Freedom as Independence

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Abstract

Much recent philosophical work on social freedom focuses on whether freedom should be understood as non-interference, in the liberal tradition associated with Isaiah Berlin, or as non-domination, in the republican tradition revived by Philip Pettit and Quentin Skinner. We defend a conception of freedom that lies between these two alternatives: freedom as independence. Like republican freedom, it demands the robust absence of relevant constraints on action. Unlike republican, and like liberal freedom, it is not moralized. We showcase the virtues of this conception and offer a novel map of the logical space in which different conceptions of freedom are located.

1. Introduction

Freedom is a cherished and rhetorically powerful concept, routinely invoked in political discourse and practice. Whenever a law or policy restricts freedom, we have a *prima facie* cause for concern. Think of recent controversies surrounding heightened security measures in response to the threat of terrorism, or the age-old complaint that high taxes infringe on individual liberty. Of course, constraints on freedom are sometimes permissible. Society restricts the freedom of convicted criminals, and justifiably so, and taxation at the right level is widely considered justified. But restrictions of freedom are usually thought to "stand in need of justification."[1] Someone seized by the police and locked into a cell has the right to ask: "On what grounds are you restricting my freedom?" The restriction, in turn, is justified if the answer appeals to the right moral considerations.

The concept of freedom is not only rhetorically powerful and morally significant, but also contested. Ordinary folk as well as political philosophers disagree

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[1] See David Miller, "Constraints on Freedom," *Ethics* 94 (1993): 66-86, at 72; S. I. Benn and W. L. Weinstein, "Being Free to Act, and Being a Free Man," *Mind* 80 (1971): 194-211, at 199; and S. I. Benn, *A Theory of Freedom* (Cambridge: Cambridge University Press, 1988).

about (i) what freedom is and, therefore, (ii) what actions and policies raise concerns on freedom-grounds. Much recent philosophical work on freedom revolves around debates between liberals and republicans.[2] Liberals, following Isaiah Berlin, define freedom as the absence of constraints on action, where the constraints that matter can be spelt out in various ways.[3] Republicans, especially in Philip Pettit's influential interpretation, instead argue that freedom requires non-domination: the *guaranteed* or *robust* absence of *arbitrary* constraints.[4]

Our aim is to make a twofold contribution to these debates. First, we map out the logical space in which different conceptions of freedom are located, thereby clarifying the structure of the most prominent contemporary views on freedom. Second, we highlight some shortcomings of the liberal and republican conceptions, and identify a superior alternative, which lies exactly between them. We call this conception "freedom as independence," and define it as the *robust* absence of constraints *simpliciter*, not only of arbitrary constraints. Freedom as independence, we suggest, retains the key virtues of the liberal and republican conceptions while shedding their vices.[5] In particular, it allows us to account for our most strongly held

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[2] We adopt the labels "liberal" and "republican" as in the recent literature *on freedom*; we do not thereby imply that anyone committed to a broadly liberal or republican *overall political morality* would necessarily endorse either conception of freedom.

[3] Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (London: Oxford University Press, 1969), 118-172.

[4] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).

[5] The term "freedom as independence" has been used before, especially with reference to Kant's conception of freedom or republican non-domination. See Immanuel Kant, *Metaphysical Elements of Justice*, transl. by John Ladd (Indianapolis: Hackett, 1999); Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, (Cambridge, MA: Harvard University Press, 2009); Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton: Princeton University Press, 2009); and Frank Lovett, "Republicanism," *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), ed. Edward N. Zalta (URL = http://plato.stanford.edu/archives/sum2010/entries/republicanism/). But the position in logical space that arguably best represents the idea—"robust" and "non-moralized"—has been left under-explored. For a discussion of Ripstein's Kantian account of freedom as independence, see Laura Valentini, "Kant, Ripstein and the Circle of Freedom," *European Journal of Philosophy* 20 (2012): 450-459; and Arthur Ripstein, "Form and Matter in Kantian Political Philosophy: A Reply," *European Journal of Philosophy* 20 (2012): 487-496. Philip Pettit initially defined republican freedom as "resilient non-interference," but later added the arbitrariness qualification; see "Negative Liberty, Liberal and Republican," *European Journal of Philosophy* 1 (1993): 15-38, at 19. Quentin Skinner *may* be read as offering a non-moralized account of republican freedom, though he sometimes defines being free as not being subjected to the "arbitrary powers" of another; see *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998), 70/72. Philip Pettit sees no difference between Skinner's account of subjection and his own, arbitrariness-qualified, account of domination; see "Keeping Republican Freedom Simple: On a Difference with Quentin Skinner," *Political Theory* 30 (2002): 339-356, at 341. We focus on Pettit's work, given its greater conceptual (rather than historical) orientation. Other discussions of "freedom as independence" include: Ian Carter, *A Measure of Freedom* (Oxford: Oxford University Press, 1999), sec. 8.6 (examining Pettit's definition without the arbitrariness qualification, but rejecting that version); Christian List, "The Impossibility of a Paretian

judgments about freedom and unfreedom, captures the moral significance of those judgments, and is versatile enough to be fruitfully employed for different theoretical purposes: normative as well as social-scientific.

In Section 2, we introduce our map of the logical space occupied by the most prominent conceptions of freedom in the recent literature. In Sections 3 and 4, we discuss the difficulties with the liberal and republican conceptions, and argue for including a "robustness" requirement in the definition of freedom and for avoiding a certain kind of "moralization." In Section 5, we review the resulting conception of freedom as independence and showcase its virtues. Section 6 concludes.

A few qualifications are needed. First, we restrict our discussion to *social* freedom, setting aside other types of freedom, such as metaphysical freedom. Second, we focus on freedom in what Berlin calls a "negative" sense and set aside freedom understood as "positive" self-realization.[6] Third, we focus on the *fact* about whether an agent is free to do some action, not on the *value* of that freedom. Importantly, this focus is compatible with acknowledging that facts about freedom matter morally, and that constraints on freedom require justification. Fourth, we discuss the *concept* of freedom, not its *measurement*. Measuring freedom is an important but different task, and any measure must, at any rate, rely on some conception of freedom.[7]

2. The logical space of freedom

Any (negative) conception of social freedom falls broadly under the following definition scheme:

> **Freedom:** An agent's freedom to do X is the absence of relevant constraints on the agent's doing X.

Republican," *Economics and Philosophy* 20 (2004): 1-23; and "Republican Freedom and the Rule of Law," *Politics, Philosophy and Economics* 5 (2006): 201-220 (exploring the implications of the robustness requirement while setting aside the arbitrariness qualification); and Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford: Oxford University Press, 2011), ch. 7, esp. 162-164 (employing a non-moralized and modally robust conception of freedom in her account of the triggering conditions of justice).

[6] See, e.g., Charles Taylor, "What's Wrong with Negative Liberty," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford: Oxford University Press, 1979): 175-193; and Ian Carter, "Positive and Negative Liberty," *The Stanford Encyclopedia of Philosophy* (Spring 2012 Edition), ed. Edward N. Zalta (URL = http://plato.stanford.edu/archives/spr2012/entries/liberty-positive-negative/).

[7] See Carter, *A Measure of Freedom*. Of course, in a reflective-equilibrium process, measurement considerations could influence our view on how to conceptualize freedom. See ibid., ch. 4.

Different conceptions differ in how they fill in the details. Political philosophers generally agree that constraints from factors outside human control, such as the laws of nature, are irrelevant to social freedom. This leaves open whether the relevant constraints include only intentionally imposed ones or also non-intentional ones (such as structural constraints, which are byproducts of social arrangements). Similarly, it leaves open whether the relevant constraints include only physical ones or also psychological ones, and so forth. For the moment, we remain agnostic on these questions and encourage the reader to substitute a preferred answer into the qualification "relevant."[8]

We focus on two other dimensions on which different conceptions of freedom can be distinguished. They concern the answers to the following questions:

> **The moralization question:** Is the constraint-absence condition qualified by some *moralized exemption clause*, according to which *morally permissible* constraints (e.g., "non-arbitrary" or "just" ones) do not count as freedom-restricting?
>
> **The robustness question:** Is the constraint-absence condition fortified with a *modal robustness requirement*, according to which freedom requires the absence of the constraints in a sufficiently large class of possible worlds (relevant hypothetical scenarios) over and above the actual world?

The significance of these questions should be evident. The answer to the first affects whether *non-arbitrary* constraints such as just imprisonment, legitimate regulation, or well-designed traffic laws can count as freedom-restricting. The answer to the second affects whether someone's mere *power* to interfere, even if not actualized—as, e.g., in the case of a slave with a non-interfering master—gives rise to unfreedom.

A simple taxonomy

Different conceptions of freedom can be characterized in terms of their answers to the two questions. Since "moralization" and "robustness" are independent from one another, we arrive at a two-by-two matrix of possibilities. Freedom could require:

[8] It is important for our analysis, however, that we do not build criteria of *moral permissibility or impermissibility* into the specification of "relevant" constraints; i.e., the notion of "relevance" should not be "moralized" *in the technical sense of the moralization question introduced below*.

(1) the *actual* absence of the relevant constraints, *without any moralized exemption clause*;

(2) the *actual* absence of the relevant constraints, *except when those constraints are morally permitted*;

(3) the *robust* absence of the relevant constraints, *without any moralized exemption clause*;

(4) the *robust* absence of the relevant constraints, *except when those constraints are morally permitted*.

Liberal freedom in Berlin's sense is an instance of case 1.[9] Moralized liberal freedom, as proposed by Robert Nozick and Ronald Dworkin, is an instance of case 2.[10] Republican freedom in Pettit's sense is an instance of case 4. What we call "freedom as independence" is an instance of case 3. Table 1 summarizes the four possibilities. Note that we use the pair of terms "moralized / non-moralized" and "robust / non-robust" in a technical way, to refer to the answers to the moralization and robustness questions we have introduced.

Table 1: A taxonomy of different conceptions of (negative) freedom

	Non-moralized	Moralized
Non-robust	*Liberal freedom* (1) Freedom = actual absence of relevant constraints	*Moralized liberal freedom* (2) Freedom = actual absence of unjust/wrongful relevant constraints
Robust	*Freedom as independence* (3) Freedom = robust absence of relevant constraints	*Republican freedom (and its cousins)* (4) Freedom = robust absence of arbitrary relevant constraints (= absence of domination)

Each case in Table 1 corresponds to an entire family of conceptions of freedom, since we can further subdivide it in terms of the other distinctions mentioned above (e.g., whether or not the relevant constraints may go beyond intentional ones, whether or not they may go beyond physical ones, and so on). Moreover, the moralization and robustness dimensions can themselves be refined and thereby made non-binary. Moralization can take various forms, depending on when a constraint is exempted

[9] For Berlin himself, strictly speaking, the qualification in note 22 applies.

[10] See Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974); Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), ch. 3, and *Justice for Hedgehogs* (Cambridge, MA: Belknap Press, 2011).

from counting as freedom-restricting. Different levels of robustness can be required for freedom, and the possibilities referred to can be of different sorts: close possibilities versus more distant ones, social versus legal possibilities, and so on. We revisit these points later.

Importantly, though, all four families of conceptions of freedom qualify as *modal*. A property or feature (of something or someone) is *modal* if it depends not only on facts about the actual world, but also on facts about other possible worlds. (The relevant notion of possibility, and which possible worlds matter, can be spelt out in a variety of ways.) The modal nature of freedom as non-domination and freedom as independence is rather obvious, insofar as they explicitly contain a modal robustness requirement. But liberal negative freedom (whether moralized or not) is also modal, despite the absence of a robustness requirement. This is because it still renders freedom facts dependent on facts about possible worlds other than the actual world. The claim that an agent is unconstrained in doing X in the *actual* world—and hence free to do X on liberal views—asserts the *possibility*, in a relevant sense, for the agent to do X. In other words, for an agent to be free to do X, there must exist some possible world *w*, accessible from the actual world, in which the agent does X.[11]

Modally robust conceptions of freedom add to this a second layer of modality. They require the possibility of doing X not only in the actual world, but also in a range of nearby possible worlds. On these conceptions, for an agent to be free to do X, the following must be true: for each possible world *w* within a sufficiently large class of worlds accessible from the actual world, there exists some possible world *w′*, accessible from *w*, in which the agent does X. It is important to emphasize the double-modality here: the possibility of doing X must exist not only in the actual world, but for each world *w* within a relevant class of worlds accessible from the actual world.[12]

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[11] In modal-logical terms, the notion "free to do X" has the structure of a possibility operator ("diamond"). This is the sense in which scholars such as Matthew Kramer understand liberal freedom, rightly, as a modal notion. He offers the formulation: "A person is free to ϕ if and only if it is possible for him to ϕ." See "Freedom and the Rule of Law," *Alabama Law Review* 61 (2010): 827-845, at 828, n. 2. On the modal character of liberal freedom, see also List, "The Impossibility of a Paretian Republican" and "Republican Freedom and the Rule of Law," and Philip Pettit, "The Instability of Freedom as Noninterference: The Case of Isaiah Berlin," *Ethics* 121 (2011): 693-716.

[12] Some alternative formal analyses of freedom replace "it is possible for the agent to do X" with "if the agent attempted to do X, she would succeed in doing X" or "if she attempted to do X, no-one would act to prevent her." For a discussion of the role of subjunctive conditionals in the analysis of liberal freedom, see Carter, *A Measure of Freedom*, ch. 8, who, in turn, draws on Hillel Steiner's work, e.g., *An Essay on Rights* (Oxford: Blackwell, 1994). Formalizations of republican (as well as liberal) freedom in terms of subjunctive conditionals are given in List, "Republican Freedom and the Rule of Law," and in Christian List and Philip Pettit, *Group Agency* (Oxford: Oxford University Press, 2011),

Against the backdrop of this taxonomy, we aim to show that the most promising conception of social freedom falls into the bottom-left quadrant of our matrix (case 3).

Two desiderata

Throughout our discussion, we assume that a plausible conception of social freedom should satisfy, as far as possible, two desiderata, the first of which—we suggest—takes priority over the second. Although these desiderata are seldom made explicit, they are implicit in much of the contemporary discussion about freedom in political philosophy. And even for readers who wish to remain agnostic about the desiderata, they should serve as useful reference points for structuring the debate.

We have already alluded to the first desideratum in the introduction—versions of which have been defended by David Miller and by S. I. Benn and W. L. Weinstein.[13] It captures the idea that the function of a conception of social freedom is to alert us to those restrictions on action that stand in need of justification.

> **The functional-role desideratum:** The conception picks out as sources of unfreedom those modal constraints on action (by which we mean actual or possible constraints) that stand in need of justification.

Incarceration, slavery, and various forms of coercion all pose modal constraints on action that are either unjustified (in the case of slavery) or require justification when they occur. Recall that someone locked up by the police has the right to ask: "On what grounds are you restricting my freedom?" Accordingly, the functional-role desideratum says that our conception of social freedom should identify such restrictions on action as sources of unfreedom. This is not to say that every restriction on action that is deemed a source of unfreedom is unjustified. The point is merely that any such restriction is a legitimate object of justificatory appraisal.[14] Note also that the desideratum does not presuppose that we can agree on which restrictions on action

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ch. 6. On that approach, republican freedom demands that "it is robustly true that if the agent attempted to do X, no-one would arbitrarily act to prevent her." Regardless of the formalization, liberal and moralized liberal freedom are more "narrowly" modal than freedom as independence and republican freedom; see, e.g., List, "The Impossibility of a Paretian Republican." On liberal freedom and counterfactuals, see also Keith Dowding and Martin van Hees, "Counterfactual Success and Negative Freedom," *Economics and Philosophy* 23 (2007): 141-162.

[13] See Miller, "Constraints on Freedom," and Benn and Weinstein, "Being Free to Act, and Being a Free Man." Cf. also William Connolly, *The Terms of Political Discourse* (3rd ed.) (Princeton, NJ: Princeton University Press, 1993), ch. 4.

[14] See Miller, "Constraints on Freedom," and Benn and Weinstein, "Being Free to Act, and Being a Free Man."

are justified, and which not. There is wide disagreement on these questions, even when we can agree more readily on which restrictions on action are *appropriate objects of moral appraisal*. The desideratum therefore presupposes no particular normative theory; at most it presupposes a thinner "meta-normative" criterion of what the objects of normative appraisal are.

The functional-role desideratum allows us to distinguish freedom *socially* understood from other, linguistically meaningful, but *non-social* forms of freedom—e.g., the "unfreedom" caused by the laws of gravity.[15] Since only constraints that fall within human control are in principle susceptible to justification, the desideratum supports the widely accepted view that only constraints under human control are relevant from the perspective of *social* freedom. Constraints over which humans have no control may be regrettable or unfortunate, but they are not the focus of a *social* conception of freedom.

A conception of social freedom can fail to meet the present desideratum in two ways. First, it can over-ascribe unfreedom, by implying that there can be *social* unfreedom due to restrictions that are not plausible objects of justificatory appraisal—because they are beyond human control. For instance, human beings are prevented by the laws of gravity from jumping 1000 meters high in the air. The claim that they are thus "unfree" to jump that high may be meaningful, but it would be incorrect as a claim about their *social* freedom;[16] it is better viewed as a claim about their physical inability.

Second, a conception of freedom can fail to meet the desideratum by under-ascribing unfreedom, namely by implying that restrictions on action that clearly stand in need of justification are not sources of unfreedom. For instance, from the perspective of social freedom, a teenage girl tube-fed against her will should not be described as merely "unable" to starve, but also as "unfree" to do so. Furthermore, it seems appropriate to suggest that she is owed a justification for why the possibility of starving is foreclosed to her. Of course, a convincing justification may be available here—e.g., the girl suffers from anorexia and would die otherwise—but the justification is owed all the same, and our calling her "unfree" from a social point of view makes a request for justification in-principle available.

[15] Cf. Benn and Weinstein, "Being Free to Act, and Being a Free Man," 199.
[16] Cf. Miller, "Constraints on Freedom."

The second desideratum requires that our conception of social freedom be sufficiently in line with ordinary-language use.

Ordinary-language plausibility: The conception displays an adequate level of fidelity to ordinary-language use.

Of course, linguistic intuitions about freedom and unfreedom are somewhat unstable, and cannot be given absolute authority in our definition of the concept, especially in light of our first desideratum, which we take to be prior to the second. For example, a sailor who, unbeknownst to everyone, is stranded on an island in the middle of the ocean and cannot leave due to severe weather conditions might be described, in ordinary language, as "unfree" to leave. Yet, in light of our first desideratum, his "unfreedom" (or "inability") is not a social one—he faces no obstacles falling within human control. It would therefore be better to say that he is "unable" to leave, but not "unfree" to do so, in a *social* sense.

An account of freedom that is altogether out of line with our ordinary-language use would be confusing and potentially misleading. A plausible conception of freedom should correctly capture at least those instances of social freedom and unfreedom about which competent speakers agree, namely "paradigmatic cases." For instance, we would have reason to be suspicious of a conception of social freedom according to which an imprisoned criminal is free. It is hard to imagine what could possibly justify defining freedom in a way that so starkly departs from how competent users of the language understand it.

With these desiderata in place, we now discuss the main shortcomings of the liberal and republican conceptions of freedom and suggest how to address them.

3. Why freedom requires robustness

As noted, on the liberal account in the tradition of Isaiah Berlin, freedom is the *actual* absence of relevant constraints.[17] For ease of exposition, from now on, we will omit the qualification "relevant;" any reference to "constraints" should be understood to mean "relevant constraints." It should be clear, however, that, if there is to be any prospect of satisfying the first of our two desiderata, "relevant" constraints must be those that are under human control.

[17] See Berlin, "Two Concepts of Liberty."

Liberal freedom: An agent is (socially) free to do X if and only if, *in the actual world*, there are no constraints on her doing X.

Critics have argued that this focus on actual constraints, or possibilities of action present in the actual world, has problematic implications.[18] Consider the often-cited case of a slave with a non-interfering master. In this hypothetical scenario, the master could in principle interfere with the slave's actions (e.g., under the legal institution of slavery as it existed in the United States prior to 1865), but it so happens that the master refrains from interfering, and many actions are *actually* open to the slave. On the liberal conception, the slave would count as free to perform these actions—a conclusion that many find unsatisfactory in light of the paradigmatically unfree status associated with slavery. Furthermore, whatever our ordinary-language intuitions about the case may be, the slave is certainly subject to modal constraints on action that—to understate things dramatically—stand in need of justification. The master's *power* to interfere is enough to raise a justificatory burden.

To address this problem with the liberal conception, republicans suggest, we need to move to a conception of freedom that demands robustness, so that freedom can already be undermined by the mere *possibility* of constraints, suitably interpreted, i.e., by the *possibility* of actions-being-rendered-impossible. In our example, the master can make use of such a possibility at any time, even if he does not currently do so. On a robust conception of freedom, an agent is free to do X only if she enjoys the absence of constraints, both in the actual world and in other nearby possible worlds. This can clearly account for the situation of the slave, since his status makes him susceptible to being constrained by his master, independently of whether the master actually exercises this power.

Is a robust conception of freedom the only one capable of accounting for the unfreedom of a slave with a non-interfering master? We now discuss three responses that a proponent of a liberal conception might give. (Variants of these have been discussed by several authors, including prominently Ian Carter and Matthew Kramer.[19])

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[18] See, e.g., Pettit, *Republicanism*, esp. 22ff., and Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge: Polity, 2001); Skinner, *Liberty before Liberalism*, esp. 40-41; John Maynor, *Republicanism in the Modern World* (Cambridge: Polity, 2003); Ripstein, *Force and Freedom*, esp. 15. See also Fabian Wendt, "Slaves, Prisoners, and Republican Freedom," *Res Publica* 17 (2011): 175-192, esp. 179ff.

[19] See, e.g., Carter, *A Measure of Freedom*, and Matthew Kramer, "Liberty and Domination," in *Republicanism and Political Theory*, ed. Cécile Laborde and John Maynor (Oxford: Wiley Blackwell), chap. 2.

Possibility versus probability

One response is to argue that a liberal conception can capture the unfreedom of slavery by appealing to the *probability*, rather than the *possibility*, of constraints. The slave with a non-interfering master is less free to do X than a non-slave because, as we may assume, the slave is *more likely* to be constrained in his actions and to suffer interference than a non-slave.[20] An agent's freedom to do X, on this proposal, increases the more we minimize the *probability* of constraints on her doing X, not the more we minimize the *possibility* of their imposition. What distinguishes a slave from a non-slave, then, is the probability of being constrained, calculated from the perspective of the actual world.

Is this probabilistic move successful? We do not think it is. Even when the slave's ability to do some action X (e.g., "taking a nap") is entirely contingent on the master's approval, the probability of his being constrained in doing X may vary a lot, conditional on the master's preferences and the situation in which the slave tries to perform X.[21] For example, if the master is in a laissez-faire mood or happens to approve of X, the probability of interference is lower. Similarly, if the slave has made the master happy or "appeased" him, the probability of interference is lower. Yet it would be out of line with ordinary-language use and misleading to suggest that a slave who successfully appeases his master, or whose actions happen to be aligned with the master's mood of the day, is genuinely *free* to perform those actions, just as a non-slave would be. The master's power to interfere, even if *unlikely* to be exercised, remains a modal constraint on the slave's action that calls for justification; in fact, it is unjustified. The slave is entitled to an answer to the question "Why does the master have the power to interfere with my taking a nap, even if he is unlikely to exercise it?" Calling the slave "contingently able but *un*free to take a nap" signals precisely this morally salient fact. It alerts us to the existence of modal constraints on action that stand in need of justification. Calling the slave "free to take a nap," as the

[20] Proposals invoking the probability of constraint-imposition have been discussed, e.g., by Robert Goodin and Frank Jackson, "Freedom from Fear," *Philosophy and Public Affairs* 35 (2007): 249-265; Carter, *A Measure of Freedom*, sec. 8.6; and Matthew Kramer, *The Quality of Freedom* (Oxford: Oxford University Press, 2003), ch. 2. Our focus is not on the exegesis of these authors. Carter, e.g., holds that "specific freedoms" are not a matter of degree, but only "overall freedom" can be, so that probabilities can only be used in measuring overall, not specific, freedom.

[21] See Philip Pettit, "Freedom and Probability: A Comment on Goodin and Jackson," *Philosophy and Public Affairs* 36 (2008): 206-220.

probabilistic version of liberal freedom would require when there is a low probability of interference, blinds us to this fact.[22]

One might think that this difficulty can be addressed through the following calculation. Let X be the act of taking a nap. Consider (i) the conditional probability of constraints in case the slave attempts to do X when his master approves and (ii) the conditional probability of constraints in case the slave attempts to do X when his master does not; then add up these two conditional probabilities, each weighted by the unconditional probability of the relevant scenario. This yields the slave's unconditional probability of being constrained in doing X. The resulting figure would take into account the fact that (i) and (ii) may be different from one another.[23]

This way of quantifying freedom, however, is still unsatisfactory. First of all, it would make the slave's freedom to do X a function of the probability of the master's approval, which may depend on factors such as whether the master is in a good mood or a bad one, whether he has slept well or badly, what preference swings he is prone to, and so on. Two slaves, in otherwise identical circumstances, would then be said to differ in their *freedom* to take a nap, purely on the grounds of a different probability of an approving master. Again, the two slaves differ just in what they are *contingently likely to be able* to do, not in what they are *genuinely free* to do. They both face modal constraints on their actions—i.e., the master's power to interfere—that are appropriate objects of moral scrutiny. On the present probabilistic account, an agent will count as free to do X, even if it is eminently possible for others to impose constraints on her doing X, provided their probability of exercising this power is sufficiently low—perhaps due to a fluke or due to appeasement by the agent in question.[24]

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[22] To be sure, Isaiah Berlin and other liberals recognize that it would be counterintuitive to say that a slave can make himself free by bringing his preferences in line with those of the master. Freedom, for Berlin, arguably requires what Philip Pettit (2001a) calls "content-independent decisiveness." See Philip Pettit, "Capability and Freedom: A Defense of Sen," *Economics and Philosophy* 17 (2001): 1-20. But, as noted by Pettit and shown formally in List, "The Impossibility of a Paretian Republican," "content-independent decisiveness" demands less robustness than "content- and context-independent decisiveness," as required by both republican freedom and, as we will see, freedom as independence. Compare our earlier remarks about the "narrow modality" of liberal freedom, especially note 12.

[23] More generally, suppose $w_1, \ldots, w_k$ are all the worlds that are accessible from the actual world, w, and suppose $\Pr(w_1), \ldots, \Pr(w_k)$ are their probabilities of occurrence, from the perspective of w. Then the agent's freedom to do X could be quantified by $\Pr(\text{unconstrained} \mid w_1)\Pr(w_1) + \ldots + \Pr(\text{unconstrained} \mid w_k)\Pr(w_k)$, where, for each w_j, $\Pr(\text{unconstrained} \mid w_j)$ is the probability of no constraints in doing X in world w_j.

[24] The probability of no constraints, as defined in note 23, could be very low, even if the agent faced constraints in *most* of the worlds $w_1, \ldots, w_k$, provided the constraint-free worlds are sufficiently probable. Further, the "aggregate" probability of no constraints can change dramatically if the probabilities of some of the worlds $w_1, \ldots, w_k$ change, even when all modal facts about those worlds remain unchanged.

A natural response would be to say that an agent's freedom to do X is captured not by the aggregate, unconditional probability of constraints on doing X, but by an entire list of conditional probabilities: the probability of being prevented from doing X in each of several relevant possible scenarios. Thus, the slave's freedom to take a nap is captured by a list of conditional probabilities that he will be prevented from doing so, for each of the following scenarios: (i) the slave has worked hard; (ii) the slave has not worked hard; (ii) the slave has swept the yard; (iii) the master is in a good mood; (iv) the master is in a bad mood; (v) the cooks have prepared a good meal; (vi) the cooks have prepared a bad meal; (vii) the master's wife has friends over for tea; and so on. However, if facts about freedom (here, to take a nap) are fully specified only by the conditional probabilities of constraints in a multiplicity of scenarios, and if freedom *simpliciter* requires a low probability of constraints *across many such scenarios*, we are back in the terrain of a robustness requirement. On this modified probabilistic account, freedom requires a *robustly low probability of constraints*, across many different ways the world could be. We could then at most disagree on *how much robustness* is required. But we would have accepted the basic claim that freedom requires robustness.

Specific freedoms versus overall freedom

We now turn to a second strategy that proponents of the liberal conception might use to account for the unfreedom of a slave with a non-interfering master—at least when the lack of interference is due to the slave's efforts to "appease" the master (or similarly, if it is due to preference adaptation). This strategy is to argue that, although the slave is free to do X, he is not free, even in the liberal sense, to [do X *and* fail to appease the master]. While, from a liberal perspective, the slave's freedom with respect to the option of doing X itself might be the same as that of a non-slave, differences emerge once we look at other options. A liberal account can therefore capture the unfreedom of a slave with an appeased master. The range of his options is restricted, compared to that of someone who, for example, is free to [do X *and* not appease anyone]. Technically, the combinations of *compossible* actions open to the slave are narrower than those of a non-slave.[25] The non-slave is free not only to do X,

[25] For arguments along these lines (here presented in simplified terms), see Kramer, *The Quality of Freedom*, sec. 2.3.2, and Carter, *A Measure of Freedom*, 225ff., drawing, in turn, on Steiner, *An Essay on Rights*.

but also to combine X with a variety of other actions Y. The slave, by contrast, cannot combine action X with action Y = "not appeasing the master," for example.

Although this observation is likely to be correct, it only shows that a liberal conception of freedom can capture the fact that a slave is typically, as a matter of empirical fact, *overall less free* than a non-slave, where by *overall freedom* we mean freedom across many different actions X, Y, Z, etc., and action combinations [X and Y], [X and Z], etc.[26] This shifts the focus (i) from an agent's *specific freedom* to perform some action (e.g., the freedom to take a nap) to an agent's *overall freedom* and (ii) from a conceptual level to an empirical one, relying on empirical assumptions about the need for appeasement.[27] Liberal freedom may thus be able to explain why, empirically, the slave whose master does not interfere due to appeasement is overall less free than a non-slave. But it still cannot explain (i) the unfreedom of a slave with an appeased master *with respect to specific actions that he is contingently able to do* and, more importantly, (ii) the unfreedom of a slave *with a benevolent master*, the kind of master who needs no appeasement and who would not interfere with the slave in a wide range of situations.[28]

With respect to (i), the slave's fragile possibility of doing X, judged from the perspective of the actual world, is insufficient to qualify as a *freedom* to do X; it is, as explained earlier, at best a *contingent ability*. There remain modal constraints on the slave's doing X that stand in need of justification. With respect to (ii), the slave's *freedom* appears compromised *even when* the master is benevolent and needs no appeasement. Once again, the master's power to interfere, even if unlikely to be actualized independently of appeasement, places modal constraints on the slave's actions that stand in need of justification. The slave appears eminently entitled to ask the master: "What justifies your power over me?" To capture this fact, we need to recognize the *possibility* of constraints being imposed on the slave—not just the presence of constraints in the actual world—as a limitation of freedom.

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[26] See, e.g., Carter, *A Measure of Freedom*.

[27] Carter, in *A Measure of Freedom*, 239, suggests that "the difference between republicans and liberals is an empirical rather than a conceptual one." We agree that, empirically, overall freedom (in Carter's terms) and robustly defined freedom (in ours) often correlate. But when the correlation breaks down (e.g., when the master is truly benevolent), we take robustness to be a *conceptual*, not just empirical, requirement of social freedom.

[28] Carter, in *A Measure of Freedom*, suggests that the intuition behind (i) is driven by the slave's lack of *overall* freedom (due to a restricted range of compossible actions), while maintaining that the slave's *specific* freedom to do X is uncompromised. See also Steiner, *An Essay on Rights*.

De jure and de facto freedom

A final liberal response to the case of the slave with the benevolent master is the following. Even if we call such a slave "free" to perform a range of different actions, we can still acknowledge that his situation stands in need of justification and is indeed unjustified. According to this response, what triggers a need for justification in the slave's situation is not a restriction of freedom, but something else. Empirically, the argument goes, the slave whose master benevolently refrains from interfering is just as free as a non-slave; by hypothesis, he is not *actually* constrained. What calls for justification is the presence of a problematic relationship of ownership, which places constraints on what the slave is *permitted to do by law*.[29] Once we accept this alternative diagnosis of what it is that calls for justification here, there is no need to modify the liberal conception of freedom. We can continue to call the slave with a benevolent master "free," and still object to his legal status.

This line of reasoning involves denying our first desideratum on a conception of social freedom. We would have to acknowledge that the slave *is* subject to some modal constraints on action that call for justification—i.e., the master does have the power to interfere, he is simply not inclined to use it—and yet insist that these should not be classified as restrictions of freedom. We would then have to ask: How should we classify these constraints instead? And why should we not describe the present constraints as restrictions of freedom, despite their being modal constraints on action that call for justification, just like other familiar freedom restrictions? It seems that considerations of parsimony are on the side of those who prefer to classify *all* such modal constraints as restrictions of freedom.

Furthermore, once we try to pinpoint what it is about the relationship between the slave and the master that calls for justification, it is hard to avoid an appeal to *some* notion of freedom. A natural thing to say about the relationship between master and slave is that it renders the slave "de jure" unfree, no matter how benevolent the master is.[30] We can capture this, in turn, by invoking a modally robust conception of freedom in which "de jure" possibilities of constraint-imposition are deemed to be freedom-restricting. The slave with a benevolent master is "de jure" unfree to do X

[29] See Wendt, "Slaves, Prisoners, and Republican Freedom," 179-182.
[30] See, e.g., List, "Republican Freedom and the Rule of Law." Cf. Matthew Kramer, "Freedom as Normative Condition, Freedom as Physical Fact," *Current Legal Problems* 55 (2002): 43-63; and Kramer, "Freedom and the Rule of Law."

because it is not consistent with his legal and customary status for him to do X without his master's consent. This "de jure" situation exists regardless of whether or not the consent is actually given, and the mere need for such consent is what makes the slave "de jure" unfree—and calls for justification.

We think that it is entirely appropriate to subsume this kind of unfreedom under the category of "social unfreedom." When we analyse the situation of the slave from a social perspective, it seems correct to understand "possibility" as consistency with the complex set of effective norms and expectations (legal, customary, social) that govern human interactions in the society in question. The slave is socially unfree to do X precisely because it is inconsistent with "how the social world functions" for him to do X without the master's consent. It is socially possible for the master to impose constraints on the slave at any time; his ownership rights permit him to do so, and society is organized so as to enable him to exercise this power.

Further, by fixing the interpretation of possibility differently, such as by referring to psychological rather than social possibility, we could even capture the distinct—and linguistically acceptable, though rather hypothetical—claim that a slave with a *truly angelic* master is "free" in some other sense: it may be psychologically (though not socially) impossible for a truly angelic master to interfere with the slave.[31]

In short, none of the present considerations undermine our claim that a plausible conception of freedom should be fortified with a robustness requirement. They only draw our attention to the fact that we can capture different interpretations of freedom by substituting different notions of possibility into our general definition scheme.

4. Why freedom should not be moralized

We have argued that a plausible conception of social freedom must involve a robustness requirement. The mere possibility of the imposition of constraints, even if not actualized, may restrict an agent's freedom. So far, we are in agreement with Pettit's republican position.[32] As our initial taxonomy indicates, however, the

[31] One might object that psychology is one of the determinants of social possibility and that a slave whose master lacks the psychological possibility to interfere is *socially* free. We do not take a stand on the relationship between psychological and social possibility, but note that, if we took psychological possibility to be necessary for social possibility, our claim that social freedom should be understood in *modally robust terms* would still stand. A slave with a reliably benevolent master would then be free because the master would lack the *psychological, and hence social*, power to interfere with the slave; the absence of constraints would be robust across a wide set of socially possible worlds (where the assumed psychological impossibility of interference would imply its social impossibility).
[32] See, in particular, Pettit, *Republicanism*.

republican conception of freedom departs from the liberal one on a second dimension too: freedom is defined as *non-domination*, the robust absence of *arbitrary* constraints.

> **Republican freedom:** An agent is (socially) free to do X if and only if, *robustly*, there are no *arbitrary* constraints on her doing X.

On this definition, the absence of constraints in the actual world is insufficient for freedom, because of the robustness requirement, and unnecessary, because non-arbitrary constraints are not deemed freedom-restricting.

As several critics have noted, the reference to an arbitrariness criterion has a problematic implication.[33] Arbitrariness is most readily interpreted as a moralized notion: something is arbitrary if it is unjust, illegitimate, capricious, or not governed by the right principles. Presumably, a slave is unfree because his master can constrain him arbitrarily, i.e., unjustly, illegitimately, and without taking seriously the slave's interests. Although qualifying freedom in this way allows us to reach the right conclusion in the master-slave case, it leads to problematic conclusions in other cases. If *non-arbitrary* constraints do not restrict freedom, then a justly imprisoned criminal, a justly taxed anarchist, and an addict forced by a legitimate state into rehabilitation for his own good are not made unfree. This goes against our two desiderata on a plausible conception of social freedom. In all the examples of non-arbitrary constraints, some agents are undeniably subject to modal constraints on their actions that stand in need of justification, even if these constraints are ultimately justified. The republican conception fails to identify those constraints as restrictions on freedom, contrary to our first desideratum on a conception of social freedom. The republican conception also violates the second desideratum. Contrary to ordinary-language use, it re-classifies *just*, *legitimate*, and *non-arbitrary restrictions of freedom* as *no restrictions of freedom at all*.

[33] See, e.g., Wendt, "Slaves, Prisoners, and Republican Freedom," 183ff.; Ian Carter, "A Critique of Freedom as Nondomination," *The Good Society* 9 (2000): 43-46; Christopher McMahon, "The Indeterminacy of Republican Policy," *Philosophy and Public Affairs* 33 (2005): 67-93, at 70ff; and John Christman, "Review of Pettit's Republicanism," *Ethics* 109 (1998): 202-206. Cf. G. A. Cohen's discussion of moralized notions of freedom in "Capitalism, Freedom and the Proletariat," in *Liberty*, ed. David Miller (Oxford: Oxford University Press, 1991), 163-182.

Reinterpreting arbitrariness in a non-moralized way

Faced with this challenge, Philip Pettit has suggested that the notion of arbitrariness should *not* be understood in a moralized way:[34]

> "Unlike 'legitimate,' 'non-arbitrary' is not an evaluative term but is defined by reference to whether as a matter of fact the interference is subject to adequate checking. Interference will be non-arbitrary ... to the extent that, being checked, it is forced to track the avowed or avowal-ready interests of the interferee; and this, regardless of whether or not those interests are true or real or valid, by some independent moral criterion. Thus there is no substance to the claim that the republican theory of freedom I favor is moralized."[35]

On this picture, constraints are non-arbitrary when they are in line with the agent's interests as she conceives of them, as opposed to when they are consistent with some independent moral criterion. The reason why constraints that track the *avowed interests* of the agent should not count as freedom-restricting is fairly straightforward. There is a sense in which they originate in, or are authorized by, the agent herself. One might argue, then, that such constraints do not stand in need of justification, and hence that they should not be classified as freedom-restricting.

Pettit illustrates this point by giving the example of a husband who asks his wife to lock up the liquor cabinet.[36] Although the wife's action removes an option from the husband's set of choices (access to liquor at home), it is not freedom-restricting, because it tracks the husband's avowed interests. The husband himself asked his wife to make the option unavailable, thereby making her action an implementation of his will, not an imposition of a freedom-restricting constraint.

This non-moralized interpretation of "arbitrariness" allows republican freedom to avoid the problematic implication that some intuitive cases of unfreedom are not

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[34] See also Philip Pettit, "The Determinacy of Republican Policy: A Reply to McMahon," *Philosophy and Public Affairs* 34 (2006): 275-283, at 278-279. In *A Theory of Freedom*, 178, Pettit offers a second response, distinguishing between "compromising" and "conditioning" persons' freedom. Arbitrary constraints "compromise" freedom, non-arbitrary ones at most "condition" it. So the justly imprisoned man is not made unfree, but his freedom is conditioned. We find the distinction between "compromising" and "conditioning" not entirely clear and set it aside. The efficacy of this distinction as a way of addressing the "problematic implication" has been put into question by Wendt in "Slaves, Prisoners, and Republican Freedom," 187-190.

[35] See Philip Pettit, "Republican Freedom: Three Axioms, Four Theorems," in *Republicanism and Political Theory*, ed. Cécile Laborde and John Maynor (Oxford: Wiley Blackwell, 2008), ch. 5, at 117.

[36] See Philip Pettit, "A Republican Right to Basic Income?" *Basic Income Studies* 2 (2007): 1-8, at 6.

classified as involving unfreedom, such as the classification of a justly imprisoned criminal as free. Presumably, even a justly imprisoned criminal—unless he is unusually repentant—will not *avow an interest* in being imprisoned. And so, his imprisonment, however just it may be, cannot be said to *track his avowed interests* and thereby to leave his freedom intact.

The move to a non-moralized arbitrariness criterion comes at a cost, however, which republicans may not be prepared to pay. To explain this, we must remind ourselves of the main claims of republican political theory, broadly in Pettit's sense.[37]

Republican political morality

Unlike contemporary liberals, who regard justice as the fundamental ideal that societies should respect and then point to several contributing values (freedom being one of them), republicans, à la Pettit, ground their political morality in the single value of freedom as non-domination. A morally worthy society, from a republican point of view, is defined as one that realizes (or alternatively, maximizes) freedom as non-domination.[38] The following thesis summarizes this idea:

> **The strong republican thesis:** A morally worthy society is one that realizes (or at least maximizes) freedom as non-domination: the robust absence of arbitrary constraints.

An appealing feature of this thesis—at least from the perspective of those who prefer a parsimonious system of values—is that a morally worthy society is defined in terms of the promotion of one central value (freedom as non-domination) rather than in terms of the juggling and balancing of multiple, potentially conflicting values.

If non-arbitrariness is defined in a moralized way—say, state coercion is non-arbitrary if and only if it is independently morally justified—then the strong republican thesis may well be true, though unfortunately not illuminatingly so. Roughly speaking, it boils down to the proposition that, in a morally worthy society, there can be constraint-imposition if and only if the constraints are non-arbitrary, which means, in turn, that they are independently morally justified. The key work in

[37] See especially Pettit, *Republicanism*.
[38] Ibid., 6-7.

defining a morally worthy society will then be done by the non-arbitrariness criterion, into which the relevant notion of moral justification will have been built.[39]

What if non-arbitrariness is defined in the non-moralized way Pettit suggests, namely in terms of the tracking of the subject's avowed or avowal-ready interests?

The democratic move

Let a constraint count as non-arbitrary if and only if it tracks the avowed or avowal-ready interests of the interferee. Pettit argues that under this definition the strong republican thesis implies:

> **The democratic corollary:** A morally worthy society (one that realizes, or at least maximizes, freedom as non-domination) is a democratic one, under a suitable notion of democracy.[40]

He defends this conclusion by making the following claim:

> **The democratic avowal premise:** In a social context, the instrument for determining the citizens' avowed or avowal-ready interests is democratic decision making.[41]

If this premise is true, the constraints involved in the implementation of democratic decisions by the state will track the citizens' avowed or avowal-ready interests and will therefore count as non-arbitrary. The imposition of constraints that lack democratic support, by contrast, will count as arbitrary. So, state coercion is non-dominating if and only if it is democratic, and thus a morally worthy society, in line with the strong republican thesis, must be democratic.

Although at first sight plausible, this argument is flawed: the notion of "avowed or avowal-ready interests" that renders the democratic avowal premise and the democratic corollary true cannot be non-moralized.

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[39] For related discussions, see Christman, "Review of Pettit's Republicanism," 205, and McMahon, "The Indeterminacy of Republican Policy."

[40] See Pettit, *Republicanism*. Cf. Henry Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002); Richard Bellamy, *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy* (Cambridge: Cambridge University Press, 2007); and Maynor, *Republicanism in the Modern World*. Different republicans hold different views of democracy, but common themes include the importance of constitutional constraints, checks-and-balances, deliberation, contestation, and civic virtue.

[41] See Pettit, *A Theory of Freedom*, 156. Cf. Richardson's distinction between different notions of arbitrariness in *Democratic Autonomy*, ch. 3.

The problem with the democratic move

In the absence of unanimity among all the citizens, no democratic decision can fully track everyone's avowed interests. Rather, any decision will have to balance different individuals' interests against one another—a familiar point from social choice theory. The coercive implementation of such a decision by the state will therefore inevitably compromise some individuals' interests.[42]

But if any act of constraint-imposition, such as a state's when it implements a democratic decision, counts as "arbitrary" as soon as it compromises *some* citizens' interests, then practically every democratic decision—absent unanimity—will involve some domination. So, if we understand the strong republican thesis and its democratic corollary as defining a morally worthy society to be one that *realizes* freedom as non-domination, we must conclude that no such society can plausibly exist.

Consider, for example, a conflict of interests between two groups within a democratic society. The rich oppose the introduction of a new inheritance tax, while everyone else supports it. After due deliberation, the reform is put to a vote, and the tax regime is approved. Assuming that the rich continue to avow an interest in not introducing the tax, there is no sense in which the coercive imposition of the policy can be said to track *their* avowed interests. On the avowal-based, non-moralized criterion of non-arbitrariness, the policy must be classified as "arbitrary" and thus "dominating." That the rich *ought* to support the policy on solidaristic grounds may be true from some independent moral perspective but is irrelevant to the argument, since we are considering a non-moralized notion of avowed interests.

One response is to deny that a democratic decision that carefully balances different individuals' interests fails to track the citizens' avowed or avowal-ready interests. According to this response, such a decision does in fact track the interests of the *collective as a whole*. This is because the decision will have been reached through a procedure with special credentials, such as fairness, equality, and so on, and those credentials bestow upon the decision the status of being "collectively avowed." The

[42] Pettit is presumably aware of this. He suggests that democracy is non-dominating insofar as it tracks the "common avowable interests" of the citizens. "Common avowable interests" are defined as those whose provision is supported by "cooperatively admissible considerations." However, avowable interests filtered by "cooperatively admissible considerations" are not the same as avowed or avowal-ready interests *simpliciter*. Cooperatively admissible interests are morally vetted, which brings us back to the moralized notion of arbitrariness Pettit wishes to avoid. See Pettit, *A Theory of Freedom*, 156.

resulting notion of "collective avowal," however, is procedure-dependent, and it is *not* a non-moralized question what the right avowal-eliciting procedure is.

To be able to say, for instance, that the inheritance tax regime tracks the avowed interests of the collective as a whole even though it manifestly does not track the avowed interests of some of its members, one has to adopt a moralized, democratic-procedure dependent notion of avowal. Without such a notion, no decision in the case of a conflict of interests can ever be said to track the avowed interests of *all* citizens and thus to be free from domination.

A possible republican response

A republican might respond that a morally worthy society need not be one that *fully realizes* non-domination, but merely one that *reduces* domination as much as possible. So, the rich in the present hypothetical example are indeed dominated by the rest of society, but the outcome is nonetheless the one with the least amount of domination. Recognizing this, we need not redefine the notion of avowed or avowal-ready interests in any moralized way. We can stick to the original non-moralized notion of avowal and perhaps count the number of people whose individually avowed interests are not respected and minimize that number. Alternatively, we can try to minimize some other measure of the extent to which avowed interests in society are not tracked (though constructing such a measure in a non-moralized way is difficult, since any measure is likely to rest on normative assumptions). It might then follow that majority decisions or other kinds of democratic decisions—either by minimizing the number of people on the losing side or by minimizing the relevant measure of the frustration of avowed interests—minimize the extent to which avowed interests are not tracked. So, although the rich in the example might be said to be dominated by the rest of society—in that their avowed interests are not tracked—the adoption of the tax regime could still be the outcome with the least amount of domination.

Does this response work? We think there are at least two problems with it. First, if we accepted the response, the democratic corollary of the strong republican thesis would imply that, in a democratic state, the majority, or the winning side more generally, dominates the minority, or the losing side. Republicans would presumably

find this hard to accept, since they often emphasize that the laws of a properly constituted democracy are in fact non-dominating, not just domination-minimizing.[43]

Secondly, the republican ideal of a morally worthy state that would emerge would be questionable. The worthy state would be one that is governed according to the will of the majority or the outcome of some other democratic procedure. This means that even when the majority is wicked, self-interested, or oppressive, or when a democratic decision is procedurally fair but substantively flawed, we would have to deem the resulting laws morally worthy from a republican perspective. Whether a law is good or morally worthy would depend, not on its substantive qualities, but only on it exhibiting the following procedural virtue: implementing the relevant democratic decision, *no matter* what its content is.[44] (Recall that we would not be able to rely on a moralized non-arbitrariness criterion to filter for substantively non-dominating decisions; everything would have to rely on the non-moralized avowal criterion.) This conclusion strikes us as problematic and, we believe, it would similarly strike most republicans as problematic.[45]

A dilemma

The bottom line is that there does not appear to be a *single* notion of avowed or avowal-ready interests under which both (1) republican freedom's problematic implication (that some clear cases of freedom restrictions, like just imprisonment or just taxation, are not classified as such) can be avoided, and (2) the strong republican thesis can plausibly be upheld.

For (2), something like just taxation or just imprisonment must *not* be classified as dominating, while for (1) it must be possible for someone's just imprisonment or just taxation to count as *not* tracking her avowed or avowal-ready interests. In short,

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[43] Pettit and other republicans are aware of the risk of majority-domination, which is why they think majority rule must be subject to counter-majoritarian mechanisms, including ample possibilities for citizens to deliberate and to criticize their governments. See Pettit, *Republicanism*; Maynor, *Republicanism in the Modern World*, ch. 6; and Richardson, *Democratic Autonomy*. But when a democratic government is subject to the right checks and balances, majority decisions cannot be said to dominate the minority.

[44] Cf. McMahon, "The Indeterminacy of Republican Policy," 80. A similar problem would arise if we adopted Frank Lovett's interpretation of arbitrariness, according to which something is arbitrary "to the extent that it is not externally constrained by effective rules, procedures, or goals that are common knowledge to all persons or groups concerned." See *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010), 96. On this view, constraints that are in line with substantively problematic rules and procedures still qualify as non-arbitrary.

[45] Indeed, Pettit, in *Republicanism*, part II, explicitly includes a number of substantive and procedural constraints within his preferred account of democratic government.

for (1) we require a non-moralized criterion of (non-)arbitrariness, whereas for (2) we require a moralized one. We cannot have both.

We are not arguing that the promotion of what republicans call non-domination with a suitably moralized criterion of arbitrariness is undesirable. To the contrary, we believe that it is highly desirable. We are only pointing out that, *as a conception of social freedom*, non-domination so understood is vulnerable to a (well-known) problematic implication, namely the under-ascription of unfreedom in an important class of cases. In consequence, the republican conception fails to satisfy our two desiderata on a plausible conception of social freedom. At most, the conception identifies a "balance of values" that it would be desirable to promote within society, where that balance includes but is not limited to freedom. Avoiding the problematic implication by moving to a non-moralized non-arbitrariness criterion, on the other hand, means that non-domination is no longer sufficient, by itself, to ground an overall social ideal, as republicans had hoped it would.

Non-moralized non-domination

Let us consider one last objection that republican theorists might raise. Although we have argued that the *non-moralized* account of freedom as non-domination cannot plausibly support the strong republican thesis, we have not commented on whether it represents a plausible conception of social freedom. In fact, some of what we have argued suggests that it does. By referring to the subject's avowed interests, non-moralized republican freedom avoids what we have called the "problematic implication." On this account, a man justly imprisoned against his will is still made unfree, because the constraints to which he is subject fail to track his avowed interests. By contrast, a man who admits himself into rehabilitation, knowing that this will significantly restrict his options, is not made unfree. The restrictions of freedom to which he is subject are authorized by him, and track his avowed or avowal-ready interests. Arguably, the man is not "subject" to the will or actions of others, since what others do to him is licensed by his authorization, just as in the case of the husband asking his wife to lock up the liquor cabinet.

So, is non-moralized non-domination a plausible conception of freedom? We believe that it is not. Although *prima facie* plausible, the claim that third-party-imposed constraints that track an agent's avowed interests are not freedom-restricting stands on shaky grounds. Conceptually, the idea of third-party-imposed constraints

without unfreedom is unconvincing: either there is no third-party imposition, hence no restriction of freedom, or there is, and therefore some such restriction. If third-party actions *robustly track* an agent's avowed interests by fully emanating from her will, they should not be regarded as external impositions of constraints at all—but rather as extensions of the agent's own actions. If others, in restricting an agent A's options, robustly execute A's will, their actions are not really "theirs," because they are ultimately under A's control. They simply express the agent's own "extended" agency. In this case, talking about third-party-imposed constraints fails to capture the full picture. The actions that restrict the agent's freedom are "hers," under her control, all the way down.

However, the rehabilitation and liquor-cabinet cases do not neatly fit this model. Normally, a wife who, upon the husband's request, locks a liquor cabinet instantiates more than an extension of her husband's agency. Similarly, the personnel of a rehabilitation centre instantiates more than an extension of the willing patient's agency. If this is so, we can meaningfully talk about third-party-imposed constraints. But whereas the republican would want us to say that such constraints are not freedom-restricting, it seems more plausible to conclude that they are, while acknowledging that they are not morally problematic. They are modal constraints on an agent's action that are appropriate objects of moral appraisal: it just so happens that they are justified—because authorized. A wife who locks a liquor cabinet upon her husband's request *does* restrict his freedom, albeit with the husband's authorization. To suggest that the wife's action does not restrict the husband's freedom is to mistake *justified restrictions of freedom* for *no such restrictions*.

Thus, even the non-moralized variant of republican freedom fails to satisfy our first desideratum: it fails to pick out as sources of unfreedom some modal constraints on action that stand in need of justification. In sum, no matter whether the "arbitrariness" qualification is interpreted in a moralized or non-moralized fashion, incorporating it into our definition of freedom leads us to miscategorize some instances of unfreedom—albeit morally justified unfreedom—as instances in which no restriction of freedom occurs. To avoid this conclusion, we must remove the notion of arbitrariness from our conception of freedom, thereby obtaining what we call "freedom as independence."

5. Freedom as independence and its virtues

We have now completed our main arguments for adopting a conception of social freedom in the bottom left quadrant of Table 1 above. In Section 2, we argued that, contrary to the liberal conception, freedom requires robustness, which corresponds to the bottom row of the table. In Section 3, we argued that, contrary to the republican conception, freedom should not be defined in a moralized way, which corresponds to the left column of the table. We have not discussed moralized liberal freedom, the conception in the top right quadrant, proposed, for instance, by Nozick and Dworkin. According to it, freedom is the absence of *unjust or wrongful* constraints, in the *actual* world. Our arguments go against both the lack of robustness and the moralization of that conception, which has already been prominently criticized in the literature (e.g., by G. A. Cohen), so we set it aside.[46]

We propose to define social freedom as the robust absence of constraints *simpliciter* (rather than of *arbitrary* constraints), in an appropriate sense of robustness, which can be spelt out further. (Recall our expositional convention according to which any reference to "constraints" should be understood to mean "relevant constraints.")

> **Freedom as independence:** An agent is (socially) free to do X if and only if, *robustly*, there are no constraints on her doing X.

Like the republican conception, freedom as independence yields a plausible analysis of cases like that of the slave with the non-interfering master and thereby avoids some familiar problems of non-robust conceptions of freedom. At the same time, it avoids the main problematic implication of the republican conception and other moralized conceptions: the failure to classify some clear cases of freedom-restriction as such.

For this reason, freedom as independence satisfies both of our desiderata. Unlike liberal and republican freedom, it does not fail to pick out as sources of unfreedom some actual or possible constraints on action that stand in need of justification. And by recognizing the freedom restrictions in the cases of the slave with the non-interfering master, the justly imprisoned criminal, the justly taxed

[46] See G. A. Cohen, "Robert Nozick and Wilt Chamberlain: How Patterns Preserve Liberty," *Erkenntnis* 11 (1977): 5-23, and "Capitalism, Freedom and the Proletariat."

anarchist, and the addict in compulsory rehabilitation, it also displays greater fidelity to ordinary-language use than liberal and republican freedom do.

Unlike republican freedom, freedom as independence cannot serve as a single, overall social ideal. But we suggest that this is a virtue, not a vice. Concepts offer tools or lenses through which we perceive the world. In moral and political philosophy, some concepts allow us to capture certain morally salient facts, while others hide them from view and thereby obfuscate our moral vision.[47] This is arguably what happens with the republican conception of freedom.

As we have shown, the Strong Republican Thesis can be upheld only at the cost of packing too much into the non-arbitrariness criterion. This makes freedom as non-domination a "loaded" conception and shifts the burden of moral justification, for example for coercive state action, from the task of explicitly balancing different values against each other to the definition of non-arbitrariness.[48] A good theory of political morality should *explain* how to balance multiple competing values, rather than *shift* the all-things-considered solution into the definition of freedom itself, via some criterion of non-arbitrariness. The republican approach runs the risk of hiding some of this moral balancing from view; freedom as independence does not.

In what follows, we further showcase the virtues of this notion. First, we illustrate how, unlike its liberal and republican rivals, it allows us to offer a morally compelling diagnosis of the freedom-effects of particular policies, using anti-terrorism law as an example. Second, we suggest how freedom as independence might be variously interpreted to capture different understandings of freedom, not only for moral but also for social-scientific purposes.

A real-world case

In October 2001, shortly after the 9/11 terror attacks, the U.S. Congress approved the Patriot Act, which—to grossly over-simplify—gave the executive greater power to monitor, search, and detain terrorist suspects, with reduced procedural safeguards.[49] The Act generated much controversy, on account of its restricting people's *freedom*. Some insisted that the restriction was justified for the sake of averting the far greater

[47] Cf. Connolly, "The Terms of Political Discourse."
[48] Cf. McMahon, "The Indeterminacy of Republican Policy."
[49] See, e.g., Rita Shulman, "USA Patriot Act: Granting the U.S. Government the Unprecedented Power to Circumvent American Civil Liberties in the Name of National Security," *University of Detroit Mercy Law Review* 80 (2003): 427-444.

evil of terrorism. Others disagreed, insisting that the increased power of the executive under the Act implied far too great a sacrifice of freedom. What most people implicitly accepted, however, was that the Act did in fact restrict freedom—specifically, the freedom of *every* U.S. citizen and resident—and that, for this reason, it stood in need of justification.

This, we believe, is the right "moral" description of the situation. Yet only freedom as independence supports it. Neither liberal negative freedom, nor republican freedom, allows us to come to this diagnosis. To see this, let us focus on one hypothetical U.S. citizen, who is subject to the provisions of the Patriot Act.

Joe is a white, middle class, Christian male. He lives in rural South Dakota and works for a local insurance company. He and his wife have two children and a dog. Take Joe's freedom "to be away from his home without it being secretly searched" the day before and the day after the enactment of the Patriot Act. Most would want to say that his freedom has been restricted by the Act: the Act places modal constraints on Joe's actions that stand in need of justification. But what verdicts would the different conceptions of freedom we have discussed deliver?

The liberal, negative conception of freedom would suggest that the Patriot Act *in no way* restricts Joe's specific freedom, and this is because the actual likelihood of Joe's house being searched is in no way increased by the Act. The Act makes no difference to him; he is as far as one can be from meeting the profiling criteria of the U.S. security agencies. From a negative-freedom perspective, then, the vast majority of Americans have no ground to complain that the Act restricts their freedom "to be away from their homes without these being secretly searched." Only a small subset of individuals—who belong to particular groups—do.[50]

One might object that the liberal notion of freedom does in fact capture the freedom-restrictions suffered by Joe and many others due to the Patriot Act. Even if someone like Joe doesn't fit the profiling criteria of the security agencies, perhaps the introduction of the Act increases the likelihood that he may be mistakenly searched—after all, mistakes always occur—thereby also reducing his corresponding freedom. We remain agnostic about whether, in reality, the Act increased the likelihood of mistaken searches. That said, it is easy to imagine circumstances in which it would

[50] See Jeremy Waldron, "Security and Liberty: The Image of Balance," *Journal of Political Philosophy* 11 (2003): 191-210; Ronald Dworkin, "The threat to patriotism," *New York Review of Books*, February 28, 2002 (URL = http://www.nybooks.com/articles/2002/02/28/the-threat-to-patriotism/).

not. For example, in connection with the Act, the U.S. security agencies might have tightened their procedures so as to reduce the probability of mistakes. Consequently, the likelihood of ordinary people's houses being searched would have remained the same before and after the introduction of the Act. Yet, it would still seem perfectly appropriate for Joe and others to complain that their freedom had been reduced.

How would the republican conception of freedom handle this case? Depending on how the arbitrariness qualifier is interpreted, it might imply either of two things. On one interpretation, since the Act has been passed through an appropriate democratic procedure, any modal constraints on action that it imposes are non-arbitrary and hence do not restrict anyone's freedom, including Joe's. On a different interpretation of arbitrariness—say a more substantive one—the Act makes it possible for the state to impose arbitrary constraints on people's actions. It is therefore not only freedom-restricting but also *unjustified* or *illegitimate*. Claims about freedom-restriction, for republicans, are "moral conversation-stoppers." Once we admit that the Act restricts freedom, we can no longer proceed to judge its merits. The judgment has already been packed into the freedom-evaluation. This, however, does not seem right. As David Miller puts it: "It is a mistake to think that to describe a state of affairs as involving unfreedom is to settle a political argument; it is, however, to make a *move* in a political argument."[51]

Freedom as independence, unlike liberal and republican freedom, gives us the most plausible diagnosis of Joe's and other people's predicament. From a freedom-as-independence perspective, the Act definitely restricts their social freedom: it confers on government agencies greater social power to search their houses, even if this power is unlikely to be exercised.[52] People are therefore entitled to a justification. Yet, it remains a separate question whether this social power is justified or not, and the answer to this question depends on considerations *over and above* freedom itself.

Some properties of freedom as independence

The conception of freedom as independence is very versatile: we have given a definition *scheme*, whose details can be spelt out in many different ways, depending on the intended application. It admits (i) different notions of possibility, (ii) different levels of robustness, and (iii) conditional as well as unconditional variants. By

[51] See Miller, "Constraints on Freedom," 69.
[52] Recall that legal possibilities are plausibly subsumed under social ones.

adjusting these elements, the conception of freedom as independence can be calibrated to capture freedom facts in a variety of ways. This flexibility is a virtue. Indeed, freedom facts—in general—may be best captured by an entire "vector" of assessments, with multiple dimensions.[53] Different *kinds* of freedom as independence, spelt out in different ways, will be useful in different contexts, and our scheme offers the resources to capture them.

Different notions of possibility

We have already commented on the availability of different notions of possibility in defining freedom as independence, based on the intended application. The possible freedom-undermining constraints may be social (e.g., legal, political, customary) or purely "natural" (concerning what is possible given the laws of physics and biology), for example. From a social perspective, it makes little sense to describe an agent as "unfree" to jump 1000 meters in the air, yet from a physical one it does. Once we become aware of these different notions of possibility, we need not accuse those who describe physical inabilities as "unfreedoms" of conceptual confusion. We can more charitably point out that the freedom they are talking about is not "social" freedom—the kind of freedom in which social and political philosophers are interested.

Similarly, within the broad category of social freedom, we might distinguish between "legal" freedom and "conventional" freedom—depending on the phenomenon we are interested in analyzing. For example, in the U.K. people have the legal freedom *not to* queue up at the bus stop, but lack the corresponding *conventional* freedom: queue-jumping is not consistent with local social norms. By focusing on different notions of possibility, we can capture each of these cases.

How exactly the relevant notion of possibility should be spelt out in the analysis of social freedom is a complex question, which we cannot explore in greater detail here. Our main point, though, still stands. Rather than subsuming different cases under a single, all-things-considered notion of freedom, we might prefer to disaggregate the complex set of "freedom facts" into different dimensions of possible constraint-imposition. Each notion of possibility induces a corresponding variant of freedom as independence, indexed to that notion of possibility.

[53] The existence of multiple dimensions of freedom has long been recognized, e.g., by Felix Oppenheim in *Dimensions of Freedom* (New York: St Martin's Press, 1961).

Different levels of robustness

The set of possible worlds across which constraints on the agent's doing X are absent can be smaller or larger. Thus we can not only recognize, and explicitly define, different levels of robustness of an agent's freedom as independence, corresponding to the "size" and "shape" of the set of possible worlds across which the agent suffers no constraints, but also re-define freedom as independence as a matter of degree.

For example, if the set of possible worlds in which agent A is not prevented from doing X is a superset of the set of possible worlds in which agent B is not prevented from doing Y, then A's freedom as independence to do X is clearly greater than B's freedom as independence to do Y. If neither of these two sets includes the other, we can either describe the two agents' freedoms as incomparable or devise some way of "counting" the number of possible worlds in each set or of measuring its size. Although this task raises difficult measurement issues that we cannot address here, the conception of freedom as independence offers the resources to be re-interpreted as a matter of degree.

Note that, once we fix the level of robustness, together with the underlying notion of possibility, then what *causes* someone to be robustly shielded from interference makes no difference to the truth of the claim that they are free to perform some action. Gloria may be free to walk alone at night without being attacked, thanks to her society's well-functioning police services. But what if the same protection is due to some powerful Mafia? If all relevant modal facts were truly the same as in the case of a well-functioning state, Gloria would have the same freedom, but, empirically, this scenario is implausible. While the robustness of the protection offered by the state is guaranteed by its rule of law, there is no such guarantee in the case of the Mafia.[54] Moreover, irrespective of whether Gloria enjoys freedom as independence to walk safely at night, the Mafia arrangement is problematic in many other ways and also unlikely to protect people's freedoms in general.

Unconditional versus conditional possibilities of being constrained

To assess how people's freedom is affected by different policies, social arrangements, or actions, as in our example of the Patriot Act, we must be able to ask, not only what their freedom as independence is under the *status quo*, but also what it would be,

[54] On robustness and the rule of law, see List, "Republican Freedom and the Rule of Law."

given certain contingencies that we are interested in. Freedom as independence offers conceptual room for making such assessments. This is because possibilities of being constrained (under whichever notion of possibility deemed appropriate) can, in principle, be unconditional or conditional on certain contingencies.[55] For example, conditional on a relevant authority's consent (say a judge's), a given agent (say the police) may be legally free to place constraints on another agent's actions (say those of a suspect in an investigation), while unconditionally such constraints could not be imposed. We can then say that, although unconditionally all citizens have certain legal freedoms as independence (e.g., to make phone calls that are not wire-tapped), such freedoms may be restricted, conditional on the relevant authority's consent.

Equally importantly, someone may unconditionally lack certain *social* freedoms as independence, because without certain legal protections she is susceptible to being constrained, while conditional on such safeguards she gains those freedoms. To give a simple example, conditional on a police officer being present on the street, pedestrians may enjoy social freedom as independence from thieves, while unconditionally pedestrians may lack this freedom. Generally, laws, policies, or other state activity may sometimes remove possibilities for either individuals or the state to place constraints on people's lives, thereby enhancing their freedom as independence.

This illustrates that, contrary to some libertarians' or anarchists' views, it is by no means true that additional layers of legislation, regulation, or state activity always reduce people's social freedom. To the contrary, even under the arguably demanding conception of freedom as independence, additional legislation, regulation, or state activity can sometimes promote freedom. And this does not depend at all on any non-arbitrariness criterion for "excusing" certain acts of interference. Rather, it stems from the way in which legislation, regulation, or state activity can affect which worlds are socially possible, relative to the actual world, and which not.

A remaining objection

An objector might concede that the conception of freedom as independence has a number of theoretical virtues, but still wonder how a political theory based on it differs from more ordinary liberal views that support constitutional safeguards for rights to liberty. Don't those views implicitly subscribe to freedom as independence

[55] For example, a conditional possibility operator might be interpreted in terms of a different accessibility relation between possible worlds than an unconditional one.

already, insofar as the constitutional safeguards to which they are committed are often associated with modally robust conceptions of freedom?[56]

Our response is that one must distinguish between the *conceptual analysis of freedom* and an overall *normative political theory*. We might well arrive at similar normative recommendations, regardless of whether we employ the conception of freedom as independence in building our normative theory or employ a traditional liberal conception, combined with appropriate constitutional safeguards. Yet, the choice among conceptions of freedom still matters. Since concepts are the building blocks of theories, the concepts that a theory employs make a difference to its overall quality, plausibility, and parsimony, especially to the way the theory *derives* its normative recommendations.[57] If our arguments are right, freedom as independence is a particularly useful theoretical building block in this regard.

Generally, we must keep the following two questions separate: (1) "What is freedom?" and (2) "What institutional set-up best promotes freedom (as well as other relevant political values)?" We have been concerned with question (1). Constitutional safeguards for rights to liberty, by contrast, will typically feature as part of an answer to question (2). Arguably, we can address that second question only after we have defined what freedom is. Therefore a theorist's defence of such constitutional safeguards by itself tells us nothing about the particular conception of freedom he or she subscribes to. For example, Dworkin and Rawls both defend constitutional rights to liberty, but hold different conceptions of freedom—namely ones in the top row of Table 1 above—neither of which coincides with freedom as independence.[58]

6. Conclusion

We have offered a map of the logical space in which prominent conceptions of social freedom are located, and defended a conception that, so far, has received insufficient attention. We hope to have shown that freedom as independence is superior to its liberal and republican rivals, and that adopting the "right" conception of freedom matters. Claims about restrictions of freedom, in the social realm, alert us to the existence of constraints on action that stand in need of justification; and this, in turn,

[56] We thank an anonymous reviewer and Rainer Forst for raising this question.
[57] An example of this can be found in the attack on Nozick's theory of justice in Cohen's article "Robert Nozick and Wilt Chamberlain," which prominently features a critique of Nozick's moralized notion of freedom.
[58] See Dworkin, *Sovereign Virtue*, and John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

is of moral and political significance.[59] The conceptual prism of freedom as independence allows us to capture precisely those constraints, while remaining broadly in line with how freedom is ordinarily understood.

[59] See Miller, "Constraints on Freedom," and Benn and Weinstein, "Being Free to Act, and Being a Free Man."