranny and thus the less freedom prevails.

As I will argue, given that freedom under modern conditions amounts not so much to the people ruling themselves, but to the representatives of all groups in society having meaningful access to the determination of political and economic policy, any one group of representatives that claims to represent 'the people' is claiming exclusive power and freedom. This is now the case in South Africa, and it is the result of a situation in which the majority party confuses its role as a representative of the majority and its role as representative of the state as a whole (or 'the people'). Any confusion of the two – that is, any confusion of the party as a political party competing for power and those members of the party that at any one time represent South Africans – as the sharpest thinkers down the ages have maintained, is a recipe for tyranny or despotic government, hardly good grounds for freedom. So, for power really to be returned to the people and thus for freedom to obtain in South Africa a number of changes have to be effected: sovereignty returned to parliament; real redistribution of wealth and power amongst the various groups that make up 'the people'; meaningful competition to represent these groups; a reorganisation of South Africa's electoral system that would enable this competition; the introduction of partisan institutions of political participation and legislation for the socially and economically less powerful; and competent, courageous, responsible and persuasive leaders.[21]

Representation is a tricky art, and the identification of the representatives with the represented spells the end of democratic politics and freedom. Another way of putting this, as I argue in Chapter 5, is that representation in all senses – in art, law, politics and so on – depends upon the maintenance of a 'gap' between the object being represented and the representation itself. In politics, this requires the rigorous maintenance of a 'gap' between the people or the state on one side and their representatives on the other. The smaller this 'gap' the less freedom obtains. South Africa is not yet free because, despite large formal and highly lauded transformational processes such as the Constitution of 1996 and the Truth and Reconciliation Commission, the cosy relation between

[21] For more on these proposed changes for South Africa in particular, see Hamilton, *Are South Africans Free?*

capital and state remains as firm as ever.[22] The form of crony capitalism that characterised the apartheid era has, if anything, been strengthened. Some of the faces may have changed, but the country is still run by a small economic and political elite that, more often than not, overlaps: many of the new entrants to the economic elite are high-ranking ANC members, thanks to the policy of black economic empowerment,[23] and those that are not (normally from the old economic elite) have direct and powerful links to the new political representatives for reasons that go back to South Africa's negotiated transition to democracy. This lack of 'gap' was tragically manifested during the August 2012 massacre by police of 34 unprotected (unrepresented) striking platinum miners at Lonmin's mine in Marikana, North West Province, and the fact that high-ranking Lonmin board members with direct links to the highest seats of political power allegedly exacerbated an already tense situation by suggesting that the cause of the initial unrest was nothing less than criminal and therefore required a firm, 'concomitant' response.[24] In other words, the power relations that continue to exist between the country's economic and political representatives are the major determining factors for the lack of freedom that obtains in post-apartheid South Africa.

Given the complex of controversies in political theory surrounding 'groups', 'group identities' and 'group rights', it is probably a good idea to state at the outset here that when I use the notion of 'group' it is not intended as a 'return' to some fixed notion of 'group identities', but simply an attempt to take seriously the prevalence of class and group representation in politics. By 'group' here I do not, for a moment, assume that any single individual's identity is determined by a group identity. Individuals can and normally are 'members' of various groups within

[22] As discussed in Chapter 5, the irony is that this is not the case formally – the representatives of capital do not enjoy a veto point in parliament – and so South Africa is still deemed a risky place in which to invest.

[23] A. Butler, 'Black Economic Empowerment since 1994: Diverse Hopes and Differentially Fulfilled Aspirations', in I. Shapiro and K. Tebeau (eds.), *After Apartheid: Reinventing South Africa?* (Charlottesville, VA: University of Virginia Press, 2011), pp. 52–71.

[24] D. Smith, 'Lonmin emails paint ANC elder as a born-again robber baron', *The Guardian*, 24 October 2012, at www.theguardian.com/world/2012/oct/24/lonmin-emails-anc-elder-baron (accessed 25 October 2012); and R. Munusamy, 'Cyril Ramaphosa: Betrayal does not get more painful than this', *The Guardian*, 25 October 2012, at www.theguardian.com/world/2012/oct/25/cyril-ramaphosa-marikana-email (accessed 25 October 2012); *cf.* S. Grootes, 'Ramaphosa may have fallen victim to a political manoeuvre', *Business Day*, 25 October 2012, at www.bdlive.co.za/blogs/politics/2012/10/25/ramaphosa-may-have-fallen-victim-to-a-political-manoeuvre (accessed 25 October 2012). The media overstated the effects of these events on Cyril Ramaphosa, now deputy leader of the ANC. For why and for an alternative interpretation, see Hamilton, *Are South Africans Free?*

society determined by various interests, social perspectives and roles.[25] 'Group', as proposed here, resists the requirement some feel to conceive of individual or group identity as essential and unchanging. Rather, resorting to the language of 'groups' is convenient *shorthand* for speaking about the various groups, classes and social perspectives that exist in all modern polities. Nor does anything follow from this discussion regarding group rights. In fact, despite my emphasis on group representation, if rights are our best political tool,[26] I would choose the liberal above the communitarian position, especially as regards normative or ethical primacy: individual rights must trump group rights, for group rights can be, and often are, used to justify institutions and practices that create states of domination by disabling the power of individuals to question and change the norms and practices of their groups. Also, the reader might ask, what is wrong with the notion of class? Well, not much, as will become apparent, especially given the extent to which this book's thesis as a whole is an attempt to re-invigorate a politics of class interest and power via meaningful political representation for classes that lack social and economic power. The only problem is that 'class' is an insufficiently broad category, for although our class perspectives and interests are of paramount importance in politics, so are other kinds of group membership and associated interests, particularly those related to gender, geography, employment, material condition, political cause, street, satisfaction and so on. I prefer the term 'group' to 'class' because as a category it is broad enough to encompass 'class' *and* all of the other ways in which collections of individuals are connected with each other in ways relevant and meaningful to their behaviour, their interests, their power within existing power relations and their effects on others. Moreover, I emphasise groups as a means of countering the unrealistic obsession in contemporary normative political theory with formal, individual equality. Reaching parity of power amongst citizens may, ironically, be undermined by formal equality: given the reality of unequal conditions and antagonistic group relations, the strict imposition of atomistic equality may only reinforce these inequalities and forms of domination.

[25] I. Shapiro and W. Kymlicka (eds.), *NOMOS XXXIX: Ethnicity and Group Rights* (New York University Press, 1997); I. M. Young, *Inclusion and Democracy* (Oxford University Press, 2000), especially Chapter 4. I borrow the idea of 'social perspective' from the latter work. However, unlike Young, who develops it in response to sustained critique of her earlier emphasis on 'groups', I don't think it is fully workable on its own; as argued in Chapter 5, 'group', properly problematised, works better as a catch-all notion.

[26] Something contested in Geuss, *History and Illusion*; Hamilton, *Needs*; and R. Geuss and L. Hamilton, 'Human Rights: A Very Bad Idea' (interview of Raymond Guess), *Theoria* 135 (June 2013), pp. 83–103.

This argument regarding the link between power, representation and freedom is then reinforced, in Chapter 6, 'Can and Ought Our Political Representatives Control the Economy?', this time from the perspective of the developed 'global North' and its over-dependence on financial products and markets, and the groups and representatives that predominate there, especially as regards the causes and consequences of the global financial crisis that began in late 2007. Here, you might say, my argument regarding representation as the 'missing link' between freedom and power is 'globalised'. I argue that the crash was a direct result of acts or omissions by political representatives over many years that further and further empowered one group of society to the detriment of other groups. I argue *against* two related explanations of the crisis predominant today – either that somehow regulation was to blame (when it was regulation's removal that led to the crash) or that it is simply impossible for political representatives to control the economy. To do so I return to Hayek's influential early twentieth-century arguments, rebuffing his idea that no single agency can understand and control the economy, not by arguing that they can control it in the sense he uses that term, but by stipulating clearly a different sense of 'control' to the one Hayek has in mind. I show how representatives do control the economy and then argue that if they can they ought to, as individual and group freedom depends upon it. As ordinary citizens we need our political representatives to exercise their powers over the economy to guide it in a manner that satisfies our needs and interests and reduces the possibility for states of domination.

In the latter half of this book I defend at length the idea that representation is fundamental to freedom as power, and use the cases of South Africa and the global financial crisis to clarify my main points. That the power relations and states of domination that obtain in both cases have not been changed despite years of liberation, in the first case, and years of economic doom and gloom, in the second case, is telling with regard to the way in which entrenched power relations can maintain states of domination even following revolutionary change and within dire material conditions. The general lesson is that all will lack freedom in conditions in which one group (or set of groups) have managed to usurp the power of the people by being allowed across the 'gap' that should keep it from formal political power. And the best way to maintain this gap, as I argue following Machiavelli and McCormick in Chapter 2 and in the main conclusion to the book, is not to seek some ephemeral 'common good' or 'public interest' but to remain realistic about continued group conflict and moral and political disagreement in society, and to entrench institutions that provide partisan political power for those groups that generally have little social and economic power. (This mistaken faith in

the 'common good' of 'the people' is associated with thinking that freedom can be reduced to formal rights of citizenship and equality and thereby safeguarded by these measures, something that is common to both liberal and republican positions, but not Machiavelli.[27] Although I do not directly defend this claim here, it is an important corollary to my main argument throughout.) These partisan political institutions would not be open to all, but only to specific groups or classes, and they would have real, meaningful political power – they would not simply be window-dressing to 'placate the masses'. These kinds of institutional proposals, as argued in the main conclusion, would focus *not* on neutrality and equality, but on the real fact of entrenched inequality and the interests specific to the disempowered classes and groups of the society they represent: partisan interests, not the common good. This is the real way to avoid domination and the usurping of power by dominant groups, and thus the real way to generate and maintain freedom. To see this it is necessary to reconceptualise freedom as power and avoid the temptation to think of liberty as an all-or-nothing concept; freedom is about the effective power of individuals and groups, normally by means of representation, and it is always a matter of degree.

[27] Amongst many others, this is true of, for example, Jean-Jacques Rousseau, John Rawls and Philip Pettit, despite the fact that the latter spends some time in *On The People's Terms: A Republican Theory and Model of Democracy* (Cambridge University Press, 2012) distancing himself, unsuccessfully, from Rousseau's idea of a unified, common good (or 'general will'). The problem with Rousseau's idea of the 'general will' in particular is that it over-emphasises unity and reason at the expense of class antagonism and irreducibly distinct interests. For a spirited attempt to defend Rousseau's account of the general will in terms of 'common interests' that can take into account 'profound differences of power and advantage', see J. Cohen, *Rousseau: A Free Community of Equals* (Oxford University Press, 2010).

1 Freedom from politics

In this chapter I argue that the predominant notion of 'negative' freedom or freedom as absence of impediment or constraint is in fact better described as freedom within a putative 'private' sphere, within which the freedom of individuals is allegedly protected from coercion in general and political interference by the actions of others in particular. As such, I go on to argue, it is characterised by at least four main problems or shortcomings as an account of individual freedom under modern conditions. I end by considering Marx's diagnosis of the predominant conception of modern freedom that he suggests builds upon the similar one provided a century earlier by Rousseau. I counter Marx's claim with regard to this and assess both of their criticisms of the predominant modern conception of freedom, showing how Marx's misreading of Rousseau has deleteriously affected the work of many modern anarchists and deliberative democrats.

'Private' freedom

What is it to be free? Some argue that to be free is to act unimpeded, to do what one wants or chooses without external obstacle or impediment. Jeremy Bentham and later, more famously, Isaiah Berlin maintained that it is for this reason that freedom is a 'negative' concept: its presence is said to be marked by the absence of something – in particular, an impediment or obstacle that inhibits the agent from doing what she or he wants or chooses.[1] This way of thinking about freedom has its source in the political writings of Thomas Hobbes, who argues thus in his famous seventeenth-century tract, *Leviathan* (1651): 'By Liberty, is understood, according to the proper signification of the word, the absence of external impediments'; and, later, 'Liberty or Freedome, signifieth (properly) the

[1] J. Bentham, *Of Laws in General*, ed. H. L. A. Hart (Oxford University Press, 1970 [*c.* 1782]), p. 254; Berlin, 'Two Concepts', pp. 118–172; Skinner, 'The Idea of Negative Liberty', pp. 186–212.

absence of opposition' and nothing more.[2] This is a diligently naturalist and negative concept: freedom here just means non-obstruction of action. Humans are free in this sense just as the water in a canal (or 'Channel') is free when unimpeded.[3] Hobbes distinguishes this kind of freedom from the 'freedom of the subject' – that is, the freedom that is possible within civil society, which presupposes the existence of a legislator and established laws and authorities within a commonwealth. But here too freedom is negative. It is marked by the absence of something: whatever freedom one enjoys in civil society consists in 'the Silence of the Law'[4] – that is, the absence of regulation in a particular area of life, an area regarding which the legislator has chosen to remain silent.

A little later in the seventeenth century, in his *Two Treatises of Government* (1690), John Locke identifies freedom within the law, arguing that it is law that counters the actions of others from restraining one's own will and action:

> *Liberty* is to be free from restraint and violence from others which cannot be, where there is no Law . . . Freedom is not, as we are told, *A Liberty for every man to do what he lists* . . . but a *Liberty* to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is: and therein not to be subject to the arbitrary will of another, but freely follow his own.[5]

In other words, laws are seen as a means of ensuring freedom because they ensure that other agents do not constrain or coerce a person's own agency. In both forms, then, the main threat to freedom is perceived to be impediments to or constraints on individual action, particularly those brought about by coercion or the conscious deliberate actions of other humans to make a person act 'against his will': in Hobbes's case the action of the legislator and in Locke's case the actions of other citizens.

This emphasis on coercion as the main potential threat to freedom is then echoed through the ages, from Bentham to Berlin and beyond.

[2] Hobbes, *Leviathan*, Chapter 14, p. 91; Chapter 21, p. 145. I will follow Hobbes and most other writers on the topic by using 'liberty' and 'freedom' interchangeably. There seems to be no significant difference in their meaning, either in everyday speech or political philosophical tract. *Cf.* H. Pitkin, 'Are Freedom and Liberty Twins?', *Political Theory* 16.4 (1988), pp. 523–552; B. Williams, 'From Freedom to Liberty: The Construction of a Political Value', *Philosophy and Public Affairs* 30.1 (2001), pp. 3–26; and J. Feinberg, 'Freedom and Liberty', in E. Craig (ed.), *Routledge Encyclopedia of Philosophy* (London: Routledge, 1998) (accessed 4 November 2009, from www.rep.routledge.com/article/S026).

[3] Hobbes, *Leviathan*, Chapter 21, p. 146.

[4] *Ibid.*, Chapter 21, p. 152.

[5] Locke, *Two Treatises on Government* (Cambridge University Press, 1988 [1689]), Book II, p. 306. Hobbes also articulates the 'liberty of subjects' in these terms: Hobbes, *Leviathan*, Chapter 21, p. 147.

Bentham argues that liberty is to be found in the absence of coercion;[6] as does J. S. Mill, if with slightly different emphasis. Mill proposes that 'the appropriate region of human liberty' is a 'sphere of action in which society . . . has only an indirect interest . . . , [that is], that portion of a person's life and conduct which affects only himself'. He argues that these actions depend upon, amongst others, 'liberty of conscience', 'liberty of thought and feeling', 'absolute freedom of opinion and sentiment on all subjects', 'liberty of tastes and pursuits', and so on, '*without impediment from our fellow creatures*, so long as what we do does not harm them'; and that '[n]o society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified'.[7]

Most contemporary liberals and libertarians are equally unequivocal. As Berlin puts it: 'To coerce a man is to deprive him of freedom . . . [this] "negative" sense [of freedom], is involved in the answer to the question "What is the area within which the subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?"'[8] Hayek states explicitly that this is only possible (coercion is only preventable) if the individual is able to secure for himself a private sphere where he is protected by the law against the interference of others;[9] as does Berlin: 'By being free in this sense I mean not being interfered with by others. The wider the area of non-interference the wider my freedom . . . It follows that a frontier must be drawn between the area of private life and that of public authority.'[10] Contemporary libertarians, such as Hillel Steiner and his acolytes, conceive of 'individual liberty' in similar terms: 'An individual is unfree if, and only if, his doing of any action is rendered impossible by the action of another individual. That is, the unfree individual is so because the particular action in question is *prevented* by another.'[11]

[6] Bentham, *Of Laws*, p. 254.

[7] J. S. Mill, 'On Liberty', in *On Liberty and Other Essays*, ed. John Gray (Oxford University Press, 2008 [1859]), pp. 16–17 (italics added); see also pp. 13–14, 59, 91, 116, 121–122.

[8] Berlin, 'Two Concepts', pp. 121–123.

[9] 'It is here that coercion of one individual by another can be prevented only by the threat of coercion.' F. A. Hayek, *The Constitution of Liberty* (London: Routledge, 1960), p. 138. Freedom, for Hayek, is simply the 'state in which a man is not subject to coercion by the arbitrary will of another or others' (*The Constitution of Liberty*, p. 11).

[10] Berlin, 'Two Concepts', pp. 123–124.

[11] H. Steiner, 'Individual Liberty', in D. Miller (ed.), *The Liberty Reader* (Edinburgh University Press, 2006), pp. 123–140, at p. 123; see also M. H. Kramer, *The Quality of Freedom* (Oxford University Press, 2003), I. Carter, *A Measure of Freedom* (Oxford University Press, 1999), Kramer, 'Liberty and Domination', and Carter, 'How are Power and Unfreedom Related?', in C. Laborde and J. Maynor (eds.), *Republicanism and Political Theory* (London: Routledge, 2008), pp. 58–82.

Liberal contractarianism also duly follows suit, with the added notion that this private sphere, this sphere that is 'free from interference', is safeguarded by inalienable rights that keep state intervention to a minimum. For thinkers such as Rawls and Nozick, liberty of this kind is a natural right; the preservation of this right is not possible under conditions of coercion; its maximisation is the main point and duty of liberal governments; and it is protected by a *cordon sanitaire* of inalienable individual rights.[12] The leitmotif of this influential tradition is that the only coherent way of thinking about liberty is the negative one of being unimpeded or free from constraint while carrying out actions: 'this or that person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so'.[13] Freedom and unfreedom are understood relative to potential impediments or obstacles created by the actions of others and dependent upon whether they had a right to act as they did: 'Other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did.'[14] On this definition, I am unfree only when someone prevents me from doing what I have a right to do, so that she, consequently, has no right to prevent me from doing it. In other words, on this account, the actions of others constrain or impede freedom, it is supposed, because they are the result of conscious deliberate human action in the face of 'natural' rights. This is normally associated with a moral endorsement of private property, with a claim that people have a moral right to the property they own.[15] In other words, for this long tradition of thought, in all its varieties, to be free is to be free from the constraints imposed by other citizens and, in particular, the state so as to enjoy what is *naturally* yours. In other words, freedom is a matter of *private* determination and enjoyment, safeguarded by general laws and rights applicable to all. Freedom is therefore to be

[12] J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 3; R. Nozick, *Anarchy, State and Utopia* (Oxford: Basil Blackwell 1974), pp. 9, 10–12; Q. Skinner, 'Machiavelli on *Virtù* and the Maintenance of Liberty', in *Vision of Politics*, Vol. II: *Renaissance Virtues* (Cambridge University Press, 2002), pp. 160–185, at p. 161.

[13] Rawls, *Justice*, p. 176; Hayek, *Liberty*, p. 16; Carter, *Measure*, p. 16; *cf.* G. MacCallum, 'Negative and Positive Freedom', in P. Laslett, W. G. Runciman and Q. Skinner (eds.), *Philosophy, Politics and Society* (fourth series) (Oxford: Blackwell, 1972), pp. 174–193, at p. 176, who includes in his definition not just 'doings' but also 'becomings' (about which more below).

[14] Nozick, *Anarchy*, p. 262. For how this libertarian position, in defence of private property as natural right, switches unconvincingly between an account of pure negative liberty and a rights-based account of negative freedom, see G. A. Cohen, 'Capitalism, Freedom and the Proletariat', in D. Miller (ed.), *The Liberty Reader* (Edinburgh University Press, 2006 [1979]), pp. 163–182, at pp. 169–172.

[15] See especially Hayek, *Liberty* and Nozick, *Anarchy*.

found by means of the law, but outside of politics and the state, and can only be restricted by government for the sake of freedom.[16]

Critique

This way of thinking about freedom obviously captures something important: it is part and parcel of the insight, common to many traditions of thought and practice, that political power can easily corrupt and become corrupted and thus must be checked in various ways. However, in the form of freedom as non-interference, it runs into at least four major difficulties very quickly.

The first and most glaring problem is the notion common to all these thinkers that an obstacle or impediment is a restriction on human freedom only if it results from a conscious deliberate human action. Why assume this? Berlin justifies the assumption through the use of the argument that politics is about what people consciously and deliberately do to each other, especially through the employment of formal collective social power, and not about 'natural' obstacles to action or other forms of human obstruction, and every thinker in the 'negative' and 'pure negative' tradition follows him in at least this regard.[17] But what of obstacles that are the result of nature or fortune? In constraining us, do they not also make us unfree?[18] And, especially given constant technological advance, may not some of these supposedly 'natural' obstacles become obstacles that humans have the power to overcome? Even something as supposedly 'natural' as the human life span is becoming more and more subject to human and thus political control. Moreover, pandemics of often fatal diseases such as HIV/AIDS and the various means of controlling its affects on the human life span only reinforce the importance of human and political control over these matters. Once medical and social factors make it possible to prolong the 'natural human life span' or prolong the AIDS-afflicted life span, then a supposedly 'natural' obstacle becomes an object of human deliberation and political decision.

If such things as the natural human life span are not generally seen as obstacles, the reason is not that they do not result from deliberate human action, but rather that we assume that they could not be changed by any action we could undertake. As soon as they can be changed – that

[16] Rawls, *Justice*, p. 302; Hayek, *Liberty*, p. 44; *cf.* B. Russell, 'Freedom in Society', in *Sceptical Essays* (London: Allen & Unwin, 1935), p. 173.

[17] See, for example, Hayek, *Liberty*; Steiner, 'Individual Liberty'; Kramer, *Quality*; and Carter, *Measure*.

[18] Geuss, *History and Illusion*, p. 95; *cf.* Cohen, 'Capitalism, Freedom, and the Proletariat', p. 169.

is, as soon as they come under our control – they will be deemed obstacles to freedom. If, in South Africa, for example, anti-retroviral treatment is available to prolong my life as a sufferer of HIV/AIDS, but the government does not make it available, this is quickly deemed an obstacle to my freedom, as expressed well during the campaign spearheaded by the Treatment Action Campaign (TAC) against the denialism and slow roll-out of anti-retroviral treatment by South Africa's African National Congress (ANC) government.[19] So, really what is at stake here regarding what should count as a possible relevant obstruction to freedom is not something that is or is not the result of conscious deliberate human action, but anything that is the kind of thing that could or could not be *changed* by human action.[20] And it is a mark of fully modern societies that nothing is sacred, beyond bounds, off limits or 'natural' (in a sense that excludes possible human control and decision), something that Marx, Weber and Heidegger – the political left, centre and right – all agree on.[21] And, given the degradation of the planetary environment, the fact that we affect and thus control (in some sense, discussed more exactly in Chapter 6 below) our natural environment is now beyond doubt. In other words, the relevant matter as regards freedom is our individual and collective power and control over our natural, social and political environment.

The second problem with this 'privatised' way of thinking about freedom is that the reality of communal existence poses a problem from the outset. Rawls, for example, argues that we are all rational egoists and, as rational egoists, we have an 'inclination to self-interest', a disposition to increase our freedom of action as far as possible, even at the expense of others. And, following Locke, Bentham and Mill, Rawls notes that, given this tendency (this 'fact of limited altruism'), before long we find ourselves encroaching upon, interfering with and disrespecting the liberty of others.[22] Rawls attempts to resolve this problem by finding a fair means of regulating the tendency of self-interested individuals to threaten the freedom of others: a means, that is, of adjudicating between rational egoists. The problem is allegedly solved via a two-step process: first, the acceptance of a formula for justice in which each person can enjoy an equal right to the most extensive system of basic liberties compatible with a like system of liberty for all;[23] second, the delineation of a sphere of

[19] N. Nattrass, *The Moral Economy of AIDS in South Africa* (Cambridge University Press, 2003).
[20] Geuss, *History and Illusion*, pp. 95–6; *cf.* Carter, *Measure*, p. 173.
[21] Geuss, *History and Illusion*, p. 96.
[22] Locke, *Two Treatises*, Book II, p. 306; Rawls, *Justice*, pp. 3–5, 239–240.
[23] This is Rawls's 'first principle' of justice; see Rawls, *Justice*, p. 302.

freedom, the so-called 'private sphere', into which the coercive power of the state and other citizens cannot trespass. This accurately captures one of the dominant modern conceptions of freedom: in my individual sphere of action I am sovereign – that is, free to pursue my own projects subject only to the constraint that I respect the spheres of others.[24]

This seems to arise out of a deep misapprehension regarding social life: given the interdependence of our lives within most social and political associations and groups but particularly modern ones, to what extent is this notion of an independent sphere of action a realistic one? The 'private sphere' does not describe a completely solitary existence, and so to what extent could we speak of it being free of interference, constraints, impediments or obstacles? As feminist scholars of various political persuasions have argued convincingly, even with only two people in a couple, for example, familial relationships constantly involve power relations, interference, inequality, domination, coercion, subjugation and so on, not to speak of more complicated and extended personal relationships and families.[25] It is as if the complications of our inter-dependent lives within political associations has led many of these thinkers to seek solace in the bosom of the family or private sphere, then give rational theoretical justification via the notion of a state of nature, in which we all have natural rights and are free if unimpeded. It is as if they are substituting the hypothetical picture of a truly free single individual alone on an island (Robinson Crusoe) with the notion of the modern individual who successfully seeks liberty outside of society as he moves between home and Homebase, or family and fashion. This is a very stylised and truncated account of freedom. It rests upon a series of unrealistic assumptions regarding the possibility for non-interference and simply ignores a large part of our social and political existence.[26] What of liberty beyond the private sphere? What of political participation or resistance to political

[24] Another version is J. S. Mill's famous 'harm principle': the only purpose for which power can be exercised in interfering with the liberty of action of individuals is to prevent harm to others. Mill, *On Liberty*, p. 14.

[25] See, for example, S. de Beauvoir, *The Second Sex*, trans. H. M. Parshley, new edn (London: Vintage Classics, 1997 [1949]); C. A. Mackinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989); J. Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford University Press, 1997); and N. J. Hirschmann, *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton University Press, 2003).

[26] As Sieyès and Hegel argued in different ways, the sentiments, needs and interests that we value in the modern age – one of which is individual freedom – are themselves only possible because of the complexity and interdependence of our modern lives; we are able to satisfy our needs and focus on our privacy in the way we do only because of the existence of others who can focus on theirs and thereby meet our various needs. E. J. Sieyès, *Political Writings*, ed. M. Sonenscher (Indianapolis, IN, and Cambridge:

power? Is this only of instrumental value, as a means to our successful achievement of private freedom? What of freedom through representation?

The third major difficulty with this reductive approach to freedom is that it is justified on the basis of an unrealistic, sharp distinction between that which belongs to the content of the concept of freedom and that which belongs only to the conditions of its utilisation or realisation. On the basis of this sharp distinction, 'positive' accounts of freedom are then accused of being bloated amalgams, incorporating components of the concept of freedom with conceptions of happiness, the good life, rationality and so on. This then leads some down dead-end paths. Berlin, for example, suggests on the basis of this distinction that there is a kind of elective affinity between 'positive' liberty and totalitarian oppression. He maintains that, unlike 'negative' conceptions of freedom, which are about being in a state in which one has unobstructed opportunities for action, being positively free means living and acting in a certain way. And if freedom is a way of life, someone else might know better than I do what constitutes that way of life and thus could legitimately force me to adopt that way of life and thus force me to be free.[27]

But this argument is fundamentally flawed. To assume that 'positive' freedom is an exercise concept just because it is not a mere opportunity concept is to forget that to be positively free might involve the possession of a faculty or capacity which may or may not be exercised. And, even if Berlin's claims were true for some kinds of positive freedom, his argument does not hold for all accounts of positive freedom: on conceptions that see freedom as residing in individual autonomy, for example, it would be an integral part of a free way of life that it is chosen by the individual living it.[28] In any case, it is simply not true that my knowing what would be good for you gives me a warrant to coerce you. To get there one needs to add the existence of a social agency (a state, say) who is 'the real me' and thus all of whose actions are really mine so that none of its actions against me can even in principle count as coercion. So, Berlin has misdiagnosed the basis of the threat of totalitarianism: the culprit is some thesis about the relation between individual and social agency and not the positive conception of freedom.[29] Contrary to the lineage traced

Hackett, 2003 [1789]); G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. A. W. Wood (Cambridge University Press, 1991 [1820]).

[27] Berlin, *Four Essays*, pp. xliii–xlix; Geuss, 'Freedom as an Ideal', p. 89.

[28] Taylor, 'What's Wrong with Negative Liberty', and Geuss, 'Freedom as an Ideal'.

[29] Geuss, 'Freedom as an Ideal', pp. 90–91. For more on this, particularly with regard to the way in which this totalitarian moment is played out when representatives try to close the 'gap' between 'the people' and themselves, see Chapters 5 and 6 below.

by Berlin and his followers, it is Hobbes with his relentlessly negative conception of freedom that provides an account of the state that has the clearest totalitarian conclusions.

Even the basic analytic definition of freedom belies the assumption that we can make a strict distinction between the content of the concept of freedom and that which belongs only to the conditions of its utilisation or realisation, or, in other words, between freedom as absence of constraint and freedom as being free to do or be certain things. As MacCallum puts it: 'Whenever the freedom of some agent or agents is in question, it is always freedom from some constraint or restriction on, interference with, or barrier to doing, not doing, becoming or not becoming something.'[30] Freedom therefore always involves a relation between three things: an agent, certain prevailing conditions, and certain doings or becomings of the agent. Freedom is about specifying *what* is free or unfree, *from* what is it free or unfree, and what is it free or unfree *to do or become*. The dichotomies between 'negative' and 'positive' freedom and 'freedom from' and 'freedom to' are thus false dichotomies.[31] For example, I may fail to be able to do something either because of obstacles or because of lack of power: for black people living in apartheid South Africa there existed a series of formal and real obstacles to employment in certain areas and professions, but even now that these obstacles have been removed, even now that there no longer exists obstacles created consciously and deliberately by other humans, a black person in South Africa may not be free to find employment. This may be the case for a number of possible reasons: (a) because she lacks the relevant skills as a result of lack of opportunities or application; or (b) because of the existence of certain real and serious internal obstacles, such as a phobia towards mathematics due to poor education (under apartheid or post-apartheid policies); or (c) because, as is often the case today, the market has failed to create sufficient new jobs. Moreover, what counts as an obstacle is not in most cases an independently specified magnitude, but is relative to my state of power. Even the formal obstacles to employment for black people in apartheid South Africa were eventually overcome through, amongst other things, the collective power of the individuals and actions of those opposed to it.

Finally, the search for freedom in the inner citadel of the private sphere disassociates my individual freedom from the form of political regime within which I happen to live. Berlin and Hayek admit that, on the negative view of freedom, I am free even if I live in a dictatorship just

[30] MacCallum, 'Negative and Positive Freedom', p. 176.
[31] *Cf.* I. Shapiro, 'On Non-Domination', *University of Toronto Law Journal* 62.3 (2012), pp. 293–335, at pp. 318–320.

as long as the dictator happens, on a whim, not to interfere with me. These positions are the direct heirs of Hobbes, who, in opposition to the republican theory of liberty, argues that it is sufficient for us to be free that we enjoy our civic rights and liberties as a matter of fact; whether or not arbitrary power exists within any civil association does nothing to subvert our liberty. 'Whether a Common-wealth be Monarchicall, or Popular, the Freedome is still the same.'[32] There is no necessary connection between freedom understood in terms of absence of constraint and any particular form of government.[33] According to this account of freedom, it therefore becomes possible to argue that under certain conditions or at certain moments, black South Africans were free in apartheid South Africa. For what, then, did so many give their lives?

It even becomes possible to imagine a situation in which a slave can be free: a slave can enjoy a great deal of non-interference from a benevolent and absent master. This is an odd outcome for an allegedly comprehensive account of freedom. It admits of the possibility that, under certain conditions, even the institutional epitome of unfreedom can generate freedom. As many ancient and modern republican thinkers have argued, this conception of freedom is wide of the mark because the matter is not simply about whether or not an individual is, in fact, physically constrained, restrained or interfered with; what makes slavery the quintessence of unfreedom is that the slave is permanently liable to interference of any kind. Slaves lack freedom because their lives are dependent upon the goodwill of another, even if they experience no actual coercion.[34] The slave is, to use a modern locution, 'dominated' because he is permanently subject to the arbitrary power of his owner.[35]

Marx on freedom and Rousseau

Before moving on in Chapter 2, where I assess the various forms of the 'neo-roman' or 'republican' account of freedom from which this last critique draws, it is worthwhile spending a moment on two seemingly

[32] Hobbes, *Leviathan*, Chapter 21, p. 149. For further discussion on this point, see Skinner, *Hobbes and Republican Liberty*, p. 212.

[33] For contemporary versions of this position, see Kramer, 'Liberty and Domination' and Carter, 'How are Power and Unfreedom Related?' John Stuart Mill makes a similar point when he argues that freedom does not depend on the form of one's government but on whether one's society respects various particular liberties: see Mill, *On Liberty*, p. 17.

[34] Skinner, *Liberty Before Liberalism*, pp. 50–53, and later (p. 69): 'It is never necessary to suffer this kind of overt coercion in order to forfeit your civil liberty. You will also be rendered unfree if you merely fall into a condition of political subjection or dependence.'

[35] Pettit, *Republicanism* and below.

very similar criticisms to my own regarding the predominant 'privatised' account of freedom: that of Marx, as supposedly supported by Rousseau; and that of Rousseau shorn of Marx's interpretative lens. One of the main reasons this re-reading is worthwhile or helpful is because it provides a snapshot of the main problem with many contemporary anarchist and deliberative democrat accounts of freedom. In different ways these schools of thought take Marx or Rousseau to be their main inspiration or legitimising figure (with Kant also looming large), and many take the interpretation of Rousseau by Marx that I critique below to be correct and central to their endeavours.

Rousseau is seen as the philosopher who gives deliberative democracy its first modern formulation, both in the sense that he is taken to be a democrat and a devotee of public reason; or, in other words that deliberative democratic justifications must be based on formal equality, make reference to public, natural reason and either produce or be aimed at consensus. Another way of putting this is that the association of democracy with reason, which normally involves a number of apolitical assumptions and extreme constraints on democracy, enables a means of combining autonomy with political authority.[36] And all this despite the fact that Rousseau was manifestly opposed to democracy as a form of government (although it remained central to his account of popular sovereignty, especially in the sense that the sovereign people could not be represented; and that any attempt to do so was to usurp their sovereignty).[37] So, despite the constant reference to 'public' reason, anarchist and deliberative democratic thought is inherently apolitical because the substance of this reason rests on a conception of freedom from politics: this supposed 'public' reason is not the result of real public political dissension, tumults and incommensurate needs and opinions, but rather a pre-political or apolitical notion of public reason via the common good. This is particularly true of John Rawls's and Jürgen Habermas's interpretation and use of Rousseau, as well as many of their acolytes today, though one notable and excellent exception is to be found in Joshua Cohen's *Rousseau: A Free Community of Equals*, wherein Cohen conceives of Rousseau's 'general will' in terms of 'common interests' that are not pre-political and

[36] For the best example of the anarchist tradition that refers repeatedly to Rousseau, see Wolff, *In Defense of Anarchism*; on the importance of 'Rousseau the democrat' for deliberative democracy, see Bohman and Rehg, *Deliberative Democracy*; and, in different key, Chapters 3 and 4 below.

[37] J.-J. Rousseau, *The Social Contract*, in Rousseau, *The Social Contract and Other Later Political Writings*, ed. V. Gourevitch (Cambridge University Press, 1997 [1762]), pp. 49–51 [Book I, Chapter 6], 82–86 [Book III, Chapter 1], 90–92 [Book III, Chapter 4], 106–108 [Book III, Chapter 10].

can take into account 'profound differences of power and advantage'.[38] Cohen may be right – and some of what I suggest later in this book supports his interpretation – but these matters of exact interpretation of Rousseau's political theoretical *oeuvre* are not my concern at this point. My point here is simply that the Rousseau read as the *pater familias* of anarchists, radical democrats and deliberative democrats may in fact be the Rousseau received through the lens of Marx's manifestly incorrect interpretation of his critique of modern freedom. Moreover, not only is this a blatantly mistaken interpretation, in this form it too is a kind of 'privatised', naturalised freedom, which is not surprising given that, at least if I am correct, it has some of its roots in Marx's apolitical, naturalised, economic solution to the problem of freedom and power under capitalism in general and of what he takes to be Rousseau's account of freedom in particular. Moreover, even if Cohen is correct in his interpretation of Rousseau it is not clear that much follows from it, especially given this book's argument that antagonistic interests and groups and the need for partisan institutions are such that it is not even clear that interests determined by means of *political* – as opposed to pre-political – processes may ever cohere around a set of what Cohen calls 'common interests'.

In his criticism of the Declaration of the Rights of Man and of the Citizen (or the Declaration of Human Rights of 1791), Marx argues that '"[l]iberty consists in being able to do everything that does not harm another". Freedom, then, is the right to do and to pursue what does not harm another. The limit within which everyone can operate in a way not harmful to others is determined by law, like the boundary between two fields is determined by the fencepost. This is the freedom of man as a monad isolated and withdrawn into himself.'[39] Thus, he maintains, the human right to freedom is the right of man separated from man, the 'right of the individual who is *limited*, enclosed within himself' and that the principal application of this human right of freedom 'is the right of *private property*'.[40] Moreover, in the subsequent few pages he maintains that this form of freedom has depoliticised society or '*abolished* the *political character of civil society* . . . [and this] shedding of the political yoke was at the same time the shedding of the ties that restrained the egoistic spirit of civil society'; that this 'unpolitical man . . . appears to be the *natural* man' and '[t]he rights of man appear to be natural rights'; and

[38] Cohen, *Rousseau*, p. 10 and *passim*; and for evidence to support this interpretation, see Rousseau, *Social Contract*, p. 56 [Book I, Chapter 9].
[39] K. Marx, 'On the Jewish Question', in *Early Political Writings*, ed. J. J. O'Malley and R. A. Davis (Cambridge University Press, 1994 [1844]), p. 45.
[40] *Ibid.*, p. 45 (italics in original).

therefore that '[t]he *political revolution* [The French Revolution] dissolves civil life into its components . . . [i]t relates to . . . private interests, and of private right as . . . its *natural basis*'.[41] As must be clear from the foregoing analysis, especially the way freedom is articulated by Locke and many of his followers, Marx is clearly on to something, and his emphasis on modern conceptions of freedom as being equivalent to individuals as monads drawn within themselves, depoliticised and privatised clearly foreshadows my own critique of these influential accounts of freedom.

In criticising the French Revolution and the conception of freedom inherent in the new doctrine of human rights, he suggests that the problem is that as a consequence of these developments the *real*, genuine man has become the egoistic man of civil society, while *political* man is only an 'abstract', 'artificial' thing, 'man as an *allegorical, moral* person'. 'Actual man is recognised only in the form of the *egoistic* individual, and true man only in the form of the *abstract citoyen*'.[42] He thinks the real problem is the abstraction of political man – that is, that the private freedom espoused by human rights creates an artificial, abstracted man alienated from his natural 'species-being', a fundamental component of which is man's political nature and agency.

In support of this argument he then cites a famous passage from Book II, Chapter 7 of Rousseau's *Social Contract*, suggesting that Rousseau is here describing a similar state of affairs to the one he has identified.[43] While it is true that elsewhere in the *Social Contract* Rousseau makes a diagnosis like the one made by Marx – arguing that *subjects* are happy with a private, individual existence of tranquillity, security of possessions and free circulation of money, while *citizens* favour individual freedom and the security of persons, and demand that the people have bread[44] – not only does Marx not reference this passage, he misquotes and misconstrues Rousseau in the passage he does quote. The point of the section that Marx quotes from Rousseau is *not* that political society has failed to emancipate man because it has generated an abstract or artificial man, but the exact opposite. Rousseau's point is that for the lawgiver successfully to institute laws that secure freedom, he must be ready to create something *new and artificial*. Only in this way will he succeed in really freeing man. The artifice of laws and politics is here conceived as a good thing, the means by which humans can be free in society. Besides leaving out a phrase in the heart of the quote,[45] Marx misinterprets

[41] *Ibid.*, pp. 48–49 (italics in original).
[42] *Ibid.*, p. 49 (italics in original). [43] *Ibid.*, pp. 49–50.
[44] Rousseau, *Social Contract*, pp. 41 [Book I, Chapter 1], 105 [Book III, Chapter 9].
[45] For the full, correct version, see Rousseau, *Social Contract*, p. 69 [Book II, Chapter 7]: 'Anyone who dares to institute a people must feel capable of, so to speak, changing

Rousseau's point because he ignores the telling sentence that follows: 'The more the natural forces are dead and destroyed, the greater and more lasting are the acquired ones, and more solid and lasting also is the institution.'[46]

Rousseau thinks the *artificial* man of politics he proposes is a requirement for freedom. Marx, on the other hand, thinks the solution lies in individuals re-absorbing what is *natural* to them, their social or political forces – that is, becoming (again) active political animals.[47] It is often supposed though that, nevertheless, and thus like Marx in one important sense, Rousseau requires significant political agency amongst all citizens for freedom to obtain: the lawgiver acts best – that is, creates the possibility for the greatest individual freedom – if and only if: (a) citizens live under laws they have prescribed to themselves;[48] and (b) the citizen can be transformed into a truly political animal in the sense that the interdependence of individuals can become clearly apparent to all and thus all citizens can vote in accordance with the general will and not their own particular wills.[49] However, there are two things to point out. First, in these passages Rousseau is not talking about government – or what might be called 'democratic representation' – but unrepresentable sovereign decisions by the people as a whole. Government is another matter; and for that Rousseau is no trailblazer for democracy. Quite the opposite, he thinks democratic government could only be possible in a polity constituted by angels not people. Second, Rousseau is much more aware than Marx that freedom depends on artificial institutions, artificial constructs of the people, and the group needs and interest that constitute them. Freedom depends upon artifice – or, as I argue in Chapter 5 below, a 'gap' between the citizenry and their representatives – and *not* on direct

human nature; of transforming each individual who by himself is a perfect and solitary whole into part of a larger whole from which that individual would as it were receive his life and his being; of weakening man's constitution in order to strengthen it; of substituting a partial and moral existence for the independent and physical existence we have all received from nature. In a word, he must take from man his own forces in order to give him forces which are foreign to him and of which he cannot make use without the help of others.' Compare this version to Marx's version: Marx omits one or two telling phrases, for example, 'of weakening man's constitution in order to strengthen it'.

[46] Rousseau, *Social Contract*, p. 69 [Book II, Chapter 7]; see also Rousseau, *Emile*, trans. A. Bloom (New York: Basic Books, 1979 [1762]), p. 40.

[47] Marx, 'Jewish Question', p. 50; and Marx, *Economic and Philosophic Manuscripts*, in Marx, *Early Writings*, trans. R. Livingstone and G. Benton (London: Penguin, 1992 [*c.* 1844]), p. 365, for his account of acting and producing under the sway of *human* (social) need (when communist workmen gather together).

[48] '[O]bedience to the law one has prescribed to oneself is freedom': Rousseau, *Social Contract*, p. 54 [Book I, Chapter 9].

[49] Rousseau, *Social Contract*, pp. 49–53 [Book I, Chapter 6], 57–60 [Book II, Chapters 1–3], 122–127 [Book IV, Chapters 2–4].

forms of democracy. So, although deliberative democrats assume their theoretical foundations are to be found in the work of Rousseau, it is probably more correct to say they lie in Aristotelian arguments reiterated by Marx regarding the *natural* quality of 'political man'.[50] So, despite many arguments to the contrary, Marxists and deliberative democrats do not in fact equate freedom with politics or political agency, or what might be called 'freedom through politics', but the exact opposite, freedom from politics, in this version by means of arguments regarding 'public' reason or communicative rationality. This too is a privatised and highly stylised account of freedom that is inapplicable for modern conditions.

Conclusion

In sum, therefore, there are two very dominant contemporary forms of thinking about freedom that effectively remove politics from our understanding of freedom. Both take coercion to be anathema to freedom, and in particular coercion by the state. The first – the predominantly liberal account of freedom as non-interference – generally assumes that politics and the law constrain our freedom and thus should be kept at a minimum. The second – anarchists and deliberative democrats – makes the assumption that communities or social organisations can and ought to arrange themselves autonomously and if they are allowed to do so the individuals that constitute them will be free. And this is deemed to be an inherently political claim or basis for freedom; in fact, it is the exact opposite: rationality and justification by means of reason and the public good trump any chance of real, antagonistic public debate. The structure for free deliberation is over-determined and unrealistic. Despite constant reference to Rousseau, it is in fact Marx and Marxists who, ironically, provide the template for this way of thinking, at least under modern conditions; this is ironic because the source of this supposedly modern, progressive way of thinking is in fact in ancient Greece – in particular, the arguments of Aristotle regarding man as natural political animal. As Marx discusses communist workmen freely associating and producing under the sway of human (social) need, contrary to his own assertion that this is an instance of 'freedom through politics' (and that of his interpretation of Rousseau), it is in fact another version of providing apolitical solutions to

[50] There are various instances of this in Marx's early writings, but see in particular, Marx, 'Jewish Question', pp. 45–50; Marx, *Economic and Philosophic Manuscripts*, p. 365; Marx, *The Poverty of Philosophy*, in *Marx Engels Collected Works*, Vol. VI (London: Lawrence and Wishart, 1976 [1847]), pp. 190–7; and K. Marx and F. Engels, *The Communist Manifesto* (London: Penguin, 1967 [1848]), pp. 97–99. Later, though, Marx provides a more nuanced account of freedom as power (see Chapter 4 below).

political problems. In his case, the reason was of an economic nature, and thus so was the solution; for deliberative democrats it is reason based on deliberation and consensus, equally as unrealistic and devoid of politics. As I argue in what follows, this emphasis on apolitical or pre-political notions such as the common good or public interest is also, somewhat surprisingly, common to one version of the republican tradition, which is therefore both unfeasible and undesirable for modern conditions of complex polities and economies and the citizens that constitute them. However, a great deal can be learned from, in particular, Machiavelli, who, as further discussed in Chapter 4 below, provides an important corrective to accounts of 'freedom from politics' and even some institutional possibilities for a real modern account of freedom as power.

2 Freedom through politics

There are at least five main responses to the shortcomings of the conception of freedom analysed in Chapter 1 – the notion that freedom is only possible outside of politics – and they all emanate from the republican tradition and various modern reformulations or offshoots of it. This tradition has its early modern roots in the political thought of Niccolò Machiavelli, who built on many of the ideas and institutions of ancient Rome, in particular its republican period, and whose arguments were very influential, if often in significantly revised form, on later republican thinkers such as Charles de Secondat Montesquieu, Jean-Jacques Rousseau and James Harrington; the commonwealthmen that inspired and championed the American Revolution, such as Algernon Sidney, Joseph Priestley, Richard Price and Thomas Paine; and the defenders of the American constitution, the authors of the *Federalist Papers*, in particular James Madison.

In this chapter, though, I do not draw these five main responses to 'freedom from politics' directly from the arguments propounded by any of this list of 'canonical' republican thinkers, for their ideas have been well documented in the groundbreaking work of J. G. A. Pocock, Quentin Skinner and Philip Pettit, amongst others. Also this is not a work of history of political thought. Rather, my concern is contemporary politics and political philosophy and so I mine and critique the ideas of five important figures from this tradition more broadly conceived, focusing on those that have had the greatest influence on republican politics and contemporary political philosophy: Hannah Arendt, Machiavelli, Benjamin Constant, Philip Pettit and John P. McCormick. They all posit distinct ways of overcoming the now predominant idea that freedom is only possible in a 'private sphere' free from politics, and yet, as I argue, none captures the full, distinctive nature of modern freedom, either for the obvious reason that they are writing in early modern times themselves or because they never fully escape the ancient and early modern conceptions and institutional arrangements that inspire them. Nevertheless, particularly in the case of one interpretation of Machiavelli's *oeuvre*, some

proponents of this alternative conception of freedom are very instructive not least of all because they remind us that political societies may always be characterised by competing, class-based interests, and thus the mainstream republican claim that freedom depends upon the republic tracking '*common*, recognizable interests' is misplaced, and that this constant class conflict may in fact constitute a necessary component of and safeguard for freedom.[1]

Freedom and politics coincide

The first main response to the shortcomings of the notion that freedom is only possible outside of politics is exemplified best in the work of Hannah Arendt. In fact, she argues the exact opposite: that freedom is only possible through politics or political action. She restates Aristotle's argument that man is a political animal as a theory of freedom, and maintains that 'freedom . . . and politics coincide' and that 'this freedom is primarily experienced in action'.[2] She contrasts this with what she calls 'inner freedom', the notion that freedom is to be found in an inward space free of coercion, an absolute freedom within one's own self. She argues that this notion of freedom has its origins in estrangement from the world, exemplified best by the writings of Epictetus (*c.* 55–*c.* 135 AD), the slave-philosopher, who defends the absolute superiority of inner freedom and argues that a man is free if he limits himself to what is in his power, if he does not reach into a realm where he cannot be hindered.[3] She argues that freedom as inherent in political action is best illustrated by Machiavelli's concept of *virtù* or virtuosity, 'the excellence with which

[1] The quote is from Pettit, *Republicanism*, p. 291 and *passim*, but, as he claims, the fact of common interests (or the 'common good') and that political power that tracks them is non-dominating (i.e. is freedom-enhancing) is a common thread amongst especially seventeenth- and eighteenth-century republican thinkers; as, in slightly different articulation, is it in the work of Skinner – see, for example, *Liberty Before Liberalism*.

[2] H. Arendt, 'Freedom and Politics', in D. Miller (ed.), *The Liberty Reader* (Edinburgh University Press, 2006 [1960]), pp. 58–79, at pp. 60, 62–63.

[3] Epictetus, 'On Freedom', in *Dissertationes*, Book IV. I, cited in Arendt, 'Freedom and Politics' at p. 59n, where she notes there that '[i]n this interpretation, freedom and politics have parted for good . . . and [man] can be a slave in the world and still be free'. It is no wonder Nietzsche thought 'freedom' an essentially servile ideal: slaves and those who fear enslavement will obviously rally to the banner of 'freedom', but, as the example of Epictetus shows, their conceptions of freedom have varied a great deal – some have retreated to an inner, personal citadel while others have stormed the bastions of power. Whether in fact in the ancient world the experience of slavery generated freedom is debatable – see O. Patterson, *Freedom in the Making of Western Culture* (New York: Basic Books, 1991), pp. xiii, xv, 3–4, 9, 48, 51; and see also. K. Rauflaab, *The Discovery of Freedom in Ancient Greece*, trans. R. Fransicono (University of Chicago Press, 2004), pp. 41–44.

man answers the opportunities the world opens up before him in the guise of *fortuna* . . . an excellence we attribute to the performing arts, where the accomplishment lies in the performance itself and not in the end product'.[4]

An account of Machiavelli's notion of *virtù* that focuses only on the performance as distinct from the consequences of political action is at odds with that provided by most contemporary scholars of Machiavelli (about which more below), but what is most revealing about this analysis is that Arendt takes freedom not simply to be equivalent to political action *per se* but political action that displays all of the characteristics of the *virtuoso* prince or leader: 'freedom as virtuosity'.[5] In other words, freedom is only possible for 'great men' actively involved in the 'public realm' in a *virtuoso* manner. Freedom is therefore the unique preserve of the very few, who leave the security of the 'private realm' and display courage in the 'public realm'.

What of the rest of us? Under modern conditions we cannot all be involved actively in *virtuosi* political acts. In fact very few of us are even involved in politics; we elect representatives for that. Arendt's conception of politics is steeped in Greek antiquity, where citizens' freedom was related directly to their active involvement in politics and by means of which they were distinguished from the rest of the population (slaves, women and metics or resident aliens). Under modern conditions, this is no longer possible, except possibly in exceptional circumstances, such as during revolutions or liberation struggles from imperial or colonial oppressors. But even then it is questionable whether this kind of political action is equivalent to freedom. There is little doubt that the leaders of the African National Congress (ANC) during the liberation of South Africa, for example, were involved in countless courageous and *virtuosi* acts that may have made them feel powerful and free, but to argue that they were therefore free would be to make a mistake – many of these actions were carried out from the confines of jail or exile.

Republican freedom

The second main response is what is now known as the 'republican' or 'neo-roman' account of freedom.[6] Its roots too stretch deep into the subsoil of Western political thought, in particular the ancient Roman accounts of liberty that mark freedom out in contrast to slavery. But the

[4] Arendt, 'Freedom and Politics', p. 64. [5] *Ibid.*, p. 66.

[6] For whether or not this tradition is best understood as 'republican' or 'neo-roman', see the debate between Pettit and Skinner: Pettit, *Republicanism*; Skinner, *Liberty Before Liberalism*; and Pettit, 'Keeping Republican Freedom Simple: On a Difference with Quentin Skinner', *Political Theory* 30.3 (2002), pp. 339–356.

most famous version is of more proximate pedigree. It is to be found in the works of Machiavelli, in particular in his less famous work, *I Discorsi* (*The Discourses*).[7] In contrast to Arendt, he would have agreed with the proponents of freedom as absence of constraint or interference to the extent that he is in no doubt that the principal wish of people is to pursue their own ends so far as possible, without insecurity or unnecessary interference.[8] They want to live without fear, to bring up their family without anxiety for their honour or welfare, and to be in a position 'freely to possess their property without distrust'.[9] However, Machiavelli then parts with this company. He argues unequivocally that this kind of individual freedom is only possible within a free state, a state based on free institutions in which all of us as citizens can participate and which is therefore kept entirely free from subjection to the will of any particular individual or group. The connection between the free state and the free individual is a substantive one in that free states govern themselves according to their own will ('by their own judgment') – that is, the will of the body politic, the citizens.[10] Machiavelli maintains that it is only possible to attain the ends that are desired by all individuals – freedom from insecurity and interference – by living in a community that enjoys *uno vivere libero*, a free way of life. As Machiavelli puts it, this sort of political community must be free from *dependenza* or *servitù*, whether imposed by a conqueror in the form of 'external servitude' or by a tyrant who arises from within the community's own political system: the citizenry as a whole must be sovereign.[11] Rousseau, later, makes this a dictum of republican freedom: we are free only when we obey a law we prescribe to ourselves.[12]

This is one of the founding arguments for popular sovereignty, upheld not in terms of a moral argument based, say, on human autonomy and the need to self-govern, but on an argument for how best to preserve

[7] *Il Principe* (*The Prince*) is Machiavelli's most famous work and the work that is partly to blame for his sinister reputation as the proponent of cunning, duplicity and the exercise of bad faith in political affairs. I say partly to blame because much of this reputation is in fact the consequence of countless incorrect interpretations of his arguments in *The Prince* brought about by a lack of contextual understanding, especially in terms of it being read without any reference to his other works, the most important of which is his *Discorsi sopra la prima deca de Tito Livio* (*Discourses on the First Ten Books of Titius Livy*). Skinner, *Machiavelli* (Oxford University Press, 1981). The most accessible English version of *Il Principe* is N. Machiavelli, *The Prince*, ed. Q. Skinner and R. Price (Cambridge University Press, 1988 [*c.* 1513]) and of *I Discorsi* is N. Machiavelli, *The Discourses*, ed. B. Crick, tr. by L. J. Walker with revisions by B. Richardson (London: Penguin, 2003 [*c.* 1517]). This work is cited hereafter as *DL*, with book, chapter and page numbers.

[8] *DL*, I, 5, p. 116.

[9] *DL*, I, 16, pp. 154, 156; Skinner, 'Machiavelli on *Virtù*', pp. 160–185, at p. 162.

[10] *DL*, I, 2, pp. 104–111.

[11] *DL*, I, 16, pp. 153–157; I, 35, pp. 197–198.

[12] Rousseau, *Social Contract*, p. 54 [Book I, Chapter 8].

one's state and thus one's own liberty. Machiavelli is not for a moment suggesting that the liberty of the individual is subsumed under, equivalent to or somehow secondary to the liberty of the state. The argument is that the best means of securing individual liberty is not in opposition to the state and its law, or when one is free from politics, but through or by means of the state and its law. Machiavelli's basic claim is that, 'if we wish to prevent our government from falling into the hands of tyrannical individuals or groups, we must organise it in such a way that it remains in the hands of the citizen-body as a whole'.[13] And this is only possible – and thus the liberty of each citizen can only be secured – if all citizens are willing to exercise their talents in defence of the good of the community.[14] In other words, in a manner quite anathema to the proponents of freedom as absence of constraint, freedom, for Machiavelli, is a kind of service; devotion to public service is held to be a necessary condition for individual freedom.[15] Machiavelli summarises this by arguing that both individual and public liberty can only be maintained if the citizen-body as a whole displays the quality of *virtù*; in other words, a willingness to 'follow to the uttermost whatever course of action' – whether virtuous in terms of conventional morality or not – 'will in fact save the life and preserve the liberty of one's native land'.[16]

Unfortunately, most citizens are not naturally *virtuoso*. We are corrupt: our basic inclination, if left unchecked, will be to place our own private interests above other interests.[17] We are either corrupt because we are lazy, as result of which we often fail to carry out our civic obligations at all. Or, even worse, we are moved by personal ambitiousness to pervert

[13] Skinner, 'Machiavelli on *Virtù*', p. 163. In the next few paragraphs I make liberal use of this excellent article.

[14] *DL*, III, 8, pp. 426–429; III, 41, pp. 514–515.

[15] As Skinner notes in 'Machiavelli on *Virtù*' (p. 163), Sallust, in a much-quoted passage from the start of the *Bellum Catilinae*, was the source of the authority for this alleged general truth.

[16] *DL*, III, 41, pp. 514–515; and Machiavelli, *The Prince*, 18, 62. *Virtù*, a central component of Machiavelli's political theory, is therefore the disposition or ability of a group or individual to act in a way conducive to the good of the republic or state. In *The Prince*, Machiavelli focuses on what may be necessary for the preservation of the principality (or state). A truly *virtuoso* prince is one who is willing to do whatever is necessary to achieve this, unconstrained by the classical and Christian moral virtues. It is this insight that has left many adherents of Christian morality aghast: that, on occasion, this may require rulers and ruled to act in opposition to the teachings of Christian morality. For more on *virtù*, see D. Ivison, *The Self at Liberty* (Ithaca, NY, and London: Cornell University Press, 1997); M. Viroli, *Machiavelli* (Oxford University Press, 1998); Viroli, *From Politics to Reason of State* (Cambridge University Press, 1992). It is for this reason that I leave *virtù* and its cognates in the original: it is not equivalent to our notion of 'virtue' or even Roman 'virtus'.

[17] *DL*, I, 17–18, pp. 157–164.

the free institutions of our community in such a way as to favour our own family or social group.[18] The problem is to find a means of transmuting our self-destructive tendencies into concern for the common good or a set of group or class interests larger than our private interests. To this end, Machiavelli first asks how these self-destructive tendencies arise. His general answer is that we are easily blinded to the nature of our own best interests.[19] He provides examples from republican Rome of how this 'impairment of moral vision' even afflicts the most *virtuosi* citizens.[20] But, he argues, ordinary citizens are even more prone to it, as they are easily 'blinded by an appearance of false good'.[21] As Julius Caesar discovered, 'it is possible to blind the multitude so completely that they fail even to notice the yoke they are placing around their own neck'.[22] And Julius Caesar is also the clue to determining why Machiavelli thinks we are so easily blinded to our own best interests: great men, Machiavelli argues, are able to dazzle us with their greatness, thereby preventing us from seeing – often until it is too late – that they may be misusing their gifts in order to seize power for themselves.[23] Even a *virtuoso* people can be thus blinded and deceived by an unscrupulous leader into enslaving themselves.[24] However, the most effective means for political leaders to dazzle and mislead the people is, according to Machiavelli, much more mundane: it is through the corrupt use of their wealth. The rich, he argues, are always in a position to purchase loyalty and to prevent people

[18] *DL*, I, 1, pp. 100–104; II, 2, pp. 274–281; I, 33, pp. 190–193; I, 37, pp. 200–204; I, 40, pp. 210–216.

[19] Machiavelli's use of the idea of being blinded to one's own best interests does not land him in the camp of those, such as Kant, who argue that if there are determinate human needs, there must be objective reasons to act to pursue or satisfy them, and that one can identify these reasons by appeal either to one's 'higher self' or to certain purposes which it is objectively rational for all agents to pursue. See T. Nagel, *The Possibility of Altruism* (Oxford University Press, 1970), pp. 13–17; Berlin, *Four Essays*, pp. 132–134, 151. And nor does it land him in the opposing camp, with the view held most famously by Hume, that 'reason is and ought to be a slave of the passions'. D. Hume, *A Treatise of Human Nature*, 2nd edn, ed. L. A. Selby-Bigge (Oxford: Clarendon Press, 1978 [1740]), Book II, Part III, Section III, p. 415. As we will see, unlike Hume, Machiavelli contends that there can be genuine reasons for action which are unconnected with our present desires, but that, in contrast to Kant, it is possible to defend this position without having recourse to the idea of objective reasons or higher selves. For more, see Skinner, 'Machiavelli on *Virtù*', p. 166; R. Geuss, *The Idea of a Critical Theory* (Cambridge University Press, 1981); and Hamilton, *Needs*.

[20] Ambition corrupted leaders such as Quintus Fabius and Manlius Capitolinus: *DL*, I, 42, p. 217; III, 8, pp. 426–429.

[21] *DL*, III, 28, pp. 481–482.

[22] *DL*, I, 17, pp. 157–160.

[23] For Machiavelli, Caesar is the perfect instance of this: he exemplifies how 'the powerful have proposed laws not in favour of public liberty but for their own power; with the result that the people have either been deceived or forced to decree their own ruin'. *DL*, I, 18, pp. 160–164.

[24] *DL*, I, 35, pp. 197–198.

from seeing that their liberty is in jeopardy by bribing them to look the other way.[25] He maintains that bribery is the most common cause of corruption in public life and offers many instances of this throughout his works.[26]

How, then, is corruption to be overcome? And, if we cannot overcome its natural causes, can we evolve some mechanism for preventing its destructive and self-destructive effects?[27] A recurring motif both in the *The Prince* and *The Discourses* is that, to a certain degree, whether we do or do not manage to avoid or overcome corruption is not entirely in our hands. It depends on our good fortune or luck. In particular, the first stroke of fortune a state needs to enjoy is that of starting life in the hands of a leader and lawgiver of outstanding *virtù*. Machiavelli makes mention of, in particular, Lycurgus in Sparta and Romulus in Rome, while in recent times Nelson Mandela in South Africa springs to mind.[28] It is also necessary for the continued maintenance of political liberty that the community should be lucky enough to acquire a series of *virtuosi* leaders. However, he strongly disagrees with those that believe that the avoidance of corruption and maintenance of freedom is entirely a matter of luck. This process, he argues, is also susceptible to reason and thus to the elaboration of rules and guidelines. He discusses a variety. First, he endorses the contemporary humanist belief that we can be raised to a condition of naturally *virtuoso* citizenship by means of education.[29] Second, he argues that a community could avoid corruption and maintain liberty as a consequence of being inspired by truly *virtuosi* leaders. The

[25] Rousseau, later, would insist very strongly on a version of this point. He argued that if inequalities in wealth and power reached a point at which one citizen was rich enough to buy another and the other poor enough to sell himself, popular sovereignty would collapse and individuals would thus be unfree (Rousseau, *Social Contract*, pp. 54–56 [Book I, Chapter 9], 78–80 [Book II, Chapter 11]). Marx then went on to identify this form of unfreedom in waged labour under capitalism. It is, moreover, interesting to note that Rousseau's and Marx's arguments for reducing inequality rest not on a moral philosophical defence of human equality but on an account of individual freedom. For more on Rousseau, Marx and freedom, see Hamilton, *Needs*; Hamilton, '"(I've Never Met) a Nice South African": Virtuous Citizenship and Popular Sovereignty', *Theoria* 119 (2009), pp. 57–80.

[26] *DL*, I, 35, pp. 197–198; I, 46, pp. 223–225; I, 52, pp. 235–238; and Machiavelli, *Prince*, Chapter 25, pp. 86–87.

[27] Later Madison would ask similar questions about the problems of faction in politics, though his solution is quite different. A. Hamilton, J. Madison and J. Jay, *The Federalist*, ed. T. Ball (Cambridge University Press, 2003 [1788]), esp. *Federalist* 10.

[28] *DL*, I, 2, pp. 109–111; II, 1, p. 270; and Hamilton, 'Human Needs and Political Judgment', in B. de Bruin and C. F. Zurn (eds.), *New Waves in Political Philosophy* (London: Palgrave, 2009), pp. 40–62.

[29] 'If one asks oneself how it comes about that peoples of old were more fond of liberty than they are today, I think the answer is . . . due . . . to the difference between our education and that of bygone times.' *DL*, II, 2, p. 267; and III, 27, pp. 478–481.

exemplary *virtù* of a single, exceptional leader can be enough to generate *virtù* because 'these figures enjoy such a reputation, and furnish such a great example, that good men want to imitate them, while the wicked are ashamed to live a different way of life'.[30] Third, he argues that citizens can be inspired to rise above their ingrained selfishness by the manipulation of their religious beliefs.

In the end, however, he does not hold out much hope for any of these arguments.[31] And the main reason for this is that Machiavelli is pessimistic about the possibility of changing our basic human nature. He prefers to take people as they are, and to recognise that in general they are corrupt:[32]

> All writers on politics have pointed out, and throughout history there are plenty of examples which indicate, that in constituting and legislating for a commonwealth it must needs be taken for granted that all men are wicked and that they will always give vent to the malignity that is in their minds when opportunity offers.[33]

Given our natural tendency to corruption, Machiavelli resorts to the coercive force of the law. The role of the law, he maintains, is to deter us from corruption and impose on us the necessity of behaving as *virtuosi* citizens: 'for owing to the fear of punishment men stay better and less ambitious for a longer time'.[34] As with Rousseau later, who is a student of especially *The Discourses*, for Machiavelli, laws make men good; and for a free way of life to last any length of time, 'the populace' must be 'chained up by the laws'.[35]

But how, exactly, does the law protect our liberty? Initially, Machiavelli sounds like those that think of freedom in terms of absence of constraint. He maintains at various points in Books I and III that law enables individual freedom by stopping other people from interfering with our freedom to pursue our own ends. Our freedom can be constrained either by other individual citizens engineering for themselves a position of supreme civil

[30] *DL*, III, 1, pp. 385–390.
[31] He has nothing to say about the specific training that might be needed to ensure the necessary forms of education; he notes repeatedly that the arrival on the political scene of a truly *virtuoso* leader is always a gift of fortune and so is not a reliable means of generating *virtù* amongst the citizenry. *DL*, III, 22, pp. 465–471. And he doubts the relevance and success of manipulating religious beliefs within Christian societies. *DL*, I, 12, pp. 142–146.
[32] Again Rousseau follows him directly in this: *Social Contract*, p. 41.
[33] *DL*, I, 3, pp. 111–112. The common notion that Machiavelli's politics depends on a highly developed sense of civic virtue is therefore misplaced.
[34] *DL*, I, 29, p. 183; and I, 42, p. 217.
[35] *DL*, I, 3, p. 112; and I, 58, p. 256. Elsewhere, he makes this point in terms of customs: 'for the maintenance of good customs laws are required' (I, 18, p. 160).

or military authority.[36] Or, we can lose our freedom from constraint when corrupt rich individuals or groups abuse the power of their wealth in a number of possible ways.[37] The potential for either kind of corruption, which undermines freedom, depends upon levels of inequality: 'corruption of this kind and ineptitude for a free mode of life is due to the inequality one finds in a city'.[38] However, the second part of his response leaves him far from the proponents of 'private' freedom or freedom from politics for whom, as I have shown, law is necessary merely to ensure that we do not violate the freedom of others. He submits that the main role of the coercive power of the law is to liberate us from our natural but self-destructive tendency to pursue our selfish interests. It can force us to promote the public interest and therefore preserve our own freedom: 'Machiavelli's further claim, in other words, is that the law can and must be used in addition to force us to be free.'[39]

This is less dramatic than it sounds. Machiavelli is not suggesting that the main function of the law is to bring our desires in line with some form of rational or higher self (for nothing is perfectly virtuous). Rather, the law forces us to be free by channelling our self-interested behaviour in such a way that our actions have consequences that, although not intended, promote the public interest. This is achieved, he argues, via two main mechanisms: the constitution and religion; in particular, a republican constitution founded on a bicameral legislature and a strong consular or presidential element.[40] Were we to add the need for an independent judiciary, this would not be far from the normal liberal position,

[36] *DL*, I, 34, p. 194. The example, again, is Julius Caesar, who took advantage of the role of dictator bestowed on him for a limited period for a specific emergency.

[37] *DL*, I, 55, pp. 243–248; I, 37, pp. 200–204.

[38] *DL*, I, 17, p. 160. Machiavelli's solution – 'a state which enjoys freedom is one that keeps the citizens poor' (*DL*, III, 25, p. 475) – is not one that we would now support as we have successfully divorced the problem of inequality from the problem of poverty. See Chapters 5 and 6 below, and A. Sen, *Inequality Reexamined* (Oxford: Clarendon Press, 1992); R. Wilkinson and K. Pickett, *Spirit Level: Why More Equal Societies Almost Always Do Better* (London: Allen Lane, 2009); and R. Wilkinson, *The Impact of Inequality: How to Make Sick Societies Healthier* (London: Routledge, 2005).

[39] Skinner, 'Machiavelli on *Virtù*', p. 177, where I assume he is referring to Rousseau's famous phrase: 'whoever refuses to obey the general will . . . shall be forced to be free' (Rousseau, *Social Contract*, pp. 51–53 [Book I, Chapter 7]). Contrary to the common criticism that this legitimises tyranny, this is in fact the *safeguard* against tyranny. See Rousseau, *Second Discourse* in Rousseau, *The Discourses and Other Early Political Writings*, ed. V. Gourevitch (Cambridge University Press, 1997 [1755]); M. Viroli, 'The Concept of *Ordre* and the Language of Classical Republicanism in Jean-Jacques Rousseau', in A. Pagden (ed.), *The Languages of Political Theory in Early-Modern Europe* (Cambridge University Press, 1990), p. 172; Hamilton, 'Nice South African'; and below.

[40] *DL*, I, 2–4, pp. 104–115. Here I do not discuss the second main mechanism through which law forces people to respect their own freedom: by enacting *ordini* (institutions) designed to encourage religious belief, or at least to compel the observance of religious

especially that espoused by Rawls.[41] But that is where the similarity ends. For liberals like Rawls, besides the slightly dubious claim that this form of constitution *ensures* equal access to power, the special purpose of the constitution is to prevent encroachment on personal rights and thereby defend the liberties of persons, or our freedom from politics.[42] For Machiavelli, the main advantage of this kind of constitution is that it converts private vices into public benefits, which it does by exploiting the rivalry and conflict that exists between the two main classes that exist in every type of civil association – the upper classes, nobility or *grandi* and the ordinary people, populace or *popolo*.[43] In Rome, for example, the representatives of these two opposed groups, those of the *grandi* controlling the Senate and those of the *popolo* controlling the Tribunate, each representing opposed interests, maintained a continuous watch over one another, and thereby ensured that neither side was able to act simply to promote its own group's interests via legislation. This is a central component of Machiavelli's argument for liberty and republican government. In contrast to those in his time and ours who argue that liberty and justice depend upon consensus or that freedom depends upon the republic tracking '*common*, recognizable interests',[44] freedom according to Machiavelli was only made possible by the constant conflict between these classes: 'In every republic there are two different dispositions, that of the populace and that of the upper class and that all legislation favourable to liberty is brought about by the clash between them.'[45]

The centrality of this kind of constant class conflict for Machiavelli's account of freedom as a whole cannot be over-emphasised. In fact, the very discussion of being 'chained up by laws' alluded to above is part of an argument for why 'government by the populace is better than government by princes': popular, republican governments are 'more prudent, more stable, and of sounder judgment than the prince'.[46] For Machiavelli, there

practices. For why this is important, see *DL*, I, 11, pp. 139–142; I, 14–15, pp. 148–152; II, 2, p. 278; and Skinner, 'Machiavelli on *Virtù*', especially pp. 182–183. But it is worth noting that here again Machiavelli's views are quite distinct from the typical liberal position that thinks of freedom as absence of constraint. For him the threat to liberty posed by any religion is the threat of corruption, not intolerance. See Rawls, *Justice*, pp. 208, 213–218 for the typical position regarding the problem of intolerance.

41 Rawls, *Justice*, p. 224.

42 *Ibid.*, section 36.

43 Skinner, 'Machiavelli on *Virtù*', p. 179; and Crick's introduction to *DL*, pp. 39–45.

44 Pettit, *Republicanism*, p. 291 and *passim*; see also a number of seventeenth- and eighteenth-century republican writers cited by Pettit.

45 *DL*, I, 4, p. 113. This goes directly against the conventional humanist – Ciceronian and Aristotelian – belief of the age that civil discord is ultimately fatal to the maintenance of a true republic and that the common good is always a function of maintaining a *concordia ordinum*. Skinner, 'Pre-Humanist Origins', pp. 121–142, at pp. 135–136.

46 *DL*, I, 58, pp. 256, 255.

are two main reasons that freedom depends upon the clash between the different dispositions or humours of the *popolo* and the *grandi*, with the second being the most important: (a) because politics represents the competitive pursuit of power and glory at the service of the *res publica* – the public thing or business – and this would only generate freedom if there existed institutions that enabled this in a manner in which the *popolo* and the *grandi* could satisfactorily compete with one another;[47] and (b) the natural disposition of the *grandi*, in particular, must be kept in check for they are motivated by an oppressive appetite, a wish to command and dominate the *popolo*. In contrast, the *popolo* wish to resist or avoid domination, they desire only *not* to be commanded or oppressed by the *grandi*.[48] This fact, Machiavelli claims, make forms of government that do not check the political power of the *grandi* very dangerous indeed: they are always likely to lead to less rather than more freedom as the *grandi* make full use of the political powers granted them to dominate the state in general and the *popolo* in particular. By contrast, he argues that the desires and actions of the *popolo* 'are very seldom harmful to liberty because they are due either to the populace being oppressed or to the suspicion that it is going to be oppressed'.[49] In other words, his praise for the *popolo*'s superior political judgement in achieving and safeguarding freedom is not because he thinks they are somehow cleverer or more astute than the *grandi*, but because their natural disposition to guard against oppression makes them so. In fact he thinks quite the opposite regarding the relative cleverness of the *grandi* and the *popolo*: *The Prince* and the *Discourses* are filled with episodes that relate the cleverness, awareness, astuteness and practical judgement of the *grandi*, but more often than not in their own cause, which normally results in the further oppression of the populace and thus the opposite of wise rule.[50] Thus, despite being generally less clever, poorly resourced, disinclined towards aggression

[47] B. Fontana, 'Sallust and the Politics of Machiavelli', *History of Political Thought* 24.1 (Spring 2003), pp. 86–108, at pp. 89–90; see also his fn. 16 regarding the various alternative translations for the Italian *umori* ('parties', 'factions' (Gilbert), 'dispositions' (Walker), 'classes' (Price) or 'humors' (Mansfield)), and the possible problem with reading back into Machiavelli a notion of class which could only have emerged after the Enlightenment. I use 'dispositions', 'classes' and 'humours' interchangeably, with appropriate anachronistic sensibility regarding the term 'classes', because I take seriously his final comment there – that 'Machiavelli's use of humours, based on a pre-modern and indeed ancient notion of medicine, demonstrates his belief in the necessary existence of opposing and antagonistic social groups as constitutive elements of the body politic'. So, whatever term is used, freedom depends upon institutions that enable and safeguard competitive and opposing social groups in their antagonistic pursuit of power.

[48] *DL*, I, 4–5, especially p. 116.

[49] *DL*, I, 4, pp. 114–115.

[50] See, for example, *The Prince*, 9 and *DL*, I, 3, pp. 111–113; I, 5, pp. 116–118.

and even craven, at least in comparison to their wealthier compatriots, the *popolo*, according to Machiavelli, are the real guardians of freedom.[51]

Freedom, therefore, depends on empowering the *popolo*, both in the sense of giving them a share in the administration of the government, but also in checking the power of the *grandi*. Machiavelli therefore makes the following suggestions as to how best to empower the *popolo* in order to achieve and safeguard freedom: arm them with weapons and training; and empower them politically and constitutionally with tribunes and assemblies. In other words, he argues that the people led by consuls in the field and tribunes at home, bound together in legions while at war and in assemblies within the walls of the republics, shackled by laws and yet given the power to make concrete judgements, will prove wiser than either the *grandi* or a prince.[52] A healthy republic, and thus a free people, is only possible, he argues, when the *popolo* are authorised not only to choose magistrates, but also to discuss and ultimately decide legislation in assembly and to judge political trials collectively. Drawing from his analysis of Venetian and Florentine politics, while using Rome as the main exemplar, he provides the following practical suggestions for elite accountability and popular empowerment: (a) assemblies that exclude the wealthiest citizens from eligibility; (b) magistrate appointment procedures that combine lottery and election; and (c) political trials in which the entire citizenry acts as final judge over prosecutions and appeals.[53] Rome remains the main exemplar not only because these institutions are drawn directly from that republic but also because Rome, or at least Machiavelli's reading thereof, demonstrates better than any other political order, he argues, that freedom depends upon institutions that enable and safeguard competitive and opposing social groups in their antagonistic pursuit of power. As he puts it:

> To me those who condemn the quarrels between the nobles [*grandi*] and the plebs [*popolo*], seem to be cavilling at the very things that were the primary cause of Rome's retaining her freedom, and that they pay more attention to the noise and clamour resulting from such commotions than to what resulted from them,

[51] 'Critics, therefore, should be more sparing in finding fault with the government of Rome, and should reflect that the excellent results which this republic obtained could have been brought about only by excellent causes. Hence if tumults led to the creation of the tribunes, tumults deserve the highest praise, since, besides giving the populace a share in the administration, they served as the guardian of Roman liberties.' *DL*, I, 4, p. 115.

[52] *DL*, I, 7, pp. 44, 58; and C. Lefort, *Machiavelli in the Making*, trans. M. B. Smith (Evanston, IL: Northwestern University Press, 2012), pp. 240–279.

[53] For more on this, see the last section of this chapter and J. P. McCormick, *Machiavellian Democracy* (Cambridge University Press, 2011), pp. vii, 26; and Chapters 3, 4 and 5 below.

i.e. to the good effects which they produced. Nor do they realize that in every republic there are two different dispositions [*umori*], that of the populace [*popolo*] and that of the upper class [*grandi*], and that all legislation favourable to liberty is brought about by the clash between them.[54]

In sum, for Machiavelli, the main advantage of laws and constitutions is not so much that all laws are good since they keep politics and thus the determination of freedom out of the hands of those with power (*grandi*, wealthy, oligarchs) or out of the hands of the people (*popolo*, populace, plebs), but that those laws that enable the institutionalisation of class or social group conflict are good since they succeed in converting private vices into public benefits, with particular reference to freedom, the greatest public benefit of all. And they do this not because they instantiate reason or virtue or generate clear-sighted perception of the 'common good', as suggested by Pettit,[55] but because they institutionalise class conflict, providing both classes with the capacity or power to control one another. So, by means of coercion at the level of law in general and with regard to the institutions and practices governing their religion in particular, the citizens will be assured of liberty. In contrast to the tradition of thought that thinks of freedom in terms of absence of constraint in which the law is generally seen as an affront or obstacle to individual freedom, and freedom is thus to be found in realms free from politics, Machiavelli therefore sees law as a liberating power; good laws will enact freedom by institutionalising the clash and conflict between social groups that results from the relentless pursuit of power by these often antagonistic classes.

At first glance this seems like a convincing substantive account of freedom: Machiavelli helpfully highlights the fact that *both* interference and dependency (or 'domination') generate a lack of freedom, and he is resolutely realistic about power, conflict and competing interests. But two very significant, related problems remain. However much some argue that Machiavelli's account of political liberty is at core also an account of freedom as absence of impediment,[56] it is clear that Machiavelli is first and foremost concerned about forms of political and individual agency

[54] *DL*, I, 4, p. 113.

[55] Pettit, *Republicanism*, pp. 201, 284, 290; Pettit, 'Depoliticizing Democracy', *Ratio Juris* 17.1 (2004), pp. 52–65; Pettit, *On the People's Terms*, pp. 5, 59, 217, 228, 244–247, 291.

[56] Skinner, 'Machiavelli on *Virtù*', pp. 178 (fn. 81), 184; Skinner, 'The Idea of Negative Liberty, pp. 186–212; Skinner, 'Pre-Humanist Origins'; Skinner, *Liberty Before Liberalism*; and Pettit, 'Keeping Republican Freedom Simple'; but *cf.* later arguments by Skinner, which seem to go back on this point, evidenced in, for example, 'Freedom as the Absence of Arbitrary Power', in C. Laborde and J. Maynor (eds.), *Republicanism and Political Theory* (London: Routledge, 2008), pp. 83–101.

that cannot leave very much room for the kinds of concerns and freedoms articulated by those who conceive of liberty as *only* freedom from constraint. However compelling this interpretation, it is obvious that the republican citizen is not defined as an individual who possesses and administers private goods as a matter of right, or for whom the good life is simply the pursuit of their own plans and enjoyments.[57] The republican citizen may have to be coerced by law, but at least under the conditions in which Machiavelli wrote, the goal towards which the coercion was aimed was not completely anathema to the norms of his society, or social group of which he was a member, and thus the associated duties and obligations that any individual may in fact be drawn to.

Individual freedom is only possible in self-governing republics, whose maintenance is dependent upon its citizens' virtue, or on them being coerced by laws realised by institutionalised class conflict into actions whose consequences are more or less equivalent in the sense that they generate freedom for all. What are these qualities? First, there is the courage needed to defend one's community. Individuals must cultivate the martial virtues and place them at the disposal of the republic.[58] Second, they need a kind of civic prudence that enables them to play an effective role in the decision-making processes of the state, true of both *grandi* and *popolo* in their various assemblies.[59] In other words the everyday sentiments and attitudes of the age included qualities and institutions defended by Machiavelli. Do these qualities and institutions chime with the values, sentiments and desires of the citizens of twenty-first-century states? Do they make sense within highly complex modern nation-states characterised by extensive division of labour, specialisation and representation?

The moderns versus the ancients?

In a speech given in 1819 at the Athénée Royal in Paris, Benjamin Constant thought not. He drew a distinction between the liberty of the ancients and that of the moderns, between the rights of public agency and the rights of private enjoyment. The citizens of modern England, France or the United States of America, he claimed, valued individual

[57] Ivison, *Self at Liberty*, p. 73; and Dunn, 'Liberty as a Substantive Political Value', pp. 61–84.

[58] *DL*, II, 2, pp. 274–281; II, 12, pp. 305–310; II, 20, pp. 339–341; Machiavelli, *The Prince*, Chapters 12 and 13. See also J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton University Press, 2003), pp. 183–218; Viroli, *From Politics to Reason of State*, pp. 162–164.

[59] *DL*, I, 9, pp. 131–134.

independence, which explains why, for them, liberty means, amongst other things, the right: to be under the sole authority of the laws; to be free from arrest, detention or execution at the arbitrary will of another agent; to express one's opinions; to choose and practise an occupation; to own and dispose of property, and do with it what one will; to come and go and associate with others without having to gain permission or account for one's motives; to worship without interference; to fill one's days in a manner most suited to one's whims and inclinations; and, finally, to exert some influence on the administration of government, whether by nomination of public officials or petitions and demands to which those in authority are obliged to pay some heed. In other words, according to Constant, liberty for the moderns meant the right to pursue one's business not that of the *res publica*.[60]

Ancient liberty, by contrast, according to Constant, was a matter of exercising collectively and directly a number of aspects of sovereign power: deliberating in the public assembly on matters such as war and peace; voting on laws, pronouncing legal verdicts and inspecting and evaluating the accounts, actions and administration of magistrates. The ancients saw not the slightest tension between this kind of liberty and the complete subjection of the individual to the authority of the community. No importance was accorded to individual independence, either in opinions, occupations or religion: 'all private actions were submitted to a severe surveillance'. In the areas of human concern and interaction that moderns value most, the authority of the social body intervened, and obstructed the individual will. He gives a series of examples from Sparta and Rome and then makes his strongest claim: 'Thus among the ancients the individual, almost always sovereign in public affairs, was a slave in all his private relations.'[61]

Whether or not we agree with Constant's specific claims regarding ancient liberty, his point is well taken, particularly the emphasis on what kinds of things modern individuals cherish when they think about freedom. His main claim still rings true: that individuals living under modern conditions no longer value ancient liberty, or having a share in the social power of a community; rather, their main concern is security in private enjoyments, and what they therefore mean by liberty is the guarantees which their institutions furnish for these enjoyments.[62] These differences and changes can be understood in terms of power. First, the sheer extent

[60] B. Constant, 'The Liberty of the Ancients Compared with that of the Moderns', in *Political Writings*, ed. B. Fontana (Cambridge University Press, 1998), pp. 309–328, at p. 311.
[61] *Ibid.* [62] *Ibid.*, p. 323.

of modern states diminishes proportionally to the political importance or power of each of their individual inhabitants. The most obscure citizen of Athens or Rome was, at least in Constant's eyes, a genuine power in himself, while the political influence of, say, the individual citizen of France was virtually imperceptible. Second, ancient slavery had provided the citizens of, for example, Athens with ample opportunity to deliberate daily on public affairs; with the abolition of slavery, these opportunities were no longer available. Third, with the rise of commerce, people's lives became busier and busier leaving them less and less time and opportunity for public agency; and, as commerce engages each individual in the active engagement in his own enterprises and the pursuit of his personal pleasure and enjoyment, 'commerce inspires in men a vivid love of individual independence'.[63] In other words, as the power of the individual diminished with regard to public agency, his or her power with regard to private enjoyment was enhanced. It was therefore natural for individuals to begin to value the latter above the former.

Although one of the main points of Constant's distinction was to enable him to go on to argue that the attempt to impose ancient liberty under modern conditions will give rise to tyranny and severe oppression, as was evidenced in the excesses of the French Revolution, he also made clear that it is vital to retain some aspects of ancient liberty. In particular, he argued that 'the danger of modern liberty is that, absorbed in the enjoyment of our private independence, and in the pursuit of our particular interests, we should surrender our right to share in political power too easily'.[64] He emphasised the fact that public agency and the safeguard of political liberty were, to use a more recent locution, instrumental *and* categorical goods. Political liberty is instrumentally good in the sense that is vital for private enjoyment. But, under modern conditions, he argued, this required the institution of a representative system, in which the authority and agency of all the citizens was conferred on a small number of representatives by the mass of the people.[65] Second, it was a categorical good because it enlarges the spirit, ennobles the thought and 'establishes among them [the citizens] a kind of intellectual equality which forms the glory and power of a people'. The work of the legislator, he argues, is not simply to secure peace, but to ensure the active involvement of citizens in political life, in voting for their representative and then supervising and controlling them through their opinions and continued moral education. 'Therefore, Sirs, far from renouncing either of the two sorts of freedom which I have described to you, it is necessary,

[63] *Ibid.*, pp. 312–315. [64] *Ibid.*, p. 326.
[65] *Ibid.*, p. 325; see also Sieyès, *Political Writings.*

as I have shown, to learn to combine the two together.'[66] So, despite the fact that Constant may have thought that Machiavelli's account of freedom was very close to an ancient conception, the two end up at a very similar place: they extol the importance both of being free from undue interference and insecurity and the importance of securing this freedom and civic virtue via active involvement in the political agencies of one's community.

Constitutional republicanism versus populist republicanism

There is therefore something appealingly 'modern' about Machiavelli's account of freedom, despite his constant 'return' to ancient Rome: he emphasises public political activity mainly for its *instrumental* value in achieving other aspects of freedom. Freedom, for Machiavelli, was not ultimately about the pursuit of public virtuosity, as Arendt would have us believe, but about acting within laws that safeguard institutions that avoid domination of one group or class by another *and* do this by formalising class conflict in various deliberative, electoral and legal norms and institutions. Besides Skinner's important interpretative contributions, there are two modern scholars who best mine for modern purposes Machiavelli's insights regarding freedom: Philip Pettit and John P. McCormick. Yet, they emphasise very different components of Machiavelli's republicanism and therefore end up with widely divergent conclusions regarding how his insights might help us gain and retain our freedom under modern conditions. In short, Pettit opts for a form of constitutional republicanism whose main goal is the avoidance of domination via the right kinds of laws and constitutional safeguards, while McCormick takes more seriously the 'popular' and 'class' component of Machiavelli's thought, emphasising the importance of empowering the *popolo* and maintaining elite accountability via various means of popular control. In what remains of this chapter, I lay out the main components of these two different proposals and, while adding another supporting voice to McCormick's radical 'machiavellian democracy', ultimately propose, however, that his direct appropriation of Machiavelli's institutional proposals for highly complex modern states and the lives we lead therein are not as desirable or workable as he suggests.

[66] Constant, 'The Liberty of the Ancients Compared with that of the Moderns', pp. 327–328.

In an important contribution to the history of political thought, contemporary political philosophy and (in later formulations) even modern politics, Philip Pettit's *Republicanism: A Theory of Freedom and Government* proposes and defends a systematic theory of republican liberty based on what he calls 'freedom as non-domination'.[67] He defines freedom as the antonym of domination, where domination is understood in terms of whether circumstances provide somebody with the capacity to interfere on an 'arbitrary' basis in the choices of somebody else. In contrast to mainstream liberal ideas regarding freedom, with their origins in Hobbes's and Bentham's writings, where one is no longer free as a result of actual interference by others, Pettit focuses on the mere threat of 'arbitrary' interference. This is the condition for domination, according to Pettit: a relationship of domination arises under conditions in which people are controlled by other individuals or bodies against their will, whether or not this control requires active interference.[68] Pettit defines 'arbitrary' as any interference that does not comport with the perceived or expressed interests of individuals: 'such a relationship [of domination] means, at the limit, that the dominating party can interfere on an arbitrary basis with the choices of the dominated: can interfere, in particular, on the basis of an interest or an opinion that need not be shared by the person affected'.[69]

Pettit categorises instances of arbitrary interference by private parties over other such parties as *dominium* and governmental actions that violate common, recognisable individual interests as *imperium*.[70] It is particularly these two forms of domination that Pettit's account of republican freedom proposes government should guard against with greatest fervour: 'the central evil against which governments should guard is the domination of citizens by other individuals or bodies'.[71] In order to ensure against these two forms of domination – these two 'evils' – Pettit proposes

[67] Pettit, *Republicanism*; see also Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge: Polity, 2001) and Pettit, *On the People's Terms*; as well as various articles, some of which are cited below; and for one instance of how his political philosophy has been applied in the context of real politics, see J. L. Marti and P. Pettit, *A Political Philosophy in Public Life: Civic Republicanism in Zapatero's Spain* (Princeton University Press, 2010).

[68] Pettit, *Republicanism*, pp. 21–27; 272; Marti and Pettit, *Political Philosophy*, p. 110; Pettit, *On the People's Terms*, pp. 26–74, 294–297; *cf.* Shapiro, 'On Non-Domination'.

[69] Pettit, *Republicanism*, p. 22; see also pp. 52–58.

[70] 'An act is perpetrated on an arbitrary basis, we can say, if it is subject just to the *arbitrium*, the decision of judgement, of the agent; the agent was in a position to choose it or not to choose it, at their pleasure.' Pettit, *Republicanism*, p. 55; and on *imperium* and common, recognisable or avowed interests, see pp. 13, 112, 150, 276–277, 290–292.

[71] Marti and Pettit, *Political Philosophy*, p. 110.

a series of institutional and constitutional reforms that he maintains will not only achieve republican freedom but also substantively enhance contemporary democracy, the latter being the subject of his latest book, *On the People's Terms*. In line with his account of freedom as non-domination, he maintains that a state that carries through these reforms will obviously have to interfere in the lives of people in various ways, but certain institutional safeguards will ensure that it never does so in an arbitrary fashion. These institutional safeguards include a combination of rigid constitutionalism and what he terms 'contestatory democracy': (a) strict division of powers, including not just the division of legislative, executive and judicial functions, but also bicameral and federal arrangements (what he calls the 'dispersion-of-power' constraint); (b) downplaying the centrality of electoral or majoritarian democracy in order to avoid the tyranny of the majority or domination of the minority by the majority (what he calls the 'counter-majoritarian' condition); (c) judicial review as a central component of democracy (part of what he calls the 'empire-of-law' condition); (d) the support of various other unelected and specifically depoliticised institutions such as ombudsmen and commissions of unelected experts, whose job it would be to assess individual or group contestation of proposed legislation; (e) all held together, hopefully, by various means of instantiating civility and civic virtue in the citizenry.[72]

There are three related problems with this version of the alternative republican landscape for attaining and securing freedom (leaving aside Pettit's account of domination, which I discuss in Chapter 3 below). First, in this version, Pettit's insistence on the fact that even domination, or the threat of arbitrary interference, is a relationship that involves (or threatens to involve) conscious deliberate human action means that his account falls foul of the first major criticism I levelled in Chapter 1 against the idea of freedom as non-interference: as in the latter case, it cannot account for the lack of freedom created by non-human action – the way the world is – or that this state of affairs (of lack of freedom in the face of the 'natural' world) may be something that humans could overcome, depending upon whether they are willing and able to make political and economic decisions that surmount these obstacles or uncover the ideological masks that may deem some challenges (surmountable or not) as 'natural' obstacles when in fact they are human creations.

Second, the conception of human interests upon which Pettit's account of freedom and republican government rests is static and thus

[72] Pettit, *Republicanism*, Chapters 6, 7 and 8 and pp. 276–281; and Pettit, *On the People's Terms*, Chapters 3, 4 and 5 (I discuss the differences in our conceptions of 'control' in Chapters 5 and 6 below).

problematic. Pettit defends a 'process-centred' republic involving a rigid constitution that tracks the *res publica*, understood by him as the 'common good' or 'public good' comprising common, recognisable citizen interests. He articulates the processes by means of which the state would track these interests in terms that make it quite clear that he takes them to be somehow pre-political, fixed and recognisable (that is, somehow untouched by the power relations and relationships of domination that he speaks of so often elsewhere): 'So understood, the formula [for when a state is going to be a republic that furthers the public good] . . . has three significant implications. It prohibits the state from taking account of goods that are not presumptive matters of citizen *interest*. It prohibits it from taking account of goods that are not matters of *recognizable* interest. And it prohibits it from taking account of goods that are not matters of *common* interest.'[73] This is later reinforced by his defence in *On the People's Terms* of rights as pre-political, concretised forms of participation, constitutionally protected rights that somehow simultaneously put various issues out of the reach of popular influence and yet provide people with equal access to influence and keep channels of influence from being clogged up.[74]

Given Machiavelli's emphasis on partisan interests, competing humours and the associated constant class conflict that is vital for freedom, the presumption here of a set of common, recognisable interests is not only odd but also utopian.[75] Pettit is adamant that this formula for a republic that furthers the public good 'outlaws the state that takes account of the recognizable interests of some individual or group other than the citizens as a whole'.[76] In other words, needs and interests that are not 'common' to the citizenry as a whole are ruled out of court. Pettit therefore does not propose mechanisms through which individuals or groups could articulate and defend interests that may not be equivalent to these supposedly 'common' interests, bar a few highly individualistic and completely depoliticised institutions of contestation (discussed in greater detail below). Thus, given the extent to which he downgrades normal electoral and less normal deliberative mechanisms for identifying needs and interests, it is hard to imagine what these 'recognizable, common interests' must be

[73] Pettit, *Republicanism*, pp. 290–291.

[74] Pettit, *On the People's Terms*, p. 217; that this is at best problematic and at worst impossible is evidenced by the fact that he seems to renege on this conception of pre-political rights later in the book, at p. 245, speaking of them in terms of 'post-social', 'non-corporate' interests.

[75] The presumption, however, is very common, as will become apparent in the more general analysis of needs and interests in Chapter 3 below; and as argued in Hamilton, *Needs*.

[76] Pettit, *Republicanism*, p. 291; and then, in 'four part harmony' (a quote from one of this book's anonymous readers), see Pettit, *On the People's Terms*.

besides those interests that are determined pre-politically on the basis of some abstract account of human nature and then safeguarded within a constitution. In other words, 'interests' in Pettit's account are more like a set of unchanging metaphysical or religious goods than the normal needs and interests that are the lifeblood of everyday politics everywhere: changing and partisan drives or goals heavily determined by institutional and ideological context – that is, prevailing political and economic decisions, and relations of power, domination, coercion, persuasion, manipulation and resources, amongst other things.

Pettit's account is set up from the outset to fail in this regard. In order to ensure that states safeguard his abstract notion of freedom as non-domination above all else, Pettit's model has to steer away from the possibility of too much democratic, particularly electoral, determination of interests, which is part of the reason why these supposedly 'common, recognizable interests' are seen as unchanging goods. The other part of the reason is that he situates Machiavelli's account of freedom within a much broader historical sweep of 'republican' thinkers such as Cicero, Harrington, Sidney and Montesquieu, who 'take liberty to be defined by a status in which the evils associated with interference are avoided rather than by access to the instruments of democratic control, participatory or representative'.[77] It is no wonder, then, that the original Roman notion of *res publica* is rendered by Pettit in the singular as the 'common good' or 'public good',[78] when a truer reflection of its literal meaning – the 'public thing' or the 'public business' – does not generate the same singularity of meaning; the latter in particular could easily accommodate a situation of competing partisan interests whose resolution into something common may not be necessary or even a condition for freedom.[79]

The third problem follows directly from this, but, given that much of it has been well articulated by McCormick, here I only highlight the most salient points. The end result of Pettit's one-sided reading of Machiavelli and his adherence to an abstract notion of freedom as non-domination is the opposite of that which he intends: republican domination not republican freedom.[80] By contrast to Machiavelli, who proposes popular participation in a number of forms – competing for office with the *grandi*; class-specific advocacy institutions; institutional means to condemn officials and powerful individuals; direct deliberation and decision over legislation and political trials in assembly; and so on – Pettit undermines

[77] Pettit, *Republicanism*, p. 30. [78] *Ibid.*, pp. 284, 290 and *passim*.
[79] For more on this in particular and problems with the notion of 'common good' in general, see, amongst others, R. Geuss, *Public Goods, Private Goods*, new edn (Princeton University Press, 2003) and Fontana, 'Sallust and the Politics of Machiavelli'.
[80] McCormick, *Machiavellian Democracy*, pp. 146–169.

popular control and elite accountability by means of two main arguments that together bolster the aristocratic preferences of those in power and thus undermine the possibility of meaningful and true political conflict between at least two opposing dispositions or humours in society: that of the *popolo* and the *grandi*.

To begin with, Pettit indentifies, incorrectly, that the real problem with representative democracy is that its basis in brute election alone generates too much indirect rule (via representatives) and thus too much possibility for 'government policy making to be influenced by factors [other than those pertaining to] the common recognizable interests of people'.[81] To counteract this he endorses 'contestatory' means for challenging the policy outcomes of electoral politics by means of institutions such as judiciaries, tribunals, ombudsmen, upper houses and local boards, through which individuals and specific groups within the citizenry may contest, review or amend decisions made by the elected elite. He calls this the 'editorial' dimension of democratic politics as against the 'authorial' dimension reflected in electoral procedures, and it is through these 'editorial' processes, he claims, that individual citizens protest and denounce state policies that do not conform to their estimations of what constitutes 'common, recognizable interests' or interests that can be justified in terms of the public good or commonweal.[82] But not only does this rest, again, on a dubious assumption that common interests exist (and that in the process of political contestation individual citizens will be motivated by them and not some other set of more partisan interests), it also leaves this added component of participation as purely reactive and passive, something he acknowledges and even acclaims.[83] In doing so, he hails various extra-electoral institutions: judicial review for its role in assessing whether government action affecting citizen interests is legal or constitutional; various tribunals populated by experts who would hold public hearings and conduct official enquiries and offer recommendations in 'white' or 'green' papers; and the figure of the ombudsman, who according to Pettit is an agent of contestation to whom citizens could appeal to investigate and report on government 'maladministration' such as incompetence, neglect, corruption, abuse of power and so on.[84]

[81] Pettit, 'Democracy: Electoral and Contestatory', in I. Shapiro and S. Macedo (eds.), *Nomos XLII: Designing Democratic Institutions* (New York University Press, 2000), pp. 105–146, at p. 126.

[82] Pettit, *Republicanism*, p. 190; Pettit, *A Theory of Freedom*, pp. 159, 160–163; and, more recently full articulated, but basically unchanged, in Pettit, *On the People's Terms*, Chapters 4 and 5, and Conclusion.

[83] Pettit, 'Democracy: Electoral and Contestatory', pp. 139–140.

[84] *Ibid.*, p. 131; Pettit, *A Theory of Freedom*, p. 172. As he says in the latter source, they are not intended to have the power to enforce a remedy but they can secure compensation

Above and beyond the problem of the fact that these remain mere corrective or reactive mechanisms and thus may not be able to attain their own intended ends, unlike the Roman tribunes, they do not wield real political power or authority to initiate legislation or formally prosecute public and private citizens. Even more tellingly, however, is the fact that in the process Pettit does not give any of these institutions or agents a group- or class-specific character: the ombudsman, for example, does not have to be and is not normally a member of the very group whose interests she or he may attempt to protect from governmental abuse or domination by other groups and individuals.[85] This and two other characteristics of Pettit's figure of the ombudsman stand in sharp contrast to the idea of the tribunes of the plebs so strongly supported by Machiavelli: (a) Pettit refuses to empower any contestatory agent with a veto authority over government policy;[86] (b) and he does not conceive of common citizens who do not belong to the ranks of the socioeconomic and political elites as a discrete group entitled to their own ombudsman. On Pettit's account these extra-electoral agencies' main job is to contest public policy on behalf of individuals or minority groups who claim that common, recognisable interests have been violated or disregarded – which brings us back to the problem of whether these interests exist – while papering over the fact of competing and partisan interests in every real, existing polity.[87]

Part of the reason Pettit lauds these extra-electoral 'contestatory' institutions and agents is because he thinks 'depoliticizing democracy' is a good thing as by doing so polities can safeguard themselves from the 'popular irrationality' and 'moral fastidiousness' that characterises popular decision-making, and which may translate into poor policy. In these cases of seemingly normal, potentially poor political judgement on the part of citizenry, he suggests that elected officials should appoint special commissions to discuss and decide issues. They would thereby take decisions away from the direct influence of representatives and the populace and 'make decisions under conditions where considerations of the

and even a change of practice on the part of government. In *On the People's Terms*, citizens are given more formative power, but only to generate seemingly consensual norms for how government should enact policy – see Chapter 5 and p. 309 – but with little or no argument for how this is possible given the profound differences in power and advantage that characterise modern, complex societies.

[85] McCormick, *Machiavellian Democracy*, pp. 149–150.

[86] In fact he rules vetoes out of court in principle: see, for example, Pettit, 'Democracy: Electoral and Contestatory', p. 118.

[87] I return to this topic in greater detail, particularly with reference to group representation, in Chapter 5 below.

common good, and only such considerations, are very likely to rule'.[88] But is this possible, even for the most noble and virtuous of republican judges or philosophers? And is it even desirable, given Machiavelli's insights and the fact that some interests may come from groups with valid claims to being dominated and thus, as a result, the expressed dire need to defend partisan interests? The answers are not clear, but in endorsing expert commissions 'that operate at one step removed from parliamentary politics and two steps removed from the people', 'the republican philosopher', as McCormick calls Pettit (to contrast him with Machiavelli, an avowedly anti-philosophical republican political thinker), consistently substitutes 'reason' for 'popular judgement',[89] assuming that the avowed needs, interests and ideas of the common citizen are either distorted by their subjugated situation or simply wrong and are therefore dangerous guides for how best to proceed in politics. This disempowers the people, confuses popular opinion with popular judgement and fails to see two very important things stressed by Machiavelli. First, the people, he suggests, when at home or on the street often claim that they want one thing or another, but normally choose something quite different when they are formally empowered to deliberate and decide within an assembly. Second, even if this were not true, the *grandi*'s judgement alone cannot be trusted to lead to good policy outcomes given their inherent appetite for oppression, their tendency to disrespect the laws, and their general inclination to corruption and collusion; rather, it must always be supplemented or corrected by the legislative decisions of the *popolo* made within institutions kept free from the effects of the oppressive domination of the *grandi* and that carry meaningful legislative power. In fact, as discussed above, Machiavelli goes so far as to argue that, if appropriately empowered, the *popolo* will make the best judgements, better than princes and elites in general.[90] Pettit's philosophical alternative is therefore not a recipe for freedom as non-domination but in fact republican domination by aristocratic elites under the veil of 'reason', as is still the case in most representative democracies today.[91] Like a surprising proportion

[88] Pettit, 'Depoliticizing Democracy', pp. 53, 55.

[89] Pettit, *Republicanism*, p. 201 and *passim*; and, notwithstanding the title, Pettit, *On the People's Terms* – the only form of judgement in this latest contribution is, again, ever more complex forms of individual contestation and influence over government (hardly 'popular').

[90] McCormick, *Machiavellian Democracy*, pp. 160–163.

[91] It is no surprise, then, that when he re-articulates his republican account of freedom as a republican theory and model of democracy, in *On the People's Terms*, what emerges is a defence of many of the de-politicised institutions that prevail in representative democracies today – judicial review, the independence of central banks and so on – based on the same assumption regarding impartiality in the determination of the common good

of contemporary liberal and republican thinkers, Pettit is explicit about this: 'the democratic process is designed to let the requirements of reason materialize and impose themselves'.[92] Machiavelli inspires us to ask: whose reason, which interests?

In conclusion McCormick emphasises three important points common to the republicanisms of Pettit, Cicero, Leonardo Bruni and Francesco Guicciardini, amongst others: (a) the marginalisation of popular participation within the politics of republics; (b) the isolation of general election as the main means of appointing magistrates (rejecting lottery, election-lottery mixtures, class quotas for offices and so on); (c) the conferring on a set of socioeconomic and political elites wide deliberative and decisional prerogative over policy questions concerning the common good, with no real limits on elite judgement. He argues, moreover, that Machiavelli is a dissenter from this republican tradition specifically because he does quite the opposite: he proposes means of directly empowering the people to decide matters of public policy because history teaches us, he maintains, that it is socioeconomic and political elites, *not* common citizens, that constitute the greatest threat to liberty within republics. Rather than advocating the empowerment of the people's representatives to serve as the filter through which the people's views are 'refined and enlarged' – as suggested by republicans from Cicero to Madison – Machiavelli 'insists upon institutional arrangements through which the people themselves refine and enlarge their own opinions'.[93] McCormick is right about Machiavelli, but is he right to suppose that the direct adoption of these essentially Roman institutional arrangements, at least as re-interpreted by Machiavelli, constitutes the best means of securing freedom under modern economic and political conditions?

I will not provide anywhere near a full answer to this question here; that will come in Chapter 5 and the Conclusion. But it is worth noting McCormick's proposals at this point and why he thinks they will secure freedom in the United States of America. In short, he recommends the following changes: an abstract typology of regimes based on mixtures of lottery and election in nomination and appointment procedures of public officials; and a revived tribunate, combining elements of randomisation, wealth-exclusion and direct plebeian judgement – an elite-accountability institution to be amended to the US Constitution. In the end he says little of institutional substance regarding the first, except that lot and election

or public interest and the possibility of 'individualized, unconditional and efficacious' equality of influence (even in the face of the irreducible power relations, inequalities and hierarchies that he notes when discussing the real world of politics).

[92] Pettit, *Republicanism*, p. 201. [93] McCormick, *Machiavellian Democracy*, p. 168.

need to be combined, either to broaden the range of candidates who may then be subject to an election or to fill offices after candidates have been identified by generally elected nominators, in order to mitigate the dominance of socioeconomic elites over magistracies in representative democracies. These processes of randomisation will keep the wealthy and notable – who under normal electoral conditions use their resources to make themselves appear 'electable' – 'from dominating a popular government's offices and thereby from disproportionately determining the government's policies'.[94]

McCormick's idea of reviving the tribunes of the plebs imitates more or less exactly that which Machiavelli proposes for reinstituting a republic in Florence: the establishment of a People's Tribunate of fifty-one lottery-selected, non-wealthy citizens who would wield powers similar to those entrusted to the Roman tribunes for one-year non-renewable terms, who would discuss the business of the federal government, five days per week, six hours per day, and who would be empowered, upon majority vote in the course of their one-year term, to veto one piece of congressional legislation, one executive order, and one Supreme Court decision, call one national referendum over any issue they wish and initiate impeachment proceedings against one federal official from each of the three branches of government;[95] coupled with the less specific idea of a wealth ceiling on eligibility for the House of Representatives, and a wealth floor in the Senate. These institutional changes would ensure, McCormick argues, that national collegial bodies institutionalise the inevitable power disparities between *grandi* and *popolo*, making the latter more, not less, conscious of them and generating sufficient resentment and class consciousness to ensure a more vigorous surveillance of the upper house and its constituencies by both the lower one and the populace at large. Separate and class-specific institutions for wealthy and non-wealthy citizens 'flatter the *grandi* and aggravate the *popolo*, thus fostering the social dispositions necessary for a free and stable republic: a relatively loyal elite and an agitated, anti-elitest citizenry'.[96]

[94] *Ibid.*, p. 178.

[95] *Ibid.*, pp. 183–14. Those selected would receive various incentives to take up these posts, such as compensation for a full year's salary, guaranteed return of their jobs, free college tuition for their children and so on. Political and economic elites are excluded from eligibility: anyone who has held a major municipal, state or federal office for two consecutive terms in their life; and anyone whose net household worth equals or exceeds $345,000 (i.e. members of the wealthiest 10 per cent of family households as established by the most recent US census data). For criticisms and discussion of these and other parts of McCormick's proposals, see the symposium on his book in *The Good Society* 20.2 (2011).

[96] McCormick, *Machiavellian Democracy*, pp. 180–181.

This fascinating, radical proposal flies directly in the face of centuries of republican and liberal thought that has banked on the unitary notion of a 'sovereign people' with a 'common good' and the associated electoral and representative institutions that proliferate throughout the globe today. These ways of doing politics forged ahead, spurred on by the grand promises of the Enlightenment and the supposed long-term egalitarian affects of commercial society. In the process they not only ignored the obvious persistence of extreme inequality and class division but also seemingly disregarded the fact that these ideas and institutions may themselves be the main inducements to 'elite insularity and popular slumber'.[97] McCormick argues that, by contrast, the institutional reforms he sketches would facilitate popular control of elites *and* enhance citizen participation. They would do so, he claims, by empowering the people to block policy outcomes that they deem are against the interests of the commonweal, initiate legislation that governs the republic and sanction public officials who threaten the latter's welfare. They would thus serve as the popularly based 'guard of liberty', as discussed by Machiavelli, but here now transposed to the American republic.

I am not sure they would, for three main reasons that I can do more than list here but that I discuss at greater length in Chapters 4 and 5 below. First, as with Pettit's proposals that McCormick rightly gives short shrift, and despite the fact that he suggests otherwise when he claims that his proposals mean the people could initiate legislation, all or at least most of the purposes and powers he gives to the Tribunate of the People are intended to be purely reactive to the policies generated by their political representatives, the *grandi*, driven as they are by their disposition to dominate. In other words, his (and Machiavelli's) proposals do not go far enough: they don't really empower the *popolo* in the positive sense of that term; rather, they give them a kind of negative or negating power by simply moulding them into another institutional means to check the power of officials in particular and the elite in general. Second, they are therefore unlikely to produce real freedom because another check on legislative mechanisms will further hinder the capacity of modern government to act. An even more incapacitated government than is already the norm within representative democracies today is no recipe for freedom, not for most accounts of freedom, especially republican accounts like the ones discussed and proposed by McCormick. McCormick's goal of

[97] *Ibid.*, p. 181, with reference to, amongst others, J. Mansbridge, 'Rethinking Representation', *American Political Science Review* 97.4 (2003), pp. 515–528; and A. Przeworski and M. Wallerstein, 'Structural Dependence of the State on Capital', *American Political Science Review* 82.1 (1988), pp. 11–29.

freedom through popular empowerment is, ironically, only achievable if we accept representation as an all-encompassing phenomenon in economic and political life, and only then thereby find ways in which group or class needs and interests can *determine* policy not simply *block* it by means of veto and so on, as I argue in Chapter 5 below. Finally, McCormick's solutions are unrealistic because they assume that political selection by lot could ever gain legitimacy under modern conditions. Today lotteries have different, less weighty roles.

Conclusion

In this chapter I have interrogated the ideas of five important figures from the republican tradition broadly conceived: Arendt, Machiavelli, Constant, Pettit and McCormick. I show how they all posit distinct ways of overcoming the now predominant idea that freedom is only possible in a 'private sphere' free from politics, and argue that, despite this, none captures the full, distinctive nature of modern freedom. Machiavelli and two divergent interpretations of his thought loom large. However, so too does Constant, somewhat against the grain, for despite the fact that Constant may have thought that Machiavelli's account of freedom was very close to an ancient conception of freedom, the two otherwise very distinct thinkers end up at a very similar place: they extol the importance both of being free from undue interference and insecurity and the importance of securing this freedom and civic virtue via active involvement in the political agencies of one's community. As I argue, there is therefore something appealingly 'modern' about Machiavelli's account of freedom, despite its ancient and early modern roots. He emphasises public political activity mainly for its *instrumental* value in achieving other aspects of freedom. Freedom, for Machiavelli, was not ultimately about the pursuit of public virtuosity, as Arendt would have us believe, but about acting within laws that safeguard institutions that avoid domination of one group or class by another *and* do this by formalising class conflict in various deliberative, electoral and legal norms and institutions. In the last part of the chapter I contest Pettit's republican proposals as applied to modern politics, partly by means of this more class-oriented interpretation of Machiavelli and partly with reference to McCormick's own radical proposals for 'machiavellian democracy' under modern, American conditions. I conclude by outlining why I think both McCormick and Machiavelli don't go far enough in their proposals for securing the institutionalisation of class conflict as necessary for freedom: their empowerment of the people is insufficient to counter the domination of elites not because they give the people insufficient power but because the manner in which they empower

them remains mostly reactive and thus lacking in real political power. As I argue in most of the rest of this book, real empowerment requires taking all forms of representation seriously, while enabling popular control over representatives at various levels, especially regarding the articulation and response to existing needs and the implementation of macroeconomic policy.

3 Power, domination and human needs

'Power' in English, 'puissance' and 'pouvoir' in French, 'potenza' and 'potere' in Italian and 'potencia' and 'poder' in Spanish and Portuguese all derive from the Latin verb 'posse' ('to be able to, be capable of, or to have the strength to').[1] And, in line with their common philological root, in the various vernaculars 'power' is linked directly to ability or capability, that is, the ability or capacity to do something or act.[2] In the broadest sense in English 'power' designates any ability to do something, including abilities of non-human agents. So we speak of the 'power of an engine or a machine', the 'power of speech' or 'the power of the West'. In English we also use 'power' to mean the ability of an individual to exercise his or her power to bring about a result. For example, as President of South Africa Thabo Mbeki had the power to veto the public roll-out of HIV anti-retrovirals and thus severely retard his government's response to the spread and effects of HIV/AIDS. In the analytical tradition it is common to find a kind of amnesia about the fact that the power of 'man over man' is dependent upon accepted *relations* of command (*Befehl*) and obedience, or what Max Weber calls *Herrschaft* ('domination' or 'rule').[3]

[1] Some political philosophers confuse their Latin and Italian: see P. Morriss, *Power: A Philosophical Analysis* (Manchester University Press, 2002), p. 9, where he maintains that 'power' comes from the Latin 'potere'; and, following him, A. Allen, *The Power of Feminist Theory: Domination, Resistance, Solidarity* (Boulder, CO, and Oxford: Westview Press, 1999), p. 127, though otherwise very illuminating.

[2] Though French, Italian and Spanish all have two terms for just one term in English. In French, for example, 'puissance' designates 'something lasting and permanent', while 'pouvoir' 'merely denotes the action'. R. Aron, '*Macht*, Power, *Puissance*: Democratic Prose or Demoniacal Poetry', in S. Lukes (ed.), *Power* (New York University Press, 1986), pp. 253–277. The same is true of 'potenza' and 'potere' and 'potencia' and 'poder'.

[3] *Macht* (or 'power') is the fundamental concept in Weber's account and is defined as the ability to realise one's will against opposition (for more, see below). In contrast to Weber, who saw that this may involve the power to do something and the power of 'man over man', the analytical tradition can become caught up in an overly strict distinction between 'power to' and 'power over' (see, e.g., Morriss, *Power*). In reality these are normally indistinguishable components of the same power to bring something about – for example, Mbeki had both the power to veto and the power over his fellow citizens as a consequence of the inter-relations between power, command and obedience. *Herrschaft*

In this chapter I follow Weber in distinguishing 'power' from 'domination', but show how it is possible, by eliciting some of Michel Foucault's insights, to move beyond Weber's account and provide a more realistic picture of both the distinction *and* relation between 'power' and 'domination'. In this way the potential for domination that power relations give rise to can be kept firmly in focus. Foucault, however, does not take us all the way. Although he advances significantly on thinkers such as Arendt, Rawls, Habermas and Pettit, ultimately Foucault provides nothing more than a series of illuminating hints. I argue though that he takes us in the right direction, towards practical as opposed to merely theoretical means of distinguishing between domination and non-domination and assessing political institutions in terms of whether they enable or disable citizens to overcome domination. To continue to blaze his trail, I maintain here, it is best to combine his insights with two related conceptions of politics, power and domination: (a) a genealogical, inter-subjective and contextualist account of the determination and satisfaction of human needs;[4] and (b) the thought of realistic thinkers such as Machiavelli, Condorcet and Geuss, who unabashedly conceive of politics as being ultimately about agency, power and interests, and the relations between them and thus, by extension, which institutions would empower citizens not only to identify states of domination but to overcome them. The pivotal relations between agency, power and interests are captured best by Lenin's famous formula 'Who, whom?', recently extended by Geuss to 'Who <does> what to whom for whose benefit?'[5] In other words, politics involves judgements within a particular concrete context of power relations about priorities, benefits and penalties and the needs and interests they would satisfy.[6] It is from these conceptions of politics, power, needs and interests that I draw a means of bolstering Foucault's insights regarding domination and empowerment. I defend an account of how needs and interests form the basis of determining, on a continuum, the extent to which relations of power generate states of domination; this is the first step in a process

can be rendered 'rule' or 'domination' because, for Weber, it implies the fact of command (*Befehl*) and obedience – that is, the one who imposes his will resorts to commanding and expects obedience, and arguably both 'rule' and 'domination' require this (but see below).

[4] This may surprise many, given Foucault's avowed mistrust and deep scepticism for concepts such as 'needs' and 'interests'. But this scepticism was directed towards a universalising humanist account of human nature and needs, which my account of needs avoids. See Chomsky and Foucault, 'Human Nature', p. 130. This interview originally appeared just prior to the original publication of *Discipline and Punish*, in F. Elders (ed.), *Reflexive Water: The Basic Concerns of Mankind* (London: Souvenir Press, 1974).

[5] Lenin, *Materialism*; and Geuss, *Philosophy and Real Politics*, pp. 25ff.

[6] Hamilton, *Needs*, pp. 1–20, 140–153.

that ends in the book's concluding chapter with a set of institutional changes that would empower citizens in a number of positive and negative ways.

Power and preferences

Weber, as ever, leads the way. In his attempt to pin down the concept of power, he conceives of it in a manner very similar to what later becomes the norm in analytical political philosophy. For Weber, power is the ability to realise one's will even against opposition (regardless of what the ability depends on).[7] Similarly, for Bertrand Russell my power is my 'ability to get what I want'.[8] Raymond Aron too follows suit.[9] In other words, driven by a desire to provide a sharply focused account of 'power' these three otherwise very different thinkers all conceive of it in the same way – that is, in terms of an individual's or group's ability to get what she or he or they want; that is, their ability to realise their preferences. This is helpful for understanding one aspect of 'power' as it emphasises one common characteristic of the exercise of power: that it is often used in a direct way by individuals or groups to overcome some distinct visible or tangible resistance. The progressive politician, for example, can get his way despite the resistance of tradition, received opinion and habit. However, this is far from the whole story. As Lukes has famously argued, power can also be used more indirectly to shape opinions, attitudes, desires and interests, either by making certain practices, institutions and beliefs seem 'natural', or by influence, persuasion, sheer coercion or manipulation (by ensuring, for example, that some possibilities are kept off the agenda).[10]

More specifically, there are four main problems with this originally Weberian way of understanding power and all of them rest on a common series of unrealistic assumptions regarding human desires, wants and preferences. First, because of the reference to what some human agent wants or wills, power in this sense designates specifically human abilities; yet, I may get what I want or desire without having any 'power', in any sense of that term. I may have been, for example, systematically lucky; I might get what I want simply by virtue of my luck rather than 'my

[7] M. Weber, *Economy and Society*, Vol. I, ed. G. Roth and C. Wittich (Berkeley: University of California Press, 1978), p. 53.
[8] B. Russell, *Power: A New Social Analysis* (London: Allen and Unwin, 1938), pp. 25–34.
[9] Aron, '*Macht*, Power, *Puissance*', p. 257.
[10] S. Lukes, *Power: A Radical View*, 2nd edn (New York: Palgrave Macmillan, 2005); Lukes, 'Introduction', in Lukes (ed.), *Power*, pp. 1–18.

ability to get what I want'.[11] Second, even if we discount luck (an act of folly, but just for the sake of argument here), the converse is also true: I may have a lot of power without necessarily getting what I want or desire. Life, literature and history are replete with examples of this phenomenon: powerful husbands whose wives and children repeatedly thwart their commands or wishes through the use of subtle wisdom, avoidance or persuasive influence; or Hitler, who despite his great deal of power, did not get what he wanted, lasting hegemony over Central Europe.[12] It is a mistake therefore to think that the powerful person has no or little power because they sometimes do not get what they want; rather their power, at times, can be overcome or avoided, depending on circumstances and social and political arrangements.

These sorts of mistakes arise because of a strong tendency in the humanities and social sciences to adhere to a Humean (and, latterly, utilitarian and rational-choice) way of thinking about human wants and preferences: that human wants are inherently atomistic; that is, that they all stand on the same level as each other, only differing from one another in intensity and with respect to a particular object in the external world. This is misleading. In reality, human agents have a set or system of wants that is structured, organised and nested. My wants are structured in the sense that I desire various things as means to various further things; and they are nested in the sense that my wanting them to some extent depends on my having certain beliefs about how they relate to other things I want.[13] This non-atomistic nature of human desire is exemplified both in everyday action and political judgement. I may want to save money *in order to* live a life of greater ease and happiness, but the very act of doing so and the fluctuations in inflation and interest rates may produce the opposite effect: an unhappy life of miserly abstemiousness and constant frustration in the face of the forces of the market. As is the case with the powerful husband and Hitler, my power is not dependent on whether or not I fail to get what I want; I may have full power over my financial choices, and yet because my initial desire is linked to a mistaken belief

[11] B. Barry, 'Is It Better to Be Powerful or Lucky?', in *Democracy and Power* (Oxford University Press, 1991); B. Williams, *Moral Luck: Philosophical Papers, 1973–1980* (Cambridge University Press, 1981).

[12] I borrow this point, the Hitler example, and many of the points in the next few paragraphs from Geuss, *History and Illusion*, pp. 23–26.

[13] M. de Montaigne, 'On the Uncertainty of Our Judgement', 'On the Inconsistency of Our Actions' and 'On Experience', in *The Complete Essays*, ed. and trans. M. A. Screech (London: Penguin, 1993 [1580]), pp. 314–320, 373–380, 1207–1269; Geuss, *History and Illusion*; Hamilton, *Needs*, pp. 84–86; and C. Sunstein, 'Democracy and Shifting Preferences', in D. Copp, J. Roemer and J. Hampton (eds.), *The Idea of Democracy* (Cambridge University Press, 1993).

about human nature or the forces of the market, my power does not translate into my achieving what I want – a life of ease and happiness.

This point is quite distinct from Plato's counterintuitive and implausible argument in the *Gorgias* that a tyrant really has no power because to have power is to be able to get what one *really* wants: everyone (by general agreement) really wants to be happy, and (for Plato) to be happy is to be in a harmonious psychic state, and if, as Plato assumes, tyrants are never in a harmonious psychic state, then despite the fact that tyrants can do any number of things, they do not have real power. This argument then moves to what for any realistic and unbiased reader is a self-evidently false conclusion: that only the good person, and perhaps only the philosophically enlightened good person, has any real power at all.[14] The real reason the powerful husband, Hitler or miserly me fail to get what we want is not because we are not good or do not have power (though this may be true), but because we have miscalculated something or some set of things about the real world either through the fact that we hold an incorrect belief or we have misconstrued the relation between that belief and other things we believe or want (or sometimes simply because all the relevant aspects of the world for the case in question are beyond our comprehension or control).

The third major problem with Weber's, Russell's and Aron's accounts of power as the intentional action of a human individual or a group is that they assume incorrectly that human agents always have clear, conscious and fully articulated preferences. (I focus here on *individual* desires, preferences and so on, but given the complexities of groups, and the fact that they are composed of individual human agents, *a fortiori* what I have to say applies to groups too.) There may be some situations in which individuals involved in a relation of power do have clear wills, desires or preferences about some state of affairs. Suppose I rule a state with massive military might relative to that of my neighbouring state and I happen to covet their oil deposits; in this instance I may be able to invade them with relative ease and realise my will whatever their resistance. In most cases, however, people involved in a relation of power will have inchoate, contradictory or unformed preferences.[15] And the related, fourth problem is that, although these accounts may fit for situations in which there are two clearly defined individuals or groups, each of which has a clear will, desire or preference, to assume that this will always be the case is to

[14] See Plato, *Gorgias, Menexenus, and Protagoras*, ed. M. Schofield and trans. T. Griffith (Cambridge University Press, 2010 [*c.* 380 BCE]), pp. 1–114; Geuss, *History and Illusion*, pp. 23–24.

[15] The classic account of which can be found in Montaigne, 'On Repenting', in *Complete Essays*, pp. 907–921.

rest one's account on a rather crude conception of power and social and political relations.

Preferences are therefore normally formed within and by a given context of power.[16] And, moreover, this is true whatever one's position in the power relation – that is, it is just as true of the powerful as it is of the powerless, and all positions between these extremes. As the ruler of the powerful state just discussed one of the reasons I covet – that is, develop a preference for – my neighbour's oil is because I know that I could get my hands on it without too much effort. Or, conversely but of similar form, if I am the weaker party in any relation of power I will tend to adapt my preferences in order to avoid being frustrated or to avoid other related forms of 'cognitive dissonance'. This is normally called 'adaptive preference formation' or the 'trimming of desires to fit circumstances'. In both cases preferences are formed by or at least within a given set of power relations: if one is the weaker party one has to 'trim' one's desires, and if the stronger then one can easily be led to amplify them. So, in both cases, it could be argued that one is involved in adapting one's preferences to the circumstances, or what has become known as 'adaptive preference formation'.[17] Another form of these phenomena is the *anticipation* of a life lived within a power relation in which certain things are expected of you, in a manner equivalent to domination (about which more below): recognising that motherhood and highly demanding careers do not mix well (at least under existing social and political conditions), many girls who expect to be mothers at some point in their lives lower their career expectations.[18]

Even this account of nested, muddled and incomplete preferences, often determined by contexts of power, is not the full story. Our preferences are also subject to complex hierarchies of preferences and values, variously called 'second-order preferences', 'human needs' or 'human rights', amongst other things. These can be antecedent wishes I have about certain of my desires or 'first-order preferences', or they can be what I and other members of my social or political community have

[16] '*[P]references are constructed, rather than elicited, by social situations*, in the sense that they are very much a function of the setting and the prevailing norms' [emphasis in original]. C. Sunstein, *Free Markets and Social Justice* (Oxford University Press, 1997), p. 38.

[17] For the original accounts of 'adaptive preference formation' and 'cognitive dissonance', see J. Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge University Press, 1985), Chapter 3, and L. Festinger, *A Theory of Cognitive Dissonance* (Stanford University Press, 1957); and for more on these and other phenomena, see Hamilton, *Needs*, pp. 84–86 and Sunstein, 'Democracy and Shifting Preferences'. The phrase 'the trimming of desires to circumstances' comes from Lukes, *Power: Radical*, 2nd edn, p. 134.

[18] S. M. Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989), pp. 142ff.

intentionally or unintentionally pre-determined will govern my or our future desires, preferences and choices.[19] Humans do this all the time: if, like me, you enjoy the pleasures of good food and wine particularly in the company of others, and you prefer this far above the rigours of periodic exercise, you might still be able to persuade yourself over time and as a result of experience that you can enjoy the former more after a little of the latter. Thus I can impose upon myself a 'second-order preference' that may be influenced by other desires or needs – such as my desire to stay relatively healthy – that will pre-determine how I will respond in any given situation of choice regarding, say, wine or exercise and that I would not otherwise have were the choice placed directly before me without prior preference 'ordering'. The same is true of politics: constitutions are prime examples – they pre-commit citizens to various choices and values, either by direct preference (explicit consent) or, in most cases, the choices of our forebears; but in both cases human preferences and value are enshrined in a legal document that forms the background pre-conditions for our current economic and political choices.[20]

Moreover, humans have what have been called '*prima facie* preferences' and 'all-things-considered preferences' – that is, preferences that one may have about a feature of a situation if these features are presented abstractly and in isolation as compared to those one would have when one has taken into account *all* aspects of a given concrete situation.[21] So, you wouldn't be far wrong if you said that my '*prima facie* preference' always is the pleasures of good food, wine and company above other options (such as spending an evening at home or going for an evening jog), whereas in a specific concrete context, where the choice is between staying at home, and dining and drinking in poor company, you would be wrong if you said I would opt for the food, wine and company; that is, in this latter concrete situation my 'all-things-considered' preferences would be to stay at home or go for a jog.

The most important point, though, is that even if I was a very unusual human and had fixed, well-formed and non-contradictory *prima facie* preferences, it seems plausible to suggest, as I have, that the existence of enduring relations of power may skew these *and* my all-things-considered preferences. This is the case partly because power relations will affect my and my society's conceptions of my and our second-order preferences,

[19] See H. Frankfurt, 'Freedom of the Will and Concept of a Person', in *The Importance of What We Care About* (Cambridge University Press, 1988); D. Braybrooke, *Meetings Needs* (Princeton University Press, 1987); Hamilton, *Needs*.

[20] See also S. Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (University of Chicago Press, 1995).

[21] Geuss, *History and Illusion*, p. 26.

needs and rights. In other words, power in politics is not only about the direct power that a particular person, group or agency may or may not have *over* another party. It is also about the effects that perceived power differentials have on the conduct and preference formation of these parties; the capacity these parties may have to resist this direct power; and the extent to which either party may be able to set the agenda – that is, determine which means, ends, values, interests and opinions are allowed on to the agenda.[22] In other words, in concrete situations in which I feel powerless, my conception of my needs and rights may significantly determine my various preferences; and in situations in which only certain kinds of needs and preferences, say, are deemed permissible or desirable, it is likely that I will experience these as needs and preferences. Or, in a register more in tune with the work of Foucault and the many thinkers influenced by him, such as Judith Butler, my very subjectivity, the very capacity I have to form preferences and needs, emerges, and depends upon, relations of power; that is, the subject is 'constituted' through subjection (*assujettissement*) to power.[23]

This brings us to the Foucauldian account of power, which provides the possibility for a view of power that gets us well beyond the tendency to think of a power as the *property* of persons or the intentional action of a human individual or group of human individuals with fixed, atomised and fully articulated preferences.[24] Foucault's structural analysis of relations of power is an account of how the exercise of power is not normally the result of intentional human action, but rather a complicated combination of long histories of institutional effects, often unintended, and the conditioned abilities of individuals to do specific things.[25] Power is therefore a relation rather than a substance, a resource or a property of persons.[26] Related to this, and particularly in later work, he emphasises

[22] Lukes, *Power: Radical*, 2nd edn; Geuss, *Philosophy and Real Politics*.

[23] See Butler, *Psychic Life*; L. Althusser, 'Ideology and Ideological State Apparatuses', in Althusser, *Lenin and Philosophy and Other Essays*, trans. B. Brewster (London: New Left Books, 1971), p. 169.

[24] 'Power is not a substance . . . Power is only a certain type of relation between individuals.' M. Foucault, '"Omnes et Singulatim": Toward a Critique of Political Reason', in *Essential Works of Foucault*, Vol. III: *Power*, ed. J. D. Faubion (London: Penguin, 2002), pp. 298–325, at p. 324. The tendency to think of power as the property of persons often, then, leads to what Frank Lovett labels the 'imbalance of power conception of domination', found expressed best in J. S. Mill, *The Subjection of Women*, in *On Liberty and Other Essays*, pp. 471–582: Lovett, *A General Theory of Domination and Justice* (Cambridge University Press, 2010), pp. 55–123. I agree with Lovett's criticism of this conception of domination but, as will become obvious, I think he is wrong to include Foucault in the list of those that propound it.

[25] Foucault, *Discipline and Punish* (New York: Penguin, 1991 [1975]).

[26] Foucault, 'Omnes et Singulatim', p. 324.

the way in which the compliance to power does not require the active 'exercise' of power by another individual or agent. Prevailing norms, values and institutions are often sufficient to give individuals good reason to discipline their own actions. Many feminist thinkers have used this way of thinking about power to explain convincingly the way in which women, for example, practise 'discipline on and against their bodies' – that is, that their 'self-surveillance is a form of obedience to patriarchy'.[27] However, if women are thereby dominated by men or patriarchy, is this domination of the same form as the way in which people may be dominated, for example, under conditions of slavery, serfdom or apartheid?

To answer this I will now turn to domination and how certain power relations do and do not create the conditions for it. But, before I do, it may be helpful, first, to summarise the account of 'power' with which the foregoing critique leaves us. Although it is probably crude to treat power as a single uniform substance or relation irrespective of context and referent,[28] it is possible to begin with and advance on Hobbes's definition that 'the POWER *of a man*' is 'his present means, to obtain some future apparent Good'.[29] More specifically, if we begin by combining Foucault's and Lukes's accounts, it is possible to identify power as: (a) connected to general concepts such as *ability* or *capacity* to do;[30] (b) a relation between rather than a resource or a property of persons; (c) the socially determined abilities of agents to bring about significant effects, by furthering their own interests or affecting the interests of others, either positively or negatively.[31]

There are a variety of qualitatively distinct kinds of power: *coercive power*, which you may have as a result of being stronger than me; *persuasive power*, which I may have by virtue of my special talent for defending a cause with passion and rhetorical skill; *collective power*, which someone might have as a result of their ability to attract support from others by virtue of their wisdom, charisma; and so on.[32] But I will argue in what follows that in all these kinds of power what matters most are the

[27] For example, S. Bartky, *Femininity and Domination* (New York: Routledge, 1990), p. 80.
[28] For a summary of the debate regarding the essential contestedness of power, see Lukes, *Power: Radical*, 2nd edn, pp. 61–69.
[29] Hobbes, *Leviathan*, Chapter 20, p. 62.
[30] Power is best 'construed as connected to general concepts like "ability to do"' (Geuss, *Philosophy and Real Politics*, p. 27); 'power is a dispositional concept, identifying an ability or capacity, which may or may not be exercised' (Lukes, *Power: Radical*, 2nd edn, pp. 63, 109).
[31] See Lukes, *Power: Radical*, 2nd edn, p. 65. In other words, the 'good' in Hobbes's account can be specified in terms of interests and in relation to others, as suggested by Lukes.
[32] Geuss, *Philosophy and Real Politics*, p. 27.

existing power relations, the prevalence of domination and the possibility of inter-subjective and genealogical determination of needs and interests. In other words, Foucault's account of power as a relation needs to be grounded in a substantive account of needs and interests, but not in the normative manner proposed by Lukes's account of interests. But, rather, in an inter-subjective and genealogical politics of needs, which provides a unique way of distinguishing between power relations that are dominating and those that are non-dominating. The next step in the argument therefore moves us away from Lukes's latest interventions on power.

Power and states of domination

Foucault not only departs from the norm as regards power but also with respect to domination. He links domination and its resistance to institutional empowerment. He argues convincingly that power exists only in action, and it is not a simple dyadic relationship between those with and those without power; rather, power involves structures of agents and actions that mediate between two agents in a power relation. From his account of 'disciplinary power' in *Discipline and Punish* right through to the third volume of the *History of Sexuality*, Foucault analyses the emergence of specific techniques or mechanisms of power in certain domains of social life that are particular to the modern era and that affect the everyday action and attitudes of individuals.[33]

Moreover, in each case – in both his discussions of penal and sexual power – he emphasises the fact that power is both repressive and productive, that the practice of confession produces, for example, discourses of sexuality even as it attempts to repress them. In order to understand complex social functions such as punishment and the production of sexuality, he maintains, 'we must cease once and for all to describe the effects of power in negative terms: it "excludes", it "represses", it "censors", it "abstracts", it "masks", it "conceals". In fact, power produces; it produces reality; it produces domains of objects and rituals of truths.'[34] Rather than simply prohibiting, censuring and restricting, power incites,

[33] He describes his own work in exactly these terms: 'In thinking of the mechanisms of power, I am thinking rather of its capillary forms of existence, the point where power reaches into the very grain of individuals, touches their bodies, and inserts itself into their very actions and attitudes, their discourses, learning processes and everyday lives.' Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–77* (Brighton: Harvester, 1980), p. 39.

[34] Foucault, *Discipline and Punish*, p. 194.

provokes and induces.[35] He re-emphasises the repressive and productive aspects of power in his account of 'bio-power' in *The History of Sexuality*. In the classical era, for example, the sovereign wielded the 'power of life and death' over his people.[36] In the modern era, by contrast, power as the right of death exists side by side with a 'life-administering' power, which 'exerts a positive influence on life', endeavouring 'to administer, optimize, and multiply it, subjecting it to precise control and comprehensive regulations'.[37]

With even more nuance, Foucault then also shows well how this new form of power brings with it its own 'repressive' problems. The modern state, he argues, is both 'individualizing and totalitarian' – that is, the effects of the modern state are individualisation and totalisation.[38] He traces this in the rise of what he calls 'pastoral power', the leader as shepherd to his flock, and then later in the form of 'reason of state', where control of populations and individual behaviour became vital for the maintenance and strength of the state. The modern state has involved the 'development of power techniques oriented toward individuals and intended to rule them in a continuous and permanent way'.[39] The state simultaneously centralises power for reason of state, to maintain and strengthen the power of the state, and 'polices' the populace to ensure *individual* well-being, good conduct and so on.[40] The 'police' function is a central component of reason of state, he maintains, as it is an important means of ensuring the state's strength.[41] The function of the police was: (a) to provide the city with adornment, splendour and form – its perfection, strength, vigour; and (b) to foster working and trading relations between men, as well as aid and mutual help. The state, in short, must provide 'communication' between men, otherwise their lives would be precarious, poverty-stricken and perpetually threatened. So, the central paradox of the police is that it has 'to develop those elements constitutive of individuals' lives in such a way that their development also fosters the strength of the state'. In other words, 'as a form of rational intervention wielding political power over men, the role of the police is to supply them with a little extra life – and, by so doing, supply the state with a little extra strength. This is done by controlling "communication",

[35] Allen, *Feminist Theory*, p. 34.
[36] M. Foucault, *The Will to Knowledge: The History of Sexuality*, Vol. I, trans. R. Hurley (London: Penguin, 1998 [1976]), p. 136.
[37] *Ibid.*, pp. 136–137. [38] Foucault, 'Omnes et Singulatim', p. 325. [39] *Ibid.*, p. 300.
[40] Thus, what he calls its original Hebrew and Christian 'pastoral' function, the leader as shepherd, becomes transformed in the seventeenth and eighteenth centuries into police functions that monitor morals, production, occupation, well-being and so on, all vital components of 'reason of state': *ibid.*, pp. 317–323.
[41] *Ibid.*, p. 317.

that is the common activities of individuals (work, production, exchange, accommodation).'[42]

The way in which Foucault sees both the repressive and productive sides of power is particularly relevant to his discussion of subjection (*assujettissement*): individuals are both *subject to* the constraints of social relations of power – that is, *subject to* a power that is being exercised over them – and simultaneously enabled to take up the position of *a subject* in and through these constraints or operations of power.[43] Power therefore enables the constitution of subjects and constrains the options, choices and preferences of those subjects at the same time. Foucault's genealogy of disciplinary power, both in terms of penal power and the 'bio-power' of the modern state, provides an account of how individuals are subjected to normalising disciplinary practices and are thereby transformed into a certain kind of subject – a docile body. As Foucault puts it, '[d]iscipline "makes" individuals; it is the specific technique of a power that regards individuals both as objects and as instruments of its exercise'.[44] At the same time, individuals are enabled to take up the position of a social and political subject by disciplinary power, which creates various subject-positions and incites individuals to adopt them and act from within them. Disciplinary power constrains by enabling, and enables only insofar as it constrains.[45]

In other words, Foucault clearly provides a very distinct account of power to that found within traditional social and political philosophy. He does not view power as a resource or as the substance or property of individual or group intentional human action; rather, power 'is only a certain type of relation between individuals'.[46] However, it does not follow from this, as some have suggested, that Foucault thereby accepts power relations in all their forms. Even if Foucault thinks that power

[42] *Ibid.*, pp. 317, 319, 322. These ideas are developed from the work of Louis Turquet de Mayerne and Johann Heinrich Gottlob von Justi. According to the latter in particular, the *Polizei* therefore have a positive task; and he distinguishes this from *Politik*, or *Die Politik*, which is a negative task consisting in the state fighting against its internal and external enemies. He thus draws up a *Polizeiwissenschaft*, the control of territory, resources, populations, towns and so on using 'statistics' and the power of the state. This has distinct echoes in Hegel's account of the role of the police in *Elements of the Philosophy of Right* and, some argue, in the way welfare systems function within modern states.

[43] Foucault, 'Two Lectures', in *Power/Knowledge*, pp. 97–98; Butler, *Psychic Life*; and Allen, *Feminist Theory*, pp. 34, 36.

[44] Foucault, *Discipline and Punish*, p. 170.

[45] Allen, *Feminist Theory*, p. 36; *cf.* N. Fraser, 'Foucault on Modern Power: Empirical Insights and Normative Confusions', in *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (Cambridge: Polity, 1990), p. 18.

[46] Foucault, 'Omnes et Singulatim', p. 324. Or, as Allen puts it in *Feminist Theory*, p. 37, he 'understands power as a mobile set of force relations that operate throughout the social body'.

is omnipresent and a requisite for subjectivity and thus freedom, he is keen to distinguish between different kinds of power relations: 'Power relations are possible only insofar as the subjects are free . . . [however,] [i]n a great many cases, power relations are fixed in such a way that they are perpetually asymmetrical and allow an extremely limited margin of freedom.'[47] This stresses the fact that he would like to distinguish between different types of power relations, in particular power relations that are more and less enabling of freedom. Or rather, as he puts it, at one extreme there exist power relations that enable freedom, or what he calls the 'strategic games between liberties', and at the other there exist power relations that constitute states of domination; and in between there exist practices or 'technologies of government' that often enable or reinforce domination; and '[t]he analysis of these techniques is necessary because it is very often through such techniques that states of domination are established and maintained. There are three levels to my analysis of power: strategic relations, techniques of government, and states of domination.'[48]

Foucault makes a similar, very convincing, if slightly more trenchant claim earlier in his career, when he says, 'I believe that political power also exercises itself through the mediation of a certain number of institutions which look as if they have nothing in common with the political power, and as if they are independent of it, while they are not.' For example, the family, the university, all teaching systems, institutions of knowledge and care, such as medicine, particularly psychiatry, 'are made to maintain a certain social class in power; and to exclude the instruments of power of another social class'. The real political task, then, he argues, is to criticise the workings of institutions 'in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight against them'.[49]

For Foucault, then, this relational and 'productive' account of power is proposed both as a better means of understanding power and a more felicitous way of overcoming power relations that generate domination. Yet, how is it possible to distinguish 'power relations understood as strategic games between liberties', 'techniques of government' that can reinforce domination, and 'states of domination' themselves? And how are citizens able to act themselves to resist power relations that generate and maintain domination?

[47] Foucault, 'The Ethics of the Concern for Self as a Practice of Freedom', in *Essential Works of Foucault 1954–1984*, Vol. I: *Ethics*, ed. P. Rabinow (London: Penguin, 2000), p. 292.

[48] *Ibid.*, p. 299. [49] Chomsky and Foucault, 'Human Nature', p. 130.

Foucault offers a general answer to the first question. Domination exists, he maintains, where 'the relations of power are fixed in such a way that they are perpetually asymmetrical and the margin of liberty is very limited'. And he goes on:

> One sometimes encounters what may be called situations or states of domination in which the power relations, instead of being mobile, allowing the various participants to adopt strategies modifying them, remain blocked, frozen. When an individual or social group succeeds in blocking a field of power relations, immobilizing them and preventing any reversibility of movement by economic, political, or military means, one is faced with what may be called a state of domination.[50]

Foucault here is expressing an often forgotten fact of social and political life: there exist different forms and grades of domination. Freedom and domination are part of the same spectrum or continuum, and normally, on this continuum, they have an inverse relation to one another. So, for example, at one extreme there is the condition of slaves, women and metics in ancient Greek thought and practice, over whom domination was so entire that they scarcely could be said to have the status of 'subjects' at all. This is 'domination as entire, or close to entire, determination'.[51] And Foucault is clear that we can speak of the 'freedom' of those who live under these conditions in only very narrowly circumscribed ways. Most of the time, most of those subject to this form of domination will have little hope of resisting it; in fact, in most cases, they may not even identify the need to resist it. Those that do succeed against all the odds to resist it achieve a degree of freedom. Then, a little further towards the middle of the spectrum is the example of the condition under which many black South Africans lived within apartheid South Africa: they had a small degree of everyday freedom, but very little meaningful economic and political freedom.[52] Then, one could argue, somewhere closer to the middle of the spectrum or continuum lies the condition of women under current conditions of patriarchy in the West, where there exists full formal freedom, but existing norms, traditions, institutions and practices maintain a situation in which women often remain dominated. They may in some particular instances be dominated directly by specific men, but normally their state of domination is experienced through the practices

[50] Foucault, 'Concern for Self', p. 283.

[51] R. E. Flathman, *Freedom and Its Conditions: Discipline, Autonomy and Resistance* (London and New York: Routledge, 2003), p. 13.

[52] For evidence and discussion of the fact that not every moment and corner of one's existence as a black person living in a township was completely determined by the apartheid state, see J. Dlamini, *Native Nostalgia* (Johannesburg: Jacana, 2010). The apartheid state simply did not have the power or means to discipline and determine every aspect of people's lives.

by means of which they discipline their own actions and subjectivity in light of existing constraints and expectations.

As regards an answer to the second question – that is, how can citizens identify and resist power relations that generate and maintain domination – Foucault and many of his followers give one of two kinds of answers, both of which are illuminating and yet inadequate. First, they suggest that because all power relations are both enabling and constraining – that is, they simultaneously constrain options and generate subject-positions from which individuals can resist the very power relations that generated their subjectivity – the space or possibility will always exist for resistance against the disciplining forms of modern power. Or, as Judith Butler puts it, '[w]here conditions of subordination make possible the assumption of power, the power assumed remains tied to these conditions, but in an ambivalent way; in fact, the power assumed may at once retain and resist that subordination'.[53] While illuminating in most cases, this is not true of all forms of domination, especially of those that are equivalent to entire, or close to entire, determination, as was the case of women and slaves in Antiquity, who had little or no agency, and who were therefore not normally involved in Butler's 'performative acts'; rather, they were near complete 'objects' of the actions and agency of others and the laws and institutions of their societies. Although slaves in Antiquity did sometimes resist the domination under which they lived, in the form of revolts and go-slow activities, they did so much less often than we imagine given more modern slave revolts; and, where and when they did revolt, they normally did so in highly circumscribed ways, not normally in opposition to the institution of slavery itself but simply to free themselves.[54] In other words, though they may have resisted or have revolted, they did not normally do so in a manner that amounted to renegotiating the norms and practices of their domination – that is, engage in 'performative acts'. Though, of course, under more modern conditions, rioting and go-slow activities, amongst other forms of resistance, are neatly captured by Butler's account of 'performativity'.

The second answer given by Foucault is helpful but incomplete. Ultimately he falls back into a quasi-Stoic or at least ancient conception of 'care of the self', in which each of us has an individual responsibility to those with whom we live to take care of ourselves, for if we do we are less likely to abuse the power relations that exist – that is, abuse our

[53] Butler, *Psychic Life*, p. 13; see also Butler, *Gender Trouble* (London: Routledge, 2006 [1990]); Butler, *Bodies that Matter: On the Discursive Limits of "Sex"* (London: Routledge, 1993).

[54] Patterson, *Freedom*; Rauflaab, *Discovery of Freedom*.

potential power over others. As he says explicitly and very optimistically in a late work: 'If you take proper care of yourself . . . you cannot abuse your power over others.'[55] In other words, he seems to suggest that if I look after myself properly I will feel no need to dominate those around me. As is repeatedly reinforced by some of Foucault's least favourite folk, psychoanalysts, this is very wise counsel. However, it is hardly a recipe for identifying and resisting those institutions, practices and discourses that generate and maintain domination, which, in the rest of his work, he both analysed and exhorted us to resist and overcome. In the same essay, however, he does go on to explain in greater detail what he has in mind here.

> I do not think that a society can exist without power relations, if by that one means the strategies by which individuals try to direct and control the conduct of others. The problem, then, is not to try and dissolve them in the utopia of completely transparent communication but to acquire the rules of law, the management techniques, and also the morality, the *ēthos*, the practices of the self, that will allow us to play these games of power with as little domination as possible . . . The problem must be framed in terms of rules of law, rational techniques of government and *ēthos*, practices of the self and of freedom.[56]

In other words, the 'care of the self' is only one part of a broader proposal for how to reduce the potential for domination, one that requires attention to various kinds of power relations at all levels of polity, economy and society.

This is a novel and important insight for two main reasons. First, as already stated, it provides a convincing alternative to the conception of power as substance or resource and it moves us beyond the problems associated with conceiving of power purely as a property of intentional human action. Second, it does all this without falling into two traps that characterise the work of three of the most influential political philosophers of the twentieth century: (a) the idea that reason, in the form of either 'rules of fairness' (Rawls) or 'communicative rationality' (Habermas),[57] can eclipse the problem of power in politics altogether; (b) Hannah Arendt's odd, very restrictive, but influential idea that power is something evident

[55] Foucault, 'Concern for Self', p. 288. [56] *Ibid.*, pp. 298–289.

[57] It is no coincidence that Rawls never explicitly discusses the topic of 'power' anywhere in his large and influential corpus. See Rawls, *Justice*; Rawls, *Political Liberalism* (New York: Columbia University Press, 1996); Geuss, *Philosophy and Real Politics*, especially pp. 90–94; and S. Wolin, *Politics and Vision*, new edn (Princeton University Press, 2004), pp. 529–556. See J. Habermas, *Theory of Communicative Action*, 2 vols., trans. T. McCarthy (Boston, MA: Beacon Press, 1984/1987); and Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. W. Rehg (Cambridge: Polity, 1996).

only in collective action and is never associated with individual action.[58] When Foucault refers in the above quotation to the 'utopia of completely transparent communication', his target is undoubtedly the work of Habermas, but it is interesting that all three proponents of these two traps share the notion that legitimacy in politics is derived ultimately from the consent of the people during unconstrained deliberation, behind a 'veil of ignorance', in accordance with rules of 'communicative rationality' or as instantiated in a stylised and archaic 'public'.

More specifically, the value of Foucault's account of domination is that it enables a challenging critique of what is now probably the best account of domination in the literature: that propounded by Philip Pettit. In his account of freedom as non-domination, domination is said to occur when individuals suffer subordination (or what he later calls 'alien control') whether or not someone actually interferes with or obstructs them.[59] The mere implicit or explicit threat of 'arbitrary interference' is sufficient, where 'arbitrary' is defined as any interference that does not comport with the 'perceived', 'expressed' or 'common avowable' interests of individuals.[60] This emphasis on arbitrary interference in terms of expressed interests moves us one step away from the language of wants and preferences. However, this is also its downfall, as it assumes that common interests can simply be read from what people express as their interests; and thereby suggests that an expressed interest is free from the power relations within which it must have been formed. By contrast, a means of distinguishing between different kinds of needs and interests and a means of assessing the institutional constellations and power relations within which they may have been formed is necessary, even if the outcome is purely procedural and institutional.

In the alternative account I provide on the back of Foucault, then, domination is the result of a situation in which power relations are skewed in such a way that some individual or group cannot identify, express or satisfy their needs or interests. In other words, domination here rests on a

[58] '*Power* corresponds to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together.' H. Arendt, *On Violence* (London: Allen Lane, 1970), p. 44.

[59] Pettit, *Republicanism*, p. 52, *passim*; and for the formulation in terms of alien control, see Pettit, 'Republican Freedom: Three Axioms, Four Theorems', in C. Laborde and J. Maynor (eds.), *Republicanism and Political Theory* (London: Routledge, 2008), pp. 102–130, at p. 102 and *passim*.

[60] He uses all three formulations – see, e.g., Pettit, *Republicanism*, pp. 55, 290–292 and Pettit, *A Theory of Freedom*, pp. 156–158. For more on the central role of the qualifications 'common' and 'avowable' in Pettit's account, see P. Markell, 'The Insufficiency of Non-Domination', *Political Theory* 36.1 (2008), pp. 9–36, especially p. 15.

specific understanding of human needs that focuses on the political and institutional means necessary for their determination and satisfaction.[61] This is the first of three ways in which my Foucault-inspired account differs from the one proposed by Pettit.

The second is with regard to its emphasis on the practical, institutional means of withstanding domination: it maintains that the real means through which citizens can guard against domination by other parties or by governmental actions is ultimately a question of political judgement not just amongst elites but also amongst ordinary citizens, and that this political judgement is better or worse depending upon the procedural power ordinary citizens have via legislation or veto over the means to satisfy their vital and agency needs. Thus, unlike Pettit, it takes seriously the myriad practical forms of domination, the indeterminacy of the concept of 'domination' and therefore the need to focus on the institutional arrangements that best empower citizens to withstand domination.

Finally, my account is based on a deep scepticism of the one form of republican theorising that assumes the existence of a 'common good' or, as modernised by Pettit, 'common avowable interests'.[62] Given the persistence of power relations in societies of all forms, it eschews this drive to consensus or a set of common goods without reference to an individual's position and power within her or his polity; rather, it assumes more realistically that needs and interests will be determined by location, group or class and that there may therefore always exist differences and possible conflict regarding the determination of needs, and so it builds into its procedural and institutional proposals means through which citizens can have greater power over legislating and vetoing for the satisfaction of their various needs.

If you think the goal is a universal definition of domination against which to measure the actions of individuals, groups, institutions or governments everywhere and always, then my alternative account will probably not suffice. However, if you think that, unlike some other forms of abstraction, the subject matter of political theory (politics) is ultimately about judgement in context under conditions of moral disagreement and potential conflict, Foucault's ideas constitute a good basis for thinking about how to empower citizens themselves to identify and overcome domination. I submit that this is best achieved by thinking about these

[61] I discuss the main three forms of needs and their institutional determinants in the next section.

[62] Another, more democratic form of republicanism is the one proposed by Machiavelli. See McCormick, *Machiavellian Democracy*; and McCormick, 'Machiavelli Against Republicanism: On the Cambridge School's "Guicciardinian" Moments', *Political Theory* 31.5 (2003), pp. 633–636.

matters in two related ways: (a) the extent to which existing institutions enable the free determination and satisfaction of needs; and (b) the political institutions that may be necessary for the empowerment of citizens in these processes.

States of domination and human needs

Democratic government responds to the articulated needs and interests of citizens *and* makes decisions regarding the development of law, physical infrastructure, economic institutions, safety and so on in the light of, amongst other things, prudence, utility, rights and preferences. As I have argued elsewhere, these evaluations and decisions regarding prudence, utility and rights are determined by perceptions of actually existing and potential, future needs.[63] The needs concerned are normally a mixture of particular drives and goals and abstract and concrete normative considerations, sometimes too simplistically conceived of as subjectively felt needs and general, abstract needs respectively. At the level of theory or philosophy it is possible to specify what these latter, abstract needs may be, irrespective of what individual people avow or particular societies espouse as norms, but in practice the decisions will depend on context, circumstance and articulated need.[64] This is the case not only due to the nature of everyday needs, but also because in order for good, contextual decisions to be made, the rulers will need to know as much of this information as possible. In order to evaluate and satisfy actually existing needs, the rulers will need to know all of the facts regarding these needs. It follows from this that good judgements about how best to proceed – that is, efficient, responsive, courageous and far-sighted decisions by government – will depend upon the existence of political institutions that enable the flow of this information.[65] Moreover, in order for these institutions to function, the citizenry need to be empowered to make claims in terms of needs (or rights) that really do satisfy their interests (and not some pre-determined set of interests or some set of interests that are not theirs). In other words, good government will require not only insight

[63] Hamilton, 'Needs and Agency', in *Handbook of Economics and Ethics*, ed. J. Peil and I. van Staveren (Cheltenham: Edward Elgar Publishing, 2009); and Hamilton, 'Human Needs and Political Judgment'.

[64] Hamilton, *Needs*, pp. 21–62.

[65] See René-Louis de Voyer de Paulmy, marquis d'Argenson, *Considérations sur le gouvernement ancient et présent de la France* (Amsterdam: Marc Michel Rey, 1764); and *Considérations sur le gouvernement ancient et présent de la France*, 2nd edn (with additions), ed. by the marquis de Paulmy (Amsterdam: Marc Michel Rey, 1784); and Hamilton, 'Human Needs and Political Judgment'.

into the allegedly 'true' needs and interests of the populace found putatively in political philosophy/theory or certain institutions and practices (such as constitutions and human rights), but also those actually existing and often more particular needs that some people may feel more urgently than others, depending on context and opportunity.

In other words, although, like Lukes and Sen, I defend the claim that in order to understand domination and empowerment one has no option but to make reference to human needs and interests,[66] I part company with Lukes in particular, who suggests that in order to do so one must make recourse to a single set of 'human functionings' that constitute the normative basis for assessment of whether or not a relation of power is or is not a form of domination. Drawing upon Nussbaum, Lukes argues that 'domination occurs where the power of some affect the interests of others by restricting their capabilities for truly human functioning'.[67] And this is despite the fact that, later in the book, he displays great sensitivity to the problems associated with notions such as 'real interests' and 'false consciousness'.[68] He chastises Marxists, in particular, for their dogmatic tendency to assume that under capitalism individual consent is engineered in such a way as to make it often impossible for the individual concerned to escape from the set of beliefs and desires that are associated with it, until and unless the ideological and political 'class struggle' brings workers to see and pursue their 'real interests'. But, despite this important insight, he fails to see that the 'liberal' alternative he adopts from the work of Nussbaum falls into exactly the same trap. It does so because despite suggestions that, as Nussbaum puts it, 'we can arrive at an enumeration of central elements of truly human functioning that can command a broad cross-cultural consensus', the 'truly human functioning' she speaks of is not the result of consensus, but rather a mix of Aristotle's philosophical reflections on human nature and the human good and a list of liberal (North American) values.[69] Even the substantive

[66] Sen does not use the language of needs or interests. For why, see A. Sen, 'Freedoms and Needs: An Argument for the Primacy of Political Rights', *The New Republic*, 10 and 17 January (1994). But *cf.* Sen on the use of different terms for the same concepts, interviewed in T. G. Weiss, T. Carayannis, L. Emmerij and R. Jolly, *UN Voices: The Struggle for Development and Social Justice* (Bloomington: Indiana University Press, 2005), p. 240; and Hamilton, 'A Theory of True Interests in the Work of Amartya Sen', *Government and Opposition* 34.4 (1999).

[67] Lukes, *Power: Radical*, 2nd edn, p. 118; M. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000), p. 83; Lovett also conceives of domination in these, I argue, problematic terms: Lovett, *Domination and Justice*, pp. 131ff. *Cf.* Shapiro, 'On Non-Domination'.

[68] Lukes, *Power: Radical*, 2nd edn, pp. 144–151.

[69] Nussbaum, *Women and Human Development*, p. 83. For more on this, and full references to Nussbaum's various versions of her 'capabilities approach' as well as associated

conception of autonomy, which underpins this set of supposed universal goods, cannot but be situated. Moreover, as with the notion of 'real interests', since these 'functionings' are particular needs paraded as universal human goods, they can and often are very easily exported as solutions for all everywhere. In other words they dictate practical politics in all contexts, irrespective of local problems and felt needs and preferences over needs. And even if they do not have this result, as putatively full theoretical and universal solutions they remove the point of politics: why bother evaluating needs in practice if the philosopher kings already know the relevant needs and can entrench them in the form of (human) rights or entitlements?

The best way out of this is to accept that although, in theory, there may exist general, universal 'real' needs, interests or functionings, in practice the imposition of these notions will more often than not result in the 'dictatorship over needs', especially when associated with political institutions that enable political judgements irrespective of the expressed needs of the citizenry.[70] It is exactly the Foucauldian insight that power relations are part and parcel of our everyday lives and are thus formative of our beliefs, wills, preferences, subjectivity and willingness to consent to domination that allows us to resort to the more subtle language and politics of needs and interests in an account of domination and empowerment. To do this, we have to accept that many of the felt needs and interests are themselves part of this structure of domination.

The only way towards objectivity regarding needs and interests, and thus a means of identifying the degree of domination in any existing set of power relations, is through inter-subjectivity and genealogy – that is, inter-subjective evaluation of needs and interests informed by genealogical understanding and critique of existing institutions and practices. This requirement to conjoin inter-subjective evaluation with genealogical critique requires subjective and objective input not just regarding existing needs and interests, but also regarding the effects of existing institutions and practices on the individual capacity or power to identify, express and evaluate their needs and interests. So, objectivity as regards needs, interests and domination is possible but is not an historically unchanging

criticisms of neo-Kantian and neo-Aristotelian forms of basic needs, goods or interests arguments, see Hamilton, *Needs*, pp. 47–52.

[70] The notion of 'dictatorship over needs' comes from F. Fehér, A. Heller and G. Márkus, *The Dictatorship Over Needs* (Oxford: Basil Blackwell, 1983). This book is about the effects of Soviet communism on the satisfaction of needs. My point here is that, if we are not careful, a too abstract and universal form of political language, for example the language of human rights, coupled with little or no opportunity for real political participation and the avowal of needs, could begin to approximate a world like that described by Fehér *et al.*

given. At each juncture it requires objective and subjective information and judgement on the part of ordinary citizens and representatives. These judgements always take place within institutional contexts, and thus the nature of the institutions and the power they provide citizens and representatives is of paramount importance; some proposals for these are included in the conclusions to this book. However, it is worth saying here that the best way, practically, to generate these processes is via political institutions that empower all citizens to carry out these forms of evaluation, but not by trying to attain the nirvana of neutrality, consensus and common good, but rather by accepting the fact of ineradicable conflict over needs and interests and the omnipresence of power relations. These political institutions would together empower citizens of all classes in the determination of needs by, in some instances, representing and empowering only those citizens whose needs are currently ignored by their representative democratic regimes. This requirement to conjoin inter-subjective evaluation with genealogical critique and new political institutions with real legislative and veto power requires subjective and objective evaluation of existing needs, interests, institutions and practices in terms of their effects on the individual capacity or power to identify, express and evaluate needs and interests.

In *The Political Philosophy of Needs* I go into more detail about the inter-subjective nature of needs and how they and their formative institutions may be evaluated using a form of genealogical critique. Suffice to say here, though, that were we to give greater weight to the language and politics of needs, and the range of various forms of needs, we might produce a means of distinguishing between dominating and non-dominating power relations, and thus of empowerment and freedom. First, it is important to distinguish between two kinds of abstract needs on one side and concrete, particular needs on the other. There are two main kinds of abstract needs, and a broad category of concrete, particular needs: (a) *vital needs*, or the necessary conditions for everyday minimal human functioning, such as sufficient food, adequate shelter, safety, periodic rest, social entertainment and so on; (b) *agency needs*, or the necessary conditions for full human agency – that is, the requirements or prerequisites for the 'causal power' necessary for agents to carry out intended actions and function fully, individually and politically, including inter-subjective recognition, active and creative expression and autonomy;[71] and (c) *particular social*

[71] Met and developed agency needs of this kind do not exhaustively constitute full human functioning, but, as successful welfare states have shown, coupled with an environment in which vital needs are satisfied without undue worry and exhaustion, they provide the feelings of safety, self-esteem, confidence, courage and associated power necessary for

needs, or largely uncontested particular needs that are felt in everyday experience. These can be concrete, particular, felt instances of vital and agency needs, subsets of these, wants becoming needs, or wants parading as needs. They are social because they all arise in a social context, and some may form part of social policy, but many may emanate from and be only about the desires, aspirations and concerns of a single citizen or group thereof.

The second thing to note about human needs is that because they are historical, normative and political in nature, the matrices of existing power relations in general and practices and institutions in particular determine their perception and evaluation. Even the highly abstract ones are experienced in particular forms depending upon context and existing norms and institutions. Moreover, as is the case with other normative concepts, they are generated and perceived inter-subjectively – that is, between and amongst individuals in society. It follows therefore that in order to understand and evaluate needs best the practices and institutions that generate and legitimise them must be evaluated. And, given the historical nature of needs, one of the best ways of achieving this, as I have argued, is through the use of genealogical critique – that is, by peeling back the layers of history manifest in the relevant institutions to identify how and why certain needs have come to be felt and perceived as needs and why other desires have not. This requires more focus than is currently the case in political theory and philosophy on the histories of shared and distinct moral psychologies. In other words, to determine how best to proceed, citizens need to be able to understand in context how their various intellectual and institutional histories have given rise to their needs, desires and preferences. This requires not only greater historical understanding of the rise and causal significance of existing social and political institutions, but a significant shift in our tendency to think that some needs, desires and preferences are either 'natural' or inherently 'individual' (as expressed most forcefully by J. S. Mill). Otherwise, as citizens, we remain rooted to a woefully unrealistic account of our moral, aesthetic and political sentiments and how they are formed. Given that most, if not all, of these sentiments (even if expressed in the most private of moments) have their sources in our shared values, needs, desires and preferences, genealogy must start and work back from the relevant particular context. In other words, genealogical critique of this

political agency and freedom. This account of needs is therefore not perfectionist. It is concerned with the necessary requirements for *political* agency not agency *per se* (or the requirements for all sets of possible intended actions). For more on these two kinds of needs in general, the relation between them and how and why met and developed agency needs have this effect, see Hamilton, *Needs*, pp. 23–47.

kind enables the determination of the extent of domination in any specific set of power relations.

Moreover, given the inter-subjective and political nature of needs, a genealogical critique of existing practices and institutions cannot be undertaken in an objective fashion unless the means exist through which individuals can provide subjective information regarding their current needs, and be involved in their inter-subjective evaluation and in the determination of their future needs. If there still remains the need for a state or coercive authority (an ultimate decision-maker), which we can assume given the ineradicable presence of moral and political disagreement and conflict, its judgements regarding needs and institutions would only be objective and legitimate were it possible to show beyond doubt that they were based in this form of genealogical and inter-subjective critique and evaluation, and, as argued in Chapter 5 below, under conditions in which all classes and groups of society have meaningful control over the formulation of the relevant legislation. In this way it is possible to identify how the evaluation of needs must be located within a more general analysis of institutions, but can in turn help to justify forms of coercive authority that are directed towards the transformation of social and political practices and institutions that generate or reinforce domination.[72] Thus, *pace* much contemporary theory, democratic participation does *not* depend on the existence of fully autonomous individuals, 'independent' of the power of anyone else, as if that were possible.

I call this inter-subjective power to identify, express and evaluate my needs, interests and their formative practices and institutions the 'power to determine needs'. The degree to which one lives in a state of domination therefore depends upon the extent and kind of power one has to determine one's needs. Domination of this kind can take a number of different forms:

(a) The existing power relations may persistently mislead me in my attempts to *identify* my needs, either through direct coercion (which may lead me to deny my needs), intentional manipulation ('persuading' me, say, that another individual or group's needs are in fact mine) or simply as a result of fixed, traditional norms and practices

[72] Hamilton, *Needs*, 63–71, 116–133, 153–170; Z. Emmerich, 'Toward a Need-Based Conception of Intersubjectivity', *South African Journal of Philosophy* 25.3 (2006), pp. 249–257; see also A. Sen, 'Well-Being, Agency and Freedom: The Dewey Lectures 1984', *Journal of Philosophy* 82.4 (1985), pp. 169–221; Sen, 'Positional Objectivity', *Philosophy and Public Affairs* 22 (1993), pp. 126–145. Lukes himself opens up the possibility for this way of thinking in the original edition of *Power*: Lukes, *Power: A Radical View*, 1st edn (London: Palgrave Macmillan, 1974), p. 33. But his appeal to 'democratic participation' rests on the unlikely condition that in order to achieve this one has to be autonomous or at least 'independent' of the power of anyone else.

that have yet to be transformed. The classic instance of this form of domination is to be found within the institutions and practices that constitute patriarchy and the continued subordination of women, but there are also many other examples.[73]

(b) I may not be able to determine my needs because I live under a regime that has either taken away or never granted me the power to *express* my needs. For example, a black person within apartheid South Africa lived in a condition of domination: political rights were deemed the privileges of whites alone, and blacks were unable to determine their own needs since the institutional means through which to express their own needs and interests had been removed (or, more exactly, never properly instantiated and then removed).

(c) I may not be able to determine my needs because I live in an economy and polity that disallows meaningful *evaluation* of needs and interests. This form of regime may provide me the formal means and freedoms to identify my needs (and preferences) and even express them without fear of prejudice or harm – it may even seek much of its legitimacy from exactly these two freedoms – but in real, specifically economic terms it may be based upon the kinds of practices and institutions that either disallow the evaluation of needs and interests or, less severely, fail to provide the institutions through which this would be achieved. A polity founded on pre-political, natural or human rights coupled with an economy in which *only* revealed preferences for consumer goods are deemed of value would be a perfect example of the former – that is, a situation in which the language of needs is excluded by the language and institutions of rights and preferences (see Chapter 6 below). Less stark, but equally as debilitating for the meaningful evaluation of needs, is a polity and economy that allows for objective evaluation of needs, at least at the level of discourse, but provides little or no institutional means through which citizens could partake in the evaluation of their own needs and the needs of their fellow citizens; in other words, a polity where even if the language of needs is not *doctrina non grata*, to all intents and purposes its use has little or no effect on the determination of how best to proceed. Over the last two hundred years or so we have seen examples of both forms of regime, especially in the developed West, but the

[73] See, for example, Sen's work on famines; and his argument that the 'most blatant forms of inequalities and exploitations survive in the world through making allies out of the deprived and the exploited', as the 'underdog learns to bear the burden so well that he or she overlooks the burden itself. Discontent is replaced by acceptance, hopeless rebellion by conformist quiet, and . . . suffering and anger by cheerful endurance.' A. Sen, *Resources, Value and Development* (Oxford: Blackwell, 1984), pp. 308–309.

best recent examples are to be found in the various combinations of liberal polities and capitalist economies that characterise most of the political and economic arrangements of our world today, the severe results of which are felt most acutely in less wealthy and more unequal societies (see Chapters 5 and 6 below).[74]

The form of domination that exists within this last category creates a situation within which we may be able to claim our rights, avow our preferences and in some instances even identify and express our needs, but we do not have the necessary institutional means either to take part in the evaluation of our needs or properly control the manner in which our political representatives evaluate our needs. In fact, in most cases, it is difficult even to ensure that our representatives take our claims seriously, whether expressed in terms of rights, needs or interests. To varying degrees, in other words, we do not have the power to determine our needs.

Institutions can then be assessed in terms of whether they empower individuals and groups to identify, express and evaluate their *own* needs and interests, either directly or in terms of whether and to what degree they generate the means to evaluate and critique existing states of domination. Needs and interests and the institutional and procedural means to determine them thereby become the link between power, domination and empowerment: if I live in an enabling environment vis-à-vis the critical assessment of needs, interests and institutions, I have the power to identify and withstand states of domination.[75] Conversely, if I am living in conditions in which I cannot determine (cannot identify, express or evaluate) my needs, I am living in a situation in which I am less likely to be able to combat and overcome states of domination. One is then empowered either if one is given the means to overcome domination or live in a situation in which states of domination are kept to a bare minimum. In the latter sense, I am empowered if I live in conditions in which I have the power to determine my needs and evaluate the institutions of my society. In other words, if we follow Foucault in that we maintain the link between domination and empowerment and yet focus on the social,

[74] Change though is afoot: given the recent financial turmoil and economic slump, and its continued fallout, there are indications that this predominant way of thinking and acting in the polity and the economy may be on the verge of significant reform. See R. Skidelsky, *Keynes: The Return of the Master* (London: Penguin, 2009) and Chapter 6 below; but *cf.* M. Blyth, *Austerity: The History of a Dangerous Idea* (Oxford University Press, 2013).

[75] *Cf.* Pettit, *Republicanism*, p. 52. As discussed earlier, Pettit assumes incorrectly that choices or preferences are fixed, that power relations are dyadic, and that power and domination is always acted out consciously by one individual on another. See also Lovett, *Domination and Justice*, as discussed earlier.

economic and political means for the identification, expression and evaluation of needs, it is possible to see that power is best understood in terms of the degrees and forms of control we have over our social, economic and political environments – that is, the determination of our needs.

This coupling of Foucault's insights with an inter-subjective and contextualist account of the determination of human needs therefore provides the basis for a full account of how to distinguish between power relations that do and those that do not give rise to states of domination. It also renders more realistic some of Foucault's important advances regarding power and domination; or, in other words, it is an account of power and domination in a more realistic spirit.[76] Thus the focus on the *meaningful* evaluation of needs, the requirement to have control over those who represent us and our main economic and political institutions, those, that is, who ultimately determine our needs, together draw this account of power and domination into the same fold as those realistic thinkers who have thought of politics as being ultimately about agency, power and interests, and the relations between them. In particular, the pivotal relations between agency, power and interests are captured most succinctly by the formula 'Who does what to whom for whose benefit?'[77] In other words, politics involves judgements within a particular concrete context of power relations about priorities, benefits and penalties and the needs and interests they would satisfy; that is, it is about specific decisions in a particular time and place by concrete people regarding doing things to other concrete people – or, rather, groups of either; or, to be even more exact, representatives thereof. As discussed at greater length in Chapter 5, it is therefore possible not just for individuals to generate states of domination vis-à-vis other individuals but also groups with regard to other groups (or individuals); and power relations exist not only between individuals but also between groups, their representatives and individuals.

The main claim I have defended in this chapter is that this is understood best if it is broken down into two related component parts: (a) the identity of the rulers and the ruled; and (b) who has the power to determine whose needs.[78] As will become more obvious in the remaining chapters, (a) and (b) do not always map neatly onto one another: your political rulers or representatives may not always be the agents that are determining your needs; depending upon context and geo-political

[76] For the difference between 'realism' and the 'realistic spirit' in politics see Emmerich, 'Political Realism', pp. 81–112.
[77] Lenin, *Materialism*; and Geuss, *Philosophy and Real Politics*, pp. 23ff.
[78] Hamilton, *Needs*, pp. 1–20, 140–153.

power and the structure of the political economy that affects you, there exist other individuals, groups, forms of representation and even modes of discourse that may have much greater power over the nature and satisfaction of your needs than those who directly rule you (or what I later call the 'formal political representatives' within your polity). The question then becomes a particular matter of the nature of the political and economic institutions that affect citizens' capacities to meaningfully determine their needs and the relations between these institutional matrices and the various forms of representation they encompass. In this way an account of how needs and interests form the basis of a distinction between relations of power and states of domination also enables an institutional analysis in the spirit both of Foucault's genealogical critique and Lenin's realism about politics.

Conclusion

In sum, if we answer the two questions I posed of Foucault by reference to the power of need determination, we are able to give one single answer to two questions. The questions were the following. What exactly distinguishes 'power relations understood as strategic games between liberties', 'techniques of government' that can reinforce domination, and 'states of domination' themselves? And how might citizens distinguish between these and act themselves to resist power relations that generate and maintain states of domination? I have argued that, by conceiving of domination and empowerment in terms of a continuum or spectrum of power or control over the determination of needs, which must include inter-subjective evaluation of needs and genealogical critique of practices and institutions, citizens themselves will be empowered to undertake these forms of participative evaluation and thus identify the degree to which existing power relations generate states of domination. The answer does not depend on a normatively grounded theoretical solution, but will be the result of institutions that enable sufficient participative power and critique in the determination of needs and institutions; and, as we will see in Chapters 5 and 6, sufficient control over representatives who themselves have sufficient power to meaningfully affect, in particular, macroeconomic policy.

As I will argue in the next chapter, it follows from this, and from my discussion of the nature of freedom in the earlier chapters, that freedom depends on the institutional power to determine one's needs, interests and liberties in context. This means that it is probably impossible to give a single universal account, or axiomatic calculus, of the relations between freedom and power. How these relations ultimately play themselves out

in practice is a contextual, concrete matter to be determined by circumstance and real determination of needs and institutions. However, it does not follow from this that we cannot specify generally applicable features of how these relations play themselves out within existing empirical reality, partly because most current social, economic and political contexts have a great deal in common with one another. I will defend the claim that the best way of getting a handle on the existing relations between power and freedom is to focus on the main domains of power, domination and freedom across four dimensions: empowerment, representation, resistance and control. This is therefore a contextualist account of power, needs and freedom that nevertheless enables an objective and general account of real modern freedom.

4 Real modern freedom

In the previous chapter I developed some of Machiavelli's and Constant's leads identified in Chapter 2 through an account of power and domination initiated by Foucault and extended by means of an inter-subjective and genealogical account of needs, interests and institutions. This led to the suggestion that the tendency amongst most contemporary political theorists and philosophers to propose theoretical solutions to our problems that assume or defend the necessity for parity of power, discursive consensus or complete absence of domination is misplaced. Rather, I submitted there that domination is best overcome in practice by means of institutions of participation and domination that take seriously the partisan nature of citizens' needs and interests and associated institutions and organisations, and that therefore constitute counterbalances to existing economic and political power relations in society. The accounts of power, domination and empowerment discussed in the previous chapter enable me to articulate freedom in terms of dimensions of effective individual power. Constant, in particular, points us in the right direction by associating freedom and power. He argues that the main difference between ancient and modern liberty derives from an historical shift in relative power: as the power of the individual diminished with regard to public agency, his or her power with regard to private enjoyment is enhanced; it was therefore natural for individuals to begin to value the latter above the former. However, Constant's sharp distinction between the public power of individuals in the ancient world, or their rights of public agency, and the private power of individuals in the modern world, or their rights of private enjoyment, is too stark and simplistic. As the previous chapter suggests, most of our real freedom and power occupies the middle ground between these two extremes; and, as I will argue in Chapters 5 and 6, representation is central to this and power is safeguarded by a set of political institutions that enable greater participation at local level and, most importantly, real control over representatives at national level.

In this chapter, though, I first propose a means of capturing and understanding this real, concrete middle ground, by means of the full

articulation and defence of a novel account of freedom. I propound an account of freedom distinct from both Berlin's 'negative' and 'positive' conceptions and their republican rival, and I suggest a number of important domains in which modern individuals exercise or fail to exercise their freedom as power. Although both Machiavelli's and Rousseau's insistence on non-dependence on the will of another as the basis for individual freedom *and* Constant's emphasis on the private independence of modern individuals strikes a chord, the degree to which I am in fact free under modern conditions is a more complicated matter that depends upon the extent to which I live in conditions of domination in a number of causally related domains. My freedom depends on my power within four related domains: (a) my power to overcome existing obstacles; (b) my power to determine who governs my political association or community; (c) my power to resist the disciplining power of my community and state; (d) and my power to determine my social and economic environment via meaningful control over my representatives. Freedom is power across all of these domains in the sense that individual freedom depends on some agent's power or ability to bring something about; at the most basic level (domain (a)) this is the power of the individual herself, and at the most complex level (domain (d)) it is the power of representative of the individual or her group; and, moreover, the power of the individual is determined to a significant degree by the way in which power is played out in the more complex last domain of representation.

Two things follow from this that ought to be stated at the outset here. First, these various domains or component parts of freedom are not definitional, in the sense that if put together in one long sentence they would provide the full definition of freedom as power (the necessary and sufficient conditions for freedom); they are simply the domains, ways or senses in which freedom depends upon power. Second, although in some very abstract sense it may be true that across all these four domains freedom is about how best to secure the power of the individual to do or be what she or he would otherwise do or be,[1] the latter notion of freedom does not fully capture what I mean by freedom as power. This is the case because although these domains or component parts of freedom as power do cover most of the ground that I argue is worth covering in understanding political freedom, this is not proposed as an exhaustive account of freedom. There is a subjective realm to freedom that is and ought to be outside the realm of the concern of political theory. The domains of

[1] As in G. A. Cohen: 'whatever may be a correct analysis of "*X* is free to do *A*", it is clear that *X* is free to do *A* if *X* would do *A* if he tried to do *A*'. Cohen, 'Capitalism, Freedom, and the Proletariat', p. 179.

freedom as power I outline above and discuss in full in this chapter are objective conditions for freedom because they are shared and because all need them as necessary conditions for the possibility of freedom of action. And they are all political because they cannot be achieved and maintained by individual or spontaneous collective action alone: given that they depend upon social, economic and political empowerment, sacrifices, discipline and control amongst all citizens, they require the coercive force of a political authority to ensure that they are institutionalised and sustained. Freedom is power in the sense therefore that it depends upon my power, control and self-control within and across these four domains, especially as regards control over political representatives. But that is the full extent of the claim defended here. However objective, this is not an exhaustive account of individual freedom. Rather, it allows for the possibility that ultimately individual freedom may vary depending on the individual in question. Freedom for some might be about being true to oneself whatever the demands, obligations and expectations of others; while freedom for others may be about being embedded and determined by these duties and ties; for some others it may be the life of the ascetic; and for others again it may be a life of constant, disciplined political struggle. I do not pronounce on these matters, mainly because given the complex realities of inter-dependent modern human existence I take that to be an unattainable and undesirable theoretical endeavour. However, it does not follow from the fact that ultimately freedom might only be fully accomplished by a particular individual living a particular life that we cannot say a great deal about the basic necessary requirements for freedom as power, for freedom as power is ultimately about the material and political conditions for freedom of action or, put more prosaically, being able to do what you wish under the constraints of communal life within highly complex modern polities and economies.

Moreover, this objective account of freedom as power is still of great significance today, particularly for those with little or no power. This is true despite the fact that the affluence and consumption levels in the developed 'North' and the poverty and aspiration to 'develop' towards this state of affluence and consumption in the 'South', coupled with the increasing degradation of the planetary environment, means there is much to be said for inducing individuals throughout the world to show greater austerity, self-control and self-discipline.[2] The form of freedom defended here accommodates this emphasis on self-control and self-discipline because, even given current conditions of extreme global

[2] Geuss, *Politics and the Imagination*, p. xiii; and for more on self-discipline and its relation to freedom, see Flathman, *Freedom and Its Conditions*.

inequality, these are deemed central components of the control necessary for freedom as power: the self-control citizens must display as they choose and control their representatives and the self-control the latter must display in political judgement and action – all are necessary to ensure individual freedom as power in any particular context as well as broader general human imperatives such as the need to ensure against the further degradation of the planetary environment.

In this chapter I therefore rescue freedom from its theoretical etiolation within the liberal and republican traditions not by giving an account of full individual human freedom, but by defending the basic claim that whatever freedom for any particular individual may ultimately involve, under the precarious and inter-dependent nature of existing conditions it will depend on the power and control individuals and groups are able to exercise within the four dimensions of freedom listed above. The concern is therefore with the basic necessary requirements for freedom as power, or in other words, the main claim I defend is that individual power and control within these four domains are necessary (but not sufficient) conditions for freedom.

Freedom as power

The alternative account of freedom proposed here is quite distinct from both the liberal and republican mainstream in one important sense. It does not *reduce* freedom to one defining feature, be that mere absence of (external) impediments, the ability to decide for oneself what to do (self-determination) or active citizenship within a free state. These are, of course, Berlin's 'negative' and 'positive' conceptions of freedom and the rival republican account respectively.[3] Rather, the account submitted here rejects the common tendency to favour a minimalist account of freedom above a realistic one. This alternative conception captures the concrete nature of freedom by linking freedom to real and effective power. To achieve this it is vital to identify freedom with power in at least one important way. When I say 'I am free' normally I am not saying exclusively, 'I am externally unimpeded' or 'I am self-determining'; no, what I usually mean is 'I am free to do *X*' which concretely means 'I have the power or ability to do *X*.' So real modern freedom here is identified with and *as* power in that it conceives of freedom as a *combination of my*

[3] Berlin, 'Two Concepts'; Q. Skinner, 'The Idea of Negative Liberty', in R. Rorty, J. B. Schneewind and Q. Skinner (eds.), *Philosophy in History* (Cambridge University Press, 1984); Skinner, 'Machiavelli's *Discorsi*'; Skinner, *Liberty Before Liberalism*; Skinner, 'The Idea of Negative Liberty' (2002); Skinner, *Hobbes and Republican Liberty*; Pettit, *Republicanism*; see also Taylor, 'What's Wrong with Negative Liberty'.

ability to determine what I will do and my power to do it – that is, bring it about.

This way of thinking about freedom chimes well with a number of the reasons and concerns that have driven most struggles for freedom across the ages, from the sharp distinction between freedom and slavery in Antiquity and beyond, and the various associated and subsequent slave revolts, such as the famous Haitian Revolution, via the myriad liberation struggles against colonialism, apartheid and domination based on race, gender or class or some mixture of all of these, to the everyday attempts to gain more independence and freedom from others, the state, the law, poverty or crime. Frantz Fanon, in *Black Skin, White Masks*, to take just one vivid example of this history of struggle, argues that the human condition is to be free and that freedom resides in the *capacity* to choose and to act.[4]

This alternative account of freedom as power also captures well an important fact about human existence: people are interested in freedom as a human ideal, goal or aspiration not in and of itself but because it is thought to be connected with the actual attainment of 'something' – that is, some good or set of goods; and the actual attainment of these depends on my having the *power* to attain them. The liberation struggle in South Africa, for example, did not have as its goal the abstract idea of being 'free from impediment' or 'living in a free state'. Rather, it had more concrete political, economic and social goals: being free to determine who rules and how they rule; to produce, exchange and consume wherever and whenever; to love, procreate, entertain oneself and others, bring up one's children and so on; and to do so in conditions free of poverty and racial and gender discrimination and domination. As many anti-colonial thinkers and fighters have expressed well in different times and in different contexts, including Nyerere, Fanon and Mandela,[5] the

[4] 'No attempt must be made to encase man, for it is his destiny to be set free. The body of history does not determine a single one of my actions. I am my own foundation.' F. Fanon, *Black Skin, White Masks*, trans. C. L. Markmann (London: Pluto Press, 1986), p. 180.

[5] 'Our mistake was not in our demand for freedom; it was in the assumption that freedom – real freedom – would necessarily and with little trouble follow liberation from alien rule.' J. Nyerere, 'The Process of Liberation' cited in W. J. Foltz, 'African States and the Search for Freedom', in R. H. Taylor (ed.), *The Idea of Freedom in Asia and Africa* (Stanford University Press, 2002), p. 40. 'For a colonized people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread, and above all, dignity.' F. Fanon, *The Wretched of the Earth* (Paris: Présence Africaine, 1963), p. 43. 'The truth is we are not yet free; we have merely achieved the freedom to be free, the right not to be oppressed. We have not taken the final step of our journey but the first step on a longer even more difficult road.' N. R. Mandela, *Long Walk to Freedom* (London: Macdonald Purnell, 1995), p. 617.

attainment of political freedom alone does not secure this; it is a necessary but not sufficient condition for these broader concrete goals. As I discuss at greater length below, the attainment of these broader goals depends on the active generation, defence and exercise of various other powers within a free state.

The same is true for less stark struggles for freedom under less tyrannical conditions. The constant clamour for freedom of speech, for example, is normally associated with a whole set of perceived goods. Citizens and the press do not defend press freedom – that the press should be free to print what they see fit – simply because they dislike it being constrained or because they think freedom depends upon being able to act unimpeded. They do so because they think this form of freedom brings with it a whole series of associated benefits that we ought to safeguard and value, such as the power to criticise our governments, the power to disseminate information and so on. And, in the case of liberation from apartheid and claims for freedom of speech the attainment of these goals or benefits, these various freedoms, depends upon those involved having the *power* to attain them. The freedoms associated with political liberation from apartheid South Africa were only attainable when the struggle gained the power (or at least perceived power) to overcome the apartheid state.

Freedom, as defended here, is therefore both about being able to *determine* what one will do and having the *power* to do what one decides to do. And, despite much received opinion, it turns out that a surprising number and variety of political thinkers from right across the political spectrum associate freedom and power in exactly these terms. It is a mainstay of much of Antiquity – in particular, Roman – thought and practice. As the main epigraph to this book highlights, it was central to Livy's understanding: 'Freedom is to be in one's own power.'[6] Then, at the beginning of the modern era, even Hobbes, the progenitor of the idea of freedom as absence of external impediments, makes this association, when he claims that the concept of human freedom is made up of: (a) the idea of possessing an underlying power or ability to act – it is in relation to a 'man's power to do what hee would' that we speak of his being or not being at liberty;[7] and (b) the matter of being unimpeded in the exercise

[6] 'Libertas suis stat viribus': Livy, *Ab urbe condita* [*History of Rome from its Foundation: Rome and the Mediterranean*], trans. H. Bettenson (London: Penguin, 2005 [*c.* 25 BCE]), Book XXXV, Chapter 32, 11. As Wirszubski argues, what Livy had in mind here is *not* the autonomy of the will, but self-reliance, enjoyed of right by Roman citizens, the conditions for which were secured by law and within social relations of respect and reciprocity (about which more in Chapter 5). C. Wirszubski, *Libertas as a Political Idea at Rome during the Late Republic and Early Principate* (Cambridge University Press, 1968), pp. 8–9.

[7] And when he argues that freedom is marked by the 'absence of external Impediments', he adds that by 'impediments' he means anything that can hinder a man from using his

of such powers.[8] In other words, it seems self-evident that even the father of Berlin's 'negative' conception of freedom is ultimately concerned with obstacles to action because he is concerned with whether or not someone is able to exercise his power to act – that is, to bring something about, to do something. Rousseau too – a central figure in the opposing, republican canon – goes on to make a similar association between power and freedom. In an infrequently cited section from Book III of the *Social Contract*, he argues that power is one of two essential elements in freedom: 'Every free action has two causes which concur in producing it, one moral, namely the will which determines it, the other physical, namely the power which executes it.'[9] And then, not very much later, Burke, a very different sort of political thinker, also directly identifies liberty with power: 'liberty, when men act in bodies, is *power*';[10] and John Stuart Mill, in his celebrated analysis of liberty, associates certain powers and habits with 'a free constitution'.[11] In other words, a whole array of thinkers, even thinkers that Berlin lauds as standard-bearers for his 'negative' conception of freedom, are ultimately concerned with whether or not someone is able to exercise his or her power to act – that is, to bring something about, to do something.

But it is in the work of Karl Marx that we see the full efflorescence of this substantive, concrete account of modern freedom that underpins my argument here. Marx unequivocally identifies freedom with power. Unlike Berlin's distinction between two concepts of freedom, a minimalist 'negative' freedom and an account of 'positive' freedom that focuses on self-governance or the ability to give oneself the rule for one's own action, Marx distinguishes three concepts of freedom. The first is very much like Berlin's 'negative' liberty, which Marx associates with the anarchism of Max Stirner, but in today's parlance we would call the 'freedom' of libertarianism.[12] The second concept of freedom Marx discusses he

powers 'according as his judgement, and reason shall dictate to him'. Hobbes, *Leviathan*, p. 91; see also Chapter 20, p. 62, where he defines 'The POWER *of a man*' as 'his present means, to obtain some future apparent Good'.

[8] 'And according to this proper, and generally received meaning of the word. A FREEMAN, *is he, that in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to do*.' Hobbes, *Leviathan*, pp. 91, 146.

[9] Rousseau, *Social Contract*, p. 82 [Book III, Chapter 1].

[10] E. Burke, *Reflections on the Revolution in France*, ed. C. C. O'Brien (London: Penguin, 2004 [1790]), p. 91.

[11] For example, late in *On Liberty* he argues that, amongst other things, the 'political education of a free people' requires 'habituating them to act from public or semi-public motives' and that '[w]ithout these habits and powers, a free constitution can neither be worked nor preserved'. J. S. Mill, *On Liberty*, pp. 121–122; see also pp. 7, 16–17, 116.

[12] K. Marx and F. Engels, *The German Ideology*, in *Marx Engels Collected Works*, Vol. 5 (London: Lawrence and Wishart, 1976 [*c.* 1846]), pp. 304–306. For typical modern

identifies with Kant's view of freedom and which he defines as the ability a creature has to make its own decisions, or govern itself.[13] The third concept of freedom is the one Marx calls the 'materialist' notion of freedom that identifies freedom with power and that he thinks is the full, sophisticated notion of freedom. He argues that in this account, freedom comprises 'the conjunction of the ability to determine what one will do and the power to do what one decides to do', and anything less than this is a mere shadow of the concept of freedom.[14] This means that for Marx the other two concepts he discusses, and *a fortiori* the main three concepts analysed in the modern literature, are poor approximations of this real form of freedom.

Another way of construing the importance of this more substantive account of freedom is that it provides a means of thinking about how freedom relates to the exercise of our powers as individuals and how we are enabled and disabled by a variety of internal and external abilities, obstacles, mechanisms and power relations. This is something, again, that a number of other social and political theorists and philosophers have identified and stressed from a wide range of political perspectives. These examples not only provide further example of the identification of freedom and power, but emphasise the fact that freedom is about 'effective power' – that is, that freedom is such an important social and political ideal and goal because it is rightly identified as a precondition for certain desirable 'beings and doings'. Nietzsche puts the association well:

> That we are *effective* beings, forces, is our fundamental belief. *Free* means: 'not pushed and shoved, without a ***feeling*** *of compulsion*' . . . Where we encounter a resistance and have to give way to it, we feel *unfree*: where we don't give way to it but compel it to give way to us, we feel *free* . . . – man's most dreadful and deep-rooted craving, his drive to power – this drive is known as 'freedom'.[15]

Then, in another key, there is John Dewey's famous identification: 'Liberty is power, effective power to do specific things . . . The demand of liberty is the demand for power.'[16] And this association is even evident at

libertarians, see: Carter, *Measure*; Kramer, *Quality*; and Steiner, 'Individual Liberty'. For further discussion of this point, see Geuss, *Politics and the Imagination*, pp. 56–57.

[13] Marx and Engels, *German Ideology*, pp. 193–195. Kant is quite explicit that, for him, freedom is the mere ability to determine the will, irrespective of whether this is even translated into actual action in the world. Geuss, 'Metaphysics of Right', p. 57.

[14] Marx and Engels, *German Ideology*, pp. 305–306. The quotation is from Geuss, 'Metaphysics of Right', p. 57.

[15] F. Nietzsche, 'Notebook 34, April–June 1885' 34[250] and 'Notebook I, autumn 1885–spring 1886' I[33], in *Writings from the Late Notebooks*, ed. R. Bittner (Cambridge University Press, 2003 [*c.* 1885–6]), pp. 16, 57.

[16] J. Dewey, *Problems of Men* (New York: Greenwood Press, 1968 [1946]), p. 111.

the heart of contemporary analytical political philosophy: for example, in Feinberg's account of freedom: 'There are at least two basic ideas in the conceptual complex we call "freedom"; namely, rightful self-government (autonomy), and the overall ability to do, choose or achieve things, which can be called "optionality" . . . '[17]

It does not follow from this emphasis on concrete freedom and identification of freedom with effective freedom, however, that freedom is reducible to specific and thus quantifiable freedoms, as propounded by Matthew H. Kramer and Ian Carter.[18] Simply because Marx, Nietzsche and Dewey, amongst others, emphasise the fact that freedom is always really about effective power – that is, that it seems absurd to them that anyone would want to be merely externally unimpeded or simply self-determining – it does not follow that their conceptions of freedom reduce freedom to specific freedoms. For nothing in what any of them argues suggests that in thinking about freedom in these terms one is always constrained to think that claims to freedom are always about specific goals and never about large, non-specific claims to freedom for large groups or freedom as a general ideal. As the example of the struggle for liberation in South Africa amply articulates, freedom (and the fight for freedom) can involve simultaneously a non-specific and a specific goal (or set of goals): those involved in the struggle against apartheid were fighting for freedom from apartheid in general, as well as a whole series of more specific freedoms or goals – free access to education, free movement of all, freedom to associate and marry across the colour bar and so on. The idea of freedom as a broad ideal or goal and the idea that freedom is always specific and thus quantifiable are not mutually exclusive; in fact they are often comfortable bedfellows.

What it does highlight, however, is that felicitous talk and action regarding political freedom are normally the result of the fact that internal or external forces (our own selves, other people or natural forces) are threatening to interfere with our intended actions. In other words, we would not think or talk of freedom unless forces existed that were attempting to constrain us.[19] As Montaigne, Nietzsche and Foucault in particular suggest strongly, discipline and freedom are not antithetical (as is supposed

[17] Feinberg, 'Freedom and Liberty', p. 1.

[18] Carter, *Measure*; Kramer, *Quality*; Kramer, 'Liberty and Domination'; and Carter, 'How are Power and Unfreedom Related?'

[19] Flathman, *Freedom and Its Conditions*, pp. 2–3 and *passim*; but note that despite an otherwise subtle and fascinating account, for reasons discussed in Chapter 1 above, I do not think that his liberal conclusion that '[t]he unfreedoms as well as the freedoms that matter to us are *inter homines*' (p. 161) follows from the rest of his argument and the positions adopted by the various figures he discusses. 'Constraints' come in various significant forms.

by most liberal commentators) but mutually dependent. My resistance to forces seeking to constrain my freedom is very often necessary to achieving and maintaining my freedom. If only in a basic and incomplete sense, then, even Hobbes's account of freedom as freedom of *movement* based on the idea of inanimate objects moving freely is an example of this form of freedom, since he suggests that the movements have overcome the resistance created by other forces such as friction in the case of the freely flowing stream. But his analogy only goes so far since what we are concerned with when thinking about individual and political freedom is not simply freedom of movement but freedom of action – that is, of being able to bring things about, affect things or live a certain way.[20] The other thinkers just listed and discussed above take us further since they see the relationship in human action between freedom, resistance, discipline, power and empowerment; and they do so because, like Hampshire later, they are concerned to identify the power relations – roles, institutions, practices – and individual powers that enable and disable individuals to carry out intended tasks. In Montaigne's formulation, the self must 'make' or 'enact' itself so as to achieve and sustain the characteristics and powers necessary for freedom;[21] or as Nietzsche would have it, the self must 'overcome' those inclinations that work against her freedom, and develop 'free-spiritedness', a state of being that enhances the self's courage, power, inventiveness and 'self-mastery'.[22]

While it is therefore possible to agree with Flathman that 'there is no categorical, invariable, conflict between freedom on the one hand and discipline on the other',[23] and that following Montaigne, Nietzsche and Foucault, individual freedom may often be subject relative since it depends upon individual powers, discipline and courage (amongst other things), it is also possible to move beyond Flathman's negative formulation by concentrating on domains of action over which all individuals objectively need power and control in order to enact their freedom. These conditions are objective because they are shared and because all need them as necessary conditions for the possibility of 'enacting' oneself, for 'free-spiritedness' and for basic political agency. And they are political because they cannot be achieved and maintained by individual or

[20] See Flathman on 'freedom *in* action': Flathman, *Freedom and Its Conditions*, pp. 6–9 and 163–169.

[21] Montaigne, *The Complete Essays*, especially 'On Vanity', 'On Restraining Your Will' and 'On Physiognomy', pp. 1070–1133; 1134–1159; 1173–1206.

[22] Nietzsche, *Genealogy of Morality*, p. 40, where he speaks of the really free 'man' having achieved a 'supra-ethical' awareness of his power and freedom and associated responsibility. See also Nietzsche, *Late Notebooks*.

[23] Flathman, *Freedom and Its Conditions*, p. 163.

collective action alone: given that they depend upon sacrifices, discipline and control amongst all citizens whatever their actual level of freedom, they require the coercive force of a political authority to ensure that they are institutionalised and sustained. So, although they are not in and of themselves sufficient conditions for individual freedom, they are no less urgent, demanding or positive. As necessary conditions, they outline a series of more positive associations via the concept of power and related concepts: empowerment, representation, resistance and control.

Empowerment

It follows from this identification of freedom and power that my freedom to act will not simply be secured by the removal of as many external obstacles as possible, as liberals assume, though that may help, but also by finding ways of increasing my power to act. Empowerment is conventionally used to mean an increase in power in this sense.[24] In fact, it is possible to go further and claim that it will only be possible to remove some external and internal obstacles through the process of empowering me since it is sometimes a direct consequence of my lack of power relative to the obstacle in question that I encounter an aspect of my internal or external environment as an impediment to action. This is because often what counts as an obstacle is relative to my state of power, especially my power to overcome constraints within me or imposed upon me; as Nietzsche would put it, to act freely is to succeed in 'overcoming' the resistance imposed on us by these forces. And these constraints can take a variety of forms: physical, psychological, political, economic, ideological and so on. For example, although I may have the formal freedom to acquire employment, and others around me do not encounter obstacles to employment, I may be unable to find employment as a consequence of the existence of obstacles that arise due to a whole range of possible external and internal obstacles specific to me or people like me (or, as I argue later, my class or group): a lack of relevant jobs in the market, my poor levels of education, my low levels of self-esteem, my lack of political connections, my tendency always to 'buck the system' and so on. I lack the relevant power or powers in that had I been trained for a different kind of job, been offered better levels of education, felt more confident about my skills, been brought up by a different authority figure and thus

[24] D. West, *Authenticity and Empowerment: A Theory of Liberation* (London: Harvester Wheatsheaf, 1990); and J. Friedmann, *Empowerment: The Politics of Alternative Development* (Cambridge, MA, and Oxford: Blackwell, 1992).

been less inclined to think all and sundry were opposed to me, I would have the ability to find employment.

If I or other members of 'my' group or similar groups or classes live within situations or states of domination in which we are unable to exercise our powers this will be a typical instance of lack of empowerment. The forms of domination can take any of the forms discussed in Chapter 3. So, it is in this sense that my lack of power generates obstacles or hindrances to my acquiring something like employment. This fact explains why even when impediments or obstacles are clearly external to me, they can still remain particular to me or my group: they can be felt only by me or those who share my position of power within existing power relations. Others may not be subject to the domination that exists within existing power relations because they happen through good fortune, inheritance of wealth, status, family structures and so on to be in a position distinct from my own. In other words, the fact that these external obstacles are not formal legal, economic or political obstacles and that they may not be encountered by everyone else in my society does not make them any less real and material. These obstacles may be, moreover, the result of my or my group's historical lack of relative power that meant I was brought up in conditions of poverty and with little prospect of good education (something especially prevalent in unequal societies that leave education to the private sector). If I were more powerful, or if my society's power relations less prone to creating states of domination, in the sense that I had the social and economic means to access a better education, my levels of skill, confidence and self-esteem may mean that I no longer encounter obstacles and hindrances within the existing job market, obstacles and hindrances that in my less powerful position were insurmountable impediments to action.

This fact about the nature of external obstacles – that is, they are often relative to an individual's power within her society's power relations – is also applicable to what have been called 'internal' obstacles.[25] For example, a history of unequal educational opportunities based on racial discrimination and domination or an early childhood that does not provide the conditions for self-assured young adults often gives rise to psychological states or 'blocks' – whether as a consequence of fear, anxiety or socialisation and expectation – which makes it very difficult or even impossible for young adults from certain gender, race and class backgrounds to excel in certain subjects or careers. For obvious reasons, these are normally known as 'internal' obstacles to freedom, but sometimes, even often, they have their origins in broader social and political

[25] Taylor, 'What's Wrong with Negative Liberty'.

inequalities and states of domination or 'external' conditions.[26] While the dire need to overcome these 'blocks' in particular individuals obviously needs the dedicated labour and training of countless psychologists and therapists of various persuasions, it is vital for political and economic policy formation that we not lose sight of two component parts to this claim: (a) the fact that supposedly 'internal' obstacles that tend to be disregarded by defenders of 'negative' freedom since by definition they are only concerned with external impediments to action are often in fact 'external' in origin;[27] and (b) the fact that many of these internal obstacles with external origins have their sources in social, economic and political conditions that are of our own political making and can therefore be changed. This is even true of some, though not all, of the conditions that obtain within seemingly 'natural' nuclear families: the institution of patriarchy often gives rise to forms of authority structures within families that distort or cripple the powers of children and adults the world over. These supposedly 'natural' institutions and practices must also therefore be interrogated for instances of domination; in fact, the degree to which they are accepted as 'natural' is often an indicator of the hidden existence of domination and constraints on freedom.

In certain situations, therefore, absence of power counts as just as much of an obstacle as a formal, general external impediment even if it does not generate external obstacles. And often it creates situations of clear external impediment, even if the obstacles concerned are not generally identified or felt. Freedom, therefore, is not so much about the removal of external obstacles (though this is also important) as the empowerment of individual agents to overcome internal and external obstacles or overcome domination. This is the first main dimension along which we can understand freedom as power: the ability to get what I want, to act as I would choose in the absence of either internal or external obstacles. This way of thinking about freedom is in fact common to a wide range of thinkers, from the variety of liberal and libertarian theorists discussed in the first chapter to Montaigne, Marx, Nietzsche, Taylor and Foucault, as discussed throughout this book.

Given these facts about power and empowerment, and following my elaboration of the arguments of Foucault and Geuss on power and domination, I submit that the most appropriate way of thinking about freedom as empowerment is via the notion discussed in the previous chapter under the phrase 'the institutional means to determine needs'. In other

[26] Wilkinson and Pickett, *Spirit Level*; and Wilkinson, *Inequality*.
[27] For typical contemporary proponents of 'negative' freedom, or what they call 'pure negative' freedom, see Carter, *Measure*; Kramer, *Quality*.

words, empowerment is possible only where the provision of the institutional means for inter-subjective identification, expression and evaluation of needs and genealogical critique of institutions and practices enables the identification of the degree to which power relations are or are not instances of domination. Moreover, empowerment in this sense will depend on individuals having the means to act in order to transform institutions that tend to support power relations that generate states of domination. I am empowered if I, and others who may have similar needs and concerns, are able either individually or in concert to change power relations that have tended to ensure that I or we remain in a state of domination. As I have argued elsewhere, one necessary condition for this is the provision of vital need satisfaction by the state (or similar coercive authority) if such provision cannot or is not being successfully brought about by the individuals concerned. It is for this reason that state provision for vital needs (such as water, housing, education and so on) is such a crucial component of a successful welfare state and why the alternative idea of a basic income grant cannot substitute for it – that is, these goods or needs have to be directly provided for by the state (or similar coercive authority) as they are necessary conditions for individual empowerment. Without them, individuals cannot begin to make use of the various powers and freedoms that they have or are given to them by law and that constitute freedom as power.[28] And a basic income grant does not ensure that these needs are met: it simply provides the financial means to do so, which can easily be used for other purposes. As is proposed at the end of this book, real empowerment depends upon the existence of certain kinds of partisan institutions for participation at local level, the power to repeal and veto legislation, the power to revise constitutions and real control of representatives, particularly as regards their long-term macroeconomic decisions.

Representation

Freedom is power not only in the sense of individual empowerment. In fact, thinking about freedom in terms of empowerment alone does not get us far towards understanding freedom under modern conditions – that is, within and between complex modern polities and economies. While the model of the single individual being empowered and thus liberated

[28] For more on this and how it differs from alternative conceptions offered by Rawls and others, see Hamilton, *Needs*, pp. 145–153. And for opposing arguments that support the idea of a basic income grant, see P. Van Parijs, *Real Freedom for All: What (if Anything) Can Justify Capitalism?* (Oxford: Clarendon Press, 1995).

is relevant for certain parts of modern social and political conditions, for most of the time our political agency is mediated and controlled by those we either elect, inherit or endure as our political representatives, governors or rulers. And the same is true, if in slightly different ways, of our economic agency. Therefore the second important dimension in which freedom is power is, in the language of the previous chapter, the means and ability to determine who governs my political association or community – that is, the power to determine who represents me politically. Here I discuss representation in historical and relatively abstract terms, as an initial step in a more complicated argument developed in the rest of this book, regarding how best to control economic policy formation via control over individual and group representatives and actualise institutions for meaningful control over political representatives.

In very different if more or less contemporary contexts (the defence of the American constitution and the French Revolution), James Madison and Emmanuel Sieyès played a crucial role in establishing our modern conceptions and institutions of political and economic representation, and both of them conceived of representative government as quite distinct from democracy. Madison often contrasted the 'democracy' of the city-states of Antiquity, where 'a small number of citizens . . . assemble and administer the government in person', with the modern republic based on representation. He argued that representation was not an approximation of government by the people made necessary by the size and complexity of large modern states; rather, he saw it as an essentially different and superior system that would enhance good judgement in politics and overcome the danger of faction in politics.[29] Similarly, in *Qu'est-ce que le Tiers-État?*, Sieyès consistently stressed the 'huge difference' between democracy, in which citizens make the laws themselves, and the representative system of government, in which they entrust the exercise of their power to elected representatives.[30] He defended representative government because he thought it most appropriate to the

[29] *Federalist* 10, in Hamilton, Madison and Jay, *The Federalist*; B. Manin, *The Principles of Representative Government* (Cambridge University Press, 1997), p. 2.

[30] See Sieyès, *Political Writings*; Manin, *Representative Government*, p. 3 fn. 3. Also, the kind of constitution that Sieyès thought suitable for a free state was quite similar to the kind of 'not-quite republican, but not-quite royal constitution' that the Federalists advocated for the United States of America (Sonenscher, Editorial Introduction to Sieyès, *Political Writings*, p. xv). As regards their criticism of 'democracy', Madison and Sieyès were simply expressing the normal view of the time: what we now call 'representative democracy' has its origins in ideas and institutions of 'representative government' that developed in the wake of the English, American and French revolutions, where 'democracy' and 'democrat' were terms of derision and insult. J. Dunn, *Setting the People Free: The Story of Democracy* (London: Atlantic Books, 2005), pp. 71–118.

condition of modern 'commercial societies' in which individuals were chiefly occupied in economic production and exchange.[31]

Representative democracy has certainly seen changes ever since the early nineteenth century: for example, the extension of voting rights and the establishment of universal suffrage.[32] Certain central elements, however, have not been affected by these developments. In most places, these include the fact that those who govern are appointed by election at regular intervals, the decision-making of the representatives is independent from the wishes of the electorate, those who are governed may give free expression of their opinions without fear of sanction from those who govern, and public decisions undergo trial of debate.[33]

But Sieyès's theory of representation went more emphatically beyond established usage by referring to something systematic in any durable and extensive modern human association: the division of labour and its link to increased specialisation and representation. This was based on a concept of representation that was both more systematic and more general in its applicability than anything to be found in the ideas of Madison and company. He made a distinction between two kinds of representation in modern commercial societies that both belonged to a single system. The one kind of representation was to be found in all the non-political activities of everyday life. For example, he argued that the person who makes my shoes is my representative. He is representing me in utilising a capacity common to both of us to carry out a vital function (or means) to satisfy a need of mine. Moreover, in utilising a representative for my capacity to make my own shoes, I am reducing the amount of effort involved in meeting my need to protect my feet and thus freeing myself up to undertake other activities. Sieyès thought that this division of labour and associated plurality of representation would increase the enjoyment of people's lives and was a necessary component for the development of the arts and the sciences and thus all durable human association.[34] The other kind of representation was the kind to be found in political society – my member of parliament is my representative, or so we assume. As Hobbes, Sieyès and others have pointed out, members of parliament may in fact represent the state rather than any particular citizen thereof (or both).[35]

[31] Sieyès, *Political Writings*, pp. xv, 92–162.
[32] P. Rosanvallon, *La cacre du citoyen: Histoire du suffrage universel en France* (Paris: Gallimard, 1992); G. Eley, *Forging Democracy* (Oxford University Press, 2002); N. Urbinati, *Representative Democracy: Principles and Genealogy* (University of Chicago Press, 2008); and below.
[33] Manin, *Representative Government*, pp. 3, 6.
[34] Sonenscher, Editorial Introduction to Sieyès, *Political Writings*, p. xv.
[35] This is discussed in greater detail in Chapter 5 below.

If either of these two kinds of representation replaced the other, Sieyès argued, the representative system would collapse. According to Sieyès, both kinds of representation have their origins in human needs and the means that humans used to meet these needs. Both meet the same purpose: anyone acting as somebody's representative meets a particular need for them and thus enables the person to do something else. Just as my representative, specialist shoe-maker frees me up to do other things, so does my representative, professional politician. But they are also fundamentally different. The kind of representation found in daily life is essentially plural while that of political life, essentially singular. The former was associated with the means individuals use to meet their individual needs. The latter was made up of the means individuals use to meet their common needs.[36]

Thus, in contrast to those who maintain that political representatives represent the individual interests of particular citizens, Sieyès maintained that government made up of political representatives represented the nation's common interests, not its members' several interests. Most commentators assume that this equates to a choice between representatives doing what their constituents want and doing what they, the representatives, think is best.[37] But this is too simplistic. Representatives could represent the interests of members without necessarily doing what the members want, and yet not have to revert to a notion of 'common interest': the representatives could do what they think is in the best interests of the members, which may *not* be what the members in fact want, and yet still successfully represent the individual interests of the members and *not* the common interest.[38] And this is the case, as will be discussed below, because some interests may be legitimate *and* partisan.

Whether political representatives represent individual members' interests or common interests, which Hanna Pitkin calls the 'mandate-independence controversy',[39] and thus what exactly is meant by representation, depends upon a number of factors that turn out to be vitally

[36] But as we will see in the next chapter this is not necessarily the last word on the matter – that is, there may be ways of introducing plural voices and needs without undermining the need for singularity in sovereign representation, especially when some needs are partisan and must not only remain so but, given the disempowered position from whence they emanate, may have to be represented by institutions and individuals that are institutionally empowered to remain partisan to these needs and interests.

[37] H. F. Pitkin, 'Representation', in T. Ball, J. Farr and R. L. Hanson (eds.), *Political Innovation and Conceptual Change* (Cambridge University Press, 1989), pp. 132–154, at p. 142.

[38] Geuss, *Idea of a Critical Theory*; Hamilton, *Needs*.

[39] H. F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967); and Pitkin, 'Representation', pp. 132–154, at p. 142.

important for this argument here. The history of the concept of representation is full of a variety of conceptions of representation drawn not only from politics, but also from law, economics, literature and the theatre. These are concerned with how we represent individuals, groups, the state and, increasingly, non-governmental structures and organisations.

As regards individuals, there are three ways people have thought about representation that complicate the distinction between 'mandate' and 'independence': (a) as a principal–agent relation, where one person (the *principal*) appoints another (the *agent*) to perform some action or function on their behalf; (b) the idea of representatives as trustees, in which, as owners of the trust for its duration, trustees act independently but in the interest of their beneficiaries; (c) representation as identification, in which, unlike in the cases of the former two, no conscious decision to *appoint* a representative is needed, but there remains a sense in which the representative promotes my interests – this occurs when an individual identifies with the actions of another person in a way that gives that individual a stake in the other's actions.[40]

As is discussed at length in Chapter 5 below, groups can be represented in similar sorts of ways, despite some complications regarding whether groups can be conceived as principals at all.[41] Underlying representation as identification in all cases is the idea that someone who resembles me or my group in important respects will act as I or my group would act and therefore promote my or my group's interests automatically. As discussed in detail below, especially with regard to the contemporary economic and political situation in South Africa, this is one kind of representation that plays a vital role in this context (the other is aesthetic representation): actual and potential creditors, who constitute the core of 'the market', respond to whether or not their interests will be defended within the formal structures of a state's representative democracy, and their interests can be defended either by representatives from parties that enjoy the support of (potential) creditors or by representatives with whom they identify, but who may not formally represent creditor interests. In both cases, the creditors can only be sure that their interests are being accorded *political* representation if their agents or the representative with whom they identify are members of the formal institutions of political representation.

As has already been highlighted, besides representing individuals in different sorts of ways, political representatives also represent the state.

[40] M. B. Vieira and D. Runciman, *Representation* (Cambridge: Polity, 2008), pp. 66–81; and below.
[41] *Ibid.*, pp. 84–119.

States, like other forms of association, depend upon representation in order to function at all, but to function as states they depend upon a wider claim to legitimacy than other kinds of association: a distinctive claim to represent all their citizens. Despite the fact that the history of representation shows that there is nothing inherently democratic about the idea of representation, in our democratic age, we assume that to be legitimate political representation must be democratic. In other words, legitimacy within modern representative democracies is derived from the periodic selection of representatives by all citizens in an open and fair electoral process.[42] Or, put another way, democratic legitimacy rests upon a system that safeguards and enables conscious decisions to *appoint* representatives. Given that representation as identification does not require a conscious decision to *appoint* a representative, only the first two of the above-discussed three kinds of representation matter at the political level within representative democracies: that is, the principal–agent relation and the idea of representatives as trustees. Moreover, in both cases the representatives are empowered to act to further the interests of the principals or beneficiaries, however different their mandate for action, in the one case direct mandate and the other trusteeship. It follows from this that what distinguishes political representation from other forms of representation, especially economic representation, is the conjunction of the requirement to appoint consciously one's representatives and the fact that the latter act in order to further the interests of the principals or beneficiaries – that is, the citizens or ruled. Both forms of 'election' empower the representative to act 'in place' of the citizen, but both also rest on an account of representation that has its source in the power of the citizenry – that is, in their freedom to hand over the power to make decisions to a set of political representatives.[43] Moreover, the freedom of the citizenry will then also depend, paradoxically, on the relative power and autonomy of the represenatives to make decisions 'in place' of them.

The workings of the relationship between citizen and representative has been central to many canonical figures in the history of political thought, but irrespective of version and political leaning we see one major constant: that the power of the representatives – or, in other words, their freedom to judge – rests in part on the power of the citizens and in part on the

[42] 'What we mean by democracy is not that we govern ourselves. When we speak of or think of ourselves as living in a democracy, what we have in mind is something quite different. It is that our own state, and the government which does so much to organize our lives, draws its legitimacy from us, and that we have a reasonable chance of being able to compel each of them to continue to do so.' Dunn, *Setting the People Free*, p. 19.

[43] But see the discusion in Chapter 5 below of aesthetic representation in politics for further complications.

power of the representatives. In other words, one of the major domains within which we exercise our freedom as power has to do with whom we elect and in what way we have some control over their decisions and judgements. Some would have us have direct control, while others think it sufficient that we control simply the choice of who rules over us.[44] At either extreme, and all along the continuum that lies between them, the question revolves around this supposed paradox: the extent to which we can control our representatives; and the extent to which they can act independently. The more power we have over them, the more likely they are to carry out the functions they have been elected to carry out, act in our interests or some mixture of the two, depending on which version of representation you think best captures what goes on between citizen and representative or ruler and ruled; but if we citizens are able constantly to enact that power we undermine their freedom to judge and act, and thus our own freedom as power. Modern representative democracy in complex states creates a situation in which the freedom of the individual depends not simply on his or her power to do what he or she would otherwise do, but also on his or her power to control or determine both who represents (or rules) them and how they do so at the right time; and thus on institutions that enable and constrain these interventions by the citizenry. The question of how they best achieve these two seemingly irreconcilable goals is dicussed below.

When Machiavelli speaks about freedom as dependent on the degree to which citizens have autonomously determined who rules and how they rule, that to be free is to live in a state in which the citizens have effective control over the rulers or the rules that guide the actions of the rulers, he is referring to control over the formal power of government in its various functions: legislative, executive and judicial. In other words, although he and, in particular, his latter-day heirs, such as Harrington, Kant, Hegel, Madison, Jefferson and so on, were acutely aware that this power over government was not usually direct power and normally mediated by representatives, it is worth stressing the fact that this tradition of thinking about freedom as power over government is more properly articulated in terms of freedom as power of one's political representatives. It is for this main reason that modern 'republican' or 'neo-roman' emphasis on freedom as non-domination fails to provide a truly 'political' account of freedom. If I am right regarding the central significance of representation in understanding freedom, it becomes difficult to see how freedom as non-domination or non-dependence is even imaginable

[44] Compare, for example, Pettit, *On the People's Terms,* to J. Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper Torchbook, 1942).

let alone possible: for the laws determining who rules and how they rule are to be determined or fixed by the citizenry as a whole and are general and applicable to all in a non-arbitrary manner, the citizenry must have meaningful control over their representatives to ensure that they determine their needs as the citizens would were they in a position to do so. However, the representatives need also to be at least periodically independent for their decision-making to be free and thus to empower citizens to respond, but how would this be possible if freedom depended upon what Pettit calls non-domination and later articulates as 'the absence of alien control'? For representatives to be independent they will have to be alien to the citizenry and beyond the direct control of the citizenry in at least one sense each of 'alien' and 'control'.[45] In other words, in order for citizens to be free in this sense, *they must have control over their representatives who are determining their needs and interests and that of the state and be constrained sufficiently to enable the representatives the independence they need to make their own judgements regarding these needs and interests*. In these real circumstances regarding political representation, therefore, not only is the freedom of citizens, at some points and at least in one sense, *dependent* on the arbitrary decisions of rulers or representatives, but it is also dependent on them having the power, mediated through the power and actions of their representatives, to ensure that their needs and interests are met and the institutions within which this takes place are periodically evaluated; and, if these institutions are found to generate domination, that the citizens can ensure their transformation in line with this prerogative to meet needs and interests.

Overcoming this seeming *aporia* between the independence of representatives vis-à-vis citizens and the power that citizens must wield over their representatives is the job of Chapter 5, but some more comment is in order here, especially to guard against the retort that this way of conceiving of representation is guilty of downplaying the main function of a political representative: to make judgements regarding how best to proceed, in terms of both the interests of the state and the interests of the citizens he or she represents. This kind of response, however, rests on an erroneous assumption: the stark distinction drawn by Hobbes, Burke and others between 'judgement' and 'opinion' – that is, between representatives using their own judgement and acting as 'mere transmission

[45] Cf. Pettit's account of 'freedom as immunity to arbitrary control' in his *Republicanism*, pp. 5–6, 10, 51–72; for his later account of freedom as 'absence of alien control' on the part of other persons, see Pettit, 'Keeping Republican Freedom Simple'; for the contorted, unconvincing lengths he goes to reconcile this level of direct control and influence and the realities of representation in modern politics, see Pettit, *On the People's Terms*, Chapters 4 and 5; and for my critique of his conception of domination, see Chapters 2 and 3 above.

belts for constituent preferences',[46] an oppositional distinction which is overcome by the alternative picture defended here of inter-subjective and genealogical evaluation of needs and interests.

This is the case for two related reasons. First, the distinction is too sharply drawn by many thinkers and commentators. Both extremes are unrealistic: the notion that representatives' own judgements regarding how best to proceed are *completely* independent from the opinions of the broader citizenry *and* the notion that representatives should (or could) simply directly represent the opinions and wants of their constituents. In fact, as various otherwise diverse thinkers, such as Cicero, D'Argenson, Condorcet, Dunn and Sen, have argued, the judgement of rulers regarding how best to proceed is not only enhanced by knowledge of citizens' opinions, it is also normally dependent on it. If judgement in economics and politics is ultimately about knowledge of power, needs and interests, it must at least in part depend upon cognisance of the existing needs and interests of the population, as expressed by them and as determined by objective observation of their conditions of existence and inter-subjective deliberation to determine needs and interests. And, of course, for representatives to be able to form their own judgements regarding these needs and interests they will need distance, time and independence from the manner in which they are often urgently articulated. Second, if therefore it is acknowledged that, at least in part, the substance of political representation and its associated judgements is the evaluation of needs as opposed to the mere aggregation or transmission of preferences, it becomes possible to break down the stark distinction between 'judgement' and 'opinion': not only does judgement enter at the level of acquiring and assessing the relevant factual information and thus takes place amongst representatives and constituents, but also, as I have argued elsewhere, the process of evaluating needs, interests and institutions leads to enhanced judgement amongst both rulers and ruled.[47] In other words, if we successfully escape two received opinions – that representation is either about completely independent judgement or the direct transmission of opinion *and* that in either case it rests on a response (or lack of

[46] Hobbes and Sieyès go even further and argue that the representative does not represent the individual constituents; he represents the collective body of them, the commonwealth or state. Hobbes, *Leviathan*, pp. 121, 128, 184; Sieyès, *Political Writings*; and D. Runciman, 'Hobbes's Theory of Representation: Anti-Democratic or Proto-Democratic', in I. Shapiro, S. C. Stokes, E. J. Wood and A. S. Kirshner (eds.), *Political Representation* (Cambridge University Press, 2009), pp. 15–34. For Burke, see E. Burke 'Speech to the Electors of Bristol', in *Selected Works of Edmund Burke* (Indianapolis, IN: Liberty Fund, 1999 [1774]), cited in 'Editor's Introduction', in Shapiro *et al*. (eds.), *Political Representation*, p. 1.

[47] Hamilton, 'Human Needs and Political Judgment'.

response) to *preferences* alone – we enable new ways of thinking about the representation of individuals and groups that is not only more realistic but also grounded in inter-subjective determination of needs and thus more likely to enhance the judgements of rulers and ruled and thus the efficacy and responsiveness of representatives.[48]

Resistance

The third dimension within which freedom is power is, as it were, the flip side of the first two dimensions. This is freedom in the face of the domination within the complex web of social relations of power, and power here is not only the formal power of government and the state or the power of single other agents to coerce, force or influence the actions of others, but the kinds of systematic and institutional power relations that exist right across society. As I have argued, power in this sense is not understood in the sterile fashion common to some branches of political science and philosophy, in which it is analysed as a property of individuals alone, in terms of A's ability to make B do something he otherwise would not. Rather, power here is understood as heterogeneous, often the consequence of unintentional action and enacted within power relations that may or may not be characterised by domination. As Foucault argues, power is everywhere and is closely tied up with existing forms of domination, repression and constraint.[49] As he puts it, 'humanity does not start out from freedom but from limitation'.[50] Not only do we start out from limitation, but we cannot fully escape the social power relations and positions of relative power that characterise human existence, particularly within and between complex, modern states. We can, however, *resist* them and engage in a constant process of 'self-making' in the face of this power; in fact, according to Foucault, power always produces resistance in one form or another. As we better understand how existing power relations dominate and repress us, we can therefore begin to see the 'possibility of self-determination' through this resistance.[51] Whether we conceive of this as an 'aesthetic of existence' or something more directly political, say, in the form of social and political activism or participation in the

[48] See below for more on forms of representation and how the aesthetic theory of representation and my account of needs, interests and domination, aided by the work of McCormick and Urbinati, avoids this unhelpful sharp distinction.
[49] M. Foucault, *Power*, ed. J. D. Faubion (London: Penguin, 2002).
[50] Foucault, 'Madness, the Absence of Work', in A. I. Davidson (ed.), *Foucault and his Interlocutors* (University of Chicago Press, 1997), p. 100.
[51] Foucault, 'An Aesthetics of Existence', in S. Lotringer (ed.), *Foucault Live* (New York: Semiotext(e), 1989), p. 452.

institutions I propose in the conclusion to this book, the point is that here freedom is no longer conceived as the absence of constraint but as the utilisation of the power which circulates in all relations to continually self-make or self-determine.[52]

This process of self-determining or self-making will never involve an escape from all existing power relations, but this is not necessary for freedom; in practising resistance, the 'disciplinary subject' practises freedom.[53] Foucault provides a number of examples of this practice of freedom throughout his work, but he expresses it best when he says,

> Well, I don't think the word *trapped* is a correct one. It is a struggle, but what I mean by *power relations* is the fact that we are in a strategic situation toward each other. For instance, being homosexuals, we are in a struggle with the government, and government is in a struggle with us. When we deal with the government, the struggle, of course, is not symmetrical, the power situation is not the same; but we are in this struggle, and the continuation of this situation can influence the behavior or nonbehavior of the other. So we are not trapped. We are always in this kind of situation. It means that we always have possibilities, that there are always possibilities of changing the situation. We cannot jump *outside* the situation, and there is no point where you are free from all power relations. But you can always change it. So what I've said does not mean that we are always trapped, but that we are always free – well, anyway, there is always the possibility of changing . . . You see, if there was no resistance, there would be no power relations. Because it would simply be a matter of obedience. You have to use power relations to refer to the situation where you're not doing what you want. So resistance comes first . . . ; power relations are obliged to change with the resistance. So I think that *resistance* is the main word, *the key word*, in this dynamic.[54]

Thus this notion of self-determination is not the same as the Enlightenment notion of self-realisation – that is, the project of finding one's true nature through the exercise of one's powers and capacities in accordance with 'human' nature. It is this latter approach to individual self-determination or self-realisation that drove Berlin and other liberals away from freedom as power. Foucault's account is distinct. It still requires

[52] Foucault's account of the ancient notion of 'aesthetic of existence' is not concerned with direct political action, or at least not uniquely: 'the principal work of art one has to take care of, the main area to which one has to apply aesthetic values is oneself, one's life, one's existence'. H. Dreyfuss and P. Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, 2nd edn (University of Chicago Press, 1983), p. 245.

[53] W. Brown, *States of Injury* (Princeton University Press, 1995), p. 63; and S. Tobias, 'Foucault on Freedom and Capabilities', *Theory, Culture and Society* 22.4 (2005), pp. 65–85; Cf. C. Taylor, 'Foucault on Freedom and Truth', in D. Couzens Hoy (ed.), *Foucault: A Critical Reader* (Oxford: Blackwell, 1986).

[54] Foucault, 'Sex, Power, and the Politics of Identity', in *Ethics, Subjectivity and Truth: The Essential Works of Michel Foucault, 1954–1984*, Vol. I, ed. P. Rabinow, trans. R. Hurley and others (London: Penguin, 1997), pp. 163–173, at p. 167.

the individual to exercise and develop her powers and capacities, but these may vary depending on context and they are normally critical and transgressive in two important ways. First, in itself the activity of self-overcoming 'is constituted through transgressing social practices', or, in other words, is achieved in the face of the existing norms, expectations and power relations.[55] Second, as I argued in Chapter 3, the interrogation of power cannot conclude with government, but must extend to governmentality – that is, 'the modes of organizing knowledge and disciplining bodies that state apparatuses may co-opt and employ in the production of subjects'.[56]

This way of thinking about freedom as the power of resistance is not very far from the account of freedom to be found in the work of Karl Marx, as discussed earlier. Foucault relocates freedom within or through politics, but his conception of politics is broader and more open to a variety of practices, transgressions, vigilances, hegemonies, identities and 'democratic disturbances'.[57] As Foucault puts it, 'there is no power without potential refusal or revolt'.[58] The other positive aspect of this account of freedom is that it incorporates the important role played by the overcoming of internal obstacles in practising freedom. As Freud and others have shown, and is only too apparent in very unequal societies such as Brazil and South Africa, fear, anxiety, low aspirations and other forms of adaptive preference formation create severe and debilitating internal obstacles to freedom. Individual and collective resistance to the domination, oppression, coercion and violence that may have generated these obstacles is one very good way of overcoming these obstacles both within and against persons.[59] In sum, this is a flexible and non-teleological account of freedom as resistance – that is, neither freedom from constraint nor freedom through control over the levers of power, but rather freedom through creative, personal and self-reflective resistance to the forces of constraint.

If we were to reconfigure this account in terms of inter-subjective and genealogical evaluation of needs, interests and institutions, as suggested

[55] D. Owen, *Maturity and Modernity: Nietzsche, Weber, Foucault and the Ambivalence of Reason* (London: Routledge, 1994), p. 205.
[56] Tobias, 'Foucault on Freedom and Capabilities', p. 67.
[57] The latter phrase is borrowed from W. Connolly, 'Beyond Good and Evil: The Ethical Sensibility of Michel Foucault', *Political Theory* 21.3, pp. 365–389, at p. 381.
[58] Foucault, 'Omnes et Singulatim', p. 324.
[59] For more on adaptive preferences in general and the fact that people who have little power and see little chance of ever gaining more power tend to develop low aspirations, see Chapter 3 above and references there. Movements such as South Africa's Black Consciousness Movement are, amongst other things, therefore important means of overcoming these kinds of internal obstacles to freedom.

in the previous chapter, we would have a conceptual language and set of institutional mechanisms through which to enable this form of resistance to the everyday norms and practices of our society, especially norms and practices that are characterised by or tend to justify and enable domination. In doing so, especially if we adhere to a contextual account of human needs, we do not in fact have to depart very far from Foucault's position. Resistance then becomes resistance to the set of norms and institutions that either ensure that our needs remain unmet or that ensure or justify power relations that give rise to domination. As Foucault says, admittedly in rather general terms,

> Consequently, those who resist or rebel against a form of power cannot merely be content to denounce violence or criticize an institution. Nor is it enough to cast blame on reason in general. What has to be questioned is the form of rationality at stake . . . The question is: How are such relations of power rationalized? Asking it is the only way to avoid other institutions, with the same objectives and the same effects, from taking their stead.[60]

Liberation can come, he goes on to argue, not just from attacking either the individualising or totalising effects of the political rationality of the modern state, either in its earlier pastoral form or its later reason of state form, but by attacking 'political rationality's very roots'.[61] But how exactly is that achieved? Foucault does not provide us with an answer to this question, but the first component of an answer to it is discussed in the next section: turn on its head the extant power relation between citizen freedom and state authority, so that individual and group freedom and happiness determine the rationality of government and reason of state, not the other way around.[62] But is this possible given the very structural properties of government? Something like an answer to this more challenging question is given in the remaining chapters, particularly with reference to the role of group representation and how best to control the political economy of one's state via meaningful control over one's representatives.

Control

The fourth dimension of freedom as power is most obvious in the extent to which the substantive freedom of citizens depends upon citizen control over economic organisation and policy formation. In any modern polity

[60] Foucault, 'Omnes et Singulatim', p. 325. [61] *Ibid.*
[62] Also see Chomsky and Foucault, 'Human Nature', p. 130.

there exists a prudential requirement to sustain effective means for citizens to judge constantly and effectively the prevailing principles of their society's political and economic organisation as well as the performance of their political authorities. In particular, given the representative system of capitalist democracies and the fact that political representatives administer highly complex economies,[63] it is vital for citizens' substantive freedom that freedom is in part conceived of in terms of being able to *judge* and *question* the performance of their elected representatives in the light of their country's macroeconomic performance and policies.[64] In capitalist democracies the freedom of individual citizens to carry through their personal and economic desires, wishes, plans, purposes and projects depends more than anything else on the state of their economies and the macroeconomic decisions of their rulers. In order for them to enjoy this thoroughly modern form of freedom, citizens must be able effectively to judge, criticise, repeal or veto the broad decisions and laws adopted by their rulers or even revolt against the rulers themselves. It is in this crucial modern sense of control over the determinants of the economic environment that we see the coalescence of the other three dimensions of freedom. Without meaningful *collective control* over our economic environment, the other forms of freedom become worthless and toothless. This is at least true of the first and third dimensions of freedom discussed above: my ability to overcome any internal or external obstacles to my desired actions and my power to resist social powers and norms and 'self-make' through transgression depend, ultimately, upon the extent to which I can control the choices of my representatives regarding macroeconomic policy. Otherwise, my resistance will change nothing and thus leave my opportunities and agency unchanged.

The sense in which citizens can have power over their economic environment via control over their political representatives and thus, to some extent, secure their own freedom runs directly counter to the liberal and

[63] Not everyone will agree that political representatives do, can or ought to administer the highly complex and inter-related economies of today. Some, like Friedrich von Hayek, argue that it is a necessary property of economies that they cannot be 'administered' by a single agent. Others, like some theorists of globalisation, maintain that within the globalised economy no single agent can in fact have control over the economy (even if it is true that this is not a necessary property of economies). While a third group, exemplified most powerfully by the ideas and policies of Margaret Thatcher and Ronald Reagan, maintain that although it may be possible it is not desirable to control the economy – that is, we should not want to have control over it, and this is because the market can only be controlled by what amounts to a police state, a reprehensible and repressive entity, something like that proposed by Fichte or some forms of Marxism. For full references, discussion and refutation of all of these arguments see Chapter 6 below.

[64] Dunn, 'Liberty as a Substantive Political Value', pp. 61–84.

libertarian argument regarding freedom and unfreedom within capitalism. The liberal and libertarian non-political conception of freedom categorises obstacles to freedom as only those that are the result of deliberate human action. This coupled with the fact that the complex economic arrangements and consequences characteristic of capitalism are not normally the direct result of individual deliberate human action produces a very startling conclusion: that the rich are no freer than the poor (they may be different in other ways but they are no freer). Economic forces and the consequences of them, such as recession, poverty, unemployment and the degradation of the environment, are deemed 'impersonal' and thus not restrictive of freedom.[65] On the conception of freedom being defended here, by contrast, not only is it not a requirement that an obstacle to freedom be the result of deliberate human action for it to restrict freedom, but the doctrine of 'unintended consequences' is dealt with head-on. In other words, if it can be shown that certain principles, institutions or forms of economic organisation have intended *or* unintended consequences that restrict freedom, they can and must be changed. And the responsibility for this change rests on the shoulders of a polity's political representatives, as it is their decisions that generate the legislation that encourages, enables or constrains the countless economic agents and institutions that make up market economies. As John Dunn puts it,

> It is in the skilful formulation and effective implementation of economic policy that those modern governments that do not actively massacre their subjects in substantial numbers do most to alter the opportunities of most of these subjects to act as they would choose to act.[66]

This claim can be supported by a variety of historical examples, not least of all the latest worldwide recession: decisions made by our political representatives determine to a measurable and significant degree the kind of economic organisations and institutions that predominate in any particular economic environment, which in turn determine the kinds and degrees of freedom enjoyed by citizens. In order for citizens to be free, they must take it upon themselves to assess and control the judgements and actions of their macroeconomic masters and in order to do this they need at least to be provided with the resources, educational opportunities and institutional means to do so. Our political representatives are both *causally* and *morally* responsible for the intended and

[65] See Hayek, *Liberty*; and Nozick, *Anarchy*.
[66] Dunn, 'Liberty as a Substantive Political Value', p. 80.

unintended consequences of their decisions.[67] And this alternative way of thinking about freedom as effective power over the economic environment via meaningful and effective control over political representatives is only brought into sharper relief by the worsening and perilous state of global environmental degradation. As Hollis notes, the spurious distinction between natural and human obstacles, as articulated by Berlin and others, enables our political representatives to escape responsibility for these matters.[68] If our account of freedom can show that our representatives' everyday policy decisions directly or indirectly affect our freedom via their effects on the economy and the environment, we may provide fuel for more active involvement by the citizenry in the determination of these matters of economic policy, or at least support for the institutional means through which they may better control the way in which their representatives determine economic policy. Citizens respond much more quickly to claims about their freedoms than to most other political claims. Moreover, a different, if related, sense of control – self-control – is a vital component for success in this regard. Given the affluence and consumption levels in the developed 'global North' and the poverty and aspiration to 'develop' towards this state of affluence and consumption in the 'global South', coupled with the perilous state of the planetary environment, in order to secure our own freedom as power, which at one extreme equates to individual self-preservation, as citizens we need to ensure the preservation of the inter-dependent ecosystems that constitute our planet and to do that we need to show greater self-control and self-discipline with regard to our consumption and its effects on the environment. But we also need to find ways to induce our representatives to do the same: we all need to display greater self-control and enhanced sensibility to the global material requirements for the freedom of all.

Freedom as power versus freedom as non-domination

These dimensions of empowerment, representation, resistance and control are the domains over which individuals objectively need power. Liberals are concerned with external obstacles because they think it is better to have *more* possible courses of action rather than fewer. That is obviously true of some situations, but it is not clear that it is true of all; but

[67] See D. Miller, 'Constraints on Freedom', in Miller, *The Liberty Reader*; K. Kristjánsson, *Social Freedom* (Cambridge University Press, 1996); G. A. Cohen, *History, Labour and Freedom* (Oxford University Press, 1988); Sen, *Inequality Reexamined*; Van Parijs, *Real Freedom for All*; and Pettit, *On the People's Terms*.

[68] M. Hollis, 'Freedom in Good Spirits', *Proceedings of the Aristotelian Society*, supplementary volume, 69 (1995), pp. 101–112.

whether or not it is always a good thing to have more rather than fewer options open, the number of available options depends not merely on the presence or absence of obstacles, but on the conjunction of one's power and the internal or external obstacles that stand in one's way. Moreover, whether or not a person, act or institution constitutes an obstacle will itself often depend on my relative power, in particular my position within existing power relations and vis-à-vis existing forms of representation. In short, my freedom of action is relative to my power to: (a) get what I want, or to act or be as I would choose in the absence of either internal or external obstacles or both; (b) determine the government of my political association or community; (c) develop and exercise my powers and capacities self-reflectively within and against existing norms, expectations and power relations; and (d) determine my social and economic environment via meaningful control over my and my groups' economic and political representatives. Freedom is therefore power in the sense that it depends upon my power, control and self-control across these four dimensions.

Under modern conditions, characterised as they are by specialisation, division of labour and a variety of forms of economic and political representation, these four dimensions of freedom as power are part and parcel of the ways in which modern individuals do and must enact their various powers to achieve and safeguard their own freedom and that of their fellow citizens. The distinctions between the various dimensions are not strict, substantive distinctions, but merely analytical distinctions that allow greater clarity regarding which dimensions of action and power individual modern citizens must focus on to achieve and maintain freedom as power. What follows from this is that in the real world of politics, more than one of the dimensions may be covered by only one kind or set of actions. For example, power within dimension (a) may in some real-world cases be secured by my successfully enacting my citizen freedom across dimension (c). They are kept separate because even if in some instances feature (c), for example, encompasses domain (a), this may not always be the case; and, moreover, the converse is normally not the case. Dimension (c) identifies self-reflective critique of the accepted norms and power relations of a citizen's polity and society that is not a necessary condition of the power expressed by domain (a). Thus freedom as power in (c) is not normally covered by (a). Moreover, (c) usually requires some form of collective action in the interstices of formal collective action (dimensions (b) and (d)), as exemplified by the Treatment Action Campaign and the lesbian, gay, bisexual and transgender (LGBT) movements in South Africa. This aspect of collective action is not captured by any of the other dimensions.

These four dimensions of freedom as power are objective because they are shared and because all individuals need them as necessary conditions for the possibility of freedom of action. And they are all political because they cannot be achieved and maintained by individual or spontaneous collective action alone: given that they depend upon social, economic and political empowerment, sacrifices, discipline and control amongst all citizens, they require the coercive force of a political authority to ensure that they are institutionalised and sustained. This is even true of dimension (a), whose actual enactment is normally purely individual in character: the condition for this individual power depends upon the nature of the prevailing political and economic institutions, whose very existence depends upon coercive legal and political structures and mechanisms. Yet, however objective, this is not an exhaustive account of individual freedom. The full extent of my claim is that whatever freedom for any particular individual may involve, under the precarious and inter-dependent nature of modern conditions it will depend on the power and control individuals are able to exercise within the four domains of freedom outlined above. The concern is therefore with the basic necessary requirements for freedom as power; or, in other words, individual power and control within these four dimensions are necessary (but not sufficient) conditions for freedom.

It follows therefore that, taken individually, these dimensions are not necessary conditions for freedom and thus, if taken alone, are not definitive of freedom. So, for example, even if dimension (a), one aspect of which is equivalent to negative freedom or 'the absence of external obstacles', is one of the basic necessary requirements for freedom as power, it does not follow from this that the absence of external obstacles is definitive of freedom. Taken all together they constitute necessary conditions for freedom. Moreover, as I have argued, freedom as power in dimension (a) usually depends upon freedom as power across the other three dimensions. There is therefore no contradiction between this claim and the other claims regarding freedom as power, particularly that freedom is compatible with alien control, as argued below. The reason it is not is due to the fact that under modern conditions of social, political and economic existence, individuals simply cannot avoid recourse to representation in general and political representation in particular.[69] Political representatives can be held accountable for their actions to varying degrees, and so too can they be given more or less autonomy, but unless one depends on a very stylised account of democratic rule (or removes oneself entirely from society), the fact of having to enact one's freedom through the alien

[69] Sieyès, *Political Writings*.

control of another is unavoidable. To assume otherwise is to make a series of very unrealistic assumptions regarding the nature of modern politics, characterised as it is by interdependence, power relations and elaborate division of labour.

Our freedoms as powers across these four dimensions are the objective conditions necessary for avoiding or overcoming what I call, following Foucault, 'states of domination'. As I have argued elsewhere, states of domination arise when the existing power relations do not give citizens the power to determine their needs. This can take various forms. Existing power relations can: (a) mislead me in my attempts to *identify* my needs (e.g. patriarchy); (b) ensure that I do not have the means or voice to *express* my needs (e.g. apartheid South Africa); (c) disable meaningful *evaluation* of needs (e.g. unregulated liberal capitalism).[70]

Moreover, given the economic and political reality within large, complex modern capitalist states, our individual freedom as power will normally not be a simple matter of direct individual control over these domains of freedom or the individual capacity to avoid these forms of domination. Our lives within these states are characterised by membership of a whole variety of overlapping and inter-dependent groups, and thus our freedom (and avoidance of domination) is determined to a significant degree by three associated matrices of freedom as power: (a) the material conditions and power of the groups that we find ourselves in (or in some cases choose to be members of); (b) the relative power of our groups' representatives; and (c) the relationship between our groups' representatives and our formal political representatives.

This is the first way in which this account of freedom as power is distinguishable from that proposed by Pettit. Especially in his later essays and latest book, where he specifically introduces the idea of control, he defines liberty as the absence of 'alien' or 'alienating' control 'on the part of other persons' and he discusses at length what a republican account of freedom requires of 'democratic control'.[71] He describes various kinds of alien control and numerous ways in which it does and does not intersect with interference or impediments to action, but ultimately his two main points are that: (a) all forms of alien control by another agent are problematic for republican freedom; and (b) that a republican state is legitimate to the extent that the order it imposes on its citizens is imposed under 'popular control', by which he means control that is

[70] *Cf.* 'domination', in Pettit, *Republicanism*; and Lovett, *Domination and Justice*, as discussed in Chapter 3.

[71] Pettit, 'Three Axioms, Four Theorems', pp. 102–130, at p. 102; and Pettit, *On the People's Terms*, Chapter 5.

'individualized, unconditioned and efficacious' and that enables electoral and contestatory influence over who is in power.[72] But, given modern conditions and the centrality of economic and political representation therein, this is a surprisingly simplistic notion of control and therefore asks much too much of the concept of freedom both as regards the notion that all alien control constitutes domination and as regards the strong emphasis on the need of individualised contestation or control. To some extent at least, all citizens are under the control of an alien power – be it the person who creates and sells them their shoes or who represents them in debates in parliament – in every aspect of their lives. Whether or not they are under the alien or alienating control of another person is not the point. The real question is whether or not existing institutional matrices do or do not generate states of domination and disable the possibility for citizens to effectively determine, or at least influence, the decisions of those that represent them. Although Pettit discusses influence and control at length in *On the People's Terms*, he remains resolutely blind to some of the realities of representation and how they, by their very nature, undermine the possibility of direct control and influence and make the notion of individualised control a bit like building castles in the sky. By contrast, my account of freedom allows for the identification of the various causal avenues of control that exist between individuals, groups and their representatives, as analysed in Chapter 5, thereby generating an overall picture of their degree of freedom as power.[73] In other words, freedom as power is sharply distinguishable from freedom from politics and freedom through politics as it takes alien control, at least in the form of economic and political representation, to be a *sine qua non* of modern social and political existence.

The second way in which my account of freedom is distinguishable from both predominant forms of freedom takes us back to one of the four problems identified in Chapter 1: that restrictions to human freedom only occur if they result from a conscious deliberate human action. I have made the case for why the 'privatised' conception of freedom is guilty of this, but so too is Pettit's version of republican freedom. As first formulated, freedom as non-domination, the basis of domination as arbitrary

[72] For example, Pettit, 'Three Axioms, Four Theorems', p. 103; and Pettit, *On the People's Terms*, pp. 23, 239.

[73] In this sense – the sense that freedom is not absolute and, amongst other things, a quantitative matter – freedom as power is similar to the 'pure negative' accounts of freedom proposed by Pettit's and Skinner's main contemporary adversaries, Kramer and Carter. However, that is the only similarity: besides being proponents of the accounts I criticised at the start of this book, they are if anything even less explicitly aware of the realities of power, control and, especially, representation for an understanding of modern freedom.

interference is always intentional – that is, intentionally carried out by an individual or a person or an agent; later, too, liberty is defined as the absence of 'alien' or 'alienating' control 'on the part of other persons'; and, finally, non-domination is defined as the absence of vitiating and invasive hindrances imposed 'by the will of another'.[74] In other words, Pettit's conception of freedom also falls foul of my argument against the requirement of conscious deliberate human action. In contrast, my account of freedom does not: if my power to do *X* or influence my representative to change *Y* is thwarted by something that is not the result of deliberate human action but is within our human powers to change or have changed, in that dimension until these powers are exercised I am less free than I would otherwise be.

Third, Pettit uses not only the notion of control, but also that of power, so at first glance his approach and mine may seem similar.[75] However, in Pettit's conception of freedom as non-domination or the absence of alien control, power is not only atomistic in the sense that it is deemed the exclusive property (or not) of individuals, but freedom is a form not of power but of anti-power, as the title of one of his earlier essays puts it.[76] In other words, even in his latest work, freedom is not identified with power, but in an apolitical and surprisingly straightforward way it is identified with control over one's destiny. Not only does this not depart very far from autonomy or self-determination, and thus Berlin's problematic distinctions, but also it takes those with power, in the form of *dominium* or *imperium*, as always the (potential) source of unfreedom, where *imperium* is consistently assumed, despite much evidence to the contrary (especially the 2007 financial crisis), as more pervasive and in greater need of contestation and control.[77] In my account, by contrast, the notion of control and power is non-atomistic in the sense that the individual capacity for freedom as power is dependent upon the existence

[74] Pettit, *Republicanism*, pp. 25, 26, 55 and *passim*; Pettit, 'Three Axioms, Four Theorems', pp. 102, 106 (especially fn. 7), 108; and Pettit, *On the People's Terms*, pp. 39, 41–44 (fn. 18 on the primacy of will-imposed hindrances) and *passim*.

[75] 'One agent dominates another if and only if they have a certain power over the other, in particular a power of interference on an arbitrary basis . . . [and] non-domination is itself a form of power.' Pettit, *Republicanism*, pp. 52, 69.

[76] Pettit, 'Freedom as Antipower', *Ethics* 106 (1996), pp. 576–604.

[77] Pettit categorises instances of arbitrary interference by private parties over other such parties as *dominium* and governmental actions that violate common, recognisable individual interests as *imperium*. Pettit, *Republicanism*, pp. 13, 55, 112, 150, 276–277, 290–292; Pettit, *On the People's Terms*, p. 25 and *passim*. For examples of contrary evidence from various different contexts, see S. Wolin, *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism* (Princeton University Press, 2010); Shapiro, 'On Non-Domination'; and Chapter 6 below.

of specific social, economic and political institutions. In my account, by contrast, the notion of control and power is non-atomistic in the sense that the individual capacity for freedom as power is dependent upon the existence of specific social, economic and political institutions. Citizens gain and retain their freedom as a result of having the institutional means to generate, critique and veto decisions, institutional arrangements and forms of representation. Moreover, as one interpretation of Machiavelli's *oeuvre* has it, in order to avoid domination (or safeguard freedom) it may be necessary to institute *partisan* political institutions for the express purpose of empowering otherwise dominated groups and classes to have the requisite power to carry out these generative, critical and controlling functions.[78] Following this reading, what matters most in my alternative account of freedom is the relationship of control that exists between individual citizens, societal groups, their various representatives and their formal political representatives.[79]

Finally, the other important difference between the conception of freedom submitted here and the one propounded by Pettit returns to the fact of his apolitical approach to many questions. This is borne out by some of his later institutional proposals that follow, he maintains, from his account of freedom. He proposes a series of reforms that he submits will not only achieve republican freedom but also substantively enhance contemporary democracy. These include a combination of rigid constitutionalism and what he terms 'contestatory democracy': (a) strict division of powers, including not just the division of legislative, executive and judicial functions, but also bicameral and federal arrangements (the 'dispersion-of-power' constraint); (b) downplaying the centrality of electoral or majoritarian democracy in order to avoid the tyranny of the majority or domination of the minority by the majority (the 'counter-majoritarian' condition); (c) judicial review as a central component of democracy (the 'empire-of-law' condition); (d) the support of various other unelected and specifically depoliticised institutions such as ombudsmen and commissions of unelected experts, whose job it would be to assess individual or group contestation of proposed legislation; all held together, it is supposed, by (e) civility and civic virtue in the citizenry and emphasis on the 'common good' and the 'common avowable interests' of 'the people'.[80]

[78] McCormick, *Machiavellian Democracy*; *The Good Society*.

[79] For more on this and how best to understand representation in modern democracies, see Chapter 5 below, and for some associated institutional proposals, see the main conclusion to this book; see also Hamilton, *Are South Africans Free?*

[80] Pettit, *Republicanism*, Chapters 6–8, pp. 276–281; Pettit, 'Depoliticizing Democracy'; Pettit, *On the People's Terms*.

By contrast, as will be proposed in the remaining chapters, freedom as power takes seriously the ineradicable fact of class conflict, power and partisan interests and thus the need to empower politically the otherwise socially and economically powerless, especially by means of institutions of representation for the unique determination and defence of their interests. Thus it does not depend upon, and positively opposes, notions such as the common good, impartiality, reason, policy experts and reliance on civility and civic virtue that are central to Pettit's institutional proposal. Rather, it proposes constitutional and institutional changes that enable real political power for all, and in particular those without social and economic power. In fact, it proposes institutional solutions in direct opposition to all of Pettit's institutional suggestions bar those proposed in (a) above, especially whether or not they should be politicised. In this alternative account of freedom as power and what follows from it in terms of institutional arrangement, politicisation is not the problem, but part of the solution: it is a requirement for instantiating power and representation and thus real citizen control over the domains listed earlier.[81]

These differences from Pettit's account of freedom also identify the ways in which freedom as power is a real modern concept of freedom. This view takes seriously Constant's distinction between ancient and modern liberty and the fact that the 'privatised' accounts analysed above therefore identify, if only partially, something unique about modern freedom – that individuals do value being able to choose how to act or be in the absence of internal and external obstacles – and thus that those accounts that flip the other way and defend purely political conceptions of freedom err for two related reasons. First, they assume levels of community solidarity, civic virtue and political action that are simply unrealistic for citizens living complex modern lives with significant degrees of everyday independence from the state and other citizens, even if these forms of individual power result from political decisions and forms of political power. Second, in finding inspiration in the rich and fecund world of ancient history, Arendt, Pettit and many other modern republicans romanticise notions such as the 'common good' and 'the people' that no longer matter in modern politics. Some modern individuals may see themselves as part of a people with a common moral vision, but these are the exceptions to the rule. Most modern individuals are simply too preoccupied with their personal and economic lives to place much significance on these older notions. They see themselves as individual citizens

[81] Hamilton, *Are South Africans Free?*; *cf.* McCormick, *Machiavellian Democracy*, Chapters 6–7.

and as members of whole series of overlapping groups, only one of which is captured by the supposed 'community' that constitutes the state. As will be argued below, my concept of freedom as power is significantly more modern as it takes these facts of modern existence at face value, and weaves together both the individualised dimension and the various group dimensions with the central role of representation. In other words, in overcoming negative and republican accounts, freedom as power is not simply an amalgam of the two. Modern citizens desire individual freedom for real, legitimate reasons. Yet, in tracing the historical evolution of these sentiments and reasons, freedom as power identifies their unavoidably political nature. It suggests thereby that the maintenance of freedom is also unavoidably political, not in the sense of requiring constant political action and involvement, but in the sense that it depends on the creation and maintenance of institutions that enable ordinary citizens to keep their economic and political representatives accountable for the decisions they make in their names.

In other words, given the various inter-related domains of freedom of action and the requirement of representation for individuals to enact their freedom as power therein, both freedom from politics and freedom through politics are wide of the mark. We value different things to the ancients and early moderns, but cannot avoid being involved in politics, both as means to secure what we value (the instrumental reason) and because the citizenry as a whole and, in particular, their representatives cannot make wise political judgements without our involvement (the intrinsic value). Matters of size, scale and complexity make this form of proposed political involvement quite unlike that which Arendt and many contemporary deliberative democrats propose.[82] Under modern conditions, we cannot participate constantly in politics, but in order to safeguard our freedom as power across the four domains specified here we must be enabled with the power and ability to determine who rules, how they rule and thus our polity's norms and institutions. It follows therefore that political participation is not best understood as an intrinsic good or an instrumental good. Our freedom of action is in part enacted in political and public ways *and* we would remain less free in the dimensions I list were we to remain exclusively concerned with our 'private' freedom or the means to secure it. With the account of freedom as power defended here it becomes possible to see how real modern freedom is not possible without politics but nor is it equivalent to political action alone or a life of constant active citizenship.

[82] As in Bohman and Rehg, *Deliberative Democracy*.

Conclusion

In sum, these four dimensions of freedom show how the various questions of freedom that have troubled thinkers across the ages, such as 'who rules?' and 'which aspects of human life should the rulers govern and from which ought they be excluded?'[83] revert to a more fundamental question: what kind of politically and economically organised society enables the possibility for freedom of action for all its citizens? The answer to this question, and to the related question regarding how to measure freedom across the globe, can only properly be answered by reference to all of these four dimensions of freedom.[84] This kind of measurement is itself only possible if we think of freedom in terms of kinds and degrees or gradations of power. As I argue in the next chapter, to do this we need to see that freedom ultimately depends not only upon the degree of control or power one has over oneself and one's ecological, economic and political environment, but also the degree of control or power that can be exercised at two further levels: (a) by the group or groups within which one finds oneself; and (b) by the political and economic representatives of these groups. In other words, it is important to overcome the common tendency amongst both liberal and republican thinkers to conceive of freedom as to do with only the individual or the state, and nothing in between or beyond these two forms of agency. While there is no doubt that slavery or the condition of being a bondsman (or living within an unfree state) is the archetype of unfreedom and complete autonomy is the archetype of complete freedom (as expressed, for example, in anarchist thought), both forms of freedom are now not possible or desirable. Although Machiavelli, Hobbes and Rousseau, as well as their various disciples, grasp important components of unfreedom and freedom – slavery, interference, free states, prescribing one's own laws and so on – none of them grasp entirely freedom as we now know it or at least could know it.

This is unsurprising, given how different their contexts were to ours. Luckily, my task here is not to assess the extent to which these and other thinkers are 'modern' thinkers and thus whether or not their ideas are still alive for us.[85] My point is simply that within complex modern representative democracies, and within any imaginable complex alternative,

[83] Questions that have troubled thinkers as different as Mill, *On Liberty*; Lenin, *Materialism*; and Geuss, *History and Illusion*, p. 88.

[84] *Cf.* Carter, *Measure*; and the *Freedom in the World Series: The Annual Survey of Political Rights and Civil Liberties* (New York: Freedom House).

[85] But see J. Dunn, 'What is Living and What is Dead in Locke', in *Interpreting Political Responsibility*; and I. Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, MA: Harvard University Press, 2005).

in order to grasp what I mean by freedom as power it is vital to focus in on the idea of individual and group control over the representatives of economic and political power in one's political association. This control will depend upon being free *from* certain things, such as poverty, fear, arbitrary interference, domination and so on, and being free *to* do certain things, to participate, represent, serve, produce, think, worship, imagine, associate, express oneself and so on; and these can be assessed at the level of the individual or the group. Freedom is therefore not reducible to a single analytical formula or criterion. Freedom has a number of components, so we may find it more helpful to speak in the plural, of 'freedoms' rather than 'freedom'.[86] All will involve the use of one's power or that of one's group or even the broader collective or the representatives of the collective to enable one to control one's body and our shared ecological, economic and political environment.

[86] Hamilton, *Needs*, pp. 104–116.

5 Freedom and representation

The nature and best forms of political representation have been hotly contested topics for centuries. This is not surprising, given representation's deep historical roots and significance in most aspects of human life, especially politics. What is surprising, however, is how *infrequently* freedom and representation are discussed together, especially in the contemporary theoretical and philosophical literature;[1] and, when they are, they are normally opposed to one another – representation as the antithesis of freedom. This is true of thinkers from right across the political spectrum: from advocates of strong democracy to most contemporary deliberative democrats, liberals, libertarians, republicans and communitarians.[2]

This, I submit, is linked to another common trait in political thought: however much freedom has been contested across the ages it is normally conceived in terms of individual freedom and state freedom alone, either making them analogous to one another or making one a condition for the other. So, Machiavelli argues that individual freedom is only possible within a free state: the citizenry as a whole must be sovereign.[3] Later, Rousseau makes this a dictum of republican freedom, arguing that we are free only when we obey a law we prescribe to ourselves, which is only possible as a citizen of a state free from internal and external dependence.[4]

[1] One recent, useful exception is W. Weymans, 'Freedom Through Political Representation: Lefort, Gauchet and Rosanvallon on the Relationship Between State and Society', *European Journal of Political Theory* 4.3 (2005), pp. 263–282.

[2] See Barber, *Strong Democracy*, p. 146: 'Men and women who are not directly responsible through common deliberation, common decision and common action for all the policies that determine their common lives are not really free at all'; and see the glaring absence of reference to representation in the most comprehensive collection of essays on deliberative democracy, Bohman and Rehg, *Deliberative Democracy*. See also Rawls, *Justice*; Carter, *Measure*; Kramer, *Quality*; Skinner, *Liberty Before Liberalism*; Pettit, *Republicanism*; and M. Sandel, *Liberalism and the Limits of Justice*, 2nd edn (Cambridge University Press, 1998).

[3] *DL*, I, 1, p. 104 ; I, 2, pp. 104–111 ; I, 5, p. 116 ; I, 16, pp. 153–157; I, 35, pp. 197–198.

[4] Rousseau, *Social Contract*, p. 54 [Book I, Chapter 8], p. 82 [Book III, Chapter 1] and p. 116 [Book III, Chapter 15] for stress on the importance for individual freedom that one's state not be 'subjugated'.

While attempting to refute republican arguments, Hobbes makes a now famous direct analogy between the liberty of states and individuals,[5] which enables him to argue that free states are equivalent to free individuals in that the liberty of both are determined only by whether or not they are obstructed or constrained.[6] Despite other differences, Locke and J. S. Mill follow Hobbes, if not always in terms of his overall account of freedom, at least with regard to his analogy between the freedom of the individual and the freedom of the state,[7] as do Rawls, Skinner, Pettit and Feinberg.[8]

Similar extremes have been used to analyse political representation. Generally, representation has been conceived either in terms of representing the state or representing individual citizens by directly tracking their expressed interests, opinions or preferences. The former strives for unambiguous 'unity' while the latter thinks unity can obtain under conditions of extreme 'diversity', usually via some means of aggregation. Hobbes and Burke provide the best examples of the former position. They link the idea of representation to a single collective concern or interest (the state's), arguing either that the representation is necessary for the relevant unity to obtain (Hobbes), or that, however the unity emerges, representatives represent it and *not* the opinions of the citizenry (Burke).[9] The same is true of other thinkers, such as Sieyès, who generates a single unity by means of the term 'nation' and his argument that the representative does not represent individual constituents thereof, but the collective body of them, 'the nation' (by which he means 'the state').[10] Then, at the other extreme, many modern theorists of representative democracy conceive of political representatives as 'mere transmission

[5] 'For as amongst masterlesse men [in the state of nature], there is perpetuall war . . . ; no inheritance; no propriety of Goods, or Lands; no security; but a full and absolute Libertie in every Particular man: So in states, and Common-wealths not dependent on one another, every Common-wealth . . . has an absolute Libertie . . . ' Hobbes, *Leviathan*, p. 149.

[6] As discussed and criticised in Chapter 1, it followed from this, Hobbes argued, *pace* republican critics, that individuals can be free or unfree whatever the form of their state or regime.

[7] Locke, *Two Treatises*, Book II, p. 217; see also Book II, pp. 4, 22, 27, 57–59, 61, 87, 95, 121–124; Mill, *On Liberty*, pp. 16–17, and again at pp. 121–122, 124–125.

[8] Rawls, *Justice*; Rawls, *Political Liberalism*; Skinner, *Liberty Before Liberalism*; Skinner, *Hobbes and Republican Liberty*; Pettit, *Republicanism*; Feinberg, 'Freedom and Liberty', p. 1: '[t]o be autonomous is to be free in the sense of "self-governing" and "independent", in a manner analogous to that in which sovereign nation states are free'.

[9] Hobbes, *Leviathan*, pp. 121, 128, 184; Burke, 'Speech to the Electors of Bristol', cited in 'Editor's Introduction', in I. Shapiro, S. C. Stokes, E. J. Wood and A. S. Kirshner (eds.), *Political Representation* (Cambridge University Press, 2009), p. 1.

[10] Sieyès, *Political Writings*; on 'the nation' as equivalent to 'the state' in Sieyès, and thus on the tautology of the term 'nation-state', see Hont, *Jealousy of Trade*.

belts for constituent preferences'.[11] They assume that under representative government a democratic order can only be legitimate if representatives give direct control over government to the people, and that this 'power to the people' is only achieved if representatives directly track expressed individual opinions or preferences.[12]

Why this pattern regarding freedom and representation? I suggest that it comes from a prevailing unhelpful obsession with consensus, the 'common good' or supposedly shared public interests as the only means of resolving the collective action problem, of moving from the many ('the multitude') to the one (the state). And this is associated with the idea that unity of agency is necessary for representation and freedom and that this unity is exemplified best by the expressed preference of an agent or the actions of a corporate body with agency (like a state or corporation). Groups or other bodies are deemed to lack the agency characteristic of entities with wills and thus cannot be free or represented.[13] As I argue here, though, even if it is true that groups don't have the same kind of agency as individuals, their representatives often give it to them (they *stand for* them) and thus freedom and representation normally do not depend upon consensus or a common good. So not only are these ideals not necessary for collective action, but the assumption that they are leads to a tendency to ignore the contesting needs, interests, voices and opinions of unrepresented or under-represented groups, classes and perspectives. Moreover, this does not lead to the negation of individual freedom. Quite the contrary, for if the complex of groups, classes and perspectives that constitute any given society are investigated, along with their associated forms of representation, it becomes possible to assess the degree of individual freedom within any polity (and link it to the forms of representation that obtain therein). These various and

[11] Shapiro *et al.* (eds.), *Political Representation*, p. 1.

[12] R. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1991); A. Przeworski, S. Stokes and B. Manin, *Democracy, Accountability and Representation* (Cambridge University Press, 1999); *cf.* C. Hayward, 'Making Interest: On Representation and Democratic Legitimacy', in I. Shapiro, S. C. Stokes, E. J. Wood and A. S. Kirshner (eds.), *Political Representation* (Cambridge University Press, 2009), pp. 111–135.

[13] Skinner claims that the guilty party is Hobbes and recent Anglophone political thought alone, and exempts republican accounts of freedom. Skinner, *Hobbes and Republican Liberty*, pp. 212–213. However, given the above examples and the diversity of the republican tradition – see D. Wootton (ed.), *Republicanism, Liberty, and Commercial Society, 1649–1776* (Stanford University Press, 1994) – I disagree, especially if one includes the work of Pettit, who even when entertaining 'group representation', reverts to discussion of representation of the 'common good' or 'the people'. See Pettit, *A Theory of Freedom*; Pettit, 'Varieties of Public Representation', in I. Shapiro, S. C. Stokes, E. J. Wood and A. S. Kirshner (eds.), *Political Representation* (Cambridge University Press, 2009), pp. 61–89, at p. 81; and Pettit, *On the People's Terms*.

cross-cutting groups, classes and perspectives are the conditions, relationships and power dynamics that limit or enable our *freedom of action*, and out of which most representation emerges. And, despite its general shortcomings, as noted above, this builds on Sieyès's account of representation, which is concerned with a variety of forms of representation throughout society: not just formal political representation but also informal, especially, commercial representation.[14]

With reference to the case of South Africa I argue in this chapter that we can enhance our understanding of freedom if we eschew this tendency to reduce freedom and representation to the level of either that of the individual or that of the state. By contrast to the prevailing norm, I argue that groups, classes and even social perspectives can have agency as most have representatives with agency, and the dynamics of this relationship of representation is one vital determinant of a social group's freedom. A more realistic conception of freedom emerges if we focus our attention on the freedom and representation of groups that cut across not only one another but also the various ways in which individuals and states are represented. So, if we are ultimately concerned with freedom in terms of the power to act, it is possible to see the central role played by representation in the degree of power individuals, groups and states have to act; and, therefore, that, like individuals and states, if groups can be represented, they can be more or less free. Group freedom and group representation understood in these terms also enable utopian forays into new forms of freedom and representation, particularly regarding the possible ways citizens could have power over their representatives and thus control their political, social and economic environments.

Groups, classes and perspectives

First, though, what is a group? A group at its most basic is a collection of individuals. But this fails to distinguish a group from other forms of association, such as a gathering of people in a particular location brought together by, say, geography or technology, as in the set of individuals who together cross a mountain pass or a bridge. A contemporary Weberian definition and taxonomy provides a better starting point: a group is 'a collective of individuals who are connected with each other in ways that are relevant to them, and/or others, and thereby affect their behaviour

[14] Later in this chapter I use expressions such as 'informal', 'economic' or 'commercial' representation as contrasted with 'formal' or 'political' representation. The former covers broadly what Sieyès means by 'commercial representation'; and the latter, like Sieyès's notion of 'political representation', means representation as found within the political structures of formal representative democracies, in particular parliament.

and/or that of others'.[15] The connection that binds the members of a group may be as a result of their gender, class, form of employment, lack of employment, material condition, political cause and so on. A group is therefore distinct from other kinds of associations since it is characterised by a durable connection amongst the members and one that is of significance or is meaningful. So a gathering of a collection of friends on a Sunday morning in the park is not a group in this sense, unless of course they happen to be gathering as members of, say, the Westdene Sunday afternoon football club, where the same (or similar) set of individuals gathers every Sunday.

Given the complex of controversies in political philosophy of late surrounding 'groups' and 'group rights', it is probably a good idea to state close to the outset here that, along with some other thinkers within neither the liberal nor the communitarian tradition, the notion of 'group' as articulated here does not, for a moment, assume that any single individual's identity is determined by a group identity. Individuals can and normally are 'members' of various groups within society determined by various interests, perspectives and roles.[16] 'Groups', as proposed here, resist the requirement some feel to conceive of individual or group identity as essential and unchanging. Rather, resorting to the language of 'groups' is shorthand for speaking about the various groups, classes and social perspectives that exist in all modern polities. Nor does anything follow from this discussion regarding group rights. In fact, despite my emphasis on group representation, if rights are our best political tool,[17] I would choose the liberal above the communitarian position, especially as regards normative or ethical primacy – individual rights must trump group rights, for group rights can and often are used to justify institutions and practices that act against the empowerment of individuals. Also, the reader might ask, what is wrong with the notion of class? Well, not much, as will become apparent below; the only problem is that it is an insufficiently broad category, for although our class perspectives and interests are of paramount importance in politics, so are other kinds of group membership and associated interests, particularly those related to

[15] Vieira and Runciman, *Representation*, p. 86 (an excellent book that I make liberal use of in the next few pages); see also Weber, *Economy and Society*, especially sections on 'communal and associative relationships', 'open and closed relationships', 'representation and mutual responsibility', 'the organization' and so on, pp. 40–53.

[16] Shapiro and Kymlicka (eds.), *Ethnicity and Group Rights*; and Young, *Inclusion and Democracy*, especially Chapter 4. I borrow the idea of 'social perspective' from the latter work. However, unlike Young, who develops it in response to sustained critique of her earlier emphasis on 'groups', I don't think it is fully workable; 'group', properly problematised, works better as a catch-all notion.

[17] Something contested in Hamilton, *Needs*.

gender, geography, street and satisfaction. Moreover, for obvious reasons, much of what I say regarding groups is about the nature of groups not the individuals that constitute them: especially under modern conditions, individual ideals, interests and perspectives are informed and influenced by a whole range of social groups, some of which individuals find themselves attached or choose to be.

The individual members of groups often share similar interests, but this depends on the type and often the size of the group in question. Distinctions can be drawn between voluntary and involuntary groups, cooperative and non-cooperative groups and groups that have and those that do not have their own agency. Involuntary groups are normally groups into which we are born, not ones we choose or can exit at our own discretion. Voluntary groups, by contrast, are groups we join by choice and also exit freely. Then there are cooperative groups, in which the members are jointly committed to some agreed goal, and non-cooperative groups where this shared commitment does not exist.[18] A good example of the former is a class-based pressure group, and of the latter a group of actual or potential creditors. The members of the latter kind of group act of their own initiative and for their own particular goals and preferences; what makes them a group is that they may share common concerns, knowledge, interests and rules of engagement and obligation. Finally, groups can be agents and non-agents. The former have the capacity to *act* in ways that resembles individuals: they can define goals for themselves, perform tasks and appoint representatives and so on, such as committees, governments and joint stock companies. Groups that are non-agents lack any formal organisation and have no capacity to coordinate their efforts, although they share common interests. These three kinds of distinctions often cut across one another: so a group can be voluntary and cooperative and have agency, such as a labour union, and a group can be involuntary, cooperative and not have agency, such as those born into a group of unemployed, cooperative but unrepresented shack dwellers on the margins of Johannesburg, and so on and so forth.

The assumption is often made that for groups to act they must have clear and explicit rules for the election or selection of representatives, which is only therefore possible for groups with agency. But this is to miss the most important fact of the nature of many groups and their relation to various forms of social, economic and political representation: that groups normally acquire agency by virtue not of direct rules for the selection of representatives but more informal and indirect forms of representation that arise as a consequence of shared identities or interests or

[18] Vieira and Runciman, *Representation*.

both, or even simply from someone deciding they will stand or speak for the group in question. The latter is more common than most suppose, especially in the sector of non-governmental organisations. And, given the contested nature of identities and interests, these various forms of group representation are characterised by the fact that often the representatives themselves are important in determining the relevant identities or interests of the group (about which more in a moment). However, it does not follow from this that the group does not therefore have agency, or the power to act, and cannot therefore be thought of as more or less free. In fact, as will be argued below, it is more usual for groups and group representation to be organised around identities, interests and self-selected representatives than it is for groups to be agents and act as principals themselves. However, even if agency is only generated by representatives, the *power* of the relevant representative and the *relation* between the group and the representative will determine the group in question's degree of freedom.

Group representation and group freedom

In general, political theorists and political scientists tend to work on the assumption that modern states contain at least two distinct groups of people – the rulers and the ruled – and that in formal political terms the rulers are the government, sovereign powers, law-makers or the *representatives*, while the ruled are the citizens, people, voters or the *represented*.[19] While this is broadly true, as it is to claim that in representative democracies the relationship of representation (as determined via the ballot box) holds these groups together, and it is this that enables the ruled to exercise some form of control over the rulers, two main problems remain. First, matters are more complex than assumed, especially given the fact that 'the rulers' normally comprised various different groups, not to mention the large number and diversity of groups that make up 'the ruled'. The extent of control or power any subsection of the ruled have over the rulers will depend therefore upon the relationship of representation their group or groups have with the ruled; in other words, in contrast to the picture just painted, it is never just a simple one-on-one, direct and individualistic relationship of representation, that between ruled and ruler or ordinary citizen and powerful elite.[20] Second, in the above description of modern states, 'government', 'sovereign powers' and 'representatives' are

[19] E.g. *ibid*., p. 126.

[20] *Cf.* Pettit on freedom and democracy, especially in *On the People's Terms* (as discussed in Chapter 4), who, because of his account of freedom and domination, has little choice

bracketed together; but as will be argued below with the help of Rousseau in particular, this is to move too quickly in a way that obfuscates rather than clarifies the telling relationships of representation in any particular polity: these things are not equivalent. To overcome these problems we first have to identify the various ways in which groups in society can be represented and then identify the relationships of representation that exist between these representatives and the formal political representatives of any polity. So in what follows I use the term 'representation' and 'representative' in a broader sense than is normally the case, since, as I argue, what some call 'electoral representation', where a political representative is legitimised by direct electoral vote, captures only one form of existing and possible kinds of representation in politics.[21]

Western political theory tends to think about representation in terms either of 'mandate' or 'independence' (the terms of art for what was outlined in the introduction to this chapter); that is, that in representative democracies representatives do or ought to respond directly to the expressed opinions and interests of the citizens they represent or, by contrast, they do or ought to act independently of those interests and judge for themselves what is in the best interests of the citizenry and state.[22] And because the former position now predominates there exists a concomitant tendency to confuse authorisation with representation,[23] the former now sometimes articulated in terms of accountability: if representatives are seen as 'conveyor belts' for existing opinions and preferences, it makes sense to view them as mere agents for their principals, the citizenry, who will then require non-opaque means of controlling the mandate of their representatives and the way in which they carry on (or, more exactly, whose preferences they do in fact represent). But, whether we foreground individual citizens or groups, the received wisdom is that representatives are given warrants to act on behalf of an individual or group in one or more of three ways: (a) principal–agent relation, (b) trusteeship and (c) identification.

but to conceive of democratic rule and legitimacy in terms of direct control (or indirect control of norms) and individualised contestation of legislation.

[21] Pettit argues that the term 'democratic representation' offers him greater generality of perspective than 'electoral representation': 'Varieties of Public Representation', pp. 61–89, at p. 62. But, given the diversity of forms of representation, I see no reason to think only about forms of representation that are 'democratic'; even democratic societies are characterised by many non-democratic forms of representation, not to speak of the various forms of representation that have existed and still exist in non-democratic societies.

[22] Hanna Pitkin calls this the 'mandate-independence controversy': *Representation*, Chapter 7.

[23] Hobbes does not make this mistake, so it is a good idea to keep him sharply in focus. Runciman, 'Hobbes's Theory of Representation'.

Principal–agent relation

If the group is an agent and can thus act as a principal, a principal–agent relation of representation can exist, in which the *principal* appoints an *agent* to perform some action or function on their behalf. For this to be possible there must exist some rule, or set of rules, by means of which the judgements or decisions of the group's members are put together to generate a collective judgement or decision. This is achieved either through consensus, where all members of a group unanimously agree, say, to appoint a lawyer to represent them against a third party, or via majority decision, in which the majority decision of a group provides the agency necessary to appoint a representative. But as has been highlighted by Madison, amongst many others, the latter warrant is always subject to the possibility of the 'tyranny of the majority', where a majority may rule at the expense of the interests of the numerical minority.[24] This has proved a persistent problem without clear solution, even if underpinned by the idea of an original unanimous decision, as is common in social contract theorists from Hobbes to Rawls. What is clear, though, is that the scope for groups to act on each side of this principal–agent relation – both as principals capable of being represented and as agents capable of representing – is very narrow. These groups will need to be sure of the consent of individual members to their procedures and give them a way out, and the representative will have to further the specified directives of the group. There are some groups like this, such as small-scale workers' cooperatives, but many groups do not fit this model, because they lack either the capacity for collectivised reason (they do not have a 'mind of their own') or the relevant safeguards for individual members. States, for example, are way too diverse for collectivised reason and lack robust exit mechanisms. But the main problem with this account of group representation is that it assumes that a group has a capacity to act prior to the action of its representatives, which is very unusual in the case of groups.

Trusteeship

Given that most groups cannot, on their own, authorise, much less instruct, a representative to perform actions on their behalf, some have thought that the legal model of a 'trust' provides a better means of explaining political representation. In common law, a trust is an arrangement whereby money or property is managed by a person, set of persons

[24] J. Madison, 'Federalist No. 10', in A. Hamilton, J. Madison and J. Jay, *The Federalist* (Cambridge University Press, 2003 [1788]), pp. 40–46.

or an organisation – the trustee – for the benefit of another person, persons or organisation – the beneficiary – without the beneficiary being said to own the property in question. This is achieved through the creation of a legal fiction: representatives act in the group's name and on its behalf, in accordance with rules that treat the group as if it were a principal – that is, as though it had a single identity and could act in the manner of principals. This is known as incorporation, whereby a multitude of individuals can create a corporation or artificial principal: an artificial person created by law. The group thereby incorporates itself into a trust and selects a trustee whose role it is to act as owner of the trust for its duration; trustees act independently, but in the interest of their beneficiaries.[25]

In this kind of relationship of representation, the group's representative will act to further the interests of the group (and thus the individual members that consitute it) without having to be given any direct orders or directives. The idea is that the representatives act in the best interests of the corporation. But what if they don't? To what or whom does the corporation or the individual members thereof turn? Whose responsibility is it to ensure they do act in the interests of the corporation? The answers to these questions are not clear within the terms of this account of representation, but this form of group representation highlights the fact that groups can have identities and interests of their own that are separate from those of their individual members, and not only are these identities and interests given agency by the representatives in question, but they are also often directly determined by the representatives without any recourse to collectivised reason (at least until the individual members or a group either assert a competing claim to speak on the corporation's behalf or dissolve it). The problem with this model is that the rules of representation that allow the group to act as an artificial principal have to be external to the group, since the group cannot act without its representative. Is there not some form of representation that enables an internal warrant that does not fall back onto the need for the group to be an agent or 'have a mind of its own'?[26]

Identification

The answer rests in a third form of representation: that of the identification of interests or identities. Here group representation does not presuppose the appointment of a representative who agrees to act on the group's

[25] F. W. Maitland, *State, Trust and Corporation*, ed. D. Runciman and M. Ryan (Cambridge University Press, 2003).
[26] Vieira and Runciman, *Representation*, p. 99.

behalf. Rather, an individual or group of individuals can bring forward a claim to represent a group, evidence for which is found in a capacity to attract a following; *or* a group can make someone or a group into their representative because they identify with something she or they do or stand for. In both cases the group members see themselves as having a *presence* in the actions of the representative. The representative gains this presence by dint of what they have in common with the group: common interests or similar descriptive characteristics, social perspectives, values and insights.[27] Whatever specific thing it is that creates the commonality between group and representative, in this form of representation the important component is *identification* not authorisation, incorporation or accountability, though these may also be present in any existing form of representation as identification.

This identification can occur as a result of a number of mechanisms. First, a particular individual or group can decide to promote the interests of a group: for example, non-governmental organisations (NGOs) that adopt a group or set of shared interests and promote them. Second, when a group identifies with the actions of another group or single individual in a way that gives that group a stake in the other's actions, the group can be said to have a representative to promote its interests. Here identification does not normally rest upon any direct promotion of interests, but a commonality of interests determined by, say, class, social position, form of employment and so on. A good example of this is the form of representation common amongst creditors (or the owners of public debt), a group and form of representation with significant power in modern politics, something the financial crisis brought to the forefront of everyone's mind, but, as the case of South Africa (discussed below) highlights, has been true in modern polities for some time. Finally, this form of representation can arise out of the sharing of some form of basic identity: for example, those ascriptive identity groups into which we are born, such as country, family, gender and so on. Here identity is thought to act as some kind of external indicator of the likelihood of the representative acting as the group members would in the face of similar circumstances.[28] This is representation by someone who is 'one of us'.[29]

However, these theories of group representation rest on one or more of three erroneous assumptions: first, that the interests of group members cohere in such a way as to make them a plausible principal; second,

[27] *Ibid.*, p. 103.

[28] But, especially as regards gender, this supposed 'unity' of interest or identification has been well criticised. There are libraries of works on the matter, but for some of the arguments and examples, see Young, *Inclusion and Democracy.*

[29] Viera and Runciman, *Representation*, p. 111.

that there exist a set of shared interests or identities antecedent to and necessary for political representation;[30] and, third, that the relevant identities and interests are fixed and are thus the main form of indentification in representation. In fact, citizens' and states' needs and interests are never pre-existing and fixed in politics; they are not objective givens waiting to be tracked through representation. On the contrary, they require identification, articulation, expression, evaluation and so on.[31] Needs and interests are more objective than wishes, opinions and preferences, in that they are more easily detached from any specific group of 'holders' (such as the collective interest in a sustainable environment), but they are never totally unattached either. Like needs, interests have a dualistic nature – they are attached and unattached, subjective and objective – and this lies at the heart of the ambiguities of any form of interest-group representation.[32] Moreover, individual and group interests are very often constructed in the process of representation itself. They often only become *present* as a result of representation – that is, they may only be experienced, identified and expressed as a result of the actions and concerns of representatives. And this fact undermines the very notion of the idea of representatives directly tracking existing interests or identities, and thus questions the validity of both 'aggregative' and 'deliberative' models of democracy, which, despite many other differences, share the assumption that legitimate representation must track interests.[33]

[30] And this has its roots in the idea that society exists antecedently to representation (or political association or polity), common to a whole range of thinkers but most often associated with the political philosophy of John Locke.

[31] As discussed in Chapter 3 above; but, for more on these mechanisms and processes, see Hamilton, *Needs*, Chapters 1 and 2.

[32] Pitkin, *Representation*.

[33] Aggregative models take interests to be stable and particular – that is, that they are what serve a person's good as expressed by his preferences; they conceive of the processes of need and interest formation as exogenous to the model; and they argue that democratic politics is a matter of fairly aggregating conflicting particular interests. Dahl, *Democracy and Its Critics*, especially Chapters 6–9. Deliberative models propound that people's perceptions of their interests can change in response to reasoned exchange of opinions and arguments; that democratic politics is – or at least ought to be – a matter of encouraging open, inclusive and egalitarian forms of rational argumentation with a view to discovering shared or common interests; and that representation promotes legitimacy in government not by tracking *any* interests, but by tracking people's post-deliberative interests, or their interests as they (would) understand them after subjecting them to free, equal and public rational argumentation. Bohman and Rehg, *Deliberative Democracy*; Habermas, *Theory of Communicative Action*; S. Benhabib, 'Toward a Deliberative Model of Democratic Legitimacy', in Benhabib (ed.), *Democracy and Difference* (Princeton University Press, 1996). *Cf.* Hayward, 'Making Interest'; W. Connolly, *Identity/Difference: Democratic Negotiations of Political Paradox* (Ithaca, NY: Cornell University Press, 1991); C. Mouffe, *The Democratic Paradox* (London: Verso, 2000); J. Tully, 'Struggles over Recognition and

It follows from this that if group representation in particular and representative institutions in general are to be freedom-enhancing rather than simply 'track' interests, they must encourage the formation of new political interests, especially in conditions in which existing relations of power create or reinforce situations of domination. The new interests will be freedom-enhancing if they enable groups to escape situations of domination, as discussed in Chapters 3 and 4 above. The conditions in a place like South Africa today illustrate well these facts about interests and the shared shortcomings of the 'aggregative and 'deliberative' accounts of democracy: historical inequalities and the interests formed by conditions of poverty, crime, fear and the persistence of extreme inequalities in income and opportunity cannot be overcome by means of representation simply 'tracking' interests (or post-deliberative interests). To do so, even following deliberation, may simply be to reinforce these existing forms of domination.

Political representation, properly conceived, may be a way out of this cycle of less and less freedom.[34] What really matters for actually existing freedom and democracy is the relationship between group representation and group freedom, a multifaceted set of mechanisms in which the freedom of the group is dependent upon whether or not the representative of the group can generate the right kinds of new interests *and* then defend them in the relevant formal institutions of representation. Representation as trusteeship, identification or even principal–agent relation may be able to articulate parts of these processes, but alone none is able to capture this layered causal story involving groups or the important process of generating freedom through the creation and defence of new needs and interests. Remaining realistic about the nature, formation and diversity of needs, interests, groups and representation calls for a rethink regarding both aggregative and deliberative models of democracy and political representation itself.

I propose, along with a few others, that an 'aesthetic' theory of political representation is a good place to start. This draws not only on art and literature, but also on Machiavelli, Rousseau and Constant, amongst others. As we know from the world of art and literature, 'representation

Distribution', *Constellations* 7.4 (2000), pp. 469–482; S. Wolin, 'Fugitive Democracy', in S. Benhabib (ed.), *Democracy and Difference* (Princeton University Press, 1996); and Hamilton, *Needs*.

[34] In an earlier incarnation I called this a 'cycle of unfreedom' – Hamilton, 'Collective Unfreedom in South Africa', *Contemporary Politics* 17.4 (2011), pp. 355–372 – but, as noted above, and for the reasons elaborated in the conclusion to this chapter, I now don't think the binary of 'freedom' and 'unfreedom' a helpful way of talking about freedom: freedom as power is always a matter of degree.

is never simply the copy of some pre-existing external reality'.[35] Rather, representation always creates something new. For example, a literary description of an event, say Tolstoy's account of the Napoleonic War, does not simply replicate the historical events; it creates a new version of it in the act of representing it. So too in the case of theatre: stage actors do not represent characters as they might exist off the stage; they bring their characters to life in the act of representing them. In other words, there is always a 'gap' between an object and the representation of that object. And this holds in politics too: as Ankersmit puts it, 'political reality is not first given to us and subsequently represented; political reality comes into being after and due to representation'.[36] Unlike the other three accounts of political representation, the aesthetic understanding captures well the fact that political representatives broadly construed can never therefore merely repeat or reiterate the preferences or interests of the people as they existed before being represented; instead the act of political represention creates a new version of the people and their interests, and this creative process gives representation its dynamism. Political representation cannot either simply 'track' pre-existing interests or provide a reflection of the people and their interests or identities; 'rather it is designed to give the people an image of themselves to reflect on'.[37] It is within this gap that the degree of a group's freedom is played out, but not in the one-dimensional sense argued by, for example, 'civil society' theorists, constrained as they are by deliberative models of democracy.[38] No, here it is the very nature of representation that, if enabled correctly, safeguards freedom.

This is the case for two main reasons. First, in establishing that political representation is not about mimesis or exact copies of the people and their interests – but rather that representatives should give 'the people' an image of themselves to reflect on – the aesthetic theory of representation highlights the fact that in any healthy system of representative democracy there will always therefore be more than one version of 'the people' at work.[39] There are 'the people' conjured up by formal political

[35] Vieira and Runciman, *Representation*, pp. 138–139.

[36] F. R. Ankersmit, *Aesthetic Politics: Political Philosophy Beyond Fact and Value* (Stanford University Press 1997), p. 47.

[37] Vieira and Runciman, *Representation*, p. 139; and for more on the 'gap' or 'difference' between voters' opinions and those of their representatives, see F. R. Ankersmit, *Political Representation* (Stanford University Press, 2002), pp. 112ff.

[38] For one of many critiques of contemporary theories of 'civil society', see Hamilton, '"Civil Society": Critique and Alternative', in G. Laxer and S. Laxin (eds.), *Global Civil Society and Its Limits* (London: Palgrave, 2003).

[39] Ankersmit, *Aesthetic Politics*; Ankersmit, *Political Representation*; C. Lefort, *Democracy and Political Theory* (Minneapolis: University of Minnesota Press, 1988); and Vieira and Runciman, *Representation*.

representatives in the act of speaking for them; there are conflicting views of 'the people' generated by group membership and representation; and there are 'the people' who pass judgement on these conjuring acts, but who nevertheless also see themselves as part of the body politic. 'Indeed, the functioning of [healthy] representative democracy depends upon politicians being able to offer competing versions *of* the people *to* the people, in order for the voters to be able to choose the one they prefer.'[40] A plurality of political parties tends to help in this process, but, *pace* received opinion, it is not a neceessary requirement as the competing images can come from various quarters, groups and forms of representation across the polity in question.

The picture that Rousseau saw in outline, was given greater detail by Constant and Condorcet and is beginning to be seen in colour by a few contemporary theorists is that this 'gap' between represented and representative has only become possible due to the way that moderns have come to perceive of popular sovereignty. Aristocratic views on representation, as in Hobbes and Burke, for example, are linked to older aristocratic accounts of sovereignty, in which the sovereign is a particular person, where unity is, literally, personified. Thanks to Rousseau – the greatest and most explicit defender of the sovereignty of the people – popular sovereignty is now, at least within representative democracies, located in 'the people'. But what are 'the people'? Who are they? Where are they? *Real* answers to these questions are no longer as forthcoming as, say, 'George III' (if not for him, then for his subjects). So, Rousseau's response was to claim that the sovereign – 'the people' – could not be represented; that government did *not* represent the people in the sense of bearing their sovereign authority; and that any efforts to 'represent' the sovereign people were efforts to usurp the authority of the people.[41]

But that is as far as he got, which along with his related idea that to be free is to live under laws one has prescribed for onself, requiring all citizens somehow to come together periodically to make or change the laws, including the constitutional framework, is why many today have thought his ideas inappropriate for modern conditions. Constant, though, took up his mantle, a claim that may burn the ears of liberal intellectual

[40] Vieira and Runciman, *Representation*, p. 141; B. Garsten, 'Representative Government and Popular Sovereignty', in I. Shapiro, S. C. Stokes, E. J. Wood and A. S. Kirshner (eds.), *Political Representation* (Cambridge University Press, 2009), pp. 90–110.

[41] Rousseau, *Social Contract*, pp. 49–51 [Book I, Chapter 6], pp. 82–86 [Book III, Chapter 1], pp. 90–92 [Book III, Chapter 4], pp. 106–108 [Book III, Chapter 10]; and this is why 'strong' and 'deliberative' democrats are mistaken to claim Rousseau as their *pater familias*. He made a strict distinction between sovereignty and government and could only be called 'democratic' with regard to the former not the latter; in fact he was opposed to 'democracy' as we tend to conceive of it – he thought it dangerous and deeply corruptible.

historians. Although often taken to be opposed to Rousseau, Constant, like Condorcet, worries in very similar language about government misuse of the language of popular sovereignty (Constant with the luxury of hindsight – Robespierre and Napoleon Bonaparte, who in different ways tried to actualise rather than merely represent popular sovereignty or the 'unitary will of the people');[42] and like Rousseau, both had a fundamental desire to find ways of institutionalising resistance to centralising and usurping authority. But unlike Tocqueville's, J. S. Mill's and Madison's concerns with the tyranny of the majority, their main concern was the potential for tyranny amongst the representatives.[43] However, the problem of the singular 'people' still remained, as it did for Madison and Hamilton. Their answers took the the people's claim to authority to be real and serious, but in order to overcome the people's lack of identity they reverted to multiplying the plausible claims to represent the popular will, which is exactly what the American system (and others) now do with the entrenched notion of the separation of powers.[44]

So, the now prevalent idea of the separation of powers is one way of generating the distinction or 'gap' between representatives and the people, while retaining a focus on popular sovereignty: via its indirectness and checks and balances, it aims to preserve the gap; demagogues, on the other hand, aim to obscure it whenever they claim to fully represent the people. And this reinforces the second main advantage of the aesthetic theory of representation, which stresses that none of the versions of 'the people' on offer to 'the people' ought ever to succeed in closing the gap between the represented and their representatives. If they do succeed in closing the gap, or even aspire to do so, they open up the possibility for tyranny or despotism, the best recipe for unfreedom: establishing mimetic forms of identity between rulers and ruled is not the realisation of democracy but an invitation to tyranny because it thwarts any opportunity for the people to reflect on and judge the actions of their representatives.[45] The aesthetic theory captures well the insights of Machiavelli, Rousseau, Constant and Madison in different contexts that

[42] Jacobin revolutionaries thought that the process of materialising formal principles such as equality would create real democracy, and generated a concomitant obsession with unity, consensus and transparency. Napoleon, like most demagogues, simply identified himself with the popular will. For Robespierre and other Jacobins, and Lefort's, Gauchet's and Rosanvallon's responses, see Weymans, 'Freedom Through Political Representation', pp. 271ff.

[43] 'An assembly, the power of which is unlimited, is more dangerous than the people.' Constant, *Political Writings*, p. 196. For more on Rousseau in this vein, see Garsten, 'Representative Government and Popular Sovereignty'; and for Condorcet, see Urbinati, *Representative Democracy*, pp. 176ff.

[44] For an excellent account of this, see Shapiro, *Real World*.

[45] Ankersmit, *Aesthetic Politics*, pp. 51–56; Ankersmit, *Political Representation*, pp. 112ff.

this is the case because the effect of closing the gap – and, worse, the complete identification of the rulers and the ruled – is (paradoxically) to *exclude* the people from politics in their active, or judgemental, role. If the gap is closed there is no longer any room for 'the people' or the various groups that make it up to evaluate the various images of themselves on offer. This is the case mainly because it removes the possibility for the portrayal of other competing images or visions of the polity.

The aesthetic theory of representation is therefore advantageous for two further reasons: it provides a means of identifying the advantages of some institutional arrangements over others, and it allows us to view representative democracy with the right kinds of institutions of representation as a form of politics that accommodates aspects of all three of the other models. If groups and their representatives are given greater and greater parity of power and control (and thus freedom) it is possible to see 'the people' can have principal–agent, trustee and interest/identity relationships of representation: actively, as the arbiters of representation, they act much like principals; passively, as the objects of representation, they act much like the legal fictions characteristic of trusteeship; and in judging what they think of the image offered to them by their various representatives, they often side with whom they identify best or with whom they think will defend best their particular interests.

However, this remains inadequate, both in its canonical association with popular sovereignty and in its aesthetic form, as it depends upon the idea of a unified or singular people, which can very easily slide into the kind of domination brought about by ideas such as the common good or public interest. In order to enhance freedom as power through representation, we need a conception of representation that empowers conflicting individual, group or other kinds of collective ideals, interests and identities while retaining the capacity for collective action. One possibility, which is linked to both of these traditions of thought, is Claude Lefort's arguments that the idea of 'the people', or popular sovereignty, cannot adequately be represented and that the only way to do so is via a preliminary quasi-representation through different and competing visions in the political arena. For Lefort, this is what marks out democratic societies from earlier forms of political regime and from totalitarian societies: that they are pluralistic, conflictual and open to radical change due to their indeterminacy and the, ultimately, purely symbolic nature of the idea of 'the people'.[46] Politics, or rule, in representative democracies for Lefort is by definition not about the simple facts of power, for power is not

[46] C. Lefort, *The Political Forms of Modern Society* (Cambridge, MA: The MIT Press, 1986); Lefort, *Writing: The Political Text* (Durham, NC: Duke University Press, 2000); Lefort, *Democracy and Political Theory*; Weymans, 'Freedom Through Political Representation'.

something that is politically determinate, but rather always connected to representation. Representation is never, then, simply about mirroring reality, as it is for positivists and, surpisingly, both predominant versions of democracy. It is the activity of making existing symbolic principles work via making visible a model of social organisation on the political scene. These principles therefore only exist *through* representation.

By combining all of these various insights, I think we can go even further than Lefort – beyond the symbolic, as it were. I submit that what he says about representation and the symbolic can also be said of interests and identities, given their fluid and changeable character; and that given the various forms of representation that exist within societies, the following might be a rough way forward. Since individual needs and interests are formed within particular institutional contexts and these contexts are, amongst other things, characterised by membership of cross-cutting groups and their representatives embedded in power relations which may or may not generate domination, it follows that the individual power to act as one would otherwise act, to satisfy one's needs, to evaluate and criticise the norms and institutions of one's society and to control one's economic and social environment depends upon four associated variables (or components) of representation: (a) the nature and relative power of the groups of which one is a member, (b) the relationship of representation that exists between the members of the group and the group's representatives, (c) the relative power of the groups' (informal and formal) representatives and (d) the relationship between one's groups' representatives and the formal political representatives of one's polity. In other words, in thinking of group representation and group freedom, there are three relevant gaps: that between formal political representatives and citizens; that between informal group representatives and formal political representatives; and that between group representatives and the various citizens that make up the groups in questions. The freedom of the groups and thus the freedom of individual citizens will depend upon the nature of these relationships, and the position and power of the groups' representatives.

Two important things follow from this. First, the institutional arrangement of any polity as it bears on group representation and power is of paramount importance for individual freedom. Second, paradoxically, or at least against the grain of deliberative democratic theories in particular, the greater the freedom of the representative the greater the possible freedom of the individual, dependent on a set of conditions that stop the representative from usurping the power and thus freedom of the individual and the group: the institutional power to determine which version of the people best represents the people – which version of those groups to

which I am affiliated is, in my judgement, a good representation thereof – and thus the power to determine my vital and agency needs.[47] In other words, overlapping causal stories regarding representation at various levels have to be brought to the fore *and* the three 'gaps' noted earlier have to be retained in order to enable good judgement by rulers and ruled alike and real freedom as power for all.

Why? Surely the 'independence' or 'substitute' arguments for representation, best expressed by Burke, can account for good judgement; in other words, if one is realistic about the lack of knowledge and interest shown by ordinary citizens in political processes, why not leave all judgements up to expert politicians with the time, interest and predisposition to make judgements in the best interests of all or at least their constituents? This is a valid question, much reinforced by the fact that individual and group freedom depends not on direct control over representatives by citizens, but on freedom from the kind of control under which, say, a delegate or agent acts. Good judgement in the public interest requires the space, time and vision – free from the clamour of many voices – to see beyond the various particular interests at stake, or so the argument goes. This is partly correct, but it forgets four requirements of good political judgement: first, representatives normally make good judgements about how best to proceed in the light of existing citizens' preferences, interests, objective conditions, ideals and values regarding how their polity ought to look and aspire to become, information for which can only come from the citizenry themselves;[48] second, to assume that because representatives *ought* to make judgements in the light of the 'common good' that they will do so – and not in the light of some sectional good or their own good or their party's good – is to assume that all have the right virtuous dispositions, a foolhardy assumption given history's many examples of the exact opposite; third, as Machiavelli shows well, freedom depends upon antagonism and class conflict and representatives seeking a supposed common good will exclude this crucial component; fourth, the temporal requirement for good judgement, as articulated by Condorcet, requires the active judgement of the citizenry not only during election times, but also between elections, if only as a negative or veto power against legislation, in a manner based on an institutional framework that enables this power at various sites and in a manner that

[47] *Cf.* Pettit, 'Varieties of Public Representation', pp. 61–89, whose attempt to work out a system of direct control over government by individual citizens or groups thereof ends up using the old language of 'the people' controlling government, whoever they may be and as if they always share needs and concerns.

[48] Hamilton, 'Human Needs and Political Judgment', pp. 40–62.

constitutes not so much a check as a delay on the final decision-making processes.[49]

In sum, then, the freedom of the group will depend ultimately not on the individual freedom of any of its constitutive members (however that may be measured or aggregated) but on the relationship of representation that exists between the citizens, social groups and (in short) the power of the group's representative. Like other forms of representation, group representation involves the creation of an agency of some sort. If authorised, uncontested or accepted, this group representative will then have the potential power to act 'for' the group; or, in legal terms, the representative then has an internal warrant to act 'for' the group. However, the extent to which the representative (and by extension the group) is free to act will depend not only on internal warrant, but also on a number of other powers, capacities and conditions it has or has to entertain, such as the power to overcome obstacles to its decisions and actions and its relative power vis-à-vis other representatives. If the representative of one of the groups to which I am a member or feel attached has the power to act in accordance with my group's expressed needs and interests or create new ones for it that help overcome existing states of domination so as to enable my group to determine its needs and interests, the group can be said to be free (or at least freer than those groups whose representatives do not have this power). For reasons related to Lefort's reformulation of popular sovereignty, I add to the aesthetic theory of representation the idea that it is possible to bring this about if we analyse in any given context how the 'gap' of representation is filled by a variety of group representatives with varying relations of power between themselves and those that govern, power relations that are characterised by more or less domination and thus enable more or less freedom as power. The relation between freedom, power and domination discussed in the preceding chapters is thus more comprehensively conceived here as one regarding the relationship between individuals, groups, group representatives and formal political representatives. If this is even vaguely right, it follows that freedom depends upon the freedom as power of both informal group representatives and formal political representatives, for their warrant to act for a citizen or group of citizens would mean little if they did not have the power and independence to do so.

[49] For more on Condorcet's institutional proposals, see Urbinati, *Representative Democracy*, pp. 184ff.; for more on the role of 'deferral' in representation and the role of 'representation as relationship', see Young, *Inclusion and Democracy*, pp. 125–141; and for more on these as well as how they can be usefully combined with McCormick's and my institutional proposals, see my concluding chapter below.

The notion that citizens have more than one part to play within a system of representative government – as both the objects and the arbiters of that representation and as both the subjects and agents of political judgement more generally – means that any unity that is achieved is subject to constant internal dispute. But, as I have argued throughout, constant institutionalised conflict is a *conditio sine qua non* for freedom as power; without it, many needs, interests and voices can easily become silenced in the quest for the common good; and some groups may otherwise dominate others.[50] If something like the common good does exist it may be nothing more than a contingent compromise between otherwise irreconcilable interests, perspectives, groups and classes. The relationship between forms of representation and degrees of freedom is brought into sharp relief by South Africa today, the great hope of freedom fighters from all across the globe, although it also exists (in less stark form) under most modern economic and political conditions.

Representation and freedom in South Africa

There is little doubt that South Africa has come a very long way since the release of Nelson Mandela and the overthrow of apartheid. It has liberated its people from the shackles of a regime based on racial segregation and oppression; it has seemingly successfully consolidated representative democracy; the rule of law is upheld by an independent judiciary and a lauded constitution; and it has (in the main) stabilised and grown its economy to an extent inconceivable during the late 1980s and early 1990s. To cite only a few indicators: until 2008, South Africa had 14 years of uninterrupted growth, with rates exceeding 5 per cent between 2004 and 2007; gross domestic product (GDP) now stands at $600 billion, which puts South Africa in the same league as the Netherlands, Poland and Argentina; with only 6.5 per cent of the population of sub-Saharan Africa, South Africa produces 37.3 per cent of its GDP; since 1994 the government has built close to 3 million houses; and more than 13 million people now receive social grants.[51] Despite these gains, though, the picture of poverty, inequality, unemployment and representation is, unfortunately, much bleaker. My focus here is on

[50] For more on groups dominating other groups, see next section; Shapiro, *Real World*, pp. 20, 39–67; and E. M. Wood, 'Why It Matters', *London Review of Books* 30.18 (25 September 2008), pp. 3–6.

[51] F. W. de Klerk, 'We astounded the world and will do so again', *The Times*, 13 February 2010, p. 24.

existing forms of representation and their effects on the realisation of freedom.[52]

South Africa is one of the most unequal places on earth:[53] this, coupled with the extreme poverty in which many of its citizens continue to subsist, directly and indirectly affects every citizen's freedom, as I argue below. That these conditions persist and that they generate conditions in which associated real freedom as power is still far off is best explained by the forms of representation that obtain within the South African polity and economy. Despite its structural consolidation of representative democracy, on transition to democracy it adopted forms of informal and formal representation that reinforce rather than change the way in which some groups dominated others under apartheid, still with racial overtones, but now much more to do with how new forms of political representation depend upon and reinforce existing class and economic power relations. These forms of representation, particularly as regards the electoral system and the management of public debt, it was supposed, would attract foreign direct investment to bolster a fragile economy and (eventually) place sovereignty in the hands of all of the citizenry. The tragedy is that it involved a degree of fiscal austerity even beyond that proposed by the International Monetary Fund (IMF) at the expense of much needed redistribution and transformation, and the programme of austerity has backfired in two senses: (a) South Africa is still deemed a risky place in which to invest (even more so following a further ratings downgrade by two of the main ratings agencies, Moody's and Standard & Poor's (S&P), of sovereign debt, sub-sovereign debt and associated key institutions citing concern over mining strikes, underlying social tension and regulatory uncertainty);[54] and (b) South Africa is now more not less dependent on

[52] For more on poverty and inequality in South Africa, see H. Marais, *South Africa: Limits to Change: The Political Economy of Transition* (London: Zed Books, 2001); Marais, *South Africa Pushed to the Limit: The Political Economy of Change* (London: Zed Books, 2011); J. Seekings and N. Nattrass, *Class, Race and Inequality in South Africa* (New Haven, CT: Yale University Press, 2005); H. Bhorat and R. Kanbur (eds.), *Poverty and Policy in Post-Apartheid South Africa* (Pretoria: Human Sciences Research Council, 2006); Hamilton, 'Collective Unfreedom'; Hamilton, *Are South Africans Free?*.

[53] South Africa has one of the highest Gini coefficients in the world, and inequality has widened since 1994.

[54] This follows a series of unprotected strikes across many sectors and an apartheid-era-style massacre of 34 striking platinum mineworkers on 10 August 2012 at Lonmin mine, Marikana, North-West Province; the workers were killed by police, who had been ordered to use live ammunition. For more on the downgrades and the spread of strike action across the platinum, gold, iron ore, chrome, trucking, municipal and farming sectors, see 'Moody's blow to municipal issuers of debt', *Business Day*, 8 October 2012, p. 11; various articles in the *Mail & Guardian*, 11–18 October 2012; and, most comprehensively, A. Ahevel, J. Marais and T. A. Lefifi, 'SA's week from hell', *Sunday Times*, 22 October 2012. From early August to late October 2012, 60 workers in total

fickle capital markets. In other words, only in formal terms does South Africa tick all the boxes as a stable representative democracy.

Why exactly, though, can South Africa not shake the 'risky' tag? And why did a country that had just been through a 'miracle' transition to the 'rainbow nation' adopt such counterproductive forms of representation? What are the results on the ground? The answers to these questions converge on post-apartheid's various relationships of representation in three ways. First, informal commercial representation: despite the ANC's best efforts to woo foreign direct investment, potential investors quickly see that their representatives – existing creditors and the capital-owning class in general (with whom they identify) – do not control a 'veto point' in South Africa's institutions of 'formal' or 'political' representation.[55] Second, formal political representation: the working class and unemployed in South Africa constitute a very large group of unrepresented or poorly represented citizens that therefore have little or no real power to determine macroeconomic policy in a manner that not only meets their needs but also helps redress the wrongs of the apartheid past. Both are the result of political and commercial forms of representation that fail to keep in check existing political and economic elites. It is no wonder corruption, poor delivery of basic services, mistrust and discontent are now endemic in South Africa. So, paradoxically, the problem is that neither the group that constitutes the old economic elite nor the group that constitutes the newly enfranchised unemployed and working class have a veto point, or a means of determining or controlling legislation in their interests, but it is the latter's lack of representative power that is most telling. But the wealthy few also lack freedom, since the lack of freedom through representation for the majority group leads to a lack of freedom for the entire society.[56]

This lack of freedom as power is the direct consequence of a negotiated settlement between old and new political and economic elites, which at the time seemed necessary to insure against economic stagnation and

lost their lives, and Moody's and S&P have downgraded most major institutions, and both sovereign debt and these institutions are now on a negative credit watch.

[55] In other words, they do not have strict veto power over political decision-making. A 'veto point' is a political institution, the holder of which, as specified by a country's constitution, has the power to block a proposed change in policy. For more on 'veto points' and 'veto players', see G. Tsebelis, *Veto Players: How Political Institutions Work* (Princeton University Press, 2002); and D. Stasavage, *Public Debt and the Birth of the Democratic State: France and Great Britain, 1688–1789* (Cambridge University Press, 2003).

[56] So, *pace* Shapiro, *Real World*, p. 78, Rae's notion of a 'segmented democracy' is not a perfect fit in the case of South Africa. D. Rae, 'Democratic Liberty and Tyrannies of Place', in I. Shapiro and C. Hacker-Cordón (eds.), *Democracy's Edges* (Cambridge University Press, 1999), pp. 165–192.

political turmoil. The formal process of negotiation occurred over the substance of the constitution,[57] which in effect documents an historical compromise between the old and new political elites, the National Party (NP) and the African National Congress (ANC), eventually affecting a number of core issues: the significance of the substance of the Freedom Charter; whether the constitution should include a bill of rights, judicial review and property rights; and so on.[58] However, it is in fact the two least-discussed compromises that are the most telling for representation and thus freedom in South Africa today.

The first is the decision regarding the best electoral system for a free, democratic South Africa. Ultimately, both major parties decided that it was in their interests to opt for an unqualified party-list system of proportional representation as opposed to either the first-past-the-post Westminster model or a mixed proportional representation system, in which a specified proportion of members of parliament are chosen by parties and the rest are directly elected by constituents – as in Germany, for example. This decision has had dire consequences. A party-list system of proportional representation in which political representatives are determined by the election of parties that generate party lists nationally, the number of members who then proceed to parliament being an exact proportion of their national electoral support as a national party, undermines the power of citizens to determine who governs and how they govern.[59] It is an electoral system that does not give citizens sufficient

[57] The process was initially called the Multi-Party Negotiating Process; it began on 1 April 1993 at the World Trade Centre, Kempton Park and ended with the ratification of the South African Constitution on 10 December 1996 at Sharpeville (the scene of the Sharpeville Massacre on 21 March 1960, when the South African police opened fire on a crowd of black protesters, killing 69 people). R. Davenport and C. Saunders, *South Africa: A Modern History* (Basingstoke: Palgrave Macmillan, 2000), pp. 559–572; R. Spitz and M. Chaskalson, *The Politics of Transition: A Hidden History of South Africa's Negotiated Settlement* (Johannesburg: Witwatersrand University Press, 2000), p. xiii.

[58] The Freedom Charter is the statement of core principles of the ANC and its allies, officially adopted on 26 June 1955 in Kliptown, the culmination of a process that started with the ANC sending out fifty thousand volunteers into townships and the countryside to collect 'freedom demands' from the people of South Africa. For more on the role of rights in general and the right to property in particular, see L. M. Du Plessis, 'A Background to Drafting the Chapter on Fundamental Rights', in B. de Villiers (ed.), *Birth of a Constitution* (Kenwyn: Juta & Co., 1994); A. J. van der Walt, 'Property Rights, Land Rights, and Environmental Rights', in D. van Wyk *et al*. (eds.), *Rights and Constitutionalism: The New South African Legal Order* (Oxford: Clarendon Press, 1996); Spitz and Chaskalson, *The Politics of Transition*; Hamilton, *Needs*, pp. 171–184; L. Hamilton and N. Viegi, 'Debt, Democracy and Representation in South Africa', *Representation* 45.2 (2009), pp. 193–212, at pp. 201–202; and Hamilton 'Human Needs, Land Reform and the South African Constitution'.

[59] It is also very rare. Only Israel has the same system. In every other democracy in the world, citizens are represented, at least in part, by members who come from or represent

power over their representatives (as representatives of constituencies or otherwise) because it cannot, by definition, provide them with the relevant power over how they are represented: that the legislature should directly reflect the electoral tally of parties rather than either the interests of the electorate as a whole, a vision of that whole or the partisan interests of a certain group of constituents means that it cannot provide a plurality of reflections of the electorate from which the latter can choose and about which it can judge. You might say that it is set up to exclude alternative and competing versions or visions of the polity. Identical proportionality of party support in parliament or an alleged exact copy of 'the people' (in miniature, as in a map) sacrifices the 'gap' between the representation of 'the people' and the people themselves and thus the potential for competition amongst the various visions and groups that constitute the people.

This closing of the gap is exemplified when the ruling party claims (especially against other parties, groups and the media) that it, and it alone, represents 'the people'; and when it fails to distinguish between the party and the state. Three examples of the latter stand out. First, the erosion of the power of the legislature in favour of the power of the executive: parliament in South Africa is at best toothless and at worst simply bypassed. Second, when the party makes a decision and claims that it is a decision made by 'the people' (as with the recall of Mbeki as president). Third, when it is suggested that the strength of the ruling party and the lack of a viable opposition party does not undermine democracy since 'the party' structures are themselves fully democratic. These kinds of claims are clear instances of mistakenly identifying 'the party' with 'the people' and thus 'the state', a tyrannical move that silences all other groups and their representatives. Moreover, it is a deeply ironic development since in healthy polities the party acts as one of the many important groups and (sets of) representatives that occupy the gap between the rulers and the ruled.[60] In the case of South Africa at present the ruling party is usurping the power and thus freedom of the people as it moves out of the gap and attempts more and more to situate itself as a microcosm or exact copy of the democratic polity it ought to be creating: the party attempts more and more to represent the people (in the sense of resembling or copying them) rather than act as one amongst many representative versions of the

a geographic area, the area where that set of constituents lives (though exactly how and what proportion of the representatives are elected in this fashion varies quite widely). A. Rehfeld, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design* (Cambridge University Press, 2005), p. 3.

[60] Ankersmit, *Political Representation*, pp. 125–132.

groups that constitute the polity from which the people can judge and choose.

This tendency to silence opposing groups and their representatives prior even to judgement by 'the people' is a perfect instance of erosion of not only particular freedoms in society, but also the freedoms of these silenced groups and thus the freedom of their members. The formal political representatives and institutions would maintain and advance freedom not only by empowering those groups that lack power (which requires effective 'service delivery'), but also by enabling a polity in which the representatives of all groups are given equal access to those who rule, in particular to those who determine macroeconomic policy.

This is far from the case in South Africa, where the majority of the polity lack meaningful representation and thus the power to affect macroeconomic policy, despite dubious claims to the contrary by the ANC that they represent the people and despite the fact that many vote ANC. At first glance it would seem that at least 55 per cent of the population are not properly represented in the sense of being provided with an alternative vision upon which to reflect, since most of this group are represented by a set of trade unions whose umbrella body, the Congress of South African Trade Unions (COSATU), is in a ruling alliance with the ANC and the South African Communist Party (SACP).[61] But this figure in fact underestimates the problem. At least one-third of the population is either unemployed or no longer economically active (either as a consequence of illness, age or disability or because they constitute a group of discouraged work-seekers). At the time of writing, in 2013, the number of South Africa's unemployed stands at 4.45 million, or a formal unemployment rate of 25.7 per cent; the number of economically inactive workers stands at 14.35 million, of which actively discouraged work-seekers constitute 2 million.[62] So even if only the actively

[61] There are five quintiles of household head income in total, and the three lower quintiles include all those household heads with an income of R30,000 (or $4,000) per annum or less; to use the apartheid-era categorisations that are still in use today, 72.5 per cent of the 'black' population, 44 per cent of the 'coloured' population, 15 per cent of the 'Indian' population and 3 per cent of the 'white' population are situated within these lowest three quintiles, so given the demographics of South Africa's population the lower three quintiles constitute 55 per cent of the population earning a monetary income (but see below). Statistics South Africa, 'Income and Expenditure of Households 2005/2006'. www.statssa.gov.za/publications/P0100/P01002005.pdf (accessed 15 August 2010).

[62] Statistics South Africa's Labour Force Survey, quoted in *Business Day*, Friday 29 July 2011; the situation has worsened since the previous survey, when 4.3 million were unemployed, giving a formal unemployment rate of 25.3 per cent – see 'Labour Force Survey 2009', in Statistics South Africa, 'Statistics South Africa Quarterly Labour Force Survey Quarter 2, 2010', at www.statssa.gov.za/publications/P0211/P02112ndQuarter2010.pdf (accessed 15 August 2010).

discouraged work-seekers and the formally unemployed are considered, South Africa's real unemployment rate is approximately 37 per cent of the population.[63] If this percentage is combined with that proportion of the population that is involved in menial and underpaid jobs (quintiles two and three discussed above, see footnote below), and if we assume that the unemployed household heads occupy the lowest quintile, on a conservative estimate a staggering figure of 77 per cent of South Africa's population has little or no meaningful representation.[64] This large group is, with some minor small changes since 1994, a relatively homogeneous group – in the apartheid-era categorisations that are still in use today it is the 'black', 'coloured' and 'Indian' marginalised or working-class group of South Africans – although it is of course heterogeneous with regard to a number of other criteria and identifiers. If this economic situation is coupled with the macropolitical situation with regard to representation discussed above, it is possible only to conclude that most groups in South Africa lack freedom as a direct result of their lack of meaningful representation: *either* they have no agents, trustees, defenders of their identities/interests or varieties of possible images upon which to reflect *or* they have powerless representatives, whose powerlessness is a consequence of the persistence of domination within extant power relations or institutional arrangements that do not enable effective representation.

By contrast, affluent South Africans as a group are better able to determine their future prospects and thus have greater freedom as power by dint of their greater influence over macroeconomic policy. They have this influence as a result of their greater purchasing power and their indirect and direct links to policy-makers themselves or via the power of their group's informal representatives. This form of freedom through

[63] This figure and my method of reaching it has been corroborated recently by a study carried out by the National Research Foundation chair in poverty and inequality research at the University of Cape Town: '"Rock bottoms" push jobless rate to 36.7%', *Business Day*, 17 July 2013.

[64] This figure is reached by adding together the real proportion of the population that is unemployed (37 per cent) and the percentage of the population that is employed but still occupies the lower three quintiles (55 per cent) and subtracting from that the proportion of those included in the quintile calculation that are unemployed (given that some of the unemployed do manage to bring in small amounts each month, either via informal labour or social grants, I estimate that those that are part of the household head survey will occupy the lowest quintile of income). The latter figure comes to approximately 15 per cent, which means that 40 per cent of South African household heads occupy quintiles two and three, which gives us the figure of 77 per cent (37 per cent + 40 per cent). (The 15 per cent lower quintile is not equivalent to the total real unemployment rate because the quintiles are a categorisation of income of household heads not all, or all potential, workers; and, moreover, a significant proportion of the unemployed or economically inactive engage in subsistence agriculture and so may be unemployed but earn so little as not even to be included in the household head income survey.)

representation is exemplified well by the nature and efficacy of the informal representation of creditors (holders of South African sovereign debt bonds): existing creditors, top business people and industrialists act as informal representatives for existing and potential creditors (and owners of capital more generally) due to a relationship of identification; *and*, as I have argued, the way in which the potential creditors determine a state's credibility and thus the risk of purchasing its credit is determined by whether these commercial representatives (existing creditors in particular) hold veto power in the state's formal representative structures. What is peculiar in the case of South Africa is not the presence of this kind of representation, but the fact that this group of representatives is relatively homogeneous and that it was not and did not expect to be represented within the democratically elected ruling elite. It may have courted and been courted by these political representatives, and it may have helped to ensure that a right to property as part of a bill of rights was central to the new constitution, but it could not assume that its interests would find formal representation within the main political institutions of democratic South Africa. Put differently, the reason South Africa remains a risky place in which to invest is a direct result of the image the ANC government portrays to investor groups: the image of 'the people' they represent is not one with which potential creditors can easily identify or feel comfortable. Here, then, representation as identification and as aesthetic reflection complement and involve one another, highlighting the first way that representation matters for freedom, even for the wealthy.

This is a tragic irony, as the most important decisions made by South Africa's post-apartheid political elite with regard to macroeconomic policy and informal commercial representation were intended to generate the opposite outcome. In 1994 the new South African government inherited an economy in disarray and the new political elites had before them three possible options.[65] First, they could default on apartheid debt. Second, they could refinance existing debt with more debt from international institutions to address the urgent issues of income redistribution and economic transformation. Third, they could stabilise the economy and reduce public debt via the adoption of an austere fiscal programme. They chose the third option. This choice was made in order to gain greater policy independence from creditors and portray an image of sound fiscal management to potential international investors, and thus inspire increased foreign direct investment. In accordance with the predominant economic orthodoxy, the new South African political elite assumed

[65] For details on the state of the economy at the time, see Hamilton and Viegi, 'Debt', pp. 198–207.

that a combination of secure institutions of representative democracy and 'prudent' fiscal management would enhance the state's credibility and thus make it less expensive for them to finance the transformation of South Africa's economy.[66] However, the consequences of the decision were quite the opposite. The South African government's austere response to debt made its bonds more attractive: an austere and conservative macroeconomic response to debt management and 'transformation' made the value of its bonds more predictable, more valuable and thus more traded amongst international creditors, thus also generating a shift in the ownership profile of South Africa's creditors: from being nearly completely domestically owned in 1994, more than a quarter of South Africa's public debt is now owned by international creditors. This internationalisation of South Africa's debt has meant that the ANC in government has become more, not less, dependent on the constraints of creditors – that is, more subject to investor scrutiny and sentiment.[67] And, yet, as compared to other young representative democracies, in the eyes of investors, South Africa still remains as risky a place in which to invest as it did under apartheid, which means the servicing of South Africa's public debt remains relatively expensive.[68]

So the decision regarding how best to manage public debt itself failed to sustain the conditions for the attainment of the intended objectives of the original decision. South Africa's creditworthiness has not improved and the new South African government does not have greater control over policy formation. Rather, the 'prudent' management of public debt and the policy priority given to equilibrium and fiscal and monetary discipline simply safeguarded the interests of the existing creditor class (and the interests of potential investors) to the detriment of social spending, redistribution and transformation. In other words, in choosing the last, most conservative option the ANC surrendered the very means of achieving one of the main goals of the decision – enabling the rest of the society to actualise their rights – for, given the country's history, without redistribution most of the citizenry remain in a condition in which they lack the resources to do so. The hope was that the process of 'transformation

[66] State credibility is defined as the perceived likelihood that a current or future government will honour debt contracts. For more on this, see Stasavage, *Public Debt*, p. 23; D. North and B. Weingast, 'Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England', *Journal of Economic History* 49.4 (1989), pp. 803–832.

[67] For the exact historical and institutional dynamics of this process, see Hamilton and Viegi, 'Debt'.

[68] For evidence, comparisons and reasons behind South Africa's continued lack of creditworthiness, see *ibid*., an argument that has been further reinforced by the recent (October 2012) Moody's and S&P rating agency downgrades.

through austerity' would generate, 'in the long run', sufficient growth to eliminate any distributional constraint. But this depends on two unstable variables – growth and continued economic sovereignty. And, as John Maynard Keynes famously put it, 'this *long run* is a misleading guide to current affairs. *In the long run* we are all dead.'[69]

The quick and sorry demise of the ANC's 'Making Democracy Work' policy is indicative of the way in which the behind-the-scenes agreements, assurances and concessions that occurred during this period sacrificed many of the stated goals of the ANC for the perceived absolute priority to ensure that monetary and fiscal policy would not undermine the interests of those who had the financial potential to continue to act as creditors for the South African state.[70] The 'Make Democracy Work' policy was an attempt to turn the general promises of the Freedom Charter – for housing and health care – into practical policies. But it never saw the light of day; it was dropped as part of the horse-trading that constituted the negotiations between the representatives of the old economic elite and the new political elite. Some have argued that the ANC leadership was simply outmanoeuvred in these negotiations,[71] which may, in part, be true, but even as they do so they provide evidence for the ANC's active involvement in this process. Take, for example, the central role played by Thabo Mbeki, who made several key revisions to the ANC's economic programme to address the concerns of top business people and industrialists, such as Harry Oppenheimer.[72]

In other words, parallel to the formal debate around the creation of a new constitution, there was a semi-formal or informal debate or forum in which national economic power and the new political elite defined

[69] J. M. Keynes, *A Tract on Monetary Reform* (London: Macmillan, 1923), p. 80.

[70] 'Making Democracy Work' was a policy proposal produced by the ANC-sponsored Macroeconomic Research Group (MERG) in November 1993. MERG was the most important research base for the ANC in the early stages of its unbanning, but it only operated between 1991 and 1993. Macroeconomic Research Group, *Making Democracy Work: A Framework for Macroeconomic Policy in South Africa* (University of the Western Cape, Cape Town: Centre for Development Studies, 1993). The same fate befell the first economic policy of the ANC government, the Reconstruction and Redevelopment Programme (RDP), which had been heavily influenced by MERG and a short-lived post-Marxist and Keynesian vision. It was quickly dumped in favour of the macroeconomic policy of Growth, Employment and Redistribution (GEAR), strongly influenced by the predominant neo-liberal discourse of pro-growth incentives. A. Habib and V. Padayachee, 'Economic Policy and Power Relations in South Africa's Transition to Democracy', *World Development* 28.2 (2000), pp. 245–263; Shapiro, *Real World*, pp. 5ff; Hamilton and Viegi, 'Debt'.

[71] M. Klein, *The Shock Doctrine* (London: Penguin, 2007), pp. 200–206; and W. M. Gumede, *Thabo Mbeki and the Battle for the Soul of the ANC* (Cape Town: Zebra Press, 2005).

[72] Gumede, *Thabo Mbeki*, pp. 33, 39, 69.

an economic constitution that would characterise the new South Africa. This forum generated a problematic form of commercial representation of the main economic powers and interests in South Africa that had dire consequences for both economic growth and transformation in South Africa. This is the second under-discussed compromise and form of representation that I maintain determines to a significant degree the extent to which South Africans lack freedom today: given the transformation in political power, it was clear to most of the representatives of the existing economic elite involved in the negotiated settlement that the interests of this elite, at least initially, would not be represented in parliament. This is more or less correct, despite the fact that this group is in the process of being partially transformed by the black economic empowerment (BEE) initiative; and, as I have argued, their continued lack of control over a veto point explains why South Africa is still thought of as a risky place in which to invest. This suggests that the orthodox argument regarding public debt and representative democracy, which holds that representative democracy is a necessary (and in some instances even a sufficient) condition for credibility,[73] must be wrong or at least augmented. The experience in South Africa undermines the received theoretical opinion espoused by this orthodox argument regarding public debt. The new South African political elite followed the mainstream economic orthodoxy of the day to the letter to ensure the credibility of the new South African state, but none of these policy moves can substitute for one undoubted necessary condition for state credibility: the formal, political representation of a state's national creditors, or at least their group representatives. It is the fact that the negotiated settlement between old and new political and economic elites left the interests of the main economic elite without clear, formal political representation in parliament, rather than the presence of consolidated representative democracy, that explains South Africa's continued lack of creditworthiness.[74]

[73] More exactly, that the institution of representative democracy reduces uncertainty and thus increases the value of a state's bonds, which means it becomes less expensive for a government to finance its activities. North and Weingast, 'Constitutions and Commitment'; J. MacDonald, *A Free Nation Deep in Debt: The Financial Roots of Democracy* (Princeton University Press, 2006); *cf.* Stasavage, *Public Debt.*

[74] There is in fact a strong and weak version of this argument against the orthodox position. The weak version accepts that the orthodox position is partially correct and argues that both representative democracy and the formal, political representation of a state's national creditors together constitute necessary conditions for credibility. The stronger version of this argument requires that we discard the orthodox position entirely: it is that the main necessary condition for state credibility is the formal, political representation of its national creditors, irrespective of the exact form of its regime. If the latter is correct, and the South African evidence supports it, it is no exaggeration to say that

The evidence seems, then, to point to the uncomfortable possibility that the informal agreement between the new political elite and the old economic elite materialised for reasons that related more directly to the management of the state's capital than it did to a policy of empowering the citizenry: the over-riding motivation behind the new political leaders' choice of option three was their desire to properly harness and retain the sovereignty of the South African state – in other words, to wrench power from national creditors and avoid a loss of autonomy to international creditors and financial institutions.[75] And it became quickly obvious to all involved that the old economic elite therefore held a vital card – they constituted the majority of the existing creditors for the South African state and their credit was a basic prerequisite for a stable, if transforming, South Africa, and thus they could not be alienated; and, so the story went, the other possible option of reneging on apartheid debt would have undoubtedly done that. However, this story is ignorant of much of history. The choice of cautious reform is actually almost unique in the context of dramatic regime change. At least since the French Revolution, history is replete with examples of shock therapies, often involving reneging on debt, radical land reform and nationalisation (or privatisation) of natural resources; in general, radical and fast changes in political and economic institutions. And in the case of South Africa the negative effects of these would have been tempered by the fact of significant international goodwill following the end of apartheid as well as odious debt considerations.[76] Either way, in the terms I have developed in this chapter, the real cause for the poor decision was that there was and still

within modern representative democracies the clamour is no longer 'no taxation without representation', but 'no credit without representation'.

[75] See the comment on transition from apartheid by the then chair of parliament's finance committee, later to become governor of the Reserve Bank, Gill Marcus, who played a central role in stabilising the debt-ridden economy the ANC government inherited. She convinced her party comrades that they did not have a 'blank slate' and that if South Africa's 'huge debt' and 'massive tax shortfall' were not addressed 'it [South Africa] was likely to land up in the hands of the IMF . . . [and] we certainly had not worked this hard for our liberation to hand it over to the IMF'. P. Green, 'Banking on integrity', *Mail & Guardian*, 24 July 2009. See also A. Hirsh, *Season of Hope: Economic Reform under Mandela and Mbeki* (Scottsville: UKZN Press, 2005), pp. 65–105; and J. Michie and V. Padayachee, 'Three Years After Apartheid: Growth, Employment and Redistribution?', *Cambridge Journal of Economics* 22 (1998), 623–635.

[76] 'Odious debts' are debts that have been incurred by a government that was not democratically chosen, and the borrowed money may even have helped a brutal regime stay in power. Given this, there is a moral case made for debt forgiveness: that citizens of recently democratised states who are saddled with the debt of previous undemocratic regimes *ought* not to have to meet these debt obligations. In other words, as with Congo following Mobutu and Chile following Pinochet, there is a strong moral argument that South Africa in transition had no moral obligation to repay the debts incurred under apartheid. P. Adams, *Odious Debts: Loose Lending, Corruption, and the Third World's Environmental*

is no real gap between the informal representatives of the most powerful commercial groups and the formal political representatives, as too, with bitter irony again, was the case under apartheid. In other words, in South Africa little has changed: the poorly represented unemployed and working class are still dominated by the economic and political elites.

Yet, irony upon irony, another unintended consequence of these formal and informal deals is that, despite them, the creditor class has not ended up us powerful as it might have: the state's lack of credibility is not good for commercial interests as capital markets react badly to instability. And this is further reinforced by the fact that all is not rosy for this group of affluent South Africans for another, associated reason: the social ills associated with high levels of inequality are difficult to overcome without capital inflows (amongst other things). The poor and deprived obviously suffer the most from the high incidence of social ills associated with inequality, but so do the wealthy. In the most extreme and direct way, this is felt in the form of crime in general and violent crime in particular. Although the poor are overwhelmingly worse off as regards incidences of violent crime, such as rape and murder, the wealthy are often specifically targeted as a result of their wealth – armed robbery in South Africa occurs at very high levels in seemingly highly protected, wealthy suburbs.[77] National crime statistics for 2008–9 show an increase of 27 per cent in house robberies, an overall increase in crime in general and a slight drop in the murder rate; but even with the latter in South Africa about 50 people are murdered a day – slightly more than in the USA, which is not exactly a model of how to control violent crime and has six times South Africa's population.[78] There is much evidence in South Africa and elsewhere that there is a robust causal relation between high levels of inequality and crime, as there is with regard to levels of general stress, mutual distrust, conflict, violence, bad health, short lives, mental illness, low productivity and so on.[79] In South Africa the persistent high levels of material inequality lead the wealthy, in particular, to be plagued

Legacy (Oxford: Earthscan Publications, 1991); J. Stiglitz, *Making Globalization Work* (London: Penguin, 2007).

[77] Sandton, one of the wealthiest suburbs in Johannesburg and South Africa, had the most cases of house robberies in the country during 2009–10. See '"Still too many murders": Experts voice caution as major-crime stats show decline', *The Star*, Friday 10 September 2010.

[78] See 'SA murder rate drops slightly, overall crime up', *Mail & Guardian*, 22 September 2009; and www.saps.gov.za/statistics/reports/crimestats/2009/crime_stats.htm (accessed 26 February 2010). In 2009–10 there is evidence of a slight decline in murders, hijackings and sex crimes, while house and business robberies have increased again. See 'Still too many murders', *The Star*, Friday 10 September 2010.

[79] Wilkinson and Pickett, *Spirit Level*; see also Wilkinson, *Inequality*.

by fear, phobias and anxiety regarding their own and their family's health, safety and security. In this way, inequality breeds stress across the full spectrum of society, not just amongst the downtrodden, and this leads to a high incidence of syndromes such as depression, phobias of different sorts and basic anxiety.[80] There is little doubt therefore that there exists a causal relation between high levels of inequality and power. If one consistently has to struggle against poor health, one will accordingly lack the power to take part in the selection and control of one's representatives and to resist the norms of one's society. It follows therefore that the high levels of inequality in South Africa severely curtail the freedom of all of its citizens. A cycle of poverty for some when associated with high levels of inequality and skewed political representation has become a cycle of less and less freedom for all.

One of the ruling party's responses to these problems regarding meaningful representation has been to try and enhance democratic participation of the citizenry at local government level. They have instituted local-level citizens' councils (ward committees) and 'popular evaluation' in the Programme of Action,[81] and they have encouraged civil society organisations and popular activism, and education.[82] But this is not a response to the problem since it is based on the premise that the problem regarding national representative politics arises as a consequence of lack of citizen participation and is thus best resolvable via greater participation and deliberation at the local level. As I have argued in this section, the problem is not about the degree or form of citizen political participation but about the way in which representation is being enacted in South Africa.[83]

[80] Incidents of mental illness are 500 per cent higher across the whole population spectrum in the most unequal societies than in the most equal ones. Wilkinson and Pickett, *Spirit Level*; Wilkinson, *Inequality*.

[81] L. Piper, 'Theorizing Democracy in Local Government in South Africa', unpublished paper presented at UKZN Politics Seminar, Durban, South Africa, November 2005; L. Piper, K. Barichievy and B. Parker, 'Assessing "Participatory Governance" in Local Government: A Case-Study of Two South African Cities', *Politeia* 24.3 (2005), pp. 370–393.

[82] Raymond Suttner argues that this is part and parcel of the ANC's attempts to pursue the 'National Democratic Revolution' (NDR) – that is, to continue 'a process of struggle that seeks the transfer of power to the people . . . where all organs of the state are controlled by the people . . . [which] requires participatory democracy, a democracy that is driven by the people'. J. Netshitenzhe, 'The National Democratic Revolution: Is It Still on Track?', *Umrabulo* 1 (4th quarter 1996), p. 2; R. Suttner, 'Democratic Transition and Consolidation in South Africa: The Advice of "the Experts"', *Current Sociology* 52.5 (2004), pp. 755–773. But this is to view real politics in South Africa through rose-tinted spectacles; for why, see below and Hamilton, 'Collective Unfreedom'.

[83] For a similar point regarding the fact that local democratic reforms miss the point, see Ankersmit, 'On the Origin, Nature and Future of Representative Democracy', in *Political Representation*.

These responses are nothing more than window-dressing for, although citizens are given some access to deliberation prior to decision-making, it is ward councillors who ultimately make the decisions behind closed doors and most, if not all, have firm party loyalty, not least of all because, in accordance with the electoral system specified in the constitution, half of the councillors are instated through proportional representation, while the remaining half are ward representatives. Therefore, as is the case at national level, councillors are accountable not to their constituencies but to party leaders.[84]

This condition of little or no meaningful representation for the majority of the population and skewed economic representation for the remainder is unhealthy for any state, let alone a new, emerging democracy. The exact causes of the poor health of South Africa's polity and economy may not be plain for all to see, but what is currently unambiguously clear is that large cracks are beginning to appear in the ruling alliance's representation of 'the people'. For some time the country has been wracked by prolonged strikes and service delivery protests, and, as I write these lines in 2013, many of the unprotected wildcat strikes in the mining and other sectors have been undertaken without union support. The lucky few that have employment as well as those that are supposed to be reaping the benefits of a party 'for the people' in terms of social grants are contesting the image that the ruling alliance has tried to conjure up of them. Outrage over years of jobless growth, extremely low wages and very poor service delivery driven by corruption and incompetence often brings parts of the country to a standstill; moreover, there is evidence that the three parts of the ruling alliance no longer portray the same image. The possible outcomes are revolution or a successful decoupling of the alliance and the institutionalisation of effective and meaningful representation for all groups.[85] The latter choice would be better for all concerned. South Africa must change now the power relations that exist between groups, their representatives and the people's formal political representatives – more exactly, it must re-open the gaps that need to exist between these sites of power; in order to do that it has to transform not only its

[84] Piper, 'Theorizing Democracy'; C. Tapscott, 'The Challenges of Building Participatory Government', in L. Thompson (ed.), *Participatory Governance: Citizens and the State in South Africa* (African Centre for Citizenship and Democracy: University of the Western Cape, 2007), p. 87 (accessed at www.accede.co.za/downloads/monograph.pdf on 15 August 2010). See also R. Pithouse, 'Burning message to the state in the fire of poor's rebellion', *Business Day* 23 July 2009 (accessed at www.businessday.co.za/articles/Content.aspx?id=76611 on 9 August 2010).

[85] *Cf.* A. Mngxitama, 'Tripartite tussle? Get real, it's just a game', *Mail & Guardian*, 3–9 September 2010.

electoral system and the structure of its ruling party, but also its property ownership, distributive mechanisms and macroeconomic policies.

Conclusion: individual freedom, collective freedom and group freedom

I have argued here that the concept of group freedom is absent, or at least frowned upon, in the mainstream literature and this is to do with the fact that groups are understood to be without the agency necessary for freedom, or at least the kind of agency exhibited by states and individuals. I have defended the claim that this is misplaced since groups are represented in various ways and through these forms of representation they can be conceived to be more or less free to act in the world. They thereby affect the way their constituent members are able to satisfy their vital needs and interests *and* (potentially) control macroeconomic policy by means of the relationships that exist between their informal groups' representatives and formal political representatives. This is especially apparent if freedom is conceived in terms of power, as argued here, viewed through the lens of representatives' relationships within contemporary South Africa, free in formal legal terms but far from free as regards power through representation. But, given these dynamics, what of the relationship between group freedom, collective freedom and individual freedom?

The notion of collective freedom comes from the work of the Marxist (or neo-Marxist) political theorist G. A. Cohen; and group freedom has been analysed in detail by Ian Carter, but in very different terms from the ones used here.[86] Cohen comes closest to an emphasis on group freedom as equally significant to arguments regarding the freedom of individuals and states in his account of the 'collective unfreedom' of the proletariat under capitalism. He argues that although individual members of the proletariat are free to escape the proletariat, given that capitalism requires a substantial hired labour force and that this would cease to exist if more than a few did escape the proletariat, this freedom is conditional on none of the other members (or at least not all of them) exercising their similarly conditional freedom. He goes on to contend that the fact that the freedom of each is contingent on the others not exercising their similarly contingent freedom gives rise to a great deal of unfreedom: even though each is individually free to escape the proletariat, each individual member of the proletariat suffers with the rest from 'collective unfreedom'. He suggests, moreover, that there are at least four reasons why individual

[86] Carter, *Measure*, pp. 246–268.

members of the proletariat may not therefore try to escape: lack of desire, laziness, diffidence and solidarity. The first three are based in what a person wants and fears as an individual and the fourth emanates from the fact that sometimes when people share a common oppression they care about the fate of similar others. What follows from this, he reasons convincingly, is that 'there is collective unfreedom whether or not solidarity obtains', that the proletariat is collectively unfree in the sense of being an 'imprisoned class' and that the best form of liberation from this condition is not just escape from the working class, but freedom from class society.[87]

Cohen's emphasis, however, on the alleged fact that the freedom of the proletariat is determined partly by individual inclinations and traits and partly by solidarity with others – that is, that group agency depends ultimately not on a representative's external power or capacity to coordinate the actions of the group but on the existing relations of association and interest identification that exist within the group – highlights the abiding rationale that underpins his account: his notion of collective freedom or unfreedom here is simply a question of the conditions that capitalism and membership of this group put on the possibility of *individual* proletarians being able to act as they would otherwise act. In other words, even if there is something collective about their condition, the ultimate question regarding their freedom rests on the effect of these conditions on their individual agency *not* the agency of the collective as a whole (via the power of their representative), except in as much as its lack of agency and the existence of solidarity constitute some of the constraints on individual freedom. This is corroborated by Cohen himself when he admits that 'the relevant agents are individuals, not a group as such' and that in the case of collective unfreedom the individual '*shares in* a collective unfreedom with regard to a type of action A if and only if . . . '.[88]

Carter, on the other hand, is interested directly in attempting 'to give an account of the degrees of overall freedom of groups'.[89] But his account is an avowedly 'individualist view of group freedom', where he concludes that '[t]he freedom of a group is nothing other than the sum total of the degrees of freedom of its individual members'.[90] I contest this conclusion based on the role of representation in group freedom (as elaborated below), but I agree with Carter that, if what I have said above about Cohen is correct, Carter's individualist account of freedom

[87] Cohen, 'Capitalism, Freedom and the Proletariat', pp. 178–181, quotes at p. 181 (and the original article: Cohen, 'The Structure of Proletarian Unfreedom', *Philosophy and Public Affairs* 12.1 (1983), pp. 11–12).
[88] Cohen, 'Proletarian Unfreedom', pp. 17, 16.
[89] Carter, *Measure*, p. 246. [90] *Ibid.*, p. 267

confirms rather than contradicts Cohen's own intuitions regarding the freedom of the proletariat, even if Cohen himself might maintain that his account rests on a distinct version of how individual actions and freedoms affect one another or can be aggregated. Cohen thinks that the degree of a group's freedom involves assessing not only the compossibility of actions of single individuals, but also the compossibility of actions of *different* individuals, 'where to render the actions of two or more individuals impossible in combination is to reduce their freedom as a group' – that is, unfreedom can be *collective* as well as individual.[91] So, proletarians can, in principle, be simultaneously collectively unfree and individually free. This may be so, and it may even be better explained in the terms Carter proposes, but only if one has a highly stylised account of freedom and agency in politics. Carter maintains that what Cohen has spotted is not a different kind of freedom, but rather the 'truth of a counterfactual conditional regarding individual actions (of some) and individual freedoms (of others)'.[92] In other words, he thinks that what Cohen has identified may provide useful information in assessing group freedom, but is not itself a dimension of freedom, and that group freedom can be measured simply in terms of 'the sum total of the degrees of freedom of its individual members'.

Neither thinker, therefore, even entertains the possibility that the very fact of representation in politics may give the group the kind of agency that would make it possible to assess the overall freedom of the group as distinct from the freedoms of its constitutive members. In other words, neither thinker even begins to face up to the unavoidability of representation in politics and to the fact that this aspect of the nature of politics means that the freedom of the group is a dimension or kind of freedom distinct from that of the freedom of the individual (even if the two may in many instances be causally connected), which may rest, ultimately, not on a process of aggregating or associating individual freedom but on the freedom as power of the representative(s) of the group in question. In sum, the accounts of both Cohen and Carter fall short for the same reason: they both assume an individualist view of group freedom and they do so because, like the thinkers discussed at the start of the chapter, they fail properly to entertain the central role played by representation in general and group representation in particular in politics.

I have argued here that if we take seriously the nature of representation in its various forms it becomes possible to see the central role played by group representation and to argue that the freedom of the group is reducible to the power of the group's representative,

[91] *Ibid.*, p. 247. [92] *Ibid.*, p. 258.

particularly if one takes seriously the aesthetic account of representation and the poverty of the mimetic account of representation. However, the freedom of any individual member of a group cannot be *reduced* to the power of that group's representative alone, and this is because most individuals in complex, modern states are members of more than one group and so their overall individual freedom is assessed best in terms of the power of various group representatives and even the power relations that may exist between them and whether or not they and their representatives are acting within situations of domination. Needless to say, this is a position exactly contrary to the one defended by Carter: rather than commencing from the freedom of individuals and somehow aggregating them to determine group freedom, it starts by assessing group freedom (via the power of group representatives) and from there determines the freedom of the various individuals that constitute the group. This is a much more realistic means of determining freedom, especially given the pervasiveness of groups, representation and power relations in complex modern societies.

As a result of our misplaced tendency to think of freedom and unfreedom in terms of individual or state action and interference to it, we can very easily be guilty of doing so when it comes to assessing collective action and the conditions for it. This has been prevalent not just in much of the political philosophical literature, but also in the general populace. The latter is particularly true in South Africa, with its long tradition of anti-apartheid activism and the vital role of the trade unions therein. The appeal to grassroots activism is still strong, and there is little doubt that South Africa has a firm heritage to draw on when it comes to political activism, labour union strikes and the will to take on the state, and that solidarity amongst marginalised individuals does often constitute a sufficient means for collective action. But is this collective action characterised by freedom or free acts or escape from situations of domination? The answer is an unequivocal 'no'. The reality on the ground is that those who are driven into a position of real resistance to the state normally rise up from situations of domination: of extreme poverty, poor or no housing, poor representation and so on. Understandably their main concern is to remedy this situation and to appeal to the solidarity of others around them (even representatives from far away with little or no experience of their particular conditions and needs), but none of this amounts to freedom or free action. It is the exercise of resistance *in extremis* not anything close to the notion of resistance espoused in Chapter 4 above – that is, these acts are far from acts of critique in which one takes on the state and other associated institutions for the roles they may play in fixing or reifying norms in one's society that generate states of domination.

However much unemployed groups and their representatives think otherwise, their group freedom (and thus one important dimension of their individual freedom) will depend on them having representatives who have the power to meaningfully influence economic policy.

So, despite the fact that many South Africans believe they can free themselves by either escaping from the crime, fear and anxiety created by the current social, economic and political ills of the country – either by literally leaving or by creating a seemingly secure 'private sphere' behind high walls and electric fences – or by confronting the state in anarchic forms of social activism, the reality is that freedom lies through effective and meaningful informal and formal political representation. In particular, as a citizen of South Africa my freedom as power over my social, economic and political environment depends upon me supporting, criticising and judging the actions and images of the representatives of the various groups of which I am a member. South Africa provides a clear lens through which to view three oft-forgotten elements in a full substantive account of real freedom: (a) the role of group freedom as power in determining individual freedom; (b) the form of representation the political and economic institutions enable in one's society; and (c) the fact that representation – *not* as mimesis but as effective institutional enabler of power for all – is the real basis for freedom in modern, complex societies. Moreover, given the effects on our lives of the freedom of others, my individual freedom as a citizen of South Africa will depend ultimately on the freedom of all groups of South Africans, which itself depends on the form and extent to which the representatives of these groups can affect macroeconomic policy and the actions of elected political representatives. As is clarified in the book's main conclusion below, the requirement for freedom of good judgement as regards macroeconomic policy depends *not* on a vain attempt to build institutions in line with the idea of the common good or formal equality before the law – it may require these too – but institutions that reserve some political power for those social and economic groups who would otherwise have little or no access to formal political power and thus no means to counter their states of domination. Even here they cannot escape the role of representatives.

6 Can and ought our political representatives control the economy?

There would hardly be much point in writing a whole book about the link between power, representation and freedom if it were to turn out that political representatives cannot or ought not control the economy. In this final chapter, against the grain of much received opinion from most quarters – the political left and right, the ordinary citizen and the scholar, the business person and the politician – I argue that political representatives can control the economy and they ought to if they and the citizens they represent value freedom.

In Chapter 4 I argued that the fourth and most important dimension of freedom as power is the extent to which freedom depends upon citizen control over economic organisation and policy formation. As I put it there, in any modern political order there exists a prudential requirement of sustaining effective means for citizens to judge constantly and effectively the prevailing principles of their society's political and economic organisation as well as the performance of their political authorities. In particular, given the representative system of capitalist democracies and the fact that political representatives administer highly complex economies, it is vital for citizens' substantive freedom that freedom is in part conceived of in terms of being able to *judge* and *question* the performance of their elected representatives in the light of their country's macroeconomic performance and policies.[1]

Then, in Chapter 5, I indicated how representation, properly conceived, opens up various gaps for this process of judgement and critique by citizens, so essential for real modern freedom, and dependent upon the relative power of group representatives. I argued that a group's freedom depends upon the freedom as power of the group's informal and formal representatives, in particular the power of the representatives vis-à-vis other group representatives to affect the judgements of formal political representatives and counter the domination of one group over another. Since all individuals in modern, complex societies find themselves or

[1] Dunn, 'Liberty as a Substantive Political Value'.

choose to become members of various groups, classes or social perspectives ('groups' is a shorthand I adopt), individual freedom is also thereby dependent upon (though not reducible to) the freedom of groups. I also suggested that one of the more important components of this freedom as power mediated by group representatives is the power to judge the representatives that determine and reflect existing and possible macroeconomic policies. The representatives of some groups have greater power in this regard than do others and it follows from this that they are better placed to determine macroeconomic policy or at least be part of the version of the economy that is portrayed to the people as a whole. It is therefore the case that those who are members of groups with representatives of this kind will be freer to judge and affect macroeconomic policy than those who are members of groups whose representatives do not hold these positions of power, influence and access. They will also, unless checked, be tempted to abuse their power to attempt to close the gaps necessary for freedom as power.

Both parts of this argument rest on the assumption that political representatives can or at least ought to administer or control the highly complex and inter-related economies of today. However, not everyone will agree that political representatives do, can or ought to administer our modern economies. Some, like Friedrich von Hayek, argue that it is a necessary property of economies that they cannot be 'administered' by a single agent.[2] Others maintain that within the global economy no single agent can in fact have control over the economy (even if it is true that this is not a necessary property of economies).[3] A third group maintain that although it may be possible it is not desirable to control the economy – that is, we should not want to have control over it – and this is because the market can only be controlled by what amounts to a police state,

[2] F. A. Hayek (ed.), *Collectivist Economic Planning* (London: Routledge, 1938); Hayek, *The Road to Serfdom* (London: Routledge, 2001 [1944]); and this was also the position infamously held (as we now know, following the world financial crisis) by Alan Greenspan throughout his long tenure as chairman of the US Federal Reserve (1987–2006), the longest-serving chairman in its history: he thought that by definition the market was wiser about itself than any individual could be, and he was therefore not only reluctant to burst any financial bubbles but also the leading proponent of deregulation for financial markets, a staunch advocate for letting markets regulate themselves. For more on this, see J. Cassidy, *How Markets Fail: The Logic of Economic Calamities* (London: Penguin, 2010), pp. 3–6; R. A. Posner, *A Failure of Capitalism* (Cambridge, MA: Harvard University Press, 2009), p. 281; and below.

[3] For a representative list of these 'globalisation' theorists, see L. Hamilton, 'The Political Philosophy of Needs and Weak States', in M. Ayogu and D. Ross (eds.), *Development Dilemmas: The Methods and Political Ethics of Growth Policy* (London: Routledge, 2005), pp. 171–189; see also J. Stiglitz, *Globalization and Its Discontents* (London: Penguin, 2002).

a reprehensible and repressive entity, something like that proposed by Fichte or some forms of Marxism.[4] Potentially these are all important counter-arguments to the position I defend in this book. I will therefore end this account of freedom by showing how my account of freedom as power (through representation) refutes all of them. Our political representatives do, in fact, determine not only macroeconomic policy but also the general trajectory of our globalised economies, and this is a good thing if and when they do so in freedom-enhancing ways. The substance of the answer regarding how they could do so in freedom-enhancing ways comes back again to the relationship between the freedom as power of groups, their representatives and their individual members.

In response to Hayek, the first thing to note is that his and Ludwig von Mises's arguments were originally generated in response to those who defended the idea of a 'planned economy' – that is, an economy whose production, it was thought, could rationally be directed by a single agent or from a single locus of authority and would do so in a way that could meet needs more efficiently than a self-directed free-market economy. A planned economy of this sort is not what is defended here; in fact, I submit that both extremes in the debate – the polarised ideas of the 'planned economy' and the 'free market' – suffer from similar shortcomings. This is what is most interesting about the original debate between Hayek and von Mises and their adversaries and later responses, such as the so-called 'Lange–Lerner solution'. Both sides are driven by the same quest: to reduce the separation between production and consumption in order that needs are met more responsively and efficiently and yet both generate the exact opposite. The defenders of the free market argue that a price mechanism in a completely unregulated market is the most rational and efficient means of reacting to the countless individual evaluations and calculations of value, thereby allegedly making it possible to reduce the distance between production and consumption. The proponents of central, socialist planning assumed that the most rational means to do the

[4] Margaret Thatcher has been the most vocal recent exponent of this idea: see A. Gamble, *The Free Economy and the Strong State: The Politics of Thatcherism*, 2nd edn (Basingstoke: Macmillan, 1994). For Fichte, see his *Grundlage des Naturrechts nach Principien der Wissenschaftslehre* [1796/7] and his *Der geschlossene Handelsstaat* [1800] (or *The Closed Commercial State*) (there is no reliable modern English translation of the latter, but there is of the former: J. G. Fichte, *Foundations of Natural Right: According to the Principles of the Wissenschaftslehre*, ed. and trans. M. Neuhouser and M. Baur (Cambridge University Press, 2000)); and D. James, 'Fichte's Theory of Property', *European Journal of Political Theory* 9.2 (2010), pp. 202–217; and D. James, *Fichte's Social and Political Philosophy: Property and Virtue* (Cambridge University Press, 2011). For Marxism, see, amongst others, A. Walicki, *Marxism and the Leap into the Kingdom of Freedom: The Rise and Fall of the Communist Utopia* (Stanford University Press, 1995).

same was to determine *ex ante* consumption demand and plan production accordingly.[5] In other words, both positions think there is no place for regulating markets: the former thinks the market regulates itself best and the latter removes the idea of a market entirely from the equation.

As a consequence, both of these extreme ways of keeping the idea of regulating markets at bay have proved unhelpful in the attempt to bring production and consumption closer together, or in other words to make economies more responsive and efficient in the satisfaction of human needs. The disastrous effects of attempting to institutionalise a completely planned economy under Soviet communism were plain for all to see (once they were allowed a look in), and a large number of people to experience first-hand, and they emerged as a result of the fact that central planning very quickly enables political representatives to forget one vital component of a functioning economy – the provision of the institutional means through which citizens can evaluate and articulate their own needs – and thus easily abuse the power vested in them by adopting narcissistic and self-serving conceptions of the needs of the citizenry.[6] Then, at the other extreme, markets very often fail and they do so most catastrophically – as evidenced in the most recent world financial crisis of 2007–9 and its aftermath that is still very much with us at time of writing and is likely to remain so for some time to come – when the drive to a completely unregulated economy by ideologues of the free market is allowed complete free-play. Rather than enabling freedom for all within the economy, unregulated markets provide the conditions for the economy as a whole to fall prey to the power, influence and interests of only one group and their representatives (or set of groups and their representatives).[7] And this is achieved most comprehensively when this site of power has untrammelled access to state or public power in ways that allow it more or less to determine macroeconomic policy.[8] In

[5] See essays by von Mises and Hayek in Hayek (ed.), *Collectivist Economic Planning*; and O. Lange, 'On the Economic Theory of Socialism', in Lange and F. Taylor (eds.), *On the Economic Theory of Socialism* (Minneapolis: University of Minnesota Press, 1948); A. P. Lerner, 'Economic Theory and Socialist Economy', *Review of Economic Studies* 2.1 (1934), pp. 51–61; and Lerner, 'A Note on Socialist Economics', *Review of Economic Studies* 4.1 (1936), pp. 72–76.

[6] F. Fehér, A. Heller and G. Márkus, *The Dictatorship Over Needs* (Oxford: Basil Blackwell, 1983).

[7] For an astute and witty account of the relative power (or significant 'political muscle') of the finance industry and how this led to the global financial crisis that began in September 2007, reaching a peak a year later, see J. Lanchester, *Whoops!: Why Everyone Owes Everyone and No One Can Pay* (London: Penguin, 2010), pp. 13, 28–29 and *passim*.

[8] For a similar argument for why this is problematic for democracy and, eventually, may lead to tyranny, see C. Tilly, *Democracy* (Cambridge University Press, 2007) and Shapiro, *Real World*.

other words, the representatives of one group come to dominate politics and political decision-making. This obviously flies in the face of Pettit's continued assertion that *imperium* – domination by government – is somehow worse and in need of much greater control than *dominium* – domination of one private agent by another: the real threat to freedom comes from the all too common and complex form of domination in which private power utilises public power (via its control over political representatives) for its own means, goals and interests and not those of others or some set of more common interests. Or, as in the case of the recent Libor scandal, private power utilises independent functions and institutions to manipulate something as fundamental and basic as the daily notional rate at which banks would lend to one another to further their own very powerful interests: we now know that this, the London Interbank Offered Rate, the most important number in international financial markets, completely unregulated and supposedly controlled by the free forces of the market, had been for some time, up until they were recently caught, repeatedly manipulated by whole swathes of the banking industry in order 'to influence interest rates or the value of [their] swaps portfolio'.[9] Ironically, the independence of Libor, central banks and many other fiscal, macroeconomic and judicial functions and institutions within liberal democracies had been defended and secured on the basis of the idea that their independence from government would be the best means of ensuring they act in the common interest.[10]

The proximate cause for Libor and a whole range of other scandals that have been subsequently unearthed is the biggest example of market failure for a generation: the collapse in the market for subprime mortgage securities in the northern summer of 2007, which left many financial institutions saddled with billons of dollars' worth of assets that could not be sold at any price and left governments with little alternative but to commit huge volumes of public monies to bail out these institutions. In this cataclysmic instance of market failure it was the financiers and bankers whose influence and interests held sway.[11] However, this crisis is only the latest in a long list of others that have occurred in the rampant 'market fundamentalism' that has held sway since the early 1980s, the almost

[9] D. MacKenzie, 'What's in a number?', *London Review of Books*, 25 September 2008; J. Lanchester, 'Are we having fun yet? The banks' barely believable behaviour', *London Review of Books*, 4 July 2013.

[10] At least according to Pettit, republicanism (or at least the aristocratic version he defends) also supports moves like the complete independence of central banks for the normative reasons criticised in previous chapters. Amazingly, Pettit continues to punt this position, even following the causes and consequences of the financial crisis: see Pettit, *On the People's Terms.*

[11] Cassidy, *How Markets Fail*, p. 3; Lanchester, *Whoops!*, pp. 155, 159.

mystical belief that markets by themselves lead to economic efficiency and enacted through wave after wave of deregulation: the Savings and Loans crash of the early 1980s; the lost decade of growth in most of Latin America following the so-called successful IMF bailout and free-market reforms of the early 1980s, with Mexico in 1994–5 and Argentina's debt default in 2001 being only the most conspicuous examples; the global financial crisis of 1997–8; the calamitous effects of IMF deregulatory reforms in Indonesia and Thailand following the 1997–8 crisis; Russia's crisis and debt default of 1998, due primarily to the higher interest rates that the East Asia crisis had provoked and a huge drop in oil demand, both a direct result of IMF free-market policies in East Asia and in Russia; the subsequent global financial crisis that affected the interest rate to most emerging markets in particular, making it impossible even for developing countries that had been pursuing sound economic policies to raise funds; Ecuador's, Colombia's and Brazil's subsequent recessions and currency crises; and so on.[12] In fact, credit-driven boom-and-bust cycles have plagued capitalist economies for centuries. Between 1970 and 2010 alone there have been 124 systemic banking crises around the world.[13]

In contrast to both of these extremes, 'planned economy' or 'free market', the thesis of freedom as power defended here maintains that our ever more complex and inter-dependent economies require many of the existing mechanisms of the capitalist economy – freedom of production, occupation, employment, movement, exchange and pricing – in order not only to continue to function minimally but also to be freedom-enhancing in the sense of satisfying needs and enabling the assessment and alleviation of situations of domination. In other words, nowhere does this approach to freedom suggest or provide ideological underpinning for the idea of a fully planned economy. However, it does follow from this account of freedom as power that all the various groups (and thus citizens) that constitute our societies and economies can only be free if they have the institutional means to assess the existing macroeconomic conditions and meaningfully judge those who are entrusted with the power to determine macroeconomic policy.[14] And this is only possible if the various representatives of these groups have control over the economy in the sense that they have the institutional means to affect the determination

[12] Stiglitz, *Globalization and Its Discontents*, pp. 18, 145–146, 149.
[13] Cassidy, *How Markets Fail*, p. 14.
[14] Ha-Joon Chang proposes a similar idea that he calls 'active economic citizenship', or the ability to make judgements about economics and demand the right course of action from those in decision-making positions (proposed just prior to the quote I use as the last epigraph to this book). Ha-Joon Chang, *23 Things They Don't Tell You About Capitalism* (Harlow: Penguin, 2011), p. xvi.

of macroeconomic policy to a degree necessary for the members of their groups to evaluate existing situations of domination and evaluate and satisfy their vital and agency needs. Given complex modern economies and polities, in effect what this means is that liberty depends upon all informal group representatives having equal access to the existing formal political representatives and parity of power not only with regard to how best to proceed in economic and politic terms, but also vis-à-vis generating and assessing the various visions of the polity and its constitutive groups that emerge from these and other forms of representation. However, as I have argued and revisit again in the conclusion to this book, the goal of equal access or power depends upon the creation of political institutions and forms of representation that enable special, unequal and even partisan forms of political participation and representation in order to enable those with little or no access to political power due to little social and economic power the means to affect political decision-making and counter the domination of the social and economic elites.[15]

Two things follow from this account of the nature of modern economies and the role of representatives. The first is the specificity of the notion of 'control' being employed here. The sense of 'control' that is employed in the question that forms the title of this chapter and in the discussion of control as a component of real modern freedom in Chapter 4 is not equivalent to the notion that Hayek takes to be central to those that defend the idea of a 'planned economy'. Their notion of control, Hayek argues, is one in which a single agent or locus of authority directs or plans or administers an economy, as if it were something to which one can attribute a specific purpose. He maintained that this was impossible, since what tends to be called an 'economy' and is assumed to have a specific purpose, such as increased economic growth or full employment, is in fact a *catallaxy* or exchange system with no particular purpose; it is simply a network of *economies*: for example, firms, individual enterprises, each with their own specific ends, but as a whole without a specific goal or purpose.[16] Whether or not Hayek is correct, by 'control' I do not mean 'control' in the sense of directed or planned or administered

[15] My positive alternative institutional proposal for freedom as power combines my own suggestions regarding the assessment of needs and representatives – (a) decennial plebiscites for the assessment of the constitution *and* government macroeconomic policy, (b) the election and assessment of political representatives through the use of local counselors with special and independent powers, and (c) an annual needs assessment – with some of those proposed by some recent works drawing on, in particular, Machiavelli and Condorcet: for example, McCormick, *Machiavellian Democracy* and Urbinati, *Representative Democracy*.

[16] F. A. Hayek, *Economic Freedom and Representative Government* (Oxford: Basil Blackwell, 1991). Economics, Hayek argues, is then the science not of production, but of exchange.

from the position of a single agent or authority. Rather, I mean parity of decision-making influence over the political representatives that determine macroeconomic policy via meaningful power for the representatives of all groups in society. Moreover, as discussed at great length in Chapter 5, what this will often amount to is parity of judgemental power over versions of the polity and groups thereof in general as well as the proposed and alternative plans for how best to proceed in macroeconomic terms in particular.[17] And therefore Hayek's arrows miss their mark here. Put differently, even if, for the sake of argument, Hayek's assertion that it is a necessary property of economies that they cannot be 'administered' by a single agent were correct my argument regarding political representatives controlling the economy can still be upheld since it does not rest on there being a single agent or locus of authority to direct or plan the economy in general and production in particular.

In fact, and this is the second thing that follows from my account of political representatives controlling the economy, if we think of control in these terms, we easily avoid both of what Hayek takes to be the two malign consequences of regarding a *catallaxy* as if it were an economy, or 'one big company': (a) the failure to exploit local and dispersed knowledge, and (b) the fact that in the absence of genuine social ends, which Hayek maintains are not present in a *catallaxy*, the organisers of a planned economy will impose their own.[18] In my alternative account of freedom as power, the focus on groups, their representatives, group freedom and its link to individual freedom – all of this as determined by the relationship between group representatives and formal political representatives – is intended as a recipe for the exact opposite: it brings local and dispersed knowledge to the fore, and it provides a means through which citizens can judge how well their political representatives have responded to the various needs, social ends, ideals and visions of these different groups. In other words, in order to have meaningful control over the economy one does not need to direct it or plan it from the position of a single agent or locus of authority. Although, ultimately, law and the coercive force of the law will be necessary to generate conformity to the rules that control the economy, there is nothing unusual about that – free markets would not function without a bedrock of laws or rules regarding property ownership, restrictions on what can be traded, who can participate in

[17] In Hamilton, *Needs*, I called these policy proposals or visions 'need trajectories'. As regards the generation and satisfaction of needs this works well, I believe, but here I am talking about broader proposals that will include other things besides needs, although it could be argued that most, if not all, will reduce to different possible futures regarding how best to develop and satisfy the needs of citizens in any particular polity.

[18] Hayek, *Serfdom*.

markets and so on;[19] and this law can be the outcome of a process that incorporates rather than ignores the varied ends and needs in any society and thus draws on information and judgements from many different agents and loci of authority.[20] By contrast, Hayek maintains, in similar unrealistic vein to his argument regarding economics and revealed preference, that law proper has no purpose, it is simply a set of rules required for the fulfilment of individual plans, and that this is better provided in common or case law (a legal analogue to the spontaneity of the market) than by statute or legislation emanating from 'capricious' legislatures, governed as they are by parties and collations of pressure groups. History and empirical reality do not bear this out, as many have argued.[21] Thus, Hayek's argument that it is a necessary property of economies that they cannot be 'administered' by a single agent is of no consequence to my argument regarding the important requirement for freedom that our political representatives control the economy.

In any case, Hayek is simply wrong about the idea that unhindered free markets provide the kind of information flow and knowledge that no single agent could successfully gather and act upon.[22] First, markets fail all the time. They do so most obviously when bubbles form. Under these conditions they can no longer be relied upon to allocate resources sensibly and efficiently. By holding out the prospect of quick and effortless profits, they provide incentives for individuals to act in ways that are individually rational but immensely damaging – to themselves and others. This is most acute in financial markets, but it crops up everywhere. Markets encourage oil companies to despoil the environment and to be major contributors to global warming; health insurers to exclude sick people from coverage; computer-makers to force customers to buy software programs they don't need; and so on and so forth.[23] Market failure of this kind is endemic throughout the economy and occurs

[19] Chang, *23 Things*, pp. 4–6. Chang argues persuasively that if we carefully examine markets we see that they are propped up by rules and boundaries that restrict freedom of choice. He lists even more examples than I have here, including the licensing of professionals such as doctors, regulation on the amount of capital one needs to trade on stock exchanges, price regulations by central banks and the fact that wages are determined by immigration control more than anything else – in other words, in the face of much received opinion (and libraries of scholarly arguments) wages are largely politically determined by a kind of protectionism (see also *ibid.*, pp. 23–30).

[20] See the institutional proposals in this book's concluding chapter.

[21] For example, Dunn, *Setting the People Free*; Geuss, *History and Illusion*; Shapiro, *Real World*; Shapiro, *The Flight From Reality*.

[22] It would be unfair to lay all the blame at Hayek's door; the same is true of Friedman, Walras, Pareto and even Arrow.

[23] Cassidy, *How Markets Fail*, p. 9; and various groundbreaking works on the 'economics of information' by Stiglitz, such as B. Greenwald and J. E. Stiglitz, 'Externalities with

exactly because the economy is not always able to allocate information and prices in the efficient manner that Hayek and others suppose. Not only may markets, through the price system, create the wrong kinds of incentives, they may also send the wrong signals to people. As discussed below, the 2007–9 credit crunch is a failure of capitalism in the presence of bounded cognition, uncertainty, hidden information and trend following, all the things that Hayek and others argue will be obliterated in a free, unregulated market.[24] Second, a single agent can and could access the relevant information partly because what is necessary for good judgement regarding how best to proceed does not depend on having all the relevant information to hand (as if that were possible and as if that mystical thing called 'the market' somehow does). After all, we make judgements about all sorts of other things without being experts or having all the relevant information: we don't need to be expert epidemiologists to know that there should be hygiene standards in food factories, butchers and restaurants.[25] The same is true of the economy; in fact, even for staunch free-marketers who defend the principle that existing price constitutes an 'aggregation' of existing individual value judgements, the economy depends upon us making these kinds of judgements all the time, judgements under conditions of limited knowledge. Third, our political representatives have been controlling our economies in the sense I employ here for most of human history; and they ought to control the economy, with the proviso that group representatives be given parity of influence over formal political representatives, not least of all because as a result citizens can then judge their political representatives directly for their skill in doing so, even if only *post hoc*.

My suggestion here is that citizens and their representatives would judge and determine macroeconomic policy in the most freedom-enhancing ways *if* they undertook these acts of assessment and judgement primarily in order to avoid states of domination and to satisfy vital and agency needs. These are broad, objective ends, but in any particular context they will involve the evaluation of a number of particular practices, institutions, sentiments, needs, preferences, ideals and visions, many of which are instantiated and satisfied at the level of the economy. In sum, it does not follow from the specificity and particularity of our ends that they are not also shared by others; they are and thus can be assessed objectively in terms of their relation to domination, need satisfaction and the

Imperfect Information and Incomplete Markets', *Quarterly Journal of Economics* 101. 2 (1986), pp. 229–264.

[24] Cassidy, *How Markets Fail*, p. 11.

[25] The example is borrowed from Chang, *23 Things*, p. xvi.

power of group representatives. Hayek thinks otherwise. He argues that the only real ends are those individual ends (or preferences) that reveal themselves in exchange, but as I and others have argued, this tendency to think that the only relevant data for political and economic life are the revealed preferences (or existing wants) of individuals rests on an impoverished account of human nature and ethics, ignoring as it does large swathes of the human condition, the interdependence of humans, their tendency to have both conflicting and common concerns and values, and their ability to assess and judge these in their own objective terms and in terms of other values such as freedom.[26]

This brings me to the second potential line of critique of the account of freedom defended here: that within the global economy no single agent can in fact have control over the economy (even if it is true that this is not a necessary property of economies). This argument is often couched in terms of a supposed relatively recent change in the nature of the world's economies: that they are now so inter-connected and interlinked, especially as a result of the recent revolution in communications technologies, that it is no longer correct to speak of a series of interconnected economies but of one global economy, a 'borderless world';[27] and that it follows from this change in the very nature of economies that no single agent can or could control this globalised economy. These and many other globalisation theories, both for and against the idea, and both with and without normative arguments as foundations, have taken the academic and policy world by storm.[28]

In the face of this tsunami of globalisation theorists, many other commentators have contested the idea that a change in kind has occurred. There is the important fact, amongst other related points, that at least since the first modern colonial conquests, or more exactly the creation in 1602 of the first multi-national corporation the Dutch East India Company, if not from long before, people and their products have come into cross-border contact with one another with varying degrees of power, interaction and speed. And there is the oft-forgotten fact that, for example, in relative terms the invention of the telegraph in the late nineteenth century and the washing machine in the early twentieth century were

[26] Hamilton, *Needs*; Hamilton, 'Needs and Agency'; Hamilton, 'Human Needs and Political Judgment'; A. Sen, *Development as Freedom*, new edn (Oxford University Press, 2001), amongst many other works; R. Geuss, 'Economies: Good, Bad, Indifferent', *Inquiry: An Interdisciplinary Journal of Philosophy* 55.4 (2012), pp. 331–360.

[27] K. Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy* (New York: Harper & Row, 1990).

[28] See, for example, David Held's many works on globalisation and cosmopolitanism and the veritable theoretical and empirical feeding frenzy they have spawned.

much more revolutionary than the recent invention of the internet.[29] And, moreover, while it may be true that today we can communicate and move much more rapidly, and that it is partly as a consequence of this that various new financial products have had such deleterious effects on the global economy, this does not change the fundamental fact that across the globe most needs are still satisfied either by local production or by means of mechanisms of distribution and exchange that are generated by local laws and norms. In other words, even if the good that satisfies my need is produced elsewhere in the world, its price will be determined by, amongst other things, local rules, regulations and conditions including import tariffs, transport costs, local competitors, local labour laws, local regulation in general and so on, all of which are politically determined.

However, just for the sake of argument, let us assume that the globalisation theorists are correct with regard to the first part of their claim – that is, that the global economy is now a different kind of beast from that which existed, say, in the mid-twentieth century. Even if this were true, it does not follow that our political representatives cannot or could not control the globalised economy. First, ever since at least 1919, the political representatives within existing states have been involved in the creation of a number of new institutions that have joined with existing ones to work across borders: the International Labour Organization, originally created in 1919, to promote 'decent work'; the United Nations, created just after the Second World War to 'maintain peace'; and the World Health Organization, to name but a few. Second, however, there is now clear and unambiguous evidence to show that, despite the high-minded, egalitarian ideals of these various institutions, they and a number of other institutions, especially the IMF and the World Bank, have been driven by the collective will and interests of the G-7 countries – that is, by the governments (the political representatives) of the seven most powerful advanced industrial countries, 'and especially their finance ministers and treasury secretaries'.[30] In other words, just as it is now clear that these institutions have failed in their various missions and mandates, it is manifest that political representatives at national level, with varying degrees of power, affect the direction and rules of the global economy.

[29] Hamilton, 'Needs and Weak States', pp. 171–189; and Chang, *23 Things*, pp. 31–40.

[30] Stiglitz, *Globalization and Its Discontents*, p. 15. These countries – the USA, Japan, Germany, Canada, Italy, France and the UK – are no longer the seven largest economies in the world. Even if the G-7 typically now meets with Russia (the G-8), membership of the G-7, like permanent membership in the United Nations Security Council, is partly a matter of historical accident, one that now does not provide representation for at least three of the top seven largest economies in the world: China, India and Brazil.

If, like me, you happen to be a citizen of a country whose political representatives have little or no power to affect the rules of the game, then tough; but it does not follow from this fact about some of us that the citizens of all states are equally powerless. The citizens of countries whose representatives do have the power to affect the future directions and rules of the global economy do have control (via their representatives) over the global economy, or at least more control than I do, which belies the claim that our political representatives cannot control the global economy. The political representatives of the most powerful countries have much greater power in the international arena than, say, the political representatives of South Africa, not to mention its neighbour, Mozambique. The citizens and the groups of which they are members of these more powerful countries are therefore also freer than I am.

In any case the fact of the global economy, of our increased interdependence, does not undermine the dire need for regulation in line with needs and overcoming situations of domination for some groups. As the aftermath of the latest financial crisis has proven beyond doubt, the decades of deregulation that preceded it generated a truly global event with horrifying global consequences. The catastrophic series of events that began in September 2007 with the bank run on Northern Rock in the UK, reaching a peak a year later with the 'conservatorship' of Fannie Mae and Freddie Mac in the USA – the largest nationalisation in the history of the world – are soon to be felt beyond doubt by most as governments begin to repay the debts they incurred to finance the bailout. Already the catastrophic affects on the economy of Greece are being felt most acutely by the least powerful and most poorly represented Greeks; the same is true, to a lesser extent, of Ireland; and, 'there by the grace of God go I' many think as they watch and watch, waiting for Portugal and Spain to also fall prey to fickle capital markets. These events and their consequences (many of which we can still only guess at) all have their roots in years of deregulation of the financial and capital markets, especially in the USA and the UK. As has been well documented in an array of recent publications assessing the causes and consequences of the crisis, the ground for the financial free-for-all that was the proximate cause for the credit crunch was laid back in the early 1980s in the USA and the UK by a series of deregulatory moves first implemented by Ronald Reagan and Margaret Thatcher, supported by rampant free-market ideology and further strengthened after the fall of communism.[31]

[31] See below for a full list of references, but note that many of the more astute thinkers were making these arguments before the credit crunch hit. See, for example, Stiglitz, *Making Globalization Work*.

The first of these acts of deregulation, the 1982 Garn–St Germain Depository Institutions Act, signed into law by Ronald Reagan with much fanfare, created insurance for mortgage lenders and thus increased their recklessness and led directly to the Savings and Loans crash of the early 1980s, and yet somehow still set the tone for a whole series of further deregulatory steps and loosening of regulatory supervision. At least eight major developments were to follow: (a) the continued insistence on free movement of capital across borders (the UK had already abolished their exchange control regulations in 1979, the year Thatcher came into office); (b) the invention by the banks of new derivatives, subprime mortgage-backed securities, credit default swaps (CDSs) and collateralised debt obligations, together constituting the prime cause of the crisis, that they sought to keep far from the hands of regulators, especially via the creation in 1985 of the International Swaps and Derivatives Association, which quickly won the right to regulate itself;[32] (c) major increases in the amount of leverage allowed to investment banks; (d) the complete independence over the management of inflation and the setting of interest rates given, following arguments amongst ideologues of the free market that the management of inflation was too important a matter to be left to politicians, by the new Labour government in 1997 to the Bank of England, part of a trend that has spread worldwide, even as far afield as South Africa; (e) the associated return to the Bank of its direct supervisory role over banks and financial institutions, now in Britain the responsibility of the ineffectual, industry body the Financial Services Authority (FSA), famous for its 'light touch' regulation;[33] (f) the repeal of Depression-era regulations separating commercial and investment banking, especially in the USA the abolishment in 1999 of the Glass–Steagall Act of 1933; (g) again in 1999, Clinton's signing into law the Gramm–Leach–Bliley Act (also known as the Financial Services Modernization Act), which allowed commercial and investment banks to combine and form vast financial supermarkets, now beginning to be uncoupled again, at least in the UK;[34] and (h) the derivates lobby managing to get the US Congress to pass a law in 2000, the Commodity Futures Modernization

[32] As Lanchester notes, it helps that the derivates had such a swooningly ardent admirer as the Head of the Federal Reserve, Alan Greenspan. As Greenspan put it in a 1999 speech: 'By far the most significant invention in modern finance during the past decade has been the extraordinary development and expansion of financial derivates'. Lanchester, *Whoops!*, p. 157.

[33] See the post-crash report from Adair Turner, the head of the FSA, at www.fsa.gov.uk/pubs/other/turner_review.pdf, cited in Lanchester, *Whoops!*, p. 155.

[34] Cassidy, *How Markets Fail*, p. 7. As Cassidy notes, Lawrence Summers, a leading Harvard economist who was then serving as Treasury secretary, helped shepherd the bill through Congress. He, like Greenspan, is (or at least was) a devotee of the idea that

Act, that *banned* legislation (and thus regulation) of CDSs on the basis that they were not futures or options.[35]

These moves have all been made possible by nearly three decades of doctrinaire free-market ideology, in which most governments, but especially the USA and the UK, have actively allowed bankers to write their own rules – that is, to dominate other societal groups and interests as a result of their access and influence over the political halls of power. Why did things get so out of hand? As always there are two sides to the coin. First, the power and influence of the financial and banking sector was allowed to become too great. The confluence of campaign finance, personal connections and ideology produced a heady mix that enabled the City of London and Wall Street to effectively dictate to their governments how best to proceed with regard to financial markets. This capacity to dictate generated a dangerous state of domination. Second, as if rubbing salt in the wounds of the dominated, are the historically unparalleled levels of full and strong support given to the City of London and Wall Street by, in particular, Mrs Thatcher and Mr Reagan (as well as Mr Blair, Mr Brown, Mr Clinton and Messrs Bush): 'for the first time the City now had unquestioned supremacy. It wasn't a debate any more: what the City wanted, the City got.'[36] This is a perfect example of one of the forms of group domination I discussed in Chapter 5: where one group and their representatives are allowed – in this case, even positively enabled – to dominate other groups and their interests, normally dependent on the closing of the healthy gap between representations of the people and the people themselves in general or political representatives and specific, powerful group representatives in particular. The political systems and forms of political representation in the USA and the UK are very distinct and yet both succumbed to the power dynamics of a particular group, their representatives and their interests. Potentially, it follows from this that institutional design, or at least the difference between the Washington and Westminster models, may be over-stated, though a full defence of this would depend on a great deal more comparative analysis than I have to hand.[37]

markets in general and Wall Street in particular could and therefore should regulate themselves.

[35] For details on these and other acts of deregulation, see Lanchester, *Whoops!*; Cassidy, *How Markets Fail*; Chang, *23 Things*; Posner, *A Failure of Capitalism*; G. Tett, *Fool's Gold: How the Bold Dream of a Small Tribe at J. P. Morgan was Corrupted by Wall Street Greed and Unleashed a Catastrophe* (London: Abacus, 2009); and L. Ahamed, *Lords of Finance: 1929, the Great Depression and the Bankers Who Broke the World* (New York: Windmill Books, 2010).

[36] Lanchester, *Whoops!*, p. 171.

[37] *Cf.* Pettit, 'Varieties of Public Representation', pp. 82–7; and Pettit, *On the People's Terms.*

Thus the best response to the third potential argument against this account of freedom – that we ought not to regulate economies even if we can – is well answered by what in the end this ideology of deregulation and doctrinaire free-market ideology generated: a state of domination that produced a cataclysmic financial crisis that has affected and will continue to affect the lives of very many of those who do not even work in the City and on the Street. The citizens of countries such as the USA, the UK, France, Germany, Spain, Portugal, Ireland and Iceland, for example, will themselves pay (or have already begun to pay) directly the bill for the bailout of the institutions that their political representatives deemed were too big to fail. They will continue to do so into the 2030s at least in the form of taxation and cuts in public spending. This bill is of staggering proportions, particularly in the USA, the world's biggest economy: Neil Barofksy, the inspector general of administering the programme of bailouts, put the cost as of 31 March 2009 at $2.98 trillion.[38] By adding to that the, at the time, imminent bailout of Citigroup, Barry Ritholtz came up with the total cost of $4.6165 trillion, and shows that this figure is bigger than the cost of the Marshall Plan, the Louisiana Purchase, the 1980s Savings and Loans crisis, the Korean War, the New Deal, the invasion of Iraq, the Vietnam War and the total cost of NASA including all the moon landings, *all added together* (with these figures adjusted upwards for inflation).[39] This situation, with variations for differences in national economies, will saddle many countries with even larger national debts than those that got them into this situation (or at least than is the international norm), debt that will be serviced from taxation and cuts in public spending. In the UK, for example, by 2016 national debt will hit 79 per cent of GDP – the highest peacetime figure ever. The huge budget deficits that are now the norm will force governments to reduce public investments and welfare entitlements, negatively affecting economic growth, poverty and social stability – not just in the short term but for decades. In late 2010 Ireland was forced to accept a $100 billion bailout from the European Central Bank and IMF whose conditions have meant that at least until 2014 it will cut public spending by 20 per cent, drop the minimum wage, slash public workers' income and pensions, increase income tax (especially on the less well-off), increase VAT across the board and impose a whole series of new forms of taxation that will affect all of its citizens. And, on top of all this, the euro as a currency has now been under severe threat for some time. Germany's reluctance to allow the European Central Bank to act as a lending bank of last resort

[38] *Wall Street Journal*, 31 March 2009, cited in Lanchester, *Whoops!*, pp. 189–190.
[39] www.ritholtz.com/blog/2008/II/big-bailouts-bigger-bucks, cited in Lanchester, *Whoops!*, p. 190.

has kept capital markets and existing and potential creditors very skittish as regards at least the four major economies listed earlier, with the possibility that this contagion may spread even to France, one of Europe's biggest economies.

But the effects will not stop there. As the emerging countries know all too well from previous crises, shrinking economies in the North spell disaster for them too. Risk avoidance coupled with lean times means much smaller margins for investment in their economies; little or no aid; reduced appetite for public debt purchases, which increases the benchmark rates for sovereign debt sales, and thus makes debt-servicing more expensive; and a generally unsettled outlook. Even China is being affected, but it is a sad irony for a place like South Africa that even though it was cushioned from the initial shocks of the crisis by dint of being commodity rich and having a highly regulated banking sector, in the medium and long term its long-hoped-for growth driven by investment will be set back by many years. What lies ahead for the North does not bode well for South Africa. A proposed growth rate of 6.5 per cent as of late 2010 would have depended on a very quick turnaround in the fortunes of northern economies, a prospect that did not, of course, materialise and does not seem within sight for some time to come; in fact, since 2010 South Africa's growth rates have shrunk back to an average of around 3 per cent, less than half of what is needed to reduce unemployment, budget deficits and enable the kind of public spending necessary for transformation in general and of the economy in particular, an economy that, left to its own devices, has been unable to reduce South Africa's rampant levels of inequality and unemployment. And, following associated and ongoing labour unrest since late 2012 and debt downgrades by all agencies across the board, economic growth is dipping even further, at time of writing in 2013 no longer able to breach 2.8 per cent per quarter and forecast to be 2.0 per cent for 2013. And this is on the back of the fact that even before the crisis the free-market policies of the three decades since the 1980s have in fact slowed growth, exacerbated inequalities and heightened instability in most countries, including rich countries such as the USA and the UK but particularly in less rich states: living standards in sub-Saharan Africa have stagnated, while Latin America has seen its per capita growth rate fall by two-thirds during this period.[40]

[40] Chang, *23 Things*, pp. xiv–xv; and, as he says regarding the USA: 'the fact that US wages had remained stagnant and working hours increased since the 1970s was conveniently fogged over by the heady brew of credit-fuelled consumer boom'. For exact figures regarding changes in per capita income in USA and Britain over this period, see *ibid.*, p. 19.

In sum, then, it is obvious that given the right climate – the political will, ideology and institutional configuration – our political representatives can and ought to control their local and global economies. They obviously can because they do, and they can do better because they cannot do much worse than they have done since the 1980s. The 'market fundamentalism' that has characterised these decades is a salutary lesson in how *not* to proceed, showing all who care to look hard why our political representatives ought to regulate economies, for without regulation our economic representatives, or sections of them, can very easily become dangerously powerful or, worse, both dangerously powerful and with the capacity to control the formal political representatives for their own ends and interests. Once this occurs not only may these individuals or groups threaten the general well-being of our economies and, by extension, the quality of our lives, but also and more importantly for my argument here they are prone to dominate and thus threaten the freedom of many others. What is sustained by an ideology of 'freedom', the alleged 'free market', 'freedom of choice' or the unimpeded rational pursuit of self-interest very quickly becomes a recipe for less and less group freedom amongst those who do not have access and control over their political representatives: not only are ordinary citizens made less free by the consequences, but given my arguments regarding collective freedom combined with the post-credit-crunch reality for many of the bankers and financiers themselves, so too are the original cheerleaders of this alleged freedom. And the foul contagion very quickly spreads worldwide; even far off South Africa will feel the effects for decades – our freedom constrained by our lack of power over global macroeconomic decision-makers and the abuse of power, lack of regulation and consequent states of domination in the North.

The trick, then, is to regulate in a manner that enhances the freedom of all groups and individuals. If freedom is conceived in terms of the absence of something – in particular, an impediment or obstacle that inhibits the agent from doing what she or he wants or chooses – as is typical in the liberal tradition, it proves very difficult to escape the straitjacket of free-market or laissez-faire thinking. In fact, retaining an account of unfreedom and freedom that focuses uniquely on impediment to choice (or the lack thereof) makes it well nigh impossible to escape the allergic reaction to regulation that is characteristic of free-market ideologues and most libertarian liberals. A strong reaction the other way to a premodern version of republican freedom is as equally unhelpful, since so much of everyday modern freedom is ultimately determined not by the nature of our macropolitical regime but by the various social, political and economic groups and relationships of representation that determine our

power to satisfy our needs and overcome states of domination. If, however, we conceive of freedom as power, where our individual power is determined directly by the control our representatives have over macroeconomic policy formation and implementation, it becomes possible to see how regulation of the economy, or 'control' of the economy properly conceived, can generate freedom for all groups and individuals.

Our representatives can control the economy – and they ought to, since it is only by means of this control that we can safeguard our own freedom. And yet ordinary citizens need to be able to control them too. The potential for abuse of power by both political representatives and group representatives more generally, especially those who have the information and means to do so, is to be expected, and thus regulation to control for these potential abuses of power is vital. Moreover, given that abuse of these forms of power and representation normally comes from political representatives and representatives of groups more generally, it is necessary to think about forms of regulation and control that both control for the closing of the gap between these two kinds of representatives and directly control for the abuse of power by political representatives. Some possible institutions are proposed in the book's conclusion, which follows this chapter. In other words, freedom as power through representation is only possible given certain institutional arrangements, in particular ones that simultaneously provide representatives and ordinary citizens with sufficient power: the former the positive power to provide the latter with different and competing visions of their future; the latter the positive power to participate in the determination of legislation; and the latter the negative power to control for abuses of power by the former. So, to return to three of the epigraphs with which I began this book, we thereby ensure that we have no political or economic 'boss[es] over [our] head[s]'; and yet remain realistic enough to safeguard the fact that our representatives remain the necessary means for us to be 'in [our] own power' and to ensure that we 'respect and enhance the freedom of others'.

Conclusion

In this book I have argued that freedom is power, in the sense that a necessary condition for freedom is citizen power and control within four inter-connected domains of human existence, with particular reference to various forms of representation. This latter component then leads to another, counterintuitive sense in which freedom is power: the freedom of citizens depends on the judgement and power (and thus independence) of their various kinds of representatives, in particular the power relations that exist between themselves, their groups and their group representatives, *and*, most significantly, between their group representatives and their and their state's political representatives. Thus freedom is power not only in the obvious or causally simplistic sense articulated at the start of Chapter 4 – a combination of *an individual's* ability to determine what she or he will do and her or his power to do it; that is, bring it about – but also in the causally complicated way that links the functions and actions of group representatives in general and political representatives in particular to the power (and thus freedom) of the groups and individuals that constitute every polity. This latter causal picture is complicated – no doubt – but in any particular society it is not beyond the ken of both ordinary citizens and elites, especially if perceived and understood by means of the kinds of political institutions I outline below and by well-supported institutions of higher learning that reward realistic social and political analysis.

Many recent studies, especially those inspired by the 'deliberative turn' in democratic theory, have recently provided ample support for this, though normally couched either in an age-old argument regarding the collective wisdom of groups or an allegedly new discovery regarding the *nature* of deliberation or based on real-world experiments of local-level democracy in mini-publics or municipalities.[1] While these studies are important and fascinating, what I have proposed here is not best

[1] Habermas, *Theory of Communicative Action*; Bohman and Rehg, *Deliberative Democracy*; J. S. Fishkin and P. Laslett, *Debating Deliberative Democracy*, Philosophy, Politics and

conceived as a version of these sometimes more sometimes less utopian calls for more democratic participation. Rather, I am suggesting that real citizen power and thus freedom will, paradoxically for some, come from placing representation at the centre of elaborations of freedom, power and democracy; that is, that a clearer understanding of the various roles that representation plays in complex, modern societies will generate better thinking regarding how best to empower and engender good judgement amongst representatives, part of which will involve giving them more not less independence, complemented by more exacting and powerful ways for citizens to control the character, actions and decisions of their political representatives.

These two goals – greater independence for representatives and greater control over them – may seem in direct contradiction with one another, but not if time and deferral in representation are given their due. Freedom is power through representation because, given certain kinds of representative institutions (outlined below), representatives can be given the freedom and time to try and work out how best to advance the needs and interests of the citizens and reduce states of domination. Doing this, however, will require that these institutions involve citizens to the extent that is possible and necessary for these decisions, but this freedom will easily become tyrannical if not associated with institutions that enable citizens and citizen groups to block, intervene and even determine outcomes if there is any evidence of states of domination between existing groups and their representatives or if one set of group representatives or another has managed to hijack the process of determining how best to proceed. In other words, since democratic political representation must involve feedback, time delays, evaluation and deferral of judgement, it is possible to build into it institutional means of both empowering representatives and empowering citizens' control over them. Thus, although the penultimate epigraph at the start of this book – '[w]ithout representation, no democratic politics'[2] – captures well a large part of this book's argument, it is probably more true to the argument here if paraphrased as follows: 'without representation, no freedom'. *Representation enables the two main forms of power necessary for freedom*: the power of representatives to determine the general trajectory of a state's

Society 7 (Oxford: Blackwell, 2003); G. Mackie, *Democracy Defended* (Cambridge University Press, 2003); M. E. Warren and H. Pearse, *Designing Deliberative Democracy: The British Columbia Citizens' Assembly* (Cambridge University Press, 2008); D. M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton University Press, 2008); R. E. Goodin, *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn* (Oxford University Press, 2012).

[2] Ankersmit, *Political Representation*, p. 115.

macroeconomic path and thus the power of its citizens, and the power of the citizens to control representatives in positive and negative ways (outlined below).

In the first two chapters I discussed the two predominant ways of thinking about freedom that have existed in Western political thought more or less ever since freedom became a term of art. Needless to say, though, people have been striving for freedom of some sort or degree ever since there were humans. And who's to say that animals are not involved in the same constant quest? Still, the most prominent account of freedom today, what Berlin called 'negative' freedom and modern libertarians call 'pure negative' liberty, conceives of freedom in terms of obstacles or impediments – I lack freedom if an impediment or obstacle inhibits me from doing what I want or choose. This is attractive for its simplicity and supposedly non-moral nature; and, as a result, much of the legal and political foundations of societies in (or influenced by) the West are based on it, as are most of our everyday conceptions of freedom. But its simplicity is beguiling, as I argued in Chapter 1. It rests on a disguised substantive conception of freedom that places moral value on freedom from politics in general and a private sphere free from the interference of others and the state in particular. I submitted, then, that this is not only a typical instance of ideology – the wolf dressed up in innocent, neutral, unthreatening lamb's clothes – but it rests on a set of assumptions that are unrealistic, especially for modern conditions. Why assume that an obstacle or impediment is a restriction on human freedom only if it results from a conscious deliberate human action, especially given that it is a mark of fully modern societies that nothing is sacred, beyond bounds, off limits or 'natural' (in a sense that excludes possible human control and decision)? Why assume that a private sphere exists in which we are sovereign independent decision-makers, when communal existence at all levels of modern existence generates an inescapable interdependence amongst humans? Why assume that the more formal, simple and free of substance the concept the more efficient and desirable? And, most confusingly, why defend so vigorously and for so long in the face of so many counter-examples in history a concept that leads to the conclusion that the form of one's political regime is not a factor with regard to the degree of one's freedom?[3]

[3] The defenders of 'pure negative' liberty, especially Matthew Kramer and Ian Carter, have tried to escape this last accusation by arguing that their account of liberty is a probabilistic matter and a matter of degree and that, therefore, one can rank different kinds of regimes for the effects they have on individuals' overall freedom. However, Kramer's example of the gentle giant indicates that he, at least, still adheres to the original position espoused by Hobbes: 'Whether a Common-wealth be Monarchicall, or Popular, the Freedome is still the same.' Hobbes, *Leviathan*, p. 149. For Kramer, see his 'Liberty and Domination'.

In the second chapter I mined the republican tradition for more promising seams of thought regarding freedom, in particular the work of Hannah Arendt, Niccolò Machiavelli, Benjamin Constant, Philip Pettit and John P. McCormick. Machiavelli, in particular, turned out to be surprisingly useful for modern conditions. But in general here too the tendency, especially in modern republicans such as Arendt and Pettit, is either never properly to escape ancient sentiments and institutions or to sacrifice a plausible account of freedom at the philosopher's stone of seeking a single axiomatic account – freedom as non-domination, minutely specified for all everywhere and always.[4] This left much to be desired and a lot more work to do. After discussing and discarding, in particular, Arendt's account of freedom, where freedom is unrealistically taken to be equivalent to politics or political action, I spent some time elaborating Machiavelli's position, especially his insistence on the importance of institutionalised class conflict in the generation and maintenance of freedom. As the reader will know, if they are reading this after having read the book, throughout the rest of the book this proves to be an important reminder and counterbalance to the tendency in some republican thought and the majority of liberals, radical democrats, deliberative democrats and libertarians that in order to proceed legitimately in politics one needs access to the 'common good' or 'public interest' or 'common interests'. Nothing could be further from the truth, as Machiavelli reminds us: the interests of different groups or classes of society are normally not and may never be the same or compatible and it is important for freedom not to paper over this reality. In fact, he goes even further: the interests of the least powerful group or class will be the safeguard of freedom as these interests come not from a desire to oppress but a desire not to be oppressed. The judgement of ordinary citizens, in other words, is a safer bet than the judgement of elites. This flies directly in the face of the republican tradition resurrected and lauded by Pettit, and in Chapter 2 I brought this out by contrasting his interpretation of this tradition to the one provided by McCormick (about which more below). Constant too helps in seeing this, as he points us towards balancing in practice various kinds of freedom rather than seeking theoretical and universal solutions to the problem of freedom. Contrary to received opinion regarding his political thought, he defends the claim that in order to generate and safeguard freedom it is necessary to balance ancient and modern freedom and prioritise the judgement of the citizenry.

[4] This kind of careful, minute exposition of a foundational, normative concept – in this case, freedom as non-domination – and its subsequent admirable expansion into how best to understand justice *and* democracy (but without much apparent cognisance of the real world of politics) is exemplified by Pettit's latest work, *On the People's Terms.*

In the remaining four chapters of the book I argued for a different conception of freedom, based upon power, but realised through representation. In Chapter 3 I laid the groundwork by suggesting a conceptual means of moving beyond the impasse between liberal and republican accounts of freedom.[5] I based this on a novel account of the nature of and relation between power and domination, inspired in part by the work of Foucault but also that of a few others and my own previous work on the political philosophy of needs. I argued that, while Foucault may do no more than hint at solutions, his account of states of domination in terms of existing power relations steers us towards a more realistic view of how best to overcome domination: a genealogical, inter-subjective evaluation of needs and institutions based upon a set of political procedures and powers that foreground both participation and representation. Needs and interests and the institutional and procedural means to determine them thereby become the link between power, domination and empowerment: the extent to which I live in a state of domination depends on the extent of my partisan power to determine my needs, generate legislation and control my political representatives. This is far from the normal supposition that if we determine the universal nature of power and domination we can rid our polities of them, upheld by the ideal of equal freedom for all by means of equality before the law. Rather, it submits that if we remain realistic about power, domination and need and provide ourselves with the means to determine in context where and how they lie, we may be empowered to overcome states of domination. The liberal and republican notion that negative freedom and freedom as non-domination involve the avoidance of alien interference or control is politically unhelpful as it rests on the unrealistic assumption that politics can somehow proceed without representation and power relations. By contrast, if we follow Foucault's initial lead and then focus on the social, economic and political means for the identification, expression and evaluation of needs, it is possible to see that power is best understood in terms of the degrees and forms of control we have over our social, economic and political environments, institutions and representatives; and that domination is best overcome via genealogical, inter-subjective evaluation and political institutions that give citizens real causal, *partisan* power. The extent to which citizens can overcome domination does not depend on a normatively grounded theoretical solution, but institutions that enable sufficient participative and representative power and critique.

[5] The impasse is, inadvertently, articulated well in a recent collection of essays, C. Laborde and J. Maynor (eds.), *Republicanism and Political Theory* (London: Routledge, 2008), in which the main proponents of both accounts 'engage' with one another. But it is striking how little they do in fact do so; most of the time they simply talk past each other.

In Chapter 4 I then provided a more direct analysis of freedom as power, with particular focus on four important domains in which modern individuals exercise or fail to exercise their freedom as power. I argued there that although Machiavelli's, Rousseau's *and* Constant's accounts all strike a chord, an alternative tradition is more helpful. This tradition, including Montaigne, Marx, Nietzsche and Dewey, opt for realism above reductionism and suggest that the degree to which I am in fact free under modern conditions is a more complicated matter than supposed by either liberals or republicans. Standing on the shoulders of this alternative tradition, I argue that freedom depends upon the extent to which states of domination predominate in four causally related domains. More exactly, my freedom depends upon: (a) my power to overcome existing obstacles; (b) my power to determine who governs my political association or community; (c) my power to resist the disciplining power of my community and state; and (d) my power to determine my social and economic environment via meaningful control over my representatives. Freedom is power across all of these domains, I argued, in the sense that individual freedom depends on some agent's power or ability to bring something about; at the most basic level (domain (a)) this is the power of the individual herself, and at the most complex level (domain (d)) it is the power of the representative of the individual or her group.

In Chapter 5 I then took things up another level, by arguing that – given the complexity, division of labour and interdependence characteristic of modern conditions – freedom as power is not normally a matter simply of individual power but of the power of group representatives and their power to influence political representatives, especially in the determination of macroeconomic policy. The most important safeguard for freedom, I argued, is not, however, greater and greater direct control over political representatives by individual citizens, as espoused by some deliberative democrats and republicans, but rather the retention of a gap between representatives and citizens or groups of citizens. It is this gap, I submitted, that enables citizens simultaneously to free their representatives to act (and thus force them to take responsibility for their decisions) and generate means to control them, especially regarding the ever-present possibility that certain powerful individuals or groups will seek to usurp the power of the state and thus enslave less powerful individuals and groups. Ironically enough, properly controlled via institutional checks and balances, it is the ordinary citizen that can ensure against tyranny by the minority – that is, ensure against usurpation of sovereign power by political representatives or the minority of powerful groups that can access directly political representatives. This then provided an apt theoretical framework for understanding what is at play in South Africa today: that, besides poverty, inequality and unemployment, it is a

very skewed set of institutions of economic and political representation that entrenches power relations, as well as group and class dynamics, and makes sure South Africa stagnates, far from its long-sought goal of freedom.

In Chapter 6 this point was then globalised by means of an assessment of the causes and effects of the global financial crisis that began in late 2007, and the consequences of which are still being felt at time of writing. I argued that it was a direct result of acts or omissions by political representatives over many years that further and further empowered one small group of the society to the detriment of the other groups. *Pace* Hayek, in particular, the doyen of the influential idea that it is impossible for any single agent to control the economy, I argued in direct opposition to much received opinion either that somehow regulation was to blame (when it was regulation's removal that led to the crash) or that it is simply impossible for political representatives to control the economy. I rebuffed these arguments by showing *how* representatives do in fact control the economy and then argued that, if they can, they ought to, as freedom depends upon it. As ordinary citizens we need them to exercise their powers over the economy to guide it in a manner that satisfies our needs and interest and reduces the possibility for states of domination.

In short, given the various inter-related domains of freedom of action and the requirement of representation for individuals to enact their freedom as power therein, both 'freedom from politics' and 'freedom through politics' are wide of the mark. We value different things to the ancients and early moderns, but cannot avoid being involved in politics, both as means to secure what we value (the instrumental reason) and because the citizenry as a whole and, in particular, their representatives cannot make wise political judgements without our involvement (the intrinsic reason). Matters of size, scale and complexity make this form of proposed political involvement quite unlike that which Arendt and many contemporary deliberative democrats propose. Under modern conditions, we do not and cannot constantly participate in politics, but in order to safeguard our freedom as power across the four domains specified here we must be enabled with the power and ability to determine *causally* who rules, how they rule and the character of our polity's norms and institutions. It follows therefore that political participation is not best understood as *either* an intrinsic good *or* an instrumental good alone; rather, it is composed of both. Our freedom of action is in part enacted in political and public ways *and* we would remain less free in the dimensions I list were we to remain exclusively concerned with our 'private' freedom or the means to secure it. With the account of freedom as power defended here it becomes possible to see how real modern freedom is not possible without politics

but nor is it equivalent to political action alone or a life of constant active citizenship.

As I argued in Chapter 3, the control over the determination of one's needs is vital for freedom, for without it at, one extreme, citizens may not be able to continue existing as human beings and, at the other, they can easily become mere pawns in larger games in which other citizens or citizen groups are determining others' needs and desires in order to satisfy their own goals and interests. Freedom as power depends upon what I call here and elsewhere the 'power to determine needs': the power to identify, express and evaluate my needs, interests and their formative practices and institutions.[6] However, as I have argued in this book, as with the idea of direct control over political decision-making in general, this kind of direct control over need determination is unrealistic and even undesirable. Part of the point of representation is that it frees us up from having to satisfy all of our own needs all of the time; life would be a lot harder without it. However, we can translate this more general normative goal of control of need determination into a more general need to avoid what Foucault calls states of domination, using the language of needs and institutions. The degree to which one lives in a state of domination, I have argued, depends upon the extent and kind of power one has to determine one's needs. States of domination of this kind can take a number of different forms.

The existing power relations may persistently mislead me and members of my groups in our attempts to *identify* our needs, either through direct coercion (leading us to deny our needs), intentional manipulation ('persuading' us, say, that another group's needs are ours) or as a result of fixed, traditional norms and practices, a good example of which is patriarchy and the continued subordination of women.

I may live under a regime that does not give me and other members of my group or groups the power to *express* our needs: for example, as a black person within apartheid South Africa, where political rights were deemed the privileges of whites alone and the institutional means through which, as a black person, I might have expressed my needs and interests had been removed (or, more exactly, never properly instantiated and then removed).

I live in a polity that disallows meaningful *evaluation* of needs and interests: a form of regime that may provide me and other members of my groups with the formal means and freedoms to identify our needs and even express them without fear of prejudice or harm – it may even seek much of its legitimacy from exactly these two freedoms – but in

[6] Hamilton, *Needs*.

real, specifically economic, terms is based upon the kinds of practices and institutions that either disallow the evaluation of needs and interests or fail to provide the institutions through which this would be achieved, such as a polity founded on pre-political natural or human rights coupled with an economy in which *only* revealed preferences for consumer goods are deemed of value. Another version of this is a polity that allows for objective evaluation of needs, at least at the level of discourse, but provides little or no institutional means through which citizens could partake in the evaluation of their needs and those of their fellow citizens; in other words, a polity where to all intents and purposes the concept of needs has little or no effect on the determination of how best to proceed. Examples of both forms of regime are found in the various combinations of liberal polities and capitalist economies that characterise most of the political and economic arrangements of our world today – the free-market-dominated United States of America at one extreme and Scandinavian welfare states at the other – the severe results of which are often felt most acutely in less wealthy and more unequal societies such as Brazil, South Africa and Mozambique.

The form of domination that even exists within this last, welfare-state category creates a situation within which we may be able to claim our rights, avow our preferences and in some instances even identify and express our needs, but we do not have the necessary institutional means either to take part in the evaluation of our needs or properly control the manner in which our political representatives evaluate our needs. In fact, in most cases, it is difficult even to ensure that our representatives take our claims seriously, whether expressed in terms of rights, needs or interests.

As I have hinted throughout this book, the only answer then is the creation and defence of political institutions whose main function is to indentify and overcome states of domination and generate freedom as power for all citizens and groups in society, and the only way that rulers and ruled are going to be able to see that these kinds of institutions are necessary is if we remain realistic and sanguine about the need for partisan institutions, conflicting groups and interests, and the kinds of antagonistic politics that follow. To that end, then, I finish by proposing a few institutions in this realistic spirit. These are only tentative and are not intended to be comprehensive, but simply one offering amongst many now being made more and more frequently by political theorists and philosophers who are passionate about overcoming the lack of freedom all over the world that results from institutions for the 'common good' or 'public interest' that serve only the interests of small groups of economic and political elites.

The kinds of political institutions that would be necessary for citizens to have meaningful control over their needs and their representatives would have to give them both the positive power to legislate and the negative power to repeal legislation, while also providing their representatives with the freedom to legislate. This seemingly paradoxical requirement is possible if we take both the need for representation and participation seriously and thus institutionalise changes at local, legislative and constitutional levels. These changes would both empower citizens to participate periodically in the determination of their needs and their constitution and give them a power of veto or repeal over legislation and a power of recall or impeachment of existing representatives. These proposals are an amalgamation of my own ideas regarding the institutionalisation of need and interest evaluation within district assemblies, a revitalised consiliar system and decennial plebiscites over the constitution (bolstered by some of Condorcet's ideas) and Machiavelli's arguments in support of the Roman tribunes of the plebs. I can but list them here without much explanation, but, before I do, let me be clear that they are intended as additions not replacements to existing institutions of representative democracy; and they originate in the insight that all polities are characterised by moral and political conflict and disagreement, which, more often than not, will have its source in the differences of position and opportunity held by the various groups, classes and individuals that constitute them. To attempt to paper over the associated power relations is typical of 'ideology' in the pejorative sense.[7] It is better to face up to them and provide practical means through which citizens might articulate, defend and satisfy their varied needs and interests by means of institutions that not only enable deliberation regarding these matters but also remain true to the often partisan nature of needs and interests, and safeguard them from the power of other norms and interests in society.

Four main institutional arrangements are therefore likely to keep states of domination to a minimum. They are also likely to better enable both the identification of common interests (where they exist) and the identification and support for partisan interests of normally powerless groups. And, given my points in the introduction to the book regarding the general applicability of my thesis, despite its having had its inspiration in the particular context of South Africa, all of these institutional proposals are intended to apply beyond the South African case. They are abstract enough for this, but this level of abstraction means that, as they stand, they are not of direct practical use: they would need to be modified and tweaked in practice and dependent on context, though not to the extent

[7] Geuss, *Idea of a Critical Theory*.

that undermines their very point: that is, to take seriously partisan citizen interests and enable citizens – especially those citizens with little social, economic and political power – to counter states of domination and participate more effectively in the determination of policy.

District assemblies

These would be local physical sites with five main functions: (i) to enable the articulation and evaluation of needs and interests, the substantive outcome of which would then be transferred by the district's counselor to the national assembly for further debate and, ultimately, legislation;[8] (ii) to make available to citizens full accounts of all the legislative activity and results emanating from the national assembly; (iii) to provide a forum for the presentation of amendments to existing legislation; (iv) to vote on proposals coming from other assemblies; and (v) to select counselors for the revitalised consiliar system. The determination of the exact geography (and thus borders) of these sites would be a matter for context and practice, but at least one guiding principle must be kept to the fore: each district should always incorporate as diverse a group of the national population as possible, especially as regards social and economic power relations – the full spectrum of conditions, needs and interests must be incorporated.

A revitalised consiliar system

Such a system: (i) would rest on the network of district assemblies; (ii) would involve each district assembly selecting one counselor for a two-year period, who would be responsible for providing information to the representatives in the national assembly regarding the *local* needs and interests of the citizenry and existing institutional configurations and their links to states of domination – that is, what changes may be required to better satisfy needs and interests, and diminish the possibility for states of domination in the local area in question; (iii) would mean that the main role of the counselors was therefore biased towards the defence of the interests of the various groups of citizenry within the district in question, whose needs and interests would surface within district assemblies, and thus not only that the powers and responsibilities of district counselors would be much greater than those of councillors within existing forms of local government, but also that, in order for them to carry out these

[8] For more on my adoption of 'counselor' (rather than 'councillor'), see below, especially footnote 9.

functions, their independence from national representatives, political parties and social and economic elites would have to be procedurally safeguarded within the constitution. I say 'select' and not 'elect' counselors as, given the formal and merely procedural function of counselors in this proposal, their selection could be undertaken by election or sortition (lottery). I favour the latter as local, district assemblies are prone to fall prey to local factions and interests that may work against the point of this form of local participation; in other words, each counselor must literally advise – give counsel to – the national assembly on the conditions, needs and interests of those she or he represents. Were the counselors to be too easily captured by social and economic elites or always come from these elites – as is the case in most national assemblies within existing representative democracies – they would not help in the necessary process of countering domination, as it would be in their interest to advance the interests of these elite groups. Of course, checks and balances and forms of accountability and transparency could be included to ensure that they do carry forward the needs and interests as articulated and determined in the district assemblies, but, given that the district assemblies will be made up of normal citizens leading busy personal and commercial lives, even these kinds of institutional checks and balances may not ensure that counselors conform to their station, as citizens are likely not to have the time properly to monitor counselors 'all the way up the political chain of command'.[9]

Updated tribune of the plebs

This would be: (i) a partisan, separate and independent institution of legislation for the exclusive membership of representatives of otherwise dominated groups and classes in society, whose membership could be made exclusively for representatives from this class either by a net-household-worth ceiling or associated measures, enabling those with the least economic power in any polity both to propose and repeal (or veto)

[9] For more on district assemblies and an explanation of my adoption of the term and institution of 'counselor' from ancient Rome (as opposed to the more normal modern English term and institution of 'councillor'), see Hamilton, 'Human Needs and Political Judgment'. I opt for 'counselor' as opposed to 'counsellor' as the latter, at least in modern usage, is associated with psychological therapy or legal counsel, connotations I am keen to avoid, especially given the bottom-up nature of the counsel this proposal envisages, which would arise out of district assemblies and be passed upwards by the counselors. The revised account of 'district assemblies' submitted here, especially (ii)–(iv) above, also draws from Condorcet's notion of 'primary assemblies'. For more on these and how they therefore become sites for both the positive and negative powers of sovereignty (legislation and repeal), see Urbinati, *Representative Democracy*, pp. 207–213.

legislation and impeach national representatives, but with strict and low per annum limits on the number of times this could be carried out – here too the selection of representatives could be by means of election or sortition, again favouring the latter, for similar reasons to those stated above;[10] and (ii) a partisan, separate and independent electoral procedure by means of which the least powerful groups or classes in society would have exclusive rights to elect at least one-quarter of national representatives for the national assembly, alongside the normal, open party-dominated processes of electing representatives within most existing representative democracies. This second component of the updated tribune of the plebs is intended to offset the potentially merely reactive character of the first and to withstand the very real possibility that the national assembly or assemblies would hamstring a plebeian chamber of this kind by various means, such as using up its power of veto of one piece of legislation per annum by first proposing mock legislation that it knows will be vetoed and then, once the per annum quota of veto has been used up, going ahead with anti-plebeian legislation about which the tribune could then do nothing.[11]

Constitutional revision and safeguard

This would entail: (i) a decennial plebiscite, following a month-long carnival of citizenship – a public holiday – in which all citizens would have equal formal freedom and power to assess existing social, economic and political institutional matrices and their effects on the determination and satisfaction of vital and agency needs;[12] (ii) a right of constitutional revision that would have to be procedurally safeguarded: that is, a right of any citizen at any point to propose the assessment and possible revision of a component of the constitution, which in Condorcet, as in Jefferson and Paine, is based on two important arguments, namely *antityranny* (shielding present and future generations from the unchecked power of past generations) and *fallibility* (that reason is prone to error and subject to change over time and thus it is important to presume the need for permanent revision to the constitution);[13] and (iii) *procedural* safeguards giving priority to the satisfaction of *vital* needs, safeguarding counselors

[10] As expressed, for example, in Machiavelli's defence of the Roman tribune of the plebs in his *Discourses*, recently updated by J. P. McCormick in his *Machiavellian Democracy*, pp. 178–188 and *passim*, but here with more emphasis on legislative proposition and repeal than on mere veto power or power of impeachment against representatives.

[11] For these and other criticisms and concerns with McCormick's proposal see the symposium on his book in *The Good Society* 20.2 (2011), and his responses in 20.3.

[12] Hamilton, 'Nice South African'.

[13] Urbinati, *Representative Democracy*, pp. 184–187.

from manipulation, coercion and corruption, ensuring the administration of district assemblies and the partisan institutions, and enabling constitutional revision.[14]

Together these four main institutional changes would provide sufficient power, class antagonism, and institutional checks and balances to generate and safeguard freedom as power for all individuals and groups in the polity in question, or at least ensure against one powerful group usurping the freedom as power of all the citizens and groups that constitute the polity in question. I have argued here that freedom cannot be attained and maintained without politics but nor can it be reduced to politics or political action. As the four dimensions of freedom as power highlight, freedom is not only to do with power in the sense of my ability to carry out my intended actions, it is also to do with power in the sense of citizen and societal group control over who rules and how they rule – in other words, over political representatives. Real modern freedom is not captured either by means of 'private' freedom or 'political' freedom. The former generates the unhelpful allergic reaction to political regulation found in the thought and practice of free market ideologues and most libertarian liberals, and the latter ignores the fact that much of everyday modern freedom is determined by the various social, political and economic groups, practices, institutions and forms of representation that enable our power to satisfy our needs and overcome states of domination. *Freedom is Power* brings all these directly to the fore in an account of the social, economic and political conditions for freedom of action.

[14] This is based upon an important distinction between the procedural components of a constitution, such as counselor independence, and the more substantive components, such as which existing needs and rights, besides vital needs, do and ought to have priority.

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