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A Brief History of Liberty—And Its Lessons[†]

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1. Introduction

A brief history of anything has to select out the main lines of rupture and continuity in the domain it charts. And, by implication, it has to commit to a hypothesis about the grounds on which to make that selection; it cannot wallow in absorbing detail. In order to provide a basis of selection for my brief history of liberty, I start from a question that is nicely posed by Henrik Ibsen's famous play, A Doll's House.[1]

Set in nineteenth-century Norway, the play features Torvald, a young, reasonably well-off banker, and his wife, Nora. Within the culture and law of their time, every woman is subject to the will of her husband across a wide range of issues, being required to submit to his judgment in the event of any difference of view. But on that front Nora is extremely fortunate.

Worshipping the very ground she walks on, Torvald gives her close to a carte blanche when it comes to what she wants to do. Thus, improvising somewhat on the play, she can associate with more or less anyone she wishes, attend whatever event that attracts her, spend on herself within reasonable limits and order her household to her taste. Torvald does not like her eating macaroons, so we are told, but even that imposes no restriction, for she can hide them if she wishes in her skirts.

The question from which I want to start in this brief history of liberty is whether or not we should regard Nora as enjoying freedom in her relationship to Torvald: whether in the choices on which that relationship bears she can count as a free agent. The question provides a useful perspective on the history of liberty, because it turns out that on one of the dominant ways of thinking about freedom, the answer is negative; on the other, positive. If we take the question seriously, as I think we should do, then it directs us to a deep fault-line between ways of conceptualizing freedom that the history of ideas—in particular, the history of western ideas—has put at our disposal.

There are no canonical terms in which to mark this fault-line—this historical rupture, as it turns out to be—and I shall describe it, for convenience, as the division between classical

[†]This paper is based on the Martha Nussbaum Symposium Lecture, given at the meeting in Athens in September 2014 of the Human Development and Capabilities Association. The material was also used as the basis for the 2014 Alan Saunders Memorial Lecture for the Australasian Association of Philosophy and the Australian Broadcasting Corporation—it is available on http://www.abc.net.au/tv/bigideas—as it was used for lectures at University College, Galway and Leiden University. I have learned from the many comments received in response to those presentations, particularly those of my Athens commentator, Mozaffar Qizilbash.
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republican and classical liberal modes of thought. The terminology is less than ideal, partly because many historical republicans, as I describe them, would have been happy with a constitutional monarchy; and partly because many self-described liberals, at least in the American sense, would reject much of what we associate with classical liberalism: they would deride it as libertarianism. But there is no better language available and, for want of an alternative, I shall stick with this.

The paper is in three main parts. In the first section I review the history of classical republican thinking about freedom, and in the second the history of classical liberal thinking, looking in each case at the answer the approach would provide to the question about Nora. And then in a final section I look at the different political philosophies, respectively neo-republican and neo-liberal, that the approaches would support in today's world. I try to be fair in my representation of the two traditions but the thrust of the piece is to argue for a return to the republican way of thinking about freedom and to support a neo-republican image of good government.[2]

2. The Classical Republican Tradition

2.1. Roman Republicanism

The classical republican way of thinking assumed a settled, celebrated form in the later period of the Roman Republic. This was mainly due to the work of a Greek resident of Rome, Polybius. Taken to Rome as a young hostage in the middle of the second-century BCE, Polybius stayed on after his release, and wrote up a lengthy history of his adopted country. And in the course of that history he articulated the three ideas that were to form the core of republican thinking.

The ideas, which I go on to explain in a moment, were: freedom as non-domination, the mixed constitution and the contestatory citizenry. Polybius thought that Rome held out a greater promise of freedom and stability than any preceding regimes, including that of Athens in the fifth- and fourth-century BCE, because of the way that its institutions implemented these three republican ideas. This vision of Rome was taken up with enthusiasm by the native-born and was later elaborated with relish in Cicero's legal and philosophical writings and in the work of the historian, Titus Livy.

The main idea in the doctrine was its conception of freedom. Under the approach adopted, freedom does not require that you escape the interference of others in your choices; the law, which was seen as the friend of liberty, inevitably involves some interference in everyone's choices. What it requires rather is that you should not be subject to the arbitrary or discretionary will of another in what came to be known in later tradition as the basic liberties: the choices that the law can and should make equally available to all individuals. You would be subject to the will of another to the extent that others could interfere in the exercise of those choices. The interference might take the form of preventing or penalizing the choice of an option, whether overtly or covertly, or misrepresenting the nature of the options available.

Anyone subject to a master, such as a slave, was wholly unfree by this account, even if the master did not interfere much in the slave's life. The Romans used the word dominatio for the condition in which a slave lived, whether or not the dominus or master actively exercised his rights as an owner: whether or not he actively imposed his will on the slave (Lovett 2010a, Appendix). And they equated libertas or freedom with the assured absence of dominatio or anything like dominatio: in effect, with the enjoyment of protection against anyone's assuming the position of a master in the person's life.

What was to provide this protection for the Roman civis or citizen: the liber or freeman? The natural assumption was the law. Citizens were each to be protected against private domination by the law; and that law was itself to be imposed on them without any public domination. They were each to live under their own jurisdiction, then—sui juris, as Roman law put it—in a double sense of the term. They were to enjoy a protected, undominated area of private choice under the law. And that law was to be created and shaped, not by an alien, princely will, but in a way that avoided public domination.

What process of forming and applying the law could protect people against public domination? The other ideas in the republican canon—those of the mixed constitution and the contestatory citizenry—were meant to provide the answer.

Taking up the first of these two ideas, the law was to be formed and implemented under a procedure that gave different groups in an inclusive male citizenry mutually restrictive access to power. Thus, in the form that Polybius found in Rome, it gave the right to propose law to a narrow elite who were members of the Senate; the right to vote on the law to popular assemblies involving all male citizens; the right to adjudicate law to a somewhat broader elite than senators; and the right to administer the law to members of the elite who had to be popularly elected, could normally hold office for just a year and were required to exercise that power in tandem with others.

The mixed constitution would have made little sense to Romans without the complementary notion of the contestatory citizenry. This notion was symbolized in Rome by the power that each of the popularly elected tribunes of the plebs enjoyed to veto the actions of those in administrative office. But it took its most vivid form in the regular protests and upheavals of Roman politics. The ordinary people—roughly speaking, the plebs—were ever ready to challenge those in power and those in power were ever ready to seek the support of the people against their opponents. This meant that apart from voting on laws and apart from electing their rulers to office, the Roman people exercised enormous contestatory power in the operations of government. The regime was democratic to the extent that the demos or people held a great deal of kratos or power (Millar 1998).

The dual requirement of protection against private and public domination could only be fulfilled, under this republican picture, if you lived as the citizen of a republic like Rome's. All going well, such citizenship would give you security, first, against anyone who sought to impose their will in their private dealings with you; and, second, against anyone who tried to impose their will via the public offices of the state. Thus, one commentator holds that libertas or freedom, as the Romans conceived of it, amounted to nothing more or less than the status of civitas or citizenship (Wirszubski 1968, Ch. 1).

The equation of freedom with republican citizenship meant that there were two ways in which you might be unfree, one private, the other public. You would be unfree if you had to live in subjection to a private master, even a master who allowed you considerable leeway in your choices. And, however much protection you enjoyed on that front, you would be unfree if you had to live in subordination to a distinct public power: say, the despotism of a prince or party; or the colonial rule of an imperial power.

2.2. Medieval and Modern Europe

The republican ideal of an independent, free citizenry remained out of reach in the realities of Roman life; it was fundamentally inconsistent, for example, with the practice whereby rich patrons cultivated a following of private clients. But the republican ideas articulated an ideal that played a mobilizing, recruiting role among European intellectuals and revolutionaries from the period of the high middle ages down through the Renaissance, to the late eighteenth century. Citizens of independent cities like Venice and Florence used the ideas to

articulate the special status they enjoyed, particularly by contrast with the vassals of feudal lords or the subjects of absolute princes. And of course those elsewhere who wanted to challenge the pretensions of lordly masters, private or public, found the ideas ready-made for the articulation of their complaints.

Niccolo Machiavelli—the divine Machiavel, as he was known to some of his English admirers—is perhaps the most outstanding republican author of the Renaissance period. In a commentary on Livy's history of the Roman republic—this, as distinct from his treatise entitled The Prince—he makes wholesale use of ideas from Polybius and Cicero in outlining a picture of what can be achieved in a republic and of how the achievement can be assured (Machiavelli 1965). Himself a high official in the short-lived Florentine republic around the turn of the sixteenth century, he draws on his cold, well-tested sense of the feasible in outlining the features of the mixed constitution and the contestatory citizenry that popular freedom requires.

As Machiavelli and other figures in Renaissance Europe absorbed the newly discovered literature of the Roman republicans, they put in circulation a set of ideas that catalyzed a raft of political changes across the continent. Those ideas were central to the formation of the republic of the nobles in sixteenth-century Poland, the Dutch republic of the seventeenth century and of course the English republic that flourished for a dozen or so years in the middle of the seventeenth century. The three ideas we have been discussing all figured in the positions defended by the supporters and partisans of these developments, being adapted in distinctive, often quite novel ways to the exigencies of local circumstance and complaint.

Although the English republic was short-lived, it had an enormous impact on political thinking in the later seventeenth and the eighteenth centuries. While Charles II was reinstated as English King in 1660, the republican ideas that had stoked the revolt against his father did not ever disappear and came into their own when his brother James II was ousted from power in 1688 and William and Mary were invited by parliament to take his place. The invitation was linked to a firm conception of the terms on which the new monarchs were to rule and with this development republican ideas became reconciled to constitutional monarchy. Under the sort of constitution that gained the acceptance of English republicans—they were more commonly known as commonwealthmen—the monarch was subject to the law, ruled only in combination with parliament, and so did not have a dominating power over others.

The three republican ideas helped to form a common language of political debate in eighteenth-century England and in its American colonies, albeit a language used to different effect by more conservative and more radical elements. On the conservative side, it was said that the mixed constitution operated like a well-oiled machine, required little popular engagement and provided for all citizens a form of freedom that was consistent with great inequalities of wealth. On the radical side, the themes were very different: that the mixed constitution only worked well under "the refractory and turbulent zeal" of the common people (Ferguson 1767, 167); that it required a constant struggle against inequality and corruption (Trenchard and Gordon 1971); and, in a late eighteenth-century development, that it could hardly be expected to support freedom unless the franchise was greatly extended (Price 1991).

But while these conservatives and radicals subscribed to different accounts of the institutional requirements of a monarchical republic, they were at one in their understanding of liberty. Thus none would have demurred at the definition of liberty offered in the eighteenth-century, radical tract known as Cato's Letters. "Liberty is, to live upon one's own terms; slavery is, to live at the mere mercy of another" (Trenchard and Gordon 1971, vol. 2, 249–250). Here we see the continuity with Roman tradition in the opposition

between freedom and slavery and in the idea that liberty involves living under your own jurisdiction, on your own terms: sui juris, in the phrase from Roman law.

But not only does republican freedom, as it was commonly understood, require you to be able to live on your own terms; it requires in particular that you have this ability as a matter of common awareness. While it consists in a protected status relative to others, the protection involved has to be provided on the basis of public norms and laws. And so republican freedom naturally goes with a consciousness, shared with others, of enjoying such security. Thus the image of the freeman or liber is always associated in the tradition with a subjective as well as an objective standing: a status that allows the free person in their dealings with others to look them in the eye without reason for fear or deference; in a phrase, to pass the eyeball test for social equality.

John Libourne gave vivid expression to this idea of freedom as a status that is at once objective and subjective in character. A supporter of the new English republic, he wrote in the 1640s that "the freeman's freedom" means that all citizens should be equal in legal power and equal in the recognition and dignity that this would confer; they ought to be "equal and alike in power, dignity, authority, and majesty—none of them having (by nature) any authority, dominion or magisterial power, one over or above another" (Sharp 1998). The somewhat less radical Milton (1953–82, vol. 8, 424–425) endorsed broadly the same idea when he argued about the same time that in a "free Commonwealth," "they who are greatest … are not elevated above their brethren; live soberly in their families, walk the streets as other men, may be spoken to freely, familiarly, friendly, without adoration."

2.3. Nora in Classical Republican Perspective

With the main elements of the republican understanding of liberty in place, we may return to the question raised about Nora. Does she count as free under the republican conception of freedom?

The question in republican terms is whether Nora is subject to the domination of Torvald. And the answer to that question must be that she clearly is. While he allows her to choose as she will, it remains the case that should he change his attitude, ceasing to dote on her as he currently does, then he would presumably interfere in those choices where he did not want her to be guided by her own tastes. She may enjoy his non-interference as a contingent matter of fact: as a stroke of good luck, as we might put it. But being unprotected against his interference—indeed being manifestly unprotected against it—she does not enjoy non-interference with the robustness that republican freedom requires. Thus she would be self-deceived if she thought that she enjoyed the objective or subjective status of a free agent in relation to him.

It is Torvald's will, not Nora's, that is ultimately in charge of how she is to conduct herself. While she may choose as she wishes in the domain of the basic liberties, she can do so only because he is happy that she should choose in this way. Whatever she does, then, she does cum permissu, as it used to be said: that is, by his grace or leave. Torvald may be a gentle master in her life but the fact that he occupies the role of master is enough to render her unfree, indeed to reduce her to the status of a slave. In the words of Sidney (1990, 441), a seventeenth-century republican thinker, "he is a slave who serves the best and gentlest man in the world, as well as he who serves the worst."

There is a certain tragedy in the situation of Torvald and Nora, as it appears within a republican reckoning. We may assume that as Torvald wishes not to interfere in Nora's wishes, so he wishes not to deny her the enjoyment of freedom. But no matter how intense that wish on his part, the greater power that local convention and law give him

means that he cannot help but be her master and cannot help but deprive her of freedom. The inequality of power between them means that should his attitude towards her change—should he become less doting and more intrusive—then there would be nothing to stop him interfering in her life. And it is the existence of that power of interference, not its exercise, that reduces her standing to that of a subject and dependant: someone lacking the status of a free agent.

It is important to add one last comment to these observations. Under the dispensation described, Nora is placed under Torvald's will by the norms and laws of her society. But her position would not be quite so objectionable if she shared equally with others, men and women alike, in shaping those rules and if she were in a position, should she reject them, to rally others in opposing them. In that case she would have a degree of control over the law, shared equally with others, that made her subordination to Torvald escapable; she might not have the power of exit in relation to the law but she would at least have a power of voice (Hirschman 1970; Pettit 2012b). In the actual situation described in the play, then, she is doubly dominated. She suffers private domination at the hands of Torvald, and she suffers public domination at the hands of the law.

3. The Classical Liberal Tradition

3.1. The Age of Revolution

The republican tradition played a decisive role in prompting the American colonists to revolt against their English masters in the 1770s. But it was the very debate surrounding the American war of independence that gave rise to the classical liberal way of thinking about freedom that eventually eclipsed the republican approach. Not only did it eclipse the republican approach in its English and American manifestation. It also led to the demise of that approach on the European continent, where republican ideas—albeit in a form recast under the influence of Jean Jacques Rousseau—played a large part in articulating the complaints behind the French revolution of 1789.

It is worth recalling some of the details of the American war in order to see just how prominent was the role of republican ideas, in particular the idea of freedom as non-domination, in generating widespread dissent. In 1765 the British government had introduced the Stamp Act, requiring its American colonists in their official business to use stamped paper on which a special tax was levied. In response to American complaints, the Westminster parliament withdrew that Act the following year. But in doing so, the parliament claimed as "of right" to have "full power and authority to make laws and statutes" to bind the Americans. In other words, it maintained that the repeal of the Stamp Act was an act of grace on its part: that while the Americans would no longer be required to pay the associated tax, that was only because Westminster chose to be indulgent.

From the received perspective of republican thought, this meant that the Americans had little or no control over how the British government treated them and that they could no longer regard themselves as freemen in relation to the law. The Americans lacked electoral representation and the control it afforded, as did many of the British themselves: hence the slogan "No taxation without representation." But they also lacked the control provided by a constitution in which those who pass laws and impose taxes have to live under the provisions they introduce. It was the absence of even this basic form of control that an English defender of the American cause—the chemist, Priestley (1993, 140)—fastened on. "Q. What is the great grievance that those people complain of? A. It is their being taxed by the parliament of Great Britain, the members of which are so far from taxing themselves, that they ease themselves at the same time."

The tax imposed by the Westminster parliament may not have been particularly heavy, as indeed the tax imposed in the Stamp Act had not been heavy. But the point for Priestley, as for the Americans, was not the size of the tax but the claim to power by the taxing authority. As he went on to explain:

> by the same power, by which the people of England can compel them to pay one penny, they may compel them to pay the last penny they have. There will be nothing but arbitrary imposition on the one side, and humble petition on the other.

The same point was emphasized by Priestley's friend, the mathematician, Price (1991, 77–78). Commenting that individuals under the power of masters "cannot be denominated free, however equitably and kindly they may be treated," he argued that the same lesson applied to societies like Great Britain and its colonies: "This is strictly true of communities as well as of individuals."

3.2. In Defense of Colonial Rule

Richard Price had included this reflection in a pamphlet published in 1776, the first full year of war, and in that same year, John Lind, a London defender of Lord North's government, published a rebuttal: Three Letters to Dr Price (1776). This rebuttal, little noticed at the time, was a remarkable document because it contained all the elements of a wholly novel way of thinking about freedom.

Lind argues in his pamphlet that freedom requires only the actual absence of interference, however contingent; it is "nothing more or less than the absence of coercion," where coercion may involve prevention or punishment, actual or threatened (16). British law certainly interferes in the lives of the Americans, he says, imposing compliance and levying taxes, since "all laws are coercive" (24). But the law also interferes in the lives of the British themselves, he observes, so that the Americans can have no particular complaint about being deprived of their liberty by British law (114). According to the conception of freedom that he espouses, their liberty is no less and no more affected by the imposition of law than the liberty of the British themselves; it is irrelevant that the law is imposed on the Americans from without and on the British from within.

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

Where does Lind get his new conception of freedom from? He acknowledges in a footnote that he owes it to "a very worthy and ingenious friend" (17). That friend turns out to be the founder of utilitarian thought, Jeremy Bentham, who had already begun to use the conception in developing a view of law and the state that would later make him famous. He had written a letter to Lind a short while before the appearance of the pamphlet, explaining that the view of freedom as nothing more or less than "the absence of restraint" was "the cornerstone of my system" and came of "a kind of discovery I had made" some months previously (Long 1977, 54).

What Lind puts on the table in this debate, then, is a way of thinking about freedom that is wholly new, by the understanding of its inventor.[3] Where republican freedom is compromised just by exposure to a power of interference on the part of another individual or body—specifically, a power of arbitrary or discretionary interference—freedom in this new sense is compromised by the exercise of any interference by another agent. Freedom is non-interference, not non-domination. It requires that in a given choice you

should be able to choose as you will regardless of what you prefer to choose. But, unlike republican freedom, it does not require that you should be able to choose as you will regardless of whether others are happy or not about this.[4]

The new approach means that all interference, and in particular all law, takes away freedom, not allowing you to choose as you wish; as this is stressed by Lind, so it is stressed by Bentham: "all coercive laws … are, as far as they go, abrogative of liberty" (Bentham 1843, 503). Secondly, the approach means that the unexercised power of arbitrary interference—the sort of unexercised power asserted in the Declaratory Act—does not have a negative impact on freedom as such. And it means, finally, that law is not any more inimical to freedom just because it represents the exercise of such a discretionary power rather than the exercise of a power over which subjects have some control. Thus it implies that the colonial law imposed on Americans without any control on their part is no more damaging to their freedom than the domestic, relatively controlled law imposed on Britons.

3.3. The New Utilitarian Way of Thinking

The debates about the American war of independence soon faded out of view with the emergence of the new Atlantic republic and with the constitution that was used to restructure it in the late 1780s. But the view of freedom that appeared on the losing side of that struggle rose from the ashes of military defeat and quickly established itself as the approach that would dominate nineteenth- and twentieth-century thought. It became a mainstay of the reformist, utilitarian movement that Bentham helped to establish and, as we shall see, a centerpiece of the classical liberalism that appeared soon afterwards.

Why did Bentham advance a relatively weak ideal of freedom in which people are not made unfree by living under the dominating power of another, only by suffering active interference? The reason may have been a failure of his reformist nerve. Were Bentham to have called for universal freedom as non-domination then he would have had to advocate the transformation of family law, under which a husband had power over his wife, and master-servant law, under which an employer had power over his employees. These may well have been challenges at which he balked. He could look for universal freedom as non-interference without having to embrace such radicalism, for the wife of a kind husband, or the servant of a kind master, can be free in his thinner sense. They may each have to live under another's power of interference, as existing law required, but if the husband or master is kind then they do not have to endure actual interference and do not suffer un-freedom by the yardstick of Bentham's newly formulated ideal.

Perhaps it was with such thoughts in mind that a close associate of Bentham's, Paley (2002), described the older idea of freedom as too radical to be taken seriously. He admits in a work published in 1785 that freedom as non-domination, which "places liberty in security," accords well with "common discourse" (313). But then he insists, paradoxically, that in contrast to the new conception of freedom as non-interference, it demands too much. It is one of those ideals of "civil freedom," he says, that are "unattainable in experience, inflame expectations that can never be gratified, and disturb the public content with complaints, which no wisdom or benevolence of government can remove" (315).

How could Paley have thought that the established conception of freedom was too radical and revolutionary, given his recognition of its deep roots in history and common discourse? Like Bentham, he was a reformer engaged with the idea that freedom should be a more or less universal ideal. I suspect that as he began to think about what freedom as non-domination for all would require, the traditional conception began to seem too radical and the novel conception looked like the only feasible and appealing ideal.

3.4. Classical Liberalism

Bentham and his followers were bent on the reform of society in the interests of all its members, women as well as men, poor as well as rich. But the image of freedom that they generated in pursuing this cause—freedom for them was one component in utility—was taken over by a group who came to be known in a new-fangled term as liberals: classical liberals, as we would call them. And for this movement freedom in the new sense was the be-all and end-all of normative ideals: the only value that economic and political institutions need be organized to implement and promote. Freedom as non-interference played the dominant sort of role in their thinking that freedom as non-domination had played in the thinking of the republicans they displaced.[5]

The rise of classical liberalism made for a departure on two fronts from the approach that republican doctrine would have supported, one of them related to the state, the other to the market. On the first side, it implied that law, and the state that law requires, could no longer be regarded as a precondition of liberty. On the contrary, as Bentham insisted, all coercive laws were inimical to freedom as such, imposing a public form of interference. If laws were necessary, it was only because they served to prevent more private interference—for example, interference of the kind imposed by criminals—than they perpetrated in public. And this meant that laws should only be introduced insofar as they could be shown to be absolutely indispensable. More generally, classical liberalism argued for a principled reluctance to grant the state any public coercive powers—any powers of regulation, criminal or otherwise—that could not be demonstrably justified by their effects in preventing private coercion.

While classical liberalism argued on one side for a minimal state—a night-watchman state, as it came to be known—it argued on a second for a maximal market. The view taken was that any relationship that people enter contractually is fine from the point of view of freedom. No matter how slight the bargaining power of the weaker in negotiating the terms of the relationship, the consent of the parties involved means there is no interference imposed and no loss of freedom. This move also marked a departure from republican thinking, since republicans had argued from very early days that the ideal of freedom is hostile to a slave contract or anything resembling it. However freely entered, a slave contract would introduce domination and would therefore jeopardize the freedom of the enslaved party.

Freedom of contract was used by classical liberals to justify market arrangements that reduced republican freedom dramatically, making it impossible for many to pass the eyeball test mentioned earlier: to look others in the eye without reason for fear or deference. The new thinkers celebrated and championed greater and greater latitude in the contractual arrangements that people could establish in the workplace, in the market and in cross-national commerce. They called for giving individuals carte blanche in setting the terms on which industrialists and other employers could hire workers, entrepreneurs could establish their enterprises as incorporated companies, mining companies could operate their mines and providers could offer their services. They even rejected the idea that ocean-going passengers should have pre-determined rights that went with paying for passage, and campaigned for passengers to be able to negotiate away such rights—and put their health and lives at serious risk—in return for lower fares (MacDonagh 1980).

Thus, justified by their new way of thinking about freedom, classical liberals argued for the contraction of the state and the expansion of the market. They looked for an ever less-regulated world, whether in the exploration and extraction of resources, the operation of manufacturing industry, the organization of the workplace, the negotiation of terms of employment, the incorporation of commercial entities, the arrangements made between

service providers and their clients, or the trading relations established between and among nations.

This deregulation may have been beneficial in some respects but it had an impact on working conditions that repelled thinkers of a republican stamp. In their view, the mines and factories of the world's rapidly industrializing societies were little better than slave camps. Men, women and ~~indeed~~, children were driven for want of a better alternative into accepting conditions that clearly denied them an un-dominated status in relation to their betters. They might have signed up freely for the employment offered, which was the point always emphasized by classical liberals, but the contract they entered allowed employers unrestrained discretion in how they treated their workers. Employees had no alternative but to ~~accept~~, such discretion; if they did not, they could be fired at will and, as often happened, find that they were black-balled among other potential bosses.

Republicans who took these conditions to jeopardize freedom as non-domination rejected the freedom of contract hailed by classical liberals and denounced the new arrangements on the grounds that they turned industrial workers into what they described as "wages-slaves" (Sandel 1996). Thomas Jefferson sounded the complaint with characteristic brio, opposing the introduction of industry to the new United States. "And with the laborers of England generally, does not the moral coercion of want subject their will as despotically to that of their employer, as the physical constraint does the soldier, the seaman, or the slave?" (Katz 2003, 13).

But this republican response to the new industrialization did not last and within a matter of decades, the classical liberal way of thinking about freedom became the new orthodoxy. It has been challenged in many ways by political and social thinkers over the past couple of centuries but it has remained stubbornly in place. Indeed it enjoys the sort of default authority that the republican approach had enjoyed in earlier times. While being opposed by many, it is recognized on all sides as the doctrine that every rival approach has to challenge. It occupies the high political ground.

3.5. Nora in Classical Liberal Perspective

Is Nora free in relation to Torvald, under the classical liberal picture of what freedom requires? It should be clear that she is. Within the range of choices that we have been taking to be relevant, Nora suffers no interference from Torvald; he wishes to restrict her only in eating macaroons but even this restriction she can successfully evade. If non-interference is all that freedom requires in the exercise of relevant choices—if it does not matter that another has an unexercised power of interference—then Nora is fully free in those choices; she chooses as she wishes, without interference by any other agent.[6]

Not only does Nora do well in enjoying such private freedom, she also does well on the classical liberal reading in relation to the corresponding form of public freedom. She may have no hand in shaping the laws that give Torvald an asymmetrical form of control over her choices. But since those laws do not actually impact on her choices, thanks to the restraint shown by Torvald, they do not take away from her freedom either. They enable Torvald, should he wish, to interfere in her life in various ways. But the fact that he does not wish to practice interference means that as she has no private complaint in relation to him, so she has no public complaint in relation to them; she enjoys non-interference both at his hands and at the hands of those particular laws.

It should not be any surprise that the classical liberal approach should deliver such a different judgment about Nora from the classical republican. On the liberal approach you are free in any choice to the extent that the doors represented by the different options in any choice remain open (Berlin 1969). On the republican approach it is important, not

just that the doors be open, but that there be no doorkeepers (Pettit 2014): no agents on whose goodwill you depend for leaving the doors ajar. The doors that answer to Nora's options may all be open but they remain open only so long as Torvald chooses not to exercise his rights as a doorkeeper. On the classical liberal approach it is sufficient to ensure her freedom that those doors are open; on the classical republican, it is also necessary that they should remain open regardless of Torvald's wishes, or indeed the wishes of any independent authority in her life.

4. Two Political Philosophies

4.1. To the Present Day

This exercise in the history of thinking about freedom is not just of antiquarian interest. For the classical liberalism described directs us to all the essential elements in the contemporary approach to government and society that is often described as neo-liberalism. And the classical republicanism it displaced points us clearly towards a radical alternative, which we may describe as neo-republicanism. Both philosophies of government put the freedom of citizens at the center of domestic political life and differ only insofar as they operate with contrasting conceptions of what freedom requires.

There are two sets of issues in domestic justice that any philosophy of the polity must address; we put aside here issues in international or global justice. Issues of social justice bear on what the domestic law should do for individual people in regulating their relationships with one another. Issues of political justice—or, if you prefer, political legitimacy—bear on how far the making of domestic law should be governed by the wishes or judgments or interests of the people as a whole. A theory of social justice tells us what is required horizontally in the relationships established by law among citizens, whether they interact directly or via corporate and other bodies. A theory of political justice tells us what is required vertically in the relationship between the body of citizens as a whole that the authorities that make and impose that law (Pettit 2015).

Neo-liberalism and neo-republicanism, unlike their classical antecedents, both assume that all the members of a society—in effect, all adult, able-minded, more or less permanent residents—deserve to be treated as equals under the law. And both agree in attempting to derive and defend theories of social and political justice from the requirements of freedom, as they understand that ideal. They do not exhaust the philosophies of government, of course, whether on the right or the left. Neo-liberals differ in both principles and policies from other right-leaning thinkers, such as traditional conservatives. And neo-republicans differ in similar ways from thinkers on the left like egalitarians and utilitarians, if not in the same measure from capability theorists: these share a similar focus on freedom and, as we note below, endorse a similar conception of social justice. But it is useful to see the right–left divide as a division between our two doctrines, since they represent the purest, freedom-based versions of the rival sides of politics on which they stand.

4.2. Neo-Republicanism

Since the neo-republican philosophy of government is the more demanding theory, and since it derives from the earlier of the classical antecedents, it may be useful to ~~gesture~~ first at the theory of social and political justice that it ~~is likely to defend~~. In sketching out these implications I rely on earlier work of my own—(Pettit 1997, 2012b, 2014)—as well as on the work of many who identify like me with the republican tradition of thought.[7]

The primary neo-republican requirement in social justice is bound to be that people should be protected by the law—and, if necessary, resourced by the law—so that they can exercise their basic liberties without having to depend on others to allow them to do so. It is only to the extent that this can be achieved in social life that people will avoid the private domination of others and be able to carve out their own lives. Protection and resourcing are required to give people independence in relation to criminal offenders and in the presence of hostile social divides; to provide for people's educational and social security, as well as their secure access, when needed, to medical and judicial assistance; and to ensure that individuals enjoy a basic independence within domestic and workplace relations where domination can otherwise be rife. The protection and resourcing available should ensure people's enjoyment of the capacity to function properly in their local society, as the capability approach emphasizes (Sen 1985; Nussbaum 2006).

How much protection and resourcing are going to be required in order to guard sufficiently against private domination? The approach suggests as a working criterion that it should be enough to enable people to look others in the eye without reason for fear or deference—or at least any reason derived from a greater power of interference on the part of others. Let people pass the eyeball test and they will each have as much as social justice requires. They may not have full material equality with each other—that looks like an infeasible goal—but they will have enough equality to be able to think of themselves and one another as equally free persons: agents equally possessed of the status that freedom requires.

The use of the eyeball test makes for a tight connection between neo-republicanism and the capability approach. For in introducing some of the main ideas of that approach for the first time, Sen (1983) invoked Smith's (1976, 351–352) appeal to the very similar idea that the sure sign of poverty is not having enough of the necessaries of life to be able to live without shame before your fellow. In illustrating that idea for contemporaries, Smith argued that leather shoes counted as essential in his own time and place for enjoying that sort of status: "The poorest creditable person of either sex would be ashamed to appear in public without them."

It is of the essence of government and law, as classical liberals never tired of observing, to interfere in the lives of the people governed. So what then is neo-republicanism likely to require by way of political justice? Assuming that law is inevitable, and desirable—it is needed, after all, to reduce private domination—the neo-republican approach requires that the making and application of law should be subject to the equally shared control of the people on whom it is imposed. No one can complain about having to share with others in the control of law—to complain on this ground would be to treat oneself as special—and no one can have a complaint against the imposition of law if they have an equal share in imposing control over it.

If they enjoyed control over the law, people would ensure that it answers to their shared sense of the terms on which they should live with one another and that it does not constitute a source of public domination in their lives. Popular, equally shared control would enable them to pass a tough-luck test that parallels the eyeball test of social justice. They would be able to think of any law that was personally unappealing, or unappealing to those in their corner of society, that it was just tough luck that social decision-making put it in place; it was not the sign of an alien will operating in their lives.

Much needs to be said on how the institutions of a polity might be designed, and the initiatives of individuals might be disciplined, so as to ensure that people share equally in control of the law, giving the demos or people kratos or power. To develop such an account would be to elaborate on the sort of mixed constitution and contestatory citizenry that tradition supported (Pettit 2012b). This is not the place to explore that topic but it

should at least be clear that as the neo-republican philosophy requires a rich protective law to guard against private domination, so it requires a rich empowering democracy to guard against public.

4.3. Neo-Liberalism

Neo-republicanism puts its faith in law, allowing the market to operate only within constraints that do not jeopardize the legal protection and resourcing required for freedom as non-domination. Neo-liberalism puts its faith in the market, admitting the legitimacy only of laws that are required to keep the peace—in effect, to prevent worse forms of interference than they perpetrate—and to allow commerce to expand and thrive. Contractually based market relations represent the domain within which freedom as non-interference is paradigmatically available to all, on this approach. Or at least that is so on the assumption that no one loses freedom by virtue of arrangements to which they consent, no matter how weak and exploitable the bargaining position they occupy.

What is neo-liberalism likely to defend in the area of social justice, allowing that that is a phrase neo-liberals are unlikely to use? What does their ideal of freedom as non-interference require in the legal ordering of direct and indirect relations between individuals? The answer is: the absence of those forms of interference that the law is well equipped to inhibit. This means: the absence of the violent or perhaps manipulative removal of other people's options in certain choices, for example; the absence of the violent or perhaps manipulative retaliation that would penalize another's choice of option; and the absence of any coercive threat to impose these kinds of ex post or ex ante restrictions on others' choices. In other words, what neo-liberalism would require by way of social justice is nothing more, and nothing less, than what we naturally describe as basic law and order. It is for this reason that the regime promoted under neo-liberal manifestoes is well described as a night-watchman state.

What about measures unrelated to law and order that we generally expect the state to provide? What about its requiring that all should be educated and its providing a basic education out of public funds? Or what about its providing a basic form of social insurance or security: for example, unemployment relief? Or what about its providing emergency medical care or legal assistance? The neo-republican state would cast these measures as bare essentials for a society in which people could be sure of enjoying equal freedom as non-domination. But what view would the neo-liberal state adopt?

Assuming a commitment to treating people as equals, it would certainly have to make education compulsory, and perhaps even provide for the education of those unable to afford it; otherwise certain children might be deprived of a chance to take their proper part in society. But on neo-liberal premises, all of the other measures are likely to be put in question. People can make voluntary arrangements, say by purchasing insurance, to guard against the dangers listed. And such arrangements, by contrast with arrangements introduced on the basis of involuntary taxation, would not involve any interference in the lives of people. Or at least they would not do so, provided that the state left it up to people themselves to decide on whether to take appropriate steps to purchase insurance or the like.

But ~~is not~~ there always going to be bankruptcy and poverty in the marketed society envisaged by neo-liberals? Yes, but neo-liberals will naturally think that state provision, based on involuntary taxation, is likely to be a second-best response to the problem. Why not rely instead on voluntary philanthropy to deal with the problems of poverty? At this point the contrast with neo-republicanism is at its starkest. For not only will neo-republicans not have a principled objection to taxation of the kind made by neo-liberals; taxation may involve interference but under a suitably democratic dispensation it need not involve

domination. Neo-republicans will also argue that philanthropy, as it normally operates, is bound to introduce domination; it will force some people to rely on the goodwill of others to have the resources needed for the exercise of their basic liberties.

At this point in the exchange with opponents, it is common for neo-liberals to argue that there are two different images of human nature at work. On the one side, an image under which many people are so incompetent that they need to be nurtured and supported by others: in effect, to be looked after by a nanny state. On the other side, an image under which people all fare better if they are left to their own resources and devices, as in a night-watchman state, and are forced to sink or swim.

The nanny-state charge may be a fair response to one form of opposition to neo-liberalism but it scarcely sticks against the republican doctrine that emphasizes the importance of non-domination. The measures of social justice for which neo-republicans argue are designed to enable people to walk tall and look others in the eye, and they would fail if they forced them into dependency. There is room for empirical argument as to what form those measures ought ideally to take. But the point is that they are meant to be selected for their capacity to empower ordinary people and that they are properly put in question if there is evidence that they elicit a dependent mentality.

As the thrust of my remarks will have indicated, I believe that neo-republicanism scores decisively over neo-liberalism in its theory of social justice. It does better by the test of reflective equilibrium, as Rawls (1971) calls it, giving a superior structure and greater support to the bulk of our considered judgments about what justice requires in the social world. But the superiority of the neo-republican approach is even more marked in the area of political justice or legitimacy.

If freedom means non-domination, then the ideal of political justice naturally requires us to design things so that the interference of law and government in people's lives is not dominating; in effect, that it is subject to the rich democratic control of citizens. But if freedom means non-interference, then it is not clear what are the demands of political justice on the operation of the state. For law and government all involve interference in people's lives and on neo-liberal premises, this interference is bad for freedom, regardless of how democratically controlled it is. The point was made in 1785 by Paley (2002, 314) when he acknowledged that on the new way of thinking about liberty, "an absolute form of government" may be "no less free than the purest democracy." Berlin (1969, 130) sounds the same theme, nearly 200 years later, when he opines that "there is no necessary connection between individual liberty and democratic rule."

The only lesson that neo-liberalism would seem to support in the area of political justice bears on what the state should do rather than on how it should be controlled. This lesson, familiar from earlier discussions, is that the state should assume such a form—presumptively, a very minimal form—that the public interference it perpetrates is less than the private interference it prevents. There is no reason to think that a democracy would do better than an autocracy in meeting this condition, as indeed Paley registers. And that may account for how rarely neo-liberals argue in support of democracy. It may even explain why neo-liberals have not been prominent in criticizing the special influence that the rich have over government when laws about campaign finance are particularly lax, as in the USA. Indeed it may also explain the popularity of neo-liberalism within circles, for example in China, where democracy is given short shrift.

5. Conclusion

We have seen that the history of thought provides us with two starkly contrasting images of what freedom requires, one classical republican, the other classical liberal. The contrast

between those images shows up in the diverging answers they support to the question of whether Nora, the protagonist of Ibsen's play, A Doll's House, counts as a free agent in relation to her husband, Torvald. And the contrast sharpens as we look to those different approaches to provide bases for reconstructing two competitors in contemporary political theory: on the one side, neo-republicanism, on the other neo-liberalism.

In defending the classical liberal conception of freedom as non-interference, as we saw earlier, William Paley suggested that the republican alternative was too radical to take seriously; it would "disturb the public content with complaints, which no wisdom or benevolence of government can remove." We may agree that the pursuit of freedom as non-domination for all—as distinct from non-domination for the few—was indeed too radical in Paley's time to constitute a feasible ideal of government. But what was true of the eighteenth century is scarcely true of the twenty-first. Although we live in the hey-day of neo-liberalism, now may be just the right time to look again at the ideal of an empowering republic on which Paley and his contemporaries turned their backs.

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Notes

1. I also make extended use of this question in the book-length study (Pettit 2014).
2. There is now an extended literature on the history and nature of republican thought and on the break that classical liberal modes of thought initiated; for an overview see Lovett and Pettit (2009). Contemporary republicanism has its origins in the historiographic works of Fink (1962), Robbins (1959) and especially Pocock (1975), which first revived interest in the classical republican writers and charted the historical continuity of their political ideas. Quentin Skinner argued in a number of essays, later collected (and somewhat revised) in Skinner (2002), that these works had failed to recognize that classical republicanism did not endorse an allegedly "positive" view of freedom as equivalent to a right of participation in government. And building on this insight, Pettit (1996, 1997)—and Skinner (1998) himself—casts the republican conception of freedom as one according to which it is the absence of domination or dependence on the arbitrary will of another, and not the absence of mere interference, that matters. This idea of freedom as non-domination has become the crucial unifying theme for those who work within the neo-republican framework, although of course within that frame there are also some differences of emphasis and detail (Pettit 2002). For a recent, alternative history of thinking about freedom, see Schmidtz and Brennan (2010).
3. There are elements of the new conception of freedom in the work of Thomas Hobbes, as I urged in Pettit (1997). But Hobbes's conception of freedom is so complex that Bentham may reasonably be taken to be the founder of the new approach. See Pettit (2008), Skinner (2008), Pettit (2012a) and Skinner (2012).
4. I follow Berlin (1969) in taking freedom as non-interference to require, not just that you can act as you actually prefer to act, but that you can act as you prefer regardless of what option you happen to prefer. This construal of Lind and Bentham is reasonable, since it is needed to support the claim that coercive law inevitably compromises freedom as non-interference: that it compromises it even for someone who happens to prefer only options that the law allows. For a fuller discussion of these issues, see Pettit (~~2015~~, Pt 1).
5. Some classical liberals thought of freedom as non-interference as a value to be promoted overall in the way that utilitarians thought that overall happiness or utility should be promoted. Others drew on an earlier way of thinking to identify natural rights to various forms of non-interference, defending a deontological rather than a consequentialist doctrine. The divide corresponds to the contemporary division between the sort of doctrine espoused on the one side by economic libertarians and on the other by those who identify with the political libertarianism of Nozick (1974). I ignore the divide here.
6. Some opponents of the republican view maintain that Nora is not free in other choices and does not enjoy the same overall freedom as non-interference that she would enjoy in the absence of Torvald's power. See Carter (1999) and Kramer (2003). For a debate around this claim, see Laborde and Maynor (2007).
7. An up-to-date list of English works in neo-republican thought should include these books as well as my own (Skinner 1998; Brugger 1999; Halldenius 2001; Honohan 2002; Viroli 2002; Maynor 2003; Lovett 2010b; Marti and Pettit 2010; MacGilvray 2011); these collections of papers (Van Gelderen and Skinner 2002;

Weinstock and Nadeau 2004; Honohan and Jennings 2006; Laborde and Maynor 2007; Besson and Marti 2008; Niederbeger and Schink 2012) and a number of studies that deploy the conception of freedom as non-domination, broadly understood (Braithwaite and Pettit 1990; Richardson 2002; Slaughter 2005; Bellamy 2007; Bohman 2007; Laborde 2008; White and Leighton 2008; Braithwaite, Charlesworth, and Soares 2012). For a recent review of work in the tradition, see Lovett and Pettit (2009).

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