Chapter 4

FREEDOM AND JUSTICE

There are two aspects to being a free citizen in a domestic polity, enjoying security in the exercise of your basic liberties. First, you must enjoy independence in relation to private individuals and associations; you must not be unprotected in relation to *dominium* or private power. And second, you must enjoy a certain independence in relation to the state; you must share in control of its doings in such a way that you are not unprotected in relation to *imperium* or public power. On the one side you must enjoy personal independence, on the other political independence.

I want to argue in this chapter that you and your fellow citizens will live in a just society to the extent that you each have the resources to exercise the basic liberties and are not subject to one another's domination in their exercise. In that case, you will enjoy the first, personal form of independence. In the next chapter, I will argue that you and your fellow citizens will enjoy the second, political form of independence to the extent that you share equally in democratic control of the state: that is, of the authorities who act in the state's name. The domestic ideals of justice and democracy, on this account, derive from freedom, where freedom is given the depth and breadth demanded by

republicanism. If we look after freedom properly, then justice and democracy will look after themselves.

Returning to *A Doll's House*, if Nora is to enjoy the status of a free person in relation to other individuals, Torvald included, then she must be given equal access with her fellow citizens to a set of basic liberties that have been suitably identified, resourced, and protected by the state. And if she is to enjoy the status of a free person in relation to that state, then she must not live at the mercy of a government that she has no power to control. According to the argument of this chapter, providing Nora and her fellow citizens with a set of suitably entrenched basic liberties will mean establishing a just society. And according to the argument of the next chapter, providing her and her fellow citizens with a suitable form of shared control over government will mean establishing a properly democratic society.

Thus justice, the topic of this chapter, means justice only in the horizontal or social relations that citizens have with one another, whether within the home or workplace, in the markets or the public square. It does not involve the vertical or political relations between citizens and their government. Nor of course does it involve the lateral or international relations between one society or polity and others. Justice in this sense is usually cast as social justice, and contrasts with political justice and international justice. The issue of political justice will come up in the next chapter and the issue of international justice in the last chapter.

To begin this discussion of social justice—I will often simply say, justice—I look first at the general idea of justice, situating the republican proposal among other candidate theories. Next, I sketch the institutions that republican justice would support, covering domains of public policy-making that I describe as infrastructure, insurance, and insulation. And then,

in conclusion, I explain why this approach requires only one freedom-centered principle of justice in contrast to the theory, championed by John Rawls and others, in which justice requires two principles, one bearing on equality in liberties, the other on equality in resources.

THE IDEA OF SOCIAL JUSTICE, REPUBLICAN AND OTHERWISE

Almost everyone agrees in the abstract that justice, understood in the social manner, requires what Rawls (1971, 9) describes as "a proper balance between competing claims." But who are the claimants to justice? What is the agency that is to balance their rival claims? And what are the claims that need to be balanced?

I take the citizens of the relevant society to be the claimants in justice, where the citizenry can be assumed in most contexts to include all adult, able-minded, more or less permanent residents.[39] And I take the state to be the addressee of their claims, where the state is a corporate agency—operating via the different arms of government—that assumes a unique, unchallenged authority to settle citizen claims, if necessary by recourse to coercion. What are the claims, then, that citizens are entitled to make against the state, and what would constitute a proper balance between those claims?

The state will establish a proper balance among citizen claims, however those claims are understood, only insofar as it treats citizens as equals in addressing them—only insofar as it is expressively egalitarian, as we may put the point, in dealing with its citizens. To treat people as equals in this sense does not necessarily mean giving them equal treatment (Dworkin 1978). Consider two teenage children for whose college education you

are responsible as a parent. Depending on their course of study, those children may each require different levels of funding: one may opt for arts, the other for a more costly professional education. If you provide both with the money they need to enroll in their chosen coursework, you will have treated them as equals. Both will get the support they require. But since you will have provided them with different levels of funding, you will not have given them equal treatment. In the same way, when the state treats citizens as equals—say, in funding social and economic infrastructure—it may not give them equal treatment. In providing equal access to roads or water or electricity, for example, the state may have to spend much more on people who live in rural areas than on those who live in towns and cities.

The republican approach strongly supports expressive egalitarianism. In this tradition, the ideal of the free citizen requires a civic status that enables each to stand on an equal footing with others. Such a status can be established only under a state that treats all its members as equals and only under a culture in which people are each prepared to accept such treatment and to claim no special privileges. In discussing justice in this chapter, and democracy and sovereignty in the chapters that follow, I shall assume that the expressive egalitarian constraint always applies. No proposal in any of these areas can command support unless it is compatible with the principle that no one is special and that all are to count in the expressive sense as equals.

Expressive egalitarianism tells us that whatever the claims of citizens, the state will establish a proper balance among those claims—and thus achieve social justice—precisely to the extent that it treats its citizens as equals in satisfying the claims. But what are the claims in respect of which the just state should treat citizens as equals? And how much substantive equality—how much equal treatment—should the state provide in satisfaction of those claims? The central issue, in Amartya Sen's (1993) phrase, is: "Equality of what?"

There are many different responses to this question (Kymlicka 2002; Vallentyne 2007). The main competitors hold that justice requires equality in resources, in happiness, in the basic capacity for social functioning, in the mix of liberties and resources that Rawls's two principles of justice invoke—I will look briefly at these principles later—or in the many close relatives of such values. These theories are not always clear about whether it is merely expressive equality that is recommended in these dimensions or substantive equality as well (Temkin 1996). And they do not always make the distinction imposed here between issues of justice—that is, social justice—and the issues of democracy and legitimacy that come up in the next chapter (Simmons 1999). In any case, we need not dwell on them in detail. Our focal concern is with justice as it is likely to appear within a republican perspective.

Given its commitment to the value of freedom at an appropriate depth and with an appropriate breadth, a republican theory will naturally require the just state to treat citizens as equals in their claims to freedom—specifically, in their claims to freedom as that has been articulated in the first part of this book. Going on that account, the state ought to treat people as equals—it ought to be expressively egalitarian—in fostering their freedom as non-domination, on the basis of public laws and norms, within the sphere of the basic liberties. This approach is squarely in line with the republican tradition of thought, connecting with the idea that Cicero (1998, 21) voiced on freedom and equality: "Nothing can be sweeter than liberty. Yet if it isn't equal throughout, it isn't liberty at all."

But how substantively egalitarian is a republican theory of justice likely to be? On the account of freedom presented

earlier, the expressively egalitarian pursuit of freedom as non-domination for all does not require a strict, substantive equality in wealth and power, although wealth and power certainly enable people to exercise choice over a wider range of options. What it calls for instead is a level of protection and resourcing for people's basic liberties—a level of entrenchment—that would enable them to count as equals in the enjoyment of freedom. I later identify this level of entrenchment as that which would enable people to pass the eyeball test: to look one another in the eye without reason for fear or deference.

While the goal of suitably resourcing and protecting people's basic liberties is distinct from that of equalizing their wealth and power, however, it is worth noting that there is a tight connection between equal freedom, in the republican sense, and material equality. Suppose that you are worse off in material respects than your neighbors. Suppose you lack some resources required for exercising the basic liberties—in skill or information, access to shelter or sustenance or income—and your neighbors enjoy an excess of such assets. Or suppose that while your legal protections against interference are barely adequate, your neighbors enjoy the benefits of private security, powerful legal representation, and good connections within the police force. In each scenario you will be less well defended against your neighbors than they are against you. And in each scenario, the state that aims to treat its citizens as equals in the enjoyment of freedom as non-domination will almost always do better in this pursuit by helping you, the worse-off party, rather than helping your richer neighbors.

There are two reasons for this (Pettit 1997b; Lovett 2001). Since you will be more exposed to domination than your neighbors, providing defenses for you is liable to reduce domination more effectively than providing extra defenses for them. And

if the state were to provide extra defenses for your neighbors, it would increase the domination to which you are already exposed, enabling them to be better guarded against your efforts to defend yourself. The first consideration suggests that it will generally be underproductive to provide resources or protections for the better off rather than the worse off: it is likely to do less good. The second suggests that it will be downright counterproductive to take this line: it is likely to do more harm than good.

We are now in a position to consider the policy-making programs that a republican theory of justice is likely to support. We need to identify the programs that the state ought to implement if it is to treat its citizens as equals in satisfying their claims to freedom as non-domination. The exercise is bound to be tentative, if only because it depends on empirical assumptions that, however plausible, may be subject to challenge. Still, it should help to communicate a sense of where republican theory leads.

We can distinguish three relevant areas of policy-making for promoting people's equal enjoyment of freedom as non-domination in their relations with one another. Relying on alliteration to make the categories easy to recall, I describe the three domains as those of infrastructure, insurance, and insulation. Infrastructure encompasses the institutions presupposed to the general public's enjoyment of a meaningful range of choice, insurance to the factors essential for supporting people who fall on evil times, and insulation to defenses against the dangers occasioned by asymmetrical relationships and criminal activities.

INFRASTRUCTURE

Every theory of justice will have something to say on the infrastructure that must be provided to the citizens of a potentially just society. That infrastructure will have two aspects: institutional and material. The institutional infrastructure will have to provide for the education, training, and information available to citizens; for the legal order, public and private, that allows individuals to negotiate their relationships and resolve their problems according to established criteria and procedures; and for the investment and market conditions that facilitate the development and maintenance of a prosperous, competitive economy.

The material infrastructure will have to ensure the integrity of the territory against external danger; the provision of roads and airways and other means of transport; the coordination of access to the means of communication used by the media and among individuals; the existence, accessibility, and safety of public spaces in cities and countryside; the sustainable use of regenerating resources of food and energy—fish, timber, and the like; the responsible use of nonregenerating resources of energy such as fossil fuels; and the care of the natural and precarious environment.

The republican theory of justice, like any plausible alternative, will argue for the nurture and care of the society's infrastructure, both institutional and material, since this will affect the extent to which people can exercise and enjoy their basic liberties. But it is worth noting that the republican picture introduces a quite distinctive view of legal entitlements—in particular, the entitlements of ownership. Libertarian and other theories often suggest that the titles to property, and the rights of ownership, are written in nature's stone and determined

independently of social convention. But republican theory, as we have seen, offers a different perspective and is likely to support quite different lines of policy.

The explanation goes back to a consideration, already mentioned, that in securing people against certain forms of intrusion, the laws and norms of a society make those individuals free. They constitute the freedoms that people enjoy in the way that the antibodies in your blood constitute your immunity against certain diseases. Thus, as we saw in the last chapter, each system of law establishes its own package of property titles and rights and its own account of the associated basic liberties.[40] Those titles and those rights are not established by nature; they are a product of the social order that the laws and norms put in place.[41]

In 1846, the French anarchist Pierre-Joseph Proudhon maintained famously that all property is theft, suggesting that any laws of ownership compromise people's freedom. The republican view developed in the last chapter clearly rejects that perspective, arguing that property conventions can make a basic liberty of ownership available to all. But the approach is equally opposed to the libertarian position, that since property entitlements are defined antecedently to social conventions, all taxation is theft, all regulation a form of oppression. The claim that all taxation is theft ignores the fact that taxation is an essential part of the conventions of law and norm whereby property and freedom of ownership are established in the first place (Murphy and Nagel 2004). And the claim that all regulation is a form of oppression fails to recognize that we establish most of our freedoms only by virtue of a common regulatory regime.

To make these points is not to suggest that taxation or regulation can attain any level, no matter how high, and continue to provide benefits; certain levels may be counterproductive and

work against the freedom of people at large. It is to say that there are no God-given property entitlements, for example, and that each society must determine the titles and rights of private property that are to obtain there, as well as the divisions to be established between private, public, and communal property. Thus, in principle, promoting freedom as non-domination in a way that treats all as equals might argue for possibilities that libertarians are unlikely to notice or contemplate. Depending on what is required for achieving the republican conception of freedom in a changing world, the theory could support the introduction of novel conceptions of property—for example, in newly emerging areas of intellectual property or the ownership of important natural resources—and novel restrictions on how far private funds can be used for certain purposes—say, for supporting political candidates, for maintaining a private system of security, or for establishing a family financial dynasty secured under the law of trusts.

INSURANCE

After infrastructure, justice requires insurance for individuals and groups against various ills. In the case of republican justice, the ills to be insured against will involve the under-resourcing of people's basic liberties and their consequent exposure to new possibilities of domination. The insurance required may be designed to help whole populations in the event of natural catastrophes such as volcanic explosions and earthquakes, hurricanes and tornadoes, periods of drought or flooding, and epidemics. Or it may be directed at the defense of individuals against various twists of fate: temporary or permanent disability, medical need or emergency, the loss of employment, the

dependency often brought about by old age, and the need for legal resources to defend against charges or to pursue complaints. Or indeed, to go to a midway possibility, it may be designed to help out one or another minority that is exposed to problems of a distinctive sort, be that minority a particular age group or refugee population or employment category. A variety of calamities can deprive people of the resources needed for the exercise of the basic liberties, leaving them unable to exercise those liberties and often exposing them to domination on the part of the more fortunate.

Right-of-center theories of justice, libertarian or liberal, tend to be dismissive of such insurance claims except, surprisingly, for claims on behalf of regional groups that suffer natural catastrophe. But a community committed to freedom as non-domination must be concerned with the insurance of individuals as well as with the insurance of localities. In order to enjoy equal freedom as non-domination, people must have sure access to shelter and nourishment, to treatment for medical need and support for disability, to representation in appearing as plaintiffs or defendants in the courts, and to support, if they need it, in their declining years. It follows that people should be publicly insured—or, if this is deemed a better alternative, be publicly required and incentivized to have private insurance—against such possibilities. They should be provided at a basic level with social security, medical security, and judicial security, whether by means of a system of social insurance, national health, and legal assistance, or by any of number of alternatives—say, the provision of a basic income for each citizen (Van Parijs 1995; Raventos 2007). They should be assured of access to what Amartya Sen (1985) and Martha Nussbaum (2006) describe as the basic capabilities for functioning in their society.

Opponents will say that private, philanthropic efforts may

better support people on these fronts, that individuals are more efficiently and effectively looked after if they have access to privately funded kitchens and shelters, for example, or to the pro bono services of philanthropic professionals like lawyers, doctors, and dentists. But assuming that such services depend on the continuing goodwill of their providers, it should be clear that from a republican point of view private philanthropy—even if it comes without problematic conditions attached—is unsatisfactory.[42] If people depend in an enduring way on the philanthropy of benefactors, then they will suffer a clear form of domination. Their expectations about the resources available will shift, and this shift will give benefactors an effective power of interference in their lives. Thus, suppose you have a continuing medical problem and depend on the pro bono services of a doctor or hospital to help you out. Once established, this dependence will put the doctor or hospital in the position of a master; you will depend for the ability to exercise various basic liberties on their not withdrawing from the relationship and leaving you in the lurch.[43]

Issues of social, medical, and judicial security have long appeared on the debating table in politics, with social democrats and progressives usually supporting such measures and libertarians and conservatives routinely opposing them. But recent developments have shown us that financial security, as we may call it, is of equal importance: that is, security against the effects that the financial markets may have on people's savings and superannuation, and on their capacity to get over crises without the philanthropy of others.

Financial security argues for familiar government guarantees in support of bank deposits, which are likely to make good economic sense anyhow, inducing confidence in the system. But it also argues for preemptive regulatory measures against

excesses in the financial markets, where the huge profits available on opportunistic transactions can create unresisted temptations, induce a frenzy of competition among rival houses, and lead to a pattern of risk-taking in which the good of all is put in serious jeopardy. Regulation is not oppression, to repeat the point made earlier, and if regulation is ever desirable, it is desirable in the financial markets (Pettit 2013a).

INSULATION, SPECIAL

The third area of policy-making where justice is relevant involves the insulation of individuals against the dangers of domination by others. In this area, a natural distinction arises between two sorts of cases: one special, the other general. In the special case, people need to be insulated against the dangers associated with relationships where an asymmetry of power exists between the parties. In the general case, they need to be insulated against the dangers of crime, individual or corporate, blue-collar or white-collar.

Take the special case first. Under the republican way of thinking, people will need insulation in a variety of relationships, such as that of wife and husband, employee and employer, debtor and creditor. Standard policy-making would argue, reasonably, for equalizing the positions by imposing legal duties on the presumptively stronger party—typically, the husband, the employer, and the creditor—and reinforcing the corresponding rights of the weaker. Such rights are important but they are often frail reeds; the weaker party must trigger them and that act alone can have serious, inhibiting costs. The wife who calls in the police against an abusive husband may find herself exposed to anger and further abuse. The employees who com-

plain to an outside inspector about working conditions may find that their boss consequently assigns them the roughest jobs.

In order to establish special insulation for these weaker parties, it is probably essential for the state to go beyond establishing suitable legal rights. It may also be necessary to screen in various options for the weaker party, as in making provision for the abused wife to take refuge in a women's home, legalizing the unionization of employees, and establishing a system of unemployment benefits. With the stronger party, it may well be necessary to screen out various options, as in providing for a court order against an abusive husband, or restricting or regulating the right of an employer to fire workers at will.[44] In addition, it will make sense to create various avenues of redress for the weaker party, as in allowing a wife to seek no-fault divorce or enabling an employee to sue for wrongful dismissal or unequal treatment in the workplace.

Are the dangers created by such asymmetries in relational power serious threats to freedom? If we think of freedom as noninterference, then the dangers are only important to the extent that actual interference is likely. Classical British liberals may not have worried about giving greater powers to husbands or employers, on the grounds, often cited at the time, that good Christian husbands would be unlikely to abuse their wives and economically rational employers unlikely to tangle with their employees. But given that we think of freedom as non-domination, any power of interference granted to a husband or employer is already a problem, even if actual interference is unlikely to occur in a given relationship. Domination materializes, after all, in virtue of the existence of such a power; it does not require the power to be exercised.

But the power may not only constitute a problem without being exercised; it may constitute a problem without even being

welcomed by the power-bearer. Torvald would not cease to dominate Nora if he recognized the asymmetry in the relationship and absolutely deplored it. Given that his power derives from cultural and legal sources, it is not something he can put aside. And so Nora can be forced to depend on his goodwill, and can be deprived of freedom as non-domination, even when he does not want her to be dependent in that fashion.

Apart from the traditional relationships in which individuals need insulation against the greater power of other individuals, the relationship between individuals and corporate entities, commercial and otherwise, also introduces troubling asymmetries (Coleman 1974). Corporate entities act only via their individual members, but members play different parts and, depending on who is in the office, may play the same part at different times. Thus, they are individually shielded from scrutiny in the parts they play, and they act to an aggregate effect that may not be clearly visible to any of them (List and Pettit 2011). As a result, the artificial, composite agents they bring to life lack vulnerability and the capacity for empathy (Bakan 2004). That effect is supported by an independent factor as well. When individuals act on behalf of a corporate entity, as when they act on behalf of any principal, this can lead them to behave more callously than they would be willing to do in their own name; it can make such callous behavior less shameful and embarrassing than it would otherwise be (Brennan and Pettit 2004).

Examples of corporate domination are commonplace. Think of the case of someone abused by a priest in childhood who contemplates bringing a complaint against a powerful church. Think of the case of small entrepreneurs who are held to ransom by the primary or secondary picketing of a powerful trade union that can put them out of business. Or think, even more saliently, of those with a claim for damages—say, damages

resulting from an oil spillage or explosion—against a large corporation. The prospect for domination in each of these cases is enormous. Compared with individual human beings, corporate organizations generally have an indefinite time-horizon, an endless fund of indifference to life's anxieties, and a more or less bottomless purse. They represent a new and powerful challenge to individual freedom.

How should we deal with the challenge posed by corporate domination? I have no easy solution to offer, especially since legal systems worldwide have been progressively increasing the rights of organizations, in particular commercial corporations, over the last couple of centuries. Governments have competed with one another to attract multinational companies to their shores by giving them ever more rights and powers, apparently oblivious of the impact of corporate power on the freedom of their citizens.[45]

Perhaps the best hope of empowering individuals in the face of corporate titans is to establish avenues for bringing complaints and charges in public forums—especially in the criminal courts—where indictment carries a great penalty for the reputation of the offending body. Corporate organizations may be able to cope with financial fines, but they all shrink in horror from bad publicity. Bad publicity can deprive churches of their congregations, unions of their support in the labor movement, and corporations of their very lifeblood: the customers who buy their products.

We have looked at troublesome asymmetries of power that arise as a result of more or less personal relationships in the family or workplace, and as a result of the relationships between individuals and corporate bodies. Without going into the issue in detail, it is also worth mentioning that in any population there are often going to be special groups whose members are

systematically vulnerable in their relationships to those in the relative mainstream. Those groups may be defined by age or employment, ethnicity or religion, gender or sexual orientation, language or migrant status, The measures required for protecting individuals in this category are as various as the sorts of problems that arise in the other relationships; it is particularly hard to generalize. But we should at least register the case, within republican theory, for seeking special insulation for the members of such vulnerable groups as well as for people in the other categories.

INSULATION, GENERAL

Insulation is also required to guard against dangers to which people in general are exposed, not just those in special relationships. The exemplars of such general dangers are acts that deserve by almost all lights to be criminalized: for example, murder, assault, rape, fraud, and theft. There are many issues here and I can only gesture at them in the most cursory way, sketching out the theory of criminal justice that a republican philosophy would support (Braithwaite and Pettit 1990; Pettit 1997a; 2014a).

Paradigm crimes of the kind mentioned involve a serious, dominating form of interference in the domain of the basic liberties and, plausibly, republican theory will call for the criminalization of such acts and indeed of any acts of a similar dominating character. But the theory is also likely to support the criminalization of acts that make such dominating interference more likely, even if they are not dominating in themselves: for example, acts of organizing with the intent to commit a crime, acts of inciting others to commit crime, or acts of seek-

ing to undermine the criminal justice system itself. At least, the theory will support criminalization in these categories insofar as that is not counterproductive or useless. Thus, it would be useless to criminalize routine deception or infidelity if the social norms associated with law can keep them within reasonable bounds. And it would be counterproductive to do so if investing the state with the power to police such an activity—here I anticipate themes from the next chapter—held out a greater prospect of domination than the activity itself.

The criminalization of different activities involves the introduction of deterrent penalties—jail time, fines, community service—for offenders as distinct, for example, from offering rewards to non-offenders. More specifically, it involves the introduction of deterrent penalties on the presumptive grounds that the community condemns the acts in question (Duff 2001); the penalties introduced are not simply costs that you can treat as payment for being allowed to perform those acts. The criminalization of certain activities aims to protect individuals from offenses against their basic liberties, or from acts that make offenses likely, reinforcing people in their status as equally free with the best (Kelly 2009). When offenses have been committed, therefore, this aim commits the state to seek to apprehend the offenders and to impose the associated penalties. This both gives credibility to the protective scheme in general and reaffirms the protected status of the victim and/or those who are vulnerable in the same way: those for whom the victim exemplifies the dangers to which they are subject.

What form should the criminal justice system assume, under a republican theory? In dealing with this question, we primarily have to consider the requirements for protecting potential victims against criminal abuse. But, anticipating the next chapter, we cannot avoid considering also the danger of investing the

state with excessive power in the area of criminal justice. Let the agents of the state be given great powers in this domain and it may prove difficult or impossible to impose effective democratic control over how they exercise those powers; it may be hard to guard against domination from above.

Given the oppressive, potentially dominating role of the state in the area of criminal justice, republican theory would argue in the first place for criminalizing only serious offenses. It would oppose the tendency to give the standing of criminal laws to public regulations governing matters like speeding, loitering, and littering (Husak 2008). And it would look for a pattern of policing and surveillance, prosecution, adjudication, and sentencing in which the agents of the state are severely restricted in the initiatives they can take and are forced to bear the onus of establishing the guilt of offenders.

Perhaps the most important requirement of such a criminal justice system is to protect against the possibility of an innocent person being punished. If agents of the state were entitled to impose sanctions independently of stringent tests of culpability, then they would possess an extraordinary degree of dominating power. They would not face sufficiently high barriers against scapegoating the innocent or singling out certain offenders for exemplary punishment. They would have enough power to intimidate whole sectors of the community.

What sorts of sentences or penalties would the theory support? Ideally, any penalty should reaffirm the status of the victim, help to provide whatever compensation is plausible, and reassure the community that the offense has not raised the likelihood of such offenses in general. The victims of assault or theft—and the families of murder victims—ought to be able to feel that what was done to them has been recognized as a wrong by the community in general and, ideally, by the

offender. Equally, they ought to be provided with some measure of restitution or reparation. And they and members of the community as a whole ought to be able to think that their prospects of suffering similar crimes are no greater, in the wake of the offender's conviction, than they were before the offense.

This approach to criminalization would allow for the possibility of mercy—say, if an offender without a record displays credible repentance and is judged, for whatever reason, not to be a threat to the community. And where mercy is denied, the approach would look for penalties that do not lock out offenders from the possibility of being reincorporated in the society as full and free citizens. This argues for a presumption in favor of more parsimonious penalties, supporting community service orders over fines, fines over imprisonment, and imprisonment over capital punishment. The criminal system should be designed to provide for the restoration of offenders as well as victims to the status of republican citizenship and freedom.

While rival theories say little or nothing about the practice of criminal justice, the republican approach makes a case for the radical reform of contemporary criminal justice systems, as even these brief comments should indicate (Braithwaite and Pettit 1990; Pettit 1997a; 2014a). This is an area of more or less salient and recurring abuse. The abuses are evident in the increasing numbers of citizens imprisoned across the world, the longer and longer terms to which they are often sentenced, the humiliation and assault to which prisoners are subject, and the failure in most systems to do anything serious in the way of reincorporating offenders into the community. Republican theory supports a radical overhaul of the criminal justice system, seeking to replace it with practices that would better promote people's general security in the exercise of their basic liberties.

But we should add one final, cautionary note. The proposals canvassed here on matters of criminal justice presuppose conditions in which relatively few actions are criminalized, relatively few crimes are committed, and relatively few offenders have to be charged, brought to trial, and punished; such conditions are necessary to allow a proper hearing to be given to each particular case. But these conditions often fail in the real world. Police are overwhelmed by the challenges they face, public prosecutors have to deal with excessive workloads, defendants are not assured of proper legal representation, the courts find questionable ways of fast-tracking their processes, and the convicted become society's rejects, dumped in overcrowded prisons or stigmatized forever in the wider community. These shortfalls from the conditions presupposed in our theory are so dramatic that they may argue for modifications to the proposals made and adjustments to the practices described. In imperfect situations, it may often be better not to try to replicate the arrangements that are abstractly most appealing, but rather to consider institutional innovations (Vermeule 2011).

It may make very good sense, in this spirit, to look for radical variations on the sort of criminal justice system we have been envisaging. We might try to supplement the criminal justice system, for example, with novel programs of restorative justice in which certain offenders can plead guilty and avoid normal judicial process. Under such a program, the admitted offender enters a conference with the victim, in the presence of a number of associates chosen by each, to determine what the offender should do to make up for the offense (Strang and Braithwaite 2000; Braithwaite 2002; Johnstone 2003). While I have not been able to explore the possibility here, restorative justice programs may well promise in real-world circumstances—and, indeed, in more ideal conditions too (Braithwaite and

Parker 1999)—to serve criminal justice better than anything I have space to consider.

Is there any serious prospect of being able to humanize criminal justice systems, bringing them more into line with the sorts of desiderata signaled? One major problem, as things stand, is that many democracies leave issues of criminal justice under the immediate control of elected officials rather than putting them at arm's length from the theater of popular politics (Pettit 2002a).[46] That means that politicians have to respond—usually in a sound bite or headline—to the anger and emotion that any serious crime understandably elicits. Therefore, they often have to make criminal justice policy in an atmosphere where anything less than a display of shock and horror, and a call for extreme measures, is bound to seem heartless and inadequate. I return to this point in the next chapter, suggesting that in the area of criminal justice, as in some other domains of policy-making, democracy may be better served by institutions that are designed primarily to register and reflect stable community standards, not to channel case-by-case responses.

JUSTICE AND THE EYEBALL TEST

This brief and tentative sketch should give a general idea of the institutions of justice that the republican theory ought to support in matters of infrastructure, insurance, and insulation. But we can hardly conclude the sketch without asking about the level of provision that is required in these areas. How much in the way of infrastructure, insurance, and insulation ought to be made available in order for people to enjoy freedom as non-domination? What counts as enough to ensure the result sought in the theory?

Under the republican theory of social justice, the laws and norms of the society should identify a suitable set of basic liberties, and then resource and protect them up to the point where, intuitively, no more calls to be done: this is the point at which people count as equals in the enjoyment of freedom as non-domination. While there may be slack enough to allow differences in private resources and protections, all must equally enjoy an adequate level of entrenchment in the exercise of those liberties.

But what level of resourcing and protection is to count as adequate? What measure of entrenchment is going to count as enough? We have to be able to give an answer to this question, however approximate, since otherwise there may be no end to the resources and protections that might be demanded in the name of republican justice. The ideal might begin to look like an inherently unsatisfiable demand, something not appropriate for the guidance of real-world policy-making.

It is at this point that the eyeball test mentioned in the prologue becomes relevant. That test is grounded in the image of the free citizen—the *liber* or freeman—of republican tradition. It says that people will be adequately resourced and protected in the exercise of their basic liberties to the extent that, absent excessive timidity or the like, they are enabled by the most demanding local standards to look one another in the eye without reason for fear or deference. They are able to walk tall, as we put it, enjoying a communal form of recognition that they are each more or less proof against the interference of others; in that sense, they command the respect of all.

The eyeball test makes justice easier rather than harder to achieve. It means that justice is compatible with failures of personal affirmation that are due to timidity or similar failures. And in allowing for a degree of material slack, it means that

social justice may be compatible with certain differences in wealth and power. Some differences may jeopardize the freedom as non-domination of the less well-off, as we mentioned in the last chapter, but many differences can still allow richer and poorer to be able to look one another in the eye without reason for fear or deference. The eyeball test allows for departures from substantive equality in such material matters, directing us instead to the importance of equality in the interactions that people are capable of enjoying with one another.[47]

While the eyeball test puts the ideal of republican justice within feasible reach, however, not mandating impossible levels of personal assurance or material equality, it ought to appeal to the most idealistic minds. It is a commonplace that a higher performance in any domain tends to generate higher expectations and standards; as a community becomes generally more caring or polite or peaceable, we will raise our expectations and standards of care, politesse, and peacefulness (Brennan and Pettit 2004). Suppose, then, that a society does better and better at achieving what counts at any time as enough to enable people to satisfy the eyeball test. As it does better in that respect, the local standards of what the test requires are likely to rise in tandem; as the society gives better protection to someone like Nora, for example, the standards for what counts as adequate protection are likely to lift in consequence. So while we embrace the ideal in any period as a feasible and useful guide to policy, we need not think that it points us to a steady state—just around the corner, as it were—where there is nothing else to be done. The ideal is inherently dynamic and developmental.

I have been suggesting that the eyeball test will give us a rough-and-ready guide to how much is required for the resourcing and protection of the basic liberties. But I should

add that it is likely to argue for different degrees of resourcing and protection in regard to different liberties. Not all liberties will call for protection in criminal law, which may be counterproductive; many will be better protected by social norms alone. And while some basic liberties may call urgently for resourcing, as we have seen, whether in providing for infrastructure or insurance, others do not. Consider, for example, the liberty to use recreational drugs, assuming that usage may involve personal risk but is not a public danger. The fact that recreational drug use involves personal risk argues against providing resources to make it generally accessible, even while concerns about domination, as we saw in the last chapter, argue for protecting people's liberty in this area. Indeed, there may even be reason to impose a heavy tax on drugs—to resource drug usage negatively, so to speak—in order to signal the personal risk involved and to encourage a general reluctance among the population to run that risk.[48]

One final question: As we saw in the second chapter, the basic liberties to be entrenched up to the level where people pass the eyeball test are not of a natural kind, and even similar societies may vary in how they define them in law and norm. Is there any way in which we might identify the best set or sets of basic liberties for a given society? I have ignored that question until now, because the obvious suggestion is that at this point too we should fall back on the eyeball test. Whatever basic liberties are established, they should be identified as well as entrenched in the manner that best facilitates people's meeting the eyeball test and enjoying the full and equal status of republican citizenship.

THE BOTTOM LINE

This sketch of the republican theory of justice would be incomplete without a comparison with rival approaches and some consideration of the novelty inherent in the practical reforms for which it calls. Every normative theory, whether in the social, democratic, or international area, is characterized by two elements: first, the base from which it argues for its recommendations, and second, the substance of the policies that it supports. The republican theory of justice—and, indeed, the republican theory of democracy and sovereignty—argues from a minimal base, viz. the requirements of freedom alone, but still manages to support a substantive and revisionary set of policies (Cohen 2004).

The minimalist base puts the theory in stark opposition to the various programs that political parties support. It offers a clear vision of what law and government should be doing in matters of social justice—promoting people's equal enjoyment of freedom as non-domination—which makes a refreshing contrast to the jumbled, opportunistic shopping lists produced by social democratic and liberal democratic parties at the polls. The republican approach scores in simplicity, memorability, and the capacity to orientate planning over the potpourri of proposals that even the most stable party program represents.

But its minimalism also marks off the republican theory from some of the best-known philosophies in the area of social justice. Thus, while the approach invokes a single freedom-centered principle in order to elaborate the demands of justice, the alternative championed by John Rawls (1971; 1993; 2001) invokes two distinct principles: one focused on liberty, the other on socioeconomic equality.[49] To quote from one of his presentations of that theory:

a. Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.
b. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society. (Rawls 1993, 291)

How can the republican theory of justice endorse a principle of freedom of a kind with the first of Rawls's principles while neglecting the second?[50] There are two considerations to mention in response. First, the freedom targeted in republican justice is, as we know, a freedom that presupposes the resources required to make it effective, whereas Rawls's theory is built around a weaker conception of freedom's demands—one under which people's equal freedom, as prescribed in the first principle, does not require them to have the resources needed to exercise and value that freedom (Rawls 1971, 204–5). And second, the freedom promoted in republican theory requires protections to guard against any power of interference on the part of others, not just to make interference by others unlikely. Rawls thinks that there is a need to guard against interference only insofar as it is a probable prospect, and so he weakens the case for robust insurance and insulation; he suggests that to depend on the goodwill of someone who is unlikely to turn nasty—and someone, therefore, who is not subjected to heavy sanctions—is not lamentable in itself (Rawls 1971, 240).

For these reasons, it should be no surprise that while Rawls needs to supplement the principle ordaining equality in freedom with a principle requiring that socioeconomic resources

should be more or less equal, republican theory does not have to look beyond the demands of freedom alone. The theory interprets freedom in a richer manner than Rawls and so, unsurprisingly, it is capable of building a suitable account of social justice on the requirements of freedom and freedom alone; it does not have to introduce an independent concern with socioeconomic equality.

Not only does the republican theory of justice have a simpler and more unified base than rival approaches, popular and philosophical alike, it also supports a substantive, more appealing set of demands and policies. The proposals that are likely to be supported by the theory, as should be clear by now, often coincide individually with proposals that have cropped up in popular politics and philosophical theory; it would be amazing if they did not. But as a bunch, they are more demanding and more coherent than most competitors.

The demanding character of the policies supported in the republican theory of justice can be seen in some of its more salient features and more likely recommendations:

- The theory entails that taxation is an essential aspect of any property system, distinguishing it sharply from any sort of theft, and thereby sidelines the antitax presumption that paralyzes practical politics in many societies today.
- While it looks for equality of status, not strict material equality, it acknowledges the connection between the two and would certainly indict the recent emergence of a mega-wealthy elite with powers of avoiding taxation, influencing government, and creating oligarchies.
- Recognizing the need for the state to maintain a material and institutional environment fit to facilitate freedom, it would focus on maintaining a sustainable natural environment—perhaps our most urgent challenge today (Broome 2012)—as well as a suitable urban and institutional environment.
- Dependency on the goodwill of others for avoiding ill-treatment already undermines republican freedom, even in the absence of ill-treatment, and so the theory would look for a legal and economic order in which exposure to possible abuse, and not just the experience of abuse, is minimized.
- Thus it would argue for a public system of social, medical, and judicial security—and a form of financial security—for everyone; in particular, it would reject the idea that private philanthropy can provide all that is required on these fronts.
- It would argue equally for publicly providing a raft of rights and powers—and publicly facilitating the social movements that can give them effect—that would enable a vulnerable domestic partner not to have to live in fear of or deference to the other.
- On the same grounds, the theory would support constraints within workplace relations that deny an employer the right to fire without cause, imposing something like a requirement to defend an appeal against dismissal in an agreed forum.
- While recognizing the role of unions in protecting employees, it would defend constraints on how far a union can resort to strike action, whether in primary or secondary picketing of a firm; for example, it might require prior recourse to arbitration of the grievance.
- Since corporations have enormous legal, financial, and political power, the theory would foster initiatives for limiting their capacity to counter individual civil claims

against them by dragging out cases in the courts and thereby imposing heavy costs on individual plaintiffs.

- While the theory would argue for the importance of the criminal justice system, it would support severe limits on the actions that the state can indict, on the measures of surveillance, prosecution, and conviction that it can employ, and on the sorts of penalties, ranging from community service to fines to imprisonment, that it can impose.
- Where real-world constraints put limits on the feasibility of running a normal criminal justice system, the theory would support restorative justice programs under which certain categories of offenders who admit their guilt are allowed to enter a conference with their victims, or their victims' families, to determine what they need to do by way of rectifying their offense.
- Finally, the theory would argue that corporate bodies like corporations or churches, and not just individual agents, should be capable of being indicted in the criminal justice system; the ignominy attached to a criminal sentence may hold out the best hope of keeping such titans in check.

These points all bear on justice for adult, able-minded individuals, since we have been abstracting from the needs of children and those who are cognitively impaired. Even in that restricted area, they are meant to be illustrative, not exhaustive. But still, they should serve to display and demonstrate the kind of recommendations that a republican theory of justice would be likely to support.

How appealing are those recommendations? How plausible are they in comparison with standard party political platforms and with existing competitors on the philosophical scene? The question takes us back to John Rawls's (1971) test of reflective

equilibrium, which we mentioned in chapter 2. The idea is to see how far the judgments and policies on social justice that republican theory supports prove on reflection to be plausible—in particular, to see how far they compare in plausibility with alternatives.

The demands made by republican theory are more extensive and coherent, and indeed individually more compelling, than the run-of-the-mill programs that political parties provide. Perhaps there is no surprise there, since parties are as much concerned with winning over the median voter as they are with elaborating abstractly attractive sets of policies. But the republican demands also compare favorably with the sorts of policies that rival philosophical approaches support. They certainly compare well with right-of-center programs that would systematically ignore many of the ailments identified in our list. But they also compare well with the left-of-center policies embraced by Rawls and others.

In one respect the demands are not as extensive as Rawls's, for his second principle of justice would look for material equality up to the point, possibly hard to reach, where allowing a degree of relative inequality would improve the absolute returns to the worst-off position. Nor are the republican demands as extensive in this way as those of even more egalitarian theories that seek, for example, the elimination of all the effects of brute luck on people's fortunes.[51] But these radical competitors are downright implausible.

Their radicalism is excessive in one way, selective in another. In arguing in radical vein for something close to material equality, the competing theories seem like moral fantasies: manuals for how God ought to have ordained the order of things rather than real-world recommendations for what the state should do in regulating the affairs of its citizens. And in concentrating on

such egalitarian proposals, they are too selective; they pay little or no attention to other areas of policy that any theory of justice ought to be concerned with. Thus, they have little or nothing to say about mundane but pressing issues like those raised by dependency in asymmetrical relationships, by the horrors of most existing criminal justice systems, or by the growth and dominance of national and multinational corporations.

Judged by the standard of reflective equilibrium, then, the republican theory of justice does better than these or any other alternatives. The recommendations it supports are challenging yet sensible proposals and would go a long way toward making any regime into an intuitively just society. If the republican theory of justice is to be judged by the character of the proposals it supports, as reflective equilibrium requires, then there are few grounds for being concerned about its credentials.

Chapter 5

FREEDOM AND DEMOCRACY

Every year a number of reports surface that attempt to rank the world's most livable cities. In arriving at their rankings, the reports consider the services available in each city, the cost of living, the natural surroundings, and other amenities. But the reports do not generally factor in the residents' level of control over how things are done in government. They consider how residents benefit from what a given city offers, but they usually ignore whether and to what extent residents have a role as the makers and shapers of the arrangements under which they live. The reports treat residents as consumers of cities, we might say, not properly as citizens.

In its discussions of different social orders, political philosophy sometimes treats people as consumers and ignores their role as citizens. It weighs the rival attractions of living as the beneficiaries (or consumers) of rival structures or arrangements. Structures in which material equality is the primary goal are considered against alternatives in which libertarian freedom or utilitarian happiness, or a mix of such goods, is all that mat-

choice in the set, at the same time; the set of choices as a whole must be co-satisfying.

7. In identifying a set of choices that meet these conditions and direct us to the sorts of basic liberties the law ought to entrench, we need only focus on upstream choices. One choice is upstream from another if securing it means securing the other, but not vice versa; e.g., securing free speech secures the freedom to speak on a particular topic, and not vice versa. Upstream choices are those co-enjoyable choices that are not downstream from any other co-enjoyable choices.
8. A co-exercisable choice is one that each is individually capable of making and that neither logic nor scarcity prevents others from making at the same time. When scarcity makes a type of choice problematic, as when limited land prevents cowboys and farmers from operating in the same area, conventional rules of property or the like can be introduced to make a circumscribed version of the choice co-exercisable.
9. A co-satisfying set of choices is one in which, ideally, each can derive satisfaction from the exercise of any single choice, no matter how many others are exercising that choice, or any choice in the set, at the same time. The set cannot include choices that inflict harm on others, expose others to domination, or are counterproductive in their effects. Some types of choice may be made co-satisfying by the introduction of suitable rules: although people in an assembly cannot each have the right to speak when they wish, they can have equal rights to speak under Robert's rules of order.
10. Which set of choices is co-enjoyable will vary across societies that differ in technology and culture, but also

across advanced, otherwise similar societies due to reliance on different rules. But the categories involved are familiar: freedom of speech, practice, association, and ownership, for example, as well as the freedom to change employment, move location, and use free time as you wish.

Part 2: The Institutions of Freedom

CHAPTER 4: FREEDOM AND JUSTICE

1. A society is just, on the republican approach, insofar as problems of *dominium* or private power are eradicated, democratic insofar as problems of *imperium* or public power are removed. Justice bears on the horizontal relations between citizens; democracy bears on their vertical relations to government.
2. By every account, justice requires the state to treat its citizens as equals, and by the republican account in particular it requires the state to treat them as equals in providing for their enjoyment of freedom as non-domination. The state must identify a suitably broad set of basic liberties and furnish citizens with the resources and protections necessary for enjoying deep freedom in the exercise of those liberties.
3. This means in the first place that the state should provide a material and institutional infrastructure that is capable of sustaining the arrangement required. The material infrastructure requires secure borders, good means of transport and communication, adequate public spaces, suitable environmental regulation, and the like. The institutional

infrastructure requires a sound legal order, accessible education and training, and the market and investment rules necessary for a flourishing economy.

4. While the republican approach fits with many other approaches in these respects, it emphasizes that the state is essential to sustaining an adequate civil and economic order, rejecting the libertarian idea that that order preexists the state and is more likely to be distorted than nurtured by state regulation and taxation.
5. Justice in the republican image is bound to require, not just an adequate infrastructure for a society of equally free citizens, but also the sort of social insurance that secures individuals and communities at a basic level against the dangers of poverty, illness, and various other forms of vulnerability. Philanthropy cannot meet people's needs adequately since, even when it comes without conditions, it is liable to expose them to dependence and domination.
6. Republican justice requires the insulation of people against the interference of others in their basic liberties, as well as infrastructure and insurance. First, it requires the special insulation of those whose position makes them vulnerable to others, whether to spouses, employers, creditors, those in the cultural mainstream, or the corporate bodies that command a special kind of power.
7. Second, republican justice requires the general insulation of people against crime. On this front, it can address all the questions in a general theory of criminal justice, ranging from what to criminalize, how to pursue surveillance and policing, how to organize prosecution and judgment, and what sorts of penalties to impose on the convicted.
8. What degree of resourcing and protection for people's basic liberties ought a state to seek in pursuit of justice?

The answer proposed here is: that level that by the most demanding local criteria enables people to look one another in the eye, without reason for fear or deference that a power of interference might inspire. This eyeball test allows for a certain inequality but not the sort that would warp people's interaction with one another.

9. The bottom line, spelled out in the text, is a theory of justice that is based on an austere principle—the demands of deep and broad freedom for all—but that argues for a rich and plausible set of demands in what the state should provide for its citizens.

CHAPTER 5: FREEDOM AND DEMOCRACY

1. Assuming that the state is required to protect against private power or *dominium*, how are free citizens to be protected—and protected as equals—against the public power or *imperium* of the state itself? The core republican idea is that if they share equally in controlling the state—if the *demos* or people achieve *kratos* or control—then the legislation, regulation, and taxation of the state will not be dominating; it will be an authorized form of interference of the kind mentioned in chapter 2.
2. Such democratic control of government can only protect people against how the government behaves, of course, not against the fact that people are forced to live in political society, within one or another particular state, and under the coercive imposition of law. Is this a problem?
3. No, it is not. That people are forced to live in political society is not due to a voluntary preference on the part of any state. Nor is the fact that they may have to live in one par-

version of the republican ideal—argues for tight constraints on action for the relief of impoverishment or oppression elsewhere. The action should not undermine democracy at home or abroad and should nurture globalized sovereignty. And in order to guard against introducing domination by the assisting state, any action adopted should be taken on a multilateral basis.

12. When would the international dispensation count as sufficient for delivering the level of non-domination envisaged under the ideal of globalized sovereignty? It would have to enable each people, via its representatives, to enjoy an international counterpart of what the eyeball test and the tough luck test identify as domestic ideals. Intuitively those representatives ought to be able to satisfy the straight talk test, addressing other states and the agents they form in combination with other states without being required to speak in subservient tones and without being entitled to speak in the tones of a superior.
13. The bottom line, spelled out in the text, is a theory of the international order that ought to prevail among peoples that is deeply challenging but still realistic. Its challenges take us well beyond the residual ideal of mutually non-interfering states without forcing us to endorse the utopian vision in which states deny their own citizens any substantive priority and seek cosmopolitan justice for all.

NOTES

1 For debate about this claim, see the exchange involving Ian Carter and Matthew Kramer on the one side, Quentin Skinner and me on the other, in Laborde and Maynor 2007.

2 Operative control may be active or virtual, as this example indicates. I control the horse actively when I use the reins to keep it on a desired path. I control the horse virtually when I let the reins hang loose because the horse is going in the direction I want. This virtual sort of control involves standing by, ready to intervene actively should that be necessary for satisfaction of my wishes.

3 Because those associations are unfortunate, some may prefer a new name for the approach. A good candidate would be "civicism," since the ideal associates freedom with citizenship, both in its historical development and in the form it assumes here. But in this book I shall continue to use the older nomenclature.

4 The recent movement, as I think of it, began from the historical work of Quentin Skinner (1978) on the medieval foundations of modern political thought, and from his subsequent articles in the 1980s on figures such as Machiavelli who wrote within the republican tradition identified by John Pocock (1975). An up-to-date list of English works in neo-republican thought should include these books: Pettit 1997b, Skinner 1998, Brugger 1999, Halldenius 2001, Honohan 2002, Viroli 2002, Maynor 2003, Lovett 2010, Marti and Pettit 2010, MacGilvray 2011; these collections of papers: Van Gelderen and Skinner 2002, Weinstock and Nadeau 2004, Honohan and Jennings 2006, Laborde and Maynor 2007, Besson and Marti 2008, Niederberger and Schink 2013, and a number of studies that deploy the conception of freedom as non-domination, broadly understood: Braithwaite and Pettit 1990, Richardson 2002, Slaughter 2005, Bel-

lamy 2007, Bohman 2007, Laborde 2008, White and Leighton 2008, and Braithwaite, Charlesworth, and Soares 2012. For a recent review of work in the tradition see Lovett and Pettit 2009. This book is naturally built mainly on my own contribution to republican themes. It reflects most closely the work in a recent extended monograph on the republican theory of democracy; see Pettit 2012c.

5 Contemporary republicanism has its origins in the historiographic works of Fink (1962), Robbins (1959), and especially Pocock (1975), which first revived interest in the classical republican writers and charted the historical continuity of their political ideas. Quentin Skinner argued in a number of essays, later collected (and somewhat revised) in Skinner 2002, that these works had failed to recognize that classical republicanism did not endorse a view of freedom as participation in the Rousseauvian mode. And building on this insight, Pettit (1996; 1997b)—and Skinner himself (1998)—cast the republican conception of freedom as one according to which it is the absence of domination or dependence on the arbitrary will of another, and not the absence of mere interference, that matters. This idea of freedom as non-domination has become the crucial unifying theme for those who work within the neo-republican framework, although of course within that frame there are also some differences of emphasis and detail (Pettit 2002b). For a recent, alternative history of thinking about freedom see Schmidtz and Brennan 2010.

6 They also included the republicans who formed the United Irishmen and rebelled unsuccessfully against British rule in 1798. Their leader, Wolfe Tone, signed many of his earlier pamphlets "A Radical Whig." See Cronin and Roche 1973.

7 For a recent view that does not make Rousseau so central, see Israel 2011.

8 Adherents of the Rousseauvian approach may have come to construe freedom in this way under the influence of their opponents. Benjamin Constant (1988) is likely to have had such an impact when, in a famous lecture of 1818, he identified "the liberty of the ancients"—essentially, the liberty hailed by Rousseau—as consisting in the right of playing an equal part in a collectively shared form of self-government. Isaiah Berlin (1969) later described this as a positive conception of freedom.

9 Thomas Hobbes (1994b, 21), arguably, anticipated this development in maintaining that corporal freedom requires only the absence of obstruction and contractual freedom, as we might call it, the absence of a contracted obligation to another. But Hobbes's views on freedom are notoriously difficult. For commentaries see Pettit 2008a, Skinner 2008, Pettit 2012a, and Skinner 2012.

10 What makes the interference of the law acceptable for Lind? Not the fact that it is subject to the control of the citizenry, as under the republican idea, but the fact, roughly, that it prevents more interference than it perpetrates (70). And on that score, so he thinks, the Americans do quite well, perhaps even better than the British (124).

11 This is unsurprising, since he endorsed the crucial premise in that argument: viz., that "all coercive laws . . . are, as far as they go, abrogative of liberty" (Bentham 1843, 503).

12 Reducing legal constraints on the interference of others may have the effect, of course, of increasing constraints overall, exposing people to the constraining effects of others' actions. Bentham thought that while they themselves took away from freedom, legal constraints would often do more good than harm, reducing constraints overall.

13 They also vary in whether they think that freedom should be understood as a goal to be promoted by social institutions—that is, broadly, in a consequentialist way—or as a constraint on the form that institutions are allowed to take: as a source of natural rights that institutions may not breach. The best example of a natural rights form of liberalism is Nozick 1974. My rendering of republicanism is consequentialist, since I derive the different demands of freedom from the requirement to promote freedom as non-domination as well as possible, treating people as equals. For a defense of this sort of consequentialism, see Pettit 2012b.

14 I am grateful to Cecile Laborde for pressing me to make these distinctions. In previous works I have tended to downplay the distinctiveness of constitutional liberalism, a term I take from her, and have unnecessarily provoked liberal protest; see Christman 1998 and Larmore 2001. One issue I do not address here is how far the commitment to the constitutional forms embraced by this approach is properly grounded in a concern for freedom or equality.

15 See Locke (1960, s 57): "where there is no law there is no freedom," and Kant (1996, 297): "a lawful constitution . . . secures everyone his freedom by laws."

16 For an illuminating account of Rawls's views on freedom see Costa

2009. This argues, contrary to the line taken here, that Rawls comes close to thinking of freedom in terms of non-domination and that his institutional proposals would serve the cause of non-domination quite well.

17 There is no tension between saying that laws and norms constitute freedom, on the one side, and holding on the other that they serve to advance or promote it. As immunity against a disease is not defined by the presence of suitable antibodies, so freedom is not defined by the presence of suitable laws and norms; we can imagine other ways of being immune against the disease and other ways of being proof against the intrusions of others. As we can think of the antibodies doing better or worse in constituting a certain immunity, then, so we can think of laws and norms as doing better or worse in constituting your freedom. And as we may hope for antibodies that do a good job in immunizing us, so we may plan for laws and norms that do a good job in providing us with freedom.

18 In particular, of course, I try to rework the ideas central to the Italian–Atlantic tradition of republicanism, not the ideas associated with the revisionary republicanism—better perhaps the communitarian approach—introduced, as we saw, by Rousseau. I think of a contemporary work like Sandel 1996 as a good example of a communitarian republicanism.

19 In view of the universalizing lesson learned from liberalism, it might not be inappropriate, as some have suggested, to speak of the reworked doctrine as liberal republicanism or republican liberalism (Dagger 1997).

20 Consciously echoing the Roman playwright Plautus, Stephen Sondheim captured these themes nicely in his musical *A Funny Thing Happened on the Way to the Forum.* Pseudolus, a slave, is utterly captivated by the prospect, held out by his master, Hero, of becoming truly free, like "a Roman with my head unbowed"—like a "Roman having rights and like a Roman proud."

21 This assumes that in some relevant sense you enjoy free will, but I ignore the question here of what it is to have free will. I address that question in Pettit and Smith 1996, Pettit 2001c, and Pettit 2001b.

22 This way of interpreting interference contrasts with the approach to the theory of freedom taken by those recent thinkers who, partly with a view to making freedom measurable, restrict interference to the removal of an option: the prevention of that choice. See Steiner 1994, Carter 1999, and Kramer 2003.

23 Hobbes explicitly defends the view ascribed to him here in his debates with Bishop Bramhall. See Hobbes and Bramhall 1999, 91.

24 As it happens, Berlin fails to recognize that Hobbes is a defender of the view he rejects. Notice that to accept Berlin's view, according to which the freedom of a choice requires that all options be open, is not to deny that you may be said to have chosen something freely even when, unbeknownst to you, the option you chose is the only one you could have chosen. On this issue see Frankfurt 1969.

25 On the importance of robustness, see Pettit 2001a, List 2004 and 2006, and Pettit 2015. For a discussion of robustness and democracy see Southwood 2014.

26 For the record, Berlin (1969, 122) denies the resources element in the first claim too: "Mere incapacity to attain a goal is not lack of political liberty."

27 Another of way of registering the loss of freedom involved here is to notice that, like interference by replacement, it transforms the options you previously had, say in doing X or Y, into options that ought rather to be described as X-if-I-allow-it and Y-if-I-allow-it.

28 The difference of attitude shows up in the fact that we feel warranted resentment at being controlled by another's will but not at being constrained by factors that have nothing to do with will; here we are entitled only to feel exasperation. Indeed, we do not feel warranted resentment just at the ill will of others, as suggested in Peter Strawson's (1962) classic paper "Freedom and Resentment." We may also resent the fact that others have the power to subject us to their ill will. This resentment presupposes that something can be done to change things, of course, and it will be warranted if it is directed at parties who can rectify the situation—say, the government—or if it is directed at the powerful themselves insofar as they take their power for granted, do not do anything to renounce it, or take positive pleasure in exercising it.

29 When the bank acts on the general policy, imposed by local standards, that constrains how it treats you, whether well or badly, it acts involuntarily in the sense identified by Serena Olsaretti (2004). On her approach, acting on a preference will be involuntary—as in giving the robber your money rather than losing your life—insofar as there is no acceptable alternative to enacting that preference.

30 And equally, of course, the impact on freedom is intuitively worse when the interference involved affects a preferred option rather than an unpreferred option.

31 There is a considerable literature on the measurement of freedom, particularly in economic circles, but most approaches do not distinguish between these two different dimensions; see Sugden 1998. For an example and defense of such an approach, see Carter 1999. Carter tries to cast all offenses against free choice as acts that prevent choice, removing one or another option, as do Steiner (1994) and Kramer (2003). For an exchange between their viewpoint on freedom and the republican alternative, see Laborde and Maynor 2007.

32 The notion of a social norm that is introduced here picks up points made in a variety of approaches. See, for example, Hart 1961, Winch 1963, Coleman 1990, Sober and Wilson 1998, Elster 1999, and Shapiro 2011.

33 Norms, as I describe them here, may or may not be internalized: people may or may not actually approve or disapprove on the pattern that others expect them to follow. Equally, norms may or may not be generally propounded by individuals as norms that the group endorses. For a discussion of such matters see Pettit 2015.

34 This plausible story is borne out by the evidence that most people obey the law not for fear of punishment, but on the basis that social norms put lawbreaking off the menu of acceptable options. See Tyler 1990.

35 We shall see later in the chapter that the basic liberties have to be carved out by law; they are not a natural kind. This means that there may be a policy issue in many cases between reducing the scope of some basic liberties in order to increase the number of basic liberties available and expanding the scope of those liberties at a cost to the number available overall. While I ignore that issue here, the general approach would suggest that it is best decided on the basis of what best facilitates satisfaction of the eyeball test introduced in the next chapter.

36 What is the level of assistance—say, assistance for the disabled—that a society ought to provide? The issue is best settled by reference to the eyeball test.

37 That observation raises a question in turn. Should we entrench choices that are not available to individuals in this way but are accessible to groups of people who have voluntarily associated with one another, as when they have incorporated as a church or company or club? In general, I think we should avoid entrenching any group choices whose entrenchment does not follow from the entrenchment of certain individual choices. Going further in entrenching group freedoms is liable to empower certain coalitions and to impact negatively on the freedom of individuals outside those coalitions.

38 The farmer and the cowboy will be familiar from Rogers and Hammerstein's musical *Oklahoma!*, but the predicament they exemplify was already a matter of human experience in clashes between farming and foraging peoples, as early as the fifth millennium BCE; see Morris 2010, 112–14, 127–28, 271.

39 While this conception of the citizenry is broad in one respect, of course, it is narrow in another; it does not include children or those suffering, permanently or temporarily, from cognitive or associated limitations or ailments. This means that the discussion in this chapter ignores issues of justice in relation to children and the intellectually disabled.

40 Kant is a figure, with roots in the republican tradition, who particularly emphasized the need for a state and a law in order to give people freedom in respect of ownership. See Ripstein 2009 and Stilz 2009.

41 Is this view in conflict with John Locke's (1960) famous claim that property exists in the state of nature and that the principal role of the state is to judge and regulate conflicts over property and related matters? Not necessarily. Locke's state of nature can be conceived of as a condition in which norms have emerged and gained a hold on people's mutual expectations but have not yet been reinforced by state-imposed laws or indeed state-imposed adjudication and sanction. In that conception, it is a protopolitical regime, not a regime that is strictly prepolitical. It resembles H. L. A. Hart's (1961) conception of a condition in which the primary rules of coordination apply but have not yet been supported by the secondary rules of recognition, adjudication, and enforcement that the state introduces.

42 Although philanthropy will be unsatisfactory in republican terms, of course—although it will not provide people with freedom as non-domination—it will be a much better alternative than outright neglect.

43 One argument against compulsory public insurance, and for discretionary private philanthropy, might seem to be that personal problems are often self-induced. What if the people who suffer problems

are to blame for falling on bad times; they gambled their money away, they smoked excessively or drove recklessly, or they engaged in legally risky ventures (Dworkin 2000; Fleurbaey 2008)? Isn't there a certain moral hazard in providing for public insurance against an event for which a person holds a certain responsibility? Might it not lead to reckless risk-taking? It might but it probably wouldn't, for two reasons. First of all, the crises involved are such that few would willingly run a salient risk of suffering such a problem. And second, the insurance benefits available are not likely to be such as to compensate fully for the loss endured in such a crisis.

44 This policy would run directly counter to "the traditional negative libertarian 'at-will' doctrine that, consistent with contractual obligations, an employer may fire an employee for 'good cause, no cause or even for cause morally wrong'" (Levin 1984, 97). For historical background see Cornish and Clark 1989, 294–5. My support for restrictions on the ability of employers to fire at will presupposes a less than fully competitive market. For a fine and congenial discussion of the market implications of republicanism in more ideal circumstances, see Taylor 2013. On the history of republican attitudes to markets, see MacGilvray 2011.

45 This means that effective action against the possibility of corporate abuses needs international action. The good news on that front, although it is news only about a first step, is that in 2011 the United Nations Human Rights Council adopted the rules proposed by the Special Representative of the Secretary General, John Ruggie, for applying human rights law to corporations. See Knox 2011.

46 For an argument that the pattern is not absolutely universal and that there is a variety in criminal justice, corresponding to the variety in capitalist organization (Hall and Soskice 2001), see Lacey 2008.

47 Other authors have recently emphasized the importance of interactional equality of this kind; see Anderson 1999, Scheffler 2005, and O'Neill 2008.

48 Even John Stuart Mill (2001) suggests that a society should seek to reduce the attractions of choices that can threaten long-term damage to the chooser by imposing relatively higher taxes on the resources that the choices require.

49 The first liberty-centered principle is meant to have priority in the sense, roughly, that its satisfaction cannot be sacrificed in any degree for the sake of the greater satisfaction of the second.

50 I ignore the fact that Rawls's basic liberties, unlike those envisaged here, include procedural liberties such as the freedom to stand for office and vote. I do not see those as liberties in the sense that is relevant to justice but as rights that are related rather to the requirements of democracy, to which I turn in the next chapter. Rawls merges concerns about the horizontal relations between people and concerns about their vertical relations to government, whereas I think that clarity is best served by keeping them apart: it flushes out the issue, discussed in the epilogue, of which of these relations should be given primacy in political philosophy and advocacy.

51 For a good recent interpretation and defense of luck egalitarianism, see Tan 2008. For a response that I find congenial, see Sanyal 2012.

52 Of course, the basic structure to be chosen in Rawls's view includes certain procedural liberties such as the liberty to vote or to stand for office, as we have seen. But these procedural liberties tend to get downplayed—they are not given the importance that republicanism gives democratic devices in general—and he even casts them as "subordinate to the other freedoms" (Rawls 1971, 233).

53 Notice that an order established in that way would not itself be dominating, since it would not impose anyone's will on others; the norms would operate as blindly and blamelessly as a force of nature.

54 The evidence cited in Pinker 2011 bolsters this claim, since it strongly suggests that in the absence of the coercive state, levels of violence are likely to be higher by many orders of magnitude.

55 For an elaboration of the commitment in democracy to equality, see Christiano 1996 and 2008.

56 Most historical republican thinkers did not make use of the term "democracy," even when it came into vogue in the early modern period. This, I suspect, is because absolutist opponents like Bodin and Hobbes had given an unwelcome meaning to the word, treating it as rule by an absolute, majoritarian assembly and contrasting it with the mixed constitution.

57 Equally, of course, an undemocratic regime might impose laws that are just, albeit not robustly or securely just. A colonial administration would be the very paradigm of an undemocratic regime but might establish a just social order. In such a case, we would have no obligation not to try to overthrow the system, even though we would have an obligation to honor and preserve the laws.

58 What democracy ensures, on this account, might be described as

way of identifying cases where such weapons may reasonably be employed by the international community.

89 Crucially, of course, the mere fact that a regime is not democratic will not make it oppressive. Thus, by most accounts, there is no human right to democracy (Cohen 2006).

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