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David Watkins

University of Dayton, [dwatkins1@udayton.edu](mailto:dwatkins1@udayton.edu)

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Slavery and Freedom in Theory and Practice

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David Watkins  
Political Science Department  
University of Dayton, 300 College Park  
Dayton, OH 45469-1425  
djw172@gmail.com

Abstract:

Slavery has long stood as a mirror image to the conception of a free person in republican theory. This essay contends that slavery deserves this central status in a theory of freedom, but a more thorough examination of slavery in theory and in practice will reveal additional insights about freedom previously unacknowledged by republicans. Slavery combines imperium (state domination) and dominium (private domination) in a way that both destroys freedom today and diminishes opportunities to achieve greater freedom tomorrow. *Dominium* and *imperium* working together are a greater affront to freedom than either working alone. However, an examination of slavery in practice, focusing on the experiences of American slaves, demonstrates that republicanism's acknowledged strategies for freedom-seeking, acquiring insulation from domination through law and through norms, do not encompass the full range of options. Slave seek freedom through physical absence, economic activity, and culture. The account of slavery and freedom developed here suggests republican accounts of freedom should either give up their focus on thresholds of freedom, or consider the possibility of a plural conception of freedom that extends beyond just freedom as non-domination to include freedom as collective world-making, or both.

Keywords:

Freedom, Non-domination, Slavery, Republicanism

David Watkins is currently an Assistant Professor of Political Science at the University of Dayton.

He specializes in Contemporary Political Theory, with particular interest in democratic theory, republicanism, and political theories of immigration. Recent publications include "Compared to What? Judicial Review and Other Veto Points in Contemporary Political Theory," *Perspectives on Politics* 13:2 (2015), 312-326, "Institutionalizing Freedom as Non-Domination: Democracy and the Role of the State," *Polity* 47:4 (2015), 508-534, and "Justice For Border-Crossing Peoples," in Richard Marback and Mark Kruman, eds, *The Meaning of Citizenship* (Detroit: Wayne State University Press, 2015), 170-209.

## Introduction

Slavery has always occupied a central place in republican political theory. In its original Roman incarnation, Anglo-American revival, and present neorepublican form, it has served as “the paradigmatic example of unfreedom in republican thought,” providing a mirror image of a fully free person.<sup>1</sup> But should slavery retain this central status in contemporary theorizing about freedom? Will argue that it should, but republican theorists have not identified the full range of theoretical insights a focus on slavery can yield, nor have they sufficiently considered how our understanding of freedom might be improved by a more careful consideration of the actual, historical conditions of slavery, especially when viewed from the perspective of slaves themselves. This paper attends to these lacunae, through closer examination of what’s so uniquely and distinctly wrong with slavery in conceptual terms, and through an examination of actually existing slavery in the American South, and the freedom-seeking strategies of the slaves who experienced it.

The first section will identify an underappreciated but important republican insight about freedom from republican theory, regarding the relationship between private domination (*dominium*) and state domination (*imperium*). The next section will make the case for theorizing freedom in light American, rather than classical, slavery. The following section draws on recent historical scholarship to identify and examine three ways in which freedom was sought—and occasionally, partially, won—by slaves despite formidable obstacles. The final section takes up the question of what this might mean for neorepublican political theory. I identify two possible adaptation strategies for republican theory in light of this account—one that requires on a modest internal modification, and

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<sup>1</sup> Eric MacGilvray, *The Invention of Market Freedom* (Cambridge: Cambridge University Press, 2012), 159.

another that requires looking beyond neorepublicanism's monistic focus on non-domination to fully appreciate what actually existing slavery has to teach us about freedom.

### Freedom and slavery in theory

While slavery plays a role in many understandings of freedom, for republicans it is particularly central. Slavery is understood as freedom's precise opposite: "The republican tradition is unanimous in casting freedom as the opposite of slavery, and in seeing exposure to the arbitrary will of another, or living at the mercy of another, as the great evil....slavery is essentially characterized by domination, not by actual interference: even if the slaves master proves entirely benign and permissive, he or she continues to dominate the slave."<sup>2</sup> There are two central ideas expressed in this passage. First, understanding unfreedom as synonymous slavery demonstrates the error of defining freedom as noninterference, rather than non-domination. The life of a slave with a benign and permissive owner may be more pleasant than that of other slaves, but it is not, in Pettit's account, more free than other slaves.<sup>3</sup> Attention to the status of slaves exposes the fundamental error of freedom as understood merely as non-interference rather than non-domination. Second, slavery is useful for understanding unfreedom because it provides a kind of complete or perfect unfreedom, against which various other unfree statuses and circumstances can be measured.

Two key concepts in the republican account of freedom demand further examination: 'exposure' and 'insulation.'<sup>4</sup> First: exposure. Living in a society ensures we are constantly surrounded

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<sup>2</sup> Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), 31-32.

<sup>3</sup> Recently Pettit has modified this claim, conceding that, all else being equal, domination with interference is in important ways worse than domination without it. See *On The People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), 28.

<sup>4</sup> Both of these concepts figure significantly in a number of iterations of Pettit's account of freedom. His account of unfreedom is frequently framed in terms of exposure to the will of others: see *Republicanism*, 31, 47n7, 122, 141; *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge: Cambridge University Press, 2001), 140-142; *On the People's Terms*, 2, 28, 123; *Just*

by the wills of others, and a good many of them have interests in us that are arbitrary from our perspective—that is, indifferent or hostile toward our avowed, relevant interests. Freedom, then, is insulation from naked and uncontrolled exposure to those wills. It is not that the wills of others have no impact on a free person, of course: republicanism isn't atomistic, and doesn't deny the inevitability and potential value of interconnectivity and interdependence. Uninsulated exposure to the will of others is incompatible with freedom because without sufficient insulation, there is no way to force those wills to track the avowed interests of those exposed. In slavery, according to republican theory, exposure is complete and total—there is no insulation by way of law or social norm or any other form of social power, and the interests of the slave are irrelevant. Insulation actively repels concrete threats to freedom, but also by virtue of its very presence as a cloak of protection, it empowers us to do and to become; to engage in self-making and world-building projects. Similarly, exposure damages freedom not only when others take advantage of that exposure to interfere against our interests and will. That the exposure exists is enough to say our freedom has been diminished, even without interference. Slavery is worse than other forms of unfreedom because standard sources of insulation are unavailable and exposure to the will of one's master is, if not total, nearly so.

Slavery represents a paradigmatic case of unfreedom in part because it is the product of public and private domination—in Pettit's terms, *imperium* and *dominium*—working in concert. Social forces and norms and the state work in the same direction, reinforcing the same ongoing domination. If a particular instance of domination is limited to either *imperium* or *dominium*, the realm of the other—either government or civil society—could conceivably provide sources of insulation.

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*Freedom: A Moral Compass for a Complex World* (New York: W.W. Norton, 2014), xxi, 86, 105. Pettit has recently placed greater emphasis on the concept of insulation in his conception of freedom; see *On the People's Terms*, 114-122 and *Just Freedom*, 89-98.

Even if the exposure to an arbitrary will is severe now, there is a possible path for the dominated to attempt to find some source of insulation. But when *dominium* and *imperium* work together—when society and the state conspire to keep some people living under conditions of domination—the search for a path out of domination is far more difficult to imagine.

To illustrate this point, consider another historically common form of domination: the domination of women by men. This can take the form of *dominium*—widely accepted social norms that men are entitled to subject women to their arbitrary will in a variety of ways. It can also take the form of *imperium*—a set of laws that endorse and codify those arrangements, and bolster them by depriving women of an equal share of political power. These two forms of domination work in concert with each other to cut off access to possible sources of insulation from domination. Compare this scenario to a society in which women are primarily subjected to one form of domination by not the other. In a society where women are subjected to *dominium* but not *imperium*—that is, the law robustly recognizes women’s status as equal to men in all the relevant ways—domination of women does not necessarily end. But access to state intervention provides a number of plausible paths to reduce existing domination, and insulate against future domination, for women collectively and individually. Or, less plausibly, consider the inverse society: one in which strong and widely accepted social norms promote the notion that women are men’s equals, even as the state remains robustly patriarchal. A woman in such a society can resist domination in a variety of ways. She will likely interact with men who, as romantic partners, but also as bosses, co-workers, friends, family, and neighbors, oppose the domination of women by men and share her feminist values. But is she really less dominated, in the republican sense? Since the law still authorizes domination, this might seem enhance her freedom only if we revert to a conception of freedom as non-interference,

since these men are dispositionally less likely to impose their arbitrary will on her, rather than being prevented from doing so.<sup>5</sup>

Pettit's account of the benign slave owner suggests he would endorse this interpretation: "even if the slave's master proves to be entirely benign and permissive, he or she continues to dominate the slave."<sup>6</sup> For Pettit, the disposition of a power-holder is largely irrelevant if they are not required by law to refrain from acting as a *dominus*. The disposition of the person in a position of power may matter at the margins—a non-dominating disposition might lead to a more pleasant life, but not a freer one. But this isn't quite right, I think, as it denies the power of social norms in the provision of predictable, stable patterns of behavior and interaction. We need to distinguish between two different sources of dispositions to not arbitrarily interfere. Pettit's benign and kindly master is introduced as someone who *just happens* to be benign; an apolitical quirk of personality. In Pettit's example, he doesn't speculate about social norms and practices that could motivate non-interference through the possibility of some kind of third-party social penalty for interference. Gender-egalitarian, feminist social norms can reduce domination with what Christopher McCammon calls the deliberative isolation of would-be dominators.<sup>7</sup> When domination of women by men exists in

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<sup>5</sup> Alan Coffee makes an argument that complements the one sketched in this paragraph, but goes further—women's full freedom from arbitrary interference can only be achieved by pursuing them independently in the spheres of law and social norms. See "Two Spheres of Domination: Republican Theory, Social Norms, and the Insufficiency of Negative Freedom," *Contemporary Political Theory* 14, no. 1 (2015): 45-62.

<sup>6</sup> Pettit, *Republicanism*, 32.

<sup>7</sup> Christopher McCammon, "Domination: A Rethinking," *Ethics* 125, no. 4 (2015), 1028-1052. One is free to dominate in deliberative isolation when one "need not reflect at all about whether anyone else" would endorse this domination (1046). The treatment of slaves on American plantations was nearly deliberatively isolated, but not entirely so: some acts of mercy (manumission) and cruelty (torture and killing for reasons other than punishment) and training (teaching slaves to read and write) were restricted by law and norm: See James Oakes, *Slavery and Freedom: An Interpretation of the Old South* (New York: W.W. Norton, 1990), 32-35, 157-166.

the sphere of law but not norms, or norms but not law, there is at least one plausible avenue for resisters to domination to seek insulation.

Although he prefers to focus on the thresholds of freedom, Pettit acknowledges the need to consider probability of interference.<sup>8</sup> Norms against powerful men arbitrarily interfering in the lives of women are one potential way to reduce the likelihood of arbitrary interference, and therefore reduce gender domination. Such norms might plausibly be understood as enhancing women's freedom as non-domination by imposing informal but nonetheless real penalties on men who dominate women, adding an additional layer of protection beyond mere reliance on those men's dispositions, as well as reducing the need for women to avoid dominating interference through freedom-reducing strategies of adaptation or ingratiation.<sup>9</sup> Furthermore, if the polity in question has a sufficiently responsive democratic political system, and these feminist norms are sufficiently widespread, there is a plausible political path toward the repeal of patriarchal laws that authorize men's arbitrary interference in the first place.

In other words, lack of *imperium* provides the potential for insulation from *dominium*, and lack of *dominium* provides may provide the potential for insulation from *imperium*. Insulation from domination will remain incomplete until that form of domination is addressed in the both realms, but at least a form of insulation is available, through which domination can be plausibly resisted, and greater insulation can be sought. The inadequacy of norms against domination without the backing of law is widely acknowledged, but in a democratic society, the reverse—legal protection without supporting norms—can be dangerously incomplete as well: a democratic community indifferent to or supportive of domination could render legal remedies dead letters. Even the most robust forms

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<sup>8</sup> Philip Pettit, "Freedom and Probability: A Comment on Goodin and Jackson," *Philosophy and Public Affairs* 36, no. 2 (2008): 206-220; *On the People's Terms*, 64-69.

<sup>9</sup> Pettit, *On the People's Terms*, 65-67.



of insulation imaginable are likely to fail occasionally. And weaker forms, while failing to offer sufficient insulation, can offer increased protection and make a person more free, if not fully free.<sup>10</sup> Pettit takes pains to avoid thinking of freedom in terms of calculations of probability of unwanted and arbitrary interference, associating such an approach with freedom as non-interference, and rightly noting that the possibility, rather than just the occurrence, of such interference hinders freedom.<sup>11</sup> This is why he adopts a threshold approach, using what he calls the ‘eyeball test’ as a heuristic for the threshold. This test is passed when citizens across wealth and power differentials “can look each other in the eye without fear or deference that a power of interference might inspire.”<sup>12</sup> Passage of this test “is, in the end, what to be undominated means.”<sup>13</sup> But the analysis here sheds doubt on the use of a sufficiency or threshold approach to freedom. Freedom as non-domination is something to be maximized—those who have virtually none of it will, understandably, reach out for whatever meager insulation they might have available to them. And those of us who experience freedom in sufficient to pass that test may still be vulnerable to vitiation<sup>14</sup> of our freedom by a variety of social and economic forces, or even political changes, and might reasonably seek to shore up our current free status with greater insulation. Focusing exclusively on the moment in which an individual or communities’ freedom crosses the ‘eyeball test’ threshold will cause a great deal of freedom-seeking and freedom-enhancing activity to fall outside our range of vision.

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<sup>10</sup> The line of critique developed here is broadly similar to that developed by Ian Carter and Matthew Kramer. See Carter, “How are Power and Unfreedom Related?” in *Republicanism and Political Theory*, edited by Cecile Laborde and John Maynor (London: Blackwell, 2008), pp. 58-82 and Kramer, “Liberty and Domination,” pp. 31-57 in the same volume.

<sup>11</sup> Pettit, *On the People’s Terms*, 60.

<sup>12</sup> Ibid., 84.

<sup>13</sup> Philip Pettit and Jose Luis Marti, *A Political Philosophy in Public Life: Civic Republicanism in Zapatero’s Spain* (Princeton, NJ: Princeton University Press, 2010), 17.

<sup>14</sup> I use ‘vitiation’ in Pettit’s sense in *On The People’s Terms*. Our freedom is vitiated, for Pettit, when we experience “hindrances that affect the use of your resources for any purpose and so, in particular, for the purpose of satisfying your will” (37-38). Vitiation is the lesser of two forms of hindrance—invasive hindrances attempt to cut off a particular path we might choose.

In slavery, social norms and law are both unavailable as potential sources of insulation, where even incremental improvements toward freedom appear to be out of reach. In addition to the subjection to domination in all aspects of one's life, slavery cuts off access to the two predominant forms of insulation, social norms and the law, thus making the path out of unfreedom implausible. So far I've treated slavery as an analytic category rather than a historical and sociological one. A complete theory of freedom would surely want as full an accounting of the resources used to generate insulation as possible. Rather than merely note that slavery appears to contain no path to greater insulation and therefore to freedom, we should examine the ways in which actually existing slaves responded to their lack of access to insulation, and sought to insulate themselves despite the extraordinary obstacles. Before I attend to that project, focusing on insulation-seeking strategies found in American slavery, I will briefly address a methodological question; namely, why focus on American, rather than classical, slavery?

### **American Slavery**

Theoretical accounts of the freedom/slavery dynamic tend to focus on ancient slavery, which served as a backdrop and motivation for the Greek and Roman theorists of freedom who are generally credited for inaugurating the republican tradition. There are several potential reasons to shift our focus to American slavery. Like ancient slavery, American slavery involved *dominium* and *imperium* working together to re-enforce the unfreedom of slaves. However, there are additional dimensions of American slavery relevant to slaves who might seek freedom. One is American slavery's racial dimension. This is the first reason I turn to American slavery. As Moses Finley noted, "modern slavery was black slavery, therefore it cannot be discussed seriously without impinging on present-day social and racial tensions."<sup>15</sup> The racialization of American slavery served an important

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<sup>15</sup> Moses Finley, *Ancient Slavery and Modern Ideology* (New York: Penguin, 1983), 9.

legitimizing function: it helped slavery make normative sense in an era in which rhetorical and philosophic invocations of equality played an important role.<sup>16</sup> Racism allowed slavery's justifications to fit, however awkwardly, within a vision of citizenship that emphasized a kind of equality. The view that inferior races were suited for slavery, the order under which they could best thrive and flourish, given their nature was central to the a central justifying narrative of American slavery. This had a number of implications for slaves seeking freedom. First, it made manumission a trickier proposition, creating new ideological and social reasons to oppose. This led to a number of laws restricting manumission, including laws that forced manumitted slaves to leave the state in which they had been held, and in other cases to provide financial support to the manumitted former slave.<sup>17</sup> American slavery had historically low manumission rates, compared ancient slave systems as well as contemporaneous slave systems in Latin America, and racism played a central role in severely restricting the social fluidity of ex-slaves.<sup>18</sup> The racist social order frustrated the strategies of those slaves who sought to escape slavery by extralegal means. They were marked as suited for slavery by their racial identity, an identity which was often difficult to disguise. Finally, the racial character of American slavery has made a substantial contribution to its afterlife as a serious obstacle to the achievement of freedom, including through persistent recreations of conditions of forced labor.<sup>19</sup>

Emancipated slaves retained a status that marked them for domination, and with a federal

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<sup>16</sup> On the transformation of the early colonial slave system into a full-blown system of racial domination, see Peter Wood, *Strange New World: Africans in Colonial America* (Oxford: Oxford University Press, 2003).

<sup>17</sup> Mark A. Smith, *Secular Faith: How Culture Has Trumped Religion in American Politics* (Chicago: University of Chicago Press, 2015), 50; Oakes, *Slavery and Freedom*, 32-35; Benjamin Klebaner, "American Manumission Laws and the Responsibility for Supporting Slaves," *The Virginia Magazine for History and Biography* 63, no. 4 (1955): 443-453.

<sup>18</sup> David Brion Davis, *The Problem of Slavery in Western Culture* (New York: Oxford University Press, 1966), 262-273; Enrico Dal Lago and Constantina Katsari, "The Study of Ancient and Modern Slave Systems: Setting an Agenda for Comparison," in *Slave Systems: Ancient and Modern*, edited by Enrico Dal Lago and Constantina Katsari (Oxford: Oxford University Press, 2008), 25.

<sup>19</sup> Daniel Novak, *The Wheel of Servitude: Black Forced Labor After Slavery* (Lexington, KY: University Press of Kentucky, 1978).

government largely uninterested or incapable of *dominium* prevention and local governments inventing new forms of *imperium*, the unfree status of those racially marked for slavery proved remarkably resilient, in some ways still with us to this day, giving slavery an extended afterlife for former slaves and their descendants.<sup>20</sup> The ideological support for slavery provided by its racialized character complicated efforts to erode it, complicating virtually any insulation-seeking strategy slaves could plausibly develop, and hampering post-abolition insulation-seeking strategies.

Another reason to focus on American slavery is its relative proximity to contemporary political and social conditions we see today. American slavery shaped American society, and the ways in which Americans have tried to theorize slavery and freedom. The racial legacies of slavery are central here but not the only way proximity matters. Unlike ancient slavery, American slavery was embedded in both a global and domestic capitalist economy, which shaped the character of slavery, as well as the tools available to resist it, to a significant degree.<sup>21</sup> Indeed, the notion that slavery was a necessarily distinct economic system from capitalism, while promoted by both Karl Marx and Adam Smith, obscures more than it illuminates as applied to American slavery.<sup>22</sup> The flexibility and growth found in a capitalist society creates the conditions for the radical (and increasingly brutal) remaking of slavery, which occurred a number of times, perhaps most prominently in the shift to cotton in the early decades of the 19<sup>th</sup> century. While the shift to cotton

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<sup>20</sup> That the post-emancipation history of race in America has been, in no small part, a history of the development of new systems and structures to appropriate and destroy black wealth is powerfully shown by Ta-Nehisi Coates in “The Case for Reparations,” *The Atlantic Monthly* 313, no. 5 (2014), 54-71; see also Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997).

<sup>21</sup> Recent histories of slavery that emphasize its capitalist nature include James Oakes, *Slavery and Freedom*, and Ed Baptist, *The Other Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014). In *The Ruling Race: A History of American Slaveholders* (New York: W.W. Norton, 1982), James Oakes documents the capitalist nature and practices of slaveowners.

<sup>22</sup> Walter Johnson, “The Pedestal and the Veil: Rethinking the Capitalism/Slavery Question,” *Journal of the Early Republic* 24, no. 3 (2004), 299-308; Finley, *Ancient Slavery*, 40-42.

production demonstrated the potential for capitalism and slavery to produce greater oppression together than either could on their own,<sup>23</sup> the blending of capitalism and slavery on a smaller scale, as seen in Southern cities in the 19<sup>th</sup> century, provided the access to wage labor necessary to craft new strategies for resistance.<sup>24</sup> Slavery in a capitalist society makes creates new incentives for new forms of exploitation but also opportunities for resistance strategies, as the next section will explore.

The final reason I choose to focus on American slavery—perhaps the most important one—is the historiographical advantage it offers. As the best historians of ancient slavery are quick to admit, our ability to stitch together a rich social history of the lives of actual slaves in ancient societies is virtually non-existent.<sup>25</sup> A record of their day to day lives, cultures, worldviews, and freedom-seeking strategies are largely lost to history. For American slavery, our knowledge of these things is of course far from perfect. However, as the next section will demonstrate, an impressive array of sources is available: the autobiographical writings of slaves and ex-slaves, compiled oral histories, and a variety of other sources, that give us greater insight into the lives, and struggles for freedom, of American slaves than we could ever hope to have from ancient slaves.<sup>26</sup> In short, as I'll demonstrate in the next section, focusing on American rather than ancient slavery gives slaves a chance to make a contribution to the theorization of the slavery/freedom dynamic.

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<sup>23</sup> Baptist, *The Other Half*; Sven Beckert, *Empire of Cotton: A Global History* (New York: Knopf, 2014); Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge, MA: Belknap, 2013); John Clegg, "Capitalism and Slavery," *Critical Historical Studies* 2, no. 2 (2015), 281-304.

<sup>24</sup> See Richard Wade, *Slavery in the Cities: The South 1820-1860* (New York: Oxford University Press, 1964).

<sup>25</sup> See, for example, Finley, *Ancient Slavery*, 110.

<sup>26</sup> An additional reason to value this resource is that it might well be more accurate: in cases where both slave and ex-slave narratives and slave-owner accounts could be tested against public records, slave and ex-slave accounts were more likely to be accurate. See Wilma Dunaway, *The African-American Family in Slavery and Emancipation* (New York: Cambridge University Press, 2003), 15.

Before turning to an analysis of the ways in which American slaves sought greater insulation and freedom, it's worth noting that a preliminary look at American slavery suggests that the account in the previous section, about how *dominium* and *imperium* work together to cut off any potential path to freedom for slaves, understates the scope and obstacles American slaves faced in pursuing freedom. The racialization of slavery rendered the path to freedom through manumission (when legal) or escape more fraught, and less likely to succeed or lead to full freedom. The interface of slavery and capitalism created incentives for relatively frequent sales and relocation of slaves, often away from their families, thus reducing a potential source for insulation, the solidarity of families and kinship networks.<sup>27</sup> The collection of social and political forces and circumstances working against American slaves seeking insulation from exposure to the arbitrary wills of others appears to be substantial.

### **Slavery and freedom in practice**

The resources for an account of freedom-seeking strategies of slaves has recently improved. From James Scott's work on the resistance strategies of the powerless to the "new social history" movement of recent decades, which sought to give a historical account of oppression as experienced by the oppressed rather than as recorded by the oppressors, a great deal of scholarly attention to slaves, and the powerless more generally, has emerged.<sup>28</sup> We should not proceed under the assumption that slavery entirely destroyed the capacity of slaves to seek insulation from arbitrary interference without careful examination of their actual efforts to do so. The assumption that the

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<sup>27</sup> Dunaway, in *The African-American Family*, demonstrates that earlier studies suggesting slave families in America largely remained intact were based on a small and unrepresentative sample of plantations.

<sup>28</sup> James Scott, *Weapons of the Weak: Everyday forms of Peasant Resistance* (New Haven, CT: Yale University Press, 1987); for a critical but sympathetic overview of the new social history movement with a focus on its treatment of slavery and the enslaved, see Walter Johnson, "On Agency," *Journal of Social History* 37, no. 1 (2003): 113-124.

condition of slavery not only rendered slaves wholly unfree, but unable to meaningfully seek freedom, are not foreign to the republican tradition. It can be traced to Jean-Jacques Rousseau in *The Social Contract*, but was given a significant empirical defense in Stanley Elkins' landmark history of American slavery.<sup>29</sup> Almost immediately, however, the shortcomings of this historiography were becoming clear. A number of scholars, focusing on slave communities themselves, sought to refute the notion, strongly associated with Elkins, that slavery was successful in its total destruction of efforts to seek freedom.<sup>30</sup> The most obvious way to resist domination for slaves is rebellion. Outright rebellion was not unheard of in the American South, but for most slaves it was poor choice. Only in precisely the right circumstances, and with significant solidarity and cooperation from a large group of slaves, did it have any chance of even a temporary increase in insulation from arbitrary interference. Otherwise it was more likely to incur an immediate and severe increase in such interference. With that in mind, I want to examine three ways in which slaves sought to provide themselves with some form of insulation when both social norms and the law were decidedly against them.

The first of these forms is *absence*. One way to avoid domination is to avoid spatial proximity to dominators. Slaves had little capacity to move their owners, but they often could remove themselves—a practice known as marronage. And while the numbers are difficult to pin down, running away was indeed one tool of seeking insulation from domination. The most common and

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<sup>29</sup> Elkins, *Slavery: A problem in American Institutional and Intellectual Life* (Chicago: University of Chicago Press, 1959).

<sup>30</sup> Foremost among historian involved in this effort was Eugene Genovese: see “Rebelliousness and Docility in the Negro Slave: A Critique of the Elkins Thesis,” *Civil War History* 13, no. 4 (1967): 293-314 and Roll, Jordan, Roll: *The World the Slaves Made* (New York: Vintage, 1976). Additional critiques of Elkins' thesis found in Ann Lane (ed) *The Debate over Slavery: Stanley Elkins and his Critics* (Champaign, IL: University of Illinois Press, 1971). An overview of the early literature focusing on slave communities and the extent to which they undermine Elkins thesis is offered by Peter Kolchin, “Reevaluating the Antebellum Slave Community: A Comparative Perspective,” *Journal of American History* 70, no. 3 (1983): 579-601.

widely celebrated form of running away was seeking to remove oneself from the polity in which slavery was legal and licit—North to a free state or to British Canada. The network of assistance for such journeys known as the Underground Railroad is perhaps the best known story of slave resistance in the United States today. But this journey made up a small portion of attempts to achieve some measure of insulation through absence; a substantial majority of slaves who removed themselves from proximity to their masters were not attempting to make that journey: “the most common form of absconding was not actually running away at all, but what might be termed truancy, absenteeism, and in some cases, lying out. The terms are imprecise as they were used to describe a broad range of resistance—from slaves staying out a few days and coming back on their own accord to joining runaway gangs.”<sup>31</sup> Such practices varied considerably in purpose, duration and destination. At its most trivial, an absence could be just a few days, or even just for an evening, perhaps to attend a “secret party” organized by other slaves in the area.<sup>32</sup> Often called “stealing away” or “stealing the meeting,” such short-term unlicensed movement included clandestine religious gatherings with prayers for freedom, and meetings with family and loved ones from nearby plantations.<sup>33</sup> Regarding the latter, two general categories of destination were most common. Many slaves sought the local versions of what James Scott has recently termed “zones of refuge.”<sup>34</sup> Such zones, Scott argues, are significantly populated by those fleeing the domination and predation of the state. They are “Nonstate space...locations where, owing largely to geographical obstacles, the state

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<sup>31</sup> John Hope Franklin and Loren Schweninger, “The Quest for Freedom: Runaway Slaves and the Plantation South,” in *Slavery, Resistance, and Freedom*, edited by Gabor Boritt and Scott Hancock (Oxford: Oxford University Press, 2008), 21-39, at 23. See also John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Oxford University Press, 1999), 97-123, and Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill, NC: University of North Carolina Press, 2004), 35-59.

<sup>32</sup> On this phenomenon, see Camp, *Closer to Freedom*, 60-89.

<sup>33</sup> Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America* (Oxford: Oxford University Press, 1997), 65-70.

<sup>34</sup> James Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009).



has particular difficulty in establishing and maintaining its authority.”<sup>35</sup> In some cases, the nature of their labor gave slaves a strategic advantage in navigating such spaces to their advantage, as their understanding of the ecological landscapes gave them a strategic advantage in such terrain.<sup>36</sup> These gangs became a source of insulation and security for their members, while maintaining clandestine mutually beneficial relationships with plantations slaves who might aid them. This strategy for seeking freedom sometimes led the formation of new political and social orders and new ‘peoples’—maroons, the name given to societies composed primarily of indigenous people and runaway slaves, were a common feature of more remote landscapes throughout the Americas.<sup>37</sup> Among the largest and most stable such communities in North America was the Great Dismal Swamp in Eastern Virginia and North Carolina, a location where thousands of people, including escaped slaves and canal company contract laborers alongside displaced Native Americans formed a social and political order beyond the reach of the state, where they “found more degrees of freedom in the swamp than they had in the outside world.”<sup>38</sup> The resources for insulation these runaway slaves used were both ecological (the terrain and their detailed knowledge of it) and solidaristic, as the community of runaway slaves had advantages over isolated individuals in sustaining this freedom-enhancing lack of proximity from both the masters and the state that supports them: “Maroon communities stood a better chance of lasting if they had sufficient people to help safeguard the settlement, and indeed,

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<sup>35</sup> Ibid, 13.

<sup>36</sup> See, for example, Mart A. Stewart, “Rice, Water and Power: Landscapes of Domination and Resistance in the Low Country, 1790-1880,” *Environmental History Review* 15, no. 3 (1991), 47-64; Larry Eugene Rivers, *Runaways and Rebels: Slave Resistance in Nineteenth Century Florida* (Champaign, IL: University of Illinois Press, 2012), 19.

<sup>37</sup> Richard Price (ed) *Maroon Societies: Rebel Slave Communities in the Americas*, 3<sup>rd</sup> ed. (Baltimore, MD: Johns Hopkins University Press, 1996).

<sup>38</sup> Daniel O. Sayers, P. Brendan Burke, and Aaron O. Henry, “The Political Economy of Exile in the Great Dismal Swamp,” *International Journal of Historical Archaeology* 11, no. 1 (2007): 60-97, at 61; for a general account of the state of our knowledge about this community see Daniel O. Sayers, “Diasporan Exiles in the Great Dismal Swamp, 1630-1860,” *Transforming Anthropology* 14, no. 1 (2006): 10-20, and Sylviane A. Diouf, *Slavery’s Exiles: The Story of The American Maroons* (New York: New York University Press, 2014), 209-229.

one of the distinguishing features of maroons was that they tended to band together in a common cause. Ideally, maroon communities needed people to tend crops; to obtain additional supplies of food, utensils, and weapons; to act as sentries, and to, if necessary, fight.”<sup>39</sup> The communities were generally strongest, and best able to resist against common threats to continued freedom, with at least around twenty members.

The other primary destination of runaways was one where numbers were less necessary: cities. Even in a slave society, cities afforded unique opportunities for runaway slaves: “By the early 1800’s, slave hiring and self-hire had grown to such an extent that in some cities there were hundreds, even thousands, of bondsmen and bondswomen. As a consequence, runaways could pose and self-hired slaves, hide their identities, create new ones, live with their relatives—slave and free—and mingle with other blacks...control was less intrusive than in the country, where black strangers were scrutinized and often arrested.”<sup>40</sup> While the swamps, forests, and marshes gave slaves the advantage of being hard to find, the location of the city gave them the advantage of a resource cities have long provided for freedom-seekers: anonymity. Runaway slaves could potentially blend in with free blacks and self-hired slaves living apart from their owners. Cities also provided the resources necessary for performances of freedom, which were occasionally successful.<sup>41</sup> In addition to providing resources to attain greater freedom, cities offered unique opportunities to exercise it, as they could “attend black churches, join mutual benefit associations, occasionally send their children to school, and most importantly find employment.”<sup>42</sup> Also important was the possibility of self-hire

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<sup>39</sup> Tim Lockley and David Doddington, “Maroon and Slave Communities in South Carolina before 1865,” *South Carolina Historical Magazine* 113, no. 2 (2012): 125-145, at 131.

<sup>40</sup> Franklin and Schweninger, “The Quest for Freedom,” 33.

<sup>41</sup> Amani Marshall, “‘They Will Endeavor to Pass for Free’: Enslaved Runaways’ Performances of Freedom in Antebellum South Carolina,” *Slavery and Abolition* 31, no. 2 (2010): 161-180.

<sup>42</sup> Loren Schweninger, “The Underside of Slavery: The Internal Economy, Self-Hire, and Quasi-Freedom in Virginia, 1780-1865,” *Slavery and Abolition* 12, no. 3 (1991): 1-22, at 12.

in the cities, which enabled runaway slaves to accumulate wealth, which could further be used to enhance their insulation from domination.

The resources provided to runaway slaves by city life are a subset of larger category of resources available to slaves provided by the conditions of the economy. The second set of resources for insulation occasionally available to slaves, then, is *economic*. The institution of slavery is designed specifically to deny such opportunities to slaves, but its actual practice created a number of opportunities for economic advancement. In addition to the economic opportunities cities provided for some slaves, additional opportunities existed closer to home. Alongside the standard slave economy was the “underside of slavery—a clandestine economy, self-hire, and the emergence of a group of virtually free slaves, those who were legally enslaved but lived autonomous lives.”<sup>43</sup> This economy appeared in a variety of forms, sometimes barely noticeable, such as the “outside Oystermen” who hired slaves to harvest Oysters at night, paying them and returning them to their quarters before morning.<sup>44</sup> More significant economic opportunities arose for slaves out of two features of the slave economy. First, some slaves developed significant valuable and potentially marketable skills. Second, the economics of slavery made slaves a long-term investment, but the unevenness of the need for labor could make slaves a temporary burden to house and feed during those periods where their labor was not necessary.

The so-called ‘Chesapeake case’ is a noteworthy example of this phenomenon. Around the time of the revolutionary war, the global price of tobacco declined sharply, leading to a decline in production. This led to a situation in which “certain slaves, particularly those with valuable skills, were permitted to act essentially as independent agents. In exchange for paying their masters a set

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<sup>43</sup> Ibid., 1.

<sup>44</sup> Ibid., 5.

weekly fee, these slaves were able to arrange their working lives as they saw fit, including entering into contracts and keeping, and determining how to spend, the remainder of their pay.”<sup>45</sup> The practice of ‘self-hire’ for slaves in Southern cities created conditions that allowed them to own property, manage small businesses, and occasionally turned their *de facto* freedom into something more via negotiated arrangements with their masters.<sup>46</sup> In some cases slaves who were not granted this kind of quasi-freedom were able to obtain economic opportunities that led to the ownership of property as well. In the low country slavery was more likely to be organized on the task system rather than the gang system—slaves were required to complete a certain set of tasks each day, but as long as they did so their labor and their time were not strictly monitored. This led to the opportunity, in some cases, to complete one’s labor early in the day, and use the rest of the day as one sees fit, including to seek economic gain.<sup>47</sup> This allowed for time to “cultivate gardens, raise livestock and poultry, and harvest cash crops.”<sup>48</sup> Why did the daily required tasks not simply increase to occupy a slave’s working day fully? In his ethnographic account of American slavery, Frederick Law Olmstead ascertained that one motivating factor that incentivized slaveowners from such a change is that “if it were changed very much, there is danger of a general stampede to ‘the swamp.’”

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<sup>45</sup> Simon Roberts-Thomson, “Slavery, Equality and Justice,” PhD dissertation, Department of Philosophy, University of Arizona (2010), p. 27. See also Peter Kolchin, *American Slavery: 1619-1877* (New York: Hill and Wang, 1993), pp. 24-25, 74-75.

<sup>46</sup> Wade, *Slavery in the Cities*.

<sup>47</sup> Philip Morgan, “The Ownership of Property by Slaves in the Mid-Nineteenth Century Low Country,” *The Journal of Southern History* 49, no. 3 (1983): 399-420; Larry Hudson, Jr., “‘All That Cash’: Work and Status in the Slave Quarters,” in *Working Towards Freedom: Slave Society and the Domestic Economy in the American South*, edited by Larry Hudson, Jr. (Rochester, NY: University of Rochester, 1994), pp. 77-94.

<sup>48</sup> Loren Schweninger, “Slave Independence and Enterprise in South Carolina, 1780-1865,” *South Carolina Historical Magazine* 93, no. 2 (1992): 101-125, at 101-102; see also Timothy Lockley, “Trading Encounters between Non-Elite Whites and African Americans in Savannah, 1790-1860,” *Journal of Southern History* 66, no. 1 (2000), 25-48.

In other words, they risked inspiring an increase in petite marronage. This suggests that the different sources of insulation for slaves could be mutually reinforcing.<sup>49</sup>

Another way economic circumstances provided opportunities for slaves to seek insulation is through the black market economy of goods: namely, theft. A secondary economy of goods stolen by slaves created opportunities for economic advancement. Theft by slaves was widespread under slavery, as it was very difficult to prevent, given the kind of access slaves necessarily had to valuable items. Theft by slaves involved “claiming and reclaiming of economic rights by the slave...and when theft was combined with slave participation in an interracial market network....they directly challenged the class relations of the South and their master’s hegemony within those relations.”<sup>50</sup> Slaves’ theft provided them with resources to enter into economic relations with (primarily non-slaveowning) whites to acquire various goods and services, such as alcohol.<sup>51</sup> This access, combined with slaves’ capacity to cultivate their own theft-justifying counter-morality, enabled the maintenance of a kind of psychological as well as economic autonomy.

However they were achieved, economic gains by slaves insulated them in a number of ways. The acquisition and accumulation of wealth created a variety of opportunities for self-development. One rare but noteworthy opportunity was ‘self-purchase’—buying their own freedom. It’s difficult to identify how widespread this practice was, although one clue can be found in censuses taken of black residents of Northern cities, which revealed that among all ex-slave residents, self-purchased

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<sup>49</sup> Frederick Law Olmstead, *A Journey in the Seaboard Slave States, with Remarks on Their Economy* (Cambridge: Cambridge University Press, 2009 [1863]), pp. 64-65. Olmstead also noted that in areas where the task system prevailed, where sunup to sundown labor by the day was instituted, productivity declined considerably, as foot-dragging—one of the more effective ‘weapons of the weak’ according to James Scott—was frequently deployed as a tactic of resistance.

<sup>50</sup> Alex Lichtenstein, “‘That Disposition to Theft, With Which They Have Been Branded’: Moral Economy, Slave Management and the Law,” *Journal of Social History* 21, no. 3 (1988): 413-440, at 416.

<sup>51</sup> Jeff Forret, “Slaves, Poor Whites, and the Underground Economy of the Rural Carolinas,” *Journal of Southern History* 70, no. 4 (2004): 783-824.

slaves made up 26% and 42% of that population in Philadelphia and Cincinnati, respectively, by the mid-19<sup>th</sup> century.<sup>52</sup> Because it was often the case that specialized, marketable skills led to the ability to accumulate money in the first place, it was not uncommon for self-purchased slaves to be in a position to earn enough to purchase the freedom of their family members as well.<sup>53</sup>

The third category of resources for insulation I want to consider is *culture*. In the 1970's, historian George Rawick compiled and edited a forty-one volume project entitled *The American Slave: A Composite Autobiography*, which sought to present the story of the slavery in the slaves own words—a collection of unedited oral histories taken by the WPA in the 1930's. While it was understandably overshadowed by the larger project, Rawick published a monograph that was meant to serve as his introduction to this collection, *From Sundown to Sunup*.<sup>54</sup> The title was meant to invoke the 'second world' of American slavery. From sunup to sundown slaves' bodies were not their own; they belonged to their masters. But one of the striking conclusions Rawick drew from these oral histories was the vitality and significance of the sundown to sunup world for the slaves—the world, with rituals, norms, hierarchies, solidarities, and cultural productions—they made for themselves, building “their own community out of materials taken from the African past and American present.”<sup>55</sup> To produce and participate in a shared culture is, of course, an exercise of whatever degree of freedom from manipulation and control a group is able to achieve, but also a way for a group of people to continue to preserve a kind of independence that promoted the psychological

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<sup>52</sup> Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana, Ill: University of Illinois Press, 1990), 65-66.

<sup>53</sup> Sumner Eliot Matison, “Manumission by Purchase,” *Journal of Negro History* 33, no. 2 (1948): 146-167, at 162.

<sup>54</sup> Rawick, *From Sundown to Sunup: The Making of the Black Community* (Westport, CT: Greenwood Press, 1972). The West African roots of slave culture (and post-slavery black culture) are explored in detail in Sterling Stuckey, *Slave Culture: Nationalist Theory and the Foundations of Black America* (Oxford: Oxford University Press, 1988).

<sup>55</sup> Rawick, *From Sundown to Sunup*, 11.

conditions necessary for future freedom-seeking efforts. According to one historian “their belief in fortune tellers, witches, magic, signs and conjurers” provided many slaves with a “psychological defense against total dependence on and submission to their masters. Whatever his power, the master was a puny man compared with the supernatural.”<sup>56</sup> Slave social structures and communities were constructed in way that imposed high costs on being seen as ‘too submissive.’<sup>57</sup> The maintenance and ownership of distinct syncretic cultural, social and religious traditions helped provide the resources that made more likely slaves’ capacity to seize the opportunity to take advantage of an opportunity to promote their own freedom, as it is now the view of many historians that the rebellion during the civil war were instrumental in creating the conditions necessary for the passage of the emancipation proclamation.<sup>58</sup>

### **Republican Freedom and Actually Existing Slavery**

What does all this mean for our understanding of freedom? In what ways does the experiences and strategies of actually existing slaves challenge the standard republican account of freedom? In what follows, I identify two ways in which republicans might respond to the challenge posed by this account. The first retains republicanism’s monistic account of freedom as non-domination, but shifts the focus away from thresholds and statuses. The second abandons that monism, looking beyond non-domination to give a full account of freedom.

A danger of the approach to slavery taken in the previous section is that it might seem to present a sanitized version of slavery. We must remain cognizant of “a real danger that in rejecting

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<sup>56</sup> John Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford University Press, 1972), 109.

<sup>57</sup> Leslie Howard Owens, *This Species of Property: Slave Life and Culture in the Old South* (Oxford: Oxford University Press, 1976), 75.

<sup>58</sup> See, for example, Steven Hahn, *The Political Worlds of Slavery and Freedom* (Cambridge, MA: Harvard University Press, 2009), ch. 2 and James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York: W.W. Norton, 2013), ch. 6.

old myths we are in the process of embracing a new one: that of the utopian slave community.”<sup>59</sup> We might be tempted to a liberal, Hobbesian theory of freedom as non-interference, where insofar as slaves manage to do avoid interference they are free. One advantage to the Hobbesian approach, after all, is that “it is highly sensitive to the fact that freedom is a matter of degree.”<sup>60</sup> Such an approach is reflected in the controversial work of economic historians Robert Fogel and Stanley Engerman, who argued that slaves frequently cooperated with slavery because of the material benefits it brought them.<sup>61</sup> Both racism and legal restrictions on manumitted slaves made the alternative to slavery something less than full freedom, which made slaves less interested in choosing it. In Fogel and Engerman’s analysis, slaves are like anyone else in the sense that they make choices between various non-ideal options. While some of their empirical findings regarding the cooperative relationship between slaves and slaveowners have been called into question,<sup>62</sup> the understanding of freedom and agency implicit in this approach certainly captures something important, missed by republicans, about slaves, slavery and freedom.

The retreat to Hobbesian freedom as non-interference is an option that, in one sense, serves as a mirror image to the straightforward republican assumption that freedom is best understood as a descriptor of persons and not choices,<sup>63</sup> and that Rousseau and Elkins were right to suggest that “servitude breeds servility.”<sup>64</sup> Close attention to the history of slavery as lived and experienced by

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<sup>59</sup> Kolchin, “Reevaluating the Antebellum Slave Community,” 581.

<sup>60</sup> Chandran Kukathas, “One Cheer for Constantinople: A Comment on Pettit and Skinner on Hobbes and Freedom,” *Hobbes Studies* 22, no. 2 (2009): 192-198, at 194.

<sup>61</sup> Robert Fogel and Stanley Engerman, *Time on the Cross: The Economics of Negro Slavery* (New York: Little, Brown, 1974).

<sup>62</sup> See, for example, Hebert Gutman, *Slavery and the Numbers Game: A Critique of Time on the Cross* (Urbana, IL: University of Illinois Press, 1975) and Paul David, Herbert Gutman, Richard Sutch, Peter Temin and Gavin Wright, *Reckoning With Slavery: A Critical Study in the Quantitative History of Negro Slavery* (Oxford: Oxford University Press, 1976).

<sup>63</sup> See, for example, Philip Pettit, “Free Persons and Free Choices,” *History of Political Thought* 38, no. 4 (2007): 709-718.

<sup>64</sup> Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge University Press, 2008), 213.



slaves gives us good reasons to resist either of these extremes as entirely too simplistic. To be sure, virtually none of the insulation-seeking, freedom-enhancing practices discussed in the previous section were sufficient to attain the status of being a free person, in the republican sense.<sup>65</sup> Many historians writing of these cracks and contradictions in the world of slavery have used terms like ‘virtual freedom’ and ‘quasi-freedom’ to describe these statuses.<sup>66</sup> Slaves were sometimes able to construct elements of their social and economic lives in patterns resembling those of free persons. For reasons republican theory makes entirely clear, this kind of status is obviously falls well short of, and should not be conflated with, the status of freedom. While the Hobbesian account reminds us that freedom should not be reduced to a threshold concept, republicans are correct that statuses matter. In the rest of this section, I’ll sketch two possible re-interpretations of republican freedom in light of slave’s lived experiences. The first is largely internal to the republican freedom as non-domination, while the second demands we move beyond it.

It seems inappropriate that a theory of freedom, particularly one based on opposition to slavery, would treat these insulation-seeking activities as largely irrelevant to a theory of freedom. What slaves’ freedom-seeking reveals is additional sources for potential insulation, beyond laws and norms, which can move the needle in the general direction of greater insulation. Financial resources and marketable skills—that is, economic power—can serve as a source of insulation, even when possession of them is neither licit nor legal. Cultural and solidaristic sources of insulation are also important, especially when considering how people might seek to enhance their freedom in distinctly unfavorable conditions. Pettit’s eyeball test identifies a threshold—while there may be degrees of

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<sup>65</sup> The only possible exception might be the most secure and stable maroon communities. Bernd Reiter argues that some maroon communities in Colombia did, in fact, enact norms and practices of citizenship consistent with republican principles in “Palenque de San Basilio: Citizenship and Republican Traditions in a Maroon Village in Columbia,” *Journal of Civil Society* 11, no. 4 (2015): 333-347.

<sup>66</sup> For example, Schweninger, “The Underside of Slavery.”

freedom on either side of it, it is when the eyeball test is passed that we can identify a person whose status is rightly understood as free. Free persons are said to pass the eyeball test by demonstrating that they can “look each other in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best.”<sup>67</sup> Slaves can seek freedom in important, substantially, and partially successful ways without reaching that threshold. Focusing on the eyeball test obscures a great deal of freedom-seeking activity.

To further illustrate this, consider the plight of contemporary slaves in the world today. While slavery still exists, contemporary slaves do not find themselves in the position identified in the first section of this paper—living under both *dominium* and *imperium* working together, with no clear path to insulation in either the social or political/legal realms. Contemporary slaves can only be created through straightforwardly criminal actions, which would suggest that one of the primary sources of insulation, the law, is potentially available to them.<sup>68</sup> The analysis in the analytical section of this paper would suggest, then, that they have greater freedom, or at least greater potential access to it, than slaves prior to legal abolition. But just as a contextual, historical analysis of American slavery demonstrated that such an analysis doesn’t account for the full range of insulation-seeking possibilities available to slaves, such an analysis doesn’t account for the full range of insulation-preventing strategies of contemporary slavers used to prevent access to the insulation the law might hope to provide, such as the threat of violence, psychological manipulation, and hyper-mobility (which removes slaves from the environments where they might seek insulation through social or

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<sup>67</sup> Pettit, *On The People’s Terms*, 84.

<sup>68</sup> In Joel Quirk’s terms, we have largely achieved legal abolition, while effective emancipation remains incomplete. See his “Ending Slavery in all its forms: Legal abolition and effective emancipation in historical perspective,” *International Journal of Human Rights* 13, no. 4 (2008), 529-554.

kinship networks, or through knowledge of local environments or culture).<sup>69</sup> The contemporary global order in which contemporary slaves exist provides an array of anti-insulation techniques for modern slavers. A focus on law and social norms as the only recognized forms of both insulation and anti-insulation is too simplistic to account for the range of opportunities and barriers for slaves in antebellum America, and it's too simplistic to capture the reality of modern slavery today.

This revised republican conception of freedom doesn't demand we abandon the idea of a threshold between free and non-free entirely, but it does demand we decenter it. It pushes us to think about the value of some of these freedom-seeking activities in longer temporal frame, paying attention to how they might prepare today's slaves for a future moment in which they might be in a position to pass the eyeball test. It also compels us to think more carefully about the psychological aspect of the test. A lack of sufficient insulation via laws and norms is not the only reason one might fail such a test. Pettit is aware of this, and emphasizes that a failure to look others in the eye due to "personal lack of nerve or "timidity and cowardice" should not count as evidence of lack of freedom.<sup>70</sup> It is understandable that Pettit seeks to distance this test from personal character traits; his theory of freedom is first and foremost about the conditions of our lives relative to our fellow citizens and not the quirks of our personality. However: timidity, cowardice, and lack of nerve are not distributed randomly, divorced from the social, political and economic power. When slaves maintained their own moral understanding of theft under slavery, or constructed a religion and culture at least partially on their own terms, or engaged in illicit economic activity, their actions shared important characteristics with the actions of free persons, which is surely part of the story of what freedom is. Opportunities for enhancing one's freedom—and one's capacity to make the best

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<sup>69</sup> For an overview of such tactics, see Kevin Bales, *Disposable People: Slavery in the New Economy*, 3<sup>rd</sup> ed. (Berkeley, CA: University of California Press, 2012).

<sup>70</sup> Pettit, *On The People's Terms*, 84-85.

of future opportunities for freedom—come in big and small moments. Part of treating someone as a potential free subject is to honor their choice about which kind of insulation they seek in a particular context; even heavily constrained ones.

The modest, insufficient gains produced by the freedom-enhancing insulation-seeking seen in slavery probably won't help the slave pass the eyeball test today, but they might make it more plausible that they might someday be in a position to pass it for two reasons. First, such activities exploit the contradictions in the existing system of domination and raise the costs associated with maintaining it. Second, they serve as a strategy to maintain a kind of psychological freedom even when physical, social, and legal freedom cannot exist; they maintain and promote the kind of mental habits necessary for passing the eyeball test in the future as necessary for complete freedom.

Frederick Douglass's distinction between being free in 'fact' and free in 'form' is relevant here: to be free in 'fact' for Douglass was a psychological state, whereas 'form' referred to one's status under the law. Both are required to pass the eyeball test, but they are not necessarily simultaneous, although achieving one increases opportunities and resources for pursuing the other.<sup>71</sup> These dangers were widely recognized as a threat to the social order at the time. Legislators in North Carolina worried a great deal about the potential effects of the maroon society residing in the Great Dismal Swamp, worried that "by their evil example and evil practices" they were "lessening their due subordination and greatly impairing the value of slaves in the district of country bordering on" the swamp.<sup>72</sup> Slaves achieving freedom in fact had the potential to be contagious, which presented dangers for the viability of slavery in form. That slaves could enact these freedom-seeking strategies, however

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<sup>71</sup> Douglass, *My Bondage and My Freedom* (New York: Penguin Classics, 2003 [1855]), 181. A similar reading of this passage can be found in Roberts, *Freedom as Marronage* (Chicago: University of Chicago Press, 2015), 71-80.

<sup>72</sup> Quotations from Diouf, *Slavery's Exiles*, 215.

incomplete, was understood, rightly, as a threat to the social order that relied on their ongoing and permanent subjection.

The strategy for incorporating the concrete history of slavery into our understanding of republican freedom presses republicans to treat freedom as existing on a broader and more temporally complex scale, de-emphasizing the significance of a particular threshold and the status associated with clearing it, but it does not require abandoning the monistic commitment to freedom as non-domination. The second strategy to make sense of the freedom-seeking activity of American slavery is to leave behind this monism and find a new way to incorporate other conceptions of freedom alongside freedom as non-domination: it takes us into the domain of what Sharon Krause calls “plural freedom.”<sup>73</sup> One of the primary reconstructive goals of contemporary neorepublican theory has been to shed and transcend republicanism’s historical elitism. Relatedly, neorepublicans tend to eschew the Athenian, communitarian side of the republican tradition.<sup>74</sup> A part of that tradition associated most strongly with Hannah Arendt offers an alternative conception of freedom that can’t be reduced to only non-domination. On this conception, freedom is a form of collective world-making: “action in concert that aims at public ends and brings about political reform and transformation.”<sup>75</sup> As Krause notes, for this to be a useful part of an egalitarian theory of freedom it needs to be reformed, expanded, and understood in broader terms than Arendt’s, incorporating activities that stand “outside official channels of government.”<sup>76</sup> Krause has in mind here various activist practices and even revolutionaries, but the concept can be further expanded to include the

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<sup>73</sup> See her “Plural Freedom,” *Politics and Gender* 8, no. 2 (2012), 238-245 and *Freedom Beyond Sovereignty: Reconstructing Liberal Individualism* (Chicago: University of Chicago Press, 2015), ch 4-5.

<sup>74</sup> See Pettit, “Two Republican Traditions,” in Andreas Niederberger and Phillipp Schink, eds, *Republican Democracy: Law Liberty Politics* (Edinburgh: Edinburgh University Press, 2013), 169-203.

<sup>75</sup> Krause, *Freedom Beyond Sovereignty*, 158, see also Arendt, “What is Freedom?” in *Between Past and Future* (New York: Penguin, 2006), 143-172.

<sup>76</sup> Krause, *Freedom Beyond Sovereignty*, 160.

freedom-seeking activities of slaves. This may seem awkward at first, because of the secretive and clandestine nature of so much of the practices discussed above. Nevertheless, the construction of a slave community designed to enhance physical mobility, economic activity, and the construction of cultural meanings is a kind of public project within the slave community, one that ultimately has consequences for the larger community (most dramatically by putting slaves in a position to contribute to their own freedom during the Civil War). That slaves can't coordinate their collective projects in the open makes them, like James Scott's hidden transcripts, harder to for outside observers to identify. But that's not a good reason for a theory of freedom to discount them. One way to characterize this is suggested in the title of Neil Roberts's recent book, *Freedom as Marronage*. Marronage broadly understood is, on Roberts' account, collective world-making as conducted by slaves, in all the forms described here and more (including, in the case of the Haitian revolution, its most complete and total form of world-making, which brought resistance and world-making together).<sup>77</sup>

If this is correct, the conceptual monism of neorepublicanism's conception of freedom is inadequate. Krause's contention is not just that freedom is a plural concept but that different types of freedom re-enforce and support each other. Collective world-making is not, obviously, identical to non-domination but they rely on each other. The world-making projects of slaves contributed to the reduction of their domination. Once we theorize non-domination through the lives and strategies of unfree peoples, rather than through an abstract reconstruction of the necessary and sufficient conditions for full and complete freedom, we begin to see that non-domination is not so easily isolated from other conceptions of freedom. The Hobbesian conception of freedom as noninterference, measured in degrees, and the Arendtian conception of freedom as collective world-

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<sup>77</sup> Roberts, *Freedom as Marronage*.

making appear to pull in opposing directions, the former toward a negative, Hobbesian understanding of freedom and the latter further toward a positive conception. The lesson of actually existing slavery for our theories of freedom is that non-domination needs to be supplemented by both of them to make sense, as it bleeds in both directions.

## **VI Conclusion**

It's easy for free persons to look at slaves and conclude that freedom must be primarily about status. The status seems to define slaves, marking them for domination, even in those rare occasions when they avoid interference. The free person, looking at the slave in a moment of non-interference, understandably focuses on how unstable and fleeting it is. But from a slave's perspective, freedom isn't just a status, bequeathed by others. It's something you make—something you grasp for and build, piece by piece, out of whatever materials you can get your hands on. It's the product of a wide array of collective activity that's bound to look incidental to freedom from the perspective of the free. But from a slave's perspective freedom looks different. The lack of access to the ordinary or conventional paths to sufficient insulation to ensure freedom demanded creativity and innovation in the world-making, freedom-seeking practices of slaves.

By focusing primarily on the image of the fully free person, in which no trace of the status of the slave remains, republicans became too focused on that perhaps unattainable ideal, and consequently pay insufficient attention to the social practices used to enhance freedom below the threshold. But these practices ought to be part of our understanding of freedom. Attentiveness to slavery in practice yields insight that slavery as an ideal type cannot; with the latter, we risk losing the plot regarding human freedom and the struggle for it. Freedom comes into clearer focus when we think about the two major sources of insulation in the contemporary world; protective laws and social norms. The abstract image of the perfectly free person has the privilege of wearing her

insulation lightly, as society is constructed in such a way that her insulation will rarely, if ever, be needed, or even noticed—it becomes indistinguishable from her identity. These insulating strategies often work productively together, mutually reinforcing and securing greater freedom. But when they don't go together, and they often don't, we have the opportunity to learn more about freedom as something we struggle to create, rather than a privilege we enjoy. A full understanding of freedom requires we examine how people with the deck so thoroughly stacked against them go about seeking freedom. At a minimum, this presses us to pay attention to a greater spectrum of statuses, and the conditions and strategies of partial freedom. It quite possibly takes us further, away from the monism of freedom as non-domination. How freedom is pursued in various non-ideal contexts is central to what freedom is, and supplements our understanding of what constitutes insulation, and how we attempt to pursue and achieve it. The intervention I've offered here is designed to motivate the theorization of a fuller, richer, more sociologically and psychologically informed vision of republican freedom; one that has more incremental dimensions than some of the more abstract versions of freedom as non-domination are capable of showing, and perhaps embracing a plural account of freedom that extends beyond just non-domination. Such a vision is enabled by attention to the lives and practices of those lives exemplify the seeking of freedom in addition to the lives and practices of those who have attained it.