JUSTICE BY MEANS OF DEMOCRACY

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JUSTICE

BY MEANS OF

Democracy

DANIELLE ALLEN

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In every human society, there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort and to diffuse their influence universally and equally.

—CESARE BECCARIA

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful.

—*FEDERALIST*, NO. 51,
JAMES MADISON/ALEXANDER HAMILTON

I tell my students, "When you get these jobs that you have been so brilliantly trained for, just remember that your real job is that if you are free, you need to free somebody else. If you have some power, then your job is to empower somebody else. This is not just a grab-bag candy game."

—TONI MORRISON

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Allen_9780226777092_FM.indd vi Achorn International 09/16/2022 08:56PM

Contents

Part I: A Theory of Justice Revised

PROLOGUE
On Surprise and the Purpose of Political Philosophy
3

CHAPTER 1
Justice That Sacrifices Democracy: An Error
16

CHAPTER 2
Justice by Means of Democracy: An Ideal and Its Design Principles
31

Part II: Subsidiary Ideals of Justice for Each Domain

CHAPTER 3
The First Subsidiary Ideal: Egalitarian Participatory Constitutional Democracy
67

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34

Uncorrected proofs for review only

Allen_9780226777092_FM.indd vii Achorn International 09/16/2022 08:56PM

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14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

CHAPTER 4
The Second Subsidiary Ideal: A Connected Society
101

CHAPTER 5
The Third Subsidiary Ideal: Polypolitanism
129

CHAPTER 6
The Fourth Subsidiary Ideal: Empowering Economies
158

Part III: From Ideal to Design Principles to Practice

CHAPTER 7
A New Model for the Practice of Democratic Citizenship
199

Epilogue
228

Acknowledgments *231*
Notes *235*
Bibliography *251*
Index *273*

Uncorrected proofs for review only

PART I

A Theory of Justice Revised

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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Prologue

ON SURPRISE AND THE PURPOSE OF POLITICAL PHILOSOPHY

Surprised by Politics

The Great Recession of 2008; Thomas Piketty's *Capital in the Twenty-First Century*; earthshaking elections in the past eight years in the US and Britain, in South America, and across Europe; a global pandemic; and the Russian invasion of Ukraine have put questions of political economy, social stability, governance, and their entanglement on the map for everyone, not just economists. Prior to the arrival of the COVID-19 pandemic, many wondered whether the political surprises of recent years flowed from the dramatic increases in income and wealth inequality in developed countries, and from the suddenly diverging fates of those with and without university education. Many were the calls to revisit our approach to political economy. With the pandemic, in developed democracies like the US and the UK, we also witnessed profound failures of governance, coupled with economic ruin for many, even as the well-off sailed along relatively untouched. The need for a reinvented political economy has become only more pressing. Yet reinventing political economy actually requires stepping outside the domain of economics. Economists have, I think, been answering the questions set for them by political philosophers. If we wish for different answers, we have to devise different questions.[1]

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The purpose of this book is to propose some fresh questions—in particular, questions about political equality. The road to proposing fresh questions for economists lies through a reconsideration of the basic foundations of justice. I will propose in this book that the surest path to justice is the protection of political equality; that justice is therefore best, and perhaps only, achieved by means of egalitarian participatory constitutional democracy; and that the social ideals and organizational design principles that flow from a recognition of the fundamental importance to human well-being of political equality and democracy provide an alternative framework within which economists might do their work.

To ask an audience—or readers—to think about political equality, a highly abstract concept, is like scheduling your course lectures at 8 a.m: you ensure, in some sense, that those who read beyond the introduction are ready for something serious. In this case, I hope to offer a journey into political philosophy and a reflection on some of the basic concepts that define justice, democracy, and democratic aspirations. In my view, important features of our contemporary experience across multiple domains—political, social, and economic—flow from intellectual mistakes that have been made consistently over the past few decades and that have their origins even earlier in the tradition of political philosophy. I would like to correct these mistakes. Understanding recent events and building foundations for a new political economy will both require us to journey back to see where things went wrong. I will lead us on this journey but will do so mainly to return to concrete political and economic realities. This itself is a method: the journey from epistemic failures in the present to a reconsideration of underlying theoretical paradigms and back to the present to revisit our understandings of current realities with fresh eyes.

What is the relationship between political economy, political philosophy, and a theory of justice? As economic theorists from Adam Smith to Karl Marx to John Maynard Keynes to Friedrich Hayek have recognized, any given economic system is built out of a set of underlying rules for human interaction. For Smith and Hayek, the rules that

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undergird a healthy market economy were the products of long processes of social evolution generating a conventional morality anchored in practices like honesty, promise-keeping, property, and contract. For Marx, the relevant rules were designed by those with power in order to preserve their power and support their capacity to extract value from others. All recognized that the rules of the game structuring human interaction and those generating particular forms of economy embodied distinctive sets of social ideals and could be redesigned. Hayek expected improvement could be achieved at the margins through modest and restrained forms of experimentalism; he believed that innovations could be made to stick through processes of human imitation and adaptation. Marx thought the rules could be comprehensively reorganized and made to stick from the top down. Hayek recognized the power in self-organizing systems; Marx recognized operations of power in the institutions of human governance and believed they could be redirected in a wholesale fashion.

More modestly, the American founders—authors of the Declaration of Independence, the Constitution, and the Federalist Papers—also saw the power and value in intentionally designed institutions of human governance. Their goal was a set of institutions that recognized the natural dynamics of human interaction—both of competition and of cooperation—and worked to guide those dynamics in directions supportive of the "safety and happiness of the people" and its "general welfare." Both self-organizing evolution and intentional governance can bring benefit to human society; both can also bring ill effects.[2]

A theory of justice does not seek to describe the rules that have come to be in human society—whether as a result of the emergence of self-organizing systems of human cooperation or as a result of intentional efforts to organize human governance.[3] Instead, a theory of justice seeks to identify the parameters for determining which among possible sets of rules for human interaction yields the best prospects for human flourishing, at both an individual and a species level.[4] These parameters would then be relevant to political economy in setting directions for and bounds to our experimentalism, as we seek to identify

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which economic policies count as redesigns that improve, rather than worsen, human prospects.

Readers will initially be skeptical that an ideal of political equality can enrich our understanding of justice generally or help us renovate political economy. In our contemporary world, invocations of political equality most immediately call to mind topical challenges such as voting rights, campaign finance reform, and felon re-enfranchisement in the US; or the issues of party functioning and membership within nations and democratic deficits in the operations of the European Union in Europe. A few years ago, if you had asked someone what political equality was mainly about, I think those are the sorts of issues they would have offered in reply. The topics are precise and technical. Yet that was before we were all so seriously surprised by events—the election of Donald Trump and the Brexit vote, for example; the upending of German politics by the migration crisis; the governance crises emerging in the US with the pandemic and in Europe with the Russian attack on Ukraine. At stake in understanding political equality are deeper issues of the strength and health of human societies and their ability to advance the general welfare by building collaborative institutions and practices that deliver safety and happiness to all.

As it happens, our best route to understanding what political equality fundamentally is will involve an investigation into why we were so surprised by those events. Such an inquiry brings to light how policy paradigms in use for the past few decades—and economic paradigms in particular—contain a blind spot that explains our surprise. This blind spot has arisen, I will argue, from the dependence of much recent economic thought on underlying, implicit theories of justice that have shortchanged political equality and democracy, sometimes even despite their authors' best intentions. I will suggest that a shift of our attention to political equality, and to a richer conception of political equality, will help us eliminate that blind spot.

With a fresh approach to a theory of justice, this book seeks to lay a foundation to reorganize policy debates around the value of political

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equality and the idea that justice at home is best pursued by means of democracy at home.

Pragmatism and the Purposes of Political Philosophy

Before beginning, I want to say a few more words about myself and my methods as a political philosopher. People often ask me what kind of political philosopher I am. I answer that I am a eudaemonist democratic pragmatist. But what on earth does that mean? *Eudaemonist* is the ancient Greek word for someone who focuses on how human beings can best flourish and who takes that flourishing as the overall goal of all thought and effort. I think that there are better and worse ways for human beings to live, and the better ways support our flourishing, and that makes me a eudaemonist. But at the same time, I think human beings can figure out how they will best flourish only by putting their heads together, collectively, through democratic practices of deliberation and decision-making. I don't think we get our answers about how to flourish from on high or from sources external to human judgment or from any individual human being. That makes me a democrat. Finally, I believe the surest way we can determine our best path to flourishing is by making judgments about what is and isn't working, given what we understand about our purposes—our hopes and aspirations for our own well-being—and knowing that our judgments will be fallible and will need correction. Commitment to this ongoing practice of experimentalism and judgment makes me a pragmatist, and even more technically, a fallibilist, corrigibilist pragmatist. But to keep it (relatively!) simple, I just label my approach that of a eudaemonist democratic pragmatist.

To help readers orient themselves to my argument, let me provide a fuller explanation of the method I deploy. My pragmatist method stands in contrast to metaphysical approaches. My method is more Deweyan or Wittgensteinian than Platonist or Kantian. "Beliefs are rules for action," the late nineteenth-century philosopher and psychologist William James famously wrote. With that comment, he identified

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a framework for testing the content of ideas that was an alternative to what, say, Platonic metaphysics or Kantian deontology had long provided. James meant that we can fully understand the content of an idea, a value, or a normative claim only after we have begun to see how it affects the world. Once someone tries to act on the basis of a normative claim, what changes around them? What practical effects do their beliefs have? If new beliefs secure a better set of experiences for those impacted by the actions stemming from them, then those new beliefs are good.

Conversely, when our beliefs leave us surprised by the world, we should investigate where and why they fail to have traction with realities, and experiment with new beliefs, developed with a view to improving the fit between belief, reality, and desired outcome. To focus on how well our beliefs deliver to us the world we hope to live in is not a narrowly consequentialist view. As we consider whether our beliefs are serving us well, we are also asking whether we are building worlds in which it is possible for us to be the kinds of people that we wish to be. Pragmatism can look like either consequentialism or virtue ethics. It differs from both in drawing the basis for judgment about the states of being its principles usher into existence not from external and fixed metrics (whether those are deontological or teleological) but rather from ongoing practices of judgment about well-being and what is effectively hypothesis testing of those judgments.

Or put it this way: How are we to know whether a set of experiences emerging from new ideas is "better" than the experiences the relevant group of people had previously? We have to count on those people to make judgments, based on conversation among themselves, about their own flourishing. Pragmatism, like Aristotelian eudaemonism, rests on the belief that human beings can fare better or worse; they can flourish or not. Aristotle sought a once-and-for-all account of that flourishing by studying nature. Pragmatists, in contrast, achieve accounts of flourishing through democratic means.

Like John Stuart Mill, pragmatists recognize all individuals as engaged in the business of determining whether they are happy.[5] Prag-

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matists recognize that because none of us *can* know the minds of others, other than partially, hazily, and wishfully, none of us is in a position to make a sound determination of what will count as happiness for another.[6] Each of us must do that for ourselves. Understanding what counts as human flourishing therefore requires two things. First, it requires social practices and organizations that permit individualized explorations by each person of their own happiness. Second, it requires democratic conversations that permit the cohabitants of a community, of a nation, of the globe to seek solutions—for all decisions that we must necessarily make together—that best permit us to bring our multiple views about flourishing into alignment. Democratic eudaemonism shares some features with Aristotelianism, but it is fundamentally pragmatist, rather than neo-Aristotelian, because on this account, the question of what makes us happy can be answered only through democratic means.

The second sentence of the Declaration of Independence provides a particularly profound statement of this pragmatist approach to democratic eudaemonism. Here it is in full:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The final clause is the most important for our purposes. From generation to generation, we must survey our circumstances, "the course of human events," and *judge* whether our government, whose purpose is to secure our rights to life, liberty, and an individualized pursuit of

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happiness, currently succeeds. Where it does not, we must revisit the basic terms of our social arrangements and reorganize them "as to us shall seem *most likely* to effect our Safety and Happiness" (emphasis added). The best we can do is make a probabilistic judgment about the joint structures that are "most likely" to achieve flourishing for all of us, a collective "safety and happiness." Moreover, we make this judgment, conceding our own fallibility as we make it. We know, as we act and as we do our best to judge rightly, that another generation will come along and correct us. The greatest philosophical contribution of the Declaration of Independence is its articulation of a species of pragmatism—this fallibilist, corrigibilist democratic eudaemonism.

Pragmatism assists our move into the future and helps us determine what to do by cultivating the practice of judgment and refining the terms of what counts as a good judgment. It gives us intellectual and normative tools for inching our way toward individual and collective flourishing. Yet pragmatism works backward, too. That is, we can use it to probe past historical practices for the values and normative commitments around which they were organized, and we can affirm those that have succeeded in delivering well-being and reject those that have undermined it.

Let's return again to William James's idea that beliefs are rules for action. A feature of a rule is that if it is applied consistently over time, it generates patterned behavior. Over the past three decades, in the United States, a rule has been introduced that children must be buckled into car seats. The result of this rule is that families have, on the whole, needed bigger cars to accommodate multiple car seats for their children; this has presumably contributed to the market shift over the past two decades toward SUVs and away from sedans, a shift that has to some degree offset improvements in fuel economy over the same period. To find the logic in a set of practices, as I deploy that idea, is to seek out the beliefs that led to the habitual behaviors that give a practice its patterned look.

This approach to studying sociopolitical phenomena is also similar to Pierre Bourdieu's method in *Outline of a Theory of Practice* (Bourdieu

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1977). In Bourdieu's analysis of practices, they are not stable, not static, as in a structuralist account. Instead, any given actor faces a set of social rules and may or may not decide to deploy them in the way they have been most recently used by those who preceded that actor on the stage. The rules are made and remade through these ongoing pragmatist re-engagements. As the poet Frank Bidart writes, "We fill pre-existing forms and when we fill them, we change them and are changed" ("Borges and I" in Bidart 1997). Rules can be remade, and as they are remade, beliefs evolve along with them. Nonetheless, some social phenomena do coalesce with more durable rules. State formation is a type of human development that has effected a near freezing into place of some norms—particularly those that pertain to political decision-making, marriage and membership, markets and property, war and punishment, and education.

In inviting people to scrutinize patterns of social difference, as I will do throughout this book, I invite us to become aware of how long-standing customary "rules of action" define social, economic, and political phenomena. First, I want to ascertain where those rules for action represent things that we still value and perhaps need to work harder to protect. Second, I want to identify where those rules represent beliefs that we might want to shift.

The argument in this book is therefore eudaemonistic, in an Aristotelian spirit, but that eudaemonism is linked to pragmatism, not metaphysics. This means it is linked to practices of judgment, not permanently fixed to algorithmically accessible metrics of well-being, whether established deontologically or teleologically.

In the book's argument, I start from John Rawls's *Theory of Justice* because it was in reading that book that I first had my own intuitions about where common conceptions of justice had lost traction with our realities (cf. Honneth 2014). No political philosopher of the past quarter century has had a more significant impact on political discourse in the English-speaking world than Rawls. He has given us many of our common and conventional "rules for action." A pragmatist inevitably

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starts from the reigning intellectual paradigms. As I pulled on the threads in Rawls's *Theory of Justice* that discomfited me and made me anxious about a lack of fit between the theory, our circumstances, and our aspirations, I came to see a pathway to an alternative set of beliefs about justice that might give us alternative rules for action.

New Rules for Action

As we will see, "rules for action" is a broad concept covering beliefs about what our ideals or goals should be, strategic design principles for specific organizational domains, and the tactical choices about rules and norms that can bring those design principles to life in practical, on-the-ground applications. This book tackles all of these subsets of rules for action: our ideals and goals, design principles that tether them to practice, and specific rules and norms for practice that flow from those design principles. While in this book I use these ideals, principles, and practical norms to sketch policy paths we might adopt going forward, we can also use them to look backward historically and sharpen our understanding of how reigning theories of justice and of political economy have synched up together over time. Table 1 provides a review of how classical liberalism, Keynesian social democracy, and neoliberalism forged links among theories of justice and broad social ideals, design principles for economic policy, and specific rules and norms for concrete applications of economic policy.

In this book, I offer a detailed set of rules for action that are alternatives to those that Rawls offered and to those that dominated in earlier paradigms of political economy. I offer this set of rules for action as a hypothesis about the pathway to human well-being. I provide an account of justice anchored by democracy and political equality, specify the ideals characterizing justice understood this way, identify subsidiary ideals that pertain to political, social, and economic realms, and clarify some of the design principles and context-specific rules and norms that emerge from those ideals. This set of alternative rules for action constitutes a road map of how we might make our way toward

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TABLE 1 Rules for action: Examples from the history of political economy

Paradigm of political economy	*Ideals*	*Guiding design principles for policy*	*Context-specific rules and norms in emblematic policies*
Classical liberalism	• Order • Rule • Utilitarianism • Antipaternalistic liberty • Autonomy (contra social hierarchies)	• Division of labor • Specialization • Competitive markets • Comparative advantage • Ricardian growth • Precursors of mechanism design • Cardinal utility	• Free trade • Antimonopoly • Complementarity of state-provided infrastructure and private investment
Keynsian social democracy	• Solidarity • Security • Fairness	• Aggregate demand • Paradox of thrift • Solidarity wages • Theory of second best	• Demand management • Tax transfer and public goods redistribution • Egalitarian supply-side policies
Neoliberalism	• Negative (formal) freedom • Procedural justice	• Self-interest (individuals and government officials) and competitive markets • No interpersonal comparisons of utility	• Laissez-faire economics • School vouchers • "Negative income" tax

Source: Adapted from Bowles and Carlin (2021).

human flourishing by pursuing justice by means of democracy. This approach to justice anchors a political economy that might be thought of as "power-sharing liberalism."

Tables 2–4 provide an overview of where we are headed. These tables will not be fully accessible yet; I haven't defined the basic terms that populate their cells. The goal of this book is to make these tables, and the forward pathway they map, understandable to readers. If I am able to do that, then I hope others will consider this pathway soundly enough judged to be worth testing out.

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TABLE 2 Core principles of justice

Domain	*Overarching ideal*	*Guiding design principles*	*Rules and norms*
Human life	Justice and human flourishing	• Non-sacrificeability of both positive and negative liberties for protection of human purpose • Political equality (defined by five facets) as first principle of flourishing • Difference without domination	Further rules for action flow from subsidiary ideals for each domain of human life. The subsidiary ideals are domain-specific versions of the guiding design principles of political equality first, non-sacrificeability, and difference without domination. The subsidiary ideals direct the strategic and tactical work involved in organizing the powers of government and other social institutions.

TABLE 3 Subsidiary ideals of justice, their guiding design principles, and consequent rules for action

Subdomain	*Subsidiary ideals*	*Guiding design principles*	*Rules and norms*
Political	• Egalitarian participatory constitutional democracy	• Energy • Republican safety • Inclusion	• Achieve equilibrium between minority-protecting mechanisms and majority-protecting mechanisms and voice and representation for all
Social	• Connected society • Polypolitanism	• Maximize bridging relationships while supporting polypolitan bonding relationships	• Reorganize authority and responsibility as well as organizational processes in civil society organizations to support bridging opportunities and power sharing
Economic	• Empowering economies: economic policy should support people's ability to function as citizens	• Free labor, democracy-supporting firms, and a good-jobs economy • Investments in bridging relationships • Democratic steering of the economy • Charters and rules that protect equal basic liberties, both positive and negative	• Use a relational lens to analyze the economy • Use a strict scrutiny standard to review practices and processes for domination, with the goal of achieving non-domination

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TABLE 4 Power-sharing liberalism: Justice by means of democracy as basis for political economy

Paradigm of political economy	*Ideals*	*Guiding design principles*	*Rules and norms*
Power-sharing liberalism	• Human flourishing • Political equality first • Difference without domination • Egalitarian participatory constitutional democracy • Connected society • Polypolitanism • Empowering economies	• Social preferences and principal agent models • "Identity economics" • Increasing returns and multiple equilibria • Networked economy • Enhanced mechanism design • Cardinal utility • Lived-experience policy making • Iterative co-design • Power sharing • Social discovery of solutions	• Investment in realm of pre-production and infrastructure of productive economy • End to wage theft • Workplace rights and voice, including control of scheduling/time • Good-jobs economy • Competition *for* the market via corporate governance reform • Civil society, market, and public sector partnerships to align natural and actual polities • Antimonopoly policies and practices

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1

Justice That Sacrifices Democracy

AN ERROR

A Twentieth-Century Blind Spot: A First Look

We have been blindsided by events and living in a state of intellectual surprise for much of the past decade and a half. This has occurred, I suggest, because of a blind spot in dominant liberal policy-making paradigms and in the political philosophies on which they rest: something has been occurring outside our field of vision. Theories, often implicitly or tacitly held, provide the lenses through which we interpret events around us. When our interpretations cease to have traction on the world as we experience it—and thereby cause us surprise—we ought to revisit our undergirding theories.

The dominant liberal policy paradigm, emerging from places like Harvard's Kennedy School of Government and operating in Washington think tanks and policy-making spaces, fuses two things: utilitarian economic welfarism and what might be considered a knockoff variant of Rawlsianism. I will call this knockoff "quasi-Rawlsian welfarism." Quasi-Rawlsian welfarism focuses on economic redistribution with reference to John Rawls's difference principle, as articulated in his landmark 1971 work, *Theory of Justice*.

In the utilitarian model, the goal of policy is to maximize societal happiness or, better, utility, as the economists label it. In its crudest

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forms, the effort to maximize aggregate utility relies on cost-benefit analyses, linked to preferences typically cast in terms of material goods. Much modeling of utility maximization in relation to preferences has abstracted away from the contextual, social, psychological, and cultural particularities of individual economic actors.[1] The pursuit of utilitarian welfare maximization has typically focused on maximizing aggregate growth—in terms of income and wealth—and on using redistributive policies to spread the benefit of that growth.

When philosopher John Rawls published *Theory of Justice* in 1971, one of his main goals was to overturn utilitarianism. He sought to prioritize the right over the good, establishing as the purpose of political order the protection of a framework of right, not the pursuit of any particular good, even utility or happiness. Yet even as, philosophically, he sought to overturn utilitarianism, in many ways the quasi-Rawlsianism that emerged in the wake of his work has reinforced utilitarianism's practical applications.

In the Rawlsian framework, the goal of a just society is twofold. First, there is a goal to protect a set of basic liberties (rights). Those basic liberties include things like the right of association, the right to free expression, and the right to participate politically. Second, there is a goal to pursue social and economic structures—within the constraint of protecting the above basic rights—that secure fair equal opportunity throughout the society and that benefit the least well-off in society. Rawls calls the obligation to benefit the least well-off the "difference principle."

In Rawls's own argument, the difference principle applies to income and wealth *and* also to the social bases of respect and positions of responsibility and power. In his view, the latter social and political resources should also be objects of distributive concern. Yet the difference principle has been applied by Rawls's interpreters most commonly in the domains of income and wealth. This focus reflects that fact that interpreting the difference principle in material terms is the more natural interpretation of the principle, even if such an interpretation runs contrary to Rawls's express intent. Since Rawls's innovative

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and influential difference principle has anchored the major part of the reception of his work, this habit of interpretation has led to a dominant focus, in philosophical discussions of justice, on the economic questions of distributive justice.[2] Relatedly, in the policy world, quasi-Rawlsianism, understood as a presumptive focus on redistributive taxation, has emerged as a common starting point for policy frameworks.

Without intending to, Rawls reinforced the utilitarian paradigm precisely by splitting off consideration of basic rights from his treatment of social and economic spheres, which were addressed via the difference principle.[3] He provided support for the utilitarian focus on growth, so long as it was tethered to redistribution.

In both utilitarian welfarism and quasi-Rawlsian welfarism, as expressed in the policy world, the core question for justice was long one of material distribution. That this is the case is clear from the implications of common parlance. When someone invokes the concept of social justice, the first thing that comes to mind tends to be matters of economic distribution and welfarist social rights. Similarly, when a speaker invokes the concept of inequality, the relevant kind of inequality the speaker has in mind is almost invariably economic inequality.[4] Only more recently has that conceptual association begun to widen to matters of social and political equality, thanks to the efforts of scholars working in feminist and critical race theory.[5] More broadly, economic inequality is what many scholars and the general public know how to talk about most comfortably, thanks to the intellectual support provided by policy paradigms coming out of utilitarian and Rawlsian welfarism.[6]

Two features of this fused utilitarian/quasi-Rawlsian policy paradigm merit attention. The first is that the utilitarian and the quasi-Rawlsian paradigms are both universalizing; they abstract away from the contextual specifics of any given society to develop overarching policy guidelines (utility maximization on the one hand and the difference principle on the other). Here quasi-Rawlsianism is in tune with Rawls himself. For instance, in *Theory of Justice*, Rawls seeks the definition of the "right" by asking us to imagine stepping behind "a veil of

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ignorance," where we no longer know anything about our own social situation; from that perspective in the imagination, we are to try to identify the principles that would constitute a just society, one that we would consider just regardless of whether we turned out to be one of the society's wealthier or poorer; male, female, or transgender; black, white, or brown; Christian, Buddhist, Muslim, Jewish, Hindu, atheist, or agnostic members; and so forth. The principles of justice are to be devised without taking into account any underlying demographic features of a society. Moreover, they are understood to apply universally, to any social context.

In the context of utilitarianism, the move to abstract away from social particularity is less a matter of the intentional design of the theory and more a necessary consequence of its mathematization. In principle, utility is a concept that can embrace not only a given actor's preferences for material outcomes but also his or her values and norms. But the project of "maximizing" utility effectively requires that we convert preferences into something arithmetic. Financial interests are conventionally used as a proxy for utility, thus flattening the particularities of preference that may in fact give meaning and shape to the life of any particular agent. The move to treat material gain, or money, as a proxy for utility permits universalization. Financial stakes can be translated into a currency and compared across countries and contexts without reference to the underlying demographic facts or situations on the ground in any given country. In other words, one of the things both of these intellectual paradigms do is turn our attention away from the underlying demographic and institutional arrangements of a society. We train our minds away from questions such as "Who has power and on account of what sorts of institutional structures and according to what sorts of allocations of resources and opportunities?"[7] Prices dominate our mental landscape, at the expense of the protocols of organization and the tokens of authority and obligation (social capital) that structure human cooperation in contexts of political and social governance. To give you a concrete example of the kind of abstraction I am trying to pinpoint, think about how the World Bank operated throughout the

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late twentieth century. The bank applied a set of boilerplate requirements for economic liberalization to developing economies as conditions for receiving loans.[8] The reigning welfarist policy paradigms have more generally taught us to overlook social and political phenomena that underlie economic conditions; this is their blind spot.

The development of a field of vision where economic questions are treated without reference to underlying political issues has also stemmed from the transition, over the course of the twentieth century, from law to economics as the primary academic influence on public policy. Sociologist Elizabeth Popp Berman (2014) has written well about the variety of factors—including new capacities for computation—that drove that change. Much could be said about this transition of influence, but suffice it here to note that it underscores the point I'm making. Legal thinking is fundamentally about the institutions of *specific* societies and about the consequences of those institutions' particularities for the specific societies in which they are found. Even subdisciplines like comparative law that compare legal systems in different places must begin by seeing the specificity of the legal institutions in each place under comparison. When law dominated the policy-making universe, universalizing policy approaches that abstracted from demographic and social specificity were not broadly available.

The abstracting, universalizing features of the fused utilitarian/quasi-Rawlsian welfarism that dominated policy-making of the late twentieth century produced theories with a distinctive field of vision occluding society, politics, and political rights. They left us vulnerable to being surprised not only by 2008 but also by Brexit, Trump, Bolsonaro, Orban, the resurgence of a far right in Germany, and the aggression of Russia. Of course, this policy paradigm has its own historical backstory, deriving from the history of political philosophy. I turn to that next.

Our Twentieth-Century Blind Spot: The Backstory

The twentieth-century blind spot I am describing rested on an underlying philosophical orientation away from positive liberty; it originates

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from a small philosophical mistake made in the early nineteenth century that has characterized most variants of liberalism ever since. The mistake was to draw a distinction between two halves of the set of basic rights protected by liberalism. An early nineteenth-century French thinker, Benjamin Constant, was among the first to divide basic human rights into two categories. He called them the "rights of the ancients" and the "rights of the moderns." The rights of the ancients embraced rights to participate in politics and to shape a society's collective life. We now call these positive liberties. The rights of the moderns, in contrast, comprise a right to property and the right to be left alone in order, among other things, to take your property and to engage in commercial transactions in pursuit of your own well-being as you see fit. We call these negative liberties. I introduced the concept of basic rights in describing Rawls's *Theory of Justice* and provided as examples freedom of association, freedom of expression, and the right to participate in politics. With these three examples, I was limning the full spectrum of basic rights, including both halves as distinguished by Constant. But, as we shall see, the result of this distinction between the two sets of rights has been to reduce attention to matters political.

The rights of the ancients were political rights, the right to be a part of a society that was working together to steer itself through collective decision-making. The rights of the moderns, for Constant, were about private autonomy—steering your own life and being more or less left alone by any collective decision-making. These latter rights are the ones—thanks also to the work of Immanuel Kant and John Stuart Mill—that are understood to make the exercise of autonomy (Kant) and individualism (Mill) possible and to provide each individual the chance to develop and implement a conception of the good life, with minimal interference from others.[9] Constant endorsed the latter set of negative liberties as the priority focus and recommended redirection of energy away from the positive, political liberties.

That distinction has worked its way into the philosophical tradition and was extended by Isaiah Berlin in the early twentieth century. Berlin introduced the terms "negative" and "positive" liberties and

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also prioritized the former.[10] Similarly, we might see Hayek, with his rejection of "primitive" morality, as providing a more sophisticated structure than Constant's for repudiating the liberty of the ancients. In other words, in the mid-twentieth century, both left-leaning liberals and right-leaning advocates of the market economy combined in rejecting the positive liberties of the ancients.[11]

Recognizing this development, Rawls in *Theory of Justice* affirmed the need to protect the whole set of basic rights and claimed to have put the two sets of rights back together. Yet comprehensively reversing the dominant tendency of a century and a half of political philosophy was harder than he might have thought. Although he asserted a commitment to political as well as private rights, to positive as well as negative liberties, Rawls's execution of his argument does not live up to the initial intentions he laid out for it. At important points in *Theory of Justice*, the political rights become sacrificeable in his argument.

Rawls's list of the basic liberties is an amalgam of the two categories of rights.[12] He writes: "The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law" (Rawls 1971, 61).[13] Here, at the start of the book, he does indeed appear to embrace political equality and to put the liberties of the ancients and of the moderns on an equal footing. Yet this listing does not then align with the structure of the argument throughout *Theory of Justice*. For instance, when he first introduces the basic structure and key examples of major social institutions, he includes "the legal protection of freedom of thought and liberty of conscience," but he leaves out protection of political liberty.[14] And indeed, in the discussion of liberty in parts 2 and 3 of his book, liberty of conscience is given first place and routinely elevated for its intrinsic value.[15] Political liberty is treated second, and Rawls repeatedly makes the case that conditions may obtain where political liberty should be sacrificed for the sake of fulfilling material needs.[16] Rawls

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acknowledges that the prioritization of negative over positive liberties has been a feature of classical liberalism since Constant, and through his argument's structure he also embraces that prioritization. While he acknowledges that some would want to put greater weight on positive liberties than he does, he also clearly makes his own choice to prioritize negative liberties.[17]

The consequences of this prioritization appear most pointedly when Rawls argues that while "historical situations" and "historical limitations" (his phrases) might sometimes justify lesser political liberty, they can never justify "the loss of liberty of conscience and the rights defining the integrity of the person" (sec. 39, 247). The "various liberties are not all on a par," he writes (sec. 39, 247). In other words, while the political liberties would never be sacrificed in an ahistorical well-ordered society, reduced political liberty may be justified in some nonideal historical circumstances; yet even in those nonideal circumstances, the negative liberties require absolute protection.

In the revised edition of *Theory of Justice*, Rawls goes further: "Under conditions that cannot be changed at present, there may be no way to institute the effective exercise of these freedoms [political liberties]; but if possible the *more central ones* should be realized first" (sec. 39; emphasis added).[18] Rawls's introduction in the revised edition of the phrase "more central ones" to refer to the negative liberties concedes the point. It's a throwaway comment, and the concept of centrality is not explicitly worked out in his argument. Yet the comment establishes a clear prioritization within the list of basic liberties. Although Rawls never explicitly names the "more central" freedoms, in his argument these are clearly the rights supporting personal, not public, autonomy: the rights of the moderns, not of the ancients.[19]

This is a tiny moment in Rawls's vast corpus—one that he himself probably did not consider central to the architecture of his argument—but it anchors and clarifies the structure of the argument about the basic liberties in *Theory of Justice*. I take it to be a ramifying mistake. That which we seek to protect absolutely, even in nonideal circumstances, as non-sacrificeable provides the content of our most fundamental ideals;

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it is that which we insist on using to shape the world willy-nilly. For Rawls, within his list of prioritized basic liberties, only the negative liberties had the status of non-sacrificeable.[20] If one established the positive and negative liberties, political equality and autonomy-securing rights, as genuinely co-original and co-equal, in nonideal conditions neither set would be clearly more sacrificeable than the other, and the theory of justice—a theory that should guide us from specific nonideal situations toward improved situations—would change dramatically. Contra Berlin's argument that pluralism of values means inevitable conflict among them, analysis of real political choices would begin with the project of seeking alignment between the protection of negative and of positive liberties. Only after a project of pursuing alignment had been exhausted would one turn to debating a trade-off between these two categories of liberties. Moreover, trade-offs would be debated in the decision-making context with reference to the particulars of the occasion;[21] victory would not be preawarded to the negative liberties. In other words, the assignment of a status of non-sacrificeability to both positive and negative liberties means *there are no a priori answers to be had about potential trade-offs, only existentially consequential judgments to be made in the moment about what liberties to preserve in the face of a tragic dilemma*.

But Rawls chose for us. He chose negative over positive liberties. As a result, over the whole arc of *Theory of Justice*, we end up mainly focusing on the conjunction of our private rights (to autonomy, association, expression, and so forth) with questions of economic justice—the wealth associated with autonomous pursuits of excellence and the need for redistribution that comes from the unequal flow of the gains of productivity across a population. Although Rawls does not abandon the question of political liberty altogether, he does across his corpus performatively embrace what he calls "one of the tenets of classical liberalism," namely, "that the political liberties are of less intrinsic importance than liberty of conscience and freedom of the person" (Rawls 1971, 229). And remember, the entire purpose of the original distinction formulated by Constant was to split off those rights that supported economic

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activity from the others and to focus on them. When you de-emphasize the political rights and focus primarily on the private rights or negative liberties, you can easily come to focus exclusively on economic questions and lose sight of political questions. Then, when politics rears its head, you will be surprised. That is the deeper historical backstory for what happened with the intellectual paradigms that dominated liberal democratic policy-making in the late twentieth century.

Anatomy of an Error

To move past the intellectual blind spot of the twentieth century, however, we need to understand not only the historical progression of theories through which it came about but also the analytical error that sustained it within Rawls's *Theory of Justice*. It is his book that really delivered the blind spot to late twentieth-century policy-making. Developing a better theory of justice will require avoiding repetition of the same error. For this reason, we need to dig still deeper into Rawls's argument and clarify the anatomy of his error.

Despite the clear prioritization of negative over positive liberties across his corpus, as I have laid out above, Rawls believed, and argued, that in his theory of justice he had consistently treated the liberties of the ancients and the moderns as co-original and co-equal.[22] In *Political Liberalism*, he writes, "The ancient and the modern liberties are co-original and of equal weight with neither given pride of place over the other. The liberties of both public and private autonomy are given side by side and unranked in the first principle of justice. These liberties are co-original for the further reason that both kinds of liberty are rooted in one or both of the two moral powers, respectively in the capacity for a sense of justice and the capacity for a conception of the good" (413). Yet, as we have seen, in imagining moments when the two categories of liberties come into conflict, Rawls routinely prioritized the liberties of the moderns over those of the ancients. There is no room in his account for people whose mantra, behind the veil of ignorance, might be "Give me liberty, or give me death," where liberty means political liberty.

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Nor is there room for people who would make the existential choice between the two categories of liberty only when there was truly no alternative and all potential pathways to alignment had been exhausted—and not a moment before.

Why did Rawls, in contrast to the Patrick Henrys among us, default to protection of negative liberties and material well-being above political liberties when imagining conflicts between the two categories of liberties and between material needs and public autonomy? Why did he consider sacrifices of political liberty appropriate in particular conditions? Why did he apply this view not only to political liberty generally but also to equal political liberty and the equal worth of political liberty? These positions reflect the fact that for Rawls, the negative liberties, the basic liberties that operate in the service of personal autonomy, are intrinsically valuable to a fully flourishing human life because autonomy itself is intrinsically valuable and the heart of human flourishing. In contrast, he conceives public autonomy as primarily providing instrumental value, with political participation being a means to protect the negative liberties.

In his argument, the exercise of public autonomy or political equality does provide at least one element of intrinsic value—namely, self-respect—but this is only one of the elements of intrinsic value necessary to a fully flourishing human life. And so the instrumental value of political liberty comes first in his argument. Indeed, he contends that only some will orient their conception of the good around the limited source of intrinsic value that he attributes to the positive liberties. He writes, "In a well-governed state, only a small fraction of persons may devote much of their time to politics. There are many other forms of human good" (sec. 36).[23] Rather than seeing political equality as an intrinsic good that also has instrumental value in bringing about the conditions for those many other forms of human good, Rawls sees the good of political equality as competing with other goods that might be chosen via the exercise of private autonomy. Yet political equality is a multivalent intrinsic good, not merely one good among many from which one might choose. It can deliver the conditions for all goods—an instrumental value—but it is

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also fully a part of the experience of autonomy, intrinsically valuable as such. It is just as intrinsically necessary to full human flourishing as the negative liberties. Indeed, private and public autonomy are so mutually dependent that they cannot be disentangled.

Yet Rawls sought to achieve just such a disentanglement. This aspiration is imaginable only in contexts of great social homogeneity or for those who have a lived experience of cultural alignment between themselves and those who hold decision-making power. As Rawls sees it, people need political equality in the original position (i.e., the hypothetical moment where people work together to form a social contract) to establish the principles of justice and a basic constitutional structure that will make it possible for each to pursue their own definition of the good life in the context of civil society associations (sec. 36). The result of this constitutional strategy, he hopes, will be a state that does *not* impose on our efforts to shape a way of life, thereby respecting our personal autonomy. In other words, private autonomy would be protected by default and completely, through the structure of the constitution. Public autonomy—or political participation—was not necessary as an extension of private autonomy because private autonomy could be expected to be so well protected in the just society.

Despite anticipating a level of protection for private autonomy that seemed to disentangle it from the need for public autonomy, Rawls does have one concern about how collective decisions might impose on our experience of autonomy. Rawls primarily sees this as a problem inhering in our life within the associations of civil society. He also thinks it is easily solved. He writes,

> The basic structure is then to secure the free internal life of the various communities of interests in which persons and groups seek to achieve, in forms of social union consistent with equal liberty, the ends and excellences to which they are drawn. People want to exercise control over the laws and rules that govern their association, either by directly taking part themselves in its affairs or indirectly through representatives with whom they are affiliated by ties of culture and social situation. (sec. 82)

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Here, when Rawls talks about the goods that we derive from our social associations, he comes closest to recognizing the permanent entanglement of personal and public autonomy. He acknowledges that our autonomy requires our ability to exercise control over the laws and rules that govern our associations in "various communities of interest." Participation—or public autonomy—is the solution to mitigating the experience of imposition from collective decisions on personal autonomy. Rawls can see this with respect to the organizations of civil society. His mistake is in not extending this insight to political participation broadly.

The intrinsic value of participation extends beyond self-respect: there is no cure for the experience of imposition on private autonomy other than participation in the crafting of public decisions. The value here, however, is not merely instrumental protection of one's private autonomy but also the intrinsically valuable experience of autonomy itself, the public autonomy that is to be had when one functions as a coauthor of the restraints imposed on private autonomy. To be a coauthor in this way, a cocreator of a community's agenda, is an intrinsic, not an instrumental good. It is the sort of good captured by W. E. B. Du Bois when he invokes an aspiration to be a cocreator in the kingdom of culture. Being that cocreator feels good; in that activity of cocreation people flourish. Rawls captures this basic dynamic in his description of how participation in our civil associations and their cultural life is a direct expression of our pursuit of autonomy, and he recognizes but fails to explicate how this description also captures the relationship between citizens and the polity as a whole, not merely their relationship to their own associational groups.

In other words, he envisages a state that can do all the things that states do—make decisions about whether and how to go to war, adjudicate contests when the rights of adversarial parties come into conflict, tax and distribute state revenues in the form of public goods—without tilting the playing field in favor of some conceptions of the good rather than others. But no such state exists—a point being driven home now by controversies over vaccine mandates, secularism, and the veil in

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Allen_9780226777092_Ch01.indd 28 Achorn International 09/16/2022 08:59PM

France, and abortion, marriage equality, and limits on freedom for religious minorities in the United States. A hypothetical "neutral" state, in which participation and the opportunity for influence constitute a discretionary, sacrificeable value rather than a necessary good is imaginable only when the cultural universe of those who hold the levers of power in a state is reasonably close to the cultural universe that characterizes the population governed by the state. In such circumstances, public decisions read as "minimalist" or "neutral" not because they are or aren't minimalist but because they implicitly track the conceptions of the good that predominate within the population.[24] Rawls more or less admits this in his analysis of the problem of the impositions brought about by social decisions in the passage quoted above. There he argues that we will want to participate in shaping the rules that govern our associations and our communities of interest unless that work is done for us by "representatives with whom [we] are affiliated by ties of culture and social situation" (sec. 82). Cultural homogeneity can make the status of participation as a necessary and intrinsic good harder to see.

Given the necessary fact of diversity in all polities, however, citizens cannot exercise their autonomy only through private action. The exercise of autonomy also requires both participation in civil society and political participation. Conditions of heightened diversity make the theoretical point especially visible, but it is a broader human point: the political liberties are intrinsically valuable insofar as autonomy is intrinsically valuable. They are the form autonomy takes.[25] To make a mistake here is to make a mistake about fundamentals of justice. The twentieth-century blind spot flows from this deep, fundamental mistake. In the wake of a long history of interpreting Rawls in directions that prioritize material and economic issues of inequality, and of the inconsistencies in Rawls's own argument around protections afforded to political liberties, it is time for us to take a new perspective and to think afresh. The goal is not to tinker with Rawls's theory but to initiate consideration of justice from another starting point altogether.

Can we identify an alternative paradigm for political economy that would not similarly leave us so vulnerable to surprises of the kind we

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have recently experienced? I think we can, particularly if we pursue an alternative political philosophy and theory of justice. Our thinking about justice would be improved, I believe, if we began from political equality, recognizing that it has the same intrinsic importance for justice and human flourishing as liberty of conscience and freedom of the person.[26] It should be equally non-sacrificeable. It should take its place as one of the necessary design principles specifying the content of justice. Answers about how to achieve justice in the social and economic domains change once one restores equal priority in a theory of justice to protection of political equality (equal political liberty) alongside protection of the traditional negative liberties: freedom of conscience, freedom of association, and the right to bodily integrity. To see how a view of justice in the social and economic domains must change given a fundamental commitment to the non-sacrificeability of political liberties and political equality, we must elaborate more fully the nature of an analytical starting point in which political equality and public autonomy, on the one hand, and the rights relevant to private autonomy, on the other, are genuinely co-equal.

We will have to return to basics. If justice consists of forms of human organization necessary to support human flourishing, our job is to clarify the design principles needed for that work. I propose that we begin with two: the non-sacrificeability of *both negative and positive liberties* and, deriving from that, a commitment to political equality. In the next chapter, I will argue that an ideal of justice, understood as the route to human flourishing, depends on these two design principles, as well as a third, called "difference without domination." I will then make the case for why these principles in turn mean that justice is best achieved by means of democracy.

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2
Justice by Means of Democracy
An Ideal and Its Design Principles

An Alternative Ideal for the Twenty-First Century

Let's start from scratch: Justice consists of those forms of human interaction and social organization necessary to support human flourishing. The design principles needed to implement justice will flow from our understanding of human flourishing. Importantly, the defining purposes of specific human lives that can count as examples of flourishing are various; there is no single picture of the flourishing life. What is shared, however, across cases of human flourishing is that human beings are creatures who need to chart their own courses in life. They thrive on autonomy, the opportunity for self-creation and self-governance. Their flourishing also depends on their cultivation of the capacity (of habits, dispositions, virtues, and character) to direct the opportunity of autonomy toward their own flourishing. But that is a theme for another day. Here I focus only on the social conditions that deliver the autonomy necessary for human flourishing and justice.

That autonomy is made real in our political institutions via the protection of both negative and positive liberties. Negative liberties are those rights of free speech, association, freedom of religion, and so forth, that permit us to chart our own course toward happiness, based on our own definitions of the good. Positive liberties and rights are

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those opportunities that we have to participate in our political institutions as decisionmakers, as voters, as elected officials, as people who contribute to the deliberations of our public bodies. Through our positive liberties, or political equality, we have the chance to shape our collective world together. The autonomy that delivers human flourishing requires that shared autonomy through political institutions in order to reach its fullest form. This makes democracy necessary to the achievement of human flourishing and justice.

But it is worth expanding on precisely why positive liberties and political equality are intrinsically valuable and share a status with negative liberties as non-sacrificeable. To understand this fully, we have to take a moment to rethink the concept of equality and its different types. My experience is that very few of us typically take the time to ascertain how different kinds of equality relate to each other. Let's begin with a basic list. There's moral human equality; there's political equality; there's social equality, or economic equality, or economic egalitarianism. The list goes on. There's also racial equality and gender equality, and so forth. What are the relations among all these categories of equality?

The relationship I'd like to propose among them is that human moral equality is the fundamental concept (see also Waldron 2017). Human moral equality names the existence of the need—stated above, distinctive of members of the human species, and fundamental to our flourishing—to be an author of one's own life, coupled with a capacity, also distinctive of members of the human species, to make evaluative judgments (Williams 2009). At the core of the idea of human equality lies our purposiveness and our capacity for autonomy. Also at the core is the need to have that capacity recognized as a necessary element of well-being, worth, and dignity. Yet a complication immediately rears its head. Well-being resting on autonomy cannot emerge simply from being the author of one's own life as an individual operating in an autonomously controlled space. None of us lives on such a private island. Each of us lives inside a set of societal constraints. As we pursue our purposes, and shape our lives in relation to them, there is no

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way to proceed through the world without recognizing and submitting to a set of limits that come from laws, shared cultural practices, social norms, and organizational protocols. Consequently, the only way to be maximally autonomous and to achieve fulfillment of one's purposiveness is to be a cocreator of those social constraints, both politically and culturally. The argument, then, is that human flourishing is a matter of both private autonomy and public autonomy, with the latter entailing meaningful participation in collective decision-making, both through participation in the evolution of cultural practices and the structure of civil society and through participation in the institutions of political governance. Only such participation as brings genuine and equally shared opportunities for influence meets the standard of "meaningful" participation. Full human flourishing therefore entails an experience of political equality, and our positive liberties are intrinsically, not merely instrumentally, valuable (cf. Mansbridge 1980; Williams 2009; LeBron 2014; Waldron 2017). To support both private and public autonomy, and fulfillment of human purpose, we need both our negative and our positive liberties, welded together. Finally, democracy is the only governance form that can deliver political equality. An ideal democracy comprises a population of free and equal citizens, whose equality must first and foremost be understood as a matter of both political equality and equality in the rights constituting private autonomy.[1] I draw a line of this kind from human purposiveness and basic human flourishing to political equality and democracy, and I take both to be simultaneously instrumentally and intrinsically valuable.[2] Insofar as the job of justice is to secure human flourishing, we can fully achieve justice only by means of democracy.

Understanding what it means to pursue justice by means of democracy next requires clarifying just how our negative and positive liberties are welded together. They are not merely independently non-sacrificeable but also dependent on each other. To sacrifice either set of liberties is in fact to jeopardize the other set. These two bodies of rights are co-original in further ways that have not yet been specified. For

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Allen_9780226777092_Ch02.indd 33 Achorn International 09/16/2022 09:00PM

instance, the right to association is not just a right of private autonomy, one of the sacred rights of the moderns. If anything, its earliest appearances on the historical register show it fully conjoined to efforts to secure rights of public autonomy. In seventeenth-century England, dissenters gathered not merely to celebrate religious rites but also to raise challenges to the legitimate authority of the monarch (Green 1985). They laid claim to a right to association to protect not only freedom of thought but also their political power. In the Bill of Rights to the US Constitution, the right to assemble was closely conjoined to the right to petition political authorities for changes in policies. In our own era, the Chinese government currently imposes great restrictions on the freedom of association not (or not only) to limit freedom of conscience but (also) to minimize the likelihood that political solidarities will form that are capable of challenging the government's authority (Allen 2012a). Some rights, in other words, that have been identified as elements of negative liberty should properly be reclassified as being components of positive liberty. This is the first adjustment that comes into view when we launch our investigation of justice from political equality. This adjustment already indicates how elements of the intrinsic value associated with the basic liberties also attach to political equality. The autonomy-satisfying right of association provides intrinsic value not only in its role as a contributor to negative liberty but also in its role as a power-activating element of positive liberty. When citizens have political equality, they have not only the instrumental value of democracy but also something of intrinsic value: empowerment.

Where Rawls offhandedly treats the pursuit of private autonomy as leading over time to the protection of the political liberties in addition to the "more central liberties," I see the connection flowing the other way around. The pursuit of democracy—which is to say of public autonomy—necessarily brings with it protection of the rights supporting private autonomy.[3] Those negative liberties must exist for the positive liberties to exist, so protection of the positive liberties is necessarily protection of the negative liberties. Because human beings generally have the capacity for autonomy as a property of their species—not

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merely choosing their own way of life but also shaping the necessarily shared aspects of life through participation in politics—democracy is a good thing for them. Democracy permits the full realization of a basic human capacity. This is an intrinsic good. Relatedly, human beings tend to grow morally and in other ways through political participation; this tendency is another species property. That democracy activates this capacity is another aspect of its intrinsic value.[4] In both these ways, democracy supports the flourishing of human beings as the kind of being they are. In short, democracy rests on the underlying moral equality that resides in this general human capacity for autonomy, and it provides a vehicle for the full realization of this capacity. In *Political Liberalism*, Rawls describes this capacity for autonomy as consisting of "the two moral powers, respectively in the capacity for a sense of justice and the capacity for a conception of the good" (413). Democracy is the type of polity that most fully activates these capacities. While the justice of democracy as a type of polity therefore derives from its grounding in *human moral equality*, the realization of democracy as a political form depends on maximizing the trajectory toward *political equality*.

In sum, human moral equality—which resides in our capacity for autonomy—necessitates political equality (that is, democracy) so that human beings can flourish as the kind of creature that they are. This is how basic human moral equality—which undergirds any rights regime[5]—and political equality fit together to support the work of justice.

Political Equality: A Design Principle

As I have said, justice consists of those forms of human interaction and social organization necessary to support human flourishing, and the design principles needed to implement justice will flow from our understanding of human flourishing. Now we have two of those principles in hand: the shared non-sacrificeability of negative and positive liberties and the commitment to political equality. At this point, I'd like to spend some time specifying the content of that commitment to

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political equality. Given how fundamental I am making political equality for the work of justice, it will be clear that I don't think reference to issues like voting rights, campaign finance reform, and specific electoral mechanisms suffice as an account of what political equality consists of. Issues such as these tend to pick out some of the formal institutional mechanisms that we use to try to achieve political equality through participation in governance. But what sort of broader concept of political equality do these institutional mechanisms reflect or, if we are successful, actually operationalize?

I propose a concept of political equality with five facets. These five facets are elements of a definition for political equality, as an anchor for justice. The facets do not constitute a comprehensive account of the content of political equality. Instead, they serve as a conceptual starter set.[6] The first facet of political equality is a requirement for experiences of non-domination, both in social contexts and in the context of operating within political institutions. The second facet consists of equal access to the instruments of government, an equal chance to participate in decision-making within political institutions. The third facet is something that I call "epistemic egalitarianism." This is the notion that any well-functioning democracy needs to make good decisions based on good knowledge processes, that is, processes for gathering and sorting knowledge and making judgments on its basis. Successful democratic knowledge processes will require reliance on both expertise and the social knowledge that ordinary people have. In other words, epistemic egalitarianism requires the development of processes that unite experts and laypeople in strong partnerships so that decisions can be made based on the whole citizenry's knowledge banks. Epistemic egalitarianism makes room for all to participate in epistemic processes of problem identification and solution discovery, even as there are different roles in the process for those with formal expertise and those whose contribution comes from the perspective of routine social participation, in one context or another. The fourth facet of political equality is reciprocity. This concerns the relational ethic that citizens have with one another: the ability to look one another in the eye; the ability to propose the

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need for redress of grievances and to be secure in the expectation that redress will be possible within constraints of reasonableness and rights. Some of the controversies surrounding the issue of police violence, for instance, have tapped into the need of citizens for reciprocity expressed through actually responsive processes for redress of grievances. The fifth facet of political equality is something I call "co-ownership of political institutions." This involves recognizing that all the machinery of a democracy—all of the assemblies, congresses, and judicial offices at federal, state, county, and municipal levels—constitutes a valuable asset. This massive apparatus is a form of property that we own together. What does it mean for us to own that property together and to have co-ownership in relationship to it? The concept of co-ownership of our political institutions should help define some limits on usage of these institutions, for instance, ruling out the privatization of prisons or conversion of a military into an army of contractors. I take the concept of political equality, then, to embrace at least these five facets, guides for thinking about institutional design and cultural norms.[7] Before we move on, though, it's worth offering a deeper overview of each of them.[8]

FREEDOM FROM DOMINATION

To be free from domination, in the argument of Philip Pettit, is to be free from the prospect of arbitrary interference or "reserve control." In his brilliant book *Just Freedom*, Pettit explains freedom from domination with reference to the expression "free rein." If you give a horse free rein, it may be able to go where it wants, but the rider retains "reserve control" and can reassert constraint at any point. Or consider Nora in Henrik Ibsen's play *A Doll's House*. Nora's husband, Torvald, a late-nineteenth-century bourgeois gentleman, applies few restrictions to his wife, who is able to spend her time as she pleases. And yet she is unhappy. She is at liberty thanks only to his good graces; she is dominated by his reserve control.

To have freedom from domination requires more than just protection of the basic liberty to choose your religion, political party,

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associations, and employment. It also requires an equal share of control over the institutions—the laws, policies, procedures—that necessarily interfere with your life but that do so, ideally, only to protect each individual from domination by another, and any group from domination by other groups.[9]

Pettit offers three simple tests for assessing whether freedom from domination exists in a society: the straight-talk test, the tough-luck test, and the eyeball test. Can the people and their representatives speak forthrightly to one another and to other citizens, or do some find themselves bowing and scraping, for instance, to those with deep pockets? If the latter, domination exists. If your side loses a vote in a political dispute, do you have good reason to view it as tough luck rather than as the "sign of a malign will working against you or your kind"? If you do not, again there is domination. And, finally, can citizens look others in the eye "without reason for fear or deference"?

Importantly, a world without domination is neither a world without hierarchy nor one without constraints. Its hierarchy and constraints (for instance, law) must, however, be legitimate. Whether specific instances of hierarchy and constraint are legitimate depends on procedural questions and on the absence of patterns of domination from the interpersonal engagements that transpire within the framework of the hierarchical institution or legal system under consideration.[10]

EGALITARIAN ACCESS TO THE INSTRUMENT OF GOVERNMENT

A democracy consists of the establishment of impersonal forms of corporate decision-making. That is, group decision-making institutions are established whose legitimacy is tied to a conception of "the people" who authorize them and whom they represent. Decision-making power is not tied to any single individual. In antiquity, democracies were the first type of political form to achieve a depersonalization of power. In contrast to a monarchy or oligarchy, it could not be said that political power lay in the hands of this or that particular person or group of

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people.[11] Democracies can structure these "depersonalizing" institutions in a variety of ways. For instance, the world has seen the direct democracy of the ancient Athenians and the representative democracies of the moderns. We have seen forms both presidential and parliamentarian. The relevant decision-making institutions are typically legislative, executive, and judicial. Executive decision-making includes the regulatory apparatus of executive agencies.

A second important element of political equality is that all citizens have equal access to this decision-making apparatus. We are accustomed to arguing for such equal access in the context of protecting voting rights. The US is currently engaged in fierce debates about campaign finance law and whether one or another legal regime in this policy domain generates unequal access to the decision-making apparatus. The issue of pro bono provision of defense counsel for the indigent is also relevant here. So too is the question of ballot access—whether every nonfrivolous candidate has a right to get their name on the ballot for a competitive election. (The concept of proof of nonfrivolousness as a barrier to entry to the ballot is analogous to the concept of nonfrivolousness as a standard for bringing a lawsuit.) The question of precisely what institutional arrangements count as ensuring egalitarian access to legislative, executive (including regulatory), and judicial decision-making processes at all levels of government (federal, state, and local) is open to debate, but the ideal is clear: a pathway to pull the levers of power that is open to one should be, in fact as well as in principle, open to all, contingent on each individual's acquiring the legitimately established qualifications relevant to the use of that particular lever of power.[12]

EPISTEMIC EGALITARIANISM

Like all polities, democracies depend on successful collective learning and knowledge-management practices to make good decisions. In contrast to other regime types, democracies have access to a technique for strengthening collective decision-making by drawing on the knowledge

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resources of the whole citizenry. This feature of political equality is what I call "epistemic egalitarianism."

Human beings are sponges, taking in information from and about their environment. Some are better sponges than others, but all of us are absorbent. All people are created equal in that we are all born to absorb. Recognizing this fact, we can cultivate collective intelligence that is better than what any individual can achieve. Of course, to say everyone is an equal participant in the project of observing and interpreting the course of human events does not mean that everyone is equally good at it, only that everyone has the capacity to pick up some bit of information, some observation, that is relevant to the whole picture and that no one else will have noticed. Some people will pick up more than others, but everyone picks up something. Experts have a crucial role to play within the larger democratic community, but the value of their contributions should not obscure the fact that contributions are needed from every quarter to achieve a complete view.[13]

Democracies can strengthen our individual and collective capacities to analyze the relation between present and future, and to make related policy judgments, by drawing everyone into the work of understanding the course of human events. They can build a collective intelligence superior to what even a closed group of experts can achieve, by developing egalitarian approaches to knowledge cultivation. Experts are most valuable when they work hand in hand with a well-educated general population capable of supplying useful social knowledge to deliberations.[14]

This sort of egalitarian epistemic practice can strengthen democratic decision-making, supporting consideration of decisions from a 360-degree point of view, with all perspectives taken into account. Moreover, deploying such practices also reinforces political equality. When the knowledge and understanding that flow into a political decision are closely controlled by a limited few, their control of knowledge resources pulls decision-making power to them as well. Broadening the engagement of the citizenry in the discovery, analysis, and deliberation

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processes that feed into policy-making decentralizes power, supporting political equality. The place of epistemic egalitarianism in political equality thus underscores the need to treat education as a public good. An effective educational system is necessary to maximize the potential of citizens to participate effectively in the knowledge-management processes and deliberations of their democracy. It's not an accident that forty-nine of the fifty US state constitutions include a right to education, or that many explicitly ground that right in preparing people for citizenship (Rebell 2018, chap. 3). A good educational system is an important foundation for realizing political equality, precisely because of the epistemic egalitarianism required of political equality.

Reciprocity

Justice in human relationships requires the kind of equality expressed by principles of reciprocity. Such principles provide the basis for interaction through which both friends and fellow citizens can achieve equality of agency in their relationships.

Whether in friendship or politics, each participant wants a sphere of agency unfettered by others.[15] Each has the capacity to engage, through talk, in a project of responsiveness to make sure that no one is encroaching on their own sphere of agency.[16] This is not to say that the spheres of agency of different people never intersect; it's rather that the intersections need to be harmonizing, not encroaching or dominating. The work of cocreation, discussed below in relation to co-ownership of political institutions, is about bringing our spheres of agency into relationships with one another. But a key feature of achieving reciprocity is that we are able both to name and to redress those moments where our spheres of agency have been unduly imposed upon by others. The achievement of freedom depends on this egalitarian engagement in a constant recalibration to undo, or redress, or fix encroachments. A free people grounds its problem-solving methods on this sort of egalitarian basis, via habits of reciprocity. Doing things with words is at the

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heart of those egalitarian problem-solving methods and mutual responsiveness. Reciprocity—or mutual responsiveness—is at the heart of justice.

Two sets of practices define the reciprocity at the core of political equality: practices that make possible the redress of grievances and practices that make it possible to acknowledge and reciprocate benefits that have been supplied by one's fellow citizens.[17] No political decision is equally good for all members of the polity, even when all members of the polity have had equal access to the instruments of government and have been equally able to contribute their knowledge to group-decision-making practices. Even in these conditions, some members of the polity will incur losses. When settled patterns emerge in who bears the losses that result from political decision-making, political equality has come undone. The goal, instead, is to establish practices that result in political gains and losses circulating through the citizenry over time (Allen 2004, chaps. 3, 4, 8, and 9).

To some extent this is achieved through practices of redress for grievances, as in the civil legal system. To another extent this is achieved through legislative and deliberative practices, including well-developed habits of compromise and negotiation, that recognize and reciprocate sacrifices that some members of the polity bear on behalf of others. This idea of reciprocity identifies the kind of equality that needs to be in play in relations between people in order for freedom to obtain. This is an equality in which, when one person does injury to another, the other person can push back and achieve redress so that there can be a balancing of agency in their relations. Securing conditions in which no one dominates anyone else requires a form of conversational interaction that rests on and embodies equality in the relationships among the participants. It is not merely that the ideal of equality requires securing conditions free from domination—the first facet of equality that we looked at—but also that equality of agency, achieved through reciprocal responsiveness, itself provides the means for securing freedom. Equality of agency rests on citizens' ability to adopt habits of non-domination in their ordinary interactions with one another; these are

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Allen_9780226777092_Ch02.indd 42 Achorn International 09/16/2022 09:00PM

habits that in *Talking to Strangers* I called "political friendship" (Allen 2004, chaps. 3, 4, 8, and 9). I will explore this idea further in chapter 7.

CO-OWNERSHIP OF POLITICAL INSTITUTIONS

The final component of political equality is cultivation, in all members of the polity, of an understanding that each has an equal ownership share in existing political institutions. Nobel Prize–winning economist Herbert Simon (2014) makes a similar argument that a democracy's political institutions constitute an asset owned by the people as a whole. Moreover, he argues that this commonly owned asset is the source of significant wealth generation in developed democracies, and that this wealth might consequently be allocated to a universal basic income on the grounds that the public owns the asset that generated it. While I don't advocate for a universal basic income, the point stands that the political institutions we share constitute a shared asset, the benefits of which should redound to all of us and ownership of which should remain with all of us. As I said above, the concept of co-ownership of our political institutions should help define some limits on usage of these institutions, for instance, ruling out the privatization of prisons or conversion of a military into an army of contractors. The topic of redistricting is also relevant here. Current approaches to redistricting often put that work in the hands of political parties rather than the people at large. This makes political institutions the possession of political elites. If, instead, those institutions were correctly understood as the possession of the people themselves, then control over their most basic and routine reorganization would be assigned to the people directly.

This focus on co-ownership of political institutions as a critical element of political equality also underscores the importance of political equality as cocreation, where many people participate equally in creating a world together. We are co-owners of our institutions because we are cocreators of them. Ideally, we carry out this work under conditions of mutual respect and accountability and by sharing intelligence and sacrifice. The point of political equality is not merely to secure spaces

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free from domination but also to engage all members of a community equally in the work of creating and constantly re-creating that community and to state clearly that the resulting institutions and shared practices are an asset that belongs to all.

This is not the end of an account of the elements of human practice that define political equality. I have offered, as I said, only a conceptual starter set. But this starter set is powerful enough to give us a framework for understanding how to design political institutions that support human flourishing.

* * *

In the expansive definition of political equality sketched above, protecting equal basic liberties, including the political liberties, requires securing (1) freedom from domination, (2) equal access to the instruments of government, (3) educational resources that support egalitarian participation by all in the polity's processes of knowledge management and deliberation, (4) a culture of reciprocity and turn-taking, and (5) an asset-based conception of political institutions that assigns the ownership stake in that asset to all citizens and blocks capture of those institutions by a subset of the population Realizing this picture of political equality via the political realm is not merely a matter of using majority vote for decision-making, nor of campaign finance regulation, but of working comprehensively to build egalitarian participatory constitutional democracy, as we shall see in chapter 3.[18] Egalitarian participatory constitutional democracy will turn out to be a subsidiary ideal that flows from the design principles for justice with which we've begun. And the five facets of political equality help bring further specification to the design principles needed for just political institutions. The goal is institutions wherein members of the polity are routinely obliged to share power in a variety of public contexts with unchosen others and are able to do so successfully.

But before we turn to the implications of this theory of justice for political institutions, we need to bring the social and economic realms

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fully into the frame. To achieve this, we have one more design principle to draw out. Once a commitment to political equality is seen as fundamental to the project of justice, what becomes of social and economic questions? Does justice collapse merely to the project of democracy? It does not. There is also work to do in civil society and the economy.

Difference without Domination: A Third Design Principle

I have launched our inquiry into justice by focusing on the intrinsic value of political equality and democracy to human flourishing. Contrary to how others have often approached concerns of justice, I have put economic questions to the side for a moment. It's time to bring them back into the frame. The next question to ask is what the implications are of the shared non-sacrificeability of negative and positive liberties and of a fundamental commitment to political equality for understanding the requirements of justice in the social and economic realms.

The important question for a theory of justice that begins from political equality is not only how political institutions function (or fail to function) to support political equality but also how economic and social domains do so.[19] In other words, questions of economic justice and social policy should be taken up from the point of view of how to develop a political economy and forms of civil society that support political equality. If we make economic and social policy in some sense secondary or instrumental to the goal of generating egalitarian empowerment and political equality, what's the result?

Once we ask this question, we find ourselves led toward a refinement of the idea of what it means to pursue justice by means of democracy. We uncover another design principle to guide this work across the three domains of political institutions, the economy, and civil society. There is more than one way to protect equal basic liberties, and some approaches are more likely than others to develop dynamics in the social and economic realms that support rather than undermine political equality. It turns out that the question we have to ask is this: What

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basic structure protects equal basic liberties (both positive and negative) in such a way as to generate social and economic dynamics that don't undermine those very liberties? Asking this will lead us, as we will see, to a new principle to assist with clarifying justice in the economic and social realms: "difference without domination." Our route to this additional principle is through a paradox that comes into view once one asks how economic and social domains can function in support of political equality and democracy.

The paradox goes like this. If societies protect basic rights like freedom of association and contract—which define both the social and economic domains and bring them into existence as evolutionary, self-governing systems based on free human interaction—they will necessarily end up with social difference. That's a great and beautiful result of freedom, but social difference also easily articulates with domination, caste society structures, and exploitation. There's no way to secure basic rights without also securing social difference, and so an obvious question emerges: How can we protect rights and foster the emergence of social difference yet avoid the articulation of that difference with structures of domination?[20] Similarly, if we protect the right to contract, the basic right to property, we will necessarily get economic structures that can articulate with domination, which is to say, with the kinds of inequalities that are disempowering of citizens. Protecting our basic rights quickly looks likely to result in undermining our pursuit of political equality. What are we going to do about that?

If we wish to unify protection of political equality and protection of the other basic liberties (on the principle of shared non-sacrificeability), we need to think about a principle to guide our rule-setting for the economic and social realms to avoid the emergence of domination. I call the relevant principle "difference without domination." In brief, the principle entails that we scrutinize our institutions to diagnose patterns of difference, work to ascertain whether they arise from or support domination, and, if they do, redesign the rules of governance through political institutions, the rules providing undergirding charters for the economy, the rules organizing the microinteractions of the economy,

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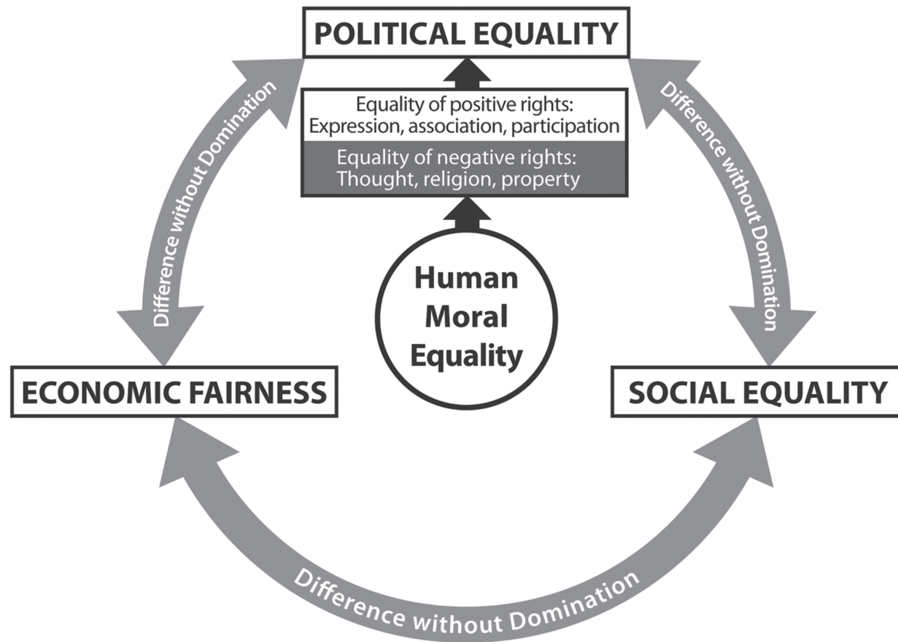

FIGURE 1 A virtuous circle: political equality as the ground of justice

or the organizational protocols of civil society, to remove or at least lessen the operating forces of domination. Many have debated whether discussions of justice should consist of substantive or procedural matters.[21] The argument I make here is that the job of rule-setting turns the procedural into the substantive, and that our rule-setting across all three domains (political, economic, and social) should be guided by the principle of difference without domination. This would permit us to establish a virtuous cycle linking political, social, and economic domains in support of the kind of human flourishing that rests on autonomy, both private and public.

Difference without Domination: A Deeper Dive into a Project of Vision Correction

The time has come to revisit the basic grounds for a theory of justice. As many have pointed out, Rawls's arguments are too dependent on an expectation of social homogeneity that drives key features of political

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life into the background of his consideration. That expectation is not merely a problem on the margins. It has a deep consequence. It supports Rawls's placement of political equality and public autonomy as secondary to the liberties supporting individual autonomy. As a theoretical matter, this is a nonviable starting point for any discussion of politics, defined as that activity is by dissensus.[22] As a practical matter, however, the insufficiency of this starting point shows itself with its most vivid immediacy in conditions of great social diversity, where public decisions will routinely impinge on most citizens' ability to deploy autonomy in fashioning their life courses. In such contexts, autonomy itself is accessible only through participation in the collective effort to shape the parameters of collective life. As W. E. B. Du Bois puts it in the first chapter of *The Souls of Black Folk*, "The power of the ballot we need in sheer self-defense—else what shall save us from a second slavery?" Du Bois's point is not merely instrumental. It is not merely that the power of the ballot blocks the re-emergence of a socioeconomic institution of slavery. It is also that the exercise of political power is itself an element of the intrinsically valuable experience of non-slavery, which is to say, of non-domination.

In my argument I depart from Rawls and follow Du Bois. I give the ancient and modern liberties equal weight, but this in turn means it is inadmissible for the dynamics in the social and economic realms to unfold in such a way as to abrogate the political liberties, or political equality, just as it is inadmissible for them to abrogate the rights that support private autonomy. We need a principle of strict scrutiny. When we protect the negative liberties of the moderns, are those protections compatible with simultaneous protection of the positive liberties of the ancients? The application of such a principle of strict scrutiny should permit us to bring the two kinds of liberty into alignment over time.

Here we reach the greatest challenge. It is precisely the type of rights protection that lies at the heart of protecting equal basic rights—and particularly the right to freedom of association—that generates forms of social and economic difference that often become a source of domination in any given society, ultimately coming to undermine pathways

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to political equality. We must confront the fact that our choices about *how* to protect the equal basic liberties always also affect the structure of the social and economic domains and vice versa.

Segregation is the easy, obvious example of the full entanglement of patterns of rights protection, the social sphere, and political economy. Jim Crow was defended on grounds of the need to protect freedom of association, an equal basic liberty. Yet from this ostensible protection of a basic liberty flowed a variety of forms of domination. A segregated society, for instance, undermines political equality by establishing patterns of domination and limited access to the levers of power. That said, it does not necessarily undermine private autonomy. This was in effect the meaning of the segregationists' argument that it should be possible to build two separate but equal worlds, an argument equally embraced by black power advocates. Surprisingly, and counter to Rawls's own stated view, the segregationist outlook is compatible with the Rawlsian notion that only the rights supporting private autonomy or liberty of conscience should be considered utterly sacrosanct. But once political liberties, and political equality, are also considered sacrosanct, then segregationist social structures are plainly revealed as antithetical to a just society. This example shows the importance of considering the political liberties as equal in importance to the liberties that protect private autonomy.

Moreover, Jim Crow's effects on the social structure of the United States in the first half of the twentieth century also laid down rigid patterns for the distribution of economic benefits. As economic productivity boomed in the mid-twentieth century, its fruits were distributed in patterns determined by the underlying allocations of land and labor controlled through segregation. In other words, the specific protection of an equal basic liberty attempted in the Jim Crow system established a basis for domination of some citizens by others across all three domains: social, political, and economic.[23]

Today, we would critique the case of segregation with the argument that, in fact, the Jim Crow system rested on only a false claim to protect a basic associational liberty. We would point out that in failing to

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protect the rights of African Americans, Mexican Americans, and Chinese Americans to move freely through society, the Jim Crow system was actually violating their rights of association while putatively protecting those of others. This is indeed the argument Rawls makes. Jim Crow may have been protecting the basic liberties of *some*, but it wasn't protecting *equal* basic liberty. One might therefore be tempted to say that in the era of Jim Crow, the only reason the patterns of domination sprang up in the social and economic realms was that equal basic liberties were not in fact protected. But this would be to miss another basic point about the equal basic liberties and their paradoxical potential to generate inegalitarian effects in both social and economic realms: Freedom to associate with those with whom we wish to associate simply is freedom to discriminate.[24] Freedom of association inevitably leads to social difference, and social difference has historically had a high likelihood of generating domination. Jim Crow rules were wrong *not only* because they exemplified a failure to protect freedom of association for all *but also* because they exemplified a case of protecting freedom of association in ways that undermined political equality. Jim Crow failed *not only* with regard to the requirement to protect negative liberties for all *but also* with regard to the requirement to protect positive liberties for all. The fundamental challenge of justice is to ascertain not only how to protect the equal basic liberties in ways that support political equality but, even more important, how to identify those modes of rights protection that will manifest themselves in emergent dynamics in the social and economic domains that are themselves supportive of political equality. Mine is a dynamic, not a static, picture of justice. I turn to that challenge now.

A fundamental expression of the right to free association is the right to marry whom one pleases. As people with a sense of affinity for one another pair up in marriages, they form the building block units of cultural homogeneity. Regardless of precisely how marriage markets are constituted in different historical and geographic contexts, they have typically generated distinguishable ethnic and cultural communities, and there is every reason to think that freedom of association is more

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likely to reinforce than to undermine that pattern. Scholars of social network theory have identified "homophily," the tendency of those who are like one another to flock together, as a basic building block of human social organization (Granovetter 1973). Even in an imagined world in which free association was protected not only from government intrusion but also from the limitations imposed by social sanction, there would still be every reason to think that homophily would drive the formation of distinguishable social groups.

And where there is social difference there can easily also be domination. Even without antipathy toward out-groups, members of social groups will often focus on gathering opportunities and resources for their own group, on the basis of nothing more than in-group preferences (Sidanius et al. 2008). Social differentiation, in other words, very often connects to opportunity hoarding and other efforts at resource control that can lead to the domination of some groups by others. At its most extreme, protection of free association can generate social differentiation that leads to caste societies, although these societies are marked by stiff social sanctions that in fact limit free association. The articulation of difference with domination in this fashion undermines a society's prospects for achieving political equality. Consequently, the goal of protecting political equality requires that we ask how we can have the social difference that flows from the protection of negative rights without also generating domination. How can we have difference without domination?

We know what difference *with* domination is. It is the situation in which patterns of social difference align such that some groups have active, or reserve, control over other groups. Difference without domination, therefore, identifies social patterning that does not eventuate in any group's having either direct or reserve control over another group, nor in any individual having direct or reserve control over another merely because of each party's social background. Difference without domination should be the principle guiding our choices about the basic structure, the laws and institutions that establish the basic rules of the game, for a society.

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Allen_9780226777092_Ch02.indd 51 Achorn International 09/16/2022 09:00PM

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Protection of the equal basic liberties must be crafted in ways that ensure protection of those liberties not merely at some imaginary t_1 state of nature, when a society is founded, but also at t_2, t_3, t_4, and so on, after social difference has developed settled patterns. Only such protections of the equal basic liberties can, in the end, count as protections. This is the point conveyed by figure 1 above. The idea is that human equality necessitates protections of the equal basic liberties, but these protections must themselves be crafted so as to align with the principle of difference without domination, if they are to succeed over time in protecting rather than undermining the equal basic liberties and political equality specifically. Protections of the equal basic liberties that are crafted in such a way as to fulfill the principle of achieving difference without domination in the social and economic domains should result in social equality and economic fairness and egalitarianism, cases I will make in the subsequent chapters. Here I will merely offer a preview.

What exactly is required of the principle of difference without domination in the social realm? How can we support social difference while disconnecting it from domination? The question is what is required of the basic structure, the fundamental political and social institutions, such that the social dynamics that emerge out of practices of free association do not articulate with hierarchy and domination and thereby undo the pathway to political equality?

The solution must lie in identifying features of the institutions of the basic structure that simultaneously protect free association and work against the development of phenomena like opportunity hoarding and group domination. These features of the institutions of the basic structure are those that permit and support difference, but without domination. We judge the institutions of the basic structure, then, for their likelihood of spurring difference without domination. I encapsulate the features of the basic structure that can make the relevant difference under a subsidiary ideal of "connected society" institutions.

Scholars of social capital distinguish among three kinds of social ties: bonding, bridging, and linking. Bonding ties are those (generally strong) connections that bind kin, close friends, and social similars to

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one another; bridging ties are those (generally weaker) ties that connect people across demographic cleavages (age, race, class, occupation, religion, and the like); finally, linking ties are the vertical connections between people at different levels of a status hierarchy, as in, for instance, the employment context (Granovetter 1973; Szreter and Woolcock 2004). As I will argue in chapter 4, an associational ecosystem that maximizes bridging ties should minimize the likelihood that social difference articulates with domination (Allen 2016a). Constructing an associational ecosystem that achieves this requires focusing on all of the policies that impact the use of land and space: transportation, housing, zoning, districting (including both for political representation and for education), public accommodations, and communications infrastructure (which affects spatiotemporal experiences). The question of how space and land use are organized affects whether the protection of the right to association will, over time, support or undermine the equal basic liberties, including among these the very right of association itself. In other words, more already existing policies may be directly germane to basic rights protection than we often realize. The standard of aspiring to achieve difference without domination does not necessarily generate a need for new policies or services. Instead, it requires a review of current policies across domains of social policy (transportation policy, housing policy, education policy, health policy, etc.) with a view to assessing how those current policies protect (or fail to protect) equal basic liberties. Where they fail either to protect equal basic liberties or to pass a strict scrutiny test for the achievement of difference without domination, then we have found places where we need to adjust our policies. Whereas many of our current policy domains are structured by a picture of justice that depends fundamentally on a focus on the distribution of material goods, I advocate an alternative approach to a policy review based instead on a picture of justice that depends fundamentally on political equality, or egalitarian empowerment.

A "connected society" is one where people can enjoy the bonds of solidarity and community but are equally engaged in the "bridging" work of bringing diverse communities into positive relations. It is one

Uncorrected proofs for review only

Allen_9780226777092_Ch02.indd 53 Achorn International 09/16/2022 09:00PM

where people also individually desire and succeed at forming personally valuable relationships across boundaries of difference. By recognizing that we should choose strategies for protecting the equal basic liberties that also accord with the principle of difference without domination, we bring a heightened salience to policy areas that have long gone overlooked. The goal of acting in this policy space would be the cultivation of an associational ecosystem in which people do have the opportunity to choose their associates in order to realize their personal visions of the good life but also find themselves *routinely interacting* with those whom they have not, so to speak, chosen, and *routinely obliged to share power* in a variety of public contexts with these unchosen others.

If a connected society is the subsidiary ideal to be developed via application of the principle of difference without domination to the social realm, what accompanying subsidiary ideal captures the application of this principle to the economic realm? In the economic realm, the focus of policy-making generally falls not on land but on labor and capital. Thus, Rawls's difference principle—that any unequal distribution of material goods among members of a polity must in some sense redound to the benefit of the worst-off—is usually taken as a justification of redistributive tax policy. The expectation is that institutions that protect equal basic liberties will result in economies in which the rewards of productivity accrue differentially to the owners of capital, the managers, and the laborers. Such a result is acceptable, argues Rawls, but only as long as the benefits accruing to the owners and managers are in some fashion beneficial to the worst-off, as, for instance, when the managers' work raises the productivity of the whole economy and the standard of living for the worst-off, even as that group falls farther behind the owners and managers in income or wealth or both. In other words, Rawls acknowledges that in the economic realm, as in the social realm, we can assume that the protection of equal basic liberties will generate difference.[25] *Difference* is another word for "inequality," in a Rawlsian vocabulary, and with the difference principle Rawls provides us with a tool to steer away from illegitimate forms of inequality.

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Yet if we ask instead the question of how we could build an economy that achieves difference without domination, we evaluate economic outcomes with a somewhat different lens. Patterns of material inequality are assessed with a view to whether they undermine the political empowerment of the citizenry. As we shall see in chapter 6, thinkers throughout the ages have considered an egalitarian economy, generating a strong middle class, a necessary foundation for the sustainability of constitutional democracy. This shift in focus—from questions simply of distribution to questions of the linkages between political economy and empowerment of the citizens—helps policy makers see not only the best-off and the worst-off but also everybody in between. Relatedly, some efforts to fulfill the requirements of the difference principle, by directing material benefit to the least well-off, may simultaneously erode the political capacity of the least well-off specifically, and the democratic citizenry generally, in cases where disempowering forms of dependency emerge. In such cases, the principle of difference without domination would suggest that we should find an alternative path to fulfillment of our material needs, one that does not sacrifice political liberties.

The application of the principle of difference without domination in the social realm led to a subsidiary ideal of a "connected society." In the economic realm, application of this overarching principle leads to a subsidiary ideal of an "empowering economy." As in the social realm, in the economic realm too, the standard of aspiring to achieve difference without domination does not necessarily generate a need for new domains of policy or services. Instead, it requires a review of current policies across domains of economic policy (e.g., labor policy, trade policy, the organization of the firm) with a view to assessing how those current policies protect (or fail to protect) equal basic liberties, positive as well as negative.[26] Where they fail to protect equal basic liberties or to pass a strict scrutiny test for the achievement of difference without domination, we find places where we need to adjust our policies. Whereas many of our current approaches to economic policy are structured by a picture of justice that focuses first and foremost on the distribution

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Allen_9780226777092_Ch02.indd 55 Achorn International 09/16/2022 09:00PM

of material goods, I advocate an alternative approach to a policy review based instead on a picture of justice that depends fundamentally on political equality, or egalitarian empowerment. Again, use of a strict scrutiny approach with the difference without domination principle is of value here.

As we will see in chapter 6, when we apply this principle to the economic realm, four issues quickly emerge as salient: (1) the organization and operation of the firm and the experience of labor within it, and the necessity of building a world on the basis of "free labor"; (2) the impact of economic distribution on access to political voice and influence; (3) the relation between structures of production and the relative degree of inequality in pretax distributions of income; and (4) the question of whether the distributive shape of the contemporary economy itself relies on forms of decision-making that embed domination within them, for instance through technocratic decision-making that is excessively insulated from democratic accountability.

One other point must also be made about how the "difference without domination" principle affects consideration of economic justice. How we protect our equal basic liberties has an impact on economic outcomes not only directly, with regard to how firms operate or who wields power over economic decisions, but also indirectly, via our social structures. Recall, again, the example of segregation. That type of social structure itself eventuates in specific inegalitarian patterns in the distribution of material goods. If we seek economic egalitarianism, the application of the principle of difference without domination in the social realm is as important as in the economic realm. Particularly in conditions of pluralism, we can achieve an egalitarian economy that features difference without domination only if the underlying pluralistic social structure is also egalitarian. The emergence of a connected society in the social realm can be expected, in the inverse of the situation with segregation, to have more egalitarian impacts on patterns in the distribution of economic resources (see chap. 4).

The principle of difference without domination, considered with reference to immigration policy, gives us a further way of clarifying

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Allen_9780226777092_Ch02.indd 56 Achorn International 09/16/2022 09:00PM

how social and economic realms are linked. In the US, the declining political power of labor—now broadly recognized as one of the main drivers of increasing income and wealth inequality in the late twentieth century—is itself a consequence of accepting incorporation into the labor force of approximately eleven million undocumented immigrants who have no rights to political participation (McCarty, Poole, and Rosenthal 2006). Their voices do not contribute to shaping policy, with plain results in the skewing of policy outcomes toward the interests of those who are financially better-off than they. A focus on political equality gives us more purchase on the challenges facing the pursuit of economic egalitarianism than does Rawls's difference principle. In addition, recognition of this linkage between the economy, political equality, and immigration will require that, along the way to fleshing out the ideals of a connected society and empowering economies, we also identify a subsidiary ideal to guide our thinking about membership in the polity and immigration. To this end, in chapter 5, I develop the subsidiary ideal of "polypolitanism," an ideal for enhancing political voice by activating the multiple memberships within political units that any given person will have.

Power-Sharing Liberalism

Mine is by no means the first effort to point out the entanglements, whether actual or potential, of liberal political philosophy with the problem of domination. Over the past three decades, critical race, settler-colonial, feminist, agonistic, and Marxist theories have all leveled challenges against liberal political philosophy on the grounds that its philosophical tradition is not accidentally but necessarily supportive of racial and patriarchal forms of domination. Some of these challenges focus on how liberal political systems have withheld rights from members of minority groups or others in a position of subordination. Some challenges have focused on how the social and economic differences that emerge from rights protection have come to articulate with domination over time. I agree with many of these critiques that liberalism

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Allen_9780226777092_Ch02.indd 57 Achorn International 09/16/2022 09:00PM

as practiced in the eighteenth, nineteenth, and twentieth centuries accepted the continuation of domination. The difference between these other lines of criticism and my own comes in, however, with regard to the path taken once the problems are recognized.

Other critiques of the close connection between liberalism and patterns of domination have often resulted in efforts to set aside liberalism as such. My project instead is a reconstruction of a liberal theory—a theory of democracy, justice, and basic rights protection—on grounds incompatible with domination generally and racial domination specifically. The identification of the principle of *difference without domination* as a necessary entailment of the commitment to protect negative and positive liberties *simultaneously* and *for all* provides a new starting point for liberal political philosophy—one intended to enable a comprehensive reconstruction of liberal political philosophy on a ground of non-domination. "Difference without domination" is a more strenuously egalitarian principle than the Rawlsian "difference principle." It requires the sharing of power across all three domains—political, social, and economic. It also establishes a higher standard for our decisions about how we protect our equal basic liberties and identifies a larger swath of the policy landscape as pertinent to equal basic liberties. In seeking to establish a new foundation for liberalism that rules out domination, I introduce what might be called "power-sharing liberalism." Liberalism based on a principle of full inclusion and non-domination involves not just the protection of negative liberties for all but also the full protection of positive liberties, hence broad power sharing across political, social, and economic institutions.

Once we see the linkage between the social and economic realms, in relation to the application of the difference without domination principle on behalf of political equality, we can finally glimpse the true import of placing equal emphasis on public and private autonomy, on positive and negative liberties, on political equality and personal freedom. When the goal of a theory of justice is, above all, to protect private autonomy and the capacity of individuals to pursue the good life as they define it, questions of social structure are often seen as separate

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Allen_9780226777092_Ch02.indd 58 Achorn International 09/16/2022 09:00PM

from the economy and politics. In Rawls's effort to single out private experience as the thing that justice ought especially to protect, he failed to attend to the necessary economic and political consequences of how our private, social spaces are structured on account of the operations of our public life.

Critics from Susan Okin to G. A. Cohen have pointed this out: Okin by emphasizing how Rawls disregarded issues of justice in the family, Cohen by arguing that Rawls failed to attend to the issues of justice inherent in our choices of jobs. The connections among the social, economic, and political realms are invisible only to actors whose private experiences have not generally been impinged upon by either the political or the economic realm—namely, those in the cultural or political majority or a position of economic privilege. In contrast, minoritarian viewpoints are defined by the permanent salience of the mutual entanglement of the political, the social, and the economic. Since politics is defined by pluralism—regardless of the empirical degree of social heterogeneity in any given polity—a complete theory of justice must incorporate the view from a minoritarian position. In the "veil of ignorance" thought experiment, Rawls's *Theory of Justice* not only defines specific situated perspectives—those of women, for instance, or racial minorities—out of the account of justice; it also defines a minoritarian perspective *as such* (i.e., *abstractly understood*)—that is, a perspective at odds with a majority perspective—out of his account of justice. The whole point of coming to consensus in the veil of ignorance is that at some fundamental level minoritarian perspectives are dissolved (Mills 1997). In contrast, a truly universal theory of justice will incorporate this minoritarian viewpoint and therefore start from an acknowledgment of the full and permanent entanglement of private and public autonomy, and from recognition of the intrinsic value of political equality, alongside personal freedom, just as W. E. B. Du Bois could see. The result is power-sharing liberalism.

While political scientists have elaborated a picture of a power-sharing politics in the consociational regimes of the Netherlands and Lebanon, that picture of power sharing has been group-based. Power is

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Allen_9780226777092_Ch02.indd 59 Achorn International 09/16/2022 09:00PM

shared among religious or ethnic groups, and individual rights are constrained by group-based rights. Here in *Justice by Means of Democracy* I argue, in contrast, for power sharing as a concept that pertains to each and every individual in a democratic society. Power is shared broadly across individuals, regardless of social background. Power sharing flows from the protection of individual rights.

Difference without Domination: From Design Principles to Rules for Action

Before I turn to a fuller elaboration of the subsidiary ideals and their policy implications in the following chapters, it is worth reflecting again on how the pragmatist methodology provides a framework for making use of design principles. I return again to William James's idea that beliefs are rules for action. Our beliefs about justice translate into design principles for human social organization and behavior, and these in turn are operationalized in concrete laws and social norms. We can make this relationship between a design principle and legal rules concrete with regard to the principle of difference without domination by drawing on an example of a specific legal rule from a policy-making setting that implicitly adheres to this design principle. This rule has emerged from the realm of civil society through ongoing legal experimentalism in the policy domain of housing.

The US has a law called the Fair Housing Act that prohibits landlords from discriminating when they rent to tenants. That law has within it an exemption known as "Mrs. Murphy's exception." This is the rule that if you're, for instance, an Irish American woman named Mrs. Murphy, you have a building with four or fewer units, and you live in the building and want to rent only to other Irish Americans, your discrimination is permissible. The notion appears to be that the scale of Mrs. Murphy's enterprise is small enough to give us confidence that this kind of discrimination will not, in aggregate, result in systemic domination that hinders equal protection of the laws. Mrs. Murphy's exception accepts that the right of association generates difference and

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Allen_9780226777092_Ch02.indd 60 Achorn International 09/16/2022 09:00PM

sets an outer boundary on where difference would begin to turn into domination—in a building of larger than four units. Here we see how the principle of difference without domination manifests in the form of a legal rule.

Interestingly, this sort of limit on the right to association, out of a principle of avoiding difference that attaches to domination, has emerged in other domains of law too, not because of design but as a principle emergent from practice. For instance, in small business law, businesses below a certain number of employees—the precise number varies in the US from state to state but tends to be in the range of sixteen to eighteen people—are exempt from nondiscrimination employment law. Or we could state it the other way around: the right of association, which spawns difference, can be protected up to the point at which it also spawns domination—here, in firms that exceed eighteen people in scale. I take this small business case exemption to discrimination law also to be an example of an implicit application of the principle of difference without domination. Our legislators and jurists appear to have made the judgment that the discrimination in these cases operates below a level that would produce systemic domination and that it results from the worthy protection of other basic rights, such as the right of association. These examples show how a design principle (difference without domination) can manifest in practices: as laws and norms.

The legal practitioners who devised these compromises were not working self-consciously with the principle of seeking to secure difference without domination. But now that we have articulated that principle, we can do just that. Pursuing justice by means of democracy requires ascertaining what specific applications—in the form of laws, rules, or norms—follow from our guiding design principles, including the principle of difference without domination, across the domains of political institutions, the economy, and civil society. The goal is to translate from the overarching design principles of the shared non-sacrificeability of negative and positive liberties, the five facets of political equality, and difference without domination to applications in the form of legal rules and social norms as specific as Mrs. Murphy's

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Allen_9780226777092_Ch02.indd 61 Achorn International 09/16/2022 09:00PM

exception. To achieve this translation, we need to equip ourselves with subsidiary ideals for each of the three core domains of human life (political, economic, and social). Each subsidiary ideal is a domain-specific version of the guiding design principles. The subsidiary ideals then help us identify further domain-specific design principles that should be used to direct the strategic and tactical work of shaping legal rules and norms in the political, social, and economic realms. The tactics that will be found in particular places at particular times will be various. Thus, the overarching ideal of justice, the overarching design principle of difference without domination, and the domain-specific ideals will be universal, but they do not generate a single blueprint for institutions or human practices that might be derived abstractly in an a priori fashion or in an imagined original position. Instead, translated via design principles, these ideals are used to generate context-specific norms and rules that might realize the ideals in specific contexts of application. The moment of translation to context and the expectation that those translations will be various are necessary elements of understanding what is demanded by justice, on my account.[27] The rules for action of pragmatism, then, bridge universalizing theory with context-specific rules and norms through acts of translation.

The subsidiary ideal for each of the three domains describes the kind of world that would ideally exist in each domain, if our three domains of human life are to be able to function together to generate a virtuous circle sustaining difference without domination, political equality, positive and negative liberties, and therefore human flourishing and justice.[28] Table 2 (p. XXX) captures the overarching structure of the argument. The subsidiary ideals provide a foundation of principle from which flows the further work of organizing the powers of government and the structure of society and the economy.

As we have seen and as I will detail more fully in the chapters to come, justice by means of democracy is realized by pursuing our three design principles, including the principle of difference without domination. This effort will manifest as an orientation toward four subsidiary social ideals: in the political realm, an ideal of egalitarian participatory

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Allen_9780226777092_Ch02.indd 62 Achorn International 09/16/2022 09:00PM

constitutional democracy; in the realm of civil society, an ideal of a connected society; in the realm of rules of political membership, an ideal of polypolitanism; and in the economic realm, an ideal of empowering economies. Table 3 (p. XXX) provides an anticipatory look at where the argument is headed.

Our next job, taken chapter by chapter, is to spell out these subsidiary ideals and the domain-specific design principles that follow from them. They will, then, provide a framework that may be used by policy makers across a variety of specific domains of policy. Although the ideal for rules of membership in the polity is logically prior to the ideals for political, social, and economic domains, I will present each of the four subsidiary ideals in the order in which I came to understand them. The design principle of difference without domination is more immediately accessible to us in relation to our preexisting understandings of the realm of political institutions and civil society than in relation to the domains of membership in the polity and the economy. I have chosen, therefore, to order the chapters by articulating the subsidiary ideal for each domain in a sequence of increasing difficulty, or novelty. I start by exploring what difference without domination entails for political institutions and then turn to what it requires for the structure and functioning of civil society. Then I apply the principle to development of a subsidiary ideal for membership in any given democratic polity. Then I turn to how the principle should shape our understanding of a subsidiary ideal for the economic realm. The theory of justice I articulate here ultimately supports a political economy aligned with power-sharing liberalism. Like other liberalisms, this theory of justice starts from a protection of basic rights, but because it seeks to protect positive liberties as strenuously as negative liberties, this liberalism, and the political economy that flows from it, must constantly attend to the achievement of forms of social and economic relationship that support political equality. The insistence on attention to relationships and power drive a re-embedding of economic policy in social contexts. Chapter 6 will culminate our exploration by investigating how political economy would be reshaped once we understand justice as best pursued by means of

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Allen_9780226777092_Ch02.indd 63 Achorn International 09/16/2022 09:00PM

democracy and what the full contours of a power-sharing liberalism would be. Finally, in chapter 7, I will take up the implications of the argument for how we understand civic agency and the civic life of individuals. We will by then have come full circle. Having started with the fact that our most recent paradigms of political economy have been surprised by politics, we will have worked our way through, starting from an underlying theory of justice, to a new framework of political economy from which to pose questions to economists, as well as a new understanding of the agency of ordinary people and why it matters.

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Allen_9780226777092_Ch02.indd 64 Achorn International 09/16/2022 09:00PM

Notes

Prologue

1. This book proposes new questions for economists, and economist Glen Weyl is answering the call (see Weyl 2022a, 2022b). Other work by economists is also developing in this spirit, including Bowles and Carlin (2021) and Rodrik and Sabel (2022); see also Allen et al. (2022). My hope is that the combination of the work in this book and the work of Weyl, Bowles and Carlin, Rodrik and Sabel, and others might provide the foundation for a reorientation of political economy.
2. See my book *Cuz* (Allen 2017) on the US war on drugs for an example of a negative equilibrium that depends on the interaction between structures of governance and the emergence of self-organizing systems.
3. In this regard, a theory of justice contrasts with sociobiology's arguments about justice that claim to describe morality as it has evolved, as a matter of evolutionary biology and the evolution of the human brain.
4. For Rawls, a theory of justice has the job of articulating the right, not the good. Yet here, too, the argument is about an overall picture of human well-being, namely, that it is by agreeing to focus for our collective decisions only on the "right," and not on the "good," that we make it possible for people to pursue and experience the good as they define it. Rawls, too, has at least implicitly a broad conception of what is good for human beings as the final object of his analysis.
5. Mill (1859) 2006, 15–16: "The principle requires liberty of tastes and pursuits; of framing the plan of life to suit our own character; of doing as we like, subject to such consequences as may follow. . . . Each is the proper guardian of his own health, whether bodily, or mental and spiritual."
6. Mill (1859) 2006, 76: "With respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else."

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Chapter One

1. Of course, the subfield of behavioral economics—in which every self-respecting econ department must today have at least one practitioner—addresses exactly these questions. The field has not, though, yet displaced the common habits of thought that have migrated from utilitarian theory to common parlance.
2. This is a critique most forcefully articulated by Anderson (1999) and Forst (2011, 2014); and by Honneth (2014). Cf. Risse (2020), part II.
3. That Rawls's arguments work this way in practical contexts is something of an irony. One of his most fundamental points is the lexical priority of the rights. Moreover, fair equal opportunity is prior to the difference principle. There are, in other words, two steps of lexical priority before you get to the difference principle. Yet the difference principle, and a welfarism based on it, has come to define Rawls's influence on public policy.
4. But see Scanlon (2018) for a counterpoint to the dominant tendency. He focuses on the relational foundations of justice as the basis for his several complementary critiques of inequality.
5. Tessema (2020), in a fine study of the historical lineage of concepts of "equity," traced the connection of the term to "social justice" and of both terms to historically developed problems of material distribution that also align with other axes of disempowerment, such as race. It is also important to say something about the meaning of "critical race theory," given current political controversies. Charles Mills (2009, 270–71) offers a particularly helpful review of the concept: "For me, the best way to think of CRT is as analogous to feminism: a broad political and theoretical movement within which there are multiple approaches. In other words, there is a minimal commitment to recognizing the centrality of race to the making of the modern world (equivalent to the commitment to recognizing gender subordination), but after that there will be considerable variation in the causal diagnoses made and the political prescriptions offered." As Mills points out, those prescriptions range from the classical liberal to the Marxist. There is no necessary connection to either approach to political economy.
6. The relevant degree of comfort with discussion of different categories of inequality is probably shifting in the contemporary moment thanks to social movements for racial and gender justice, but the important point is that political inequality as a stand-alone concept typically does not make it onto the list of concerns around inequality.
7. There are exceptions to the tendency of much recent liberal egalitarian political philosophy to tilt toward abstraction—for instance, Tommie Shelby's *Dark Ghettoes* (2016). Shelby's unusual decision to integrate social science research within a Rawlsian philosophical argument is an exception that proves the rule.
8. Ravallion (2016), 87: "The Washington Consensus was too formulaic to be credible as a policy prescription. It listed a single set of policies, but governments of developing countries could see for themselves that there were multiple paths to development success."
9. Mill does not use the term "autonomy," but scholars of his work commonly understand his theory of liberty to be a theory of autonomy.
10. Berlin also extended the meaning of "positive" to include much more than republican liberty, in some instances arguing that positive freedom could exist only in the form of the collective or social whole. He then attacked those extensions, which would obliterate individual freedoms, without distinguishing between them and republican liberty.
11. The revival of republican liberty began with J. A. Pocock in 1975. On the other hand, the whole participatory democracy movement, starting in 1962, very much stressed self-ownership of the law, and one of the earliest and most extensive discussions of "participatory politics" is found in Robert J. Pranger's *The Eclipse of Citizenship* from 1968 (Kang 2012).

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Allen_9780226777092_Notes.indd 236 Achorn International 09/16/2022 09:08PM

12. What are rights? Very generally, they are boundaries in our treatment of each other, secured by incentive structures that both enforce those boundaries and inculcate habits of respecting those boundaries in our treatment of each other.
13. He adds, "These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights" (Rawls 1971, 61).
14. Rawls (1971), 7: "By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men's rights and duties and influence their life-prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start."
15. Rawls (1971), 195: "After this, three problems of equal liberty are discussed: equal liberty of conscience, political justice and equal political rights, and equal liberty of the person and its relation to the rule of law"; 197–98: "In pursuit of this ideal of perfect procedural justice (sec. 14), the first problem is to design a just procedure. To do this the liberties of equal citizenship must be incorporated into and protected by the constitution. These liberties include those of liberty of conscience and freedom of thought, liberty of the person, and equal political rights. The political system, which I assume to be some form of constitutional democracy, would not be a just procedure if it did not embody these liberties"; 199: "The first principle of equal liberty is the primary standard for the constitutional convention. Its main requirements are that the fundamental liberties of the person and liberty of conscience and freedom of thought be protected and that the political process as a whole be a just procedure. Thus the constitution establishes a secure common status of equal citizenship and realizes political justice."
16. Although scholars have not noticed this feature of Rawls's thought, it does in fact structure the book as a whole, as I detail in the chapter, and should be taken seriously.
17. Rawls (1971), 201–2: "Thus one might want to maintain, as Constant did, that the so-called liberty of the moderns is of greater value than the liberty of the ancients. While both sorts of freedom are deeply rooted in human aspirations, freedom of thought and liberty of conscience, freedom of the person and the civil liberties, ought not to be sacrificed to political liberty, to the freedom to participate equally in political affairs. This question is clearly one of substantive political philosophy, and a theory of right and justice is required to answer it. Questions of definition can have at best but an ancillary role"; 230: "One of the tenets of classical liberalism is that the political liberties are of less intrinsic importance than liberty of conscience and freedom of the person. Should one be forced to choose between the political liberties and all the others, the governance of a good sovereign who recognized the latter and who upheld the rule of law would be far preferable. On this view, the chief merit of the principle of participation is to insure that the government respects the rights and welfare of the governed. Fortunately however, we do not often have to assess the relative total importance of the different liberties. Usually the way to proceed is to apply the principle of equal advantage in adjusting the complete system of freedom. We are not called upon either to abandon the principle of participation entirely or to allow it unlimited sway. Instead, we should narrow or widen its extent up to the point where the danger to liberty from the marginal loss in control over those holding political power just balances the security of liberty gained by the greater use of constitutional devices. The decision is not an all or nothing affair. It is a question of weighing against one another small variations in the extent and definition of the different liberties. The priority of liberty does not exclude marginal exchanges within the

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Allen_9780226777092_Notes.indd 237 Achorn International 09/16/2022 09:08PM

system of freedom. Moreover, it allows although it does not require that some liberties, say those covered by the principle of participation, are less essential in that their main role is to protect the remaining freedoms. Different opinions about the value of the liberties will, of course, affect how different persons think the full scheme of freedom should be arranged"; 230: "Moreover, it allows although it does not require that some liberties, say those covered by the principle of participation, are less essential in that their main role is to protect the remaining freedoms. . . . . It is only when social conditions do not allow the effective establishment of these rights that one can acknowledge their restriction. The denial of equal liberty can be accepted only if it is necessary to enhance the quality of civilization so that in due course the equal freedoms can be enjoyed by all"; 233: "I do not wish to criticize Mill's proposal. My account of it is solely for purposes of illustration. His view enables one to see why political equality is sometimes regarded as less essential than equal liberty of conscience or liberty of the person. Government is assumed to aim at the common good, that is, at maintaining conditions and achieving objectives that are similarly to everyone's advantage. To the extent that this presumption holds, and some men can be identified as having superior wisdom and judgment, others are willing to trust them and to concede to their opinion a greater weight. The passengers of a ship are willing to let the captain steer the course, since they believe that he is more knowledgeable and wishes to arrive safely as much as they do. There is both an identity of interests and a noticeably greater skill and judgment in realizing it. Now the ship of state is in some ways analogous to a ship at sea; and to the extent that this is so, the political liberties are indeed subordinate to the other freedoms that, so to say, define the intrinsic good of the passengers. Admitting these assumptions, plural voting may be perfectly just. Of course, the grounds for self-government are not solely instrumental. Equal political liberty when assured its fair value is bound to have a profound effect on the moral quality of civic life."

18. Cf. the argument of the original edition. Rawls (1971, 542–43) continues : "As the conditions of civilization improve, the marginal significance for our good of further economic and social advantages diminishes relative to the interests of liberty, which become stronger as the conditions for the exercise of the equal freedoms are more fully realized. Beyond some point it becomes and then remains irrational from the standpoint of the original position to acknowledge a lesser liberty for the sake of greater material means and amenities of office. . . . Increasingly it becomes more important to secure the free internal life of the various communities of interests in which persons and groups seek to achieve, in modes of social union consistent with equal liberty, the ends and excellences to which they are drawn. In addition men come to aspire to some control over the laws and rules that regulate their association, either by directly taking part themselves in its affairs or indirectly through representatives with whom they are affiliated by ties of culture and social situation."
19. Earlier in section 32 he has rightly explicated, with reference to Constant, how the long-running arguments over how to define the liberties of the ancients and of the moderns are really arguments about the relative value of the different basic liberties. Formally, he puts the question of relative value to the side, but he nonetheless seems to suggest that he would come down with Constant for the view that freedom of thought and conscience ought not, he argues, to be "sacrificed" to political liberty.
20. In section 82, Rawls does discuss the emergence of a principle of the inviolability of political liberties in the well-ordered society. In this and the preceding paragraphs, however, I am suggesting that he has misunderstood the role of principles of inviolability; they should help us achieve a well-ordered society while we are under nonideal conditions, they should not be that which we secure with and only with the well-ordered society. Rawls's prioritizations among the basic liberties, and his differential application

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Allen_9780226777092_Notes.indd 238 Achorn International 09/16/2022 09:08PM

of a principle of inviolability to the negative and the positive liberties, established a framework for political judgment, which is in itself an ideal framework even if deployed in nonideal circumstances. I am criticizing that framework for political judgment.

21. Kamm (1993) discusses the case-based method for moral reasoning in groundbreaking ways.
22. For a good account of co-originality, see Frank (2005).
23. Rawls objected to views that made more extensive claims about the inherent good of democratic equality, for instance, Habermas's argument that democracy is valuable in itself because political participation is necessary to full human flourishing and not merely to self-respect. Rawls rejected the idea that "civic humanism is true: that is, the activity in which human beings achieve their fullest realization, their greatest good, is in the activities of political life" ([1993] 2011, 5–6, 420). Some people, he argued—for instance, a George Washington or an Abraham Lincoln—may develop such a conception of the good for themselves. They may need the activities of a political life to achieve their full flourishing. But we ought not to impose that conception of the good on everyone else.
24. Susan Okin (1991) makes a parallel point concerning Rawls's nonattention to the impact of family structure on justice in *Justice, Gender, and the Family*.
25. I am using a conception of autonomy that extends to embodied autonomy, not simply the giving of moral laws to oneself, as in a strict Kantian sense. Instead, I am using autonomy as an antonym to domination.
26. This is not a new path, not in fact an abandonment of classical liberalism, as Rawls suggests, but a return to a moment before liberalism, via Constant, divided the two sets of rights from each another and prioritized negative liberties. Prior to that point, eighteenth-century traditions of liberalism—rights-based political theories—were commonly republican, emphasizing the importance of positive liberties and participation. As Melvin Rogers has shown (2020, forthcoming), republicanism did not die off when liberalism began to focus on negative liberties with Constant as well as with John Stuart Mill. It lived continuously in the tradition of African American political philosophy. The argument that I make throughout this book draws on the durable commitment of those who have experienced political marginalization to affirming the intrinsic value of positive liberties.

Chapter Two

1. For an excellent exposition of the core elements of an ideal of democracy, see Ober (2017).
2. Why start an argument about the meaning of justice by asserting that justice must include political equality or democracy? There are two possible answers. Either one thinks that participating in democracy is in itself good for human beings or else one thinks that only by participating in a democracy can human beings secure the elements of justice. The value of democracy may, in other words, be either intrinsic, deriving from what it itself is, or instrumental, deriving from the outcomes that it secures. For the past two centuries, political philosophers in the West (in contrast, for instance, to scholars working on Chinese traditions of meritocracy) have argued that democracy has an undeniable instrumental value—in securing conditions for the exercise of personal autonomy, and possibly in securing various aspects of material well-being. They have also argued that it *may* have intrinsic value. It *may* be the activity in which full human flourishing is manifest. See Jill Frank (2005) for a fine analysis of the difference between intrinsic goods, which inhere in an activity itself, and instrumental goods, which are often the deliverables or outcomes of an activity.

Uncorrected proofs for review only

Allen_9780226777092_Notes.indd 239 Achorn International 09/16/2022 09:08PM

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Amartya Sen explores both the instrumental and the intrinsic justifications for democracy and a third "constructive" justification in "Democracy as a Universal Value" (1999b). As an example of the instrumental value, Sen famously argues that the adoption of democratic political institutions ensures that a society will not suffer famines (1999a, chaps. 6 and 7). By a constructive justification, he has in mind the work that democracies do to generate our preferences and senses of value and direction; democratic decision-making mechanisms drive social processes that help populations define goals and values in the first place, thereby shaping personal and collective preferences. I agree that democracy can also be justified on this constructivist basis, but I put that plank of justification aside for the time being.

3. This argument that rights of participation protect rights of private autonomy runs parallel to Sen's argument in *Development as Freedom* (1999a) that political rights protect economic rights.
4. This species property argument has predecessors in Aristotle (see Williams 2009; Sen 1999b) and the Declaration of Independence (see Allen 2014b).
5. Rights were originally conceived of as equal among the rights bearers, and once rights were extended to all human beings, the very nature of what we mean by rights means that those who have those rights have them equally.
6. Why these five facets and not others? My answer is that of a philosophical pragmatist: These are the facets of the concept of political equality that anchor understanding of that ideal within the context of US democracy. They are the five facets limned in the Declaration of Independence, a text that has shaped the normative horizons of this culture for two and a half centuries, whether its arguments have been affirmed or repudiated and whether the text has been intentionally acknowledged (as by Abraham Lincoln, Martin Luther King Jr., the Black Panthers, and the Tea Party) or left unacknowledged. The Declaration in fact made a positive contribution to political philosophy by tethering eudaimonism to pragmatism. Its approach to political equality supports that tethering, and I build on its five facets for political equality for that reason. Cf. Allen (2014b).
7. I've argued for them at greater length in my book *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (2014b). Here, for summary purposes, I will simply name the five facets.
8. What follows is a broad-brush paraphrase of my argument in *Our Declaration*. I should note that in the context of this chapter I start from the Declaration of Independence not merely because it is an anchor for the US political tradition but also because I take it to have made an innovative contribution to political philosophy, and particularly to the philosophy of egalitarianism. Its innovation has been less recognized and less followed up on in the philosophical literature than it should be. In particular, I take the Declaration to articulate a liberal-pragmatist theory of democracy grounded in a conception of human flourishing ("the pursuit of happiness") that leaves the people themselves to define and judge experimentally and experientially over time, while hedging their experiment with, the concept of "rights." This hedge is what makes the view liberal; the experimentalism is what makes it pragmatism. Moreover, this pragmatism does posit a final good ("happiness"), but it does not give that final good a metaphysical ground. Instead, the document leaves judgments about happiness to individual people and the people as a whole to be made over time. In this regard, the view articulated in the Declaration rests on commitments both to fallibilism and corrigibilism. Finally, it articulates a constructive justification for democracy insofar as it identified democratic citizenly debate (about principle and about how to organize the powers of government to deliver on those principles) as the only means for developing a view about the content of "happiness." The political philosopher who comes closest, I think, to articulating a philosophical view in line with that laid out in the Declaration of Independence is Amartya Sen. John Stuart Mill in *On Liberty* picked up key aspects of the

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Allen_9780226777092_Notes.indd 240 Achorn International 09/16/2022 09:08PM

argument about happiness and independent human judgment set out in the Declaration of Independence, but the ultimate reduction of the "happiness" concept to "utility" by the utilitarian tradition reduced the power of the original idea and obscured the original constructivist view about the ongoing creation of definitions of personal and public happiness over time by a deliberating and contestatory democratic people. With this mistake, utilitarianism, and other public philosophies that have flowed from it, fundamentally lost sight of politics, reducing decision-making to the work of aggregating given and static preferences.

9. Protection from domination includes protection that comes in a positive form—via instances where law is required to solve collective action problems. That is, we sometimes need coercion to get people to contribute to creating things that benefit all (or many) and that all or many genuinely want, but that absent coercion, insufficient numbers of people will contribute to, so these things will not come about. Also, we need to avoid domination by potential free riders. (Thanks to Jane Mansbridge for this point.)
10. The arguments in this chapter are complemented by those of Melvin Rogers (2020) in "Race, Domination, and Republicanism" and by an outline of fundamental principles for justice in the twenty-first century in Allen et al. (2022) *A Political Economy of Justice*.
11. As Jane Mansbridge points out to me, this brings out the significance of Thucydides's critique of Pericles in the *History of the Peloponnesian War* when the historian says that Athens was a democracy in name only because all the power was really in the hands of one man, namely, Pericles (book 2.65). Mansbridge astutely observes that Thucydides was seeking to refute the democracy's claim to have achieved a depersonalization of power. It's also notable that in the early modern period some monarchies were thought not to be personal but instruments of God or legitimated by their pursuit of justice or the common good. The idea emerged that the monarchy was not the specific person of the monarch, and this facilitated the emergence of modern conceptions of the state.
12. This is not quite the same as Rawls's idea that the basic liberties must be protected equally for all even if, due to inequalities in resources, not all have equal value of political liberty. The rich will have more value from the political liberties available to them. Rawls's solution to the gap between political liberties and actual empowerment is the application of the difference principle to the functioning of the basic liberties. He writes, "Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all" (sec. 32). I am articulating the further idea that there should be no avenue of lever pulling available exclusively to the rich and only to the rich, even if it is possible for the rich to do more with the levers available to be pulled.
13. Ober (2008), in *Democracy and Knowledge*, provides the most comprehensive empirical and theoretical articulation of the importance of epistemic egalitarianism to the success of democracy. See also Farrell and Shalizi (2015).
14. This has been recognized recently in the United States by the Presidential Commission for the Study of Bioethical Issues, which has made collaboration between experts and lay citizens a key feature of its work. See, for instance, the Commission's report *New Directions* (2010).
15. This ideal of equal agency is the cornerstone of Aristotle's concept of rectificatory justice, which he argues for in *Nicomachean Ethics*, book 5.4, and which I explicate in both *World of Prometheus* (2000, chap. 11) and *Talking to Strangers* (2004, 128–30). I have made this idea a core element of my own democratic theory.
16. As Jane Mansbridge points out, a fuller conception of reciprocity would include cocreation. Cocreation is the fifth facet of equality that I consider, and I address it below. The project of responsiveness also has the goal of doing things together than one cannot do alone. In the section of the Declaration most closely tied to reciprocity, however, the focus is primarily on redress of grievances, and I follow that structure here.

Uncorrected proofs for review only

Allen_9780226777092_Notes.indd 241 Achorn International 09/16/2022 09:08PM

17. My account here, articulated fully in my *Talking to Strangers* (2004), is very close to Rawls's argument about the importance of a "sense of justice."
18. On campaign finance, Rawls put on the table years ago the question of what to do when accumulations of financial capital are converted into forms of political domination and undermine the fair value of political liberty (*Theory of Justice*, sec. 36). While efforts in the US to control private giving to political campaigns run into conflicts with the liberty of free expression, a reorganization of voting mechanisms around ranked-choice voting would redirect campaign funds into more socially productive uses, reducing the power of money in politics without infringing on rights of expression. See also Sodonis and Witte (2012).
19. See, for instance, Hacker (2011); Gilens (2012); and Scanlon (2018), who analyze how income and wealth inequality have come to affect American politics, with the political preferences of the wealthy elite dominating decision-making.
20. This is my revision to Hayek via a focus on several kinds of self-ordering system and the relations among them. While this might on first blush sound like Michael Walzer's argument in *Spheres of Justice* (1983), and while there are many points of similarity and alignment between my argument and Walzer's, our arguments are fundamentally distinct in the following way. Walzer sets out to offer an account of distributive justice, where the social goods of different spheres of social life each have principles of distribution pertinent to those spheres. The principles don't flow from any conception of human or natural rights (as Walzer points out in his introduction). He writes: "Hence in the pages that follow I shall imitate John Stuart Mill and forego (most of) the advantages that might derive to my argument from the idea of personal—that is, human or natural—rights. Some years ago, when I wrote about war, I relied heavily on the idea of rights. For the theory of justice in war can indeed be generated from the two most basic and widely recognized rights of human beings—and in their simplest (negative) form: not to be robbed of life or of liberty. What is perhaps more important, these two rights seem to account for the moral judgments that we most commonly make in time of war. They do real work. But they are only of limited help in thinking about distributive justice."

    In my argument, in contrast, I do not seek a theory of distributive justice, in the first instance, but a theory of, in effect, relational justice, where the relevant relationship sought is one of political equality, and the content of that is indeed captured by the basic and most widely recognized rights of human beings. I take distributive questions to be secondary to relational questions. As a result, the kinds of issues that emerge for attention in the political, social, and economic domains in my argument are often different than those that emerged for Walzer. The interesting exception is in our chapters on membership, where our concerns are highly aligned.
21. This is a central debate among Hayek, Nozick, and Rawls. Like Rawls, I take just proceduralism to yield substantive justice. We also differ, though. Rawls argues that the goal is to move from principles of justice (derived procedurally from the original position) to the "institutions" of the just society. I would argue that the goal is to equip people with principles that permit them to be constant revisers of the "chartering rules" that structure the basic structure. Like Rawls, I do seek to articulate universal principles, but I more emphatically expect (like Michael Walzer) that the concrete instantiation of those principles in specific demographic circumstances may well be highly various.
22. Of course, politics is not limited to dissensus; it also involves consensus, as Mansbridge points out in *Beyond Adversary Democracy* (1980). But it is always necessary to "come to consensus," which means starting from or passing through "dissensus."
23. See Sethi and Somanathan (2004) on impacts of segregation even in absence of discrimination.
24. A point made controversially by Arendt in "Lessons from Little Rock" (1959).

Uncorrected proofs for review only

Allen_9780226777092_Notes.indd 242 Achorn International 09/16/2022 09:08PM

25. Robert Nozick (1973) provides the classic argument about the relation between liberty and economic difference or inequality, with Wilt Chamberlain as his example. Of course, there is a difference between Nozick and Rawls. Rawls based the difference principle on the idea that in the original position (without envy) we would accept (indeed welcome) any inequalities that grew the pie, and that the least advantaged sectors also had to benefit because we might end up there. But the difference principle kicked in only after the liberties were guaranteed and then after equal opportunity was guaranteed (two layers of priority).
26. Rawls had little to say about the organization of the firm, though Elizabeth Anderson has recently made important contributions on this topic, especially with her book *Private Government* (2017), which, like *Justice by Means of Democracy*, also rests on a reorientation toward political equality.
27. The method sketched here for proceeding from ideals to subideals to design principles to rules for action was used in Allen, Heintz, Liu, et al. (2020) and Allen, Fung, Weenick, et al. (2018).
28. Allen (2004, 85–91) initiates a conversation about the role of ideals for guiding action in relation to democracy's imperfections. The ideals identified here could be considered an extension of that argument.

Chapter Three

1. In my view, this is where Hayek made his central mistake.
2. This definition is drawn from Allen, Heintz, Liu, et al. (2020). HELLO
3. Energy: *Federalist Papers*: 22, 23, 26, 37, 69, 71, 73, 77–78. Republican safety: *Federalist* 70. See also Michels ([1911] 1962); Rahman (2017).
4. Declaration of Independence: "It is the right of the people to alter or to abolish . . ."; US Constitution, Article 5: amendment process; *Federalist Papers* 39, 40, 43, 85.
5. My treatment here draws on Lukes (1974); *Federalist* 15; Rousseau ([1762] 2004).
6. The Georgia Land Lottery used lottery for distribution of homesteads in the nineteenth century; the California Redistrict Commission currently selects some commission members via lottery.
7. For a general review of different voting procedures, with a focus on the role of supermajority requirements as a decision mechanism, see Schwartzberg (2013).
8. On the early recognition that enslavement was creating factionalism, see, for instance, this excerpt from the Continental Congress debates on the Articles of Confederation, July 30, 1776:

   LYNCH. If it is debated, whether their *slaves* are their *property*, there is an end of the confederation. Our *slaves* being our property, why should they be taxed more than the land, sheep, cattle, horses, &c.? Freemen cannot be got to work in our Colonies; it is not in the ability or inclination of freemen to do the work that the negroes do. Carolina has *taxed* their negroes; so have other Colonies their lands.

   DR. FRANKLIN. *Slaves* rather weaken than strengthen the State, and there is therefore some difference between them and sheep; sheep will never make any insurrections.

   RUTLEDGE. I shall be happy to get rid of the idea of slavery. The *slaves* do not signify *property*; the old and young cannot work. The property of some Colonies is to be *taxed*, in others, not. The Eastern Colonies will become the carriers for the Southern; they will obtain wealth for which they will not be taxed."

9. See *Federalist* 51, 63, 69, 77. The concept of enterprise liability in corporate law travels similar conceptual territory. See Keating (2001).

Uncorrected proofs for review only

Allen_9780226777092_Notes.indd 243 Achorn International 09/16/2022 09:08PM

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