

Independence and Equal Freedom

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Republican political theorists defend a conception of freedom according to which freedom consists in absence of domination by other agents.¹ This paper addresses the question of how republican freedom should be distributed. It is well known that various liberal theorists defend competing accounts of how freedom should be distributed. But to what distributional aim should republican theorists commit themselves? Should the aim of republican policy be to maximize freedom as republicans understand it or should they seek an equal distribution even if this would lead to a less than maximal degree of republican freedom at the societal level?² Philip Pettit holds that the goal of republican policy should be to maximize freedom as non-domination. He argues, however, that policies designed to maximize non-domination will tend to produce an equal distribution of republican freedom. This is an attractive claim since it seems to capture two things that might be thought to be desirable in a political society; that we should have as much freedom as possible and that people should have equal freedom. I will argue that Pettit's account of the distributional goals of republican theory conflicts with our commitment to a principle of equal freedom for all. By "equal freedom for all," I mean a principle according to which the state ought to secure freedom equally and ought to secure it for all of its subjects. The intuitive strength of that commitment should emerge in the course of

my argument. I begin with a brief introduction to the republican conception of freedom and then proceed to the question of distributional principles.

I. Freedom as Non-domination

Pettit introduces his account of freedom by bringing out the ways in which this concept allegedly differs from positive and negative liberty.³ As traditionally understood, negative liberty consists in the absence of interference, obstacles or preventing conditions to action introduced by other agents.⁴ Negative liberty theorists differ principally on the question of what counts as interference or constraint. The characterization of negative liberty given by Isaiah Berlin leaves open the possibility that freedom is limited not only by actual physical restraint or force, but also by threats that limit the choices of the threatened or make what they wish to do more difficult. More recently, defenders of pure negative liberty have argued that an act of interference does not count as a constraint unless it physically prevents someone from performing some action. On this view, a threat does not count as a constraint to freedom.⁵

In contrast to this idea of negative freedom or freedom *from* interference, positive freedom is typically understood as an ideal of self-mastery. You are free, on the positive conception, insofar as you have achieved a kind of control or self-direction in your own life. Theorists of positive liberty disagree about what this self-mastery consists in and how it is to be realized.⁶ But most contemporary theorists of positive liberty agree that positive liberty consists in a special kind of relation to oneself in which what one does or aspires to is under one's own control.

Pettit argues that the distinction between positive and negative liberty leaves conceptual space for a third concept of liberty on which freedom consists in not being dominated by others. This concept of freedom differs from negative liberty in that it regards arbitrary interference rather than mere interference as such to be the principle threat to freedom. It differs from positive liberty in that it does not require self-direction or self-mastery. In order for freedom to be realized on Pettit's conception, I need only be free from domination by others.

To be dominated, according to Pettit, is to be subject to a power of arbitrary interference. As Pettit puts it, the problem is "that of having to live at the mercy of another, having to live in a manner that leaves you vulnerable to some ill that the other is in a position arbitrarily to impose..."⁷ Correspondingly, one is free on this conception when and to the extent that no other person is in the position to interfere arbitrarily in one's choices.

Because non-domination picks out interference that is perpetrated on an arbitrary basis as the basic threat to freedom, the characterization of arbitrariness is particularly important. Pettit initially claims that "an act of interference is perpetrated on an arbitrary basis...if it is subject just to the *arbitrium*, the decision or judgment of the agent; the agent was in a position to choose it or not choose it at their pleasure."⁸ What Pettit has in mind here is that an act of interference is arbitrary if the interfering agent's decision whether or not to interfere is determined only by consideration of her own pleasures, projects, interests, desires or whims. To this formal account of arbitrariness, Pettit adds a substantive account according to which interference is arbitrary if it is not forced to track the interests of the person or persons subject to the interference. For Pettit, interference is

arbitrary if the decision whether or not to interfere is not constrained to track the interests of the person suffering the interference as s/he understands those interests.⁹ Non-arbitrary interference, on the other hand is subject to constraints; “an act of interference is non-arbitrary to the extent that it is *forced* to track the interests of the person suffering the interference” as that person understands those interests.¹⁰

A crucial qualification here is that the act must be forced to track not just any of the interests of those affected, but the “shared” or non-factional interests of those affected.¹¹ In other words, such an act must be forced to track, as Pettit puts it, the “welfare and worldview of the public.” – a matter that, Pettit emphasizes, can only be determined contextually. There is no armchair answer to the question then of whether an act of interference is arbitrary.¹² Non-dominating interference, in other words, is interference that reliably tracks the public good and does so in a way that the members of the public can recognize as reflecting their worldview.

II. Pettit on equal freedom for all

Pettit is not committed in principle to equal freedom for all. His view is that an equal distribution of freedom is a likely result of policies designed to maximize republican freedom.¹³ However, Pettit’s view contains two basic egalitarian commitments. The first is an anti-elitist assumption that each is to count for one and none for more than one.¹⁴ The second is a claim about the value of non-domination, namely that non-domination is primary good – a good that each of us has reason to want whatever else we want.¹⁵

Neither of these principles delivers equality of non-domination. The main reason for this is the familiar idea that treating people as equals does not necessarily require giving them equal shares.¹⁶ Consider a meritocratic view according to which the distribution of non-domination should reflect the presence or absence of certain virtues or moral qualities. One could hold for example that independent status should only be secured for those who do or would display a virtue of independence or self-reliance.¹⁷ Such a system according to which independence is to be secured or distributed in accordance with merit (whether merit is measured in terms of self-reliance or some other value) *is consistent* with the assumption that each is to count for one and none for more than one. It does not treat some people as less valuable than others in some arbitrary way. However, such a scheme allows for very unequal distribution of freedom as non-domination. The meritocratic distribution is also consistent with the claim that non-domination is a primary good. One could admit that considerations of what persons have reason to want are relevant to the question of the appropriate distribution of non-domination, but hold that such considerations are not morally sufficient to determine a just distribution. Considerations of virtue and merit must also play a role. As we have just seen such considerations often require departures from equal shares.¹⁸

Pettit's positive argument for the egalitarian character of freedom as non-domination involves two main claims. The first is that inegalitarian policies are unlikely to maximize non-domination since they themselves are forms of domination. The second is that, if we restrict ourselves only to choice among non-dominating policies, the project of maximizing non-domination is likely to support policies designed to achieve an equal distribution.¹⁹

Let us begin with Pettit's argument for the first claim. This argument is partly comparative. Pettit wants to show that a state that seeks to maximize freedom as non-domination does better with respect to equal freedom than a state that seeks to maximize freedom as non-interference. Suppose our goal is to maximize freedom understood as *non-interference*. Pettit argues that this goal may mandate significantly inegalitarian policies and may lead to an inegalitarian distribution of non-interference. To illustrate this, Pettit turns to a consideration of specific policies. A state that sought to maximize expected non-interference might find that the best way to do so would be to adopt policies of selective internment of dangerous members of the society and selective under-protection of some vulnerable members.²⁰ This point can be clarified in the following way. Suppose that in a particular society, five percent of the population are especially likely to interfere with others (call these "the dangerous"). Another five percent are especially likely to suffer interference (call these "the vulnerable"). The other ninety percent of the population of this society are neither particularly dangerous nor particularly vulnerable. It might turn out, Pettit claims, that the best way to maximize expected non-interference would be to intern the dangerous (thus subjecting them to a high degree of interference) and to under-protect or abandon the vulnerable (thus leaving them exposed to a high degree of interference). The other ninety percent, who are neither dangerous nor vulnerable, would, under this scheme, enjoy fairly low levels of interference.

This leads Pettit to claim that the goal of maximizing freedom as non-interference could have significantly inegalitarian implications for the distribution of non-interference and may lead to inegalitarian policies such as our imagined policy of selective internment

and under-protection. But one might ask at this point; why wouldn't a policy of internment *without* under-protection always do better in terms of maximizing non-interference than a policy of internment plus under-protection? I think that what Pettit has in mind here involves the possibility that if the government dedicates more resources to protecting the vulnerable in this scenario, thus decreasing the amount of interference to which they are subject, the level of interference among the ninety percent of the population that is neither dangerous nor vulnerable would rise to the point that the level of overall interference in the society would be greater than it would be under the policy of internment and under-protection. Someone who wanted to defend the ideal of non-interference might want to argue that this is not likely in the real world.

However that may be, Pettit's argues that these inegalitarian policies are not at all likely to maximize freedom as *non-domination*. Pettit's argument here turns on the idea that a policy of selective internment and under-protection is a form of arbitrary interference. Thus a state that considers this kind of policy to be available is itself a dominating agent (and indeed an agent that dominates all of the citizens, not just those that it interns or under-protects). Since such a state subjects all of its citizens to domination it is very unlikely that any reduction in domination that it achieves through the policy will compensate for the domination that the policy itself represents.²¹

I don't think that Pettit's argument succeeds. In order to bring this criticism out let us focus on the policy of under-protection. Here is a reconstruction of Pettit's argument.

- (1) In under-protecting a group of citizens, the state interferes with them.
- (2) This interference is arbitrary.

(3) A state that has the capacity to arbitrarily interfere in this way dominates all of those who live under it.

(4) Any reduction in domination that results from the policy is very unlikely to outweigh the increase in domination represented by the policy itself.

C. Therefore a policy of under-protection is very unlikely to maximize expected non-domination.

Premise (1) requires some explanation. First, one might ask why a policy of under-protecting the vulnerable counts as interference. The answer is that Pettit thinks of interference as intentional worsening of someone's choice situation.²² According to Pettit such intentional worsening can take the form of an act of omission.²³ For example, according to Pettit, a pharmacist who, for no good reason, refused to sell much-needed insulin to diabetic or who would only sell it at an exorbitant and non-standard price interferes with the diabetic by intentionally worsening her situation relative to some received benchmark.²⁴ Similarly in our case, the state that chooses to omit protection of the vulnerable from its social policies interferes with the vulnerable by intentionally worsening their choice situation even though it doesn't do anything to them.²⁵

What (1) does not explain, however, is why a non-dominating state would regard the policy of under-protection as unavailable. In many cases, interference is morally permissible and may even be morally required according to Pettit.²⁶ It is permissible for me to occupy the only phone booth in the vicinity even though you need to use it, and it may be morally required for me to trip you in order to prevent you from battering a third party with a baseball bat. Thus, even if we admit that certain kinds of omissions count as interference, this is not the source of the explanation for why such a policy is wrongful.

The premises that explain the wrongfulness of this policy are premises (2) and (3).

Pettit needs (2) to be true because that is what allows him to say that a state that practices such a policy is a dominating agent. But does Pettit have the resources to show that (2) is true? In order to answer this question we need to look again at Pettit's account of what makes an act (or policy) arbitrary. Recall that, for Pettit, an act or policy is arbitrary if it is not forced to track the shared interests of the public according to their opinions.

What I want to claim is that a policy of under-protection is not necessarily arbitrary on this conception of arbitrariness. Public reasoning on this question might proceed as follows. "Each member of the public has an appropriately shared and non-factional interest in security of the person. What are therefore required are policies that maximize the provision of security to citizens. This policy of under-protection maximizes the provision of the security of the person. It is true that the situation of the vulnerable is worsened by the policy, but that worsening is not arbitrary since it is justified by the pursuit of the overall policy goal." This suggests that from the point of view of the interests and worldview of the public, a policy of under-protection might not be regarded as arbitrary.

But what if we look at things not from the point of view of the public in general, but from the point of view of the vulnerable? Wouldn't it make sense to say that the vulnerable have a special complaint here? After all they are being subjected to interference that others do not suffer. Doesn't this interference appear arbitrary from their point of view and shouldn't our evaluation of the policy take account of that?

The answer is that this policy does appear arbitrary from their point of view, but in a way that Pettit cannot capture. What is arbitrary about the way that the policy treats

the vulnerable is not that it goes against the interest that they agree that they have in security of the person. It is rather that they are being asked to bear a burden that others are not being asked to bear for the sake of that social goal. The policy is arbitrary because it treats them unequally or because it does not provide *equal* advancement of the interest in security of the person. But Pettit's view doesn't have the resources to appeal to this way of being arbitrary. I conclude that although the policy of under-protection of the vulnerable is arbitrary, Pettit isn't able to explain why. Indeed no maximizing view can do so. The maximizing view is the problem here.

The lesson from this is that an act or policy can be arbitrary even though it tracks the public interest. One important form of arbitrariness lies in unequal treatment. But only someone who has a substantive commitment to equality that goes beyond bare impartiality of the Benthamite type is able to capture this kind of arbitrariness. I conclude that (2) is false and thus that Pettit's first argument fails. For all he says, a maximizing conception of the distribution of republican freedom might be quite likely to require an egalitarian policy of under-protecting the vulnerable.

III. Does maximizing non-domination require egalitarian policies?

Let us now turn to Pettit's second claim. Let us assume that we are to pursue the goal of maximizing non-domination only by means of non-dominating policies. Then Pettit's claim is that maximizing non-domination is likely to require egalitarian policies rather than inegalitarian ones. Pettit's argument for this claim turns on two main points. The first is that an agent's degree of freedom is a function of the degree of power that she has relative to the power of others in the society. The second is that the capacity of power

to produce non-domination is subject to diminishing marginal productivity. Taken together these two claims are supposed to show that the maximization of non-domination requires egalitarian policies.

An agent's degree of freedom depends on the degree of power she enjoys relative to the power of others. Pettit thinks of powers as "all those factors that are liable to affect political, legal, financial, and social clout."²⁷ One's powers are what enable one to resist and deter arbitrary interference. Thus increases in power increase freedom. It follows from this that one (perhaps the main) important way in which a policy can affect an agent's degree of freedom is by augmenting or diminishing her power. This is complicated by the fact that the effectiveness of power in providing freedom depends not just on my power but also on the power of other people. This is because my capacity to effectively resist and deter interference that does not track my interests will vary depending on the degree of power enjoyed by everyone else with whom I may come into contact. Thus Pettit claims that the degree of a person's freedom is a function of their power ratio in relation to the other members of society.²⁸

To illustrate this consider street prostitution. Persons who engage in sex work on the street are surely among the least powerful and therefore most vulnerable members of society. The idea here is that such sex workers enjoy a very low degree of non-domination because they are not capable of resisting force, fraud and coercion by johns, pimps and police. It is because their power ratio in relation to these others is so skewed that they are vulnerable and subject to domination. Pettit's claim is that it will typically maximize non-domination if we focus on empowering the vulnerable rather than providing additional power to those who already enjoy a fairly high degree of power thus

moving the distribution of non-domination in the direction of equality rather than away from it.

The claim that empowering the vulnerable rather than further empowering the already powerful will typically be the maximizing strategy turns on the claim that power is subject to diminishing marginal productivity. In other words, someone with a fairly high degree of power who is able to easily resist and deter arbitrary interference may find that an increment of additional power adds very little increase in freedom. On the other hand, an agent with a very low degree of power may find that the same increment of power has a significant impact on their ability to resist and deter arbitrary interference.

Taken together, these claims are supposed to imply that the goal of maximizing non-domination is likely to require egalitarian policies. This is, first, because any attempt to increase an agent's degree of non-domination by increasing her power is also going to diminish another person's power. It is unlikely, Pettit thinks, that the increase in the advantaged person's power will compensate for the decrease in the other party's power and so unlikely that an inegalitarian policy will maximize non-domination. This becomes even more unlikely once we take note of the claim that power is subject to diminishing marginal productivity. It turns out that it is likely that the most efficient way to increase overall non-domination is to increase the power of the most vulnerable. Thus it is likely that maximizing policies will also favor policies that move us towards equality in the distribution of non-domination.

It should be pointed out that some of the things that Pettit would accept as relevant to a person's degree of non-domination are not actually well-understood as powers that a person possesses. Take our example of a vulnerable person, the street sex

worker. As Levitt and Venkatesh discovered in their empirical work on street prostitution in Chicago, a significant percentage (3%) of the sexual transactions engaged in by female sex workers involve freebies with police officers to avoid arrest.²⁹ Pettit would claim that in a context in which prostitution is criminalized, one thing that is relevant to reducing the intensity of domination among this vulnerable group would be a strong institutional culture among police that prohibits such interactions.³⁰ (Indeed even a personal code of masculine honor that forbade an individual police officer from demanding sexual relations with vulnerable prostitutes would reduce the intensity of the domination they suffer). If we assume that such an institutional culture would reduce not only the actual interference to which prostitutes are subject, but the degree of domination they suffer (thus assuming that the norms of an institutional culture are the right kind of constraint to remove the power of arbitrary interference), then we can point out that the institutional culture here, although it is a factor that is relevant to the degree of non-domination to which someone is subject is not a matter of the power of street workers to resist or deter arbitrary interference.

Pettit might respond here that such an institutional culture functions to reduce the power of the police officers to engage in arbitrary interference. Thus if we were comparing the intensity of non-domination of sex workers who live in a society in which there is no such institutional culture to those in which there is such a culture, we could say that the sex workers in the second society enjoy a greater degree of freedom because their power ratio is better in relation to the police officers. This response depends on the claim that institutional constraints and norms count as decreasing power and thus decreasing domination. However, if this were correct, it would have counterintuitive

consequences. Suppose that a criminal organization engaged in a protection racket has a norm according to which it is permissible to break the arms of people who refused to pay for protection, but not their legs. Since this norm is in place and is followed by the organization's enforcers, it follows on this view that the organization is less powerful than it would otherwise be and exercises a lesser degree of domination over the people it terrorizes than it would if it had no such norm. This strikes me as implausible, but we can leave it aside as nothing in my argument is going to turn on it.

Regardless of whether Pettit is right that the sex workers in the second society are freer because their power ratio in relation to the police officers is better, questions remain. Suppose we grant that Pettit is right that power is subject to diminishing marginal productivity and thus that increasing the power of someone who already has a lot of power is not likely to maximize non-domination. There are plausibly many cases of policy choice where the assumption of declining marginal productivity will not come into play. Moreover, there is reason to think that in the actual world, in which policy choice is subject to constraints of feasibility and cost, egalitarian policies might well be part of an overall scheme designed to maximize non-domination.

Imagine that you are in charge of policing strategies in a large city. Since you have limited resources you have to decide where to focus police presence. The following two possibilities present themselves. You can increase police presence in a large, relatively peaceful middle-class neighborhood. By doing so, you will be able to reduce police response times on breaking and entering and domestic dispute calls by one hour. By hypothesis this increases the degree of non-domination enjoyed by all the inhabitants of this neighborhood since it decreases the ability of thieves and domestic abusers to

interfere arbitrarily in the lives of the inhabitants. Alternatively you can forgo the increased police presence in the middle-class neighborhood and increase police presence in an area of town where violent crime is more likely, an area frequented by street sex workers. Thus by increasing police presence in the area of town where the street sex trade is located, you can significantly increase protection for a small but highly vulnerable population.

Is there any reason to think that the large increase in non-domination enjoyed by this small population will outweigh the relatively small increase in non-domination enjoyed by each member of a much larger population in the middle-class neighborhood? Pettit's view has given us no reason to think so and thus no reason to think that the maximizing goal of non-domination will require increased police presence in the poor neighborhood rather than the middle-class one.

This is a version of the problem of abandoning the vulnerable. Of course it might turn out (although one hopes not) that abandoning the vulnerable in this way is the right policy choice to make in an actual world. My complaint here is not so much that Pettit's view gets us to the wrong policy but that it gets there in the wrong way. On the maximizing view, abandoning the vulnerable would be the right policy choice to make because it is what the ideal of maximizing non-domination requires in the world as it actually is. I think most of us would be more inclined to regard it as an unfortunate inability to live up to an ideal of equal protection given the exigencies of the actual world. This is an expression of our commitment to equality. It is this commitment that Pettit's view fails to capture.

The difficulties faced by Pettit's arguments draw their force from our intuitive commitment to equal freedom for all. While I have not provided an argument for the principle of equal freedom for all in this paper, I believe that the arguments developed here ground a strong *prima facie* case in favor of that principle. There is still much work to be done. In particular, a full defense of the principle would have to provide a plausible account of when differential treatment or interference does not run afoul of the ideal of equal freedom.

¹ I am grateful to Louis-Philippe Hodgson, Sari Kisilevsky and Doug MacKay for comments on drafts of this paper.

² I do not assume here that these two distributions are the only ones that a republican could defend.

³ Philosophers of a Kantian bent have recently defended related accounts of political freedom that focus on a right to independence understood as a right not to be subjected to the will of others. See for example Louis-Philippe Hodgson, "Kant on the Right to Freedom," *Ethics* 120 (2010): 791-819. Arthur Ripstein presents his account of Kant's political philosophy as a working out of the idea of a right not to be subordinated to the choice of others. See Arthur Ripstein, *Force and Freedom*, (Cambridge, MA: Harvard University Press, 2009), 4. There are significant differences between the Kantian approach and the republican one defended by Pettit. I leave these Kantian views aside in this paper.

⁴ Isaiah Berlin, *The Proper Study of Mankind* (New York: Farrar, Straus and Giroux, 1998), 191-242.

⁵ Hillel Steiner is the principle defender of this view. See his *An Essay On Rights*, (Oxford: Blackwell, 1992).

⁶ Gopal Sreenivasan follows Rousseau in understanding positive liberty in terms of two psychological capacities, the power to set principles and the power to follow them. See Gopal Sreenivasan, "A Proliferation of Liberties," *Philosophy and Phenomenological Research* 63 (2001), 231-232. John Christman defends a view on which positive liberty requires me to be in the position to reflect upon and resist the formation of preferences. See John Christman, "Liberalism and Individual Positive Freedom," *Ethics* 101 (1991): 347.

⁷ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997), 5.

⁸ Ibid., 55.

⁹ Ibid.

¹⁰ Ibid. (emphasis added).

¹¹ Ibid., 56.

¹² Ibid., 57.

¹³ I assume in this paper, as Pettit does, that it is possible to measure republican freedom in the ways required for interpersonal comparisons of freedom.

¹⁴ Pettit, *Republicanism*, 110-111.

¹⁵ Ibid., 90-91.

¹⁶ Ibid., 110-111.

¹⁷ Something like this view seems to have been held by Thomas Mellon, the father of the banker Andrew Mellon. See David Cannadine, *Mellon: An American Life*, New York: Knopf, 2006.

¹⁸ I am not defending this meritocratic view here. Indeed, I doubt that it will find any serious defenders. However I think it raises a problem for Pettit's account. Without some substantive commitment to equality we cannot explain why the meritocratic view should be rejected.

¹⁹ Pettit, *Republicanism*, 111-112.

²⁰ Ibid., 111.

²¹ Ibid., 112.

²² Such intentional worsenings can occur in three ways according to Pettit. "All interfering behaviors, coercive or manipulative, are intended by the interferer to worsen the agent's choice situation by changing the range of options available, by altering the expected payoffs assigned to those options, or by assuming control over which outcomes will result from which options and what actual payoffs, therefore, will materialize."

Pettit, *Republicanism*, 53.

²³ Ibid., 53.

²⁴ Ibid., 54

²⁵ One puzzle raised by my reading of the argument is how to identify the benchmark in relation to which under-protection counts as worsening. More needs to be said about this. However it seems to me that the same difficulty arises in almost all cases in which interference takes place by means of an omission. It is important to note that Pettit claims that any such judgments about worsenings must be sensitive to context. Pettit, *Republicanism*, 54.

²⁶ Ibid.

²⁷ Ibid., 113.

²⁸ Ibid.

²⁹ Steven Levitt and Sudhir Alladi Venkatesh, "An Empirical Analysis of Street-Level Prostitution," <http://economics.uchicago.edu/pdf/Prostitution%205.pdf> (accessed April 22, 2011) 5, 15. I should note that nothing in my argument turns on the empirical facts here.

³⁰ My evidence for the claim that this is consistent with Pettit's view includes passages like this one: "Suppose that a power bearer acknowledges a code of noblesse oblige, for example, or just aspires to be a virtuous person. That is going to mean, in itself, that the power they have over someone else is at least less intense than it might have been; there is a certain reduction in the domination they represent, by virtue of their being exposed to the possibility of effective rebuke." Pettit, *Republicanism*, 64.