

FREEDOM AS ANTI-DOMINATION

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TABLE OF CONTENTS

	Page
Chapter	
I. INTRODUCTION.....	1
What is Liberalism?.....	3
Reflective Equilibrium.....	11
Outline of the Argument.....	20
II. NEGATIVE AND POSITIVE LIBERTY.....	26
Conceptions of Liberty.....	26
The Problem with Negative Liberty.....	35
The Problem with Positive Liberty.....	43
Two Concepts or One?.....	69
III. AGGREGATE CONCEPTIONS OF LIBERTY.....	73
Aggregating Negative and Positive Liberty.....	73
The Overall Freedom Approach.....	80
The Equality Approach.....	94
The Democratic Consent Approach.....	120
Towards a Third Conception of Liberty.....	125
IV. FREEDOM AS NON-DOMINATION.....	126
Beyond Negative and Positive Liberty.....	126
A Republican or Liberal Conception?.....	128
Non-domination.....	133
The Positive Aspects of Non-domination.....	148
Non-domination Reconsidered.....	193
V. PURE NEGATIVE LIBERTY.....	195
Pure Negative Liberty and Non-domination.....	195
Possibility of Interference.....	197
Pure Negative Liberty.....	205
Problems with Pure Negative Liberty.....	223
Pure Negative Liberty Reconsidered.....	249
VI. FREEDOM AS ANTI-DOMINATION.....	251

Towards a Status Based Conception of Liberty..	251
Freedom as Anti-domination: a Sketch.....	259
Some Objections.....	290
Anti-domination and Liberalism.....	309
Anti-domination and the Value of Negative and Positive Liberty.....	332
VII. ANTI-DOMINATION AND CONTEMPORARY POLITICAL ISSUES..	342
Assessing Political Controversies.....	342
Pornography.....	344
Same-sex Marriage.....	357
Affirmative Action.....	369
Conclusion.....	380
BIBLIOGRAPHY.....	381

CHAPTER I

INTRODUCTION

While a commitment to individual liberty lies at the core of liberalism, it is not entirely clear what this commitment entails, as there is much disagreement over the concept of liberty itself. As Abraham Lincoln once famously stated, "we all declare for liberty, but in using that word we do not all mean the same thing" (Lincoln 2003: 677). To put it another way, liberty is a *concept* of which there are many distinct *conceptions*. All liberals converge, virtually by definition, in endorsing liberty as a primary political value (Cranston 1967); however, this convergence would be fairly vacuous if it were reached only at the level of the concept of liberty, while significant divergence at the level of the conception of liberty remained. If the liberal commitment to liberty is to have any definite content, then we need to know which conception of liberty is the liberal one.

In this essay, I will attempt to answer this very question. The problem is that liberals themselves strongly disagree about which conception of liberty grounds liberal principles. As I will argue, however, none of the

conceptions traditionally championed by liberal theorists are adequate to the task because they often conflict with fundamental liberal commitments and intuitions. The dispute over the nature and value of liberty is indeed part of the wider dispute between liberals over the the central commitments of liberalism itself. It is my contention, however, that all parties of this dispute have failed to fully appreciate the respective deficiencies of the standard conceptions of liberty in terms of those commitments that liberals all share. Given these deficiencies, a better, more adequately liberal, account of liberty is needed. To this end, I will outline and argue in favor of a unique alternative conception of liberty -- liberty as *anti-domination* -- on the grounds that it is the conception best suited to liberalism.

The anti-domination conception of liberty holds, in short, that one is free to the extent that one stands in a reciprocal relation of power with one's fellow citizens. Unlike other conceptions of liberty, freedom as anti-domination is a *status based* as opposed to an *act based* conception, and, as I will argue, it is this feature of the anti-domination account that makes it well suited to ground liberal commitments and values. Before outlining this broader argument in detail, I first want to say something

about what I mean by "liberalism" and the method by which my argument will proceed. I will then conclude this introductory chapter by giving a brief sketch of my overall argument and of each chapter that will follow.

What is Liberalism?

As I mentioned above, all liberals agree that liberty is a primary political value, but this does not tell us much about liberalism as a political doctrine for two reasons. First, as I just noted, liberals disagree about what liberty means. Just as importantly, however, they also disagree about the role liberty plays within liberal thought. While all liberals hold that freedom is a primary political value, they do not all hold that it is *the* primary political value. For some liberals, liberty, though no doubt significant, plays a subsidiary role to more central liberal values, such as equality or social justice (see below). For others, the value of liberty must be ranked with, or weighed against, other distinct, perhaps even conflicting, liberal values (Berlin 2002).

Instead of trying to characterize liberalism in terms of one central or defining feature, I think it is best described as a family of views that share a variety of

commitments while disagreeing about the precise nature and role of any one of these commitments. Internal debates amongst liberals aside, I contend that all liberals, or perhaps even better all liberalisms, share a series of *normative* and *institutional* commitments.

Normatively, liberalism is committed to what Adam Smith called "the liberal plan of equality, liberty, and justice" (Smith 1937: 628). As such, liberals generally affirm a commitment to equality and justice in addition to liberty. As with liberty, there is much disagreement amongst liberals concerning the proper understanding these concepts as well and what a commitment to them requires. These controversies are indeed significant, but it would be a mistake to let them completely overshadow the extent to which liberals do agree about these norms. Regarding equality, John Gray nicely summarizes the liberal position (gendered language aside) as follows: liberalism, according to him, is "*egalitarian*, inasmuch as it confers on all men [and women] the same moral status and denies the relevance to legal or political order of differences in moral worth among human beings" (Gray 1995: xii). In short, liberalism holds that all people have *equal moral worth*. Again, while liberals disagree about what people are owed on account of their equal moral worth, they all deny that claims to

superiority, or pleas for special treatment, on the basis of race, gender, class, religion, ethnicity, etc. have moral relevance.

In turn, the liberal commitment to justice is nicely captured by John Rawls's assertion that, "each person possesses an inviolability that even the welfare of society as a whole cannot override" (Rawls 1971: 3). To this extent, liberalism is "individualist" (Gray 1995: xii); it holds, as Martha Nussbaum puts it, that "the flourishing of human beings taken one by one is both analytically and normatively prior to the flourishing of the state or nation or religious group" (Nussbaum 1997: 62). This commitment is, I think, importantly distinct from the idea that liberalism is committed to a kind of social *atomism* (Taylor 1985), a charge often leveled by critics of liberalism.¹ Still, it is certainly the case that all liberals affirm the moral worth of persons as *individuals*.

For now, I will hold off from giving even the broadest outline of the liberal commitment to liberty since this discussion will dominate much of the subsequent chapters. I do want to note, though, that liberals who tend to focus more on equality or justice nonetheless still recognize

¹For a response to this type of criticism, see Bird 1999.

liberty as a fundamental liberal value. For example, while Rawls writes that, "justice is the first virtue of social institutions" (Rawls 1971: 3), his First Principle of Justice states that, "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" (Rawls 1971: 60). Similarly, while Ronald Dworkin (1995; 2000; 2007) and Will Kymlicka (1988; 2002) both maintain that equality is the most basic liberal value, each argues that a commitment to equality necessarily entails a commitment to liberty. So again, while liberals differ about the precise nature and role of liberty within the broader liberal framework, they each affirm that liberty has significant value and further that any account of liberalism would be incomplete if it lacked some account of the importance of liberty.

In addition to these three normative commitments, liberals also share certain institutional commitments. The first of these is a commitment to democratic governance. The liberal sentiment concerning democratic institutions is exemplified by John Stuart Mill's unequivocal declaration that, "the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community" (Mill 1919: 21). This conviction is shared by other early

originators of the liberal view, such as Locke (1997), and by contemporary liberals as well.² It is not just that liberals, as a group, also tend to be democrats. Rather, liberals hold that there is a fundamental connection between liberal norms and democratic government.³ That is, the liberal ideals of liberty, equality, and justice can only be realized under democratic regimes. Departures from democracy then are in some vital sense also departures from these ideals.

Again, liberals disagree about *why* democracy is essential insofar as they disagree about *how* democracy links up with these liberal norms, and they further disagree about what sorts of institutions and procedures are required in order to make a regime sufficiently democratic. Still, it is not hard to see why liberalism and democracy are, on a general level, fundamentally related. First, democratic rule, in which each and every citizen has an equal say, is the institutional embodiment of the liberal norm of equality (Christiano 2004). In contrast, a government in which some citizens were permitted to rule over others without their consent would

² See for example, Rawls 1971, Waldron 1987, Buchanan 2002, Christiano 2004, Dworkin 2006 and Estlund 2008.

³ For a detailed discussion of the relationship between liberalism and democracy, see Holmes 1995: 31ff.

be one that failed to respect the equal moral worth of persons. Further, democratic government, at least ideally, guarantees that the interests of each are given due consideration, helping to ensure that the requirements of justice are met (although democracy certainly is not sufficient to ensure justice as I will discuss shortly). Finally, democracy is often seen as vital to liberty. As we will see, liberals differ on why this is so. For some, democracy helps protect liberty because non-democratic governments, as an empirical matter, are more likely to infringe on personal liberty than democratic ones. For others, liberty itself consists in some form of political participation. Again, I want to hold off on this discussion for now. My point here is simply to stress that liberalism and democracy are *necessarily* related. Not all democrats are liberals, but all non-democrats are non-liberals.

This last point is crucial because, while all liberals are democrats of some sort, they do not favor unrestricted democracy. Political power in a liberal regime must, in some sense, reside with the people, but this should not be taken to mean that the majority should be given free rein to coerce those in the minority in order to advance their own ends. An unchecked democracy amounts to little more

than tyranny by the majority. As such it hinders, rather than advances, the liberal ideals of liberty, equality, and justice. In a purely majoritarian regime, those in the minority are not treated as moral equals and their well being is likely to be sacrificed for the benefit of the majority. This concern over the prospect of majoritarianism gives rise to the second institutional commitment: the protection of basic rights. In a liberal regime, power is vested in the people, but there are some strict limits on its exercise. The majority is not legally permitted to infringe on the basic rights of citizens even if they have a strong and compelling interest in doing so. Accordingly, liberals do not simply endorse democracy simpliciter, but what is commonly referred to as *liberal democracy*.

The protection of basic rights ensures that individuals are treated as equals and that they are not rendered subordinate to the greater good. Again, the commitment to protecting basic rights is shared by classical and contemporary liberals alike.⁴ Not surprisingly, however, liberals disagree about what having a right entails and what it means to protect or promote it. Nonetheless,

⁴For some examples in the classical tradition, see Locke (1997) and Mill (1999). For contemporary theorists, see Rawls (1971), Kymlicka (1988), Waldron (1993) and Dworkin (2007).

liberals generally converge in endorsing certain rights as basic.⁵ The first of these are rights ensuring both equal protection under the law and an equal right of participation in the political process. The second are those rights commonly referred to as *basic liberties*: a right to freedom of expression, freedom of conscience, freedom of assembly, and freedom from arbitrary arrests and seizures. Liberals also generally affirm a right to hold private property (though, as we will see, there is significant disagreement amongst liberals about what this right amounts to and its significance).

As the above list indicates, there is an intuitive connection between rights and liberty. As we will see, however, the precise nature of this relationship is difficult to discern, especially if we take one of the standard conceptions of liberty as our starting point. Indeed, as I will argue, the failure of standard views to account for either the significance or inviolability of the basic liberties is one of their major deficiencies from the liberal point of view.

The account of liberalism offered above is just a sketch. There are no doubt other ways of describing liberalism's core commitments that may differ from my own.

⁵For a representative list, see Rawls 1971: 61.

Nonetheless I think all liberals can identify with the description I have offered here. In this respect, the above account outlines a series of minimal conditions for liberal views. Whatever else liberals are committed to, they are at least committed to the norms of liberty, equality and justice as well the need for democratic governing procedures constrained by the protection of basic rights. In the proceeding chapters, I will expand upon this minimal account of liberalism, but for now I want to move from this topic and say something about the method by which my argument will proceed.

Reflective Equilibrium

My argument will proceed, as is common in political and moral philosophy, by means of "reflective equilibrium" (Rawls 1971: 20ff.). A reflective equilibrium strategy attempts to establish the greatest possible coherence between our institutions, or considered judgments, and the more general theory that govern them by adjusting both our judgments and our theory as necessary. In some respects, my project is an exercise what Rawls calls "narrow reflective equilibrium" (Rawls 1999: 289); however, I do not mean this in the pejorative sense that Rawls does. My project is

narrow in two senses. First, it is narrow insofar as I am only interested in *political liberty*. I am not interested in all the various ways in which we might characterize someone, or even something, as *free*. I take it, however, that this stipulation is relatively uncontroversial. To demand that a theory of freedom cover all possible meanings of the word "free," is to demand far too much precision in ordinary language. We should not expect, for example, that the phrases, "I am *free* for lunch this afternoon," "coffee is *free* with your meal," and "the prisoner was set *free* as of today" all make use of the same singular concept of *freedom*.

My project, however, is narrow in another, perhaps more controversial, respect. It is narrow insofar it starts from considered judgments that are grounded in the basic liberal commitments I have just described. My goal is to construct a theory of liberty that best fits with these commitments within a larger theory of liberalism. To this extent, I take these commitments for granted. Though the precise nature and content of these the commitments will necessarily be adjusted and revised as this project progresses, I will not consider them subject to wholesale rejection or test them against alternative basic principles from competing conceptions of political morality. To this

extent, my discussion will be mostly internal to liberalism. I will not address objections, criticisms, or concerns originating from theorists of other competing traditions, such as critical theorists, radical democrats, realists, or Neo-Marxists. Were I striving for the more ambitious achievement of "wide reflective equilibrium" (Rawls 1999: 289), it would be necessary to do so, but my goal in this essay is to develop a liberal theory of liberty, not to defend liberalism against its many critics.

It would be wrong, however, to infer from this that my project has little or no bearing on liberalism's overall appeal as a theory. In the first place, if liberalism lacks internal coherence -- that is, if there is no conception of liberty that is not in tension with other liberal commitments and intuitions -- then liberalism will not be an attractive political ideal from the perspective of wide reflective equilibrium. We have to be able to show that liberalism is a workable political doctrine on its own terms before we can show that it is superior to alternative positions. Second, while I will not address criticisms of liberalism directly, I think that many, though certainly not all, of these criticisms are based on a misrepresentation of liberalism's central commitments, particularly its commitment to liberty. As I hope will

become clear later on, the account of freedom I will offer under the name of anti-domination is able to dispel some common criticisms of liberalism, such as the criticism that it is overly atomistic and fails to appreciate the importance of communities or groups (Taylor 1985), that its core principles do not in fact support a commitment to democracy (Sandel 1996), and that its understanding of freedom is compatible with some forms of slavery (Pettit 1999). To this extent, my account will be appealing to non-liberals who might share most of liberalism's basic commitments, but are critical of how liberals typically understand them.

If successful, my account of liberty would go a long way towards establishing the viability of the liberal project as whole. It would show both that liberalism constitutes a coherent set of commitments and has more appeal than some of its critics have supposed. I should note, however, that even this is likely too ambitious of a goal. I have no pretensions about being able to resolve liberal debates concerning the nature of liberty once and for all. What I do hope to show is that the standard competing conceptions are deficient in ways their proponents have failed to fully appreciate and that freedom as anti-domination offers a potentially attractive

alternative.

The anti-domination conception offers an attractive alternative, I will argue, because it best fits with liberal commitments and intuitions, but I need to say something more about what I mean by "best fits." There are several ways in which a given conception of liberty can fail on the kind of narrow reflective equilibrium standard I have described above. First, a conception of freedom would fail to establish reflective equilibrium if it plainly contradicted other liberal commitments. So, for example, a conception of liberty that understood freedom as submission to a religious authority would obviously be in severe tension with the liberal commitments to equality and democratic governance. This is no doubt an extreme case. As I will argue, the kind of conceptions that are popular in the literature conflict with basic liberal convictions in far more subtle ways, but these conceptions are nonetheless deficient to the extent that they do conflict with these other commitments. Second, a conception fails to achieve genuine reflective equilibrium if it is merely an ad hoc construct that reflects liberal principles, but fails to offer an independent account of *liberty* on its own. So, for example, an account of liberty which declared that one is free only to the extent that one is a citizen

in a liberal democracy, but failed to say anything about *why* living in a liberal democracy was essential to liberty, would be a purely ad hoc conception of this sort. Such a conception fails to achieve reflective equilibrium because it is insufficiently *reflective*; it simply takes certain commitments and intuitions at face value without figuring out how they hang together or even if they are consistent. Were this all that were required in order to achieve reflective equilibrium, it would be a remarkably weak standard, as virtually any set of commitments could meet it. Reflective equilibrium would therefore serve as a poor means of evaluating the merits of competing theories.

So much for how a given conception might *fail* to establish reflective equilibrium; I now want to say something about what constitutes conditions for success. Success on a reflective equilibrium approach is a matter of degree. That is, a given conception of liberty might be said to succeed in either the *weak* or *strong* sense. In the weak sense, a conception of liberty succeeds if it is merely *consistent* with other liberal commitments, but does not necessarily have any stronger relationship to them. For example, suppose one championed something like a Buddhist conception of freedom, in which freedom was understood as being free from desire or achieving a state

of inner peace. Such a conception is probably consistent with the liberal norms of equality and justice as well as the institutional commitments to democracy and basic rights, but there is no essential connection between the Buddhist conception of freedom and these other core commitments (indeed, one of the supposed appeals of the this kind of conception is that it can be achieved under almost any conditions). Accordingly, conceptions like this only weakly contribute to reflective equilibrium because, while they fit within broader liberal scheme, they do not inform it; they tell us nothing about the nature of other liberal commitments or how they hang together.

There is another respect in which a conception might succeed, but only in the weaker sense. This occurs when a conception does establish a stronger connection between liberty and other liberal commitments, but only on the basis of certain potentially contingent assumptions. In *A Theory of Justice*, for example, Rawls argues against utilitarianism in favor of *justice as fairness* on this basis. Because utilitarianism does not strictly rule out slavery or other policies that infringe on basic liberties, the utilitarian is forced to argue that it will never turn out, as an empirical matter, that such policies will increase overall net utility. In contrast, *justice as*

fairness does not rely on such assumptions and its application is therefore not limited by these empirical assumptions.⁶

In contrast, a conception of liberty achieves reflective equilibrium in the strong sense if it both reveals the connection between liberty and other liberal commitments and is not overly reliant on certain empirical assumptions. This is not to say that it makes *no* empirical assumptions or that its application is unaffected by the relevant facts, whatever they may be. It is unlikely that a theory of liberty which was completely free standing from any set of empirical questions would have much practical application. But a conception is stronger to the extent that its fit with other commitments and intuitions is less dependent on contestable assumptions. It is stronger because, as Rawls puts it, "it ensures this fit over a wider range of possible cases" (Rawls 1971: 160).

There are good reasons to prefer a conception of liberty that contributes to reflective equilibrium in the strong rather than weak sense. Determining which

⁶Rawls states: "It is characteristic of utilitarianism that it leaves so much to arguments from general facts. The utilitarian tends to meet objections by holding that the laws of society and of human nature rule out cases offensive to our considered judgments. Justice as fairness, by contrast, embeds the ideals of justice, as ordinarily understood, more directly into its first principles. This conception relies less on general facts in reaching a match with our judgments of justice. It insures this fit over a wider range of possible cases" (Rawls 1971: 160).

conception of liberty was the liberal one would not have much value if nothing hinged on it. Many conceptions of liberty are consistent with liberalism, but this does not tell us much about liberalism itself. Again, liberalism bares more than just a nominal relationship to liberty. That is, liberty is not just one value among many that liberals happen to endorse; it is a *central* and, at least in part, *defining* component of liberalism. It is part of what makes liberalism unique as a political philosophy, and, if liberty is to play this role, then it must be able to contribute to reflective equilibrium in the stronger sense.

Some might object, though, that the desire for this kind of reflective equilibrium is fundamentally misguided. It might turn out, as a conceptual matter, that our most cherished political values are in conflict. Isaiah Berlin, whose views on liberty I will discuss at length, held this view (Berlin 2002). According to him, sometimes the demands of liberty, equality, and justice will pull us in opposing directions, and there is no way of resolving these conflicts that does not result in us having to sacrifice one value in favor another. To fail to recognize this is to naively deny the inherently tragic character of human life. Perhaps, but until we have tried and failed to

reconcile our most basic moral and political commitments, we should not assume that this is the case (Dworkin, 2001: 90). After all, if we could show that, contra Berlin, these values can be reconciled, then we will have made considerable progress towards resolving what at first seemed like interminable political conflicts. Maybe no such account is ultimately available -- I will try to offer one in the following pages -- but resignation to this fact should be a position of last resort.

Outline of the Argument

The remarks above set the stage for how my argument will proceed. I will start by examining the standard accounts of liberty found within the literature. I will argue that some of these accounts fail in terms of reflective equilibrium whereas the others succeed only in the weaker sense. So, for example, against some conceptions, I will argue that they conflict, quite explicitly, with other fundamental liberal values such as equality and justice or the commitments to democracy and basic rights. Others, I will argue, offer conceptions that are consistent with these values, but are constructed in a mostly ad hoc fashion. Not all of the potential candidates fail in this

manner, but when they do not, I will argue that they only succeed in the weak sense. In other words, they either establish mere consistency, or they rely on certain questionable assumptions.

Having done this, I will then offer my own conception of liberty as anti-domination. I will argue that this conception succeeds in the strong sense. Indeed, I will try to make the strongest possible case for this view that I can. On this strongest possible account, liberty as anti-domination is held as *the* central, rather than merely a central, liberal value, and other liberal values, such as equality, justice, democracy, and basic rights, are valuable precisely because they promote freedom as anti-domination. The success of my account, however, does not hinge on whether I am entirely successful in demonstrating that the strongest case holds (an admittedly ambitious task). Rather, my goal is to show that the anti-domination account is *more successful* than other alternatives. If it turns out that liberalism cannot be grounded in a commitment to liberty as anti-domination alone, and must also be grounded in a commitment to either equality or justice, this will not count against the anti-domination view provided that it does a better job of grounding liberal principles than competing conceptions -- in other

words, that it does more to establish the overall coherency of the liberal project than these other accounts.

A more detailed sketch of my argument goes as follows: I will begin, in Chapter 1, with Isaiah Berlin's famous distinction between "negative" and "positive" liberty (Berlin 2002). I will argue that Berlin is wrong in thinking that the negative conception is the properly liberal one, in particular because it cannot account for either the various ways in which one can be rendered unfree or the significance of the basic liberties. I will also argue, however, that the positive conception does not offer a viable alternative. While Berlin is wrong about the fitness of the negative view, he is right in thinking that the positive view is ultimately antithetical to liberalism because it justifies coercion in the name of liberty. Further, recent attempts to make the positive account more congenial to liberalism fail. Having rejected both negative and positive liberty, in Chapter 2, I will turn to what I will call "aggregate conceptions" of liberty, or, in other words, conceptions which try to combine elements of both negative and positive accounts. Such conceptions, I will argue, face the following dilemma: either they ultimately collapse into a positive account, or they are ad hoc in the manner described above.

Because neither negative nor positive liberty, nor some combination thereof, present viable candidates, in Chapter 3, I will consider Philip Pettit's recent account of freedom as "non-domination" (Pettit 1999). Pettit's non-domination view at least at first appears to be unique because he presents it as a *status based* conception of liberty as opposed to an *act based* conception. One's freedom, on his view, is supposedly determined by the position one occupies in relation to others rather than what one does or can do. Accordingly, as we will see, the paradigmatic case of unfreedom on Pettit's account is slavery. Despite its initial appeal, however, I will argue that Pettit's view fails to offer a genuine third alternative. Like many aggregate accounts, Pettit's view ultimately reduces to a positive conception of liberty and accordingly inherits all its flaws. It is also, once its implications are fully drawn out, incompatible with the commitments to democracy and basic rights. After rejecting the non-domination account, In Chapter 4, I will revisit the negative conception of liberty. Specifically, I will focus on Ian Carter (2008) and Mathew Kramer's (2008) argument that a properly formulated account of the negative view -- what Carter calls "pure negative liberty" -- is better suited to capture the harms of domination. While

theirs is superior to other negative accounts of liberty, I will argue that it too is incompatible with the liberal commitments to democracy and basic rights.

Finally, in Chapters 5 and 6, I will present my own account of freedom as anti-domination. As the name suggests, my account is based, in part, on Pettit's. Unlike Pettit's account, however, freedom as anti-domination, as I will argue, is a true *status based* account of liberty and therefore conceptually distinct from both negative and positive conceptions. Just to recall, freedom as anti-domination holds that one is free insofar as one stands in a reciprocal relation of power to others. In Chapter 5, I will argue that anti-domination is a coherent and practically viable alternative conception of liberty, one which better conforms to liberal commitments and intuitions. In the final chapter, Chapter 6, I will show how freedom as anti-domination can be usefully applied to some current political controversies. Specifically, I will address the issues of pornography censorship, same-sex marriage, and affirmative action.

Admittedly, the account of anti-domination I will be able to offer here will only constitute a rough sketch. While I will try to anticipate various criticisms and extrapolate on key points as I go, there is much that I

will regrettably have to leave uncovered. Still, I hope to show that the anti-domination view represents an original third conception of liberty, one deserving of serious consideration.

CHAPTER II

NEGATIVE AND POSITIVE LIBERTY

Conceptions of Liberty

In this first chapter, I will examine several distinct conceptions of liberty, focusing specifically on Isaiah Berlin's famous distinction between negative and positive liberty. Berlin's treatment of this topic serves as a useful departure, not only because it has proved so influential, but also because he tries to make the case that the negative conception is the liberal one. After outlining Berlin's position in detail, I will argue that we should reject this conclusion. The negative conception is ultimately tension with fundamental liberal intuitions and accordingly cannot serve as the normative foundation for liberal institutions. I will also argue, however, that the positive conception fares no better on this score, and that proponents of that view are unable to effectively respond to Berlin's central criticism of it.

In political and moral philosophy, there are various distinct articulations of the concept of liberty as well as

various ways of distinguishing between them.¹ Many such articulations make a distinction specifically between two kinds of liberty. For example, there is the traditional distinction between *freedom from*, which conceives of freedom primarily in terms of the absence of external impediments, and *freedom to*, which conceives of freedom primarily in terms of the presence of enabling conditions. Similarly, Benjamin Constant distinguishes between the "liberty of the ancients," which consists in active participation in public life, and the "liberty of the moderns," which consists in the protection of the private sphere from external interference (Constant 1988: 309).

The most famous contemporary treatment of this topic, though, is Isaiah Berlin's distinction between negative and positive liberty (2002). According to Berlin, negative liberty involves the absence of interference whereas positive liberty involves the achievement of self-mastery. To be sure, Berlin's own view draws from the *to/from* distinction as well Constant's *ancient/modern* distinction, and we might be tempted to think of negative liberty as equivalent to freedom from/modern liberty and positive

¹ Throughout, I will assume there is no distinction between "liberty" and "freedom" and use these terms interchangeably.

liberty as equivalent to freedom to/ancient liberty. As we shall soon see, however, this is not entirely correct. In particular, Berlin's conception of positive liberty is a bit more robust than either freedom-to or what Constant's liberty of the ancients.

According to Berlin, a person's negative liberty consists in the extent to which he or she can perform any given action unimpeded. As Berlin puts it, "if I am prevented by others from doing what I could otherwise do, I am to that degree unfree" (Berlin 2002: 169). On the negative account, it does not matter if an agent desires to perform a particular action or if she should perform a particular action. The negative view remains non-committal regarding the evaluative worth of the action in question, either by the agent's own lights or by some more objective measure. As Jeremy Bentham, one famous proponent of the negative view, asks rhetorically, "the liberty of doing evil, is it not liberty?" (Bentham 1962: 301) Berlin likewise points out that it would be rather paradoxical if a slave could become more free, at least in the political sense, simply by conditioning himself to desire only those courses of action that his status affords (Berlin 2002: 31). In addition to Bentham, who defines liberty as "the

absence of restraint" (Bentham 1968: 310), the negative tradition also includes Thomas Hobbes, who similarly characterizes liberty strictly as "the absence of external impediments" (Hobbes 1998: 86), as well as Berlin himself.

In contrast, acting freely on the positive view requires not only the absence of external interference, but also that one's actions originate from oneself. That is, that one acts on the basis of one's own desires or in accordance with one's own designs. As Berlin puts it, to be free in the positive sense is to "be one's own master" (Berlin 2002: 178). In order to possess positive liberty then, I must be the one who determines my own goals and pursuits and not find myself dependent upon, or at the mercy of, various alien influences. The positive view thus greatly expands the potential sources of unfreedom. On the positive account, I can be rendered unfree not only by physical interference, but also by intimidation, manipulation, lack of resources, lack of knowledge, my own immaturity, or by my own weakness of will. In this respect, Berlin's conception of positive liberty goes quite a bit further than liberty understood as *freedom to*. On Berlin's account, I am free in the positive sense not just to the extent that I am rendered capable of performing

certain actions, but to the extent that I am properly *in command* of myself.

For Berlin the central distinguishing feature of the two views is that negative freedom is concerned with "the area within which the subject" is free to act whereas positive freedom is concerned with the "what, or who" that determines what someone can do or become (Berlin 2002: 169). Unlike the negative view, which is not concerned with the character of the agent, but only with the extent to which he or she encounters interference, the positive view requires that an agent's actions originate from his or her "real" or "true" self (Berlin 2002: 180).

This appeal to the real or true self can be understood in a variety of ways. In one sense, it can be understood as the distinction between the lower, or "empirical self," which is comprised of our base instincts, impulses, and desires, and the higher, or metaphysical self, which is comprised of our most fundamental and essential capacities, such as our ability to reason and reflect self-critically (Berlin 2002: 179ff). We are acting freely, on the positive account, when our actions are determined by our higher as opposed to our lower selves. This is the understanding of freedom endorsed by rationalists such as

Kant and Spinoza. It is also the one advanced by the British Hegelian, T. H. Green, who characterizes freedom "as expressing the condition of a man who is inwardly 'master of himself'" (Green 1900: 322) and as the power of one to "become all that he has it in him to be" (Green 1900: 324).

In another sense, the real or true self can be expanded to encompass not only oneself as a particular individual agent, but some more inclusive *whole*, such as a social group, culture, or the state. On this understanding, I am not free to the extent that I am doing what I want to do, but to the extent that my actions conform with, or are constitutive of, the collective will of this larger body. This is Constant's "freedom of the ancients," or freedom as participation in public life, and it is the understanding freedom employed by Rousseau when he declares that it is the *general* as opposed to the *particular* will that expresses one's true freedom (Rousseau 1968: 64). On this version of positive liberty, freedom requires some form of collective action. This view is exemplified by Hannah Arendt who makes an explicit contrast between negative liberty, or what she calls "mere liberation," and true freedom which can only be attained through civic engagement

(Arendt 1968: 148). It is also the view expounded by John Dewey who describes "liberty" as, "that secure release and fulfillment of personal potentialities which takes place only in rich and manifold association with others" (Dewey 1954: 150).

There may indeed be significant overlap between these two ways of conceiving the self under a positive conception of liberty. Exercising our essential human capacities, such as reason and self-reflection, may require that we engage with others and recognize the constitutive role these larger groups play in our own identities, though positive views no doubt differ as to exactly how our identity and its constitutive features are to be understood.

Nevertheless, all variants of positive views share a certain salient feature: they all require, in the addition to the absence of interference, some form of active participation on the part of the agent. So, for Green, I am only free to the extent that I actually achieve self-realization, and for Arendt, I am free only to the extent that I am actively engaged in some form of public life. Following Charles Taylor, we can classify negative views as employing an "opportunity concept" of liberty and positive

views as employing an "exercise concept" (Taylor 1985). This distinction perhaps better captures the distinctively *negative* and *positive* aspects of each conception, since it highlights the fact that freedom is enhanced on the negative view through the *removal* of external obstacles whereas it is enhanced on the positive view through the *promotion* of certain behaviors.

This is what motivates Berlin's concern that positive views result in the troubling paradox that physical coercion can render one more free rather than less free. Once we understand freedom as an exercise rather than an opportunity concept, and once we recognize the relevant source of our freedom as our true or higher self rather than our empirical self, we introduce the possibility that the use of force may serve as means to promote freedom rather than hinder it:

Once I take this view, I am in position to ignore the actual wishes of men or societies, to bully, oppress, torture them in the name, and on behalf, of their 'real' selves, in the secure knowledge that whatever is the true goal of man (happiness, performance of duty, wisdom, a just society, self-fulfillment) must be identical with his freedom - the free choice of his 'true', albeit often submerged and inarticulate self. (Berlin 2002: 180)

In short, one can, to use Rousseau's unfortunate phrase, be "forced to be free" (Rousseau 1968: 64), or, as Berlin puts it, on the positive view, "liberty so far from being incompatible with authority, becomes virtually identical with it" (Berlin 2002: 194).

This is why Berlin identifies the negative conception as the properly liberal one. In so far as liberalism seeks to *limit* the legitimate use of state force through the promotion of rights and democratic procedures, it employs an opportunity rather than exercise concept of liberty. Accordingly, freedom, on the liberal view, must be understood as, "the opportunity to act, not the action itself" (Berlin 2002: 35). Berlin's view seems to accord with accounts of liberty found within the classical liberal tradition. For example, according to Mill's "harm principle," "the only freedom which deserves the name is that of pursuing our own good in our own way" (Mill 1956: 16), and, as Locke insists in *The Second Treatise*, all people are naturally in "a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit" (Locke 1997: 4). Indeed, the

negative conception seems to play a significant role in the development of liberal thought.²

The Problem with Negative Liberty

Were Berlin's assessment correct, we could join him in endorsing the negative conception as the liberal one and let the matter rest. Unfortunately, while Berlin rightfully identifies the problem with positive views from a liberal perspective, it is not clear that the negative view fares better in light of the criticisms posed by positive theorists. As Berlin himself notes, and as I will examine in further detail later, neither Mill nor Locke endorses a *strictly* negative view, and the negative view may not map as cleanly onto accounts of freedom found in classical liberalism as Berlin might have supposed (Gray 1980). Whereas Berlin seems to attribute these incongruities to a confusion on the part of classical liberals, I think they point to a deep fundamental tension between negative liberty and core liberal commitments. In

²For a discussion of the negative concept of liberty in the history of liberal thought, see Gray (1995) chapters 7 and 8.

fact, it is debatable whether Berlin himself consistently endorses a purely negative conception of liberty, a point I will explore further in chapter 2.

As an exercise concept, positive liberty sometimes requires the employment of physical interference as a means to enhance liberty. The negative conception, however, firmly rules out this possibility by regarding any and all instances of physical interference as impediments to freedom, and this is why Berlin finds it preferable from a liberal perspective. This exclusive focus on physical interference, however, severely limits the scope of the negative account. The problem is that there are powerful means by which one might reduce the freedom others without employing physical interference at all.

John Christman (1991) offers the compelling example (hardly all that farfetched) of a culture that instills in women the conviction that they should be subordinate to men -- that they should not desire any independence of their own, and that they should defer to their male partners on all major decisions. Such a culture need not employ physically coercive methods in order to preserve this power dynamic. Provided that women are raised without the resources or opportunity to question their inferior status,

they will likely accept their position as legitimate. But it hardly seems right to say that their freedom remains undiminished simply because their subordination is achieved without the employment of physical force. If anything, this lack of need for directly coercive measures points to the devastating efficiency of these oppressive techniques (see Foucault 1980: essay 5).

The negative conception ultimately cannot recognize the myriad ways in which someone may find him or herself at the mercy of another -- through manipulation or intimidation for example -- without necessarily being subjected to physical interference. Even threats of physical violence may not limit freedom on the negative account, since, if the threat is effective in getting its victim to comply with whatever is being demanded, then no actual interference will result. When, for example, the highwayman threatens you with the choice between your money or your life, you will not incur any real sanction provided that you comply. Unless we make certain assumptions about what choices agents can *reasonably* consider viable -- the kind of assumptions prohibited by negative views -- then, rather counter intuitively, we cannot consider threats as coercive (Benn and Weinstein 1971).

Similarly, Philip Pettit has recently argued that negative conceptions cannot capture what he calls instances of "domination" (Pettit 1999). Consider the case of the lucky slave under the rule of a benevolent master. So long as the slave maintains the master's favor, he or she will encounter little actual interference. But we could hardly count the slave as free on this score, since his or her freedom is entirely dependent on the whim of the master. Were the master's disposition to change, the slave would no longer enjoy this lack of interference. Even when the master's hand is stayed, the slave lives under the ever present threat of this prospect, and this dependency renders the slave unfree in a significant respect. Negative accounts, however, cannot account for the freedom reducing effects of this dependency, since it does not always manifest itself in the form of actual interference. The result is that some instances of slavery are compatible with negative liberty. This, however, is a troubling result for the negative view since, if anyone is to count as unfree, surely it's the slave (this after all is the defining feature of slavery), and a lucky slave is still nevertheless a slave in some essential sense. I intend to explore Pettit's criticism of negative liberty and his own

conception of liberty as non-domination at greater length in later chapters, but for now I simply want to highlight that the negative view, at least as Berlin presents it, fails to properly recognize that the predicament of the lucky slave entails substantial unfreedom.

The problem is that these other, non-interference based, sources of unfreedom are likely to be every bit as prevalent, and therefore every bit as freedom limiting, as actual interference. According to Iris Marion Young (1990), for example, there are at least "five faces of oppression," of which physical violence is only one (the others being "exploitation," "marginalization," "powerlessness," and "cultural imperialism"). In this respect, the negative conception is overly narrow. It may rule out interference in the name of liberty, but it does so at the expense of disregarding entirely other significant impediments to individual freedom.

There is a second problem, however, that plagues negative accounts regarding the relative worth of various freedoms. On the negative view, all acts of interference are of a par since judgments concerning the value of various actions are excluded in determining the extent of one's liberty. This commitment, however, generates rather

counter intuitive results when comparing the respective degree of liberty enjoyed by citizens of different political regimes. Consider Charles Taylor's famous traffic light example. Traffic lights, since they impede movement, count as restrictions of freedom on the negative conception strictly speaking. Impositions on freedom of religious worship, however, appear to result in a less severe restriction of freedom, as one is likely to encounter more interference from traffic lights on a day-to-day basis than one would if religious worship were prohibited, an imposition that for many would at worst result in actual interference only one day a week or perhaps none at all (Taylor 1985: 218ff).

This, however, forces the proponent of the negative liberty to concede that a state that restricts religious worship, but has relatively lax traffic laws, is *more* free than one that protects freedom of religion but imposes many traffic laws. This is a rather tough bullet to bite, though. Traffic lights are a fairly trivial, even welcomed, restriction of movement, whereas prohibitions of religious worship of any kind constitute a fairly egregious violation of individual liberty. Even if we hold that traffic lights are coercive in some sense, it is hard to

maintain that they are equivalent to restrictions on religious freedom or other basic liberties. From a liberal perspective, it is hard to deny the intuition highlighted in Taylor's traffic light example. Within the liberal tradition, certain basic liberties - such as freedom of speech, religion, and thought for example³ - are regarded as more essential than others despite the fact that these basic liberties seem to provide less in terms of overall negative liberty. The negative account, however, offers no means by which we might rank the relative value of distinct liberties.

What makes the negative account so attractive to Berlin - namely its exclusive focus on physical interference - is what also makes it overly limited from a liberal perspective. Ultimately, this strict focus on physical interference renders the negative conception both too narrow and too broad. It is too narrow in the sense that it cannot account for sources of unfreedom other than interference, and it is too broad in the sense that it regards any act of interference as equally freedom limiting. The negative conception indeed avoids the more

³ There is certainly much room for disagreement amongst liberals about which liberties should be considered *basic*, but for a representative list, see Rawls, 1971: 61.

troubling dimensions of positive accounts, but it does so at too high a price.

I should note that, more recently, some advocates of the negative approach have offered versions of it designed to respond to many of the above objections. In particular, Hillel Steiner (1994), Ian Carter (1999) and Mathew Kramer (2003) have gone substantially farther than Berlin in systematically drawing out the full implications of the negative view. I put aside their respective positions for now, however, because I intend to address them at length in chapter 4. What I hope to show in that chapter is that some of the of above objections do still in fact apply to these more nuanced approaches, but I think we can better appreciate the supposed merits of the Steiner/Carter/Kramer approach by contrasting it with Pettit's non-domination view, which I intend to explore (and ultimately reject) in chapter 3. For now, I just want to emphasize that the cruder version of the negative view, at least, is deeply problematic.

The Problem with Positive Liberty

Despite Berlin's objections, we might wonder whether or not the positive conception provides a better alternative.

Taylor and Christman both endorse positive views for this reason, and, while Young resists characterizing her view as a formal account of freedom in general, she at least implicitly seems to advocate in favor of a kind of positive conception.⁴ Because positive views countenance a broader array of potential barriers to freedom, and because they regard certain physical restraints as more significant than others, they might prove satisfactory where negative views are lacking. What I will show, however, is that it is precisely these features of positive conceptions that generate the anti-liberal paradox at the heart of positive accounts.

⁴Of these three, only Christman explicitly considers his view "liberal." Taylor and Young object to what they think is an overly atomistic understanding of the self that they believe is central to liberal views. Contrary to Taylor and Young, I do not think that social atomism is essential to liberalism (Bird, 1999), but this objection aside, I think that the liberal worries I raise against positive views are consistent with both Taylor and Young's own commitments. That is, regardless of how they want to label their own views, both Taylor and Young share certain commitments with liberalism that are inconsistent with the positive conceptions of liberty they want to endorse.

As opposed to negative views, positive conceptions allow for the possibility of *internal*, in addition to *external*, barriers to freedom thus allowing for sources of unfreedom other than physical interference (Taylor 1985). An agent might be able to pursue certain courses of action entirely unimpeded, yet he or she may still fail to act out of fear, ignorance, lack of ability, or mere lack of will. On the positive view, these internal obstacles -- internal in the sense that they do not stem from physical interference by others -- necessarily count as restrictions of freedom because they often prevent self-realization, or self-mastery, every bit as much as external obstacles, and sometimes even more so. According to Taylor:

[...] the fact that I am doing what I want, in the sense of following my strongest desire, is not sufficient to establish that I am free. On the contrary, we have to make discriminations among motivations, and accept that acting out of some motivations, for example irrational fear or spite, or this too great need for comfort, is not freedom, is even a negation of freedom. (Taylor 1985: 222)

If internal obstacles hinder freedom, it follows that rather invasive instances of physical interference can promote individual liberty. To illustrate this, consider the following example. Say that Alf truly desires to join the army in order to, in short, "be all that he can be." Yet Alf also dreads the rigorous physical and mental

demands of army service. He indeed possesses a "great need for comfort," and, while he regrets his weaknesses of will and wishes he could abandon his cushy civilian life and enlist, he just cannot bring himself to do it. So an army recruitment officer, let's call him Sgt. Green, decides to help Alf by forcibly conscripting him into service. After doing so, Sgt. Green then routinely forces Alf, through threat of severe sanction, to engage in grueling army training exercises, often against Alf's expressed objections. On the positive view, Green's use of physical coercion actually increases Alf's freedom, since it conforms to his fundamental desires. Green forces Alf to perform the actions he most desires to do and thereby helps him overcome, or master, his strong, and ultimately hindering, base desire for comfort. In short, while Green no doubt engages in interference, he helps Alf to exercise his freedom.

This would still be the case even if Alf did not acknowledge any strong or fundamental desire on his part to join the army. Since positive freedom requires acting on the basis of our "true," "real," "higher," or "more fundamental" wants or desires, it is always possible that we are mistaken about what we do in fact desire. Were this

not the case, we could not make sense of the claim that some of our desires are more significant, or somehow more fundamental, than others, because there would no criterion by which we could be right or wrong about which desires are more central to who we are. All desires would just be brute and of a par, but then there would be no sense in which acting on the basis of one desire would be preferable to acting on the basis of another. As Taylor stresses:

The whole notion of our identity, whereby we recognize that some goals, desires, allegiances are central to what we are, while are not or less so, can make sense only against a background of desires and feelings which are not brute, but what I shall call import-attributing [...]. Thus we have to see our emotional life as made up largely of import attributing desires and feelings, that is, desires and feelings which we can experience mistakenly. (Taylor 1985: 224)

So, to return to the example above, even if it never occurred to Alf to join the army, Sgt. Green may nevertheless further Alf's liberty by conscripting him anyway. If Green can identify a fundamental value that Alf, for whatever reason, fails to appreciate, then Green can coerce Alf in order to "help" him achieve this goal. Whereas the negative view requires neutrality concerning such value judgments - on the negative conception, the value or disvalue of performing an action in no way effects

whether an agent is free to perform it - the positive view necessitates that we take these evaluations into account.

This raises the question of how such evaluative judgments are to be made. Taylor seems to imply that there is in fact an objective moral criterion by which we can establish our most central desires. Consider the following example given by Taylor:

How can we exclude in principle that there may be [...] other false appreciations that the agent does not detect? That he may be profoundly in error, that is, have a very distorted sense of his fundamental purposes? [...] I should nominate Charles Manson and Andreas Baader for this category, among others. I pick them out as people with a strong sense of some purposes and goals as incomparably more fundamental than others, or at least with a propensity to act the [sic] having such a sense so as to take in even themselves a good part of the time, but whose sense of fundamental purpose was shot through with confusion and error. (Taylor 1985: 227)

Taylor takes it as intuitive that neither Manson nor Baader were acting on the basis of their own most fundamental desires. Presumably, this assessment does not involve some psychological fact about either Manson or Baader, since then it would be an empirical question as to whether their actions conformed to their ultimate purposes. Instead, Taylor implies that Manson and Baader were *necessarily* not acting on the basis of their ultimate, most fundamental purposes, presumably because what they did was so objectively heinous.

On at least some positive views then, we are acting freely only to the extent that our actions conform to some objective moral value or standard. To return to our example again, Green now can coerce Alf without knowing anything about Alf in particular if he is correct in thinking that military experience is objectively valuable. Green can rightfully ignore any or all of Alf's professed objections, or any facts about his history or past actions. To be sure, there will be much disagreement about what the appropriate moral values or standards are, and Green will not be promoting Alf's liberty if he is in fact mistaken about the value of military service. The agapic pacifist, for example, would regard the promotion of peace as the relevant moral value and would thus find it necessary to forcibly prevent a newly assertive and self-confident Alf from joining the army against his wishes in order to help him realize his true moral project. The important point to note is that, in either case, Green or the agapic pacifist will only be decreasing Alf's liberty when they interfere *on the basis of* an incorrect evaluative assessment and not to the extent that they employ physical force.

We can see why Berlin would find such examples troubling. We might of course think that forced

conscription is in some cases necessary, and we might even think that such conscription benefits the person on whom it is imposed. It might make this person more disciplined, more productive, better socialized, and even ultimately happier, but it achieves these goals, however worthy, at the expense of the person's liberty. State conscription might in some cases constitute a *justified* use of coercion, but it is nevertheless still *coercion* and therefore intuitively seems to result in a reduction of individual liberty. To hold otherwise, would allow for the possibility that a fairly pervasive state -- one that say required prolonged military service from all its citizens in times of war and peace in order to "better" its citizenry -- would be entirely in line with the promotion of liberty. In summary, because they allow for *internal* in addition to *external* barriers to freedom, and because they countenance the relevance of value judgments, positive views can be used to justify expansive state coercion.

It might be objected, though, that examples like the one outlined above move too quickly. While positive views might permit coercion in the name of liberty in certain cases, they perhaps do not justify such *pervasive* coercion. One might assert, for example, that the positive view need

not necessarily devolve into a defense of despotism provided that we hold that it is the individual him or herself who is in the best position to identify and realize his or her own purposes. The instances in which government interference will actually improve one's efforts towards self-realization will thus be relatively rare. Taylor, for example, holds, "that each person's form of self-realization is original to him/her, and can therefore only be worked out independently" (Taylor 1985: 212), and Joseph Raz similarly insists:

The fact that the state *considers* anything to be valuable or valueless is no reason for anything. Only its being valuable or valueless is a reason. If it is likely that government will not judge such matters correctly then it has no authority to judge them at all. (Raz 1986: 412)

On such an approach, positive liberty is not necessarily in conflict with liberalism. In fact, precisely because the liberal state is minimally invasive, it might be best suited to promote one's positive liberty.

This is an important objection because Berlin's case against positive liberty is based almost entirely on his conviction that positive views ultimately justify sweeping state interference. If, however, there are positive conceptions that are more liberal-friendly, so to speak, then the force of his argument is weakened considerably at

least against some views. As positive views, they may still permit some degree of interference in the name of liberty, but if these instances were reduced to cases of *soft paternalism* (such as seat belt or helmet laws, compulsory education for children, and mild public censorship) rather than outright tyranny, it is not intuitively obvious that these views run contrary to the fundamental commitments of liberalism. After all, liberals frequently advocate in favor of such policies.⁵

Berlin seems to rest his case against positive conceptions on the conviction that, whatever their intrinsic merits, positive views have historically been susceptible to distortion by those who want to employ them as justifications for tyranny and oppression:

[...] the perversion of the notion of positive liberty into its opposite – the apotheosis of authority – did occur, and has for a long while been on the most familiar and depressing phenomena of our time. For whatever reason or cause, the notion of 'negative' liberty [...], however disastrous the consequences of its unbridled forms, has not historically been twisted by its theorists as often or as effectively into anything so darkly metaphysical or socially sinister or remote from its original meaning as its 'positive' counterpart. (Berlin 2002: 39)

⁵ See for example Mill's famous discussion of preventing people from walking on unsafe bridges (1999: 146). I discuss this example further in Chapter 2. cf. Feinberg (1989: 12ff.)

Berlin thus advances a kind of *slippery slope* argument against positive conceptions of liberty. We should adopt the negative conception in favor of the positive one, he reasons, because even those versions of positive liberty which contain no overtly despotic commitments will inevitably be employed to advance such aims.

We should be cautious, however, before declaring this objection decisive, as appeals to slippery slopes are often fallacious. The worry of course with slippery slopes is that they imply a series of causal connections without providing sufficient evidence that these connections do in fact hold. Such appeals, of course, need not *always* be fallacious. It is an empirical question whether or not positive conceptions have been employed effectively, or have in any way contributed to, the enactment of highly coercive policies or the rise of tyrannical political regimes. Berlin, writing just after the fall of National Socialism and just at the rise of communism, both of which he thought endorsed implicitly positive conceptions, felt justified in stipulating this empirical connection (Berlin 2002: 194; 198). But surely it would require a great deal more empirical research and argumentation to show definitively that *all* positive conceptions of liberty

inevitably, or even *likely*, contribute to the realization of despotic rule. In fact there might not be such a strong connection between positive liberty and tyranny if it turns out that, as an empirical matter, an invasive state is not so good at promoting one's true aims or purposes. Of course, as Taylor notes, there will be exceptions, such as Manson and Baader, that warrant state intervention, but these cases will be rare and rather uncontroversial. On the whole, Taylor, Raz and others might argue, the positive view will recommend against interference.

There are a couple of problems, however, with this defense of the positive conception. In the first place, it is not clear that these cases will be all that rare. The case of Alf, outlined above, hardly seems that implausible, and we can imagine multiple other cases in which we can identify, and help better realize, someone's authentic desires through interference. If we know, for example, that someone has failed to go college, get married, or take up mountain climbing merely out of fear, ignorance, or laziness, why shouldn't we coerce him or her into doing so on the positive view? Again, it will be an empirical question as to whether such interference will be effective -- perhaps we will not be very good at identifying people's

ultimate purposes, or perhaps they will resent our interference and thus come to reject these purposes rather than identify with them -- but neither Taylor nor Raz offer much evidence to indicate that the positive view will come out against interference in most cases, and it seems plausible that the evidence will suggest otherwise.

There is, however, a deeper *conceptual* problem with this position. The positive view can offer, at best, a *prudential* argument against the use of interference. That is, it can offer no reason why coercion is *morally wrong*, only why it might not be *effective*. This, however, runs against the intuition that certain coercive acts are morally heinous regardless of their outcomes. For example, in a footnote, Taylor asks us to consider, "the unease we feel at the reconditioning of the hero of Anthony Burgess' *A Clockwork Orange*" (Taylor 1985: 226).⁶ It seems clear that Alex's treatment in that novel warrants, at the very least, "unease," but it is hard to see how the positive view can sustain this conviction. The implication is that such coercive techniques violate the dignity of those who are subjected to them, but in what sense can we say that

⁶ This treatment is vividly depicted in Stanley Kubrick's film version, in which Alex's eyes are forced open as he watches various film clips intended to "cure" him of his anti-social behavior.

their dignity has been violated on the positive view? We cannot say what seems intuitively obvious: "because it impinges on their liberty in a fairly dramatic way," because, if the treatment is effective in getting the person to realize his or her own "true" desires, however understood, then it constitutes an *advance* of their liberty on the positive account. Of course we might say that such treatment is unlikely to be very effective, that it is likely to do more harm to anyone subjected to it than it is to help further their liberty (indeed, Alex's treatment proves ineffective in a variety of ways), but we will never be able to definitively rule out this possibility.

Further, suppose the state were to become exceptionally good at identifying and promoting people's own true desires or purposes. Say that advances in neuroscience and behavioral psychology allowed states to develop physically invasive techniques to achieve this end. Would this now make such use of force acceptable? If anything, we are intuitively inclined to think that the invasiveness of these techniques would make their use more objectionable from the standpoint of liberty not less so. The forms of social engineering employed in *A Clockwork Orange* or *Brave*

New World are not deplorable because of their ineffectiveness, but because of their degradingness.

On the positive account, though, it will always be an open question whether physical interference, even in its extreme forms, will promote or hinder liberty. One could not object to a proposed coercive state policy by asserting, "you cannot do this to me. This exceeds the limits of the state's power," as this objection could never count as *decisive* on the positive account. The best one could do is question the efficacy of any particular policy proposal.

To put this point another way, even when the positive conception does recommend against interference, it can only give what Stephen Darwall calls "a reason of the wrong kind" (Darwall 2006: 13ff). On the positive view, when someone objects to what he or she perceives as coercive interference, we, as alleged aggressors acting on the basis of the positive conception, may very well acquiesce to his or her demands if we conclude that such interference is unlikely to be effective. But in such cases, while we will be acting *in accordance* with his or her demands, we will not be acting *because of* them, as these objections have no normative weight of their own. Accordingly, on this

conception, the liberal commitment to individual liberty loses much of its force as it can no longer serve as a decisive objection to coercive impositions. In short, the problem is not that positive views always *require* pervasive interference; it is that they do not properly prohibit it.

It should now be clear that the positive conception is not much better than the negative one at explaining the priority of the basic liberties, such as freedom of speech, religion, thought, assembly and so on. Formal rights that protect such liberties can serve, at best, a purely instrumental role on the positive account. Suppose, for example, we could positively verify that someone's religious beliefs -- beliefs that were instilled in him or her as a child -- served to repress his or her *true* desires and stifle his or her *real* potential. In cases such as these, the positive view might *require* prohibitions against religious worship.⁷ Again, the crucial point is that the positive view robs basic rights of their proper moral force. They can never function as strict prohibitions against government interference, or as "trumps," as Ronald Dworkin (2007) puts it.

⁷Gaus (2003a) and Carter (1999: Chapter 3) both offer versions of this argument against the positive view.

It should also be clear that the positive conception is no better at recognizing the manifold sources of oppression. Dominated groups who suffer from marginalization, exploitation, or cultural imperialism will never be able to assert to their oppressors, "stop, you cannot do this to us," as the positive account deprives them of this appeal. Even when their objections are heeded, this will not because they have objected. Consequently, the positive conception effectively renders them *powerless*. At best their objections can count as evidence that the interference being imposed upon them might not successfully achieve the desired end. Accordingly, the positive conception provides no better recourse against these sorts of harms than the negative one, and, even worse, it can sometimes serve to justify them.

As I will argue in subsequent chapters, a chief virtue of the conception of freedom as *anti-domination* that I hope to develop is that, unlike negative and positive conceptions, it is able to account for both the significance of basic liberties *and* the harms of various forms of oppression not limited to physical interference. Before moving on, however, it is worth noting two other

strategies for *liberalizing* the positive conception: the *pluralism* approach and the *content neutral* approach. I want to briefly address both these strategies here. While I think that both mitigate, to some extent, the disturbingly *anti-liberal* features of positive views, neither is able to avoid the implication that, in some cases, physical coercion may increase individual liberty, and hence they are both vulnerable to the sorts of objections outlined above.

The Pluralism Approach

In his essay, "Two Concepts of Liberty," Berlin endorses value pluralism, the view that there exist multiple distinct and incommensurable goods which cannot be mutually realized in a single life. We should therefore, he concludes, endorse a negative conception of liberty, which leaves individuals free to choose amongst these set of goods, rather than a positive conception which would force us, presumably without warrant, to privilege one good over all other equally valuable, but ultimately incommensurable, goods. Value pluralism thus entails negative liberty (Berlin 2002: 212ff).

One can certainly take issue with this inference, but I am not interested here in whether or not Berlin is right

in thinking that a commitment to value pluralism somehow entails a commitment to negative liberty.⁸ What is interesting for our purposes is that Joseph Raz (1986) argues conversely that positive liberty entails value pluralism. On Raz's view, in order to act autonomously, an agent must have at his or her disposal a variety of "good" options to choose from. An agent who could only choose one form of a good life would not be acting autonomously -- i.e. would not be exercising his or her true freedom -- because this choice would lack any real meaning in the absence of other worthy options. In other words, my choice to participate in this or that form of life is autonomous only if it is accompanied by a *rejection* of other worthwhile alternatives. Because my autonomy requires that these options be made available to me, positive liberty would prohibit the state restricting my options in the name of liberty:

Autonomy means that a good life is a life which is a free creation. Value-Pluralism means that there will be a multiplicity to choose from, and favourable conditions of choice. The resulting doctrine of freedom provides and protects those options and conditions. (Raz 1986: 412)

⁸ There are probably, in fact, good reasons to think that Berlin is indeed wrong about this. See Talisse, 2004

This commitment to value pluralism does hedge against one disturbing feature of totalitarian or oppressive regimes: their tendency to promote homogeneity. If access to a multiplicity of worthwhile options is itself a good, then a political regime that restricts their access will be undesirable for this reason. There are two problems with this argument, however. First, a state that fails to promote, or at least make available, various conceptions of the good life will be undesirable on this score *independent* of its tendency to suppress freedom. We can easily imagine a rather invasive state that recognizes and promotes value pluralism. This state might very well reject the project of imposing one ultimate standard of value at the expense of all others, while at the same time regard it necessary to prevent its citizens from pursuing bad options and even to "encourage" them (perhaps with force) to pursue various good ones. As Raz concedes, "some options one is better off not having" (Raz 1986: 410). Second, once we understand autonomy as the pursuit of our own good, we must recognize, as Taylor points out, the significance of internal, in addition to external, barriers. The state can physically interfere, in a rather invasive manner, to remove these internal barriers to autonomy without privileging any one

good over any other, thereby violating the principle of value pluralism.

Raz's responses to these worries are rather unsatisfactory. First, he asserts that not all state efforts to promote autonomy necessarily involve coercion. The state could promote some behaviors by conferring honors and rewards and discourage others through taxation and other sanctions (Raz 1986: 161). In the first place, we have to wonder why these actions do not constitute coercion given that the imposition of taxes and the distribution of rewards will certainly require the use of state power (cf. Nozick, 1974). While Raz might be correct in assuming there is a difference between these milder uses of force and more draconian ones, he offers no criterion for distinguishing between the two, and we are left to wonder, if these uses of force do not constitute coercion, then why not more extreme ones as well? Further, while it might be true that the state *need not* employ more invasive measures to promote autonomy, Raz provides no reason why it *should not*. Again, the appeal to liberty, when invoked to oppose physical coercion, loses much of its force on this view. Of course one could adopt a positive conception of liberty without necessarily endorsing an invasive state; not even

Berlin, would dispute this much. But one could not *object* to such a state under this conception of liberty. As long as the state's employment of interference is consistent with value pluralism, Raz's view leaves those who suffer such impositions with no recourse.

Nevertheless, Raz also contends that even well intentioned coercion will almost always reduce autonomy because coercion is often global and indiscriminate. That is, when employed, it will often restrict one's access to good options as well as bad ones. So, Raz insists, "there is no practical way of ensuring that the coercion will restrict the victims' choice of repugnant options but will not interfere with their other choices" (Raz 1986: 419). Placing someone in prison will diminish her *good* options as well as her bad ones. But notice again that this is just another prudential consideration. Should the state develop more discriminate, yet nevertheless invasive, techniques (and I must confess that I am less skeptical than Raz that such techniques do not already exist) would coercion suddenly become more acceptable? We should hope not, but

Raz's approach cannot sustain this conviction despite its commitment to value pluralism.⁹

The Content Neutral Approach

Recall that, in contrast to negative conceptions, most positive conceptions hold that evaluative considerations are relevant when determining the extent of an agent's freedom. If I am acting on the basis of poor or misguided values, then I am not acting freely on the positive account, since my actions do not conform to my true or fundamental purposes objectively understood. John

⁹ I should note one puzzling feature of Raz's view. At times, Raz asserts that any form of coercion *necessarily* diminishes autonomy. "All coercion invades autonomy by subjecting the will of the coerced" (1986: 155). Insofar as we understand *coerced* as the opposite of *autonomous*, this claim is tautological and hence trivial. Negative and positive theorists do not disagree that coercion is freedom limiting. They disagree over what constitutes coercion. Insofar as Raz is operating under a positive understanding of freedom, this assertion does not alleviate the worry that certain invasive actions might nevertheless promote liberty. Raz could mean, however, that coercive acts necessary limit autonomy because they impair one's *negative* freedom. If so, he would be employing the distinctly negative understanding of coercion as physical interference. At times, Raz suggests that is how he understands coercion. Negative liberty could be understood, on his view, as, in part, *constitutive* of autonomy (although this is hard to square with his insistence that the removal of *bad options* from one's range of choices does not diminish one's autonomy). I confess I am not sure exactly how to best interpret Raz on this point. If he means the former, then I think I have adequately addressed his view here. If he means the latter, then I hope to address this position in more detail later (in chapters 2 and 4) when discussing Matthew Kramer's (2003) position.

Christman (1991), however, argues that this is not an essential feature of positive views. There is an important difference, he contends, between the agent who "deliberately" acts immorally and the one who "acts mindlessly, obediently carrying out the commands of a manipulative master. Certainly the first agent is enjoying something the second person lacks: the capacity for self-generation and self-government" (Christman 1991: 358).

On Christman's view, it is not the *content* of the action that is relevant, but its *origin*. We cannot say definitively, for example, that neither Manson nor Baader acted freely on the basis of what they did. It matters whether their actions stemmed from their own authentic desires or if they were in fact the products of insanity and delusion, regardless of how deplorable we might find their actions to be. This still leaves the difficult question of how to discern what constitutes an authentic desire versus an inauthentic one, and Christman develops a lengthy set of criteria for determining when preferences are formed autonomously that I won't go into here. The important point, though, is that if this can be done successfully, it would establish what Christman characterizes as an "internalist," "subjectivist," and

hence "content neutral" understanding of positive freedom (Christman 1991: 359).

Christman believes this view is attractive because it avoids the more troubling implications of positive views in general. As Christman stresses, "insofar as positive liberty requires an external value condition (in its demand for rationality), it is not in conflict with the severest form of tyranny - interference with a person based on her mistaken *values* in the supposed name of freedom itself" (Christman 1991: 356), but once we abandon the commitment to evaluative standards, we can hold that it is impermissible for the state to coerce citizens - in the name of liberty - by appeal to their *higher* selves or *more worthy* ends, while still endorsing a positive conception of liberty. The result is what Christman regards as a *liberal* understanding of positive freedom.

Again, like Raz's value pluralism approach, Christman's content neutral approach does resist the homogenizing tendency of most oppressive and tyrannical regimes. Any state committed to a positive conception of liberty that is content neutral will likely have to tolerate a diversity of conceptions of the good. It is not clear, though, that the content neutral approach does in fact prohibit pervasive

government interference in the name of liberty because, while it abandons the commitment to evaluative standards, it nevertheless retains the commitment to *internal* sources of restraint. So, even if we hold, as Christman advocates, that value judgments are irrelevant when determining the extent of one's freedom, we could still justify the use of physical interference in order to remove internal obstacles to freedom. The example of Alf discussed above illustrates this point. Even on the content neutral approach, we could conscript Alf on the grounds that it accords with his *own authentic desire*, not because we judge that military service has any value in and of itself.

The problem, as Ian Carter (1999) points out, is that, while Christman's version of positive liberty is content neutral in the sense that it disregards value judgments, it is not content neutral in another significant respect. The content of an action is still relevant on Christman's account insofar it pertains to the *authenticity* of the action, if not its objective value (Carter 1999: 155). Determining whether or not a given course of action is freely chosen still depends on whether the action conforms to the agent's authentic desires, and this requires that we know something about the content of the action in question.

Christman is therefore mistaken in claiming that the content neutral approach is concerned with the origins of actions *rather* than their content. More accurately we should say that Christman's approach is concerned with *certain kinds* of content, albeit non-evaluative ones.

Once we make measurements of freedom content dependent, however, we introduce the possibility of freedom promoting interference (Carter 1999: 119ff.). Accordingly, Christman's supposedly more liberal-friendly positive conception of liberty is still consistent with some pretty disturbing policies. Imagine, for example, that a religious sect wants to forcibly "rehabilitate" homosexuals in order to change their sexual preference and behavior. They need not claim that homosexuality is a sin and therefore inconsistent with acting freely. Instead they could assert that homosexuals have been manipulated and corrupted by modern society's overly permissive and lax attitudes towards sexual behavior. Rehabilitating them, so to speak, just brings their actions in accordance with their authentic desires, which are now liberated from society's distorting influence. Again, much will depend on how we determine what constitutes an authentic versus an

inauthentic desire, but, once determined, we can justify the use of force in the name of liberty.

Two Concepts or One?

Before moving on, I want to address the worry that the preceding discussion rests on a fundamental confusion. In a well known paper, Gerald MacCallum, Jr. (1967), argues that there are not two distinct conceptions of liberty, but rather one conception with three variable components. Freedom always involves the following "triadic relation": x is free from y to do or become z . The variable x "ranges over" agents, y covers "preventing conditions," and z covers *enabling* conditions (MacCallum 1967: 314). When determining the extent of an agent's freedom, we may focus, as negative views do, on y , or we may focus, as positive views do, on x or z . But in either case we are employing one and the same conception of freedom, just with different points of emphasis.

In a similar vein, John Gray (1980) argues that any viable conception of negative liberty must take into account some theory about what it is to be a rational agent, and consequently Berlin's distinction between

negative views that focus on the area of control versus positive views that focus on the agent of control cannot be sustained.¹⁰ Following MacCallum, Eric Nelson (2005) has more recently argued that the distinction between opportunity and exercise conceptions is spurious. On Nelson's view, it is not the case that negative liberty involves the absence of barriers to action whereas positive liberty involves the performance of the action itself. *Both* negative and positive liberty, he contends, hold that freedom involves the removal of obstacles; they just disagree about what constitutes an obstacle, with negative liberty focusing exclusively on external obstacles and positive liberty allowing for the possibility of internal ones.

The worry of course is that these objections potentially render Berlin's insistence that there are two *distinct*, and hence incompatible, conceptions of freedom suspect (Shapiro 2005: 152ff). But while MacCallum's analysis is perhaps illuminating, it does not dissolve the central problem discussed at length in this chapter, namely

¹⁰Gray, however, does not agree with MacCallum that liberty can be understood as one conception with three variables, and he thinks we can meaningful talk about distinct negative and positive conceptions of liberty provided that we replace Berlin's understanding of liberty as non-interference with liberty as the "non-availability of options" (Gray, 1980).

the problem of which conception is *normatively* superior on the liberal view. As Christman warns, we should be careful not to confuse a "normative" problem for a "conceptual" one (Christman 2005: 79). In outlining these two conceptions of freedom, Berlin is not claiming that either conception is, by itself, conceptually complete or exhaustive, and he recognizes that we may employ the concept of liberty in a variety of different contexts with a variety of different meanings. But, politically, we are not concerned with the concept of freedom simpliciter, but as it particularly relates to the state. That is, we want to know what the state should take itself to be preserving, promoting or at least not infringing upon, in its commitment to individual liberty, and this is a normative question rather than a purely conceptual one. Gray likewise points out that MacCallum's formula just moves this normative question to a different level. Whatever we input for MacCallum's variables is bound to be as normatively controversial as the concept of liberty itself (Gray 1980: 511).

This is not to say that MacCallum's formula is not useful. It may very well help in clarifying the exact cite of controversy between varying conceptions of liberty, and it may even ultimately reveal that there are far *more* than

just two possible conceptions of liberty depending of the number of different ways of construing each variable.¹¹ In this respect, MacCallum's triadic formula may elucidate the dispute at hand. It does not, however, dispense with it.

There is one significant respect, however, in which MacCallum's approach is overly limited. As Gray points out, there is no room in MacCallum's formula for conceptions of liberty which equate being free with occupying a certain kind of *status* (Gray 1980: 511). As I will argue in chapters 3, 4 and 5, there is an important distinction between *act* based conceptions of freedom and *status* based conceptions. MacCallum's formula works well for act based conceptions, but it cannot cover status based ones. Since I hope to show that the properly liberal understanding of liberty is a status based conception, I think MacCallum's formula, however useful, cannot fully capture the liberal understanding of freedom.

¹¹ For example, if we think there are two different possible inputs for each variable, then we have eight possible conceptions of freedom and exponentially more if we think that there are more than two possible inputs.

CHAPTER III

AGGREGATE CONCEPTIONS OF LIBERTY

Aggregating Negative and Positive Liberty

In the previous chapter, I argued that both negative and positive conceptions of liberty are deeply problematic on liberal grounds and that neither conception is sufficient to capture basic liberal intuitions about the value of liberty. It is not surprising then that we often find simultaneous appeals to *both* conceptions in the work of liberal theorists. As was noted earlier, the negative conception no doubt played a significant role in the development of liberal thought. It should also be noted, however, that few if any prominent proponents of the liberal view adhere to a *strictly* negative conception of liberty. While Mill, for example, does assert in *On Liberty* that, "the only freedom which deserves the name is that of pursuing our own good in our own way" (Mill 1999: 55), he later, in a famous example, also insists that we may obstruct someone from crossing an unsafe bridge "without any real infringement on his liberty; for liberty consists in doing what one desires" (Mill 1999: 146). If

liberty consists in "doing what one desires," however, then the conception of liberty at work is a positive one.

Likewise, Locke seemingly evokes the negative account of liberty when he declares that, "[to possess] liberty is to be free from restraint and violence from others" (Locke 1997: 32), yet, in a similar vein as Mill, he simultaneously asserts, "that ill deserves the name of confinement which hedges us in only from bogs and precipices" (Locke 1997: 32). Locke, in fact, goes even further to suggest that the law is somehow *constitutive of* freedom: "where there is no law," he insists, "there is no freedom" (Locke 1997: 32) despite the fact that the law imposes rather significant restraints on the actions of those who are subject to it. Such considerations lead Locke to distinguish between "liberty" from he calls mere "license" (Locke 1997: 5). But if "license" is best understood as unrestricted action - and this seems like a reasonable interpretation of Locke's view on the matter - then *liberty* must entail something *more* than this

Many contemporary liberals have followed suit. Ronald Dworkin, for example, insists that, while liberals are no doubt committed to protecting some degree of negative liberty, particularly those liberties guaranteed through basic rights, they are not committed to valuing negative

liberty *as such*. On the liberal view, he maintains, one is at liberty to express oneself in the form of political protest or practice one's own chosen religion. One is not, however, at liberty to, for example, kill one's critics (Dworkin 2001: 88). Laws against killing one's critics therefore do not lessen one's liberty on the liberal view, according to Dworkin, though they clearly do entail a degree of state interference. Likewise, Will Kymlicka (2002) and Jeremy Waldron (1988) both argue that liberalism does not entail a commitment to the value of liberty in general, but to certain *specific liberties* of special normative significance.

Indeed, Berlin's categorization of the negative view as the liberal one is especially suspect considering that neither of the two theorists we identified as exemplifying the negative conception, Hobbes and Bentham, are particularly good representatives of liberalism (Larmore 2001: 233). With Hobbes, this is fairly evident, given that he is the most famous modern proponent of despotism.¹ Bentham, on the other hand, admittedly belongs to the liberal tradition, but he is somewhat of an outlier in it.

¹ On a rather broad understanding of liberalism, we might, as Gaus and Courtland (2007) argue, label Hobbes a liberal because he believes that any restrictions on liberty require justification; however, even on this broader understanding, he must be considered a liberal in the "qualified" sense, they admit, because he thinks that extensive restrictions can in fact be justified.

While he does argue that governments should operate under the general presumption that more liberty is better than less, he is famously hostile to the notion of fundamental or basic rights, describing "natural rights" artfully as "nonsense upon stilts" (Bentham 1973: 269). Accordingly, he asserts that states can permissibly infringe upon these so-called basic liberties when doing so is necessary to promote the greater happiness of the general population (Bentham 1973: chapter 20). So, even if Bentham is properly considered a member of the liberal tradition broadly construed, he is hardly the most representative proponent of it.

The problem then is this: insofar as liberalism is committed to limiting the scope of state power, the negative view seems most appropriate. Few if any liberals, however, regard any and all instances of state interference as freedom inhibiting. Some exercises of state power - such as traffic laws, laws against murder, and guard rails on bridges - are welcomed restrictions on certain behaviors. Liberals are thus lead to conclude that these restrictions do not really curtail liberty. Some liberals, though certainly not all, go even further to insist that taxes, wealth redistribution, and economic regulations also need not constitute violations of liberty in any

significant sense.² Other exercises of state power, however, (such as prohibitions on speech, religion, or assembly) constitute egregious violations of individual liberty on any liberal view. These restrictions are significant in a way that others are not. But, as we saw in the preceding chapter, making such discriminations requires recourse to the positive conception of liberty and the seemingly illiberal commitments that go with it.

We might conclude then that the liberal view is committed to neither a purely negative nor positive account of liberty, but incorporates elements of both. This, however, ignores the deep and, as Berlin stresses, "irreconcilable" differences between them as normative principles (Berlin 2002: 12). Of course we could always adjust our conception of liberty to fit the political principles, policies, and institutions we want to endorse on a liberal account, borrowing from both the negative and positive conceptions where appropriate, but this would render the liberal commitment to individual liberty entirely ad-hoc. If liberalism is committed to liberty, then we need to know what sorts of principles, institutions and policies this commitment demands and not the other way

²See for example: Rawls (1971), Murphy and Nagel (2002), and Dworkin (2007)

around. If we are to judge which policies and institutions promote freedom and which hinder it, we need to have a conception of freedom that can make such discriminations. We cannot simply adjust our understanding of freedom so that it is consistent with the policies and institutions we want to endorse if freedom is supposed to serve as the normative justification for promoting these policies and institutions and not others. In short, ad-hoc conceptions of freedom are as easy to formulate as they are useless.

This is not to say that an investigation into the normatively best conception of liberty cannot proceed by means of a strategy of reflective equilibrium. After all, my own strategy, thus far, has proceeded in just this fashion (in chapter 1, we rejected both negative and positive conceptions precisely because they could not sustain basic liberal intuitions about the nature of liberty). Any successful reflective equilibrium strategy, however, has to achieve coherence at the conceptual level in order to establish a genuine *equilibrium* between our concepts and our intuitions or considered judgments. When considering various objections, such a strategy cannot simply employ whichever concept seems best able to preserve these intuitions and judgments without also giving equal consideration to the way in which these concepts hang

together. If Berlin is right, however, in thinking that the negative and positive conceptions are normatively at odds with each other, then a reflective equilibrium strategy that makes use of both conceptions, but does not address this fundamental tension, fails to achieve coherence at the conceptual level and hence fails to achieve genuine reflective equilibrium.

If the liberal understanding of liberty is to employ elements of both negative and positive conceptions, it cannot proceed in such an ad-hoc fashion. We need some systematic way of aggregating both views. In this chapter, I will explore and ultimately reject three such strategies. The first introduces evaluative considerations at the level of overall freedom rather than at the level of the freedom to perform individual actions. The second insists that liberalism is not committed to preserving liberty *as such* but to preserving certain basic liberties because they are necessitated by the liberal commitment to equality. And the third insists that not all instances of state interference constitute a reduction in liberty because they are done with the consent of citizens of a liberal democracy. I will argue that none of these strategies is successful as they either ultimately reduce to positive conceptions of liberty, or, like positive conceptions, they

are consistent with extreme and pervasive state interference. As such they are vulnerable to the very same objections leveled against positive views in general that were explored in the preceding chapter.

The Overall Freedom Approach

One possible strategy for explaining the priority of the basic liberties is to argue that a certain set of specific liberties generates the greatest total extent of liberty for all. One can plausibly interpret Rawls as offering this kind of argument in *A Theory of Justice*.³ In outlining his first principle of justice, the *liberty principle*, Rawls seems to endorse the negative view in stating that, "people are at liberty to do something when they are free from constraints either to do it or not to do it and when their doing it or not doing it is protected from interference by others" (Rawls 1971: 202). According to the first principle of justice then, "each person is to have an equal right to the most extensive liberty compatible with a similar liberty for others" (Rawls 1971: 60). For Rawls, the first principle has lexical priority

³Admittedly, it is unclear whether this is the argument Rawls is advancing or if he thinks that the first principle applies *only* to the basic liberties from the beginning. I address this latter possibility a little later on.

over the second -- which concerns the just distribution of resources -- meaning, as he later asserts, that "liberty can be restricted only for the sake of itself" (Rawls 1971: 244).

To this end, Rawls makes a distinction between liberty itself and the "worth" of liberty (Rawls 1971: 204). While liberty is simply lack of interference, the worth of liberty consists in the material resources one possesses in order to make use of one's overall liberty and the contribution these liberties make to the achievement of one's ends. A more equal distribution of the "worth" of liberty at the expense of an unequal distribution of liberty itself is not permitted under the first principle; however, liberty can be restricted in certain cases if it promotes greater liberty for everyone in general. Hence some liberties can be privileged over others, not because they are more important on some evaluative measure, but because they foster the most extensive distribution of equal liberty for all. Thus Rawls concludes, "while it is by and large true that a greater liberty is preferable, this holds primarily for the system of liberty as a whole, and not for each particular liberty" (Rawls 1971: 203).

As H.L.A. Hart (1973) points out, however, this distinction between liberty and the worth of liberty cannot

be sustained. We cannot, Hart maintains, explain the benefit incurred by restricting various liberties without appeal to the worth of these liberties on some other independent scale. Consider the example Rawls gives in support of the first principle:

To illustrate by an obvious example, certain rules of order are necessary for intelligent and profitable discussion. Without the acceptance of reasonable procedures of inquiry and debate, freedom of speech loses its value. It is essential to distinguish between rules of order and rules restricting content of speech. While rules of order limit our freedom, since we cannot speak when we please, they are required to gain the benefits of this liberty. (Rawls 1971: 203)

While Rawls insists that liberty can be restricted only for the sake of itself, here, when explaining the rationale for rules of order in public debate, Rawls appeals, not to the greater overall negative liberty these restrictions would promote, but to the value these restrictions would help realize. As Hart emphasizes, "plainly what such rules of debate help to secure is not *greater* or more extensive liberty, but a liberty that is more valuable for any rational person than the activity forbidden by the rules" (Hart 1973: 543). Indeed, Taylor's traffic light example is so damaging to the negative view precisely because the basic liberties *do not* seem to generate the greatest

overall liberty in comparison to what seem like more trivial ones.

In order to explain which liberties are more basic, Rawls cannot rely on liberty itself, but must appeal instead to some more substantive and independent standard. According to Hart, possible criteria could include either "utilitarian considerations" or "some conception of what all individuals are entitled to have as a matter of human dignity or moral right" (Hart 1973: 545). Rawls rejects the first because it warrants an unequal distribution of liberty in some cases. Further, a utilitarian approach is likely to yield, at best, an instrumental justification for securing individual liberty and would thus be subject to a familiar objection that we have explored elsewhere.

The second option, however, risks reducing Rawls's view into a straightforwardly positive conception of liberty. Again, as Hart puts it, the liberties Rawls identifies are not more valuable because they yield greater overall liberty, but because they yield liberties that are "more valuable for any *rational* person" (543; emphasis added). Establishing the more fundamental liberties thus requires recourse to some ideal account of the rational agent. If liberty can be restricted in order to promote the value of liberty as determined by the desires of ideal

rational agents, then people can be forced to be free against their own professed wishes and in opposition to their actual desires. Understood this way, the restriction of liberty for the sake of itself takes on a rather sinister meaning that Rawls does not intend.

Nonetheless, this does appear to be the strategy that Rawls ultimately adopts. In response to Hart, Rawls claims that the first principle is not committed to the priority of liberty *as such*, but to certain basic liberties (Rawls 1995: 107). The question, though, of course, is how to determine which ones are basic. To this end, Rawls suggests that some liberties are more fundamental than others because possessing them is necessary in order to fully realize what he identifies as our two most fundamental moral powers or capacities: our capacity to be "reasonable" and our capacity to be "rational" (Rawls 1995: 293). Our capacity to be reasonable is our ability to cooperate with others on the basis of fair principles of justice. Our capacity to be rational is our ability to choose, and act on the basis of, our own conception of the good.

Without going into detail about how these two powers require the protection of certain basic liberties and in particular which ones, it should already be clear that the conception of liberty at work here is an *exercise* concept

rather than an opportunity concept. Samuel Freeman even explicitly describes it as such: "what makes a liberty *basic* for Rawls is that it is an *essential social condition for the adequate development and full exercise of the two powers of moral personality over a complete life*" (Freeman 2007: 53). If basic liberties are necessary so that, as citizens, we can effectively identify, and act on the basis of, our own conception of the good, then interference designed to help us act on the basis, or designed to help us better identify our own wants and interests, need not be considered freedom limiting.

Of course what Rawls might mean is not that the exercise of our moral powers *itself* constitutes liberty, but that a certain degree of negative liberty is necessary to achieve this end. This interpretation, though, renders the first principle of justice far too weak. Whenever government interference could assist in helping citizens better realize their moral powers, the state would be justified in disregarding the first principle. Rawls then cannot adopt a purely instrumental defense of the value of basic liberties while preserving the lexical priority of the first principle. It is hard to see then how Rawls can maintain the priority of liberty as a first principle of

justice without abandoning his initial commitment to the negative conception in favor of the positive one.

Maximizing overall liberty itself will thus not justify privileging certain basic liberties over others unless this overall measure is, at least in part, evaluative. As we have seen, negative freedom, as understood by Berlin, is supposed to disregard the relative value of performing any given action in determining whether or not an agent is free to pursue it. Such value judgments are the purview of positive conceptions. On the negative account, I am at liberty to kill my critics provided that no one can stop me regardless of whether it is morally acceptable for me to do so. To the extent that the state prevents me from doing so, it thereby decreases my liberty, even though we might agree that it is good that the state imposes this prohibition.

Surprisingly, however, Berlin suggests that, while value judgments are irrelevant when determining whether or not an agent is free to perform this or that particular action, they are relevant when determining an agent's *overall* level of freedom. Towards the end of "Two Concepts," he asserts that freedom is "measured" by "the number and *importance* of the paths" open to a person (Berlin 2002: 211; emphasis added). Earlier in the essay,

in a footnote, Berlin outlines five relevant considerations when determining the extent of an agent's overall freedom on the negative view. Two of these conditions require that we assess, not just the availability, but the worth of those courses of action open to the agent. These include, "how important in my plan of life, given my character and circumstances, these possibilities are when compared with each other," and "what value not merely the agent, but the general sentiment of the society in which he lives, puts on the various possibilities" (Berlin 2002: 177n1). G. A. Cohen echoes this same sentiment:

While I think the negative account could do perfectly well without mentioning desire in the case of freedom to perform particular actions, desire might not be so easily dispensed with from an account of the total freedom of a person. (Cohen 1981: 45)

Cohen, however, provides no details as to what such an account might look like. More recently, Matthew Kramer has developed this view at greater length. Unlike Berlin, Kramer is optimistic that we can precisely measure the degree of an agent's freedom, but like Berlin he also insists that, "whereas the existence of any particular freedom or unfreedom is strictly a matter of fact, the extent of anyone's overall liberty is a partly evaluative phenomenon" (Kramer 2003: 9).

The introduction of evaluative considerations at the level of overall freedom is motivated by concerns we explored in the previous chapter. Recall that one problem with the negative view is that it is overly broad in that it counts any and all instances of physical interference as equally freedom limiting. A government that prohibits freedom of religion or freedom of speech but has relatively lax traffic laws, or takes no measures to prevent citizens from walking on unsafe poorly constructed bridges, will be more free than one that does permit freedom of speech and religion, but also seeks to protect citizens by imposing traffic laws and erecting guard rails. Just as we are wary of positive conceptions because they enable dictatorships to claim that they are promoting freedom rather than hindering it, we should also be wary of any negative conception that allows oppressive regimes to excuse their prohibitions against faith and expression by pointing out all the unsafe bridges one is free to cross or all the intersections one is free to recklessly plow through. Further, we also noted that the negative view cannot account for the freedom limiting power of threats without taking into account the worth of available options. Again, the negative conception is severely lacking if it allows an

oppressive regime to plea, "you can do or say anything you like provided you are willing to accept the consequences."

Appealing to evaluative standards at the level of overall liberty is meant to alleviate these worries. Citizens living under a regime with few or no traffic or safety regulations may still be counted as less free than those living under regime with many such regulations if these citizens also lack the more *significant* liberties protected by the right to free speech or religion that citizens in a liberal democracy typically enjoy. The appeal to evaluative standards also avoids the implication that one might be considered free to do a whole host of things in an oppressive regime provided that one is also willing to accept the rather drastic consequences because the threats that accompany these options will consequently decrease their worth and thus greatly diminish their contribution to one's overall liberty.

This strategy, however, avoids the inherent problems of the positive conception at the level of individual actions only to reintroduce them at the level of overall freedom. Consider how any such account may go. The number of individual acts an agent is free or unfree to perform in the negative sense will be only one determining factor in his or her overall freedom (and advocates of the overall

freedom approach differ as to how precise these calculations can be made). The assigned importance or value of each action will also count as a "multiplier," to borrow Kramer's (2003) phrase, thereby giving certain actions greater weight depending on their added significance.

But what constitutes for this added significance? It cannot be that the freedom to perform these actions somehow entails or requires less interference, since then it would not be the worth or value of these liberties that would account for their greater contribution to overall freedom, but the scope of unimpeded action that they would permit (this was Rawls's failed strategy). But how does the *worth* of performing activities contribute to an agent's *freedom*? One possibility is that the more valuable courses of action are simply those that the agent happens, as a matter of fact, to want to perform, so the liberty to perform them will be more highly prized by the agent simply because it ensures that these courses of action will always remain available. Both Cohen and Berlin seem to suggest this possibility in the passages quoted above.

This strategy, however, generates serious problems. One problem is that a contented slave on this account will not be appreciably less free than a free citizen, since the slave will have at his or her disposal the ability to

perform those actions he or she deems valuable. We will have to say something similar about the housewife who has been conditioned into valuing her subordinate status and her exclusively domestic role above all alternatives. Even if we maintain that the slave or the housewife is still nevertheless less free because there are still a significant number of actions he or she is unable to perform (even though the value, and hence multiplier, of these freedoms is relatively low), there is still no guarantee that this approach will warrant protecting the basic liberties, like freedom of speech and religion, over supposedly more trivial ones, since there is no guarantee that someone will, as a matter of fact, necessarily value speech or religion more than the thrill of speeding down the highway or walking over a treacherous bridge. Of course, when assessing overall liberty, we could appeal, not to what people actually profess to desire, but to the desires of their true, essential, or ideal selves, but such an appeal would reduce this approach to a thoroughly positive conception of liberty. This problem is compounded if we contend, as Berlin also suggests, that overall freedom is determined in part by what one's culture or society deems as valuable, since then the state can coerce people against their own objections and still claim to be

promoting their overall freedom on some other evaluative standard.

Another problem with this approach is that, if certain specific freedoms are of particular value, thereby making them more significant in terms of one's overall liberty, then what's to say that other freedoms are not of particular *disvalue*, thereby making their overall contribution to effectively negative. We can certainly imagine that some freedoms might have such disvalue (G. Dworkin 1988: Chapter 5).⁴ Perhaps the availability of some options only serves as a distraction from one's more worthy pursuits, or perhaps having them only causes one to have anxiety over the proper course of action, or perhaps having *too many* options simply makes it far too difficult to properly weigh the pros and cons of each option. Even worse, some options might present one with unwanted temptation. Certainly, the drug addict, for example, might find it easier to overcome the urge to use if this option was not even available. Indeed, Raz seems right, at least on some level, in asserting that "some options one is better off not having" (Raz 1986: 410).

Consistency then would seem to demand that, on any partly evaluative overall freedom approach, we countenance

⁴Ronald Dworkin (2000) also suggests this possibility.

the *disvalue* of some freedoms in addition to the higher value of others, hence giving such freedoms a *negative* multiplier effect.⁵ If we adopt this approach, though, then plainly the state can exercise interference while simultaneously increasing overall liberty, as the elimination of some of an agent's liberties, those with a negative multiplier effect, will actually increase an agent's overall liberty.

At bottom, the central problem with this strategy is that it conflates the *instrumental value* of freedom with freedom itself.⁶ Certainly, the freedom to pursue various desirable courses of action is itself valuable because it makes these pursuits possible. The freedom to perform them might therefore be more valuable to me than other freedoms, but this greater value does not thereby also, by the same degree, make me more *free*.

To be sure, more can be said about the overall freedom approach, and we will have an opportunity to revisit it, particularly Kramer's version, in chapter 4. I will have

⁵ Hillel Steiner also points out that the evaluative approach potentially results in the rather paradoxical implication that one could be rendered less free by having more options at one's disposal, if these options are of considerable disvalue (Steiner, 1994: 81). Kramer, however, insists that the lowest multiplier any individual freedom can have is 1. It cannot be 0 or negative (2002: 443ff), and, if correct, this stipulation avoids the objection outlined here as well. Again, I explore Kramer's in detail in chapter 4.

⁶ I explore the instrumental value of freedom at greater length in chapter 4.

to put aside further discussion until then, but what I hope to show in that chapter is that the above objections are ultimately unavoidable.

The Equality Approach

Another possible strategy, one endorsed by Ronald Dworkin and Will Kymlicka, is to derive the basic liberties from the liberal commitment to equality. On this view, equality is the central liberal value, and liberty is valuable only insofar as it promotes or preserves equality. I will examine two distinct version of the equality approach. The first holds that equality of resources both entails a presumption in favor of maximizing overall liberty and, simultaneously, offers a justification for privileging certain *basic* liberties. The second argues that, in order for each citizen to have the opportunity to lead a good life, they must be afforded certain basic liberties.

Equality of Resources

Like Rawls, Dworkin at least purports to endorse the negative conception of liberty, "I mean by liberty what is sometimes called negative liberty - freedom from legal constraint - not freedom or power more generally" (Dworkin

2000: 120). Elsewhere, however, as we've already noted, Dworkin insists that certain legal prohibitions do not really count as restrictions on liberty at all. For example, Dworkin contends that laws preventing me from killing my critics do not infringe on my liberty, and, like Taylor, Dworkin insists that mundane traffic laws also do not compromise liberty in any relevant sense (Dworkin 2007: 271).

The problem, according to Dworkin, is that, if we recognize any legal prohibition as a violation of individual liberty, then the liberal commitment to freedom will inevitably conflict with another central liberal value, namely equality. Insofar as the negative conception regards any and all laws as coercive, laws promoting equality will necessarily inhibit liberty. Dworkin, however, cites the examples above as evidence that the strict and uncompromising version of the negative view is "absurd" (Dworkin 2007: 271). Following Locke, Dworkin distinguishes between "liberty," which consists of the morally significant freedoms embodied in the fundamental rights of each citizen, and mere "license," which consist of simply doing whatever one wishes (Dworkin 2007: 269).

The question though is how to distinguish between liberty and license without recourse to a positive view,

and Dworkin is explicit that his view is not a positive one. Since equality is the core liberal value according to Dworkin, the solution is to identify those liberties necessary for promoting or recognizing equality. So liberalism is indeed committed to protecting certain *fundamental negative liberties*, but not liberty as such:

Individual rights to distinct liberties must be recognized only when the fundamental right to treatment as an equal can be shown to require these rights [...] the right to distinct liberties does not conflict with any supposed right to equality, but on the contrary follows from a conception of equality conceded to be more fundamental. (Dworkin 2007: 274)

According to Dworkin, the "right to equal treatment" entails a general presumption in favor of liberty. It will prohibit, for example, paternalistic policies that favor certain forms of life over others. As Dworkin stresses:

Constraints cannot be defended, for example, directly on the ground that contribute to a culturally sophisticated community [...] because that argument would violate the canon of the liberal conception of equality that prohibits certain forms of life are inherently more valuable than others. (ibid)

The right to equal treatment, however, will not bar all instances of state interference. Laws designed to promote general welfare, like traffic laws and laws against murder, will not reduce liberty in any significant way, because such regulations and prohibitions do not privilege any form of life over any other, or so Dworkin contends. They

therefore do not violate equal treatment. In addition, the norm of equal treatment will sometimes require state interference. Wealth redistribution, through progressive taxation and social welfare programs, will sometimes be necessary in order to ensure equality. It is a mistake then, on Dworkin's view, to think that liberalism entails any strong commitment to property rights (Dworkin 2007: 277 - 78). Other basic rights, however, will be essential under his view. The right to freedom of speech or religion will be necessary, for example, in order to ensure that everyone is free to express and abide by the values he or she holds central. Infringement on these liberties will entail privileging certain forms of life by declaring some views or values as somehow less worthy than others.

The problem with this argument is that, while perfectionist policies designed to promote certain values, cultures, or life styles might be one possible justification for limiting the basic liberties, they certainly are not the only one. Security, for example, might provide a rather powerful rationale for limiting freedom of speech or religion, as presumably this is also the rationale behind traffic laws and laws against murder. The state might declare that certain displays of public expression are not necessarily corrupt in any moral sense,

but dangerous, perhaps because they might lead to political instability. Likewise, the state might ban certain forms of religious worship, not because the government has declared there is but one true religion, but because religious pluralism might also contribute to political instability or social unrest. One could argue, for example, that, if some citizens identify more with their religious community than their country and are beholden to it more so than the state, then this potentially undermines social cohesion and state authority. Religious citizens might choose to obey their religious authorities rather than the state authority where they conflict, and citizens of different religions might find themselves in conflict with each other. A state could protect against these ills by banning religious worship all together without privileging any one religion over any other. Indeed, it seems as if the more egalitarian Hobbesian could consistently commit him or herself to the norm of equality without thereby also being committed to the normative priority of the basic liberties.

Further, restrictions on liberty could be justified on utilitarian grounds. One could hold that strict government regulation is necessary in order to ensure the satisfaction of people's preferences, and this regulation need not

privilege one conception of the good life over any other. Dworkin's response to this line of justification is that any utilitarian argument will justify inequalities, especially since some people desire, not only the betterment of their own welfare, but the betterment of their welfare *in comparison to others*. Racial supremacists, for example, do not just want live well but to live better than people of any racial background they deem inferior (Dworkin 2007: 275ff). But even if this were true of the utilitarian position in general, the egalitarian can avoid this implication simply by stipulating the appropriate egalitarian restraints on any distribution of overall utility or welfare. Rawls's "difference principle" is one example of a distribution scheme that places restrictions on policies intended to maximize overall welfare on egalitarian grounds. It is important to note, however, that the difference principle in and of itself does not entail any commitment to liberty. Recall that the protection of liberty, embodied by Rawls's first principle, has fundamental value only because actors in the original position would give it lexical priority over the difference principle. Without the first principle, there is nothing in the difference principle itself that would ensure that citizens have a right to basic liberty.

Equality, on some conceptions at least, does not necessarily generate a strong a commitment to liberty. As the argument above suggests, for example, equality understood as equality of welfare is compatible with far reaching restrictions on freedom. More recently, however, Dworkin (2000) has argued that not all conceptions of equality are necessarily liberal ones, and he has offered his version of the properly liberal conception of equality, what he calls "equality of resources." Equality of welfare requires that each citizen enjoy the same level of happiness, preference satisfaction, well-being, or however welfare is to be defined. Equality of resources, on the other hand, requires that each citizen be given an equal distribution of economic and social resources as determined by the "value of the resources each person has as the cost to others of that person's having them" (Dworkin 2000: 131).

Crucially, Dworkin argues that in order to promote equality of resources we also must promote liberty. So, it is possible that, while some conceptions of equality are compatible with severe restrictions on liberty, the liberal conception prohibits this. Dworkin's articulation of this position is complex, and I will only be able to briefly summarize it here.

Dworkin illustrates the ideal equal distribution of resources by imagining a hypothetical auction. Initially, all resources -- and resources should not be understood in the solely material sense as should become clear shortly -- are unowned and are to be distributed by means of an auction in which each citizen has equal initial bidding units. This auction is to continue until the resulting distribution passes what Dworkin calls the "envy test" (Dworkin 2000: 67ff). The envy test is met when no citizen prefers the resources of any other citizen to his or her own. A real world distribution is just to the extent that it approximates this ideal distribution.

This auction procedure, Dworkin contends, will require a strong presumption in favor of greater overall liberty because, unless citizens know what they will be able to do with these resources once they have acquired them, they will not be able to effectively assess their value. Restrictions of any sort will artificially deflate the value of these resources, since their relative worth will be diminished from the point of view of those citizen who want to use them for this now prohibited purpose. To take Dworkin's example, clay would be worth far less in an auction amongst sculptors if they did not know whether they would be permitted to use it to produce controversial works

of art once they had purchased it (Dworkin 2000: 152). In order to effectively bid on resources at the auction stage, citizens will need the greatest possible flexibility regarding how their resources might be used post-auction. So, Dworkin concludes, the auction will permit only limited restrictions on post-auction liberty:

This principle establishes a strong presumption in favor of freedom of choice. It insists that an ideal distribution is possible only when people are legally free to act as they wish except so far as constraints on their freedom are necessary to protect security of person and property, or to correct imperfections in markets. (Dworkin 2000: 148)

This strategy has the further advantage, Dworkin contends, of prohibiting certain groups of citizens from imposing moral norms on others. On Dworkin's account, we are to think of resources expansively. In addition to economic goods, "Social circumstances" are to be considered a kind of resource (Dworkin 2000: 154). Accordingly, while some citizens might want to promote certain moral values (for example, by restricting the benefit of marriage to only heterosexual couples), they will be unable to do so in an auction in which each citizen is afforded equal initial bidding resources. Insofar as other citizens also have interests in being able to marry whomever they choose, they will be able to block any other group of citizens from

bidding for the exclusive right to this social privilege (Dworkin 2000: 155). Equality of resources, understood as an ideal distribution, thus preserves the liberal commitment to neutrality and entails a significant degree of economic and social liberty.

Dworkin's argument hinges on his contention that any auction designed to equally distribute resources would require a baseline presumption in favor of liberty and would either prohibit upfront, or make effectively impossible, post-auction restrictions on liberty. It is not clear though that any such auction would have to proceed in this way. Consider Dworkin's contention that maximum flexibility is necessary in order for bidders to assess the worth of the resources being auctioned. It should be noted that certain *restrictions* might also be necessary in order to assess the real value of any resource. This is because the value of my resources will depend not only on what I do with them, but also on what others do with theirs.

To take a simple economic example, if I were to bid on a piece of property, say with the intention of building a vacation resort, I would of course need to know that this project would be permitted once I acquired the property. But it would be equally important for me to know what

others are not permitted to do with their surrounding properties. The value of my resort would be considerably diminished, for example, were someone else to build a toxic waste disposal plant nearby. In order for me to effectively assess the value of my property then, I need to know what prohibitions will be placed not only on me but others as well. This applies equally to social resources. Say I wanted to bid on access to the social resource of the institution of marriage. Suppose I would also value this resource considerably less if I knew that other people who did not share my same conception of marriage would also be granted access to this same privilege. I would consider their participation as devaluing this social resource. Accordingly, I could not effectively evaluate how much this resource is worth to me at auction unless I knew that these restrictions were in place.

Why then couldn't an auctioneer decide that it is necessary to stipulate such restrictions as the auction's baseline? While this would disadvantage bidders in some respect -- because now the value of some resources will be less than what they would be under a more flexible baseline -- it would have the advantage of making their investment less vulnerable to the decisions of others. In short, it would provide more security for one's investments at the

expense of one's liberty to use these investments however one pleases.

Dworkin, however, rules out this possibility. An auctioneer cannot, he maintains, adopt the more restrictive strategy because then the auction will not be maximally sensitive to people's actual desires. These baseline restrictions will arbitrarily prevent some people from pursuing their desired life projects. But Dworkin stresses, "an auction is fairer -- that it provides a more genuinely equal distribution -- when it offers more discriminating choices and is thus more sensitive to the discrete plans and preferences people in fact have" (Dworkin 2000: 151). In other words, an auction is unfair if it effectively prohibits any activity in which citizens might wish to engage.

The problem now, however, is that it seems as if, rather than *yielding* a commitment to liberty, the equality of resources position *presupposes* it. Equality is to be understood, on this view, as the ability of citizens to pursue their own projects on equal terms, an ideal that closely resembles Mill's understanding of liberty as the freedom to pursue our own good in our own way provided that we do not interfere in the freedom of others. But if the equal resources view already has imbedded within it a

commitment to individual liberty, then Dworkin's attempt to derive the normative value of liberty from it is obviously circular.

What's worse is that once we look closely at the theory of liberty presupposed by the equal resource view, it begins to look like a positive account. It would indeed be disturbing if Dworkin's hypothetical auction were sensitive only to people's empirical desires, since then the contented slave and the subordinate housewife will meet the envy test once they have acquired a rather meager share of economic and social resources. Were this the case, severe *inequalities* would be fully compatible with an ideal distribution of resources, and equality of resources would not necessarily entail a strong presumption in favor of greater negative liberty in every instance. Fully aware of this problem, Dworkin contends that the equal resource view will also require that one's desires be relevantly "authentic" (Dworkin 2000: 158). Dworkin does not elaborate much on how we might distinguish between authentic versus inauthentic desires, but he does give a broad outline of what authenticity requires: "participants to the auction would want both an opportunity to form and reflect on their own convictions, attachments, and projects, and an opportunity to influence the corresponding

opinion of others" (Dworkin 2000: 160). This is how Dworkin justifies giving priority to certain basic liberties over others, as these liberties will be necessary to protect autonomy. So, in addition to a general presumption in favor of greater overall liberty, the equal resource view requires "affording special protection to freedom of religious commitment, freedom of expression, access to the widest available literature and forms of art, freedom of personal, social, and intimate association, and also [...] freedom from surveillance" (Dworkin 2000: 160).

If freedom requires authenticity, however, then the equality of resource view endorses an exercise as opposed to an opportunity concept of liberty. Liberty, on this view, does not consist in being free from restraint, but in acting on the basis of one's own most authentic desires. Again, this justifies pervasive physical interference in the name of liberty. Returning to Dworkin's auction mechanism, suppose that a group of citizens now wishes to restrict the right of marriage to heterosexual couples, not because they would value this intuition less were it available to non-heterosexual couples, but because they think that any society which permitted such marriages would be violating basic human nature. Accordingly, such a society would be morally corrupt in such a way that none of

its members would be capable of forming authentic desires regarding a significant aspect of human life. Pre-auction baseline restrictions such as these might be necessary in order to ensure that people's desires are properly authentic. Once we permit this kind of justification, we cannot rule out prima-facie that even those acts of interference that violate the basic liberties will not be necessary to promote autonomy. For example, what is to prevent a group of citizens from claiming that any society that fails to adopt the true religious view is hopelessly susceptible to deception and manipulation? Dworkin's appeal to authenticity in order to establish the priority of the basic liberties suffers from the very same problems as positive theories of liberty in general.

Dworkin would likely argue that the liberal commitment to neutrality would prohibit these sorts of justifications, and I should note that my presentation of Dworkin's position is somewhat stronger than his own. Dworkin's own method is not so vigorously foundationalist as to suggest that *all* liberal values simply fall out of a commitment to equality. His goal is rather to show that equality is compatible with, and mutually supportive of, other liberal values such as liberty and neutrality. But I think this reveals the deficiency of Dworkin's approach. We need to

know *why* liberalism requires neutrality regarding the justification of coercive policies, not just that it does so. In other words, we need to be able to explain why such coercion is incompatible with liberty rather than simply assert that it is. As it stands, Dworkin's approach risks devolving into a purely ad-hoc defense of liberty.

Nonetheless, Dworkin's conviction that liberty and equality do not ultimately conflict provides a valuable insight. One of the virtues of the conception of freedom as anti-domination that I will develop in chapters 5 and 6, is that it can account for the intimate relationship between liberty and equality. Like Dworkin, I think it is a mistake to view these ideals as essentially in conflict. Unlike Dworkin, however, I hope to show why liberal freedom requires an additional commitment to equality. If successful, this project will have the further advantage of making liberal values more coherent.

Equality of the Good Life

Another version of the equality approach does not rely on a commitment to pluralism at the level of the good life, but instead tries to advance an appropriately *liberal* conception of what the good life entails, a conception which in turn requires that citizens be given equal

liberty. Unfortunately, as I will show, this kind of strategy is also inadequate because it faces the following dilemma: either it too reduces to positive account of liberty, or it provides, at best, an instrumental account of the value of liberty.

In other works, Dworkin has advocated just this kind of approach. On Dworkin's liberal account of the good life, the good life consists in realizing one's own goals without interference or imposition from others, what he calls the "challenge model" of the good life (Dworkin 1995: 249). On the challenge model, the good life consists in "the inherent value of a skillful performance of living" (Dworkin 1995: 241). Living well on this model will require that people have access to basic material goods -- that they not suffer from economic hardship that would prevent from skillfully pursuing their life goals -- and that they be given the freedom to pursue these goals in their own way.

Dworkin's case for the challenge model rests on two rather controversial assumptions. First, Dworkin contends that few if any people would reject the basic premise of the challenge model. Any more specific account of the good life implicitly relies on the challenge model to explain what makes this particular life a good one. So, suppose,

for example, that one believed that the good life consists in becoming a model fire fighter. What makes becoming a model fire a *good life*, Dworkin would insist, is the challenge this feat involves. Becoming a model fire fighter requires overcoming great difficulty as well as tremendous skill and tenacity. If it did not, then we would not value it, and Dworkin asserts that this holds universally for any conception of the good life. Second, Dworkin assumes that, on the challenge model, ethical values are "indexed" rather than "transcendent" (Dworkin 1995: 249ff). That is, living well requires responding appropriately to the particular circumstances in which one finds oneself rather than in realizing some transcendental ethical ideal. Both these convictions are essential because they permit Dworkin to maintain that, while liberalism is predicated on a particular conception of the good life, this conception is sufficiently uncontroversial to not run afoul of the liberal commitment to neutrality. Neither conviction strikes me as all that plausible, but for the purposes of my argument here, I will assume that both hold true.⁷

⁷The first conviction hardly seems as intuitive as Dworkin suggests. Suppose, for example, that Tiger Woods was, from an early age, groomed to be a world class golfer (and this may very well be true of Tiger Woods). On the challenge model, his life would be deficient in a significant respect because he lacked the opportunity to pursue his

On the challenge model, our lives cannot be made better by government interference because, even if such interference helps us achieve our ends in the long run, it still prevents us from fully engaging in the pursuit of these ends. Dworkin insists, "a challenge cannot be made more interesting, or in any other way a more valuable challenge to face, when it has been narrowed, simplified, and bowdlerized by others in advance" (Dworkin 1995: 271). Dworkin's argument is no longer that interference is prohibited because equality demands that people be free to pursue a plurality of possible goods, but rather because it is the pursuit itself which constitutes the good life on the liberal view. Since all citizens have an equal right to

life project in his own way. The nature and conditions of his life's pursuit were set in advance for him. But is it really obvious that Tiger Woods has therefore not led a good life? Perhaps we might all agree that his life would have been *better* had he been able to choose it for himself, but would it really have been better had he failed to become a world class golfer in the absence of this conditioning? To suggest that it would I think runs counter to most people's basic intuitions. The second conviction does not seem all that intuitive either. Suppose that I think that the good life consists in living according to God's will. This constitutes a transcendent ethical value. Of course, God's will could be sensitive to various specific circumstances, so I will have to respond to these circumstances appropriately in order to live rightly, but the point is I will not be living rightly, no matter how skillfully I pursue my various projects, if these projects do not conform to God's will. The challenge model therefore does not seem to require that all relevant ethical values be indexed rather than transcendent. These objections are important because, if successful, they undermine Dworkin's conviction that living a good life requires possessing a good degree of individual liberty, as interference might make people's lives better either by *helping* them achieve their ends or preventing them from pursuing less worthy ones. I do not develop this point in detail here, however, because I think Dworkin's view is deficient even independent of these concerns.

this pursuit, they should all be granted certain liberties by their fellow citizens.

Dworkin's challenge model also gives us reason to prioritize the basic liberties he contends. In order to for me to discover and pursue my own projects, I will need to be able to form and express my own values, and I will also need access to a wide array of information. So the basic liberties of freedom of religion, speech, press, conscience, etc., will warrant special protection. More trivial liberties, like being able to drive through intersections, murder my critics, and cross unsafe bridges, will not be necessary for this pursuit. In fact limitations on these liberties might be necessary in order to ensure that people are able to pursue their life's projects safely and effectively.

If successful, the challenge model provides both a justification for promoting liberty in general and for privileging certain basic liberties in particular. The question is does it avoid the insidious implications of the other strategies we have examined. I do not think it does. Consider the various ways in which one can fail to live a good life on Dworkin's account:

Of course ethical integrity may fail for many reasons. It fails when people live mechanically, with no sense of having and responding to ethical convictions at all. It

fails when people set their convictions aside and serve their volitional interests with a vague but persistent sense that they are not living as they should. It fails when people believe, rightly or wrongly, that the correct normative parameters have not been met for them, when they have less resources than justice permits, for example. And it fails conspicuously when people are made to live in a way they regret, and never endorse, by the fiat of other people. (Dworkin 1995: 167)

If one can fail to live a good life for all the reasons cited above, then plainly *internal* obstacles are every bit as significant as *external* ones. Here again, Dworkin's view begins to resemble other positive conceptions of liberty understood as individual autonomy. A drug addict, for example, might give in to her "volitional interests" at the expense of her or more authentic life plans. Or take the example of Alf from the previous chapter, who gives into his sense of fear and laziness rather than realizing of his dream of a life of military service. Or, again, consider the person who represses his own most true desires because of his conservative religious upbringing. Wouldn't Dworkin's view recommend limiting his freedom of religion in this case? Rather than prohibiting interference, Dworkin's challenge model requires it in cases in which such interference is necessary in order to remove internal obstacles to freedom.

Dworkin's response would likely be that such interference could never be helpful since, he insists,

external influence cannot make one's life better on the challenge model. But this seems inconsistent. The challenge model does require, on his view, that people be given access to basic economic resources because lack of these resources prevent people from skillfully executing their plans. Why then can something like a "lack of ethical conviction" not be alleviated in the same way? Certainly we would not want to say that providing people with basic material and economic goods should be *prohibited* on the liberal view because such assistance could not possibly make their lives more challenging. But why can we not say the same thing about forcing the drug addict into treatment, conscripting the reluctant soldier into service, or removing the repressed church goer from the influence of oppressive religious institutions? Dworkin seems to rule out such possibilities arbitrarily. If liberty consists in overcoming obstacles and adversity, as it does on the challenge model, then Taylor is right: we must properly recognize the freedom limiting effects of internal obstacles as well as external ones, and, once we do so, we cannot escape the implication that interference can enhance liberty in some cases.

Fully formulated, the challenge model reduces to a positive conception of liberty. If certain liberties are

important to realizing the good life while others are not, then we might say that liberty consists, not in being free from possible restraints, but in skillfully executing one's life project. This clearly invokes an exercise concept of liberty. Accordingly, it inherits all the problems germane to positive views which we explored in detail in the preceding chapter. Of course, Dworkin might avoid this implication by denying that liberty is itself a skillful mastery in the execution of one's affairs and instead hold that some degree of negative liberty, while distinct from living the good life itself, is necessary to achieving it. One cannot complete one's life projects without some degree of negative liberty. On this approach, however, the value of negative liberty is once again merely instrumental. As the quote from Dworkin above illustrates, we can imagine some cases in which negative liberty might not help one realize the good life. As such, the challenge model is not necessarily inconsistent with pervasive physical interference on the part of the state.

Will Kymlicka employs a similar equality based strategy. Like Dworkin, Kymlicka argues that all citizens must be afforded a certain degree of negative liberty if each is to have the equal opportunity to lead a good life. Again, for Kymlicka, liberalism is thus not committed to

the advancement of liberty as such, but to protecting certain essential liberties. As he puts it, "in making liberty claims [...] we are entitled, not to the greatest equal amount of this single commodity of freedom, but to equal consideration for the interest that make particular liberties important" (Kymlicka 2002: 148).

Kymlicka's account differs from Dworkin's in certain respects, but it encounters the very same problems. In order to live a good life, Kymlicka contends, we must be able to endorse, and then act upon, what we identify as our own fundamental values and interests. This in turn requires both that we be granted access to basic resources and be afforded basic liberties:

According to liberalism, since our most essential interest is in getting these beliefs right, and acting on them, government treats people as equals, with equal concern and respect, by providing for each individual the liberties and resources needed to examine and act on these beliefs. (Kymlicka 1988: 184)

Again, the basic liberties will be paramount on this account. In order to critically assess my basic values and interests, I will need access to information, the freedom to express myself, and the freedom to practice my chosen religion. But if identifying these basic values and interest correctly is what's essential for living a good life, then it seems as if coercion would be necessary in

cases in which I have *misidentified* them. Like Dworkin, Kymlicka flatly denies this possibility. Even if, he contends, the state could better identify my own interests or sense of the good, it does not help for the state to force me into acting on this basis. This is because my life only goes well to the extent that I "endorse" the values that I live by. State coercion done for the sake of furthering my interests "won't work because a valuable life has to be lead from the *inside*" (Kymlicka 1988: 183; emphasis added).

If a good life must be lead from the "inside," however, then again internal barriers will hinder its realization every bit as much as external ones. We only need to rehearse the familiar examples: the drug addict, the reluctant soldier, the repressed religious observer, and the oppressed housewife, will all fail to lead a valuable life from the inside because of internal impediments, impediments that could be alleviated by applying external force. Again, like Dworkin, Kymlicka identifies lack of resources and external interference as unjust insofar as they prevent one from leading the good life. It would be inconsistent then not to acknowledge the significance of internal barriers as well, especially given that they might be every bit as prevalent as external ones.

Accordingly, Kymlicka's view is vulnerable to the same dilemma as Dworkin's. Either he is identifying freedom itself with acting on the basis of one's most fundamental interests (in which case he is endorsing a fully fledged positive account), or he must afford negative liberty at best an instrumental value. This latter interpretation might best represent Kymlicka's view. External interference is *unlikely* to effectively promote one's fundamental interests even when a third party has correctly identified these interests. But as we saw last chapter, this purely prudential consideration against imposing interference renders the liberal commitment to liberty rather thin. If the state were able to develop coercive techniques that were effective in getting citizens to endorse the "right" values and interests, then the commitment to liberty dissolves. And this is assuming that such techniques do not exist already.

Ultimately, the norm of equality does not seem to be able to sustain the broader liberal commitments held by Dworkin and Kymlicka. Their approach either implicitly relies on an anti-liberal positive conception or renders the commitment to liberty too weak. The liberal understanding of freedom cannot simply be derived from the liberal commitment to equality. Rather, this commitment to

equality depends upon on an already established commitment to liberty. As Jeremy Waldron puts it, "equality of respect [...] cannot be understood [...] except by reference to a conviction about the importance of liberty (for everyone)" (Waldron 1988: 130).

The Democratic Consent Approach

Waldron accordingly rejects the Dworkin/Kymlicka approach and offers the final strategy we will consider for aggregating negative and positive views. Like many liberals, Waldron is skeptical of positive conceptions because of their anti-liberal implications (Waldron 1988: 132), yet he also thinks that the rather flat-footed negative conception, which regards all acts of interference as freedom limiting, is too extreme. Like Dworkin and Kymlicka, Waldron denies that any law must be regarded as an impediment to freedom. "The question," he insists, "has to be whether liberty - *in any sense in which liberty is thought to be important* - is attacked or undermined whenever a rule of social conduct is enforced" (Waldron 1988: 133).

On Waldron's account, there are cases in which the enforcement of a law or social rule *does not* constitute a

limitation on individual freedom, namely when it is enforced with the individual's consent. Accordingly, he asserts:

If the rule is one that the citizen has agreed to, surely little that is important in relation to liberty is lost if it is subsequently enforced against him. If we take this agreement seriously, we may see that as something more like the consummation of his freedom than a violation of it. (Waldron 1988: 133)

Impositions that one consents to do not count as coercive, hence, Waldron insists, the importance of democratic procedures and institutions for the liberal conception of freedom. Provided that laws are enacted via the appropriate procedures and thus pass democratic muster, they do not really inhibit liberty despite the fact that they impose restraints. Waldron essentially agrees with Locke, contra Hobbes and Bentham, that laws do not hinder liberty by default. In fact, they may promote it by allowing individual citizens to pursue collective endeavors that they could not achieve on their own.

Waldron explicitly casts his account as an aggregate conception, incorporating both a negative and positive element (Waldron 1988: 135). In keeping with the negative view, he denies that the individual encompasses some larger constitutive hole. He does not regard freedom as the expression of a collective will through some larger, more

comprehensive body, such as the state or society. Nevertheless, he does think that part of what it means to be free, on the liberal view, is that one enters into an agreement with others concerning how they wish to be ruled. His view thus also retains a distinctly positive element. The citizen of a sufficiently democratic order is not constrained by its dictates, not because these dictates conform to the general will, but because "it is possible for an individual to *choose* to live under a social order, to *agree* abide by its restraints, and therefore to use his powers as a free agent to commit himself for the future." Accordingly, he continues, "the enforcement of such an order does not *necessarily* mean that freedom as a value is being violated" (Waldron 1988: 134).

Waldron's view certainly has intuitive appeal. Suppose we are playing baseball and a runner is called out at a close play at the plate. It would sound bizarre to charge the catcher with obstructing the base runner's *liberty*, or for that matter the umpire for call the runner out. Baseball can only be played if the participants agree to abide by certain rules. So we need not view all rules as "*necessarily*" violating the value of freedom since these rules might enjoy the consent of those subject to them. The same might be said of laws enacted by states. These

laws might just so happen to conform to the demands of its citizens.

The problem is that it is unlikely that any actual laws passed by any real world liberal democratic states will enjoy this kind of universal consent, no matter how robust the democratic procedures in place are. Of course that's not entirely correct, because we could imagine a democratic procedure that is so robust that it stipulates universal consent as a necessary condition for the enactment of any given law.⁸ Still, few if any real world democracies employ such a rigorous standard. It is unlikely that most traffic laws would even pass this test, let alone more controversial egalitarian policies such as progressive taxation or social welfare policies. The requirement that laws enjoy *actual* universal consent I think would be too extreme for Waldron. But even if it weren't, this view would still encounter another familiar problem. If actual consent is sufficient to render interference non-coercive, then we have to consider the limitations imposed on the contented slave or the subordinated house wife as similarly non-coercive. Accordingly, the appeal to actual consent is both too

⁸See Robert Paul Wolf (1998: 34ff.) for an example of how such a government might work.

strong, in that no actual liberal democracy could ever live up to it, and too weak, in that it will permit certain acts that we intuitively want to label as coercive.

Alternatively, Waldron could argue that what is required is not *actual* consent, but *ideal* consent. A law need not be considered coercive if it enjoys the consent of agents participating in some idealized decision procedure, such as under Rawls's veil of ignorance for example. Not only would this strategy have the advantage of explaining why certain laws are non-coercive even when they do not enjoy actual consent, but it would have the further advantage of explaining why some laws are impermissible even when they do enjoy actual consent. The slave or housewife should not be subject to an oppressive social order because they would never agree to this order under ideal conditions. Of course this strategy has the severe *disadvantage* of employing a now fully positive conception of liberty. If freedom concerns, not actual agents, but ideal ones, then citizens can be forced to act on the basis of the desires of their ideal selves in accordance with their liberty. In the end, Waldron's approach, like other aggregate strategies, reduces to a positive account.

Towards a Third Conception of Liberty

The aggregate strategies discussed above are all insufficient on liberal grounds. Their implicit reliance on positive conceptions entails implications that liberals cannot accept. While each of the theorists discussed in this chapter attempts to show that not all interference need be seen as equally freedom limiting, all would reject the inference that pervasive state interference is compatible with the promotion of individual liberty. None of the accounts they develop, however, are able to rule out this possibility, and as such, they offer a defense of liberty that is too weak to sustain fundamental liberal principles.

In chapter 1, I argued that neither negative nor positive conceptions are sufficient on the liberal view. In this chapter, I argued that, despite their initial appeal, aggregate conceptions prove equally inadequate. Liberalism it seems is not committed to negative liberty, positive liberty or some combination thereof. If the liberal commitment to liberty is to be salvaged then, a third conception will be necessary. I turn my attention toward one potential candidate, Philip Pettit's non-domination view, in the next chapter.

CHAPTER IV

FREEDOM AS NON-DOMINATION

Beyond Negative and Positive Liberty

I've argued in the preceding two Chapters that negative and positive conceptions of liberty prove inadequate resources for developing a liberal account of freedom. The problem is that many liberal theorists have remained committed to a negative conception of liberty while responding to the hard cases for the negative conception by evoking an anti-liberal positive conception. Responding to these hard cases requires moving beyond Berlin's negative/positive distinction, but liberals have thus far not done so. While some liberals, such as Rawls (1971), Dworkin (2000) and even Berlin (2002) himself, purport to endorse negative conceptions of liberty, they each implicitly rely on positive ones, either rendering their respective accounts inconsistent or threatening to undermine the fundamental liberal principles they hope defend. Others, such as Jeremy Waldron (1987), explicitly endorse an aggregate view of liberty, but fail to show that such a view can consistently support liberal principles.

At the same time, the concept of liberty has received renewed attention within the republican tradition, particularly in the recent work of Philip Pettit.¹ Freedom, on Pettit's view, consists neither in enjoying non-interference nor in achieving self-mastery, but in *non-domination* (Pettit 1999). An agent suffers domination, according to Pettit, to the extent that he or she is exposed to the arbitrary will of another (Pettit 1999: 52ff). The master/slave relationship is thus the paradigmatic case of domination (Pettit 1999: 22ff). The slave is always at the master's mercy even when the master chooses not to directly interfere in the slave's affairs. It is, according to Pettit, the slave's *status* as a slave that renders him or her unfree, not the extent to which he or she is subject to interference. Suffering domination then is not equivalent to suffering interference, and furthermore being free from domination is not equivalent to achieving self-mastery in the stronger positive sense. One can be free of domination, but still fail to accomplish one's own most authentic or otherwise fundamental goals.

¹Quentin Skinner (1998; 2002) also defends a conception of liberty as non-domination, and his and Pettit's account mutually inform one another. Skinner, however, prefers to call his view a "neo-Roman" rather than "republican" (Skinner, 2008: 84). James Bohman (2005) and Henry Richardson (2003) have also developed their own accounts of freedom as non-domination. I will discuss Skinner's view later in this Chapter and Bohman and Richardson's respective views in Chapter 5.

If Pettit is correct in identifying domination as a unique kind of harm, then *freedom as non-domination* potentially represents a genuine third conception of liberty.

Indeed, as I hope to demonstrate in this Chapter, Pettit's formulation of freedom as non-domination, if successful, promises to avoid the central problems we have explored at length in the preceding Chapters.

Unfortunately, while promising in significant respects, Pettit's version of freedom as non-domination fails to provide the genuine third alternative promised.

Unfortunately, Pettit's view is ultimately vulnerable to the very same objections as aggregate views. As I will argue, there are several features of Pettit's account that, despite his objections, are distinctly positive in nature. Accordingly, freedom as non-domination risks collapsing into a variant of positive liberty.

In what follows, I will first outline Pettit's conception of freedom as non-domination. I will then outline four problems with Pettit's view that expose its positive features.

A Republican or Liberal Conception?

Before proceeding, I want to address a potential confusion.

It might seem surprising that our search for a distinctly *liberal* understanding of freedom should turn towards the work of Philip Pettit, given that Pettit himself understands freedom as non-domination as a uniquely *republican* conception of freedom as opposed to a liberal one. In fact, on Pettit's view, republicanism is distinct from liberalism precisely on account of its differing view of freedom.²

There are good reasons, however, to think that Pettit's classification is misguided, some of which we have already explored. In the first place, Pettit identifies negative liberty as the liberal conception (Pettit 1999: 9). But, as we saw in the preceding Chapter, few liberals, either historical or contemporary, endorse a strictly negative conception of liberty, even though some purport to do so. Even if Pettit is right to follow Berlin in pointing out a historical connection between liberalism and negative liberty, it would be wrong to conclude that negative liberty serves as the exclusive basis for the liberal conception of freedom, as the previous two Chapters have shown. Like Berlin, Pettit singles out Hobbes and Bentham as the modern originators of the negative view (Pettit

²For a detailed discussion of the difference between republicanism and liberalism on Pettit's account, see Pettit 1999: 7 - 11.

1999: 45ff) despite the fact that neither are liberals in the traditional sense (Larmore 2001: 233). Further, Pettit construes republicanism fairly broadly to include even Locke (Pettit 1999: 40), who is a liberal if anyone is. Ultimately, Pettit's republican freedom, at least as he initially presents it, fits better with liberalism than a strictly negative conception (Larmore 2001: 233ff). Indeed, I hope to demonstrate in Chapter 5 that freedom as anti-domination, which is itself drawn from Pettit's republican account, is the most promising liberal conception of freedom.

It is also worth noting that, in addition to being more congenial to liberalism than he seems to suggest, Pettit's republican account of liberty also seems to be in tension with most traditional accounts of republicanism. On those accounts, republicanism endorses a positive variant of liberty wherein *true* liberty, as distinct from mere non-interference, is achieved through some form of collective self-rule. As we have already seen, Rousseau, perhaps the most prominent republican theorist of the modern era, equates freedom with obedience to the "general will" (Rousseau 1968: 64). Pettit views Rousseau as more of an outlier in the republican tradition than his prominent reputation would seem to suggest (Pettit, 1999: 19), but I

am not sure that this is an accurate characterization. For example, Hannah Arendt (1968), another prominent twentieth-century republican, also understands freedom as realizable only through active civic engagement, as was noted in Chapter 1. Further, more contemporary republicans, such as Michael Sandel, share this commitment to the central importance of civic participation and the positive conception of liberty that seems to go along with it. Indeed, on Sandel's view, it is precisely this positive understanding of liberty that distinguishes republicanism from liberalism:

Central to republican theory is the idea that liberty depends on sharing in self-government [...] It means deliberating with fellow citizens about the common good and helping shape the destiny of the political community [...] To share in self-rule therefore requires that citizens possess, or come to acquire, certain qualities of character or civic virtue. But this means that republican politics cannot be neutral towards the values and ends its citizens espouse. The republican conception of freedom, unlike the liberal conception, requires a formative politics, a politics that cultivates in citizens the qualities of character that self-government requires. (Sandel 1996: 5 - 6)

Pettit, however, insists that the republicanism of Rousseau, Arendt, and Sandel, is but one strand of republican thought, namely the "communitarian" or "populist" strand, and further that this version has

overshadowed the other strand of republicanism which is concerned with preventing domination rather than fostering self-mastery through civic participation (Pettit 1999: 8).³

The version of republicanism that Pettit has in mind, however, seems much closer to liberalism than its communitarian variant (Ferejohn 2001: 83).⁴ While *communitarian* republicanism differs sharply from most versions of liberalism in its endorsement of both moral perfectionism and collectivism, Pettit's preferred republicanism joins with liberalism in both insisting on state neutrality regarding the good life (Pettit 1999: 56) and in prioritizing individual liberty over the formation of a collective will (Pettit 1999: 302), or at least so he contends. I introduce this last qualification because, as I intend to argue, Pettit's republicanism is much closer to the communitarian strand than he initially lets on, hence its implicitly positive features.

My objection to Pettit's republican label thus does not amount to a mere quibbling over the use of terms. Ultimately, I think Pettit's efforts to sharply distinguish his own view from that of liberalism risks undermining his

³For Pettit's detailed critique of Sandel's republicanism, see Pettit 1998.

⁴Larmore (2004) and McMahon (2005) also note the similarities between Pettit's republicanism, as he presents it, and liberalism.

entire project. In trying to move beyond Berlin's distinction between negative and positive liberty, Pettit runs afoul of Berlin's central worry; he ends up endorsing what amounts to an *anti-liberal* rather than simply a *non-liberal* conception of liberty. What's more, if the analysis in the preceding two Chapters is correct, then such an attempt is superfluous, since the liberal conception of liberty is already distinct from either negative or positive conceptions. Instead of trying to locate a non-liberal conception of liberty within the republican tradition, I think the better strategy is to develop a unique third conception that better coheres with standard liberal commitments. This is what I hope to do with freedom as anti-domination in Chapter 5.

Non-Domination

Pettit has offered various articulations of freedom as non-domination. In its earliest formulation, I enjoy freedom as non-domination, "to the degree that no human being has the power to interfere with me" (Pettit 1996: 578). More recently, Pettit proposes a modified view: I suffer domination to the extent that another has "the capacity to interfere on an *arbitrary* basis" in my affairs (Pettit

1999: 52; emphasis added). Non-domination accordingly consists in the absence of the possibility of such arbitrary interference. In his most recent, Pettit has offered another distinct, though on his view compatible, articulation of non-domination as, "the absence of alien or alienating control on the part of other persons" (Pettit 2008: 102). And Quentin Skinner offers a similar formulation of what he calls the "neo-Roman" account of liberty, wherein to be free is "not to be subject to the power of anyone else" (Skinner 2002: 249).

I will explore a more detailed account of non-domination shortly, but for now it is important to note that, under any formulation, the relationship between slave and master is paradigmatically a relationship of domination (Pettit, 1999: 22; Skinner 1998: 38ff). The relation of slave to master is one of utter and total dependence. The master can, at any moment, interfere in the slave's affairs with complete impunity. It is not the case, however, that the slave's liberty is only diminished upon the actualization of such interference. Crucially, for both Pettit and Skinner, the slave remains unfree in a significant respect even when conditions resulting in actual interference on the part of the master fail to materialize. Thus, even the lucky slave under the rule of

a benevolent master is still unfree despite the fact that he or she might be fortunate enough to enjoy a high degree of non-interference. To put it another way, it is the *mere possibility* of interference that renders one unfree, rather than actual interference itself.

This is the intuition that the negative conception of liberty cannot capture. As Pettit puts it succinctly, "I suffer domination to the extent that I have a master; I enjoy non-interference to the extent that the master fails to interfere" (Pettit 1999: 22 - 23).

Domination and interference are thus distinct kinds of harm. As the example of the lucky slave reveals, actual interference is not a necessary condition for domination, nor, as we will see shortly, is it a sufficient condition on Pettit's view. There are conditions under which I may be subject to interference, but do not thereby suffer domination. That is, there can be cases of non-dominating interference.

Essentially, it is the slave's status as slave that renders him or her unfree in terms of non-domination. As Pettit emphasizes, "the condition of liberty is explicated as the status of someone who, unlike the slave, is not subject to the arbitrary power of another; that is someone who is not dominated by anyone else" (Pettit 1999: 31).

Unlike negative conceptions of liberty, which focus on the range of choices available to an agent, liberty as non-domination is concerned with the standing an agent occupies (Pettit 2007: 715). As Pettit frequently stresses, freedom as non-domination, "goes with being able to look the other in the eye" (Pettit 1999: 71). Accordingly, liberty as non-domination is conceptually distinct from liberty as non-interference, and, on Pettit's view, it is superior to liberty as non-interference in that it alone is able account for the intuitive and essential connection between being enslaved and being unfree.

At the same time, being free from domination is not equivalent to achieving full-blown self-mastery in the stronger positive sense. One may lack the wisdom, courage, or tenacity to effectively pursue his or her own authentically-chosen ends yet not occupy a subservient status in relation to his or her fellow citizens (Pettit 1996: 578). Like its negative counterpart, the positive conception is concerned mainly with the range of options an agent has at his or her disposal; only, on the positive conception, it is the *origin* rather than the *availability* of these options that is significant in terms of one's freedom (Berlin 2002). Self-mastery, in the positive sense, signifies not so much a social status, but a state

of accomplishment regarding one's most fundamental projects. It too is thus conceptually distinct from freedom as non-domination. Further, insofar as the positive conception sometimes justifies subordinating people in the name of freedom -- for example, in cases when doing so is necessary in order to instill within them the wisdom, courage, or tenacity required for them to achieve their true purpose -- it may itself constitute a form of domination.

The conception of liberty put forth by Pettit and Skinner under the banner of non-domination thus has significant intuitive appeal. Surely if anyone is to count as unfree, it is someone who suffers enslavement. The fact that certain forms of slavery and complete subordination are compatible with both negative and positive conceptions of liberty only highlights their respective deficiencies. It is one thing, however, to recognize that, whatever it means for one to enjoy freedom, it must mean at the very least that he or she is not relegated to a status of servitude; but it is another to formulate a coherent conception of freedom that underwrites this intuition. Unless this project can be executed successfully, freedom as non-domination will not provide a very useful third alternative whatever its initial intuitive attractiveness.

Because Pettit has offered the most systematic treatment of freedom as non-domination, I will focus primarily on his various formulations of it. In his earliest formulation, Pettit equates non-domination with *anti-power* (Pettit 1996). That is, one enjoys non-domination to the extent that one is able to effectively resist the uninvited incursions of others. Again, it is important to stress that, on this account of freedom, one need not suffer any actual interference in order to suffer domination. All that is needed to produce a relationship of domination is a significant discrepancy in the powers possessed by the respective parties. Provided that I have no recourse against arbitrary interference from others, I am unfree even if they choose not to exercise their power advantage. Since reciprocity fails to obtain in these cases, I am at still at the mercy of others even if I am fortunate enough to avoid their sanction. Conversely, if I *do* possess a means of recourse, I enjoy non-domination because now my ability to avoid interference does not depend exclusively upon the good will of others. In other words, I enjoy non-interference "resiliently," as opposed to contingently because this lack of interference is not something I come upon by fortunate accident, but something that I have the power to command (Pettit 1996: 589).

Securing non-domination for the general population, then, on this understanding, requires achieving an equal (or equal enough) distribution of power amongst individual citizens.⁵

More recently, however, Pettit has abandoned this way of understanding non-domination. The problem with this approach, Pettit now thinks, is that, while promoting reciprocal power relations amongst citizens may *limit* non-domination, it will never *eliminate* it. This is because an equal distribution of power is still compatible with significant degrees of arbitrary interference (Pettit 1999: 67). Just because I have recourse does not guarantee that you will not choose to interfere with me -- that you won't decide that doing so is still worth the risk. What's worse is that, if I do decide to exercise my recourse, I can only do so by interfering with you. For example, if you decide to stand in front of my apartment door preventing my access, I can respond in kind and do the same to you provided that our respective power resources are relatively equal. But in this case neither of us will enjoy resilient

⁵In order to develop this view in greater detail, it would of course be necessary to say more about what constitutes *power* and how it can be measured and distributed. Since Pettit abandons this formulation early on, I will not develop a more elaborate account here; however, I will return to this issue when outlining my own conception of freedom in Chapter 5.

non-interference. Rather, we are both subject to the constant threat of interference, not *in spite of*, but *because of*, our reciprocal positions. It is of course likely, Pettit acknowledges, that an equal distribution of power will, in many cases, result in fewer total instances of arbitrary interference than an unequal one, since each individual will have the means to deter interference from others, but the threat of arbitrary interference in such a regime nevertheless remains. Thus the anti-power formulation does not guarantee freedom if freedom consists in protection against exposure to arbitrary interference.

Accordingly, in his more recent formulations, Pettit has moved away from conceiving of non-domination as a kind of *anti-power* to conceiving it exclusively as the *absence of the possibility of arbitrary interference*. As will become clear, I think this shift in emphasis from *anti-power* to *arbitrary interference* is a mistake on Pettit's part, as it renders freedom as non-domination conceptually too similar to both negative and positive accounts. In fact, I think the *anti-power* approach is far more promising than Pettit acknowledges, and that account informs the conception of freedom as anti-domination that I develop in Chapter 5. For the remainder of this Chapter, however, I will focus on Pettit's second formulation of non-domination

as the absence of potential arbitrary interference.

In his later articulation, Pettit contrasts his view more explicitly with the negative and positive approaches. In addition to freedom as the absence of interference and freedom as self-mastery, Pettit notes that Berlin's distinction leaves room for an obvious third alternative: "absence of mastery by others" (Pettit 1999: 22). Pettit's conception thus borrows crucial elements from both negative and positive conceptions, but it aspires to not be a mere ad hoc aggregate view like those critiqued in the preceding Chapter. Instead, Pettit presents his view as a conceptually unique *hybrid* account.

Accordingly, Pettit contends, freedom understood as the absence of the mastery of others differs from negative and positive accounts of liberty in significant respects. As has already been stressed, unlike with the negative conception, one need not actually be interfered with in order to suffer domination on this account. But equally as important for Pettit, one can be subject to interference and *not* suffer domination provided that this interference is non-arbitrary, and interference is non-arbitrary on Pettit's view when it is "forced to track" the agent's own avowed interests (Pettit 1999: 56). Pettit illustrates this point with his favorite example of Ulysses who requests

that his sailors tie him to the mast in order to ensure that he is incapable of responding to the call of the sirens (Pettit 2001: 45, 75). In doing so, Ulysses's sailors indeed subject him to physical interference. But, though they interfere, the relationship between the sailors and Ulysses is not one of domination, as this act of interference accords with his expressed wishes. The sailors are not dominating Ulysses in tying him to the mast; rather, they are obeying his instructions. To put it another way, in spite of their interference, the sailors do not exercise "alienating control" (Pettit 2008: 102) over Ulysses because their actions are still responsive to his demands. Though interfered with, Ulysses is, at some level, still the agent in control, and binding him therefore results in no loss of his freedom.

Pettit thus contends that the sort of interference present in the case of Ulysses is intuitively not freedom limiting, and, he reasons, a similar relationship may obtain between the state and individual citizens. On a negative conception, any state law will be inherently freedom limiting because, regardless of whether the law is justified, enacted democratically, or promotes the common good, it will constitute a form of interference. On the non-domination view, however, state laws and regulations

are not freedom limiting provided that they track, or are responsive to, the interests of individual citizens. A state can meet this burden, on Pettit's view, if its laws are subject to both democratic scrutiny and the proper procedural checks and balances. Pettit, however, does not endorse something like the *democratic consent* approach, the positive implications of which we noted last Chapter. Instead, what's crucial for Pettit is not that laws achieve either actual or ideal consent, but that they be subject to contestation so that they do not become sectional or factional in nature, thereby allowing one group of citizens to arbitrarily coerce others. The free state can guard against this risk,

by recourse to public discussion in which people may speak for themselves and for the groups to which they belong. Every interest and every idea that guides the action of a state must be open to challenge from every corner of the society; and where there is dissent, then appropriate remedies must be taken. (Pettit 1999: 56)

Hence the importance of democratic procedures, basic rights, and the rule of law. Should a state lack these checks, it risks imposing public "imperium" rather than private "dominium" (Pettit 1999: 112). That is, the state itself will become an instrument of domination, and a devastatingly effective one at that. But, provided that

such checks are in place, state interference will not be of the arbitrary sort. Accordingly, a constitutional authority could protect people from private dominium by others, while not itself becoming a source of imperium, and such an authority will be necessary in order to insulate those who are vulnerable from the unwanted and arbitrary influence of the more powerful (Pettit 1999: 68).

So, unlike the negative conception, the non-domination account holds that interference and liberty are compatible under certain conditions. Some forms of interference do not lessen freedom. This raises the suspicion that non-domination is a version of positive liberty. Pettit, however, steadfastly rejects this charge. He accordingly distances himself from the populist or communitarian strand of republican thought:

The approach I take does not support any Rousseauesque paradox to the effect that submission to the law is a form of self-emancipation, but only the traditional republican refusal to equate law's mode of restraining liberty with that of the bully or burglar. (Pettit 1999: 302)

Again, being free from the mastery of others is not, on Pettit's view, equivalent to realizing the more robust achievement of *self-mastery*. One could be free from the arbitrary interference of others without being free from

various *internal* barriers to freedom as identified by Taylor (1985), achieving fully fledged autonomy as advocated by Raz (1986), or actively participating in public life in the manner required by Arendt (1968). Just as liberty and some forms of interference are compatible on the nondomination view, so are liberty and the absence of some forms of mastery.

Before critically evaluating Pettit's non-domination view, it is worth highlighting the potential advantages this conception has over its negative and positive counterparts. Recall that one problem with the negative conception is that it is simultaneously both too narrow and too broad, too narrow in that it does not count for limitations of freedom that are not produced through interference, and too broad in that it counts any and all instances of interference as equally freedom limiting. If successful, the nondomination view avoids both worries. In understanding unfreedom in terms of domination rather than interference, Pettit's view is able to countenance cases of coercion that the negative view cannot capture. Relationships of domination, after all, do not only obtain between masters and slaves. Not only will the contented slave count as unfree on Pettit's view, but so will the subordinate housewife, the exploited laborer, and the marginalized racial minority or ethnic

group, because their lack of political and social standing puts them at the mercy of others even when they are not directly interfered with.⁶

The non-domination account also promises an additional advantage over the negative alternative: it can discriminate between more valuable and less valuable freedoms. Traffic laws and guard rails on bridges can be seen as trivial instances of interference on the non-domination view because they are non-arbitrary, as they track citizens' own interests. Furthermore, some laws, like criminal laws and civic regulations, will not only fail to hinder freedom on the non-domination account, but will be essential to facilitating it. Protecting citizens from violence or exploitation at the hands of others is one of the fundamental ways in which the state can promote non-domination. But, just as some instances of state interference do not inhibit liberty in any meaningful sense, others will indeed constitute gross violations of liberty. Laws that prohibit freedom of speech, for example, will prevent people from being able to express their interests or their objections to coercive policies, a capacity that is necessary in order to ensure that interference remains non-

⁶For a detailed list of dominating relationships, see Pettit 2001: 137.

arbitrary. Likewise, laws prohibiting freedom of the press will prevent citizens from having access to necessary information so that they may individually evaluate the degree to which the state's actions accord with their own interests. The same can be said about laws restricting religious worship and barring public assembly. The former prevents people from developing their own values and commitments, whereas the latter prevents them from forming publicly recognizable group identities necessary for achieving social recognition and status. In this respect, promoting freedom as non-domination warrants bestowing special consideration to the basic liberties over others.

The question is: can the non-domination view, in contrast to aggregate strategies, achieve these advantages without recourse to a positive conception of liberty? As we've noted, Pettit insists that it can. I am less sure. Pettit's view, I contend, ultimately shares more in common with positive liberty than he suggests. Further, I also think that, despite Pettit's objections, the non-domination view is consistent with pervasive state interference, including violations of citizens' basic liberties. I now want to turn to those elements of the non-domination view that seem distinctly positive in character.

The Positive Aspects of Non-domination

In this section, I will outline four problems with Pettit's account of non-domination. I will label these: a) the authenticity problem, b) the collectivization problem, c) the evaluative problem and d) the maximization problem. The first two of these raise questions about what it means for interference to be non-arbitrary. The second two focus on Pettit's consequentialist account of the value non-domination.

Collectively, these problems reveal that, despite Pettit's protests to the contrary, the non-domination view does, in some cases, justify coercion in the name of liberty. But they also show that the non-domination view is not in earnest a status based conception of liberty. Accordingly, they call into question what is supposed to be the defining feature of Pettit's account.

The Authenticity Problem

One of the chief difficulties for Pettit's view lies in spelling out specifically what makes a given instance of interference non-arbitrary rather than arbitrary. Recall that, in order to be non-arbitrary, interference must track the interests of those subject to it. In the preceding

Chapters, however, we have explored at length the problems with what we might call *interest-based* theories of liberty. One problem is that, if we think that tracking the interests of citizens requires making evaluative distinctions between more and less worthy desires (Taylor 1985), then our conception of liberty will be an inherently positive one. Pettit, however denies that we have to understand what it means to track the interests of others in this manner. He insists that this process is "not essentially value-laden," but rather, "there is a *fact of the matter* as to whether or not the state is effectively forced to track non-sectional interests and ideas when interfering in people's lives" (Pettit 1999: 56; emphasis added). Hence, Pettit's republicanism shares with liberalism a commitment to neutrality. Interference is consistent with freedom on the non-domination view, not when it is aimed at promoting some substantive conception of the good that is independent from citizens' actual wants and desires, but when it is institutionally constrained in such away so as to track only those interests that citizens' do, as a matter of fact, hold in common. A republican government operating under the norm of non-domination pursues only those aims and goals that in some sense acceptable to all.

It is not clear, however, whether such an assessment

can be entirely free from normative considerations. As John Christman points out, an effective criminal successfully tracks the interests of his or her victims in some sense (Christman 1998: 205). For example, a kidnapper must be able to track the interests of those hoping to secure the release of the victim in order to demand the proper ransom. In short, effectively exploiting people requires that one be responsive to their interests just as much as honoring their wishes does. But surely a state that tracked the interests of its citizens in order to exploit them would not be defending its citizens from domination, but rather perpetuating it. What is important then is not just that state policy be responsive to citizens' interest in some purely factual sense, but that it be so in the *right way*.

The problem is, once we start to elaborate on what the *proper* mode of responsiveness is, the non-domination view encounters a dilemma familiar to positive conceptions in general. This is because the question of whether or not the state is forced to track the interests of citizens is at least partially evaluative in another significant sense. As we saw with Christman's (1991) own *content neutral* view of positive liberty, a conception of liberty can be evaluative not only with respect to the *value* of an agent's interests and desires, but also with respect to their *authenticity*.

While it may be the case that the state can effectively track the interests of its citizens without considering the relative worth of these interests objectively understood, it can hardly remain neutral with respect to the authenticity of these interests; at least it cannot if it is to protect them against domination.

Again, consider Christman's example of the subordinated housewife who, because of her relatively marginalized status and the prevalent cultural attitudes of the society in which she lives, comes to regard her position as justified and accordingly defers to her male partner in all major decisions. This clearly seems like a paradigmatic case of domination. Provided that she shows the proper deference, the housewife will avoid actual interference, yet this non-interference is won at the price of her subordinated status. She is clearly unfree despite the fact that she may encounter little physical coercion, and the fact that she does not actively resist her subjugation is only further evidence of the extent of her domination. Indeed, this is a case in which a state authority could intervene and protect her from domination. But, were the state to ignore the authenticity of her interests, it could reasonably claim that her current situation is one in which her interests are respected. After all, deferring does accord with what she

herself desires. In addition, as Marilyn Friedman (2008) points out, one of the most prominent historical justifications for why women should be subordinate to male authorities is that men, in their supposed role as "protectors" and "bread winners," are best suited to act in the best interests of women (Friedman 2008: 257). The subordinate housewife in this case might very well concur that this is a correct assessment of her own interests. Of course, we might suspect that these interests are themselves the product of her domination, but, unless the state is able to make this evaluative discrimination, it will have to regard her interests as successfully *tracked* in this case.

It seems clear that Pettit does not mean to assert that tracking the interests of citizens should be evaluatively neutral in this latter sense. The oppressed housewife is one of his own examples (Pettit 1999: 5), and Pettit acknowledges that being subject to "manipulation" is one of ways in which someone can suffer domination (Pettit 1999: 60, 159). At times though, Pettit does seem to suggest that we should understand "interests" in an evaluatively neutral sense. According to Pettit a "set of practices and policies will be in a person's net interest, plausibly, if it is one whose expected results are something that the agent wants for himself or herself, where that want satisfies conditions

that guard it against charges of clear irrationality” (Pettit 2004: 153).⁷ But if Pettit employs *this* understanding of interests, then his view is overly narrow in the same manner as negative conceptions. Accordingly, not countenancing cases like the one depicted above would severely limit the applicability of Pettit's conception of liberty. On this score, even the contented slave could be regarded as free from domination, and surely this is an unacceptable result for Pettit's view.

Unfortunately, this puts Pettit in a rather serious bind, because if tracking the interests of citizens is an evaluative endeavor, then Pettit's view faces a problem familiar to positive conceptions like Christman's. If the state can avoid dominating its citizens by being responsive only to their *authentic* as opposed to their *inauthentic* desires, then it can interfere with them against their own professed wishes, and such interference will not be regarded as freedom limiting. As with positive conceptions, Pettit's non-domination view validates state coercion in the name of freedom. Even setting aside the generally disturbing

⁷ Presumably, what Pettit means here by “rational” is something like the fairly weak sense of rational employed by Benn and Weinstein (1971) to account for the freedom inhibiting effect of threats. A threat, such as “your money or your life,” deprives you of your negative liberty on their view because no rational person would choose the former over the latter. I will discuss this issue somewhat further in Chapter 4. For a discussion of Pettit's evaluatively neutral understanding of interests, see Costa 2007.

implications of this thought, this result is particularly damaging to Pettit's view, because notice now it is not a person's *status* that determines his or her freedom, but whether or not his or her desires conform to some evaluative standard. If citizens can be coerced, in the name of freedom and against their professed wishes, then their objections to such interference have no real force. They will, in a sense, be at the mercy of the state which has the authority to determine their own authentic interests. Regardless of whether we think this is something the state can effectively do, such a conception of liberty renders citizens effectively powerless because, were they to voice the objection, "you cannot do this to me as a free citizen," the state could always respond, "but our actions accord with your true interests." Again, the citizen's objections could only count as a prudential consideration concerning the effectiveness of coercion, not its moral permissibility. Not only is Pettit's view not as impartial as he suggests, but it also fails to preserve his crucial insight that one's status determines one's freedom. Accordingly, Pettit's view is not only insufficient on a liberal view, but also fails on his own terms.

The Collectivization Problem

Despite his persistent objections, there is a sense in which Pettit's view strongly resembles what he calls the *populist* strand of republicanism. He readily acknowledges that citizens will often have self serving interests. I may not wish, for example, to pay taxes, abide by traffic laws, or adhere to state regulations, and I will thus regard such impositions as contrary to my interests. If state policies must track these interests in order to be non-arbitrary, this requirement will make the state's efforts to promote non-domination difficult, if not impossible, for two reasons. First, this would entail that anyone's objection to any proposed law would be sufficient to block that law's passage. Since few if any laws will enjoy universal consent, this would make it virtually impossible for the state to enact any laws at all, even when they serve to benefit everyone (Pettit 2001: 163ff). Second, insofar as people's interests will often conflict, were the state to act in accordance with the desires of one citizen or group or citizens, this will often times necessarily entail that its actions are in conflict with the interests of others. In such cases, whatever the state does will be an instantiation of domination, since its actions will inevitably fail to track the interests of some.

Pettit thus insists that the interests that the state must be forced to track in order to avoid interfering arbitrarily are not of this self serving-sort, but those interests that citizens hold in common:

I may have an interest in the state imposing certain taxes or in punishing certain offenders, for example, and the state may pursue these ends according to procedures that conform to my ideas about appropriate means. But I still may not want the state to impose taxes on me - I may want to be an exception - or I may think that I ought not to be punished in the appropriate manner, even though I have been convicted of an offense. In such a case, my relevant interests and ideas will be those that are shared in common with others, not those that treat me as exceptional, since the state is meant to serve others as well as me. And so in these cases the interference of the state in taxing or punishing me will not be conducted on an arbitrary basis. (Pettit, 1999: 55 - 56)

If this is what Pettit has in mind, however, then tracking the interests of citizens is necessarily an evaluative project in another significant respect (Waldron 2007: 152; Carter 2008: 65). It is important that the state not track citizens' interests simply as they are, as citizens will have parochial or self serving interests. Instead, there must be procedures in place that enable the state to distinguish between common and sectional interests.

But, even if we agree that it would be *wrong* for people to pursue their selfish desires at the expense of others, why should we think that preventing them from doing so is

not a limitation of their freedom? The worry of course is that we are slouching even further towards a positive view by understanding freedom not in terms of the availability of options, but in terms of their value. Perhaps, though, Pettit could make the case that restricting the relevant interests to only those held in common is not intended to imply that these interests are somehow morally more worthy or valuable, but that this restriction is necessary in order to ensure that each person's status as a free citizen is protected. At the same time, *prohibiting* people from acting on the basis of their self-serving desires does not seem to diminish their *status* as free citizens even if it does limit some of their options. Or, as Pettit puts it, laws may "condition" people's freedom, in limiting the number of options available to them, but they do not necessarily thereby dominate them (Pettit 1999: 301).

Pettit's contention has some plausibility. Under a status based conception of liberty, we might reasonably claim that preventing people from engaging in certain activities is necessary in order to protect the status of others, while holding in turn that this interference does not diminish the status of those subject to it. For example, if I insist that others pay taxes for my benefit, but refuse to pay them myself, or if I demand that the state

employ force to protect me from violent criminals, yet seek to inculcate myself from similar sanctions, then I will effectively be dominating others. They will be subject to my arbitrary will without recourse. But surely I cannot object that I am in turn being dominated by them in not being allowed to exploit them. I am certainly not subordinated to a lesser status if I cannot take advantage of others provided they cannot take advantage of me. In this respect, a status based conception of liberty captures Dworkin's intuition that it is absurd to think that I am somehow rendered *unfree* by laws that prevent me from murdering my critics (Dworkin 2001: 88). We might say, with Pettit, that laws against murder certainly condition people's freedom, but they do not subject them to domination, since not being able to murder people who disagree with me in no way diminishes my status as a free citizen. So we can explain why laws against murder are not inherently freedom limiting without having to borrow from positive conceptions of liberty, as Dworkin effectively does.

As long as the "common interest" is interpreted narrowly to mean only those privileges or penalties that citizens are willing to grant or impose on each other reciprocally, then Pettit's view seems to avoid any Rousseauian implications. Unfortunately, Pettit's notion of

common interest seems to involve a good deal more than this. Difficulties arise for Pettit's view when citizens *disagree* about what constitutes the common interest. In such cases, those in the minority will not be able to regard the coercive actions of the state as non-arbitrary, not because they do not conform to their own self-serving interests, but because they do not conform to what they understand as the common interest, particularly when the policy in question severely disadvantages them. Such citizens are not demanding special privileges or immunities for themselves, and accordingly they are not trying to dominate others; rather, they are objecting to impositions that specifically burden *them*.

Pettit, however, insists that, as long as the proper democratic institutions and procedures are in place, these adversely effected citizens should not feel dominated. Suppose, to borrow Pettit's examples, a group of citizens objects to a proposed legal prohibition or does not want a major roadway built near their homes:

All that is necessary is that they be assured that the judgment is made according to their ideas about proper procedures and that it is dictated, ultimately, by an interest that they share with others: an interest in the order secured by the criminal justice system or an interest in the possibilities of travel realized by roads and airports. They may bitterly regret the fact that

the judgment disadvantages them, but under the assurance described they can look on that disadvantage as a misfortune on a par with a natural accident; they do not have to see it as a token of domination by the state or groups within the state. (Pettit 1999: 198)

Thus, according to Pettit, while such disadvantages *condition* the liberty of some citizens, they do not constitute arbitrary interference and are hence nondominating.

It is not clear, though, why citizens would have to regard these outcomes in this way. Perhaps Pettit's claim is plausible if we understand common interests in terms of Pareto-efficiency. Citizens can accept instances of state interference that make them better off, or at least no worse off, even if these policies benefit others more than they. Though they may resent the fact that they didn't come out on top, they can still see the policy as in their interest since it does not make them worse off than they otherwise would be without it. It is unlikely, though, that many state policies would achieve Pareto-efficiency, and Pettit readily admits that often times democratically enacted policies will make certain groups *worse off*. He concedes:

It may be a matter of common avowable interest that the tax system be made more efficient, that new power station should be constructed, or that various anti-pollution measures should be implemented. But any way of advancing such a cause

is bound to hurt some more than others. There will always be a minority who are negatively affected by any improvement in the tax system, a minority who live in the vicinity of the new, much needed, power station, and a minority who depend for their livelihood on industries hard hit by important anti-pollution legislation. (Pettit 2001: 163)

But given that citizens like those in the above example are forced to suffer an imposition which disadvantages them in order to benefit others, how can they view this imposition as anything but arbitrary? That is, why shouldn't they regard this policy, against which they have no recourse, as exploitive and hence dominating? It cannot be because opposing such a policy violates reciprocity, because these citizens are not demanding special privileges for themselves, but are merely objecting to a policy or set of policies that uniquely disadvantages them; nor can it be because they still serve to benefit, since the policies in question are not Pareto-efficient by stipulation.⁸

The only remaining possibility is that these sorts of policies are not arbitrary because they accord with some more substantive understanding of the common interest. The problem is there will likely be significant disagreement over what constitutes the common interests amongst citizens. Even if we think a consensus could be reached on a list of

⁸ Carter also briefly considers, and then quickly rejects, the Pareto-efficient interpretation of what Pettit might mean by common interests (Carter 2008: 65).

certain basic goods (such as security, education, a clean environment, access to travel, etc.), *ranking* these values is bound to be controversial (Gaus 2001: 157). Since political decision making will inevitably involve cost benefit analysis resulting in various trade-offs, almost any government policy will conflict with some citizens' conception of the common good. Accordingly, if citizens can be coerced on the basis of a conception of the good which they explicitly reject, and this coercion is entirely consistent with their freedom, then they can quite plainly be forced to be free.

This puts Pettit in somewhat of a bind, or, more specifically, a kind of trilemma. First, he could simply concede that government action will, in most cases, constitute domination of at least some group of citizens (a result he would likely find unacceptable since, on his view, the state is the primary means by which we can combat domination). Second, he could assert that what constitutes the common good is just any policy that is passed through the appropriate democratic procedures. Christopher McMahon (2005) in fact interprets Pettit in this way. The problem with this option, as McMahon points out, is that any state policy will be non-dominating on this view provided that it passes democratic muster (McMahon 2005: 81). But then we

would have to admit that, theoretically at least, almost any policy, no matter how intuitively objectionable, could be considered non-dominating under the appropriate circumstances, and accordingly there would be virtually no limit on what the state might do.

Pettit explicitly rejects this second option (Pettit 2005). In response to McMahon, he denies that state policies are made non-arbitrary by virtue of being passed through democratic procedures. Instead, Pettit argues that there is a determinant answer as to what constitutes the common interest objectively understood, and democratic procedures are essential because, if properly administered, they will often yield the correct answer. In short, Pettit accuses McMahon of committing a Euthyphro like error: a policy will be licensed by democratic procedures, on Pettit's view, "because it is nonarbitrary [...] rather than being nonarbitrary because it is licensed" (Pettit 2005: 279).

Accordingly, Pettit seems to opt for a third option: he defends a particular objective conception of what constitutes the common interest. The conception of the common interest he has in mind is a *contractualist* one, wherein the common good is understood as what people could reasonably agree to under fair deliberative conditions

(Pettit 2001: 157f1). This strategy, however, faces serious problems as well. One problem is that real world deliberative conditions will rarely if ever be of this ideal sort, and Pettit's contention that democratic procedures will often yield results that will conform to this standard is hardly plausible. Under real world conditions, there will inevitably be constraints on time and limited information and, as such, democratic deliberations are likely to be fallible at least some of the time and not generate the same results that would be reached under ideal conditions.

In addition, whatever contractualist strategy we employ will inevitably rely upon an appeal to people's ideal rather than actual selves, otherwise the problems of self-serving interests or pervasive disagreement are simply reintroduced.⁹ But even if a contractualist approach provides the correct framework for developing just political institutions and social arrangements, they cannot serve as a foundation for liberty without evoking a positive account. On any such view, citizens can be coerced against their own

⁹There are several possible candidates Pettit could appeal to. On a contractualist approach, the common good could be understood as what agents would agree to when behind the veil of ignorance (Rawls 1971), or as "what no one could reasonably reject as the basis of informed, unforced, general agreement" (Scanlon 1982: 11), or as those norms "that meet (or could meet) with the approval of all affected in their capacity as *participants in a practical discourse* (Habermas 1990: 66). None of these options, however, is able to avoid the objection outlined here.

professed wishes, yet in accordance with their freedom, because this coercion is leveled with the consent of their ideal if not actual selves. In this respect, Pettit's view resembles Waldron's democratic consent approach despite his initial objections.

This problem is only deepened by Pettit's contention that the non-domination view justifies some rather controversial policy proposals; indeed, he sees this as a virtue of the view: "freedom as non-domination supports a rich, even radical set of policies, providing ecumenical ground for what might otherwise seem like sectional demands on the state" (Pettit 1999: ix). Pettit goes on to argue that policies such as wealth redistribution (Pettit 2001: 158), public health care (Pettit 1999: 159; 2010: 96), environmental protection and energy independence (Pettit 2010: 97) or all justified in the name of non-domination. Such policies are sure to be controversial, however, because they will no doubt place significant burdens on some citizens who do not regard them as essential to the common good. Yet, on Pettit's view, we should not regard such impositions as restraining the liberty of these citizens.

The problem is not that we should regard such policies as intuitively or inherently freedom limiting. The conception of freedom I will argue for in subsequent

Chapters in some cases justifies similar policies. The problem, rather, involves Pettit's explanation for *why* these policies do not constitute violations of individual liberty. At bottom, this explanation must be because these policies accord with some notion of the public good as determined by the hypothetical deliberation of citizens' ideal selves. One worry of course is how do we determine the limits of what the state might impose upon citizens in the name of liberty? If the policies discussed above can be justified, what's to say that more radical ones cannot be as well, especially given that there is bound to be much epistemic disagreement over which policies do in fact conform to this standard (Costa 2007: 302). This is a problem familiar to positive views, but, aside from this more general worry, this result is particularly problematic for Pettit's non-domination alternative because again it seems as if one's status is no longer decisive. If the state can justify interference by appeal to my ideal as opposed to actual consent, then the force of my explicit objections will be rendered impotent, as the objections can always be circumvented. I will have no recourse against any policy that aligns with the common good even if I do not recognize it as such. The state will be able to utterly ignore my protests without violating my liberty. On such a view, my freedom is not determined by my

status, but to the extent to which the laws I am subject to conform to some higher ideal.

The Evaluative Problem

The next two objections I will raise target Pettit's treatment of non-domination as a teleological principle as opposed to a deontological one. On Pettit's account, non-domination is a value to be maximized rather than a "constraint" to be respected (Pettit 1999: 98). If we understand non-domination in this former consequentialist sense, then "we think that the state should be designed so that the expected non-domination amongst those who live under the system is at a maximum," whereas, if we understand non-domination deontologically, then, at least on Pettit's view, we think that the state itself must never violate the norm of non-domination, not even as a means to maximize the level of non-domination enjoyed by citizens overall (Pettit 1998: 99).

Pettit argues that the teleological understanding both better conforms with the historical tradition of republicanism and is intuitively more compelling. Treating non-domination in this way, however, generates significant problems for his view. In the first place, in order to determine how best to maximize non-domination, we will have

take into account not only the extent of non-domination citizens enjoy but its relative significance. Citing Taylor (1985) approvingly, Pettit insists that it will often be the case that enjoying non-domination over a certain range of options will be of more value to an agent than enjoying it over others: "it will also be important insofar as domination in some areas is likely to be considered more damaging than it is in others; better be dominated in less central activities for example, rather than more central ones" (Pettit 1999: 58).

Once we understand non-domination as something that must be maximized, it is clear why Pettit has to make this further stipulation. Without it, his view would face a problem familiar to negative accounts that hold that the state should maximize non-interference. Were we not to take evaluative considerations into account, the non-domination view would sanction some rather counter intuitive results.

For example, consider Two Societies. Society One is similar to the one depicted in Ray Bradbury's *Fahrenheit 451* (1950). In this society, citizens are free to engage in almost any activity they like. There are no laws prohibiting drug use or various sexual behavior, there are no censorship laws prohibiting indecent entertainment, and

there are no paternalistic safety regulations mandating that citizens wear seat belts or bike helmets. There is, however, a fairly strict prohibition on any material promoting what the state regards as "critical thinking." Consequently, the state forcibly confiscates, or prevents the transmission of, any book, website, film, television program, etc., that provokes people to critically reflect on their values, desires, or inherited cultural norms.

Society Two is much like the present-day United States or other liberal democracies. In this society, there is a well established legal protection of speech and press rights which prevent the state from passing any law, or set of laws, that would effectively suppress critical thinking however understood. Yet, in this society, the state does impose many legal restrictions that the society described above lacks: there are laws against recreational drug use, there are laws against prostitution, there are laws censoring some pornographic material, or at least that make this material more difficult to obtain, and there are laws mandating that motorists and cyclists wear either seat belts or helmets even if their noncompliance would pose no danger to others. Furthermore, suppose that at least some, if not most, of these regulations are arbitrarily imposed. They exist simply because there are prevalent social

taboos, endorsed by the majority, against certain behaviors, not because they are necessary to promote the common good or protect public safety.

Citizens in Society One will therefore enjoy non-domination over a wide range of options that those in Society Two lack. Still, it would seem absurd to hold that the citizens of Society One enjoy a greater degree of non-domination *overall* than those of Society Two because these citizens lack a significant freedom that those of Society Two possess, namely the freedom to produce, promote, and consume materials encouraging critical thinking. I take it that this intuition still holds even if the citizens of Society One are exposed to less arbitrary interference on a day-to-day basis than those of Society Two. That is, though they have the option, the citizens of Society Two do not often engage in activities that encourage critical reflection. More often than not they prefer to entertain themselves with the same sorts of uncritical distractions that are readily available to the citizens of Society One except, in this regard, the citizens of Society Two are more likely to encounter arbitrary interference than their counterparts in Society One.

Despite this, it seems clear that the citizens of Society Two enjoy not less but more non-domination than

those of Society One. There is little doubt, I think, that liberal democracies, like the United States for example, sometimes impose laws intended to regulate what are publicly considered "undesirable" behaviors on what amounts to a purely arbitrary basis. Though regrettable, these laws are not equivalent to the more objectionable restriction of fundamental liberties, which constitutes a much more severe limitation of liberty. The Prohibition period in the United States, for example, no doubt violated the liberty of American citizens before it was ultimately repealed, but it would have been far worse had the government permitted the consumption of alcohol but prohibited any literature, art, or news media critical of societal or cultural norms. Citizens under prohibition may have rightly lamented the fact that they could not consume alcohol, but it seems counter intuitive to assert that they were subject to the same level of domination as citizens deprived of their most basic freedoms.

If we understand non-domination as a value to be maximized, and hence something that can be quantified in some sense, then how do we account for this discrepancy? The problem we are faced with is similar to the one that Charles Taylor (1985) poses against negative views in general. Recall that Taylor charges that, under a negative

view, we would have to regard traffic lights as greater impediments to liberty than laws restricting religious worship because they would likely result in more day-to-day interference for most citizens than prohibitions on religious practice. In the case of non-domination, however, the traffic light example no longer has any force because, presumably, traffic lights constitute non-arbitrary instances of interference and are hence nondominating (of course, as we saw with the two preceding objections, the introduction of this qualification generates serious problems of its own). As the above example shows, however, we can imagine similar cases in which citizens are exposed to a fair degree of arbitrary interference, or even the possibility of such interference, and yet this infraction seems less egregious than exposure to arbitrary interference in other more central areas of life, even if this former exposure extends over what seems like a quantifiably greater range of options.

As was noted earlier, Pettit attempts to avoid this problem by essentially endorsing Taylor's solution. He asserts that enjoying non-domination in certain areas of one's life might be more or less significant, and hence of greater or lesser consequential value, than others (Pettit, 1999: 58). Pettit does not elaborate much here on what

accounts for their greater value, but we are left to presume, based on his reference to Taylor, that it is because the range of actions that compose the more central or significant areas of our lives in some sense constitute more worthwhile pursuits, the implication being that we do value, or should value, the activity of critical thinking over indulging in more banal forms of entertainment. Accordingly, not being exposed to arbitrary interference in our pursuit of these activities is of greater value to us. Presumably, the greater value of these activities will have a multiplier effect such that the freedom to perform them, or more specifically the absence of the possibility of arbitrary interference when performing them, will account for a greater amount of non-domination than the freedom to perform less central activities.

Pettit's view now, however, strongly resembles one of the aggregate strategies we examined in the previous Chapter, namely *the overall freedom* approach. Accordingly, it encounters the same problems. The central problem is that, if the relative value of performing certain actions determines, in part, the extent of their contribution to one's overall level of freedom, then the conception of liberty at work is either an exercise concept, or the value of liberty is rendered purely instrumental. One way to

account for the multiplier effect of more significant freedoms is to insist that freedom itself consists in the active pursuit of worthy courses of action rather than their mere availability. So, to return to the example above, if freedom itself involves critical self-reflection, then obviously the freedom to perform those activities that encourage critical self-reflection will be more valuable than ones that do not and certainly more valuable than ones that might distract one from such pursuits. This is indeed Taylor's own explanation, as we have already seen. But, were Pettit's view to incorporate this explanation, freedom as non-domination would become a thoroughly positive account of liberty.

Given that Pettit is at pains to insist his view is not a positive one, we can assume he would not advocate this approach, his endorsement of Taylor's position notwithstanding. Alternatively, another way to account for the multiplier effect of more significant freedoms, is to maintain that, while freedom itself is an opportunity rather than exercise concept, the freedom to perform certain actions nonetheless make a greater contribution to one's overall freedom because performing these actions is more valuable, though this is not to say that the performance itself is what constitutes our liberty. Again, the problem

with this approach is that it renders the value of freedom merely instrumental. If what is truly important is not freedom itself, but what this freedom enables us to do, then we have to concede that, in some circumstances at least, interference, or even the mere possibility of interference, will be just as effective of a means, if not more so, of achieving these various ends. Again, to return to the above example, citizens will no doubt require a degree of freedom from non-interference, or the possibility of arbitrary interference, in order to think for themselves, but they will likely need other things as well. They might need coaching to encourage them to think critically when they lack the capacity to do so, they might need to be disciplined when they slack off and fail to diligently think critically, or they may need to be barred from engaging in certain mindless activities that only serve to distract them from their more worthy pursuits. While, unlike positive accounts, an instrumental conception of freedom does not itself justify state interference, it is still compatible with a paternalistic state that imposes a significant degree of interference on its citizens.

Additionally, a purely instrumental account of the value of freedom is incompatible with a status based conception of liberty of the sort championed by Pettit in

the name of non-domination. If enjoying non-domination is not a value in itself but rather a means to realizing some other value, then the status one achieves in virtue of enjoying a substantial degree non-domination has no independent value of its own. That is, on an instrumental account, one's status is no longer inviolable, but can be disregarded for the sake of achieving some higher end. In short, Pettit's consequentialist approach is in tension with a conception of liberty that is status based.¹⁰

Pettit could, of course, avoid these implications by insisting that such interference does not count as dominating because it tracks the interests of citizens and is therefore non-arbitrary. The problem is that, in order make this claim plausible, we would have to understand people's interest in some ideal rather than actual sense. But this only pushes Pettit's view farther down the positive

¹⁰ I do not mean to suggest that a status based conception of liberty is incompatible with consequentialism in general. One could hold, for example, that enjoying the status of a free person, whatever that entails, is a value that must be weighed against other values in a consequentialist fashion, and I am not asserting that there is anything obviously inconsistent about this. If the status of a free person, however, consists in one's freedom from the possibility of arbitrary interference (i.e. the extent to which one enjoys non-domination), then achieving this status must have some value over and above the instrumental value of maximizing non-domination if it is to have any independent value of its own even in the consequentialist sense (without this independent value, including the value of status in our consequentialist calculus would amount to a kind of *double-counting*). What I am arguing here is that Pettit must give up on the independent value of *status* if he adopts a purely instrumental account of the value of non-domination.

spectrum. Even if Pettit's view does not entail a full blown positive account, however, it is not clear how Pettit can introduce evaluative standards while avoiding the troubling implications of similar aggregate strategies. At the same time, it seems that such standards are necessary if Pettit's view is to avoid some rather counter intuitive results. It is not clear what resources the non-domination view provides to avoid this dilemma.

The Maximization Problem

The final problem we will examine, which I will call the *maximization problem*, also targets Pettit's treatment of non-domination as a teleological value. This problem concerns the extent to which arbitrary state interference itself may result in a net *decrease* in overall domination. If the value of non-domination is to be understood teleologically, then there must be instances in which the state may permissibly perpetuate domination in the interests of decreasing overall domination. That is, there be must cases of tradeoff. Pettit illustrates this point by analogizing the value of non-domination with that of peace (Pettit 1999: 98). If we treat peace as constraint on our actions, then we will never act in an non-peaceful manner even to promote greater peace overall. We will, in short,

practice strict pacifism. If, on the other hand, we treat peace as a value to be maximized, then we will think that it is necessary in some circumstances to engage in violence in order to secure greater peace in the future. Analogously, if we also treat non-domination this way, then there will be occasions on which it will be necessary to engage in arbitrary interference in the interests of securing greater overall non-domination.

This feature of non-domination is central to Pettit's view. Recall that one of the primary distinctions between freedom as non-interference and freedom as non-domination is that the former is only concerned with actual interference whereas the latter is concerned with the possibility of interference. On Pettit's view, the negative tradition's fixation with actual interference over potential interference is the result of a spurious distinction between freedom and its security. William Paley, anticipating something like the non-domination view, objects that it, "describes not so much liberty itself, as the safeguards and preservatives of liberty" (Paley 1825: 359).¹¹ What Pettit's example of the slave under the rule of a benevolent master is supposed to highlight, however, is that there is

¹¹As cited by Pettit 1999: 73.

an essential connection between one's status as a free citizen and the security of one's negative liberty. Recall that a slave in this circumstance will enjoy a good degree of negative liberty provided that he or she maintains the master's favor, but this slave still does not enjoy freedom as non-domination because the master could decide at any moment to interfere in the slaves' affairs with impunity. The slave in this case remains a slave not because he fails to possess a sufficient degree of negative liberty, but because his possession of this liberty is not secure.

If the goal of governmental institutions designed to promote non-domination is to maximize the degree of freedom from arbitrary interference that citizens enjoy, then, Pettit insists, there will be occasions on which the government itself may engage in arbitrary interference if such interference is necessary to protect citizens against the possibility of even greater levels of arbitrary interference. He states:

There are all sorts of ways in which it may be quite natural to tolerate a political failure to honour non-domination, if the failure represents the most effective means of increasing non-domination overall. It may be that the cause of maximizing non-domination overall requires giving parliament special unfettered powers in some area, for example, or giving judges a lot of sentencing discretion for a certain sort of offence. And if the cause of maximizing non-domination does

require such departures from the perfect constitution - from the constitution that exemplifies non-domination in each and every feature of its design - then it would seem only natural to tolerate those departures; it would be precious, even fetishistic, to insist on remaining faithful to the abstract ideal. (Pettit 1999: 102)

The permissibility of engaging in domination in the name of maximizing greater non-domination overall, however, generates some potentially disturbing results. If the measures Pettit outlines above are justifiable, then what is to say that more extreme measures will not, in some circumstances at least, be justifiable as well? For example, could the institution of martial law constitute an increase in non-domination in certain cases? Could the temporary installation of a benevolent but unchecked dictator do the same?

Pettit insists that such concerns are overblown. While it is permissible for the state to deviate from the commitment not to arbitrarily interfere in the lives of its citizens on occasion, there is a strict and discernible limit on the extent to which the state can have such powers without itself becoming the greatest threat to freedom as non-domination:

One of the recurrent lessons of republican thinking [...] is that as a state gains the powers necessary to be a more and more effective protector - as it is allowed a bigger and bigger

army or police force or intelligence service, for example - it becomes itself a greater threat to freedom as non-domination than it seeks to remove. (Pettit 1999: 105)

Pettit's confidence, however, is unwarranted. If the state is charged with protecting citizens' overall security in order to maximize the range of options over which they enjoy non-domination, then we can easily imagine cases in which fairly pervasive state interference would indeed increase non-domination overall.

Take the imposition of martial law briefly mentioned above. Imagine a city, or some section of a city, that has become completely overrun with crime. In this city, theft and violence are common place, and citizens live in what amounts to a constant state of fear. These citizens are thus constantly subject to the possibility of arbitrary interference. Their day-to-day activities can be interrupted at any moment by the threat of violence, and this will be no less true for those citizens who happen to be fortunate enough to escape any actual coercive interference. Now imagine that, in response, the state imposes martial law, granting state institutions the authority to conduct random searches, detain people without cause, and impose strict curfews. It is certainly plausible that the majority of citizens in this case will

now enjoy a greater level of non-domination after the imposition of martial law than before. While they are now exposed to the possibility of arbitrary interference at the hands of the state, these citizens will be exposed to a lesser degree of arbitrary interference in their day-to-day activities provided that the state's measures are successful. They will be able to conduct these activities with a relative degree of security. This is precisely what the imposition of martial law is meant to achieve. But do we really want to say that these citizens are made more *free* by the imposition of martial law? Pettit seems committed to answering in the affirmative, but this seems implausible. A state under the imposition of martial law intuitively seems like the very antithesis of a free state. Even if we think that martial law in some cases might be justified, it is justified *at the expense* of citizens' freedom, not in the name of it.

Perhaps Pettit could concede that, in extreme cases, giving the state massive unchecked power does promote greater freedom if the alternative is a state of chaos and widespread fear. The worry though is that examples like the one outlined above will not be all that rare. Any occasion when there is significant paranoia about crime will justify such measures on Pettit's non-domination

account (Christman 1998: 206). This problem is compounded further when we include the potential impact of *external*, in addition to *internal*, threats to security. Paranoia not only about crime, but also about the possibility of an imminent terrorist attack -- as has become common in post September 11th America and much of the rest of the world -- or the threat of infiltration by a foreign enemy -- as was the case with post Second World War "red scare" -- will also justify invasive government policies in the interest of protecting security and hence maximizing overall non-domination. We do not need to go too far back in history to find examples of expansionary state policies predicated on this type of justification. J. Edgar Hoover, for example, defended the almost Orwellian methods of the House Un-American Activities Committee on the grounds that such measures were necessary to guard against the alleged threat the spread of communism posed to freedom. In a speech given before *HUAC*, he declared "the communists have been, still are, and always will be a menace to freedom."¹² More recently, US Senator Orin Hatch defended the "Patriot Act" -- which, among other things, gave various federal authorities far greater discretion to detain individuals

¹² "Speech Before the House on Un-American Activities Committee" March, 26th, 1948.

and access their personal records and electronic communications - on similar grounds. In response to the objection that such discretionary powers represented a threat to basic liberty, Hatch responded that they were essential to "protect what is perhaps our most important civil liberty: the freedom from future terrorist attacks."¹³

This kind of rationale for the expansion of state discretionary power, as offered by Hoover and Hatch, is not that the value of security trumps the value of liberty. It is rather that the value of security is itself *constitutive* of the value of liberty. But this rationale has potentially disturbing implications because it places a remarkably weak limit on the extent to which the state can yield arbitrary power over its citizens while ostensibly remaining committed to the value of liberty. If, however, we follow Pettit, both in positing an intimate connection between freedom and its security and in treating freedom as a value to be maximized, then it seems like we are forced to embrace this implication.

Perhaps, though, Pettit might object that this worry is still overly exaggerated. Appeals of the sort made by Hoover and Hatch, while theoretically defensible on the non-domination view, are ultimately not warranted by the

¹³ "In Defense of the Patriot Act," USA Today, May 14, 2003.

evidence. The actual probability, so this argument might go, of a communist take over from within during the Cold War or of another large scale terrorist attack following September 11th were not so great as to justify the sorts of expansionary measures ultimately undertaken by the state. Such expansion of state power does, as a matter of empirical fact, pose a greater threat to overall non-domination than the threats these measures were designed to combat. So while there may be no *theoretical* limit on the extent to which the state may employ discretionary power to promote non-domination, there is a fairly accessible *empirical* limit. In short, we have good empirical reasons to think that an overly powerful state will abuse its power and will become, in relatively short order, the greatest threat to non-domination of all.

Again, we might wonder if the empirical evidence actually bears this out. Regardless, however, this type of argument is not available to Pettit because, as he is often at pains to stress, enjoying freedom as non-domination entails being free from the mere *possibility* of arbitrary interference and not just that the *probability* of such interference is relatively low. Pettit recognizes that rendering arbitrary interference actually impossible will not always be feasible, but, even in such cases, Pettit

seems to suggest that non-domination is achieved only to the extent that the probability of arbitrary interference is actively rendered as unlikely as is possible. Were this not the case, then the slave under the rule of the benevolent master could legitimately be considered free since the probability he or she will encounter actual interference is again fairly minimal. Again, on the non-domination view there is a tight and essential connection between freedom and its security, and, as Pettit emphasizes, the security that the non-domination view is concerned with is "the sort of security which means, not just that people with a power of arbitrary interference probably will not exercise it, but that the agents in question lose that power: they are deprived of the capacity to exercise it or at least their capacity to exercise it is severely reduced" (Pettit 1999: 73). He later puts the point even more strongly: "the point is not just to make arbitrary interference improbable; the point is to make it inaccessible" (Pettit 1999: 74).

Now let's return to the terrorist example from above. Surely it will take a great deal of government intervention to render the possibility of a future terrorist attack impossible or even as improbable as is feasible. Even when we think that the likelihood of a future attack is fairly

minimal, it will still remain possible. But, to the extent that the only reason the terrorists decide *not* to strike again is because they judge that the costs are too high or that their resources are best spent elsewhere (say in more regional conflicts), they will still exercise domination over their potential targets simply because they remain capable of carrying out such an attack. Accordingly, even when the prospects of an attack have been greatly diminished, the state will still be justified in yielding significant discretionary power to combat this hypothetical threat, and both the possession and exercise of this power is compatible with the advancement of non-domination.

Given all the possible threats to security -- both real and imagined, internal and external -- Pettit's view seems to justify a fairly powerful and intrusive state. The problem is that, in treating non-domination this way, Pettit has made the connection between freedom and security too tight. Again, the issue is not that security concerns never warrant the expansion of state power. The worry is, rather, that, if we do not maintain a distinction between freedom and security, the normative limit on the extent to which the state can expand its power becomes an increasingly vanishing one. Our conception of political freedom should allow us to weigh the relative values of

freedom and security, not render them synonymous. Otherwise, measures such as the imposition of martial law, arbitrary searches and seizures, warrantless wire taps, and other forms of unchecked state power will not count as infringements on individual liberty provided that the potential stakes are great enough. As Benjamin Franklin once famously remarked, "those who would give up essential Liberty, to purchase a little Safety, deserve neither Liberty nor Safety" (Franklin 1959: 242). Regardless of whether we agree with Franklin's ranking (and his rather harsh assessment of those who don't), it hardly seems plausible that he is guilty of a conceptual confusion.

Accordingly, even if it is not a straightforwardly positive view, the non-domination account still runs afoul of Berlin's central concern: it justifies widespread and pervasive state interference in the name of liberty. But, even setting this Berlinian worry aside, this implication is particularly problematic for Pettit's view. First, it is no longer clear that non-domination can be effectively measured at all given the incredibly high standards of success Pettit places on achieving non-domination. Does the mere possibility of a catastrophic threat to security, such as a terrorist attack, justify imposing less severe, though more likely to be realized, restrictions on citizens

negative liberty? Given that eliminating the risk of arbitrary interference posed by one agent will require bestowing some other agent, like the state, with substantial and relatively unfettered powers, how can such relative comparisons be made? What is a greater threat to non-domination, the possibility of a terrorist attack or the possibility of an overreaching police state given that we cannot render one of these threats *impossible* without de facto rendering the other *possible*? To highlight this problem, consider that, if the state itself has the potential to become the greatest threat to non-domination, a concern Pettit readily acknowledges, then we can easily neutralize this potential threat by simply dissolving the state entirely. Arbitrary interference at the hands of the state would thus become strictly impossible. But this would expose citizens to arbitrary interference from myriad other sources.

The problem is this: if maximizing non-domination were a matter of maximizing the *probability* that citizens will encounter as little arbitrary interference as possible, then measuring the amount of non-domination citizens enjoy under different political regimes becomes a relatively straightforward process. But it is a crucial feature of the non-domination view that it regards the mere possibility,

rather than the relative probability, of arbitrary interference as what's significant. Possibility, however, unlike probability, does not admit of degrees. Under any political regime, some form of arbitrary interference, either at the hand of the state itself or some internal or external threat, will be *possible* strictly speaking. Accordingly, how are we to compare the relative threat one source of possible arbitrary interference poses to non-domination in contrast to another except by appeal to the probability of these threats materializing? Unfortunately, this is precisely the sort of appeal Pettit rules out.

I will revisit this issue some in the next Chapter when I discuss the "pure negative" view, but now I want to turn to an even deeper problem for Pettit's view. If we can maximize the degree of non-domination people enjoy at the expense of exposing them to at least some degree of arbitrary interference, then again it is no longer clear that the non-domination view constitutes a *status based* conception of liberty. For example, if non-domination is to be viewed teleologically, there plausibly could be cases in which a slave, under the rule of a benevolent master, suffers less domination overall than he or she would as say a wage laborer. While the benevolent master may possess the unfettered capacity to interfere in slave's affairs at

will, he or she may also provide for the slave's well-fare and protection. It could plausibly be said that such a slave will enjoy a greater degree of non-domination than the laborer who can be fired at any moment and hence lacks such security. If so we cannot say that the slave is not free, or at least less free than he or she would be otherwise, without knowing something about the slave's situation. But then it is not the slave's *status* as a slave that makes him or her unfree in the relevant sense. Accordingly, slavery no longer serves as the paradigmatic case of unfreedom. Ironically, the very feature of the non-domination account that distinguishes it from the negative one, namely its emphasis on the importance of the security of one's liberty, also undermines its ability to effectively capture the intuition that underpins the lucky slave case. But this was supposed to be its defining feature.

When we extrapolate from the slave case, the implications of Pettit's view become even more worrisome. Could a benevolent dictator in some cases ensure greater non-domination for all than a democratically controlled state? Pettit's non-domination account unfortunately does not offer us a means for ruling out this possibility. Pettit is in fact surprisingly quick to dismiss the

inviolability of traditional checks against government power, such as basic rights. When addressing the historical connection between republicanism and the doctrine of natural rights, Pettit states:

My inclination is to think that when republicans spoke of natural rights [...] they generally meant to argue that certain legal rights were essential means of achieving freedom as non-domination, and that the description of such rights as natural did not have more than rhetorical significance for them. In particular, it did not imply that the rights were fundamental norms that called to be honoured in deontological fashion. (Pettit 1999: 101)

Again we encounter a familiar problem. Pettit understands the value of basic liberties to be purely instrumental in nature. As such, they are not the sorts of things one can appeal to in order in order to oppose coercion. That is, they do not *empower* people to actively resist unwanted interference. Presumably the value of other democratic institutions must also be instrumental in nature on Pettit's view, and we are accordingly left to wonder whether the non-domination account really does establish a fundamental connection between liberty and democratic institutions as we had initially believed.

Non-domination Reconsidered

When taken in conjunction, the four problems outlined above highlight the ultimate inadequacy of Pettit's non-domination account as it stands. If state administered interference accords with your interests (either authentically or collectively understood), if it promotes the degree of nondominated choice you enjoy in the evaluatively more significant areas of your life, or if it is designed to maximize the overall amount of non-domination you enjoy, it need not be considered freedom limiting. It is accordingly difficult to identify any discernible limit to state power on the non-domination account.

As such, despite its initial promise, the non-domination account fails both on its own terms and as a viable candidate for a liberal conception of liberty. It fails on its own terms because it does not ultimately constitute a status based conception of liberty and accordingly cannot account for that feature of slavery that makes the lucky slave unfree. And it fails as a liberal conception because it is overly lax when it comes to the permissibility of state interference, particularly in regards to basic liberties. As we noted earlier, in

attempting to develop a *non-liberal* conception of liberty,
Pettit ends up with what amounts to an *anti-liberal* one.

CHAPTER V

PURE NEGATIVE LIBERTY

Pure Negative Liberty and Non-domination

The hope explored at length in the previous chapter was that Pettit's non-domination view could provide an account of liberty that was richer than the negative conception but avoided the anti-liberal implication of the positive conception. Ultimately, however, Pettit's view succumbs to the same fate as the aggregate strategies we explored in previous chapters: it collapses into a kind of positive view. Still, I hope to argue that the initial promise of Pettit's approach can be salvaged with a reformulated account of non-domination -- or what I will call anti-domination -- that avoids these problems.

Before doing so, however, I want to first examine another line of criticism that has been leveled against Pettit's view. This line of criticism comes from proponents of the "pure negative" view of liberty (Carter 2008), Ian Carter and Matthew Kramer, who argue that the negative conception, properly understood, better accounts for the

sorts of violations of liberty that Pettit asserts are uniquely captured by the non-domination account. According to Carter and Kramer, Pettit is right to recognize the deficiencies of liberal defenses of negative freedom, but, they maintain, it is not the conception of negative liberty as *such* that is the problem but the way in which this conception has traditionally been articulated (Kramer 2008: 34; Carter 2008: 58). The conclusion to draw from Pettit's insights then is not that a third conception of freedom is required, but that we need a more systematic and fully coherent account of the negative view.

Were such an account available, it would indeed provide an appealing option from the liberal perspective. The pure negative view would presumably avoid the problems inherent to positive views, which we have discussed at length, while also being able to account for the harms of domination. The question then is can the pure negative articulation avoid the criticisms levied at negative views, traditionally construed, in addition to avoiding the anti-liberal implications of positive views.

Unfortunately, while I think the criticisms advanced by Carter and Kramer against Pettit's non-domination account are successful, their own project is less promising. While superior to traditional articulations of

the negative view in some respects, the pure negative view, as I will argue, still contains serious deficiencies and is ultimately insufficient on liberal grounds. In the end, Pettit is right to think that a status based conception of liberty is able to capture something normatively significant that the pure negative conception cannot even if his own view falls short of fully realizing such a conception.

I will take up this project in Chapters 5 and 6, but in this chapter I will first examine the criticisms posed by Carter and Kramer and the inadequacy of Pettit's response. I will then evaluate the pure negative view on its own terms.

The Possibility of Interference

Recall that domination, on Pettit's formulation, consists in the exposure to the possibility of arbitrary interference. Carter and Kramer focus their criticisms on what it means for interference to be both *possible* and *arbitrary*. We spent a considerable amount of time discussing the problems the *arbitrariness standard* creates for Pettit's view in the preceding chapter, so I will not revisit them here. We also explored to some degree the

problems that the *possibility standard* creates as well, but, since the sorts of criticisms advanced by Carter and Kramer - and shared by others who are not themselves proponents of the pure negative view - are to some extent unique from the ones we explored earlier, and because this issue formulates the crux of the debate between Pettit on one side and Carter and Kramer on the other, it is worth exploring these issues further.

One problem we examined last chapter was that, if we hold that it is the *mere possibility* of interference rather than its relative probability which matters, then freedom becomes impossible to measure. Unfortunately, freedom must be measurable if non-domination is to be regarded as a value in the consequentialist sense as Pettit insists. Aside from this internal tension within Pettit's own view, however, there is the more general worry that his insistence on focusing on the possibility rather than the probability of interference leads to some rather counterintuitive conclusions. The problem is that the *possibility standard* is so weak it extends the umbrella of dominating relationships far too wide.

Kramer offers a somewhat fantastical example of one such relationship (Kramer 2008: 41ff): imagine a gentle giant who, because of his large size and brute strength,

could at any moment, and with relative ease, interfere in the life of any member of his community. Because of his shy and passive demeanor, however, the giant would never think of acting in such a manner, and his fellow citizens are fully aware of this fact. He certainly has the capacity to interfere, but the likelihood that he will exercise it is miniscule, perhaps even approaching zero. To take the example somewhat further than Kramer does, suppose also that, in addition to being shy and passive, the giant is also extremely deferential and accommodating. Not wishing to upset others, whenever possible he honors their requests and obeys their directives.

On Pettit's view, it seems we would have to conclude that, in spite of all this, the giant is nonetheless a dominator on account of his capacity to interfere. But this hardly seems plausible. The giant after all not only has no intention of harming anyone, he also obeys whenever commanded. At the very least, we could hardly imagine that his fellow citizens would experience this relationship as one of domination, and we would be hard pressed to think of a reason why they should. The giant's mere capacity to interfere thus intuitively seems insufficient to produce a relationship of domination absent some higher degree of probability that he will utilize it.

Perhaps Pettit could dismiss this example as overly fantastic. In more real world examples, we will never have such assurances that a more powerful party will not choose to interfere. In addition, if the giant's extreme aversion to committing interference functions as a kind of psychological incapacity, like some form of "pathology" (Pettit 2008: 123), then we could reasonably conclude that the chances of him interfering are not merely unlikely but effectively impossible, in which case he would not exercise domination over his fellow citizens on Pettit's own standards.

I do not think, however, that the problem highlighted by Kramer's example can be so easily dismissed. Gerald Gaus has developed the following much more real world example with similarly counterintuitive results:

A downright counterintuitive consequence of Pettit's freedom barometer is that my freedom is affected by people with whom I have nothing to do, of whom I have no knowledge and who have never altered my option set. Suppose, for example, that in Ukraine there was an ex-Soviet general who, during the 1990s, kept control of a battery of nuclear missiles for old times' sake; keeping them in working order was his hobby. Certainly, the consequence of this is that I was a little less secure than I thought I was in the 1990s, but to Pettit I was less free. This general had the capacity to interfere on an arbitrary basis with certain choices of mine. He never did, and because I had no knowledge of him, he had no impact at all on my life. It strikes me as

counterintuitive that when the general finally gave up his missiles at the end of the decade, my level of freedom went up. (Gaus 2008: 73)

Gaus's example highlights a problem we explored last chapter: Pettit's view effectively conflates liberty and security. In Gaus's example, we need not ascribe to the general any pathological condition in order to account for the improbability of his interfering. The general simply has no interest in using the missiles as weapons. He is only trying to keep himself busy.

Again, we can strengthen these counterintuitive implications by elaborating on this example somewhat further. Suppose that the general does not even know that the missiles he is in control of are operational. In fact, he has assumed, albeit incorrectly, that they have been disarmed. Maintaining them for him is simply a daily ritual. He has no intention of yielding their destructive power nor does he even realize that he could do so. Can we really assert that a relationship of domination obtains here? Perhaps Pettit would want claim that, in this case, the general's lack of knowledge effectively renders his capacity to interfere impossible, since he cannot knowingly exercise it, and that therefore, like the gentle giant, he also fails to exercise domination over anyone. This does not follow, however, since the general could, at any

moment, decide to launch the missiles on a whim; he could simply push the launch button purely for his own amusement. The fact that he does not realize the devastating consequences this would have in no way prevents him from doing so.

No doubt, we should find this scenario troubling. The chance that the general might unwittingly or accidentally launch these missiles, however unlikely, is surely still cause for concern. But it intuitively seems like our concern in this case is for our security, not our freedom. While the potentially absent minded general puts our lives at risk, he no more dominates us than does the reckless driver or the careless surgeon,¹ and this is what underpins Gaus's intuition that Pettit's "freedom barometer" is highly skewed.

Even when considering the sorts of cases that the non-domination view is supposedly designed to best accommodate, Pettit's emphasis on the significance of merely possible

¹It is worth noting that this example raises certain questions that I am unable to explore here fully. In particular, there is the vexing question of, should the general (or the reckless driver or careless surgeon) actually come to interfere in my affairs, does their interference constitute a reduction of my freedom if they had no intention of doing so? The way Gaus presents the example suggests that he leans towards no. Kramer, however, argues that they do (see Kramer 2008: chapter 4). This in itself is an enormously complex issue, but I will not address it here since I think that both Gaus and Kramer would agree that Pettit's view cannot handle such examples successfully. Whereas Kramer would want to insist that *actual* interference due to recklessness does diminish freedom and Gaus would not, both would agree that, when the likelihood of such interference is low, we should not be overly concerned about its freedom reducing effects. Pettit's view, however, implausibly seems to hold otherwise.

interference generates serious worries. Consider again the case of the housewife who, as long as she remains properly deferential to her husband, will encounter little or no actual interference in her day-to-day affairs. On the non-domination account, she remains unfree even when not interfered with because her husband retains the capacity to interfere. Like the lucky slave, the subordinated housewife is supposed to be one of the instances of unfreedom that the non-domination view is uniquely well suited to capture. Nonetheless, Pettit's justification for why this scenario constitutes a case of domination exposes his view to a line of feminist criticism. As Marilyn Friedman (2008) has argued, Pettit's view entails an implausible, and perhaps even masculinist, conception of human beings as completely independent and entirely self-sufficient.² As Friedman points out, Pettit often describes those who suffer domination as "dependent" (Friedman 2008: 254), and indeed it seems to follow that, if one is in anyway dependent on another, then one is thereby subject to the possibility of arbitrary interference, as one's dependency can always be exploited by whomever one is dependent upon. The problem, according to Friedman, is

²Nancy Hirschman has offered a similar line of criticism. See Hirschman 2003: 26ff.

that human beings are necessarily interdependent by their very nature:

Being dependent on others for at least some times or some aspects of survival is the common lot of all human beings. There is nothing to scorn in dependency. What is needed instead is a proper appreciation of how to manage the *inter-*dependencies of human relationships in ways that benefit all participants while minimizing arbitrary interference and abuses that dependency may permit to happen. (Friedman 2008: 255)

Pettit's view essentially neglects the significance of relationships of care. Such relationships are fundamental features of human life, but they necessarily expose us to the possibility of arbitrary interference.³ If such dependency is all that is necessary to produce a relationship of domination, then achieving non-domination is an impossible feat for anyone. Accordingly, we should not be concerned with the mere possibility of interference, but the relative likelihood that one party of a relationship will experience arbitrary interference over the course of time (Friedman, 2008: 256).

I hope to revisit these examples in the following chapter, but for now I want to examine the extent to which the pure negative view is better equipped to avoid the

³Pettit could respond that relationships of care are not dominating because interference done in the name of care is not arbitrary. This, however, would only reinforce the worry that Pettit's view is ultimately a positive conception of liberty.

problems associated with these examples as well as the problems discussed in the preceding chapter.

Pure Negative Liberty

As we have seen, Pettit's requirement that interference be possible and arbitrary in order to be dominating renders his account deeply problematic in a variety of respects. It is worth asking then whether our conception of freedom must be formulated in this way in order to account for the sorts of cases that concern Pettit. Essentially, Carter and Kramer argue that it does not. In fact, they argue that the negative conception is perfectly well equipped for the task once properly formulated.

Drawing on the work of Hillel Steiner (1994), Carter (2008) and Kramer (2008) have developed what what Carter calls the "pure negative" view (Carter 2008), wherein liberty is measured by the total number of possible actions available to an agent. This view is *pure* in the sense that it only considers whether performing such actions is *physically* possible and not whether doing so is desirable, rational, prohibitively costly, etc. In short, it is a strictly non-aggregate conception of negative liberty (it is worth noting that Kramer's view is not, in the strictest sense, a "pure negative" view, since he does introduce

evaluative considerations into the measurement of overall liberty. We will have an opportunity to reexamine this detail of Kramer's view a little later in this chapter).

As liberals, we have good reason to be concerned about the measure of our overall liberty, Carter and Kramer contend, since liberty is a quantitative good. Liberty has quantitative value in two respects: it has both "non-specific instrumental" and "non-specific constitutive" value (Carter 1999: chapter 2). Liberty has instrumental value because it allows us to engage in a host of valuable activities. If we had little or no freedom, we would be prevented from *doing* the sorts things that we find valuable. Yet freedom is nonetheless *non-specifically* valuable in this sense because we often do not know in advance what sorts of activities will have value for us (Kramer 2003: 430). Because life is filled with contingencies, we want to have as much liberty as is reasonable so that we might be able adapt accordingly. In this respect, liberty is like money (Carter 1999: 51). We desire money because it is a means to obtaining other valuable things, but we also seek to amass large quantities of money itself because we do not always know when we will need it or what we will need it for. In short, we do not just want vouchers for certain specific goods; we want a

currency which we can exchange for any possible good.

Freedom also has non-specific *constitutive value* because it is a constituent element of another essential value, namely individual autonomy (Kramer 2003: 431). In order to be autonomous, I must possess a degree of negative freedom. If I am physically prevented from pursuing certain actions, I am thereby unable to exercise my will. Again, it is essential to note that freedom is still non-specifically valuable in this sense because, in order to achieve autonomy, it is crucial not only that I be free, in the negative sense, to do what I choose, but also that I have the option of *not pursuing* a host of other possible courses of action that I *might* have chosen.⁴ I am more autonomous when I purposefully select one option from many after deliberation than I am when I have only one choice, even if this is the option I would have ultimately chosen anyway (Kramer 2003: 431).

This is why proponents of the pure negative view contend we should be interested in maximizing an agents overall negative liberty. In this respect, freedom, as Steiner stresses, is to be understood *extensionally* as

⁴This view is similar to Raz's (1986) which we explored in chapter 1, except Carter and Kramer are explicit that they are interested in options understood in the purely extensional, negative sense (and I say more about this later in this chapter) whereas Raz is much less clear on this issue.

opposed to *intensionally* (Steiner 1994: 34ff.). That is, actions are to be characterized in terms of the physical components necessarily involved in performing them rather than in terms of the possible descriptions they could accurately fall under. If freedom were treated intensionally, measuring it would prove impossible, since any action could satisfy an indefinite number of possible descriptions. For example, in mowing my lawn, I am engaged in an activity that takes place over a quantifiable physical area involving the lawn, my body, the mower, etc. But this very same activity admits of indefinitely many descriptions: completing a burdensome chore, trying to pacify my neighbors, just killing time, etc. What is relevant in terms of my freedom in this case, Steiner contends, is that I can physically perform this action. Thus, we should say that I am free to perform one definite action in mowing my lawn rather than indefinitely many actions (free to complete a chore, free to pacify my neighbors, free to kill time, etc.).

Such an account will no doubt have to be able to answer some rather difficult questions concerning whether freedom is measurable even in the purely extensional sense.⁵

⁵Here are just some potentially vexing questions: if space and time are infinitely divisible, is it not the case that, in being able to perform one action, I am thereby free to perform an infinite number of actions,

Steiner (1994), Carter (1999), and Kramer (2003) argue at length that such measurements are, in theory at least, possible, and they spend a considerable amount of time disputing objections to the contrary. For my purposes here, I will simply assume that they are right about this. But there is one potential objection I do want to consider since it is particularly relevant to our present discussion.

At first glance, the lucky slave appears to put a wrinkle in the pure negative view. The lucky slave may have access to the physical components necessary to perform a host of actions, and yet we still want to say that the slave is not free in a significant respect. Steiner in fact seems fully aware of this problem when he states:

Evidently persons who are owned by other persons possess no assigned freedom whatsoever. It's not that slaves have few rights: they have none. Of course, they usually do have some freedom. How else could they perform tasks? But that freedom doesn't *belong* to them. It lies, as they do, entirely within their owners' domains. (Steiner 1994: 231)

The problem, though, is that to understand the slave's predicament in this way is to understand the slave's

and doesn't this render quantitative comparisons between levels of freedom impossible? Other questions must be answered as well, such as, how do we determine the size of our unit of measurement? How do we take into consideration probability and contingencies? How do we account for collective actions? Etc.

freedom intensionally and not just extensionally. To see this, let us revisit the lawn mowing example. Though mowing my lawn is an action that takes place over a definite physical area during a definite duration of time, certain intensional descriptions of this action seem relevant in order to determine whether or not I am performing it freely. It matters, for example, whether I am mowing my lawn purely on my own accord, or whether I have merely been given permission to do so by another. If I were a slave, I might be perfectly free, in the purely extensional sense, to mow my lawn either because this is something my master commands me to do or because it is something he or she merely tolerates (perhaps I am only able to live at on "my" property by master's good graces, and mowing my lawn is something he or she requires of me). Either way, it seems as if my freedom to mow my lawn (or to perform any other task) differs significantly under these conditions from my freedom to do so when I am the sole agent of control. In order to be free in this stronger latter sense, the action of mowing my lawn must fall under the description of "doing something I am entitled to do" rather than the description of "doing something I am permitted or commanded to do" though both descriptions have the same extension; they both describe the same single

physical act.

What the purely extensional account seemingly fails to capture is the significance of one's status in determining one's freedom. At least as Steiner presents it, the pure negative view by itself cannot account for the freedom limiting effects of slavery without being supplemented by something like Pettit's non-domination account.

Accordingly, we might think that Pettit is therefore correct in asserting that there is a conceptual distinction between freedom as non-interference and freedom as non-domination.

Kramer and Carter, however, question whether this conceptual distinction really holds, or at least whether the harms identified by Pettit under the banner of domination cannot be equally well accounted for by the negative conception. To this end, Kramer and Carter highlight a crucial distinction overlooked by Pettit as well as many proponents of the negative view, including Berlin: the distinction between an agent's negative freedom to perform any single act and his or her *overall* negative freedom, or the *total number of actions* he or she is free to perform. As Kramer puts it, the "overall freedom of each person [...] is determined by the range of combinations of conjunctively exercisable opportunities that are available

to him" (Kramer 2008: 34). Freedom, on this understanding of the negative view, is concerned not just with the interference an agent encounters in attempting to engage in any particular act, but with the range of possible actions he or she *could* perform unimpeded under given circumstances. Understood this way, negative freedom is a "modal" concept (Kramer 2003: 4). That is, it takes into consideration not only actual interference but the relative likelihood of possible future interference.

To illustrate this point, consider the ways in which threats constitute coercion though no actual interference need occur. Recall from chapter 1 that one of the problems with the negative view is that it seemingly cannot account for why threats have this freedom-reducing effect. Provided that you comply with whatever the threatening agent demands, no actual interference will occur. Furthermore threats rarely prevent you from doing whatever you wish to, strictly speaking; they just make it rather costly. So when the bully threatens to beat me senseless if I do not act in accordance with his or her wishes, I may still choose to act otherwise if I am willing to pay this rather steep price. Accordingly, some have argued that, unless we supplement the negative view with some account of what choices can *reasonably* be considered viable, it cannot

account for the coercive nature of threats (Benn and Weinstein 1972).

Carter and Kramer, however, stress that the *pure* negative view can easily accommodate such cases once we recognize the distinction between an agent's freedom to perform a given action and his or her total net liberty. While threats may not prevent an agent from performing this or that particular act, they will greatly reduce his or her overall freedom. When the highwayman threatens, "your money or your life," or the bully demands to be treated with deference, you may avoid physical interference provided that you comply, but your freedom will nonetheless be diminished in the pure negative sense because the range of conjunctively exercisable opportunities has been greatly reduced. The highwayman prevents you from keeping your money *and* your life just as the bully prevents you from engaging in any range of behaviors that would upset him or her.

Kramer and Carter argue that something similar obtains in the case of the lucky slave. Even though the lucky slave might not suffer actual interference at any given moment, he or she will be subjected to interference if he or she acts against the master's wishes or if the master's relatively tolerant

disposition were to suddenly change. Either way, the slave's range of conjunctively exercisable options will be limited simply because he or she is at the mercy of the master, and this will be no less true at times when the slave is able to avoid the master's wrath.

Carter stresses that the link between slavery and unfreedom on the pure negative view is thus an empirical rather than an essential one (Carter 2008: 80ff). Based on what we know about the institution of slavery, we have good reason to believe that slaves will suffer significant interference over the course of their lives, and we thus have good reason to be concerned about the status of slaves on the pure negative account. In turn, policies and institutions designed to promote negative liberty should be sensitive to the condition of lucky slaves. According to Kramer and Carter then, there is no real substantive harm captured by the non-domination view that isn't as equally well accounted for by the pure negative view.

Pettit's most recent articulation of the non-domination account seems to confirm Carter and Kramer's suspicions. Consider how Pettit distinguishes domination from mere interference:

Take the scenario where others do not interfere in a given case because, as it happens, they are

happy with the way I am acting or they are happy, at least for the moment, to let me have my way. They are able to interfere arbitrarily with me, should that be to their tastes, and the only reason they do not interfere in a particular case is that I display a congenial profile. They leave me alone so long as I behave to their taste but they are ready to interfere *if I ever begin to deviate from that pattern* - or if their taste changes. They economize on interference, resorting to it only on a need-for-action Basis. (Pettit 2010: 36; emphasis added)

An agent under this condition, Pettit adds, "will no longer have access to the option x, for example, but only x-provided-it-is-to-the -taste-of-those-others" (Pettit ??? 59). It is clear, though, that this agent's negative liberty is drastically reduced in this scenario. He or she will be unfree, in the pure negative sense, to perform any range of actions that are not "to-the-taste-of-those-others" even if he or she is able to avoid actual interference by not engaging in these sorts of activities. Understood this way, it is indeed hard to see how freedom as non-domination and freedom as non-interference substantially differ.

Indeed, Pettit's non-domination view is particularly vulnerable to the sorts of objections advanced by Carter and Kramer because, as we saw last chapter, he insists on treating non-domination as a value to be maximized rather than a constraint to be respected. So, recall that there may be instances when it is worthwhile to give certain

legislative or judicial authorities a large degree of discretion or unchecked power in the service of maximizing overall non-domination. If this is so, however, then there can be possible cases in which a slave, under the rule of a benevolent master, suffers less domination overall than he or she would as say a wage laborer. As such, we cannot say that the slave is not free, or at least less free than he or she would be otherwise, without knowing something about what freedom reducing harms he or she is likely to suffer in this or that situation. But then it is not the slave's *status* as a slave that makes him or her unfree in the relevant sense. Rather it is something about the harms the slave is likely or not likely to suffer in virtue of occupying this status. The connection between slavery and unfreedom on Pettit's non-domination is accordingly also an empirical rather than an essential one. As such, it is hard to understand what the harms of domination could be other than that of interference.

Pettit offers two responses to this objection (Pettit 2008), neither of which, I will argue, is adequate. First, Pettit insists that the pure negative view individuates options in an implausibly coarse manner. On Pettit's view, threats constitute coercion not because they remove a possible option, but because they change the content of the

options available. This is because an option is best understood as, "a package of probabilistically weighted possible consequences, each with its own attractive or aversive aspect" (Pettit 2008: 121). So when the highwayman threatens you with the choice between your money or your life, the first option is not the same as the option of keeping your money when no such threat is present because, with the threat, the consequences of selecting that option have dramatically changed. As such, options must be evaluated in context and cannot be treated as the same in isolation.

To illustrate the implausibility of the pure negative view, Pettit argues that the overly coarse way of individuating options leads to counterintuitive judgments concerning the rationality of decisions. Say in choice situation A, you are given the choice between a large apple and an orange, and you are disposed to take the apple and give your friend the orange. In choice situation B, you are given a choice between an orange and a small apple, and you are disposed to take the orange and give your friend the apple. Now let's say in choice situation C you are given a choice between a large apple and a small apple. If we stick to the coarse individuation of options, transitivity would demand that you take the large apple and

give your friend the small one. Pettit, however, insists that this is counterintuitive, since you may have good reason to keep the small apple and give your friend the large one, perhaps because you don't want to be rude (Pettit 2008: 122). The choice of the large apple is not the same across situation A and situation C (and likewise for the small apple across situation B and C) because the context has changed. So one can be rational in picking the large apple in choice situation A, the orange in B, and the small apple in C. The pure negative view, however, would seem to require that you must pick the large apple in situation C in order to avoid acting irrationally by violating transitivity.

Pettit's first objection, however, is question begging. Individuating options in the manner Pettit suggests requires that we consider not just the physical availability of these options, but their qualitative worth as defined by their "attractive and aversive aspects" (Pettit 2008: 121). But it is precisely these sorts of evaluative considerations that the *pure negative view* contends we should ignore when considering the range of options available to an agent, even though they may be relevant for other determinations, such as rationality. The manner in which we individuate options is determined by

our purposes for individuating them. Nothing in principle prevents us from holding that options should be treated purely extensionally when evaluating an agent's liberty, but should be treated differently when evaluating his or her rationality. Pettit simply asserts that there should be symmetry here without argument.

Proponents of the pure negative view, however, hold that we have good reasons for not treating freedom and rationality as symmetrical in this sense. Assessing an agent's rationality requires that we take into consideration not only the availability of certain options, but their desirability either by the agent's own lights or by some more objective standard. In short, rationality is an exercise concept rather than an opportunity concept. The mere availability of one or many courses of rational action is clearly not enough to declare that an agent who possesses them is thereby *acting* rationally. Acting rationally requires that he or she actively engage in one of these courses of actions. So we should not be surprised that there is an asymmetry between how we demarcate actions for the purposes of determining rationality and how we demarcate them for the purposes of determining freedom if we think, as proponents of the pure negative view certainly do, that freedom is an opportunity rather than an exercise

concept.

In addition there are good reasons not to treat freedom as an exercise concept in order to preserve this symmetry. If an agent's evaluative judgments are relevant when determining the content of options, then one's options can change not only through threats, but also through changes in one's own preferences. On Pettit's method of individuating options, the choice between your money or your life necessarily changes not only when the highwayman forces you to choose between the two, but also when you change your own qualitative evaluations of the worth of these options. You may, for example, suddenly come to recognize the depravity of a life that places so great an emphasis on material goods, in which case giving up your money might seem less like tragic loss and more like a welcomed opportunity. But we clearly wouldn't want to take such changes in preferences into account when assessing an agent's overall freedom because then a slave could become more free simply by desiring less (Berlin 2002: 31). As such, not only lucky slaves, but rather unlucky ones, could be counted as free provided that they come to desire only those things that their masters permit.

A conception of freedom that equates alleviating the plight of slaves through the imprisonment of slave holders

with convincing those suffering from enslavement to simply lower their expectations is a politically deficient one on any measure, but this prospect is particularly troubling for Pettit's view, since slavery is supposed to be paradigmatic case of unfreedom on the republican account. So not only does the pure negative means of individuating options seem *better* able to account for the harms of slavery than Pettit's, we again see here how Pettit's view begins to resemble a positive conception of liberty under further scrutiny.

Pettit's second objection is that the Carter/Kramer view cannot account for cases in which an agent is exposed only to the *possibility* of interference, and we have little reason to believe that this interference will ever actually materialize -- in other words, cases in which the dominating agent will never exercise his or her power to interfere no matter what the dominated agent does. Unfortunately, though, it seems as if the only cases covered by this stipulation are the cases in which the non-domination view intuitively fails rather poorly, such as Kramer's *gentle giant* example and Gaus's *Soviet general* example. On the pure negative view, we can explain why the gentle giant and the Soviet general intuitively do not substantially limit our freedom because neither has any

impact on the range of conjunctively exercisable actions we are free to perform. Were the giant to suddenly become not-so-gentle or the general to become not-so-disengaged, we would think differently about these scenarios. But the pure negative view can accommodate this shift in attitude because now the likelihood that either the giant or the general will have a substantial negative impact on the range of actions we may perform has greatly increased. Furthermore, concentrating on the probability of interference in favor of the possibility of interference avoids the measurement problems we explored in the previous chapter as well as the interdependency problems raised by Friedman. Accordingly, the fact that the non-domination view includes cases of possible interference that the pure negative view excludes seems more like a vice than a virtue.

As such, Pettit's responses to Carter and Kramer's objections are ultimately unsatisfactory. Still, we might wonder whether a more successful defense could be marshaled in favor of the non-domination view. Pettit does, at the very least, highlight one intuition that plausibly cuts against the plausibility of the pure negative account. The slave who is spared the wrath of his or her master because the master has suddenly "fallen in love" or "discovered

religion," will no doubt appreciate the resulting decrease in actual interference, Pettit acknowledges, but he or she is still subjugated in a way that the person whose social and political status necessarily protects him or her from being subjected to this kind treatment is not (Pettit 2008: 125). But whatever the merits of this intuition, Pettit's view is ill-equipped to capture it because, as we explored at length last chapter, the non-domination view is, at its core, ultimately not a status-based conception of liberty either. I hope to save these intuitions in the proceeding chapter, but now I want to examine the feasibility of the pure negative view on its own terms.

Problems with Pure Negative Liberty

In several respects, the pure negative view, as articulated by Carter and Kramer, has considerable appeal. It does seem able to accommodate the lucky slave example (and others like it), and it also avoids a problem common to negative conceptions explored in chapter 1, namely the problem involving the coercive nature of threats. So, while the pure negative view is still an interference-based account of liberty at bottom, it is able to account for cases of unfreedom that do not involve actual interference. Accordingly, it is not hamstrung in the same manner as

other negative accounts, such as Berlin's.

The pure negative view also seems well suited to avoid another set of common of objections that I have advanced against both negative and positive conceptions alike. This set of objections pertains to views which render the value of freedom purely instrumental in nature. The worry with such views is that, if freedom is simply an instrumental value, there will be, from a liberal perspective, an unacceptably high number of instances in which it will be permissible to restrict freedom to achieve some other end; in short, freedom will no longer serve as a central political value. While Carter and Kramer highlight the instrumental value of liberty, they also note its "non-specific" (Cater 1999: 32) or "content-independent" (Kramer 2003: 431) character. Because we can never know in advance what freedoms will be instrumentally valuable for us, we have good reason to value freedom in general rather than simply valuing certain specific freedoms only for specific purposes. Further, Carter and Kramer both note that freedom is not simply instrumentally valuable, it also constitutively valuable, again in the non-specific sense, as it is an essential element of individual autonomy. Thus, negative liberty is not merely a means for achieving autonomy, but part of what makes a given life autonomous.

The question then is whether the pure negative view is a satisfactory view all things considered. In this concluding section, I will argue that it is not. I will outline three specific problems with the pure negative view. The first I will call the *relational problem*, the second the *new traffic light problem*, and the third is the familiar *problem of basic liberties*.

The Relational Problem

One problem with the pure negative view is that it potentially broadens the scope of individual liberty in a way that renders it far too wide. If my freedom consists in the total number of acts I am free to perform in conjunction, then my liberty can be decreased by natural barriers every bit as much as social or political ones. On the pure negative view, it seems that we should be equally concerned with the freedom limiting effects of natural disasters, disease, and the inherent limitations of human physiology, as we would be with police states, the institution slavery, or coercive threats. In fact, it is indeed possible that natural events, on this view, constitute a far greater threat to liberty than any social or political phenomenon, and technological advances therefore constitute a far greater expansion of liberty

than any possible political reform.

This, however, seems highly counterintuitive. As Steiner notes, to draw this conclusion is to conflate "liberty" and "ability" (Steiner 1983: 74). While I might, for example, regret my inability to fly, I do not regard this limitation as equivalent to the kind of limitation I suffer when I am subject to physical coercion at the hands of others. Political liberty and physical ability are conceptually distinct notions. It is not clear, however, how the pure negative view can account for this distinction. Again, if my freedom is measured in terms of the physical components necessarily involved in performing any given range of actions, then why isn't my inability to fly not every bit as much a limitation of my freedom as various social or political barriers, if not more so?

For his part, Steiner simply asserts that, "liberty is a social relation, a relation between persons" (Steiner 1983: 74). So whenever we discuss freedom, what we mean is those actions we are free to do absent interference *from other people*. Accordingly, Steiner further insists, "the restraints imposed upon us by nature, and our struggles and successes in overcoming them, are subjects deserving of our closest attention. But it is not to physicists, doctors, or engineers whom we turn in seeking answers to the

question of 'How Free'?" (Steiner 1983: 75). Carter explicitly follows Steiner in this respect:

The idea, in other words, is that freedom is a *social* concept -- that 'freedom' expresses a relationship between *persons* -- so that mere natural obstacles do not as such constrain a person's freedom. The creation, through technological innovation, of the means by which obstacles can be overcome does effect freedom, but only in the sense that we must ask ourselves, *once* such means have been created, whether and how far certain agents withhold those means from others. (Carter 1999: 172)

The problem is that this stipulation is entirely ad-hoc. There is nothing inherent in the pure negative conception itself that would suggest obstacles produced by human agents are more significant than natural ones. Kramer, in fact, readily admits that there is no non-circular means of justification for circumscribing the scope of negative liberty to interpersonal relations (Kramer 2003: 362). Still, Kramer sides with Steiner and Carter in asserting that this stipulation is ultimately warranted because it squares with our basic intuitions (Kramer 2003: 366).

Nonetheless, this seems like a major defect with the pure negative view. When inquiring into our conception of liberty, we want to know *why* freedom is a social or relational concept, not simply *that* it is. In other words, we want to know what is it about our conception of liberty

that makes social relationships particularly significant. For all its faults, Pettit's non-domination view is at least capable of doing this much. If we think that its *arbitrary* interference, rather than interference *simpliciter*, which threatens liberty, then we can easily account for why social relationships have the significance that they do. While natural events no doubt frequently interfere in our lives, they are hardly capable of interfering *arbitrarily* or *non-arbitrarily*; they can neither track nor fail to track our avowed interests. They accordingly limit freedom, but they do not dominate in Pettit's terms. The pure negative view, however, rejects including the condition of arbitrariness, hence its purity. But if this purity is supposed to be the defining feature of the *pure* negative account, then what justifies the stipulation that only human caused obstructions constitute interference? How is this stipulation not prohibited on the pure negative view's own terms? To say that this qualification is necessary to avoid certain counterintuitive results, while true, is hardly insightful. Again, we can always construct, in an ad-hoc fashion, a conception of liberty that perfectly fits our intuitions, but, as I have noted before, such ad-hoc conceptions are as easy to formulate as they are useless.

This methodological concern aside, however, restricting the scope of the pure negative view in this way creates additional problems for Carter and Kramer's position, since this restriction is in direct tension with the stated value of freedom as a quantitative good. If freedom has non-specific instrumental value, then the means by which it is obstructed should be entirely irrelevant. If it is important for me to possess as much freedom as is possible because I have no way of knowing in the future what needs I will have or what ends I will wish to pursue, then why will it matter to me whether this freedom is obtained by limiting interference from others or from natural events, especially if natural events represent a greater threat of interference? On the pure negative view, my freedom of movement is valuable in itself; securing it against intrusion from *other people* does not somehow make it *more valuable*.

This issue is especially relevant because the conceptual distinction between natural and human sources of interference has significant political implications. Imagine, for example, a state with a strong centralized government and an entirely state-run economy committed to fostering rapid industrialization and economic expansion (a state not unlike the post Second World War Soviet Union or

China). Such a state will no doubt frequently interfere in the lives of its citizens. But imagine a state official justifying this interference by pointing out how the advances in technology and infrastructure accomplished through rapid economic development allow citizens *to do* much more than they ever could before. They are, this state official might argue, therefore *more free overall*, not in spite, but because of, government interference.

What we would likely want to say in response to this official is that, even if it were true that state controlled economic development provides citizens with new opportunities, it does so at the *expense* of their liberty. Under a relational conception of liberty, it would be easy to explain why this is so. Under the pure negative conception, however, we would be at somewhat of a loss. If freedom is best understood as the total number of actions an agent is free to perform, then the state official has a potentially compelling case; on the whole, state control produces greater overall liberty. It is hard to see how Carter and Kramer's flat assertion otherwise is at all compelling.

Perhaps Carter and Kramer could argue that, while this objection may hold when we consider the non-specific instrumental value of freedom, it does not hold when we

consider the constitutive value of freedom. Insofar as negative liberty is a constituent element of autonomy, it is only interference from other people that can decrease it. Again, it is not clear why this must be so. If the extent of my autonomy is in part a function of the opportunities I am free to reject, why does it matter if I secure these opportunities against interference from others rather than interference from natural events? If I am destitute and at the mercy of the elements, then won't this severely limit my autonomy even if there is no other person causally responsible for my predicament? Some theorists at least do hold that natural obstacles significantly limit my freedom in this respect (Sen 1992), and Carter and Kramer offer no argument to the contrary.

Defenders of the pure negative view are accordingly incapable of offering an argument in response to cases like the one described above. As such, the circular nature of their view is less innocent than they initially let on. The problem is that Steiner, Carter, and Kramer are ultimately right: political liberty is a relational concept; unfortunately, the pure negative conception is not.

The New Traffic Light Problem

The above considerations give rise to a related, yet ultimately, distinct problem. Recall Charles Taylor's famous traffic light example (Taylor 1985): if freedom is understood in the negative sense, as primarily freedom of movement, then traffic lights, Taylor contends, will constitute a far greater infraction of liberty than legal prohibitions against religious worship, since they will, on the whole, result in greater restrictions on one's freedom of movement.

At first glance, it might seem as if the pure negative account cannot escape this result. Traffic lights often do restrict most people's range of conjunctively exercisable options whereas, for many at least, prohibitions against religious worship would rarely do so. Carter, however, insists that this does not necessarily follow, since, contra Taylor, traffic lights *do not*, on the whole, restrict people's range of movement, rather quite the opposite: "traffic lights generally serve to increase, not decrease, the overall quantity of action available to motorists. That is what they are designed for" (Carter 1995: 824, n.13). A state that had no traffic laws would thus hardly be more free, in the pure negative sense, than one that does; and a state that had no traffic laws *and*

prohibited religious worship would fare even worse in this comparison. Accordingly, Carter contends that the pure negative view does not have the counterintuitive implications that Taylor suggests.

The problem with Carter's response, however, is that it proves *too much*, because now it seems as if traffic lights provide a *greater* contribution to overall liberty than laws protecting freedom of religious worship (as well as other basic liberties, such as freedom of speech, assembly, press, conscience, etc.). If this is so, then the pure negative view still encounters the traffic light problem, only now in reverse: a state that has many traffic laws *and* legally restricts religious worship is plausibly *more* free than one that has relatively few traffic laws and also no legal prohibitions on religious worship.

I think we can better appreciate the difficulty this example raises if we broaden its scope somewhat. Imagine a regime that legally prohibits religious worship on the basis that religious diversity leads to social instability. If citizens are beholden to religious authority, so this regime might contend, then this threatens the rule of law, and, without the stability provided by the rule of law, it will be difficult for citizens to coordinate their actions and pursue them in peace. Under such a justification, the

state can reasonably claim that prohibitions against religious worship *increase*, rather than decrease, citizens' overall liberty.

Of course, on the pure negative view, it does matter whether the state is right about this. If, as an empirical matter, permitting religious worship would not result in a breakdown of the rule of law, then the pure negative view would recommend against imposing these restrictions. But it is not hard to imagine a situation in which a state authority would be justified in making this claim, and it is not unlikely that some present day states do find themselves in a situation like this.⁶

Whatever one thinks about the above examples, this problem can be broadened further still. Consider the following case: in Italy, following the Second World War, it was said of the former deposed and executed fascist leader, Mussolini, "at least he made the trains run on time." The implication of course was that, while Mussolini was without question a brutal and oppressive dictator, at least pre-war Italy, under his rule, was a place of order

⁶On a smaller scale, at least, we can imagine someone offering this sort of a justification for the recent headscarf ban in France or the minaret ban in Switzerland. The growth of a devout minority, whose identity is more tied to their religious community than the state they reside in, perhaps represents minds of many a threat to social stability and even long term legal stability.

and efficiency. Post-war Italy on the other hand had descended into chaos and disorder, suddenly making the day-to-day activities that people had previously taken for granted much more difficult to perform. In making the trains run on time, for example, Mussolini greatly increased citizens overall freedom of movement, though we hardly want to say that he thereby made them *more free* all things considered. On the pure negative view, however, we are committed to saying that pre-war Italy was indeed more free than post-war Italy, not in spite of, but because of, Mussolini's fascist government.

Again, the crucial point is that what we want to say about such cases is that they perhaps embody a genuine conflict between liberty and stability. But oppressive state policies that promote stability do so at the expense of citizen's liberty, not in the name of it. In equating liberty with freedom of movement, however, the pure negative view effectively collapses the concept of political and social order into the concept of liberty. Consequently, it provides no means for criticizing certain oppressive regimes on the basis that they fail to respect individual liberty.

This problem is similar to the one concerning the relationship between security and non-domination that we

explored last chapter, and it is worth noting that the pure negative view faces similar difficulties. Just as oppressive regimes might be better suited to provide order and stability, so they might be better suited to provide greater security. In doing so, they will also be promoting freedom on the pure negative view because any threat to one's security potentially limits one's range of available actions. If I am constantly terrorized by violent criminals or the prospect of a terrorist attack, I will be prevented from engaging a wide range of activities. Indeed, Kramer highlights this feature as one of the virtues of the pure negative view. Under this view, he stresses, "what some negative-liberty theorists have perceived as a dichotomy between unfreedom and insecurity will turn out to dissolve into a single complicated condition of unfreedom" (Kramer 2008: 34).

If this is so, however, then the pure negative view has the same disturbing implications as the non-domination view on this score. A state that exercises marshal law, imposes strict curfews, or engages in intrusive surveillance can reasonably claim to be promoting individual liberty in the pure negative sense. This again seems like a major defect in the pure negative account. In debating the merits of the Patriot Act or the practice of

pretextual traffic stops, we want to be able to weigh the potential increase in security against the decrease in individual liberty, but the pure negative view, like the non-domination view, deprives us of this conceptual resource. Were we to object that the Patriot Act sacrifices liberty for security, our objection would not simply be wrong on the pure negative view; it would be incoherent.

To be sure, the pure negative account does have an advantage over the non-domination account in regards to this issue. Because the pure negative view is concerned with the relative probability of interference rather than its mere possibility, under that view, we can say that, when a security threat is overblown -- as was likely the case with "red scare" -- then the heightened measures of security undertaken by the government will not be justified. Still, it is not hard to imagine scenarios in which this will not be the case, and in such scenarios we want to be able to weigh security concerns against liberty concerns, not collapse them.

The Problem of Basic Liberties

Whether Carter and Kramer can marshal an effective response to the objections outlined above hinges on whether the pure

negative view is capable of accounting for the significance of the basic liberties. It is worth noting, though, this problem is distinct from the one discussed above. The problem of basic liberties involves simply whether the pure negative view can account for the added significance we place on these specific liberties. The problem outlined above, however, concerned the extent to which highly invasive efforts by states to ensure either stability or security are compatible with promoting overall liberty. If, however, the pure negative view can explain why certain liberties have greater value, then this problem is potentially avoidable. When state efforts to provide for security or stability violate these more basic liberties, the pure negative view will be able to hold that such efforts do in fact hinder individual liberty on the whole.

It is not immediately apparent, however, what resources the pure negative view has to account for the basic liberties' added significance. In this respect, Taylor's original traffic light problem is still at least partially applicable. Even if traffic lights do not constitute a reduction in overall liberty on the pure negative account, it is still not clear how basic liberties, such as freedom of speech or freedom of religion, themselves substantially contribute to overall

liberty. After all, the conjunctive range of actions involved in speech acts, or anything but the most elaborate religious ceremonies, is fairly limited.

Carter attempts to respond to this objection by again highlighting the distinction between an agent's freedom to perform a particular act and his or her overall freedom. While it is true, Carter notes, that speech acts themselves do not require much in terms of the quantifiable area needed to perform them, *preventing* people from engaging in speech acts will require imposing significant restraints, and these restraints in turn will greatly limit one's range of available options:

Where agent A is rendered unfree to speak, then, there is very likely to be a great reduction in A's freedom *in an overall sense*. For A will as a result be unfree to perform certain bodily movements, or will at least be deprived of access to the physical space (through which the sound waves would have traveled) which would otherwise have been directly causally linked to A's body. And this will also imply A's unfreedom to bring about those events that would be consequent upon A's moving her body in those prevented ways (or upon A's use of the space or matter to which she has been deprived access). (Carter 1999: 206)

There are two problems with this line of response, both of which are noted by Kramer (Kramer 2003: 458ff). First, in order to show that freedom of speech is significant in terms of one's overall liberty, Carter needs to show that *possessing* this liberty substantially contributes to this

total measure. What he has shown instead is that *restricting* this liberty substantially decreases it (Kramer 2003: 459).

This discrepancy makes a significant difference. To see this, consider that we can give virtually any liberty greater significance by applying Carter's analysis. Take for example one's freedom to, say, relieve oneself in public. If someone is intent on engaging in this behavior, then it will certainly require a great deal of physical restraint to prevent him or her from doing so. Consequently, his or her range of conjunctively exercisable options will be greatly reduced by these preventative measures. But surely this does not make the liberty to relieve oneself in public a fundamental or basic one. That question involves whether this activity is something that one is *entitled* to do, and the pure negative view seems ill-equipped to answer this question.

The second problem is that preventing people from engaging in speech acts does not necessarily require the employment of such severe physical restraints (Kramer 2003: 459). While it is true that the threat of imprisonment, for example, will have this kind of effect if carried out, other methods will not. At the very least, we can imagine

some hypothetical examples of such techniques.⁷ Suppose, for instance, that a government was able to develop special microchips which it forcibly installed in the brains of all citizens. These microchips prevent citizens from engaging in any speech acts the government disapproves of, but their effect is limited to this area. Accordingly, these chips would be devastatingly effective at restricting free speech, but they would have relatively little effect, if any, on citizens' overall available options understood in the extensional sense.⁸

We do not need to appeal to science-fiction like examples, however, to illustrate this problem. A state could just as easily regulate speech by imposing severe sanctions on certain speech acts that do not involve long term imprisonment. For example, a state could subject citizens who engage in anti-government speech to severe beatings and torture, both of which would likely be quite effective at discouraging such speech, but neither of which would entail significant limitations on the other actions citizens would otherwise be free to perform. The fact that restrictions on speech *often* result in restrictions on

⁷This seems to be the sort of case that Kramer has in mind in objecting to Carter's position (Kramer 2003: 459ff)

⁸Carter and Kramer disagree over the extent to which mental acts and speech acts can be measured extensionally. See Kramer 2003.

other behaviors - behaviors which in turn do require possession over an extensive range of physical space - is thus a purely contingent matter, and, as such, the pure negative view cannot account for why certain liberties are regarded as basic.

As was noted in chapter 2, Kramer attempts to solve this problem by deviating somewhat from the *pure* negative approach, and I think we are now in a better position to give his argument fuller consideration. When measuring an agent's overall freedom, Kramer contends, it is not only permissible but necessary to introduce evaluative considerations in order to avoid the sorts of problems outlined above. Kramer, however, objects to the charge that such qualitative considerations are unjustified and arbitrary on any pure negative account. He argues that, while freedom does have non-specific, or content independent value, we need to recognize that it also has specific, or content dependent value (Kramer 2003: 432ff). That is, while freedom is in general valuable, certain freedoms are *more* valuable.

Recall that freedom, on Carter and Kramer's account, has non-specific value, in one respect, insofar as it is constitutive of individual autonomy. The more freedoms I have, the more autonomous I become, regardless of the

content of these freedoms. But we can acknowledge that any and all freedoms contribute to my autonomy to some extent, while also recognizing that certain freedoms make a *greater* contribution, and *this* contribution cannot necessarily be reduced to the extent to which they add to my overall freedom of movement. Any measure of *overall* freedom therefore needs to take into consideration the added significance of these evaluative factors. Otherwise, the pure negative view is doomed to have highly counterintuitive implications like the ones just highlighted. Once we incorporate qualitative considerations into our overall metric, however, we can acknowledge the proper weightiness of the basic liberties. These liberties are more fundamental despite their relatively meager contribution to one's overall freedom of movement because they are essential elements of one's individual autonomy (Kramer 2003: 463).

The question is whether the introduction of qualitative considerations avoid the problematic implications of the pure negative view at the expense of embracing the anti-liberal implications of positive ones. Kramer insists that this need not be the case, since we can regard the qualitative worth of certain freedoms as having a secondary importance in the overall measure of one's

freedom. Of primary importance is whether or not a given course of action is physically available to an agent. Crucially, while evaluative considerations can give *added* weight to the overall contribution of certain specific liberties, they cannot *decrease* it. In our overall freedom metric, the lowest value any freedom, however small or trivial, can have is 1; it cannot be zero or negative (Kramer 2003: 428). Accordingly, evaluative measures can only enhance one's liberty understood in the negative sense. As Kramer puts it, "qualitatively-oriented weightings, then, occupy, a subordinate place in our measurements. They never lower the numbers at which we arrive through our enquiries into the purely physical scope of each person's freedoms and unfreedoms" (Kramer 2003: 429).

Kramer's privileging of the "purely physical" components of liberty is what broadly places him within the *pure negative* camp despite his inclusion of evaluative measures. It is also what allows him to claim that his view avoids certain troubling consequences of positive conceptions and other aggregate views. If freedom is primarily a measure of the range of actions one is physically capable of performing, then physical force can, by stipulation, only decrease one's liberty and never

increase it.

The question again, though, is what justifies this stipulation. As was mentioned in chapter 2, if certain freedoms have content specific value, what prevents others from having content specific *disvalue* (G. Dworkin 1988: chapter 5).⁹ And if some freedoms do have disvalue, shouldn't our measure of overall freedom include negative multipliers as well in order to reflect as much? Including such calculations of course necessarily entails that physically restraining people from pursuing certain options can, in some cases, result in an increase of their overall liberty. As was noted, Kramer strictly rules out this possibility, but recognizing the value of certain liberties while ignoring the disvalue of others seems entirely arbitrary.

Even if we grant Kramer that qualitative considerations can only add to one's overall liberty, however, I do not think his view avoids the above implication. If liberty is valuable because it is an essential component of autonomy, then it is autonomy, rather than negative liberty itself, which is ultimately valuable. Further, it must be acknowledged that there are other constituent elements of autonomy in addition to

⁹ See also: R. Dworkin 2000 and Steiner 1994: 88.

negative liberty, and, as Taylor (1985) points out, sometimes promoting these elements will be in conflict with promoting negative liberty. In order to be autonomous, it is necessary not only that I have a significant degree of overall negative liberty, in addition to certain specific liberties, but also that I generally behave rationally, that I have the right sort of knowledge, that I be free from fear and manipulation, and that I do not often succumb to laziness. Promoting these elements of my autonomy might, in some circumstances at least, require education, training, and conditioning that interferes with my overall negative liberty (think of our example of Alf and Sergeant Green from chapter 1). Even if it is true that, in order to be fully autonomous, I will need to possess a degree of negative liberty at some ultimate point in time, it does not follow that my negative liberty should be promoted above other constituent elements of my autonomy nor even that it must be respected in each and every case. At bottom, autonomy is an exercise rather than an opportunity concept, and I can possess all the necessary negative liberty and yet still not be fully autonomous because I fail to act in the appropriate manner.

The problem though is that, if freedom is valuable because it is necessary for autonomy and our measure of

overall freedom is supposed to reflect this, then autonomy should be what is *primary* in terms of one's freedom and negative liberty should be given a subordinate status (after all, negative liberty is constituent of autonomy and not the other way around). That is, having more negative liberty no doubt *increases* my autonomy, but only if I have already achieved some degree of autonomy in other respects (i.e. only if I behave rationally, possess the appropriate knowledge, do not succumb to fear or laziness, etc).

Kramer, however, comes to the exact opposite conclusion. The only possible justification for this inversion is that holding negative liberty as primary, in favor of autonomy, is necessary in order to avoid the rather anti-liberal implication that one can indeed be forced to be free. But, again, not only does this render Kramer's view entirely ad-hoc, this stipulation is inconsistent on his own terms.

I do not see how Kramer can avoid this problem. Notice that this difficulty is not made any better when we consider the instrumental value of liberty. If certain specific liberties have content specific instrumental value, say because they allow us to do valuable things, then, on some occasions at least, forcing people to participate in these sorts of activities will be a more effective means of achieving these ends than granting them

certain allowances. So we again must ask why not regard the instrumental value of liberty as primary and its physical extension as secondary.

Nor will it help if we, contra Kramer, exclude evaluative considerations from our overall measure of liberty, but grant that certain liberties can have specific value in addition to their contribution to overall liberty. This is the line ultimately taken by Carter:

[Valuing freedom in general] will not stop us from saying different kinds of freedom, or indeed that one kind of freedom - say, freedom of religion - is more valuable than another kind of freedom - say, freedom of movement - because choosing to pursue a particular religion is more valuable than choosing to move in a certain direction. For we may still attempt to compare these different kinds of freedom in terms of their *nonindependent* value. (Carter 1995: 824)

This approach at least avoids the inconsistency of Kramer's alternative, but it does so at the expense of dramatically reducing the value of negative liberty itself. In offering this concession, Carter is ceding much of the debate to the defenders of the positive view. If Taylor is right in thinking that the value of the basic liberties is best captured by a positive conception -- and so far we have not seen a satisfactory rejoinder from the negative camp -- and the value of the basic liberties trumps, on Carter's own terms, the value of negative liberties, then the positive

conception is, to this extent, normatively superior to the negative one, at least on liberal terms. Recall that, in introducing this distinction in the first place, Berlin was not concerned with whether negative and positive liberty are somehow mutually exclusive at the conceptual level -- he thought that quite plainly they are not -- but with which one should serve as the normative foundation for a liberal political regime. While Berlin sides with the negative conception, if it turns out that this conception cannot account for the primacy of the basic liberties, this contention seems highly suspect. Ultimately, Carter effectively concedes that the pure negative view is insufficient on liberal grounds.

Pure Negative Liberty and Domination Reconsidered

Perhaps it could be objected that I have interpreted the pure negative view too strongly. Perhaps proponents of this view could argue that it is not their intention to show that negative liberty serves as the ultimate foundation for all liberal political norms and institutions, but simply to show that negative liberty is valuable in and of itself, and that, therefore, our political institutions, whatever other ideals they might embody, must be in part designed to promote pure negative

liberty.

But Carter and Kramer seem to have a far more ambitious agenda in mind. Recall from our discussion at the beginning of this chapter that they both contend that the pure negative view can sufficiently account for the harms of domination. What the above objections reveal, however, is that it ultimately cannot do so. Despite whatever virtues it may have, the pure negative view cannot account for what is distinctive about social relationships or why citizens are entitled to certain basic liberties, nor does it even necessarily prohibit pervasive state interference; in fact, sometimes it sanctions it.

Though Pettit fails to effectively respond to the Carter's and Kramer's objections, I think he is ultimately right to insist that there is something unique about the phenomenon of domination that the negative view fails to properly recognize even in its pure negative form. The slave who avoids his or her master's wrath because the master has suddenly fallen in love is indeed, contrary to the pure negative view, less free than the slave whose status affords him or her protection against such treatment, and the additional deficiencies of the pure negative view explored at length above only strengthen this conclusion.

CHAPTER VI

FREEDOM AS ANTI-DOMINATION

Towards a Status Based Conception of Liberty

In the preceding chapters, I considered and rejected various conceptions of liberty on the basis that none of these conceptions fit well with central liberal commitments and intuitions. As I argued in Chapter 1, negative liberty, at least as Berlin (2002) conceives it, is inadequate insofar as it fails to recognize the various ways in which one can be rendered unfree by means other than interference and because it cannot account for the significance of the basic liberties. Positive liberty, however, is equally inadequate because it is compatible with, and, on some formulations even encourages, pervasive state interference. Accordingly, it can, at best, offer no argument *against* what are, from the liberal point of view, intuitively oppressive regimes, and, at worst, serves to justify them.

In Chapter 2, I examined several strategies for aggregating negative and positive liberty in order to avoid

these difficulties. The problem with these approaches, however, is that they either reduce to a positive conception, or they are conceptions of liberty only in the ad hoc sense. If they are the former, then they inherit all the problems germane to positive views. If they are the latter, then they fail to establish genuine reflective equilibrium.

Having considered and rejected both negative and positive accounts, as well as various ways of combining them, in Chapter 3, I examined Pettit's attempt to construct a third conception of liberty, freedom as non-domination. There I argued that, despite Pettit's objections, this conception has "positive features" as well. For one, it forces us to take people's *interests* into account when assessing their freedom, thereby justifying, in some cases, interference in the name of liberty. Second, the interests it requires us to consider are the *common interest*. As such it risks collapsing into a *collectivist* conception of freedom. Further, I argued that Pettit's consequentialist understanding of non-domination is ultimately in tension with the liberal commitments to democracy and basic rights.

Finally, in the preceding chapter, I examined the "pure negative liberty" approach advanced Ian Carter and

Mathew Kramer. While it has some advantages over the traditional formulation, *pure negative liberty* is also at odds with the core commitments of liberalism. Not only can it not account for the value of democracy and basic rights, but the pure negative view even suggests that liberty may be best realized under *illiberal*, anti-democratic regimes. As we saw, Carter and Kramer can avoid this implication only by rendering their account of liberty ad hoc in crucial respects.

Accordingly, none of the conceptions of liberty examined thus far are viable on liberal grounds. At worst, they fail on the reflective equilibrium standard because they conflict with other core liberal commitments. At best, they establish reflective equilibrium, but only in the *weak* sense. Recall that a theory of liberty achieves reflective equilibrium in the weak sense to the extent that it offers a conception of freedom that is merely consistent with other liberal values, but fails to establish any stronger relationship between them. If there is another conception of liberty, then, that can establish reflective equilibrium in the stronger sense -- one that is not only consistent with, but also reveals the relationships between core liberal values -- then liberals would have good reason to endorse it. In this chapter, I will make the case that

there is such alternative conception available: freedom as *anti-domination*.

Despite their differences, all of the conceptions examined thus far share a salient feature: they are *act based* rather than *status based* conceptions of liberty. That is, they understand freedom in terms of the quality of the actions an agent can perform or does perform, as opposed to in terms of the position an agent occupies in relation to other agents. On the negative account, for example, it is the *availability* of various options which is relevant, whereas, on the positive account, it is something like the *successful performance, authenticity, or worth* of the actions an agent chooses to pursue, depending on the specific account in question. In either case, both conceptions are, at bottom, focused on the *actions of* persons rather than the *relations between* persons. Pettit, of course, presents his non-domination conception as exceptional in this respect, but, as we saw in chapters 3 and 4, his view also does not prioritize the role of an agent's status. Recall that what ultimately makes the lucky slave unfree, on Pettit's account, is not so much his or her status as a slave, but the extent to which this status exposes him or her to the possibility of arbitrary interference. So, while different from other *act based*

accounts, Pettit's view is still primarily concerned with the kind of interference an agent suffers or is exposed to rather than the standing he or she occupies.

Further, in addition to their other faults, *act based* conceptions seem incapable of properly recognizing the degree to which one's status determines one's freedom. As we have seen, the negative view cannot explain why some instances of slavery are intuitively freedom limiting. Even if it can account for why the institution of slavery is in general empirically likely to limit the liberty of those who suffer under it, it cannot account for the intuitively salient distinction between the slave who is free in the negative sense because his master has, as Pettit puts it, "fallen in love" or "discovered religion" (Pettit 2008: 125), and the one who is free because his master has been compelled, by force, to respect the slave's status as an agent and be responsive to his demands. Again, the chief virtue of Pettit's non-domination view is supposed to be that it can account for this difference, but, as I have argued, it is not clear that it can. Because Pettit treats non-domination as a value to be maximized, his view is compatible with unchecked government power and even some forms of slavery.

The positive conception fares little better on this

score. Recall from Chapter 1 that, even when the positive conception does recommend against interference, it does so on the basis of the wrong kind of reason. On a positive account, an agent's objection to interference counts, at best, as evidence that such interference might not be instrumentally effective; it has no independent force of its own. In other words, the agent's objection *as such* does not count as a reason against employing interference. So even when an agent is not interfered with on this conception, it will not be because of any power of her's to *command* non-interference, to borrow Pettit's phrase (Pettit 1996: 589). Again, the power to command non-interference is supposed to be one of the defining features of freedom on Pettit's non-domination view, but, on closer examination, it does not appear that the non-domination conception substantially differs from the positive one in this respect. Because interference can be non-dominating provided that it is also non-arbitrary, citizens can, on the non-domination view, be exposed to a significant degree of interference in spite of their explicit protests without a significant loss of freedom, as I argued in chapter 3.

My proposal, which I will defend at length in this chapter, is that a *status based* conception of liberty is able to capture central liberal intuitions concerning the

proper normative role of freedom while avoiding the problems that plague various *act based* conceptions. In order to develop this *status based* account, I will draw on Pettit's earlier formulation of non-domination as *anti-power*, or one's power to resist interference from others (Pettit 1996). Recall that Pettit later rejects what he calls "the strategy of reciprocal power" as a means of fostering non-domination because he thinks that this strategy does not necessarily eliminate one's exposure to the possibility of arbitrary interference (Pettit 1999: 67). Just because citizens possess roughly equal power does not, he insists, guarantee that they will not interfere, on a purely arbitrary basis, in each other's affairs. What I intend to argue, however, is that precisely what it means for one to possess freedom in the *status based* sense is that one stands in a reciprocal relation of power to one's fellow citizens. This kind of reciprocity is therefore, on my view, not a *means of* achieving freedom, but freedom itself.

In order to distinguish my view from Pettit's, I will call this conception of freedom, *freedom as anti-domination*. The *anti* prefix is meant to emphasize that, on this conception, one enjoys freedom to the extent that one is *able to actively resist being dominated by others*.

Notice that this feature is absent from Pettit's non-domination account, or at least from most recent formulations. It is not an essential feature of this view that one's freedom from the possibility of arbitrary interference be the direct result of one's own power. One might enjoy freedom as non-domination because one is protected from interference by the power of a third party, namely the state. It is true that, on Pettit's view, this third party can only avoid becoming an instrument of domination itself by being "*forced to track*" the interests of citizens when interfering in their affairs (Pettit 1999: 56; emphasis added). So we might think that citizens do, in some sense, exercise power on Pettit's view to the extent that they can force the state to be responsive to their interests. But once we recognize that the interests the state must be responsive to are people's *authentic* and *collective* interests, it is no longer clear that this power resides with individuals themselves.

In what follows, I will first outline my conception of *freedom as anti-domination*. What I will be able to offer here is only sketch; developing a complete account goes beyond the scope of this dissertation. What I do hope to show, however, is that this conception of freedom represents a viable third alternative. I will then defend

this conception against various possible objections, some occasioned by this conception and other more familiar ones. In doing so, I hope to both further clarify and stress the distinctiveness of the anti-domination view. Next, I will show why freedom as anti-domination is the conception best suited to liberalism. Finally, I will conclude by arguing that freedom as anti-domination also promotes negative and positive freedom.

Freedom as Anti-domination: a sketch

As I mentioned briefly, in order to enjoy freedom as anti-domination, one must stand in a reciprocal relation of power to others. The question of course is what exactly this entails. Just as there are many varying conceptions of freedom, there are many varying conceptions of power, and we do not want to pursue a strategy that simply relocates problems concerning freedom to power. Such a strategy would only put off these conceptual difficulties rather than resolve them. So it will not help to simply assert that freedom as anti-domination consists in enjoying reciprocal power unless we can say something about what "power" means. For the remainder of this section, I will attempt to spell out what kind of power one must possess in

order to be free in the anti-domination sense.

We might start by defining power rather broadly as the ability to "make things happen" (Pettit 1996: 859), or, if this still too vague, we may follow Hobbes in thinking of power as one's "present means to obtain some future apparent good" (Hobbes 1962: 72). It should be readily apparent, though, that this conception is *far too* broad for our present purposes because it is insufficiently relational. Power, on this understanding, extends not only over other people, but over natural objects and events as well (in fact, power on this broad understanding will likely be more of a feature of our interaction with natural objects and events than with each other. Our relationships with other people will be but one rather small subset of our power broadly construed).

The kind of power involved in relationships of domination, however, is of a more specific sort; it is the kind of power commonly referred to as *power over*. There is a significant distinction between possessing power in the sense of making things happen or securing goods and possessing power over others. For example, you may have the power to, say, dunk a basketball whereas I do not, but this surely doesn't entail that you have any *power over* me (except perhaps in the specific case in which we happen to

be playing basketball, and even that's questionable if I possess other skills that you lack). The fact that you can dunk a basketball ordinarily has no effect on me whatsoever. Yet, strictly speaking, you can *make something happen* which I cannot. Likewise, suppose you possess the material resources necessary to build a pool in your backyard whereas I lack them. It is still not at all clear that you have any power over me even though you can secure a good that I cannot. It might of course turn out that, as an empirical matter, the fact that you possess these resources whereas I do not likely entails that you also have the the means to dominate me (perhaps because your ability to build a pool is an indication of your enormous wealth), but until we know what it means for you to possess *power over me*, we cannot establish this empirical connection.

Intuitively, cases in which A dominates B have something to do with the power A has over B.¹ So we might say that a reciprocal relationship of power obtains in cases in which A has no power over B and B likewise has no power over A. This narrower conception of power is better suited to capture the disparity of power that constitutes

¹I will use this A and B schema when describing power relationships, as is common in the literature.

the condition of enslavement. The slave is at the mercy of the master, not simply because the master can make things happen or secure goods that the slave cannot, but because the slave is *power-less* to effectively resist the master's control. Of course it is likely the case that the master's *power over* the slave is the result of his or her greater overall power in the broader sense, but a disparity in the degree of power enjoyed by two individuals will not result in a relationship of domination (and in the extreme case, one of enslavement), unless this disparity in some sense places one member of the party at the mercy of the other.

This is why, in his initial formulation, Pettit characterizes freedom as a kind of *anti-power*. Anti-power is the kind of power one exercises in resisting unwanted incursions from others. As Pettit puts it, "anti-power relates to subjugating power in the way that antimatter relates to ordinary matter: it represents something repellent to subjugating power" (Pettit 1996: 589). Someone who possesses anti-power can effectively neutralize the potential power advantage others have over her. Essentially, anti-power levels the playing field, establishing a relationship in which each party can prevent incursions perpetrated by the other.

The problem with this formulation is that it only

tells us what anti-power *achieves* not what it *consist in*, or, to put it somewhat differently, it describes the *effect* of anti-power but not its *essence*. We know that someone who possesses anti-power is able to effectively resist being subjugated, but, if this account is to be complete, we need to be able determine further how one comes to possess anti-power in the first place.

Perhaps, though, one could object that this desire for a more complete account is misguided because there is nothing more to anti-power than just this. One possesses anti-power precisely to the extent that he or she is able to avoid interference from others. It is therefore a kind of category mistake to think that there is something over and above this in which anti-power itself consists. It should be apparent, however, why this response is inadequate. Under the envisioned conception of anti-power, we would have to consider the lucky slave as free. Recall that one might be able to avoid interference from others through appeasement, charm, or simple good fortune, but he or she nonetheless still suffers domination if these others could choose at any point to interfere solely at their own discretion. On this *reductive* view of anti-power, we would have to say that lucky slaves do in fact possess it even though, intuitively, the condition of enslavement is itself

characterized by the slave's distinct *lack* of power.

For his part, Pettit does not endorse this reductive approach, but instead proposes a variety of means by which we might balance the access citizens have to various essential resources - essential in the sense that they are necessary in order somehow ward off or at least deter interference from others (Pettit 1996: 590ff). But, unless we can say something more about what anti-power is, we will not be able to identify precisely what resources are essential to it. We are still in need of a more complete understanding of the concept of *power over* if we are to make sense of Pettit's notion of anti-power.

Frances Lovett (2001) offers a potentially promising approach. On Lovett's formulation, a crucial feature of relationships of domination is that they render one party dependent on the other, and he further proposes that we can measure dependency in terms of the costs one would incur in trying to exit the relationship (Lovett 2001: 102). On the whole, I think that Lovett's account of domination suffers from the same problems as Pettit's since he basis it largely on Pettit's view,² but his approach hints at a

²On Lovett's view domination consists in three factors: an imbalance of power between two parties (where power is understood in the broad sense discussed above), the extent of one party's dependency on the other, and the absence of established rules which prevent arbitrary uses of power. I think the second condition is vulnerable to the objection

possibly fruitful way of understanding the concept of *power over*. Borrowing Lovett's insight that dependency can be understood in terms of exit-costs, we might formulate *power over* as follows:

A has power over B to extent that A's ability to impose costs on B is greater than B's ability to impose costs on A, and further that A dominates B in those cases in which A can impose fairly substantial costs on B and B has little to no means of imposing costs on A.

Such a formulation, I think, nicely captures the lack of reciprocity between masters and slaves, as well as in other relationships of domination. Even when the master does not exercise his or her ability to impose costs on the slave for the slave's failure to comply with the master's wishes - say because the slave is for the most part obedient and does not fail to comply or because the master has become lazy or fairly tolerant - the fact that the slave would have no recourse should the master choose to impose these costs is what accounts for the slave's subjugated status.

Whatever its potential merits, however, this approach faces serious difficulties once we try to spell out exactly what constitutes a *cost*. Suppose we treat costs subjectively; a *cost*, in this sense, is anything that

that dependency is the natural condition of human agents which we explored in chapter 4, and the third condition is vulnerable to all the objections that apply to the stipulation that non-arbitrary interference is not freedom limiting which we explored at length in chapter 3.

prevents an agent from doing/becoming/or getting something that he or she wants. The problem of course is that, if the agent happens to be satisfied with his subjugated status, he will not view the potential sanctions that keep him in this condition as real costs on this understanding. Whereas the reductive strategy struggles with the case of the lucky slave, this strategy instead struggles with the case of the contented slave.

Alternatively, we could try to develop an objective account of costs. So, on this approach, we would try to develop some list of activities/achievements/goods that any normal agent should pursue (or perhaps would pursue under ideal conditions). A cost could then be understood as anything that hinders these pursuits. This approach, however, simply reintroduces all the problems inherent to positive conceptions of liberty. On this understanding of *power over*, the use of physical force as means of encouraging someone to pursue these sorts of activities, achievements, or goods would not count as costs even if this person vigorously objected to such treatment.

As I mentioned earlier, the *status based* approach will not constitute much of an advance if it simply relocates the problems associated with other conceptions of liberty to a different level. We therefore need to avoid

conceiving of *power over* in a way that essentially reduces it to a positive conception of liberty. To this end, I propose that we think of one's *power over* others, not in terms of the costs one can impose on them, but in terms one's ability to limit their options (or, if we want retain the language of costs, we can understand costs in the narrow *negative* sense of limits on opportunities). So, under this formulation, *power over* is as follows:

A has power over B to the extent that A can limit B's range of options.

With this understanding of *power over* in mind, we can further characterize *domination* as:

A dominates B to the extent that A's ability to limit B's range of options is greater than B's ability to limit A's range of options.

Or, in more condensed form:

A dominates B to the extent that A's *power over* B is greater than B's *power over* A.

Finally, a condition of *reciprocity* obtains when A's *power over* B is roughly equal to B's *power over* A.

The account of *power over* offered above is admittedly still just a sketch, but we can flesh it out a little further by highlighting some of its central features. First, as I have already stressed at length, *power over* is a *relational* conception of power, or what is also commonly

referred to as *social power*. Second, this conception of power is *non-evaluative* in two significant respects (and this stipulation is necessary in order to avoid the problems generated by positive conceptions of liberty). It is non-evaluative in one respect insofar as it takes no account of the interests or desires of the agent over whom power is exercised. Again, the master has power over the slave regardless of whether the slave endorses or objects to his or her enslavement, and likewise, the master still exercises power over the slave even if he or she only interferes with slave in the slave's own best interests. Contrast this approach with Steven Lukes' well known account of power relations. According to Lukes, "A exercises power over B when A effects B in a manner contrary to B's interests" (Lukes 2002: 50).³ Lukes formulates his conception in this way because he is worried about cases in which one could exercise power over another through methods such as ideological indoctrination. As we have seen though, including these sorts of evaluative considerations risks turning *power over* into a kind of analog to positive liberty and consequently inherits all

³Alvin Goldman holds a similar view: "In determining a man's overall power, therefore, we must look not only at the number of persons that would be affected by the issues w.r.t. [with respect to] which he has power, but also at *how much* difference in welfare the outcomes of the issue would cause" (Goldman 1972: 258).

its problems. Plus, I hope to demonstrate in the final section of this chapter that freedom as anti-domination avoids the kind of worries Lukes has in mind.

The conception of *power over* I have developed here is also non-evaluative in another crucial sense. It not only ignores the interests of those over whom power is exercised, but also of those who possess it. Again, take the master/slave example: what matters is that the master could significantly limit the slave's opportunities, not that by doing so he or she could produce some valuable outcome. Contrast this with Hobbes's account of power as one's ability to obtain a future good, or Lovett's formulation of social power as one's "means to influence the situation of others [sic] persons or groups for the purpose of bringing about some new, desired state of affairs" (Lovett 2001: 106). Again, it is crucial, for our purposes, that *power over* exclude these kinds of value assessments. If *power over* is in part a function of the ends one is able to successfully achieve, then interference designed to promote one's interests, objectively or subjectively understood, will not limit one's freedom. Therefore, under the conception of power I am advancing here, *power over* consists in one's ability to limit the options of others regardless of either the *value of those*

options to the person from whom they are removed or of *the value of limiting those options* for the agent who has the power to remove them.

A third key feature of this conception of *power over* is that it is an *opportunity concept* rather than an exercise concept. This feature is essential for two reasons. First, *power over* must be treated as an opportunity concept in order to do justice to the plight of the lucky slave. The master still has power over the slave even when he or she chooses not exercise it. One's power over another consists in what one could do to another, not in what one does do. Second, if *power over* were not conceived of in this way, it could not serve as the basis for a *status based* conception of liberty. A conception of liberty based on the exercise concept of *power over* would be an *act based* one; it would be concerned with what one actually does rather than the status one holds in relation others. Further, suppose we did treat *power over* as an exercise concept and consequently freedom as anti-domination as the extent to which one exercises power over others. This would turn freedom as anti-domination into a positive conception of liberty of a very bizarre sort. Freedom, on this understanding, would consist in one's active mastery over others, and this would certainly not be

a very promising conception from the liberal point of view.

Finally, this conception of power is not a *behavior based* conception. On a behavior based model, A holds power over B to the extent that A can get B to *do something* B would otherwise not do.⁴ Ian Carter, for example, offers the following behavior based model: "Let us say that A exercises power over B when A's behavior induces B to modify her course of action in accordance with A's interests" (Carter 2008: 59).⁵ In contrast, the conception I offer here holds that A has power over B to the extent that A can limit B's opportunities regardless of how this might affect B's behavior. Of course in cases in which A chooses to exercise her power by preventing B from pursuing some course of action that he would have pursued absent A's interference, then A's power will necessarily have some effect on B's behavior. But this is an incidental feature of this conception since A will continue to hold power over B, according to my view, even when A fails to have any discernible effect on B's behavior whatsoever.

I recognize that this might seem somewhat counterintuitive, but again I think this stipulation is

⁴ See Dahl (1968) for a fairly systematic account of a behavior based model of power.

⁵ Note that Carter's conception is also both an *exercise* concept and a *value-laden* concept.

crucial to understanding the power relationship between masters and slaves. In the first place, the lucky slave's behavior may only be marginally affected by the master's power. Therefore, if we hold a behavior based conception, we would have to say that the master really does not hold power over the lucky slave. But, equally as important, the behavior based model is just as lacking when it comes to the case of the not-so-lucky slave. A slave may effectively refuse to abide by his master's wishes provided that he is willing to suffer some fairly severe consequences. No master could possess such absolute power (except perhaps under rather fantastical conditions) so as to be able to force the slave to perform certain tasks even when the slave physically resists. Nonetheless, it seems fairly intuitive to assert that the master still possesses *power* over the slave even when the slave refuses to do what the master wants because the master has the ability to impose severe sanctions for non-compliance.

In summary, the conception of power at work in freedom as anti-domination is a 1) *relational*, 2) *non-evaluative*, 3) *opportunity*, and 4) *non-behaviorist* conception of power. Each of these features is crucial in order for freedom as anti-domination to be a workable conception of liberty, one capable of avoiding the sorts of criticisms I have advanced

against other views. But it is important to stress that it is also an intuitively appealing conception of power on its own because it best captures the power relationship that obtains between masters and slaves. The master has power over the slave even when he or she chooses not exercise it, even when he or she cannot compel the slave to behave exactly how he or she wants, and even when he or she can sincerely claim to be acting in the slave's own interests. It is the fact that the master could behave towards the slave in any way which he or she chooses and with total impunity that accounts for the power differential between them.

Power over understood as the ability of one agent to limit the options of another best describes the kind of power that masters hold over slaves. The master can impose severe and strict limitations on the slave's activities whereas the slave could never hope to have any similar effect upon the master. If Pettit is right in thinking that the master/slave relationship is paradigmatic of relationships of domination in general, and I think he is, then we can expand this model to cover these other cases as well, such as the subordinate housewife who is wholly dependent on her husband, or the wage laborer whose fortunes depend entirely on the whim of his or her

employer. One achieves freedom as anti-domination then, to the extent that it is in one's own power to resist domination from others, or to the extent that one does not suffer impositions without equal recourse. And this occurs when one's *power over* is roughly equal to those with whom one interacts.

I should note, however, that the formulation above is over simplified in one crucial respect. In most real world scenarios -- and certainly under most political arrangements -- there will be more than just two actors. In formulating *power over*, *domination*, and *reciprocity* in this way, I do not want to give the mistaken impression that freedom as anti-domination is only concerned with *bi-lateral* relationships. In fact, quite the opposite is intended: one's status on this view is determined not by one's relationship with any one particular agent, but by one's relationship to a network of multiple agents. In this sense, one's standing is determined *multi-laterally*. So, one enjoys freedom as anti-domination to the extent that one is not at a power disadvantage with respect to other agents, keeping in mind both that agents can often act as groups and that agents can act on each other's behalf. Obviously, the more potential agents we introduce, the more complex this equation becomes. For simplicity's

sake, I will often use examples of bi-lateral relationships, but this should not be taken to imply that this model has only a narrow application, and, in the proceeding sections, I will say more about the significance of multi-lateral relationships.

It is worth noting that liberty as anti-domination has both a negative and positive element. Its negative element consists in the fact that *power over* is understood on this conception as one's ability to limit the total range of options, in the pure negative sense, of another agent; or, in other words, one's *power over* consists in one's power to interfere. Again, it is essential that we construe *power over* in this way so as to avoid reintroducing the anti-liberal implications of positive views. In order to stave off some potential confusions, however, it is worth keeping some points in mind. First, borrowing an insight from Carter and Kramer's pure negative approach, it is important to recognize that one can limit the total range of options of another through means other than direct physical interference. I can, for example, significantly limit your options by monopolizing certain resources or issuing threats (provided that I am able to make good on them should you fail to comply). Second, one's power and status is always a matter of proportion. For example, while the

slave can certainly interfere with the master by refusing to comply with the master's demands even under the threat of severe sanction, it is still the case that the master dominates the slave because the master's power to limit the slave's options is far greater in proportion to any meager resistance the slave could possibly muster. Finally, it is important to stress that, while it has a negative component, freedom as anti-domination is not ultimately a negative conception of liberty. One's freedom on the anti-domination view is not necessarily limited just because one is interfered with. It *is limited*, however, when one is exposed to a greater degree of possible interference than others because, in such cases, one will be at a significant power disadvantage. This is what makes freedom as anti-domination a *status based* conception of liberty rather than an *act based* one, though it does employ the notion of interference.

Freedom as anti-domination also has a positive element in that it conceives of liberty as the possession of a kind of power. It is important, however, to stress again that it does not thereby reduce to a positive conception of liberty. Because the anti-domination view holds that *power over* is both a non-evaluative and opportunity concept, it avoids the implication that one can be forced to be free.

Because freedom as anti-domination is a status based conception, forcibly compelling someone to engage in certain actions can in no way increase his or her freedom. This is why we should not find the fact that actual interference itself is not necessarily freedom limiting on the anti-domination view particularly troubling, because it is equally true that actual interference *can never* enhance, or even be consistent with, one's freedom as anti-domination. Returning to Taylor's (1985) example, the reason why traffic lights do not significantly hinder freedom on the anti-domination view is not because they are some insignificant or trivial instances of physical interference, but because they impose on everyone equally; they do not uniquely advantage or disadvantage any person or persons.

So while freedom as anti-domination has both a negative and positive element, it is a unique third conception of liberty rather than an ad-hoc aggregate conception. It is also distinct from Pettit's non-domination account in that it holds that one's freedom is determined by one's power to resist interference from others rather than one's exposure to the possibility of arbitrary interference. Freedom as anti-domination is also distinct from other reformulations of Pettit's non-

domination conception. James Bohman (2005), for example, offers an account of non-domination that is similarly power-based. Bohman, however, casts his version of non-domination in explicitly Arendtian terms. That is, on his view, one enjoys freedom as non-domination to the extent that one has the power to initiate democratic deliberation. It is not clear to me, however, what exactly this entails or how this view avoids reducing to a positive conception of liberty of the specifically Arendtian sort. The anti-domination view I offer here is also distinct from Henry Richardson's formulation of non-domination as freedom from arbitrary power rather than arbitrary interference (Richardson 2003). I do not intend to go into Richardson's distinction between power and interference in any detail here except to note that Richardson's own power-based reformulation of the non-domination view retains Pettit's arbitrariness criterion. Accordingly, I think that, whatever its other merits, Richardson's view inherits all problems that accompany this standard.

Now that we have a rough sketch of freedom of anti-domination and its essential components, in the remainder of this section I want to say a little bit about how we might promote and ultimately achieve it. There are a variety of means by which we can foster reciprocity of

power amongst citizens. First, there is the obvious, though perhaps somewhat unappealing, strategy of arming everyone - say by outfitting every citizen with an AK-47 - so that none is exposed to the possibility of being threatened by others without having at his or her disposal a substantial means of recourse. Again, whether this strategy helps promote anti-domination or not, it is probably unappealing for a variety of independent reasons, and the prospect of such a scenario is, I think, why Pettit abandons his earlier formulation of freedom as anti-power in favor of his latter formulation of freedom as the absence of arbitrary interference (Pettit 1999: 67).

There are several reasons, however, why I think such a strategy will not successfully promote anti-domination, and I plan on revisiting this issue at greater length in the following section. For now, it is worth noting that the conditions produced by this strategy are bound to be unstable. Say we were able to arrive at an ideal distribution of what we might call *punitive powers* - or one's power to inflict physical punishment - and that we were somehow able to institute this distribution. Over time, conflicts will inevitably ensue, individuals and groups will collude, and eventually someone, some group, or some groups will gain the upper-hand. Unless there is a

third party prepared to step in and redistribute punitive powers when imbalances begin to emerge, such a strategy will not effectively prevent domination. Further, unless this third party is itself incredibly powerful, it is hard to imagine how it could successfully fulfill this function. If this third party is sufficiently powerful, however, then it will necessarily be an agent of domination since all other agents will necessarily be at its mercy even if this third party did not choose to use its power in any malevolent way.

While I think this strategy is bound to be ultimately unsuccessful on its own, it is still worth noting that the distribution of punitive powers does play some role in the level to which citizens enjoy freedom as anti-domination. The freedom of the members of states, nations, or ethnic groups depends in part on the extent to which they can defend themselves against potential aggressors. Any state, nation, or ethnic group that cannot do so will thereby be at the mercy of others and forever dependent on their good will.⁶ Of course if any nation, state, or ethnic group is

⁶ In contrast, Berlin seems to deny any link between the political independence of states, nations, or ethnic groups and either negative or positive liberty (Berlin, 2002: 204). Given that national independence is often thought of as integral to liberty (think of the American Revolution for example), the fact that the anti-domination view is able to capture this strong intuition is another one of its many advantages.

overly aggressive in, or preoccupied by, providing for its own defense, it might create a condition in which the individual members of this group are subordinated to this end, in which case they will be rendered relatively powerless as individuals. In this respect, the anti-domination view does not collapse security and freedom. It recognizes that an overly zealous preoccupation with security threats can result in domination of individual group members, but it also recognizes that a group which is entirely defenseless is exposed to a degree of domination as well. This is a good example of how multi-lateral relationships can complicate matters, but I just want to emphasize here that the extent to which a group's investment in its own defenses contributes to or infringes upon the freedom of its members depends upon how it affects the amount of *power over* that they enjoy *as individuals* in comparison to the amount of *power over* that they are exposed to when taken as a whole.

Another possible strategy would be to establish some third party, such as the state, charged with regulating the affairs of individuals so that no one is able to gain an unfair advantage and with the power to intervene when necessary in order to reestablish reciprocity. The problem with this strategy, as briefly mentioned above, is that

this third party will have to be incredibly powerful in order to carry out this task, so powerful in fact that everyone else will necessarily be at its mercy. In a sense, this is the strategy endorsed by Pettit in the name of non-domination:

The strategy of constitutional provision seeks to eliminate domination, not by enabling dominated parties to defend themselves against arbitrary interference or to deter arbitrary interferers but rather by introducing a constitutional authority - say a corporate, elective agent - to the situation. The authority will deprive other parties of the power of arbitrary interference and of the power of punishing that sort of interference. It will thereby eliminate domination of some parties by others and if it does not itself dominate those parties, then it will bring an end to domination. The reason that a constitutional authority will not itself dominate the parties involved, if it does not dominate them, is that the interference it practices has to track their interests according to their ideas; it is suitably responsive to the common good. (Pettit 1999: 67 - 68)

As we saw in chapter 3, however, this way of understanding non-domination is highly problematic, and in particular, it does not prohibit the creation of an enormously powerful state. In fact, it likely requires it.

This kind of strategy will not be viable on the anti-domination account I am advancing here unless the role of the state can be conceived of in such a way as to be more congenial to the goal of fostering anti-domination rather

than Pettit's ideal of non-domination. I think this can be achieved by thinking of the state, not as a third party that interferes only in the name of the "common good," but as itself a kind of distribution of institutional and legal powers. A state fosters anti-domination for its citizens to the extent that it constitutes an equal distribution of these powers among them. So, for example, a despotic state is one in which the distribution of institutional and legal powers is very imbalanced and consequently one in which the vast majority of citizens are subject to domination. A constitutional democracy on the other hand will be one in which power is distributed more equally (I will say much more about this in section IV).

On the anti-domination ideal, interference by state officials will promote freedom, not if it reflects the common interest, but if these officials are acting on behalf of some citizen or group of citizens. In this sense, the kind of power possessed by state officials is a kind of power of proxy. So, for example, suppose I call the police to forcibly remove an intruder who has entered my home. When they do so they act as my proxy or, in other words, as an extension of my legal powers. Alternatively, if they fail to remove the intruder, they can later pursue him or her to both reclaim my property and begin criminal

proceedings. Accordingly, even if the intruder is able to over power me in the moment, say by threatening me with a physical violence, I still retain a degree of power over him or her. By summoning the police to act on my behalf, I can ideally prevent the intruder from successfully interfering in my affairs, or barring that, at least impose strict penalties on him or her which ensures that he or she has no real overall power advantage over me. Likewise, to give another example, when a government safety regulator sanctions an employer because he or she has failed to implement safe working conditions, this regulator is serving as a proxy for the workers. Were the employer able to neglect worker safety without penalty, he or she would be in a position to limit the combined opportunities of the workers (in exposing them to the possibility of suffering a severe injury), and the workers would have no means of recourse. The regulator therefore *empowers* the workers by establishing safety guidelines and imposing penalties if the employer fails to comply.

Of course it is true that state officials will likely not be very effective in this capacity unless they are able to act somewhat independently. In modern states, government agents, such as the police or safety regulators, are continually at work overseeing the affairs of citizens;

they do not somehow suddenly spring into action only when summoned. Further, it is important that they function in this way because it will often be the case that those on behalf of whom they are acting will not be fully aware of the potential impositions that threaten them. This might lead us to worry that the proxy model I have outlined above not only fails to describe any modern existing state, but is also hopelessly idealistic. I do not think this is the case, however. Just because these agents act with some degree of independence does not entail that the power they are imbued with ultimately resides with them rather than those they are supposed to serve. As long as the appropriate checks and balances are in place and citizens can rein-in these actors when necessary, it will be the citizens themselves who ultimately exercise control. Should state actors acquire *too much* independence, they will of course become agents of domination even if they can sincerely claim to be acting in the name of the common interest. Under the appropriate limits and checks, however, state actors function less like an independent third party who wield *power over* citizens and more like an extension of the power citizens have over each other.

At this point, it is worth highlighting a significant distinction between the anti-domination view and Pettit's

non-domination view. Recall that, according to Pettit, non-domination is a good to be maximized, and accordingly, the state can itself engage in arbitrary interference if this increases the overall level of non-domination citizens enjoy. So, there will be cases in which giving the state a significant degree of unchecked discretion will be justified in the name of promoting greater non-domination overall. Notice that this line of justification is not available on the anti-domination account. Because the state is best thought of as a distribution of powers, a state in which certain officials, judges, or representatives are given unchecked power will, for that very reason, be one in which the distribution of power is unequal and hence dominating. It is therefore conceptually impossible to *promote* anti-domination through an unequal distribution of power. This is not to say, of course, that some political arrangements are not better than others at fostering anti-domination even when they fall short of the ideal. But, because anti-domination consists in establishing reciprocity between parties, it is not a good that can be maximized. We can make relationships *more or less* reciprocal, but it makes little sense to say we can *maximize* reciprocity (beyond making relationships *maximally* reciprocal) as if reciprocity were a quantifiable good.

There are other means by which the state can distribute institutional and legal powers in addition to the ones described above. It can give people various political powers (such as the ability to vote in elections or referendums, or the ability to seek public office), it can give people various legal powers (such as the ability to pursue civil action), it can create legal entities (such as corporations and unions) to empower groups, and it can bestow people with basic legal rights (the anti-domination view's ability to explain the significance of basic rights without evoking a positive account is obviously one of its major advantages, and I will explore this issue at greater length in section IV). Again, the extent to which these mechanisms promote anti-domination depends on the extent to which, in conjunction, they equally distribute power.

It must be noted, however, that even if the state does embody an equal distribution of institutional and legal powers, this is not sufficient to ensure that all of its citizens enjoy freedom as anti-domination. An unequal distribution of certain resources can also produce relationships of domination. If, for example, the vast majority of material wealth in a given society is held by a relatively small percentage of the population, the wealthy will be able to dominate the rest of society, since they

will be able to limit the options of others in far greater proportion than what they are exposed to themselves. So promoting freedom as anti-domination will in some cases require redistributing these economic resources (this does not mean freedom as anti-domination requires a strictly equal distribution of economic resources. Recall from above that greater economic resources does not necessarily mean greater *power over*. That is, the fact that I have more economic resources than you does not entail that I have any greater ability to limit your options. I will say more about this in section IV).

Of course, the anti-domination view will be concerned not only with distribution monetary resources, but other basic resources as well. In particular, it should be noted that the more access to basic resources people have, the less dependent they will be on others, and this independence will shield them from the possibility of having their options substantially limited by others. If, for example, I am not reliant on others to secure access to health care, education, or various means of employment, they will not be able to limit my opportunities by restricting my access to these resources. The point to stress here is that we can increase the extent to which people enjoy freedom as anti-domination not just by giving

them the means to equitably sanction each other, but also by making them more independent from one another.⁷

Accordingly, the anti-domination view also requires that we pay attention to distribution of what Amartya Sen has called basic "capabilities" (Sen 2001). Often times, this strategy might be the more effective than the strategy of increasing people's capacity to punish each other, and it also might be more desirable for reasons independent of its tendency to foster anti-domination.

Finally, the anti-domination view also requires that we pay adequate attention to the distribution of what we might call *social resources*. If some citizens have access to certain social privileges and opportunities whereas others do not, these advantaged citizens could use their "social capital" (Bourdieu 1991; Putnam 2001) as a means of limiting the opportunities of others. We have good reason then, on the anti-domination account, to be concerned about the emergence of a social-hierarchy that limits the social resources of certain classes of people.

Promoting freedom as anti-domination will, in most cases, probably require some combination of three

⁷ I do not mean completely independent, of course. I do not want to belie the fact, as Pettit is accused of doing, that people are necessarily interdependent on each other in significant respects. I discuss interdependence at greater length in section III.

strategies outlined above. Of course it is empirical question as to which strategy, or combination of strategies, will produce the most equitable distribution of *power over* among citizens, and as such I cannot explore this issue in sufficient detail here. What I will argue later in this chapter (section IV) is that a liberal political regime committed to promoting basic rights, democracy, and equality, represents the ideal power arrangement on the anti-domination view; this is why freedom as anti-domination is the conception of liberty proper to liberalism.

Some Objections

Having outlined in broad detail the features of freedom as anti-domination, I want to consider, and respond to, several possible objections. In doing so, I hope to not only defend the anti-domination account against potential criticism, but also further clarify this conception and identify its advantages. The first two objections I will consider are occasioned specifically by the anti-domination account. The third is one we looked at last chapter in regards to the non-domination view.

The "Power is not distributive" Objection

Although we examined above several means by which *power* over might distributed, one might worry that there is something essential about the nature of power that the distributive approach overlooks. The worry is that, if there is some crucial aspect of power that cannot be understood in distributional terms, then a distributional approach to power will fail to capture some of the ways in which power works to dominate and oppress people. Iris Young, for example, charges that, "a distributive understanding of power, which treats power as some kind of stuff that can be traded, exchanged and distributed misses the structural phenomenon of domination" (Young 1990: 31).

Young offers several arguments in favor of this contention. Most of them, however, are based on her assertion that distributive conceptions of power do not appreciate the extent to which power is relational (Young 1990: 31ff.). This sort of objection, though, has no bearing on anti-domination understanding of *power over*, which is an explicitly relational concept. Young's other line of objection, however, is more directly relevant to the anti-domination view. Young cites Foucault's theory of power to suggest that distributive understandings of power rest on a faulty ontology. Essentially, Foucault argues

that it is wrong to think of power as something substance-like which can be evenly or unevenly distributed. As Foucault puts it in a passage cited by Young (Young 1990: 32): "power must be treated as something that circulates, or rather something which only functions in the form of a chain. It is never localized here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth" (Foucault 1980: 98).

Assessing the viability of Foucault's treatment of power all-things-considered requires a much more in depth analysis of the ontology of power than I am prepared to give here. I do want to point out, however, just how normatively impoverished this conception is if it entails that we can never treat power as a distributive item. Unless power is in some sense quantifiable and locatable (and the above quote from Foucault suggests that in some sense he thinks it is not), then we can never say of two agents that one has *greater power over* the other. But it seems essential that we be able to assert this in order to critique certain political arrangements. If we cannot say that the master has *greater power over* the slave, or that the despot has *greater power over* his or her subjects, then it is hard to imagine how any political reform designed to correct these imbalances could count as progress. At least

as Young presents it, the Foucauldian position would entail that protecting the slave from the master's wrath or placing institutional checks on the despot can have no meaningful impact on the power enjoyed by these respective parties because it is a mistake to think of power in these terms. Being able to think of power distributively is normatively important, however, because, intuitively, some power *imbalances* produce injustice. The Foucauldian view as advanced by Young, however, seems to entail that this sort of concern rests on a confusion. This seems rather implausible. To borrow Rawls's phrase, "to each according to his threat advantage" is not a conception of justice because it is normatively deficient, not because it is conceptually incoherent (Rawls 1971: 134).

This is not to say that the Foucauldian position is necessarily incorrect all-things-considered. It might be the case that power, in the broadest possible sense, is best understood as non-distributive. The distributive conception of *power over* may very well be derivative of some ontologically more fundamental non-distributive conception of power. The anti-domination view I am advancing here need not take any stand on this issue. But, in order to be viable, the Foucauldian conception of power must have some way of accounting for the more narrow

understanding of *power over* as something that can be evenly or unevenly distributed. If it cannot do so, then it is severely lacking on normative grounds. If it can, then it presents no real challenge to the anti-domination view.

The "War of All Against All" Objection

Even if we agree that power is distributive, there might be reason to worry that an equal distribution of power is not an appealing political ideal. I suspect the reason why Pettit comes to reject the anti-power strategy is because he recognizes that it, in practice, it would ultimately reduce to something like the anti-domination view sketched above. Pettit thinks that this approach would be attractive if the ideal form of anti-power, wherein people could somehow always effectively repel unwanted interference from others, were realizable. But he recognizes that this ideal *is not* realizable, and he worries about the second-best approach:

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

Thus, under this non-ideal version of the strategy, arbitrary interference and domination may be reduced, but it is not ever going to be eliminated. (Pettit 1999: 67)

The anti-domination view closely resembles what Pettit calls here the "non-ideal version" of the "strategy of reciprocal power." Pettit's concern is that this strategy will not eliminate the possibility of arbitrary interference.

At least as presented above, Pettit's objection has no bearing on the anti-domination view since freedom as anti-domination does not consist in the absence of the possibility of arbitrary interference. Recall that, on the anti-domination view, establishing reciprocal power is not a means for achieving freedom but *constitutes* freedom. Still, Pettit's worry cannot be dismissed so easily, since he paints a fairly unattractive picture of what freedom as anti-domination would look like in practice. Consider Gerald Gaus's version of this same objection (here leveled against Pettit's earlier anti-power formulation of the non-domination view). Gaus worries that, on this kind of conception, Hobbes's state of nature would constitute an ideal state of freedom, because, in the state of nature:

we are each symmetrically placed, and have equal 'threat advantage.' Anyone in a position to interfere with me is equally subject to interference by me. So we are all free and

nondominated. As Pettit is fond of repeating, each of us can look others straight in the eye - a sign of nonservility - though we all tremble as we do so (Gaus 2003: 70).

Gaus's objection is aimed at what he sees as an internal inconsistency in Pettit's view (and Pettit seems to have come to this same conclusion himself), rather than at the anti-domination view I have put forward here. Still, if true this would be a rather unhappy result for the anti-domination account. First, Hobbes's state of nature - in which life is famously nasty, brutish, solitary and short - - hardly seems free of domination (and I think this is the intuition that Gaus is highlighting). If anything, it seems more intuitive to say that one is under constant threat of domination in the state of nature. If this intuition is correct, then we might worry that the anti-domination account does not adequately capture the essence of domination in the more common use of the term. Second, if Hobbes's state of nature does constitute an ideal of anti-domination, then freedom as anti-domination will not be a very appealing conception on liberal terms. Hobbes's argument *against* the value of freedom is that freedom is precisely what one does enjoy in the state of nature, and, consequently, one enjoys little else. This is what, on Hobbes's view, necessitates the need for the state (Hobbes

1962). Of course, Hobbes has negative liberty in mind (Hobbes 1962: 159ff.), not liberty as anti-domination. But if the same type of concern applies to freedom as anti-domination, we might question its value as a political ideal.

The question, then, is whether it is right to think that people enjoy freedom as anti-domination in the Hobbesian state of nature. I have already mentioned one potential response to this kind of worry. Earlier it was noted that an equal distribution of punitive powers will not necessarily secure anti-domination for most because it will be inherently unstable; over time people will form coalitions and eventually some will gain the upper hand over others. The problem, though, is that this response does not apply to the scenario being considered here, since Hobbes's state of nature is, by stipulation, one in which people have not yet joined together and ceded their power to some collective body. In the state of nature, people's punitive resources remain perpetually equal.

Does this mean, though, that their *power over each other* is equal, or, more precisely, that no one enjoys an imbalance of *power over anyone else* under these conditions? I do not think that this is case. While it is true that no single agent can prevail over all others in the state of

nature, this does not mean that each individual agent stands in a reciprocal relation of power to all other agents. To see this, imagine two agents in the Hobbesian state of nature, A and B. Suppose A and B are of roughly equal size and strength and have roughly equal resources at their disposal. Still, in a conflict between A and B, one of them will triumph. Hobbes's state of nature is not one in which agents enjoy Pettit's ideal form of anti-power. A cannot automatically repel aggression by B and vice versa (otherwise the state of nature would not be such a bad place). While it is likely true that, in the state of nature, there will be no way for either A or B to know who will win this contest except by "having it out" so to speak, this does not mean that this question has no determinate answer.

So suppose that A and B do come into conflict with each other, and A ultimately triumphs by either capturing or killing B (note that this does not mean that A had to first acquire some resource advantage over B. She could have just gotten lucky and happened to catch B off guard while he was distracted with something else). In this scenario A's power over B is clearly greater than B's power over A, since A can successfully limit B's options while simultaneously depriving B of any means of recourse. This

does not, however, entail that A is now in the clear, since there is likely some agent, C, capable of gaining the upper hand over A, and likewise some agent, D, capable of then gaining the upper hand over C, and so on. So, while the state of nature does describe a situation in which no one agent can successfully dominate all or most others, it is still the case that agents will necessarily dominate one another at various times. It is therefore not a situation in which everyone enjoys freedom as anti-domination, but one in which nobody does.

We thus need not worry then that Hobbes's state of nature represents an ideal arrangement from the standpoint of anti-domination. In fact, consistent with our intuitions, the state of nature constitutes a dystopia on the anti-domination account. Still, there remains Pettit's less extreme form of this objection (Pettit 1999: 67): if anti-domination is constituted by reciprocal powers of interference, then doesn't it justify political arrangements in which people are constantly interfering in each others' affairs on an arbitrary basis, and isn't this still an unattractive ideal?

I think there are several responses to this objection. First, it is an empirical question as to how much interference citizens are likely to endure under conditions

of reciprocity. While we clearly do not have access to a definite empirical answer at the moment, it does not seem unreasonable to assume that people will be effective at deterring actual interference once given the power to do so. Insofar as people are likely to not want to be interfered with themselves, they will avoid acting as an aggressor in order to avoid retribution. After all, while I do not necessarily want to endorse the US system of incarceration as an ideal method, it is effective in deterring most people from committing crimes. While it is true that arbitrary interference will never be strictly *eliminated* even on the anti-domination ideal, this is hardly a defect of the view. As we have seen, it is not clear that interference can ever be rendered strictly impossible, and further, any view of freedom which requires that it be so both yields fairly counter intuitive implications and serves as a rather poor political ideal.

Second, Pettit seems to assume that the only way to establish reciprocity where *power over* is unequally distributed is to give the disadvantaged parties greater punitive powers. Recall from above, however, that another strategy is to give them greater access to basic resources so that they will be relatively independent, making them more immune to having their options limited by others.

Again, Pettit's view of what constitutes interference seems fairly narrow, including only acts of direct physical obstruction. Often, however, the most effective means by which one person can limit the options of others is by monopolizing, or at least restricting access to, basic resources. So we need not think of the ideal political arrangement, on the anti-domination account, as one in which citizens are constantly threatening each other. Instead, we can think of it as one in which citizens are relatively independent from each other.

Finally, it is worth pointing out that Pettit himself often seems to employ the reciprocal power strategy, though he purports to reject it. Consider Pettit's rationale for why free markets do not create conditions of domination: "one seller may be able to interfere with another by undercutting the other's price, but the second should be free, above the level of the competitive price, to undercut that price in return; thus there is no question of permanent exposure to interference by another" (Pettit 1999: 205). The reason why neither seller is dominated in this case is not because neither is exposed to the possibility of interference, but because neither is more capable of interfering than the other. What Pettit seems to be advocating here is something more like the anti-

domination position rather than his own non-domination account. In fact, it is difficult to imagine how competitive markets could function at all if interference of the sort mentioned above were rendered strictly impermissible as the non-domination view seemingly requires (Gaus 2003: 68ff).

The "Possible vs. Probable" Objection

I now want to turn to a more familiar objection explored in the previous chapter. The anti-domination view retains one essential feature of Pettit's non-domination account. As with the non-domination account, it is *possible* rather than *actual* interference that renders one unfree on the anti-domination view. The crucial difference is that the non-domination ideal seeks to render arbitrary interference *impossible* whereas the anti-domination ideal seeks to render powers of interference *equitable*, while recognizing that this will not completely eliminate the possibility of interference, arbitrary or otherwise. Nonetheless, one might worry about this focus on the mere possibility of interference rather than say on the probability of interference. In particular, one might object that the anti-domination view will, rather counter intuitively, identify relationships in which the probability of one

party interfering with the other is incredibly low as one of domination. Accordingly, it performs equally poorly as the non-domination view on the kind of thought experiments developed by Gaus (2003) and Kramer (2008).

I do not think this is the case, however. In fact, on the contrary, I think the anti-domination account captures our intuitions about these cases better than any other conception, though this might not be immediately apparent. Let's start with Gaus's example. Recall that Gaus asks us to imagine an ex-Soviet general who continues to manage an arsenal of nuclear weapons located in an ex-Soviet republic after the cold war. The general could, at any moment, launch these missiles on a whim; however, he has no intention of doing so. He simply continues to look after the missiles as a kind of hobby. But, because this general could interfere in the lives of citizens half-way around the world, he necessarily dominates them according to Pettit's account, even though these citizens have no knowledge of the general and he has no intention of exercising this power.

It might seem at first that the anti-domination account will have to say something similar about this case. After all, doesn't the general have at his disposal the means to interfere, in a rather devastating way, in the

lives of others who have no equal means of recourse? Not necessarily. Imagine that the general did launch these missiles on a country such as the United States. It is plainly not the case that the United States, and its citizens, would have no means of recourse, since the United States has a nuclear arsenal of its own. So, while the general is capable of exacting enormous consequences on others, he can only do so in this case at the cost of having these consequences revisited on himself (or at least his potential victims retain this capability regardless of whether they choose ultimately not to exercise it). In short, the general can interfere, but he does not dominate according to the anti-domination view. Of course, this does not mean that this arrangement is ideal in all other respects. The fact that the general could wreak great havoc at any moment gives us good reason to be concerned about the threat he poses to our safety if not our freedom. But the fact that the anti-domination view retains the distinction between freedom and security is one of its virtues, as we have discussed at the length the disturbing political implications of collapsing this distinction.

Admittedly, though, this response does not quite dispose of this counterexample entirely. We could just as easily imagine the same scenario except with the

stipulation that the United States did not have this means of recourse, or we could suppose that the missiles were turned on some more helpless country. One might argue that the anti-domination view is still committed to the counterintuitive assertion that the general will be an agent of domination in this kind of case. But I am not sure that our intuitions remain the same under these modifications. Imagine that the general could launch these missiles and suffer absolutely no repercussions for doing so. He could, if he chose, treat others as mere objects - perhaps even as play-things for his own amusement, just like the missiles themselves - rather than as agents who must be treated with the proper consideration. If the only thing that prevents the general from doing this is his own indifference, laziness, or good nature, then it does not seem counterintuitive to assert that he exercises a kind of domination over others. Even if this still sounds somewhat implausible, however, it is worth noting that the anti-domination view can say something about this case that the non-domination view cannot. Under the anti-domination view, even if we are hesitant to think that the general exercises domination over others, we can at least say that they fail to exercise anti-domination over him because they hold no power over him whatsoever. So we might think that

it is more intuitive to say of this case that the general's potential victims enjoy non-domination (understood here as the incredibly low likelihood they will encounter interference at the general's hand), but not anti-domination.

I think that this way of understanding the relation between the general and his potential victims better captures our intuitions about this case and others like it. There is, in fact, evidence that suggests that states seek to develop nuclear weapons even when possessing them will have no appreciable effect on their security because of the *status* these weapons afford (Sagan 1997: 73ff.).⁸ States that possess nuclear weapons gain in international stature by virtue of the fact that other states perceive them as being powerful, and obtaining this standing is significant even if it is the case that they would be exposed to no real security threat in the absence of these weapons.

The anti-domination view can take the same line on Kramer's gentle giant example. Recall that Kramer asks us to imagine a giant whose brute physical strength would make it easy for him to interfere in the lives of members of nearby village, but, because he is passive, shy, and

⁸ Sagan points to the particular example of France following the Second World War to illustrate this point.

somewhat of a recluse, there is little to no risk that he will actually engage in such behavior. On the anti-domination view, the fact that the gentle giant could interfere is not what is strictly relevant. What is relevant is whether the villagers have a means of equal recourse, and, unless the giant is of such immense strength that he is virtually immune to any form of retribution human beings could muster, it is likely that the villagers, functioning as a group, could exercise equal power, or roughly equal power, over the giant. To the extent that they can, the anti-domination view will hold that the giant does not dominate them. Of course if they cannot, the anti-domination view will hold that the giant does dominate them even if he has no intention of interfering, but, as with Gaus's example, I am not convinced that this conclusion greatly offends our intuitions. It is not entirely counterintuitive to think that the presence of a creature so powerful that he could, at any moment, destroy an entire village while the villagers could do nothing but sit idly by does impose a threat to their liberty. At least it does not seem implausible to think that the villages would experience this relationship as one of domination no matter how confident they were that the giant would never actually harm them (at this point, though, the

gentle giant has become so fantastical that we might question its effectiveness as an intuition pump in general).

I revisit these examples because I think they highlight a crucial advantage the anti-domination conception has over the non-domination view: though both conceptions focus on the *possibility* of interference rather than its *probability*, the anti-domination view does a better job explaining the relationship between possible interference and unfreedom. This is especially true when we consider Friedman's criticisms of the non-domination account. Recall Friedman's (2008) charge that the non-domination view ignores the essential interdependency of human agents. Because people are, by their very nature, dependent on each other, they can always arbitrarily interfere in each other's lives. Freedom as non-domination is consequently an unattainable ideal. The anti-domination view, however, avoids this implication. That two or more parties of a relationship are dependent on each other in all sorts of vital ways does not, in and of itself, affect either's freedom on the anti-domination account. If, however, one party is *more* dependent on the other, then this will adversely affect the freedom of the more dependent party, because now the less dependent member can

restrict the more dependent member's options in greater proportion. In short, on the anti-domination view, dependency itself does not produce domination, but disproportionate dependency does.

Again, I think this stance best captures our intuitions about certain relevant cases. Take for example the relationship between spouses. Spouses are without doubt interdependent, and therefore subject to the possibility of interference at the hand of the other, but it does not seem right to say, except perhaps in jest, that people lose their freedom simply by getting married. If, however, one spouse is *more* reliant on the other, then this does produce a relationship of domination. On the anti-domination view, the subjugated housewife is unfree not simply because she is married, but because she is almost wholly dependent on her husband for her livelihood (I will say more about these sorts of relationships in section V).

Anti-domination and Liberalism

In the preceding two sections, I have given a rough sketch of freedom as anti-domination and addressed some potential objections. I now want to make a more positive case for the anti-domination view. In this section, I will argue

that the anti-domination conception is best suited to capture liberal intuitions and serve as the normative basis for liberal political ideals. I will first argue that the anti-domination view can account for the priority of the basic liberties as well as explain the essential connection between freedom and democracy without collapsing into an anti-liberal positive conception. I will then show that freedom and equality are not in conflict on the anti-domination view, and that freedom as anti-domination provides grounds for remedying the kind of inequalities that often concern liberals. Essentially, my argument is that a strong commitment to each of these - basic liberties, democracy, and equality - is necessary in order to secure reciprocity of power between citizens.

Anti-domination and Basic Liberties

In previous chapters, I argued that neither negative nor positive conceptions of liberty can properly explain the priority of the basic liberties. On the negative view, the argument is supposed to be that the basic liberties have priority because they maximize overall negative freedom, whereas on the positive view, it is that they have priority because people must possess them in order to exercise their most essential capacities. The problem with both

approaches is that neither ultimately warrants giving the basic liberties special protection. As we have seen, being afforded certain liberties (like freedom of speech, the press, conscience, assembly, etc.) does not make a significant contribution to one's overall negative liberty, and, in some cases, restricting rather than protecting these liberties will maximize overall liberty in the negative sense. Likewise, on the positive account, it may be necessary to infringe on people's basic liberties when they *fail to exercise or realize* their most essential capacities. On both negative and positive views then, violating people's basic liberties is consistent with promoting their freedom in a broader sense.

The anti-domination conception takes a different stance on the significance of the basic liberties. On the anti-domination view, basic liberties are best understood as vital checks against the accumulation of power. That is, they help secure limits on the power that any individual, or group of individuals, can successfully acquire. Basic liberties often serve specifically to limit the power of the state by prohibiting it from engaging in certain activities. In this sense, they function as "trumps" in Ronald Dworkin's sense of the term (Dworkin 2007). As we shall see, though, they do not function only

in this way. On the anti-domination view, then, basic liberties are a necessary, though certainly not sufficient, means of guarding against the emergence of power imbalances. In what follows, I will examine three specific fundamental freedoms -- freedom of expression (including freedom of speech and press), freedom of conscience (specifically freedom of religion), and freedom of assembly -- and explain why each are essential to securing freedom as anti-domination.

At first, it might not be immediately apparent why the anti-domination view would require giving special protection to freedom of expression. After all, *power over*, on this view, is understood as one's ability to limit the options of others, and, if freedom of expression adds little to one's overall negative liberty, how does possessing it substantially increase one's power in this sense?

While it is true that speech acts themselves do not require much in terms of negative liberty and therefore do not substantially contribute to its overall scope, freedom of expression and the ability to limit it are both significant resources of power. If, for example, I could somehow deprive others of their ability to express themselves in the public arena while retaining this ability

for myself, I would gain a tremendous power advantage over them, since I would now have a greater influence over social and public affairs. I could advance my own agenda while simultaneously silencing the objections of others. A political order in which some people had freedom of expression whereas others lacked it would therefore be one in which the distribution of power was highly unequal. Because the advantaged group would have the exclusive privilege of setting the political agenda and the exclusive right of raising objections, they could interfere in the lives of others with virtual impunity.

The vital importance of freedom of expression becomes apparent once we remember that the state is supposed to act as a kind of proxy for individual citizens under the anti-domination ideal. If some citizens lack freedom of expression, however, it would be impossible for the state to fulfill this function. Suppose, for example, that I had the power to silence those who object to my actions on the basis that my activities impinge on their range of opportunities. This in and of itself does not mean I will necessarily be able to impose upon them however I wish, since it might be the case that a third party will prevent me from doing so, but, while my critics will no doubt appreciate this intervention, it will not promote their

freedom as anti-domination *unless* it is done on their behalf. And if my critic's grievances cannot get a public hearing, they will be unable to exercise their power through the state. Of course, one will rarely have the power to silence one's critics completely, but even if one is only able to restrict the speech of others partially - either through prior restraints or post facto sanctions - he or she will thereby gain a significant power advantage over them.

The anti-domination view thus supports what Cass Sunstein refers to as the "Madisonian conception" of free speech (Sunstein 1993). On the Madisonian conception, freedom of speech is one of the most essential means of ensuring that power is not concentrated in the hands of the few. It guarantees that everyone has an equal say in the management of public affairs. This is why Madison regarded "free communication among the people" as "the only effectual guardian of every other right" (Madison 2006: 241). Without it, freedom as a whole is jeopardized because the concentration of power is unchecked.

Before moving forward, a couple of points are worth emphasizing. First, it is not the case that, on the anti-domination view, all regulation of speech must be strictly prohibited, since some regulation might be necessary in

order to ensure reciprocity of power. As Sunstein points out, regulations on "commercial speech, libelous speech, scientific speech with potential military applications, speech that invades privacy, disclosure of the name of rape victims, and certain forms of pornography and hate speech" do not necessarily violate the spirit of the First Amendment, and they might be necessary to protect people from suffering various impositions (Sunstein 1993: xviii). Second, freedom of expression is not just a negative right but a positive one as well on the anti-domination view. Freedom as anti-domination might, for example, require that the government provide public forums for expression⁹ and provide public financing for political campaigns in addition to limiting private campaign contributions. Without such provision, some citizens might be able to use their economic resources to garner greater influence in public affairs thus increasing their power advantage and hindering true reciprocity.

It is important to stress, however, that, even though the anti-domination view may permit the regulation of expression in certain cases and provide a positive right of expression in others, it does not thereby reduce to a positive conception of liberty. The justification for both

⁹ See Sunstein 2005: 104ff.

regulating and promoting free expression is to establish reciprocity, not to either encourage productive speech or to enable people to authentically express themselves. Accordingly, citizens cannot be forced to be free on the anti-domination account. Determining precisely what policies the anti-domination approach would ultimately recommend in this area would require a more detailed analysis than I can provide here. My point, however, is simply to emphasize that the anti-domination view's concern with freedom of expression is not narrowly focused on negative rights one has against state interference.

The anti-domination view also requires the protection of freedom of conscience because, in the absence of such a right, citizens will be vulnerable to the undue influence of others. If the state, or some other collective body, could unilaterally impose a moral code of conscience on other citizens, this would give this agent or collective agent a tremendous power advantage over them. Consider the case of religious freedom. Suppose that a religious authority were able to use state power to impose certain religious standards or practices on other citizens without their explicit consent. This would give this religious authority tremendous political power over those in the religious minority. Accordingly, the state has good reason

to prohibit the use of its institutions for this end. Still, this requirement in and of itself does not guarantee religious freedom. The state could just as successfully prevent any one religious group from acquiring too much influence by *banning* religious worship outright without discriminating against any one religion, or religions, in particular. Notice, though, that, were such a policy permitted, this would give the state itself (or, perhaps more accurately, those who occupy positions of power within the state) a disproportionate amount of power. If the state were able to prohibit citizens, through force, from giving their allegiance to any religious or moral authority other than itself, then the state would become enormously powerful. As the only socially recognized authority, the state would have virtually unchecked influence in civil institutions and social affairs. In order to ensure reciprocity then, it is important both that no single religion, or group of religions, be able to gain too much political influence and that the state not be able to suppress the proliferation of a diversity of religious and moral outlooks.

This is why the protection of religious freedom, and freedom of conscience more broadly, requires the state to ensure both the *non-establishment* and *free exercise* of

religion. It is not sufficient for citizens to just be allowed to practice their own chosen religion in private. A relatively tolerant theocracy could meet this standard. Rather, the state must also neither establish an official state religion nor try to suppress religious practice in the public sphere. Were it permitted to do so, it would gain a power advantage over ordinary citizens and would therefore dominate them no matter how tolerant it was of what they did in private.

Finally, I want to consider the importance of freedom of assembly. Recall that one of the most effective ways in which people can increase their power is through collective bodies. For example, as a worker, I am far more powerful if I am a member of a union than I would be if I were the lone advocate for myself. Through union membership, the power of workers is made more proportional to that of their employers. As a union, workers can strike and seek legal recourse not available to them as individuals. As such, they are capable of exercising substantial power over their employers. Accordingly, if some citizens were able to form collective bodies and others were not, this would afford certain groups of citizens with a significant power advantage (for example, if the government permitted, or even encouraged, the formation of corporations, but

restricted the formation of unions). Freedom of assembly, like freedom of expression, is both a negative and positive right on the anti-domination account. Were the state able to bar individuals from forming collective bodies - such as unions, trade associations, civil institutions, and advocacy groups - the state would be, in effect, the only legally recognized collective agent, thus giving state officials disproportionate power over its citizens. If, however, the state does nothing more than permit the formation of such associations, this will not be sufficient to foster reciprocity of power. It will also be the essential that the state imbues some collective bodies, like unions for example, with certain legal powers in order for these groups to effectively advocate on their members' behalf.

While I cannot go into too much detail here, it is also worth noting that the same rationale applies to other group rights. In order to ensure reciprocity, it may be necessary to afford certain disadvantage or vulnerable groups (for example, displaced native peoples) with special rights of self-determination. It might also be necessary to grant members of minority or otherwise disadvantaged groups with what Will Kymlicka (1995) calls "group-differentiated rights," or rights that are afforded to an

individual by virtue of the fact that he or she is a member of such a group (such as the right of non-native citizens to have public documents translated into their native language, or the exclusive right of members of a native group or tribe to hunt or fish in certain designated locations). To this extent, the anti-domination view is concerned not just with individual rights, but with group rights as well.

Anti-domination and Democracy

Freedom as anti-domination establishes an essential connection between freedom and liberal democracy, a connection absent from negative and most positive conceptions. A commitment to negative liberty does not necessarily entail a commitment to democracy because a benevolent dictator could afford his or her citizens a significant degree of negative liberty without in any way being subject to their authority. In fact, as we have seen, we can easily imagine cases in which such a dictatorship might be more effective at promoting overall negative liberty than a liberal democracy. Berlin readily admits as much: "just as a democracy may, in fact, deprive the individual citizen of a great many liberties which he might have in some other form of society, so it is

perfectly conceivable that a liberal-minded despot would allow his subjects a large measure of freedom" (Berlin 2002: 176). Likewise, as I have argued at length in previous chapters, Berlin's concern that positive conceptions justify despotism is ultimately well founded (this of course is not true of views such as Rousseau's, which conceives of freedom as obedience to the general will, and Arendt's which conceives of it as active participation in civic institutions. But, as we have seen, these sorts of views have significant problems of their own).

Freedom as anti-domination, however, entails a strong commitment to democratic procedures and institutions because they ensure that political power is distributed equally among citizens. As long as citizens each have an equal say over which policies the state enacts, no one citizen or group of citizens will be able to use the policy making power of the state to interfere disproportionately in the lives of other citizens. Of course it will also be necessary that these procedures be subject to the proper anti-majoritarian checks. For example, it will not be permissible, on the anti-domination view, for a state policy to violate the basic liberties, as outlined above, even if this policy enjoys democratic support. In order to

achieve anti-domination for all, it may also be necessary to grant minorities with certain additional rights and privileges that cannot be revoked by the majority, and to institute decision procedures that require a super-majority rather than a simple majority when making policy concerning certain essential matters (such as constitutional amendments). Without these provisions, democracy would reduce to majoritarianism, and it would become an instrument of domination to be employed by the majority rather than a means of establishing reciprocity.

It is also true that, except in communities of relatively small size, anything even approaching universal participation in public policy making will prove to be an impractical ideal. The best larger scale communities will be able to achieve is some form of representative democracy. A representative democracy, however, is perfectly acceptable on the anti-domination ideal as long as representatives can be held in check, and reigned in if necessary, by the citizens they represent, and representative democracies typically employ a variety of means to ensure this, such as periodic elections, term limits, and a system of checks and balances.

This last provision is particularly important on the anti-domination view. Under a representatives system,

certain citizens, in their capacity as representatives, will necessarily have substantial political powers that ordinary citizens lack. This might lead us to worry, that even under ideal conditions, a democratic regime will never constitute an equal distribution of power strictly speaking. Allen Buchanan expresses this concern as follows: "the egalitarian democratic theorist acknowledges, as he must, that legislators, administrative officials, officers of the court, and the police wield powers that ordinary citizens do not. Even in a direct participatory democracy in which each citizen has an equal vote on every law, government officials will wield powers ordinary citizens do not" (Buchanan 2002: 710). This objection, however, conflates power understood in the broad sense as the ability to make-things-happen with *power over* understood in the narrow sense as the ability to limit the options of others. It is of course true that government agents will be able to make-things-happen that ordinary citizens cannot, but this need not translate into a greater *power over* provided that there are other state actors who are also powerful and capable of counterbalancing influence of these state actors.

This, I think, is the ideal that Madison has in mind in outlining the concept of separation of powers in *The*

Federalist Papers, particularly "Federalist no. 51" where he states famously, "the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others [...] Ambition must be made to counteract ambition" (Madison et al. 1966: 289). In a constitutional republic, power is distributed in such away that no one party is able to consistently advance its agenda over the objection of other parties. Under this arrangement, the powers the parties enjoy will off set each other preventing any one party from gaining a power advantage over others. Echoing Madison, we might say that institutions should be designed so that power is made to counteract power. Under these conditions, even if state actors do possess substantial political powers in the broad sense, they will not possess disproportionate *power over* others (even over ordinary citizens) provided that other state actors are charged with the task of checking the power of these actors and vice versa.

The kind of democracy freedom as anti-domination supports is thus *liberal* democracy, liberal in the sense that democracy is to be constrained by basic liberties, protections for minorities, and separation of powers rather

than functioning through simple majority rule. The virtue of the anti-domination view is that it can account for the essential connection between democracy and freedom without evoking a positive conception of liberty and the *anti-liberal* conception of democracy that accompanies it. On the anti-domination view, democratic rule is not essential to freedom because it somehow constitutes the general will - in which case minorities would have to *submit* to the majority decision in order to be free - nor because freedom consists in active civic participation - in which case citizens could be forced to be free when they fail to participate. Citizens remain free in terms of anti-domination even when they outright oppose the majority decision and when they have no interest in participating in public policy formation whatsoever. What matters is that they have the power do so if they choose.

I also want to emphasize a significant contrast between the non-domination and anti-domination accounts on this score. The reason why democratically authorized instances of state interference do not significantly impact the freedom of citizens on the anti-domination view is not because this kind of interference is somehow non-arbitrary or in accordance with their own interests, but because, provided the appropriate procedures and checks are in

place, democratically authorized interference will not generate a power imbalance between citizens. Recall that freedom as anti-domination does not ensure that citizens are never interfered with against their wishes. What it does ensure is that they are never exposed to a disproportionate amount of possible interference in comparison to other citizens. So, when citizens find themselves on the losing end of a democratic decision, they should not regard this result as an infringement of their freedom *unless* the decision somehow strips them of their power thereby leaving them at a disadvantage, and this is precisely what the checks and balances described above are meant to guard against. This is not to say that citizens' *negative liberty* is not compromised when a democratic decision results in interference, and nothing in the anti-domination account prevents us from admitting as much. Regarding such interference, we can say that it renders citizens *not free* to do *x, y, or z*, but it does not thereby render them *unfree* in the overall *status based* sense.

With the appropriate safeguards in place, citizens can rest assured that, though they have lost out in this instance, this in no way entails that they are any more likely to lose out on future deliberations. Accordingly, they still stand in a relation of reciprocity with their

fellow citizens, and this is why they remain free despite losing some of their negative liberty. If, however, a group of citizens find themselves *consistently* on the losing end of democratic decisions, then this will count as good evidence that power is not equally distributed. These citizens will therefore have good reason to think that they are subject to domination.¹⁰ The crucial point to emphasize is that, while freedom as anti-domination is consistent with some degree of state interference, it is not consistent with *pervasive unchecked* state interference. Accordingly, freedom as anti-domination supplies the vital connection between democracy and liberty while avoiding the troubling implications that plague Pettit's account.

Anti-domination and Equality

In Chapter 2 we discussed Ronald Dworkin's contention that protecting negative liberty cannot serve as the central

¹⁰ There are two unproblematic exceptions to this general rule. The first involves citizens who are predisposed to object to *any* government policy regardless of its content. In this case, they will often, if not always, find themselves on the losing end of democratic decisions and this will *not* entail that they are at a power disadvantage. But again this is not problematic provided that they are not in fact at such a disadvantage. I do not think it is too much of a leap, however, to assume that this kind of citizen will not be the norm, and, for most citizens who do care about the content of public policies, a perpetual losing streak will count as evidence that there is an imbalance of power at work. The second case involves citizens who are incredibly tolerant of state interference even when it is rather pervasive. But this case is also unproblematic provided that citizens retain the power to actively resist this interference even if they choose not to exercise it. Again, I think it is fairly safe to assume this will not be the norm.

liberal norm because this goal inevitably conflicts with promoting another fundamental liberal value: equality. On the anti-domination view, however, there is no fundamental tension between liberty and equality because equality is constitutive of liberty. Because freedom as anti-domination is a *status based* account of liberty, certain kinds of inequalities - namely inequalities of power - will hinder liberty.

Liberty and equality are therefore not only consistent ideals on the anti-domination account, but they are also mutually supportive in two essential respects. First, promoting anti-domination requires promoting a certain degree of equality because one can only enjoy anti-domination if one occupies a position of reciprocity with respect to one's fellow citizens. Second, it is impossible to promote anti-domination *at the expense* of equality. This is because any *power over* that one enjoys over and above what is necessary in order to achieve reciprocity does not make one any *less* dominated. What it does do is make one *more* dominating of others. So, beyond a certain threshold, one cannot increase one's own level of freedom as anti-domination; one can only decrease the level of others.

Accordingly, freedom as anti-domination entails a commitment to promoting and preserving political, legal,

social, and economic equality. I have already discussed the importance of political equality above at length. Regarding legal equality, if coercive laws only apply to some citizens and not others, or some citizens are able to seek legal recourse whereas others cannot, this will lead to large disparities in power. Likewise, freedom as anti-domination also requires social equality. If some citizens are excluded from opportunities or privileges because they are made to suffer social marginalization, they will be unable to achieve a relationship of reciprocity with their fellow citizens, as citizens who occupy a higher social status will be able to turn their standing into a power advantage. Finally, freedom as anti-domination also requires economic equality, not only in the sense that economic opportunities must be open to all, but also in the sense that it prohibits any group of people from accumulating such a disparate amount of economic wealth that they gain a power advantage over their fellow citizens. In particular, the anti-domination view prohibits citizens from monopolizing certain basic resources - such as education or health care - that would in effect allow them to greatly diminish the opportunities of their fellow citizens. Freedom as anti-domination thus requires, in addition to equal economic opportunity, equal

access to basic resources.

It is, however, important to emphasize once again that the anti-domination view does not require equality of welfare. That some citizens enjoy greater welfare than others does not necessarily mean that these not as well off citizens suffer from domination, because it might be the case that, given equal opportunities and equal access to basic resources, some citizens will choose to pursue greater wealth whereas others will opt for a life of leisure or focus their energy on non-material goods such as family life. The resulting disparity in wealth will not be of concern on the anti-domination view provided that the wealthy cannot translate it into a power advantage over others who are less wealthy. If their greater wealth allows them to purchase bigger houses, take more lavish vacations, or install pools in their back yard, this will not have an appreciable effect on the power they hold over others; possessing these luxuries does not enable them to limit other's opportunities whereas buying political influence or monopolizing basic resources would.

This commitment to *equality as reciprocity* as opposed to *equality of welfare* is in keeping with basic liberal intuitions. Recall that Dworkin rejects the welfare view in favor of the "equal resources" view because, according

to him, liberal equality does not entail strict egalitarianism, but a commitment to respect the equal moral worth of others (Dworkin 2000). The problem with Dworkin's approach, however, is that he tries to show that equality of resources somehow entails a commitment to liberty when in fact it presupposes it. The anti-domination view takes a different position on the relationship between liberty and equality by recognizing the primacy of liberty; it holds that equality is not valuable *as such*, but insofar as it is constitutive of liberty. The anti-domination view thus accords with Elizabeth Anderson's assertion that the "point of equality" is "to end oppression," and it does so not by ensuring that "everyone gets what they morally deserve" but by creating "a community in which people stand in relations of equality to others" (Anderson 1999: 288 - 89).

Anti-domination and the Value of Negative and Positive Liberty

In previous chapters, I have argued that neither negative conceptions nor positive conceptions - nor some aggregation of the two - are satisfactory on liberal terms. Throughout this chapter, and in the preceding section in particular, I have tried to make the case that freedom as anti-domination is the conception of freedom proper to liberalism. I do

not wish to imply, however, that negative and positive liberty should not be regarded as genuine values in their own right. Negative and positive liberty are no doubt goods that most people wish to possess; they just cannot serve as the normative basis for a liberal political order.

In this final section, I want to make the case that a liberal regime committed to promoting freedom as anti-domination will, by virtue of that fact, also promote negative and positive liberty. The proper way to understand the relationship between anti-domination on the one hand and negative and positive liberty on the other, is that anti-domination is the defining norm that underpins liberal institutions and negative and positive liberty are valuable goods that tend to flourish under these institutions. In this respect, freedom as anti-domination will serve as a "side constraint" (Nozick 1974) on efforts to promote negative and positive liberty. It is not permissible, under the anti-domination ideal, to maximize negative or positive liberty at the expense of freedom as anti-domination; however, it is my contention that this constraint entails no great sacrifice because, if citizens enjoy freedom as anti-domination, it will be very likely as an empirical matter that they will also enjoy a substantial degree of negative and positive liberty.

Anti-domination and Negative Liberty

Recall that there are essentially two ways in which we can increase the degree of anti-domination that someone enjoys. First, we can increase that person's *power over others* by giving him greater means to limit the options of others, or we can decrease the power that others have over him by making him less dependent on them. It is clear how the second strategy also fosters negative liberty. The more independent one is, the less others will be able to interfere in one's affairs, and consequently the more negative liberty one will possess.

It is perhaps less clear how the first strategy fosters negative liberty, although we have already touched upon this matter briefly. Insofar as Carter (1999) and others are right in thinking that negative liberty is a quantitative good (say, like money) that people in general wish to amass for themselves, then it is reasonable to make two assumptions about the *purposes for* and *extent to which* people will tend to exercise their *power over others*. First, because negative liberty is a good people desire, they are likely to try to use their power over others to secure it. To the extent that they fear that others might encroach on their negative liberty, people will attempt to

make such encroachments costly by threatening to respond in kind; in essence, they will use their *power over* as a deterrent. Of course nothing on the anti-domination view ensures that they will be successful in doing so, and this might lead us to worry that, if people make good on their threats, this first strategy is likely to make everyone *worse off* on the scale of negative liberty. This worry, however, is alleviated by a second reasonable assumption: insofar as people want to preserve the negative liberty they already have, they will in general seek to avoid incurring their fellow citizens' wrath, as doing so will decrease their own enjoyment of negative liberty. So, while using one's *power over* as a deterrent is not guaranteed to be successful, it is empirically likely to be successful. Showing that these assumptions do in fact hold would require substantial empirical research which I cannot provide here, but I think they are both rather plausible.

Anti-domination and Positive Liberty

In previous chapters we have discussed many different variations of positive liberty. The kind I have in mind here is roughly what Berlin (2002) refers to as "self-mastery," or what we might call freedom as personal autonomy. There are of course likewise many different

conceptions of what constitutes autonomy, but, following Christman and Anderson, we can think of autonomy broadly as "the idea of being one's own person, directed by considerations, desires, conditions, and characteristics that are not simply imposed externally on one, but are part of what can somehow be considered one's authentic self" (Christman and Anderson 2005: 3).

Domination clearly hinders personal autonomy. The slave, the abused spouse, or the destitute wage laborer will not be able to live their lives free from conditions externally imposed upon them; their lives will not be directed by their own desires, needs, or plans, but by the desires, needs, and plans of others. To this extent, promoting freedom as anti-domination will help foster personal autonomy because not being exposed to such conditions of near total domination is a *necessary* condition of achieving personal autonomy.

Of course achieving freedom as anti-domination is not a *sufficient* condition for achieving personal autonomy, and, as such, one might worry that there will be many troubling examples of individuals who suffer from a lack of personal autonomy that the anti-domination view will have nothing to say about. Recall Christman's example of the housewife who perpetually obeys her husband, not because he

threatens her should she fail to do so, but because she has grown up in a culture that inculcates in women the belief that they are somehow inferior to their husbands and should therefore always defer to their husband's judgment. This housewife clearly lacks personal autonomy, but it is not immediately apparent that she suffers from domination because what prevents her from living her life according to her own plans and desires is not the threat of physical interference but cultural indoctrination. Because the conception of power employed by the anti-domination view is both non-evaluative and non-behaviorist, it might seem like it cannot offer a critical assessment of this arrangement. On the anti-domination understanding of power, the husband's *power over his wife* is determined wholly by his ability to physically interfere with her, not how she behaves towards him or how he is able to effect her interests authentically understood.

I do not think this concern is warranted, however. What the above account leaves out is exactly *how* this social indoctrination occurs. Let's consider some possibilities. Suppose that the housewife is unfailingly obedient because she has simply internalized the physical violence, or threat of physical violence, she has been made to suffer at the hands of her husband or other male

authorities in her life. It is not just that she is aware and afraid of the potential repercussions should she disobey, but that she has come to accept, and perhaps even endorse, her subjugated status as a direct result of the abuse that has been inflicted upon her. In this case, it will no longer be necessary for the husband to actually abuse, or even merely threaten, his wife in order to get her to do what he wants, but this clearly does not mean that she stands in a relationship of reciprocal power with him on the anti-domination account. He in fact has a tremendous power advantage over her, and he has been able to exercise it in a devastatingly effective manner. The wife clearly suffers from domination in this sort of case, and the anti-domination view gives us good reason to be critical of the conditions under which this kind of relationship is formed.

Now, however, let's suppose this housewife has never been exposed to violence or even the threat of it. Let's suppose that her husband would never think of abusing her and that there are laws prohibiting him from doing so, laws that are routinely and effectively enforced. Let us suppose further that the wife is aware of these laws, and she would not hesitate to seek legal recourse should her husband abuse her or threaten to. Despite this, she

remains steadfastly loyal and obedient to her husband because she was taught from an early age that she should defer to men and that the only respectable career and life plan for a woman is to become a good housewife. The worry in this case is that, absent the threat of physical violence lurking in the background, we will have to say that the housewife is free in anti-domination terms even though she intuitively lacks autonomy. After all, she has not been exposed to the threat of physical violence, and further she possesses an effective means of recourse; yet the values and goals which she lives by are clearly not her own.

Again, though, I think we would be mistaken to think that the housewife described above genuinely enjoys anti-domination. The reason why she accepts her subjugated status in this case is because she knows no alternative; her options have been limited right from the get go. Her husband need not threaten her in order to make her obedient because social conditions are as such that she is left with little options she should refuse to obey. There are few if any life plans available to her other than becoming a housewife, and, as a result, she has little to no access to other social or economic opportunities. Further, the cost of exiting her relationship with her husband is likely very

high. Even if divorce is legal, she will be unable to sufficiently support herself without being married. It is clear in this case then, that the housewife is still at a severe power disadvantage despite the fact that she is not made to suffer physical violence and even has the power to repel it. Outside of this legal power, her husband range of opportunities is virtually immune to her influence, whereas her prospects depend entirely on him (or at least they depend on her being able to find support from another husband).

The two scenarios sketched above illustrate the phenomenon of *adaptive preferences* in which women come to embrace and endorse a social identity that has been imposed upon them either by force or by the removal of any genuine alternatives (Friedman 2005). Contrary to the objection outlined above, the anti-domination view gives us good reason to be concerned about the phenomenon of adaptive preferences, not because acting on these preferences as opposed to more authentic ones constitutes the essence of unfreedom, but because the conditions under which such preferences are formed are quite clearly conditions of domination. To that extent, alleviating these conditions through the promotion of anti-domination will help limit the influence of adaptive preferences and hence help foster

autonomy.

There will, however, be cases in which one does enjoy freedom as anti-domination, but fails to achieve full personal autonomy. Consider now the case of the housewife who grew up in a culture that promotes sexual equality with equal access to educational, social, and economic opportunities. If she chose to, she could divorce her husband and this would in no way hinder her life prospects. She could support herself, and, if she has been out of the workforce for an extended period while raising her family, her husband will be made to support her in the interim. In short, she possesses freedom as anti-domination. Suppose, however, that because of her strong religious commitments, she believes that women should be obedient to their husbands and that divorce is morally disgraceful. Or suppose that she has grown accustomed to a life of luxury and ease, and she is willing to defer to her husband in order to maintain it. In either case, we might be correct in thinking that the housewife fails to achieve full autonomy. In the first case, her religious beliefs might be mistaken or at least based on a gross misrepresentation of true religious teaching. In the second, she might suffer from laziness, an unhealthy obsession with material wealth, or a great need of for physical comfort.

In both cases, it is possible that the housewife's prospects for achieving autonomy might be improved with forced intervention, but the anti-domination ideal prohibits this. If we were in a position to interfere in the housewife's life without her explicit consent, we would hold a significant power advantage over her, even if we only used this power to promote her autonomy. Again, the norm of anti-domination serves as a side constraint on what we are permitted to do in these sorts of cases. We cannot promote her autonomy at the expense of stripping her of her power by placing her under our command. Accordingly, the anti-domination conception is able to place strict limits on the extent to which we can interfere in people's lives in the name of their own interests whereas the positive conception cannot. If, under conditions of anti-domination, citizens still fail to act autonomously, this does not permit the state to intervene. While their failure to achieve full autonomy might count as evidence that the underlying power structures are fundamentally imbalanced, it does not in itself justify the use of state coercion. On the anti-domination view, the state is charged with fostering conditions favorable to promoting autonomy, but not with directly instilling it in citizens.

CHAPTER VII

ANTI-DOMINATION AND CONTEMPORARY POLITICAL ISSUES

Assessing Contemporary Political Controversies

In the preceding chapter, I argued that freedom as anti-domination is the conception of liberty that liberals should endorse. It is superior to competing conceptions insofar as it establishes reflective equilibrium in the strong sense. Not only is the ideal of anti-domination consistent with the core commitments of liberalism, it also *entails* them. A liberalism committed to ensuring freedom as anti-domination will, for that very reason, also be committed to promoting equality, democracy and the protection of basic rights. If my contention is correct, then liberalism, rather than representing a series of disparate and perhaps even conflicting commitments, can be grounded in an appeal to the single value of anti-domination. This account would therefore go a long way towards establishing the coherence and viability of the liberal project in general.

Still, in order to make this case complete, I need to

say something about how the anti-domination account can be applied to particular cases. Recall that, on a reflective equilibrium strategy, we move back and forth between our considered judgments about particular cases and the theory that purportedly guides them by adjusting both our judgments and our theory as necessary in order to establish the greatest possible coherence between the two. Having outlined the anti-domination conception of liberty in the preceding chapter, in this final chapter, I will argue that it can be fruitfully applied to some contemporary political controversies that have proved particularly vexing for liberals. Specifically, I will focus on the controversies among liberals concerning pornography, same-sex marriage, and affirmative action. Because freedom as anti-domination is a *status based* account of liberty, it can offer guidance in these controversies where other competing conceptions cannot. If so, this further supports my contention that the anti-domination view is able to achieve reflective equilibrium in the stronger sense. It not only shows how the core commitments of liberalism hang together, but also how certain controversies within liberalism can ultimately be resolved. On the anti-domination account, we do not have to regard these controversies as the inevitable result of a fundamental conflict between liberal commitments.

Before proceeding, I should note that my aim is not so much to defend a definite position regarding each of these controversies, though I will certainly offer some suggestions, but instead to show that freedom as anti-domination offers us new and helpful ways of thinking about them. Even if more work is required to settle these controversies definitively, the anti-domination view still makes progress in this direction.

Pornography

The issue of pornography presents a difficult problem for liberals because arguments both for allowing and strictly prohibiting certain forms of pornography both appeal to basic liberal values. Feminist proponents of prohibiting the production or consumption of pornography that eroticizes either violence perpetuated against women or the subordination of women more generally argue that this kind of pornography cause substantial harm to women either by directly inciting men to physically and sexually abuse them or by contributing to a prevailing cultural attitude that women are not proper equals.¹ Accordingly, state regulation of pornography is necessary in order to effectively promote

¹See for example, Longino (1980), Mackinnon (1988), Dwyer (1995), West (2003), and Eaton (2005)

gender equality. Liberal opponents of these kinds of prohibitions argue, however, that such concerns are not sufficient to warrant the restriction of freedom of expression, which is a basic liberty. As Joel Feinberg stresses, "given that 'communication' is a form of expression, and thus has important social value, obviously it cannot rightly be made criminal simply on the ground that it may lead some others on their own to act harmfully" (Feinberg 1985: 156).² If such a justification were sufficient to permit state interference in this area, Feinberg worries that the state's power to restrict expression would be virtually limitless.³ All the state would have to do is show some remote causal connection between what someone says and what someone else does in order to limit speech rights.

This tension has led some feminists to wonder whether liberalism and feminism are ultimately compatible ideals. Though she does not herself share it, Caroline West summarizes this worry as follows:

Many feminists have claimed that liberalism lacks the conceptual resources to adequately address feminist issues and concerns - so much so, that it is now quite frequently said that one cannot be a

²Cf. Dworkin (1985)

³The example Feinberg (1985: 155) uses is prohibitions on employers from criticizing their employees on the ground that this might cause their employees to become enraged and lash out at others.

liberal and a feminist. The orthodox liberal defense of pornography is often held up as a classical illustration of some of the central respects in which liberalism fails feminists; and the liberal conception of equality, subjectivity and the public/private distinction, have been identified as deeply problematic from a feminist point of view. (West 2003: 395)

The controversy surrounding pornography and freedom of speech creates a difficult dilemma both for liberals and feminists who are otherwise sympathetic to liberalism. If warranted, the concern expressed by West should deeply trouble liberals. It is not that feminists necessarily *reject* fundamental liberal values, such as freedom and equality (though some do), it is that they think that the *liberal* understanding of these values does not properly recognize all the ways in which women are rendered unfree and unequal. If this is indeed the case, then liberalism is deficient on its own terms. At the same time, if Feinberg's criticisms are warranted, then feminists who share liberal commitments have good reason to worry that any institutional enforcement of feminist ideals risks granting the state tremendous unchecked power, thus threatening liberty.

It is my contention that a liberalism committed to the norm of anti-domination goes a long way towards resolving this tension. Once we hold anti-domination as the guiding

principle, we can justify narrow state regulation of certain forms of pornography, provided that certain conditions are met, without simultaneously justifying far more sweeping restrictions on freedom of expression as Feinberg worries. Rather than asserting that some forms of pornography are "harmful" in some vague sense, the key is to demonstrate how they contribute to conditions of domination.

Recall that the anti-domination justification for protecting freedom of expression is that doing so is necessary in order to ensure reciprocity amongst citizens. Were some citizens able to express themselves publicly while silencing others, this privileged group would gain tremendous influence in economic, social and political affairs thus giving them a substantial power advantage over their fellow citizens. This does not mean, however, that there are no conditions under which the government might regulate speech. To reference one famous example, the freedom to shout "fire" in a crowded theater, when one is fully aware that there is in fact no actual fire, is not protected under the anti-domination standard because the power to incite fear and panic is in no way essential to reciprocity. I am placed at no power disadvantage by my fellow citizens if they are able to sanction me for speech

that has the potential to substantially harm them in a fairly direct sort of way (this sort of *direct* causal connection, where the speaker is aware of the likely immediate harmful effects his or her speech will have and utters it precisely to achieve this effect, is the kind of causal connection that most liberals would agree warrants government interference).⁴ To cite another example, it may be necessary, in the name of anti-domination, for the state to regulate intentionally deceptive advertising in order to protect consumers. Since consumers' primary means of recourse against companies that offer defective or harmful products is to take their business elsewhere, they accordingly must have access to reliable information in order to wield this power effectively.⁵

These kinds of regulations, however, are not the sort that liberals typically find objectionable. The question is whether the regulation of pornography can be justified on similar grounds. I want to argue that certain forms of pornography can limit the power of women in such a way as to lessen their freedom on the anti-domination standard.

⁴ See Feinberg 1985: 157 for example

⁵ My claim here is not that, if the economic decisions of consumers are not fully informed, they are somehow not made freely. This would make the anti-domination account a positive conception of liberty. My claim is rather that, if companies were able to control the information available to consumers, they would be able immunize themselves against consumer complaints and, overtime, come to effectively control the market so as to greatly limit the options of consumers.

The kind of pornography I have in mind is what A. W. Eaton has called "inegalitarian pornography," pornography that in some way eroticizes the forced subjugation of women (Eaton 2005).

One way in which inegalitarian pornography can limit the power of women is by rendering their own speech relatively ineffective in certain social and legal settings. This applies to pornography that depicts sexual acts forcibly imposed *on women* -- sometimes even acts that could only be characterized as brutally violent rape -- as sexually pleasurable *for women*. Some feminists charge that men who consume this type of pornography somehow internalize it so that they interpret attempts by women to resist their sexual advances as indication that these women find their advances pleasurable and are in fact inviting further sexual contact (I should stress that showing that this is in fact the case no doubt would require substantial empirical evidence).⁶ To illustrate this kind of case, Caroline West asks us to consider the unfortunately familiar scenario in which a woman attempts to refuse a man's sexual advances, but her explicit "no's" are taken to mean "yes" (West 2003: 400). Women in such a scenario

⁶For a detailed discussion of the empirical research involving the cultural effects of pornography, see Eaton 2005

lack, in some significant sense, control over the meaning of their own speech acts. This is what West calls the "scrambling" effect (West 2003: 403). The consumption of pornography can, in certain cases, distort women's speech to the extent that they are unable to convey themselves effectively in order to ward off unwanted advances.⁷

The power of women is curtailed significantly in comparison to men under these conditions because the power to end or refuse sexual intercourse will lie almost entirely with men when such *scrambling* is in effect. Protests on the part of women will have virtually no weight of their own because they can be taken to indicate consent. I do not mean to suggest that, in the absence of the scrambling effect, women somehow possess an uncanny power to effectively repel forced sexual contact from men simply by uttering the word "no" or otherwise indicating their resistance. Certainly not all cases of rape and sexual assault are like the one described above, but it is still the case that, under social conditions in which "no" can mean "yes," women are exposed to a disproportionate degree of possible interference at the hands of men.

Admittedly, however, showing that this is the case requires a little bit more explanation because one might

⁷ Cf. Langton (1993)

object that, under these "no-means-yes" conditions, women might be *more likely* to suffer sexual abuse by men, but this does not necessarily entail that they are at an overall power disadvantage in comparison to men. According to this objection, provided that women have some effective means of recourse against men who sexually assault them, they will not be dominated even if they do sometimes suffer sexual abuse (I should stress that this would not mean that there is nothing objectionable about such abuse nor that we shouldn't try to prevent it. It would just mean we couldn't justify regulating pornography on the basis that it promotes freedom as anti-domination). Further, women do have means of recourse provided that there are laws against rape and sexual assault. Were the anti-domination view to fail to recognize this in the case of the relationship between pornography and sexual abuse, it would essentially collapse the distinction between liberty and security -- a criticism I have repeatedly leveled against competing conceptions.

This objection, however, misses the point. The argument is not simply that inegalitarian pornography makes rape and sexual assault causally more likely (as this kind of argument would also be vulnerable to Feinberg's objection), but that it contributes to conditions under

which the assertions and claims made by women lack any real force. Under these conditions, even if there are laws against rape and sexual assault, they will be considerably less effective since men who are prosecuted under them will claim, perhaps with some degree of plausibility, that they were unaware that their victims had intended to refuse their advances, and therefore they have committed no crime. Furthermore, the men who are in a position to prosecute or adjudicate these offenses may themselves be predisposed to be sympathetic to these kinds of defenses, thinking perhaps that women are more often than not "asking for it." The impact of the scrambling effect therefore goes far beyond increasing the likelihood of sexual assault. As Catherine Mackinnon puts it, pornography "strips and divests women of credibility, from our accounts of sexual assault to our everyday reality of sexual subordination. We are stripped of authority and reduced and devalidated and silenced" (Mackinnon 1992: 483).

Indeed, the scrambling effect is just one of the ways in which inegalitarian pornography disempowers women more generally. As Eaton stresses:

one need not understand pornography's role in promoting and sustaining gender inequality in active terms. Sexualizing gender hierarchy can also reinforce or exacerbate already existing

conditions of inequality, undermine prohibitions or other strictures against discriminatory behavior, and predispose an audience to internalize the psychology of gender inequality...pornography need not actively solicit rape, for example, in order to be a significant force in promoting and sustaining gender inequality. (Eaton 2005: 684)

Accordingly, in order to justify state regulation of pornography, we do not have to appeal to some remote causal connection between certain forms of pornography and specific harms to women (nor do we even have to appeal to a probabilistic notion of causation as Eaton (2005) ultimately does). Instead we can point to the ways in which inegalitarian pornography creates, worsens or sustains social and legal conditions in which women are rendered less powerful than men. This is what is unique about inegalitarian pornography. It is not just that it encourages harmful acts; it is that it contributes to the systemic disempowerment of women. As such, regulating it does not, contra Feinberg, also justify restrictions on more innocuous forms speech that bear only a remote causal relationship with physically harmful acts.

If the above analysis is correct, then freedom as anti-domination can accommodate feminist concerns about the narrowness of liberalism without abandoning a fundamental commitment to freedom of speech. I should, however,

highlight two important caveats to this conclusion. First, as I already mentioned briefly, establishing that inegalitarian pornography does in fact contribute to the conditions described above would require an in depth examination of the empirical evidence, and I have not provided that here. I do not wish to give the impression that this empirical question is not relevant on the anti-domination view. Quite the contrary. If it turns out that, as an empirical matter, pornography has very little impact on prevailing cultural attitudes and practices, then it is unlikely that the anti-domination view would recommend in favor of regulating it. This is just to say that more empirical research is likely required before we could arrive at a definite policy recommendation from the standpoint of anti-domination. My main point, however, is simply that freedom as anti-domination provides a valuable conceptual resource by which we might adjudicate this controversy, not that it somehow gives us a deductive argument in favor of regulating pornography.

Second, even if we did establish that inegalitarian pornography in some way contributes to female disempowerment, this would not necessarily justify outright prohibition. We would first have to determine whether a state agency designed to regulate pornographic material

could be kept in check and reined in if necessary. Otherwise we risk giving such a regulatory body too much discretion to abridge speech, rendering it an agent of domination. In addition, there may be ways of combating the disempowering effects of inegalitarian pornography that are preferable to state imposed prohibition for this very reason. We might, for example, impose very severe sanctions on producers and distributors who sell certain kinds of pornography to minors. Or, instead of criminalizing some forms of pornography, we might permit women to sue producers of inegalitarian pornography as recommended by Andrea Dworkin and Mackinnon (1997) as well as Cass Sunstein (1993). Finally, we might encourage, or perhaps even subsidize, *egalitarian* pornography, as Eaton mentions in passing (Eaton 2005: 693). Exactly which of these strategies or combination of strategies would best promote freedom as anti-domination is another empirical question we must grapple with before reaching any specific policy recommendations.

I want to conclude by noting the deficiency of the non-domination account on this issue. It is not clear what recommendations, if any, the non-domination conception could offer regarding this controversy. Perhaps one could argue that inegalitarian pornography somehow increases the

range of possible arbitrary interference women are exposed to. I must confess I am not sure how such an account would go, but even if it were successful, it would lead to the kind of nightmare scenario that Feinberg fears. If all the state had to show is that a speech act increases the possibility of interference (not the *actuality* or even the *probability*) in order to regulate it, then it does seem as if the state's power to impinge on freedom of expression would be virtually limitless.

Perhaps one could argue instead that state regulation of some forms of pornography is permitted on the non-domination account because this amounts to non-arbitrary interference. This assertion, however, is equally unpromising. Certainly, from the point of view of the consumers of pornography this interference would fail to track their interests. As Feinberg notes, "works of pornography...have an intimate personal value for those who use them" (Feinberg 1985: 157). Accordingly, it is difficult to see how these consumers could regard pornography censorship as anything but arbitrary, unless what makes it non-arbitrary is that it either tracks some *collective* interest or the consumers' own interests in some more evaluatively substantive sense. This sort of justification, however, returns us to those features of

Pettit's account that seem positive in nature, and it would indeed be disturbing if the state could censor someone's expression by appeal to the collective interest or true or authentic interests of those who are exposed to it.

Same-Sex Marriage

In some respects, the controversy concerning same-sex marriage mirrors that of pornography regulation. Proponents of extending the scope of legally recognized marriages to marriages between same-sex couples often appeal to the liberal norm of equality. If the state is going to confer a privilege or a benefit, this argument goes, it must do so equally. A state that recognizes only marriages between heterosexuals therefore violates the norm of equality.⁸ In turn, opponents of extending marriage rights, much like opponents of prohibiting the production and consumption of certain forms of pornography, charge that requiring the state to recognize same-sex marriage conflicts with basic liberty. At first blush, this assertion may not seem as intuitively appealing in the case of same-sex marriage as it is in the case of pornography censorship. With regards to the latter issue, there does seem to be a fairly obvious, even if ultimately resolvable,

⁸ For an example of this type of argument, see Wedgewood 2011.

tension between censoring pornography and protecting free speech, but how does extending marriage benefits likewise conflict with liberty?

What drives this skepticism, I think, is the intuition that, if anything, *failing* to extend marriage rights to same-sex couples is a violation of liberty since it prevents these couples from *doing* something they strongly wish to do. Whether restricting marriage benefits does violate liberty, however, depends on the conception of liberty we appeal to. On the negative conception, it is not clear that such a restriction is a violation of liberty since, in imposing it, the state is not necessarily *preventing* same-sex couples from *doing anything* in the strictly negative sense. As long as the state does not criminalize sexual acts between same-sex couples or prevent them from having their own private marriage ceremonies, it does not restrict their *physical range of opportunities* by legally only recognizing heterosexual marriages. One might object, however, that the state policy of sanctioning heterosexual marriages still coerces non-heterosexual couples because this privilege confers certain benefits on heterosexual couples that non-heterosexual couples cannot receive. This problem, however, can be solved by giving same-sex couples the right to form legally recognized

civil-unions, which grant them the same legal rights as married couples, but are not regarded as *true* marriages, in the fullest sense of the term, by the law.

Consider Charles Fried's argument against the assertion that heterosexuals and non-heterosexuals all equally have a right to marriage (I should note that Fried is not opposed to same-sex marriages outright, just the claim that they should be granted in opposition to the will of the majority):

What can we conclude about the vexed question of gay marriage? That, it seems to me, is a matter not of liberty, but, if anything, of equality. If the government does not disadvantage gays for what they do in bed, I do not think liberty demands it go further and celebrate it. That too is a question of liberty. One does not have to go to the wedding (or funeral) of someone whose way of life one finds distasteful....Gay marriage - unlike civil unions, which allow any two persons to make legal arrangements combining their property and other material rights - is a kind of civil blessing asked of the population as a whole, and though people may (and perhaps should) be willing to give that blessing to gays as well as straights, I balk at the courts forcing them to do that. (Fried 2007: 140 - 141)

Jeffrey Jordan (2011) makes the stronger case that the state should not recognize same-sex marriages, presumably even when the majority is in favor of them, on similar grounds. Jordan argues that a state acts coercively when it needlessly takes sides on a controversial issue -- that

is, when it makes a proclamation concerning the proper view on such an issue when a more accommodating option is available. He even goes as far as to assert that, "a state which is partial and takes sides in moral disputes via declaration, when there is no overriding reason why it should, is *tyrannical*" (Jordan 2011: 88; emphasis added).

It might seem as if, in *not recognizing* same-sex marriages, the state is taking sides in a moral dispute. Jordan, however, rejects this conclusion, arguing that there is a more accommodating option available. The state could, he claims, protect the right of same-sex couples to do whatever they wish in private, but just not recognize their marital status in the public realm. This way, the freedom of same-sex couples, again in the negative sense, is not limited, while simultaneously, citizens who have strong moral objections to the practice of homosexuality are not *forced* to publicly recognize the marital status of same-sex couples (Jordan 2011: 89).

Admittedly, it is not clear what "forced" means in this context, and I will return to this issue shortly. For now, I want to consider the problems of a positive-liberty-based or a non-domination based defense of same-sex marriage rights. As to the latter, it is seemingly no better off than the negative conception. If not conferring marriage

rights to same-sex couples does not constitute physical interference, then it obviously does not constitute *arbitrary* interference. This point is crucial because what the non-domination account must show in order to assert that the practice of restricting marriage rights contributes to the domination of same-sex couples is not simply that it arbitrarily assigns a legal status to one group but not another, but that in doing so it somehow *interferes* with this disadvantaged group.

The positive conception holds out more promise for providing a link between liberty and marriage rights, but, as is often the case with positive views, this advantage comes at a high price. On a positive liberty based defense of equal marriage rights, one could assert that the institution of marriage provides a good that is essential for living a full and flourishing life. Those who are barred from participating in this social institution because their relationships are not recognized as legitimate are consequently prevented from fully realizing one of their true and authentic goals or purposes.

The problem with this kind of argument, as should now be familiar, is that it justifies using state coercion to encourage, and perhaps even force, people to get and stay married. If the institution of marriage is essential to

living a full and complete human life, then the state has good reason to compel its citizens to marry in the name of liberty. To this end, the state could impose penalties on people who do not marry by a certain age or deny them certain rights conferred to married couples (states do in fact already do this. The worry is that they will be justified in doing it to a far greater extent under this line of argument). The state could also make it much more difficult to get a divorce in order to *discourage* citizens from exiting their marriages. As Cheshire Calhoun argues, "even if there is something to be said for committed relationships, it is hard to see how using the law to keep couples together could be justified" (Calhoun 2000: 112). She further points out that strict divorce laws have historically disadvantaged women by making it difficult for them to exit abusive relationships (Calhoun 2000: 112). What is worrying about this sort of argument, according to Calhoun, is that it puts the state in the position of promoting a particular normative conception of the proper role and form of the family: "it is a return that requires using law and social policy to dissuade individuals from pursuing a plurality of conceptions of how intimate relationships ought to be organized" (Calhoun 2000: 113).

Neither the negative nor positive conception offers an

attractive option for those looking to defend equal marriage rights on the basis of liberty. Are critics like Fried and Jordan right then to assert that extending marriage rights to same-sex couples somehow infringes on the liberty of those who oppose same-sex marriage? This is not so clear either. Recall that both Fried and Jordan argue that the state coerces citizens if it forces them to legally recognize same-sex marriages, but it does not impose upon same-sex couples in a like manner as long as it allows them to do whatever they wish in the private sphere. But this seems inconsistent. If the state respects the freedom of same-sex couples so long as it does not restrict their negative liberty, then how does the state, in *extending* marriage benefits, fail to respect the freedom of same-sex marriage opponents considering that this policy would likewise have no effect on their negative liberty? This is why Fried's analogy between being forced to attend the wedding or funeral of someone whose life one finds distasteful and being forced to recognize the legal status of marriages of which one disapproves is deeply misleading (Fried 2007: 140 - 141). There is, in fact, a strong *disanalogy* between these two cases. Forcing someone to attend a ceremony, of whatever nature, against his or her will would indeed require substantial physical

interference, but requiring only that he or she acknowledge the legal standing of someone else's marriage does not. Unless the state were to mandate that people *attend* same-sex wedding ceremonies, rather than recognize the legal status of these marriages after such ceremonies, it does not infringe on anyone's negative liberty.

Perhaps Fried and Jordan should be taken instead to mean that requiring legal recognition of same-sex marriages infringes on the *positive* liberty of those who object to same-sex marriages on moral grounds. This argument would go something like the following: because the state is supposed to represent the public as a whole, when it grants legal recognition to same-sex couples, it is making a declaration, in the name of all citizens, that these marriages are *worthy* of equal recognition. Since some citizens have strong moral opposition to same-sex marriages, however, in making this declaration the state effectively forces them to endorse a moral principle that they in fact reject. As such, the state prevents them from living on the basis of their own most fundamental convictions. Neither Fried nor Jordan puts their position in positive liberty terms, but it seems like this is what they have in mind.

Whatever one thinks of this argument on its own (and I

offered several arguments as to why we should be suspicious of positive-liberty-based approaches in general), it creates substantial problems for Fried and Jordan's position. If the state is required to protect and promote citizens' *positive* liberty, then the fact that it does not infringe upon the *negative* liberty of same-sex couples in denying them marriage rights is hardly an adequate accommodation. In not recognizing the legitimacy of same-sex marriages, the state would, in effect, be declaring, again in the name of all citizens, that same-sex marriages are *not worthy* of equal recognition, and obviously same-sex couples who desire to marry would reject this assertion. If the state fails to respect the positive liberty of opponents of same-sex marriage in extending marriage benefits, then it is hard to see how it does not equally fail to respect the positive liberty of same-sex couples in not extending them. If anything, not extending benefits is worse because, in doing so, the state is not only making a public declaration that same-sex couples strongly dispute, but is also denying them access to an institution that these couples view as necessary to living out their most fundamental commitments.

Ultimately, I think the argument offered by Fried and Jordan rests on an equivocation. Their assertion that

extending marriage rights to same-sex couples infringes on liberty while restricting these rights does not is plausible only if they are referring to the *positive liberty* of opponents of same-sex marriage, but the *negative liberty* of same-sex couples. I can see no justification, however, for this discrepancy. Either negative liberty should be the measure, or positive liberty should. If it is to be negative liberty, then nothing the state does either way has any effect on the liberty of those on either side of this controversy. If it is to be positive liberty, then *no matter what the state does* it will infringe on the liberty of one group or the other.

At this point, we might conclude that the same-sex marriage controversy is best described as a dispute concerning the norm of equality not liberty. It is simply a mistake to think this debate can be resolved in favor of either side by appeal to the norm of liberty. But this is why I think the anti-domination conception is particularly helpful regarding this issue. On the anti-domination view, the state arguably does diminish the freedom of same-sex couples in a significant respect. Accordingly, the anti-domination conception helps us see how state restrictions on marriage violate not only the equality of same-sex couples, but their freedom as well.

To see this, consider Calhoun's (2000) assessment of the harms of such restrictions on gays and lesbians. Essentially, her argument is that excluding gays and lesbians from participating in this institution contributes to their broader exclusion from civil society more generally:

Same-sex marriage bars do play an especially central role in displacing gays and lesbians to the outside of civil society. In particular, being fit for marriage is intimately bound up with our cultural conception of what it means to be a citizen. This is because marriage is culturally conceived as playing a uniquely foundational role in the sustaining civil society. As a result, only those who are fit to enter marital and family life deserve full civic status. Bars on same-sex marriage encode and enforce the view that lesbians and gays are inessential citizens because they are unable to participate in the foundational social institution. Marriage bars thus play a critical role in displacing gays and lesbians. (Calhoun 2000: 108)

If "marriage bars" contribute to the broader exclusion of gays and lesbians, then it contributes to their domination as I have conceived it. In being regulated to second class status, gays and lesbians will not have access to the same resources and opportunities as heterosexuals and will accordingly be at a considerable power disadvantage in comparison to them.

Consider the various ways in which this exclusion disempowers gays and lesbians. If being married, or at

least being a possible candidate for marriage, is a prerequisite for obtaining positions of power in civil society, then gays and lesbians will be unable to achieve these positions. They will have more difficulty than heterosexuals, for example, at getting elected to public office, becoming chief executives in public corporations, or at being appointed to leadership positions in prominent civil institutions. Accordingly, gays and lesbians will have considerably less access to various venues of power and will therefore, as a group, be exposed to a disproportionate amount of possible interference at the hands of others. Further, in denying marriage rights to same-sex couples, the state signals that sexual orientation is an appropriate basis for discrimination. Accordingly, gays and lesbians are likely to have little or no recourse against those who discriminate against them on this basis since such discrimination has been deemed socially, and in some cases legally, acceptable by the state.

Because, as Calhoun attests, marriage is regarded as such a fundamental social institution, it provides an essential avenue to other resources and sources of power. In short, as Jeremy Garrett puts it, being married provides one with substantial "social currency" (Garrett 2009: 167). Restricting access to this institution results in an unequal

distribution of this social currency and consequently an unequal distribution of power. In order to promote anti-domination then, the state must resist the attempt of some groups, in this case heterosexuals, to grant themselves exclusive access to this privilege. Therefore, on the anti-domination view, equal marriage rights is not just a matter of equality, but of freedom.

Affirmative Action

The final controversy I want to address concerns the debate over affirmative action. This debate centers on what steps academic institutions, government agencies, and employers must take to promote or ensure equality for traditionally underrepresented groups: are they required only to remove any and all institutional barriers preventing members of these groups from gaining admission or employment, or must they further take proactive steps to ensure that a certain portion of students or employees come from these underrepresented groups? Both sides of this debate base their arguments on an appeal to the norm of equality. Opponents of affirmative action argue that preferential treatment given to underrepresented groups, such as women and racial minorities, violates the very principle of equality on which it is based. As Lisa Newton puts it,

"just as the previous discrimination did, this reverse discrimination violates the public equality which defines citizenship" (Newton 1973: 310). Proponents of affirmative action, however, charge that, without taking positive steps to ensure equal representation, the commitment to equal opportunity is hollow. President Lyndon Johnson expressed this sentiment in a 1965 speech he gave at Howard University prior to signing the Executive Order that put affirmative action into practice at the federal level:

You do not take a person who for years who has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you're free to compete with all others," and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through these gates....We seek not...just equality as a a right and a theory but equality as a fact and equality as a result.⁹

Essentially, proponents of affirmative action argue that, because traditionally underrepresented groups have suffered years of systemic prejudice and exclusion, they are at an inherent disadvantage in comparison to their more privileged counterparts. It is therefore unreasonable to think that they have a genuine opportunity to achieve equal success once institutional barriers have been removed.

This quote from President Johnson reveals the sense in

⁹As quoted in Cahn 1995: xii

which the affirmative action debate can be seen as a dispute over the nature of *liberty* just as much as *equality*. In the absence of legal or institutional barriers, either explicit or implicit, some opponents of affirmative action argue that, because nothing is strictly preventing underrepresented groups from achieving success in their academic and professional endeavors, they possess full equal opportunity. In other words, once certain obstacles are removed, nothing restricts their liberty in the negative sense. At the same time, were employers or colleges and universities to give underrepresented groups special consideration in order to achieve what Johnson calls "equality of result," such preferential treatment would constitute a formal barrier for *non-underrepresented* groups, thus in turn diminishing their opportunities. On a negative conception of liberty, affirmative action is thus an anathema to equal opportunity according to this argument.

On a positive account, however, preferential treatment is likely required in order to achieve equal liberty for all. This is because removing formal barriers to education or employment is not enough to ensure that underrepresented groups have equal life prospects given that these groups have historically been deprived of the necessary skills and resources needed to compete on an equal footing. Merely

granting them an equal opportunity to achieve their ultimate goals and purposes is not valuable absent the ability to actually achieve them. Therefore, positive steps must be taken in order to ensure that these underrepresented groups possess the necessary resources and develop the appropriate talents and skills in order to be successful in their endeavors. In short, this defense of affirmative action relies on an *exercise* as opposed to an *opportunity* conception of liberty. It strives for *equality of result* as opposed to mere *equality of opportunity* understood in the strictly negative sense.

I am not suggesting that the affirmative action debate *must* be cast in these terms. One could, for example, think that the case for affirmative action rests on whether such policies are justified as a kind of compensation for past injustices or on whether promoting the value of diversity is sufficient to justify preferential treatment. What I do want to argue is that, if one does want to make the case that affirmative action policies are necessary to securing equal freedom for all, then the anti-domination conception is a better basis than the positive conception (or even the non-domination conception as I will argue in conclusion of this section).

A positive-liberty-based defense of affirmative action

will of course inherit all the problems occasioned by positive views in general, but I want to focus on some problems regarding affirmative action specifically. The positive-based account is particularly vulnerable to two common objections to affirmative action policies. The first is the charge that affirmative action stigmatizes those groups it is designed to benefit by signaling to the wider community that these groups lack the appropriate skills and capabilities to compete with white males on their own (Steele 1994). Even if it is true that underrepresented groups only need such special assistance because of past discrimination and that white males have, in effect, been receiving preferential treatment up until now at the expense of others, the risk is that affirmative action will nevertheless be perceived as kind of crutch. This will be especially true if the justification for affirmative action is based on a positive account of liberty. Because the rationale for affirmative action on such an account is that underrepresented groups are unlikely to be able to achieve success in their life's projects without assistance, the worry is that their achievements will often be viewed as suspect by others. In other words, their successes will not be regarded as properly their own. Accordingly, even if affirmative action programs do promote the positive liberty

of underrepresented groups, these groups will still fail to achieve equal status with their fellow citizens given the social stigma attached to them.

The second objection is that affirmative action programs constitute a form of assimilation insofar as they promote the interests of underrepresented groups based on the dominant white-male norm of success. Again, the positive-liberty-based defense of affirmative action is particularly vulnerable to this objection for the following reason: in order to identify which skills and capabilities are necessary for success, we have to first determine what success consists in. The problem is that, if success is understood in terms of getting an education at institutions traditionally dominated by white males and then afterward securing employment in industries likewise traditionally dominated by white males, it will rule out competing conceptions. In order to lead truly fulfilling lives, underrepresented groups will be told that they must first study and master a curriculum designed by the dominant white male majority -- a curriculum that likely reflects the history and values of this dominant group. Second, they will be told that success is primarily measured in terms of material wealth, ruling out alternative conceptions of success as personal fulfillment or family and community

involvement.

Though she does not discuss positive liberty specifically, I think this is the kind of worry that Georgia Warnke has in mind in criticizing what she calls an "integrationist" defense of affirmative action:

The problem with an integrationist ground for affirmative action is that it is also assimilationist. The vision of the United States as a grand melting pot surreptitiously takes white, male America as the norm and requires all those groups accepted into its public life to conform to standards set by the white males who once monopolized it. White males constitute the standard for the normal employee or citizen and others must cut and prune their identities and commitments to fit this pre-established norm. (Warnke 1998: 98)

Because, for years, white males have set the standard for what constitutes success, determined the skills and capabilities necessary to achieve it, and designed the institutions through which it is to be achieved, giving underrepresented groups access to these institutions does not so much help them achieve *their own* goals or purposes but those that have been designed by others. This creates a dilemma for the positive-liberty-based defense of affirmative action. We can either assert that the dominant white-male norm is the best understanding of what success and the good life consist in -- a stipulation that will surely be degrading to those who do not feel represented

by that norm -- or we could admit that this norm is inherently exclusionary in which case affirmative action will be a *hindrance*, not a means, to helping underrepresented groups achieve their own authentic ends.

I do not mean to suggest that either *stigmatization* or *assimilation* are inevitable consequences of any affirmative action policy. Rather, my claim is that a positive-liberty-based defense of affirmative action makes these consequences more likely due to what Thomas Hill Jr. (1995) has called "the message of affirmative action." According to Hill, the effects of affirmative action policies depend not just on *what they do*, but also on *how they are justified*, or as he puts it, "what our actions say to others, depends largely, though not entirely, upon our avowed reason for acting" (Hill 1995: 169). The worry with the positive liberty approach is that it may give the message that underrepresented groups are both incapable of living successful lives on their own and that the proper model of a successful life is the one exalted by the white male majority. In either case, affirmative action paradoxically contributes to the extent to which underrepresented groups are relegated to a secondary status within society.

Perhaps there are ways in which the positive-based-

liberty defense can avoid, or at least mitigate, these consequences, but, given the problems of positive accounts in general and their specific difficulties regarding affirmative action, I think it is worth pursuing an alternative strategy. To this end, I propose that the anti-domination account provides a better defense for affirmative action, in part, because it sends the right kind of message. Under anti-domination rationale, affirmative action is justified insofar as it is necessary to promote reciprocity of power. The extent to which it actually does so is an empirical question that I cannot fully explore here, but it seems intuitively plausible that affirmative action would be justified on this ground. Past discrimination has given white males disproportionate influence in public life. They are disproportionately represented in powerful political, economic, and social institutions, and they have greater representation in the schools and universities through which one gains entry into these institutions. As such, white males, as a group, have greater *power over* women and minorities. They are able to expand the opportunities for themselves while at the same limiting those of others because they are more likely to occupy positions of power.

Because white males possess greater *power over*

underrepresented groups due to past discrimination, it is unlikely that simply removing formal, institutional and legal barriers to progress will alleviate this disparity. Even after such barriers have been removed, white males will still be in position to use their power to their advantage and continue to monopolize access to political, economic, and social resources. Affirmative action policies can help rectify this power imbalance by giving underrepresented groups greater access to essential educational resources and further by ensuring that they have equal representation in various political and economic institutions. In addition, the anti-domination justification for affirmative action sends the right kind of message because it does not somehow signal that underrepresented groups are incapable of achieving successful or fulfilling lives by their own means or on their own standards. Instead, the anti-domination rationale recognizes that past discrimination has left underrepresented groups at a substantial power disadvantage, and this power disadvantage diminishes their liberty by placing them at the mercy of the white male majority even if it is the case some of them are nonetheless capable of having great success despite this disadvantage. The anti-domination defense thus appeals

explicitly to the equal status of underrepresented groups rather than placing this status at risk by encouraging a message of either stigmatization or assimilation.

At this point, it is worth noting that the non-domination cannot offer a similar defense of affirmative action. In the first place, white males who lose out on academic placement or get passed over for employment will regard affirmative action policies as entirely arbitrary. The interference these policies involve will not track the avowed interests of this group. Members of the white male majority can therefore argue, not without plausibility, that, on Pettit's standard, affirmative action is not only unfair, but constitutes a form of domination. Perhaps Pettit could argue instead that this interference is not arbitrary because it furthers a *common* interest. I explored the problems with this type of response in Chapter 3, but, even if this were a viable response, it shows at best that affirmative action does not itself constitute domination. It does not further show that affirmative action is necessary to promote non-domination since it is not clear how affirmative action lessens the degree to which underrepresented groups are exposed to arbitrary interference.

Again, I should stress that the soundness of the anti-

domination justification depends on the empirical evidence concerning the harmful effects of past discrimination and the effectiveness of particular affirmative action policies in correcting them. It also depends on whether or not there are better alternatives available. I obviously cannot resolve either question here, but I hope I have made the case that the anti-domination defense of affirmative action is both reasonably plausible and potentially valuable insofar as it avoids the problems of some competing alternatives.

Conclusion

There is no doubt that more could be said about the anti-domination stance regarding these and other controversies. As I noted in the previous chapter, the account of anti-domination I have been able to offer here is merely a sketch. Additional work is needed in order to expound upon the anti-domination view further and fully draw out its implications. First, a more formalized account of anti-domination is required than what I have been able to develop in the preceding chapter. We need some way of at least coarsely measuring domination in order to assess specific political, social and economic arrangements. In particular, we need to be able to analyze more precisely

the ways in which multilateral relationships affect the power of individual agents, and I have been able to say little of much detail about this issue here. Relatedly, further work needs to be done on exactly how different institutional arrangements affect the distribution of power among agents, which institutions distribute power most equally, and what reforms of existing institutions would promote the anti-domination ideal. Finally, substantial empirical research is necessary in order to assess the effectiveness of the kind of policy proposals I have discussed above.

Such questions are beyond the scope of this dissertation. What I hope I have shown is that they are worth exploring further. While the debate over the nature and value of liberty is certainly far from settled, I think that the anti-domination conception provides an attractive candidate, one that has not yet been articulated or explored in the contemporary literature. Whether its advantages are ultimately sufficient to garner assent among liberals remains to be seen, but the issue certainly warrants further consideration.

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