

TOWARD A STRUCTURAL THEORY OF FREEDOM:
NON-DOMINATION, SELF-DEFINITION, AND THE POLITICS OF LIBERATION

by

JENNIFER ANNE EINSPAHR

A Dissertation submitted to the
Graduate School-New Brunswick
Rutgers, The State University of New Jersey

for the degree of

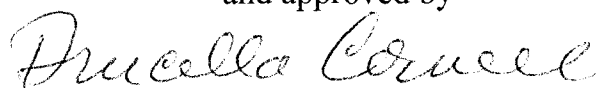
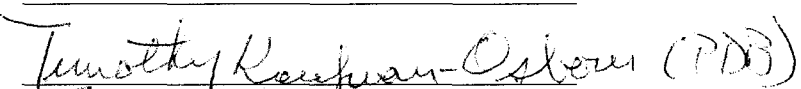


Doctor of Philosophy

Graduate Program in Political Science

written under the direction of

Gordon Schochet

and approved by

New Brunswick, New Jersey

January, 2004

UMI Number: 3117604

Copyright 2004 by
Einspahr, Jennifer Anne

All rights reserved.

INFORMATION TO USERS

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleed-through, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

UMI[®]

UMI Microform 3117604

Copyright 2004 by ProQuest Information and Learning Company.

All rights reserved. This microform edition is protected against
unauthorized copying under Title 17, United States Code.

ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

© 2004

Jennifer Anne Einspahr

ALL RIGHTS RESERVED

ABSTRACT OF THE DISSERTATION

Toward a Structural Theory of Freedom:

Non-Domination, Self-Definition, and the Politics of Liberation

by

JENNIFER ANNE EINSPAHR

Dissertation Director:

Gordon Schochet

Situated in democratic theory, feminist theory, and public law, this dissertation connects the framework of structure and agency with political theories of freedom. I ask, what is the nature of the interplay between (free) individual action and choice, and the central institutions that we frame and that frame our lives in turn? I then connect this exploration with normative theories of freedom: Are some institutional forms more amenable to human freedom than others, and if so, what would be the criteria by which to make this judgment? Or, to put the question the other way around, what kind of a theory of freedom would be considered viable if we take the constraining and enabling effects of institutions into account?

Through the development of a structural theory of freedom, drawing from thinkers such as Marx, Giddens, and Sewell, I challenge the definition of freedom as the

absence of restraint and (re)place freedom into relationship to structural equality. I argue for an understanding of freedom that refuses a dichotomous construction of the individual and the collective, the “material” and the “symbolic,” the “internal” and the “external.” I argue that a structurally free society would be one in which formative mediating institutions, both “public” and “private,” would cohere with the two ethical principles of structural freedom: non-domination and self-definition. Drawing from republican and feminist conceptions of freedom, these two principles construct an understanding of freedom as contextualized practice. Non-domination is that condition wherein a person is not in a position to be subject to the arbitrary will of others, and relational self-definition is the capacity to construct ourselves as free and to be recognized as subjects so capable. I argue that our mediating institutions should be built and maintained with these principles in mind. I apply this structural understanding of freedom to child custody law in the fourth chapter; this analysis suggests further applications for structural freedom in the ongoing, reflexive process of and participation in institutional design more generally.

ACKNOWLEDGEMENTS

For a project concerning (in part) those conditions under which human agency becomes possible, it seems more than fitting to acknowledge those who helped make it happen. My dissertation committee members gave me both structure and incredible freedom, and to each of them I give my deepest thanks; for without them this project could never have become what it did, when it did. Gordon Schochet's undying faith in my abilities, the creative license he granted me throughout the writing process, and finally his intrepid advocacy were indispensable. Drucilla Cornell continues to inspire and challenge me as I work through the complexity of freedom's many faces. I have learned from her that freedom is on the ground as well as in the sky. Mary Hawkesworth promptly read and commented on everything I submitted. She has my heartfelt thanks for her generosity, as well as for pushing me to be systematic while simultaneously suggesting new and creative ways to think through my core questions. Finally, Tim Kaufman-Osborn read and commented on the work with great care. But for even more than this, he is to thank (blame?) for opening my world to political theory, a strange and wonderful place where, deliciously, there are far more questions than answers. It is all to my benefit that he has most generously continued to act as my guide.

Many of my fellow graduate students were instrumental in helping me progress through the stages of the project, from the nagging idea, to the false starts, to the multiple incarnations of the proposal, to the working drafts, to the end result. Isabelle Barker read many versions of many chapters, listened to my ramblings with inexplicable patience, and always helped me to clarify my ideas. Molly Baab, Melissa Brown, Jennifer Schenk,

Danielle Gougon, Denise Horn, Rose Corrigan, Isis Leslie, and others gave invaluable feedback on various portions of the project. To each of them, I give my heartfelt thanks.

“Material” and “symbolic” support often come together. Sue Carroll and Cyndi Daniels provided feedback as well as temporal structure for the project, in the form of working dissertation groups. I thank them for providing these much-needed venues of support. I am grateful also to Barbara Bender, who gave me courage and confidence at a crucial juncture, not to mention a rewarding job. The Rutgers Department of Political Science provided financial support for my final year of writing; it couldn’t have come at a better time.

This project is dedicated to the women in my family, without whom it would have been impossible and unthinkable. The struggles and successes of Ruth Dillard, Susan Guthrie, and Ellen Einspahr were always with me as I wrote. I dedicate this project also to my dear friend C.L. Schopfer, the first person to suggest that my aspiration to become a feminist theorist was entirely within the realm of possibility.

Finally, to Ed Kenny: for putting up with New Jersey; for providing food, shelter, transportation, and affection; and for helping me to keep my eye on the prize, I thank you. I couldn’t have done it without you.

TABLE OF CONTENTS

Title Page	i
Abstract	ii
Acknowledgements	iv
Table of Contents	vi
 Introduction. WHY A STRUCTURAL THEORY OF FREEDOM?	 1
Argument and Outline	14
 Chapter 1. STRUCTURE, AGENCY, AND FREEDOM	 24
The Non-Structural Freedom of Liberal Individualism	27
Structure and Structuralism: Marx and Levi-Strauss	38
Toward a Reflexive, Relational Structuralism: Giddens, Bourdieu, and Sewell	47
 Chapter 2. INSTITUTIONS, NON-DOMINATION, AND REPUBLICAN THEORIES OF FREEDOM	 63
Institutions, Structure, and Freedom	67
Beyond (Liberal) Liberty: Back to the Republic	79
Republican Freedom as Non-Domination: Pettit and Skinner	85
Non-Domination Expanded	94
Non-Domination and the Example of Rousseau	99
Non-Domination, Self-Definition, and Institutions	113

Chapter 3. FEMINIST THEORIES OF FREEDOM AND THE PRINCIPLE OF SELF-DEFINITION	116
Wendy Brown's Post-Structuralist Freedom	125
Drucilla Cornell's Kantian Freedom	140
Nancy Hirschmann's Epistemological Freedom	154
A Feminist Structural Theory of Freedom?	169
Chapter 4. STRUCTURAL FREEDOM AND THE INSTITUTION OF THE FAMILY: The Example of Child Custody Policy	170
The Family as Political Institution	172
Feminism, Freedom, and the Family: Independence Contested	179
Child Custody Policy: In Whose Interest?	188
"Best Interest" Standard: Legal Guidelines and Trends	192
Divorce, Custody, and Material Effects	196
Structural Freedom and Responses to Changing Custody Policy	201
Conclusion. TOWARD CREATIVE INSTITUTIONAL THINKING	211
Bibliography	227
Curriculum Vita	233

Introduction: Why a Structural Theory of Freedom?

In the last 100 or so years, commitment to democracy and freedom have expanded. “In 1900, no country had universal suffrage; today nearly all countries do. Between 1974 and 1999, multiparty electoral systems were introduced in 113 countries. Most of the fascist and authoritarian regimes of the twentieth century have vanished.”¹ During this same time period, however, inequality has increased sharply. Disparities in wealth and access to basic resources have grown wider than ever before, both globally and domestically. For example: “The distance between the incomes of the richest and poorest country was about 3 to 1 in 1820, 35 to 1 in 1950, 44 to 1 in 1973 and 72 to 1 in 1992.” And currently: “Worldwide, 1.2 billion people are ‘income poor,’ living on less than \$1 per day. More than a billion people in developing countries lack access to safe water, and more than 2.4 billion people lack adequate sanitation.”² Things are better on the domestic front, but we still see glaring inequality: “In the U.S. alone, some 40 million people are not covered by health insurance, and one adult in five is functionally illiterate.”³ (Of course, these inequalities are further complicated by race and gender. In the U.S., if a person is black he or she is over three times as likely to be poor than if he or she is white, while over 50% of single mothers and their children live below the poverty line.⁴) Organizations such as the UNDP list these vast structural inequalities as threats to human freedom, and this project starts with the premise that structural conditions and freedom are interrelated. Two questions emerge here.

¹ United Nations Development Programme, *Human Development Report 2000* (New York: Oxford University Press, 2000) 5.

² *Human Development Report*, 6; 4.

³ *Human Development Report*, 8.

⁴ Randy Albelda and Chris Tilly, *Glass Ceilings and Bottomless Pits* (Boston: South End Press, 1997) 24-29.

First, if it is possible to criticize such conditions of inequality from the point of view of freedom, what kind of a conception of freedom do we need? Individual liberties do not sufficiently address this dynamic of the *relational* absence of freedom that results from positions of structural domination. But second, what do we mean by “structure” and “structural”? This is not at all clear from the outset, and may lead one astray. Specifically, a static notion of “structure” all too easily lends itself to an understanding of freedom that is all but meaningless because one’s situation seems inescapable, determined; this construal of “structure” (and its relationship to freedom) insufficiently captures the conflict and resistance that occur as people continually fight for their freedom. If freedom is eminently human, then so is “structure,” running as it does through human consciousness and action.

Accordingly, it is important to consider as well the flip side of the problem of structural inequality in its relationship to freedom, that is, the “experiential” or “subjective” side of systems of stratification. Ideological accounts of inferiority inevitably accompany (and seemingly justify) existing hierarchies. This can be imagined to function something like a material-symbolic feedback loop. For example, ironically and perniciously, denying women access to education has often been justified in terms of women’s purported irrationality. Or, critics of racial ideology in the U.S. have often noted the circularity of Jim Crow thinking: we relegate racial minorities to menial labor, and then conclude that they are fit only for laboring. Or take the case of an individual woman experiencing abuse or violence in an intimate relationship within a larger context of gender inequality: it is no coincidence that leaving such relationships becomes difficult both financially and psychologically, as gender ideology (not to mention the

effects of the abuse itself) accompanies the unequal distribution of resources between women and men.⁵ The disempowered are made to feel, “emotionally,” their “material” inferiority. What’s more, it becomes impossible to know if the “real” cause of one’s suffering is unfair stereotypes (“it’s the culture, stupid”) or an unequal distribution of resources (“it’s the economy, stupid”).

If freedom is in some important sense the opposite of oppression,⁶ as I argue it is, it becomes difficult from the outset to disentangle the “external” forces acting over a person from a person’s own “internal” will and desires, while the “material” obstacles to one’s desires are experienced as intertwined with “symbolic” obstacles; it is impossible to make any sense of “choice” without an understanding of context.⁷ What is needed is a

⁵ Statistics on the battery of married women in the U.S. vary, but most data indicates that the problem is widespread. “The FBI’s Uniform Crime Report indexes 10 million reported crimes a year but does not collect statistics on wife abuse. Since statutes in most states do not identify wife beating as a distinct crime, incidents of wife abuse are usually categorized under ‘assault and battery’ and ‘disputes.’ Estimates that 50 percent of American wives are battered every year are not uncommon in the literature. Recent evidence shows that violence against wives becomes greatest at and after separation. Divorced and separated women account for 75 percent of all battered women and report being battered fourteen times as often as women still living with their partners” (Carole Sheffield, “Sexual Terrorism,” in *Women: A Feminist Perspective*, ed. by Jo Freeman (London: Mayfield Publishing Co., 1995) 300). The problem of wife battery is immensely complicated by the fact that single women with children are very likely to be poor. Nearly one in four children in the U.S. live below the poverty line, and more than 50 percent of single mothers live below the poverty line, compared to 12 percent of women with no children. See Randy Albelda and Chris Tilly, *Glass Ceilings and Bottomless Pits* (Boston: South End Press, 1997) 24-27. In general, women earn less than men, about 75 cents to the dollar for the same work performed (www.now.org).

⁶ Here I will adopt Iris Marion Young’s definition of oppression as “systematic institutional processes which prevent some people from learning and using satisfying and expansive skills in socially recognized settings, or institutionalized social processes which inhibit people’s ability to play and communicate with others or to express their feelings and perspective on social life in contexts where others can listen. While the social conditions of oppression often include material deprivation or maldistribution, they also involve issues beyond distribution.” She divides oppression into five categories: “exploitation, marginalization, powerlessness, cultural imperialism, and violence.” See *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) 38, 40.

⁷ Beth Kiyoko Jamieson and Nancy Hirschmann have recently formulated feminist theories of freedom addressing the complex problem of women’s “choice” within contexts of inequality. In important ways, my argument is similar to that of Hirschmann, whose work I will discuss at some length in chapter 3. Hirschmann will argue that a feminist theory of freedom must take into consideration the formation of possible choices as well as the act of choosing. However, Hirschmann’s focus on social constructivism and epistemology, which recognizes “the need to conceptualize freedom in terms of the interaction and mutual constitution of external structures of patriarchy and the inner selves of women” (*The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton: Princeton University Press, 2003) 199), differs from my approach, especially in that I focus on institutions and theories of structure and agency. Jamieson, in

simultaneous reexamination of the dynamic between structure and freedom (*not* agency⁸), that is, as they exist in interrelationship with each other. Here it will be possible to find ways to crack apart what often seems like an intractable circularity between material conditions of domination and their ideological justifications.⁹

I should specify from the beginning that while ultimately I do not think “political” (or “social”) and “psychological” freedom—the two “faces” of freedom—are separable, the topic of this project is *not* “free will” as such, the *process* of making “undetermined” choices, or “autonomy,” all concepts that are concerned on some level with psychological or moral processes.¹⁰ Instead, I focus on social or political freedom, that is, the aspect of

RealChoices: Feminism, Freedom, and the Limits of the Law (University Park, Pa.: Pennsylvania State University Press, 2001) offers a critique of contemporary feminist theory and argues for a feminist theory of freedom fully compatible with a more nuanced understanding of the liberal tradition. For reasons that will become apparent, I do not share Jamieson’s acceptance of the liberal tradition as a fruitful place from which to begin a feminist analysis of freedom and choice.

⁸ I will say much more about this distinction between freedom and agency in a moment.

⁹ Nancy Fraser similarly notes the circularity between the cultural subordination of certain identities, such as women and racial minorities, and the economic subordination of these groups. She argues that to remedy this problem, “redistribution-recognition dilemma,” wealth must be redistributed at the same time that identity categories are deconstructed. In many respects I am in agreement with Fraser’s argument here. However, in tackling the problem from the point of view of freedom rather than justice, I will explore in greater depth the construction of the individual vis-à-vis formative mediating institutions and spend less time with the “macro” questions of the “public sphere.” In some respects, it could be said that it is my goal to develop a theory of freedom that is compatible with such a comprehensive view of justice. See for example Nancy Fraser, “From Redistribution to Recognition? Dilemmas of Justice in a ‘Postsocialist’ Age,” in *Justice Interruptus* (New York: Routledge, 1997).

¹⁰ There is a growing literature on moral freedom in relation to social structure and agency in the field of psychology. See for example Judith A. Howard, “A Social Cognitive Conception of Social Structure,” *Social Psychology Quarterly* Vol. 57 Is. 3 (Sept. 1994) 210-227 and Guy E. Swanson, “Doing Things Together: Some Basic Forms of Agency and Structure in Collective Action and Some Explanations,” *Social Psychology Quarterly* Vol. 55 Is. 2 (June 1992) 94-117. In the field of philosophy, a growing number of feminist thinkers are addressing the problem of “internalized oppression” and the relational nature of autonomy. Jennifer Nedelsky may have been the first to develop a specifically relational understanding of autonomy, in “Reconceiving Autonomy: Sources, Thoughts, and Possibilities,” *Yale Journal of Law and Feminism*, Vol. 1, no. 7 (1989), 7-36. For an outstanding collection of essays on the difficulty of the concept of autonomy for feminist theory and practice, see Catriona Mackenzie and Natalie Stoljar, eds. *Relational Autonomy* (Oxford: Oxford University Press, 2000). For a specifically moral philosophical approach to problems of deals with free will versus determinism, see for example Ann Ferguson, “Moral Responsibility and Social Change: A New Theory of Self,” *Hypatia* Vol. 12, No. 3 (Summer 1997) 116-141, and Diana T. Meyers, *Self, Society, and Personal Choice* (New York: Columbia University Press, 1989). My concern here is not with autonomy, or what these thinkers might refer to as the *process itself* of making undetermined choices. I am less interested in a procedural account of autonomy than I am in a substantive one, or the social conditions that frame the choices themselves (see

freedom concerning the relationships and behaviors among human beings within shared social and legal contexts. Implicit in the argument I make here, however, is that the “external” world of political freedom *cannot* be disentangled from questions of the “internal” state of freedom. Indeed, one’s position of relative freedom or domination vis-à-vis other members of society, as well as the institutional factors within which one functions, will have a profound impact on whether or not one feels oneself to be free, or experiences one’s choices and one’s actions as free. At the very same time, whether one “feels” oneself to be free is in some important sense beside the point; the social or political condition of hierarchy can be seen as objectionable to human freedom on its face. How? And, what happens, then, to agency? What happens if someone is, structurally speaking, disadvantaged, but does not “feel” oneself to be “unfree”?

That this has become the question is itself the question I address here. The answer lies (in part) in the contemporary connotation of “structure versus agency,” where the two terms are usually defined as mutually oppositional, that is, where each is defined by what the other is not. In general, the structure-agency framework concerns the production and reproduction of social phenomena over time and the role of individuals and collectivities in that process; “structure” is defined most generally as set of patterns or relationships that organize or frame both collective and individual life, and agency is defined as the always-present capacity for human action. Structure-agency frameworks

Natalie Stoljar, “Autonomy and the Feminist Intuition,” in *Relational Autonomy*, Catriona Mackenzie and Natalie Stoljar, eds. (Oxford: Oxford University Press, 2000), 94-111). My focus is a better way to theorize the notion of structure itself, especially as it relates to individual and social freedom.

¹⁰ I have chosen to foreground liberal conceptions of freedom here both because this understanding of freedom dominates our thinking about freedom in the U.S., which in turn has implications globally due to the current hegemony of the U.S. in international relations, and because the originally autonomous individual underlying liberal conceptions of freedom is directly at odds with the much more dualistic account of the nature of the individual that I advocate here.

are best understood as existing on a continuum, with determinism on one end and voluntarism on the other (the most useful understanding of structure lies somewhere in the middle of this spectrum).¹¹ Under a deterministic model, “structures” are hard and fixed, “material” and “objective.” Structures determine everything individuals do; insofar as human beings act, they are products of “structure,” automaton, and freedom becomes meaningless. Under the voluntaristic model, what we might call “structures” are the result of voluntary human action. Humans are not constrained to act in any way by “structures” larger than the individual; all is free will, agency. In assuming that the determinism/voluntarism question is one of either/or, “structure” has become confused with a lack of freedom, while “agency” has been conflated with freedom as “free will.” This makes it difficult to make claims about “oppression” without undermining the “agency” of those who suffer oppression—a growing problem for critical social theory. Certain developments in the modern and postmodern periods have led to this confusion.

In the modern period, marked by the Reformation’s split between the right and the good, matters of “conscience” have been formulated as “private,” as outside the purview of the state. Another way of putting this is that increasingly, only “the right” (a procedural concept) is to be considered the business of government, while “the good” should be left to the conscience of the individual.¹² If every person can be her own priest, and is herself the ultimate authority on matters moral and religious, then the state has no business in telling its citizens what they should believe. It is a relatively short step to questioning authority of all kinds, and to locating “conscience” in matters political in the

¹¹ Sharon Hays, “Structure and Agency and the Sticky Problem of Culture,” *Sociological Theory*, Vol. 12, No. 1 (March 1994) 57-72.

¹² A corresponding split could be observed between the “sciences” (concerned with observable fact from a neutral standpoint) and the “humanities” (concerned with all things human and therefore value, unknowable, not-fact); political science has always straddled this divide rather uncomfortably, if usually reaching for fact and abashedly dabbling in value.

individual; all authority is subject to evaluation by those who will be governed. Indeed, authority itself, and especially “natural” or “divine” authority, is thrown into question, and the burden of proof is shifted—men and women are now free unless an imposition on that freedom is justified. An in important respect this was an is a radical notion, playing an instrumental role in a series of revolutions in the modern period. But this is also a decidedly voluntaristic model of structure and agency which tends to efface the complex relationship between socioeconomic conditions on one hand and choice and action on the other. All too easily, this leads to the problematic conclusion that to be “determined” (“constructed?”) is always, uncritically, to be unfree.¹³

Following in this vein, in the west, and especially in the US, we tend to think of freedom in terms of *individual* rights and liberties—the more government and society leave me alone to pursue my chosen course of action, the more I am free.¹⁴ This configuration of freedom is largely liberal in nature, and can be traced to thinkers such as John Locke and J.S. Mill, or more recently to Isaiah Berlin. For liberal thinkers generally, liberty is consistent with a limited constitutional rule of law, but at the core of liberal liberty is the conflict between the interest of the individual and the good of the whole. Since liberty is thought to reside *a priori* in the individual, the institution of government requires that individuals (voluntarily) sacrifice some of their liberty, resulting in greater goods such as stability, security, or justice. Thus, the relationship

¹³ I am not making the claim that to be “determined” in one’s actions or choices by “outside” forces in not in some important way indicative of being unfree. Quite the contrary, as I will argue in chapter two: a relationship wherein a person is structurally subject to arbitrary interference is central to the mode of conceptualizing freedom that I argue for here. Rather, the problem is that voluntarism makes the assumption that individuals are “free until proven coerced,” making it difficult to grasp the ways in which material-symbolic conditions of structural domination pose challenges to human freedom. Of course, this problem also stems from a fundamental misunderstanding about what it means to be “determined.” I will spell out both these points in much greater detail in the first and second chapters.

¹⁴ I will provide a detailed critique of the individualized nature of liberalism’s “liberty” in chapter one.

between the “individual” and “society,” at least where liberty is concerned, is considered basically antagonistic in nature. It follows that attempt to institutionalize substantive rather than procedural equality would constitute a limit to freedom; as Berlin said:

To avoid glaring inequality or widespread misery I am ready to sacrifice some, or all, of my freedom: I may do so willingly and freely: but it is freedom that I am giving up for the sake of justice or equality or the love of my fellow men...If the liberty of myself or my class or nation depends on the misery of a number of other human beings, the system which promotes this is unjust and immoral. But if I curtail or lose my freedom, in order to lessen the shame of such inequality, and do not thereby materially increase the individual liberty of others, an absolute loss of liberty occurs.¹⁵

Berlin’s views on freedom were shaped by the horror of war justified in terms of “forcing people to be free,” or institutionalizing collective freedom; from this point of view, it becomes very difficult to conceptualize any kind of determining force or “structure” as compatible with freedom. For instance, creating institutions or policies to implement greater equality—a welfare state, affirmative action policy, regulations on certain kinds of speech, proportional representation, a progressive tax structure—seem either to trade one person’s liberty for another, so there is no total gain in liberty; or present the specter of an overgrown state or oppressive bureaucracy, a perhaps worse threat to liberty than the inequality of the status quo. Thus, one of the central problems of liberal democracy has been assumed to be the tension between the interest of the individual and the good of the whole, while freedom and equality are assumed to be fundamentally at odds.

Contemporary popular conceptions of freedom also seem to resonate with Isaiah Berlin’s formulation of “negative liberty,” or the absence of interference or coercion.¹⁶

¹⁵ Berlin, “Two Concepts of Liberty,” 125.

¹⁶ Hobbes defined liberty as “the absence of opposition (by opposition, I mean external impediments of motion)...a FREE-MAN is *he that in those things which by his strength and wit he is able to do is not hindered to do what he has a will to do*, from *Leviathan*, (Indianapolis: Hackett Publishing, 1994) xxi.1, 2;

For example, to offer some purely unscientific anecdotal evidence, when I tell people I am writing about freedom, nine out of ten people assume I am either talking about the philosophical problem of “free will” or else about specific political “liberties,” such as free speech, or privacy—in short, liberties such as those found in the Bill of Rights, which enumerate the basic freedoms citizens should retain in the face of (ideally limited) state authority. To be sure, liberties such as these should be considered fundamental to any reasonable notion of freedom, but we cannot stop there. It is imperative to challenging individualistic ways of thinking about freedom, in which equality and justice are seen as neatly separable from freedom and the individual’s “interests” are read in isolation from social and political context.

Postmodern accounts of freedom, insofar as freedom relates to subjectivity, provide some clues about how to conceptualize this dynamic, but also present a new set of problems. In the post-World War II western context, the philosophical idea of “freedom” has become closely connected with internalized notions such as “subjectivity,” “experience,” and “identity,” all concepts closely aligned with agency read as “free will.” Numerous interrelated social and political movements, as well as trends in philosophy and the social sciences, have functioned to reinvigorate the “structure-agency” question, breathing new life into “agency” specifically. These include the successes and failures of feminist, civil rights, and gay rights, and workers’ rights movements; the persistence of racial, gender, and class inequality despite the existence of “equal rights;” and the

p. 136. Berlin defined (negative) liberty as “the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree,” from “Two Concepts of Liberty,” in *Four Essays on Liberty* (New York: Oxford University Press, 1969) 122.

influence of poststructuralism on philosophy and social scientific thought.¹⁷ In reaction to the horrors of Hitler's Nazi Germany and Stalin's brutal dictatorship, these various intellectual movements sought to "reclaim subjectivity."¹⁸

The extermination of millions, the participation of millions more in that extermination, the historically innovative use of propaganda and the use of terror as a tool of policy, [totalitarianism's] monopoly over media and its myriad political and social organizations, its judiciary and its value system are not simply separable from the lived life of the community. Ethical disorientation indeed becomes a fundamental aim of totalitarian politics. New ways of thinking seemed imperative in the latter part of the twentieth century: existentialism, critical theory, and postmodernism followed one another in gaining popularity among the broad intellectual public. Each was committed to reaffirming the subjectivity of the subject, the uniqueness and integrity of the particular, against all metaphysical and teleological definitions. Each pitted the individual against bureaucracy and instrumental forms of rationality; and, with ever greater vehemence, each engaged in an assault upon established authority in the name of personal experience.¹⁹

Thus, in the West in the twentieth century, personal freedom for many has come to be associated with resistance to the ideologies that stem from authoritative sources, whether it be government, religion, or culture itself. Personal freedom is cast in terms of asserting one's "authentic" self as against oppressive constraints on one's subjectivity.

¹⁷ Immanuel Wallerstein reads the current anxiety about structure versus agency as a symptom of the philosophical and religious split between the true and the good. Within Christianity, the structure/agency problem took the form of a moral quandary: Christian theologians have long puzzled over the question, if God is omniscient and omnipotent, then how can a person ever make a free choice? He traces this split to the Protestant Reformation and Calvin's "negative" proof of grace, the form of which argument parallels positivism's falsifiability. A similar kind of problem presents itself within Western political theories of freedom in the modern age. In the modern era, conscience is considered "private," a matter between the individual and God, and political freedom is likewise divorced from any state interest in instilling "virtue" or educating the whole person in any particular way. Governance, then, can only be a matter of regulating observable behavior, and not the inner workings of hearts or minds. Much as scientific positivism treats only observable phenomena as "fact" while ethical questions are left to the unknowable realm of morality or philosophy, or "value," modern freedom places "the right," or empty procedural justice, over "the good." In reading structure/agency as simultaneously a question of macro/micro and determinism/free will, he calls for the reconciliation between the "true" (or the "right") and the "good" in social science, a stance he labels "utopistics." See "Social Science and the Quest for a Just Society," *American Journal of Sociology*, Vol. 102, Issue 5 (March 1997), 1241-1257.

¹⁸ The phrase is Stephen Bronner's. See *Ideas in Action*, chapters 10-14.

¹⁹ Bronner, 143-4.

Two interrelated philosophical and political subjects of concern have emerged as a result. The first involves the relationship between “identity” and freedom, and the second concerns the ability of individuals and collectivities to change their circumstances. Both in important ways stem from a rejection of a positivist epistemology, which assumes the neutrality of the scientific observer in collecting “facts” while characterizing most philosophical enterprises as “metaphysical,” or unobservable and therefore not-fact. In contrast, social constructivism, poststructuralism, psychoanalysis, and critical theory, in varying ways and to varying degrees, see “the individual” as fundamentally constructed, or as a product of the environment. The “culture industry,” “hegemonic discourse,” “grand narratives,” “gender ideology,” and so forth are seen as responsible for producing personalities or “identities” that are docile, vulnerable to manipulation by the powers that be, while challenging accepted truths as fictions that serve to maintain the existing relationships of power.²⁰

The legacy of this general mode of inquiry has been mixed.²¹ On one hand, the idea that identities are in some way constructed has opened many doors to freedom. Indeed, without some notion of construction, and I rely on some such notion here, it would be impossible to challenge gender ideology—say, the idea that women are essentially weak—as false, and as a tool to maintain the status quo. On the other hand, to focus too much on epistemological or “cultural” constructions is to risk becoming locked into an argument about the truth or falsity of such constructions, where resistance

²⁰ In the postmodern era, the scientist and philosopher are seen as invariably occupying particular positions, infused with power, that undermine any claim to “pure” knowledge.

²¹ There are, of course, vast differences among the various intellectual movements of the postmodern era; I do not wish to conflate poststructuralism, deconstructionism, postmodernism, psychoanalysis, and critical theory. I intend only to make a very general kind of observation regarding the broad intellectual trends characterizing the West since World War II. For essays linking these movements with specific historical events, see Stephen Eric Bronner, *Ideas in Action: Political Tradition in the Twentieth Century* (New York: Rowman and Littlefield, 1999) chapters 10-14.

involves thinking about ourselves differently, too often to the exclusion of forming collectivities to change the material conditions that are so invariably connected to the “construction” of devalued identities.

For example, within gender theory, “the woman question” continues to be debated. If the identity “woman” is constructed by ultimately oppressive forces, so that women are oppressed *as* women, how can positive changes for women occur in the name of “woman”? If we reclaim the value and dignity of woman, do we unwittingly reassert the very gendered constructions that have served to keep women in a position of subordination? A similar problem appears in movements for social transformation. The question seems to be, is it possible for human beings to consciously change society, especially since the actors are in some ways constructed by that very society? And further, if they do manage to effect change, will they inevitably reproduce the structures that have produced the actors and the actions themselves, repeating the circle?²² In other words, if we are so profoundly products of our environments, then how can we hope to ever effect any kind of change, whether individually or collectively, without reasserting the logic that produced us to begin with? The key to “freedom,” then, seems to be in finding ways of resisting the constructions of identity that seem to serve to keep power from the disempowered.

It is not difficult to understand why freedom has come to be disconnected from institutional considerations of equality, such as the distribution of wealth and leisure, and instead focused on individuals’ subjective experience of freedom, but these two “sides” must be approached as interconnected. While avoiding a retreat to a “positivist” stance, or in other words rejecting the assumption that the “fact” of structural oppression can be

²² Laura Ahearn, “Language and Agency,” *Annual Review of Anthropology*, Vol. 30 (2001) 110.

wholly knowable from above or without, and maintaining the insight that individuals are important ways “constructed,” I also reject the postmodern tendency to locate agency in the resistance to “discourse,” when discourse is left insufficiently connected to institutional design. A viable theory of freedom must reflect the complex dialectical interrelationship between the “objective” conditions of “external” forces of domination and freedom, the distribution of material resources, and institutional constraints and opportunities on one hand; and the “subjective” experience of internalized oppression and free choice, the distribution of symbolic resources, and agency on the other. It is imperative to disentangle freedom from both determinism and voluntarism; freedom and agency are not coterminous.

In connecting structure/agency with freedom, I ask, is there is an interplay between (free) individual action, (free) individual choice, and so on, and the contexts or structures within which we find ourselves, what is this interplay? I then connect this exploration with normative theories of freedom: Are some structures, contexts, etc., more amenable to human freedom than others, and if so, what would be the criteria by which to make this judgment? Or, to put the question the other way around, what kind of a theory of freedom would be considered viable if we seriously take structure into account, in both its enabling and constraining effects? And from this question, the more specifically politically normative one arises: On what principles should we craft our most central and important institutions in order to better sustain a more robust, structural conceptualization of freedom?²³

²³ It is the aim of much normative political theory in general to fashion principles by which political life can be guided. An exhaustive list of such works would be impossible, but with the purpose of situating my argument, I have chosen a representative sample of the most similar or most influential works concerning the relationship between structure and freedom with progressive policy implications. My argument here

Argument and Outline of the Project

The argument can be summarized as follows: Through the development of a structural theory of freedom,²⁴ I challenge the prevailing Western consensus around the meaning of freedom,²⁵ its scope, the kinds of challenges that can be made in its name,

follows in the vein of several groups of thinkers. For example, Philip Pettit has challenged the construction of freedom as the opposite of coercion, and proposed instead that the ideal of non-domination inform our construction of society. I am sympathetic to Pettit's claims in many ways, but ultimately this principle is insufficient without greater attention to the constraining effects of informal structures such as race and gender. See Phillip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997). In a more general way, I am influenced by a growing and highly constructive trend within feminist theory aimed at reconstructing core political concepts so that women, minorities, and the lower classes are no longer inadvertently excluded from within those concepts. For a representative sample of such work, see Nancy J. Hirschmann and Christine DiStefano, Eds., *Revisioning the Political: Feminist Reconstructions of Traditional Concepts in Western Political Theory* (Boulder: Westview Press, 1996). With regard to the concept of freedom, my work follows several recent articulations of specifically feminist approaches to freedom. See Nancy Hirschmann, *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton: Princeton University Press, 2003), and "Toward a Feminist Theory of Freedom." *Political Theory*, Vol. 24, No. 1 (February 1996) 46-67; Beth Kiyoko Jamieson, *RealChoices: Feminism, Freedom, and the Limits of the Law* (University Park, PA: Pennsylvania State University Press, 2001); and Drucilla Cornell *At the Heart of Freedom: Feminism, Sex, and Equality* (Princeton: Princeton University Press, 1998); and *The Imaginary Domain: Abortion, Pornography, and Sexual Harassment* (New York: Routledge, 1995). There is also a hopeful trend toward connecting normative political theory with institutional analysis. The best representative of this trend is Bo Rothstein, *Just Institutions Matter* (Cambridge: Cambridge University Press, 1998). Finally, from an Aristotelian "human capabilities" perspective, Amartya Sen, *Development as Freedom* (New York: Knopf, 1999) and Martha Nussbaum *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000) have provided ethical principles meant to inform international policies concerned with human rights and development.

²⁴ Christian Bay, in *The Structure of Freedom* (Stanford: Stanford University Press, 1958) was perhaps the first to articulate what he called the "structure of freedom." My analysis here, and my construction of "structural freedom," is in some ways similar to that of Bay. For Bay, freedom means the "expression of individuality, or self-expression.... A person is free to the extent that he has the *capacity*, the *opportunity*, and the *incentive* to give expression to what is in him and to develop his potentialities" (15). However, Bay's concern with freedom tends more to the psychological than mine. Bay is concerned that human beings retain freedom against defensiveness, systems of rewards and punishments, and manipulation, and proposes that is to be done largely through education. Furthermore, Bay's *The Structure of Freedom* was written in 1958, before the basic questions of politics were challenged by theories of race, class, or gender inequality. Even though he is concerned with the process of making undetermined choices, his analysis does not take into account the seriousness with which ideologies of race and gender function to inhibit a person's freedom, through the internalization of oppressive norms. This is something about which I am deeply concerned; I will deal with this problem of freedom more extensively in chapter three, through a reading of freedom as self-definition, as articulated by prominent, contemporary feminist theorists of freedom.

²⁵ I use the term freedom, and not liberty, self-consciously, although I will occasionally use the terms interchangeably. In the March 23, 2003, edition of *The New York Times* (Week In Review), Geoffrey Nunberg notes the differing linguistic roots of freedom (Anglo-Saxon) and liberty (Latin), and the increasing use of "freedom" since World War II. Hannah Pitkin's important essay also draws a distinction between liberty and freedom, where liberty (or liberties) describes a system of rules, such as in the Bill of Rights, while freedom describes more general and wide-ranging phenomena, from free will to political

and its relationship to structural (in)equality. I argue that a theory of freedom that refuses a dichotomous construction of the individual and the collective, the “material” and the “symbolic,” the “internal” and the “external,” would provide the normative ground from which to critique the material condition of stratification. Structural freedom is dialectical, recursive, and relational in nature, and as such understands the “individual” to be essentially malleable in relationship to the constraining and enabling effects of structures and institutions, at the same time that it understands institutions to be malleable in the face of human agency. It is my intention that institutional prescriptions follow from this understanding. A structurally free society would be one in which formative mediating institutions, both “public” and “private,” would cohere with the ethical ideal of structural freedom. Institutions would mitigate relationships of domination, following the principle of non-domination, but in a universal way, where citizens are *not* required to conform to any particular construction of ideal of citizenship, following the principle of self-definition.

In chapter one, I lay the groundwork for this understanding of freedom through a critical reading of dominant theories of freedom, which tend to see the interests of the individual and the good of the whole as fundamentally at odds. I do not make this critique from the point of view of communitarianism; it is not my intention to argue that the good of the whole should “trump” individual desire or will, or that the individual should subordinate his or her interests to that of the whole. Rather, I take issue with the construction of the individual itself: Through the lens of a reflexive understanding of structure, I argue that what an individual sees as his or her own good cannot be separated

freedom. See Hannah Pitkin, “Are Freedom and Liberty Twins,” *Political Theory* (Vol. 26 No. 4, 1988) 523-52. The subject of this inquiry is freedom in Pitkin’s sense, although I will occasionally use the term “liberty,” particularly in reference to liberal theorists who themselves use the term “liberty.”

from collectively held ideas about the good, while ideas are embedded inextricably in a material world invariably and necessarily shot through with symbolic meaning.²⁶ This goes beyond positing a “situated” self rather than an “unencumbered” self; the reflexive nature of structure/agency I develop here precludes the possibility of arriving at a commonly held “good” that will hold over time.

Through the work of thinkers of structure such as Karl Marx, Anthony Giddens, Pierre Bourdieu, and William Sewell, I seek to provide a nuanced account of the interrelationships between structure and agency, rejecting the dichotomy between “the individual” the contexts within which they operate. I develop an account of structure that incorporates and presupposes agency, refusing the tendency of some “structuralist” approaches to view human action as inescapably determined. At the same time, I argue that “agency” must always be understood in connection with structural and institutional conditions, where the material and the symbolic are understood as distinct but interwoven. Through this critical exploration of structure and agency, I develop an understanding of the individual as embedded, relational, and existing within multiple and often conflicting structures, but also as a source of ongoing, embodied structural change. The individual is not understood as a pre-formed self whose boundaries are in need of protection by the state (although “rights” will play an important part in this analysis in

²⁶ Communitarians such as Michael Sandel or Charles Taylor would argue that the Aristotelian or Hegelian construction of freedom is aimed precisely at overcoming the alienation between the individual and the common good; an individual is not understood as sacrificing his freedom for the good of the whole because the interests of each are understood to exist in harmony. See for example Michael Sandel, “Introduction,” *Liberalism and Its Critics*, ed. Michael Sandel (New York: New York University Press, 1984) and Charles Taylor, “Hegel: History and Politics,” in the same volume. This claim is quite different from the one I make here: Under a fully reflexive account of structure, as I develop in chapter one, even a small, homogenous community could not be governed by what it agrees constitutes “the good.” Due to agency, and in particular what William Sewell will call the “transposability of schemas” and the multiple nature of intersecting structures, the idea of “the good” will invariably undergo continuous revisions as part of its very nature. As I will argue especially in chapter three, flexibility must be built in to institutional design.

chapter three). Instead, the individual is constructed as existing in a continuous, dialectical relationship with the social and political structures by which and through which human beings make their lives, both materially and symbolically.²⁷ Further, it will not be enough to say that “individuals” and “structures” interact; this is a way of constructing the relationship wherein the integrity of each remains intact. Rather, these continuous interactions produce constant changes in the composition and nature of the individual as well as the composition and nature of overarching structures, so that one quite literally cannot be understood without the other.

This understanding of the nature of the “individual,” then, underlies and informs the structural theory of freedom I argue for here. I maintain that a viable theory of freedom must be structural in that it takes the individual’s relationship to both the enabling and constraining effects of structures into account, recognizing the complex interactions between structure and agency. To say that the essence of freedom is free choice or unobstructed will makes little sense unless we examine how the array of possible choices has been constructed. (This examination will take place in part through an examination of “new institutionalist” and “adaptive preferencing” literature in chapter two.) At the same time, the ability to choose one’s own life path, and to have some hope of pursuing one’s desires, is an essential component of any meaningful notion of freedom, but it requires access to life’s resources, brought about by a democratic relationship to the forces that structure our lives. In this way, I advocate a specifically

²⁷ Challenging the dichotomy between the material and the symbolic, as a necessary component of challenging that between “individuals” and the contexts they make and through which they are made, is also a central tenet of a structural theory of freedom. By “material” I mean those things which seem to have a physical existence and which can be sensed through sight, sound, touch, or smell. By “symbolic” I mean patterns or schemas of sense-making most often transmitted through language, signs, and symbols. A structural theory of freedom understands the “material” to be non-sensical (in the sense of “unable to be sensed”) without the “symbolic,” and the “symbolic” to be non-sensical (in the sense of “meaningless”) without the material.

dialectical and relational account of structure with an aim toward developing a more viable and robust conceptualization of freedom, capable of providing the normative ground from which to make judgments regarding the organization of social and political life, particularly as it relates to policy and institution-building. The two interdependent normative principles I develop here are non-domination and self-definition.

In chapter two, I begin from the conviction that what we can accomplish, or even imagine to desire, is largely shaped by the options available to us. From the point of view of a structural theory of freedom, wherein individuals are understood to exist in a dialectical relationship with the structures that surround them, it is nonsensical to suggest that institutions can be obliterated, or to refrain from “constraining;” the question becomes, specifically who and in what way does an institution enable/constrain, and how are we to make ethical judgments about this condition? And, germane to the project at hand, how can we arrive at coherent and viable normative principles meant to inform the building and maintenance of the institutions that inevitably frame our lives?

To answer these questions, I will draw extensively from the work of Philip Pettit and Quentin Skinner, who argue that a conception of freedom analytically distinct from that undertaken by the liberal tradition can be found in the republican tradition: freedom conceived as the opposite of domination rather than the opposite of coercion. For Pettit and Skinner, domination is defined as the condition wherein a person’s will is potentially subject to arbitrary interference. Informed by the reflexive account of structure I develop in chapter one, I will expand their basic definition of non-domination to include arbitrary interference over a collectivity, and I will highlight the interlocking relationship between material and symbolic sources of domination. As I develop this account of non-

domination, I will ask, how does the principle of non-domination conform with a structural theory of freedom, and what can it tell us about the building of the institutions that human beings shape and through which they are shaped?

The principle of non-domination, the first necessary component of a structural theory of freedom, emphasizes various modes of institutional mediation, in both its enabling and constraining capacities (and in fact, I will argue that these two institutional effects cannot be easily separated). I argue for the principle of non-domination as an ethical standard for judgments of the possibilities for freedom in and through the institutions of a given society. If non-domination is a principle concerned with the *positioning* of subjects, socially and politically, it is necessary to make explicit the institutional conditions necessary to a viable theory of freedom. Drawing from republican conceptualizations of freedom will be useful in this regard. Republican thinkers, from Cicero to Machiavelli to Rousseau, link freedom to a particular mode of governance; there, one's relative position vis-à-vis the structures of citizenship, rulership, and other systems of power is considered key in determining one's status as free or not free. It is not around "interference," an extremely individualized concept, but rather around systemic, structural domination that republican liberty turns. This construction of freedom as non-domination will prove very useful to the structural theory of freedom I develop here.

However, the principle non-domination alone is not alone sufficient to a structural theory of freedom. Through a reading of the role of dependence and independence in Rousseau's republican construction of freedom, in the last part of chapter two, I argue that non-domination, without the accompanying principle of self-definition, tends to

overlook that aspect of structural freedom which allows for the space of the free subject to choose his or her own life path, forced not to conform to oppressive constructions of the self for the sake of any greater good. Although Rousseau is keenly aware of the potentially devastating effects of conditions of personal and political domination left unmediated by institutional or educational devices, his gendered construction of the citizen, in which strictly defined ideals of femininity and masculinity are imposed from without, undercuts his usefulness (and that of the republican tradition more generally) for a structural theory of freedom.²⁸ The principle of non-domination cannot adequately grasp the implications of living under oppressive symbolic schemas which impose and attempt to fix inegalitarian identity categories.

It is my intention that non-domination and self-definition together form a structural understanding of freedom in which the material and symbolic (as well as the “internal” and the “external,” agency and structure) are seen to exist in a dialectical relationship; these dual principles coincide with the dual nature of structure as argued in chapter one. In chapter two I ask, Are individuals or groups subject to arbitrary interference? Do institutions make this domination systematic through the distribution of “actual” or “symbolic” resources? In chapter three, I shift focus to the aspects of oppression and domination that touch more directly the imaginative or subjective aspects of freedom: what we imagine our possibilities to be (or not to be) is as powerful an obstruction to freedom as is a lack of resources to fulfill one’s desires. The principle of self-definition speaks to this aspect of structural freedom.

²⁸ Rousseau is not the only thinker to depend upon a gendered division of labor—simultaneously “material” and “symbolic” in nature—in order that the republic function. Machiavelli’s robust republic, for example, relies heavily on a gendered construction of “virtue,” or masculine public-spiritedness. Rousseau’s faults in this regard, I will argue, are continuous with the republican tradition in general.

Structural freedom rejects the notion that any interference constitutes a hindrance to one's freedom; yet it also recognizes the potential of institutions to oppress. The principle of self-definition requires that, with regard to formative institutional structures, we are left free to construct our understandings of ourselves and our choices as non-dominated in relationship to others and to "the state," *and* to be recognized as agents so capable. I should make it very clear that this is not an appeal to the ideal of the "self-made" person, nor do I assume that some authentic, essential identity or being or personality exists "inside" of every person, waiting to unfold. To be sure, self-definition requires the support of a non-oppressive context, or in other words, a context of structural non-domination. But the principle of non-domination also needs that of self-definition; absent the insistence that individuals maintain the space for participating in the construction of the *meaning* of their lives, the construction of institutional relationships of non-domination cannot hope to succeed.

A structural approach to freedom insists that not only is it necessary to occupy a structural position within which one is not dominated, but also that it is necessary to create institutional space attentive to and respectful of one's understanding of one's choices and needs. In chapter three, I argue that the principle of self-definition in addition to that of non-domination should inform the building and maintenance of institutions, and specifically those involved in the laws and policies surrounding sexuality, the family, health, and employment, although this list is in no way meant to be exhaustive. This principle is central to a structural understanding of freedom, here drawing from and expanding upon contemporary feminist articulations of freedom. I develop this principle of relational self-definition through a critical reading of

contemporary feminist theories of freedom, drawing particularly from the work of Nancy Hirschmann and Drucilla Cornell.

The subject of freedom for each of these thinkers must be the situated individual, embedded in relationships and located within various power structures. Unlike feminists approaching women's oppression from the lens of (in)equality, these feminist theorists of freedom will each, though differently, argue that the *content* of a specifically women's freedom, or women's desires, be left unarticulated and not be written in to the law. The idea of freedom as "self-definition," despite or perhaps because of a patriarchal context, begins to capture this insight. These thinkers provide invaluable insights into the formation of individuals capable of free choice and action; however, when the content of *political* (or collective) freedom is left unarticulated, or when self-definition is not linked to the institutional condition of non-domination, these theories are at their weakest. I will argue that only when the principle of self-definition is founded upon that of non-domination will a structural theory of freedom be complete.

In the fourth and final chapter, I illustrate the principles of non-domination and self-definition for a structural understanding of freedom through an analysis of contemporary child custody policy in the U.S. Here I ask the questions such as: Does current child custody policy subject individuals or groups to arbitrary interference? Does child custody policy, specifically in its relationship the institution of the family, make this domination systematic through its distribution of "actual" or "symbolic" resources, and if so, in what way? Further, I pay particular attention to the constructions of independence and dependence in relation to the principles of non-domination and self-definition. I will argue that the state has a positive role to play in mitigating relationships of domination,

but that at the same time, through the principle of self-definition, it should not be in the business of constructing some as “needy” and some as “self-sufficient,” when in reality every person depends on others; every person is interdependent. Current child custody policy, in that it relies on particularly asymmetrical constructions of “motherhood” and “fatherhood,” as well as in its tendency to deprive caretakers of the material/symbolic means to make meaningful life choices, fails to meet the principles of non-domination and self-definition.

Structure and agency must be understood to exist in a dialectical relationship; if institutions are human creations, but not creations fully under human control, choice and action can be understood only in relationship with the structures that we create but that frame our lives in turn. I conclude this chapter, as I will conclude the overall project, by suggesting that freedom lies not in attempting to guard “the individual” from the effects of institutions, but rather in recognizing and harnessing humanity’s ongoing role as creators of, and created by, an inevitable though continually shifting terrain of enabling and constraining institutional interrelationships. In this recognition lies the possibility for a world where, in breaking out of the circles of reinforcing domination, freedom stands a chance.

Chapter One

Structure, Agency, and Freedom

The framework of structure versus agency addresses one of the questions most central to a political theory of freedom concerned with institutions and their role in human life: are men and women better understood to be enabled to act and to make meaningful choices by larger social, political, and economic structures, or are they better understood to be constrained by them, so that agency and freedom are to be found in acting despite the obstacles presented by external structures? And if, as I will argue, the answer to this question is that it is both, what would this tell us about how we should organize our collective lives in order to live more freely?

In this project, I develop and argue for what I call a structural theory of freedom.¹ Unlike many dominant understandings of freedom, structural freedom understands the individual to be essentially malleable in relationship to the constraining and enabling effects of structures and institutions. In the second chapter, I develop this argument with a specifically institutional focus, both through literature on the “new institutionalism” and through the normative principle of non-domination,² drawn largely from the republican tradition. Non-domination aims to take seriously the position of individuals vis-à-vis structures of power, rather than focus on consent and “free choice,” as do many theories

¹ Christian Bay was perhaps the first political thinker to address what he referred to as the structure of freedom. Bay’s argued that through education, it was possible to arm citizens against the pernicious effects of defensiveness, susceptibility to rewards and punishments, and manipulation. See Christian Bay, *The Structure of Freedom* (Stanford: Stanford University Press, 1958). His analysis is far more concerned with the *process* of making undetermined choices than mine will be; I will focus largely on the structural and institutional conditions which both constrain and enable individual choice and action. Furthermore, Bay’s analysis does not address the effects of more informal structures, such as race and gender.

² I borrow and expand upon Phillip Pettit’s and Quentin Skinner’s recent formulations of freedom as non-domination. See Philip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997); Phillip Pettit, “Keeping Republican Freedom Simple: On a Difference with Quentin Skinner,” *Political Theory* Vol. 30 No. 3 (June 2002); and Quentin Skinner, *Liberty Before Liberalism*. Cambridge: Cambridge University Press, 1998.

of freedom. In the third chapter, through a reading of contemporary feminist theories of freedom, I develop the principle of self-definition³ as a required complement to that of non-domination. Self-definition, when understood as necessarily relational in nature, is a concept that focuses on the formation and enactment of agency, *through* the constraining *and* enabling action of structure.

In the present chapter, however, it will be my concern to convince the reader that a more thoroughly reflexive and relational understanding of structure is necessary to a viable conception of freedom. Traditional (and largely accepted) liberal conceptions of freedom, as I will demonstrate below, fail to grasp the multifaceted interplay between structure and agency. They generally portray individuals as atomistic to the extent that an already-formed, autonomous will is assumed; free choice is largely considered to be unproblematic as long as no one is actively obstructing an individual's will.⁴ In contrast, a viable theory of freedom must be structural in that it takes the individual's relationship to both the enabling and constraining effects of structures into account, recognizing the complex interconnections between structure and agency. The idea of reflexivity represents the ongoing and essentially dualistic nature of the relationship between individual consciousness and context, the material and the symbolic, enabling structures and constraints. To say that the essence of freedom is free choice or unobstructed will

³ The term is Nancy Hirschmann's, specifically in her essay, "Toward a Feminist Theory of Freedom," *Political Theory* (Vol. 24 No. 1, February 1996) 46-67. In important ways, my argument is similar to that of Nancy Hirschmann, whose work I will discuss at some length in chapter 3. Hirschmann will argue that a feminist theory of freedom must take into consideration the formation of possible choices as well as the act of choosing. However, Hirschmann's focus on social constructivism and epistemology, which recognizes "the need to conceptualize freedom in terms of the interaction and mutual constitution of external structures of patriarchy and the inner selves of women" (*The Subject of Liberty* (Princeton: Princeton University Press, 2003) 199), differs from my approach, especially in that I focus on institutions and theories of structure and agency.

⁴ Or, the subject of "free will" is bracketed within political theories of freedom, set aside as a metaphysical question that is outside the scope of a discussion of freedom within society.

makes little sense unless we examine how the array of possibilities from which to choose has been constructed. At the same time, the ability to choose one's life path, and to have some hope of pursuing one's desires, is an essential component of any meaningful notion of freedom, but it requires access to life's resources, a certain kind of relationship to the forces that structure our lives.

I advocate a specifically dialectical and relational account of structure with an aim toward developing a more viable and robust conceptualization of freedom, capable of informing critiques of stratification and the building of more just policies and institutions. A temporally recurring and spatially relational understanding of structure sees determining factors and (free) choice as two sides of the same coin; moreover, it takes seriously the interrelationship between material and symbolic aspects of structure, or structure's "resources" and "schemas,"⁵ which are both mutually reinforcing and mutually constituting, but never in a wholly closed or absolutely determined way. A reflexive account of structure, in which the "internal" aspect of the mind and the "external" aspect of the material world continuously reflect back onto one another, always allows for the possibility of agency, and this dual understanding of structure will inform and underlie questions of freedom in important ways.

In the first part of this chapter, I will argue that the individualistic and unreflexive nature of canonical liberal theories of freedom is insufficient to a properly structural theory of freedom; beginning a theory of freedom from the assumption of a pre-formed individual disallows a consideration of the malleable nature of the individual in relation to the constraining and enabling effects of structure. From here, I will develop greater

⁵ William H. Sewell, Jr., "A Theory of Structure: Duality, Agency, and Transformation," *American Journal of Sociology*, Vol. 98, Is. 1 (July 1992), 1-29.

specificity of the structure/agency framework, first by locating the epistemology and methodology of structuralism historically, especially through the work of Karl Marx and Claude Levi-Strauss. In the last section of the chapter, I will concentrate on specifically dialectical accounts of structure and agency as represented by thinkers such as Anthony Giddens, Pierre Bourdieu, and William Sewell. These accounts will help to provide a much more nuanced understanding of the relationship between individual actors and the contexts within which they find themselves, allowing us to address the effects of more subtle, but no less important structures of inequality, such as race and gender, from within a structural theory of freedom.

The Non-Structural Freedom of Liberal Individualism

Three main difficulties with liberal conceptions of freedom can be seen in various forms in the political philosophy of Thomas Hobbes, John Locke, J. S. Mill, and Isaiah Berlin. First, liberal theories of freedom generally begin from the vantage point of a rights-bearing individual largely abstracted from social conditions. Second, and related, liberal theory considers the individual in his or her already-formed state, with no explanation of how an individual might come to make the choices he or she does. And third, these thinkers generally see people as fundamentally at odds with society and with authority, so that liberty entails a drawing of boundaries between individuals and social or political structures. A structural theory of freedom attempts to challenge each of these tendencies.

Liberal conceptions of freedom can, for the most part, be traced to Thomas Hobbes's seventeenth-century mechanistic view of freedom. Hobbes defined liberty as

“the absence of opposition (by opposition, I mean external impediments of motion)...a FREE-MAN is *he that in those things which by his strength and wit he is able to do is not hindered to do what he has a will to do.*”⁶ For Hobbes, human beings are like bundles of atoms, floating in space, bumping in to each other willy-nilly. Liberty is that condition of moving toward a desired object, where one’s will is unimpeded. It does not matter *what* one desires, or how one came to desire it; it matters only that no one steps in to impede one’s motion.

However, it is important to note that for Hobbes, if liberty is a lack of impediment to action, or absence of physical hindrance, it is also more of a problem of a chaotic social state than it is a positive good. If everyone is sufficiently equal, to the extent that even the weakest can find a way to kill the strongest,⁷ then what happens if two or more people want the same thing? What is to stop war? Hobbes’s articulation of liberty sets a very interesting precedent: through his demonstration that it is in each person’s interest to obey the consented-to authority, consent becomes inextricably tied to freedom. In the “state of nature,” characterized by a great lack of security, freedom creates trouble—it is the fact of humanity’s natural condition with which we are forced to reckon, since without an absolute authority to enforce rules, without security, life is “solitary, poor, nasty, brutish, and short”—the “war of every man against every man.”⁸ Since people are naturally free in specifically this way, external coercion, and the realization of its necessity, become paramount. In short, individual freedom for Hobbes is a condition that must be mitigated through consent to an overarching, absolute authority. It is this

⁶ Thomas Hobbes, *Leviathan*, (Indianapolis: Hackett Publishing, 1994) xxi.1, 2; p. 136.

⁷ “For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others that are in the same danger with himself.” Hobbes, *Leviathan* (I.xiii) p. 74.

⁸ Hobbes, *Leviathan* (I.xiii), pp. 76 and 78.

authority, keeping all citizens in line, that guarantees sufficient security for the maintenance of liberty in an otherwise chaotic society.

In this way, consent becomes the mark of legitimate authority for the modern period; Hobbes sets the stage for the problematic of authority versus freedom that is at the heart of social contract theory. Within this basic liberal doctrine, freedom and coercion are understood to be conceptual opposites, rather than something like freedom and domination, which would speak to the actual structural conditions one finds oneself under, rather than the circumstances of one's arrival to that position.⁹ That is, if it can be assumed that a person has freely consented to his or her position, a person's freedom is assumed to remain more or less intact.¹⁰ One's position vis-à-vis one's fellows, one's advantageous or disadvantageous position within society, does not itself constitute a hindrance to freedom, as it would under a structural theory of freedom. This individualized and consent-focused way of conceptualizing freedom, and hence the subsequent inability of liberal theories of freedom to take into account the effects of structural inequality, can be seen in later liberal thinkers, including Locke, Constant, Mill, and Berlin.

John Locke's conceptualization of liberty emphasizes the protection of the person and his property (here I use the masculine pronoun intentionally; in accordance with contemporary law, Locke assumed that only property-owning males who had reached their majority would be the recipients of the full rights of citizenship). Locke's conception of freedom is less atomistic than that of Hobbes, especially in that for Locke

⁹ Freedom as non-domination, or the opposite of slavery, will in large part be the theme of Chapter 2.

¹⁰ Of course, one of the goals of social contract theory in general is to convince the reader that it is in one's best interest to consent to a political authority. Often, the type of freedom provided for under the social contract are presented as *superior* to natural liberty, as in the case of Hobbes's now secure subjects, Locke's less inconvenienced subjects, and Rousseau's subjects who are enabled to experience a truly moral freedom.

men are conceived as essentially educable rather than as bundles of matter bumping in to one another; and to be sure Locke places a greater positive value on liberty than does Hobbes.¹¹ But the freedom of Locke's individual is nonetheless guaranteed largely through a patrolling of personal boundaries, through the assistance of a minimal state and the rule of law.

Like Hobbes, Locke begins by asserting natural liberty and equality; in the state of nature, all men are in essentially the same position, "a state of perfect freedom," which he defines somewhat narrowly as the ability to "order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any man."¹² Men are also in a state of equality, where no person holds a rank higher than any other; men are "equal one amongst another without subordination or subjection."¹³ He does not say that men are all the *same*, in rationality or ambition, however. Rather, there is only no *natural hierarchy*, so that every man is of essentially the same status; no one has the right to harm another person or steal his property, and men have the right to defend themselves against such attempts. This inconvenient condition, Locke argues, is best combated by collectively and freely consenting to a government that protects property, enforces contracts, acts as impartial judge, and in general preserves mankind.

Social freedom for Locke is different from natural freedom in significant ways. For Locke, "The *liberty of man*, in society, is to be under no legislative power, than that established by consent;" "*freedom of men under government*, is to have a standing rule to

¹¹ That is, for Hobbes freedom is a problem to be mitigated; for Locke, liberty is to be protected and valued through the rule of law rather than the potentially arbitrary rule of man.

¹² John Locke, *Second Treatise of Government* Ed. C.B. MacPherson (Indianapolis: Hackett Publishing Company, 1980) 8.

¹³ Ibid.

live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man.”¹⁴

This is to be contrasted to “natural liberty,” or the “freedom of nature,” which most political thinkers would equate with “license,” or “to be under no restraint but the law of nature.”¹⁵ Significantly, social liberty can exist only under the rule of law; however, once in society, it can only be assumed that (as rational beings) men have consented to their condition, leaving little or no room to criticize any maldistribution of various kinds of freedom, as one might from a structural point of view.

Within liberal contract theory, represented most clearly by Locke, the idea that “all men are born free” does important work in breaking down the idea of natural hierarchy; but at the same time, in cases of inequality, it shifts the burden of proof to the unequal person rather than to the social circumstances. That is, the playing field is considered to be more or less equal, so if a person seems to be “unequal,” the natural conclusion is that it is the fault of the individual. Moreover, the place of consent in Locke’s theory of freedom and government cannot be underestimated. If we presuppose that men truly are originally free, equal, and rational, why would they possibly consent to a situation that would make them worse off? By presupposing the pre-formed, rational chooser, who is capable of giving consent by virtue of his freedom and equality, Locke provides no way to find fault with structural conditions that might affect one’s ability to

¹⁴ Locke, *Second Treatise*, 17. To foreshadow the following chapter, this sounds very similar to Phillip Pettit’s formulation of non-domination; but as I will show below, the place of consent in Locke’s conception of freedom largely undercut what is seemingly an egalitarian impulse.

¹⁵ Locke, *Second Treatise*, 17.

make free choices in a radically inegalitarian context.¹⁶ This can be seen in his explanation for man's consent to the use of money.

Locke begins his argument for legitimate inequality by asserting two things: That man owns his own labor and person, and that the value of (and ownership over) an object is derived by the amount of labor that has been "mixed" with it. From here, it is not a far leap from the perfect equality found in nature to the radically inegalitarian positions in which men find themselves in the modern world. "God gave the world to men in common....He gave it to the use of the industrious and rational, (and *labour* was to be *his title* to it)."¹⁷ But not all men labor equally, as "different degrees of industry were apt to give men possessions in different proportions."¹⁸ At first there was no difficulty with this, since what men accumulated would be limited by what they could use right away; any excess would spoil and would be of no use to the laborer. But, according to Locke, there came a time when men tacitly consented to the use of money, which allowed them to accumulate more than they could use "without injury to anyone;" from this he concludes that "men have agreed to a disproportionate and unequal *possession of the earth*."¹⁹

Money, private property, and a minimal government are inextricably bound with freedom in Locke's thinking. First, one of Locke's main reasons for leaving the state of

¹⁶ Carole Pateman is foremost amongst feminist thinkers in making a similar argument against the function of consent within Locke's theory of freedom in the *Sexual Contract* (Stanford: Stanford University Press, 1988), specifically with regard to women's (in)ability to consent from a position of disempowerment. Similarly, Catharine MacKinnon makes important structural critiques against the primacy of consent in determining women's freedom and instead argues for determining women's freedom by examining the actual conditions of women's lives. See for example Catharine MacKinnon, "Feminism, Marxism, Method, and the State: An Agenda for Theory," *Signs* (1982), and "Pornography, Civil Rights, and Speech," *Harvard Civil Rights-Civil Liberties Law Review* (Vol. 20, 1985).

¹⁷ Locke, *Second Treatise*, 21.

¹⁸ Locke, *Second Treatise*, 29.

¹⁹ Locke, *Second Treatise*, 29.

nature and signing on to the social contract, as it were, is that consenting to a common government mitigates the inconvenience of having to defend oneself and one's possessions, and provides for a common law or judge, rather than the situation of individual men being judge in their own case.²⁰ But there is a further argument about the particular type of government his rational individuals will contract for. After the invention of money, where it becomes clear that some are more rational than others, as manifested by the amounts of property they've been able to accumulate, a common arbiter is needed to keep order and protect property. For Locke, a government that functions according to the rule of law, guaranteeing the liberty to "order their actions, and dispose of their possessions and persons, as they think fit," is much better than the arbitrary rule of a monarch, who could presumably appropriate one's possessions at will.

On one hand, the place of liberty and equality in Locke's work makes him a radical thinker; he aims to delegitimize the rule of a monarch, and this he does convincingly and with aplomb. Adam's natural right, and that of his descendants (kings), he argues, is not legitimate because it is based on force rather than consent, setting the stage for social and political revolutions around the world. On the other hand, from within Locke's argument, there is no way but to conclude that conditions are as they are because men have agreed to them, as long as men have consented (even tacitly) to the representative government under which they live. These conditions include radically inegalitarian distributions of wealth and other goods, based upon men's differential rationality, as demonstrated by the unequal accumulation of wealth.

Again, if freedom is approached from the perspective of the pre-formed, choosing individual, it is difficult if not impossible to object to the structural constraints that follow

²⁰ Locke, *Second Treatise*, 12 and 15.

from the ostensibly free choices of, in this case, the parties to the social contract.

Although later liberal thinkers will take liberty in slightly different directions, most retain the conception of the individual as an already-formed, rational actor who can legitimately consent to exchanging one kind of freedom for another, where individuals are considered in abstraction from their relative positions of social power, and where any external authority not consented to constitutes a constraint on one's freedom. That certain structural conditions must of necessity be in place in order for meaningful choice to take place is well outside the scope of the liberal framework.

The next liberal thinker of note, chronologically speaking, is John Stuart Mill. In *On Liberty* (1859), Mill sets out a theory of freedom that again pits freedom and authority against one another. Another way to put this is that Mill sees the good of the whole and the good of the individual as being fundamentally at odds. On the first page of his treatise, he tells his audience that his concern is “the nature and limits of the power which can be legitimately exercised by society over the individual.”²¹ More specifically, he wants to know, “What, then, is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much human life should be assigned to individuality, and how much to society?”²² The self and society, it seems, represent separate areas of sovereignty, bounded and distinct, if rubbing up against each other in a tension-filled relationship. The question is not, as it might be for an Aristotelian, how to bring the self and society into greater harmony, but at what point exactly to draw the line between the two.

²¹ John Stuart Mill, *On Liberty* (Indianapolis: Hackett Publishing Co., 1978) 1.

²² Mill, *On Liberty*, 73.

Mill wants to reserve as much sovereignty, and therefore liberty, to the individual as possible. The limit is the “harm principle:” “The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”²³ This is Mill’s version of the utilitarian maxim, “the greatest good for the greatest number.” Individual liberty must be limited by a consideration for the good of humanity, which for Mill is a prerequisite to a progressive society: “I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being. Those interests, I contend, authorize the subjection of individual spontaneity to external control only in respect to those actions of each which concern the interests of other people.”²⁴ Mill’s main justification for this is that it is essentially the creativity made possible by liberty that is responsible for improvements in social life. This is apparent in the way he chooses to break down the various areas of liberty.

Mill identifies the three domains of liberty as “the inward domain of consciousness” protected through freedom of speech and of the press; the “liberty of tastes and pursuits” in structuring one’s life as one sees fit; and the liberty of the “combination among individuals.”²⁵ The identification of these specific domains of liberty reflect Mill’s own experience in conservative Victorian England. He experienced “social tyranny” throughout his life, shunned as he was for his unorthodox relationship to long-time friend and eventual wife, Harriet Taylor. Mill’s main concern was that people

²³ Mill, *On Liberty*, 9.

²⁴ Mill, *On Liberty*, 10.

²⁵ Mill, *On Liberty*, 11-12.

be left alone to do as they pleased, as long as no one was getting hurt by it; and (optimistically) society in general would progress in the process. Liberty is necessary to progress for Mill because innovations come from new thoughts, which cannot arise under conditions of censorship and dogma; and from different experiments in living, or the protection of individuality. In this way, he argues, not only are the liberties he mentions good for the individual, but good for the long-term interests of society as well.

I have always detected a certain uncomfortable circularity about Mill's argument here; a progressive society seems to be characterized by the extent to which it protects individual liberty, while individual liberty is said to result in progress. Mill is also not entirely convincing on the point of drawing any kind of easy distinction about interfering with liberty only when it concerns society as a whole. And to his credit, Mill himself seems to struggle with the distinction between what concerns only the self and what concerns other people. For example, it is clear to Mill that "fornication" and gambling must be tolerated by society, at least when they go on in private, but "should a person be free to be a pimp, or to keep a gambling house? The case is one of those which lie on the exact boundary line between two principles,"²⁶ the protection of individual rights and the good of society in general.

For my purposes here, it is instructive to point out that in following Mill's line of argument, we have come very far from the question of the interrelationship between structure and agency. Mill's thinking leads us to start delineating liberties, or which aspects of individuality should be left untouched by government and society. He presumes that an interaction with authority will not in any way increase one's liberty, although it would not *quite* be fair to say that agency is predicated upon the absence of

²⁶ Mill, *On Liberty*, 98-9.

structural constraints, for Mill supposes that the progress of an individual depends in some way upon an authority that is active in protecting individual liberties. Nevertheless, Mill's juxtaposition of the individual and society occlude a consideration of the enabling effects of external structures.

Finally, Isaiah Berlin provides the most famous of the contemporary articulations of individualist, liberal freedom. Berlin defends the formulation of freedom as the absence of impediment to one's actions, or "negative" liberty. He means liberty to be "negative" in the sense of absence, where liberty is defined as "the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree."²⁷ Liberty is defined as what cannot be done to you. Berlin captures what is at the heart of most liberal articulations of freedom: The individual is assumed to be a unit entirely separable from society; analysis of the individual begins at the end, with no consideration of the ongoing process of the formation of the individual in relation to "external" structures; and the individual is assumed to be fundamentally at odds with society, so that authority is always pitted against liberty in some way, and legitimated only by consent. The more completely and perfectly one is unencumbered and independent, the more one is free: The enabling effects of structure, the process of becoming an individual, and one's dialectical relationship with the social and material world tend to disappear from view. This way of conceptualizing the individual, the subject of freedom, is insufficient. The most fruitful way to understand the individual is from the vantage point of a specifically reflexive,

²⁷ Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (New York: Oxford University Press, 1969) 122.

relational, and dualistic relationship to the structures that constrain as well as enable action.

Structure and Structuralism: Marx and Levi-Strauss

Generally speaking, “structure” can be defined as a framework, set of patterns, or way of organizing aggregates or collectivities. Structuralism is a way of viewing social and political problems that foregrounds such patterns. From a structural perspective, to think about freedom is on some level to think about the individual’s relationship to the myriad social, political, economic, and even geographical structures that frame, support, constrain, or enable one’s actions. Unlike a basic approach to “liberties,” such as those listed in the Bill of Rights, which frames liberty in terms of delineating personal boundaries that can justly or unjustly be crossed, a structural approach to freedom suggests that the formation of the agent is in some way contingent upon his relationship to social and political structures. This is a very different way of understanding the individual’s relationship to structures, in both their constraining and enabling capacities. For this reason, a closer look at the interrelationship between structures and agents should better inform a viable theory of freedom. I explore and expand upon the work of thinkers such Karl Marx, Anthony Giddens, and Pierre Bourdieu in order to arrive at an understanding of freedom that privileges neither structure nor agency, but treats the two in relationship to one another. This dialectical understanding of structure and agency will inform the principles of non-domination and self-definition that comprise a structural theory of freedom.

Karl Marx is perhaps the most influential as well as widely recognized structuralist. Marx contended (to varying degrees) that human beings—their perspectives, interests, and choices—were products of their positions within the economic and therefore social system. In *The Eighteenth Brumaire of Louis Bonaparte* (1852), he tells us that “men make history, but they do not make it just as they please: they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past.”²⁸ In *Capital*, some fifteen years later, the mature Marx goes so far as to say that “individuals are dealt with here only in so far as they are the personifications of economic categories, the bearers of particular class-relations and interests.”²⁹ For Marx the class, or category, is the basic unit of analysis, as well as the driving force of history; history was the movement that resulted when classes conflicted, and this was determined by economic forces and not the creative action of individuals. However, the early Marx is concerned with alienation as such, and his idea of the “species being,” in which freedom is imagined to lie in the actualization of creative human labor, underlies his material structuralism, complicating the role of economic or material forces in determining human behavior. In fact, if one keeps the philosophical impulses of the early Marx in mind, it could be argued that Marx’s structuralism (in important ways influenced by Hegel) reconciles the division between agency and structure in that he sees society and individuals as part of the same, interrelated, organic whole.

Marx’s early concern with alienation and its relationship to labor can be seen as a reaction to liberalism and the dominance of the English economic thought of the

²⁸ Karl Marx, “The Eighteenth Brumaire of Louis Bonaparte,” *The Marx-Engels Reader*, 595.

²⁹ Marx, *Capital*, from *The Marx-Engels Reader*, 297.

nineteenth century, which was heavily influenced by Adam Smith's economic theory and the political philosophy of John Locke. In order to debunk the rule of the Monarch, recall, Locke presupposed individual autonomy and original equality through the construct of the "state of nature." A king is born the same as any man, Locke says, and has no legitimate claim to rule over other men or their property.³⁰ The validity of this claim rests on the idea of an individual who is naturally free and autonomous, in the state of nature, and remains so as long as no other man infringes upon his liberty. The flip side of this is that any time men enter society, there is a chance that his liberty will be violated; but Locke makes it clear that entering society is unavoidable, and this is why we need the constructs of law and rights. A division between "public" and "private" is implicit here; the individual has to be seen as totally distinct and separable from society if his natural rights are to be protected against it. Freedom, then, is rendered as a freedom *from*, or negative liberty, and the function of the (ideally minimal) state is to protect men from violations against their freedom. Marx saw this dynamic between the state and the individual as completely upside-down, or "inverted."

For Marx, it could be said that there is no such thing as an abstract individual, that is, an individual that can be understood in abstraction from his relationship to society. At the same time, however, there is no society as distinct from the individual; they are two sides of the same coin. The individual is specific while society is the whole, but they are not qualitatively different. Furthermore, for Marx, if we do not recognize this, we become alienated from ourselves and from each other, and cannot fulfill our human

³⁰ John Locke, *Second Treatise of Government*, Ed. C.B. MacPherson (Indianapolis: Hackett Publishing Company, 1980) 7. Again, I use "men" here self-consciously because Locke assumed, according to the law of the time, that only men would be property-owners. This is not to rule out the possibility for Locke of a female monarch, however; societies have long allowed queens to rule with no thought of extending political equality to women in general.

potential. To (especially the early) Marx, this is what is so damaging about liberal capitalism.

In “On the Jewish Question,” Marx elaborates on his conception of the individual and his or her relationship to society, and therefore to freedom, through his critique of liberal capitalism. First Marx challenges the split between public and private that is assumed by liberal thinkers, charging that this division leads individuals to lead unnecessarily alienating double lives. “He lives in the political community, where he regards himself as a communal being, and in civil society, where he acts simply as a private individual, treats other men as means, degrades himself to the mode of mere means, and becomes the plaything of alien powers.”³¹ Marx asserts that it is essential that human beings recognize themselves as communal, or as having the character of “species-being,” but that this limited recognition on the part of the state is but an imagined recognition or fulfillment. Marx says that in his political life, man is “divested of his real, individual life and infused with an unreal universality.”³² Furthermore, men have species-being in civil society, but do not recognize it. In fact, they are working against it. Men appear as real individuals, but in reality they are alienated from the knowledge that they are social beings. Marx sees social relations as primary, but when they are not recognized as such by the members of society, individuals are positioned in an unnecessary opposition to each other, as under the conditions of competitive capitalism. The “inverted world” is the one that falsely identifies the state as the universal, when in fact the state is a (forgotten) invention of man wrongly invested with

³¹ Karl Marx, “On the Jewish Question,” *Marx-Engels Reader*, 34.

³² Marx, “On the Jewish Question,” *Marx-Engels Reader*, 34.

powers. What Marx sees as this essential irrationality of liberalism is demonstrated further in his discussion of liberty.

Marx views liberalism's notion of negative liberty as alienation, not freedom. In liberal ideology, he says, "liberty as a right of man is not founded upon the relations between man and man, but rather upon the separation of man from man. It is the right of such separation...It is the right of self-interest....It leads every man to see in other men, not the *realization*, but rather the *limitation* of his own liberty."³³ Freedom, for Marx, is the recognition of others as ourselves, as members of the same community and species. As it stands, however, "none of the supposed rights of man...go beyond the egoistic man, man as he is, as a member of civil society; that is, an individual separated from the community, withdrawn into himself, wholly preoccupied with his private interest and acting in accordance with his private caprice."³⁴ What is the solution to this situation of alienation? It is communism that will bring true freedom to man, he says.

Communism allows human beings to overcome their alienation from themselves, from other men, and from the products they produce because it recognizes humanity's true nature. To understand why this is so, it is necessary to take into account the primacy of the economic base in Marx's thought:

The way in which men produce their means of subsistence depends first of all on the nature of the actual means of subsistence they find in existence and have to reproduce. This mode of production must not be considered simply as being the reproduction of the physical existence of the individuals. Rather it is a definite form of activity of these individuals, a definite form of expressing their life, a definite *mode of life* on their part. As individuals express their life, so they are. What they are, therefore, coincides with their production, both with *what* they produce and with *how* they produce. The nature of individuals thus depends on the material conditions determining their production.³⁵

³³ Marx, "On the Jewish Question," *Marx-Engels Reader*, 42.

³⁴ Marx, "On the Jewish Question," *Marx-Engels Reader*, 43.

³⁵ Marx, "The German Ideology," *Marx-Engels Reader*, 150.

Since the individual's relationship to the material world is of such importance to Marx, the activities that individuals engage in on a day to day basis must have the character of overcoming alienation among men, their products, and each other if freedom is to be realized: "*Communism as the positive transcendence of private property, or human self-estrangement, and therefore as the real appropriation of the human essence by and for man; communism therefore as the complete return of man to himself as a social (i.e. human) being—a return becomes conscious, and accomplished within the entire wealth of previous developments.*"³⁶ As private property disappears, unnecessary boundaries between men begin to dissolve. Individuals begin to see their relations with each other as voluntary, and they begin to fulfill their real social needs in those relations, not the ever-increasing, never attainable, trumped-up monetary "needs" of consumer capitalism.

While many worry that communism would lead to a devastating attack on individual rights as the protective barriers between human beings fall away, it is important to note that Marx did not intend to launch any kind of attack against individuality. In fact, it could be argued that under communism human beings recognize themselves more as individuals in that they can see themselves to be members of a community and species. "Man, much as he may be a *particular* individual (and it is precisely his particularity which makes him an individual, and a real *individual* social being), is just as much the *totality*—the ideal totality—the subjective existence of thought and experienced society present for itself; just as he exists also in the real world as the awareness and the real enjoyment of social existence, and as a totality of human life-activity." From this point of view, "the powers of the individual can only flourish when

³⁶ Marx, "Economic and Philosophic Manuscripts," *Marx-Engels Reader*, 84.

he regards them as social forces, valuable and effective within a human community and not in isolation.”³⁷ This is a freedom *to*, not a freedom *from*.

Furthermore, Marx wanted human beings to recognize themselves as their own creators: “A *being* only considers himself independent when he stands on his own feet; and he only stands on his own feet when he owes his *existence* to himself.”³⁸ While the independent man in this passage might be recognized as the autonomous liberal individual, it is important to remember that for Marx there is no such thing. This passage is more accurately read as an advocacy of the realization of one’s own self through the recognition of one’s connections. As Erich Fromm asserts, “for Marx, the aim socialism was the emancipation of man, and the emancipation of man was the same as his self-realization in the process of productive relatedness and oneness with man and nature. The aim of socialism was the development of the individual personality.”³⁹

So, given the complex interrelationship between individuals and the contexts within which they operate in Marx’s thought, is there room for what we would call agency in Marx’s understanding of the relationship between the individual and society? In the “Theses on Feuerbach,” he tells us “the human essence is no abstraction inherent in each single individual. In its reality it is the ensemble of the social relations.”⁴⁰ But can we conclude from this that Marx saw larger forces, including economic forces, as determining human behavior in any neat way? In the third thesis, the answer is clearly that he did not:

³⁷ Leszek Kolakowski, *Main Currents of Marxism: Its Rise, Growth, and Dissolution* (Oxford: Oxford University Press, 1978) 179.

³⁸ Marx, “Economic and Philosophic Manuscripts,” *Marx-Engels Reader*, 91.

³⁹ Erich Fromm, *Marx’s Concept of Man* (New York: Frederick Unger Publishing Co., 1961) 38.

⁴⁰ Marx, Sixth Thesis on Feuerbach, “Theses on Feuerbach,” *Marx-Engels Reader*, 145.

The materialist doctrine that men are products of circumstances and upbringing and that, therefore, changed men are products of other circumstances and changed upbringing, forgets that it is men who change circumstances and that it is essential to educate the educator himself. Hence, this doctrine necessarily arrives at dividing society into two parts, one of which is superior to society. The coincidence of the changing of circumstances and of human activity can be conceived and rationally understood only as revolutionising practice.⁴¹

Marx was undoubtedly a materialist, and his particular brand of structuralism reflects this. Materialism and structuralism need not be coterminous with determinism, however; even in Marx, the structuralist methodology which analyses society from the whole rather than the parts leaves some room for agency through the fact that history is ultimately a human phenomenon: “The first premise of all human history is, of course, the existence of living human individuals.”⁴² In this way, a structuralist vantage-point implies agency. This tendency can be seen in the structuralism of Levi-Strauss as well.

In fields such as anthropology and sociology, structuralism evokes the work of twentieth-century French anthropologist Claude Levi-Strauss. Levi-Strauss’s structuralism differs from that of Marx in that the mediating effects of language and the structures of the mind take on a greater role. If Marx is a materialist, Levi-Strauss could be characterized more as an idealist; that is, he assumes that there is something within the human mind, structurally, that tends to organize the world into binaries, and that this tendency can explain a great deal about the organization of human societies. This is not to say that his is an idealism along the lines of Hegel’s, however, where spirit or idea is seen as the driving force of the material world. Rather, his focus on universal and systems, especially as related to both conscious and unconscious social and mental processes, gives his structuralism a more dualistic or dialectic character.

⁴¹ Marx, Third Thesis on Feuerbach, “Theses on Feuerbach,” *Marx-Engels Reader*, 144.

⁴² Marx, “The German Ideology,” *Marx-Engels Reader* 149.

What is unique, however, and where many later structural thinkers influenced by Levi-Strauss will raise objections, is that he emphasizes in his work that when he speaks of structure, or structuralism, he is talking about the *model* that describes the material world, and not the material world itself:

The term ‘social structure’ has nothing to do with empirical reality but with models which are built up after it. This should help one to clarify the difference between two concepts which are so close to each other that they have often been confused, namely, *social structure* and of *social relations*. It will be enough to state at this time that social relations consist of raw materials out of which the models making up the social structure are built, while social structure can, by no means, be reduced to the ensemble of the social relations to be described in a given society. Therefore, social structure cannot claim a field of its own among others in the social studies. It is rather a method to be applied to any kind of social studies, similar to the structural analysis current in other disciplines.⁴³

The method here, which Levi-Strauss credits to linguistic structuralism, “shifts from the study of *conscious* linguistic phenomena to the study of their *unconscious* infrastructure; second, it does not treat *terms* as independent entities, taking instead as its basis of analysis the *relations* among the terms; third, it introduces the concept of *system*...finally, structural linguistics aims at discovering *general laws*.”⁴⁴ Deeply influenced by the linguistic structuralism of Saussure, Levi-Strauss applies this method to the mediating infrastructures, or the conceptual schemes, surrounding such “cultural” phenomena as language, kinship structures, myth, and art; specifically, structure is what allows binaries to be organized into myths. This method of analysis, where structure refers to particular mental schemas held both individually and collectively, has been very influential in the social sciences, including the work of Anthony Giddens and Pierre Bourdieu, who I will discuss in greater depth below.

⁴³ Claude Levi-Strauss, *Structural Anthropology* (New York: Basic Books, 1963) 279.

⁴⁴ *Ibid.*, 33.

As can be seen by the examples of Marxian and Levi-Straussian versions of structural thought, structuralism is characterized by the method of examining wholes, which are epistemologically and ontologically prior to its parts, which parts are best described as positions or relationships rather than determined by any independent nature. In most cases, the whole organism is thought to obey some universal set of laws, which can usually be discovered by human observation or through the analysis of a system. But will the “material” aspects of structure be emphasized, as in the case of Marx, or the more “symbolic” aspects (following linguistics) as in the case of Levi-Strauss? Both aspects are central to understanding the complex effect of structures, whether they oppress or enable; for example, as noted earlier, the denial of resources tends to be accompanied by a legitimating ideology. Another way to state this is that material and symbolic aspects of structure maintain a dualistic relationship with *each other*. This dual nature of structure should be kept in mind as we approach a structural theory of freedom through a reflexive and relational understanding of structure.

Toward a Reflexive, Relational Structuralism: Giddens, Bourdieu, and Sewell

Perhaps the most useful formulation of the relationship between structure and agency can be summarized as *reflexivity*, a notion I borrow from Anthony Giddens (and which I will explore in greater depth below). The notion of reflexivity suggests that there is a flow between the “internal” world of will and the “external” world of influences over our choices. These “internal” and “external” arenas reflect back upon one another continuously, both materially and temporally, and it is of the utmost importance to a structural theory of freedom to understand this internal/external, material/symbolic

relationships in a mutually constitutive rather than dichotomous way. Here, it is helpful to turn to sociological literature, since the field of sociology has developed a more nuanced understanding of structure and agency than its sister social sciences. The idea of reflexivity captures the interrelational nature of symbolic and material aspects of structure as well as the dialectical dynamic between structure and agency. This more nuanced understanding of structure is essential to a viable theory of freedom because it provides a way to conceptualize the individual whose action and consciousness are neither wholly determined nor characterized by “free will.” It allows us to delve into the constraining as well as enabling aspects of structure, with an aim toward formulating principles of freedom that will guide institution-building and public policy. Prominent sociologists and anthropologists such as Philip Abrams, Anthony Giddens, and Pierre Bourdieu discuss structure and agency as a dynamic relationship that is best understood historically, or as an ongoing process.

Philip Abrams, a sociologist, argues against one-dimensional constructions of structure and ahistorical understandings of agency. He makes an argument for overcoming the dualism that he perceives to be at the heart of a specifically Cartesian, dualistic individualism. To properly think through the relationship of structure and agency, it is essential, he argues, “to escape from the seductive clutches of the belief that the individual has a being distinct from that of society or, conversely, that society and the individual constitute separate realities.”⁴⁵ The problem is not to decide whether structure or agency determines history and action more. Rather,

The problem of agency is the problem of finding a way of accounting for human experience which recognises simultaneously and in equal measure that history and society are made by constant and more or less purposeful individual action *and*

⁴⁵ Philip Abrams, *Historical Sociology* (Near Shepton, England: Open Books, 1982) 227.

that individual action, however purposeful, is made by history and society. How do we, as active subjects make a world of objects which then, as it were, become subjects making us their objects?⁴⁶

Structures and actions participate together in a dialectical dance over time, constantly changing. Both material and symbolic aspects of structure shape the human world in an emphatically historical, or procedural way; here time becomes the focus of analysis, highlighting the interrelationship between structure and agency.

For Abrams, then, the answer is to approach sociological questions historically.⁴⁷ The social world, in its “two-sidedness” (in that we are both the creatures and creators of the social world) is essentially historical. “What we choose to do and what we have to do are shaped by the historically given possibilities among which we find ourselves....And how we behave now—whether we throw a bomb or go on a peace march, whether we protest about inequality or thrive on it—is very largely a matter of what previous experience has made *possible and meaningful* for us.”⁴⁸ That is, “historical sociology is...the attempt to understand the relationship of personal activity and experience on the one hand and social organisation on the other as something that is continuously constructed in time. *It makes the process of construction the focal concern of social analysis.*”⁴⁹ For Abrams, then, structure and agency are two sides of the same social coin, distinct but inseparable. Later social theorists share this basically historical understanding of structure and agency, which will help us to think through the political

⁴⁶ Philip Abrams, *Historical Sociology* (Near Shepton, England: Open Books, 1982) xiii.

⁴⁷ Joan Scott makes a similar argument with regard to understanding the role of “experience” in history. See Joan W. Scott, “Experience,” in *Feminists Theorize the Political*, Judith Butler and Joan W. Scott, Eds. (New York: Routledge, 1992) 22-40. I am essentially in agreement with both articulations of this argument.

⁴⁸ Abrams, *Historical Sociology*, 3 (emphasis added).

⁴⁹ Abrams, *Historical Sociology*, 16 (emphasis added).

value of freedom insofar as freedom describes a relationship between individuals and the social and political structures which both constrain and enable them.

Like Abrams, Anthony Giddens's social theory emphasizes the relationship between structure and agency over time. His approach to social theory is clearly influenced by the historical materialism of Marx, in that the *organization* of resources is an essential component of social systems for Giddens (only the collectively held schemas governing resources is part of his definition of "structure"); however, he imbues social actors with a less ambiguous conscious awareness of and influence over the forces of institutions than does Marx. His work is also influenced by Levi-Strauss, as the two share an interest for the processes that govern social production and reproduction through social practices that exist on a "virtual" plane, if by virtual we mean non-concrete as opposed to non-real.⁵⁰ Unlike Levi-Strauss, however, Giddens rejects the notion that structure can describe nothing more than the model that social scientists use to apprehend the world. Giddens's social theory aims to understand what Levi-Strauss might call "social relations," or the ways in which the ongoing relationship between structure and agency function to produce and reproduce the social world, where actors can occasionally enact changes in the systems that produce them. His definition of structure remains stubbornly abstract, however, and his significant contribution to theories of structure and agency would be more compelling were the material world (and not simply the rules that govern its organization and manipulation) to take a more independent role.⁵¹

⁵⁰ For example, language exists on a symbolic plane, and although it cannot be touched or smelled, it is nonetheless real; as a prime mediator between the "material" world (those things that can be "sensed" empirically) and the human world of understanding, the role of linguistic "schemas" or "rules" that exist in the collective imagination, creating a framework for understanding and communication, should not be underestimated.

⁵¹ This is essentially the argument of William Sewall, "A Theory of Structure," 12-13.

Giddens focuses on the process of the production and reproduction of social structures, where actors recreate the conditions that made and continually make their actions possible in the first place. Specifically, Giddens's theory of structuration provides a compelling account of the reproduction of social patterns and organizations in which neither actor nor structure is emphasized over the other:

The basic domain of study of the social sciences, according to the theory of structuration, is neither the experience of the individual actor, nor the existence of any form of societal totality, but social practices ordered in time. Human social activities, like some self-reproducing items in nature, are recursive. That is to say, they are not brought into being by social actors but continually recreated by them via the very means whereby they express themselves *as* actors. In and through their activities agents reproduce the conditions that make these activities possible.⁵²

Several terms will have to be defined to make sense of structuration theory and its importance to a structural theory of freedom, including the distinction between “recursive” and “reflexive,” the role of “agency” and “action, what he means by the “duality” of structure, and the place of “rules and resources” in his theory.

Giddens's structuration theory depends upon both recursivity and reflexivity. When Giddens speaks of the “recursive” character of human action, he refers to the repeated and ongoing nature of social reproduction, in which consciousness, practice, and the material world are closely interconnected. Put another way, this repeated process, through which structure and action continually recreate each other, suggests in an important way the simultaneously constraining and enabling effects of structure, or its dual nature:

The concept of structuration involves that of the *duality of structure*, which relates to the *fundamentally recursive character of social life, and expresses the mutual dependence of structure and agency*. By the duality of structure I mean that the

⁵² Anthony Giddens, *The Giddens Reader* ed. by Philip Cassell (Stanford: Stanford University Press, 1993) 89.

structural properties of social systems are both the medium and the outcome of the practices that constitute those systems.... The identification of structure with constraint is also rejected: structure is both enabling and constraining, and it is one of the specific tasks of social theory to study the conditions in the organisation of social systems that govern interconnections between the two.⁵³

Recursivity, then, is a description of structure as both the precondition and the outcome of action; it is the framework *and* the product of action. This is why Giddens refers to his theory as “structuration,” a process, rather than structuralism, which implies a certain ontological deadness. This explanation also raises more questions, however: what does Giddens mean by action (which is reflexive in nature), and for my purposes here, what might it have to do with freedom?

Reflexivity, for Giddens, is an ongoing process of critically observing one’s own action as well as those of others, or the space for self-awareness and reflection that allows for agency.⁵⁴

It is useful to speak of reflexivity as grounded in the continuous monitoring of action which human beings display and expect others to display. The reflexive monitoring of action depends upon rationalization, understood here as a process rather than a state and as inherently involved in the competence of agents. An ontology of time-space as constitutive of social practices is basic to the conception of structuration, which *begins* from temporality and thus, in one sense, ‘history.’⁵⁵

And, “it is the specifically reflexive form of the knowledgeability of human agents that is most deeply involved in the recursive ordering of social practices.”⁵⁶ In other words, unlike deterministic structural theories, Giddens sees social actors as always possessing a certain degree of mental awareness over the process of structuration in which they are

⁵³ Giddens, 122.

⁵⁴ In understanding Giddens’s terminology here, it is helpful to bear in mind that “reflect” and “reflexive” come from the same root word; the sense he is trying to convey might more accurately (if less properly) be rendered as “reflective,” except for that “reflexive” conveys a greater sense of repetition. Similarly, “recursive” might be better rendered as “recurring,” but again this is almost too static a sense for Giddens.

⁵⁵ Giddens, 90.

⁵⁶ Giddens, 90.

involved. For Giddens, actors are not “cultural dopes,” but rather “every competent member of every society knows a great deal about the institutions of that society.”⁵⁷ Even the disempowered possess a formidable amount of agency.

The next terms to consider, then, are “actor,” “action,” and “agency,” which are terms closely related to reflexivity. For Giddens, agency “concerns events for which an individual is the perpetrator, in the sense that the individual could, at any phase in a given sequence of conduct, have acted differently.” Agents, then, are the authors of action, which he defines as “a continuous process, a flow, in which the reflexive monitoring which the individual maintains is fundamental to the control of the body that actors ordinarily sustain throughout their day-to-day lives.”⁵⁸ This is not to emphasize the autonomous realm of the psyche over the social, however, and in fact Giddens explicitly rejects what he sees as the determinism of Freud.⁵⁹ Instead, actors make the world at the very same time that the world makes them.

It would seem, then, that Giddens’s structuralism focuses more on the frameworks and schemas of social practice rather than on the distribution of material goods. But in fact, Giddens includes both “rules and resources” in his account of structure, opening up the space for a consideration of power and freedom in a way that takes into account one’s social position vis-à-vis the mode of production as well as more “virtual”⁶⁰ aspects of social organization. Structure, for Giddens, refers to “‘structural property’, or more exactly, to ‘structuring property’, structuring properties providing the ‘binding’ of time and space... [T]hese properties can be understood as rules and resources, recursively

⁵⁷ Giddens, 124.

⁵⁸ Giddens, 96.

⁵⁹ Giddens, 92.

⁶⁰ By “virtual” Giddens seems to mean those things that exist on the level of signs and symbols, especially through language.

implicated in the reproduction of social systems.”⁶¹ According to his theory of structuration, “power is generated in and through the reproduction of structures of domination, which include the dominion of human beings over the material world (*allocative resources*) and over the social world (*authoritative resources*).... Power is generated by the transformation/mediation relations inherent in the allocative and authoritative resources comprised in structures of domination.”⁶²

Some care is needed in reading this definition, however. For Giddens, as for Levi-Strauss, structure itself exists only on a virtual plane; with regard to resources, structure involves the *principles* that govern human relationships to them. In a sense, then, Giddens’s “resources,” both allocative and authoritative, are social or virtual, and it is only a society’s ideas about wealth, or relations of production, or the distribution of goods and services, that are properly understood to be involved in structuration. But it also seems that an objective account of the “actual” state of the material world—the distribution of resources, e.g.—is an important element in understanding the enabling and constraining effects of structure in human life. That is, following the materialism of Marx’s structuralism rather than linguistic structuralism on this point, actual resources should be accorded an independent role in the process of structuration. As William Sewell argues, it would be better to define structure as “composed simultaneously of schemas, which are virtual, and of resources, which are actual....Schemas are the effects of resources, just as resources are the effects of schemas....Sets of resources and schemas may properly be said to be constitutive of structures only when they mutually imply and

⁶¹ Giddens, 117.

⁶² Giddens, 185, emphasis added.

sustain each other over time.”⁶³ Even though the material world is in many significant ways a human creation, material things also tend to create humanity as well.⁶⁴ Since this is the case, a viable structural theory of freedom should be able to account for the dialectic that exists between humanity and its creations, which always have some reciprocal effect on humanity.

Given an independent role for material resources, Giddens’s recursive and reflexive approach to the problem of structure and agency is extremely useful for thinking through the political aspects of freedom. While most theories of freedom take the already-formed individual as the starting point, this dynamic understanding of the individual-context relationship shifts the focus to the situations within which individuals find themselves without effacing the essential agency of the actor. This focus suggests that a meaningful theory of freedom must take the social organizations and institutions that shape our social worlds into account, as a structural theory of freedom does. Structure should not be seen as a barrier to agency, as Giddens makes clear, but rather as agency’s precondition. This is a rather common-sensical point but often overlooked point; without a framework from which to draw, action would be meaningless. Further, Giddens’s structuration theory imbues actors with an awareness of the institutions in which they are involved. This constitutes a strong warning against assuming that the empowered can speak on behalf of the disempowered. What Giddens does not provide is a way to make judgments about the kinds of institutions that function in societies or about the quality of the content that actors receive from structures or institutions. Will the

⁶³ Sewell, 13.

⁶⁴ For a brilliantly argued account of the dialectical relationship between the seemingly material nature of artifacts and the seemingly independent nature of consciousness, which the author refers to as “the dialectic of projection and reciprocation,” see Timothy V. Kaufman-Osborn, *Creatures of Prometheus* (Lanham: Rowman and Littlefield Publishers, Inc., 1997).

kinds of resources we provide and the types of institutions we build change the schemas we use to maintain and explain those resources and institutions? This information is essential to a meaningful structural theory of freedom. Does Bourdieu's construct of habitus provide us with a better ground from which to make such important judgments, or from which to draw viable principles of freedom?

Pierre Bourdieu, in his *Outline of a Theory of Practice* (first published in French in 1972; published in English 1977) aims to break with the dichotomy between (cultural) structuralism and social action. Coming out of a French structuralist tradition, and also heavily influenced by linguistic structuralism, Bourdieu's work can be seen as a negotiation between the structural determinism of Levi-Strauss and what I would call the hyper-agency and egoism of French existentialism, especially as represented by Jean-Paul Sartre.⁶⁵ Clearly influenced by Marx, but dissatisfied with his economic determinism, his theory of practice focuses attention on the dialectic between what he calls "objective structures" and the dispositions and actions of individuals through the construct of the "habitus." This focus on what is basically a process makes his theory of practice very useful for a theory of institutional freedom concerned with the mechanisms between structure and agency, and the reflexive and relational nature of this relationship. Ultimately, however, Bourdieu's account of the determining effect of structures on individuals does not provide sufficient explanation for social change; if changes in the material setting prompt changes in individual action, it seems that changes in the objective structures can occur only from outside the system.

To make any sense of his theory of practice, and to glean it for its usefulness to a structural theory of freedom, it is necessary to come to a clearer understanding of his

⁶⁵ Craig Calhoun, "A Different Poststructuralism," *Contemporary Sociology* (May 1996) 303.

concept of the habitus. His first and most comprehensive definition of the habitus appears in the beginning of the second chapter, “Structures and the habitus;” it will require some unpacking:

The structures constitutive of a particular type of environment (e.g. the material conditions of existence characteristic of class condition) produce *habitus*, systems of durable, transposable *dispositions*, structured structures predisposed to function as structuring structures, that is, principles of the generation and structuring of practices and representations which can be objectively “regulated” and “regular” without in any way being the product of obedience to rules, objectively adapted to their goals without presupposing a conscious aiming at ends of an express mastery of the operations necessary to attain them and, being all this, collectively orchestrated without being the product of the orchestrating action of a conductor.⁶⁶

The habitus, then, is something like a set of unconscious, embodied characteristics or ways of relating to the world, produced by an environment which is reinforced through the very actions structured by the habitus. Bourdieu characterizes the habitus as “systems of durable, transposable dispositions”; a “strategy-generating principle”; a “universalizing mediation”; the “durably installed generative principle of regulated improvisations”; and a “socially constituted system of cognitive and motivating structures.”⁶⁷ Produced by “the structures constitutive of a particular type of environment,” the habitus is something like the dialectical feedback loop of praxis which keeps any given social system running; but it is a system that runs quietly in the background. This point becomes more clear through Bourdieu’s explanation of the difference between the way the habitus functions and the effect of conscious and promulgated rules. The habitus, as embodied dispositions located in individuals, is much more influential and durable than any social and political laws made explicit by a given society.

⁶⁶ Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977) 72.

⁶⁷ Bourdieu, *Outline*, 72-78.

The metaphors of jazz improvisation and game-playing are often used to describe Bourdieu's embodied practice that it is the internalization of the objective world. Like a jazz musician who has so thoroughly learned the rules of chordal harmony and rhythm that she is then empowered to freely improvise within that highly structured world, or in the way a baseball player doesn't have to rehearse the rules in his head before running to first base, Bourdieu's individuals are enabled to act because they have internalized a set of rules that makes practice reflexive, in the sense of acting as if by reflex. Since the rules of the habitus are unconscious and embodied, their force is strongest.

The principles embodied in this way are placed beyond the grasp of consciousness, and hence cannot be touched by voluntary, deliberate transformation, cannot even be made explicit; nothing seems more ineffable, more incommunicable, more inimitable, and, therefore, more precious, than the values given body, *made* body by the transubstantiation achieved by the hidden persuasion of an implicit pedagogy.⁶⁸

Another way to put this is that the habitus functions on the level of *doxa* (Bourdieu's term), or the unconscious and unquestioned beliefs of a society, rather than orthodoxy, which purposefully (and thus less effectively) aims to set out the right and the wrong. Since the habitus is a generative process, its inscription and inculcation onto the body makes it more powerful than any conscious play for social power. "It is because subjects do not, strictly speaking, know what they are doing that what they do has more meaning than they know."⁶⁹ And what they do is to recreate the structures that made their practice possible in the first place, seemingly inescapably.

Bourdieu does leave open the possibility for open conflicts of power, however. In a stratified society, the members of that society will occupy different realities. In times of crisis, arguments arise over the definition of reality. Those in power have an interest

⁶⁸ Bourdieu, *Outline*, 94.

⁶⁹ Bourdieu, *Outline*, 79.

in defending the *status quo*, he argues, while the dominated classes tend to expose the prevailing field of *doxa* as arbitrary through critical discourse. This happens when

the dominated have the material and symbolic means of rejecting the definition of the real that is imposed on them through logical structures reproducing the social structures (i.e. the state of the power relations) and to lift the (institutionalized or internalized) censorships which it implies, i.e. when social classifications become the object and instrument of class struggle, that the arbitrary principles of the prevailing classification can appear as such.⁷⁰

For Bourdieu, then, the habitus is open to change, if there are changes in the “objective” conditions. But is this change to come from inside or outside the system? And, germane to the question at hand in this project, is there any hope in consciously making changes in social, political, or economic structures, with an eye toward building institutions that will sustain a viable conception of freedom, from the point of view of Bourdieu’s theory of practice? If “as an acquired system of generative schemes objectively adjusted to the particular conditions in which it is constituted, the habitus engenders all the thoughts, all the perceptions, and all the actions consistent with those conditions, and no others,”⁷¹ how are changes to be introduced if not from “outside”? This fault can be remedied by taking agency more seriously, especially through the idea of the “transposability of schemas” as introduced by William Sewell.

In his clear and insightful critical essay, Sewell utilizes Giddens’s theory of structuration and Bourdieu’s habitus to develop an account of structure that explains social change as well as it explains continuity. (The work of both Giddens and Bourdieu has been widely criticized for not taking great enough account of agency.⁷²) He defines

⁷⁰ Bourdieu, *Outline*, 169.

⁷¹ Bourdieu, *Outline*, 95.

⁷² Theorists of agency criticize structural theories such as those put forth by Giddens and Bourdieu for being too static in nature. See for example Mustafa Emirbayer and Ann Mische, “What is Agency,” *American Journal of Sociology* (Jan., 1998) 962-1023; Laura Ahearn, “Language and Agency,” *Annual Review of Anthropology* (2001) 30: 109-37; William H. Sewell, “A Theory of Structure: Duality, Agency,

five principles of structure: the multiplicity of structures, the transposability of schemas, the unpredictability of resource accumulation, the polysemy of resources, and the intersection of structures. The constructs “resources” and “schemas” are useful for thinking through Giddens’s and Bourdieu’s uses of “structure” as well as for a structural theory of freedom. Sewell convincingly argues that “schemas,” or the “virtual” aspect of structure existing through ideas, language, social roles with their rewards and sanctions, and so on is an important aspect of structure side by side with “resources,” or the material aspects of culture. Through the two constructs and the five principles, he provides a succinct and highly useful definition of structure that is dualistic, reflexive, and able to account for agency:

Structures, then, are sets of mutually sustaining schemas and resources that empower and constrain social action and that tend to be reproduced by that social action. But their reproduction is never automatic. Structures are at risk, at least to some extent, in all of the social encounters they shape—because structures are multiple and intersecting, because schemas are transposable, and because resources are polysemic and accumulate unpredictably. Placing the relationship between resources and cultural schemas at the center of a concept of structure makes it possible to show how social change, no less than social stasis, can be generated by the enactment of structures in social life.⁷³

He defines agency as “entailing the capacity to transpose and extend schemas to new contexts,” a capacity that is “inherent in the knowledge of cultural schemas that characterize all minimally competent members of society.”⁷⁴

His five principles mentioned above inject agency into a truly dual account of structure by introducing unpredictability; Sewell’s conception of society is

and Transformation,” *American Journal of Sociology* (July 1992) 1-29; Hans Joas, *The Creativity of Action* (Chicago: University of Chicago Press, 1996). Others argue that Bourdieu’s habitus does contain a viability notion of agency, going beyond a sophisticated material determinism. See Lois McNay, *Gender and Agency* (Malden, Ma.: Polity Press, 2000).

⁷³ William H. Sewell, “A Theory of Structure: Duality, Agency, and Transformation,” *American Journal of Sociology* (July 1992) 19.

⁷⁴ Sewell, 18.

much more “multiple, contingent, and fractured”⁷⁵ than are Giddens’s or Bourdieu’s. The “multiplicity of structures” calls attention to the ways that structures vary within different spheres; as institutional structures, government and religion have very different dynamics and rules, for example. The “transposability of schemas” calls attention to agency in a direct way. We may employ a given logical schema to understand new ones, but like playing the telephone game, things are always lost in the translation, opening up the possibility for unintended consequences. Likewise, the “unpredictability of resource accumulation” and the “polysemy of resources” add an element of contingency to action where resources are concerned, in both their acquisition and interpretation. Finally, the “intersection of structures” demonstrates how one structure changes when it intersects with another, as in the case of race, gender, and class, for example.

A viable structural theory of freedom would benefit from precisely these most reflexive formulations of the relationship between structure and agency. Structural freedom takes the individual as the subject of liberty, but, through a focus on the mediating effects of institutions (both enabling and constraining) understands the individual to be socially constructed and relationally situated. A structurally free society would be one in which formative mediating institutions—that is, institutions that mediate between the “virtual” world and the “actual” world, as well as between a society’s fellows—would cohere with the ethical ideal of structural freedom. This would entail ensuring structural non-domination, the precondition for a meaningful, because necessarily relational, principle of self-definition. Thus, as we will see, these two principles of self-definition are distinct but interrelated in important ways.

⁷⁵ Sewell, 16.

To foreshadow the following chapters, I will argue that the principles of self-definition and non-domination together encapsulate the necessary simultaneity of the two seemingly incompatible faces of freedom, namely the sense of being left alone to do what we wish and the ability to participate in forming the laws that will govern us; as these accounts of structure and agency are meant to demonstrate, we are neither free actors not determined, but both. In much the same way that structure and agency could said to presuppose each other, so could these two aspects of freedom. Drawing largely from the classical republican tradition, the principle of non-domination suggests that freedom is best understood as the opposite of domination rather than coercion, and is structural insofar as concrete relations and positions take center stage: while a free individual is not in the position to have his or her will arbitrarily interfered with, it is a principle that can be applied to the character and ordering of a society as a whole. Self-definition, a principle drawing largely from feminist theory, recognizes that self-definition can take place only in relationship. This is a structural principle insofar as the possibility of any positive self-definition depends upon a structurally unoppressive context. At the same time, this principle represents the creativity of action inherent in human agency—the potential that can never be captured or fully determined, particularly as a result of the multiple and fractured nature of structures and the ongoing participation of the inventive human mind in those structures. Together, these principles are meant to inform the building of institutions that would be incompatible with a stratified society, where some experience freedom at the expense of the rest.

Chapter Two

Institutions, Non-domination, and Republican Theories of Freedom

Beginning a discussion about freedom at the point of an individual's already-formed desires is to overlook the active role of institutions in shaping human nature, will, and choice. In the classroom, in reaction to the commonly held belief in the individual's ability to craft one's own destiny, I will sometimes ask my students to share with me their career aspirations. After a number of students reply that they would like to be lawyers, or writers, or doctors, I ask how many have considered careers as blacksmiths. (The complement to this problematic is demonstrated by asking how many students plan to be pancake waitresses or grocery clerks, pickpockets or drug addicts.) The point, of course, is that what we can accomplish, or even imagine to desire, is largely shaped by the options available to us. From the point of view of a structural theory of freedom, wherein individuals are understood to exist in a dialectical relationship with the structures that surround them, it is nonsensical to suggest that institutions can be obliterated, or to refrain from "constraining;" the question becomes, specifically who and in what way does an institution enable/constrain, and how are we to make ethical judgments about this condition? And, relevant to the project at hand, how can we arrive at coherent and viable normative principles meant to inform the building and maintenance of the institutions that inevitably frame our lives?

In the introduction to this project, I provided a snapshot of the current state of deep inequality and stratification among different groups of people across the globe. Living in a society characterized by such deep stratification immensely complicates the problem of freedom and free choice. Conditions of economic or "material" stratification

often carry along with them ideological justifications for the *social* or “cultural” hierarchies that exist, forming a mutually reinforcing relationship. As Nancy Fraser puts it: “Even the most material economic institutions have a constitutive, irreducible cultural dimension; they are shot through with significations and norms. Conversely, even the most discursive cultural practices have a constitutive, irreducible political-economic dimension; they are underpinned by material supports.”¹ To take a local example, Rutgers University is split up into five separate colleges; Livingston College is generally considered the least selective of these colleges, populated by the least worthy students. When Rutgers sees fit to accord fewer resources to this group of students, their relative underperformance seems to justify the continued inequalitarian distribution of classroom space, teaching talents, and other University resources, a circular condition not lost upon the Livingston College students. Furthermore, one tends to “internalize” (incorporate into one’s cognitive framework as one’s own) the norms that support prevailing institutions. For example, many women believe that women are much better suited to child care than are men. When women then perform the majority of care work, this proposition becomes true, thus reinforcing the sexual division of labor. Of course, many women believe no such thing; but when a couple discovers it is less of an economic hardship for the woman to work part time or stay at home because she earns less, the result is much the same.²

This situation of complex material and symbolic inequality renders any simple understanding of the relationship between institutions and lived freedom impossible. Not

¹ Nancy Fraser, *Justice Interruptus: Critical Reflections on the ‘Post-socialist’ Condition* (New York: Routledge, 1997) 15.

² Susan Okin makes a similar point regarding the circular nature of “vulnerability by marriage.” See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989) 138. Women continue to earn 75 cents to the dollar compared to men for the same work.

all institutions constrain and enable in the same way, and they do not affect all groups of society equally. What would characterize an institution that would enable/constrain in a productive rather than an oppressive way? And, central to the project at hand, how would one go about making this distinction? I argue here that it is essential to build ethical principles of freedom from which to make normative judgments regarding the character of particular institutions. Through the lens of a structural theory of freedom, I have arrived at the principles of non-domination and self-definition as such ethical principles.

As discussed in chapter one, liberal individualist understandings of freedom, following Hobbes or Berlin, examine freedom from the point of view of the individual; how structures substantively situate actors vis-à-vis one another, beyond the equal rule of law, and how they shape individual desires and will, is not generally considered a question of freedom.³ In contrast, structural freedom, understood as reflexive and relational in the sense articulated in chapter one through the social theories of Marx, Giddens, and Sewell, focuses on the lived interrelationships between individual actors and the social and political contexts within which they operate. Structural freedom takes the ongoing interaction between “the individual” and our formative mediating institutions to be the subject of freedom, understanding the individual to be continuously constructed

³ As I argue in chapter one, liberal freedom as articulated by thinkers such as Locke and Mill is more complex than the simple formulation of “absence of impediment to motion” as articulated by Hobbes and Berlin. For Locke, freedom is compatible with a non-arbitrary rule of law while Mill acknowledges the pernicious effects of the more symbolic aspects of domination, such as in his formulation of “social tyranny.” But as I argued in the previous chapter, Locke and Mill saw the individual and society as fundamentally at odds. What’s more, they rely on coercion as determinant of a lack of freedom (I will explain the significance of this in much greater detail below). For these reasons, even though some aspects of their thinking will be compatible with the principle of non-domination I develop here, I classify Locke and Mill as belonging more fully to the liberal individualist camp than to a competing one, such as that represented by republicanism.

as well as constructing; individuals are understood to be relationally situated, but never in a static way.

A structurally free society would be one in which formative mediating institutions, both “public” and “private,” would cohere with the ethical ideal of structural freedom. The principles of self-definition and non-domination foster this goal in distinct but interrelated ways. As a normative ideal, structural freedom encompasses the institutional possibility of self-definition founded on the structural reality of non-domination. These two principles reject the dichotomy between structure and agency and instead foreground the dialectical nature of this relationship. In chapter three, I explore the aspect of structural freedom as self-definition through a reading of feminist theories of freedom. There, self-definition is understood as a specifically relational concept, acknowledging that subject formation and agency depends upon, and in fact presupposes, structural support. In this chapter, I will focus on the principle of non-domination. I have chosen to explore this principle first because in significant ways, the possibility of non-oppressive self-definition depends upon the structural condition of material/symbolic non-domination.

To develop the principle of non-domination, I begin by situating this concern with freedom within political science institutionalist literature that connects individual freedom with particular institutional forms. After defining “institution” and differentiating this political phenomenon with the more general “structure,” I will engage with contemporary political philosophical and historical revitalizations of a uniquely republican configuration of freedom.⁴ Here, freedom as non-domination is characterized

⁴ See Philip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997) and Quentin Skinner, *Liberty Before Liberalism*. Cambridge: Cambridge University Press, 1998.

by an absence of domination rather than an absence of coercion or interference, where domination is defined as the social or political condition wherein a person's will is systematically subject to arbitrary interference. I will argue for a structural approach to freedom that, following the republican tradition, understands domination as characteristic of a lack of freedom, here expanded to include symbolic as well as material aspects of domination. In the last part of this chapter, I will discuss the relationship between dependence, independence, and institutional form in Rousseau's theory of freedom, highlighting the strengths of his account of freedom for the principle of non-domination I develop here. Throughout, I will ask (and attempt to answer), how does the principle of non-domination conform with a structural theory of freedom, and what does it tell us about how we should form our institutions? To answer this question, it will first be necessary to define "institution."

Institutions, Structure, and Freedom

In general, political scientists take overtly bureaucratic or governmental institutions as central to the study of politics. There is some disagreement, however, about how institutions should be defined, and what role they should play in political analysis. Specifically, should institutions be treated as sites where the aggregation of externally determined individual behavior can be observed, as rational choice theorists would have it, or as something like agents in their own right, uniquely affecting individuals and the societies within which they are embedded? The "new institutionalist" literature and scholars dealing with "adaptive preferencing" provide useful perspectives into the relationship between "institutions" and (contextualized) choice. These scholars

of politics have (once again) taken to treating institutions as independent entities that affect choice, action, and collective behavior.

For the “new institutionalists,” the study of the structure of institutions becomes paramount. Individuals are not assumed to be able to accomplish whatever they will politically; their action is shaped by the rules and parameters of the institutions through which they act. The new institutionalism’s focus on the interplay of structure and action is provocative, suggesting implications potentially much more radical and interesting than those contained in their own analyses. In the case of the new historical institutionalism in political science, many of the guiding questions of this literature parallel my own: If I am inquiring after the relationship between individual freedom and larger social and political structures, they are focused on the narrower but relevant question of individual behavior and specific political institutions. However, although these scholars provide useful definitions of institutions, it will be necessary to turn to the new institutionalism in sociology to arrive at a sufficiently nuanced understanding of “institutions.”

For new institutionalists, then, what is an institution, and how does it differ from “structure”? In March and Olsen’s seminal essay, “The New Institutionalism: Organizational Factors in Political Life,” the authors define “political structure”:

By a political structure we mean a collection of institutions, rules of behavior, norms, roles, physical arrangements, building, and archives that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals. In contrast to theories that assume action is choice based on individual values and expectations, theories of political structure assume action is the fulfillment of duties and obligation.⁵

⁵ James G. March and Johan P. Olsen, “The New Institutionalism: Organizational Factors in Political Life,” *The American Political Science Review* (Sep., 1984) 741.

Political institutions are a sub-set of “political structure,” and although they include “social, political, and economic institutions” as within the scope of their study, only “formal organizations” such as the “legislature, the legal system, and the state,” as well as law and bureaucracy generally, and economic organizations, such as “the firm” and “budgets,” make an appearance, leaving “social institutions” largely undefined.⁶ What is of note here, however, is the independent role assigned to the structures that individuals encounter as political actors; the way the world is arranged affects behavior in important and significant ways. It is notable that “duties and obligation” figure as the source of action rather than “choice.”

Peter Hall and Rosemary Taylor, in their review of historical, rational choice, and sociological institutionalism, also provide useful definitions of the “institution.”

Historical institutionalists, they find, define institutions as:

the formal or informal procedures, routines, norms, and conventions embedded in the organizational structure of the polity or political economy. They can range from the rules of a constitutional order or the standard operating procedures of a bureaucracy to the conventions governing trade union behaviour or bank-firm relations. In general, historical institutionalists associate institutions with organizations and the rules or conventions promulgated by formal organization.⁷

This definition is very similar to that provided by March and Olsen, focusing on the most formal aspects of political and economic organizations. But like theorists of structure more generally, there is a focus on the rules and conventions that flow from the way an institution is organized. This effect is captured through the notion of “path dependency,” or the idea that institutional structure will shape outcomes independent of the will of

⁶ March and Olsen (1984) 734-5.

⁷ Peter A. Hall and Rosemary C. R. Taylor, “Political Science and the Three New Institutionalisms,” *Political Studies* (1996) XLIV, 938.

individual actors. Thus, institutional variables must be introduced into the empirical study of political processes.

What is implicit but crucial in this and most other conceptions of historical institutionalism is that institutions constrain and refract politics but they are never the sole ‘cause’ of outcomes. Institutional analyses do not deny the broad political forces that animate various theories of politics: class structure in Marxism, group dynamics in pluralism. Instead, they point to the ways that institutions structure these battles and in so doing, influence their outcome.⁸

In general, “new institutionalists” are concerned with the structure of institutions in part because they are convinced that said structure can influence—to varying degrees—human possibility.⁹

As a subset of “structure,” this understanding of “institution” accords in some ways with the reflexive account of structure I develop in chapter one. Importantly, institutionalists often bridge “schemas and resources” in their analyses, since formal organizations are responsible for redistributing many socially significant material goods. That is, while institutions are often responsible for the distribution of “actual” resources, as Sewell puts it, they are also responsible for creating the meaning and value attached to those resources as well as to more “symbolic” social goods. Institutions responsible for creating laws and policies are particularly good examples of this. For example, we will

⁸ Kathleen Thelen and Sven Steinmo, “Historical Institutionalism in Comparative Politics,” in *Structuring Politics*, ed. Sven Steinmo, Kathleen Thelen, and Frank Longstreth (Cambridge: Cambridge University Press, 1992) 3.

⁹ For collections of essays on (political) historical institutionalism, see Karen Soltan, Eric M. Uslaner, and Virginia Haufler, eds., *Institutions and Social Order* (Ann Arbor: The University of Michigan Press, 1998); and Sven Steinmo, Kathleen Thelen, and Frank Longstreth, eds., *Structuring Politics* (Cambridge: Cambridge University Press, 1992). For more sustained accounts, see B. Guy Peters, *Institutional Theory in Political Science* (London: Pinter, 1999). For a work relating institutions specifically to structuralism, see David Easton, *The Analysis of Political Structure* (New York: Routledge, 1990). The work of Theda Skocpol has been charged with employing an overly deterministic institutionalism. (Theda Skocpol, *States and Social Revolutions* (Cambridge: Cambridge University Press, 1979); Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, *Bringing the State Back In* (Cambridge University Press, 1985)). For an interesting and informative critique of these works which sees possibilities for political innovation in institutional settings, see John Dryzek, “The Good Society versus the State: Freedom and Necessity in Political Innovation,” *The Journal of Politics* (May 1992).

find in chapter four that although child custody policies are involved in distributing actual goods—child support payments, visiting rights, and so on—these policies also function on the symbolic level, regulating men and women through very powerfully held social schemas. Race, class, and gender frameworks are constituted and reconstituted as caregivers are found to conform (or not conform) to the ideals of the “good mother” and “the good father” in order to “win” custody cases. To apply an institutionalist approach to such a setting would be to attempt to understand the relationship between structural constraints and agency in a specifically political setting: What happens to various actors as they confront child custody policy—judges, lawyers, litigants, children? In what ways are each of their actions and choices determined by the constraints of family law? This line of questioning is direct contrast to a “rational choice” paradigm which assumes a certain model of rationality apart from the presumably neutral institutional constraints.

It seems, however, that limiting one’s analysis to the formal institutions of government, law, and policy is to apprehend an incomplete picture. To be sure, the contribution of historical institutionalism by scholars studying specifically political phenomena should not be dismissed. It is all too easy to overlook political institutions as ineffective or corrupt, and therefore not mainly responsible for political outcomes. All the same, a narrow focus on political institutions risks overlooking the effect of more “informal” social or cultural institutions of human freedom. For this reason, I advocate a definition of “institutions” that includes not only organizations such as state bureaucracies and policy-forming bodies, traditional understood to be “political,” but economic structures (e.g., modes of production and exchange), social structures (e.g., kinship structures), and aspects of society that are usually considered “cultural” (e.g.,

norms and values). Not only do these elements of the social world overlap with “politics,” but they frame choice, consciousness, and action in interdependently important ways. Sociologists employ a much broader (and dare I say more social) conception of institutions than do political scientists and economists in their explorations of the production and reproduction of social life, including systems of power and hierarchy.¹⁰

The sociological institutionalists,¹¹ according to Hall and Taylor, employ a more expansive definition, including “not just formal rules, procedures or norms, but the symbol systems, cognitive scripts, and moral templates that provide the ‘frames of meaning’ guiding human action.” In this definition, “institutions” and “culture” are conceptually distinct, but they “shade into each other.”¹² This use of “institution” can be seen in sociology and organizational analysis: “The new institutionalism in organizational analysis has a distinctly sociological flavor. This perspective emphasizes the ways in which action is structured and order made possible by shared systems of rules that both constrain the inclination and capacity of actors to optimize as well as privilege some groups whose interests are secured by prevailing rewards and sanctions.”¹³

¹⁰ A further split occurs with regard to the importance placed on power and self-interest in political and sociological institutionalist theories. As Hall and Taylor put it, “The sociological institutionalists...develop a more expansive conception of why a particular institution might be chosen, which goes beyond considerations of efficiency toward an appreciation for the role that collective processes of interpretation and concerns for social legitimacy play in the process. Among other things, such an approach goes a long way toward explaining the presence of many apparent inefficiencies in social and political institutions. From the perspective of political science, however, the approach that sociological institutionalism takes to such processes often seems curiously bloodless. That is to say, it can miss the extent to which processes of institutional creation or reform entail a clash of power among actors with competing interests.” “Political Science and the Three New Institutionalisms,” 953-4.

¹¹ For a collection of representative essays on new institutionalism in sociological organization theories, see Walter Powell and Paul DiMaggio, *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991). See also Mary C. Brinton and Victor Nee, eds., *The New Institutionalism in Sociology* (New York: Russel Sage Foundation, 1998).

¹² Hall and Taylor, 947.

¹³ Walter W. Powell and Paul J. DiMaggio, “Introduction,” *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991) 11.

This formulation of institutions resonates with Giddens's "rules and resources" and with Sewell's "schemas," as discussed in chapter one: the structure of institutions, through both "rules" and "resources," shapes human action. However, where the institutionalist approach can be read as "top-down," emphasizing the power of institutions to constrain, Giddens and Sewell see the human-institution relationship as dual or two-way, at the same time that they accord a more significant interplay between "material" and "symbolic" aspects of structure, or "resources" and "schemas:" "If resources are the effects of schemas, it is also true that schemas are the effects of resources."¹⁴ Sewell uses the example of the factory: the cultural meaning and significance of a factory depends upon the "rules defining the nature of property rights and of workplace authority,"¹⁵ for example; at the same time, "a factory is not an inert pile of bricks, wood, and metal. It incorporates or actualizes schemas, and this means that the schemas can be inferred from the material form of the factory."¹⁶ This interplay allows for change to occur: "Schemas not empowered or regenerated by resources would eventually be abandoned or forgotten, just as resources without cultural schemas to direct their use would eventually dissipate and decay."¹⁷ Thus, to better comprehend the significance of the distribution of resources through institutions, it is necessary to examine what meanings are attached to them through language and other cognitive schemas, and *vice versa*. It is this more flexible understanding that I incorporate here.

¹⁴ Sewell, 13.

¹⁵ Sewell, 12.

¹⁶ Sewell, 13.

¹⁷ Ibid.

Although not expressly sociological in perspective, an argument similar to that of the sociological institutionalists, bridging “culture” and “politics,”¹⁸ is made by thinkers who have developed an “adaptive preferencing” model to explain the relationship between the array of options available to political actors and the choices they actually make. Two succinct and useful formulations of adaptive preferencing can be seen in the (independent) work of Aaron Wildavsky and Cass Sunstein. Wildavsky argues that in contrast to rational choice economic models that assume that preferences can be understood independently of the choices made available by structures and institutions (“exogenous”), we must understand preferences to be shaped by politics; preferences are “endogenous” or internal to the system within which actors are embedded. He says,

Rejecting a social science that begins at the end by assuming interests, I wish to make what people want—their desires, preferences, values, ideals—into the central subject of our inquiry. By classifying people, their strategies, and their social contexts into the cultural biases that form their preferences, cultural theory attempts to explain and predict recurrent regularities and transitions in their behavior. Preferences in regard to political objects are not external to political life; on the contrary, they constitute the very internal essence, the quintessence of politics: the construction and reconstruction of our lives together.¹⁹

Similarly, Cass Sunstein, in a critique of liberal politics that treats all preferences equally, ties the social and political construction of choices directly to questions of freedom and autonomy:

[T]he satisfaction of private preferences, whatever their contents and origins, does not respond to a persuasive conception of liberty or autonomy....If preferences are a product of available information, existing consumption patterns, social

¹⁸ Here, “the political” or “politics” is meant to indicate that which concerns the formal, recognized, legitimate governing bodies and institutions, and the activities which surround those bodies. (Ultimately I advocate a much broader notion of politics that encompasses power relations more generally, but to eliminate confusion, I use the term here as it is commonly used in the field.) Next, “culture” indicates those aspects of society involved in the creation and maintenance of norms and values, such as kinship structures, spiritual practices, ethical norms, and so on. As I hope the vein of my analysis will begin to make clear, these are distinctions I ultimately reject.

¹⁹ Aaron Wildavsky, “Choosing Preferences by Constructing Institutions: A Cultural Theory of Preference Formation,” *The American Political Science Review* (March, 1987) 5.

pressures, and governmental rules, it seems odd to suggest that individual freedom lies exclusively or by definition in preference satisfaction, or that current preferences should, on grounds of autonomy, be treated as the basis for settling political issues. It seems even odder to suggest that all preferences should be treated equally, independently of their basis and consequences, or of the reasons offered in their support.²⁰

In other words, any viable theory of freedom should be able to take into account how the universe of possible choices comes to be, and not simply find freedom in the fact that we have any choices at all. This way of exposing the underlying normative dimensions of institutional influence seems to me particularly useful, reuniting “fact” and “value” in a productive way.

Bo Rothstein similarly brings together empirical political science and normative political philosophy, rejecting the separation of fact and value. Specifically, Rothstein is concerned to show how institutional conditions can affect the mores and values of the society within which it functions, linking structural freedom normatively with what could be called civic education. By “institutional conditions” he means “various formal systems of rules, such as constitutions, systems of taxation, and – critically for this analysis – social welfare programs. These are not to be seen merely as rule-systems determining which strategies of action are rational, but as established normative arrangements as well.”²¹ The argument here is that political conditions affect values, norms, and common culture; there is a dialectical relationship between institutions and actors. “Social norms, I want to argue, *can be explained by the manner in which political institutions structure the decision-making situation faced by actors and influence trust.*” Instead of seeing culture as determining institutional design, “the causal connection can

²⁰ Cass R. Sunstein, “Preferences and Politics,” *Philosophy and Public Affairs* (Winter, 1991) 11.

²¹ Bo Rothstein, *Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State* (Cambridge: Cambridge University Press, 1998) 16.

also be the reverse....This idea has a politically interesting corollary, moreover, namely that a society's norms are not structurally given (by culture, history, the World Spirit, etc.). If instead norms vary with the character of political institutions, then we as citizens have a critical role to play."²² From the point of view of a structural theory of freedom, then, it would follow that because individuals are malleable in the face of institutions, *and* institutions are malleable in the face of collective action, participation both materially and symbolically would be key to a society in which citizens occupy positions of freedom, rather than domination, vis-à-vis institutions as well as other citizens.

What is common to all of these basically structural modes of political and social analysis is an attention to the manner in which individual action is framed by the institutional context within which the actor finds himself. To recall Sewell's useful formulation of structure:

Structures, then, are sets of mutually sustaining schemas and resources that empower and constrain social action and that tend to be reproduced by that social action. But their reproduction is never automatic. Structures are at risk, at least to some extent, in all of the social encounters they shape—because structures are multiple and intersecting, because schemas are transposable, and because resources and polysemic and accumulate unpredictably. Placing the relationship between resources and cultural schemas at the center of a concept of structure makes it possible to show how social change, no less than social stasis, can be generated by the enactment of structures in social life.²³

To use the language of the adaptive preferencing school, our choices, interests, and desires are not “exogenous” to (that is, independent of) the social, economic, or political system which is responsible for the array of possible choices presented to the chooser. This is not to say, however, that individuals are powerless in the face of overarching institutions, or structures more generally. In fact, as I argued in the first chapter of this

²² Rothstein, *Just Institutions Matter*, 134-5; emphasis in original.

²³ William H. Sewell, “A Theory of Structure: Duality, Agency, and Transformation,” *American Journal of Sociology* (July 1992) 19.

project, *agency is always implied in the most useful and accurate theories of structure.* This would suggest in important ways that *the building and maintenance of institutions must be informed by coherent and viable normative principles.* I have proposed the principles of non-domination and self-definition as such guiding norms.

In thinking about freedom, an exploration of the role of institutions in enabling/constraining becomes vitally important. This is especially true if we understand “institution” in the more expansive sociological sense, as I do here. But institutions do not always affect or react to action in the same way, and with the same consequences. What I am looking for is a way to make judgments about the kinds of institutions we should support in order to sustain a viable conception of freedom. Such a theory would understand freedom to be incompatible with structures of inequality, since such structures arbitrary preclude access to the structures by which we make (meaning) of our lives, and which make (meaningful) our lives. For the remainder of this chapter, I argue that the principle non-domination, insofar as it is structural and reflexive, represents a normative principle by which to build and maintain the formative mediating institutions of politics and society; in chapter three I will develop the complementary principle of self-definition.

Non-domination is a principle drawn largely from the republican tradition, which provides a useful alternative understanding of the nature of freedom with regard to institutional design. Rooted in ancient Greek and Roman conceptions of society, it recognizes the relationship between institutional form and human potential, and (with the exception of Rousseau, who consciously does battle with such constructions) has not yet conceived of the split between fact and value, politics and culture. In particular, the

republican tradition offers a useful way to begin to understand freedom as the opposite of domination; thinkers of this tradition assume that freedom rests on a regime type that values, and even requires, wide-spread popular participation. However, there are many pernicious aspects of the republican tradition, among them the tendency to enslave (both literally and figuratively) certain segments of the population in order that the ruling classes experience the freedom of “ruling in turn.” While this is a serious flaw indeed, I believe it is not so integral to the theories of freedom offered that we cannot come away from this engagement with a useful understanding of freedom as non-domination. In fact, I will challenge these thinkers, and especially Rousseau, to take their own principles seriously, reclaiming many of republicanism’s core insights for a structural theory of freedom.

But again, it should be borne in mind that non-domination is not a “stand-alone” principle. The feminist principle of relational self-definition is a necessary complement to that of non-domination, providing the ethical impulse of maintaining the dignity of the individual and exploring the unpredictability of agency in the face of even the best and planned and most ethically informed institutions. Specifically, relational self-definition will provide the space for making normative and ethical judgments about the effects of “symbolic” institutional constraints experienced as “internally” constraining or enabling, if and only if it is understood that the “internal” and the “symbolic” can never be separated from the “external” and the “material.” But first it will be necessary to develop the principle of non-domination, beginning with, what is republicanism, and what of use can it tell us about the relationship between freedom and institutions?

Beyond (Liberal) Liberty: Back to the Republic

The recent “republican revival” can be attributed to a growing dissatisfaction with the hegemony of liberal ideas in general. In 1955, Louis Hartz argued that at the time of the Revolution, American political culture could be explained by Lockean liberalism and nothing but Lockean liberalism.²⁴ He posited that since America did not have a history of feudalism, there were no other traditions to challenge liberalism’s hegemony. It was as if it had floated across the Atlantic and planted itself in America by default. For Hartz, this, along with a social predisposition for individualism and capitalism, explained the nature of the revolution and founding as well the absence of any real challenge to liberalism (such as socialism) in America’s subsequent history. (For my purposes here, it is also important to note that the assumed inherited conception of liberty was a correspondingly liberal one, consisting in the absence of impediments to one’s desired actions.) This basic thesis dominated academic history for over twenty years.

Not surprisingly, the overly simple and parsimonious nature of Hartz’s thesis, which left many aspects of American political history ignored or unexplained, began to attract critics. What about the fear of British corruption and luxury? Paine’s pamphlet, for example, nearly seethes with such fear as well as hatred for the King of England²⁵—where is the cool Lockean sensibility there? And what about the conflict and anxiety provoked by the Revolution itself—was this great experiment, a republic without a king,

²⁴ Louis Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought since the Revolution* (New York: 1955).

²⁵ “It is the republican and not the monarchical part of the constitution of England which Englishmen glory in, viz. the liberty of choosing an house of commons from out of their own body – and it is easy to see that when the republican virtue fails, slavery ensues. Why is the constitution of E---d sickly, but because monarchy hath poisoned the republic, the crown hath engrossed to commons? In England a k--- hath little more to do than make war and give away places; which, in plain terms, is to impoverish the nation and set it together by the ears. A pretty business indeed for a man to be allowed eight hundred thousand sterling a year for, and worshipped into the bargain! (Thomas Paine, *Common Sense*, ed. Isaac Kramnic, (New York: Penguin Books, 1986) 81).

really going to succeed? And did liberalism explain the founders' insistence on a mixed constitution with a balance of powers?

The “discovery” of republicanism in the roots of American political culture and philosophy seemed to answer these questions and new ones, sweeping through history departments like a tidal wave.²⁶ But what was republicanism, exactly? Historians such as Bernard Bailyn,²⁷ Gordon S. Wood,²⁸ and J.G.A. Pocock²⁹ looked to Cicero, Livy, Machiavelli, Montesquieu, and Harrington, among others, and began to find republicanism everywhere they looked. Bailyn traced the influences of American revolutionary thought to somewhat obscure British sources, while Pocock excavated Roman and neo-Roman texts. In republicanism they saw an explanation for American concerns with justice, virtue, and the public good, as well as a fascination with founding a balanced and therefore enduring regime. Significantly, an alternative way of conceptualizing liberty—not as the opposite of coercion but as the opposite of slavery, or what I will call structural domination—emerged as well.

Much as Bailyn, Wood, and Pocock revitalized an interest in the neo-Roman roots of contemporary political systems, thinkers such as Quentin Skinner and Philip Pettit have revived a pre-liberal conception of freedom: republican freedom. Seeking to provide an alternative conceptualization of freedom to that provided by Constant and Berlin, whose formulations of freedom I will review below, Skinner and Pettit have

²⁶ Daniel T. Rodgers characterizes the shift from the Hartzian thesis to Republicanism as a Kuhnian paradigm shift. See “Republicanism: The Career of a Concept,” *The Journal of American History* (June 1992) 11-38.

²⁷ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967).

²⁸ Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969).

²⁹ J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975).

characterized republican freedom as non-domination as opposed to non-coercion. Many liberals, following Berlin, would argue that anything other than “negative” liberty, the absence of coercion or impediment to motion, is not properly liberty at all. But I agree with Pettit and Skinner that non-domination captures a unique insight into the connections between structures and freedom. To show that this is a distinct way of conceptualizing liberty—that is, that the disagreement between liberals and republicans is more than merely a disagreement about the conditions that must be met in order to secure liberty—I will first briefly trace the formation of the ancient/modern and positive/negative liberty dichotomies, where we will hear echoes of the structure versus agency debate. I will then draw out the republican objections to this way of understanding of freedom, suggesting that republican freedom as non-domination is a viable and superior way to understand liberty.

In his 1819 essay “The Liberty of the Ancients Compared with that of the Moderns,” originally delivered as a speech in post-Revolutionary France, Benjamin Constant contrasts what he sees as the collective and participatory liberty of the ancients with the individual, independent liberty of the moderns. Constant argues that the modern era has brought about fundamental changes in economic and social relations. Our states have become larger, he says, and modern commerce, which does not have the use of slavery, has left men with insufficient leisure to participate in politics in the way that the ancient Romans did, for example. Thus, he concludes, modern times call for a representative form of government which gives the maximum amount of individual freedom in the form of being left along to pursue one’s interests. He argues that to impose a republican form of government, with its corresponding notion of republican

liberty as intensive civic participation, would be oppressive to individuals. “Modern” liberty, therefore, rejects the outmoded aim of “the sharing of social power among the citizens of the same fatherland”³⁰ in favor of maximum individual independence.

First, Constant is incorrect to assume that republican liberty is tantamount to participation,³¹ as I will demonstrate below. Furthermore, like many subsequent thinkers, he assumes that mass participation in political decision-making is equivalent to living under “the authority of the social body”³² and that this authority constitutes an undue restriction on individual choice. Of the French Revolutionaries, Constant says,

They wished to exercise public power as they had learnt from their guides [Rousseau, et. al.] it had once been exercised in free states. They believed that everything should give way before collective will, and that all restrictions on individual rights would be amply compensated by participation in social power.... The fact is that social power injured individual independence in every possible way, without destroying the need for it.³³

By extension, government involvement in matters presumably hitherto understood as public, such as education and civic religion, also comprises a constraint on individual liberty. (Tellingly, however, he assumes that market relations do not constrain individuals in any distressing way; indeed, he is concerned that individuals be left free in order to pursue such relations.) That individuals *necessarily* participate in institutions, and that not all participation entails constraint, becomes completely lost in this analysis.

Much like Constant, Isaiah Berlin takes up the basically Hobbesian notion of individual freedom as absence of impediment to motion, and again, the enabling and

³⁰ Benjamin Constant, “The Liberty of the Ancients Compared with That of the Moderns,” trans. and ed. by Biancamaria Fontana *Political Writings* (Cambridge: Cambridge University Press, 1988) 317.

³¹ Of course, he is reacting to the French Revolution (which he somewhat mistakenly associates with the political philosophy of Rousseau). The ideal of participation was undoubtedly a goal of the revolutionaries, but would not have been the main goal for most of the thinkers in the republican tradition.

³² Constant, *Liberty*, 318.

³³ Constant, *Liberty*, 320.

disabling effects of context disappear from view.³⁴ People are free to the extent that they are not impeded in their actions, so that liberty is defined as “the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree”³⁵ In contrast, “positive” liberty, which answers “who governs me” rather than “how much am I governed,” is not really freedom at all but self-mastery or self-rule. That is, what others mistake for freedom, he argues, is actually autonomy, which involves choosing what our “best self” would want by following a higher rule or law. This second-guessing of desires and wills is a problem for Berlin in that it raises the troubling possibility of the “split self”:³⁶ if I can be ruled by my own best self, he argues, it is a short step to allowing another to substitute his (rational) judgment for my (irrational) judgment, in the name of my own best interest.³⁷ Here is where, for Berlin, the individual falls prey to the will of the community, perhaps most famously expressed in Rousseau’s paradoxical notion of being “forced to be free.” The only aspect of freedom that Berlin will allow, then, is what he calls the “negative” freedom of being left alone to do as one pleases, without interference from others or physical obstacles caused by one’s fellows.

Berlin’s positive-versus-negative-liberty formulation has been actively debated and reformulated since Berlin first articulated it. Opponents and proponents alike have delved into the finer points of the framework, expanding and contracting what counts as

³⁴ It is probably not a coincidence that Constant and Berlin articulate very similar conceptions of freedom in reaction to what they experienced as a social horror. For Constant, this was the bloody French Revolution, and for Berlin, after being expelled from Germany in WWI, it was the equally horrific Russian Revolution.

³⁵ Berlin, “Two Concepts,” 122.

³⁶ For an interesting discussion of the “split self” with relation to the concept of autonomy, see John Christman, ed., *The Inner Citadel: Essays on Individual Autonomy* (New York: Oxford University Press, 1989).

³⁷ Berlin, “Two Concepts,” 132-133.

an obstacle to one's actions (internal versus external barriers) while others have productively reformulated "positive" versus "negative" into a conflict between opportunity and exercise concepts.³⁸ But I would argue that even in an expanded version of this conversation, this way of understanding liberty forecloses important questions about the *mechanisms* relevant to liberty and the sorts of institutions conducive to sustaining a viable conception of freedom, even in the most minimal way suggested by the new institutionalist and adaptive preferencing schools. Polarizing individualized "negative" liberty and "positive" liberty, a liberty in which community judgment and politics are smuggled into the individual either through socialization or a more coercive force, implies that 1) an individual can be understood in isolation from context and 2) that social and political structures have little or nothing to do with freedom. Like Constant's "modern" liberty, negative liberty cannot account for non-oppressive individual-institution (agent-structure) interactions beyond the "empty" protection of individual liberties. If structure and agency are interrelated in the manner I argue in chapter one, where structure and agency presuppose one another and freedom depends upon structure, then we need a way of conceptualizing liberty that can account for that interrelationship. Freedom as non-domination treats freedom and the structure of political society as

³⁸ For insightful and useful dissections of Berlin's positive versus negative liberty framework, see for example Christian Bay, *The Structure of Freedom* (Stanford: Stanford University Press, 1958); Nancy Hirschmann, "Toward a Feminist Theory of Freedom" in *Political Theory*, Vol. 24, No. 1 (February 1996): 46-67. Alan Ryan, ed., *The Idea of Freedom* (Oxford: Oxford University Press, 1979). On "exercise" and "opportunity" concepts, see Charles Taylor, "What's Wrong with Negative Liberty," in *The Idea of Freedom*, 173-193: "Doctrines of positive freedom are concerned with a view of freedom which involved essentially the exercising of control over one's life. On this view, one is free only to the extent that one has effectively determined oneself and the shape of one's life. The concept of freedom here is an exercise-concept. By contrast, negative theories can rely simply on an opportunity-concept, where being free is a matter of what we can do, of what it is open to us to do, whether or not we do anything to exercise these options...Freedom consists just in there being no obstacle. It is a sufficient condition of one's being free that nothing stand in the way" (177). This is an improvement on Berlin's stark "negative liberty," but Pettit's question will remain: Does the slave of a kindly and permissive master have sufficient options open to him?

closely related, thus laying the groundwork for the building and maintenance of institutions informed by coherent and viable normative principles.

Republican Freedom as Non-Domination: Pettit and Skinner

Quentin Skinner and Phillip Pettit have each identified and advocated a unique republican theory of freedom, where freedom figures as the opposite of slavery, or as non-domination, where domination is defined as a structural condition where a person is subject to arbitrary interference. For these thinkers, republican freedom is generally found in republics. Pettit defines a republic as organized under the rule of law (rather than the tyrannical rule of a king); as having a mixed constitution characterized by some form of checks and balances; as valuing civic virtue and public service; and as sharing a conception of liberty where participation, independence, and non-domination are emphasized.³⁹ For example, Cicero defines liberty as life without a master, and this is linked strongly to particular regime types. (The Latin *liber* means “free man,” as opposed to “slave.”) Specifically, he makes the strong case that monarchy and liberty are incompatible:

No state except one in which the people have supreme power provides a habitation for liberty, than which surely nothing can be sweeter. But if liberty is no equally enjoyed by all the citizens, it is not liberty at all. And yet, how can all citizens have an equal share in liberty—I pass over citizens in a monarchy, for there, of course, the subjection of the people is neither concealed nor questionable—but even in those states in which all men are nominally free?⁴⁰

Even though Cicero identifies monarchy as the best of the unmixed regimes (aristocracy and democracy being the other two), monarchy is equivalent to living under a master,

³⁹ Pettit, *Republicanism*, 20.

⁴⁰ Cicero, *On the Commonwealth*, I.xxxi. Trans. by George Sabine and Stanley Smith (New York: Macmillan Publishing, 1976) 134-5.

while living in freedom (rather than under tyranny or in license) means living in a free state, i.e., a republic comprised of elected magistrates, a sovereign popular assembly, and a republican constitution.⁴¹ That is, one's *position* vis-à-vis the given structures of citizenship, rulership, and other systems of power was considered key in determining one's status as free or not free. Institutional arrangements could foster or preclude liberty, but they would always figure in some way, an insight central to a structural understanding of freedom.

By extension, that one's own republic might have been the source of domination, outside the very real possibility of corruption due to unbalance or faction (which would amount to tyranny), would not have been seen as the main challenge to liberty for thinkers in this tradition.⁴² Indeed, authority is compatible with republican liberty: Cicero quotes Plato at length on the dangers of license⁴³ and condemns pure democracy for its tendency toward excess.⁴⁴ As long as government maintained its ideal republican form, and it did not fall under the sway of another ruling power, vigorous government was wholly compatible with liberty. Of course, the ideal republican form is seen as easily corrupted; republican thinkers spend a lot of time devising ways to maintain

⁴¹ "The commonwealth, then, is the people's affair; and the people is not every group of men, associated in any manner, but is the coming together of a considerable number of men who are united by a common agreement about law and rights and by the desire to participate in mutual advantages" (Cicero, *On the Commonwealth*, I.xxv, 129). Cicero believed that men were naturally virtuous and inclined toward the common good; the most virtuous of men naturally made the best leaders because they would impose only those laws they would obey themselves.

⁴² For most republicans, living under just laws would not itself be seen as diminishing one's freedom, as they would have for later thinkers such as Hobbes and Bentham. However, important republican thinkers such as Cicero would have maintained that the *form* of government was of the utmost importance here; monarchy and liberty were seen as incompatible. There is admittedly a certain circularity here. Cicero defined the ideal republic in such a way that a republic way, by definition, free. Conversely, liberty could be had *only* in a republic. Later, Machiavelli would argue that a state could be free under a monarch, as long as the monarchy was uncorrupt, shifting this relationship between liberty and institutional form significantly.

⁴³ Cicero, *On the Commonwealth*, I. xliii and xlv, 148-150.

⁴⁴ Cicero, *On the Commonwealth*, III.xxxiii, 225.

balance and prevent faction. The concern with faction reaches back at least to Aristotle, who argued for a “middling” regime to maintain stability: “What is many is more incorruptible...The judgment of a single person is necessarily corrupted when he is dominated by anger or some other passion of this sort, whereas it is hard for all to become angry and err at the same time.”⁴⁵ Republican thinkers were also concerned to bolster the virtue⁴⁶ of the citizenry in order to prevent the decline of the regime, the possibility of which produces obvious anxiety in thinkers such as Machiavelli or Madison. Living in a “free state” also comprised freedom from foreign or external rule; a “vigorous” citizenry protected the freedom of the body politic in a dual way. To fall under the sway of a neighboring regime would obviously undermine the freedom inherent in republican institutional forms.

Does this vigorous government then require active citizen participation? Skinner interprets republican liberty as not *necessarily* definitionally tied to participation in a self-determining polity, as liberal thinkers including Constant have assumed. Instead, according to Skinner, liberty within the republican tradition (originating with Cicero and

⁴⁵ Aristotle, *The Politics*, Book III, ch. 15, line 8. This idea is somewhat suspect given our knowledge of the behavior of mobs. The general political point is still well put, nonetheless—institutionally, living under the whim of a single tyrant seems to pose a greater threat to one’s (or a society’s) liberty than living under a representative system.

⁴⁶ *Virtu* was a distinctly masculine concept for the ancients. The root *vir*, meaning man, is the Latin root for “virile,” and *virtu* largely carried this sense. On the association of masculinity with military service and other gendered forms of republican participation, see R. Claire Snyder, *Citizen Soldiers and Manly Warriors: Military Service and Gender in the Civic Republican Tradition* (Lanham, MD: Rowman and Littlefield Publishers, Inc., 1999); Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993); Wendy Brown, *Manhood and Politics* (Totowa, NJ: Rowman and Littlefield Publishers, 1988); and Hanna Pitkin, *Fortune is a Woman: Gender and Politics in the Thought of Niccolo Machiavelli* (Berkeley: University of California Press, 1984). For a more general critique of the association of masculinity with the ideal of public-spiritedness and citizenships, see Jean Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Princeton: Princeton University Press, 1981). On the restriction of women to the private sphere as republican mothers or guardians of civic virtue, see for example Susan Okin, *Women in Western Political Thought* (Princeton: Princeton University Press, 1979); Melissa Matthes, *The Rape of Lucretia and the Founding of Republics* (University Park, PA: Pennsylvania State University Press, 1999). On women as signifiers of the bodily, the particular, and the irrational in republican works, see Zerilli, *Signifying Woman*, and Young, *Justice and the Politics of Difference*.

other Roman writers such as Livy and carried through Machiavelli) was at its core the insight that citizens cannot be free unless they live in a free polity, meaning that the rule one experiences is not arbitrary. This type of rule was thought to be most likely under a republican regime, where the participation of the citizenry would play a key role, but it was also possible (according to some thinkers such as Machiavelli) that a monarch bound by the rule of law might also meet the criteria of non-arbitrary rule. It is the *potential* for coercion, found in relationships of domination, and not actual instances of it, that figures as the opposite of liberty. According to Skinner,

It is never necessary to suffer this kind of overt coercion [such as when a tyrant directly threatens or interferes with your life] in order to forfeit your civil liberty. You will also be rendered unfree if you merely fall into a condition of political *subjection* or *dependence*, thereby leaving yourself open to the danger of being forcibly or coercively deprived by your government of your life, liberty or estates. This is to say that, if you live under any form of government that allows for the exercise of prerogative or discretionary power outside the law, you will already be living as a slave. Your rulers may choose not to exercise these powers, or may exercise them only with the tenderest regard for your individual liberties. So you may in practice continue to enjoy the full range of your civil rights. The very fact, however, that your rulers possess such arbitrary powers means that the continued enjoyment of your civil liberty remains at all times dependent on their goodwill. But this is to say that you remain subject or liable to having your rights of action curtailed or withdrawn at any time. And this, as they have already explained, is equivalent to living in a condition of servitude.⁴⁷

It is not around individual instances of interference or coercion, setting aside the distinction between these two terms for the moment, but rather around systemic, structural domination that republican liberty turns.

Pettit defines republican freedom not as an absence of interference but as an absence of domination. For Pettit, “being dominated involves occupying a position where another can interfere on an arbitrary basis in your life: specifically...where

⁴⁷ Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998) 69-70; emphasis added.

another can interfere with greater or lesser ease on a more or less arbitrary basis across a smaller or larger range of choices.”⁴⁸ How does this differ from the basic definition of liberty as lack of interference or coercion? For Pettit, as for Skinner, the key is a broader, more contextualized, structural focus. He recognizes the dangers inherent in interference, but he insists that domination is conceptually distinct. To illustrate the important difference between interference and domination, Pettit’s most readily available example is of the slave whose master is not at home. Domination is

exemplified by the relationship of master to slave or master to servant. Such a relationship means, at the limit, that the dominating party can interfere on an arbitrary basis with the choices of the dominated: can interfere, in particular, on the basis of an interest or an opinion that need not be shared by the person affected. The dominating party can practise interference, then, at will and with impunity: they do not have to seek anyone’s leave and they do not have to incur any scrutiny or penalty.⁴⁹

But a slave may also have a kindly master who does *not* interfere. The powerful party may never tell the one who is structurally subjected what to do or how to do it, and the “master” may never actively interfere in the actions of the one who is dominated. This does not make the slave any less a slave; he or she is defined by his or her *condition* or position of servitude regardless of whether or not the master chooses to exercise his or her power. This relational dynamic can be expanded to relationships of inequality in general.

Before directly addressing the distinctions between domination, interference, and coercion, it is important first to make a distinction between slavery as a metaphor and the institution of slavery. The institution of slavery—the socially and politically supported

⁴⁸ Phillip Pettit, “Keeping Republican Freedom Simple: On a Difference with Quentin Skinner,” *Political Theory* Vol. 30 No. 3 (June 2002) 341.

⁴⁹ Phillip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997) 22.

total subordination of a person or group of people to a master or masters, wherein a master's will is legitimately substituted for the will of a slave—is the most extreme example of a denial of freedom imaginable. Slavery is undoubtedly one of the worst crimes of and against humanity, and in no way do I wish to diminish the plight of those who have actually suffered under slavery by equating all forms of domination with this institution. However, as a metaphor, slavery captures insights into freedom that coercion cannot. Although slavery is often spoken of as if it were a relationship between two individuals, a master and a slave, it could never have existed without an institutionalization of the practice. That is, slavery was an is a social and political phenomenon that runs through various institutions of society, including (but not limited to) the law, the economy, kinship structures, and so on. I wish to call attention to the ways in which relationships of domination and subordination are supported in and through institutions, so that freedom can be understood only within systemic, institutionalized contexts. Nevertheless, I do not wish to diminish the horror of slavery by implying that every relationship of domination and subordination or inequality more generally is tantamount to slavery. The term domination captures many of the important relational aspects of the metaphor of slavery, without confusing metaphorical with literal meanings or diminishing the impact of the actual institution. For this reason, I will leave the language of slavery behind and instead use that of domination.

To return, then, to the distinction between freedom as the opposite of domination and freedom as the opposite of interference or coercion. First, the relational or positional notion of liberty as non-domination differs from freedom as an absence of interference. Non-domination is inclusive of much more subtle barriers to freedom than are most

liberal accounts of freedom. Freedom understood as non-domination encompasses not just individual instances of arbitrary interference, as when one person actively impedes another's motion in the Hobbesian and Berlinian articulations of freedom, but the potential for such action. A person's freedom does not only hinge on whether or not she is actually held at gunpoint and robbed of her cash; her freedom is under attack under structural conditions such that another may arbitrarily, and with relative impunity, relieve her of her money. Or, living under a rule of law which legitimizes violence against women by failing to successfully prosecute and convict the perpetrators of such crimes would be a violation of the principle of non-domination⁵⁰—being vulnerable to attack because of one's social position as a woman is characteristic of the *potential* for arbitrary interference.

Non-domination is also unlike an absence of coercion specifically as coercion relates to the role of equality and consent in liberal social contractarian conceptions of freedom. The assumption behind liberal understandings of freedom is that of basic equality; no one has a higher status than any other in the state of nature, and it is presumed that any inequality occurring after the social contract is both relatively

⁵⁰ Violent crimes against women are a useful example here. It is a well-documented fact that crimes against women are underreported, and men who commit sexual assault are rarely prosecuted and even more rarely convicted. (For a comprehensive set of statistics with regard to the reporting and prosecution of various sexualized crimes against women, see Carole Sheffield, "Sexual Terrorism," in *Women: A Feminist Perspective*, ed. by Jo Freeman (London: Mayfield Publishing Co., 1995).) Here Freeman convincingly argues that an institutional disinterest in punishing crimes against women leads to their *de facto* legitimization, the result of which is a generalized terror held on the part of women which hinders their freedom in internalized and insidious ways. And once again connecting material and symbolic aspects of institutions, Sheffield lists a set of collectively held schemas about women that seem to justify or at least make less serious crimes against them, such as, "She asked for it," or, "She must have done something to provoke him." Similarly, in a controversial but highly provocative analysis of rape, Sharon Marcus delineates a "rape script" that enables men to carry out sexual violence against women and constrains women from resisting as equal parties to the fight. This script then functions to legitimate violence against women in that women's supposed violability and men's supposed inviolability lend an air of inevitability to the occurrence of rape at the same time that inequality is inscribed through the very act. See Sharon Marcus, "Fighting Bodies, Fighting Words," in *Feminists Theorize the Political* (New York: Routledge, 1992) 385-403.

insignificant and legitimate because the terms of the contract would have been agreed to by all. Within this paradigm, consent and coercion are a conceptual pair, where one nullifies the other. If a person has freely chosen or consented to her condition, then presumably she has not experienced coercion, and if she has been coerced, it is generally assumed that this nullifies any consent given. The problem arises when no active coercion can be identified. To return to the example of violence against women: if a woman fears taking a walk after the sun goes down, and she chooses to stay in her home, has she been coerced? If a woman is sexually assaulted but she fails to sufficiently resist the attack, has she consented? Not only is it very difficult to make an argument for coercion when no specific agent can be identified, but the pairing of consent and coercion, concepts that pit individual against individual, disallows an examination of the institutional forces, both material and symbolic, that work to affect the actions and choices of individuals in complex ways. In contrast, the republican worldview is prior to the invention of the state of nature construct, which presupposes man's original freedom and equality. Here, status—one's position *or the position of the group to which one belongs*, in relation to particular institutions—is treated as much more relevant to freedom.

There are some small differences between liberty as defined by Skinner as defined by Pettit that I will mention briefly. Skinner sees republican liberty as including non-interference while most recently Pettit has been quite forceful in arguing that non-domination only is at the heart of republican liberty. Skinner writes:

The neo-roman writers fully accept that the extent of your freedom as a citizen should be measured by the extent to which you are or are not constrained from acting at will in pursuit of your chosen ends. They have no quarrel, that is, with the liberal tenet that, as Jeremy Bentham was later to formulate it, the concept of

liberty 'is merely a negative one' in the sense that its presence is always marked by the absence of some measure of restraint or constraint....What, then, divides the neo-roman from the liberal understanding of freedom? The neo-roman writers insist...that to live in a condition of dependence is itself a source and a form of constraint. As soon as you recognise that you are living in such a condition, this will serve in itself to constrain you from exercising a number of your civil rights."⁵¹

Skinner wants to include "non-interference" in the republican definition of freedom. In answer to Skinner, Pettit wants to "keep republican freedom simple" by forgoing the language of dependency in favor of that of domination, and by making a distinction between the potential for arbitrary interference that does constitute domination and the type of interference that does not constitute domination.

First, Pettit insists that the condition of being dependent on the goodwill of another for life's basic goods is *itself* characteristic of domination,⁵² so that the structural potential for interference (which is a more serious threat to freedom than random interference) is subsumed within the language of domination if and only if the interference is arbitrary. Again, he makes the case for the possibility of interference without domination, as in the particular case of "a nonarbitrary rule of law," where "law is nonarbitrary to the extent that those who make the law are forced to track avowable common interests—and only the avowable common interests—of those who live under

⁵¹ Skinner, *Liberty*, 83-4.

⁵² Phillip Pettit, "Keeping Republican Freedom Simple" *Political Theory*, Vol. 30, No. 3 (June 2002) 341. An interesting question regarding the position of children emerges with this equation of dependency with domination. Pettit seems to object particularly to *political* forms of dependency, but is casting women, for example, as unfree because they find themselves in relationships of personal dependence with their husbands the same thing as being dominated and therefore unfree? I would argue that if one person is directly dependent on another for life's basic goods, this is a situation rife with potential domination and as such constitutes a limitation to one's freedom.

the law.”⁵³ A few examples serve to illustrate the distinction between dominating and non-dominating interference.

Within contexts of relative equality, interference without domination need not *necessarily* constrain one’s freedom, and it may in fact enable freedom in important ways. Within relationships of subjection, the reverse is true. For example, if a mob boss gives a person advice, and he has the power to beat that person with a bag of oranges if he does not comply, this will be experienced as domination. If a pimp advises one of his employees to dress in a certain way and he can withhold her paycheck if she refuses, this will be experienced as domination. However, if a friend on whom one does not depend for one’s livelihood gives advice, this is interference of a sort, but it may be experienced as enabling and supportive. Further, domination without interference, as in the case of a non-advising pimp or mob-boss, is a worse situation than the meddling friend from the point of view of republican freedom. Due to these distinctions, instead of considering both non-domination and non-interference to be at the heart of the republican way of conceptualizing liberty, Pettit argues for the simpler model of non-domination only.

Non-domination Expanded

It is this strong formulation of freedom as non-domination that is most useful for the structural theory of freedom I develop here. Freedom as non-domination allows us to

⁵³ Pettit, “Keeping Republican Freedom Simple,” 344-5. Here, Pettit does not mean to suggest that all laws are non-arbitrary in this way. A rule of law that is truly non-arbitrary may entail a “coercion of the will” that results in the freedom of living under the rule law, where one can enjoy “undominated choice” (343), rather than the freedom of “licentiousness” (344-5). Some sort of mechanism to ensure popular and representative participation would seem to be key. Further, “effective republican freedom requires...the minimalisation of nonintentional obstacles like those associated with poverty, handicap, and the like” (343). Although Pettit does not take the analysis in this direction, it would seem that the elimination of “nonintentional obstacles” such as oppressive gender norms could be part of this project. This might be accomplished through providing the “resources necessary to enjoy the...nondomination” (343), although it is unclear exactly how this would come about.

take both the *enabling* and *disabling* aspects of structure into account. Our lives are *necessarily* “structured;” it should be the form of our institutions that should count, and not that we live under them at all. In short, a structural theory of freedom allows the institutions that mediate between individuals, as well as between citizens and the state, to become the focus of the analysis of freedom. This provides a framework for thinking about freedom within the context of social and political inequality, bringing freedom much more closely in line with the conclusions of prominent thinkers concerned with contemporary conditions of economic and cultural domination and subordination. At the same time, these analyses point to the need for a greater attention to the “symbolic” dimensions of freedom, especially in connection with institutional arrangements.

For example, social critics such as Iris Marion Young, Nancy Fraser, and Michael Walzer, address the domination inherent in systems of stratification through the normative lens of justice. In *Justice and the Politics of Difference*, Young argues that the focus of a theory of justice should be the structures of dominance themselves. She defines domination as “structural or systemic phenomena which exclude people from participating in determining their action or the conditions of their lives.”⁵⁴ Although Young rejects republicanism on feminist grounds, especially in its more populist aspect where deliberation entails impartiality and an ideal of universal citizenship exclusive of body and feeling,⁵⁵ the principles of non-domination and self-definition require the structural position of non-domination that makes possible participation in the making (meaning) of one’s life, in the simultaneously material and symbolic sense.

⁵⁴ Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) 31.

⁵⁵ See Young, *Justice and the Politics of Difference*, p. 97 and Chapter 4 in general.

Nancy Fraser also deals with structural domination through the concept of justice. For Fraser, the “postsocialist” age is characterized by a problematic schism between the cultural (Sewell’s ideas or schemas) and the social-political (material resources). The schism is most evident around “identity politics,” where disadvantaged groups fight for either recognition (a positive revaluing of a devalued identity) or redistribution (social welfare to address economic inequality). Fraser argues that redistribution should be the aim of social groups caught in the vicious circularity of the mutually reinforcing symbolic and material domination that characterizes our age, but ironically that recognition-based claims must ultimately aim to deconstruct symbolically undervalued identity categories such as race or gender.⁵⁶ In significant ways, the principles of non-domination and self-definition, the latter which I develop in the following chapter, parallel Fraser’s twin aim of (material) redistribution and the (symbolic) deconstruction of identity categories, but from the normative vantage point of freedom rather than justice.

Michael Walzer similarly addresses domination in his *Spheres of Justice*. Walzer’s conviction that “rule without domination is no affront to our dignity, no denial of our moral and political capacity”⁵⁷ would suggest that non-domination would be a welcome organizing principle for liberty. Another way of stating this is to say that liberty as non-domination is compatible with Walzer’s formulation of “complex equality,” the underlying schema of his conception of justice where living under *authority* (as opposed to domination) is wholly compatible with personal integrity. This parallels my argument

⁵⁶ See Nancy Fraser, “From Redistribution to Recognition? Dilemmas of Justice in a ‘Postsocialist’ Age,” in *Justice Interruptus* (New York: Routledge, 1997), 32.

⁵⁷ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983) 321.

here that institutional non-domination is wholly compatible with freedom; the point of analysis is the *quality* of institutions, not that they have any authority over us at all; but further, greater attention should be paid to the “internal” aspects of structural freedom than non-domination alone can do.

If structure and agency exist in anything like the dialectical relationship that I identify in chapter one, then the freedom of the individual must be understood to be compatible with the enabling and disabling effects of structure. Specifically, the focus of analysis of a structural theory of freedom should be the material and symbolic dynamic between particular institutions and the subjects that produce them *and* are produced by them. Therefore, in this way, it would seem that a meaningful and viable notion of freedom *depends* upon a social and political context characterized by justice and equality. The principle of non-domination, then, is a way of understanding freedom that is distinctly institutional in focus, but to continue to depart from Pettit’s formulation, the most comprehensive understanding of non-domination would include the analysis of “institutions” in their least formally politically guise. As I argued at the beginning of this chapter, if by “institution” we mean only the formal governing bodies of society, we will miss a large part of the picture of freedom. And as I have argued so far, relationships of equality and inequality, mastery and subjection, are formed and mediated both through and among institutions not usually considered to be political, such as the family, religion, and economic institutions, as argued by Young, Fraser, and Walzer. Therefore, domination can be found in the organization of society symbolically as well, although the “schemas” of domination running through language and ideology are always tied to the unequal distribution of “actual” resources, as I have noted previously. A structural theory

of freedom as non-domination must therefore take the dual symbolic and material effects of institutions into account at the same time that institutions are understood to be creations of human action. What might a theory of freedom capable of this look like?

At this point, I will turn to the work of Jean-Jacques Rousseau in order to illustrate both the possibilities and the limits of the principle of non-domination for a comprehensive structural theory of freedom. I argue that Rousseau's complex understanding of freedom provides a fruitful way to think through the problematic of the constraining/enabling effects of institutions; in step with classical republican articulations of freedom as non-domination, Rousseau assumes a connection between the structure of the (particular) political body and the freedom of its citizens, between basic equality and freedom, and between domination and the condition of unmediated dependency. These are important elements in any conception of freedom that is to take both structure and agency into account, and Rousseau, as a modern representative of the republican tradition, takes seriously the malleable nature of individuals in the face of institutions. This is especially true in his articulation of the "general will" and in his careful education of the pupil Emile.

At the same time, Rousseau's articulation of "non-domination" will ultimately fail to provide a comprehensive structural theory of freedom; the feminist principle of relational self-definition will be a necessary complement to that of non-domination. Self-definition explores in greater depth the institutional concern with "actual" resources with the "symbolic" process of identity-formation. This connection is latent within republicanism; indeed, Rousseau is keenly aware of the dynamic between the construction of what we might call the "psyche," or "identity," and the possibilities for a

republic founded on principles of non-domination. And from this alone we would do well to take a lesson from Rousseau. However, Rousseau's solution to the problem of what we might call "identity" calls into question the usefulness of his articulation of "non-domination" for the structural ideal of freedom I develop here. I want to make clear that it is *not* that his theory of freedom requires the regulation of the individual's will or the structuring of his or her desire that it is objectionable; to be sure, *every political society constructs the desires and wills of individuals*. Rather, the problem is that it does so in such a way that a radically dichotomous population is produced, requiring the subordination of the feminine to the masculine and imposing upon Rousseau's population a devalued definition of "woman." So while I argue that certain aspects of his conceptual framework are indispensable to an understanding of freedom capable of taking both structure and agency into account in a deeply reflexive way, in the end the principle of non-domination, in Rousseau's characteristically republican form, will not be sufficient to a thoroughly reflexive, structural theory of freedom.

Non-Domination and the Example of Rousseau

Rousseau's configuration of freedom displays a distinctively republican character in that he assumes a connection between proper institutional form, basic social equality, and the freedom of "the people." Freedom for Rousseau will in part entail living in a society that is characterized by non-domination; this is achieved through the general will, an "institution" in the expansive sociological sense, consciously designed to mediate (not eliminate) relationships of domination. Simultaneously, Rousseau seeks to mitigate the potentially pernicious effects of dependence inherent in intimate relationships, largely

through the careful (and differentiated) education of men and women; this education then undergirds his construction of republican citizenship. To uncover this complex relationship between institutions and freedom in which the “material” and the “symbolic,” the “political” and the “social,” all shot through with mutually constituting meaning, I will focus on the mechanisms designed to mediate dependence in Rousseau’s philosophies of freedom.

It is one of Rousseau’s main projects in the *Social Contract* (and one could argue in *Emile* as well) to reconcile freedom with the necessary dependence that sociability entails. “‘Find a form of association that defends and protects the person and goods of each associate with all the common force, and by means of which each one, uniting with all, nevertheless *obeys only himself and remains as free as before.*’ This is the fundamental problem which is solved by the social contract.”⁵⁸ Clearly, Rousseau worries about the domination—both the slavery and the mastery⁵⁹—that inheres from the vulnerability of unmediated personal dependence. Instead, he attempts to address the dangers inherent in relationships of dependence while acknowledging that we cannot (and should not) go back to the independence of the state of nature. (Some of life’s greatest and sweetest joys result from contact with others, he tells us.⁶⁰) Therefore, the function of the general will is to make us all equally dependent and thus equally free, and only in this particular way equally dependent. “Finally, as each one gives himself to all, he gives himself to no one; and since there is no associate over whom one does not acquire the same right one grants him over oneself, one gains the equivalent of

⁵⁸ Jean-Jacques Rousseau, *Social Contract*, I.4.iv., emphasis added.

⁵⁹ “Man was/is born free, and everywhere he is in chains. *One who believes himself the master of others is nonetheless a greater slave than they*” (*Social Contract* I.1.i, emphasis added).

⁶⁰ “The habit of living together gave rise to the sweetest sentiments known to men: conjugal love and paternal love” (DI, 147).

everything one loses, and more force to preserve what one has.”⁶¹ The device therefore allows attachment to the state as a whole and eliminates all personal dependence equally. “Properly understood, all of these clauses come down to a single one, namely the total alienation of each associate, with all his rights, to the whole community. For first of all, since each one gives his entire self, the condition is equal for everyone, and since the condition is equal for everyone, no one has an interest in making it burdensome for the others.”⁶² The general will, in other words, is a structure designed to mediate relationships of domination and therefore to create the conditions for freedom. Thus, even as Rousseau pretends he is doing otherwise, his freedom as transformed through the institution of the general will is an attempt to extract something *like* independence out of dependence, and autonomy out of—domination?

Institutionally, freedom depends upon an equality of position, or having an equal stake in the system. At the same time, as we will see, the general will serves the function of civic education. Consistent with the individual-institution relationship I outline here, Rousseau implies that humanity *changes*, and in fact achieves moral freedom, through the participation in the general will. This civic education parallels the education received by Emile in *Emile*—but does it parallel Sophie’s as well, and what difference does this make? First, to reach this point, it is necessary to outline in greater detail Rousseau’s conceptualization of freedom and its relationship to dependence and independence.

In comparing Rousseau’s portrayal of radical individual freedom in his state-of-nature scenario with the socially mediated freedom of the *Social Contract*, it at first seems as though Rousseau advocates two separate and contradictory notions of freedom, one

⁶¹ *Social Contract*, I.8.viii.

⁶² *Social Contract*, I.6.v.

that valorizes independence (as with the “noble savage” and the pupil Emile), and one that creates interdependence (through the general will). This seeming contradiction can be resolved if we assume Rousseau saw the freedom of the state of nature as attractive, maybe, but ultimately impossible, as in the *Discourse on Inequality*; or else as a fail-safe for personal freedom in a society that is irredeemably corrupt, as in *Emile*. To begin to disentangle these contradictions, it makes sense to start at “the beginning,” with Rousseau’s story of the co-emergence of humanity and inequality.

The *Discourse on Inequality* provides an explication of the “state of nature” in Rousseau’s thought, and it is here that we find humanity’s (or, rather, pre-humanity’s) original freedom.⁶³ Rousseau’s state of nature is one in which humans are literally independent. Their physical needs are few and easily satisfied, and they neither need nor desire contact with others. These proto-humans could be said to experience “negative liberty,” therefore, in the sense that they are self-sufficient. Living alone and purely in day-to-day immediacy, they need neither physical nor psychological support from others, so their needs happily coincide with their power to fulfill them.⁶⁴ The solitary nature of human beings prevents both progress and corruption: “What progress could the human race make, scattered in the woods among the animals? And to what point could men mutually perfect and enlighten one another, who, having neither fixed domicile nor any

⁶³ It is important to note that Rousseau is reacting to and arguing against the view of the state of nature as depicted by Hobbes. In contrast to Hobbes’s notion that the state of nature consisted of a “war of all against all,” Rousseau depicts the savage as basically gentle. For Rousseau, Hobbes’s error “was that he imputed to natural man a number of qualities—foresight, pride, and fear of violent death—which are the product of *society* and not of nature” (Roger D. Masters, “Introduction” to Jean-Jacques Rousseau, *The First and Second Discourses*, Ed. Roger D. Masters (New York: St. Martin’s Press, 1964) 16).

⁶⁴ Some commentators such as Daniel Cullen, in his *Freedom in Rousseau’s Political Philosophy* (DeKalb, Illinois: Northern Illinois University Press, 1993), would argue that this is precisely the condition to which Rousseau would have the freed man return. This, however, is to fundamentally misunderstand the importance Rousseau places on moral freedom; freedom must address the fact that man cannot escape making choices in society.

need of one another, would perhaps meet hardly twice in their lives, without knowing or talking with each other?”⁶⁵ They are free in the sense that they are alone, or completely unencumbered.

Certainly, Rousseau’s vision of the state of nature in the *Discourse* is highly implausible;⁶⁶ but one need not believe that proto-humans ever existed in this manner to take his point: in accordance with a reflexive account of structure, human nature *is* artifice and sociality. Indeed, for Rousseau these creatures become human at the same moment that convention, society, and relationships of interdependence come into being. In other words, humanity is defined by its very social nature, so that “humans” *qua* humans never existed in the state of nature. And what are the implications of this for Rousseau’s theory of freedom? Inequality quickly follows sociability: “The first person who, having fenced off a plot of ground, took it into his head to say *this is mine* and found people simple enough to believe him, was the true founder of civil society.”⁶⁷ From here, humanity experiences a steady down-hill spiral. People begin to compare themselves to each other; vanity creeps in. Tools are invented; with new possibilities, greed is born. Needs and technology escalate together, until humanity has succeeded in enslaving itself by its inventions and the desires they feed. By this time, inequality, although a convention, has firmly established itself in social relations and reinforced by the law.⁶⁸

Rousseau takes us carefully, step by step, though humanity’s “de-naturation,” or the process by which proto-humanity becomes humanity through its own artifice, so that

⁶⁵ Jean-Jacques Rousseau, *Discourse on Inequality*, 119.

⁶⁶ One might even say this premise is ridiculous, especially from a feminist point of view. His passages describing mothers’ disinterested reaction to their infants are among his least convincing.

⁶⁷ *Discourse on Inequality*, 141.

⁶⁸ *Discourse on Inequality*, 180.

he can point to the proper place of intervention. If society is to be free, intervention must occur in the very place where history went so wrong. For Rousseau, this means that we must mitigate, through the use of social institutions, relationships of inequality and dependence. The device Rousseau invents to combat the evils of dependence is the general will, which is meant to legitimize rather than eliminate dependence; this gesture is entirely in step with a structural theory of freedom that views individuals and collectivities as inevitably and invariably shaped by, and shapers of, social and political institutions. Before this can be fully appreciated, however, we need to be more clear about the central place of dependence in Rousseau's theory of freedom.

For Rousseau, unequal personal dependence unequivocally leads to a lack of freedom. This can be seen most clearly in the *Second Discourse*, where he explains that domination and institutional inequality arise due to relationships of dependence, going so far as to say that dependence is the precondition for slavery: "Since the bonds of servitude are formed only from the mutual dependence of men and the reciprocal needs that unite them, it is impossible to enslave a man without first putting him in the position of being unable to do without the other."⁶⁹ He makes a similar point in the *Emile*:

Children begin by getting themselves assisted; they end by getting themselves served. Thus, from their own weakness, which is in the first place the source of the feeling of their dependence, is subsequently born the idea of empire and domination. But since this idea is excited less by their needs than by our services, at this point the moral effects whose immediate cause is not in nature begin to make their appearance; and one sees already why it is important from the earliest age to disentangle the secret intention which dictates the gesture or the scream.⁷⁰

Cooperation, therefore, without some mediating device such as the social contract, leaves men (and women?) vulnerable to the devastating effects of personal subordination on one

⁶⁹ DI, 140.

⁷⁰ *Emile*, 66.

hand and domination on the other. In such relationships, how can human beings ever be free? This is an especially pressing question, since for Rousseau the dependence of the “master” is an even more serious condition than that of the “slave”: “Man was/is born free, and everywhere he is in chains. One who believes himself the master of others is nonetheless a greater slave than they.”⁷¹ But are all types of dependence equally dangerous?

Rousseau’s state of nature story reveals at least three different kinds of needs resulting in three types of dependency. First, there is physical or economic dependency on *things*, such as food, shelter, and clothing. Absent involvement with others, however, these needs are fairly easily satisfied and pose little or no threat to one’s freedom. Second, there is a transference of dependence on things to a dependence on others to satisfy our basic needs, through cooperation. He says:

As long as they applied themselves only to tasks that a single person could do and to arts that did not require the cooperation of several hands, they lived free...But from the moment one man needed the help of another, as soon as they observed that it was useful for a single person to have the provisions for two...slavery and misery were soon seen to germinate and grow with the crops.⁷²

The economic inequality that inheres creates the preconditions for slavery, and this, for Rousseau, is the origin of our chains. “Since the bonds of servitude are formed only from the mutual dependence of men and the reciprocal needs that unite them, it is impossible to enslave a man without first putting him in the position of being unable to do without the other.”⁷³ This is also the point at which Rousseau would like to intervene with mediating social institutions, and here where we can most clearly see the interrelationship between equality and freedom in Rousseau’s thinking. But there is more: “Each one

⁷¹ Rousseau, *Social Contract*, I.1.i.

⁷² *Discourse on Inequality*, 151.

⁷³ *Discourse on Inequality*, 140.

began to look at the others and want to be looked at himself, and public esteem had value.”⁷⁴ A third kind of dependence, that created by the inflammation of *amour-propre*, or vanity, changes (as noted above) what we *perceive* to be our needs, both materially and symbolically, leading to new forms of slavery and domination. This means that for Rousseau, a change in socialization or moral development must accompany a change in unequal social institutions.

The point for Rousseau is not so much that dependence in and of itself is dangerous; rather, it is when dependence is not properly mediated, leaving individuals subject to arbitrary interference, that freedom is compromised. On this point Rousseau had it right. We are all “in chains,” if by “chains” we mean the “resources and schemas” through which humanity makes (meaning of) its life. The trick is to make sure the “bondage” is made equal and therefore legitimate. A structural theory of freedom requires institutions aimed at overcoming domination, or the potential for *arbitrary* interference. The social contract is meant to combat the second and third kinds of dependencies Rousseau outlines by transforming them and making them legitimate.

Rousseau would argue that the kind of freedom that emerges from the general will is more complex, more realistic, and more moral than that found in the state of nature since it deals explicitly with the problems that arise in society: our fundamental dependence on others for all of life’s goods as well as the meaning we make of it. We can see how this is meant to work, in part, by analogy to the pupil Emile’s education. For Rousseau, proper education is the solution to the problem of *amour-propre* (vain self-love) in the imperfect world, whether on the private or public level. By combating vanity and redirecting the will toward the (common) good, education can engender both moral

⁷⁴ *Discourse on Inequality*, 149.

and civil freedom. The education that Rousseau recommends for Emile aims at mediating his relationships with people so that dangerous dependencies can be curtailed; the social institutions created by the general will serve a similar function.⁷⁵ Through private education, one can learn the moral autonomy necessary to live in a corrupt society; participation in the general will (which is in some ways analogous to public education) provides the opportunities for civil freedom as well as moral freedom, in following, and in fact being *bound to*, to the point of being “forced to be free,” a law one has participated in making. But is every citizen equally “independent,” equally “autonomous”? In the dual process of the “education” of man and citizen, however, a radically dichotomous gender system is produced, in which Emile’s male “independence” depends upon a careful crafting of masculinity and femininity, undercutting his otherwise egalitarian impulses.

In order to retain autonomy in a corrupt world, Rousseau recommends that his pupil make himself self-sufficient, or independent, rather than that he engage in mediated or transformed dependence.⁷⁶ In contrast, Sophie is educated so that her life revolves around Emile; her dependence bolsters Emile’s status as a citizen. Emile’s freedom depends not only upon his own independence but also upon his not acting as master over others, while Sophie, also a member(?) of the less-than-ideal regime, is to play the part of a willing wife while all the while holding the puppet strings: Rousseau has told us that

⁷⁵ Roger Masters argues that “Rousseau’s political teaching, based on the famous notion of the general will, is thus merely a development, in terms of society as a whole, of the same concept of freedom which underlies Emile’s private education; despite polar opposition between the education suited to natural man and that of the citizen, both are intended to free the individual from a dependence on other men *qua* men” (*The Political Philosophy of Rousseau* (Princeton: Princeton University Press, 1968) 42).

⁷⁶ Cullen takes to be Rousseau’s ideal for freedom the self-sufficient image of Emile. Cullen argues that Emile experiences a negative type of freedom in that he lives without obstruction by others. While the autonomy experienced by Emile may be one of the prerequisites to civil freedom, it should not be taken to mean that civil freedom is unimportant to Rousseau.

having dominion or authority over others will not make *Emile* free, since this would leave him the position of being dependent on their cooperation, and as we have noted, Rousseau does not exempt “masters” from the pernicious effects of slavery. How does this work with regard to the interdependence of the sexes? The dependence of women and men may be mutual, but decidedly uneven:

Woman and man are made for one another, but their mutual dependence is not equal. Men depend on women because of their desires; women depend on men because of both their desires and their needs. We would survive more easily without them than they would without us. For them to have what is necessary to their station, they depend on us to give it to them, to want to give it to them, to esteem them worthy of it. They depend on our sentiments, on the value we set on their merit, on the importance we attach to their charms and their virtues. By the very law of nature women are at the mercy of men’s judgments, as much for their own sake as for that of their children.⁷⁷

Here we seem to have a clear case of institutionalized, structural *inequality*, complicating the usefulness of Rousseau’s theory of freedom for the principle of non-domination, and for a structural theory of freedom more generally.

First, it is important to note that the gendered power relationship is more ambiguous than it would at first seem; Rousseau repeatedly tells us that Sophie’s power to rule Emile, through her feminine wiles, is a power she must use carefully. In fact, the delicate balance of the republic depends upon a man’s loving his wife and children, a duty that Rousseau assigns to the women of the republic. In answer to the eradication of gender difference in Plato’s *Republic*, Rousseau argues not that some natural sexual difference justifies men’s and women’s different educations, but that women be the careful tenders of men’s emotions as a social and political necessity. Plato’s plan of “civil promiscuity” is folly: “as though the love of one’s nearest were not the principle of love one owes the state; as though it were not by means of the small fatherland which is

⁷⁷ Rousseau, *Emile*, 364.

the family that the heart attaches itself to the large one; as though it were not the good son, the good husband, and the good father who make the good citizen!”⁷⁸ Indeed, Sophie’s “mastery” over Emile in matters of the heart is requisite to the moral freedom of men in *Rousseau’s* republic, and this is not a power that Rousseau, as well as many today, would take lightly.

Nonetheless, it is very easy, and very tempting, to attribute Rousseau’s attitudes toward women in *Emile’s* Book V to a case of simple misogyny, and to dismiss his theory altogether: As Nancy Tuana points out,

He argues that innate differences between the sexes do not dictate differential roles, but that sex roles are necessary for the good of the state and thus should be enforced. Thus Rousseau’s views concerning woman and man’s proper roles and abilities cannot be simply excised from his philosophy, leaving his epistemology and his social and political theory intact. The differences between women and men, differences which I will argue place woman in a position inferior to man, are a consequence of Rousseau’s social and political theory. To remove the sexism from Rousseau’s thought, we would essentially have to revise his entire philosophy.⁷⁹

And in important respects, this is undoubtedly correct. The consequences of “interdependence” fall to women and men in a decidedly unequal, and undoubtedly unfair, way:

In the union of the sexes each contributes equally to the common aim, but not in the same way. From this diversity arises the first assignable difference in the moral relations of the two sexes. One ought to be active and strong, the other passive and weak. One must necessarily will and be able; it suffices that the other put up little resistance. Once this principle is established, it follows that woman is made specially to please man. If man ought to please her in turn, it is due to a less direct necessity. His merit is in his power; he pleases by the sole fact of his strength. This is not the law of love, I agree. But is that of nature, prior to love itself. If a woman is made to please and to be subjugated, she ought to make herself agreeable to man instead of arousing him. Her own violence is in her charms. It is by these that she ought to constrain him to find his strength and make use of it. The surest art for animating that strength is to make it necessary

⁷⁸ Rousseau, *Emile*, 363.

⁷⁹ Nancy Tuana, *Woman and the History of Philosophy* (St. Paul: Paragon Press, 1992) 45.

by resistance. Then *amoure-propre* unites with desire, and the one triumphs in the victory that the other has made with him. From this there arises attack and defense, the audacity of one sex and the timidity of the other, and finally the modesty and the shame with which nature armed the weak in order to enslave the strong.⁸⁰

But there is more going on here than a reiteration of a millennium's worth of hatred toward women; his writings on sexed interrelationship cannot and should not be simply ignored.

Although Rousseau certainly creates a gendered system that should give any contemporary reader pause, I take seriously Elizabeth Wingrove's exhortation to pay attention to the careful way in which Rousseau interrelates politics and sex, and therefore in important ways structure and agency: "Rousseau's thoroughly political account of sex, virtue, liberty, and reason suggests that individual identity and agency are not meaningful separate from the structures of government and community which those individuals must legitimize with their consent....The freedom [democratic politics] makes possible requires domination."⁸¹ To be really free, citizens must consent to be "bound" to one another, much as Rousseau's men and women become bound to one another through an admittedly uneven division of emotional and sexual labor. What does this mean for a politics of *non*-domination, then?

In the first chapter, I argued for a structural understanding of freedom in which agency, or the potential to act, is understood as not only dependent upon structure but constitutive of it. Structural freedom takes the ongoing interaction between "the individual" and our formative mediating institutions to be the subject of freedom, where the individual is understood to be continuously constructed as well as constructing. I

⁸⁰ Rousseau, *Emile*, 358.

⁸¹ Elizabeth Wingrove, *Rousseau's Republican Romance* (Princeton: Princeton University Press, 2000), 23.

have also argued that non-domination is incompatible with structural conditions of inequality, which preclude access to the structures by which we make (meaning) of our lives, and which make (meaningful) our lives. From the point of view of a structural theory of freedom, then, it is nonsensical to suggest that institutions can be obliterated, or to refrain from “constraining,” for, consistent with Rousseau’s theory of freedom, *every political society constructs the desires and wills of individuals*. The question becomes, specifically who and in what way does an institution enable/constrain, and how are we to make ethical judgments about this condition? The characteristically republican principle non-domination requires that individuals and collectivities not be in such a position that they are subject, systemically or on the individual level, to arbitrary interference.

Rousseau meets this challenge in acknowledging and exploring the necessarily constrained nature of human interrelationship, while in fact linking moral and political freedom to this constraint. At the same time, the gendered identities and subjectivities he constructs are undeniably unequal. Women are constrained in such a way that their very subjectivity revolves around male citizens; “women” enable citizens to be oriented subjectively toward the state. But to what extent must we accept Rousseau’s gender relations if we are to take from it a meaningful construction of non-domination?

Rousseau takes into account the essentially sociological, and even embodied, dimension of the proposition of a reflexive, recursive structural understanding of freedom, in which agency and structure are mutually constitutive. In his theory of moral and political freedom, he binds people together in such a way that the parties to the general will have an equal stake in the common, at the same time that Rousseau cannot make any meaning of humanity *as such* without the social structures that frame

interrelationship. Through the general will, to the extent that citizens are dominated, they are dominated by themselves, through their own will; this is better, and more legitimate, than other types of domination that form willy-nilly. In important ways, this is consistent with the principle of non-domination I develop here.

However, in considering the underlying role of gender inequality in his social thought, we see clearly that the effects of institutional domination (or, mediated domination and in that way non-domination) do not fall equally on the various members of the population, and in fact that the careful regulation of women's sexuality—and, even more seriously, their subjectivity—is required to sustain Rousseau's republic. To be sure, his writings challenge us to take seriously the role of institutions in a world where “personal” and “political” relationships run through one another; we cannot arrive at a meaningful notion of structural freedom in the *political* sphere without also paying attention to the way freedom is structured in the personal realm, and even in the body itself. Rousseau should be given credit for making this link between interpersonal relationship and person-institution relationships, for the enabling and constraining effects of structure function simultaneously through these realms. And again I turn to Wingrove:

My goal is not to retrieve or redeem some authenticity to Sophie's self-expressions. It is to understand how, for Rousseau, political and moral agency is possible *only* in the context of through the enabling *and* constraining structures of, social interaction and material, bodily practices. It is to understand how subjection is *always* a feature of political and moral agency. After identifying those subjecting interactions and practices as gendered, it is not, then, helpful to dismiss them as artificial and illegitimate. That they are undoubtedly both is (oddly, I admit) beside the point, because we can better understand how they structure republican politics, and thus how sexed bodies substantiate consensual nonconsensuality, only if we consider how they make moral agency—both Sophie's and Emile's—possible.⁸²

⁸² Elizabeth Wingrove, *Rousseau's Republican Romance* (Princeton: Princeton University Press, 2000) 77.

Rousseau, perhaps more than any other thinker of his day, recognizes interdependence as a fundamental human condition, and attempts to make this interdependence legitimate. In this way, Rousseau points us in the right direction; but to arrive at a structural theory of freedom from which we can make judgments about systems of inequality and stratification, and which will be compatible with an understanding of non-domination compatible with justice, it will be necessary to move beyond Rousseau's deeply inegalitarian gendered prescriptions.

Non-Domination, Self-Definition, and Institutions

Republican freedom as non-domination begins to provide us with a framework for a structural theory of freedom capable of taking the dynamic between structure and agency into account. Agency is more complicated than simply resisting oppressive contexts, since structure in many ways is the prerequisite to agency. In fact, Rousseau had it right in that it is the fate of humanity to live in relationship with other human beings as well as with the material world they create, and further, that on some fundamental level, we cannot do away with our "chains;" the best we can hope for us that we make them legitimate by "subjecting" all to the same non-arbitrary interference. Given this, it is imperative that we pay close attention to the institutions we create and the effect that these institutions have on our ability to make choices. Freedom depends upon the mediation of relationships of domination; meaningful choice and action are diminished by the potential for arbitrary interference.

However, does the "public" structure of non-domination require an inegalitarian economy of will and desire? Feminist critics of the republican tradition have been rightly

concerned with the exclusive masculinity associated with *virtu*; with the tendency of republican theories to emphasize militarism; with the division between public and private in which women are relegated to the home, the particular, and the bodily; and specifically with what can only be called Rousseau's misogyny.⁸³ But there is at least one thing of value we can take from the republican tradition: the linkages among subjectivity, identity, freedom, and political structure.

If domination is a structurally arbitrary force over one's life, and if freedom entails living without relationships of domination, then we can learn some things from the republican tradition on the most basic level. First, following Cicero, we have to look at how the government itself is structured. Does it have arbitrary power in our lives? Would we characterize the relationship between government and its citizens as one of master to subjects? And how are our general policies constructed? Do they seem to give some individuals arbitrary power over the lives of others? These alone are (somewhat unfortunately) radical questions given the current context, but they do not reach deeply enough the more "symbolic" aspects of structural freedom and domination. Rousseau in particular delves into that complex, murky area between the individual's experience of freedom and the structural conditions of political society, between the "cultural" and "political," the "psychological" and the "institutional." However, the psychic burden that women are made to bear is too much; indeed, it is notable that Rousseau's heroines never seem to survive. The principle of self-definition, which I will develop in the following

⁸³ In addition to the note on *virtu*, above, see on the association of masculinity with military service in republicanism, Snyder, *Citizen Soldiers and Manly Warriors*; Jean Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Princeton: Princeton University Press, 1981). On the restriction of women to the private sphere as republican mothers or guardians of civic virtue, see for example Susan Okin, *Women in Western Political Thought* (Princeton: Princeton University Press, 1979); Melissa Matthes, *The Rape of Lucretia and the Founding of Republics* (University Park, PA: Pennsylvania State University Press, 1999). On women as signifiers of the bodily, the particular, and the irrational in republican works, see Zerilli, *Signifying Woman*, and Young, *Justice and the Politics of Difference*.

chapter, provides a way to make judgments about this more “symbolic” aspect of domination. Relational self-definition, coupled with the principle of non-domination, completes the picture of a structurally free society in which the determining potential of structures and the subjective experience of being enabled or constrained vis-à-vis those structures are brought simultaneously into view, and subjected to ethical scrutiny.

Chapter Three

Feminist Theories of Freedom and the Principle of Self-Definition

Structural freedom understands individual choice and institutional structure as existing in a reflexive, recursive, and dialectical relationship; institutions affect human behavior, and human behavior affects institutions. As such, a structural approach to freedom takes equality to be compatible with freedom, for it understands all actors to be continuously positioned (although actively so through processes of critical reflection). Systems of deep stratification and oppression immensely complicate any easy understanding of freedom; an individual's choices and actions are informed by differing positions vis-à-vis variable structures within which material and symbolic resources and schemas are distributed unequally. One's relative position within a given system will have implications for freedom.

In the previous chapter, I argued that the principle of non-domination provides an ethical standard for understanding the possibilities of freedom in and through institutions within a given society: Are individuals or groups subject to arbitrary interference? Do institutions make this domination systematic through the distribution of "actual" or "symbolic" resources? In this way, "individual" freedom, here a positional concept, can be understood only in relation to the structure of a given society. However, as I began to suggest, the construct of non-domination alone fails to grasp the complexity of freedom within contexts of deep stratification and inequality; it cannot adequately get at the effects of living under oppressive symbolic schemas, at the same time that it does not leave sufficient room for agency. The construct of non-domination can too easily tend to a static understanding of relationships of power, disallowing the space for agency

inherent in all structures, in particular around the “transposability of schemas” and the “intersection of structures as articulated by William Sewell in chapter one. To better take into account these aspects of structure which produce unintended consequences, and therefore on some level freedom, I argue that a structural theory of freedom requires the principle of relational self-definition, or the ability to decide and act upon a good of one’s own choosing, when this is understood to require institutional support. While I am less interested in the process of self-definition than I am the conditions under which self-definition is possible, I will argue that the ideal of self-definition is a necessary complement to non-domination, tackling head on both agency and equal participation in the symbolic/material.

It is my intention that non-domination (largely concerning “actual resources”) and self-definition (largely concerning “symbolic schemas”) together form a structural understanding of freedom in which the material and symbolic are seen to exist in a truly dialectical relationship; these dual principles coincide with the dual nature of structure as resources/schemas, recursive over time, reflexive, and multiple as outlined in the first chapter of this project. In reality, of course, the “material” and the “symbolic” are so completely intertwined that they are experienced simultaneously, as I indicated in the chapter one (am I enabled to become a corporate executive because I participate in a system of collectively held beliefs in a white man’s ability to lead, or because I have experienced a system in which resources have been available to me, or both?). But for the purpose of completing the construction of such a dual, reflexive, and recursive structural theory of freedom, it is necessary to shift the focus to the symbolic aspects oppression and domination; what we imagine our possibilities to be (or not to be) is as

powerful an obstruction to freedom as is a lack of resources to fulfill one's desires. But how are we to make judgments regarding the specifically enabling and constraining effects of those interactions on "individual" agency, and how does agency complicate the picture of structural domination??

Structural freedom rejects the notion that any interference constitutes a hindrance to one's freedom, following the republican tradition, yet it also recognizes the potential of institutions to oppress. The principle of self-definition is a check against the tendency of the republican tradition to fix subject positions. Self-definition requires that, with regard to formative institutional structures such as law and policy, we are both left free to construct our understandings of ourselves and our choices as non-dominated in relationship to others or to the state, *and* to be recognized as subjects so capable: The state has a positive role to play in mitigating relationships of domination and upholding structural freedom; but it should not be in the business of constructing some as needy and some as "self-sufficient," some as "dependent" and some as "independent," when in reality we are all "dependent" upon the structures that frame our lives. For example, one should not have to present oneself as "married" or "single," "head of household" or "single mother," "working poor" or "disabled" to access either "actual" "symbolic" resources, as required by many contemporary U.S. institutions. Here, Rousseau had it right: we are all in "chains;" the trick is to assure that the "bondage" is made equal and therefore legitimate. A structural approach to freedom insists that not only is it necessary to occupy a structural position within which one is not dominated, but also that it is necessary to create institutional space attentive to and respectful of one's understanding of one's choices and needs. The principle of self-definition in addition to that of non-

domination should inform the building and maintenance of institutions, and specifically those involved in the laws and policies surrounding sexuality, the family, health, and employment, although this list is in no way meant to be exhaustive. This principle is central to the structural understanding of freedom I develop, here drawing from and expanding upon contemporary feminist articulations of freedom.

Feminist theorists are increasingly reclaiming freedom, often articulated as relational self-definition or self-realization, as a normative ideal for women and men; freedom does not have to be a reality only for the elite at the expense of the rest. At the same time, in rejecting the theoretical incompatibility of freedom with equality, feminist thinkers are beginning to avoid many of the most serious pitfalls of the “gender equality framework”: With which men are women to be equal?¹ Do women have to be the same as men in order to be equal to them?² Does “formal equality” in a context of inequality actually put women at a disadvantage?³ Should gender inequality “trump” race or class

¹ When race and class are taken seriously, “gender equality” becomes much more problematic. Do feminists want to be “equal” to poor men, or to men of marginalized racial groups? All too often, a small elite of economically privileged, white, heterosexual men is taken to be the “men” with which liberal feminists want to gain equality. Here, the framework of equality does little to address the concerns of the vast majority of women, for whom social hierarchies other than gender are salient. See, for example, bell hooks, *From Margin to Center* (Cambridge, Ma: South End Press, 1984).

² The seeming paradox at the heart of the “equality versus difference” debate has been insightfully addressed by Joan W. Scott in her now-famous essay, “Deconstructing Equality-Versus-Difference” (*Feminist Studies*, Spring 1988, 33-50). She uses deconstructionism to unmask the “power relationship constructed by posing equality as the antithesis of difference and the refusal of its consequent dichotomous political choices” (44). Scott calls our attention to the fact that the pairing of the terms “equality” and “difference” misrepresent both terms. Equality, she argues, does not entail proving that everyone is basically the same as everyone else. This means that there is always power at work behind the emphasis of some differences over others, in contrast to a notion that there are simply natural differences that accidentally include or exclude certain groups. However, these insights do little to address the concrete policy concerns facing courts and legislatures. The nonsensical phrase “pregnant persons” rendered by the Supreme Court is a case in point; consider also the Sisyphean court struggles with regard to employment discrimination and sexual harassment.

³ Martha Fineman argues in *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (New York: Routledge, 1995) that this is the case with regard to divorce, alimony, and child support policy. She argues forcefully against the “white knuckling” of formal equality feminism. In contrast, Joan Williams (among others) argues for an equality model. See Joan C. Williams, “Deconstructing Gender,” in *Feminist Jurisprudence: The Difference Debate*, ed. Leslie Friedman Goldstein (Lanham, Maryland: Rowman & Littlefield Publishers, 1992).

inequality? These are paradoxical questions without satisfactory replies. Instead, feminist theorists of freedom take the formation of will and desire into account, broadening a normative concern with gender/racial equality and bringing it in line with the ideal of freedom.

One danger of a framework of freedom for thinking through feminist problems is a depoliticizing individualism; I will attempt to mitigate this tendency in my reading of the feminist thinkers below. Feeling as though we are making free choices, raising our children with a sense that they can act as their own agents, or creating alternative communities from which to critique oppressive, hegemonic ideologies are important and perhaps necessary reactions to an oppressive context. But they are not enough. Ultimately, by focusing freedom only on the individual, we will be lead to shrink from power and change: our “free choices” ought to have an impact on collective decisions; our children ought to be governed by institutions that do not arbitrarily interfere with their wills or allow others to do so, whether by arbitrarily distributing “actual” or “symbolic” resources; and oppressive hegemonic ideologies and institutions should be transformed. In this way, the principles of non-domination and self-definition must remain linked.

Contemporary feminist thinkers have challenged accepted formulations of freedom, advocating instead a notion of freedom that is contextualized;⁴ understood in relationship to other concepts such as equality, justice, and power.⁵ Here, I will critically

⁴ “Freedom is neither a philosophical absolute nor a tangible entity but a relational and contextual practice that takes shape in opposition to whatever is locally and ideologically conceived as unfreedom.” Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995) 6.

⁵ In the introduction to her book that develops and defends three principles of a feminist theory of freedom, Beth Kiyoko Jamieson notes that “justice is not a stand-alone virtue. It requires that we value both equality and liberty.” Jamieson, *Real Choices: Feminism, Freedom, and the Limits of the Law* (University Park,

explore and expand upon particular aspects of Wendy Brown's, Drucilla Cornell's, and Nancy Hirschmann's articulations of feminist theories of freedom; I do so in order to arrive at the structural principle of relational self-definition. The subject of freedom for each of these thinkers must be the situated individual, embedded in relationships and located within various power structures. Unlike feminists approaching women's oppression from the lens of (in)equality, these feminist theorists of freedom will each, though differently, argue that the *content* of a specifically women's freedom, or women's desires, be left unarticulated and not be written in to the law. The idea of freedom as "self-definition," despite or perhaps because of a patriarchal context, begins to capture this insight.

Further, it bears repeating that the principle of self-definition must be founded upon that of non-domination. In chapter one, I argued that structure and agency must be understood to exist in a dialectical relationship. I argued that structures, and specifically institutions, are human creations, but not creations fully under human control; choice and action can be understood only in relationship with the structures that we create but also which frame our lives. Specifically, a reflexive structural political theory of freedom must take the enabling and constraining effects of institutions into account. I have argued that the principle of non-domination should undergird the building and maintenance of institutions that will enable freedom rather than facilitate oppression. But much as structure cannot be understood without agency, non-domination cannot properly function without a simultaneous attention to self-definition. First, any meaningful notion of self-definition as an important aspect of freedom will be insufficient if an individual's

Pa.: Pennsylvania State University Press, 2001) 1. I would argue that freedom, similarly, cannot be a useful guiding principle for action without the virtues of justice and equality.

structural condition is one of domination; self-definition is a relational concept that depends upon a non-oppressive context. At the same time, the notion of domination cannot adequately grasp the symbolic dimensions of internalized domination, *or the ways in which agency functions to assure that no system is ever closed*, that the principle of self-definition seeks to elucidate. As I have noted previously, the problem of freedom for the oppressed is curiously circular, as the material and the ideological reinforce each other in insidious ways: Deprived of resources and power, those occupying the low ends of the social hierarchy perform the very inferiority that is thought to justify their position. Simone de Beauvoir made this observation some five decades ago:

The dominant class bases its argument on a state of affairs that it has itself created. As George Bernard Shaw puts it, in substance, ‘The American white relegates the black to the rank of shoeshine boy; and he concludes from this that the black is good for nothing but shining shoes.’ This vicious circle is met with in all analogous circumstances; when an individual (or group of individuals) is kept in a situation of inferiority, the fact is that he *is* inferior. But the significance of the verb *to be* must be rightly understood here... Yes, women on the whole *are* today inferior to men; this is, their situation affords them fewer possibilities. The question is, should that state of affairs continue?⁶

The point for Beauvoir was of course to change this state of affairs by breaking this “vicious circle,” and my intention is much the same. The structural theory of freedom I complete here with the principle of self-definition aims to break this circle.

With the understanding that the agent-focused principle of self-definition must be coupled with a structural principle of non-domination, I will explore Wendy Brown’s critique of liberal freedom in *States of Injury* (1995); Drucilla Cornell’s idealist theory of freedom in *At the Heart of Freedom* (1998); and Nancy Hirschmann’s articulation of a feminist theory of freedom in her 1996 *Political Theory* article, “Toward a Feminist

⁶ Simone de Beauvoir, *Introduction to The Second Sex*, trans. and ed. by H.M. Parshely (New York: Vintage Books, 1989) xxx.

Theory of Freedom.” Each of the three feminist theories of freedom below, highlighting and expanding upon the role of self-definition as it appears to greater and lesser degrees for each thinker. They each, in different ways, complicate the construction of the individual, convincingly arguing that the individual must be understood as constructed, regulated, embedded, and/or situated (yet indeterminate). This is by extension a much needed complication of the notion of agency, or the capacity to act; many theories of freedom unproblematically assume the ability of the agent to act on his (or, rarely, her) own behalf.⁷ At the same time, while there are identifiable similarities among these articulations of freedom, there are also important methodological differences, which I will highlight throughout. Brown’s methodology could be described as a genealogical critique of liberal freedom; Cornell employs a psychoanalytic and ethical approach in defending the dignity of the free person; and Hirschmann provides an epistemological exploration of the construction of free individuals and their contexts. These methodological differences will ultimately put these feminist theories of freedom at odds with one another, and in arriving at a coherent ideal of self-definition, it will be necessary to judge one thinker’s approach against the others.

As I facilitate a conversation among these thinkers through the critical analysis that follows, I will argue that Brown’s largely poststructuralist impulse which leads her to equate freedom with resistance will prove to be insufficient to the structural account of

⁷ To be fair, one would have to add, “as long as there no external impediments to his motion,” to give credit to Hobbes’s influential formation of freedom. I am, of course, oversimplifying what is in fact an extremely complex set of philosophical propositions regarding the nature of free will. At this point, I want to suggest only that through various postmodern renderings of the individual as contingent or determined (Brown), psychoanalytic readings of the formations of individuals’ psyches (Cornell), and through epistemological and social constructivist approaches (Hirschmann), theorists of freedom have been able to complicate the formation of the *desires* of individuals in useful and productive ways. This complication has also allowed for more nuanced and insightful articulations of the effects of gender and gendered structures on the capacity of individuals to act.

freedom I develop here. Although Brown does argue that freedom has something to do with a greater participation in democratic institutions, a central aspect of non-domination, her critique of liberal politics, and particularly of “rights,” leaves the reader with no sense of political alternatives, and certainly with no ethical foundations for building institutions. It is my hope that the last two chapters have made it clear that avoiding institutions is not only an impossible goal but a foolhardy one. Cornell draws most heavily from Kant, Lacan, and Rawls. Cornell’s argument for freedom is ethical in nature; the assumption and protection of the free person, inherently imbued with dignity, is at the heart of Cornell’s justification for particular social and political policies. I share with Cornell a commitment to the ethical idea of the free person, but I push her to connect her commitments to universal rights even more closely with a stringent understanding of equality, specifically through the principle of non-domination. Protecting the space for each person to live her life in her own way will remain empty in crucial ways unless our institutions are governed by the principle of non-domination. Finally, Hirschmann comes the closest to articulating a fully reflexive, structural theory of freedom. She sees the connections between structure and agency through an epistemological approach to social constructivism. But like Cornell and Brown, in the end she shrinks from committing to any particular vision of institutional form. Again, self-definition must be explicitly connected to non-domination.

I continue to argue here that it is dangerous to leave the articulation of the content of institutions to conservative forces. In all, the feminist theories of freedom I will explore below provide invaluable insights into the formation of individuals capable of free choice and action, but when the content of *political* (or collective) freedom is left

unarticulated, or when self-definition is not linked to the institutional condition of non-domination, these theories are at their weakest. This is the case most clearly with Brown's poststructuralist critique of liberal freedom and rights discourse.

Wendy Brown's Post-Structuralist Freedom

Wendy Brown, in *States of Injury: Power and Freedom in Late Modernity*, argues that individualized, liberal understandings of freedom shrink from an engagement with the forces that hold real power over our lives: capitalist institutions and liberalism's desiccated version of politics. Drawing from thinkers such as Marx and Foucault, she draws a picture of the modern state as shutting down politics, regulating and disciplining our desires, rather than opening up new possibilities for action and freedom. In many ways, her critique can be read as compatible with the feminist principle of freedom as self-definition that I develop here; within Brown's theory, self-definition takes the form of the ability to define and pursue one's desires, without reference or comparison to the mythical, uninjured, included "we" (and taking place outside the disciplining reach of the state). I will take from Brown the impulse that it is not enough to simply *feel* powerful, and that freedom has something to do with actually *being* powerful. This is a helpful insertion point for an inquiry into the structure of some of the most important of our mediating institutions, situated between the individual and collective forms of power.

At the same time, Brown's methodology reveals some limitations. While I will ultimately agree with her that protections for women *per se* should not be written into the law, I disagree that this must be done through a distancing from rights discourse. Freedom is not to be found in forgetting our "wounded identities," as she suggests, but in

changing those structures that not only *construct* us as excluded, but actually exclude us. And while constructing more spaces within which the work of democratic politics ought to take place is a fine ideal, Brown unfortunately leaves us with no guidance in implementing the kinds of institutions that would support such a reinvigoration of our democracy. It is as if Brown would do without institutions altogether, since they will inevitably regulate our desires, which for Brown constitutes a lack of freedom. In the long run, I will argue that this is a mistake; the dream of a society without institutions is just that, a dream, and we should not leave the structuring of these institutions to conservative forces. Again, as I will demonstrate below, Brown's poststructuralist critique of liberal freedom is ultimately insufficient to the structural theory of freedom I advocate here.

In *States of Injury*, Brown argues that liberal states embody the epitome of irony: they deny through promises, regulate through recognition, and exclude through inclusion. Alternatively, Brown attempts to refigure freedom as collective, active, and powerful rather than individual, self-pitying, and punitive. Brown argues that the ideals of personal sovereignty and individual rights which underlie liberal freedom cause individuals to become invested in their self-defeating pain as they seek compensation for their injuries; they then become trapped in their injuries as their subordinated identities are written into the law. This is especially apparent for Brown when truth and morality function as integral parts of our politics and where a necessary connection is drawn between our (fixed) identities and our desires. It is only by removing the foundation of truth, morality, and identity from our politics, Brown argues, that can we achieve a truly

radical democratic society where “humans might govern themselves by governing together” (5).

Brown makes this argument through a genealogy of identity politics in North America, providing a stringent critique of liberalism’s formulation of the relationship among freedom, rights, and individuality. Employing Marx, Foucault, and Nietzsche, Brown seeks to demonstrate the complex relationship between identity politics (for Brown, it is important these are identities formed around a common oppression) and varying configurations of freedom. For Brown, a telling effect of identity politics is to mask class antagonism while the power of the Marxist critique is lost—“blame” is shifted to exclusion based on one’s identity rather than on the effects of class. This has the effect of reinscribing the bourgeois ideal of freedom. But further, at the same time that identity politics seeks recognition, this recognition allows for the description, regulation, and discipline of that identity by the state. But the state is not disinterested; it does not live up to its promise of universalism. At the same time, she argues, identities formed on exclusions continue to multiply and become ever more private, while the space and desire for political action contracts. For Brown, the modern liberal subject experiences an ever-increasing frustration at the failure of inclusion in a fictional liberal ideal, leaving “subjects” (she rarely uses the language of “citizenship” or “citizens”) resentful and disempowered rather than free. To understand this argument, it is necessary to understand the role the work of Marx and Foucault in her approach to freedom.

Brown begins her analysis of the emergence of the politics of recognition through a reading of Marx. Brown sees identity politics as emerging at a time when Marxist thought was on the decline; however, the decline of the class critique was not

accompanied by the obliteration of class stratification. The focus instead fell on our differences, such as race, gender, and sexuality; but the feeling and quality of exclusion had not changed. She argues that “identity politics may be partly configured by a peculiarly shaped and peculiarly disguised form of class resentment, a resentment that is displaced onto discourses of injustice other than class, but a resentment, like all resentments, that retains the real or imagined holdings of its reviled subjects as objects of desire” (60). The elusive middle class, that abstract, mythical “we,” remains in place as the representation of those things from which marginalized groups have been excluded and “to which nonclass identities refer for proof of their exclusion or injury” (61). A “feminist,” for example, might point to her relative economic deprivation in relation to (white, straight, economically privileged) men, grounding her move politically on the basis of her sameness to men in every important respect. At the same time that identificatory markers other than class are made to carry an undue burden, capitalism and bourgeois values are renaturalized. In other words, identity politics can be seen as *requiring* the depoliticization of capitalism for its very existence, while the desirability of the ostensibly generic and universal but really the white, masculine, middle class ideal is uncritically reaffirmed.

Moreover, Brown argues, politicized identities come to be regulated by the state. To explain what she means by this, Brown uses the example of Santa Cruz’s recent “purple hair ordinance” (65). This local employment ordinance lists almost every conceivable site of difference as protected from discrimination under the law in matters of hiring, firing, and promotion, from race to weight and including one’s personal appearance. On the face of it, it seems that this would be a law of tolerance, allowing

people the freedom to dye their hair or pierce their body parts without fear of recrimination from employers. So why is this so characteristic of the *problems* of liberal individualism and disciplinary power for Brown?

Brown says of the Santa Cruz ordinance, following Foucault, that it is “a perfect instance of how the language of recognition becomes the language of unfreedom, how articulation in language, in the context of liberal and disciplinary discourse, becomes a vehicle of subordination through individualization, normalization, and regulation, even as it strives to produce visibility and acceptance” (66). Through the very naming of “difference,” this ordinance makes real, makes empirical, these characteristics and fixes them so that they appear essential, always already there. This move makes it difficult to argue that these “traits” are in fact produced by power and discourse. Brown is also implicitly questioning the very presence of the state in this project. At the same time that these traits are listed, entitling their possessors to rights in the form of protection, these traits also become categorized as deficiencies or disabilities, constructing individuals as *needful* of protection from the state. (This kind of “everything-but-the-kitchen-sink” list also has the effect of rendering all inequalities depoliticized individual “differences,” equating belonging to a minority race, for example, with having purple hair.) After reading the entirety of the Santa Cruz list, is there anyone left who is *not* in need of such protection? And what would be the power or advantage of remaining unnamed, unidentified by this list? For Brown, the advantage would be avoiding “a spectacularly potent mode of juridical-disciplinary domination” (133), forever figuring diverse groups as weak and in need from protection by the state.

Further, for Brown, casting problems in turns of injured identities—and acting litigiously instead of collective and politically—forecloses any discussion of what we might want once we have overcome that pain.⁸ It is this impulse within liberalism, for Brown, that leads to a unfreedom and *ressentiment*. Brown takes the notion of *ressentiment* from Nietzsche, describing it as “the moralizing revenge of the powerless” (66). For Brown *ressentiment* and the “politics of recognition” are inextricably locked together in a self-defeating, internalized project in which failure is inevitable; liberalism breeds *ressentiment* through its formulation of freedom as an unattainable and misdirected notion of individual sovereignty. But, for Brown, it is not only those who practice identity politics who are vulnerable to this resentment but all liberal subjects. To more fully understand the role of *ressentiment* in Brown’s construction of “wounded attachments,” it will first be necessary to develop more fully her ideas regarding freedom in the liberal state.

Liberal freedom, for Brown, shrinks from power and tends toward internalization, too easily accepting the notion of “feeling empowered” (23). Freedom is seen as individual and private, as the line over which the state cannot cross, leaving us alone to pursue our individual interests. I have argued this point specifically with regard to Hobbes in Berlin in chapters one and two. But liberal freedom is also much more complex than this, since freedom has been constructed as protection from the state against other members of society as well. In trying to move away from this individuated notion of liberal freedom, Brown argues:

⁸ This is a point with which I basically agree; winning a civil law suit might make a wronged person feel superficially better, but it does little to address the problems underlying the problem in the first place. However, some have taken issue with what seems to be an attack on rights *per se*. Legal scholar Patricia Williams, for example, would argue that it is much worse to be excluded from rights altogether; even the ability to sue might be better than nothing. See Patricia Williams, *The Alchemy of Race and Rights* (Cambridge, Ma.: Harvard University Press, 1991).

Against the liberal presumption that freedom transpires where power leaves off, I want to insist that freedom neither overcomes nor eludes power; rather, it requires for its sustenance that we take the full measure of power's range and appearances—the powers that situate, constrain, and produce subjects as well as the will to power entailed in practicing freedom. (25)

Brown envisions a political freedom that is in the world rather than in the mind. This begins to make sense when we think about the tensions inherent in the concept of the “subordinated sovereign subject” (71).

Sovereignty is defined as a supreme and independent power or authority in government, possessed or claimed by a state or community. It is at once difficult to reconcile this definition of sovereignty with the liberal idea that each *individual* can (and does) possess sovereignty. Clearly, not every individual can be sovereign; if everyone had “supreme and independent power” there would be no one over whom to exercise this power; or, the situation would be that of the “war of all against all” depicted by Hobbes. Yet liberal discourse operates under the myth that we have chosen our places in life, that everyone is free and equal in his sovereignty.⁹ The corollary to this free agency is that we are all personally accountable for our own situations, as the state ostensibly does nothing more than treat us all with equal disinterest.

Brown wants to emphasize power and effectiveness over the will, separating (inner) identity and morality from desire. It is in this context that we can understand

⁹ Feminists have, of course, resisted and reformulated this depiction of the individual. For example of canonical works relating this portrayal of the individual to specifically masculine points of view, see Christine Di Stefano, *Configurations of Masculinity, A Feminist Perspective on Modern Political Theory* (Ithaca: Cornell University Press, 1991); Wendy Brown, *Manhood and Politics: A Feminist Reading in Political Theory* (Totowa, NJ: Rowman and Littlefield, 1988). For various other feminist critiques of the canon, see also Jean Bethke Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Princeton: Princeton University Press, 1981); Susan Moller Okin, *Women in Western Political Thought*. (Princeton: Princeton University Press, 1979); Carole Pateman, *The Sexual Contract* (Stanford University Press, 1988); Arlene Saxonhouse, *Women in the History of Political Thought: Ancient Greece to Machiavelli* (New York: Praeger, 1985); and Linda Zerilli, *Signifying Woman: Culture and Chaos in Rousseau, Burke, and Mill* (Ithaca: Cornell University Press, 1994).

freedom as the condition of *non*-sovereignty, since we can now see atomistic individuality as the very condition of unfreedom. This non-sovereignty is admittedly dangerous, as it “requires that we surrender the conservative pleasures of familiarity, insularity, and routine investment in a more open horizon of possibility and sustained willingness to risk identity, both collective and individual” (25). But, Brown argues, it is only in letting go of the pain invested in our identities that we can reach power and hence freedom. Otherwise, our “wounded attachments” prevent us from moving forward.

What, then, constitutes a “wounded attachment”? For Brown, politicized identity, in that it is an identity formed out of a *reaction* to power, cannot help but reiterate its own subordination. The “presumption of the self-reliant and self-made capacities of liberal subjects, conjoined with their unavowed dependence on and construction by a variety of social relations and forces” (67), breeds a *ressentiment* that seeks to place the blame for one’s sufferings onto something external to the self. But next, since work is required to transfer one’s pain onto an external source, the subject becomes invested in his or her own “wounded attachment.” A sense of moral right to one’s own suffering comes to be attached to one’s sense of self (70). For example, a “cultural” feminist may seek to glorify “women’s ways of knowing” that, even while developed under subordination, carry a moral superiority. However, *ressentiment* cannot do the work of transforming those very structures that created the wounded attachment in the first place: “Identity politics structured by *ressentiment* reverse without subverting this blaming structure: they do not subject to critique the sovereign subject of accountability that liberal individualism presupposes, nor the economy of inclusion and exclusion that liberal universal establishes” (70). In turn, politicized identity cannot move out of this cycle of

pain and into a formulation of the political separated from its own invested sufferings. It remains trapped in a politics too heavily imbued with righteous morality as revenge becomes a substitute for action (73).

In order to move beyond these problems, allowing us to proceed with a radical democratic project, Brown argues that we must do some modified Nietzschean “forgetting.” She muses that perhaps in seeking recognition, what the political subject really wants is to release her pain (74); but Brown wants to make sure that politics does not become consumed with wallowing in this pain, and indeed, she argues that the realms of the political and the moral should not cross. We instead need to focus on the future, and what that future should look like. (Again, her vision is the radical democratic one where “humans might govern themselves by governing together” (5). It is not clear to me, however, how any principle can be free of ethical norms). She suggests that the best course of action might be to foster a political culture that could acknowledge the pain of its subjects “without being overtaken by it, a challenge that includes guarding against abetting the steady slide of political into therapeutic discourse” (75). Brown does not deny that our social positions will influence our desires, but she argues that moralizing anger, attached to identities forged under subordination, simply does not belong in our politics. I take this to mean that Brown would therefore eschew the pursuit of gay rights, affirmative action, or anti-pornography statutes (not to mention “purple hair ordinances”), all of which can be framed as “rights claims” since they seek change through law, on the grounds that claims of exclusion or injury would serve only to solidify the suffering of the injured parties in and through the law.¹⁰ The “wounded” identities remain vengeful in

¹⁰ The question of whether the courts can effect positive social change, such as achieving parity between the genders or races, is a contentious topic within public law. For example, Gerald Rosenberg argues that

their impotence, unable to claim power and to imagine a future without pain.¹¹ But what would an alternative to the pursuit of rights look like, and why for Brown would the alternative be more clearly indicative of freedom?

In effect, Brown wants to shift that portion of the political recognition process that deals with pain and the formation of the identity to another realm (although she never says where), emphasizing a person's relationship to her or his contingent desires. Her emphasis is meant to take us from an internal struggle to an external one, providing a sense of community rather than isolation and opening up the possibility for real change instead of monetary restitution. She suggests that we turn to the language of political goals and desires, concentrating on—and arguing about—what we want. “What if we sought to supplant the language of ‘I am’—with its defensive closure on identity, its insistence on the fixity of position, its equation of social with moral positioning—with the language of ‘I want this for us’? (75). For Brown we need to divorce these wounded

landmark Supreme Court cases such as *Brown v. Board* (1954) and *Roe v. Wade* (1973) have not achieved any significant social change in the areas of civil rights or women's rights. See Gerald Rosenberg, *The Hollow Hope* (Chicago: University of Chicago, 1991). Michael McCann, however, counters: using the example of the pay equity movement, McCann demonstrates that litigation and rights played a central role in the mobilization of the movement, and in fact that court decisions can produce positive social change. See Michael McCann, *Rights at Work* (Chicago: University of Chicago Press, 1994). Feminist legal scholars also disagree about the proper role of rights discourse for women's movements. In addition to Patricia Williams's argument in favor of rights, as noted above, Elizabeth Schneider argues that the mobilization for rights can be empowering for women. She traces out a dialectic of rights in which theory and praxis continually inform each other, producing ever-expanding and ever-changing notions of rights. In this way, Schneider leaves open the possibility of a rights discourse that has room for ideas of community and women's lived experiences; further, she figures rights-consciousness as a potentially powerful tool in shaping women's images of themselves. See Elizabeth Schneider, “The Dialectic of Rights and Politics: Perspectives from the Women's Movement,” *New York University Law Review* (Vol. 61) 589-652. Kristin Bumiller, however, more closely agrees with Brown. Bumiller argues that “antidiscrimination ideology may serve to reinforce the victimization of women and racial minorities. Instead of providing a tool to lessen inequality, legal mechanisms, which create the legal identity of the discrimination victim, maintain divisions between the powerful and the powerless by means that are obscured by the ideology of equal protection.” See Kristin Bumiller, *The Civil Rights Society* (Johns Hopkins University Press, 1988) 2.

¹¹ Brown has in mind here specifically the work of Catharine MacKinnon on pornography, and MacKinnon's and Andrea Dworkin's involvement in the crafting of anti-pornography statutes in Minnesota and Canada. Brown devotes chapter 4 of *States of Injury* to her work, especially that on the discriminatory and subordinating nature of pornography.

attachments from our political desires, and instead fight out what “we want for us.” But how is this to be done?

In some ways, Brown’s concerns with freedom concord with the structural theory of freedom I develop here. We can take from Brown that rights should remain ideals at which to aim. That is, it is consistent with the principle of relational self-definition I will develop here that we should not “fill in” the content of a right based on one’s identity. For example, I argue that any articulation of “women’s rights” necessarily entails a normative definition not only of what constitutes the identity “woman,” but also what a woman’s interest entails. And, with Brown, this is even more dangerous if “womanhood” is construed as having something to do with having been injured or having been subordinated, since this subordinated status could be (further) inscribed into the law. For this reason, I will take a stand against gender-specific child custody policies in chapter four. Moreover, Brown’s attempt to reconnect freedom with power is instructive; it is not enough to simply *feel* powerful, and turning to the state to redress our injuries, especially in the case of civil law suits, may ultimately fail to liberate us. Thus, I see the ability to define, articulate, and fight for one’s desires, without reinscribing one’s subordination, as a potential characteristic of a feminist, and perhaps even a structural, approach to freedom.

However, even though I share some of Brown’s conclusions and concerns, I arrive at those conclusions via a very different path; accordingly, the normative implications of her claims and mine differ radically. Brown is concerned that the state has the potential to regulate through the naming and fixing of subordinated identities, so she argues that we ought to turn away from “rights” and the false promises of the state.

She draws from the work of Nietzsche and Foucault, insisting that freedom lies 1) forging an identity without reference to pain 2) adopting this (“abstract?”) pain-free identity in contests of political power, which are ideally to take place outside of the realm of traditional politics or law. These conclusions are problematic from the point of view of a structural theory of freedom in that (internal) “identity” must be viewed as imbricated with (external) politics while from a structural perspective institutions are assumed to enable as well as constrain. Brown does not take seriously enough the dialectical relationship of institutions and individuals or the *enabling as well as constraining* dimensions of institutions.

First, that we could articulate desires separate from our “wounded” identities as sexed beings may be both impossible and undesirable. Drucilla Cornell will argue that all sexed identities, whatever they may be, must be valued equivalently by the law; this is a very different kind of claim. Cornell might ask of Brown, what would be lost in “forgetting” our identities, even if wounded? And can this even be done? Cornell will argue (below) that a central component of moral politics consists in an equal valuation of all identities, and she especially seeks to protect what she terms as one’s “sexuate being.” Against Brown’s insistence that morality should be divorced from political struggles, in Cornell’s judgment the state has a positive role to play in providing an ethical framework within which citizens can develop, choose, and act. I argue with Cornell and against Brown that our formative institutions must be guided by ethical principles and that the state has a role to play in enabling the flourishing of the free person. In fact, I would go so far as to argue that it is impossible to understand the “self” without reference to

society's mediating institutions, making it even more important that institutions be guided by viable and coherent ethical norms.

On a related point, Brown assumes that the power involved here is only regulative and oppressive. As I have argued, the relationship between structure and agency is such that it is necessary to take institutions into account in discovering how individuals have been enabled to act. Institutions, and the essentially malleable "identities" construct and are constructed by them, have an important role to play in producing citizens capable of democratic participation. As Susan Bickford argues, against Brown,

identity has another relationship to politics, one that manifests a different kind of power: power as an enabling, empowering force or capacity. Far from being constructed solely by their oppression and exclusion, group identities may be cherished as a source of strength and purpose....Our strength may come from those around whom we grew up, those who taught us our racial heritage, incited our religious passions, constituted our ethnic or economic or sexed milieu.¹²

Here, rather than seeking definition of ourselves in an "abstract we," we recognize those structures that have a hand (constraining/enabling) in shaping our desires: family, race, religion, culture. Nancy Hirschmann's articulation of a feminist theory of freedom, which I will explore at greater depth below, will also join institutions with the formation of will and desire. This understanding of a neither a positive nor a negative role, but always a role for institutions, is much more consistent with the structural theory of freedom I develop here, and especially with the goal of relational self-definition.

Structural freedom takes the internal and external, the "cultural" and "political" as more closely interrelated than Brown does here. Perhaps our "wounded attachments" are a symptom of living under oppressive structures, both material and ideological, and less a

¹² Susan Bickford, "Anti-Anti-Identity Politics: Feminism, Democracy, and the Complexities of Citizenship," *Hypatia* Vol. 12, No. 4 (Fall 1997) 119-120.

symptom of believing in liberalism's abstract freedom as Brown suggests; and perhaps individuals can effect positive change both *despite and through* these so-called "wounded attachments." Achieving an identity capable of real agency is less a matter of "forgetting" our pain and divorcing our desires from our identities than it is changing those structures that consistently and systematically oppress us, construct us as lesser, and deprive us of the real resources we need to effect change. One need not "forget" that women, peoples of color, gays and lesbians, and the impoverished have been treated unjustly in order to effectively participate in struggles for political transformation: "Claims about suffering, as well as claims made in anger, can be attempts to enact democratic political relationships. Both are part of the language of citizenship."¹³

Finally, the principle of non-domination—a democratic impulse to undergird freedom with conditions of structural equality—maintains freedom's focus on power. In some ways, although Brown worries that politics has become only about "culture" and not about real political struggles, her focus on the identity politics in some ways reinscribes the very problem she seeks to correct. In other words, Brown offers a critique the production of *subjects* who can seemingly turn only to the courts for protection. Might a more productive endeavor be to consider institutional alternatives? At the conclusion of her critique, it is profoundly unclear where we ought to turn to exercise our agency, to participate in or form a more democratic political system. "Perhaps the warning here concerns the profoundly antidemocratic elements implicit in transferring from the relatively accessible sphere of popular contestation to the highly restricted sphere of juridical authority the project of representing politicized identity and adjudicating its temporal and conflicting demands" (133). Brown never makes clear,

¹³ Bickford, 126.

however, just where this political arena might be: “Might rights campaigns converge most effectively with ‘*prepolitical*’ struggles for membership or ‘*postpolitical*’ dreams of radical equality?” (133, emphasis added.) In a fractured society, where most people can hardly muster the enthusiasm to vote, a turn toward “popular contestation” or to some realm either “before” or “after” politics might be just as ineffective and “closed” as a turn toward the state. The great difficulty is in imagining getting from where we are now to where she would want us to be; she seems to be advocating a change in perspective, a “cultural” change, but doesn’t link it to any particular institutional transformations. Without such “political” changes, it is unclear how these “cultural” changes are to occur. The nature of more progressive institutions remains completely unarticulated.

From the point of view of a structural theory of freedom, the dialectical interrelationship between “individuals” and “institutions,” “culture” and “politics” must be treated with much more care than Brown does here. Self-definition requires a real engagement with institutions: our “identities” are inevitably formed in relationship to cultural/political structures. The construction of “self-definition” linked to the normative principle of non-domination takes us in this direction, for to be able to define oneself necessarily entails complex interactions with society and society’s resources, both material and psychic. Simultaneously, the ability to craft a meaningful life is an ever-present human capacity that also inevitably forms the construction of institutions, those sites through which schemas and resources are shaped and distributed. This will become increasingly clear as we explore Cornell’s formulation of the free person and Hirschmann’s social constructivist approach to freedom.

Drucilla Cornell's Kantian Freedom

I have argued that the principle of self-definition is a necessary complement to the principle of non-domination, together forming a thoroughly reflexive, dual, and dialectical structural theory of freedom, but that self-definition is a principle that cannot stand alone. Self-definition is the ability to see oneself as the author of one's will and desires, ideally built upon a structural position of non-domination, but also recognizing the fractured and multiple nature of structures. Self-definition captures the more "agentic" side of the structure/agency relationship delineated in the structural account of freedom I develop in chapter one, although I maintain that in reality the "agentic" cannot be separated from the "structural." Structural freedom entails living under conditions where one is not in a position of dominating another or being dominated, a principle which more readily captures the more "material" aspects of freedom, while self-definition speaks to the need to live under conditions of symbolic freedom, although again I do not mean to suggest that these two experiences can in reality be disentangled.

The work of Drucilla Cornell, which I explore below, can be understood to be compatible with a structural approach to freedom inasmuch as her notion of self-representation is compatible with the principle of self-definition I advocate here. For Cornell, women (and others) themselves must be the source of the definition of their identity, not a necessarily normative definition, of "woman," for example, that is external to the individual. Cornell provides an ethical account of freedom that foregrounds agency while tackling head-on important institutional questions regarding gender, family, sexuality, and race. Although Cornell is attentive to the process of "individuation," or subject-formation in relation to (patriarchal) structures of society and the psyche, I

challenge her to take the essentially malleable nature of individuals in the face of institutions even more seriously by building the structural principle of non-domination into her framework. The “internalized” ethical principle of self-representation requires an “external” normative referent capable of making judgments about the various contexts within which individuals are embedded.

In *At the Heart of Freedom*, Cornell makes her argument for freedom from three bodies of thought seldom employed together: Lacanian psychoanalysis, Kantian ethics, and Rawlsian political liberalism. From psychoanalysis, she posits that sexuality (or more precisely, one’s “sexuate being,” a term she borrows from Luce Irigaray¹⁴ and modifies) is “at the heart” of how a person comes to view him/herself; further, this sexuality is imbricated in the choice of how we will carry out some of our most important life activities, such as the expression of the erotic and the raising of children. Cornell furthermore argues, making an ethical (Kantian) as well as a political argument, that as a free person one has the right to express her or his sexuate being. Therefore, the enforcement of the patriarchal family form, by denying marriage and parenting rights to gays and lesbians, for example, is an obvious violation of this requirement, since it punishes those who express their sexuality and experience their deepest affective ties outside the bounds of the “legal” family. From political liberalism, she argues that we cannot enforce a norm deemed to be the good only by some: every person has the right to make choices regarding what constitutes the good. A lack of choices about sexuality, something so central to one’s identity and way of life, equals the denial of a person’s basic freedom, effectively excluding them from what Cornell calls the “moral community” (again, a concept taken from Kant), an action not to be undertaken lightly.

¹⁴ I do not mean to imply that the work of Luce Irigaray is necessarily psychoanalytic in nature.

In order to more fully understand how Cornell justifies this complex argument philosophically as well as practically, it is important to understand how she combines the work of Kant, Lacan, and Rawls (among others). In this, the role of her construction of the “imaginary domain” will be key.

Starting from a Kantian understanding of freedom and autonomy, Cornell postulates the *a priori* freedom and dignity of every individual. She draws heavily from the *Groundwork of the Metaphysics of Morals*, where Kant lays out his crucial concepts of the categorical imperative (“act only in accordance with that maxim through which you can at the same time will that it become a universal law”¹⁵); the formula of humanity (“act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means”¹⁶); and the kingdom of ends (“act as if your maxims were to serve at the same time as a universal law”¹⁷). For Kant, freedom involves a priority of the right over the good; to articulate the content of freedom is to foreclose its possibility. What’s more, the dignity of each person is such that a person acting morally must assume that every person is the self-legislators of their own laws, that is, also a rational, moral actor. In less technical language, this means to act morally, we can never presume to know anything about the other person, and specifically about what is good for the other person, and we must always treat others with dignity, or an integral, immeasurable worth.¹⁸ Autonomy is the state of recognizing oneself as the legislator of the laws one follows, which for Kant is a universalizing premise and not an

¹⁵ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Ed. by Mary Gregor (Cambridge: Cambridge University Press, 1997) 31.

¹⁶ Kant, *Groundwork*, 38.

¹⁷ Kant, *Groundwork*, 45.

¹⁸ Kant, *Groundwork*, 42.

individualizing one.¹⁹ This is a radically different view of freedom than that articulated by British liberals. For Kant freedom is a philosophical, moral premise, an idea meant to inform ethical action, rather than a physical state to be protected through constitutional law. It is essential to bear this in mind in exploring the complex relationships among freedom, “self-representation,” sexuality, and law in Cornell’s work.

Employing this Kantian ethical framework, Cornell premises that “we must demand that before law and within the basic institutions of society, women be evaluated as free and equal *persons*, whose inviolability cannot be easily overridden in the name of some greater good. Following Kant, we should privilege the freedom of every member of society simply as a human being” (11, emphasis in original). Freedom for Cornell is not something to be achieved; rather, the postulate that we are all free and equal persons is the building block, the *a priori* assumption, on which to build a just political theory. This freedom then becomes the source and justification of “a concept of rights that would allow us to be recognized as the source of own evaluations and representations of our sexual difference” (11). For Cornell, we must all be considered person of equal intrinsic worth, free to pursue our own happiness in our own way (18). But why is “sexual difference” of such central concern for Cornell, and how does this fit into her Kantian ethical framework? Before going on to explain the centrality of sexuality and the importance of psychoanalysis to her theory of freedom, however, it will first be necessary to understand the way in which Cornell employs the terms “representation” and “self-representation,” as well as its relationship to the principle of self-definition I am concerned with here.

¹⁹ Kant, *Groundwork*, 47.

Juxtaposing her notion of representation to the juridical one in which a lawyer “represents” his or her client, Cornell instead refers to the process that goes on in each person’s own psychic space: how does a person make sense of her/himself? Specifically, how does a person choose to represent him/herself sexually? The language here is meant to imply agency, but not radical choice; she is not arguing that people “choose” to be heterosexual or homosexual. Rather, self-representation is a right that each individual possesses, so that the individual is seen as the author of the meaning one assigns to one’s life choices: “Self-representation of one’s sexuate being involves not only representing oneself in and through sexual personae but setting forth a life that expresses one’s moral and affective orientation in matters of sex and the family” (40). In other words, the individual gets to fill in the content, the meaning, of “woman,” “gay,” “straight,” and so on.

So why is sexuality so central to personhood, and its expression and exercise therefore so central to freedom? In order to understand the centrality of sex,²⁰ sexuality, and “sexuate being” in Cornell’s argument, it is necessary to explore her use of psychoanalysis. For Cornell, sex is at the center of how we “individuate,” or come to have independent ego identities. We all see ourselves as “sexed beings;” we cannot separate a picture of “I” without thinking of ourselves as sexed. She will call this component of our identities our “sexuate being,” which she defines as “the sexed body of our human being when engaged with a framework by which we orient ourselves; because we are sexuate beings we have to orient ourselves sexually” (7). Our “sexuate being” is

²⁰ Cornell defines “sex” as “our unconscious identifications as beings who have been sexed, who have been formed, and who can know themselves only through a sexual imago. We cannot know ourselves outside of these identifications that formed us into beings sexed in a particular way and, as a result, turned us toward particular objects of desire” (7).

inseparable from our own concepts of ourselves as persons because it is developed synchronically with it; thus, it follows that we cannot express ourselves or our desires without also expressing our sexuate being, which is an integral part of our ego identities. We are “‘sexed’ so that we cannot see ourselves from the outside as men or women, gay or straights. Instead, we see ourselves so deeply from the ‘inside’ as ‘sexed’ that we cannot easily, if at all, re-envision our sexuate being. This inner ‘sexed’ sense is the sexual imago that is the basis of the unconscious assumed persona through which we represent ourselves” (37). For Cornell, then, any concept of the free person must be reconciled with the fact of sexual difference, with the fact that we are all sexuate beings.

Further, since we cannot imagine the subject of freedom to be sexually neutral, to be unmarked by sexual difference, and the expression of sexual difference must be protected as a right. “The demand to exercise one’s sexuate being through bonds and associations with others is structurally analogous to the protection of the right not only to appeal to conscience alone in religious matters but to be allowed space for the practice of one’s faith” (40). This includes the right to live out one’s life as a gay man or a lesbian, as a single parent, or as a marriage resister—in effect, Cornell will argue that the state cannot endorse the patriarchal family form as the only legal and socially acceptable family form. This last connection comes into focus with a discussion of a construction central to Cornell’s argument, the “imaginary domain.”

Cornell’s “imaginary domain” is that psychic space where we represent our desires to ourselves; it is the space of imagining possibilities and a space of freedom to be protected.

Those spaces in which we reimagine the meanings of “kin,” “love,” “sex,” and “intergenerational friendship” are not places we have necessarily been

or know and so they demand imaginative creation. We are dreaming them up as we constitute our families, even as we struggle with what it means to be a family member. And the imaginary domain is crucial for these dreams. First, it allows the sexual imago in and through which we come to represent ourselves in the first place. Second, it is the psychic space in which we are allowed to freely imagine ourselves as sexuate beings, representing ourselves as persons who define our own moral perspectives in matters of sex, love, and intergenerational friendship. Third, it allows for imagined modes of relationship that help us give body to the ways we wish to set up our intimate relationships. (43)

The imaginary domain is what makes it possible for each of us to become unique people. But more than this, the imaginary domain is a normative concept that allows a theorist to define the acceptable levels of regulation regarding a person's sexuality (33). The imaginary domain is thus an especially useful construction to explain the necessity of freedom in how we are to organize our intimate lives. Since our sexuate being involves a certain "sexual orientation" (in the literal sense) to any number objects of desire, and since the carrying out of this orientation will necessarily involve ties of kinship and love, a just state must protect these expressions in the name of the imaginary domain. On the basis of protecting the imaginary domain as a right, Cornell argues that the state should not be involved in privileging any one family form.

This, then, brings us to an important political component of Cornell's theory of freedom. In order to apply a principle of distributive justice (which she will do), coming out of a Kantian reading of Rawls, Cornell argues that first we must all be evaluated equally as persons. And since personhood is imbricated in our sexuate being, this means all expression of sexuality must also be evaluated equivalently. The state cannot "degrade" (in the literal sense of "grading down") an individual in matters of the imaginary domain. Specifically, the protection of the imaginary domain as a principle of justice and fairness demands that we value the feminine equally, as a matter of fact. The

view from under the “veil of ignorance,” then, must be seen *not* as the view from nowhere, as the abstract unsexed person (who seems inevitably to be a white male), but as necessarily sexed. The distribution of social goods then proceeds from this point: “The equivalent evaluation of sexual differences must be made prior the beginning of the operation of a proceduralist theory of justice. If the theory is to meet the requirement of legitimate universalizability, it must evaluate our sexual differences equivalently, as part of what it means for women and gays and lesbians to be included in the moral community of persons” (29). This, then, can operate as a set of principles by which we can evaluate justice: “Universal equivalent evaluation should be measured by answers to the questions of whether or not legal institutions, laws, education, particular cultural practices, or other basic structures of society, operate in a manner consistent with the equivalent evaluation of women” (164). The “feminine” (or other expressions of one’s “sexuate being”), no matter what content an individual gives it, it to be treated with dignity under the law: A pregnant woman should be eligible for health benefits because she is a person, regardless of whether or not men also receive such benefits; a gay man should have the right to raise children not because he and his partner are “like” a straight couple, but because to deny him this right would be a violation of his “imaginary domain.” This assertion of universal human rights, understood to incorporate sexuality, is in direct contrast to a standard of “equality,” in which a comparison must be made in order to justify receipt of social goods.

But does this mean that the state should pass more laws protecting “alternative” kinship structures or sexuality? Should the law seek to “protect” women due to their vulnerability, or their injured status, as Brown would have it? This is far from the case,

argues Cornell: “The equal protection of the imaginary domain does not demand that every aspect of life be controlled in the name of substantive equality... [in fact] the opposite is the case. That protection seeks to get the state out of the business of giving ‘form’ to our intimate lives” (26). Here, it seems that Cornell is making an argument similar to that of Brown. Brown argued that liberal subjects risk resubordination if we turn to the state for rights, since our the characteristics of our injured identities are being fixed by being written into the law. Due to the methodological differences between Brown and Cornell, however, Cornell’s is actually a very different kind of claim. Cornell’s procedural and foundational ethic requires the state and the construct of “rights” where Brown’s poststructuralist stance eschews them. To insist that the subject of feminism must be the equivalently evaluated person, understood as necessary and integrally sexed, is very different from resisting being a subject at all; for Cornell, the state must do what it can to allow individuals to be the authors of their own meanings, providing universal benefits rather than distributing benefits only to women and men who conform to traditional kinship structures. Unlike Brown’s, Cornell’s state is one that should be relied upon to administer procedural justice, and in fact the psychic well-being and freedom of the individual seems to depend upon it.

On this point, Cornell’s framework for understanding freedom is clearly more closely in line with the structural theory of freedom I put forth here: institutions can be brought under human control—and in fact human existence is nonsensical without something like an institutional context—so should be governed by viable ethical principles. However, Cornell’s reliance on the Kantian/Rawlsian framework of procedural justice raises an additional point regarding her underlying assumptions about

subject-formation, particularly in light of the dialectical account of structure/agency I developed in chapter one. Brown and Cornell, as well as Hirschmann (below), understand the formation of the subject and her desires to occur very differently. Another way to put this is that differing conceptions of the individual, and what she needs to flourish, undergird each understanding of the nature of freedom. Brown is all too aware of the ways in which contemporary “juridical-disciplinary” apparatuses function to shape the desires and choices of postmodern subjects. More like Hirschmann below, Cornell recognizes the social constructivism inherent in the creation of our values:

None of us starts from scratch—each of us wrestles with the ideas of the good life that are culturally available to us. Formed as we are by the world into which we are thrown and which engages us because we are set in the midst of it, the process of mining and shifting our values as we make them our own is a lifelong project. We can never draw a clear line between the values “out there” and the ones we have internalized and embraced as personality defining. We cannot actually be the fully original source of our own values, or even know the extent to which we have absorbed conventional morality, unconsciously sanctifying it rather than rebelling against or critically appropriating it. Although we cannot be the fully authenticating source of our own values, in reality we should nonetheless be politically recognized as if we were. (38)

One might ask of Cornell, is the kind of political recognition she advocates here sufficiently attentive to the problems of consciousness-formation within a context of radical stratification and inequality?

Cornell might argue that this way of shifting the ground of the process of defining the meanings of one’s sexuate being, from the state and its laws to the individual, more fully incorporates agency into a procedural understanding of justice. This impulse toward privileging self-definition is a necessary complement to non-domination, a principle which too easily, unless vigilantly guarded against, tends to erase the participation of the “victim” out of history, fixing inequality in time and space.

Answering Brown's concern that legal rights based on identities will serve to further reinscribe the subordinate status of the subject, and to anticipate Hirschmann's insistence that women are always accorded the capacity to act and choose, or agency, despite an oppressive structure, Cornell's focus on the self-representation of the free person seems to open up new possibilities:

[I]f women are defined as disadvantaged, then a legal reform program will focus on making up for this disadvantage. This is a very different proposition than that women, recognized as free persons, be given the change to live out their lives to the fullest and be provided with the full scope of rights, resources, capabilities, or primary goods that a theory of distributive justice defends. Further, and consistent with my foregrounding of freedom, *any definition* of what a woman is makes the imposed definition, not the woman, the source of the meaning of her sexual difference. If the subject of the theory of justice is the basic "structure" of society, the subject of feminism, for purposes of right and legal reform, is first and foremost the free person. (20, emphasis in original)

One remaining question, then, is what would this look like in practice? And what other political principles might be compatible with the vision of the sexually just society Cornell has laid out? What kind of legal and social structure would provide the space for people truly to self-represent their sexuate being? Based on her ethical and political justifications, she convincingly argues the need for the reform of the laws that govern our sexuate being.

Cornell argues that certain types of state policies would have to be changed in order to accommodate a serious valuation of all people as equal and equally free in their sexuate beings—public policies would no longer support patriarchal norms. For example, she lists state-sponsored day care, state health care, and reform in custody, reproductive, and adoption policy as points of necessary intervention. Clearly, for Cornell, we need the space and the opportunity to represent our sexuate beings freely, and

the state can play a role in this by allowing us to fill in the meanings of our lives, instead of having to conform to a definition created and sponsored by the state. The principles of structural freedom would prescribe similar political changes.

For Cornell, other reforms would have to be made as well. For example, in her consideration of prostitution (46-51), she fiercely defends the status of prostitutes as persons, insisting that we cannot charge them with false consciousness if they think they are freely choosing but we know better—we know they are *really* victims. The standard would apply to strippers, or pornography models, or other women often labeled as coerced into their professions (and/or as sexually deviant) either by well-meaning feminists or by those making an argument about “decent” morality.²¹ Cornell would insist that we must take a person’s word for it when they tell us that they are pursuing their lifestyles out of choice, and that they should be allowed to do so. Not to do so would be to deny them the status of a free person who is capable of representing her own sexuate being. While I agree that excluding such people from the “moral community of persons” is unacceptable, and that in effect we must believe what a person tells us about the way they choose to represent their own sexuality as a matter of liberty of conscience, does this stance then detract attention from the context within which sex workers, for example, find themselves? In what ways is a person’s agency inhibited by occupying a dominating or dominated position, understood as a simultaneously material and symbolic experience in accordance with the structure/agency dynamic I have outlined above?

²¹ Cornell would argue, and I would agree, that the occurrence of such strange bedfellows in these issues is not coincidental, and that it should alert us to something important. For example, as a result of the pornography ordinances created by Catharine MacKinnon and Andrea Dworkin, lesbian bookstores were some of the first shops to be closed down. See Lisa Duggan Nan. D. Hunter, *Sex Wars: Sexual Dissent and Political Culture* (New York: Routledge, 1995).

On a related point, Cornell argues that men and women will remain perfectly free to pursue “traditional” family lives, meaning monogamous heterosexual (patriarchal?) relationships and nuclear families. Even with choices with which we disagree, we must accord every individual the status of the free person: just as gay and lesbian parents must be allowed the right to raise children, so heterosexual couples must be allowed to carry out the lives of their own choosing.²² Again, although it is imperative we grant such freedom of conscience in matters of sexuality, and I am full agreement with her defense of the rights of gays and lesbians to live out their sexual being in way that accords them equal evaluation under the law, are we turned away from concerns about structure and context, to our detriment? Let us refer to the definition of patriarchy that she provides as

first and foremost the state-enforced and culturally supported norm of heterosexual monogamy as the only appropriate organization of family life. This norm, as traditionally defined, has placed the father as the head of his line. A crucial aspect of this is that women continue to be defined mainly by their reproductive capacity and place in the family, and so are denied the right to the self-representation of their sexual being. Gays and lesbians as well, since they have no place in *this kinship system*, continue to be denied their right to the self-representation of their sexual being. (p. 22, emphasis added)

And, “[patriarchy] is inconsistent with equal protection of the sanctuary of the imaginary domain. As such, it can no longer be legally *imposed* on free and equal persons as a *state-conceived* norm for the regulation of family life” (23, emphasis added). Cornell defines “patriarchy” as a *state-enforced* norm, even if culturally supported. Would Cornell still object if this particular family form were not state-enforced, and if there were other legitimate options? Would not the *content* of patriarchy still be troubling? Are there ethical principles other than procedural ones by which we could make this

²² Cornell seems compelled to defend herself against the charge of being a totalitarian “feminazi,” intent on destroying all “traditional” religions, kinship structures, and cultural norms (174).

judgment? Cornell shies away from saying that this way of organizing one's sexuate being is wrong on its own ground; it seems that it is wrong only because it is the only real and legitimated norm available, because it limits the possible ways that women and men, whether "straight," gay, or lesbian, can self-represent their sexuality. But isn't there something more wrong with patriarchy than that? In what ways do even "freely chosen" instances of patriarchal family forms demand a regulation of women and their sexuality that in itself is a violation of structural freedom, and perhaps also the "imaginary domain"?

In an important sense, of course, this boils down to how "patriarchy" is defined in the first place; it would be tautological to argue that patriarchy is *inherently* oppressive if we have defined patriarchy as an oppressive institution from the start. However, it can be argued that patriarchal kinship structures, in which the father is supposed to be the "head of the line" and through which women are assigned "private" duties and responsibilities and men "public" ones is *structurally* and *systematically* oppressive, regardless of whether or not one has "chosen" to participate in this family form. To this end, I contend that Cornell's insights might be built upon and informed by a discussion of structural/republican accounts of freedom: It can be said that individuals are not free not *only* because there isn't a large enough array of possible choices for how to carry out one's "sexuate being," an ethically suspect situation to be sure, but *also* because the patriarchal family form is *structurally* oppressive, constructing relationships of material and symbolic domination among its members. I would argue that a substantive principle of structural non-domination would need to undergird the principle of "self-definition" (or "self-representation") that Cornell articulates here if I am to continue to appropriate it

for a structural understanding of freedom. I will argue that Nancy Hirschmann's articulation of feminist freedom as relational self-definition would likewise benefit from an underlying substantive principle of non-domination.

To summarize briefly before turning to the third section of this chapter: Brown frames her critique in terms of the dangers of liberal freedom and rights discourse, providing little in the way of positive or substantive principles. And although I sympathize with her democratic impulses, and with her frustration at the evisceration of contemporary politics, her poststructuralist approach which links freedom with resistance is ultimately incompatible with the structural theory of freedom I develop here. Cornell complicates our understanding of the formation of the individual vis-à-vis psychic and kinship structures, providing a strong case for the incorporation of sexuality into the notion of the "free person" which underlies her account of procedural justice. I incorporate her notion of "self-representation," or the ability to see oneself as the author of one's own laws, into the principle of self-definition, or the ability to create a life of one's own meaning. This is both a prescriptive ideal for institutions and an observation regarding the always-present function of agency in a reflexive (or reflective) understanding of structure. However, unlike Cornell, I undergird this principle of self-definition with a consideration of the structural positions of subjects. I will approach the work of Nancy Hirschmann on freedom in a similar way.

Nancy Hirschmann's Epistemological Freedom

In her 1996 essay, "Toward a Feminist Theory of Freedom," Hirschmann develops an understanding of freedom as relational self-definition, incorporating a

dialectic between individuals and institutions through the lens of social constructivism. She relies on an epistemological discussion of subject-formation and oppressive socialization to make her argument, which is, to be sure, a much-needed intervention into traditional configurations of freedom lacking in the subtlety necessary to address the complex problems of women's oppression and agency. At the same time, through her reliance on epistemological categories, the symbolic schemas of structures and institutions play a greater role in her understanding of freedom than do material resources; her analysis would benefit from the dual understanding of structure/agency I develop here.

Hirschmann frames her discussion of a need for a specifically feminist theory of freedom within the debate between the positive and negative libertarians. She notes that the "positive" versus "negative" liberty framework, as put forth Isaiah Berlin in 1959,²³ has become the dominant framework for theorizing about freedom. The framework suggests that we can either understand freedom as the freedom "to" do something, a positive, "exercise" concept, or as freedom "from" something, a negative, "opportunity" concept.²⁴ She argues that a meaningful feminist theory of freedom must move beyond the over-simplification that this dichotomous framework presents, and Hirschmann will suggest that positive and negative liberty must be understood as interdependent concepts. To this end, she turns to relational self-definition. Unlike the either-or construction of the positive-versus-negative liberty framework, and more like the structural approach I develop here, she argues that this model takes into account structure as well as agency,

²³ See Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (New York: Oxford University Press, 1998).

²⁴ This distinction between an exercise and an opportunity concept can be credited to Charles Taylor, "What's Wrong with Negative Liberty," *The Idea of Freedom*, ed. Alan Ryan (Oxford: Oxford University Press, 1979), 173-193.

providing a more useful and more feminist theory of freedom. In addition, Hirschmann's articulation of a feminist theory of freedom draws from a more realistic conception of the individual as embedded in relationship and as such provides a very useful beginning to a meaningful, substantive theory of freedom. She attempts to demonstrate the possibility of women's agency in a patriarchal context as well as shows the conditions under which that context may be changed.

Hirschmann begins her article by asking whether or not the women are "free" in the following examples: A woman who is unable, because of a variety of external obstacles, to obtain an abortion in a timely manner; a woman who is beaten by her husband but refuses to file charges with the police; "Mrs. Bridge" of the movies, who completely submits to her husband seemingly of her own volition; and a lesbian who doesn't want to come out to her bosses for fear of professional harm, but whose partner would like an open relationship. These are all examples of situations in which we can see that in some sense the women in question are both "free" and "not free" (46-7). There are clearly some (symbolic? material?) obstacles in the paths of these women, but at the same time they seem to be choosing to enact their own oppression. For Hirschmann, these are the types of complex situations for which feminists need to chart out a "territory of values," since abstract principles of freedom do little to shed light on these complex problems: "[T]he task for feminist theorists is to stake out an overtly political territory of values—such as choice, bodily integrity, professional development, and/or nurturing relationships—that would allow theorists to point out the ways in which patriarchal practices and customs deny women access to the resources they need to satisfy these values" (48). Drawing from women's experiences will be key to this project.

For Hirschmann, the inability of existing frameworks of freedom to account for the lack of freedom experienced by the women in her examples points to the need for a more nuanced, and more feminist, way to theorize freedom. An examination of the ways in which women experience freedom as well as unfreedom challenges us to address both the formation of desires in social context as well as resistance to the social context. The usual “positive” versus “negative” framework, Hirschmann argues, actually embodies a set of deeply interdependent ideas, much like agency and structure, run through with political ideals and normative assumptions. The crux of the problem with Berlin’s familiar schema of positive versus negative liberty, she argues, as well as the space within which a feminist theory of freedom can be articulated, lies in the distinction between internal and external barriers to freedom: when women’s experiences are taken seriously, “internal” and “external” are demonstrated as interdependent and interrelated concepts.

Negative liberty, for Berlin, answers the question “how much am I governed?”²⁵ Here, freedom is defined as being left alone to do whatever one wishes, or as the state of the absence of coercion. If “negative liberty” is in this way an “opportunity concept,” this formulation of freedom concerns itself with external barriers, with things outside the self that might coerce us to do something we do not wish to do. Conversely, Berlin argues that “positive liberty” answers the question, “who governs me?”²⁶ Here freedom is defined as the ability to govern oneself. It follows that if “positive liberty” is in this way an “exercise concept” concerned with process, it should deal mostly with internal barriers, with questions of autonomy. The usual question is, what internal struggles

²⁵ Berlin, *Four Essays on Liberty*, xxxix.

²⁶ Berlin, *Four Essays on Liberty*, xxxix.

might keep me from what I truly want? What false desires are preventing me from my true desires, and how can I become master over those desires which enslave me?

However, as Hirschmann points out, it quickly becomes apparent that the lines between external/internal, opportunity/exercise, are not so neat; the relationship between self and society is much more complex than the negative-positive framework allows. First, with “negative” liberty, it is not self-evident or immediately clear what gets to count as an “external” barrier. While literal physical barriers or threats of violence might be easy examples of external obstacles, there are as many “hard cases” as easy ones. For example, does the economic context count as an external barrier?²⁷ Does gender ideology count? What about something so amorphous as “patriarchy”? Similarly, the problem with “positive” liberty is with defining what counts as “internal.” Can we ever say that any of our desires are original to ourselves, or authentically our own? How might particular social contexts shape my wants, my will? How am I to decide which impulses arise from oppressive, external norms, for example, and which desires are truly my own?

So the question becomes, what is at stake in charting out—and fiercely defending—the lines between “positive” and “negative” liberty? Hirschmann astutely identifies these distinctions as reflections of the normative conceptions of the person, the individual, as portrayed by the liberal/libertarians and communitarians. Are persons innately individualistic, separate, unconnected, rights-oriented, even antagonistic, or are

²⁷ Berlin himself seems to leave this judgment up to the individual; however, he provides criteria for judgment hinging on whether or not other human beings are the cause of one’s poverty. “Two Concepts,” 123.

they connected, communitarian, selfless, concerned with responsibility and care (50)?²⁸

How one answers this important question will dictate how one approaches the relationship between state and society, society and individual, which Hirschmann identifies as political values. Thus, she argues that the debate between the positive and negative liberty camps is ultimately a political matter. However, from the point of view of the structuralist epistemology/ontology I develop here, an understanding of the individual as deeply embedded in institutional contexts and acting through multiple structures should underscore a viable theory of freedom. Hirschmann will come close to making this claim herself, but I would push her even further in this direction. From arguing that the understanding of the individual underlying positive and negative approaches to freedom is one of values we can judge only from the vantage point of politics, which I take to mean contests of power rather than any knowable philosophical foundation, Hirschmann goes on to argue that the lines we like to draw between such internal and external barriers to liberty are rendered falsely mutually exclusive when they are in fact interdependent; “inner” and “outer” exist in interrelationship (52). It is here, Hirschmann argues—with political principles and with attention to the relational individual—that we (as feminists) need to focus more attention. First, however, it is important to understand the role of social constructivism in Hirschmann’s argument: how can women have agency given the patriarchal context within which we are all embedded?

²⁸ While a review of the full “ethic of care” literature is out of the scope of the current project, feminist theorists have attempted to rebuild various political concepts on the basis of what they consider a more accurate reflection of the situated individual, who is embedded in relationships of interdependence and care. This model is often seen as more amenable to the inclusion of women and women’s characteristics as persons in core political concepts. See the essays in the recent collection: Nancy J. Hirschmann and Christine Di Stefano, eds., *Revisioning the Political* (Boulder: Westview Press, 1996).

Hirschmann develops her distinctively feminist theory of freedom using two interrelated methodologies; social constructivism and a feminist epistemology drawing from “experience.” In order to show why feminists should turn to the principle of self-definition in relation to freedom, she must first show why it is not enough to simply expand what counts as “external barriers,” and she must also show that despite a patriarchal construct, women have agency: “[T]he notion that the context for women’s desires and preferences is, for the most part, a patriarchal one does not mean that women are simply ‘unfree’....Feminists have been able to describe critically the ways in which desire, preference, agency, and choice are as socially constructed as are the external conditions that enable or restrain them” (48). While consciousness for both women and men is formed within a patriarchal context, this does not mean that alternatives cannot be imagined; because of the role of critical reflection (and I would add the transposability of schemas and the multiple and fractured nature of structures) there is indeed room for a “feminist” discourse of freedom. But this discourse, she argues, can emerge only in a context of relationship with other women.

Social constructivism, she notes, is necessary but insufficient for explaining women’s condition under patriarchy as well as their resistance to it. She argues that human beings and their world are socially constructed, and that “the desires and preferences we have, our beliefs and values, our way of defining the world are all shaped by a particular constellation of personal and institutional social relationships that constitute our individual and collective histories” (51). But does this mean that the “masculinist perspective” that surely pervades our world cannot be escaped? That women cannot but accept the patriarchal definitions of their being? She acknowledges

that because of this “masculinist perspective” that shapes our world, social and/or political rules make it seem as though women “choose what they are in fact restricted to” (52). This would imply, she goes on, that the solution would be to expand what counts as negative liberty’s “barrier” to women’s freedom in order to include “patriarchy.” But important questions arise here. For example, does “patriarchy” count as an external barriers? Do external barriers need to be *specific*, or have *identifiable agents* as the cause? Do they need to be conditions that we can do something about, i.e. *remediable* conditions? Can we say that something so general as “society” or “culture” are external/internal causes of unfreedom? What would this do to the important concept of agency? How would we account for resistance?

While it is a tempting impulse to expand the notion of the external barrier of freedom to include the notion of patriarchy, thereby maintaining some of the positive aspects of “negative” liberty, such as choice and agency, she argues that this would in effect render the agency of women impossible. She concludes the problem in this way: “By saying that everything in the patriarchal order is a barrier to women’s freedom, possibilities for free action within those parameters disappear” (55). This is the classical problem with totalizing structuralist accounts of women’s oppression²⁹: if women are nothing but oppressed, how can anything ever change? And are we going to get into the

²⁹ Catharine MacKinnon has arguably provided the most provocative account of women’s structural oppression to date. However, in works such as *Only Words* (Cambridge, Massachusetts: Harvard University Press, 1993) and “Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence” *Signs* (1983, vol. 8, no 41) 635-658, the limits of her structuralism become apparent. By defining womanhood *as* being oppressed sexually, she leaves no room for women to represent their own sexuality to themselves in order to break out of the totalizing logic of patriarchy. No possible source of a counter-discourse exists in this universe (except, perhaps, the inexplicably Archimedean wisdom articulated by MacKinnon herself). Hirschmann would point out that MacKinnon articulated her theory within the same “patriarchal” context that MacKinnon decries. This suggests that a fatal flaw might be found in accounts of women’s oppression which assume a one-dimensional and one-way relationship between the (victimized) self and (the oppressive) society. It is interesting to note as well that both Brown and Cornell cite MacKinnon’s work as devoid of possibilities for freedom.

business of telling women that they perceive themselves to be free really are not, but that they are experiencing “false consciousness”? In this way, furthermore, such an expansion of the category “barrier” ironically “returns us to the problems of *positive* liberty by second-guessing ‘true’ desires and motivations” (55-6). Thus, “social constructivism not only reveals that what is often called an ‘inner barrier’ is culturally mediated and externally generated but also highlights the *interaction* of ‘inner’ and ‘outer’ and reconceptualizes the meaning and relationship of those terms” (56).

And, importantly, she argues that we cannot uncritically accept the notion that the patriarchal context is itself a barrier to women’s freedom because

it implicitly uses a concept of the subject that exists beyond, or outside of, not only this particular (patriarchal) context but any context whatsoever. The abstract ‘woman’ whose ‘freedom’ is allegedly restricted by her context is who she is *because* of that context. Feminists cannot operate from some abstract ideal of what a woman is ‘really’ like, what her desires and preferences ‘truly’ consist in, without then challenging the entire framework of social construction, which is necessary to the critique of patriarchy in the first place. Furthermore, it denies the reality that women, by living and acting within and on existing contexts, have always helped shape them. (56)

Ironically, from the point of view of social constructivism, while patriarchy may restrict women’s freedom, it also makes their freedom possible (57). But Hirschmann makes another equally important point here: compatible with Cornell’s ethical argument, she asserts that a feminist theory of freedom must not assume what “women’s interests” are. It is of course possible and necessary to create a context within which women can freely articulate their desires, which on some level is what a feminist theory of freedom is about, but, she argues, a battle over these many desires must take place within the political arena. To give content to “women’s” desires prior to their articulation would be to close off important avenues to freedom—the ability to define oneself and one’s

desires, the ability even to define for oneself what it means to be a woman, that the principle of self-definition as a component of structural freedom entails. But if “women’s interests” are a matter of politics, does Hirschmann then supply no normative prescription?

Hirschmann’s solution, reminiscent of the consciousness-raising tactics of second-wave feminism (or more recently feminist standpoint theory³⁰) is to create a “double vision” (57). This double vision acknowledges that while everyone participates in the “field” of social construction, some groups of people systematically and structurally have more shaping or constructing power than others. Freedom for marginalized groups means increasing their “ability to participate in the process of construction.” “The logical solution would seem to be to find another context, one in which language and epistemology generate a set of countermeanings that provide a critical perspective on the dominant language” (58). What she develops, then, is a feminist theory of freedom as self-definition that emerges out of relationship, providing the possibility of a counterdiscourse. In important ways, I am in agreement with Hirschmann here: a structural approach to freedom would reject the notion that revolutionary ideas emerge out of thin air, but at the same time, her emphasis on “language and epistemology” leads her to overlook the “material” side of the structure/agency coin.

³⁰ Nancy Hartsock was the first to articulate a specifically feminist standpoint theory. See Nancy M. Hartsock, “The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism,” in *Discovering Reality*, ed. Sandra Harding and Merrill Hintikka (Boston: D. Reidel Publishing Company, 1983) 283-310. See also Susan Hekman, “Truth and Method: Feminist Standpoint Theory Revisited,” *Signs* (Vol. 22, No. 2, 1997) 341-402; Sandra Harding, *Whose Science, Whose Knowledge* (Ithaca: Cornell University Press, 1991), especially chapters 5, 7, 11, and 12; and Patricia Hill Collins, *Black Feminist Thought* (Boston: Unwin Hyman, 1990).

Hirschmann is on target in arguing that the process of self-definition cannot but take place in community. If part of what feminists need to do is to develop a self-definition that isn't a part of the dominant definition, if they are to develop a counterhegemonic discourse, then it makes sense to assume that they need the space in order to do so. New language and alternative contexts are understood to emerge relationally; alternative contexts would allow women to "evaluate their choices more fully and to facilitate the creation of new choices" (61). She points to the Milan Women's Bookstore Collective's as an example of such a community, citing their *Sexual Difference* as a text which shows the potential for relational self-definition in what they term *autocoscienza*:

Engaging in such community allows women to see how they have created, and can create, the world; hence it enables women to identify their agency, their ability to act on and shape their contexts, to make choices and act on them. Without such community, then—without such an alternative context—no 'individual' woman can ever be free, because she must act within the existing patriarchal context, and that context is invested in obscuring women's agency even from women themselves. So, in this feminist conception of freedom as self-definition, the notion of the individual 'self' necessary to its operation is far more complicated, both politically and epistemologically, than is either negative liberty's individualism or positive liberty's communitarianism. (61)

For Hirschmann, then, this feminist notion of freedom as self-definition in relationship involves individual and group development/empowerment, occurring simultaneously. This, she argues, "requires negative liberty's absence of restraint as well as positive liberty's community assistance, but it simultaneously requires an expansion of external restraint beyond negative liberty's conventional formulation and a notion of community that pulls back from, or transforms, positive liberty's hierarchical social determination of

desire” (63). In this way, Hirschmann seems to provide the possibility of agency in an oppressive context through relational self-definition.

At this point, however, I would argue that women’s lack of freedom is as much a problem of being denied access to material resources as it is to participation in the construction of symbolic schemas, and again, not to imply that this two interwoven aspects of structure can be pulled apart. I agree with Hirschmann (and Brown, and Cornell, although they argue this point on different grounds) that we cannot and should not attempt to discover what “women’s interests” are, but we can draw some conclusions about what *human* interests are. Neither women nor men will be free if institutional conditions of domination prevail. For Hirschmann, epistemology is the key to understanding the complex problem of women’s experience of a lack of freedom: If women take on oppressive norms because they occupy oppressive contexts, the key would seem to be to create non-oppressive contexts in which they can recognize their agency. And to be sure, Hirschmann provides a much needed account of women’s agency in patriarchal contexts. However, her analysis would be strengthened by the consideration of further substantive principles of freedom. For example, would the formation of a feminist “double-vision” necessarily lead to progressive social transformation, or would it rather lead to a proliferation of alternative communities? I would have a structural principle of non-domination, better able to take into account relationships of power, undergird her epistemological argument for freedom. The possibilities for women’s freedom might be greater in relationship to a women’s-only context not only because alternative meanings might be developed there, but also because

of the possibility for forming coalitions better able to strategize about how to restructure unjust institutions.

To further demonstrate this point, it is useful to contrast Hirschmann's construction of self-definition with Cornell's construction of self-representation. Again, the methodological differences among feminist thinkers of freedom becomes apparent. Again, for Hirschmann the crux of the matter is epistemological. Not content to rely on observable behavior to determine whether one is free, and seeing a need to explain "internalized" forms of oppression with regard to women's experience, Hirschmann sets out to explain more the more subtle aspects of women's oppression. She rightly calls our attention to the ways in which women, in effect, become their own oppressors; taking on the norms of an oppressive culture, or perhaps the "vision" of the oppressor, women behave in such ways as to suggest that they are not free, despite the presence of any easily identifiable external barrier. Cornell, approaching freedom from a Kantian ethic, would oppose this framing of the problem. Cornell's "self-representation" is less a practice of *thinking* of oneself in a certain way (free, not free) than it is a moral premise; to act morally, we grant others the dignity of assuming that they act freely, rationally, morally, a stance in many ways compatible with the multiple and fractured nature of structure/agency as I understand it here. Self-representation is the ethical space within which Cornell wants to grant all human beings the dignity that comes with agency. On these grounds, Cornell might object to the kind of "second-guessing" of women's consciousness that Hirschmann seems to undertake: Cornell might ask, if a woman believes herself to be a freely choosing actor, how can we morally tell her otherwise?

Two possible objections could be raised to this response. First, it could be argued that there are psychic goods to be had as a result of having one's feminist consciousness raised. It may be that living under conditions of oppression, while identifying with the norms and values of the oppressor, may take a great psychic toll. In contrast, being able to "see" the reality of women's oppression and devaluation may be the first step toward (re)affirming one's own worth as a woman. The second possible objection is really a response to both Hirschmann and Cornell. In what ways does a focus on one's *perspective* about one's freedom detract attention from undertaking an examination of the institutional, material conditions of stratification and inequality that underlie oppression of all sorts? A structural theory of freedom would acknowledge the constant interplay between the material and the symbolic; and while this is not to say that an examination of women's (lack of) freedom can be undertaken without reference to the "symbolic" formation of women *as* women (or the construction of a "minority" group as a minority, etc.), one can point to a proliferation of measures—mortality rates, literacy rates, likelihood of suffering violence, access to nutritious food and water, etc.—to make the argument that living in a society marked by stratification is likely to inhibit one's choices in material as well as symbolic ways.

There is a further problem, however, that takes us back to the thorny "equality versus difference" debate with which I opened this chapter. What sorts of understandings of "woman" underlie Hirschmann's self-definition and Cornell's self-representation? Is women's oppression a matter of *women's* oppression (Hirschmann) or women's *oppression* (Cornell)? Hirschmann's argument for women's freedom in and through women's-only contexts/consciousnesses ironically, perhaps, leads to the conclusion that

women's freedom lies in eradicating any meaningful notion of "woman." From an epistemological perspective, the problem of women's oppression seems to be that they are *defined* as oppressed; the solution, as Hirschmann would have it, would be to create context within which they are not defined as oppressed. Stated another way, it seems that were it not for their being oppressed, women would have no reason to identify with other women and form alternative communities around their womanhood. Would the reverse situation be true as well—if the oppressive patriarchal context were overcome, would womanhood in large measure become irrelevant, and only then would "women's" agency finally be realized?

If I am reading both of these thinkers right, Cornell's utopian vision is very different from that of Hirschmann (not to mention Brown's vision of "forgetting"). For Cornell, sexual difference, understood as manifested in myriad ways, is the result of an inevitable process of psychic individuation. If "womanhood" has anything to do with this process of forming what Cornell calls one's "sexuate being," then the only hope for freedom is to craft institutions and policies that accord dignity to the individual who is understood not as a gender-neutral, abstract being, but as inevitably sexed. An eradication of gender, the vision of "androgyny" feminism, would not be Cornell's vision of utopia, but rather a situation in which a proliferation of sexual expression is accorded equal value and dignity under the law. In this way, gender becomes a structure much more malleable in the face of individual expression and agency—encouraging instead of squashing the latent structural tendency toward the transposability of schemas—rather than irrelevant or meaningless. One need not accept Cornell's Kantian point of departure to see radical possibilities for this articulation of self-definition.

A Feminist Structural Theory of Freedom?

What does all of this mean for a structural theory of freedom, then? I have argued that the principle of self-definition is a necessary complement to that of non-domination within a comprehensive structural theory of freedom which understands institutions and individuals to continuously shape and re-shape each other. I understand self-definition to reflect not only the human capacity for agency inherent in the fractured and multiple nature of structures, particularly through the transposability of schemas, but also a normative principle that should inform the building and maintenance of institutions when rested on the principle of non-domination. Here I agree with Cornell that the state should not be in the business of “giving form” to our ethical lives, and I would further argue that the state has a positive role to play in mitigating relationships of domination. In order to give more concrete form to these principles, in the next chapter I will discuss freedom with regard to the institution of the family. There I will argue that the principles are consistent with a universal welfare state, mitigating the relationships of domination which result from inequality and vulnerability, and with a system of law and policy which ceases to assume the patriarchal family as the norm, again linking the material and symbolic aspects of freedom in relation to a key institution in the making (of meaning) of our lives.

Chapter Four

Structural Freedom and The Institution of the Family: The Example of Child Custody Policy

Unlike liberal theories of freedom which assume *a priori* the basic liberty of individuals, balancing individual liberty with the good of the whole (utilitarianism) or delineating procedures meant to maintain the right over the good (Kantian liberalism), a structural theory of freedom as I have argued it here takes very seriously the complex and ongoing dynamic between “individuals” and “institutions,” the “internal” and the “external” over time. As such, a meaningful theory of freedom cannot be separated from an account of the resources and schemas through which individuals craft (meaning of) their lives. Further, through the guiding principles of non-domination and self-definition, a structural theory of freedom seeks a reorganization of the structures that make freedom a possibility for some and a near impossibility for others. One such key structure is the family.

The example of the family for illustrating the principles of structural freedom is a particularly useful one because it sits at significant junctions between law and sexuality, public policy and gender norms, “public” life and “psychic” life. It is also an institution within which equality and freedom, or inequality and oppression, can be analyzed in interrelationship, as from the point of view of a structural theory of freedom. In analyzing the institution of the family, in historical perspective and within the current U.S. context, we encounter the circularity between material and symbolic conditions once again: The sexual division of labor within the family renders women vulnerable within marriage due to the dependence on the male wage at the same time that women’s caretaking duties at home render them less competitive in the job market, while an

ideology of motherhood seems to naturalize this situation.¹ For these reasons and other, many feminists, including myself, believe that true freedom for women depends on a restructuring of family life at the same time that structural inequalities in the “public” realm are redressed.

In the first part of this chapter, I will argue that women’s structural freedom, or lack thereof, can be better understood through an exploration of the construction of dependency in relation to the family and the sexual division of labor. I will rest this claim on an understanding of the family as an institution cutting across politics and culture, “resources” and “schemas.” In the second part of the chapter, I will show how the principles of non-domination and self-definition can better give us the tools to address problems of domination in contemporary problems in family law and policy. A comprehensive examination of all such laws and policies is well beyond the scope of this project; to narrow the discussion, I will focus on some themes and questions that arise from past and current child custody policy. I will ask, what does child custody policy say both implicitly and explicitly about what a family is and what it should be, and what does this have to do with the freedom of caretakers? How are “mother” and “father” understood by the courts, and what is the effect of this (or these) understanding(s) on policy? What kinds of ideological battles are being fought in the courts? What are the material effects of custody policies? In the third and concluding section of this chapter, I will return to normative theoretical concerns: In what ways can we use a feminist, structural theory of freedom to make better informed decisions about the kinds of policies we might support and the types of institutions we ought to build and maintain? I will

¹ Susan Moller Okin makes this argument in *Justice, Gender, and the Family* (New York: Basic Books, 1989). I will discuss the dynamics among dependence, freedom, and the material and symbolic aspects of gender construction particularly through the lens of motherhood at greater depth below.

suggest that an ideal policy would be one in which law and society recognize care work as necessary and central to the lives of both men and women and in which no one's freedom to choose is jeopardized. The principles of self-definition and non-domination would suggest the institution of universal health care and child care as well as a disentangling of gender norms from child custody policies. But first, what does it mean to treat the family as an institution to which a structural theory of freedom can be applied?

The Family as Political Institution

In treating the family as an institution that can be analyzed from the point of view of a structural, political theory of freedom, I am less interested in debating about what "true" motherhood might mean than in the personal/political ramifications of the family for individuals and the institutions they create and are created by in turn. Recall the sociological definition of "institution" as "not just formal rules, procedures or norms, but the symbol systems, cognitive scripts, and moral templates that provide the 'frames of meaning' guiding human action."² I argue that the organization of family life is deeply imbricated in the distribution of resources and schemas; as such, the juncture between the material and the symbolic is evident within the institution of the family. Thus, the dynamics of interdependence within family life, such as caring and being cared for by others, are not "private" questions but are rather central to politics, and, furthermore, that an understanding of and intervention into these dynamics is the purview of a structural theory of freedom.

² Peter A. Hall and Rosemary C. R. Taylor, "Political Science and the Three New Institutionalisms," *Political Studies* (1996) XLIV, 947.

If we are interested in the freedom of (necessarily gendered) individuals, it makes sense to study the ways in which various structures affect a person's ability to act.

Gender is one of the central organizing and dividing structures of our society, giving meaning and substance to sexual difference. The family, as an institution positioned between the individual and the state, is one of gender's "arms;" it is perhaps the most important gendered and gendering mediating institution of civil society. However, it does not stand discretely apart from either the individual or the state; the relationships of power go both ways. The family is intricately bound up in how we as a society come to produce and regulate gendered beings, but individuals also act in and through the family to influence society and the state. Thus, how we come to organize our emotional and sexual lives, and which modes of organizations the state will allow and/or legitimate, becomes a centrally important question, with implications for the state, society and the individual. It will be deeply implicated in how resources are distributed, including material goods such as care and money, and more abstract goods such as one's sense of self-worth, power, authority. How does the institution of the family act as a mediating institution between the individual and the state? Does it enable action, and/or does it produce oppression and curtail agency—and for whom? Will some ways of organizing kinship structures increase the sphere of freedom more than others?

It is important to begin by noting that how the institution of the family will be experienced will vary depending on a woman's position within interlocking structures; not just gender but race and class need to be considered. For example, minority and working class women often experience the family as an enabling institution:

"Examination of racial ethnic women's experiences draws attention to...the family as a

source of resistance to oppression from outside institutions...In the racial ethnic family, conflict over the division of labor is muted by the fact that institutions outside the family are hostile to it. The family is a bulwark against the atomizing effects of poverty and legal and political constraints.”³ In “Men: Comrades in Struggle,” bell hooks makes a similar point, urging white feminists to reconsider positioning men as the “enemy;”⁴ for black women, black men have more often been “comrades in struggle” than have white women. More generally, the enabling role of the family through caring and socialization, as discussed below by Joan Tronto and Jennifer Nedelsky, should not be overlooked.

That said, the family has also been identified as an institution through which individuals are dominated and their capacity for self-definition disrespected. Scholars who study the public laws and policies related to the family have developed important links between state enforced patriarchy and the oppression of women of all races and classes, lesbians, and gay men. In particular, they have made important links between state-enforced patriarchal kinship structures and the regulation of women’s bodies, the control over women’s property and children, and the enforcement of gender roles.

For example, important work in the area of reproductive rights has shown that the mother’s body is constructed as potentially adversarial to the fetus, justifying the control of such bodies, while the father’s body is not rendered unfree due to the reproductive process.⁵ Women’s right to bodily integrity is continually undermined in the name of

³ Evelyn Nakano Glenn, “Racial Ethnic Women’s Labor: The Intersection of Race, Gender, and Class Oppression,” in *Women, Culture, and Society: A Reader*, Third Edition, Ed. by Barbara Balliet (Kendall/Hunt Publishing Company, 2002) 487.

⁴ bell hooks, “Men: Comrades in Struggle,” *Feminist Theory: From Margin to Center* (Boston: South End Press, 1984) 67.

⁵ See for example Cynthia Daniels, *At Women’s Expense: State Power and the Politics of Fetal Rights* (Cambridge, Mass.: Harvard University Press, 1993) and “Between Fathers and Fetuses: The Social Construction of Male Reproduction and the Politics of Fetal Harm” *Signs* (22: Spring, 1997) 579-616. For an interesting contribution considering recent “advances” in reproductive technologies and their gendered

motherhood and/or fetal rights.⁶ With regard to the control of women's non-reproductive labor, "working mothers" (as if there were any other kind) occupy what is currently a very difficult symbolic and material ground to negotiate, working an "extra month a year"⁷ in comparison to their husbands while often being charged with being either bad mothers and/or second-rate career women.⁸ Similarly, works connecting welfare and gender have demonstrated the ways that women as mothers are disciplined and regulated through "need-based" (rather than universal) welfare policies. Regulations regarding the number of children a mother may have and still qualify for benefits, or regulations regarding the presence of men not married to the mother, are ready examples.⁹

Finally, literature linking marriage, divorce, child custody, and child support law to gender has examined the various ways that individuals are punished for choosing non-patriarchal family forms.¹⁰ For example, non-married couples, lesbians, and gay men are routinely denied health care benefits and all the rights that accrue to the "next of kin." But marriage and divorce policy can have even more serious "material" ramifications: the recent feminization of poverty, due at least in part to no-fault divorce and women's continued role as primary caretakers, demonstrates the vulnerability created for women

effects, see Janet Dolgin, *Defining the Family: Law, Technology, and Reproduction in an Uneasy Age* (New York: New York University Press, 1997).

⁶ See for example Rosalind Petchesky, "Fetal Images: The Power of Visual Culture in the Politics of Reproduction," *Feminist Studies* Vol. 13 No. 2 (Summer 1987) 263-292.

⁷ For a discussion of women's "extra month a year" of work, see Arlie Hochschild, "The Second Shift: Working Parents and the Revolution at Home," in *Feminist Frontiers III* eds. Laurel Richardson and Verta Taylor (New York: McGraw-Hill, Inc., 1993) 258-262. See also Janice M. Steil, "Supermoms and Second Shifts: Marital Inequality in the 1990s," in *Women: A Feminist Perspective* ed. Jo Freeman (Mountain View, CA: Mayfield Publishing Company, 1995) 149-161.

⁸ On the conflict experienced by "working mothers" in relation to an ideology of motherhood, see Michele Hoffnung, "Motherhood: Contemporary Conflict for Women," in *Women: A Feminist Perspective* ed. Jo Freeman (Mountain View, CA: Mayfield Publishing Company, 1995) 162-181.

⁹ See for example Gwendolyn Mink, *Welfare's End* (Ithaca: Cornell University Press, 1998) and Linda Gordon ed., *Women, the State, and Welfare* (Madison: University of Wisconsin Press, 1990).

¹⁰ To name but a few, see Judith Stacey, *In the Name of the Family: Rethinking Family Values in the Postmodern Age* (Boston: Beacon Press, 1996); Martha Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (New York: Routledge, 1995); Kath Weston, *Families We Choose: Lesbians, Gays, Kinship* (New York: Columbia University Press, 1991).

by a system which provides few well-paying jobs for women *and* assumes they will be the primary caretakers of children. This is evidenced in part by the startling effects of no-fault divorce: the standard of living after divorce increases slightly for fathers and decreases dramatically for mother-headed families, even when support awards are taken into account.¹¹ Further, women who try to raise children outside the confines of marriage are punished with poverty: “female-headed families in the U.S. are four times as likely to be poor as male-headed or couple-headed families. According to the National Advisory Council on Economic Opportunity, at the present rate, by the year 2,000 the poor will be made up almost entirely of women and children.”¹² In fact, that women continue to pursue divorce and single motherhood at this expense, now that the option is available at all, should attest to the lack of autonomous choice that has always been at the heart of marriage and the sexual division of labor. As Judith Stacey puts it,

It seems a poignant commentary on the benefits to women of [the traditional nuclear] family system that, even in a period when women retain primary responsibility for maintaining children and other kin, when most women continue to earn significantly less than men with equivalent cultural capital, and when women and their children suffer substantial economic decline after divorce, that in spite of all this, so many regard divorce as the lesser of evils.¹³

That women continue to choose divorce despite almost certain hardship should be suggestive of the necessary coercion that has historically been involved in marriage.

In addition to feminist policy analysts, feminist theorists make important links among family, the state, and domination. One particularly useful example is the work of

¹¹ One recent large-scale study is by Eleanor E. Maccoby and Robert H. Mnookin, *Dividing the Child: Social and Legal Dilemmas of Custody* (Cambridge: Harvard University Press, 1992). The results here are roughly compatible to those found by Lenore Weitzman in *The Divorce Revolution* (New York: Free Press, 1985).

¹² From the NOW website: <http://www.gopbi.com/community/groups/NOW/index.html>.

¹³ Judith Stacey, *In the Name of the Family: Rethinking Family Values in the Postmodern Age* (Boston: Beacon Press, 1996) 69.

Jacqueline Stevens. Stevens, taking states to be membership organizations, argues that political societies produce the family forms, making intergenerationality possible, that then reproduce the state: “to be born into a family is always to be born into a larger group that made possible the family form as such.”¹⁴ Without kinship rules regulating the inheritance of property, and importantly *defining who and who does not belong in the state*, the state would not be able to maintain continuity as against other political societies or from one generation to the next. In effect, Stevens argues, political society provides the rules for what counts as kinship, creating structures such as gender, race, and ethnicity in the process. In this way, Stevens challenges the idea that family, race, or ethnicity have natural underpinnings, and instead delineates the state-produced kinship rules that make these membership groups possible in the first place.

Stevens’ critique of marriage and paternal rights is germane to the discussion here. For Stevens, anti-miscegenation laws, laws governing marriages between citizens and “immigrants,” and laws governing the proper age at marriage all suggest that the state includes some and excludes others from membership, thereby reproducing itself, *through* the kinship rules that it creates. She correctly notes that only the state gets to define what counts as marriage; but further, for our purposes here, she argues “marriage genders the fully developed political state and its citizens even when it appears that the state does not have sex-specific requirements for the duties of ‘husband’ and ‘wife.’”¹⁵ Why? Stevens suggests that all kinship structures—which by their very rule-making, regulatory natures suggest that there is a way to reproduce human beings absent such structures—require the negation of mothers. Motherhood is constructed as natural and

¹⁴ Jacqueline Stevens, *Reproducing the State* (Princeton: Princeton University Press, 1999) 10.

¹⁵ Stevens, 215.

pre-political; but motherhood alone does not constitute a kinship structure. For men to be incorporated, enforceable kinship structures are necessary, since the fact of legal paternity, for example, gives men authority over women they would otherwise lack. In the modern state this takes on a clearly juridical character. This is so in part, Stevens argues, because the state awards men control over women's bodies by giving *husbands* custody rights biological fathers *per se* cannot claim.¹⁶ Conversely, a mother's right to her *biological* children is always assumed, and even seems to trump juridical claims in cases of adoption or surrogacy.¹⁷ Stated another way, "motherhood" is rendered natural while "fatherhood" is accorded a juridical status. What are the ramifications of this for women and women's freedom? "The very fact that paternity exists for men already figures mothers as relational (to husbands) and not *autonomous*."¹⁸ In short, women's freedom is curtailed at the intersection between kinship structures and the state, or through the maritally produced unit known as "the family."

Another perspective from which this dynamic becomes more apparent is the fact that men have an equal interest in the reproduction process, but they have not been held responsible for it at the risk of their own "independence."¹⁹ The evidence suggests that policies and laws dealing with the family and reproduction encourage women to become dependent on individual men or on the state; in neither case is women's freedom—either

¹⁶ Stevens, 222-23; 227. It is interesting to note that the in custody battles between a woman's husband and a biological father who is not the husband, the state favors the husband. Furthermore, if a woman is married, her husband's name is automatically placed on the child's birth certificate as "father."

¹⁷ The case of surrogate motherhood is an interesting one here; courts seem to favor biological mothers over whatever contractual arrangements have been made. Stevens, 227-230.

¹⁸ Stevens, 224 (emphasis in original).

¹⁹ Financial responsibility toward children incurs a kind of authority that the stereotypical relationship of motherhood does not; I would argue that this is because men must partake in the "public" realm in order to procure financial security. "Fatherhood" in many ways is often considered less a full time job and more of an on-going financial duty. However, it is important to keep class in mind as well. Many fathers (as well as mothers) incur economic risks in order to provide for their children. This should not be the case.

non-domination or self-definition—structurally supported, while at the same time men’s “independence” is largely assumed.²⁰ It can be argued that on a structural level, women’s lives are regulated by the state in their capacity as reproducers, laborers, wives, and mothers. In short, patriarchal kinship structures, enforced by the state and socially supported, inhibit the freedom not only of persons who fall outside the norm of the heterosexual, monogamous couple, but also those who participate in the only legally available family form.²¹

All of this is to suggest that the family cannot be ignored as an institution which is integral to women’s vulnerability both inside and outside its confines and which makes it easiest for women to enter into relationships with individual men or the state marked by “dependence.” It is not enough to say that women simply want to be parents more than men do and that this leads them to “choose” marriage if the other “choice” is destitution. In order to further explore the dynamic between the institution of the family and material and symbolic forms of domination, it will be useful to complicate the theoretical relationship between in/dependence and structural freedom.

Feminism, Freedom, and the Family: Independence Contested

As currently constructed (both materially and symbolically), women’s prescribed social and political roles vis-à-vis the institution of the family seems inevitably to bring with them relational dependencies²² that serve to limit structural freedom. Given the current sexual division of labor, which cuts back and forth across the “public” and the

²⁰ I will discuss constructions of dependence and independence at greater length below.

²¹ This is not to say that certain material benefits and protections do not accrue from entering into the marriage contract. It is perhaps not coincidentally ironic that heterosexual married couples are in some ways the most favored *and* the most regulated family form.

²² Martha Fineman uses the term “derivative dependency,” and I will discuss her argument at length at a later point. I prefer “relational” because it implies a contingent structural interrelationship.

“private,” women’s “dependency” has served to seriously and systematically curtail women’s ability to make free, meaningful choices; at the same time, women’s “dependency” masks the reality of social interdependence, instead constructing (male) “independence” as the norm.²³ As the above discussion suggests, however, this is not meant to underestimate the real effect of women’s material dependence on individual men within a society which takes little or no social responsibility for the rearing of children while maintaining a wage gap along the lines of gender.²⁴ “Stay at home moms,” who depend at least in part upon the salary of another, occupy structural positions ripe for domination, since our society associates power with money in significant ways. Alternatively, as discussed above, unmarried mothers tend to experience increased levels of poverty and state regulation,²⁵ placing them in structurally disadvantageous positions both materially and symbolically. A discussion of the constructions of dependence and independence with regard to gender shed light on the problematic of structural freedom in relationship to the institution of the family.

Feminist theorists have challenged the presumption of independence underlying masculinist constructions of freedom. To be sure, as discussed in chapter three, feminists have had a relatively uneasy relationship with the ideal of freedom: First, on one hand,

²³ Nancy Fraser and Linda Gordon, “A Genealogy of *Dependency*: Tracing a Keyword of the U.S. Welfare State,” *Signs* (Winter, 1994) 309-336. Fraser and Gordon trace the development of the concept of “dependency,” and show how its contemporary meaning is constructed in a way such that women’s “dependency” carries insidious overtones of immorality while naturalizing the mythical condition of “independence.”

²⁴ Women still earn approximately 75 cents for every dollar earned by men for the same work. For the most current statistics on the wage gap, visit the website for the National Organization for Women, www.now.org. For a thorough discussion of the family as an economically interdependent unit, and women’s often disadvantageous position within that unit, see Naomi Gerstel and Harriet Engel Gross, “Gender and Families in the United States: The Reality of Economic Dependence,” *Women: A Feminist Perspective* ed. Jo Freeman (Mountain View, CA: Mayfield Publishing Company, 1995) 92-127.

²⁵ For a well-organized set of poverty statistics in relation to race and various family configurations, see Randy Albelda and Chris Tilly, *Glass Ceilings and Bottomless Pits: Women’s Work, Women’s Poverty* (Boston: South End Press, 1997), especially chapters 2-5.

feminists have allied themselves with the ideal of freedom, utilizing it in order to expose the ways in which women's choices have been curtailed. Women have rightly expressed outrage at being denied the freedom to determine the course of their own lives, to control their own bodies, to live independently of men, to participate in the worlds of the mind and sport, to organize their intimate lives as they see fit, to own property, to hold positions of public esteem, and so on *ad nauseam*. On the other hand, feminists have challenged dominant conceptions of freedom, suggesting that it has operated on a male model that depends upon the otherness²⁶ of, the governing over, and the subordination of women.²⁷ For example, the work of Simone de Beauvoir and Hannah Arendt has each been charged with uncritically accepting and incorporating a male model of freedom. In the case of Beauvoir, she it is sometimes argues that in her yearning for transcendence, she affirms the superiority of a specifically masculine configuration of freedom that denies, attempts to escape, and devalues the particularity of the body, coded as feminine "immanence."²⁸ Similarly, Arendt is charged with overlooking the ways in which the Aristotelian ideal of "ruling and ruling in turn" depends upon an underclass of women, servants, or slaves in order to fulfill the day to day, mundane tasks of humanity.²⁹

Additionally, Susan Moller Okin and Carole Pateman each have developed important arguments that call into question liberal assumptions of radical independence

²⁶ Here I mean "otherness" in the sense used by Simone de Beauvoir, that the feminized Other serves as opposition, propping up the masculine sense of the (free) self while justifying and depending upon women's subordination. See Simone de Beauvoir, *The Second Sex*, trans. and ed. by H.M. Parshely (New York: Vintage Books, 1989).

²⁷ See Nancy J. Hirschmann, "Revisioning Freedom: Relationship, Context, and the Politics of Empowerment," in *Revisioning the Political: Feminist Reconstructions of Traditional Concepts in Western Political Theory*, eds. Nancy J. Hirschmann and Christine Di Stefano, (Boulder: Westview Press, 1996) 51-74 for a discussion of masculinist and feminist interpretations of freedom.

²⁸ See for example Jean Elshtain, *Public Man, Private Woman* (Princeton: Princeton University Press, 1981) 306-310.

²⁹ See for example Wendy Brown, *Manhood and Politics: A Feminist Reading in Political Theory* (Totowa, NJ: Rowman and Littlefield, 1988), chapter 2.

and force us to examine the interconnections between women's relegation to the domestic sphere and the seemingly unproblematic liberty of (male) actors in the "public" sphere. For both Okin and Pateman, any attempt to bring about equality for women must address both the "public" and "private" realms, which are here seen as expressions of patriarchal power that are inextricably linked. This is especially true with regard to the institution of the family and the gendered constructions of material/symbolic in/dependence that currently undergird it.

In *Justice, Gender, and the Family*, Okin argues that the family must be taken seriously as a political institution to which standards of justice apply, and that justice in the family depends upon the deinstitutionalization of gender. First, she argues, a just family life, in which there is an equitable division of labor within the home, would first of all be more just for women. "In a just society, the structures and practices of families must give women the same opportunities as men to develop their capacities, to participate in political power and influence social choices, and to be economically secure."³⁰ And not only this, but a just family is essential to a just society. Since for Okin the family is the essential institution underlying society, and because we learn about morality and justice, as well as about gender expectations, within the family, a parallel of structures and practices must exist between the just family and the just society. In fact, since "the unequal distribution of rights, benefits, responsibilities, and powers within the family is closely related to inequalities in the many other spheres of social and political life,"³¹ it would be impossible to have justice in society without justice in the family. In other words, Okin argues, gender itself, by which she means the "deeply entrenched

³⁰ Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989) 22.

³¹ Okin, 113.

institutionalization of sexual difference,”³² is an all-pervading form of dominance and one that should be abolished both within and outside of the family. Justice demands that division of paid and unpaid labor must be made more egalitarian in its distribution and that we dismantle the assumption that women will inevitably be the primary caretakers of children.³³

Carole Pateman’s *Sexual Contract* offers an influential and important critique of liberal political theory, especially of original contract theory, which exposes the effects of hierarchical family formations on liberal politics. Although she focuses less on children and caretaking duties, her critique does call into question women’s ability to “fit” into society as *liberal* individuals without a radical reevaluation of the family and of the individual as such. Pateman posits a tacit “sexual contract” underlying the story of the social contract put forward by thinkers such as John Locke. In Pateman’s retelling of the original contract, women were (rhetorically and actually) excluded from the pact made by men. With the overthrow of the patriarch/monarch, these new “brothers” (as opposed to “sons”) came together as equals to agree to the social contract. Women, however, were excluded from this original contract since they were already subsumed under the “sexual contract,” in which women were still attached to individual men. In fact, Pateman suggests that part of the incentive to enter the original contract, which would ease competition among the “brothers,” was the guaranteed domination over women in the newly created society. In essence, this meant that women could not be “individuals” since the sexual contract denied them property in their own persons.

³² Okin, 6.

³³ Okin, 138-39.

But, for Pateman, this does not mean that women could simply become individuals in the way that men have; in fact, this is impossible because (male) individuality depends upon the subordination of women in the “private” sphere: “The ‘civil individual’ is constituted within the sexual division of social life created through the original contract. The civil individual and the public realm appear universal only in relation to and in opposition to the private sphere, the natural foundation of civil life.”³⁴ Autonomous, “civilized” individuals, in need of the protection of their rights in order to maintain their original liberty, cannot also be responsible for the mundane tasks of the natural world, in other words. For Pateman, then, the idea of the sovereign individual who acts through contract must be called into question since it masks patriarchal power relations, making the coercion of women appear to be choice—this is especially true for such “contracts” as marriage, prostitution, and surrogacy which guarantee the sexual availability of women to men. In this way, many feminist thinkers have suggested that the assumption of radical self-sufficiency that underlies “masculinist” configurations of freedom is illusory, masking over the existence of structures that have made what is experienced as the freedom of men possible.³⁵ (In contrast, occupying a position where one is not vulnerable to the arbitrary will of another, as under the principle of non-domination, and being able to participate in the making of one’s own meaning, are both aspects of a structural understanding of freedom that require basic equality.)

Jennifer Nedelsky similarly calls into question the assumption of masculine sovereignty and through an effort to reconceive autonomy in relational terms. Although

³⁴ Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988) 113-14.

³⁵ Susan Moller Okin, in *Justice, Gender, and the Family* (New York: Basic Books, 1989) and Carole Pateman, in *The Sexual Contract* (Stanford: Stanford University Press, 1988) have each made this observation specifically with regard to the family. I will discuss their work in greater depth below.

autonomy is not coterminous with freedom or even agency, it is closely related, and the structure of Nedelsky's argument here can be applied to a feminist conceptualization of freedom where individuals are recognized to be both enabled and constrained by the structures within which and through which they operate. Instead of relying on a model of property rights to think about autonomy, Nedelsky suggests, a model based on childrearing might be more helpful and appropriate. Where property provides walls and isolation, childrearing takes into account the relationships that "provide the support and guidance necessary for the development and experience of autonomy. . . We see that relatedness is not, as our tradition teaches, the antithesis of autonomy, but a literal precondition of autonomy, and interdependence a constant component of autonomy."³⁶ Nedelsky wants to retain individuality and the ability to make "one's own law" as central to autonomy while also drawing attention to the relations that make this possible.

This relational approach to autonomy is consistent with the work of Joan Tronto and other "ethic of care" thinkers who call attention to the political nature of care and care work: How do infants become agents if not through care? Tronto argues that caretaking involves responsibilities and commitments that have been undervalued and ignored, to women's disadvantage. Instead of placing care "above" or "below" politics, but always outside of it, she suggests that coming to terms with care as a political enterprise will open up a broader base for political participation, suggest broader political goals and solutions, challenge the boundaries between public and private, and provide a

³⁶ Jennifer Nedelsky, "Reconceiving Autonomy: Sources, Thoughts and Possibilities," *Yale Journal of Law and Feminism* 7(1): 1989, 12.

framework within which conflict can be better theorized.³⁷ In challenging the assumption that caring can be only particular or private, and that men care about while women care for,³⁸ Tronto wants to bring care into social and political institutions so that caring can be seen as a central part of everyone's lives. This would mean that involvement in care work would not place a person outside the realm of political consideration. While Tronto's work to some extent valorizes a job that women have not had a choice to perform, her analysis is crucial in pointing out that care work is inevitable and that we are all implicated in it in some way.

I argue here that we must retain the positive ideal of freedom, specifically the principles of self-definition and non-domination, in order to highlight the positive goal of individual agency, but we must do so with the realization that in order to make real choices, certain structural supports are needed. While recognizing that this does indeed require a delicate balancing act, I am convinced that the benefits are well worth the effort. Keeping this in mind, I will now turn to further reasons why an understanding of the relationship between the family and the state is central to the structural theory of freedom I develop here.

That said, "the family" is much too complex and variable to be examined here in anything like the comprehensive manner it deserves. For this reason, I have chosen to focus on one small aspect of institutionalized family life: contemporary child custody policy in the United States. Child custody policy is one area in which gendered notions of family come into sharp focus. This is in part because it is impossible to make a law

³⁷ Joan C. Tronto, "Care as a Political Concept," in *Revisioning the Political: Feminist Reconstructions of Traditional Concepts in Western Political Theory*, eds. Nancy J. Hirschmann and Christine Di Stefano (Boulder: Westview Press, 1996) 144-45.

³⁸ Joan C. Tronto, "Women and Caring: What Can Feminists Learn about Morality from Caring?" in *Gender/Body/Knowledge*, eds. Alison M. Jaggar and Susan R. Bordo (New Brunswick: Rutgers University Press, 1989) 173-5.

about the family without giving at least a tacit definition of what a family is. The “best interest of the child” standard in family law is a particularly useful lens since it is highly indeterminate and encourages the formation of ideals. (We have to have an idea of what the best family is before we can think about a child’s best interest.) Further, the standard seems to call for a decision based upon the point of view of the child involved in the custody dispute. But since the child is in fact a minor, adults have to fill in the content of what a child’s best interest entails. Even when the child is deemed old enough to be asked about which parent he or she would prefer to live with, this cannot be used as the sole factor in deciding what kind of custody arrangement is in a child’s best interest. Therefore, the law must ask, what kind of a mother and what kind of a father ought a child to have? The rule also prompts questions of what is *not* in the best interest of children. What kind of parenting is unacceptable, and does this apply differently to mothers than fathers? Judges, lawyers, social workers, psychologists, social scientists, mothers, and fathers are all involved in this inescapably normative enterprise, creating interesting and observable dynamics between structure and agency. For these reasons and others, the “best interest” standard is a useful vantage point from which to evaluate the state’s understanding of, as well as its construction of, the modern family.

The aspect of freedom that is the ability to define oneself freely, as predicated upon the situation of non-domination, as presently configured, seems to depend upon being free from the demands and constraints of care work. This is an unacceptable solution for a society that wishes to have both justice and children. In both theory and practice, then, it is necessary to restructure the family and the economy so as to make structural freedom equally possible for those with caretaking duties and those without,

whether the providers of care be women or men. But further, this would entail a redistribution of these duties so that care is not associated with any particular group, whether it be gender, class, or race. Only then would a person's choice to care for another be a less hazardous one. Recent child custody policy has encouraged neither of these goals. In the next section of the chapter, I will highlight some themes and raise some questions that emerge from a look at past and current child custody policy. What sorts of issues emerge when our laws and society attempt to discern what is in the best interest of children? I will begin with a brief history of custody policy, including social mobilization on the part of both mothers and fathers.

Child custody policy: In whose interest?

Modern custody disputes are embedded in a larger history of family law. In the west, from ancient times until almost the nineteenth century, women and children were considered part of men's household property.³⁹ Roman family law is a striking example. Here, the rule of *pater familias* meant that the male heads of household had complete legal control of their "families" to the point that they could legally kill their wives, children, and slaves.⁴⁰ In this context and for centuries after, when a mother became absent from a family, the children without question remained a part of the father's household. This assumption, which became the standard in English common law, was then transferred to the colonies where it became part of U.S. family law as well.

³⁹ There is of course great variation by country, race, and class. Women were sometimes allowed to hold property and were sometimes considered to have property in their own persons. See Donna Dickenson, *Property, Women & Politics: Subjects or Objects?* (New Brunswick: Rutgers University Press, 1997).

⁴⁰ The Latin word *familia* encompasses slaves as well as wives and children, leaving us to wonder to what extent all members of the *familia* were functionally equivalent to property. See Sarah B. Pomeroy, *Goddesses, Whores, Wives, and Slaves: Women in Classical Antiquity* (New York: Schocken Books, 1975) 150-52, 191.

During the nineteenth century, in Britain as well as the U.S., custody law began to favor mother-custody with the justification that maternal care and affection was in the “best interest of the child.” In a time of increasingly harsh “public” conditions under industrial capitalism, the shift to the “best interest” standard can be understood as reflective of a nostalgia for a past in which the family existed for child protection and loving care.⁴¹ This reverence for the nurturing mother and a softened stance toward children was in sharp contrast to the previous common-law view of children as family assets. Gradually, the “tender years” doctrine, which assumed a natural bond between mother and child, especially in the earliest years of the child’s life, began to take precedence over the conventional understanding of the father as owner. By the 1920’s, almost every state in the union had embraced the “tender years” doctrine as the new standard in family law, preferring mother-custody in almost all cases and sometimes going so far as to deny that fathers had any natural right to custody;⁴² the availability of the mother was seen as *the* best interest of the child. Throughout this era, however, notions of father’s rights to children⁴³ never disappeared completely, and we have seen this presumption regain ground in recent years.

The “tender years” doctrine has steadily fallen out of favor since the 1960’s. Feminists themselves have contested the assumption of the natural bond between mother and child and have asserted that maternal preference rules serve to trap women in the ideology (as well as the powerlessness and poverty) of domesticity. In part due to the efforts of formal-equality feminism, the courts now routinely reject the idea that mothers

⁴¹ Janet L. Dolgin, *Defining the Family: Law, Technology, and Reproduction in an Uneasy Age* (New York: New York University Press, 1997) 217.

⁴² Mary Ann Mason, *From Father’s Property to Children’s Rights* (New York: Columbia University Press, 1994) 60.

⁴³ It is interesting to note that children’s needs figured as central to maternal preference rules while fathers’ entitlement has figured as central to paternal preference. Neither formulation speaks to women’s freedom.

and their children share a special bond that automatically entitles women to—or burdens them with—custody of children, even though social structures continue to do so.

Legally, the assumption that mother-custody in the tender years serves the best interests of children was abolished or demoted to only one factor of consideration in almost all states between 1960 and 1990.⁴⁴ This has left judges with a “best interest” standard that is even more indeterminate than ever. However, while women still request and receive sole custody the majority of the time, the old assumption that a husband is legally responsible for his family even after divorce has been eroded. While women still sacrifice their positions as ideal wage workers in order to assume the role of primary caretaker, no fault divorce provides for far less spousal and child support after divorce.

Fathers, and especially fathers’ rights groups, have also contested the idea that women automatically make the best parents. Some charge that women are being given custody of children out of an unwarranted bias toward mothers. But while some fathers may want to take up “traditional” mothering roles, whether or not they are married to their child’s mother, the loudest of the groups seem to imply that women are scheming to eliminate the need for fathers altogether—or rather, possibly, the need for the male-headed family. A quick internet yields dozens of websites aimed at educating fathers about their rights to children. These sites often display statistics meant to demonstrate that the family has gone to ruin due to the absence of men. The American Fathers coalition,⁴⁵ for example, correlates teenage pregnancy, youth suicide, juvenile homelessness, behavioral disorders, rape motivated by displaced anger, dropping out of high school, drug abuse, and youth crime to “fatherless homes,” citing statistics out of

⁴⁴ Mason, 123.

⁴⁵ At http://www.hky.com/Fatherless_homes.txt

context and making no mention of the effects of poverty. While an argument can be made that these men (or some men) truly believe that the presence of a father is the best interest of children, a sense of anger at being denied entitlement pervades this rhetoric. In fact, here we see the idea of male entitlement become conflated with *children's* ostensible need for a strong “head of household” or disciplinarian.

The anger expressed by father's rights groups toward women who are raising children without fathers, or who have physical custody of children after divorce, is very much in step with the new family values rhetoric coming from the right. In effect, feminists have been charged with destroying society by destroying the traditional family. What we all need, they argue, is a return to good old-fashioned family values. While it is true that family life has changed dramatically over the last few decades, and that the women's movement probably has had something to do with it, it is not at all obvious that the solution is to emphasize any particular family *form*—husband, wife, kids, for example—over a particular family *quality*—a stable and supportive family life, for example. In all this, it is important to keep in mind that it is not the family itself that has broken down, “but one, historically specific, system of family life (the ‘modern nuclear family’)”⁴⁶ that has. Furthermore, I would add, this specific family form has limited women's choices and curtailed their freedom. But what has been the response of the courts and family policy in the face of changing family forms and norms? Have courts been influenced by the idea that children need a disciplinarian or strong head-of-household? Are certain family forms favored over others? If so, to what extent must mothers and fathers conform to traditional roles in order to “win” custody battles? To

⁴⁶ Stacey, 82.

begin to answer these questions, I will begin with the prescribed legal guidelines for judges.

“Best Interest:” Legal Guidelines and Trends in Appellate Decisions

The “best interest” standard is probably one of the most fluid and vague standards in law today. With the exception of some legislative preferences for joint custody, it seems to function as a veritable garbage can for whatever lawyers and judges need to put in it. As such, understanding how the “can” gets filled may be very important. It may also suggest that the legal system regards such cases as somewhat irrelevant family junk, allocating few resources to their just resolution. Court cases thus provide us with an interesting window into various conceptions of the family: What kinds of parents do the courts imagine will best meet the best interests of the child? Do children need two parents more than one, or is it more important that children retain a close relationship with one parent? Do judges seem to place much importance on their decisions? Although the standard is extremely flexible, there are certain guidelines that the courts must follow, at least on paper.

*Blond’s Family Law*⁴⁷ lists the characteristics that courts may and may not consider with regard to deciding what is in the best interest of a child. Relevant parental attributes include the following:

Gender. The “tender years” presumption has recently been held in violation of the equal protection clause “when the gender classification represents generalizations and does not permit considerations of particular circumstances” (137).

⁴⁷ Neil C. Blond, Nicole L. Fenton, and Edward B. Johnson, *Blond’s Family Law* (New York: Sulzburger & Graham Publishing, Ltd., 1994) ch. 4.

Sexual Practices. Non-traditional sexual practices can be considered if it can be shown that the practices would have a negative impact on the children.

Physical Handicap. A handicap cannot be considered unless it prevents a parent from “providing ethical, emotional, and intellectual guidance during the formative years of a child’s life” (137).

Race. A parent cannot be denied custody for marrying a person of another race.

Religion. Religious belief or affiliation cannot be considered unless the beliefs are likely to cause great mental or physical harm to the child.

Financial Capacity. Economic capacity should be considered only when the situation is so extreme as to severely impact the quality of the child’s upbringing.

Child’s Preference. Most jurisdictions take this into account but it is not a determinative factor.

Expert Testimony. The use of psychologists as experts has lately been drawn into question.

These rules are of a vague enough quality that judicial discretion has played a very large role in custody decisions. One definite rule is with regard to gender: a maternal or paternal preference is illegal, so courts must frame their decisions in gender-neutral terms even if this is not the effect. But most of the other guidelines are very flexible. For example, what kinds of sexual practices have been found to be negative influences for children? And what is considered an “extreme” financial situation? Due to the highly indeterminate and flexible nature of these rule, a look at recent trends in appellate decisions should thus provide one window into what the courts believe to be acceptable parenthood. What the courts find to be in the best interest of children will then be compared to data that reveal the consequences of these judicial value choices for men, women, and children after divorce.

While we cannot be certain that the “best interest” of children as articulated by feminists, fathers’ rights groups, or right-wing pro-family values proponents has had any direct impact on custody policy, it is notable that there has been a definite shift in recent decades toward the adoption of “compromise” solutions that can purport to be gender neutral. One popular solution with the courts is to grant joint custody. This may mean that the child or children involved have two homes, two sets of parents, and even two communities. A variation on this seems to be to grant joint *legal* custody while granting sole *physical* custody to the mother. In effect, this means that fathers retain access to decision-making and other powers over their children without the accompanying responsibility of day to day care. This is a particularly problematic solution for many because it grants access to both children and the ex-spouse without any real reciprocal duties aside from usually poorly enforced financial responsibilities. Alternatively, some states have adopted purportedly gender-neutral primary caretaker rules, which in practice amount to much the same thing as maternal preference, since mothers still, more often than not, perform the role of the primary caretaker. While it is by no means agreed upon which of these solutions is best, and while the outcomes differ dramatically from state to state, it is important to keep in mind that the vast majority of cases are settled out of court. An important question to ask, then, is whether the likely outcome of a case, were it in fact to be resolved by the court, affects the bargaining process in settled cases. In order to address this question as well as others, it will be necessary at this point to take a closer look at the courts’ interpretation of what is in a child’s best interest, followed by an assessment of the material effects of current child custody policy.

As stated before, the courts have made a shift in what they perceive to be in the best interests of children toward increased exposure to the absent father. In fact, motherhood in itself has fallen rather low on the list of factors in the decision-making process. A 1989 survey of judges in the American Bar Association “revealed that the fact of motherhood was treated as a fairly insignificant factor in the decision-making process—only 10.6 percent, compared with greater economic stability (46.5 percent) or primary disciplinarian (33.3 percent).”⁴⁸ Given the large wage gap that still exists between men and women (women still make only about 70 cents to men’s dollar) as well as the deeply gendered assumptions behind “disciplinarian,” it seems that women will increasingly have a difficult time in retaining custody of their children. These trends, however, do differ greatly from state to state.

Another arena in which ideological battles are being fought involves biological versus non-biological relationships. The courts generally seem to favor biology. For example, some courts have justified taking custody from lesbian mothers, determining such “promiscuity” (lesbian activity) to be detrimental to children. In recent years, gay rights groups have been able to make modest gains in the struggle for adoption rights for gay or lesbian partners. These gains remain tenuous, however, and most courts have favored biological fathers over lesbian “widows” in custody battles.⁴⁹ This is probably reflective of a larger trend in custody policy that disfavors non-biological parental custody for persons such as non-married partners, grandparents, or step-parents and that also increasingly seems to favor the claims of disenfranchised biological fathers.⁵⁰ Is this

⁴⁸ Mason, 129. She is citing Thomas J. Reidy, Richard M. Silver, Alan Carlson, “Child Custody Decisions: A Survey of Judges,” *Family Law Quarterly* (1991), 23 (75):110.

⁴⁹ Stacey, 114-118.

⁵⁰ Mason, 133-139.

trend holding up for custody decisions after divorce, as well, and what does this mean for the structure of women's freedom?

Divorce, Custody, and Material Effects

The following table shows overall trends in 19 states in the years 1989 and 1990, where "high," "medium," and "low" refer to the frequency of joint custody awards by state:

State Category	Father	Mother	Joint
Montana	8.1/8.4	47.8/46.4	43.3/44.0
High			
Kansas	7.8/6.8	50.1/47.2	39.5/43.6
Connecticut	5.3/5.3	58.7/58.1	35.8/36.4
Idaho	9.8/10.4	57.9/55.3	31.9/33.2
Rhode Island	NA/5.4	NA/62.2	NA/31.7
Alaska	NA/14.2	NA/63.1	NA/19.5
Medium			
Vermont	NA/10.6	NA/71.4	NA/17.1
Illinois	8.7/9.2	77.4/75.4	13.7/15.1
Wyoming	11.0/9.5	73.0/74.4	14.1/15.1
Missouri	10.4/11.0	74.4/73.1	14.0/14.8
Oregon	10.7/12.6	74.1/71.7	14.9/14.0
Michigan	9.5/11.2	76.4/73.9	12.5/14.2
Virginia	NA/11.6	NA/70.9	NA/13.8
Pennsylvania	10.5/10.0	78.6/76.7	9.4/10.1
Low			
Utah	10.5/9.7	79.3/81.1	10.1/9.0
Tennessee	11.1/11.3	78.9/78.9	8.1/8.6
Alabama	9.7/10.7	79.5/80.2	9.3/8.6
New Hampshire	12.2/11.0	79.9/80.4	6.6/7.1
Nebraska	NA/12.2	NA/81.3	NA/4.1

Physical Custody Awarded (percent), 1989/1990

Source: Monthly Vital Statistics Report, Vol. 43, No. 9 (March 22, 1995), National Center for Health Statistics.

While this information does show that women generally receive sole custody about 60-80 percent of the time, it does not tell us how many cases were contested and what the relative increase in joint custody awards has been. The data below suggests that it is becoming easier for fathers to obtain custody when conflict does arise.

From 1960 to 1990, in the small number of cases that actually go to trial, a rise in awards to fathers has been found—from 36.7 percent in 1960 to 45 percent in 1990, “slightly more often than custody was awarded to mothers.”⁵¹ This means that when custody is contested, fathers have at least as favorable odds as mothers in gaining custody.⁵² A study by Maccoby and Mnookin reveals consistent but slightly different results. When both fathers and mothers wanted sole custody, which occurred in six percent of their sample, mothers were awarded custody 45% of the time and fathers 11% of the time, with the remaining cases, or just over a third, resulting in joint custody.⁵³ Importantly, this suggests that in situations of the most severe conflict, joint custody is used as a way to split the difference between competing claims.⁵⁴ It is important to keep in mind, however, that nearly 80 percent of the cases in their sample were uncontested. Of these, when a mother requested sole custody (about 70 percent of the uncontested requests) she was granted that request 90 percent of the time.⁵⁵ This in itself may have harmful economic consequences for women and children.

While it seems that mothers are still awarded custody the majority of the time, we cannot assume that women are simply “winning” these custody battles. Lenore Weitzman, in her 1985 study, expressed concern that mothers would bargain away

⁵¹ Mason, 129.

⁵² Mason, 129.

⁵³ Maccoby and Mnookin, 104.

⁵⁴ I will discuss some of the problems with the trend toward joint custody at a later point.

⁵⁵ Maccoby and Mnookin, 103.

needed property in order to keep custody of their children. One later study suggests that this might “bargaining chip” might play a role, but in a relatively small number of cases. Maccoby and Mnookin report: “Indeed, approximately 20 percent of the fathers who said they wanted maternal custody in fact requested joint physical custody or father physical custody. The data indicate that some mothers might be playing this game as well; 33 percent of the small group of mothers who expressed a desire for joint physical custody requested sole maternal custody in their papers.”⁵⁶ But this in itself does not mean that the bargaining process is being effected. In order to isolate the effect of the bargaining chip, they used regression analysis to determine the effect of higher reported conflict or contention in the divorce proceeding on resulting property awards. They find no statistical correlation, however, between higher levels of conflict and lower property awards. Thus, they assume that the bargaining chip hypothesis is incorrect, stating that they find it “implausible that mothers who report no conflict would nevertheless make economic concessions because of an implicit threat. Moreover, if fathers are making implicit threats, it is plausible that mothers would provide a higher conflict rating.”⁵⁷ If this factor plays a role, they argue, it would have to take its effect unilaterally and implicitly, which they grant is possible but not probable. According to this one study, then, gender-neutral custody preferences are not effecting property awards in high-conflict divorces more than uncontested divorces.⁵⁸

Another important factor to consider, regardless of the effect of the “bargaining chip,” is the relative material conditions of women and children after divorce. Whatever

⁵⁶ Maccoby and Mnookin, 102.

⁵⁷ Maccoby and Mnookin, 156-57.

⁵⁸ It is also important to note that this study encompasses only the state of California and as such should not be considered generalizable.

the cause, it is clear that the standard of living for women, and especially for women who retain custody of their children after divorce, declines dramatically while the husband's standard of living usually increases somewhat. In the Maccoby and Mnookin study, mothers had only about half of the resources available to them than they did prior to the divorce, with a median income of about \$18,000 for all family sizes.⁵⁹ This ought to be taken into account when considering the effects of child custody policy on women's ability to make real choices in their lives.

A note on joint custody

Joint custody has become one popular solution to conflicting claims at divorce. Some studies have raised concerns that this solution actually creates the greatest burden for children who have to divide their time between two households, often commuting back and forth between two different cities. I want to highlight this fact. Not only does this raise doubt about whether the best interest of children is actually being served by joint custody, but it may reflect a careless and unreflective response to the trend toward gender equality in custody policy. In effect, I am suggesting that the most harm being done to children might stem from an unwillingness to think about what a *good* parent is in favor of the assumption that two parents are better than one.⁶⁰ That quantity is better than quality is by no means necessarily true; continuity with one parent might actually turn out to be better for some children.⁶¹ Furthermore, divorcing parents that did not

⁵⁹ Maccoby and Mnookin, 260.

⁶⁰ It is also possible that the courts are in some way reinforcing a notion of essential biological differences in parenting, which would imply that children need both "mother-love" and "father-love." This approach may be just as indiscriminate.

⁶¹ There is a vast social science literature on what is psychologically the best divorce outcome for children. See Donald T. Saposnek, *Mediating Child Custody Disputes* (San Francisco: Jossey-Bass Publishers, 1998) and Joseph Goldstein et. al, *The Best Interests of the Child* (New York: The Free Press, 1996), for opposing viewpoints. Questions have been raised as to the underlying gendered assumptions and political

agree to a custody arrangement outside of courts are likely to be hostile toward one another after the divorce as well, and joint custody may simply expose children to ongoing parental hostility. In this way, I would suggest, a preoccupation with family *form* may be the most detrimental to children and the most dangerous enemy of family *quality*.

While there are definitely problems with joint custody, a preference for sole maternal custody is also unacceptable because of its dire economic consequences in today's society *and* because it perpetuates a system that leaves women vulnerable and their choices constrained. It also assumes that the mother is or should be the best parent, which is not always true. So then, what are we to do? What *would* be a just child custody policy that would position women as non-dominated, materially and symbolically, and further the goal of deinstitutionalizing gender? Feminists have had varied responses to this question. The most noted voice in issues of divorce and custody policy is that of law professor Martha Fineman. Fineman offers a strong argument against formal equality, but I will argue that she takes freedom too little into account, leaving detrimental gender roles too firmly in place. Her solution does not address women's need for a structural condition of non-domination and self-definition that would both alleviate the vulnerability and dependence currently associated with the assumption of primary caretaking duties *and* redistribute caretaking duties. Joan Williams offers a modified formal equality approach, providing a somewhat better short-term solution than does Fineman. In both cases, however, the advocated "primary caretaker" rule would

motivations of this literature. See, for example, Martha Fineman, *The Illusion of Equality* (Chicago: University of Chicago Press, 1991) ch. 7-8.

ultimately be insufficient if primary caretaking continues to be performed exclusively by women.

Structural freedom and responses to changing custody policy

Martha Fineman's work comes out of the context of the recent changes in divorce and custody policy that mandate no-fault divorce and gender-neutral custody laws.

Fineman rightly points out the devastating effects that these policies have had on women and children, especially given the recognition that women's status in the job market has changed little since the times of more generous alimony and support awards. Formal equality has it wrong, she argues, since equality of rule does not yield anything close to equality of result; and there is no reason that women should be penalized for divorce with poverty and increased regulation. She attributes this failure of current family policy to its construction around patriarchal ideology. At the heart of the problem, she argues, is the Sexual Family.

Fineman begins by deconstructing the notion that the family is a self-sufficient unit with a natural (sexual) bond between a man and a woman at its core. The rhetoric surrounding the family, she argues, would indicate that it is independent and that its work is done in privacy. As such, the family is positioned outside the reach of the state and is seen as entitled to protection against interference by the state. However, it should be noticed, the state relies on the institution of the family for the socialization and care of its future members, indicating that the state and the family are in fact interdependent. Furthermore, Fineman correctly points out, the family is a site of both "inevitable" (care-receiver) and "derivative" (caretaker) dependencies that can function only with

assistance: “the subsidized nuclear family unit, mischaracterized as ‘self-sufficient’ and ‘independent’ is held out as the idealized norm,”⁶² while its very subsidization through structures such as tax rules, zoning ordinances, and insurance regulations is ignored. Not only this, but it is only the patriarchal family form, or the sexual family, that is encouraged while others are penalized. “Public” families, most notably single-mother families on welfare, are punished with stigma, poverty, and state control. But why, she asks, should the presence of a man be necessary to the definition of the family, with all its accompanying subsidy and privacy?

Fineman wants to call into question the assumption that a horizontal, sexual relationship between a man and a woman is the necessary component of the family. The assumption that the man is central to the family perpetuates patriarchal ideology both inside and outside the family; as such, she calls for the abolition of marriage. Instead, she wants to draw a line around the Mother-Child dyad, which she uses metaphorically to indicate the vertical relationship between the primary caretaker and the child, or other dependent. This would then be the core family unit deserving of protection and subsidy. In this, it is assumed, men could be Mothers or not. Fineman states, “I believe that men can and should be Mothers. In fact, if men are interested in acquiring legal rights of access to children (or other dependents), I argue they *must* be Mothers in the stereotypical nurturing sense of that term--that is, engaged in caretaking.”⁶³ The point is that primary caretaking earns access to children, not affiliation with the mother. Biological fathers do not even automatically earn access to a Mother’s children: “Fathers, or nonprimary caretakers who have sexual affiliation to the primary caretaker, are certainly free, under

⁶² Martha Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (New York: Routledge, 1995) 227.

⁶³ Fineman, 235.

my model, to develop and maintain significant connections with their sexual partner and her children if she agrees to such affiliation. The mother may also wish to forge ties and relationships with nonsexual affiliates.”⁶⁴ In other words, the mother, in her relationship to dependents, is placed at the center and is given a much greater amount of power and control. Other caretakers play a role only on the mother’s terms. But what might be some of the difficulties with this?

This reconceptualization of the family for Fineman amounts to an association of responsibility with access in child custody policy, which is a positive association. But exactly what kind of responsibility is it? Does she assume that the biological mother will (and should) in fact take primary (or sole) responsibility for her children? Does her solution, ironically, leave women and their children in an even more privatized and vulnerable situation than before due to a narrowing of the definition of a “parent”? While Fineman rightly advocates that we support Mothers in their care-giving capacities, suggesting that we make it more economically feasible for women to raise children outside of a heterosexual relationship, she does not seem concerned that the association of women with primary caretaking duties might leave patriarchal ideology in place. She attempts to redistribute the burden (as well as the privilege) of caretaking solely by insisting that if men are to have access to children, they must Mother.⁶⁵ Does Fineman assume that men have sufficient desire to have access to children that they will do so, and in the way that she prescribes? If not, are we comfortable with the idea that caretaking could be done by just one group (women) in a just society? This leaves us with the further question, how would we view women who choose *not* to Mother under such a

⁶⁴ Fineman, 5.

⁶⁵ It is also interesting to note that women seem to have access to children by virtue of gestation, not through the act of “mothering.”

framework? Is there only one type of Mothering, and will we become ensnared in the project of defining what “true” or “good” Mothering is? Who would enforce this ideal? On the one hand, Fineman’s work contains too many prescriptive ideas about mothering; on the other hand, her suggestions do not do enough in disrupting a deleterious sexual division of labor. As such, I believe that while Fineman’s Mother-Child dyad in some ways works to benefit mothers, it is not sufficient to a structural theory of freedom. In order to address some of the problems I have outlined with regard to Fineman’s assumptions regarding the characteristics of motherhood, I will now turn to Joan Williams’ articulation of an equality approach in family law.

Joan Williams, in “Deconstructing Gender,” advocates an equality approach over a difference approach,⁶⁶ arguing that an attempt to reappropriate stereotypes of domesticity by reclaiming its positive aspects will only serve to trap women within the very ideology from which many are trying to escape. The stereotypes of Victorian femininity were in fact historically utilized to justify women’s subordination and confinement to the household; nurturance and care went hand in hand with a notion of women’s irrationality and natural dependency. Given this, Williams’ analysis would suggest, is it desirable to salvage characteristics that were developed under subordination, especially given that economic dependency is currently a necessary component to the “choice” to be the self-denying stay-at-home mom, for all but an elite few? And even if we subsidize the Mother-Child dyad, will women still be rendered vulnerable to relationships of domination?

Williams argues against a difference approach, pointing out that relational feminism is unable to make a critique of capitalism. The ideology of domesticity only

⁶⁶ I would argue that Fineman’s approach is a “difference” approach in some way.

continues to make credible the idea that women marginalized by capitalism have simply chosen not to muck themselves up in the nastiness of competition.⁶⁷ But further than this, she argues, it does nothing to challenge the gendered structure of wage labor: the “gender system results in the impoverishment of women, since it leads mothers systematically to ‘choose’ against performing as ideal workers in order to ensure that their children receive high quality care.”⁶⁸ In this way, she argues, relational feminism is most helpfully viewed as a critique of possessive individualism, under which “everyone, regardless of sex, is limited to two unacceptable choices—men’s traditional life patterns or economic marginality.”⁶⁹ While Fineman’s argument speaks to the economic marginality involved, she does not disrupt *men’s* traditional life patterns seemingly at all. Care has still not been brought into the center.

Williams argues, then, that instead of turning to a reclamation of the ideology of domesticity, feminists should work toward a redefinition of the ideal worker so that workers can be recognized as parents. She recommends policy changes such as day care, flex-time, and four-day workweeks.⁷⁰ I would argue that these sorts of supports are necessary if care work is to lose its social stigma. This would also help to begin to deinstitutionalize gender, since parenthood could be recognized as part of and central to all our lives. But what about child custody? Williams advocates rules of law that are sex- but not gender-neutral. Instead of suddenly disowning people who have been victimized by gender (women), the law should be able to address the disadvantages of gender roles. But this need not correspond with biological sex, she argues; in custody, a

⁶⁷ Joan C. Williams, “Deconstructing Gender,” in *Feminist Jurisprudence: The Difference Debate*, ed. Leslie Friedman Goldstein (Lanham, Maryland: Rowman & Littlefield Publishers, 1992) 57.

⁶⁸ Williams, 58.

⁶⁹ Williams, 64.

⁷⁰ Williams, 65.

rule that protects “anyone who has eschewed ideal worker status to fulfill childcare responsibilities”⁷¹ would be acceptable. This would allow the law to reference people according to their social roles and not to their genitals,⁷² moving us closer to the goal of deinstitutionalizing gender.

While there are many attractive aspects to this proposal, and while I agree with Williams on a short term basis, I wonder if the sex/gender distinction would actually make a difference in law. If women are in fact assumed to be primary caretakers, would it make a difference whether the court recognized them as biological or socially constructed women? Furthermore, would the continued incentive of marriage lead women to continue to “choose” childcare at the expense of their own success as wage workers, leaving the sexual division of labor firmly in place? Martha Fineman, in contrast, does address the effects of marriage specifically; ultimately, however, she fails to deconstruct the logic of domesticity, privatizing and naturalizing the relationship between women and their children. Even though she makes it easier for women to be Mothers, especially outside the confines of marriage, she does not go far enough in questioning that women *will* be mothers, and that women as a group want to do the particular kind of work that it requires. In short, the assumption that women will be primary caretakers limits their freedom, especially in relation to the principle of self-definition. This means that in the long term, a primary caretaker rule, no matter how much social support is erected to assist people in caretaking duties, will not work to favor women’s structural freedom if primary caretaking is synonymous with womanhood. The redistribution of care work is thus key. In this, social supports will have to be put into

⁷¹ Williams, 69.

⁷² Williams, 70.

place, bringing care work to the center of everyone's lives. This may also mean that we call into question Mothering as something particular or special to women. In the long run, women's choice to be mothers or not, inside or outside of a heterosexual relationship, can be made real only if men can and do mother, too.

As a way to begin to think about what this might look like, I would like to propose the following thought experiment. First, as I have indicated, social supports such as a lower work week, flex-time, universal health care, and universal child care are absolutely crucial if we are to bring care work to the center, and to mitigate structural relationships of domination that adhere around constructed relationships of dependence and independence. To limit violations of non-domination and self-definition, it is imperative that these benefits are available to everyone, regardless of one's gender, race, or class identity. Second, I believe it to be necessary to women's freedom to either abolish state-sanctioned marriage, along with the incentives that make the "choice" of dependence upon individual men much more attractive than other possible life choices, or to make marriage universally open, disconnecting it entirely from the function of raising children. Here, I agree with Fineman: Why should the heterosexual couple be the only entity deserving of or entitled to special protection by the state? And why should ties to children be based on this narrowly defined "family" unit of the heterosexual couple? But third, I would like to think about what it would mean if parenting were to be truly gender neutral. To do so, I will enlist the imagination of Drucilla Cornell.

What if the state provided a structure for the custody of children apart from sexual relationships, so that adults who intended to care for children could form a parental unit of their own choosing? Cornell suggests a legal custodial structure not based upon the

assumption that the sexual unit (in most cases, the biological mother and the legally recognized father) would automatically be the parental unit:

To achieve the needed stability for children, the assumption of custodial responsibility would carry with it all that it does now—financial support, limits on movement, and so forth. Parents would be legally established at the time they assumed custodial responsibility; each child would have a legally recognized family...The procedure would be similar to that of current step-parent adoptions. Custodial responsibility would remain for life; legal responsibility to custodial children would continue regardless of the sexual lives of the custodial partnership or team.⁷³

Cornell imagines that this would entail a serious, conscious, and long-term commitment to the child, and one that would not be easily broken. Although the details of the legal procedure remain vague, I imagine that it could look something like this: Biological mothers, *if* they intended to care for the child, as well as anyone else to whom the mother consents, would enter into something like a marriage contract, but the commitment would be to the child rather than to the sexual partner. (Ideally, Cornell implies, there would be no stigma attached if a woman decided against taking on custodial responsibilities.)

Cornell does not state this specifically, but I would add that the terms of the custodial arrangements be allowed to be specified by the future parents. In all cases, sexual or domestic relationships between adults would be considered separately from custodial relationships between adults and children, so that there would be no reason to assume that two sexually involved adults would make up the parental unit. In fact, as Fineman points out, the sexual relationship seems to be the most volatile relationship in our society. Instead, siblings could decide to assume custodial responsibility, or a child and a parent, as well as couples, whether they be heterosexual, gay, or lesbian, and this might in fact be a more stable unit on which to base the raising of children. Furthermore, there would be

⁷³ Drucilla Cornell, *At the Heart of Freedom: Feminism, Sex, & Equality* (Princeton: Princeton University Press, 1998) 127..

no assumption that one parent would be “dependent” upon another (or the state) in any asymmetrical way. Obviously, this would depend upon structural changes in the “public” realm; the freedom of self-definition would rest on the structural condition of non-domination.

So then, what rules would govern the worst-case scenario of an adult wishing to break his or her legal custodial agreement? In most cases, the assumption would be that the legal relationship between both (or more) parents *and the child* would remain in place: “Once you have signed on, you have signed on for life, which is why I believe that this conception of custodial responsibility meets the state’s as well as the children’s interest in stability.”⁷⁴ Cornell does provide an exception under cases of abuse, so that one partner or team member may sue to have another parent’s rights terminated. This should produce far fewer custody battles, and so would avoid discussions of who was the more primary caretaker, who would be the better provider, or what was in the “best interest” of the child,⁷⁵ but rather (as I have expanded Cornell’s construct) the parents would have a contract, created by the consenting parties, to which to turn. This situation would allow for much greater freedom for parents, both symbolically and materially speaking, and would be in greater conformity with the way that families actually function today.

This proposition depends less upon the stability of the relationships between sexually affiliated parents than do current family formations while it provides far more support. Furthermore, I believe that this begins to disentangle care and gender, allowing

⁷⁴ Cornell, 126.

⁷⁵ As was noted earlier, the “best interest” standard is so indeterminate that judges are forced to make decisions about who is the better “mother” or “father.” This is inevitably a prescriptive and regulatory enterprise.

for much more meaningful choice, and freedom, in women's lives. Agency functions in part through the inherent "transposability of schemas;" allowing a proliferation of new meanings and practices around the family is surely one way to disrupt the insidious circles that seem forever destined to capture women and men within material/symbolic structures of domination. In this way, I believe that thinking in terms of voluntary and gender-neutral parenting in a society that recognizes care as central to everyone's lives (through universal entitlements) would be more consistent with the principles of self-definition and non-domination, suggesting new ways to build and maintain institutions consistent with a structural vision of freedom.

This is certainly not the only practice consistent with structural freedom, and the family is not the only institution worth considering in this capacity (although it is arguably the most important one). In the following conclusion, I will briefly summarize the arguments I have made throughout this project, and end by suggesting additional creative institutional solutions aimed at fostering the principles of non-domination and self-definition that make up structural freedom.

Conclusion Toward Creative Institutional Thinking

In the preceding chapters, I have argued that freedom should not be understood as internalized and individualized, primarily entailing the protection of “the individual” from the effects of institutions or one’s fellows, as through limits on state power, individual “civil liberties,” or the impartial rule of law. Such understandings take as their starting point already-formed wills and desires, underestimating the role that the individual-institution relationship plays in continuously reconstructing the array of possible choices as well as the meaning attached to those choices. To arrive at a viable conception of freedom, it is instead necessary to recognize and harness humanity’s ongoing role as creators of, and created by, an inevitable though continuously shifting terrain of enabling and constraining interrelationships, invariably mediated by institutional arrangements.

In chapter one, I argued that agency and structure are mutually constitutive, and that this dialectic over time and space should underlie a viable concept of freedom. “Structure” should not be understood to entail constraint only, but rather a complex of “resources and schemas” through which the material world comes to be meaningful at the same time that ongoing (re)constructions of meaning necessarily mediates humanity’s relationship to the material world. The “individual” is understood to be “constructed” at the same time that “individuals,” especially in their largely unpredictable capacity as collectivities, continually reconstruct their surroundings. This means that individuals are necessarily embedded in constraining and enabling, though shifting, institutional contexts. This dynamic was captured by the idea of “reflexivity,” a term borrowed from

Giddens and defined as the ongoing and essentially dualistic nature of the relationship between individual consciousness and context, the “material” and the “symbolic,” and structure and agency.

As I have argued it here, structural freedom takes as the subject of freedom shifting social and political interrelationships, treating institutions (including “the state”) as sources of constraining *and* enabling power at the same time that freedom is conceived not as the opposite of coercion, but as the opposite of structural, systemic relationships of domination. The multiple nature of interlocking structures, and the concomitant interrelationship of structure with agency,¹ throws into question the assumption that freedom is at bottom a concept that is opposed to coercion, whether by social or political institutions or by individuals. In addition, a structural approach to freedom implicitly questions the goal of impartiality. Not only is human apprehension limited because it is always embedded and situated, but the “object” being apprehended, the social world understood as inclusive of collectively held norms and values, is also continuously subject to reinvention.

The implications of this particular structural approach to freedom are (at least) two-fold. First, this epistemological framework suggests that sense cannot be made of freedom absent a focus on the interrelationship between “individuals” and the contexts within which they operate. Freedom cannot be understood aside from the structures of power which both frame meaning and situate actors vis-à-vis one another as well as

¹ Throughout this project, I have self-consciously used “structures” and “structure” in two distinct but interrelated senses. In the first sense used here, “structure/s” refers to identifiable patterns or organizations of social, economic, and political “resources;” given economic arrangements is one obvious example of such a “structure,” but race, class, and gender could also be considered “structures,” while “institution” is a more specific subset of structure in this sense. In the second sense used here, “structure” refers to the abstract “schemas,” symbolic or linguistic, through which the social, economic, and political world is organized. I have argued that these two ways of conceiving structure cannot be easily separated, and “agency,” the capacity to act, is imbricated with both.

institutions, while what we imagine our possibilities to be are shaped by the options available to us; the construction of one's self and one's desires requires access to avenues for making meaning. Second, however, this does not render freedom, "individual" or otherwise, meaningless. Rather, unlike individualized and internalized constructions of freedom which pose freedom and equality as oppositional, a structural approach to freedom suggests that a basically egalitarian participation in the construction of material/symbolic institutional arrangements is in significant ways linked to freedom; if humanity authors and is authored by institutions of "our" own creation, it does not automatically follow that all members of society participate in this process on equal terms. A dynamic structural approach to freedom is founded upon and consistent with basic equality, rather than figured as in opposition to it. Inequality, in terms of relationships framed by differential access to material as well as symbolic resources, creates an environment ripe for structural domination and oppressive hegemonic definition. Freedom as I have constructed it here depends upon participation in making (meaning of) the world.

Accordingly, I have in significant ways privileged a structural point of view over an agentic one: relational self-definition, insofar as it is a principle concerned with individuals and their choices rather than structural interrelationships themselves,² is dependent upon a non-oppressive context, or the condition of structural non-domination. To be meaningful and viable, especially within a context of stratification and inequality, freedom has to be linked to considerations of power. All too easily, the limiting power of

² I have argued throughout that self-definition *is* a principle concerned with structural interrelationship; this is another instance in which disentangling structure from agency can be misleading. I mean only to imply here that the focus of the principle of self-definition is somewhat different than the focus of non-domination, although clearly both principles contain elements of the "structural" and the "agentic."

structures can be rendered invisible, and a structuralist focus exposes the power of institutions to not only create the universe of choices but to influence individual choices as well. Institutions always enable as well as constrain, but they do not always do so in the same way, and with the same consequences; it is both possible and necessary to make judgments about how institutions are organized with relation to freedom, and this need not entail an undercutting either of moral freedom or of agency. With this in mind, I developed two principles of structural freedom, non-domination and self-definition, in chapters two and three.

Non-domination is that condition wherein one is not in a position to have another's will arbitrarily substituted for one's own; while acknowledging the republican roots of this way of conceiving freedom, especially as articulated by Philip Pettit, I expanded the principle in order to include symbolic as well as material forms of domination, which are themselves overlapping and mutually constituting, as indicated in chapter one. This is a principle that makes sense only in context; interference alone is not enough to constitute a limit on freedom. Non-domination asks, how is one person situated vis-à-vis another, or vis-à-vis an institution? Non-domination recognizes that there are limits to one's ability to determine the course of one's own life; it is a structural principle in that the nature of relationships among individuals and between individuals and institutions forms the basic unit of analysis in considerations of freedom. Rather than characterize all limits to action as a constraint on one's freedom, non-domination approaches this question in qualitative rather than quantitative terms;³ it is in occupying

³ I do not mean to invoke Isaiah Berlin's "positive liberty" question of "by whom am I governed," and his "negative liberty" question, "how much am I governed" (Introduction, *Four Essays on Liberty* (New York: Oxford University Press, 1969) xliii). While in some ways an Berlin's opposition could also be

the position of potential domination that is foremost at issue, rather than the extent to which one is actually limited in one's actions, although these two aspects of freedom are clearly linked.

The principle of self-definition, like that of non-domination, is also necessarily relational, recognizing the embedded, situated nature of individuality as well as the always imbricated terrain between the material and the symbolic. Since the social and political world is fluid and shifting, institutions should respect the definition of the self represented by the individual. Drawn from contemporary feminist theories of freedom, and the work of Nancy Hirschmann and Drucilla Cornell in particular, self-definition encompasses the ability to define one's will and desires, and to be recognized as a person so capable. As I have defined it here, however, this principle in large measure depends upon a non-oppressive context, or the institutional condition of non-domination. The "symbolic" is tied to the "material" world in such a way that changing or reappropriating oppressive definitions will effect little change absent a concomitant shift in material relations. Self-definition is a principle that becomes meaningful only in practice. In other words, the ability to make meaning of one's life is an "empty" ideal until connected to specific institutional contexts, but self-definition nonetheless holds out as an the capability of individuals to make meaning of their own lives and to be represented as persons so capable.

In chapter four, I illustrated the two principles of structural freedom through a reading of child custody policy in the U.S. There, I showed that current constructions of child custody policy encourage relationships of domination, particularly through

characterized as qualitative versus quantitative restrictions on liberty, Berlin utilizes the very epistemology I reject, and I do not wish to adopt his framework.

constructions of dependence and independence, while employing potentially oppressive, gendered ideals of the “good mother” and “good father.” To be brought in line with a structural understanding of freedom, underlying relationships of domination should be addressed: in what ways do child custody arrangements encourage relationships wherein a person is subject systematically to the potential arbitrary interference of his or her will? And in what ways do these arrangements require conformity to a hegemonic definition of the self in relation to one’s role (presumed or actual) as a caretaker? Further, in what ways are conditions of domination linked to the closing off of avenues for making meaning of one’s life?

This was but one example of the institutional application of structural freedom. How might a structural construction of freedom inform other institutional contexts? In the following, I will tie structural freedom to specific, contextualized issues of freedom and domination and to particular institutions, showing how structural freedom, as I have defined it here, provides a useful framework for thinking creatively about institutional solutions to contemporary problems of domination and oppression while avoiding the major problems of individualized and internalized conceptions of freedom. I will also continue to draw out the interconnections between these two complementary principles of a structural theory of freedom.

Throughout this project, I have connected structure and agency with freedom, and republicanism with feminism, with the hope of 1) arriving at principles for making judgments regarding freedom from within the context of structural inequality and 2) breaking into the “vicious circularity” of the mutually reinforcing “material” and

“symbolic” forms of oppression. In what ways has this enterprise proven fruitful? What do we know now that we did not know at the beginning of this project?

The first notable lesson of a structural approach to freedom, especially in its function as a normative institutional ideal, is that it is imperative to disentangle the framework of free will versus determinism from the concept of freedom, even as one reads freedom through the lens of agency and structure. The facile congruence of structural determinism with coercion or domination on one hand and “free will” (or agency) with freedom on the other is misleading. From the point of view of a reflexive understanding of structure, occupying a position wherein one is subject to arbitrary, oppressive forces is not the same as being structurally determined, while being enabled to act through non-oppressive forces is not the same as exercising agency. Another way to put this is that freedom and agency are not coterminous, while being subject to structural forces is not the same thing as being unfree. For example, the manner in which current problematics of freedom are constructed tend to conflate these two interrelated but ultimately discrete issues: Insufficiently reflexive “structuralist” accounts of conditions under which freedom is lacking and action is constrained tend to underestimate the role of creative human action in arriving at inventive and even unintended institutional solutions (whether intentionally or not) to oppressive social conditions. On the other side, liberals tend to adopt an individualized, internalized conception of freedom as an original condition compromised only by interference, so that choice and action are disconnected from institutional frameworks and freedom is left disconnected from normative concerns with structural equality and justice.

This does not, however, mean that the structure/agency problematic is unimportant to contemporary discussions of freedom; indeed, I have read freedom through this lens by taking freedom from the point of view of institutionally mediated interrelationships. Rather, the structure/agency framework provides the epistemology and ontology underlying a given construction of freedom; another way to put this is that the underlying epistemological structure/agency configuration will inevitably inform any understanding of freedom. Approaching constructions of freedom with this in mind illuminates embedded assumptions about the nature of the individual and the individual's relationship to formative mediating institutions. Liberal accounts of freedom tend to underestimate the role of non-state powers in restricting action, while both liberal and poststructuralist accounts of freedom underestimate the role of institutions in enabling action; at the same time, unreflexive structuralist accounts overestimate the determining power of structure. In contrast, as I have argued it here, a dialectical and dual account of structure, more in line with republican and feminist conceptions of freedom, underlies a viable conception of freedom. This dynamic understanding of structure arrived at in chapter one would indicate that the condition of being constrained and that of being enabled are both, and often simultaneously, the effects of structure, and here often of specific and identifiable social and political institutions. Thus, structure and agency are two sides of the same coin and freedom entails both structure and agency.

As I made clear in the first chapter, structure and agency are mutually constituting. If "structure" refers to the given organization of power while "agency" refers to an individual's inherent capacity to influence that organization, then agency applies whether we "win" or "lose." In fact, as I argued in chapter one, a structural

viewpoint need not entail the fatalism and defeatism that seem to accompany a belief that all our actions are determined, so that no individual can make a difference. Instead, recognizing the role that structures play in our lives can be liberating. This is because to see the structures that constrain and restrict us is to expose the work of power in relationships. However, again, structural freedom is an argument against those understandings of freedom that can be conflated with agency; freedom must should be understood not as an inherent capacity to act or to resist, but rather as characteristic of social and political relationships attached to particular and identifiable though continually shifting institutional conditions. To illustrate what I mean by this, and why I think this insight is central to a structural conception of freedom, I will relay a different kind of story, through a brief account of structure, agency, and freedom, and particularly of the principles of non-domination and self-definition, in *The Narrative of the Life of Frederick Douglass*. How should we read his story? Does Douglass have “agency”? Is he “free”? What does it matter to a structural theory of freedom?

Frederick Douglass was an American slave who, after his emancipation, went on to become one of the most prominent abolitionists and human rights leaders of the nineteenth century. Douglass’s story has become famous in part because he was able to leave the world an account of his life in the form of a written narrative. His story is important to the one I am telling here because it demonstrates both the danger of conflating agency with freedom and the interrelationship of non-domination and self-definition to a reflexive structural understanding of freedom.

In terms of structural constraint, Douglass was during the time of his enslavement about as unfree as any person could be. Subject to the arbitrary whim of a master, with

no social or legal recourse, Douglass was a slave. His was the most obvious case of “domination” imaginable, in the sense articulated in chapter two: his master both had the power to interfere with Douglass’s will and he actually did so, quite regularly. He was of course also denied positive self-definition; defined as outside of humanity, denied all dignity, and restricted from learning how to read or write (at least legally), his access to paths of meaning was controlled (almost) completely by his slave master. These “material” and “symbolic” aspects of his structural unfreedom were not easily separated, however. For example, that the law of the nation defined him as three-fifths of a person, Douglass (and many others like him) were caught in that vicious circularity of material and symbolic oppression. His material deprivation enabled and maintained society’s ability to define him as not-human and to exploit his labor, while believing in his essential inhumanity justified his domination.

In writing his narrative, however, and in our listening to it, Douglass challenges us to see that he was never a slave, but rather *enslaved*; and what’s more, though enslaved, he always retained his agency. This at first seems counterintuitive: How can someone living a life so absolutely determined be said to have agency? By uncovering the constant struggle between himself and his would-be master, Douglass reveals the process behind his enslavement: there are beatings, battles of will, contests over meaning; there is perversion, subversion, and re-education. If Douglass had simply *been* a slave, essentially and ontologically, all the power exerted over him to keep him enslaved would have been redundant, unnecessary. But in reading him as an “agent,” he was necessarily a participant in his own history, and this case his own history was one of constant battle to maintain his humanity. He may have lost the fight, for all intents and

purposes, due to the structural existence of slavery as an institution and all of the legitimizing narratives that accompanied that institution. Nevertheless, denying Douglass's role in the history of his own life, and in that of the history of the institution of slavery, would be to deny him his agency while closing off important avenues for change. Even this seemingly total system contained cracks and fissures: To return to Sewell's language, the schemas available to Douglass were transposable (despite attempts on the part of the ruling classes to close off such avenues); and the structures making slavery possible were multiple and intersecting, so that the possibilities for change came from within the system of slavery itself but in an unpredictable way.

At the same time, a structural understanding of freedom makes it clear that Douglass was not in any meaningful sense free. In terms of the structural principles of non-domination and self-definition, he occupied the literal position of slavery; he was physically and legally unable to legitimately exercise his own will, and he was defined as a person fit only to be ruled. To say that his situation one was one of "freedom" because he was an agent—not a passive victim—would be to conflate freedom and agency in such a way to deny one of the most horrific examples of human cruelty, the total restriction of freedom, known to mankind.

Unlike understandings of freedom which conflate agency with freedom and structure with determinism, the structural principles of non-domination and self-definition enable us to make some contextualized judgments regarding the relationship between institutional conditions and individual lives. The question posed by the principle of non-domination is, do others, or institutions, have arbitrary rule over a person's life? Can one person substitute his judgments for another's, and is this condition supported by

the institutions that frame their lives? To what extent is a person able to determine the course of her life and actions? The principle of self-definition asks, does a person have access to avenues for making meaning? Do institutions employ definitions of an individual's desires and wishes that the individual understands to be one's own, or must individuals conform to a definition of the self with which they do not identify? Together, these principles provide entrance into the intractable circularity of "material" and "symbolic," "economic" and "cultural" subordination, bringing freedom in line with justice and equality. Freedom involves subjecting institutional arrangements to debate; participation in the construction of institutions implies involvement in structuring the overlapping terrain of material resources and symbolic schemas. From where does this (re)construction begin?

I have argued that there is no "outside" or "above" from which to obtain an "objective" view of the social world and to "fill in" the content of freedom for every context. Freedom must be understood to be deeply contextualized. Thus, freedom is "grounded" not in an eternal truth, but in the needs and wishes of a specific community:

Critical theory is a mode of discourse which project normative possibilities unrealized but felt in a particular given social reality. Each social reality presents its own unrealized possibilities, experienced as lacks and desires. Norms and ideals arise from the yearning that is an expression of freedom: it does not have to be this way, it could be otherwise. Imagination is the faculty of transforming the experience of what is into a projection of what could be, the faculty that frees thought to form ideals and norms.⁴

Structural freedom as I have argued it here is in this way depends to a certain extent on conditions of social justice and equality; structural freedom aims to provide relational and dynamic principles for carving out spaces for freedom. Certainly, eliminating institutions of blatant domination such as slavery is obviously necessary to structural freedom, but

⁴ Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) 6.

there are other, more subtle forms of domination to be identified. This identification can only take place in context, however. One necessary component of structural freedom is therefore the creation and maintenance of institutional settings that foster the space and time necessary for listening to the claims of the disenfranchised:

Claims about suffering, as well as claims made in anger, can be attempts to enact democratic political relationships. Both are part of the language of citizenship. What I am suggesting is that this conception of democratic citizenship requires, as part of its conditions for realization, a practice of political listening. Such listening is best understood not as an attempt to get an 'authentic' meaning, but as a participation in the construction of meaning. And I think we democratic theorists need to begin to imagine supple institutional spaces that might support such interaction and foster and sustain coalition politics.⁵

Structural freedom provides not a universal "ground" for freedom, but rather spells out some institutional preconditions for arriving at interrelationships and contexts where freedom is viable. Furthermore, if freedom is a process rather than a static state, and if the material and the symbolic are imbricated in the way that I have indicated here, then it follows that freedom depends upon the institutional conditions for participation in the construction of material/symbolic resources/schemas. Structural freedom implies that we ought to build flexibility and responsiveness into institutional design in order to respond to shifting and contextual needs.

Another implication of this view of freedom for political life is that we need to think much more expansively, creatively, and collectively about institutions and their function in our common lives. First, this entails paying much closer attention to the ways in which spaces themselves are actually designed. The reflexive approach to structure outlined here takes much more seriously than most accounts of freedom the effect of actual material spaces on the possibilities for freedom. For example, Susan Bickford

⁵ Susan Bickford, "Anti-Anti-Identity Politics: Feminism, Democracy, and the Complexities of Citizenship," *Hypatia* Vol. 12, No. 4 (Fall 1997) 126.

argues that city spaces inhibit the ability of citizens to participate in an egalitarian democratic life.

The architecture of our urban and suburban lives provides a hostile environment for the development of democratic imagination and participation. From Bentham to Foucault and beyond, social theorists have recognized the role of architecture in constructing subjectivity. But the built environment also constructs intersubjectivity, and it is the form of intersubjective relations currently being generated and entrenched that is especially pernicious: the world is being constructed, quite literally, in ways that adversely affect how we regard politics and who we recognize as fellow citizens.⁶

This situation, in which “material” factors in significant ways affect political possibilities, would be of central concern to a structural theory of freedom. This is unlike theories of freedom that take interference or coercion to be the main obstacle of freedom, or which see freedom in resistance to given material/symbolic structures. Instead, freedom is implicated in the very ground, both quite literally (or “materially”) and symbolically⁷ on which intersubjectivity is formed.

Institutional design is part of this enterprise in another, related way. All too often, democratic theorists remain locked in ways of thinking about institutions that replicate the very systemic problems we are trying to subvert. John Nelson combines feminist and republican understandings of institutions as I do here in order to imagine new institutional possibilities, taking advantage of the transposability of schemas in creating spaces for the exercise of agency. He explains that in the imagination of science fiction writers, radical institutional potentialities can be imagined in a way that is not possible within traditional frameworks for thinking about institutions:

Feminist science fiction reimagines public institutions to make them more flexible, playful, and responsive to everyday needs. Science fiction with a

⁶ Susan Bickford, “Constructing Inequality: City Spaces and the Architecture of Citizenship,” *Political Theory* Vol. 28 No. 3 (June 2000) 356.

⁷ Again, it bears repeating that I do not think the “material” and the “symbolic” can be so neatly separated.

feminist and republican focus would free our institutions from Max Weber's iron cage of routinization, legalization, rationalization, and bureaucratization. The new institutions found in science fiction include affinity families and familial firms; occasional cults and life-long schools; regulative carnivals and anarchic wild zones; women warriors and male mothers; cybernetic tutors, leaders, and friends; ritualized happenings, virtual communities, and civilizational way-stations. We find in such institutional inventions the kind of story-experiments that help us rethink our theories of politics and our sense of how institutions might work.⁸

It is in the interest of policy planners and theorists alike to turn to nontraditional sources to think through ways in which institutions might be made to work for us rather than against us, to remind ourselves that human beings continue (on some level) to be involved in the ongoing (re)construction of institutional design.

That said, as I have indicated, I insist that structural freedom depends upon a non-oppressive context. The principles of non-domination and self-definition subject institutional arrangements to careful scrutiny; freedom inheres when individuals do not exist in relationships of domination with others and when they are not subject to definitions of their persons and choices they do not take as their own. I will indicate three areas in particular need of re-examination from the point of view of structural freedom. First, structural freedom would likely be compatible with those institutional conditions, including but not limited to, a universal welfare system in which resources, both material and symbolic, would be available on a more egalitarian basis. Such a system would help to mediate relationships of person-to-person and person-to-institution domination, but if and only if it were universal in nature. Requiring recipients of benefits to conform to definitions as "needy" or "dependent," for example, would violate the principle of self-definition. Second, the principles of structural freedom would indicate

⁸ Anna Lorien Nelson and John S. Nelson, "Politics and Literature: Institutions in Feminist and Republican Science Fiction," *Legal Studies Forum* (22) 1988, 645.

that we ought to pay particularly close attention to those institutions which connect the personal and the social, the cultural and the political. The laws and policies that surround kinship structures (or “family”) is a particularly important place to look. We might ask, in what ways to kinship structures produce relationships wherein one person is subject to the arbitrary interference of another? In what ways do the central mediating institutions of political society require conformity to oppressive definitions of the self in order that “individuals” are treated differently based on a differential position within said structure? And finally, what we do, quite literally, on a day to day basis plays a central role in the creation and maintenance of structural interrelationships; human action exists at the nexus of the material and the symbolic, resources and schemas. Prevailing divisions of labor, which overlap structures of race, class, and gender, ought to be considered highly suspect; such divisions create inequalitarian access to existing resources. If human beings make (meaning of) their lives in large part through what they do and where they do it, in relation with others, then structures of labor should be of central concern to any theory of freedom concerned with domination and hegemonic definition.

Dominant conceptions of freedom posit freedom as at odds with the ideals of equality and justice. It is my hope that the structural understanding of freedom I have developed here provides a way to think about freedom that can be seen as compatible with equality and justice. How we understand central ethical and normative political concepts such as freedom will play a role in what we take our collective possibilities to be. Structural freedom holds out hope for a institutional conditions where freedom is more than a possibility for some at the expense of the many.

BIBLIOGRAPHY

- Abrams, Philip. *Historical Sociology*. Near Shepton, England: Open Books, 1982.
- Ahearn, Laura. "Language and Agency." *Annual Review of Anthropology*, Vol. 30 (2001) 109-137.
- Alvarez, Sonia. "Advocating Feminism: The Latin American Feminist NGO 'Boom.'" *International Feminist Journal of Politics*, Vol. 1, No. 2 (September 1999) 181-209.
- Arendt, Hannah. "What Is Freedom?" in *Between Past and Future*. New York: Penguin, 1993, 143-171.
- Aristotle. *The Politics*. Trans. by Carnes, Lord. Chicago: University of Chicago Press, 1984.
- Bailyn, Bernard. *The Ideological Origins of the American Revolution*. Cambridge: Harvard University Press, 1967.
- Bay, Christian. *The Structure of Freedom*. Stanford: Stanford University Press, 1958.
- Beauvoir, Simone de. *The Second Sex*. Ed. and Trans. by H.M. Parshely. New York: Vintage Books, 1989.
- Berlin, Isaiah. "Two Concepts of Liberty," in *Four Essays on Liberty*. New York: Oxford University Press, 1998.
- Bickford, Susan. "Anti-Anti-Identity Politics: Feminism, Democracy, and the Complexities of Citizenship." *Hypatia*, Vol. 12, No. 4 (Fall 1997) 111-131.
- , "Constructing Inequality: City Spaces and the Architecture of Citizenship." *Political Theory*, Vol. 28, No. 3 (June 2000) 355-376.
- Bock, Gisela; Quentin Skinner; and Maurizio Viroli, eds. *Machiavelli and Republicanism*. New York: Cambridge University Press, 1990.
- Braidotti, Rosi. "Embodiment, Sexual Difference, and the Nomadic Self." *Hypatia*. Vol. 8, No. 1 (Winter 1993) 1-13.
- Brown, Wendy. *Manhood and Politics*. Totowa, NJ: Rowman and Littlefield Publishers, 1988.
- , *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton University Press, 1995.
- Bourdieu, Pierre. *Outline of a Theory of Practice*. Cambridge: Cambridge University Press, 1997.
- Butler, Judith. *Bodies that Matter*. New York: Routledge, 1993.
- , *Gender Trouble: Feminism and the Subversion of Identity*. New York: Routledge, 1990.
- Calhoun, Craig. "A Different Poststructuralism." *Contemporary Sociology*. Vol. 25, Is. 3 (May, 1996) 302-305.
- Cicero. *On Obligations*. Trans. and intro by P.G. Walsh. Oxford: Oxford University Press, 2000.
- , *On the Commonwealth*. Trans. and Intro by George Sabine and Stanley Smith. New York: Macmillan Publishing Company, 1976.
- Collins, Patricia Hill. *Black Feminist Thought*. New York: Routledge, 1991.
- Connell, Robert W. *Gender and Power: Society, the Person, and Sexual Politics*. Stanford: Stanford University Press, 1987.

- Constant, Benjamin. "The Liberty of the Ancients Compared with That of the Moderns." In trans. and ed. by Biancamaria Fontana *Political Writings*. Cambridge: Cambridge University Press, 1988.
- Cornell, Drucilla. *At the Heart of Freedom: Feminism, Sex, and Equality*. Princeton: Princeton University Press, 1998.
- . *The Imaginary Domain: Abortion, Pornography, and Sexual Harassment*. New York: Routledge, 1995.
- Crenshaw, Kimberle. "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color." *Stanford Law Review*: 1241, 1991.
- Daniels, Cynthia. *At Women's Expense: State Power and the Politics of Fetal Rights*. Cambridge, Mass.: Harvard University Press, 1993.
- . "Between Fathers and Fetuses: The Social Construction of Male Reproduction and the Politics of Fetal Harm." *Signs*. 22: Spring, 1997, 579-616.
- Di Stefano, Christine. *Configurations of Masculinity*. Ithaca: Cornell University Press, 1991.
- Dolgin, Janet L. *Defining the Family: Law, Technology, and Reproduction in an Uneasy Age*. New York: New York University Press, 1997.
- Douglass, Frederick. *Narrative of the Life of Frederick Douglass, an American Slave*. Ed. Houston A. Baker, Jr. New York: Penguin Books, 1986.
- Dryzek, John S. "The Good Society versus the State: Freedom and Necessity in Political Innovation." *The Journal of Politics*. Vol. 54, Is. 2 (May, 1992) 518-540.
- Duggan, Lisa, and Nan. D. Hunter. *Sex Wars: Sexual Dissent and Political Culture*. New York: Routledge, 1995.
- Elshtain, Jean Bethke. *Public Man, Private Woman: Women in Social and Political Thought*. Princeton: Princeton University Press, 1981.
- Emirbayer, Mustafa and Mische, Ann. "What is Agency?" *American Journal of Sociology*. Vol. 103, Is. 4 (Jan. 1998) 962-1023.
- Ferguson, Ann. "Moral Responsibility and Social Change: A New Theory of Self." *Hypatia*. Vol. 12, No. 3 (Summer 1997) 116-141.
- Fineman, Martha Albertson. *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform*. Chicago: University of Chicago Press, 1991.
- . *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies*. New York: Routledge, 1995.
- Flathman, Richard E. *The Philosophy and Politics of Freedom*. Chicago: University of Chicago Press, 1987.
- Fraser, Nancy. *Justice Interruptus*. New York: Routledge, 1997.
- Foucault, Michel. *Power/Knowledge*. New York: Pantheon Books, 1980.
- . *The Foucault Reader*. Ed by Paul Rabinow. New York: Pantheon Books, 1984.
- Giddens, Anthony. *The Giddens Reader*. Stanford: Stanford University Press, 1993.
- Habermas, Jurgen. *The Structural Transformation of the Public Sphere*, trans. Thomas Burger. Cambridge, Ma: The MIT Press, 1991.
- Hall, Peter A. and Rosemary C. R. Taylor, "Political Science and the Three New Institutionalisms." *Political Studies*. Vol. XLIV (1996) 936-957.
- Hartz, Louis. *The Liberal Tradition in America: An Interpretation of American Political Thought Since the Revolution*. New York: 1955.

- Hays, Sharon. "Structure and Agency and the Sticky Problem of Culture." *Sociological Theory*, Vol. 12, No. 1 (March 1994) 57-72.
- Hearst, Alice. "Constructing the Family in Law and Policy." *Law and Social Inquiry*, Vol. 22, no. 1 (1997), 131-148.
- Hirschmann, Nancy. *The Subject of Liberty: Toward a Feminist Theory of Freedom*. Princeton: Princeton University Press, 2003.
- , "The Theory and Practice of Freedom: The Case of Battered Women," in Shanley and Narayan, eds. *Reconstructing Political Theory*, 194-210.
- , "Toward a Feminist Theory of Freedom." *Political Theory*, Vol. 24, No. 1 (February 1996) 46-67.
- , and Christine Di Stefano, eds. *Revisioning the Political*. Boulder: Westview Press, 1996.
- Hobbes, Thomas. *Leviathan*. Indianapolis: Hackett Publishing Company, Inc., 1994.
- hooks, bell. *From Margin to Center*. Cambridge, Ma: South End Press, 1984.
- Jamieson, Beth Kiyoko. *RealChoices: Feminism, Freedom, and the Limits of the Law*. University Park, PA: Pennsylvania State University Press, 2001.
- Josephson, Jyl. *Gender, Families, and the State*. New York: Rowman and Littlefield, 1997.
- Kant, Immanuel. *Groundwork of the Metaphysics of Morals*. Ed. and Trans. by Mary Gregor. New York: Cambridge University Press, 1997.
- Kateb, George. *The Inner Ocean: Individualism and Democratic Culture*. Ithaca: Cornell University Press, 1992.
- Kaufman-Osborn, Timothy V. *Creatures of Prometheus: Gender and the Politics of Technology*. Lanham: Rowman and Littlefield, 1997.
- Kay, Judith W. "Politics without Human Nature? Reconstructing a Common Humanity." *Hypatia*. Vol. 9, No. 1 (Winter 1994) 21-52.
- Kittay, Eva Feder. *Love's Labor: Essays on Women, Equality, and Dependency*. New York: Routledge, 1999.
- Levi-Strauss, Claude. *Structural Anthropology*. New York: Basic Books, 1963.
- Locke, John. *Second Treatise of Government*. Indianapolis: Hackett Hackett Publishing Company, Inc., 1980.
- Lorber, Judith. *Paradoxes of Gender*. New Haven: Yale University Press, 1994.
- Lukes, Steven. *Power: A Radical View*. London: The Macmillan Press Ltd, 1974.
- Machiavelli, Niccolo. *Discourses on Livy*. Trans. by Julia Bondanella and Peter Bondanella. New York: Oxford University Press, 1997.
- Mackenzie, Catriona, and Natalie Stoljar, eds. *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*. New York: Oxford University Press, 2000.
- MacKinnon, Catharine. *Only Words*. Cambridge, Massachusetts: Harvard University Press, 1993.
- , "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence" *Signs*. Vol. 8, no. 41: 1983, 635-658.
- March, James and Johan Olson. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review*. 1984: Vol. 78, 734.
- Marx, Karl, and Frederick Engels. *The Marx-Engels Reader, Second Edition*. Ed. by Robert C. Tucker. New York: W. W. Norton & Company, 1978.

- Mason, Mary Ann. *From Father's Property to Children's Rights: The History of Child Custody Policy in the United States*. New York: Columbia University Press, 1994.
- Matthes, Melissa M. *The Rape of Lucretia and the Founding of Republics*. University Park, PA: Pennsylvania State University Press, 1999.
- McNay, Lois. *Gender and Agency: Reconfiguring the Subject in Feminist and Social Theory*. Cambridge: Polity Press, 2000.
- Mill, John Stuart. *On Liberty*. Indianapolis: Hackett Press (1859), 1978.
- Mink, Gwendolyn. *Welfare's End*. Ithaca: Cornell University Press, 1998.
- Nedelsky, Jennifer. "Reconceiving Autonomy: Sources, Thoughts, and Possibilities." *Yale Journal of Law and Feminism*, Vol. 1, no. 7 (1989), 7-36.
- Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press, 2000.
- Okin, Susan Moller. *Justice, Gender, and the Family*. New York: Basic Books, 1989.
- . *Women in Western Political Theory*.
- Ortner, Sherry. *Making Gender: The Politics and Erotics of Culture*. Boston: Beacon Press, 1996.
- Paine, Thomas. *Common Sense*. Ed. Isaac Kramnick. New York: Penguin Books, 1976.
- Pateman, Carole. *The Sexual Contract*. Stanford: Stanford University Press, 1988.
- Pettit, Phillip. *A Theory of Freedom: From the Psychology to the Politics of Agency*. Oxford: Oxford University Press, 2001.
- . "Keeping Republican Freedom Simple." *Political Theory* Vol. 30, No. 3 (June 2002) 339-356.
- . *Republicanism*. Oxford: Oxford University Press, 1997.
- Pitkin, Hanna. "Are Liberty and Freedom Twins?" *Political Theory*. Vol. 26, No. 4 (1988) 523-52.
- . *Fortune is a Woman: Gender and Politics in the Thought of Niccolo Machiavelli*. Berkeley: University of California Press, 1984.
- Pocock, J. G.A. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton: Princeton University Press, 1975.
- Putnam, Robert. *Bowling Alone*. New York: Simon and Schuster, 2000.
- Rawls, John. *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1971.
- Rhode, Deborah L. and Martha Minow, "Reforming the Questions, Question the Reforms: Feminist Perspectives on Divorce Law." In ed. Stephen D. Sugarman and Herma Hill Kay, *Divorce Reform at the Crossroads*. New Haven: Yale University Press, 1990, pp. 191-210.
- Rodgers, Daniel T. "Republicanism: The Career of a Concept" *The Journal of American History* (June 1992) 11-39.
- Rothstein, Bo. *Just Institutions Matter*. Cambridge: Cambridge University Press, 1998.
- Rousseau, Jean-Jacques. *Emile, or On Education*. Trans. by Allan Bloom. New York: Basic Books, 1979.
- . *On the Social Contract with Geneva Manuscript and Political Economy*. Ed. by Roger D. Masters and trans. by Judith R. Masters. Boston: St. Martin's Press, 1978.

- Ryan, Alan, ed. *The Idea of Freedom: Essays in Honour of Isaiah Berlin*. New York: Oxford University Press, 1979.
- Sandel, Michael, Ed. *Liberalism and Its Critics*. New York: New York University Press, 1984.
- Sawicki, Jana. "Foucault and Feminism: Toward a Politics of Difference." In Eds. Mary Lyndon Shanley and Carole Pateman, *Feminist Interpretations and Political Theory*. University Park, Pa.: Pennsylvania State University Press (1991) 217-231.
- Saxonhouse, Arlene W. *Women in the History of Political Thought: Ancient Greece to Machiavelli*. Westport, CT: Praeger Publishers, 1985.
- Scott, Joan W. "Deconstructing Equality-Versus-Difference." *Feminist Studies* (Spring 1988): 33-50.
- Sellers, M.N.S. *American Republicanism: Roman Ideology in the United States Constitution*. New York: New York University Press, 1994.
- , *The Sacred Fire of Liberty: Republicanism, Liberalism, and the Law*. New York: New York University Press, 1998.
- Sen, Amartya. *Development as Freedom*. New York: Knopf, 1999.
- Sewell, William H. "A Theory of Structure: Duality, Agency, and Transformation." *American Journal of Sociology*. Vol. 98, Is. 1 (July, 1992) 1-29.
- Shanley, Mary L. "Fathers' Rights, Mothers Wrongs? Reflections on Unwed Fathers' Rights, Patriarchy, and Sex Equality." In ed. Joan C. Callahan, *Reproduction, Ethics, and the Law: Feminist Perspectives*. Bloomington: Indiana University Press, 1995, pp. 219-248.
- and Uma Narayan, eds. *Reconstructing Political Theory: Feminist Perspectives*. University Park: Pennsylvania State University Press, 1997.
- Skinner, Quentin. *Liberty before Liberalism*. Cambridge: Cambridge University Press, 1998.
- Snyder, R. Claire. *Citizen Soldiers and Manly Warriors: Military Service and Gender in the Civic Republican Tradition*. Lanham, MD: Rowman and Littlefield Publishers, Inc., 1999.
- Stacey, Judith. *In the Name of the Family: Rethinking Family Values in the Postmodern Age*. Boston: Beacon Press, 1996.
- Stevens, Jacqueline. *Reproducing the State*. Princeton: Princeton University Press, 1999.
- Sunstein, Cass R. "Preferences and Politics." *Philosophy and Public Affairs* Vol. 20, Issue 1 (Winter 1991): 3-34.
- Taylor, Charles. *Sources of the Self: The Making of Modern Identity*. Cambridge, Ma.: Harvard University Press, 1989.
- , "What's Wrong with Negative Liberty." In ed. Alan Ryan, *The Idea of Freedom*. Oxford: Oxford University Press, 1979, 173-193.
- Tronto, Joan. *Moral Boundaries: A Political Argument for an Ethic of Care*. New York: Routledge, 1993.
- Wallerstein, Immanuel. "Social Science and the Quest for a Just Society." *American Journal of Sociology*. Vol. 102, Is. 5 (March, 1997) 1241-1257.
- Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books, 1983.

- Weitzman, Lenore. *The Divorce Revolution*. New York: Free Press, 1985.
- Weston, Kath. *Families We Choose: Lesbians, Gays, Kinship*. New York: Columbia University Press, 1991.
- Wildavsky, Aaron. "Choosing Preferences by Constructing Institutions: A Cultural Theory of Preference Formation." *The American Political Science Review*. Vol. 81, Issue 1 (March 1987): 3-22.
- Williams, Bernard. "From Freedom to Liberty: The Construction of a Political Value." *Philosophy and Public Affairs*. Vol. 30, No. 1 (2001) 3-26.
- Williams, Joan C. "Deconstructing Gender." In eds. Leslie Friedman Goldstein *Feminist Jurisprudence: The Difference Debate*. Lanham, Maryland: Rowman & Littlefield Publishers, 1992, pp.41-98.
- Williams, Patricia. *The Alchemy of Race and Rights*. Cambridge: Harvard University Press, 1991.
- Wingrove, Elizabeth. *Rousseau's Republican Romance*. Princeton: Princeton University Press, 2000.
- Wood, Gordon S. *The Creation of the American Republic 1776-1787*. Chapel Hill: University of North Carolina Press, 1998.
- Young, Iris Marion. *Justice and the Politics of Difference*. Princeton: Princeton University Press, 1990.
- , "Reflections on Families in the Age of Murphy Brown: On Gender, Justice, and Sexuality." In eds. Nancy J. Hirschmann and Christine Di Stefano, *Revisioning the Political: Feminist Reconstructions of Traditional Concepts in Western Political Theory*. Boulder: Westview Press, 1996, pp. 251-270.
- Zerilli, Linda. *Signifying Woman: Culture and Chaos in Rousseau, Burke, and Mill*. Ithaca: Cornell University Press, 1994.

CURRICULUM VITA

Jennifer Anne Einspahr

1992-1996	Whitman College B.A. with Honors in Politics, 1996
1997-2003	Rutgers, the State University of New Jersey Ph.D. in Political Science, 2004