

Two Spheres of Domination: Republican Theory, Social Norms and the Insufficiency of Negative Freedom

Alan M. S. J. Coffee

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I

Republicans understand freedom as independence from arbitrary controlling power. This freedom is always realised within a political community, membership of which secures protection against any interference from others that cannot be justified according to certain acknowledged standards. Individuals are free, therefore, under coercive laws that are made socially. A central feature of contemporary republican theory has been the assumption that their conception of freedom should be understood solely in negative terms as an ideal that represents an absence, not of all actual interference, but of relationships of domination. Republicans, it is said, have not traditionally been motivated by the desire to rule over others but, rather, by the desire not themselves to be ruled over.¹ Accordingly, they do not perceive freedom as coming through participating in the government of their community so much as in being protected from its potential abuses. I shall argue, however, that this recent republican focus on freedom as an exclusively negative ideal is both misleading and misguided, and that it both fails to satisfy the conditions of its own internal logic while also obscuring the risk of a particularly damaging and insidious threat to freedom that can arise from oppressive and exclusionary social norms.

There are several possible reasons why the negative character of freedom has been emphasised. For one thing, it differentiates this conception from an alternative, also often described as ‘republican’, that identifies freedom with a positive ideal of active engagement

¹ Pettit attributes this to Machiavelli (1997, 28). See also Laborde and Maynor (2008, 3).

in the civic life of the political community.² In defining freedom as a lack of relevant constraints, neo-republicans not only place their approach within a historical body of literature but they also facilitate a dialogue with current defenders of liberal theory. Republican freedom is not presented as a particular form of the good that not all citizens may endorse, but as a non-sectarian and non-normative ideal that is acceptable to all-comers no matter what their particular theoretical convictions (1997, 11). However, being formulated as the absence of domination, rather than of straightforward interference, the republican ideal is said to offer the advantage of resilience, guaranteeing protection against the important forms of interference, without sacrificing anything of value.

A number of articulations of contemporary republicanism have been developed in recent years that emphasise its negative character.³ The most influential by far is Philip Pettit's conception of freedom as non-domination which also remains the most fully worked-out and thoroughly-argued account available. Pettit also consistently emphasises the negative character of his model and demonstrates its rationale with great rigour. For this reason, in what follows I shall restrict my analysis to his formulation even though my ultimate concern is with the general structure of republican freedom rather than with any one specific account. In challenging the negative approach, I do not advocate a positive conception in which freedom is found through active participation in political matters or the life of the *polis*. I find the language of positive and negative liberty, and the sharp distinction often drawn between them, unhelpful in the context of republican theory and I make no use of it myself except in following its use in the literature. I remain firmly within the 'neo-roman' tradition and accept

² On an alternative model often described as civic republicanism, it is argued that political participation and citizen virtue are constitutive of the ideal form of human life. This approach is derived from an Aristotelian or Athenian tradition and can be found in Pocock (1975) and Sandel (1996). Pettit distances his work from this, appealing instead to a tradition rooted in the Roman republic (1997, 283-305. See also Skinner 1998).

³ Notable recent accounts include Lovett 2010, Laborde 2008, Maynor 2003, and Viroli 2002. See also the contributions to volumes edited by Laborde and Maynor (2008) and Besson and Martí (2009).

the basic characterisation of republican freedom as being focused on protection against the misuse of power.⁴ This is not, however, the same as defining freedom negatively.

Pettit regards individuals as being free so long as no other person is able to interfere in their choices or compel them to act except insofar as it would, in his words, ‘track’ their ‘common avowable interests’ (those private interests a person has that pass a test of public relevance) (1997, 52-8). In other words, any coercion to which I am subject must be demonstrably in my interests. A teacher, for example, has the power to coerce a student but only within strict limits that are acknowledged to be in the latter’s interests. A system of laws and institutions is required in order to ensure that the use of power is constrained in this way. However, while my freedom requires any laws that govern me to reflect and protect my actual avowable interests, as I understand them, it is not part of the meaning of freedom that I have any say in what these laws are. Freedom, Pettit maintains, is a ‘contestatory’ concept which he defines in opposition to a ‘participatory’ one. It is sufficient for me to be able to challenge and overturn any law that fails adequately to track my interests. In this respect, free citizens are said to act as ‘editors’ rather than ‘authors’, vetoing and rejecting those rules that do not meet the test for non-arbitrariness rather than actually drafting them (2007, 234; 2001, 160-173).

Although defined as an absence, the sense in which republican freedom is negative differs in at least two important respects from the more widely understood conception of negative freedom as straightforward non-interference. First, republicans are concerned only with non-arbitrary interference. This is a socially-constructed idea the precise definition of which will vary between different political communities. At the same time, republican freedom is a resilient ideal that demands more than just the contingent absence of arbitrary power. Given these characteristics, a reliable means is required by which a population can come first to establish its own shared definition of arbitrariness, and subsequently to agree upon when that concept should be applied.⁵ Furthermore, this being a negative freedom, the means must not entail any active input on the part of citizens. As we shall see, Pettit’s

⁴ I defend a historical version of republicanism based on the republican writings of Mary Wollstonecraft and Richard Price in Coffee 2013 and 2014.

⁵ The definition of ‘arbitrariness’ must reflect the subjective ideas about their interests of the citizens while being sufficiently determinate to serve as the basis of law and government. Satisfying both conditions at once is a notoriously difficult philosophical task.

strategy for demonstrating the negative character of his approach is to claim that what a given population collectively considers to be arbitrary will be ‘a matter of fact’ (1997, 117-18). This fact, he maintains, can be identified and tracked using a public form of reason that is regulated by a set of principles that are acceptable to everyone, which Pettit refers to as cooperatively-admissible considerations. These are said to embody their shared ideas about arbitrariness (2004, 59). So long as the institutions that uphold the law are regulated by arguments that are confined to using these relevant considerations and appealing to the salient facts, citizens will be able to force others to track their avowable interests.

If successful, this approach is said to put all citizens on a secure and even footing. Since cases of domination can be brought to light by considering the facts rather than by invoking controversial normative or ideological ideals, this gives oppressed people great hope that their condition can be overcome. Pettit cites women, cultural and ethnic minorities, and gay citizens as historically-marginalised social classes whose members have reason to find this advantageous (1997, 138-147, 194). Nevertheless, I shall argue that his approach does not succeed. Even where it can be shown that there is a collective agreement within a population about what is considered to constitute domination, this is not sufficient for republican freedom. What must be shown, rather, is the more demanding requirement that such a consensus would necessarily allow all citizens’ avowable interests to be tracked, since only then would freedom be resilient. A negative conception of republican freedom, however, is unable to meet this condition. The reason is that it fails to distinguish between two separate aspects of domination, each of which requires arbitrary power to be held in check in its own appropriate way.

Ultimately, arbitrary power is always held in check by public forms of reason, since the institutions through which domination is contested must be responsive to arguments about what is in the common interest. The exercise of public reason, however, always takes place in a social context that can subtly and imperceptibly influence the way that even cooperatively-accepted principles are understood and applied by those who use them. This may give rise to a systematic bias in favour of some sections of the population over others, even where principles that nobody disputes are used. I illustrate this in section III taking just one of the cases that Pettit invokes, the historical domination of women, and examining the continuing legacy of patriarchy on political discourse. As women have sought to ensure that their common avowable interests are tracked, it has not been enough that they challenge the arbitrariness of the power over them using already-agreed concepts. It has also been

necessary for them to change the accepted notions about those concepts. I argue, therefore, that domination must be addressed on two levels, corresponding to the operation of republican institutions and the social and cultural context in which these institutions function. At the first level, citizens exchange reasons grounded in generally-accepted considerations. Here a contestatory approach is appropriate and useful, and so I do not challenge Pettit's model on this. At the second level, however, it is the considerations themselves and the social norms within which they are understood that give rise to domination. In this latter instance, however, the possibility that citizens are actively involved in the process of redefining the considerations accepted in public deliberation, and in reshaping associated background norms, must be included as part of the republican ideal of freedom.

My focus throughout this analysis will be on the philosophical concept of freedom, rather than on republican politics considered more broadly. Although its role is central, freedom as non-domination is only one aspect of Pettit's wider deliberative and democratic republican theory in which people's active engagement forms an important part (Pettit 2012). Nevertheless, while citizens are encouraged to bring about a more inclusive and representative social order, this involvement is considered to play an instrumental role in enabling freedom rather than comprising an integral aspect of it (as I argue it must). Academic precision aside, I believe that there is much to be gained from emphasising both the contestatory and participatory aspects of freedom as a concept. The potential for prejudicial or exclusionary social norms to become entrenched and so to prolong patterns of domination is very great, as the long history of women's marginalisation or the continued disadvantage of the descendants of slaves long after formal emancipation testifies (Coffee 2013). In such cases, the recourse to reasoned argument to challenge and overturn domination is stifled or even negated as background cultural ideas and values combine to normalise and legitimate the situation. By conflating the two levels of domination, and by focusing on the role of cooperatively-admissible considerations, the negative approach to republican freedom risks both obscuring this threat from oppressive norms while overstating the role that contestatory politics can play in combating them.

II

A central principle in republican theory is that the set of laws that governs a free people must be responsive to the outcome of reasoned public deliberation (Skinner 1998). Although it may reasonably be debated whether this is the most efficient, fair or legitimate means to

govern, a key issue for republicans to explain is how citizens remain free under such a coercive law, even when they may not have given it their consent. This matter is brought into even sharper focus for negative theorists, since their justification must be made only in contestatory terms. Since Pettit's own rationale makes most sense when considered in the context of his wider philosophical methodology, it will be worth examining in some detail how he builds his case before challenging his position in the final two sections.

Freedom as non-domination is said to be a 'primary good' in the sense of something that everyone has reason to value no matter what their other theoretical or personal commitments (Pettit 1997, 90). Accordingly, Pettit intends to make use of only uncontroversial assumptions and axioms (2008, 103). He starts by observing that 'almost everyone assumes that freedom as non-interference is a good' (1997, 82). This closely links his idea of freedom as non-domination conceptually to non-interference from the start. Pettit's innovation is to argue that the benefit of non-interference lies not in the brute fact of its absence but in the knowledge of its continuing absence. Only then, he argues, do we have the security and stability necessary to make use of freedom without having constantly to take precautions against fresh threats emerging. It is, however, a reality of social life that we are inevitably and constantly subject to various forms of coercive interference from others (2008, 102). If resilient non-interference is to be compatible with community living, a further axiom is required. Here Pettit notes that 'what marks us off as a species is that we are each able to make our choices, and indeed to form our beliefs, in a reason-sensitive way' (2010, 76). His conception of freedom is aimed at systematically regulating interference in such a way that our ability to act as reasoning agents, as he conceives it, remains intact.

In order to show how a social life characterised by continual mutual interference can be compatible with freedom, Pettit distinguishes between two ways in which people can control the actions of others: alien and non-alien.⁶ The difference between these lies in whether or not the controlled party retains any power of choice in the particular action under consideration. Control is alien where the controllers' will is decisive, thereby leaving those they control alienated from their own decision-making powers (2008, 103). This happens where one person uses physical force over another, as well as where trickery or threats are

⁶ In recent work, Pettit has articulated his model in terms of alien/non-alien control rather than arbitrary/non-arbitrary power (2008). While each pair approaches the subject slightly differently, both represent the domination/freedom distinction.

used. With non-alien power, however, it is the controlled person that has the final say about whether or not to allow the control to take place. The interfeeree is able to ‘invigilate the choices of the interferer, being ready to stop or redirect the interference’ at any time. Examples of non-alienating influence of this kind include where we persuade others on the basis of reasons, or when two parties negotiate with each other. These are consistent with freedom because they do not undermine the ‘assumption of personal choice’ in those whose actions are controlled (2008, 107).

Social freedom requires that individuals are subject only to non-alien forms of control. Republican freedom, however, entails more than the mere absence of non-alien control. After all, even slaves may sometimes find that their actions are not forcibly controlled without this altering their condition as slaves. Others only really treat us as ‘persons’ in his sense of intentional agents responsive to reasons, Pettit argues, where the possibility of exercising alien control over us is foreclosed. It is for this reason that resilience is built in as a feature of freedom. In republican theory, the role of guaranteeing that individuals are only ever subject to non-alien kinds of interference falls to the law. If it is to fulfil this role, of course, the law itself must necessarily be expressed in terms of reasons that individuals can accept (and the institutions that uphold the law must be responsive to counter-reasons should this condition not be met). Furthermore, if all citizens are to be free, these reasons must be ones that every individual can accept. The reach of government to act intrusively or coercively must be confined to matters on which everyone can agree is justified, namely to a shared and acknowledged idea of what the citizens themselves understand to be in their own collective interests or common good (2007, 317-335).

It is the function of the law to ensure that coercive power is always and only exercised in accordance with what is agreed to be in the common good. It is not necessary, however, that those subjected to the law play any part themselves in defining its content. All that is required is that any law, policy, or decision can be challenged in the light of the common good and overturned should it fail to satisfy the appropriate conditions (1997, 185; 2007, 299). It is in this capacity that Pettit describes the role of citizens as ‘editors’ – scrutinising and approving or rejecting the rules that protect their freedom – rather than as ‘authors’ (2007, 321). Nevertheless, while the law is scrutinised in the light of the common good, what is understood to represent common good must, in turn, be examined and tested. Although it represents the reference point by which alien and non-alien control are distinguished, there is no independent or objective criterion by which the common good can be determined. This

latter is, instead, an empirical reflection of the actual ideas and perspectives of those people who make up the population. These ideas and perspectives must, nevertheless, be distilled into a coherent and concrete form which can be tracked. Significantly, however, in coming to agree on the content of what is in their shared interest, the citizens' role is also editorial rather than authorial. Even at this level, then, freedom as non-domination is a negative and contestatory concept.

On Pettit's approach, the common good is not something that the citizens create together, so much as something that they identify. What the members of a society understand to be arbitrary, he believes, will be a 'matter of fact' (1997, 56-7; 2007, 117-18).⁷ The challenge faced by republicans is to pinpoint this fact, or set of facts so that it can be tracked by the law. In the absence of any agreed reference point, this task can only be performed deliberatively, through an exchange of mutually-acceptable reasons. This being a contestatory theory, however, what is important for freedom is not that everyone can contribute their ideas but that they all have a veto on the final outcome that prevents their being alienated (2007, 279). Nevertheless, a consensus will also be needed on what will be counted as an appropriate or qualifying reason for exercising one's veto. Here, too, Pettit appeals to what he sees as identifiable facts of the matter. 'Let people debate public policy', he maintains, 'and certain considerations will inevitably emerge as those that everyone countenances as relevant, that everyone expects everyone to countenance as relevant, that everyone expects everyone to expect everyone to countenance as relevant' (2004, 59). These are the cooperatively-admissible considerations through which all public deliberation is framed and constrained.

Although there is no definitive set of considerations that the members of every community must adopt, Pettit takes it that there will always be a sufficient number. 'Why', he asks, 'form a common state if there are none?' (2001, 157). The sorts of candidate principles he thinks are likely to be shared include: the requirement that each citizen is treated as an equal; that public opinion must not be ignored; that expert testimony must be taken into account; and that there are limits on the invasion of private space by government (2007, 326).

⁷ Although it is central to his model, Pettit says surprising little in support of this claim. A potential theoretical justification is available to him, based on his own ideas about intentional action and 'persons' as 'orthonomous agents' (2007, 238). Space does not allow further discussion of these ideas, and they do not affect my argument. In any case, Pettit's case is said to be grounded in ideas accessible from any methodological standpoint (1997, 11).

Certain other kinds of principles, he suggests, would almost certainly be rejected, such as those ‘self-seeking observations to the effect that such and such an initiative would give one section of the population an advantage over others, as well as expressions of what is required by an ideal or cause that is not shared by all’ (2004, 59).

As he builds his case, Pettit means to address all forms of domination through a single model. Specifically, he lists as potential threats: ‘physical strength, technical advantage, financial clout, political authority, social connections, communal standing, informational access, ideological position, cultural legitimation, and the like’ (1997, 59). Each kind of power, however, limits freedom in same way, namely in terms of the choices we are in a position to make with respect to the available options (2010, 74). The kinds of situation that he seems to have in mind most often, however, are those in which there are conflicts involving clear-cut alternatives from which to choose, such as game-theoretical or coordination problems (2001, 158). His analysis is often given in terms of people’s ability to select from options x , y , z (2007, 106; 1997, 53). Illustrating how his model might operate in practice, Pettit describes a committee set up by the residents of a condominium to manage their collective affairs whilst leaving them maximal room for private choice (Martí and Pettit, 63-64; Pettit 2012, 252). People would only respect the committee’s authority, he says, if it were regulated by principles everyone accepted as representing their interests and points of view about the communal life of the building. Examples include: a rule of law constraint forcing the committee to abide by its own principles; a private right constraint preventing the committee from intruding too far into owners’ homes; principles ensuring that decisions and plans are publicised and transparent; separations of powers; provisions to bring in appropriate support from arbitrators, auditors and advisors; tie-breaking procedures; and amendment rules allowing decisions to be altered within certain limits.

Articulated in this way, all the weight of Pettit’s theory is placed on the fact of collective agreement on certain issues justifying the use of coercive power. As long as citizens are addressed using reasons that they accept in principle, they have been treated in a non-alien manner and their freedom remains intact. Where republican institutions are committed to dealing only in considerations that are cooperatively-admissible, the relevant common interests can be identified and tracked systematically, ensuring that citizens are not ruled arbitrarily. The involvement of the citizens themselves is only editorial, accepting or rejecting proposals using these same admissible principles and considerations.

III

If republican freedom is to be negative, it must also be resilient. It must, therefore, be shown that where both public deliberation and republican institutions are committed to restricting themselves to considering arguments made using cooperatively-admissible considerations, that the common, avowable interests of each citizen will necessarily be tracked. It is not my intention here to question Pettit's own conception of public reason or his notion of a 'cooperatively-admissible consideration', which he constructs on Habermasian lines (2001, 180). Neither is my concern to ask what the most effective way is to generate an inclusive medium of deliberative exchange, nor how that should be implemented. The literature on deliberative public reason is large, and growing, and I cannot add to it here.⁸ Instead I take Pettit's formulation of public reason and focus specifically on the relationship between the supposed fact of agreement and the tracking of common interests, considering the implications for negative republicanism.

Mere agreement on relevant considerations, I shall argue, cannot provide sufficient confidence that our interests will be tracked. The way that even apparently straightforward principles are understood within a population can be subtly, yet profoundly, affected by factors such as social structure, and historical and cultural influences. The use and meaning of some very basic concepts may significantly bias debate in favour of some social groups over others in ways that the majority of citizens cannot be expected to be able to detect. In order to illustrate this, I shall examine in detail one of the considerations that Pettit singles out: 'the requirement that each citizen is treated as an equal'. The principle of equal treatment is probably now one of the most firmly-entrenched democratic ideals. It is also widely accepted that its provisions should apply to women as much as to men. Nevertheless, there is no country in which true gender equality been reached, even where extensive legislation may have been passed with this objective in mind.⁹ Part of the explanation may be that the

⁸ For useful contributions from a republican perspective see Bellamy 2007, Laborde 2008, Miller 2000, Shapiro 2012, and Sunstein 1993. More specifically, for discussions around the dangers of social exclusion in the context of public deliberation see Young 2000, Tully 2008, and Coffee 2013.

⁹ Even in the Nordic countries (which are often regarded as having done most to eliminate gender-based disparities) on an index that measures economic opportunity, access to education, indicators of health, and political empowerment men's advantage over women has

collectively-accepted principle of equality has not yet been applied as rigorously and extensively as it could. However, there is also evidence that in some countries, despite continued and concerted efforts, the rate of progress in closing the gap between the sexes has slowed markedly and may even have stalled.¹⁰ I shall argue that this is suggestive of a deeper problem, and that the greater enforcement of the *currently-agreed* ideas of equality will not necessarily improve the tracking of women's common, avowable interests.

Treating citizens equally is not solely a matter of following a process when selecting between certain options *x*, *y* and *z* in the manner described above. We must also consider the wider conceptual framework within which the condition of equal treatment as citizens operates. What it means to be 'a citizen', for example, is understood within a more expansive system of social, political and economic relationships. Citizenship itself is a complex and contested notion that varies between particular societies. It is also often associated with several additional ideas – such as being a 'free' or 'independent' 'individual' within a political community that distinguishes between 'public' matters and 'private' concerns – each of which has, in turn, a particular and contestable structure. Each term also comes with its own specific history which has shaped its current meaning (Hirschmann 2008, 1-28; Pateman 1990, 3-15). The way that a concept such as 'citizen' is understood by present populations is to some extent a reflection of the political debates, social concerns, and beliefs and values that prevailed over the course of its evolution. Although the majority of people are not aware of the contingent meanings of the basic moral and political terms that they use unreflectively, as we shall see, the implications are serious for negative republicanism.

Of the many factors that lie behind women's on-going disadvantage as citizens, it is widely agreed that their far greater share of domestic work, especially in raising and caring for children, has been highly significant (Lister 2003, 130).¹¹ In part the reason is financial – women's careers are typically shorter and more disrupted, putting them at a greater risk of

been calculated to be between 15-20%. In the United States, this rises to almost 30% (Hausmann et al., *Global Gender Gap Report*, World Economic Forum, 2012, 8).

¹⁰ The UK Equality Commission notes, for example, that the gender pay-gap 'has never threatened to drop below 10%, and progress today appears to be grinding to a halt' (*How Fair is Britain?*, 2010, 44).

¹¹ Despite some convergence in the respective ratio of paid to unpaid work performed by each sex, the gender gap shows no sign of disappearing. See Craig 2007.

poverty and dependence on others (which for Pettit equates to a lack of freedom) – and in part it is social – women’s influence is reduced since these disruptions inhibit their progress into positions of prestige. However, while it often recognised that measures such as providing paid maternity leave and adequate childcare would do much to address this problem by creating a more level basis for social participation, in the United States these measures are not guaranteed by law at the national level. One response to this is to argue that ‘a state that fails to protect women in these respects does not seem to treat them as fully equal citizens’ (Costa 2012, 14).¹² I see no reason, however, to doubt that the American population *regards itself* as being collectively committed to the principle ‘that each citizen is to be treated as an equal’, or that both sexes are to be included. The problem seems to be, rather, that these shared commitments are not sufficient to lead to the decision that parental paid leave is required as part of treating women equally.¹³

To produce a full analysis of the American debate about maternity rights is beyond our present scope. An important element, however, is the understanding of citizenship that is often assumed in this debate. In particular, a prominent theme that is often invoked is that the decision to have children is a personal one, and that individuals and families should bear the costs of the choices they make rather than transferring these onto businesses and the state (White 2009, 186-92). Such ideas are not integral to the notion of citizenship itself, and neither are they gender-neutral. In their abstract form, contemporary cooperatively-accepted ideas about citizenship can be shown to derive from a classical paradigm in which ‘the citizen’ is seen as a free, independent individual who puts aside personal interests aside in order to contribute to the common good of the community (Pocock 1995). Over time, this bare concept has come to acquire concrete content of various kinds concerning what it actually means to work for the collective benefit, and what citizens can expect from the state

¹² While broadly favourable to Pettit’s ideas, Costa believes that the definition of arbitrariness should have some substantive content to ensure that equality is maintained. This option is not available to Pettit who holds that freedom is non-moralised and determined according to a people’s own ideas about what is in their common avowable interests, even where the outcomes may seem unpalatable to outsiders. For example, where a population’s beliefs prevent them from avowing a common interest in reducing women’s ‘domination by their husbands’, he maintains that ‘the state is not authorized to act’ (2006, 282-3).

¹³ One question this might raise is whether republican policy can be determinate. I set that aside for this discussion. See McMahon (2005) and Pettit’s reply (2006).

in return (Jaggar 2005, 92; Pateman 1990, 31-57). Female voices, however, were historically almost wholly absent from the process of defining this content. Although a universal and ungendered ideal may have been intended, it is perhaps unsurprising that a model of citizenship emerged in which the activities that were considered socially productive were those associated with, and performed by, men. Notably, paid employment was said to satisfy this condition, while work done in the family home was not (Pateman 1990, 179-209).

When women were eventually accepted as citizens, it was according to an ideal that had been established without their input or perspective. Initially, newly-enfranchised women tended to be concerned more with demonstrating that they could fulfil the demands of the cooperatively-admissible concept of citizenship than with redefining this idea (Jaggar 2005). However, even as the notion of the citizen has been modified in light of women's presence, its historic legacy exerts a powerful and lasting influence that has shaped social attitudes towards the kinds of government benefits and support that are considered legitimate. On this basis, to contest the lack of paid maternity provision for women using the cooperatively-admissible principle that citizens are to be treated as equals is to build in a bias against its success. Furthermore, citizenship is a fundamental political concept that serves as a reference point for the wider structures of social, economic and political relationships that have grown up around it. Agreeing whether or not working parents should receive state support, then, is not merely a matter of selecting option *x* or *y*. It requires a process of re-examining, revising and renegotiating several aspects of the shared background social structures, practices and norms. Even where the basic principle of gender equality has popular support, this is clearly a complicated and controversial undertaking.

The difficulties of devising, implementing and enforcing legislation that protects men and women to the same extent within an already-gendered society can be appreciated by considering the European Union's policy of 'gender mainstreaming'. Since the mid-1990s, official EU policy has sought to eliminate the potential for gender bias by considering the differential impacts on the sexes in all its legislation and decision-making at all levels. Despite considerable institutional support for two decades, however, this strategy has had only partial success, and women's overall disadvantage as citizens remains nevertheless firmly entrenched (Walby 2005; Benschop and Verloo 2006). One reason has been that the goal of gender equality is only one of several competing priorities for policymakers. Rival objectives which need not be directly opposed to the gender mainstreaming project – such as generating economic growth and prosperity – have had the effect of hindering its progress

(Walby, 322-33). These objectives, many of which may correspond to Pettit's cooperatively-admissible considerations, must, therefore, be integrated and harmonised before any effective form of contestatory politics can secure women's freedom from being dominated. In the absence of any argument that there is a 'fact of the matter' about how competing considerations are harmonised within a population, the process of negotiating a consensus must be open to all members of the community if they are to avoid being treated arbitrarily.

Cooperatively-admissible considerations, even where these command collective assent, cannot be used to anchor a negative form of freedom that entails only that citizens are able to challenge and contest instances of arbitrary power. The distorting effect of cultural influences, combined with the complex manner in which these pervade social structures, mean that notional agreement to considerations, such as the equal treatment of citizens, cannot reliably protect everyone's common, avowable interests. A possible objection to Pettit's approach, at this point, might be to argue that he pays too 'little attention to the social forces that enable' domination to take place.¹⁴ A more constructive line, however, is to ask how these background influences can be accommodated within a neo-republican framework. I have argued elsewhere that social structures, systems and ideas should not be considered merely as enablers of domination, but as sources of potentially arbitrary power in their own right (Coffee 2013). This must also be the case on Pettit's account, since it is in virtue of their differential cultural standing that men exercise alien forms of control over women. In republican terms, a free individual must be resiliently protected against *any* form of arbitrary power, cultural biases no less than legal inequalities. I turn to this subject in section IV.

In denying that cooperatively-admissible considerations can be used reliably to challenge domination, I do not suggest that reasoned public deliberation is ineffective as a means for safeguarding freedom. The obstacles described above notwithstanding, over the last century women have made considerable gains towards securing citizenship on equal terms with men, even if there remains a long way to go. This was not achieved solely by applying existing accepted ideas about equality to their situation, but rather by intervening to reshape those very accepted considerations. On one level, feminist scholarship led the way in

¹⁴ This remark by Hirschmann comes in a different context from the present discussion. She questions the notion of interference used in Pettit's conception of domination. An abused wife, she argues, who believes that it is a woman's role to make a relationship work may not notice all the interference she suffers which is no less real for that (2003, 27).

identifying the patriarchal legacy embedded in the concept of citizenship, and feminist activism has raised awareness of the need for paid parental leave. More indirectly, women influence their culture through their presence at all levels of society, from the workplace to prominent leadership positions. It was only as their perspectives on social and political life become more widely understood and were integrated into the wider prevailing conceptual schemes, I argue, that women's contestatory arguments against arbitrary power could be effective. Women's editorial role, in other words, can only operate within a system in which they have been first included as co-authors.¹⁵

IV

'The free citizen', according to Pettit is 'protected against domination on a common basis with others in the society – specifically, on a basis of shared laws and norms' (Dimova-Cookson, 483). It follows, then, that individuals can be dominated by power that is arbitrary in respect of two sets of standards, represented by a community's laws and its norms. Each of these standards must, consequently, be kept in check by the citizens who, in their editorial capacity, scrutinise and reject any proposed rule or normative principle that fails to track the common interest. However, although Pettit speaks here as if laws and social norms are on a par in the role they play in our freedom, there is an important distinction between them since laws always serve as a reflection of social norms.

Laws are created in order to track a society's ideas about what is arbitrary, while what is arbitrary is determined by a society's norms as reflected in its beliefs, values and traditions. Citizens hold their law in check by scrutinising its provisions and powers in the light of the community's prevailing norms, rejecting any element that does not track the common good. Norms, in their turn, must be held to the same standard. Just like arbitrary laws, offending

¹⁵ There is historical republican support for this principle. I have argued that Mary Wollstonecraft's most significant contribution to republican theory was to make just a similar point (Coffee 2014). Men's ability to reason impartially, she argued, had been 'clouded' by widely-held social prejudices about women's capacity to act independently. This meant that women were dominated (or as she puts it, slaves) twice over, first by the unequal laws that restrict them and again by the force of opinion that prevents these laws from being challenged. It is only by creating a 'revolution' at the second of these levels, she argues, that their freedom at the first can be secured.

norms must be confronted and removed from the pool of ideas that contribute to establishing what is arbitrary in that community. In this latter case, however, the editorial model cannot be replicated. Unlike with rogue laws, when citizens confront oppressive or dominating norms, there is no set of higher norms to which they can appeal. Pettit's idea of domination explicitly rules out making any reference to independent or objective normative content. Norms can only be scrutinised and challenged on the basis of other norms. This is done deliberatively drawing only on shared ideas about the range of basic liberties that citizens should possess, 'however they are best interpreted in the local culture' (Dimova-Cookson, 484). Local culture itself, however, cannot be relied upon to be free of bias and prejudice, as we have seen in the case of pervasive sexist and patriarchal values.

We can, therefore, identify two distinct spheres in which republican freedom must be safeguarded simultaneously. First, citizens are free under the law, which must be required to track local norms about what is considered to be arbitrary. This empowers individuals to challenge instances of the arbitrary use of power on matters in which there is broad social agreement or which can be resolved discursively. A negative and contestatory understanding of freedom is entirely appropriate at this level. The law, however, sits within a system of background ideas to which it must refer. This means that free citizens must also be able to challenge the prevailing understanding and interpretation of these social as these relate to their freedom. Negative freedom makes no sense at this level. Since it is the local norms themselves that are the subject of controversy, resolution can only come dialogically and discursively. The involvement of the citizens in the process of creating or revising the norms by which they will live together is an integral part of their freedom, should they choose to exercise it. Pettit's model, I have argued, only addresses the domination at the first level and so is incomplete. A full account must recognise and address the dangers faced at both levels.

Unlike the law, the social background is not a defined and identifiable body of codified principles or rules but is, rather, amorphous, intangible and fluid. Culture, cannot be controlled or regulated in the same way as the law. This means that, whereas an appropriately-designed institutional structure can guarantee that a population's laws are non-arbitrary, there can be no equivalent assurance about its system of cultural norms. One reason, then, for distinguishing these two spheres of republican freedom is that the threats posed to freedom from within each must be differently addressed. In the latter case, since norms cannot be legislated citizens must, instead, strive to maintain an open and inclusive institutional context that is receptive to new ideas and aware of the ever-present danger of

hidden legacies and misunderstanding prejudicing the application of cooperatively-admissible considerations in favour of the members of some groups over others. Citizens from all social groups must, for example, have access to the important channels of influence such as education, the arts, the media, law and politics. The reason is not, however, to increase the range of options available to them. It is entailed by the republican concept of freedom that citizens be empowered to help reshape the way that their interests are presented and understood by others. Although no individuals are required to make use of such opportunities, they must be able to invigilate their cultural environment with the possibility positively to intervene in an effort to change it. Without this empowering element, citizens would be ruled arbitrarily because they would live under an alien form of control.

Citizens must accept that creating social and cultural change is an extremely slow, uncertain and open-ended project. Nevertheless, as Pettit acknowledges, it is inevitable that some values and beliefs will shift and alter over time (2012, 270).¹⁶ As these changes take place, however, the process need not permeate all sections of the community at the same speed or in identical ways. As we have discussed in respect to patriarchy, the traces that are left as former ways of life give way may not affect the members of subsequent generations in an even-handed way. Another example may be found in the legacies of religious belief

¹⁶ Pettit recognises that the fact of cultural change poses him a problem. In response, he has recently articulated a ‘dual aspect democracy’ in which he distinguishes between a short-run politics bound by accepted norms of policymaking and a longer-run in which the rules of policymaking may shift (2012, 269). These aspects are not the same as my two spheres. For one thing, Pettit is writing about *democratic* politics which does not alter his stance on *freedom*, which remains strictly negative. Secondly, both of his aspects operate at what I define as the first level. As a by-product of fast and combative politics certain options or mechanisms come to be replaced by others over time. Using the example of the changes in Britain since the nineteenth century, Pettit argues that the combined influences of industrialisation, a growing and more mobile population, and democratic pressure meant that government could no longer abide by its originally-accepted *laissez-faire* attitude to social policy. Long-term procedural changes were set in motion that went what policymakers initially imagined. Pettit here focuses on norms of policymaking and procedure. These still sit within the controversial and ever-changing background (second-level) conceptual schemes I discuss.

systems in societies that have become secularised. The moral, legal and cultural frameworks that are bequeathed inevitably reflect the influence of those earlier ways of thinking, and so have a differential effect on religious and non-religious citizens (Habermas 2006). In addition, new social groups are frequently added to the citizenry, both from within (such as when women and the working classes were granted suffrage) and from without (as new waves of immigration are absorbed). The members of these groups bring their own perspectives and interests which must come to inform the set of shared and admissible considerations. Given the myriad and perpetual drivers of cultural change, we cannot rely on there being a ‘fact of the matter’ about how the population will understand what is arbitrary. Their own ideas about the common good will have to be accommodated if the newcomers are to be free.¹⁷

The different nature of the threats posed by arbitrary law and arbitrary norms must be recognised if republican freedom is to be resilient. The contemporary neo-republican emphasis on its negative character can only represent a part of freedom. An exclusive focus on the contestatory element understates, and risks obscuring entirely, the real and ever-present potential of unchecked and undetected social prejudices and cultural biases to subvert the use of public reason. The danger is that too great a confidence is placed in widely-agreed and apparently settled considerations being thought to embody the interests and perspectives of citizens from every social group, leaving marginalised or invisible sections of the community at a considerable disadvantage in attempting to challenge domination. An impression may also be created that the greatest threats to freedom come at the first level, from sources that can be addressed through legal challenge and regulatory change. This, I believe, is misleading as the difficulties confronting gender-mainstreaming legislation have highlighted. Where the causes of disadvantage and domination are cultural and structural as much as legal, the remedy must address both spheres simultaneously. The possibility of being involved directly as authors *and* as editors must be included if citizens are not to be ruled arbitrarily. The potential exists in any society that the cultural norms that govern public deliberation will allow the interests of the members of certain groups to be expressed and

¹⁷ In his discussion of freedom and domination, Tully defends an ‘agonistic’ model in which continuous negotiation and conciliation over the constitutional order is central (2005). While I am sympathetic towards much of his analysis, I make no appeal to agonistic politics. My purpose is only to show that negative freedom under law cannot be replicated at the level of social norms.

protected more fully than those of other groups. However, as populations have become more culturally diverse and socially plural, so awareness of this danger has heightened. It is important that republican theory can respond.

By understanding the threats to freedom as operating in two spheres, republicans are well placed to address these concerns. The negative protections that citizens have under a non-arbitrary law that is required to track all and only their common interests are only as resilient as the social norms within which these operate allow. Acting positively to ensure that these norms do not themselves become sources of arbitrary power is the prerogative of free citizens.

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