

THE COMPATIBILITY OF PETTIT'S FREEDOM
AS NON-DOMINATION TO RAWLS'S THEORY OF JUSTICE

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Abstract. *The aim of this article is to examine the concept of freedom in Philippe Pettit's the neo-republican theory by comparing it to John Rawls's liberal theory of justice. Pettit offers an interesting point of view about freedom, but what we wish to analyse is if his notion of freedom as non-domination already may be found in the Rawlsian theory of political justice. If this is the case, Pettit's theory could offer us important clarifications about political freedom and elucidate difficult and unclear aspects in the Rawlsian theory.*

Keywords: *Philippe Pettit, John Rawls, political freedom in liberal and republican theories, Freedom as non-domination, theory of justice.*

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The aim of this article is to examine the concept of freedom in Philippe Pettit's the neo-republican theory by comparing it to John Rawls's liberal theory of justice. Pettit offers an interesting point of view about freedom, but what I wish to analyse is if his notion of *freedom as non-domination* already may be found in the Rawlsian theory of political justice. If this is the case, then Pettit's theory could offer us important clarifications about political freedom and elucidate difficult and unclear aspect in the Rawlsian theory.

We begin with a general presentation about political freedom in liberal and republican theories. Next Pettit's theory about freedom as non-domination is introduced, allowing us to compare it subsequently to Rawls's theory of political justice. Pettit and Rawls have many divergent points of views in their theories, a fact we cannot thoroughly compare here due to the restricted space. It can though rapidly be observed that Rawls is profoundly Kantian in comparison to Pettit who doesn't mention Kant at all. Another fundamental aspect is that Rawls's theory is deontological and Pettit's is teleological. Nevertheless it is easy to notice that Pettit is to a great extent influenced by Rawls. Consequently many aspects of the Rawlsian theory of justice can be found in Pettit's writings.

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Political freedom: Liberal versus Republican

In any political philosophy the definition of ‘freedom’ is a fundamental topic, together with other topics as ‘justice’, ‘equality’, ‘democracy’, etc. Through the history of political philosophy different theories have tried to answer questions like: “What is freedom?”; “What does it mean to be a free citizen?”; “How much can we allow the state to interfere with the lives of the citizens?” and so on. Isaiah Berlin defines in his famous work¹ *negative freedom* as absence of constraints, such as freedom to express your opinions without external censorship. Compared to this aspect, *positive freedom* is on the other hand a person’s capacity to determine by himself his own destiny, to participate in public decisions and to carry out authority. Negative freedom, in other words *freedom as non-interference*, is to be preferred according to Berlin. Generally liberalism and utilitarianism, which have been prevalent theories in political philosophy starting from the eighteenth century, have interpreted the concept of political freedom as one of non-interference.

At the end of last century, philosophers like Quentin Skinner and Philippe Pettit, started a new philosophical debate arguing that the authentic values of classical republicanism have been abandoned by the expansion of liberalism and utilitarianism in the last two centuries. Skinner has shown for example that republicanism had an important influence during the renaissance and that this can be observed in the political theories of Marsilius of Padua and Niccoló Machiavelli.² Another period when the republican ideas played a major role was during the Declaration of Independence and the creation of the United States constitution in 1786-87, through the influence of the Founding Fathers. Skinner claims that, in the centuries that followed, political theories embraced the liberal interpretation of freedom and that the republican freedom was overshadowed.³

Republicanism has its roots in classical antiquity and especially in the political theories of the roman republic, such as those written by Cicero. In his youth Cicero took a hostile attitude against any form of arbitrary domination. He criticized for example the abusive governing of Verres, who had condemned to death through crucifixion a certain Garius without an adequate juridical procedure which was a standard for roman citizens. Cicero accuses Verres for having endangered the entire Roman Empire when he didn’t respect the correct juridical procedures and instead using arbitrary power for his own personal interests.⁴

A central feature of classical republicanism is the counteraction against royal regimes that used excessive or arbitrary power and instead trying to construct a regime represented by the citizens. It is important that the state is governed by laws and not by one single man, according to the principle announced by James

¹ Isaiah Berlin, *Four Essays on Liberty*, Oxford University Press, 1969.

² Skinner, Quentin, *The Foundations of Modern Political Thought*, (vol. I: *The Renaissance*), Cambridge University Press, 1978, and *Visions of Politics*, vol. II: *Renaissance Virtues*, Cambridge University Press, 2002, Held, David; *Models of Democracy*, ed. III, Polity Press, Cambridge, 2006.

³ Skinner, Quentin, *Liberty before liberalism*, Cambridge University Press, ed. 7, 2003, pp. 6-10.

⁴ Depalma Digeser, Elisabeth: *Citizenship and the Roman Res publica: Cicero and a Christian Corollary in Republicanism: History, Theory and Practice*, eds. Daniel Weinstock and Christian, Frank Cass Publishers, London, 2004.

Harrington in *The Commonwealth of Oceana*: “An Empire of Laws and not of men.” Another important feature in republicanism is the emphasis on the citizens’ civic virtues and their active participation in political life.⁵

The concept of Freedom as non-domination

Pettit argues that the liberal interpretation about political freedom is not sufficient and contains a theoretical gap. There may be individuals who are not free even if they are without constraints. A slave could have a kind and gentle master who doesn’t interfere in the slave’s life. This non-interference of the master doesn’t make the slave freer. Another example would be a society where the husband by tradition holds the authority in the family. In this case he would hold a dominating position over his wife and children. Even if the husband would be kind and gentle and would not use his authority, Pettit considers that the wife and the children live under domination, in other words they don’t benefice from real freedom.

Pettit agrees that freedom also means lack of interference, but that this view doesn’t completely manage to define the sphere of political freedom. What he wishes to emphasize is that freedom doesn’t only mean non-interference, but also non-domination. The concept of political freedom would be more prolific if we would interpret it according to freedom as non-domination following the republican tradition. This interpretation would be more supportive than the liberal or the populist interpretation about freedom. The latter interprets freedom through a democratic vision, according to which freedom is the possibility of each citizen to participate in elections and to express their opinion about the way of governing. This vision about freedom is not satisfactory, according to Pettit, since it can lead to a tyranny of majority through democratic means.

Another important difference between classical liberalism and republicanism is that the latter argues that we can have cases of interference without obstructing the citizen’s freedom, this being the case for example with state legislation. What is important, according to the republican view, is that this interference is not arbitrary and doesn’t represent a form of domination. Law doesn’t compromise people’s freedom. A state must have necessary constraints enabling the decrease of arbitrary domination.

Pettit’s concept of freedom as non-domination promotes the idea that each citizen is defended against arbitrary domination. According to Pettit arbitrary domination occurs for example in domestic violence or when the employee feels that he is threatened by his employer, but also following capricious decisions made by institutions where a traditional hierarchy dictates the rules, which is the case in many religious institutions.

Pettit argues that if we accept the republican values we would be more willing to give the state more extensive power than the traditional liberalism would give.

⁵ Bird, Colin, *An Introduction to Political Philosophy*, Cambridge University Press, Cambridge, 2006, p. 189.

Likewise we would consider state interference with a more positive attitude, but off course only if the interference is not arbitrary. Another consequence following the acceptance of republican values would be that we would not be willing to tolerate any form of domination, such as between husband and wife or between employer and employee.

The conceptual problem in Pettit's republican theory is the understanding and interpretation of what actually non-arbitrary domination is. To elucidate this we quote Pettit: "What is required for non-arbitrary state power [...] is that the power [will] be exercised in a way that tracks, not the power-holder's personal welfare or worldview, but rather the welfare and world-view of the public. 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."⁶

The problem is that it is not always clear what a shared interest is. In the case of factional or sectional interests, what are the instruments of guidance for the state? Pettit writes that in this case the state action must be guided through a public discussion in which "people may speak for themselves and for the groups to which they belong. Every interest and every idea that guides the action of a state must be open to challenge from every corner of the society; and where there is dissent, then appropriate remedies must be taken. People must find a higher-level consensus about procedures, or they must make room for secession or conscientious objection or something of that kind."⁷

Freedom as non-domination is a personal good that everyone should have reasons to accept, according to Pettit. But its realization is not possible without the help of political institutions. Pettit stresses that the best way to reach an ideal, such as freedom as non-domination, is to adopt a teleological perspective in politics and not a deontological one, as found in the Rawlsian theory.

The aim is, writes Pettit, that the state may function with an institutional ideal where freedom as non-domination is promoted. How could the state promote this ideal? Pettit thinks that this should not be difficult. The police forces which protect people against violence could also protect them against domination. Another example could be the educational system which could help people to be on guard regarding forms of manipulation.

The first assumption is that the maximization of non-domination through the apparatus of the state goes primarily via identifying the fields where persons are dominated and then concentrating the efforts to intensify non-domination in those areas. The state does not have to be too concerned about which fields should be the best ones to concentrate the efforts on, but instead put its attention to all areas where people are exposed to domination. If the first assumption can be somewhat complicated due to possible indeterminacy, the second assumption is much more determinate: Given the fact that the state, in promoting freedom as

⁶ Pettit, Philippe, *Republicanism — A Theory of Freedom And Government*, Clarendon Press, Oxford, 2002, p. 56.

⁷ *Ibidem*, p. 56. Public consensus is also an important notion in Rawls's *Political Liberalism*.

non-domination, imposes legal constraints to people and thus reduces their non-dominating options, doesn't compromise freedom but conditions it.⁸

Pettit considers that his theory is a special form of consequentialism: "This republican doctrine, as we shall see, is a consequentialism with a difference: it allows us to say that the institutions which promote people's freedom as non-domination go to constitute that freedom, not to cause it; the doctrine does not countenance any temporal or causal gulf between civic institutions and the freedom of citizens."⁹

According to Pettit the notion of freedom as non-domination has three advantages compared to freedom as non-interference, even if the first permits more non-arbitrary interference. It has the following advantages:

- 1) It allows people to step out from a state of insecurity, distress and inability.
- 2) People don't have to feel a need to exercise a strategy against someone considered more powerful or to try to anticipate their moves.
- 3) The final aspect is that people can be pulled out from subordination which comes from the common understanding that the person concerned is exposed to a possible arbitrary interference.¹⁰

Pettit thinks that his theory will be attractive to many different groups like feminists, socialists, ecologists and different ethnical minorities. An important necessity in a republican state is that the state instruments have to be non-manipulative. What resources could be used so that the state would be able to function non-manipulatively? Pettit answers that a non-manipulative republican state must fulfil three conditions:

Thus the system must:

- 1) be founded according to the earlier mentioned statement of Harrington: "an Empire of laws and not of men". This condition retains the place and body of the laws. The form of the laws must be general and applicable to everyone, inclusive the legislators themselves. If this aspect is not respected the law becomes arbitrary.
- 2) disperse the legal powers between different authorities. This condition retains the daily functioning of the laws. This aspect implies that the first aspect is fulfilled and prescribes that where the government can choose between a legal based action and a more specific action, the first type of action based on principal is to be preferred.
- 3) make the law relatively resistant against the majority will. This is called the contra-majority condition. It must be possible to amend laws, but constitutional ones less easily. Well defined procedures must be respected for the basic laws, preventing them to be modified on arbitrary basis. The criterion that a law should have majority support is not sufficient to make it a good law. What defines a good law is one that enables the promoting and protection of freedom as non-domination.¹¹

⁸ *Ibidem*, p. 104.

⁹ *Ibidem*, p. 81.

¹⁰ *Ibidem*, p. 89.

¹¹ *Ibidem*, p. 182.

Another important aspect in promoting freedom as non-domination is the contestability in a democratic process. This, together with the interpretations of the applicability of laws, can sometimes be arbitrary but what is capable of controlling the arbitrariness, hence intrinsic domination, is the possibility given to the citizens to contest the decisions made by those in power. A process of public decision can be considered contestable if it meets the three following conditions:

- 1) It has a foundation for contestations. Deliberative republic is based on debates and dialog between different groups of interests.
- 2) An available channel, a voice, through which the decisions may be contested.
- 3) A forum where contestations are heard and the validity of demands are evaluated and where an answer may be given.

Democracy needs two fundamental aspects: First of all people should have a direct and an indirect control over the government. Pettit calls this “the author’s control”. Secondly people need to have means to attack the decisions of the government. This is “the editorial’s control”. Pettit is convinced that this model of democracy can be extended towards international relations between states. International institutions, like UN and EU among others, if they are designed according to the contestatory model of democracy, can become powerful instruments in promoting a more performing level of democracy: When international institutions interact with national centres of power, the former can control abuses committed by these centres and force them towards a better level of democratic performance.¹²

What needs to be pointed out is that Pettit has been somewhat reluctant to mention the human rights in comparison to Rawls. Pettit prefers instead to emphasise the citizen’s rights. This is common to most republican thinkers, but it is also found with the communitarians, which are even more reluctant to evoke universal rights. Not until Pettit introduces his international republican theory in the article *Democracy, National and International* in 2006 (quoted above) and more recently in *Republican Law of Peoples* from 2010,¹³ is he obliged to refer to human rights.

All and all Pettit’s republican theory of freedom offers an interesting perspective of political freedom, but is this perspective compatible with other political theories, for example in the one drawn up by Rawls? Pettit thinks that liberal theories placed in the centre-left, like the Rawlsian, would accept the republican concept of freedom as non-domination and would consider that it is naturally included in their notion of freedom. Instead the right-wing liberalism, such as Nozick’s libertarianism, cannot accept the republican concept. But what these two wings of liberalism have in common, according to Pettit, is the negative perspective of freedom, in other words freedom as non-interference.¹⁴

¹² Pettit, Philippe, *Democracy, National and International*, The Monist, vol. 89, nr. 2, 2006, p. 320.

¹³ *European Journal of Political Theory*, Special issue on ‘Republicanism and International Relations’, 2010. An interesting article about human rights in republican theories is written by Wendt, Fabian; *Slaves, Prisoners, and Republican Freedom*, Res Publica 17 (2), 2011, pp. 175-192.

¹⁴ Pettit, *Republicanism — A Theory of Freedom And Government*, pp. 9-10.

Pettit is not enough convincing in his efforts to emphasize the difference between freedom as non-domination and freedom as non-interference. Let us consider for example the following quotation about the relationship between the husband and his wife in a hypothetical society where women are not protected, by law or by culture, against physical abuses committed by their husbands. Pettit writes: “The republican will say that, while you may be unlikely to suffer actual interference at the hands of the loving husband, still you are dominated by him, and there is no way of removing that domination without altering the conditions under which women generally relate to men. Freedom as non-domination requires the inaccessibility of arbitrary interference to your husband, not just the improbability of his having recourse to such interference. Someone concerned about non-interference will be forced to take quite a different line. Suppose it happens that the loving husband is entirely unlikely to interfere with you. The devotee of non-interference will have to say that this situation is desirable in the highest possible degree. There is no probability of interference by your husband, and such expected non-interference is achieved without relying on protective coercion or interference by legal or cultural authorities. It will not matter in the books of this theorist that you are dominated — that your husband has the capacity to interfere on an arbitrary basis — and so there is no particular cause or grievance that you will share, by the accounting in those books, with less fortunate women. If you take up the grievance of those women, that will have to be an altruistic act; you cannot take up their grievance on the basis of recognizing a common cause with them.”¹⁵

Is indeed Pettit’s the argument valid? Does liberalism in general have in common the concept of freedom as non-interference? We can agree with Pettit that in Nozick’s theory of the minimal state the freedom of non-interference is endorsed, but in Rawls’s liberal theory the notion of freedom is completely different.

Could there in a Rawlsian society exist this kind of relationship between a loving husband who is not interfering with his wife’s affairs, even if she is living under socially accepted domination? We consider that the answer to this question is negative. In the ideal Rawlsian state this kind of relationship cannot exist. The other dominating relations that Pettit described, for example between the slave and his master, children with their parents or employees with their employer, are not either included in a category of arbitrary domination in the Rawlsian society, as we will demonstrate in what follows.

The Rawlsian political freedom

In Rawls’s theory political power is legitimate only if the execution of political power is in conformity with a constitution that all the citizens reasonably, as free and equal, can approve, in the light of their principals and ideals through common human reason. Thus political power can only be used in a way that all citizens could approve. It has to fulfil the criterion of reciprocity: The

¹⁵ *Ibidem*, pp. 123-124.

citizens have to reasonably believe that everyone can accept certain fundamental laws.

In the Rawlsian theory the state coercion is legitimate through public reason: “[I]n a democratic society public reason is the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.”¹⁶ Rawls writes that a society is well organized when it is efficiently governed by a public concept of justice where all members recognize, respect and adopt the same principals of justice, and the basic social institutions generally satisfy the principals of justice and they are recognized as such.

The original position, where the citizens choose the basic principles of their society, takes place behind the veil of ignorance. This means that nobody knows his place in society, nor his wealth, intelligence, character or power etc. Nevertheless these citizens have two moral powers: the sense of justice and a concept of the good. These two moral powers are principal characteristics in what Rawls calls his normative and political concept of the person. In *Political Liberalism* these two moral powers are applied to obtain both the list of the freedoms and the list of principal goods. The individuals in the original position also have the capacity to be cooperating members of the society in which they live.¹⁷

The principals of justice are those chosen in the original position. These are the result of what a rational person could give priority to. Because they cannot know if their intuitive judgements about priority are the same, they try to reach an agreement regarding the way in which the principals are in a reflective equilibrium. In *Justice as Fairness* the principal of justice are not self-evident. Instead their justification lies in the fact that they would have been chosen in the original position.

Now we come to the decisive question from the perspective of Pettit’s theory: Could the individuals in Rawls’s original position choose a principle that would allow somebody to keep slaves only if he doesn’t interfere with their freedom? Or could a benevolent husband be considered the authority in the family if he wouldn’t interfere with his wife’s freedom? The answer is evident: in Rawls’s theory this wouldn’t be possible. Rawls believes that the individuals in the original position behind the veil of ignorance would agree on at least two principals of justice:

1) *The Principle of Freedom*: Every person holds the same equal claim to a complete adequate scheme of equal and fundamental rights and freedoms, a scheme which is compatible with the same scheme for everyone; and in this scheme only the equal political freedoms have to be guaranteed for their just valour.

2) Social and economical inequalities have to satisfy two conditions:

a) *Fair equality of opportunities*: The functions and positions have to be open to everyone under the condition of equality of fair opportunity;

¹⁶ Rawls, John, *Political Liberalism*, second edition, Columbia University Press, New York, 2005, p. 214.

¹⁷ *Ibidem*, p. 34.

b) *The principle of difference*: Social and economical inequalities have to bring the greatest benefice to those less advantaged in society.

In the Rawlsian system the principles of justice have a lexical order: The first principle of freedoms has priority over the second, in other words the second principle can never violate the first principle under any condition.

In the article *The Priority of Right and Ideas of the Good*¹⁸ Rawls specifies more largely the list of primary goods, identifying a partial similarity in the structure of permissible concepts of the good when the persons are thought to be free and equal. Even if the citizens do not affirm the same comprehensive concept, two things are sufficient for the common idea of rational advantages. First of all the citizens affirm the same political concept of themselves as free and equal persons. Secondly, their comprehensive concept of the good, how different their religious or philosophical doctrines may be, includes the same primary good, i.e. basic freedoms and opportunities, as income and wealth, which are guaranteed by the same social basis of self-respect.¹⁹

The Rawlsian freedom includes both freedom as non-interference and freedom as non-domination. Rawls writes in *The Law of Peoples*: “Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly).”²⁰

As we earlier mentioned, Rawls’s theory is based on the principle of reciprocity. A criterion for this principle involves that “when terms are proposed as the most reasonable terms of fair cooperation, those proposing them must think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated or under pressure caused by an inferior political or social position.”²¹

Victoria Costa argues that the Rawlsian notion of freedom is more close to the republican liberty and cannot be considered only in terms of freedom as non-interference. She rightly identifies that Rawls’s concept is not identical with the republican one and that it is normal that some differences can be expected “since Rawls does not tend to think of the liberties in relational terms, and therefore does not pay sustained attention to the possibility of interpersonal relationships of domination and servitude. Despite some differences in the underlying conception of freedom, the theory of justice as fairness gives [...] adequate protection to citizens from state domination, and contains a number of valuable tools for dealing with the problem of private domination.”²²

¹⁸ *Philosophy and Public Affairs*, vol. 17, nr. 4, 1988.

¹⁹ See also *Political Liberalism*, p. 181.

²⁰ Rawls, *The Law of Peoples with The Idea of Public Reason Revisited*, Harvard University Press, 2000, p. 65.

²¹ *Ibidem*, p. 14.

²² Costa, Victoria, *Rawls on Liberty and Domination*, *Res Publica* (2009) 15, p. 411.

We agree with Costa that the Rawlsian notion of freedom includes both freedom as non-interference and freedom as non-domination. Rawls defines in most cases freedom in connection with constitutional and legal restrictions. Freedom is a part of the institutional structure and represents a system of public rules that specify citizens' rights but also obligations.

Rawls emphasises the fact that human rights have to be considered in two ways: First of all they are a part of a liberal and reasonable concept of justice and "and as a proper subset of the rights and liberties secured to all free and equal citizens in a constitutional liberal democratic regime."²³ Secondly human rights are a part of social forms "which sees persons first as members of groups — associations, corporations, and estates. As such members, persons have rights and liberties enabling them to meet their duties and obligations and to engage in a decent system of social cooperation. What have come to be called human rights are recognized as necessary conditions of any system of social cooperation. When they are regularly violated, we have command by force, a slave system, and no cooperation of any kind."²⁴ In Rawls's international theory of justice human rights represent the passage from domestic justice to the international justice. All decent states must respect the human rights.

Conclusion

From the above we may conclude that freedom as non-interference and freedom as non-domination cannot be put into practice in a state without a control of respecting citizen's and human rights, which both Pettit and Rawls have emphasised in their theories. An important instrument for this is the public forum and contestatorial democracy but also international organizations which control and sanction violations committed by states against these rights. A concluding quotation from Pettit offers us a descriptive picture: "[T]he paradox is that when the electoral sovereignty of a national collective people has to face the extra checks provided by having international as well as national sites of contestation, then that can improve the contestatory sovereignty of the separate, several individuals who constitute that people."²⁵

The political freedom in Pettit's theory is compatible with the one proposed in Rawls's theory of justice. A synthesis between these two theories would be very prolific for a better future understanding about the functionalities of political freedom, public reason and democracy, both on a national and on an international level.

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²³ Rawls, *The Law of Peoples with The Idea of Public Reason Revisited*, p. 68.

²⁴ *Idem*.

²⁵ Pettit, *Democracy, National and International*, p. 321.

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