

Competing for Liberty: The Republican Critique of Democracy

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Freedom as non-domination has acquired a leading status in political science. As a consequence of its success, neo-roman republicanism also has achieved great prominence as the political tradition that delivered it. Yet despite the fact that liberty in the Roman mode was forged not only in direct confrontation with monarchy but against democracy as well, the relationship of republicanism to democracy is the great absentee in the contemporary debate on non-domination. This article brings that relationship back into view in both historical and conceptual terms. It illustrates the misrepresentations of democracy in the Roman tradition and shows how these undergirded the theory of liberty as non-domination as a counter to political equality as a claim to taking part in imperium. In so doing it brings to the fore the “liberty side” of democratic citizenship as the equal rights of all citizens to exercise their political rights, in direct or indirect form.

In the last decade, the neo-roman republican theory of freedom as non-domination has acquired a leading status in political science and redesigned the geography of political studies. Today, freedom as non-domination plays a prominent role not only in political theory and the history of political thought, domains in which it arose in the mid-1980s, but also in the theory of justice, public policy, and economic researches (Ackerman and Alstott 1999; Casassas 2007; Sen 2009, 301–4; White 2011); constitutionalism and human rights studies (Bellamy 2007; Bohman 2008; Laborde 2010; Miller 2007); and studies in globalization governance (Slaughter 2005; Waldemar 2006). The realignment of discourses on liberty around one dominant theory had not happened since the decade after World War II, when Isaiah Berlin ([1958] 1992) codified the liberal conception of freedom as non-interference; it is this conception that liberty as non-domination has now largely replaced. As a consequence of this success, neo-roman republicanism also has achieved momentum as the political tradition that delivered it (Dagger 1997; Laborde and Maynor 2008; Maynor 2003; Podoksik 2010; Sunstein 1988). Indeed, although its main theorists—Quentin Skinner and Philip Pettit—have proposed different interpretations of what they mean by republican liberty (Pettit 2002; Skinner 1998, 81–83), both agree that it is a status (of the citizen or the freeman *versus* anyone dominated by the will of another) and not a natural kind of right (freedom to do what one pleases without being interfered with provided that no harm to others is involved). As such,

liberty as non-domination entails a legal order that is based on a constitutional system of control that limits state power. As a new theory of negative liberty, it requires not political consent or “authorship” (that people make, whether directly or indirectly, the law they obey), but “editorial” inspection and control. “Short of giving individual people or groups of people a power of veto over government, it might be possible to give them a power of contestation” (Pettit 2001, 164). While this rendering of liberty reconciles republicanism with liberalism, it puts it in competition with democracy, which entails authorship, not simply editorial judgment (Viroli 2002, 42). Yet the relationship of neo-roman republicanism with democracy is the great absentee in the rich debates that liberty as non-domination has prompted. This article takes that theme as its central concern.

In its early stage, neo-roman republicanism engaged in a robust diatribe against liberalism, claiming in particular that its idea of liberty as non-interference was unequipped to detect and oppose servitude or dependence (Pocock 1981; Skinner 2002b). Recently, however, important studies have proved that the relationship between liberalism and republicanism is actually more one of degrees of similarities and differences than of opposition (Dagger 2008; Podoksik 2010, 232–33); in fact republicanism is not only compatible with liberalism but either gave birth to it (Kalyvas and Katznelson 2008) or provided modern societies with a conception of liberty that fits both a market economy and an individualistic moral culture (Spitz 2005). Indeed, if we turn our attention from citizenship in the narrow sense as the negative liberty to enjoy one’s life and goods in immunity from arbitrary action to a more political sense as the right to take part in *imperium*, the distance of neo-roman republicanism from liberalism almost disappears while its distance from democracy increases. Liberty as non-domination consists in not being exposed to a power that is *de facto* and potentially uncontrolled, as when “someone lives at the mercy of others” or suffers the will of a *dominus* (Pettit 2001, 137). This conception makes democratic power no less potentially dangerous because, according to republicans, it does not originally come with limitations, which have to be imposed on it by constitutional constraints. Consequentially neo-roman republicanism argues that

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there is no “definitional connection” between liberty as non-domination and “democratic control” (Pettit 1997, 30). This was also Berlin’s inspiration in arguing that liberty as non-interference stands opposite to liberty as self-government: “There is no necessary connection between individual liberty and democratic rule,” because the question to which liberty protection requires an answer is not “who governs me?” but rather “how far does government interfere with me?” (Berlin [1958] 1992, 130). Thus no less than liberty as non-interference, liberty as non-domination is suspicious about the implications of the democratic principle of taking part in *imperium*.

In this article I take this suspicion as the starting point of my analysis of the mistrust and criticism of democracy within the Roman and neo-roman tradition. My argument has historical and theoretical components. On the historical side, I propose two interrelated ideas: First, the conceptualization of republican liberty in its Roman rendering was perfected through a direct confrontation with a democratic view of politics; and second, its rivalry with democracy rested on an underlying resistance against the Athenian notion of parity (*isonomia*) as a kind of equality that exceeds the legal status of the free person and translates into a vindication of an equal political right to participate in lawmaking. To support these arguments, I propose a comparison between the systems of collective decision making in Rome’s pluralistic and hierarchical assemblies and in Athens’ assembly of equals. As mixed government was the answer against simple democratic government, so *aequa libertas* was the answer against *isonomia*.

On the theoretical side, the question relating to the negative rendering of republican freedom is whether its anti- or nondemocratic impetus is in the end counterproductive to its own very valuable goal of achieving and securing individual liberty as non-domination.¹ Equality in respect to political power is an essential condition for the enjoyment of liberty: This principle is democracy’s contribution to the theory of political liberty, the meaning of *isonomia*. My view does not amount to a call for participatory versus representative and constitutional democracy. My claim is that a secure liberty includes not only the binding quality of legal norms, as neo-roman republicans argue, but also the process of opinion and will formation in which citizens participate as equal in rights (Habermas 1998, 249–51). The opposite of secure liberty is subjection as obedience to laws that citizens have no role in making. To paraphrase Pettit, my argument is that the importance of “democratic control” comes from the fact that it *is* in a “definitional connection with liberty” and *not* merely “a means of furthering liberty” (Pettit 1997, 30). This can be appreciated whenever we examine the meaning of liberty in the Roman and the Athenian traditions. Thus as a friendly rejoinder to the neo-roman view of liberty, this article provides both historical and conceptual attention to what might be called the “liberty side” of democratic citizenship. This political condition

(equal political liberty or *isonomia*) makes liberty from subjection more, not less secure because it challenges certain distributions of power, yet not power per se, and its critical function culminates in citizens’ claim to remove the factors that prevent them from living together as political equals. Nonetheless, it does not in itself involve a perfectionist call for self-realization as with positive liberty;² if anything, it can be regarded as a precondition for the pursuit of an autonomous moral life.

The article proceeds in five sections. The first offers an overview of the nondemocratic core of republicanism. The second distinguishes the neo-roman conception of liberty from other conceptions that also belong to the republican tradition and shows how its Roman as Ciceronian background translated into countering democratic forms of sharing in *imperium*. The third section explains the difference between Roman *aequa libertas* and Athenian *isonomia* as one between liberty that does not require equal participation and liberty that requires parity in the political domain of decision-making. The fourth section illustrates and discusses the misrepresentations of democracy that originated in the Roman tradition and that still taint the distrust of democracy in neo-republicanism. The final section concludes.

ROMAN REPUBLICANISM’S DISCONTENT WITH DEMOCRACY

We owe to the republican vision of liberty and government some of the most successful and enduring arguments against democracy. These arguments have depicted democracy as an immoderate regime, which has *doxa* and voting as criteria for making laws and does not have within itself antidotes against demagoguery and populism, its intrinsic defects. The ancient metaphor of democracy as a ship ruled by sailors with no knowledge of seafaring and buffered by the winds of public opinion (Plato 1992, 162; Polybius 1986, 309) gave voice to one of the most robust and long-lived components of Western political thought. Through time, discontent with democracy became independent of the republican theory of government and a constitutive component of the modern theory of democracy, which “is often constructed as being concerned, in the first instance, with a voting rule for determining the will of the majority” (Ober 2008, 3). Still today, democracy seems unable to produce wise and good decisions and to secure individual liberty unless it is preemptively constrained by rules that subject “the voting collectivity” to a “discipline” it cannot give to itself (Pettit 2000, 134). That inability is said to be caused by the interpretation of liberty as “achieving participation,” rather than “avoiding” arbitrary interference by powerful people (also majority assemblies), as republicanism instead suggests (Lovett 2010, 218; Pettit 1997). As a “system whereby

¹ Richard Dagger (2008, 186) proposed a similar question.

² Constant ([1819] 1998) and Berlin ([1958] 1992) theorized the existence of a direct link between the ideal of political self-government and the ideal of moral perfection of the self as expressions of liberty as autonomy.

the collective will of the people rules,” democracy is endogenously unreliable because it gives centrality to legislative bodies (Pettit 2004, 59). But securing liberty would entail narrowing the domains in which decisions are made by voting (whether by citizens through referenda or by parliaments) in favor of depoliticized juridical procedures of contestation or independent authorities that, in effect, replace actuating politics with a negative action by judgment and impartial decisions (Pettit 2004; Rosanvallon 2008; Urbinati 2010).

These critical arguments originated in the Roman republican tradition, particularly in its identification of democracy with popular elements in the Roman constitution and society. Yet as we see later, democracy is different from popular government. As John Dunn (2005, 54) has argued, Rome gave us a large portion of our political vocabulary, from citizenship and the constitution to republic and federation, but did not give us “the word *democracy*.” Athens and Rome represented two rival models of free government and their rivalry never disappeared. An historical reconstruction of the modern reception of these two models would show that the intensity of the rivalry between Rome and Athens tracked the intensity of the vindication of self-government and political equality and became particularly visible when that vindication was high (Guerci 1979; Rawson 1969). Attacks on democracy thus reached their peak in the eighteenth century, the century of republican renaissance and of the admiration for ancient Rome. That century began with a studious assault on political equality (by, among others, David Hume) and the distinction between an aristocratic republic and a democratic one (mainly by Montesquieu); it ended with the first powerful criticism of democratic sovereignty (by Edmund Burke) and the violent rejection of Condorcet’s Constitution Plan in 1793, the first modern democratic constitution ever written (Cambiano 2000, chaps. 1 and 2; Palmer [1959] 1970; Urbinati 2006, chaps. 5 and 6). Disdain for democracy was exhibited also on the other side of the Atlantic, where, as we know, the authors of the *Federalist Papers* criticized democracy as the rule of the lower classes and took care to distinguish it from the republic.

Today, republicanism and democracy are practically held as synonyms. Cicero’s discontent with democracy’s goal of making decisions an issue of “popular vote” and “a matter of opinion” (Cicero 2008b, 121) seems to be an object of erudition at the most. In the last century, particularly after World War II, pivotal works have successfully emancipated democracy from the classical and modern accusation of being about mob rule or simple majoritarianism. In fact, democratic thought has been enriched by the modern understanding of society and the state, and in particular by the distinctions between private individuals and citizens, between informal polling of opinions and public deliberation according to procedures and constitutional norms, and between participation as self-interest and participation as a quest for general goods as conditions for political equality, such as the educational function of participation as a school of competence in citizen-

ship (Dahl 1956; Dewey [1927] 1991; Habermas 1996; Kelsen [1945] 1999; Pateman 1995; Przeworski 1999). Studies in deliberation and representation have offered additional arguments about the role of democratic citizenship in making liberty secure (Cohen 1997; Elster 1997; Manin 1997; Pitkin 1967). This article presumes these established contributions as a subterranean guide in its examination of the critique of democracy within neo-roman republicanism.

Although neo-roman republicans accept consent to majority rule at the level of practice, their theory of liberty as non-domination nonetheless echoes the Ciceronian distrust of the idea that majority support is a criterion of a good decision. Their distrust for democracy is an example of criticism “from within,” by which I mean that it takes the form of distress with the “popular passion, aspirational morality and sectional interests” (Pettit 2004, 54) that democracy’s appeal to consent propels. Certainly neo-roman theorists emphasize the importance of self-government, but construe it as a *means* to secure individual liberty that is nondeterminant. They see it as essential not to protect individual liberty but to form virtues and good citizenship, basic conditions for making institutions work well, and to enable citizens to support these institutions with trust, not simply consent. They do not regard political equality as a condition essential for the enjoyment of liberty. To republicans, ancient and modern, being a citizen is not in and of itself a condition of liberty if citizens do not cultivate the crucial quality that Cicero had described as *virtus* (Skinner 1993, 303).

Yet democracy holds self-government as a principle, regardless of the quality of the outcome and the virtues of the citizens. It is for this reason inclusive and associated with political equality, the essential premise of liberty that democracy contains within itself. Democratic procedures are valuable not for the results they allow, but for the chance they give citizens to express their opinions freely and openly and also to organize with the purpose of challenging existing laws or prompting a new majority. Above all, democracy is about freedom. The pursuit of equal political freedom—understood as every individual’s right to participate directly or indirectly in the making of the law he or she is to obey—is what characterizes democracy as a distinct form of government since its classic Athenian origins (Aristotle 1997, 1317b; Raaflaub 1996). It was for this reason identified with *isonomia*, a claim of liberty through political equality, not simply a legal guarantee against powerful actors. Although democracy is not the topic of this article, this brief outline of the idea of liberty in democracy may help contextualize the critique that springs from the neo-roman view of liberty. It would be absurd, of course, to claim that neo-roman republicans dismiss self-government and political equality; the point, rather, is that neither of these two conditions figures as determinant in their formulation of liberty. Indeed, neo-roman republicans deem the association of freedom with self-determining democracy peculiar to a positive concept of liberty, which is, to them as to liberal theorists, an open door to arbitrary interference.

Thus, it is important that a discourse on the relationship between republicanism and democracy starts with the neo-roman conception of liberty: In facing and countering this republican critique, the democratic theory of government would have the chance to demonstrate that democracy actually *is* able to secure liberty and that political equality *is* a secure means to it. Answering the republican challenge would provide us with the key to the solution of another important problem that, as noted, follows from that republican critique; namely, that democracy is close to, and sometimes undistinguishable from, demagoguery and populism and that it does not have within itself an antidote to them—an antidote that, instead, a republican government can provide. I focus on this last critique, considering its clarification as preliminary to the recovery of democracy in its full dignity as a theory of liberty, because it is a theory of self-government that includes both the will (voting) and opinion as essential elements (Urbinati 2010). My argument inverts that made by John McCormick in his *Machiavellian Democracy* (2011), insofar as it claims not that republicanism is distraught with democracy because of the latter's populist nature, but that republicanism (in the Ciceronian or neo-roman tradition) gives democracy a populist identity in order to conclude that it is not secure for liberty. The fact that a government is a representative rather than direct democracy does not change the traditional worry of republicanism about tyranny; in fact, it compounds that traditional concern with a worry about “the tyranny of the democratic elite” and parliaments (Pettit 2001, 162).

THE BUILDING OF NEO-ROMAN REPUBLICANISM

A Divided Tradition

It is important that I clarify my choice to circumscribe republicanism to the neo-roman theory of liberty and government, because of course not the entire republican tradition is negativist in the juridical mode of thinking proposed by neo-roman theorists. Consider, for instance, Hannah Arendt's vision of the *vita activa* as discursive participation in the public arena that exalts the uniqueness of the individual citizen; or Pocock's Greek ideal of the polity as practical education in living a virtuous life; or Maurizio Viroli's emphasis on the duty toward the community and the ethical and even religious component of political liberty; or finally, Michael Sandel's ideal of solidarity as the cement of a communitarian republic (Arendt 1978; Pocock 1975; Sandel 1995; Viroli 2002). These authors share with neo-roman republicanism the criticism of the liberal conception of liberty as non-interference as the truest or privileged conception of liberty. However, they criticize it not only for its narrow identification of freedom with individual rights against the state but also for what they regard as the damaging ethical implications to politics that arise from its individualistic foundation. For these republican theorists, a negativist conception

of political liberty is thus insufficient because, by relying primarily on the checking role of institutions and individual interests, it depresses the controlling and active function of virtue and thus weakens the legal and constitutional foundations of the commonwealth.³

Thus we need to focus on the work of the neo-roman theorists as they propose a negative conception of political liberty with the aim of making individual liberty more secure, thus implying that it is precisely what makes liberty open to an active political agency that is the main source of the problem. They identify the ideal of political action in civic humanism with the idea of liberty in democracy and criticize both as examples of positive liberty. Neo-roman theorists are no less distressed with the “liberty of the ancients” than are the liberals, and like Isaiah Berlin they are ready to concede that political freedom need not be thought of as residing in “collective control over the common life” (Skinner 2002c, 242; 2002a; 2006; Taylor [1979] 1992, 212). Based on this anti-positive liberty premise, they argue that, despite the earlier mentioned differences within republicanism, there is nonetheless one republican “tradition” that was “unified across time” and that relies on the authority of the same ancient and modern authors and texts (Pettit 1997, 19). This tradition has been nourished by a lasting admiration for the Roman Republic and a conception of liberty whose theoretical format is preeminently Ciceronian (Pettit 2001, 144–49; Skinner 2002b, 205–10). In claiming to be a “unified” tradition that has the Roman experience at its core, the neo-roman conception of liberty sets the meaning of republicanism and endorses the Roman antagonistic relation to democracy. It makes rivalry with democracy a constitutive component of republican identity.

Conceptions of Liberty

Contemporary scholars of political thought agree on the meaning, origin, and implications of the three conceptions of liberty that have shaped political life and the government of Western societies, two of which are negative or obstructive (liberty as non-interference and liberty as non-domination) and one that is positive or assertive (liberty as autonomy or self-government). The origins of liberty as non-domination and of liberty as autonomy are ancient; they are broadly associable with the Roman Republic and Athenian democracy and their conceptions of civil liberty, respectively: *aequa libertas* and *isonomia*. The roots of liberty as non-interference are instead modern; they are associable with a liberal society and the equality of rights that all individuals enjoy naturally as human beings before they do as citizens. Although republican liberty and democratic liberty are eminently political, the third, liberal conception of liberty claims to be rooted in human nature and to be prior to politics. As for their

³ The identification (for critical purposes) of republicanism with the civic interpretation can still be found in Habermas (1998). Skinner's main effort has been precisely to interrupt this identification. More radically, Pettit (1997) redefined the “tradition” by unifying it under the neo-roman conception of liberty.

theoretical contents, these ideas evolved from within specific polemical contexts. The consciousness of the dualism between liberty as non-interference and liberty as autonomy is modern and ostensibly arose in counterrevolutionary times: It was explicitly inaugurated by Benjamin Constant in 1819 and revived by Isaiah Berlin during the Cold War (Berlin [1958] 1992; Constant [1819] 1998). The consciousness of the dualism between liberty as non-domination and liberty as non-interference, in contrast, is recent and testifies to the renaissance of the neo-roman republican theory of liberty in the age of civil rights: Its starting point was Quentin Skinner's 1984 essay on "The Idea of Negative Liberty" (Skinner 2002b).

After World War II, reinterpreting republican liberty in the negative has been undertaken for the sake of separating republicanism from the ideological and historical experiences associated with the "terror of virtue" and the primacy of political will that derailed the French Revolution (Jainchill 2008). In making liberty as non-domination prior to liberty as self-government, neo-roman republicanism seeks to be identified with the defense of the rule of law ("the empire-of-law condition") and legal constitutionalism, with particular attention to the way citizens obey, rather than to the fact that we obey a law to which we give our consent, as per the interpretation of political liberty as autonomy (Pettit 2002, 348–50). Within this view, it is democracy's very nature that demands that the role of politics be decreased. Indeed, although democracy's motivation is good (to remove arbitrary power from the state), its achievement turns out, fatally, to be bad because of its "majoritarian" and "populist" character (Pettit 1997, 30–31). Hence, making liberty secure entails both interpreting democratic control as not "definitional" of liberty, but "editorial," and interpreting the editing at the individual, not the collective level; for example, by citizens appealing to courts against public officers on matters of private law (Pettit 2001, 167–72). As one critic has observed, "editorial democracy might be satisfied by having some sort of statutory watchdog" (Bellamy 2007, 167).

A collateral consequence of this interpretation is that it makes republicanism a natural competitor with that other ancient, political conception of liberty—that offered by democracy. Despite "later reconstructions of the tradition [of republican liberty] as Athenian in origin and as committed to one-eyed enthusiasm about democracy and participation, the tradition was essentially neo-Roman in character" (Pettit 1997, 166). Liberty according to the Romans (*aequa libertas*) is clearly separated from and actually contrasted with liberty according to the Athenians (*isonomia*). Political liberty, we are here invited to think, requires a negativist perspective because it consists first and foremost in *resisting against* either a factual or a threatened arbitrary intervention by those who are in power, rather than in participating on an equal footing in the exercise of power. Is democratic control important to make liberty secure? Not really, because in this view democratic control is about "furthering liberty" rather than determining it (Pettit 1997, 30). To paraphrase the

distinction made by Pocock (1981, 356), "being free by law" is made prior to and disassociated from "being actively free in the city." To neutralize the latter, neo-roman theorists have devised a unitary redescription of the republican tradition according to which "the primary focus is clearly on avoiding the evils associated with interference" because "people's eagerness for freedom comes of a desire, not to rule, but rather not to be ruled" (Pettit 1997, 27–29).

The Polemical Nature of the Conceptions of Liberty

The rivalry between neo-roman republicanism and democracy is thus contained within the conception of liberty as non-domination. As Skinner notes (2002c 248–49), this liberty owes its "phraseology entirely to the analysis of freedom and slavery at the outset of the *Digest* of Roman law... If everyone in a civil association is either bond or free, then a *civis* or free citizen must be someone who is not under the domination of anyone else, but is *sui iuris*, capable of acting in their own right." Liberty is first of all a legal status of nondependence as *sui iuris* (free citizen) versus *alieni iuris* (subjected person or slave). Whereas the accidental goodwill or utility calculus of a ruler (individual or collective) decrees the latitude of liberty as non-interference, the constitution of a secure political order (the rule of law) guarantees the latitude and enjoyment of individual liberty, both private and political (Viroli 2002, 47–49). Thus, liberal liberty, or freedom as non-interference, turns out to be structurally unsafe and incomplete precisely because it disregards norms and power relationships in which political authorities and citizens alike are necessarily implicated.⁴

The divergence between these two negative conceptions of liberty is remarkable: Indeed, whereas in the one case the private or particularistic will of the public actor, whether singular or collective, is taken to be an indication of liberty, in the other case the indication is an equitable law. Republican liberty exists within and under a constitutional law (*buoni ordini*), not before or outside or against the law. It requires a legal and institutional order to be both enjoyed and guarded by the citizens, and this is what makes it both negative and political, an expression not of natural rights but of rights that are enjoyed by individuals who are members of a political community (Skinner 1998, 20). Politics entails institutions; it does *not* involve per se any quest for participation of all the subjects in the lawmaking process insofar as individual freedom cannot, according to these writers, be "equated with virtue or the right of political participation" and does not "consist in membership of a self-governing state" (Skinner 1998, 74, fn. 38). This is where republic and democracy diverge.

⁴ In devising his interpretation of republican liberty as *non-domination* or *non-arbitrary interference* Pettit has explained the difference between his rendering and Skinner's nondependence (Pettit 1997, 51; 2002; Skinner 2002c, 255).

Whereas democracy entails obeying the laws we make and pertains thus to the exercise of power, neo-roman republicanism is concerned with liberty and the containment of power. Hence, like Berlin, it holds that liberty pertains to the manifestation of one's will and entails a call for the rule of law rather than for political legitimacy. In stressing the distinction between "an unregulated action and an action regulated by the law," neo-roman republicans distance themselves from the democrats, who complete that distinction with the specification that the action should be "regulated by an autonomous law (one accepted voluntarily)" (Kelsen [1945] 1999, 259–60; see also, Bobbio [1954] 2005, 144). It is against this view that neo-republican theorists claim that for liberty to be guaranteed and enjoyed what is essential is the empire of the rule of law—procedures and magistrates—not necessarily participation regulated by procedures. Whereas the neo-roman republican view has, in Pettit's terms, a "definitional connection" with liberty as non-domination, the democratic one figures as an expansion of liberty and thus an expression of power.

Skinner interpreted the differences between the liberal and republican liberties as the outcome of an ideological struggle, and he reconstructed the titanic battles they fought from the age of Italian civic humanism to that of the English Civil War. He stressed the polemical nature of the visions of liberty and showed how the battles that republican liberty fought in modern times against liberty as non-interference were a sign of the persistence of both the Roman tradition (with its dualism between freedom and slavery) and the anti-republican goal that lingered behind liberty as non-interference.⁵ One may legitimately wonder whether the polemical attitude that Skinner ascribed persuasively to political ideas and to the theories of liberty in particular cannot be used to explain also the relationship between republicanism and democracy. This I intend to do.

Asking the Right Question

The question to be put to the neo-roman republican theory of liberty may be phrased as follows: "If liberty as non-interference was born out of an ideological confrontation against liberty as non-domination, what was the polemical environment within which the republican conception of liberty developed?" Why not suggest that the republican conception of liberty too achieved momentum in the course of a polemical confrontation and that the democratic conception of equality was part of it? After all, much as with Thomas Hobbes' theory of liberty, it would be difficult to understand the Roman conception of *aequa libertas* without appreciating its antidemocratic meaning and implications. It is certainly true that the monarch (whom the Romans identified with the tyrant) was chronologically the first

absolute power the republic faced and opposed—in fact it was the monarchy's arbitrary and corrupting power against which republicanism forged itself. Still in the seventeenth century, these antimonarchical "claims about national servitude" were quickly made by commonwealth writers on behalf of Parliament (Skinner 2006, 167). However, there was a second rival force against which Roman republicanism fought and constructed its identity. In the age in which the main classical republican authors—Cicero, Livy, and Sallust—wrote their work, the struggle of the Roman senatorial class, the depository of *aequa libertas* and civic virtue, was not against monarchy or regal tyranny (a struggle that was successfully concluded by 509 BCE) but against the popular quest for a more equal distribution of wealth and power (Crawford 1993; Nicolet 1980; Scullard 1959, chaps. 1–9).

Thus, the republican theory of liberty was forged in the midst of polemical confrontations against two forms of arbitrary power: that of the one (tyranny) and that of the multitude (democracy). This pattern was to be resumed at other critical moments of regime change; for instance, in the seventeenth and the eighteenth centuries (Ayes 1997, chap.1; Robbins 1969, 40–43; Scott 1991, 233–36; Skinner 1998, 30–31). As Skinner wrote of English commonwealth leaders, "the right solution, they generally agree, is for the mass of the people to be represented by a national assembly of the more virtuous and considering, an assembly chosen by the people to legislate on their behalf," the assumption being that people are inclined to corruption rather than virtue (Skinner 1998, 32). The price that commoners would have to pay for political inclusion was their "public silence" (Milton [1659–60] 1950, 174–75). Thus, James Harrington proposed to transfer the deliberative function from the incompetent people to the competent Senate, whose yes/no proposals would be silently voted on by the popular assembly. His fear of incompetent citizens speaking out in assemblies (fear of demagoguery) led him to distinguish between "good commonwealth" and "pure democracy," a distinction that Montesquieu and Rousseau would later enrich and perfect (Harrington [1656] 1996, 143, 38, 29; Montesquieu 1989, Book 2, chap. 2; Rousseau 2004, Book 4, chap. 2; Scott 1993, 148–60). Fear of monarchy and fear of democracy also went hand in hand in the age of the French Revolution and were shared by moderate and republican thinkers alike (De Dijn 2008; Hartog 2000). For example, Gabriel Bonnot de Mably, whose works inspired many of the leaders of the French Revolution, declared Athenian democracy to be a very bad model because it gave Athenians an equal opportunity to compete for, and thus aspire to, all magistracies (Mably 1749, 51, 80).

When we come to contemporary neo-republican historians and theorists, we see that they too have perfected their negative redefinition of political liberty in opposition to positive liberty. Writing during the Cold War, they intended by this move to mark their distance not only from the earlier mentioned civic interpretations of republicanism but also and more importantly from a democratic conception of political participation.

⁵ The emergence of an individualistic conception of liberty and the formation of centralized monarchies have been considered as the main factors that proved the inability of small republics to adapt to the economic transformation of the market society (Venturi 1971).

As Skinner has shown, starting with the late thirteenth century, the vindication of the Italian republics' independence against empire and the church was simultaneously conducted both in the *civic* modes and in the *juridical* ones: The former were inspired by the humanistic project of autonomy and perfection that individuals would achieve through the *vita activa*, and the latter were entrenched in the Roman tradition of the rule of law and the legal guarantees of individual freedom. Whereas the civic mode became through the centuries the backbone of a positive conception of liberty that historians have made responsible for Enlightenment republicanism and the ensuing debacle of the Terror (Baker 1990; Furet 1981), the juridical mode was instead more rigorously anchored in the Roman law and became the true ancestor of negative liberty and the inspirer of modern constitutional government.

At the moment that the neo-roman republican vision showed that liberty as non-domination was capable of fulfilling the promise of negative liberty better than liberalism, it settled its polemical stance toward democracy. Thus, both liberals and neo-roman republicans had an identical adversary, positive liberty, with the caveat that the latter were more effectively adversarial than the former and were for this reason better equipped to protect individual liberty against democratic decisions as well (Pettit 2003). The consequences of this revision are twofold. On the one hand, liberty as non-domination is more firmly tied to the legal than to the political or even the social condition of liberty (Markell 2008). On the other, it requires a constitutional state and the rule of law, but does not command any specific form of government: People can be said to enjoy liberty from the oppression of the powerful even when they do not participate in government, as seventeenth-century English republicans made clear (Skinner 2002b, 199). It was in relation to this juridical expansion that Pocock has spoken of a liberal transformation of neo-roman republicanism: "Liberty under law had nothing to do with their having a voice in the government" (Pocock 1981, 357). The juridical circumscription of liberty and containment of political equality to the minimum conditions of inclusion in the legal order and the enjoyment of the rule of law are the main characteristics that result from the polemical relation of neo-republicanism with democracy.

EQUITY VERSUS EQUALITY

Up to this point I have offered an overview of the character of the Roman and neo-roman republican tradition in regard to the theory of liberty. I now return to the Roman Republic. As anticipated at the start, the identification of the popular elements in Roman government with democracy was at the origin of the most enduring republican arguments against democracy: that of democracy being a simple (as not mixed) form of government and thus dangerously prone to arbitrary decisions like any simple government, and that of anchoring the legitimacy of the law in the will of a part of the people (whether in the forms of the

populace at large or of the majority) and thus being de facto a kind of tyrannical domination. These critiques inspired two conclusions: (1) Democracy is unable to achieve good and competent decisions because it gives preference to numbers and quantities rather than competence and quality, and (2) politics is an activity and as such an expression of virtue, rather than consent. On the Roman view, "legal equality—the object of free peoples—cannot be preserved" in a democracy because "what people call equality is in fact very unfair. When the same degree of honor is given to the best and the worst (and such must exist in any population), then equality itself is highly inequitable;" for these reasons "this is the least admirable" of the forms of government (Cicero 2008a, 23, 77). This was the central premise of Ciceronian republicanism, which deserves some close attention.

The Senate and the people were the two institutionalized components of the Roman Republic, in which the political competition for magistracies was ideologically divided between the *optimates* and the *populares*, even though both camps were constituted by members of the ruling elite who had no great sympathy for the plebs.⁶ At the twilight of the Roman Republic the fight between these two factions became dramatic. This drama was the cradle of the "tradition" of the republican conception of government and liberty that has inspired republican theorists ever since. Cicero defended the republic's institutions against the threats coming from both "excessive power" (mainly the single ruler) and "extreme liberty" (mainly the collective or the populace at large) (Cicero 2008a, 30). He linked liberty to protection against both the *excess* of power and the *abuse* of power. To counter both, Cicero linked liberty to the *virtue of moderation*. This move was strategic and meant to secure the protection of the status quo. What Cicero meant by linking liberty to protection against both abuses of power and excess of power is that society itself and all agreements between persons are made on the basis of equity (*equitas*), not equality, and are preserved on the basis of trust (*fides*), not consent. Immoderation is a violation of equity and trust alike. It means breaking the equilibrium among classes and clearing the way to the promotion of equality in power, thus identifying legitimacy with consent, which Cicero regarded as the source of both excessive power and extreme liberty. As immoderation was the main source of subjection, moderation was the virtue that presided over just power and fair liberty as both a personal quality of the citizens and the magistrates, and the ordering rule of a mixed constitution. From this ethical and political justification of the idea of checks and balances, the vision was born of a republican order as a more moderate and desirable alternative not only to democracy but also to monarchy or tyranny.

⁶ The difference was that the *optimates* had a traditional approach that favored the Senate, whereas the *populares* promoted the popular cause and favored popular institutions. This is "no modern left-right distinction. Freed men and wealthy plebeians could adopt the 'optimiate' position as could nobles and equestrians take on that of the *populares*" (Coleman 2000, 241; Wood 1988, 194).

Cicero's idealized republic was meant to promote a harmonious yet hierarchical participation of the noble and popular orders in the public realm. This was the meaning of *concordia ordinum*. Concordia was both the result of, and the condition for, an interpretation of the virtues of justice as *equity*—that is, the assessment of recognition in proportion to social status and responsibility toward the republic—*not parity*. Consequentially, liberty was conceptualized as the outcome of a robust anti-egalitarianism, within which equality under the law was disassociated from equality of political rights or an equal individual chance to be elected and to contribute to the government. *Aequa libertas* meant “a law equally binding on patricians and plebeians” and was defined not with regard to individuals but to classes of citizens (Livy 1998, III. 31, 34; Wirszubski 1968, 10–11). It denoted liberty in relation to the *status* of someone as a member of a group, not in relation to the individual. This is what made it truly different from democratic *isonomia*, as we see shortly.

Yet the republican order must be able to make inequalities in status and in the distribution of responsibilities and honors stir recognition and emulation, not envy or resentment. The rhetoric of virtue was used for the sake of achieving that uneasy task. This explains Cicero's devastating attack against the Gracchi's politics as divisive and partisan: Indeed, on his account their vindication of an agrarian reform (redistribution of land to benefit the poorest) fueled the popular desire to have “more” (more land and/or more money), and that passion radicalized social conflicts by pitting citizens against each other and inducing them to seek their interests first and above the good of the republic (Cicero 1990, 253).⁷ *Substituting equality for equity* was thus the evil to be avoided, because concord “cannot exist when money is taken away from one party and bestowed upon another” or when redistribution of wealth becomes the fiscal politics of the state (Cicero 1990, 255). Thus the “properly mixed constitution consists of a *concordia* of the social orders, devised, however, to guarantee the political domination of the aristocratic landholding minority” (Wood 1998, 193).

Since ancient Rome, combining inequality with an honorable tradition and the rule of law has been a characteristic of nondemocratic government and the vision of a corporate, not an egalitarian and individualistic, society. Historically, having this combination as the goal induced republican theorists of all times to disassociate equal rights from equal power (Atkins 2005, 481; Cicero 2008a, 23). As Janet Coleman notes, “what the republic is, is a ‘reconciliation’ of irreconcilable conflicts of interest, of irreducible views on merit and status, a constitution held together by means of a law that is agreed to be just for all and thence produces the concord of the orders” (Coleman 2000, vol. I, 285). In Roman society, “at least for the freeborn,” there was “some measure of personal liberty, but not equality” (Taylor 1949, 3, 26).

⁷ Niccolò Machiavelli also criticized the Gracchi for injecting civil strife or a kind of conflict that was detrimental to liberty rather than beneficial to it (Machiavelli 1997, I, 37).

If we move to contemporary neo-roman republicans we find the echo of this ancient resistance against equality. Trying to amend the elitist residue of the republican tradition and its lack of interest in equality, Pettit (2001, 136–38) has argued that, in its claim for equality before the law, the republican tradition, notoriously very suspicious toward the call for social equality, admits implicitly that non-domination has a natural propensity to be equally distributed. In theory, republicanism is not as strongly committed to end poverty as it is to end direct types of domination; it has a practical and important concern to alleviate the material conditions of distress of the poor, yet this effort is not logically implied by the concept of domination itself but comes as secondary to other institutional considerations (for instance, social stability). Indeed, economic hardship cannot be imputed to any one in particular, and “the system” cannot be held responsible. Non-intentional and impersonal obstructions do not make for domination—only intentional decisions do; for instance, when “someone lives at the mercy of others” or acts as a *dominus*, as a master in a master–slave relationship (Pettit 2001, 137). It is an historical fact that the step toward making equality an essential requirement of liberty as non-domination was made by democracy, not the republic. Pettit himself confirms this diagnosis when he evaluates critically whether republicanism should be revised by anchoring it in “equal freedom” rather than non-domination. Against this hypothetical revision, in his 1997 book on republicanism he reaffirms the sufficiency of the principle of equality before the law even in dealing with the quest for social justice. This does not exclude the possibility that republican thinkers might be ready, in some grave circumstances, to acknowledge that “it might be necessary to restrict the wealth of the very rich and powerful in order to ensure equal freedom for all” (Pettit 1997, 117, 158–65). Yet these exceptional measures do not require us “to take equal freedom—strictly speaking, equally intense freedom—to be the central concern;” equality before the law is sufficient security because it stipulates a proportional conception of equality that is by itself capable of inspiring policies of “restrictions on sumptuary or luxury levels of affluence” when needed (117). We are thus invited to mistrust the “promises” coming from social reformers who want to use the state “to cope with limitations on freedom due to handicap and illness, lack of education and information, insecurity and poverty,” because these honorable goals “would permit the state to coerce or manipulate or force people in this or that manner” (Pettit 2001, 131).⁸ In sum, a republican social policy, when activated, should aim at restoring the equilibrium among socially unequal partners, rather than countering social inequalities themselves. As in Cicero's case, social conflict is the evil to be preempted,

⁸ This rendering returns in the popular version of this doctrine of liberty for real politics in Martí and Pettit (2010). It was adapted to the Spanish case in the years of Zapatero's government, whose party chose “non-domination” as its catchword and tried to translate neo-roman republicanism into a public philosophy for political campaigns and the justification of policies.

not inequality. Hence, poverty and economic duress are a problem insofar as they can engender instability and violence. Equality is no concern here.

DEMOCRACY MISREPRESENTED

A Populist Picture

It seems reasonable to say that the critical stance of republicans in the Roman tradition, ancient and modern, toward democracy originated in their concern with the place of equality. To vindicate a republican conception of government that is rights-based but not liberal, and supportive of self-government but not simply democratic, Pettit has explained that the “sovereignty of the people” that a republican government contemplates does not reside in “electoral authorization” but in “the right of resistance” (Pettit 1997, 202). In other words, the kind of active or expressive liberty that the republic stresses consists in an obstructing power.

This conception of liberty imports a contestatory understanding of political participation, whose main goal should be that of stopping, checking, and impeding rather than legislating, reforming, and ruling. Contestatory politics is politics enacted through courts, tribunals, and monitoring committees, however, rather than through parties or collective movements, or finally lawmaking assemblies or parliaments. It is a counteraction that stops and denounces laws or norms that already exist (Pettit 1997, 202). Its core is justice and its place the judiciary; the actors are citizens who appeal to courts and reason as judges; that is according to a kind of impartiality that we see operating in tribunals rather than parliaments. Their loci are not the voting booth, the parliament, or participation outside institutions because these are forms of political presence in which opinions rather than arguments count and numbers rather than reason are decisive; they are loci that, we may say, are ruled by the principle of political equality or *isonomia*. The aim of this rendering is to stress that, when it is not merged within republican contestatory practice and government, democracy risks being identical with populism or the collective assertiveness by the people, a site of potentially arbitrary power.

As anticipated earlier, the picture of democracy as populist that this critique entails is very problematic and parasitical on a view of “the people” that is republican rather than democratic. To go back to the ancients once again, Aristotle devised the best and still valid definition of democracy as a government in which the citizens rule and are ruled in turn and in which two liberties operate: that of individuals to live as they like and that of citizens to participate in the making of the law they obey. In both cases political equality is essential as the precondition without which liberty would be enjoyed unequally and thus more or less like a privilege. Aristotle’s idea was that the basis of democracy “is that each citizen ought to have an equal share,” which means that the *position of each citizen* in relation to the political community has to be considered, not that of citizens en masse (Aristotle

1977, 489). Furthermore, Aristotle introduced a crucial distinction between what we might call in modern parlance a constitutional democracy and an en masse or populist democracy; he argued that the latter was a corrupted form, because it violated the *individualistic* character of democracy, the fact that the decision relied on the vote of each individual citizen summoned in the assembly (299–305). Both in its direct form and in its representative form, democracy, properly construed, has an individualistic and egalitarian feature; both direct voting and the suffrage right are meant to guarantee that all citizens are treated equally *uti singuli* (as individuals) when it comes to political power. Regardless of its form, whether direct or representative, democracy is never an en masse regime, never a government in which collective decisions are made so that only the majority is counted and counts. As Kelsen ([1945] 1999) observed, “the will of the community, in a democracy, is always created through a running discussion between majority and minority, through free consideration of arguments for and against a certain regulation of a subject matter;” this is why political minorities must always exist and their rights be protected for democracy to operate adequately (287–88).

As for Rome, it “was never a democracy in the Greek sense, nor . . . in the modern sense either. . . . Rome remained an oligarchic timocratic state” (Katz 1997, 14). Rome “in Cicero’s time was an example of a political system in which, in Aristotle’s words, ‘the people, and not the law, is the final sovereign’” (Millar 2002, 176). Since the classical age of republicanism, this image of the people and popular government has been equated with democracy, with the predictable consequence of identifying the latter with mob rule. Thus when neoroman republican thinkers, past and present, identify democracy with populism, they do not see democracy as a complex form of government, as Aristotle suggested, but identify it with its most negative form (demagoguery) and call it democracy. They disclaim democracy on the basis of the Roman contextual experience of the role of the people and identify it with popular government, which in the Roman case was indeed populist and plebiscitarian (Millar 2005, 13–48).

The analysis of the meaning of “the people” in the republican and democratic traditions is external to this article and would deserve a research of its own. It is sufficient to say that scholars have shown that the word and institution of *populus* as they pertained to the Roman Republic did not have the same meaning and character as the Athenian *demos*. The same can be said for words such as “popular government” and *dēmokratia*. Republican critics who make democracy an expression of positive liberty merge “popular” or “populist” with “democratic;” they mix categories that are different not only as historical phenomena but also as political categories. This difference has been explored by, among others, S. E. Finer, who rendered it as follows: “The Forum polity, though not necessarily democratic, is ‘popular’: that is, authority is conferred on the rulers from below” (Finer 1997, I, 43). “Popular” as authority conferred from below is not, however, enough to make a government based on popular

assembly a democratic government. To understand the difference between “popular”/“populist” government and “democratic” government we have to turn to the differences between the ways republicans and democrats voted; that is to say, between Roman popular voting assemblies and the Athenian voting assembly. These differences pertained to membership, gathering procedures, systems of voting, and finally geographical space.

Rome and Athens

Roman political life was dominated by a small number of senatorial families from whom were drawn the top magistrates who administered the law, deliberated on that law and on policy in general in the Senate, and led the armies. Their power was limited in that laws had to go to voting assemblies for their approval or formal promulgation; however, there was no constitutional barrier to changing laws and no procedures regulating the time and summoning method of popular assemblies. The Roman people when assembled for voting did not debate issues and did not raise concerns from the floor as did the Athenians. Thus, it was not the Athenian *ekklēsia*, but the Roman *comitia* that were yes/no voting assemblies without the power to initiate laws and openly discuss them (a practice that many republican writers, from Guicciardini to Rousseau, have regarded as essential to limit the people’s power).

In Rome therefore, as Millar notes, the assembled voters were closely related to “an undifferentiated mob or crowd,” and the legislative meetings of the “assembly of tribes” had “no fixed timetables during the year” as opposed to the Athenian *ekklēsia*, “which had forty regular meetings each year” and “met in a specially designed area, the Pnyx.” In conclusion, Millar writes, it was “only the proclamation of an assembly, after a due interval for the public promulgation of the proposed legislation, and the instruction from the presiding magistrate to reassemble into ‘tribes,’ that transformed the crowd into the sovereign *populous Romanus*” (Millar 2002, 154). Equality was the distinguishing factor. In Rome decisions were determined not by individual votes and their equal counting as in Athens, but by the people voting in fixed tribal groups and according to an order that was determined by census and social hierarchy. Whereas *Athenian democracy was based on the single assembly of citizens* and each citizen counted as one and sat in the assembly as an equal, the place of the people in *the Roman Republic was structured according to social differences and a plurality of assemblies* (gathered for different purposes and operating with different procedures) within which votes were taken.

Thus, as a consequence of the organization of the voting people by ranks and hierarchy, individual votes had much less weight in Rome than in Athens. The “majority vote within each unit determined ‘its’ vote, and the majority of units determined the result (whether electoral or legislative),” so that the counting of the votes was interrupted as soon as the majority was reached (Millar 2002, 19). More or less as with contemporary

first-past-the-post electoral systems, in Rome the voting system was meant to determine the winning opinion rather than to express and debate opinions. The populist-oriented structure of the “untrammelled” Roman populace was the object of Cicero’s heavy criticism of democracy (i.e., popular government) as “the force of the mob” in which “passions exercise powerful control over thoughts” (Cicero 2008b, 163; 2008, 93; Millar 2005, 34–53). The problem is, however, that the crowd in the Forum was the result of an institutional organization of the popular presence in *the Roman Republic*, not of democracy (Millar 2005, 197–226).

Because its social and political structure was organized by tribes or grouped citizens, not individual citizens, Rome, unlike Athens, had two rival political notions of liberty that referred to the two main articulated groups, the nobility and the plebs, rather than to each and all individuals (Raaflaub 1983, 533–34). The *optimates* saw liberty as much against the ambitions of single powerful individuals as against the collective claims of ordinary people. *Libertas* implied political equality, yet only among those who were equals—the kind of equality enjoyed by the patricians was not the same as that enjoyed by the plebs (it was, however, the same sort of equality as that defended by Athenian oligarchs against the democrats). Hence Dionysius of Halicarnassus commented that the Roman system of “centuries” was a stratagem devised by the oligarchs to exclude “the poor from any part in public affairs” (Dionysius 1937–50, IV, 1621).

As for the meaning of liberty among the plebs, this too was not identical to Athenian or democratic liberty because it did not entail equality in running for office and was not linked to *isonomia* and *isegoria*; that is, the right that each and every citizen had to take part in lawmaking in a meaningful way and to address the assembly or express an opinion freely and frankly (*parresia*). Athenian citizens achieved liberty when they achieved the right to participate as equals (*isonomia*), as well as to speak on matters of state importance in the assembly (*isegoria*) (Hansen 1996; Ober 1989, 109). Athenian democracy proved that political equality translates into liberty. But the Roman plebs did not fight for the exercise of political power or democracy: They fought for protection or private security against the patricians, for whose ranks magistracies were reserved (Pitkin 1988; Raaflaub 1983; Wirszubski 1968, 11–17). To achieve that protection the Roman plebs sought institutional guarantees and in this sense used power in the negative, as a means to security. In any case, to them *libertas* did not mean an “extension of equality from legal to political or social rights, let alone equal access to office, voting, or debate” (Pitkin 1988, 534). The difference between popular government and democracy is thus striking.

Misrepresenting Democracy as Popular Government

In a pivotal study on Athenian society, Paul Vernant observed years ago that Kleisthenes’ constitutional

reform (507 BCE) was not intended to eliminate social differences or erase social classes, and in this sense it was not egalitarian in a pejorative sense. Kleisthenes wanted instead to use a new instrument—that of procedures and institutions—to release individuals (in their decision-making capacity) from their niches within systems of kinship, social hierarchy and inequality, and corporate solidarity (Vernant 1991). Whereas the Romans made sure that citizens acted always from within their social niches and classes as political unequals, the Athenians created a normative homogeneous space within which individuals acted as political equals (equal in relation to something, not everything) and were able to manage public business, not only the concerns of their particular social group. In classical Athens “the polis, which was the political community of the citizens, and the society as a whole, in which all groups participated, were clearly distinguished” (Cartledge 2007; Hansen [1991] 1993, 64). Different in status, an Athenian was equal as a citizen (Raaflaub 2007). The few and the many were not organized by ranks, each of which had a different role in the state and different protective or checking institutions. Upper and lower classes competed in the same institutions—the assembly and the popular juries. The only institutions that were de facto covered by the members of the upper class were the elective ones, like treasury and the military command. However, in theory and de jure, all the Athenians had the chance to compete for these posts. Democracy meant in ancient Greece that each and every citizen had an equal and meaningful chance to take part in lawmaking and to address the assembly.⁹ In practice then, as Hansen observes, “the political leaders in Athens were the group of Assembly speakers, general and financial officers” that from time to time came to form “something of an elite” (Hansen [1991] 1993, 271). Thus whereas the collectivities *optimates* and the *plebs* were Rome’s sovereign (*Senatus Populusque Romanus*), individual citizens were Athens’ sovereign. Democracy meant equal liberty or *isonomia*. Post-eighteenth-century democracy has inherited from this ancient ideal the insight that the social and the cultural should not enter the definition of citizenship. The idea of equal citizenry (*isonomia*) was not the child of the doctrine of popular sovereignty, although modern democracy was indeed built on this doctrine.

Isonomia made politics a space that was symbolic and normative and that had one and only one function: making laws that all must obey. It gave the political constitution its central role as an institutional and procedural order over the juridical constitution as a basic framework that served to resolve individuals’ actual conflicts. It became the fundamental framework that characterized democracy as “one person/one vote,” majority rule that “treats all views fairly,” party competition in elections and parliamentary institutionalized

decisions (in modern democracy), and the balance of power (Bellamy 2007, 5). All these factors together make for the political constitution of democracy, not only majority rule and not only self-government.

Like the Romans, Athenians also feared the monopoly of power, but they did not fear differences among citizens. Debate on public issues was a means by which citizens exercised control because “submissiveness and blind obedience” were not “typical” of their liberty (Raaflaub and Wallace 2007, 28). Yet they tried to prevent social difference from translating into political difference (i.e., into civic inequality). Hence although they ostracized powerful individuals, they also devised specific procedures to constrain legislation and finally to moderate the powerful demos. *Isonomia* and *isegoria* guaranteed an equal opportunity to participate, not an equal outcome. Democratic citizens used the power of speech to attract attention and persuade one another (Yunis 1996, 9), and the assembly was the stage on which they performed before their peers and were judged according to their capacity for speaking to the issue at hand.¹⁰

To conclude, the meaning of the Athenian demos—as of a democratic people—is unequivocally associated with *equal liberty* or *parity*, not merely *equitable liberty* or juristic *fairness*. Its meaning may be rendered as follows: Without *isonomia* or political autonomy, an equal power to contribute to the making of the law, individual liberty cannot be secure. Democrats can thus lob against neo-roman republicans the same criticism that the latter raised against the liberals: For individual liberty to be secure, a legal system that subjects all citizens equally is not enough. Neither is a system of rules that guarantees basic rights to property, due process, and habeas corpus; that is to say, the rule of law. Once it is compared with the democratic theory of liberty as equal liberty, neo-roman republican theory seems to fall prey to the same vice it ascribes to Hobbes’ and Berlin’s theories of negative liberty, because it does not regard the question of political legitimacy as a precondition of secure liberty.

To sum up: the main arguments of republicanism against democratic government were (and are) based on a representation of “the people” that was active within the republic of Rome and that lacked any knowledge of or practice in democratic *isonomia*. It is important to unmask and challenge this rendering of democracy (which became a *topos* in modern antidemocratic thought, republican and otherwise, from Edmund Burke to J. L. Talmon) by recalling what many authoritative studies on Athenian democracy have abundantly shown: Democracy was a self-regulated and constitutional politics, a rich system of rules and procedures that the people themselves invented and experimented with to shield their own participation from the impact of an unequal social power; namely,

⁹ “It does not matter, then, that some offices are more powerful than others. All citizens have the same chance of being allotted high or low offices. They have not only equal power as members of the assembly, but also an equal chance to participate at all levels in the apparatus of government” (Kraut 2002, 227).

¹⁰ Although rhetorical skill is something we regard today as simply a matter of making the better case appear worse and the worse appear the better, talking in public for the sake of persuasion was not mere pandering in ancient democracy but the expression of political liberty (Garsten 2006; Ober 1989).

the easy manipulation of the assembly by orators or the interests of powerful aristocrats (Raaflaub 1983; 1996).

DEMOCRACY AS SECURE LIBERTY

At this point I wrap up my critical analysis of the republican arguments against democracy by proposing a concluding reflection on the political consequences of a conception of liberty as non-domination that does not see the principle of an equal chance of political participation as an essential condition for its own realization. To be sure, after the French Revolution and in relation to the struggle for national self-determination, a branch of republican thought proposed much more explicit democratic and egalitarian solutions. Nineteenth-century political thinkers and leaders like Giuseppe Mazzini and Louis Blanc linked republican freedom to universal suffrage and sponsored a conception of liberty that extended non-domination claims outside the legal sphere to social and economic relations. Yet its more recent polemical confrontation with liberalism has led republicanism to strengthen the procedural vision of the protection of liberty and to weaken the tie of liberty to democracy and equality; it brought republicanism to mistrust popular sovereignty and the parliamentary centrality that representative democracy entails with the argument that they surrender to partisanship and the manipulating strategies of organized interests (Pettit 1997, 183).

In commenting on the identification of liberty with negative liberty, Hannah Arendt, writing before Skinner's revision of the theory of liberty, observed that, even when it means more than freedom of movement or from physical obstruction and includes "exemption from the abuse of power" (a definition that matches with liberty as non-domination), a negative rendering of liberty does not cover the "actual content of freedom;" it stops short of "participation in public affairs, or admission to the public realm" (Arendt 1965, 25, 141). Two and not one would thus be the kinds of liberty that make for a free citizen in a constitutional republic. By linking liberty with equality in sharing political power—a reciprocal relation of recognition under the law—and by surmising that two kinds of liberty make for political freedom—liberty "from the abuse of power" and liberty of "admission to the public realm"—Arendt touched on an issue that is paramount for a democratic conception of liberty (25, 33). In ancient Greece, liberty (*eleutheria*) meant both autonomy as opposed to slavery or tyrannical subordination and individual liberty in a free city; that is "freedom of the polis" and "freedom *within* the polis." In the latter sense, liberty designated democracy in opposition to domination (Ober 1989, 94). In this sense, freedom from subjection can be interpreted as a condition that is predicated on the nature of one's relation to others. In the Greek world "*autonomous* . . . is a quality 'objectively' predicated by others; it is not a quality 'subjectively' claimed by an individual as an inalienable or natural right with which he has been endowed by his

creator;" it is a claim against despotism and in this sense against non-domination (Ostwald 1982, 11).

A similar position, although one that is more directly linked to a procedural view of democracy and the acceptance of political representation, was advanced by Norberto Bobbio in 1954. Bobbio ([1954] 2005) acknowledged that, although conceptually distinct, "liberty from" and "liberty to" require each other for individual liberty to be safely enjoyed. He linked the latter to equality as the equal liberty of participating, directly or indirectly, in the making of political decisions and judgments on public issues or issues that pertain equally to all citizens. This understanding of liberty, which sees the constitution as a basic pact that free people commit to for resolving disagreements, seems more apt insofar as it presumes that for me not to be dominated, I should have also an equal opportunity to participate in making the decisions I am supposed to obey: Domination is not independent from subjection or the absence of political equality. Furthermore, it presupposes political conflicts or the public expression of disagreements, at the end of which the vote is taken and tallied and the law is made. Liberty goes together with an equal prospect of raising issues, making them an object of public interest, managing the public expression of our interpretations, and finally reaching an agreement when, and in fact because, there is no unanimity. In substance, non-domination requires a reshaping of power relations. This is the important lesson that theorists of neo-roman republican liberty have taught us. Yet it is because liberty as non-domination is not simply the liberty of the individual but the liberty of an individual who acts with others as a political equal (a citizen), that the role of political consent (its makers, forms, and rules) is no less essential than the role of legal contestability in making individual liberty secure.

Yet in the neo-roman conception, recalling that democratic participation there has no "definitional connection with liberty," it sometimes seems that suffrage rights are not as essential a component of liberty as the rights to due process, property, and free speech. This brings us back to where we started, and in particular to the question of the place of political agency in the theory of liberty as non-domination. As we saw, contemporary republican thinkers have been eloquent and explicit in disassociating the legal domain and the political domain. They went back to the Roman tradition, in which for free people to enjoy *libertas* it was enough that they enjoyed the juridical status of the *liber homo* without this status entailing the right to vote and competition for magistracies; that is, to say the full political status of citizenship. In this sense, contemporary republican thinkers argue that the central theme of republican freedom is avoiding domination, rather than guaranteeing participation in the life of the city.

In ancient Rome, people living in distant provinces or colonies were given the status of free persons even if they did not have the right to vote; they were *cives sine suffragio*, citizens without the right to vote (Millar 2005, 12–14). Of course, the Roman Republic's geographical extension, coupled with direct voting as the necessary condition for promulgating law, made necessary the

disassociation between the juridical status and the political status of liberty. To them thus, as to republicans who were inspired by their political culture, citizenship was a status that did not require political agency to secure liberty; rather it was a legal regime of law that protects individuals in their person and property. This is what today's neo-roman republicans deem secure liberty to be (Viroli 1990). For this liberty to exist it is important that the law does not become an instrument of will, no matter whether the will is of the many, rather than the few or the one. The issue of the form of government is not central because, as described earlier, non-intentional and impersonal obstructions do not make for domination, only intentional decisions do; that is, when "someone lives at the mercy of others" or acts as a *dominus*, a master in a master-slave relationship (Pettit 2001, 137). Equal participation in the making of the law is no guarantee against this risk; only the rule of law is. Clearly, the Roman interpretation, rather than being an alternative, anticipated the "liberal" solution of separating individual rights and political rights so as to make the former more universal and more basic than the latter. As we saw earlier, Romans looked for protection against the power of the magistrates and found this protection in institutional guarantees and the rule of law. Liberal institutions and the rule of law attempt to guarantee the same protection to all persons, regardless of their citizenship status. The right of ratification (yes/no in an assembly) and the generality of the law (protection against the power held by the magistrates) have been, from Cicero and Locke to Rousseau and onward, the two minimal requirements of what the republicans call political liberty. As Hanna Pitkin put it, *libertas* was thus "passive," "defensive," and "predominantly negative" (Pitkin 1988, 535).

Yet the unequal status that the disassociation of negative and positive liberty entails (and even provokes) may be primed to make individual liberty as non-domination insecure. Indeed, for a law to be stopped or contested, a decision must have been made that instituted that law; and if those who enjoy the right to contest it do not also enjoy the right of participating, directly or indirectly, in the making of decisions by majority rule, they will not have any certainty that their contestatory power will protect them from those who have full political power.¹¹ This is the crucial import of political equality that democracy carries on and that can make negative liberty (from interference as well as from domination) secure and effective. For a democrat, political equality cannot be disassociated from liberty

¹¹ The status of *cives sine suffragio* is in this respect not simply a historical curiosity. Over the last decade, for example, there have been proposals in the EU to make residence, not citizenship, the primary goal of an immigrant with a working permit by making it the basic legal status that brings with it certain civil rights, such as habeas corpus, the rule of law, and also, if possible, the right to vote in local, not national and European elections (Benhabib 2004, 147–69). This disassociation of the legal status of liberty from full political membership seems to be consistent with the negative stamp of liberty as non-domination, the primary focus of which, neo-roman republicans write, is clearly on avoiding "the evils associated with [arbitrary] interference" rather than "liberty of democratic participation" (Pettit 1997, 27).

if the latter is to be enjoyed. Thus, in reversing the argument that republicanism is a completion of democracy (Viroli 2002, 7), I would suggest that the contrary is true: Without an equal relationship of power among citizens (the principles of reciprocity and autonomy) and an effective right to express one's opinions (without an equal power to make an opinion be counted as equal and participate in the making or changing of the law), legal liberty and due process of law are not secure acquisitions. This is democracy's contribution to the theory of liberty: the meaning of equal liberty.

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