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Political Freedom?

Similar to many other liberation struggles, the one led by the African National Congress (ANC) in South Africa made liberal use of the notion of freedom and liberty: freedom from alien rule, freedom from apartheid; the liberty to vote and stand for office; the right to love, to bring up one's children, to live securely and to trade, not determined by the colour of one's skin, one's gender or sexuality; the freedom and power to determine who represents one in the courts, the executive and the legislature; and so on. The ANC is no liberationist upstart. There have been moments when its very survival was in question, but its history has been long and synonymous with the struggle for political freedom and the advent of democracy in South Africa. On 8 January 2012 it celebrated its centenary, only a little over 2 years prior to the celebration of two decades of democracy in South Africa. Most importantly, if not always completely worked out, its focus on freedom from alien rule, colonialism and apartheid consistently involved a sense of what might be necessary for the real, concrete, everyday freedom of all South Africans within a democratic South Africa. This is evident in nearly every strategy and policy document or publication ever since its founding in 1912, and in particular: the 1943 *Africans' Claims* in South Africa document; the 1955 Freedom Charter; the causes and consequences of the 1960 Sharpeville and 1976 Soweto apartheid massacres; the 1989 Harare Declaration; and from even before 1989 right up until 1996, during the negotiations with the National Party (NP) prior to and in the early years of rule in a democratic South Africa; and, as a party in government, in some of its early macroeconomic policy choices, for example, the Reconstruction and Development Programme (RDP). Moreover, the nature and maintenance of freedom are still very much at the forefront of debate in democratic South Africa, due in no small part to the nature of South Africa's constitution and recent real threats on specific freedoms, such as the constraints on freedom of expression that will follow if Zuma signs in to law The Protection of State Information Bill (popularly known as The Secrecy Bill).

This is not a book about the history of the ANC, so I will not chart its long, adaptive and fascinating history, the best examples of which can be found in the scholarly works of William Beinart, Anthony Butler, Saul Dubow and Tom Lodge, amongst others.¹ Few other liberation movements, at least in Africa, can claim such a long and illustrious history. Nor can many claim such versatility, adaptability and courage in the face of 300 years of colonial 'white' supremacy and segregation culminating in nearly half a century of institutionalized apartheid and racial domination. The movement's history is marked by a fluid capacity to change, to grasp new opportunities and to seize the moment at various important junctures in South Africa's history. What began as a gathering of rebellious chiefs and mission-educated elites, who led it during its early years, later supplemented by urban workers, rural activists, organized women, the youth, communist allies and middle-class leaders, is now South Africa's ruling party with high levels of organization and skills. However, the great promise of the ANC's Freedom Charter, the internationalization of its fight for freedom, the eventual overthrow of apartheid and the relatively peaceful transition to democratic rule in South Africa have given way to very little real political and economic change for the lives of most South Africans. As is analysed in detail in the next chapter, South Africa remains one of the most unequal places on earth, with some of the highest unemployment rates in the world and dangerously high youth unemployment (above 50%), alongside crippling numbers of often violent strikes. The price of its peaceful transition to democratic rule and the ANC's desire to attract international investment has been macroeconomic policy that hinders rather than helps the new South African polity in its attempts to respond to the dire need to overcome the legacies of apartheid. Formal political freedom might have been obtained, but this has not been followed by real political freedom. What went wrong?

In this chapter I begin to answer this question by, first, defending an argument for what I call 'freedom is power', which serves two functions: as I argue in the concluding chapter, it may yet help to reset South Africa's political and economic compass towards concrete, real political freedom; and, more importantly for my purposes in this chapter, it enables a more lucid lens through which to understand what has gone wrong in the objective to free South Africans. Using this new theoretical template regarding freedom I then go on to argue that, in particular, three important moments in the ANC's history indicate and explain the extent

¹ W. Beinart, *Twentieth-Century South Africa* (Oxford: Oxford University Press, 2001); A. Butler, *The Idea of the ANC* (Johannesburg: Jacana, 2012); S. Dubow, *The African National Congress* (Johannesburg: Jonathan Ball, 2000) and T. Lodge, *Sharpeville: An Apartheid Massacre and Its Consequences* (Oxford: Oxford University Press, 2011).

to which it was willing to accept and even reinforce the international political language and institutions of human rights, which, once RDP had been shelved, accommodated very comfortably the associated macroeconomic choices that set South Africa on a strictly orthodox and conservative path of development through growth as opposed to development through industrialization: the adoption of fiscal and monetarist orthodoxy rather than the realignment of the South African economy for effective redistribution of wealth and opportunities and the creation of political institutions that would enable real political freedom. These moments are the Freedom Charter, the Sharpeville and Soweto massacres, and the negotiations with the NP and the early years of rule in democratic South Africa that produced a constitution based on human rights and forms of economic policy and political representation that have hamstrung any attempts to attain freedom as power for all South Africans. The main claim I defend, in the face of most mainstream interpretations, is that the language of real political freedom for all, if understood in terms of human rights, which finds its full, final expression in the constitution of 1996, was never in contradiction with an austere, conservative approach to fiscal and monetary policy, a subsequent increase in corruption, patronage politics, and various forms of malfeasance and the empowerment of a small economic and political elite, which may have partly changed its 'colour' but has done little or nothing to change the basic power relations that were inherited from apartheid. The very internationalization of the anti-apartheid movement and the associated uncritical or even instrumental adoption of the United Nations-inspired language of human rights² is ironically and tragically, especially given recent events in Marikana, one of the main reasons for the lack of freedom as power that currently afflicts the lives of all South Africans. In other words, in South Africa it is not so much a case of 'revolution suspended'³ as 'revolution still pending' or the 'revolution is still to be televised', to paraphrase the 1960s' protest movements in the United States of America and, later, Gil Scott-Heron's famous song.

Freedom as power

Freedom is power, as defended here, is an amalgam of components of the various liberation struggles that have peppered our shared histories and a response to the practical inadequacies of the three main received theoretical accounts of freedom

² Dubow, *African National Congress*.

³ A. Habib, *South Africa's Suspended Revolution: Hopes and Prospects* (Johannesburg: Wits University Press, 2013).

that have characterized human history: Republican freedom, 'negative' freedom and 'positive' freedom (aspects of the latter two combine in practice, in manifold ways, to produce 'Liberal' freedom). Freedom is power is quite distinct from both these 'Liberal' and Republican mainstreams in two important senses. First, it does not abstract liberty from two related concepts – power and representation – that would otherwise ground freedom in the substantive individual and political capacities for real emancipation. Second, it therefore does not *reduce* freedom to one of the following three defining features: (1) the absence of (external) impediments; (2) the ability to decide for oneself what to do (self-determination); or (3) citizenship within a free state. These are, originally, Jeremy Bentham's, but more famously, Isaiah Berlin's 'negative' and 'positive' conceptions of freedom and the rival Republican account, respectively.⁴ Understood in all of these terms, South Africans are now free, despite the evident lack of real power to act freely that characterizes the lives of most – particularly the unemployed and working class – who live in this highly unequal, impoverished, racially scarred and unsafe society. These theories or conceptions of freedom are therefore unpersuasive, especially given the fact that they are proposed as universally applicable theories. So, to see clearly *why* South Africans lack freedom we need to start elsewhere, with an account of freedom understood in terms of the power to act and the requirements for that power. In other words, in capturing the concrete nature of freedom by linking freedom to real and effective power, this alternative account rejects the common tendency to favour a minimalist account of freedom over a realistic one.

There is nothing crazy about this idea, even though it may elicit strong countervailing responses. When I say 'I am free' normally I am not saying exclusively 'I live in a free state' or 'I am externally unimpeded' or 'I am self-determining'. No, what I usually mean is 'I am free to do X', which concretely

⁴ J. Bentham, *Of Laws in General*, ed. H.L.A. Hart (Oxford: Oxford University Press, 1970 [ca. 1782]); I. Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (Oxford: Oxford University Press, 1996 [1969]), pp. 118–172; C. Taylor, 'What's Wrong With Negative Liberty', in *The Idea of Freedom*, ed. A. Ryan (Oxford: Oxford University Press, 1979), pp. 175–193; N. Machiavelli, *The Discourses*, ed. B. Crick, trans. by L. J. Walker with revisions by B. Richardson (London: Penguin, 2003 [ca. 1517]); J.-J. Rousseau, *The Social Contract*, in J.-J. Rousseau, *The Social Contract and Other Later Political Writings*, ed. V. Gourevitch (Cambridge: Cambridge University Press, 1997 [1762]); Q. Skinner, 'The Idea of Negative Liberty', in *Philosophy in History*, ed. R. Rorty, J. B. Schneewind and Q. Skinner (Cambridge: Cambridge University Press, 1984), pp. 193–224; Q. Skinner, 'Machiavelli's *Discorsi* and the Pre-humanist Origins of Republican Ideas', in *Machiavelli and Republicanism*, ed. G. Bock, Q. Skinner and M. Viroli (Cambridge: Cambridge University Press, 1991), pp. 121–142; Q. Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998); Q. Skinner, 'The Idea of Negative Liberty: Machiavellian and Modern Perspectives', in *Vision of Politics Vol II Renaissance Virtues* (Cambridge: Cambridge University Press, 2002), pp. 186–212; Q. Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008); P. Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997); P. Pettit, *On The People's Terms* (Cambridge: Cambridge University Press, 2012).

means 'I have the power or ability to do X'. Hence, real modern freedom here is identified with and *as* power in that it conceives of freedom as a *combination of my ability to determine what I will do and my power to do it or bring it about*.

Nor is this a particularly novel idea. Freedom as power in this sense chimes well with most of the struggles for freedom across the ages, including the sharp distinction between freedom and slavery in Antiquity and beyond, subsequent slave revolts like the Haitian Revolution and later liberation struggles against colonialism, apartheid and domination, *and* the everyday attempts to gain more independence and freedom from, say, the state, the churches, the community, the law, poverty, crime and so on. As Frantz Fanon argues, the human condition is to be free and that freedom resides in the *capacity* to choose and to act.⁵

It turns out, moreover, that thinking about freedom as both about being able to *determine* what one will do and having the *power* to do what one decides to do is more common in the western tradition than is normally supposed. Despite much received opinion, a surprising number and variety of political thinkers from right across the political spectrum associate freedom and power in exactly these terms. It is a mainstay of much of antiquity. As the Roman historian Titus Livy put it, 'freedom is to be in one's own power', by which he meant *not* the autonomy of the will, but self-reliance, enjoyed of right by Roman citizens, the conditions for which were secured by law and within social relations of respect and reciprocity.⁶ This is also true of a number of modern thinkers, as diverse as Thomas Hobbes, the progenitor of the idea of 'negative' freedom, the idea of freedom as absence of external impediments, Jean-Jacques Rousseau, a central figure in the opposing, Republican canon, Edmund Burke and John Stuart Mill.⁷ Thus, a whole array of thinkers, even thinkers that Berlin lauds as standard-bearers for his 'negative' conception of freedom, are ultimately concerned with whether or not someone is able to exercise his or her power to act, that is, to bring something about, to do something.

However, it is in the work of Karl Marx that we find the full efflorescence of the account of freedom that underpins my argument here. In *The German Ideology*, and in other later works, Marx distinguishes three concepts of liberty. The first is

⁵ F. Fanon, *Black Skin, White Masks*, trans. C. L. Markmann (London: Pluto Press, 1986), p. 160.

⁶ T. Livy, *History of Rome from Its Foundation: Rome and the Mediterranean [Ab Urbe Condita]*, trans. H. Bettenson (London: Penguin, 2005) 35.32.11; Ch. Wirszubski, *Libertas as a Political Idea at Rome during the Late Republic and Early Principate* (Cambridge: Cambridge University Press, 1968), pp. 8–9; and below.

⁷ T. Hobbes, *Leviathan*, ed. R. Tuck (Cambridge: Cambridge University Press, 1996 [1651]), pp. 91, 146; Rousseau, *The Social Contract*, p. 82; E. Burke, *Reflections on the Revolution in France*, ed. and intro. Conor Cruise O'Brien (London: Penguin, 2004 [1790]), p. 91; J.S. Mill, *On Liberty and Other Essays*, ed. John Gray (Oxford: Oxford University Press, 2008 [1859]), pp. 7, 16–17, 116, 121–122.

what Marx associates with the anarchism of Max Stirner, but in today's parlance we would call 'negative' freedom or, more exactly, the 'pure negative' freedom of libertarianism.⁸ The second concept of freedom Marx discusses he identifies with Immanuel Kant's view of freedom and which he defines as the ability a creature has to make its own decisions, or govern itself.⁹ Kant is quite explicit that, for him, freedom is the mere ability to determine the will, irrespective of whether this is even translated into actual action in the world. The third concept of freedom is the one Marx calls the 'materialist' notion of freedom that identifies freedom with power and that he thinks is the full, sophisticated notion. Following this account, freedom comprises 'the conjunction of the ability to determine what one will do and the power to do what one decides to do', and anything less than this is a mere shadow of the concept of freedom.¹⁰ This means that for Marx the other two concepts he discusses, and *a fortiori* the main three concepts analysed in the modern literature, are poor approximations of this real form of freedom.

Freedom as power also captures the fact that people are interested in freedom as a human ideal, goal or aspiration because it is connected with the actual attainment of 'something', that is, some good or set of goods; and the actual attainment of these depends on my having the *power* to attain them. The liberation struggle in South Africa, for example, did not have as its goal the abstract idea of being 'free from impediment' or 'living in a free state'. Rather, it had more concrete political, economic and social goals: being free to determine who rules and how they rule, to produce, exchange and consume wherever and whenever, to love, procreate, entertain oneself and others, bring up one's children and so on; and to do so in conditions free of poverty and racial and gender discrimination and domination. This is strongly in evidence in the ANC's Freedom Charter, in demands such as

[e]very man and woman shall have the right to vote for and to stand as a candidate for all bodies which make laws;...[a]ll people shall have equal rights to trade where they choose, to manufacture and enter all trades, crafts and professions;...[t]he law shall guarantee to all their right to speak, to organize, to meet together, to publish, to preach, to worship and to educate their

⁸ K. Marx and F. Engels, *The German Ideology*, in *Marx Engels Collected Works*, Volume 5 (London: Lawrence and Wishart, 1976 [ca. 1846]), pp. 304–306; I. Carter, *A Measure of Freedom* (Oxford: Oxford University Press, 1999); M. H. Kramer, *The Quality of Freedom* (Oxford: Oxford University Press, 2003); H. Steiner, 'Individual Liberty', in *The Liberty Reader*, ed. D. Miller (Edinburgh: Edinburgh University Press, 2006), pp. 123–140; R. Geuss, 'On the Very Idea of a Metaphysics of Right', in *Politics and the Imagination* (Princeton: Princeton University Press, 2010), pp. 56–57.

⁹ Marx and Engels, *The German Ideology*, pp. 193–195.

¹⁰ *Ibid.*, pp. 305–306; Geuss, 'On the Very Idea of a Metaphysics of Right', p. 57.

children; ... [a]ll people shall have the right to live where they please, be decently housed, and to bring up their families in comfort and security ... [t]he courts shall be representative of all the people ... [and] the rights of the people shall be the same regardless of race, colour or sex.¹¹

As it is in the Constitution of the Republic of South Africa, 1996, by means of its repeated reference to the injustices of the apartheid past, the representative institutions of the new South Africa, and a comprehensive bill of rights that secures not only civil and political rights but also social and economic rights, such as 'freedom of trade, occupation and profession', 'human dignity', 'environment', 'housing', 'health care', 'education', and so on and so forth.¹²

In other words, as both of these founding documents for a free and democratic South Africa make clear, the attainment of political liberation is only one step towards securing and maintaining freedom as power – both display acute awareness that political freedom is an ongoing process of enabling the power of the citizenry. To paraphrase Mandela in the first epigraph to this book, the attainment of political liberation alone does not secure real political freedom. Fanon too makes a very similar claim in relation to post-colonies in general and with particular reference to the importance of how freedom is only manifest in concrete terms, such as in access to 'land', 'bread' and the other requirements necessary for 'human dignity'.¹³ In other words, political liberation from alien rule is a necessary but not sufficient condition for the broader concrete goals and conditions for freedom as power. (And, as I discuss below, the attainment of these broader goals depends on the active generation, defence and exercise of various other powers within a free state.)

The same is true for less-stark struggles for freedom under less-tyrannical conditions. The constant clamour for freedom of speech or freedom of academic enterprise, to take but two examples, is normally associated with a whole set of perceived goods. Citizens, the press, academics and artists normally do not defend press, academic and artistic freedom – that, for example, the press should be free to print what they see fit and that university lecturers should be free to teach and research as they see fit – simply because they dislike being constrained or because they think freedom depends upon being able to act unimpeded. They do so because they think this form of freedom brings with it a whole series of associated benefits that we ought to safeguard and value, such as, the power to

¹¹ ANC, 2011. The Freedom Charter [online]. Available from: <http://www.anc.org.za/show.php?id=72> [Accessed 30 July, 2013].

¹² *Constitution of the Republic of South Africa*, Eighth Edition (Cape Town: Juta & Co Ltd, 2009).

¹³ F. Fanon, *The Wretched of the Earth* (Paris: Présence Africaine, 1963) p. 43.

criticise our governments, the power to hold them accountable, the associated requisite power to disseminate information, generate new findings and ideas, and so on. This has been much in evidence both in the recent controversies around attempts by the ANC government to legislate what is potentially, at least in its first few incarnations, a draconian Secrecy Bill, to censor art that criticises those in political power *and* in various responses by academics in South Africa to withstand government intervention into university curricula and debates regarding the manner in which they do, or ought to, carry out their research. Many, of course, undoubtedly simply recoil and spit back at the attempted interference, but the more subtle, nuanced and intelligent responses display a keen awareness of the way in which these long-fought-for freedoms are necessary for a set of political, economic and scientific goods: the power of citizens to keep political and economic elites accountable; the power to determine and disseminate information regarding the country's economic and political elites; and the importance for scientific endeavour itself and the social, economic and political health of one's society that the practice of academic research and teaching and artistic expression be enabled by certain fundamental freedoms.

Moreover, in all three cases – the case of liberation from apartheid, claims for freedom of speech and demands for artistic and academic freedom – the attainment of these goals or benefits, these various freedoms, depends upon those involved having the *power* to attain them. It is an often forgotten fact of history that the freedoms associated with political liberation from apartheid South Africa, for example, were only attainable when the various components of the struggle against apartheid gained the power (or at least perceived power) to overcome the apartheid state. That it was a successful and relatively peaceful transition was due to the coming together of a whole series of powers and events – an *impasse* between the military power of the NP and the popular power of the ANC, strong international pressure, an internal front of opposition led by the United Democratic Front (UDF), an economy in freefall, the courage of a few leaders within both the ANC and the NP leadership and so on – none of which were inevitable or whose coming to a head together was part of a broader teleology of history in the region and elsewhere. It depended upon the powers of groups and individuals who had the foresight, determination and courage to seize a historically unusual if very unpredictable moment.

Thus, another way of construing the importance of this more substantive account of freedom as power is that it enables thinking about how freedom relates to the exercise of our powers as individuals and how we are enabled and disabled by a variety of internal and external abilities, obstacles, mechanisms and power

relations. This is something, again, that a number of other social and political theorists and philosophers have identified and stressed from a wide range of political perspectives. These examples not only provide further instances of the identification of freedom and power, but also emphasize the fact that freedom is about 'effective power', that is, that freedom is such an important social and political ideal and goal because it is rightly identified as a precondition for certain desirable 'beings and doings'.¹⁴ For example, as John Dewey puts it: 'Liberty is power, effective power to do specific things... The demand of liberty is the demand for power'.¹⁵ Surprisingly, this association is also evident at the heart of contemporary analytical political philosophy, for example, in Feinberg's account of freedom: 'There are at least two basic ideas in the conceptual complex we call "freedom"; namely, rightful self-government (autonomy), and the overall ability to do, choose or achieve things, which can be called "optionality" ...'.¹⁶

Considered through the lenses of these and other authors and struggles for full political freedom, the main liberal argument that to be free is to act in the absence of impediments or obstacles, in particular those that result from conscious deliberate human action, rests on a deep misapprehension about politics.¹⁷ I cannot adequately summarize here a complex argument that I develop and defend elsewhere,¹⁸ suffice to say that liberal thinkers such as these are concerned with external obstacles because they think it is better to have *more* possible courses of action rather than fewer. This is obviously true of some situations, but it is not clear that it is true of all; but whether or not it is always a good thing to have more rather than less options open, the number of available options depends not merely on the presence or absence of obstacles, but on the conjunction of one's power and the internal or external obstacles that stand in one's way. Moreover, whether or not a person, act or institution constitutes an obstacle will itself often depend on my relative power, in particular my position within existing power relations and *vis-à-vis* existing forms of representation. I therefore argue that

¹⁴ F. Nietzsche, 'Notebook 34, April–June 1885' 34[250] and 'Notebook I, Autumn 1885–Spring 1886' I[33], in *Writings from the Late Notebooks*, ed. Rüdiger Bittner (Cambridge: Cambridge University Press, 2003), pp. 16, 57.

¹⁵ J. Dewey, *Problems of Men* (New York: Greenwood Press, 1968 [1946]), p. 111.

¹⁶ J. Feinberg, 'Freedom and Liberty', in *Routledge Encyclopedia of Philosophy*, ed. E. Craig (London: Routledge, 1998), p. 1. Available from: <http://www.rep.routledge.com/article/S026> [Accessed 4 November, 2009].

¹⁷ J. Locke, *Two Treatises on Government* (Cambridge: Cambridge University Press, 1988 [1689]); Bentham, *Of Laws in General*; Mill, *On Liberty and Other Essays*; F. A. Hayek, *The Constitution of Liberty* (London: Routledge, 1960); Berlin, 'Two Concepts of Liberty'; Carter, *A Measure of Freedom*; Kramer, *The Quality of Freedom*; Steiner, 'Individual Liberty'.

¹⁸ L. Hamilton, *Freedom is Power: Liberty Through Political Representation* (Cambridge: Cambridge University Press, 2014).

freedom is power in the sense that it depends upon my power, control and self-control within the four following dimensions: (a) the power to act or be as I would choose in the absence of either internal or external obstacles or both; (b) the power to determine the government of my political association or community; (c) the ability to develop and exercise my powers and capacities self-reflectively within and against existing norms, expectations and power relations; and (d) the power to determine my social and economic environment via meaningful control over my and my groups' economic and political representatives.

These are objective conditions for freedom because they are shared and because all need them as necessary conditions for the possibility of freedom of action, particularly in the sense of political agency widely construed: freedom to vote, participate, deliberate, petition, veto, impeach, determine who rules and in whose interests they rule and control these representatives, both economic and political. And these objective conditions are all political because they cannot be achieved and maintained by individual or spontaneous collective action alone: given that they depend upon social, economic and political empowerment, sacrifices, discipline and control amongst all citizens, they require the coercive force of a political authority to ensure that they are institutionalized and sustained. However objective, though, this is not an exhaustive account of individual freedom. The full extent of my claim is that whatever freedom for any particular individual may involve, under the precarious and inter-dependent nature of modern conditions it will depend on the power and control individuals are able to exercise within the four domains of freedom outlined above. The concern is therefore with the basic necessary requirements for freedom as power, or in other words, individual power and control within these four dimensions are necessary (but not sufficient) conditions for political freedom.

Freedom and representation

The problem with many political theoretical accounts of freedom is that they take the unit of agency to be either the individual or the state, that is, a single agent or a single entity with clear agency, and they build their accounts of *political* freedom upon this basis. It is no surprise then that they infrequently incorporate analyses of power relations and economic and political representation into their accounts and that they all conceive of unfreedom as necessarily having its basis in conscious deliberate human action, that is, that we are only made unfree by the conscious deliberate acts of individuals or similar agents, such as corporations or

states. This is as true of the liberals and libertarians cited above as it is of modern Republican thought.¹⁹ This is an unconvincing way of conceiving of social and political existence under most conditions of human existence, but it is particularly implausible under modern conditions, given the complexity and division of labour of life within and between modern states, characterized as it is by membership of a whole array of overlapping and interdependent groups and various forms of associated representation. Our freedom is therefore determined to a significant degree by a number of different variables to do with the nature and power of these groups and their representatives. Individual, modern freedom as power will normally not be a simple matter of direct individual control over the domains listed above but will be a matter of individual power and control, coupled with the power and control of the groups and representatives that frame and format the lives of modern individuals, complicated even further by the power relations that exist between individuals and groups and amongst the various groups themselves.

I discuss groups and group representation again in Chapters 3 and 4 when I provide the two main components for what I submit goes some way towards a complete diagnosis for why South Africa still lacks freedom. However, before proceeding with this part of the argument here, it is important to state unambiguously that the notion of 'group' as articulated here does not, for a moment, assume that any single individual's identity is determined by a group identity. Individuals can and normally are 'members' of various groups within society determined by various classes, interests, perspectives and roles.²⁰ Individual or group identity is therefore not conceived of as essential and unchanging. Rather, resorting to the language of 'groups' is shorthand for speaking about the various groups, classes and social perspectives that exist in all modern polities. Nor does anything follow from this discussion regarding group rights: along with liberals and in opposition to communitarians, if rights turn out to be the best means of formatting politics,²¹ I remain sceptical of the idea of group rights, especially as regards normative or ethical primacy. Individual rights must trump group rights because group rights can and often

¹⁹ E.g. Pettit, *Republicanism: A Theory of Freedom and Government* and *On the People's Terms*; but cf. Machiavelli, *The Discourses*; W. Weymans, 'Freedom Through Political Representation: Lefort, Gauchet and Rosanvallon on the Relationship Between State and Society', *European Journal of Political Theory*, 4.3 (2005), pp. 263–82; J. P. McCormick, *Machiavellian Democracy* (Cambridge: Cambridge University Press, 2011).

²⁰ I. Shapiro and W. Kymlicka (eds), *Ethnicity and Group Rights: NOMOS XXXIX* (New York: New York University Press, 1997); I. Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).

²¹ Something contested in Geuss, 'On the Very Idea of a Metaphysics of Right'; L. Hamilton, *The Political Philosophy of Needs* (Cambridge: Cambridge University Press, 2003) and R. Geuss and L. Hamilton 'Human Rights: A Very Bad Idea', *Theoria*, 135 (2013), pp. 83–103.

are used to justify institutions and practices that act against the empowerment of individuals. This is important particularly in the case of South Africa, given how the concept of 'group right' has been deployed historically in South Africa. Finally, however important for political understanding, the concept of 'class' is less capacious as compared to 'group', since it cannot include other kinds of group membership and associated interests, particularly those related to gender, geography, street, satisfaction and so on.

Freedom and domination

Moreover, my alternative account remains realistic about freedom and domination. Following Michel Foucault, Steven Lukes and Raymond Geuss it holds that 'power' is a relation that is connected to the abilities of agents to bring about significant affects, either by furthering their own interests or affecting the interests of others, positively or negatively.²² These abilities depend upon the extent to which individuals are able to determine and satisfy their vital and agency needs.²³ This in turn depends on the prevailing political and economic institutions and whether or not citizens find themselves in situations of domination, or what Foucault calls 'states of domination'. Moving beyond, yet in the spirit of, Foucault, I argue that a situation or state of domination can take various forms, but in general they are characterized by power relations that block or fail to empower individuals in their attempts to determine and satisfy their needs.²⁴ This can take various forms. Existing power relations can: (a) mislead me in my attempts to *identify* my needs, for example, patriarchal institutions and norms; (b) ensure that I do not have the means or voice to *express* my needs, for example, apartheid South Africa; (c) disable meaningful *evaluation* of needs, for example, unregulated liberal capitalism; and (d) constrain the capacity to *meet* needs, for example, the corrupt and distorted patronage politics of post-apartheid South Africa. Freedom as power therefore depends upon avoiding or

²² M. Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–77* (Brighton: Harvester, 1980); M. Foucault, *Discipline and Punish* (New York: Penguin, 1991 [1975]); M. Foucault, "Omnes et Singulatim": Toward a Critique of Political Reason, in M. Foucault, *Essential Works, Vol 3: Power*, ed. J. D. Faubion (London: Penguin, 1997), pp. 298–325; M. Foucault, *The Will to Knowledge: The History of Sexuality, Vol 1*, trans. R. Hurley (London: Penguin, 1998 [1976]); S. Lukes, *Power: A Radical View*, Second Edition (New York: Palgrave Macmillan, 2005), pp. 63, 65, 109; R. Geuss, *Philosophy and Real Politics* (Princeton: Princeton University Press, 2008), p. 27.

²³ Hamilton, *Needs*.

²⁴ Cf. Pettit, *Republicanism: A Theory of Freedom and Government and On the People's Terms*; F. Lovett, *A General Theory of Domination and Justice* (Cambridge: Cambridge University Press, 2010).

overcoming situations of domination by ensuring control over the dimensions listed earlier via control over one's groups' representatives in general and one's political representatives in particular.

In short, individual freedom as power across the four social and political dimensions I list are the objective conditions necessary for avoiding or overcoming situations or states of domination. Moreover, given the economic and political reality within large, complex modern capitalist states, our individual freedom as power will normally not be a simple matter of direct individual control over these domains of freedom or the individual capacity to avoid these forms of domination. Modern political freedom (and avoidance of domination) is therefore determined to a significant degree by three associated matrices of freedom as power: (a) the material conditions and power of the groups that we find ourselves (or in some cases choose) to be members of; (b) the relative power of our groups' representatives; and (c) the relationship between our groups' representatives and our formal political representatives. By conceiving of freedom in terms of power and group representation, my alternative account of freedom avoids the mistakes of 'negative', 'positive' and 'republican' accounts of freedom, especially regarding the common tendency to focus uniquely on conscious deliberate human action and, at least in its libertarian form, the associated aggregation of individual freedoms to determine degrees of individual and group freedom, informed as they all are by assumptions regarding a direct relation of stylized individual autonomous agency and the freedom of the group or community.²⁵ And, more importantly for my argument here, it does not avoid the important link between the causal power of individuals, groups and representatives and their freedom. Or, put more positively, it provides an analytical framework for assessing the social and political power of agents as citizens and subjects, that is, as regards their actual capacities to affect and critique public policy (indirectly, via their representatives, or by means of more direct forms of participation or protest) and their abilities to determine their own and their groups' futures and act upon these determinations. This is a more realistic and comprehensive account of political freedom than existing competitor theories as it does not reduce the domain of freedom to 'private' freedom or 'freedom from politics' in some putative 'private sphere' where individuals are free from politics and the law, but nor does it flip right the other way and assume, as in Hannah Arendt's political thought, that political freedom

²⁵ E.g. Carter, *A Measure of Freedom*; Pettit, *Republicanism: A Theory of Freedom and Government and On the People's Terms*.

is always fully 'public and active'.²⁶ It remains realistic about the impossibility of constantly active political participation under modern conditions and yet provides means of conceiving of even the most supposedly atomistic and private of causal powers as linked to the capacities and powers of others in one's society. This is what I take Mandela to mean when he claims, in the long quote in the main introduction to this book, that '[f]reedom is indivisible' – the freedom of one depends on the freedom of all.

South Africans' lack of political freedom

As I argue in the next chapter, freedom's indivisibility is brought out well in the South African situation, particularly if freedom is understood in terms of power. I need first though to outline exactly why South Africans still lack freedom as power. Surprisingly for some, maybe, this realistic account of freedom as power sets more stringent normative and institutional standards than other existing barometers of freedom such as the annual Freedom House measurement, amongst others.²⁷ Some may see this as an advantage; some may not. Either way, given that freedom as power admits of degree and is not merely a matter of counting up or quantifying individual freedoms, as is the case with these other forms of measurement and is unambiguously the case for the libertarian conception of freedom that underpins them – '[t]he freedom of the group is nothing other than the sum total of the degrees of freedom of its individual members'²⁸ – it enables the categorization of economies and polities in terms of their degree of freedom as power. Contemporary South Africa does not meet these criteria even closely, despite its peaceful transition to liberal democratic rule and lauded, liberal constitution. This is because it has failed to eradicate or even reduce domination across all of the four domains of freedom articulated here. It is no exaggeration to argue that under current conditions most South Africans are still: (a) misled in their attempts to *identify* their needs; (b) kept from having the means or voice to *express* their needs;

²⁶ H. Arendt, 'Freedom and Politics' in *The Liberty Reader*, ed. D. Miller (Edinburgh: Edinburgh University Press, 2006 [1960]), pp. 58–79; Hamilton, *Freedom is Power*, ch. 2.

²⁷ Freedom House, 1973–2013, *Freedom in the World* (Washington, DC: Freedom House) Available from: <http://www.freedomhouse.org/report-types/freedom-world>; R. Mattes, 'Democracy Without People: Political Institutions and Citizenship in the New South Africa', Afrobarometer Working Paper No. 82. Cape Town: Institute for Democracy in South Africa (IDASA) (November 2007) p. 10.

²⁸ Carter, *A Measure of Freedom*, p. 267.

(c) are unable meaningfully to *evaluate* their needs; and (d) are constrained to a debilitating degree in their capacity to *meet* their needs.

This is the case because the majority of South Africans are not empowered by the economic and political institutions and forms of representation that were adopted during and following the end of apartheid. The reason for this has to do with the nature of the settlement that was eventually reached between the two major players in the negotiated transition to democratic rule – the NP and the ANC. Informal negotiations began from the late 1980s, some time before Mandela was freed in 1990, reaching fever pitch right up until the eleventh hour prior to the 1994 elections, and finally finding entrenchment in the constitution of 1996.²⁹ The first thing to note is that even some time prior to President de Klerk's speech to parliament on 2 February 1990, in which he announced the unbanning of the ANC and all other previously banned parties, that all prisoners, including Mandela, were to be released and that all exiles were to be allowed to return home, there was a recognition by some in the leadership of both the NP and ANC that an *impasse* had been reached: 'a grudging recognition in each party that their adversaries had the capacity to frustrate their goals and objectives as well as being unable to achieve their own' (Turok, 2008: 41)³⁰. Just as the ANC's leaders recognized that it had no hope of bringing down the apartheid regime militarily, the majority that it represented could not be kept down by military force alone; hence, the NP realized that its military might was insufficient to maintain the order and oppression necessary to return the apartheid regime and economy to its supposed heyday of the 1970s, even if it were sufficient to continue to make a mockery of the ANC as a liberation army.

This *impasse* of power between the two major parties in what was a delicate, dangerous and protracted negotiated settlement meant that both parties were forced to compromise on fundamental issues. The ANC, for example, gave way on the issue of federalism, or at least to a certain degree, ultimately played out through the formation of large urban municipalities with executive mayors,³¹ and agreed to the inclusion of a right to private property and a variety of social and cultural rights within a fulsome bill of rights. The latter two compromises had been vehemently opposed by the ANC for most of the preceding half century,

²⁹ Beinart, *Twentieth-Century South Africa*; R. Spitz and M. Chaskalson, *The Politics of Transition: A Hidden History of South Africa's Negotiated Settlement* (Johannesburg: Witwatersrand University Press, 2000); H. Klug, *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction* (Cambridge: Cambridge University Press, 2000).

³⁰ B. Turok, *From the Freedom Charter to Polokwane: The Evolution of ANC Economic Policy* (Cape Town: New Agenda, 2008).

³¹ Mattes, 'Democracy Without People'.

from the Freedom Charter of 1955 to the Harare Declaration of 1989. Both of these compromises were aimed at appeasing the realistic fear the NP had that the minority interests of those they represented under a democratic dispensation would be trampled by the majority. The NP, on the other hand, dropped its demands for a form of consociational democracy that would have, in effect, given certain minority groups veto powers over legislation, that is, it would have disproportionately empowered small, cultural groups (particularly their 'white' constituency) and protected existing privileges to a much greater degree than would be the case under any possibly conceivable form of majoritarian or popular rule.

However, it was not the compromises that were the most important effects of the *impasse*. The most telling consequence of the *impasse* was that there were a number of structural issues that both sides could agree on, partly because of the nature of the *impasse* itself – it meant that each party's erstwhile enemy was simply going to have to become a 'partner' of sorts during and following the transition to democratic rule – but also because the globally accepted and powerful human rights discourse, coincidentally, conformed with the concerns and interests of both parties. The result was a 'pacted' settlement,³² brokered by means of an elite compromise that has effectively reinforced the lack of freedom as power of the majority of South Africans, as completely elaborated on in Chapter 4. Given the proximate history and the nature of the *impasse*, it was in neither party's interest to completely pull out of the process, to try and go it alone and get what they wanted alone; neither could, so neither did.

This was exemplified in mid-1992 when the first efforts to reach a negotiated settlement – the now famous Convention for a Democratic South Africa that convened on 20 December 1991 (dubbed CODESA one) – ground to a halt over a number of contentious issues, in particular, which body would be empowered to draft South Africa's new constitution. Both sides were able to make concessions and overcome the stalemate on the basis of the guarantees offered by the human rights discourse. The ANC accepted the idea of 'sunset clause', put forward by Communist Party Chairman Joe Slovo, providing executive power-sharing with the NP government for a period of 5 years after the democratic elections. This enabled the NP government to accept a democratic constitution-making process, rather than by negotiation in CODESA, that is, that the constitution would be drafted by an elected constituent assembly, which itself made it possible for

³² I. Shapiro and K. Tebeau, 'Introduction' in *After Apartheid: Reinventing South Africa?*, ed. I. Shapiro and K. Tebeau (Charlottesville and London: University of Virginia Press, 2011), pp. 1–18.

the ANC to agree to the adoption of a negotiated interim constitution.³³ The latter would set constraints on the substance of the final constitution, entrench a government of national unity for 5 years and ensure the legal continuity the government required. The negotiations resumed on a new basis and with renewed impetus as all now realized that there really was no other alternative to a negotiated settlement (if viewed positively) or elite compromise (if viewed with more scepticism).

The point though is not that the settlement or pact was somehow now inevitable, partly, of course, because at the time, during the negotiations, it clearly was not: violence was not only imminent, but broke out sporadically throughout the negotiations; and various events, particularly the assassination of Chris Hani on 10 April 1993, stretched it to breaking point. The main point is that various elements came together that made the main parties able not only to compromise but also cohere around a set of institutions and ways of conceiving them. The most important of these, and the one that could be said to underpin the possibility of the above-described concessions, was the fact that from the very outset of the negotiation process, the major political parties agreed that a democratic South Africa should be constructed on the basis of a justiciable constitution, articulated in terms of safeguarding the equal human rights of all South Africans. Three things follow from this. First, the constitution is the supreme law, binding all parts of the state including the legislative majority and making constitutional change possible only by means of amending the constitution itself, through special and very demanding procedures and a special majority of legislators. Second, a justiciable constitution empowers the judiciary to uphold the constitution, thus making not only the constitution but also, in effect, the constitutional court sovereign. Contrast this to a system in which parliament is sovereign, where courts are required to abide by the decisions of a political majority in parliament. 'Under constitutional supremacy, the courts are mandated to enforce the Constitution even to the point of striking down the decisions of the democratically elected legislature.'³⁴ Most importantly, the function of the courts under the system agreed upon by both parties is to uphold the rights guaranteed in the constitution against violation by the state or by private bodies. This basic agreement over what amounted to a fundamental change in the role of the courts and the place of law in the governance of South African society was only made possible by the underlying fact that both major

³³ Constitution of the Republic of South Africa, xv.

³⁴ Constitution of the Republic of South Africa, xvi.

parties were satisfied with the idea of human rights as the founding set of principles or lexicon for the interim constitution and then, ultimately, the final constitution.

Most importantly, therefore, the nature of the proposed new political order was the consequence of the fact that the two main parties were able to cohere around the language of human rights. Despite its history of vitriol against notions such as human rights, the NP quickly came to see that, within a democratic South Africa, the ANC would easily command majority support and thus a majority in parliament for some time to come. For the NP and those they represented, therefore, the language of human rights, inclusive of cultural and group rights as it is, enabled them to safeguard some of their interests, even under conditions of being in a permanent minority. The fact that parliament, and thus elected political representatives, would thereby be much less significant and powerful than in the regime they had created in 1948 was now of no concern to them; in fact, given the likely future scenario, all the better that parliament be severely constrained and weakened by a sovereign, human rights-based constitution. For the ANC, despite reservations regarding a number of rights within the eventual bill of rights, the language of rights in general and human rights in particular had been part of its lexicon since at least the Freedom Charter of 1955, if not even further back. That these two otherwise warring parties could cohere over the relatively abstract language of human rights may seem remarkable, until one remembers two highly significant global developments. First, the rapid growth in global power of the human rights discourse, at least ever since the adoption by the United Nations (UN) General Assembly on 10 December 1948 of the Universal Declaration of Human Rights. Second, that following, in particular, the two apartheid massacres at Sharpeville on 21 March 1960 and at Soweto on 16 June 1976, the anti-apartheid movement had not only become internationalized (and much of its power rested on this) but had, as a result, wholeheartedly embraced the discourse of human rights.³⁵ One of the co-authors of the Freedom Charter has stated unambiguously that the emphasis on human rights in the Freedom Charter is a direct consequence of the global currency of these notions at the time, and this emphasis was reiterated at the Morogoro Conference in April 1969 and again in the 1989 Harare Declaration that converted the vision of the Charter 'into a constitutional reality'.³⁶ And, of course, the eventual final constitution of 1996 is now the standard bearer for defenders of human rights all across the world.

³⁵ Dubow, *African National Congress and Lodge, Sharpeville*.

³⁶ B. Turok, *From the Freedom Charter to Polokwane*.

Thus, the *impasse* in military and political power between the two main parties, the end of the cold war, the internationalization of the anti-apartheid struggle and coherence around the language of human rights enabled an agreement. Together they enabled the negotiators to identify a set of interests and goals that most could agree on. Also, lest it be forgotten, by its very nature, the elite compromise had to satisfy the interests and reduce the fears of both sides and thus had to institutionalize forms of political power that safeguarded existing interests – that is, the interests of the elites during the process of negotiation – rather than enable a revolutionary shift of power or interests. In other words, for consensus of a kind to emerge, the settlement could not empower the previously disenfranchised too rapidly and at the direct expense of the previously advantaged. The human rights discourse did just that.

Although human rights safeguarded within a sovereign constitution may have helped ensure peaceful transition, it had a series of deleterious long-term effects on the prospects for real political freedom in South Africa. The human rights-based emphasis on settling a volatile *status quo* and the need to look backwards and find ways of resolving and healing the wrongs and injustices of the past have left South Africa with a macro-political and macroeconomic legacy that was unable to deal with its future. This is readily apparent in three centrally important components of the economy and polity ever since. First, a conservative and austere macroeconomic policy that prioritized stabilizing the mess of an economy handed over by the NP government and then, very slowly, a shift towards distribution of wealth by means of growth at the expense of radical redistribution of incomes and resources. (The dynamics of this and the associated response to public debt are discussed in full in Chapter 4.) Second, the form and substance of the new constitution, which in great detail manages to make constant reference to righting the wrongs of the past, safeguarding the existing rights of all across a deeply divided society, remove sovereignty from parliament and generates a series of extra-parliamentary checks and balances in the form of what have become known as the Chapter 9 institutions. Third is the structure and dynamics of a completely new electoral system, a party-list proportional representation system in place of the polar opposite Westminster first-past-the-post system tainted by its use under apartheid (as discussed in detail in Chapter 3).

The effect of these three structural decisions is an arrangement that leaves little or no room for everyday citizens to affect the manner in which the polity and economy is managed. Once they have voted, they have no means of calling political representatives to account as representatives are no longer bound to

a particular constituency and citizens elect parties, which determine who will represent them – the latter is intended as ambiguous because, of course, under this form of proportional representation, representatives represent the interest of their parties and not those of the citizens or some subsection of the latter. Economically, although citizens in democratic South Africa may have formal rights to a plethora of goods, as articulated in the constitution, in order to realize these rights they need the social and economic power that these formal rights on their own cannot provide. This condition of reifying extreme inequality by means of an institutional arrangement premised on formal equality (not, of course, unique to South Africa) is exacerbated in South Africa by the perceived need to use state resources and powers to generate quickly a ‘black’ middle class; the most efficient means of doing so is the associated willing cooptation of the existing ‘white’ economic elite. The result is that the spoils of the new state and its associated markets have been retained in a very small numbers of hands, as is spelled out in Chapters 2 and 4, in particular.

What follows from this on the ground in South Africa today is debilitating for freedom as power in three ways. (Or, in other words, the effects on the ground are that most South Africans remain dominated in one or all of the four ways specified above.) First, even though the elite compromise generated a peaceful outcome, the real material advantages of that peace were kept securely in the hands of a new class of elites that very quickly closed shop on further entrants and proceed to seek and secure rents for their privileged positions right across the polity and economy, further exacerbated by an education system that fails to generate sufficient numbers and quality of new entrants to challenge those who now dominate in most spheres.³⁷ Second, this degree of elite compromise and rent-seeking has given rise, quite understandably, to high levels of corruption and highly distorted forms of patronage politics. Third, the *impasse* has not gone away; it has only changed its spots, as it were. The new, mainly ‘black’ political elite is periodically under threat of capital flight from an old, mainly ‘white’ economic elite, upon whose capital part of the state’s credibility rests; moreover, the old economic elite is periodically under threat of the nationalization of its wealth in general and its land, mineral resources and banks in particular. A cold-war-style *impasse* – the *impasse* that gave rise and characterized the negotiations between the NP and the ANC – has given way to an *impasse* based on the relatively equal bargaining power of these two threats. The result is that

³⁷ R. de Kadt and C. Simkins, ‘The Political Economy of Pervasive Rent-seeking’, in *Thesis Eleven* 115 (April, 2013), pp. 112–126.

most, if not all, of the country's economic and political energies and institutions are focused on maintaining the equilibrium between these two extreme threats, and what follows from this is little movement on empowering and freeing the rest of the population and the fact that this majority does not constitute (and finds it very difficult to enter) either of these two groups and so its needs go unheard, unevaluated and unmet. I will return to these systemic problems of post-apartheid South Africa in greater detail in subsequent chapters, but it is worth noting here that their effect is to keep the majority either unrepresented or poorly represented in this incessant elite bargaining stalemate. Thus, taken together, what follows from this is that most South Africans are dominated in all the four ways stipulated earlier: they do not have the material resources, institutional access or requisite knowledge properly to identify, express, evaluate or meet their needs.

These forms of domination also explain the frequency of (often violent) protests against local-level corruption and the poor delivery of public services: in short, the majority of the population simply have no other voice, no other means of expressing their needs and the fact that they are being left unmet as a consequence of the elite pact that characterizes the institutions that were allegedly set up to respond to their needs. They remain dominated, but they do not have the institutional means to express their claims for greater freedom in legal and constructive ways; their only recourse is not only to protest but also to escalate the way in which they protest to such a level that they and their needs will be noticed by the ruling elites. Put differently, they have to be sufficiently destructive of the polity or the post-apartheid peace to make it in the interests of the elites to respond in some manner.

Most importantly, the human rights legal framework and structure of governance as secured by South Africa's sovereign constitution of 1996 actually disempower rather than empower South African citizens. Rather than furthering their freedom as power, it stops them from overcoming the four forms of domination that prevail. The reason it does this is because, first, rights are not processes; they are trumps. They stop processes. They predetermine interests; they reify interests in a pre-political fashion. Politics is all about processes, processes that identify, express, form, evaluate, prioritize and then meet needs, and these processes are best undertaken with as much participation and input by those whose needs will ultimately be met.³⁸ As understood here, at the very

³⁸ F. Fehér *et al.*, *The Dictatorship Over Needs* (Oxford: Basil Blackwell, 1983); Hamilton, *Needs*; Geuss and Hamilton, 'Human Rights'.

least, that will involve the power to determine who rules – or who represents the people or the various sub-groups thereof – the power to sanction who rules, and the power to be involved in the decisions they make regarding, in particular, macroeconomic policy. Human rights, moreover, are rough-hewn, they are crude legal functions that have to be relatively undifferentiated; however, politics is, or at least ought to be, all about something much more subtle, especially in extremely unequal or divided societies: the ability to differentiate between people and their needs and thus activate citizens, motivate them to demand successfully the various goods that will provide them with freedom as power. Human rights combined with an impotent parliament – an electoral system that empowers the majority party and little else – and conservative macroeconomic policy together block any attempt citizens may make to participate in politics or, at least, control their representatives. Finally, human rights are counterproductive to the goal of overcoming domination because they tend to give individual citizens with little or no control politically over what happens a sense of some kind of control. Even when I don't have control over my street, my city or my state, at least I feel as if I have some kind of control, I have a right to something-or-other. 'Rights under this aspect are the modern form of opiate for politically neutered populations.'³⁹ In other words, not only do human rights constitute one of the components of the complex of institutions that maintain domination in South Africa, they act to create the illusion of power, control and freedom where there is none or very little.

As Marx said of the Declaration of the Rights of Man and of the Citizen (1791 and 1793 versions), the radical constitution produced during the French Revolution,

[i]t is curious that a nation that begins to liberate itself, to tear down all barriers between the various national groupings and to found a political community solemnly proclaims ... the privileges of egoistic man, separated from his fellow man and from the community ... This fact becomes even more curious if we consider that citizenship in the state, that the *political community*, is even reduced by the political emancipators to the status of a mere *means* for the preservation of these so-called human rights ... 'The *aim* of all *political associations* is the *preservation* of the natural and imprescriptable rights of man.' (Declaration of the Rights etc. of 1791, Art. 2) 'Government is instituted to guarantee man the enjoyment of his natural and imprescriptable rights.' (Declaration etc. of 1793 Art. 1)⁴⁰

³⁹ Geuss and Hamilton, 'Human Rights'.

⁴⁰ K. Marx, 'On the Jewish Question', in K. Marx, *Early Political Writings*, ed. J. O'Malley and R. A. Davis (Cambridge: Cambridge University Press, 1994 [1843]), pp. 45–46. Many thanks to James Furner for reminding me of this quote.

Written in 1843, this statement could have been written of South Africa two decades after the ‘miracle’ political liberation of her people.

Conclusion

The experience of South Africa over at least the last 60 years only reinforces the argument of the first half of this chapter regarding how best to understand political freedom: in terms of ‘freedom is power’. This is the case for hopeful and deeply troubling reasons. The first reason is that political liberty is clearly still cherished very strongly in South Africa, as is the liberty to pursue private enjoyments. Political liberty is so important not only because it was only very recently and precariously achieved, but also because it needs to be constantly maintained and secured, and because without it, private independence will itself no longer be assured. The hopeful or uplifting characteristic of contemporary South Africa is that, given the historical proximity of liberation, some citizens still see this relationship with unwavering clarity and nerve. Like Machiavelli and others and as the experiences of many states throughout history show, they see that the attainment of political liberation is only one of a number of necessary conditions for individual political freedom. At the very least, citizens have to put in place and support institutions that maintain the form of regime that provides them with the array of necessary conditions for freedom.

However, the deeply troubling pervasive reason that further supports the importance of conceiving of freedom as power is that, as will be shown fully in the remaining three chapters, political freedom and the institutions that are supposed to maintain it can very easily be or become corrupted, even if formally they retain legitimacy, and thus fail not only to secure political freedom itself but also to provide the various other necessary conditions for individual independence and freedom. Contrary to the contemporary tendency to laud democracy and democratic institutions simply if and when they fulfil a set of formal conditions – periodic elections, free competition, free access to power, non-violent alternation of governing parties and so on – I maintain that the question of whether democracy as a form of regime secures freedom and is thus valuable is a substantive one, the answer to which lies in the extent to which any actual democracy enables the set of substantive powers and freedoms discussed in this chapter. However, South Africa has some way to go before it secures these substantive powers and freedoms for its citizens and this is because it has yet to properly secure both forms of liberty, that is, political liberty in the form of

active and meaningful involvement in the agencies of one's political community and the degree of power necessary to live an independent and non-dependent life. Or, in other words, the majority of South Africans are still dominated in four debilitating ways. Despite, or partly because of, the promises of the Freedom Charter of 1955 and the Constitution of 1996, existing power relations in South Africa: (a) mislead most South Africans in their attempts to *identify* their needs; (b) ensure that they do not have the means or voice to *express* their needs, or have them properly represented by others; (c) disable meaningful *evaluation* of needs, as they have no real means to determine macroeconomic policy; *and* (d) constrain their capacity to meet their needs, as the needs and interests of an elite economic and political class determine most macro-political and macroeconomic decisions.