

Freedom as a Radical Ideal

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Professor Pettit's claims about the constitutional significance of republicanism rest on the 'core idea' he claims for it of 'freedom as non-domination'. He says that:

a person is free just to the extent that no one has the position of a *dominus* in their life: not any private lord, and not any public authority. No one is able to interfere in what they do except so far as they are forced in doing so to respect the perceived interests of the person in question; no one, in the received phrase, has an arbitrary power of interference in their affairs.¹

It is, of course, a very appealing idea that one should not be dependent upon or vulnerable to others. But how shall we identify dependence and vulnerability? The normative weight of Pettit's formulation is carried by the notions of 'perceived interests' and 'arbitrary interference'. In reading Pettit's paper one is taken by rhetorical admonitions such as that freedom will mean we are 'able to look every other in the eye'² and 'walk tall' among our peers³ but its radical 'contestatory'⁴ value in today's politics is open to doubt.

It seems to me that if one believes that freedom is an ideal opposed to extant relationships of domination then it is a necessarily radical ideal. Pettit does not much discuss what extant relationships of domination there are in the world, although he mentions private wealth and power and public power.⁵ But in which relationships is domination manifested? How will one know if one's interests and affairs are the product of someone else's overbearing influence or manipulation? Without a way in which to determine these questions it will not be possible to determine dependence or interference. It is my contention that the normative value of freedom lies in the response to these questions and in particular a conception of what makes one's interests and affairs one's own.

Ultimately, Pettit's version is too thin a version of freedom to substantiate its claimed value in a democracy, and in order to explain its value, in fact relies on

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¹ P Pettit, 239 this volume. In his book *Republicanism. A Theory of Freedom and Government* (Oxford: Oxford University Press 1997) 67, Pettit describes it this way: 'Non-domination in the sense that concerns us, then, is the position that someone enjoys when they live in the presence of other people and when, by virtue of social design, none of those others dominates them.'

² P Pettit, 240 this volume.

³ Pettit, *Republicanism. A Theory of Freedom and Government* 28.

⁴ *Ibid* 21ff.

⁵ *Ibid* 28.

liberal normative premises of negative liberty which contradict the intersubjective notion about freedom it tries to retain. This paper will contend that to achieve the stated aim of identifying people's interests and leaving room for newly emerging or clarifying interests one would need a stronger version of freedom based on its intersubjective value. Pettit's version remain too tied to negative liberty concepts.

The Value of Freedom

It is very important to distinguish between descriptive and normative uses of freedom. There is clearly a descriptive sense of freedom that means unobstructed, for instance. But I take it that in order to explain the sense of freedom that is valuable one must distinguish it from the sense in which a jellyfish or rat is free when unobstructed. This valuable sense is its normative sense. The value I take freedom to have draws on the power we understand to humans to have to develop interests and views and personalities.

Pettit's explanation is a perfectly valid description of some types of freedom.⁶ One enjoys non-domination he says when the conditions of non-domination are not satisfied. This is the descriptive element. The normative element—why we should value this type of freedom—is contained in the following statement: no one has the capacity to interfere on an arbitrary basis in another's choices.⁷ This is an explanation of freedom as a valuable power. And so Pettit says:

To enjoy non-domination is to be in a position where no one has that power of arbitrary interference over me and where I am correspondingly powerful.⁸

So this Pettit describes, in negative terms, as an *immunity* or *security against* interference. But he then goes on to outline a more positive formulation: 'there has to be something attractive about the sort of liberty which requires that you are not dominated by another *and which enables you, therefore, to look others in the eye.*'⁹ It seems that Pettit wants to say this in order to identify an intersubjective dimension to freedom in a normative sense. Non-domination can consist of isolation, but he says that the republican tradition does not value that: 'liberty is civil as distinct from natural freedom, in the idiom of the 18th century'.¹⁰ Freedom as non-interference, the modern liberal idea of negative liberty with which Pettit contrasts freedom as non-domination, is said to be linked to the notion of 'natural' rather than civil liberty. On the other hand, it seems that the 'civil' idea of liberty presupposes the presence of a number of mutually interactive agents. So Pettit suggests that the enjoyment of freedom as non-domination goes with 'the *ability* to look another in the eye, confident in the shared knowledge that it is not by their leave that you pursue *your innocent, non-interfering choices*; you pursue those

⁶ The description and explanation of freedom as non-domination is more fulsome in his book, P Pettit, above n 1.

⁷ Ibid 67.

⁸ Ibid 69.

⁹ Ibid viii (emphasis added).

¹⁰ Ibid 66.

choices, as of *publicly recognized right*. You are a somebody in relation to them, not a nobody. You are a person in your own legal and social right.¹¹

The key points here are that one is said to have: (1) an ability (that is, a power¹²); (2) to pursue one's innocent non-interfering choices; and (3) as of publicly recognised right. However, the distinctive feature of this value of freedom as a power, although described using the language of intersubjectivity, is that it does not rely on an intersubjective notion of power at all.

Pettit says his freedom as non-domination has intersubjective elements in that it requires a shared knowledge that neither is dominated and that there is a shared recognition of personhood.¹³ He contends that this makes freedom an intersubjective ideal, rather than just something one enjoys oneself (as he suggests may be the case in 'liberal' versions). Yet the problem with this contention can be seen by considering this: how is this version any more intersubjective than other types of liberal versions? In the Kantian tradition, at least, one must accord the possibility of enjoyment of freedom to each as a person because there is no reason to favour just your own. That is surely the meaning of the Categorical Imperative in this context.¹⁴ Freedom, then, can consist of 'publicly recognised right' drawn from just such a Kantian liberal framework.

In Pettit's version it is still the case that the *power* that is the freedom is an ability to 'prevent various ills', that is, domination, and *therefore* to pursue what are described as one's innocent non-interfering choices. Now this reference to innocent non-interfering choices is a loaded term that points to what is valued—not just described—in Pettit's republican liberty. But the explanation as it stands does not show how freedom as a description—as a certain set of conditions—relates to that power to pursue choices. It is surely only in elaborating on that relationship that one can make explicit its value. Pettit's argument assumes—without substantiating in an explicit way—that one *can* pursue choices and, as a necessary prerequisite, that one *knows* what choices to pursue and what their relationship is to one's interests in order that they truly be one's *own* choices. (Rather than someone else's such as an imposed socialised choice.) This is why I suggest that Pettit's version of freedom is too thin.

However, I believe there is a more substantial flaw in Pettit's version that flows from the failure to identify an intersubjective basis for freedom. That is his explanation of freedom as requiring the 'absence of mastery' or of 'domination' remains tied to a negative liberty understanding of freedom.

¹¹ Ibid 71.

¹² The derivation of power is from the latin *potere*, 'to be able', P Moriss, *Power. A Philosophical Analysis* (Manchester: Manchester University Press, 1987) 9, 13.

¹³ Pettit, above n 1, *Republicanism. A Theory of Freedom and Government* 71.

¹⁴ 'Act only on that maxim through which you can at the same time will that it should become a universal law.' I Kant, *The Moral Law. Groundwork of the Metaphysic of Morals* (trans HJ Paton), (London: Routledge, 1948) 84.

The Epistemology of Freedom

I have suggested that the normative value of freedom lies in a conception of what makes one's interests and affairs one's own. It is this quality of autonomy that Kant famously equated with freedom.¹⁵ It values the idea that humans have the capacity to direct themselves according to reason and not simply be in the grip (internally or externally) of 'alien causes'.¹⁶ Yet one cannot be said to be autonomous merely because one acts on preferences one happens to have (first order desires). One must be able critically to reflect on the preferences one chooses to have. Frankfurt famously called this the ability to form second-order desires.¹⁷ If this is a capacity for critical reflection the crucial question still is: how do the principles which guide critical reflection come about? As Raz states: 'the autonomous life is discerned not by what there is in it but by how it came to be?'¹⁸ There is a long epistemological tradition in Western rationalist thought that the moral conditions of 'self rule', the principles which guide critical reflection, are knowable *a priori*, that is, from solitary introspection. This is certainly associated with Kantian liberalism and what might be called the neo-Kantian liberalism revived in opposition to utilitarianism in the latter half of this century.¹⁹

In the setting of constitutional law it is often regarded as the underpinning of the injunction that the freedom of citizens protected by and from governments is their negative liberty. The idea of negative liberty was most famously expressed by Berlin:

I am normally said to be free to the degree to which no man or body interferes with my activity ... If I am prevented by others from doing what I could otherwise do, I am to that degree unfree.²⁰

Ronald Dworkin expresses negative liberty as 'not being obstructed by others in doing whatever one might wish to do' and contrasts it with positive liberty which he describes as 'the power to control or participate in public decisions, including the decision how far to curtail negative liberty.'²¹ Dworkin argues that negative liberty is a corruption of freedom beginning 'in the idea that someone's true liberty lies in control by his rational self rather than his empirical self, that is, in control

¹⁵ '[T]he property which will has of being a law to itself', *ibid* 107.

¹⁶ *Ibid*.

¹⁷ H Frankfurt, 'Freedom of the Will and the Concept of a Person', in J Christman (ed), *The Inner Citadel. Essays on Individual Autonomy* (New York: Oxford University Press, 1989) 64.

¹⁸ J Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986) 371.

¹⁹ O Hoffe, *Immanuel Kant*, (trans M Farrier) (New York: SUNY Press, 1992) 240-47; Rawls and the veil of ignorance is the pre-eminent example, J Rawls *A Theory of Justice* (Oxford: Oxford University Press, 1972) 140f, 252-4.

²⁰ I Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969) 122.

²¹ R Dworkin, 'Two Concepts of Liberty' in E and A Margalit (eds), *Isaiah Berlin. A Celebration* (London: Hogarth Press, 1991) 101.

that aims at securing goals other than those that the person himself recognises.²²

However, it is misleading to imply that only positive liberty stipulates conditions for the exercise of 'rational' power. Negative liberty stipulates that one's reasoning capacity is separate from one's empirical beliefs and that the allegedly empirical self knows by solitary introspection what one wishes to do. This epistemological understanding (how we know, including how we know ourselves) has been considered so obvious and objective that a theorist like Dworkin feels free not to acknowledge it as an assumption at all. Private cognition is simply thought to be the way humans are rational. It is this assumption which also pervades Pettit's discussion of freedom and ultimately undermines it.

The negative liberty version of freedom assumes that humans (or at least adults) have fully worked out views and interests and personalities and so left alone in a descriptive sense means that one can be free in a normative sense. Pettit, while he claims to distinguish his version of freedom from negative liberty (freedom as non-interference) and sometimes deploys the rhetoric of intersubjectivity does not adequately detach it from negative liberty's normative premises about why freedom is valuable to people, that is, its relationship to private cognition. He does not specifically address how one will determine one's own affairs beyond the assumption that, left alone, humans already have the ability to construct and understand what their affairs are. This, knowingly or not, mires Pettit's formulation of freedom in the epistemology of negative liberty. Thus while trying to distance his version from liberal constitutionalism it has the same drawbacks of negative liberty liberalism. These, I believe, are an inability to examine the way relationships of domination inculcate themselves into people's perceived interests and affairs, potentially undermining the reason to respect them. The epistemology of negative liberty rests on what I shall call that view a monological view wherein self-understanding proceeds solitarily in the manner of Descartes' *cogito*.²³ It is an internal or private affair. I take it to contrast with a dialogical epistemology where the ability of critical reflection is located in social interaction. Here I follow Habermas in seeing rationality and subjectivity as arising in and from linguistic structures of communication.²⁴

A dialogical epistemology can support the belief that freedom should be taken as the ability to contest prevailing ways to understand the world and one's interests in order to assess them as authentic or not. Some liberals may question the use of the term 'authentic' as if it requires use of an external concept of what are one's interests. However, I suggest it is necessarily implicated in any ability to

²² Ibid 104, 101.

²³ One relies on 'inner awareness', D Woodruff Smith, 'The Cogito circa AD 2000', (1993) 36 *Inquiry* 225, 229. Nagel calls it adopting the 'internal perspective', *The View From Nowhere* (Oxford: Oxford University Press, 1986) 113.

²⁴ 'Reflection, too, is due to a prior dialogical relation and does not float in the vacuum of an inwardness constituted free from communication.', J Habermas, 'Some Further Clarifications on the Concept of Communicative Rationality', in M Cooke (ed), *On the Pragmatics of Communication* (Cambridge: Polity Press, 1999) 308; also see J Habermas, 'Individuation through Socialization', in *Postmetaphysical Thinking* (trans WM Hohengarten), (Cambridge: Polity Press, 1992).

judge interests as one's own. Hegel raised this problem of authenticity against Kant. The knowing subject must be able to ascertain the conditions of the knowledge of which it is in principle capable before trusting its directly acquired cognitions.²⁵ A theory of freedom as autonomy must, then, be able to determine how self-understandings are authentic. The epistemology of negative liberty locates this capacity within a sovereign 'private' sphere. One need not accept that conclusion if the mind is not seen as a *place* which thoughts inhabit, but as a *reflexive power*. By this I mean that it is an exercisable capacity for reflection on reflection, which has both the intellectual content of cognition and also the motivational force of self-reflection. It may thus have an open quality, not bounded but porous and malleable sustained and realised by mutual recognition of each other's agency.²⁶ It represents the emancipatory cognitive interest a critical theory posits for all subjects capable of speech and action that enables knowledge of the world and oneself.²⁷

This view sees the contemporary struggle for freedom, at least in contemporary Western democracies, to involve revealing hidden forms of coercion and manipulation that mould our identities and apparent possibilities. Such a struggle, of course, builds on the liberal heritage that has provided other forms of institutional freedoms. It is just such freedoms to which Pettit refers when he claims that his republican checks on government would involve not just the rule of law and separation of power 'but also the need to back public decisions with reasons, the involvement of statutory authorities in certain decisions, the accountability of government to an independent auditor, and the provision of freedom of information.'²⁸ However, the modern struggle for freedom demands much more. True, Pettit also talks of the need for government consultative and 'editorial' measures.²⁹ But the fundamental question remains open: how can we be sure that one's authentic interests, individually and in common, are those percolating through, and protected by, the institutional arrangements, including parliament?

What we need to be able to contest are the intellectual resources by which we conceive of ourselves and our interests, articulate them and subject them to criticism. By intellectual resources I mean those concepts that *enable* and *motivate* people to conceive of their interests and what makes their affairs our own. They involve conceptions of such things as gender and sexualities, ethnicity, persons, what is 'private', what is 'public', what is 'choice', to name but a few.

²⁵ J Habermas, 'Hegel's Critique of Kant', in *Knowledge and Human Interests* (trans JJ Shapiro), (London: Heinemann, 1972) ch 1.

²⁶ See J Habermas, *The Theory of Communicative Action*, vol 2, (trans T McCarthy), (Cambridge: Polity Press 1987) 44-45, 58-60; J Habermas, 'Remarks on Discourse Ethics', in *Justification and Application* (trans C Cronin) (Cambridge: Polity Press, 1993) 43.

²⁷ See J Habermas, above n 25, 308, 311, 313.

²⁸ Pettit, 255 this volume.

²⁹ Ibid 21f.

Pettit's Value of Freedom is Monological

Monological normative premises, which I suspect are present in simply seeing freedom as a type of immunity, have been criticised as privileging the status quo, ie just those interests that can already be articulated and which people already have the power to pursue. For instance, that you have a gender or sexuality as a given and that its meaning to you is a given.

Perhaps Pettit's response might be: well, no, his theory is neither too thin nor covertly relying on negative liberty premises because public discussion requires effective contestation³⁰ of interests. My contention is that such a notion is not guaranteed by Pettit's formulation of freedom at all (beyond its rhetorical effect). He does say (and I think rightly so): 'every interest and every idea that guides the action of a state must be open to challenge from every corner of the society'.³¹ But the question remains how would we know what is effective contestation rather than relationships of domination? The answer: when one is not subject to arbitrary interference. How do we establish non-arbitrary interference in Pettit's scheme? The answer is through public discussion. It is in public discussion that Pettit seems to claim interests will become apparent. But how does public discussion proceed? Does not that depend on the institutional safeguards of the state? Yet it is just those institutional arrangements which must be judged as arbitrary interference or not.³² Interference will not be arbitrary if it 'tracks common interests' but that must be identified through a process of public discussion.

The acts of interference perpetrated by the state must be triggered by the shared interests of those affected under an interpretation of what those interests require that is shared, at least at the procedural level, by those affected.³³

The lack of explicit normative premises seems to tie Pettit's argument up here in circular reasoning. Yet it is apparent what he means. Freedom as non-domination assumes that left to our own devices, unencumbered by interference of which mastery or domination is a type, we can engage confidently and articulately in public discussion based on knowing our interests and directing them through choices. In other words, this conception of public discussion—of a contestatory politics—is based on the very same conception of personhood as other monological theories.

The ultimate point is that describing public discussion as where there is effective contest won't tell us when there is effective contestation unless the normative premises of the model are made clear. There must be a conception of the way that public discussion proceeds, and the way people will participate in it, prior to the institutional determination of 'common interests'. (Consider legislation that penalises hate speech; does that prevent effect contest and challenge by suppressing some views or does it allow effective participation by preventing intimidation and

³⁰ Pettit, above n 1, *Republicanism. A Theory of Freedom and Government* 63.

³¹ *Ibid* 56.

³² Cf Pettit, 243 this volume.

³³ Pettit, above n 1, *Republicanism. A Theory of Freedom and Government* 56.

coercion?)

If it is true that 'freedom as non-domination' surreptitiously contains that monological normative premise then this privileges dominant forms of behaviour and knowing just as it renders them invisible. They are the backdrop of knowledge that moulds and constrains the choices we make and all the assumptions about what is normal and what is natural. They are the premises of what currently counts as public discussion.

Locating an Alternative Conception of Freedom

I suggest that one needs to locate the value of freedom in intersubjective relationships and see it as an intersubjective power. If freedom is intersubjectively conceived then it is never enough to posit freedom existing before social relationships are considered. One would need to focus on the way social relationships form one's conception of one's interests and affairs. Negative liberty cannot ensure that relationships of domination do not inculcate themselves into the way we perceive our interests. It may therefore distort or deform a perception that is truly 'ours' instead of being the necessary and sufficient bulwark of our interests that its proponents argue.

Instead I suggest that the core idea of freedom require the ability of critical distance³⁴ from one's choices and interests to assess them as authentic or not. This place the focus of freedom on the way relationships are constructed between people that enable interests to be conceived, reconceived, articulated and discussed. Such a focus moves away from the negative/positive liberty dichotomy and the individual/collective dichotomy as well. It suggests freedom will be mutually achieved.

The normative value of freedom—the power to know our interests and make choices—would be located in intersubjective relationships, not through solitary introspection. Such a dialogic account seeks to affirm that self-understanding is 'an active process of *taking* and *structuring* experience.'³⁵ The contention is that we all influence one another all the time. Freedom, paradoxically, would consist of some normative version of interference. The value of freedom would relate not to the walls between people but the way that influence proceeds; it would demolish the normative division at the foundational constitutional level of society between public and private spheres. The constitutional provisions of a free society, on this view, should therefore seek to ensure that people participate in the processes of public discussion and formation of their interests with equal power to contest the articulation of interests. It must be a power that is facilitated within any given relationship that affects one's ability to engage in discussion and reflection.

³⁴ Cf P Ricoeur's discussion of 'distanciation' in 'The Hermeneutical Function of Distanciation', in P Ricoeur, *Hermeneutics and the Human Sciences*, (ed and trans JB Thompson) (Cambridge: Cambridge University Press, 1981) 131ff.

³⁵ L Code, 'Experience, Knowledge and Responsibility', in M Griffiths and M Whitford (eds), *Feminist Perspectives in Philosophy*, (Bloomington: Indiana University Press, 1988) 187, 190.

The aim would be to provide the institutions and resources to enable people to achieve a critical distance from what they perceive as their own interests and affairs, as well as to assess and debate the interests of others. We need to develop a more complex understanding of the value of freedom as autonomy, both an individual and collective autonomy, and so its relation to personhood. I cannot, of course, elaborate on it here. However, the need to develop alternative radical conceptions of freedom detached from monological premises is indicated by Pettit's paper. For his paper seems to incorporate monological premises as if they were natural and not as part of a powerful intellectual discourse—a Cartesian solipsism—that has gripped our minds and dominated our imagination.

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