Which Republicanism, Whose Liberty?

Robert Jubb
September 2014

JWI Working Paper
No. 2014/04
This paper was presented at a meeting of the Edinburgh Political Theory Research Group on Thursday 8 May 2014. We thank Robert Jubb for his permission to include the article within the JWI Working Paper series.
As an intellectual tradition, republicanism is at best a broad church. As may be inevitable in a tradition stretching from the Greek city-states to anticolonial struggles in the Americas and well beyond, we tend to identify authors and works as republican through their use of some of a set of tropes which recur in various forms in works which often otherwise have very little in common. In this sense, worries about the ability of even good polities to persist in time, and about human and worldly corruption in general, hostility to concentrations of power, and an emphasis on the importance of often militaristic civic virtue are what unite and so make up republicanism. Even the genealogy of republicanism’s role in Britain’s 13 North American colonies’ struggle for and consolidation of their independence offered by J. G. A. Pocock in his seminal *The Machiavellian Moment* takes in figures as different as Niccolò Machiavelli and Alexander Hamilton.¹

One of these was a sixteenth century Florentine humanist, notorious for a work that at least presents itself as a guide to political adventurers hoping to seize power, but whose most significant contribution to the republican tradition seems to have been an emphasis on the martial virtue of citizens and class-based political strife as crucial to the survival of republics.² The other was a soldier married into the pre-Independence colonial elite of British America who could not think of “the rapid succession of revolutions” in the “petty republics of Greece and Italy” the humanists looked to as guides without “horror and disgust”, and so was glad that the “science of politics” had received the “great improvement” which enabled it to go beyond the achievements of antiquity.³ Their attitudes towards history and popular political participation seem like they could hardly be more different.

Yet Pocock hardly covers the whole republican tradition, even in the Anglophone societies with which he is most concerned. Although Pocock’s account is meant to frame our understanding of contemporary American political culture, with its obsession with the idea of a frontier and of its own ever-elusive virtuousness, his coverage really ends with the American Republic’s founders. Yet the Anglophone republican tradition did not

1 Pocock 1975.
2 Pocock’s Machiavelli stresses that “if a man bore arms not for himself but for another, he was incapable of citizenship” (Pocock 1975, 386). When Harrington takes up this point, he however rejects Machiavelli’s related claim that “all the laws which are passed in favour of liberty” are generated by the “rift between” “the people and the upper class” (Machiavelli 1997, 29), telling his readers that “notwithstanding the judgment of Machiavel, your commonwealth is both safe and sound” in part because it ends class conflict (Harrington 1992, 162-3).
3 Hamilton, Madison, and Jay 43-44.
disappear once it had achieved perhaps its greatest triumph. Alex Gourevitch has ably shown the ways in which American labour and other struggles drew on republican tropes well after the era with which Pocock is concerned, for example.⁴ Nor is that to say anything of the Francophone or German republican traditions through the eighteenth and nineteenth century, in which theorists as different as Fichte and Tocqueville can be located, or of the forms (anti)colonial republicanism took outside the eastern seaboard of North America.

Pocock’s account is also disputed. The central figure in his transition of Florentine political thought to the Anglophone world is Harrington, yet figures like Jonathan Scott have made a powerful case that Harrington was in fact rejecting Machiavelli’s account of a participatory republic built on the military virtue of independent-minded citizens. Scott sees Harrington as operating in another tradition, not of “Aristotle, Cicero, [and] Machiavelli” but of “Plato, Lycurgus, [and] Thucydides”, of being “[as the greatest English disciple, not of Machiavelli, but of Hobbes”, and so as sacrificing “the moral and participatory bases of the classical republican tradition”.⁵ His rejection of Florentine political thought’s central claims makes it hard for him to be the conduit through which it flowed into eighteenth century Anglophone political thought. Equally, we might query the accuracy of Pocock’s reconstruction of the perhaps rather more liberal and Lockean American founders, or even of Machiavelli.⁶

This is not just a matter of correctly understanding our past and so better grasping what the constellations of ideas that make up our own intellectual landscape include and exclude. If we want to draw on the republican tradition as a repository of ideas we might use to guide our attempts to structure our collective lives, we need to appreciate its complexity and the absence of any real single unifying commitment. Insofar as a thinker can be appropriately identified as republican, it is likely to be because they made use of some of a set of tropes which are together shared by republicans, a kind of family resemblance, rather than defining necessary and sufficient conditions. Further, these tropes will have been used not because there is a shared republican political programme, but because they seemed convenient or appropriate to the thinker using them. We are likely to misrepresent members of the republican tradition if we do not appreciate its plurality, and in that misrepresentation, we will miss much of the

---

⁴ See Gourevitch 2014.
⁵ Scott 1993, 162-3
⁶ See for example, Gibson 2000 and McCormick 2003 and 2011.
sophistication and plausibility of the lessons we might learn from the tradition and its members.

In the remainder of this paper, I try to illustrate the importance of taking the diversity of the republican tradition seriously by looking at the work of probably the most prominent contemporary neorepublican, Philip Pettit. Pettit leans on the authority of the republican tradition when he describes contemporary neorepublicanism as reviving an “ideal” that, despite having “shaped many of the most important institutions... we associate with democracy”, “has not been given enough attention in contemporary debates”.

Yet partly as a result of its simplification, neglect, and misunderstanding of the republican tradition, Pettit’s republicanism is, paternalistic, elitist, antidemocratic, based on an implausible theory of liberty, and inconsistent. Although greater attention to the republican tradition is not necessary to diagnose Pettit’s problems, and of course is not sufficient to put them right, a better understanding of the purposes republicans expected particular institutional arrangements to serve and of conceptual apparatus they used to frame and justify them would nonetheless help to avoid his difficulties.

Neither is Pettit the only culprit here, rather than simply the most prominent. Any theory which seeks to describe the republican tradition in terms of an abstract, conceptually sophisticated, and highly determinate idea or group of ideas is going to run into similar difficulties. Republicanism, like any political tradition, is just not cohesive in that way. Given the diversity of thinkers and their concerns it includes, how could it be? Republicanism as a political tradition will at best give us some tropes which may serve as the basis of more precisely articulated conceptual work. We can build on some of the worries republicans tended to try to see what we ought to worry about, but they are not going to tell us what liberty is, not least because where it is a question for them, they often disagree about the answer. To accurately and most fruitfully draw on the republican tradition, we need to understand why they did not care and disagreed about that and other questions, rather than assuming there is some fundamental and exact commitment they all share. Otherwise, individual republican thinkers will either be forced misshapen into a distorting intellectual framework or stripped from their historical context, and so made alien to us, neither of which helps us here and now.

**Pettit’s Republicanism**

---

Philip Pettit has been the public face of the revival of republicanism in contemporary political theory and philosophy for most of the last two decades. In 1997, his *Republicanism: A Theory of Freedom and Government* presented a specific institutional programme as the consequence of adopting the wrongly obscured tradition of theorising liberty as non-domination, and so linked a set of policy prescriptions with a particular theory of liberty. Its marriage of analytical rigour and careful institutional prescription, all framed in a romantic narrative of righting the historical injustice of republicanism’s disappearance, was extremely successful. Pettit’s theory went on to be adopted as something like an official ideology by the Spanish Government of José Luis Rodríguez Zapatero elected in 2004. Pettit even returned to Spain to pass judgment on the achievements of the Zapatero government in 2007, and has published that judgment, together with a series of further reflections on the challenges of realising non-domination in a book entitled *A Political Philosophy in Public Life.* When discussing republicanism in contemporary political theory and philosophy, either as an institutional programme or as an account of liberty, it is very difficult to avoid Pettit’s work.

For Pettit, republicanism is united around conceiving liberty as non-domination. Drawing on Pocock and Skinner to construct his republican tradition, Pettit sees a tradition of thought stretching from Machiavelli and his Florentine contemporaries to Madison and the North American settlers, passing through Harrington, Locke and the Augustan whigs on the way. According to Pettit, all of the members of this tradition hold that liberty consists not in the absence of interference, as Berlin argued it does, but in the absence of domination. To be a slave is not necessarily to be interfered with; it is instead to live under the command of, at the mercy of, a master who may interfere at will. Slaves can hardly be free, so a theory of liberty which describes them as free – as the standard liberal view of freedom as non-interference sometimes will – must be inadequate and should be given up or revised.

Pettit believes that interference instead only results in a loss of liberty when it is arbitrary. Law at least does not have to be arbitrary, and a government of laws rather than men can preserve liberty. Rather than forever worrying about government

---

8 Martí and Pettit 2010.
9 For example, Pettit 1997 appears to have around four times the citations of Dagger 1997, published on a similar topic in the same year by the same publisher in the same series, despite Dagger’s book having won Columbia University’s Spitz Prize.
10 See Pettit 1997, 17ff.
coercion as liberals committed to a theory of liberty as non-interference must do, republicans who adopt the understanding of liberty as non-domination can see a civil order as a guarantor and even promoter of freedom if it is appropriately checked and controlled. Seeing freedom as resting in the guarantee of the absence of arbitrary interference gives a better judgment in cases of slavery and of government than a liberal view of freedom as non-interference. For Pettit, this distinctive view separates republicans from liberals, giving them the appropriate conceptual apparatus to evaluate their social and political world that liberals lack.

Pettit also strongly connects this distinctive view of liberty to a set of quite determinate institutional prescriptions. For Pettit, understanding freedom as non-domination means committing yourself to what he calls ‘contestatory democracy’. Contestatory democracy combines electoral democracy, in the sense of governments being selected through some formally egalitarian process of voting, with the rule of law, the separation of powers, and a requirement that law be “resistant to majority will”.11 Without guarantees against the depredations of tyrannical majorities, Pettit claims minorities will be dominated by them. On the other hand, Pettit consistently insists that if minorities systematically obstruct attempts by a democratic majority to implement its will through procedures like judicial review, no domination has occurred. In his most recent book, as in Republicanism in 1997, he argues that a supreme court with the power to strike down legislation does not dominate the electorate because their decisions are in the end “likely to be the ones that the people... would make or approve if they had all the relevant information or expertise”.12

It is in this sense that Pettit’s position is paternalistic, elitist, and antidemocratic. It justifies preventing people from putting their will into action by claiming they cannot be trusted to promote their own good, makes political authority depend on possession of necessarily restricted qualifications, and denies that democratic majorities are entitled to make law. In a 1999 paper which approvingly cites the Tory grandee Lord Hailsham on the dangers of ‘elective dictatorship’,13 he denies that an equal distribution of rights to affect political decisions amongst those who have to live under those decisions provides an impartial way of making those decisions. Each counting for one and no more

11 Ibid 173.
12 Pettit 2012, 237.
13 Pettit 1999, 176.
than one is not enough for impartiality.\textsuperscript{14} Instead, those well-placed enough to sit in a supreme court have to be given veto rights to prevent majorities from not giving enough weight to the interests of minorities, being overtaken by fits of unreason, or treating elections as merely opportunities to express their moral commitments.\textsuperscript{15}

It is important to see here that no fundamental right needs to be at stake for a majority's decision to dominate a minority on Pettit's account. It fails the relevant test of impartiality if the majority weighted the interests of the minority wrongly, if the majority is not being rational, or if it is merely expressing its moral commitments. Any political decision, regardless of its implications for the basic protections fundamental rights provide or whether it is taken by a democratic majority or the justices of a supreme court, can involve these faults. Pettit takes the right to make these mistakes, however trivial their consequences, from democratic majorities and instead hands it to unaccountable experts whose powers are bound to be invoked by obstructive minorities more at less at whim. This is a hierarchical and inegalitarian view. It deprives common citizens of even a formally equal chance of determining the rules which govern the social world they must live their lives in, instead entrusting the reins of power to those it judges know best and providing the wealthy and powerful with yet another means of protecting their interests.

Part of the framework sustaining Pettit's hierarchical and inegalitarian view is his theory of liberty. Pettit's theory of liberty is moralistic. For Pettit, a power to interfere with someone else only counts arbitrary and so domineering if it is “not forced to track the[ir] avowed or readily avowable interests”.\textsuperscript{16} A power to require someone to wear a seatbelt and to penalise them if they do not does not involve a loss of liberty for Pettit, at least as long you agree being injured is not in your interests and the power is only to require them to wear a seatbelt. In this sense, reliably successful paternalism, if paternalism must involve a loss of liberty, is impossible for Pettit. Reliably successful paternalism reliably promotes its subject's interests through limiting their liberty. No such thing is possible on Pettit's view since a reliable promotion of someone's interests cannot limit their liberty. Pettit's view then makes one of the standard questions about the significance of liberty, whether, how, and by whom it should be traded off against other values, impossible to ask. Liberty is not at stake unless our interests in the

\textsuperscript{14} Pettit 1999, 179.
\textsuperscript{15} Pettit 1999, 176-7 and 185, where Pettit makes clear that his idea of contestatory "democracy" includes significant checks on democratic authority.
\textsuperscript{16} Pettit 2002, 341-342.
promotion of other values are too. One of the many of its consequences which make this view implausible is that no freedom can be at stake when judges strike a law down if that law was not in the people’s interests, regardless of whether people themselves chose it.

Worse still, Pettit’s view of liberty has another strange feature, one which makes it not just implausible but perhaps inconsistent with the rest of his theory. Possibility plays an odd role in Pettit’s theory. Domination occurs when someone could arbitrarily interfere, not only when they in fact do interfere, even where interfering includes making threats and so closing off options. As he put it in a recent co-authored paper, domination is defined in terms of “the capacity... to interfere”.\footnote{Lovett and Pettit 2009, 14. As Ian Carter and Matthew Kramer have pointed out, if republican freedom is not defined in terms of capacity and so possibility, then it becomes equivalent to a sophisticated non-interference view based around conjunctively exercisable liberties. See Carter 2008 and Kramer 2008.} A capacity depends on what is possible, not on what does or will happen. We are constantly capable of doing an extremely wide range of actions, the vast majority of which we will never do. A capacity to interfere does not need to ever be exercised in order to exist. More, we can know that a capacity will never be exercised without it ceasing to be a capacity. We might therefore know that a particularly benevolent master will never discipline his or her slaves if they run away. Slaves might run away, knowing full well that their master would not prevent them or try to regain control over them, without that master losing the capacity to interfere arbitrarily with them. They might even have been encouraged to flee by their master, who perhaps lacks the legal power to do what he or she would most like to and free them. On Pettit’s understanding of domination, a master who honestly and publicly proclaims to their slaves that she or he will never exercise his or her legal rights over them dominates those slaves for as long as she or he retains those rights because it remains possible for him or her to interfere arbitrarily with them. Slaves can do things where there is no risk of them being arbitrarily interfered with and Pettit must say they were not free to do them because their master retained the capacity to interfere arbitrarily with them, even though in fact she or he would never exercise it.\footnote{The supposed advantage of a theory of freedom focused on capability over on focused on actual interference, that it deal well with shifts in behaviour in order to appease powerful figures, is no advantage over a sophisticated non-interference view like Carter’s or Kramer’s. Such a view, by looking at which opportunities are conjunctively exercisable and so when defiance will close off other opportunities, can account for the way in which worries about actors who might interfere can count as losses of liberty.}
That makes Pettit’s view implausible in another way. If our freedom depends on whether others could interfere arbitrarily with us, then there will be many acts we can and do perform knowing that we will not be interfered with at all which we are not free to do. This view of liberty is not consistent with the rest of Pettit’s theory because, as Matthew Kramer has pointed out, it is very unlikely that we can ever be fully protected from the possibility of arbitrary interference.\textsuperscript{19} Can we really ensure that the military could not mount a coup? Is there any way to make it impossible for passersby to assault each other in the street at random?

Pettit ought to worry in particular that it will always be possible for the members of institutions entrusted with preventing majorities from making law to fail to meet the responsibilities Pettit has assigned them. Indeed, legal systems have often been complicit in the oppression of minorities. One only has to think of the way that the US Supreme Court was complicit in the enslavement and then denial of political rights to African Americans for the majority of its history despite a formally egalitarian constitutional framework to realise this. Where they do not do so that depends, presumably, on both their and the more generally prevailing culture, on interlocking patterns of dispositions to act in particular ways we standardly use in explaining human behaviour and the institutions to which it gives rise. As Pettit himself puts it, formal legal institutions are “dead [and] mechanical”.\textsuperscript{20} They “cannot walk on their own” and need a “place in the habits of people’s hearts” to have “life and momentum”.\textsuperscript{21}

Yet Pettit cannot rely on these dispositions to demarcate what powers to interfere particular agents have, since if he did, he could not insist, as he does, that a perfectly reliably benevolent slave-owner dominates their slaves.\textsuperscript{22} As a slave-owner, she or he has the capacity to arbitrarily interfere with his or her slaves, and her or his disposition not to use that capacity, however reliable, is irrelevant. Pettit’s theory is then inconsistent because his view of liberty makes it impossible for the institutions he says it requires for its protection to in fact protect it. No institutions could possibly protect it, because all institutions require human support, support that could be withdrawn even if we know it will not be.

\textsuperscript{19} See Kramer 2008.
\textsuperscript{20} Pettit 1997, 241. A whole chapter is devoted to the discussion of this issue in Republicanism.
\textsuperscript{21} Ibid, 241.
\textsuperscript{22} See for example, Lovett and Pettit 2009, 14.
There are then at least two serious sets of problems with Pettit’s neorepublicanism. First, his institutional prescriptions are paternalistic, elitist, and antidemocratic. They are explicitly designed to prevent democratic majorities from being able to enact their wills, with law-making power instead being passed to experts whose authority based on knowing best trumps our claim to each play an equal role in shaping our social world. Second, his theory of liberty is doubly implausible and inconsistent with the rest of his theory as a consequence of the second implausibility. It collapses claims about freedom into claims about the promotion of interests, and sees us as unfree whenever it is possible for an agent to arbitrarily interfere with us, whatever we know about whether they in fact will interfere. Without drawing on the facts about dispositions to act that Pettit’s focus on capacities rules out, we cannot provide guarantees of non-domination so understood, and so Pettit’s theory cannot generate any concrete institutional recommendations because no institution can make it strictly impossible for its members to be interfered with arbitrarily.

Lessons from History

Demonstrating that Pettit’s republicanism has these problems does not require any knowledge of the republican tradition, however. Nor is their demonstration particularly novel. Roger Boesche began a pattern of rightly complaining about Pettit’s elitism and antidemocratic instincts in his review of *Republicanism* in *Political Theory* in 1998, and much of what I say about his account of liberty simply summarises Carter’s and Kramer’s excellent work. How then could we benefit from reading Pettit’s work and that of other neorepublicans in the light of the republican tradition they hope to lay claim to? First, by assessing Pettit’s institutional recommendations and justifications for them in light of what republicans who have shared those prescriptions and justifications have hoped for from them, we can get a better grasp on what those institutions are really meant for. Second, by looking at alternative republican accounts of freedom and government, we can see how Pettit’s problems can be overcome without pitching us back into the difficulties sometimes associated with the liberal view Pettit hopes to supercede.

Pettit’s institutional prescriptions are those typically traditionally associated with republicanism. He separates powers and limits the role of the electorate, instead trusting elites to rule in their name. Like Madison in *The Federalist*, he wants to prevent

---

“the people in their collective capacity” from participating in government, preferring to restrict their role to the selection of representatives who will anyway be constrained by judicial review and ombudsmen of various sorts.\textsuperscript{24} It is therefore instructive to try and understand what, for example, Madison and Hamilton hoped for by limiting popular sovereignty. Like Pettit’s, The Federalist’s counter-majoritarianism is paternalistic, concerned to defend the people “against their own temporary errors and delusions” by dispersing and checking power.\textsuperscript{25} In insulating representatives from the popular will, they aim to “suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority”, just as Pettit appeals to the epistemic authority to justify the power he grants to experts.\textsuperscript{26}

The self-inflicted injuries from which Madison and Hamilton hope to save the people are intriguing though. Federalist 10 mentions a “rage for paper money”, that is, for control over credit to pass out of the hands of the coastal elite to which the authors of The Federalist belonged.\textsuperscript{27} Other horrors to be forestalled include “the abolition of debts” and “an equal division of property”.\textsuperscript{28} What the reason, truth, and justice whose authority has to be protected against the temporary errors of an excitable people prescribe is the perpetuation of the hierarchies The Federalist’s authors stood at the top of. Madison and Hamilton would have been very aware of the possibility of popular demands for a more equal distribution of power. The year before The Federalist was written, Shays’ Rebellion was sparked by anger over debt collection and tight fiscal policy. Growing from attempts to shut down courts enforcing debt collection and fines for failure to pay, it only ended when two of three groups intending to storm a federal armoury to arm themselves to resist the Massachusetts state government and its suspension of habeas corpus were broken up with grapeshot by a militia privately funded by the state’s merchant elite. Madison’s and Hamilton’s paternalism is not just elitist in the sense that it looks to members of an elite for leadership, but in the sense that the leadership they are supposed to offer involves ensuring that, above all things, their own position and that of their class is not threatened. For them, an important part of the appeal of dispersing powers is that it is a way to prevent popular movements from trying to free themselves from the control of their social betters.

\textsuperscript{24} Hamilton, Madison, and Jay 2008, 313.
\textsuperscript{25} Hamilton, Madison, and Jay 2008, 310.
\textsuperscript{26} Hamilton, Madison, and Jay 2008, 311.
\textsuperscript{27} Hamilton, Madison, and Jay 2008, 54.
\textsuperscript{28} Hamilton, Madison, and Jay 2008, 55.
John P. McCormick has been arguing that this is the case for the republican tradition as a whole for at least the past decade, denying that Machiavelli is a member of that tradition on the grounds that he entrusts the protection of liberty to the people rather than the nobles. Unlike Madison and Hamilton, menaced by forms of popular unrest that threatened their privileged position, Machiavelli wanted to empower the people at large. Like Madison and Hamilton, though, he sees the issue as one of who has control. The people should be trusted because they are less ambitious than the grandi. While the grandi jealously seek positions of power and influence and will remember slights, nurturing them into grudges, the common people are typically only concerned to protect their liberty and avoid being oppressed. Giving them control will not end in the good of the state being sacrificed as part of someone’s attempt to write their name into the history books or to revenge themselves on someone who refused to give them quite enough respect. Instead, it will free the bulk of the population from oppression by their social superiors.

McCormick is more charitable to Pettit than I have been here, seeing him as not having understood the inegalitarian and hierarchical commitments of the institutions he claims would realise his theory of liberty. Pettit however is quite clear that his theory of liberty treats the distribution of property as having an effect on liberty “akin to the natural environment”. As long as property rights are not created or sustained by a dominating state, then they only condition your liberty in the same way that a snowstorm which stops you leaving your home conditions your liberty. This is despite the fact that the state’s police power is not typically responsible for snowstorms. Consequently, he denies that when someone cannot afford to buy something and so would be prevented from taking it, they are any less free than someone who can pay for it. For Pettit, there is no complaint in liberty about coercive political institutions enforcing a system of rights which grant some a far larger option set than others even though those option sets could be much more equal. Given that Pettit does not think there is any particular problem with an elite capturing a disproportionate share of a society’s cooperative surplus, as long as it is done in accordance with the rule of law –

---

30 See for example McCormick 2011, 145, where he describes Pettit’s commitment to republicanism as compelling “him to endorse some of the aspects of contemporary “democratic” politics that are least friendly to liberty, conceived in Pettit's own terms”.
31 Pettit 2006, 139
32 Pettit does think there is a problem if material inequalities create the possibility of arbitrary interference. See Pettit 2006, 139ff.
contrast this with, for example, Rawls’ insistence that a society’s cooperative surplus should be fairly distributed – it is easy to see why he is untroubled by the anti-egalitarian implications of the republican tradition’s institutional prescriptions. For him, the anti-egalitarian implications are just not troubling.

Being more familiar with the republican tradition makes us more aware of how anti-egalitarian Pettit is. Initially, his insistence on excluding the people as a collective from power might make him seem a benign if mistaken technocrat. However, looking at what republicans historically typically wanted and expected from the kinds of institutions Pettit champions should make us think again. These are institutions meant to protect socio-economic elites and their power, and indeed, when we look at what Pettit says about material inequality, we can see that he has no problem with state-mandated inequality as such, since legal enforcement of property rights merely creates an environment ‘akin to the natural environment’. That natural environment should avoid creating opportunities for domination, to be sure, but that explicitly does not require even reciprocity in schemes of social cooperation, let alone some kind of impulse towards material equality. However innocent Pettit’s commitment to institutional forms designed to perpetuate the power of socio-economic elites may be, it is at best irresponsible and at worst dangerous given what those institutions are meant to do. Greater familiarity with the republican tradition could have avoided it.

Part of the problem here is the way Pettit treats the republican tradition as united around a particular theory of liberty. It is not at all clear that Madison and Hamilton, for example, are particularly concerned with liberty in Pettit’s quite specific sense of the absence of the possibility of arbitrary interference. They undoubtedly do have a set of worries about concentrations of power, but worries about concentrations of power do not have to be understood as worries about the possibility of arbitrary interference, especially understood in Pettit’s terms. In particular, Pettit’s definition of freedom leads him to exclude Rousseau from his republican tradition since he he believes that Rousseau, despite drawing on the republican tradition, sidelines freedom as non-domination. Instead, he misreads Rousseau’s comments about being forced to be free in the standard way, seeing them as evidence of precisely the totalitarian dangers Berlin

---

33 See for example, Rawls 2001a, 5ff. In Pettit 2012, Pettit describes the implications of his theory for social justice, endorsing social insurance to protect against poverty (see pp. 75-129). There is no attempt to address inequality as such.
warned of with positive liberty. Consequently, he denies himself a set of resources to more accurately understand the relationships between law, freedom, and democracy.

When Rousseau says that someone coerced to obey the general will is forced to be free, he is worried that without protection against its members choosing to “enjoy the rights of a citizen without being willing to fulfill the duties of a subject”, the social contract would be “absurd, tyrannical and liable to the most enormous abuses”. A law without that does not have some form of coercive power backing it up is unlikely to remain effective for long, and anyone who obeys it exposes themselves to the risk of exploitation by their more morally flexible fellows. If the social contract is to last then, it must give itself coercive power, and if what it does by lasting is free its members from the class legislation of the false social contracts created by the rich to fool the poor into accepting their wealth, then it forces its members to be free. Anyone who thinks that living in a lawless state is not a state of freedom, that a Hobbesian state of nature involves far too much coercion, and that this state can be improved by the limits on freedom imposed by coercive political authority in essence agrees with Rousseau. They also think that being forced to obey laws creates a situation in which everyone or at least most people are more free, although of course their account of why people are more free will be different. They may reject Rousseau’s account of freedom as living under the general will, but they understand, like him, that government increases liberty by limiting it.

Pettit though consistently denies that we can be forced to be free in Rousseau’s sense of the law taking liberty in order to create more. Non-arbitrary interference, like that of appropriate laws, does not make us unfree. There is no way for Pettit to see government as taking some liberty in order to grant back more. Doing so would mean admitting that non-arbitrary interference, even that of the most perfectly administered law, could limit

---

34 See for example Pettit 2002, 347, where it is clear that Quentin Skinner also makes this mistake, and Pettit 1997, 30. Although the discussion in Pettit 2012 makes an apparently different complaint, about Rousseau’s idea of popular sovereignty (see for example 12-18). Rousseau adopts that idea of popular sovereignty precisely because otherwise we would be bound by laws which we had not willed. The general will is the solution to the problem of finding a way to “defend and protect the person and the goods of each associate with the full common force” in which each “nevertheless obeys only himself and remains as free as before” (Rousseau 1997, hereafter SC, 1.6.4). It is only if reliable interest-promotion can be a limit on liberty that Rousseau’s idea of sovereignty makes sense.

35 SC 1.8.7, 1.8.8.

36 See for example Pettit 2012, 146-152, where Pettit denies that an account of freedom as non-interference can deliver a sensible criterion of legitimacy based on freedom precisely because it has to see government as involving a loss of freedom.
freedom. That admission would remove much of what is distinctive about Pettit’s account of liberty and so strip his theory of much of its appeal as a unified account of both what freedom is and which institutions we ought to have. Although Pettit could continue to insist that the possibility of interference limits liberty, rather than only actual or likely interference, there would be no real role for arbitrariness in his theory and so it would simply be a peculiar kind of theory of liberty as non-interference. It is understandable then that Pettit resists admitting that we can be forced to be free.

That resistance is connected to his claim that a system of property rights is merely an environment analogous to the natural environment. If we see property rights as imposing a loss of liberty, then it will be difficult to justify them without seeing them as also providing gains of some sort as a return for that loss. The increase in the range of acts we can perform without being interfered with provided by the coercive enforcement of property rights is an obvious candidate as that justifying gain. In this sense, property rights are a paradigmatic case of being forced to be free, at least where the system of property rights does make those it is imposed on free. If, alternatively, being forced to be free is incoherently paradoxical, then seeing property rights as both justified and involving a loss of liberty needs to identify something other than a gain in liberty which makes that loss of liberty at least acceptable. This is especially difficult if, like Pettit, your theory is supposed to generate institutional recommendations out of a theory of liberty alone. Pettit needs to insist that property rights are not limits on liberty in order to allow any enforcement of rights over objects in the world at all.

Admitting that we can be forced to be free would put pressure on Pettit’s anti-egalitarian conclusions. This is clear from what Pettit says about property rights, where his claim that property rights are analogous to the natural environment rules out a range of standard egalitarian arguments about how they ought to be distributed. Rawls’ arguments in favour of the difference principle depend on the basic structure of society being a system of cooperation. If the basic structure were not a creation of political power, it would not necessarily owe its members a fair return.\textsuperscript{37} Left-libertarians and followers of G. A. Cohen’s analytical marxism demand egalitarian distributions of property because property rights are restrictions of liberties to use, control, and benefit from objects.\textsuperscript{38} Once we see government as an imposition which profoundly structures the options and so limits the liberty of those subject to it, we have a powerful reason to

\textsuperscript{37} See for example Rawls 2001a, 40.
ensure that the goods that imposition creates are distributed according to some egalitarian criterion.\footnote{In this sense, I may seem to endorse a form of the voluntarism about distributive justice Andrea Sangiovanni has criticized (see Sangiovanni 2012). However, that impression is mistaken. I do not claim that the "morally relevant features" of coercive political power "explain the content and scope of the distributive obligations themselves" (81). I merely claim that coercive political power is relevant to the explanation of those obligations. Sangiovanni’s criticism of voluntarism allows that coercive political power is relevant to the form and content of distributive obligations between members of a society. Its relevance is, in his critique, one which must however presuppose other moral judgments, like for example a principle of reciprocity or fair play (see 95ff). The account I give rests on the idea of an appropriate return for the contribution provided by submission. Although I am sceptical about the sense in which this presupposes rather than, say, invites an account of reciprocity, I am not relying on the wrongfulness of coercion alone to explain why being admitting we are forced to be free gives the justification of state power an egalitarian character.} It is not usually acceptable to limit someone’s freedom of action simply for the benefit of others. They are also owed something as a result. We would not expect someone to accept having to respect someone else’s rights to physical integrity without giving them similar protections, at least against the person whose rights they must accept. Similarly, if someone is to be compelled to accept the state’s all-encompassing authoritative regulation, that regulation had better not exploit them. They are owed a return on their submission which recognises that the way the regime serves its subjects’ interests is only possible through their collective acceptance of its profound shaping of their lives. While it may be true that no one subject matters, that is equally true of all subjects, especially when we consider in which the regime, through its profound shaping of their lives, effectively creates the subjects and the way they can and are disposed to contribute to it.

One of the egalitarian claims accepting the idea of being forced to be free draws our attention to is a claim to political authority. If we are to accept the authority of the regime that governs us, the entitlement to determine how that authority is used had better not be unequally distributed. How can we ground that authority unless we have an equal share in it? In this sense, democratic rights, the rights that Pettit and other members of McCormick’s republican tradition reject, are at least suggested by accepting that we can be forced to be free. Rousseau saw this. It is because living under the social contract, like living under any laws, takes away our natural liberty, that all must have an equal say in how it is regulated. Only giving each member an equal say ensures that none of them are dominated. When all have an equal say, they are all equally vulnerable to the law. If, as Rousseau insists, the law must be general to qualify as law, then no member of the social contract should be dominated by the law. Because the law must
“both come from all and apply to all”, “no one has any interest in making it burdensome to the rest”.  

Seeing us as being forced to be free also gives us further resources to reject Pettit’s insistence that making the law ‘resistant to majority will’ avoids domination. Pettit worries here that majorities will be tyrannical and oppress and so dominate minorities. The obvious response here is that if the majority does not get decide, then some other group does and that group is dominating the majority by frustrating them. Pettit does not only mobilise his theory of liberty to explain why democratic majorities are not dominated by having their will frustrated here though. He also, in more recent work, attacks the account of sovereignty he sees as underlying an insistence on having a unified sovereign which speaks with a single voice. It is a mistake, he argues, to think that we cannot understand a more plural and complex sovereign as emerging from a network of competing institutions and practices. We do not, as Hobbes, Bodin, and Rousseau allege, cease to have a sovereign once political institutions are able to check and balance each other. The parts of a system with checks and balances rule together, and in that sense the majority is not dominated, since it is part of a system that rules.

Whatever the merits of this response to Hobbes and Bodin, it is inadequate as a response to Rousseau. First, the sovereign in Rousseau is a complex collective agent, the people as a whole, whose voice can be worked out through “the pluses and minuses that cancel one another”. Further, Rousseau goes on to make it clear that these ‘pluses and minuses’ can only cancel each other out when they have a certain character. If a private association’s interests come to dominate voting, “there is no longer a general will”. Rousseau’s problem with checks and balance is not then that they turn the sovereign into a complex collective agent, since his sovereign is also a complex collective agent.

Second, Rousseau’s reasoning for requiring that all rights are surrendered to that sovereign is that otherwise its will would not completely determine its members’ interactions, and those interactions would therefore carry the risk of domination. If the general will does not rule, private wills do, and private wills are domineering. If you are governed by someone else’s private will, then you do not “obey only yourself and remain

---

40 SC, 2.4.5, 1.6.6.  
41 See Pettit 2012, 223ff.  
42 SC, 2.3.2.  
43 SC, 2.3.3.
as free as before”.

The reason that voting dominated by a private association’s interest ceases to generate a general will is that “the opinion that prevails is nothing but a private opinion”. This criterion for ensuring that living under a system of law is not dominating only makes sense if you first see a system of law as a coercive imposition which could, at least in theory, force you to be free. Because Pettit’s theory of liberty prevents him from seeing this, he cannot see why you might adopt this criterion for preventing a legal system from dominating its subjects.

Rousseau’s claim here is, through Kant, the ancestor of Rawls’ attempt to satisfy what he calls the liberal principle of legitimacy through public reason. Both Rawls and Rousseau demand that law is public and not private. Because it is in the relevant sense public, it aligns with the the wills of those whom it governs. It and its makers owe them that because it limits their liberty. Pettit cannot help himself to that thought, because he cannot admit that law can both limit someone’s liberty and set them free. Obviously, Rawls and Rousseau have quite different accounts of how to satisfy the demand that a state’s basic structure is publicly justified. Still, by looking at Rousseau’s account, we may come to better understand Rawls’ attempt to understand publicity in the industrial and post-industrial mass democracies he theorised, and which Rousseau can hardly have imagined. Here, the question is one of stability. How can dispositions which accept the way a society orders itself be reliably inculcated in its members? A society which does not do that can only sustain itself by governing at least some of its members by brute force, and, as our difficulties in accepting Rousseau’s recommendations suggest, many ways of doing it will anyway seem to us like instances of at least something very like brute force. Neither of those will count as appropriately aligning the law with the wills of those it governs. If we can see why Rousseau thought that Corsica was the only nation left still suitable for a social contract, we might understand better the options we have for finding ways of making law that do not dominate us. Pettit’s insistence that we cannot be forced to be free makes it systematically more difficult for him to pose himself that question properly, let alone answer it.

44 SC, 1.6.4.
45 SC, 2.3.3.
46 Apparently, Kant so admired Rousseau that the only picture on display in his home was a portrait of Rousseau. More substantively, the parallels between the categorical imperative, particularly in its third formulation, and the general will are obvious. See Bertram 2012. For what Rawls calls the liberal principle of legitimacy, see for example Rawls 2001a, 41.
47 (Author-identifying reference suppressed).
48 For this reading of Rawls’ concern with stability, and slightly different vindications of it, see Freeman 2007 and Weithman 2010.
49 SC, 2.10.6.
Nor is it only Rousseau to whose lessons Pettit is blind. One of the central themes of *The Machiavellian Moment* is the centrality of questions about corruption and commerce to republicanism. Harrington's state is made possible and stabilized by a distribution of land which puts swords in the hands of free-born Englishmen. Their weapons and their willingness to use them make the law more than a paper tiger. The liberalization of capital which allows the state to maintain a standing army without holding the land needed to feed and pay it undoes all that. Not only does it separate state stability from English yeoman virtue, the availability of capital also corrupts what virtue there is by giving the state, and others, the ability to buy and sell men's allegiances, with all the chaos and disorder that implies. The set of problems associated with what István Hont called the jealousy of trade systematically reshapes the bases of human sociability in ways that threaten republican accounts of how we can stably live together without seeking to dominate each other.\(^{50}\) States will seek to dominate each other in competing to control international trade, while they will also have to reshape themselves and so the relations their subjects enjoy with each other in order to do so effectively.

This is, for example, part of the context for *The Federalist* and its opponents, just as it is of Rousseau's hostility to trade and insistence on the simple virtues of the pastoral life. *The Federalist* is centrally concerned with the despotism of absolute monarchies and their standing armies, and so with the position of the newly independent states in the international system and the effects their domestic political arrangements have on that position. The risk of conflicts between the states, which would inevitably both invite intervention by the powers of the Old World and mean the adoption of all their bad habits by state governments, is central to their argument in favour of a strong federal government.\(^{51}\) The states cannot remain independent, because if they do they will fight and if they fight, they will lose their status as republics. On the other hand, Rousseau often seems to suggest that only small, poor predominantly agricultural states could remain free. In particular, he worried that a trading state could not be free. Relations of dependence, between it and other states, between its citizens and citizens of other states, and between its own citizens, would be created which would make the emergence of a general will impossible.\(^{52}\) Political economy and international relations were central to the problems republicans faced, from Machiavelli’s insistence on an

\(^{50}\) Hont 2005.
\(^{51}\) See in particular Hamilton, Madison, and Jay 2008, 11-43.
\(^{52}\) See in particular SC 2.10.
agrarian law to distribute the spoils of conquest, through Harrington’s belief that England was a “commonwealth for increase”, and on to The Federalist’s assertion that the ‘petty republics’ of antiquity could be superseded.

Yet Pettit, by his own admission, paid no attention to either political economy or international relations when assessing whether the Zapatero government had been governing Spain in an appropriately republican manner, and his two brief and schematic pieces of work on republicanism and international political theory do little more than express the manifestly complacent hope that international deliberative forums and coalitions of the weak will be able to protect states against domination by each other and private actors. One only has to look at Spain, where the Government’s budget is effectively being dictated by international lenders, both public and private, to see how naive that hope is. Proper attention to the republican tradition, rather than an anachronistic insistence on drawing it together through an anyway implausible theory of liberty, could have avoided this. For one thing, it would have removed the temptation to dismiss worries about a society’s economic system as irrelevant to domination by denying that legal enforcement of property rights counts as a limit to liberty. For another, it would have drawn attention to the centrality of questions about a society’s economic system in the republican tradition.

In this sense, Rawlsian liberals are better inheritors of the republican tradition than Pettit, partly through their concern with stability for the right reasons. It has recently been increasingly obvious that when Rawls claimed that principles of justice “regulate the choice of a political constitution and the main elements of the economic and social system”, he meant that they dictate a society’s political economy. Martin O’Neill and others have emphasised that we cannot straightforwardly see Rawls as an advocate of

53 Although Machiavelli attributes the fall of the Roman republic to the struggles over the enforcement of the agrarian laws, he also claims that “the city would have much more quickly been reduced to servitude if the plebeians had not constantly checked the ambition of the nobility with this law” (Machiavelli 1997, 101). He also makes clear there that long military commands, another key element of the fall of Rome (Machiavelli 1997, 315), were a way of evading the law, suggesting that if it had been properly enforced, they would not have existed.

54 Harrington 1992, 7.

55 See Pettit 2011. Here, Pettit casts his approach of treating the international financial system as an environment which, like the natural environment, has to be treated appropriately as a middle way between the total absence of regulation and absolute control between assumed by the government. This allows him to avoid questions of what counts as treating it appropriately, and whether a system created by state regulation of property is or is not dominating.

56 Pettit 2010a, 82ff; Pettit 2010b, 151ff.

57 Rawls 1971, 7.
the tax and transfer redistribution associated with the welfare state. Instead, he understands two social systems he calls ‘property-owning democracy’ and ‘liberal socialism’ as meeting the demands of his principles of justice. These systems aim to distribute control over capital, including human capital, more widely than in the system he calls ‘welfare-state capitalism’ whose concentration of capital he thinks may “develop a discouraged and depressed underclass many of whose members are chronically dependent on welfare”. Rawls is then interested in questions of political economy, although perhaps rather schematically. Unlike Pettit, though, whose theory of liberty makes it difficult for him to raise questions of political economy, Rawls at least has a sound basis for beginning to consider these questions. That part of the liberal tradition may display greater fidelity to the framework of the republican theorists whose insight Pettit claims to be resurrecting than Pettit's own work.

Conclusion

By looking at the republican tradition more carefully then, we can learn more about where and how Pettit goes wrong, and begin to see how we might move beyond his mistakes. Although we do not need to familiarize ourselves with the republican tradition to diagnose Pettit’s mistakes, we see them more clearly through the lens it provides. Pettit’s technocratic insistence on government by experts becomes an inequalitarian refusal to allow the people as a collective to play a role in governance. Similarly, his claim that we should adopt the theory of liberty as non-domination shared by all republicans turns out not just to be the assertion of an anachronistic and implausible theory of liberty, but to prevent him from seeing how an egalitarian frame emerges from shared subjection to law and how republicans worried about political economy. Rather than trying to unify a republican tradition which stretched across centuries and continents around a single and highly specific idea of liberty along with the institutional framework which necessarily goes with it, we should instead see republicans as a group sharing various themes, as having a family resemblance. We then avoid misrepresenting the tradition and so denying ourselves various insights that may help us better

---

58 See for example O’Neill and Williamson 2012.
59 See Rawls 2001a, 133-140.
60 Rawls 2001a, 140.
61 In the international realm, although Rawls 2001b refuses to consider international political economy, it does at least give a set of principles to govern liberal societies’ interactions with each other, and what Rawls calls ‘burdened societies’ and ‘outlaw states’, aiming to show how a world friendly to liberal societies can be sustained. Pettit, given that his international theorising amounts to suggesting banding together with other states, can hardly complain.
understand the political problems we face here and now, like those of how to create free states in a world of increasingly mobile and demanding capital.

Here, I have used Rousseau to show how Pettit misrepresents and so misses a range of insights from a central member of the republican tradition, but examples could easily be multiplied. As I noted, McCormick queries the Cambridge School’s reconstruction of Machiavelli that Pettit and others rely on, while Scott has led a chorus of criticism of Pocock’s account of Harrington. Nor is it only the role of property in historical republican thinkers that is problematic for contemporary neorepublicans. Although Pettit and other contemporary neorepublicans are quite happy to adopt Machiavelli’s insistence on virtue, they ignore his critique of the emasculating effects of Christianity in contemporary neorepublicanism. Can the insistence on virtue contemporary neorepublicans freely take from the Florentine be separated from his disdain for what with Nietzsche we might call a ‘slave morality’? How different is this from Harrington’s insistence that those who hold “the saints must govern” are “the most dangerous”, and how do both relate to a theory of liberty? Until we are clear about how different republican theories use the tropes the tradition provides differently, and how they relate to each other, we are likely to misunderstand them and continue to miss the insights they might provide us to understand our own political predicaments. Indeed, without doing that, it may well be that contemporary liberalism actually offers a better answer to the questions that plagued early modern republicans than the theorists who claim to draw on their work.

References


62 See Kimpell 2009.
63 See for example Machiavelli 1997, 156-161.
64 Harrington 1992, 63.


Kimpell, Jessica L. 'Neo-republicanism: Machiavelli’s Solutions for Tocqueville’s Republic', European Political Science Review 1 (3):375-400


