

A Dialogue on Republicanism

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in: *Revue de Philosophie Économique*, (forthcoming 2021)

Abstract

Two interlocutors, Philip Pettit and a student, are exchanging views on liberal political and economic philosophy during lunch at Prospect House, the faculty club of Princeton. The dialogue begins with clarifications of the notion of liberty, and, against objections of the student, Pettit introduces and defends his own conception of freedom as non-domination rather than as non-interference. It proceeds with an exchange of arguments regarding the different kinds of institutional settings that entrench liberty and all the other things valued by humans. The interlocutors reach a preliminary consensus that in order to substantiate the republican ideal of freedom as non-domination in concrete institutional realities, two things are required: the establishment of a *mixed constitution* – so that no single, unconstrained body can exercise lawmaking and other government functions – as well as *eternal vigilance* on the part of the citizens. The second part of the dialogue deals with a major challenge to the republican political philosophy expressed by the student: the issue of *non-domination in markets*, which is diagnosed as an important *lacuna in republican thought*.

(Philip Pettit's views are drawn freely from his following publications: *Republicanism. A Theory of Freedom and Government*, Oxford: Oxford University Press, 1997; *A Theory of Freedom. From the Psychology to the Politics of Agency*, Cambridge: Polity Press, 2001; (with Geoffrey Brennan): *The Economy of Esteem: An Essay on Civil and Political Society*, Oxford: Oxford University Press, 2004; (with Christian List): *Group Agency: The Possibility, Design and Status of Corporate Agents*, Oxford: Oxford University Press, 2011; *On the People's Terms. A Republican Theory and Model of Democracy*, Cambridge: Cambridge University Press, 2012; *Just Freedom A Moral Compass for a Complex World*, New York and London: W.W. Norton, 2014. When Philip Pettit or the student are quoting or discussing views from other authors, then an endnote with the respective reference is provided.)

PETTIT: Are we heading for the Prospect House?

STUDENT: Yes, that would be nice. Is this the faculty club?

PETTIT: Yes, this is where Princeton faculty take their guests – there are not many options around really, so I have booked a table in the Garden Room there. I hope you will like it.

STUDENT: I am sure, I will.

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JOHN GOICURIA: Hello, I have your reservation. Lunch for two, is that right?

PETTIT: Yes, John. Thank you. Tell me, can we have by any chance the President's table? I think he is not on campus.

JOHN GOICURIA: Yes, sure. Here we are.

PETTIT: Thank you very much. You can take the seat overlooking the garden.

STUDENT: It is very nice here.

PETTIT: So, what have you been up to since you have arrived at Princeton?

STUDENT: I have had a look on the campus and went to the library. This has been quite impressive. Everything is very quiet here. And where there is not a lot of action, there is a lot of thinking.

PETTIT: And, have you been able to do a lot of thinking yourself?

STUDENT: I was mainly thinking about a performance that I happened to see in the theater, here on campus.

PETTIT: Which play did you see?

STUDENT: This was Henrik Ibsen's play *A Doll's House* and it was by a Danish group who staged it very close to the original production in late 1879, in the Royal Theater in Copenhagen. This was their claim at least.

PETTIT: The play took Denmark and Europe by storm by then and established Ibsen's enduring reputation as one of the world's great dramatists.

STUDENT: No wonder that it has been so successful since it raises many important questions.

PETTIT: Like any good piece of theater does, but I find it fascinating for the question it raises about the meaning of freedom in particular.

STUDENT: I guess you mean with respect to the relationship between the protagonists in the play, Torvald, this young and successful banker, and his wife Nora.

PETTIT: Under nineteenth-century law Torvald has enormous power over how his wife can act, but he dotes on her and denies her nothing – nothing, at least, within the accepted parameters of life as a banker's wife. True, he bans the macarons for which she has a particular taste. But even that denial is not much of a restriction, since she can hide the macarons in her skirts. When it comes to the ordinary doings of everyday life, then, Nora has *carte blanche*. She has all the latitude that a woman in late nineteenth-century Europe could have wished for.

STUDENT: So, Nora enjoys many benefits that anyone might envy.

PETTIT: But does she enjoy freedom? In particular, does she enjoy freedom in her relationship with Torvald?

STUDENT: His hands-off treatment means that he does not interfere with her, as political philosophers say.

PETTIT: He does not put any prohibitions or penalties in the way of her choices, nor does he manipulate or deceive her in her exercise of those choices. But is this enough to allow us to think of Nora as a free agent?

STUDENT: If freedom consists in noninterference, as a series of philosophers hold, we must say that it is.

PETTIT: But I suspect that like me, you will balk at this judgment. You will think that Nora lives under Torvald's thumb. She is the doll in the doll's house, not a free woman.

STUDENT: I am not sure whether I would balk at this judgment. It all depends on the conception of freedom that one is willing to adopt.

PETTIT: My own conception of freedom as a person requires more than just being let alone, just benefiting from noninterference; it requires richer assets than any that Nora enjoys. To be a free person you must have the capacity to make certain central choices – choices about what religion to practice, whether to speak your mind, who to associate with, and so on – without having to seek the permission of another. You must be able to exercise such basic or fundamental liberties, as they are usually called, without having to answer any master or *dominus* in your life.

STUDENT: I think this juxtaposition to slavery is very helpful. Man, or at least European man, seems to enter history divided into free and unfree.

PETTIT: Freedom in this sense requires the absence not just of interference, but of the subjection to another that was known at the time of the Roman republic as *dominatio* or domination¹. The absence of interference that Nora enjoys is not enough for freedom in this sense, since it only comes about by Torvald's grace and favor. In order to enjoy freedom you must have the ability to avoid interference even if others take against you, and this is precisely what Nora lacks. If Torvald took against her and withdrew his goodwill, then she would no longer enjoy noninterference at his hands. Thus, as things stand, she is indebted to him for the latitude of choice that she enjoys. She is subject to his will, by virtue of his legal and cultural power, and it is only her good fortune, not the status of being a free woman, that explains why she escapes his intrusion in her life. What Nora needs, if she is to be truly free, is not just the absence of interference, then, but the absence of domination: that is, the absence of subjection to the will of others, in particular Torvald's will.

STUDENT: Kant had already clearly seen this when he noted: "Find himself in what condition he will, the human being is dependent on many external things [...]. But what is harder and more unnatural than this yoke of necessity is the subjection of one human

being under the will of another. No misfortune can be more terrifying to one who is accustomed to freedom."²

PETTIT: This tradition can be traced back at least to the *liber* of Roman thought, rather than to Kant. The *liber* was someone who lived in his own domain – the masculine form fits with the habits of the time – on terms that he himself set. Within that domination he lived *sui juris*, as it was put in Roman law, 'under his own jurisdiction'. He did not operate in *potestate domini*, 'in the power of a master', and he did not have to make his choices *cum permissu*, 'with permission'. He could act without fear or deference, being protected and empowered in relation to others, and even in relation to the very law that helped establish his position.

STUDENT: So, your conception of freedom goes back to the Roman times. It does not lay any claim to novelty then?

PETTIT: My general stance is that the existence of a historical pedigree for an approach taken in political philosophy is bound to give the approach more intellectual plausibility. How likely is it, after all, that any one of us would discover afresh a wholly novel idea for political life?

STUDENT: The distinction made popular by Isaiah Berlin between negative and positive liberty is very helpful in this context. "I am normally said to be free to the degree to which no man or body of men interferes with my activity. [...] If I am prevented by others from doing what I could otherwise do, I am to that degree unfree; and if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved"³. This notion of negative freedom conceptualizes liberty as non-interference. Berlin thought that "whatever the principle in terms of which the area of non-interference is to be drawn, whether it is that of natural law or natural rights, or of utility, or the pronouncements of a categorical imperative, or the sanctity of the social contract, or any other concept which men have sought to clarify and justify their convictions, liberty in this sense means liberty from; absence of interference beyond the shifting, but always recognizable, frontier"⁴.

"The 'positive' sense of the word 'liberty' derives from the wish on the part of the individual to be his own master", according to Berlin: "I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other men's acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside"⁵.

PETTIT: Although Berlin's distinction between positive and negative liberty is useful, my point is that non-domination and non-interference are distinct issues, and that liberty as an ideal in politics should be understood as non-domination.

STUDENT: Nora's example was supposed to show this, I know, but there are many more meanings of "liberty" that have entered moral and political philosophy over the centuries.

PETTIT: Yes, of course, there are – nobody denies that.

STUDENT: "Inner freedom" is a very popular notion. The concept of "inner liberty" has been juxtaposed to liberty in the sense of absence of coercion by the medieval Scholastics for example. They have distinguished between *libertas a necessitate* and *libertas a coactione*.

PETTIT: "Inner freedom" normally refers to the extent to which a person is guided in his actions not by passions, desires or momentary impulses, but by his considered will. By his intellect or reason which can oversee the emotions, tame the passions and overcome his moral or intellectual weakness.

STUDENT: This kind of rational control of the soul has certainly been important in many ethical writings – its immediate appeal rests on a fundamentally simple and erroneous psychological view: on the one side is reason, sitting on its throne, on the other the passions, always contesting it. When the throne is usurped, "inner freedom" is endangered; when the counter-revolution of reason succeeds, the warm deontological security of "inner freedom" establishes itself again. The soul is the scene of a theatre that stages a fascinating, but in principle simple play.

But "inner freedom" has also served as the title of another, similar, but different play. When there are forces beyond my control, forces in my natural and social environment that is, which surpass me and which can crush me without me having any chance to react – what can I do then? I can only turn to inner emigration. I might be a slave, as Epictetus was, and still feel free, because I have been able to liberate myself from my desires that I know I cannot realize – by entirely eliminating them or at least entirely control them: "τῶν ὄντων τὰ μὲν ἐστὶν ἐφ' ἡμῖν, τὰ δὲ οὐκ ἐφ' ἡμῖν. ἐφ' ἡμῖν μὲν ὑπόληψις, ὀρμή, ὄρεξις, ἔκκλισις καὶ ἐνὶ λόγῳ ὅσα ἡμέτερα ἔργα: οὐκ ἐφ' ἡμῖν δὲ τὸ σῶμα, ἡ κτῆσις, δόξαι, ἀρχαὶ καὶ ἐνὶ λόγῳ ὅσα οὐχ ἡμέτερα ἔργα. καὶ τὰ μὲν ἐφ' ἡμῖν ἐστὶ φύσει ἐλεύθερα, ἀκόλυτα, ἀπαραπόδιστα, τὰ δὲ οὐκ ἐφ' ἡμῖν ἀσθενῆ, δοῦλα, κωλυτά, ἀλλότρια."⁶

PETTIT: One could label this play, following Berlin, "the retreat to the inner citadel". But even this notion of inner freedom is not a useful one for the purposes of establishing a free polity.

STUDENT: Let us agree, then, that "inner freedom" is not the ideal according to which the institutions of a polity should be designed.

PETTIT: Yes, this concept cannot serve as a useful ideal for *political* praxis.

STUDENT: Another meaning of liberty that is often prevailing in philosophical discussions is liberty as the power to satisfy our wishes or the extent of the options among which you can choose. In these discussions liberty is conceptualized very close to power to enact whatever wishes or preferences you have. It can also be phrased in a choice-theoretic framework, as having the ability – using the necessary personal, natural and social resources – to choose whichever option you value most. This freedom comes close to omnipotence, I think, and is certainly distinct from "absence of coercion from other men", which is the only feasible ideal in politics.

PETTIT: Although I am in agreement with you that freedom is recognizably different from omnipotence, I would not reject the choice-theoretic framework as a useful guide to construct a workable political philosophy of freedom. Here is a formula that might be acceptable to you: You enjoy freedom of choice between certain options to the extent

that: 1. you have the room and the resources to enact the option you prefer, 2. whatever your own preferences over those options, and 3. whatever the preference of any other as to how you should choose.

STUDENT: I think it is prudent to restrict the usage of the concept of liberty for the purposes of political philosophy to the influences on human action that come from other men. Your proposal seems to be close to Russell's definition rephrased in a choice-theoretic framework: "Freedom in general may be defined as the absence of obstacles to the realization of desires. Complete freedom is thus only possible for omnipotence"⁷.

PETTIT: This is a primitive mistake that you accuse me of doing – I would never hold such a definition as defensible, of course! Neither has been a charitable interpretation of Russell; he had distinguished between "political liberty as one species of a genus" from "freedom in general" that you have quoted. The core of the matter is domination as I was telling you before, and domination can be fruitfully connected to choice, I suggest. Insofar, let me gloss it otherwise, so that the relationship of domination becomes crystal clear: Someone has dominating power over another, someone dominates or subjugates another, to the extent that 1. one has the capacity to interfere 2. on an arbitrary basis 3. in certain choices that the other is in a position to make.

STUDENT: I would certainly not oppose this clarification as long as freedom is kept distinct from power, or even more, omnipotence.

PETTIT: Let us agree that freedom and power are not to be used interchangeably, as long as we consent to use freedom as the absence of the capacity of a second or third party to interfere arbitrarily on certain choices that one is in a position to make.

STUDENT: Be that as it may, as long as we consent that we do not want to honor positions like that of Dewey that "liberty is power, effective power to do specific things" and that the "demand of liberty is the demand for power"⁸.

PETTIT: There is a connection between liberty and power, I would not deny this, but the issue is much more complicated than Dewey seems to suggest.

STUDENT: My fear is that if freedom is understood as power, then this would inevitably lead to the identification of liberty with wealth. Any kind and extent of wealth redistribution by a political authority can then be justified on the grounds that it increases liberty. But even though wealth and liberty can be both desirable, they are nevertheless different. I can be a poor peasant, but still a free man. And I can be a wealthy courtier living in the lap of luxury, but still a servant.⁹

PETTIT: If you are impoverished – if you lack the resources to function adequately in your society¹⁰ – then you are likely to live in fear of how the rich and powerful will treat you, should you speak your mind frankly or exercise no caution about whom you associate with.

STUDENT: Yes, if you are poor, you are likely to live in fear of how the rich and powerful will treat you, but it is important to recognize "that we may be free and yet miserable. Liberty does not mean all good things or the absence of all evils. It is true that to be free may mean freedom to starve, to make costly mistakes, or to run mortal risks", as Hayek stressed.¹¹

PETTIT: Freedom as non-domination is not the only good in life, of course. But it is a gateway good, as we might put it: a good whose realization promises to bring the realization of other goods in its train. If we look after freedom as non-domination in the context of domestic regulation and government, guarding against people's dependency on others in areas of properly personal choice, then we will also have to look after goods such as social, medical, and judicial security, domestic and workplace respect, and, more generally, a functioning legal and economic order. If we pay the admission price for freedom, then we will have paid enough to ensure access to those other more specific values as well.

STUDENT: Let me recapitulate. You put a lot of emphasis on the definition of liberty as non-domination rather than as non-interference, accusing many authors in the liberal tradition that they impermissibly failed to honor this distinction. Trying to structure our discussion on the proper definition of liberty, I suggested to follow the useful distinction between negative and positive liberty, popularized by Isaiah Berlin. We have then

discussed and rejected the concept of "inner liberty" as a useful ideal for the purposes of political philosophy. We then seemed to agree that equating freedom with power or omnipotence would be inappropriate. Finally, I suggested that freedom and wealth be used in distinctive way and at this point, I feel that a disagreement between us is starting smoothly to take shape.

PETTIT: Because I want to grant freedom the status of a gateway good, as I said.

STUDENT: You certainly need argue further in order to convince me on that. Please allow me to quote again Berlin on that: "Liberty is not the only goal of men. I can, like the Russian critic Belinsky, say that if others are to be deprived of it – if my brothers are to remain in poverty, squalor and chains – then I do not want it for myself, I reject it with both hands and infinitely prefer to share their fate. But nothing is gained by a confusion of terms. To avoid glaring inequality or widespread misery I am ready to sacrifice some, or all, of my freedom: I may do so willingly and freely; but it is freedom that I am giving up for the sake of justice or equality or the love of my fellow men. I should be guilt-stricken and rightly so, if I were not, in some circumstances, ready to make this sacrifice. But a sacrifice is not an increase in what is being sacrificed, namely freedom, however great the moral need or the compensation for it. Everything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience."¹²

PETTIT: I disagree. I do not deny the existence of a variety of values, of course. Nor am I a defender of a confusion of terms. But I want to argue that the conception of freedom as non-domination allows us to see at least all issues of justice as issues, ultimately, of what freedom demands: what it demands in our social relations with one another, in our political relations to our government, and in the relations between the different societies on earth. I want to build an overall political philosophy on the foundation of freedom as non-domination and I think that this has natural ecumenical attractions. John Keats wrote, with some licence, that the sum of all required knowledge – all we know and all we need to know – is contained in the line "Beauty is truth, truth beauty". My refrain to put it in somewhat embarrassing parallel, is "Justice is freedom, freedom justice".

STUDENT: Listen, it seems that we have now really reached the point that many philosophical exchanges reach: we disagree on the appropriate use of terms. When such a point is reached, I find that a conceptual analysis would be a sterile enterprise: what would we gain, if we would proceed with a further analysis of the concept of liberty and the other concepts used in political life, like justice, prosperity, equality or fairness?

PETTIT: Conceptual clarity.

STUDENT: If this were feasible. But how much further should we pursue the struggle with the meaning of terms, even if they are so important, given their many uses in different contexts and in different historical epochs?

PETTIT: What is freedom? What is justice? – answering these kinds of questions has traditionally been considered as the central task of philosophy.

STUDENT: In order for the results of philosophy to become substantial and important, one should stop asking "What is X?"- questions altogether or at least whenever a stubborn disagreement emerges, as in our case. This is the radical path that I favor. For, what kind of answers can we get when we ask such a question? We cannot get to the essences of things. We cannot provide necessary and sufficient conditions of the respective concept, either. And the descriptions of the use of the respective concept in different contexts will just give us some information about the meaning of "X", quite a trivial result really. So, here is my suggestion: instead of debating further on the meaning of "freedom", let us turn to an analysis and evaluation of different kinds of institutional settings that entrench liberty and all the other things that humans value.

PETTIT: Providing answers to "What is X?" questions will always remain an important philosophical task, I think. If philosophers will not care for conceptual clarity, whom do we expect to care about this task? But I want to honor your concerns and take up your suggestion; we can turn our attention to the institutional reality now. Freedom as non-domination is an institutional reality in the sense that it is constituted, not caused to exist, by the institutional arrangements that put it in place.

Remember the argument, eg in *Just Freedom*, that because of the context-sensitive nature of the usage of 'is free', there is no semantically right account; and that as between different accounts that stay reasonably faithful to usage, the choice is to be made on the basis of reflective equilibrium.

STUDENT: What exactly do you have in mind? Do not institutions relate in a standard cause-effect fashion to the non-domination that they help to bring about?

PETTIT: No. Institutions will constitute, or help to constitute, the very non-domination which citizens enjoy under them. In other words non-domination comes into existence simultaneously with the appearance of the appropriate institutions; it represents the reality of those institutions in the person of the individual.

STUDENT: This sounds a bit mysterious to me...

PETTIT: The presence of certain antibodies in your blood makes it the case that you are immune to a certain disease, but it does not cause your immunity, as if the immunity were something separate on which we had to wait; the presence of those antibodies constitutes the immunity, as we say. By analogy, the presence in the polity of such and such empowering and protective arrangements makes it the case that you are more or less immune to arbitrary interference, but it does not cause that immunity; it constitutes it. To be immune to a certain disease is to have antibodies in your blood – maybe these, maybe those – which prevent the development of the relevant virus. The presence of the antibodies represents a way of realizing the immunity; it is not something that causally leads to it. To be immune to arbitrary interference, to enjoy non-domination, is to have inhibitors present in your society – maybe these, maybe those – which prevent arbitrary interference in your life and affairs. And the presence of suitable inhibitors – suitable institutions and arrangements – represents a way of realizing your non-domination; it is not something that leads by a causal path to that non-domination.

STUDENT: But if freedom as non-domination is an institutional reality in the sense that you explained, this is an ominous feature really. If freedom is conceived of as something that the state constitutes or helps to constitute, then how can it represent a criterion by which the state can be judged?

PETTIT: That is nonsense. Freedom as non-domination is an institutional reality in the sense that it is constituted, not caused to exist, by the institutional arrangements that put it in place. But we can still compare the freedom as non-domination that different sets of institutions may constitute, and we can still find that one set does better than the other in respect of such freedom: we can do this in just the way as we could compare the kinds and levels of immunity against a certain disease that different sorts of antibody might conceivably provide.

STUDENT: Let me grant for the moment that the relationship is constitutive rather than causal, although, frankly, I do not expect that anything substantial hinges on that. The more important question is why pursuing the value of freedom as non-domination should be a political concern for the state to advance. Even if you accused me of speaking nonsense a minute ago, I still regard you as a friend. We all know that friendship is a great value in human life, but none of us believes that the state should give itself the task of furthering friendship. Why is freedom as non-domination different in this respect?

PETTIT: Unlike friendship, freedom satisfies two crucial conditions, one negative, the other positive. It is not something that individuals can satisfactorily pursue by private, decentralized means and it is something that the state is able to pursue fairly effectively.

STUDENT: The fulfillment of the negative condition seems pretty obvious. In a situation where exclusively individuals relying on their own private efforts strive for non-domination the outcome will be likely a very unequal distribution of non-domination. People will have to devote their skills and energy either in productive activities or in defending themselves from the domination of others. Such a situation would be less desirable to every individual vis à vis the situation in which a constitutional authority undertakes the task of protecting all individuals from the blind exertion of a strategy of reciprocal power. A minimal constitutional provision of establishing a third party entrusted with the enforcement of some rules of peaceful coexistence will be in the interest of every individual in a society¹³.

PETTIT: Yes, political theory has convincingly shown this, I think – in effect that anarchy is neither a desirable nor a viable option.

STUDENT: The question remains whether the state is able to pursue non-domination effectively. The fundamental doubt of political theory is: *Quis custodiet custodes?* Who will guard against the guardians?

PETTIT: This doubt can be mitigated, if not completely extinguished, when the state follows the republican ideal of acting as the undominating defender of its citizens' freedom as non-domination.

STUDENT: And how can this be accomplished? Experience teaches us that a government and state continuously fail to be satisfactory.

PETTIT: There are three ways in which a government and state fail to be satisfactory¹⁴. It might fail to operate impartially by systematically favouring members of a particular grouping, like a family or tribe. It might operate impartially but fail to operate according to established, stable rules in decision-making; that is it might be ad hoc or capricious, rather than constitutional. Or it might operate impartially and constitutionally, but fail to accommodate to its subjects. The first danger introduces partial, as distinct from impartial, rule; the second particularistic rule, as distinct from constitutional rule – the rule of law; and the third paternalistic rule, rather than accountable rule. Now, the republicanism that I propose, endorses the mixture of the mixed constitution meant to ensure *impartial* rule, the constitutionalism of the mixed constitution meant to ensure *constitutional* rule and it encourages the contestatory character of the citizenry to ensure *accountable* rule.

STUDENT: Let us work through these provisos which are supposed to ensure freedom as non-domination in a republican polity. When we say that the republic is to secure freedom of its citizens by satisfying a range of constitutional constraints associated broadly with the mixed constitution, which constraints do we refer to?

PETTIT: The mixed constitution was meant to guarantee a rule of law – a constitutional order – under which each citizen would be equal with others and a separation and sharing of powers – a mixed order – that would deny control over the law to any one individual or body. Polybius was a Greek who spent many years in Rome, first as a hostage and then as a willing visitor who wrote in the middle of the second century BCE an extended

history of Rome that highlighted what he saw as the glory of the Roman republic. Rome gave citizens freedom in relation to the power or *dominium* of private masters insofar as the law afforded equal and adequate protection for each. And Rome gave citizens freedom in relation to the law itself – to the public power or imperium at the origin of law – insofar as it ensured that the law reflected the shared wishes of the citizenry.

Polybius was particularly effusive about the control over the shaping of law that the Roman constitution gave the citizenry. The power to form, enact and administer Roman law was put in the hands of mutually checking, popularly representative bodies and officials. This power materialized in an arrangement Polybius called a mixed constitution. The arrangement was constitutional insofar as public, impartial law governed it; and it was mixed insofar as it gave power to all sectors of society.

STUDENT: However, "isonomia", that is equality of laws to all manner of persons was an ideal already known and strived for in Ancient Athens. Solon established isonomia in Athens when he gave the people the certainty of being governed according to known rules. What Solon did was to enact the set of rules as instructions to the officials in order to control their administrative action. The major step was to treat the officials as the servants of the law, which was written and publicly accessible by all and was no longer bound to an unwritten tradition but superseded it. This established the operation of the Greek conception of the rule of law, implicitly founded a constitutional scheme based on its sovereignty and effectively constrained officials and their decisions.¹⁵

PETTIT: Be that as it may, the main figure in Renaissance Republicanism was surely Niccolò Machiavelli who in his *Discourses on Livy*, published in 1531, like earlier Roman authors, hailed civic freedom, the freedom as non-domination enjoyed by the citizens of a republic, as the signature ideal. He argued in particular for a constitution that allowed ordinary citizens to contest government in the way the Roman plebeians had continually contested the proposals and decisions of their rulers, whether in popular elections or demonstrations, via their tribunes or in the courts. And republican ideas were incorporated into the enormously influential work of Baron de Montesquieu on *The Spirit of Laws* (1748) and were more or less common property to the Whig establishment in eighteenth-century Britain.

STUDENT: I know, there is a glorious history to this set of ideas, and I can see how the appropriate constitutional provisions can secure freedom. Government must be carried out by means of an empire of law; the powers recognized under that law must be dispersed across different individuals and bodies; and the more basic and important laws must not be subject to straightforward majoritarian amendment. But still, however well designed any system of law will leave considerable power in the hands of officials, be it judges, members of parliaments or of the executive. How is it possible to rule out decision-making on an arbitrary basis among legislators, administrators and judges?

PETTIT: There are two immediate answers to your question, an influential, but wrong one and a less popular, but correct one.

STUDENT: Let me guess the most influential one: consent.

PETTIT: Exactly.

STUDENT: There is a long tradition arguing in favor of consent, explicit or implicit, as the main means of securing non-arbitrariness in politics¹⁶.

PETTIT: If explicit individual consent is required for non-arbitrariness, especially if the consent has to be unforced, then non-arbitrariness in public decisions becomes an inaccessible ideal. If implicit individual consent is thought to be enough, however, and an absence or protest is taken as evidence of implicit consent, then non-arbitrariness in public decisions becomes an ideal that is so accessible as to be empty: any decision that fails to drive me to the barricades will count as non-arbitrary from my point of view.

STUDENT: David Hume has given the definite counterargument to implicit or tacit consent in his *Of the Original Contract*:

"Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a *tacit* consent to his authority, and promised his obedience; it may be answered that such an implicit consent can only have place, where a man imagines, that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a

certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims.

Can we seriously say, that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign languages or manners, and lives from day to day, by the small wages he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her"¹⁷.

PETTIT: Very nice!

STUDENT: So, if consent will not do, what is the alternative?

PETTIT: Contestability. What is required for non-arbitrariness in the exercise of a certain power is not actual consent to that sort of power but the permanent possibility of effectively contesting it.

STUDENT: Is this your answer to the question what makes it possible for a public decision not to have the aspect of an arbitrary act of interference?

PETTIT: Yes. The public decision may materialize, like most public decisions, on a basis that is consensual only in a vanishingly weak sense. That does not matter, provided that it materializes under a dispensation of effective contestability. The non-arbitrariness of public decisions comes of their meeting, not the condition of having originated or emerged according to some consensual process, but the condition of being such that if they conflict with the perceived interests and ideas of the citizens, then the citizens can effectively contest them. What matters is not the historical origin of the decisions in some form of consent, but their modal or counterfactual responsiveness to the possibility of contestation.

STUDENT: The issue is, of course: how can contestation be effectively institutionalized in a polity?

PETTIT: The contestability of public decision-making can be institutionalized within an appropriately designed democracy.

STUDENT: But democracy is normally connected with consent. It is normally connected, that is, with the popular election of the personnel in government.

PETTIT: My suggestion is that democracy be understood on a model that is primarily contestatory rather than consensual. On this model, a government will be democratic, a government will represent a form of rule that is controlled by the people, to the extent that the people individually and collectively enjoy a permanent possibility of contesting what government decides¹⁸.

STUDENT: This needs elaboration – it is not clear to me.

PETTIT: Consider an analogy. Whatever existentialists may have thought, individual autonomy or self-rule cannot conceivably require that people should have considered and endorsed each of their particular beliefs and desires in a historical process of self-construction; if it did, then no one would be autonomous. What it requires, more plausibly, is that people are capable of exposing each of their beliefs and desires to appropriate tests, especially in the event of problems arising, and whether or not they maintain such a commitment depends on how it fares in the tests. The index of individual autonomy is modal or counterfactual, not historical. People are autonomous in virtue of what can be – in virtue of what they can do in checking their beliefs and desires – not in virtue of what has been: not in virtue of a record of self-checking and self-construction.

Democracy refers us, at least etymologically, to the self-rule of the people. And as individual self-rule or autonomy can be modelled in a modal rather than a historical way, so plausibly can the self-rule of a people be modelled in that way. The self-ruling individual may run on automatic pilot much of the time, acting on beliefs and desires that originate in forgotten times and pressures. What makes them self-ruling is the fact that they are never just the victim of those beliefs and desires: they are able to examine them at will and, depending on how the examination goes, able to maintain or amend them. By analogy, the self-ruling demos or people may also often run on automatic pilot, allowing public decision-making to materialize under more or less unexamined routines. What makes them self-ruling or democratic is the fact that they are not exposed willy-nilly to that pattern of decision-making: they are able to contest decisions at will and, if the

contestation establishes a mismatch with their relevant interests or opinions, able to force an amendment.

STUDENT: This is an interesting analogy, but you remain vague on what exactly democratic contestability requires in order to be institutionally embedded.

PETTIT: In order for public decision-making to be contestable, there are at least three general preconditions that have to be satisfied. The first is that decision-making is conducted in such a way that there is a potential basis for contestation. The second is that not only is there a potential basis for contestation, there is also a channel or voice available by which decisions may be contested. And the third is that not only is there a basis and a channel for contestation, there is a suitable forum in existence for hearing contestations: a forum where the validity of the claim is assessed and a suitable response determined.

STUDENT: So, I suppose the requirement of the existence of a suitable forum for hearing contestations goes hand in hand with debate-based decision making as it is envisioned by a series of contemporary democratic theorists favoring a model of deliberative democracy.

PETTIT: Exactly. In concrete terms, it would mean that at every site of decision-making, legislative, administrative, and judicial, there are procedures in place which identify the considerations relevant to the decision, thereby enabling citizens to raise the question as to whether they are the appropriate considerations to play that role. And it would mean that there are procedures in place which enable citizens to make a judgment on whether the relevant considerations actually determined the outcome: the decisions must be made under transparency, under threat of scrutiny, under freedom of information, and so on.

STUDENT: This ideal of deliberative decision making seems to make contact with the ideal of a "republic of reasons" that Cass Sunstein finds in the American founders and defends in his own right¹⁹.

PETTIT: Yes, according to Sunstein the traditional republican vision, in particular the vision which inspired Americans in the eighteenth century is that of a polity within which

citizens have equal claims and powers, public matters are decided by deliberation on the basis of considerations that have common appeal – they are not biased in favor of any group, or even in favor of the status quo – and agreement serves as a regulative ideal as to how things should be decided; the vision in a word is that of a deliberative democracy. And I want to mention also the arguments of my friend Quentin Skinner to the effect that one of the central themes of the classical and Renaissance humanism in which republican ideas were nurtured was a belief in dialogical reason: "our watchword ought to be *audi alteram partem*, always listen to the other side"²⁰.

STUDENT: And do you have a criterion with the help of which your whole approach is made more operational?

PETTIT: In what sense?

STUDENT: In the sense of having a yardstick at hand with the help of which I can decide whether a concrete institutional reality is close to the republican ideal or not? In other words, how much in the way of protection, infrastructure and insurance ought to be provided by the government in order for people to enjoy freedom as non-domination?

PETTIT: In seeking a more concrete version of the prescription I propose that we should take as a guiding heuristic the image of the *liber*, or 'free person', in the republican tradition. The picture claims to represent a status in which people can all enjoy freedom of choice fully, and yet also enjoy it equally.

STUDENT: This is a vague answer!

PETTIT: No, it is an approximate answer. And here is an answer which is even closer to the actual: the passing of the eyeball test. It requires that people should be resourced and protected in the basic choices of life – for short, the basic liberties – that they can look others in the eye without reason for fear or deference of the kind that a power of interference might inspire. When you enjoy social, medical, and judicial security, and benefit from a suitable legal and economic order, you do not depend for your security on the indulgence and condescension of others. You can walk tall and assume the status of an equal with the most powerful in land.

Suggestion: perhaps it would have been useful to introduce the basic liberties earlier: say, at the point I noted.

STUDENT: The point at which people count as equals in the enjoyment of freedom as non-domination is an absolute one, I suppose.

PETTIT: The eyeball test does not require that people should be able to look one another in the eye, regardless of their personal lack of nerve. It requires that they have this capacity in the absence of what would count, even by the most demanding standards of their society, as mere timidity or cowardice. The reference to the standards of their society is necessary since there is likely to be cultural variation in what counts as mere timidity rather than rational fear or deference. People are liable to vary across societies in the different levels of vulnerability to which they have become inured, in the probability that they assign to others becoming hostile, and in the levels of trust that they invest in one another. If there is cultural variation on this front, then it is clearly *local standards* that should provide the relevant benchmark for determining when fear or deference is irrational and when prudent; there is not going to be any universally valid alternative that might be invoked in their stead.

STUDENT: So, the republican ideal is culture relative in the end.

PETTIT: I am not a relativist, of course, but it is important to stress that the republican ideal is inherently dynamic and developmental.

STUDENT: Can you be more specific?

PETTIT: It is a commonplace that a higher performance in any domain tends to generate higher expectations and standards; as a community becomes generally more caring or polite or peaceable, we will raise our expectations and standards of care, politesse, and peacefulness. Suppose, then, that a society does better and better at achieving what counts at any time as enough to enable people to satisfy the eyeball test. As it does better in that respect, the local standards of what the test requires are likely to raise in tandem; as the society gives better protection to someone like Nora, for example, the standards for what counts as adequate protection are likely to lift in consequence. So while we embrace the

ideal in any period as a feasible and useful guide to policy, we need not think that it points us to a steady state – just around the corner, as it were – where there is nothing else to be done. The ideal is, as I said, inherently dynamic and developmental.

STUDENT: I doubt that an open-ended ideal of the kind you suggest can be very useful in the end. If the measure of goodness of institutions is itself changing in a non-predetermined manner, how can it play the very role of being a measure?

PETTIT: The republican ideal is dynamic, because there is never a final account available of what someone's interests are or of whether certain forms of interference – certain forms of state interference, in particular – are guided by ideas that they share. As people interact, and organize, and affirm certain identities – say, identities as women or workers or members of indigenous population – they are always liable to see what has been unquestioned, barely visible patterns in their relations with certain others as indices of a dominating relationship. As the notion of arbitrary power, ultimately the notion of domination, is developmental, so too is the complementary ideal of freedom as non-domination. The requirements of such freedom are not fixed once for all, as on tablets of stone. They are subject to constant reinterpretation and review as new interests and ideas emerge and materialize in the society.

STUDENT: I am not convinced, but let me pose another question now. In every regime, the government or at least the executive arm of government is likely to be enormously more powerful than any other individuals or bodies, having special access to the means of universal coercion. But if the government is the powerful party in the relationship between people and government, then how can we expect people to be able to contest the government *effectively*, as required by the republican ideal?

PETTIT: The experience of societies over the past couple of centuries, even perhaps before, shows that the control of the people over the state can be grounded in a disposition of people to rise up in the face of a government abuse of legitimacy and a disposition of government to back down in response to the fact or prospect of such opposition. This is the trump card that the people are always in a position to play, relying

on any of the various measures, violent and non-violent, direct or indirect, individual and collective, that can be used to resist a regime.

STUDENT: The experience of societies over the past couple of centuries shows the exact opposite: think of Stalin's Soviet Union, Mao's China and Kim's Korea.

PETTIT: Let me phrase it like this: to the extent that the possibility of popular, successful resistance is on the cards – to the extent even that it is on the cards as a matter of common belief – the influence of the people over government can be established on a robust basis and can constitute a real form of power.

STUDENT: I would challenge what you say, reminding you of Carl Schmitt's argument that even democratic governments fail the requirement. Even democratic governments are in a position to freely decide that a given case is a non-exceptional one where the rule of law applies or is an exceptional or emergency case where the rule of law is suspended. In his phrase: "Sovereign is he who decides on the exception."²¹

PETTIT: The difficulty posed by this observation is real but not overwhelming. The important point to see is that popular control of government is grounded in the actual or perceived potential for widespread resistance – people's presumptive power of rebellion.

STUDENT: I agree with what you say, insofar as you keep this to the normative domain: this is the precondition of the republical ideal to have a chance at all to materialize, but it is surely not empirically the case that this indeed materializes – in the vast majority of the historical cases, I'd dare say.

PETTIT: Be that as it may. Normatively at least I share the view of a series of authors on that point. John Locke embraced the importance of the possibility in arguing for the right of people to rise up against the government, should it not be fulfilling its allotted role: as he saw it, the role of being an impartial arbiter of disputes. In his view, as in my own view, the legitimacy of a government ultimately turns on whether 'the *Community* may be said in this respect to be *always the Supreme Power*'²². The people will have to be the supreme power in any polity that has a claim to legitimacy.

Adam Ferguson, a Scottish adherent of the eighteenth-century republican creed, gave the idea memorable expression in describing the requirement of liberty. The liberty of the British people, he suggests, may be manifest in the fact that laws are formulated under widely accessible influence and given a widely acceptable direction. But its grounding goes much deeper: 'it requires a fabric no less than the whole of political constitution of Great Britain, a spirit no less than the refractory and turbulent zeal of this fortunate people, to secure it'²³. This characteristically republican theme has a long history. It appears most dramatically in the idea championed in Machiavelli's *Discourses on Livy* that what enabled the citizenry of republican Rome to enjoy their freedom vis-à-vis the state was something that might appear at first sight to be a source of instability: the willingness of the plebeian poor to rise up against even the suspicion of an abuse or usurpation of power by the nobles. The price of liberty, in the hallowed republican slogan, is eternal vigilance.

STUDENT: The price of liberty is eternal vigilance.

PETTIT: So, in order to substantiate the republican ideal of freedom as non-domination in concrete institutional realities, the establishment of a *mixed constitution* is required - so that no single, unconstrained body can exercise lawmaking and other government functions - and *eternal democratic vigilance* on the part of the citizens.

STUDENT: The way that I normally think about this is in terms of formal and informal institutions and their interaction. The formal institutions as the political institutions enforced by the state can only effectively guide the behavior of the citizens while interacting with the informal institutions that the members of a society have come to adopt in a long evolutionary process of collective learning that no single mind can consciously design or direct. That is why the instantiation of the republican ideal has certainly been an exception in human history: the spontaneous evolutionary process of the emergence of informal institutions that would ensure eternal democratic vigilance is a historical exception.

PETTIT: It goes without saying that societies differ greatly to the extent to which the support of popular influence and control over government is available. It will be available

in a measure that reflects the extent to which two factors are in place and/or are taken as a matter of common belief to be in place: on the one side, the disposition of the people to resist perceived abuses of power by the government; and on the other, the disposition of those in government to be inhibited by the fact or the prospect of such resistance. These two factors determine how resistive a society is: how far, in reality and/or perception, the citizens are resistance-prone and the government resistance-averse.

STUDENT: One could address the relationship between formal and informal institutions in terms of a *self-enforcing constitution*²⁴. The institutional limits to state action laid down in the constitution require a sufficient number of citizens who are willing to support it. There is always a great range of opinions among citizens about the appropriate role of the state and what actions constitute a transgression of citizens' rights. The essence of the problem is the *coordination* of diverse opinions and the construction of a consensus about a set of state actions that trigger citizens' reactions. So, those constitutions that are constructed according to the principle of the rule of law need to be supported by the appropriate civic culture, one that both opposes government transgressions and polices the state in a coordinated manner²⁵. This is of tremendous importance for the maintenance of the rule of law.

PETTIT: If these observations are sound, then the main effect of a well-functioning democracy will be to make an infinite number of policies or processes unthinkable. The *demos* that keeps tabs and checks on government will mainly exercise *kratos*, not in causing this or that to be decided on, or to be decided on by this or that process, but in ensuring that a myriad of other policies and processes are never considered. They ride hard on the policies or decisions of those they elect, and on the decision-making processes whereby those policies are selected. They make sure that the authorities don't ever go off track and stand ready to blow the whistle – to make democratic trouble – if they do. It may have been this pattern that traditional republicans had in mind when endorsing the idea that the price of liberty is eternal vigilance: that is, on this interpretation, eternal democratic vigilance.

STUDENT: I find your republican conception admirable in its conceptual clarity and normative appeal. I would have been inclined to question a few aspects of it, if we were

in another context. But overlooking this beautiful garden on such a sunny day, my inclination towards consent is more likely to prevail...

PETTIT: Flattery is the opium to the successful. The trouble with most of us is that we would rather be ruined by praise than saved by criticism – as the saying goes.

STUDENT: I take it then as a challenge to be critical?

PETTIT: This is an invitation to offer prospects of improvement, not a provocation to exemplify your wit.

STUDENT: Why is freedom more important than justice, prosperity or efficiency? Or to phrase it differently and more systematically: I take it that you are a pluralist with respect to values, i.e. that you believe that there are many values that cannot be reduced to a single supervalue. If this is the case, then on what grounds is freedom more important than other values in political life?

PETTIT: In arguing that the just state ought to promote equal freedom as non-domination amongst its citizens, the republican theory of justice does not suggest that freedom as non-domination is the only value that matters, as a utilitarian theory might argue that utility is the only relevant value. What it holds, however, is that if we look after the requirements of equal freedom as non-domination, then we will have looked after the requirements of many other values as well: for example the value of enjoying functioning capabilities. Freedom as non-domination is not the only value in politics, but it serves a gateway role: if we pay the price of securing freedom as non-domination in a suitable measure, we will have paid enough to secure social justice and political legitimacy.

STUDENT: You have stressed earlier the character of freedom as a gateway good, a good whose realization promises to bring the realization of other goods in its train. I acknowledge that there is a natural tendency of nearly all of us to believe that all things we value in life must be intimately connected or at least compatible with one another. This is probably a manifestation of a drive to avoid cognitive dissonance, a relatively solid finding of empirical psychology. If all values can in the end be reduced to one, then values can be neatly systematized as instruments to a single supervalue. Value monism

seems to enable a simple and elegant axiology and to help establish a well-ordered harmony of values, all in one way or another inferior or subservient to the highest value.

PETTIT: I am not a value monist, however, as you yourself mentioned before.

STUDENT: You are not, but you sound like one! If all conflicts between values are only apparent, as you seem to suggest, then value pluralism becomes a harmless position: all options for choice can be tidily arrayed according to how much of the central value, freedom as non-domination, they promote or respect. An evaluative choice would in the end be reduced to choice between two amounts of the central value. Practical rationality can still be exerted, of course, but in a faint way: tragic choices or moral and political dilemmas have been softened to near disappearance.

PETTIT: There is no contradiction between the claim that there are many values and the claim that one value is more important than the rest, playing the role of a gateway good. Besides, this thesis certainly cannot be classified as value monism, real or apparent.

STUDENT: Let me pose it in the following way: the value pluralism that you seem to defend is *reductive* value pluralism. Indeterminacy and genuine normative disagreement does not emerge or is kept to a minimum. But the interesting variation of the position of value pluralism is certainly *non-reductive* pluralism: values can be in conflict in an irreducible manner. Think of the decision making processes of an individual agent experiencing normative uncertainty. When a reflective agent attempts to choose between equally compelling, but conflicting and even apparently irreconcilable ends, what the agent typically confronts is the fundamental plurality and diversity of ends²⁶. The interesting feature of these cases is that indeterminacy is allowed with respect to what ought to be done, something that *ipso facto* underwrites the legitimacy of normative disagreement.

PETTIT: But this exactly fits my republican conception: it is a further, strong argument in favor of contestatory democracy as a method to come to terms with such cases of normative disagreement.

STUDENT: Not quite so! In the republican conception there is a clear limit to the scope of the application of the democratic method: the contestatory model deals only with the disagreement on how to entrench freedom as non-domination in the public institutions, and does not aim at enabling choices among diverse, possibly irreconcilable and in any case non-reductive values. In a real world setting, which is the setting of a non-reductive pluralism, a trade-off among these values must take place and reasonable choices must be made. To put it in yet other, simpler terms: there is nothing that guarantees that the establishment of liberty in a polity will necessarily lead to the emergence and prevalence of peace, prosperity, justice, efficiency or material equality.

PETTIT: Hold on! I admit that there is a lot of empirical work to be done in establishing the links between the entrenchment of liberty and the entrenchment of the other values. Let me repeat that my claim does not primarily concern ideal theory, but concrete institutional realities. If freedom as non-domination is constituted in the respective institutional reality along the lines that I have indicated before, then this concrete institutional reality will appeal to citizens also in many other ways.

STUDENT: I think that you are wrong on this. Citizens permanently evaluate institutional realities with respect to *different* values. And they choose an institutional reality over another not only according to one value. The fact that citizens choose to exit a country and go somewhere else, say when citizens of other countries choose to live in a country of the Western world as is currently the case, is because they judge institutional realities of the polities in the West as they constitute a long series of values to a greater or lesser degree: freedom, justice, security and prosperity. That all good things must be compatible with one another and therefore capable of being realized simultaneously is simply false. Have we not agreed before that ideals must be transformed into concrete alternatives if they are to be taken into serious consideration politically?

PETTIT: Yes, we have.

STUDENT: My point is that each and every political action represents an intervention in a structured social situation – there is, in other words, always an *institutional a priori* that characterizes these situations. This does not imply that social processes cannot be

influenced, of course, but there are unavoidable restrictions set by prior conditions on possible changes²⁷.

PETTIT: I do not deny this, of course.

STUDENT: I plead therefore for focusing even more on a comparative institutional approach rather than on a transcendental approach, as Sen somehow misleadingly called it²⁸, referring to Rawls's theory of justice²⁹. Instead of identifying a perfect societal arrangement, the ideal of republican polity in your case, and trying to work out institutional structures in order to come closer to this ideal, a comparative approach might indeed be preferable. To illustrate the contrast involved, it may well be that abolishing the rule in certain Islamic countries that women must always be escorted by men in the public domain, will yield an advancement of their liberty. The implementation of such a policy could still leave the society involved largely unfree, nevertheless. Would you deny this?

PETTIT: No. But...

STUDENT: Please allow me to go on.

PETTIT: Sure.

STUDENT: Now, the great advantage of a comparative approach is that it is compatible with accepting plural, non-reductive values and their entrenchment in institutional arrangements. Besides, the comparative approach encapsulates the requirements of critical reason. We always find ourselves in an institutional a priori whenever political praxis is required. In other words, the construction of alternative solutions always occurs in the context of already existing solutions, whereby one always has to acknowledge that the existing solutions themselves are already a product of cultural evolution. Every time that a solution to a new problem is required, it is to be borne in mind that a body of solutions to problems of the same or similar type already exists, which has arisen in an evolutionary process of collective learning. Depending on the problem in question, the available pool of solutions can make it easier or more difficult to find a solution. It defines, in any case, the specific problem-solving context for new problems. For the

political realm, this means that there are no presuppositionless solutions to problems, but that each and every political action is undertaken in a more or less strongly structured situation. The exertion of critical rationality in political praxis ensures that traditional solutions that have been handed down are not necessarily to be accepted; yet, it does not preclude that they perhaps best fulfill the accepted values and criteria, and given that they have stood the test of time they at times may very well be the best available solutions.

PETTIT: I agree, of course, with that and my republican conception of democracy endorses this view to a great degree. A central requirement of contestatory democracy is that many issues should be heard away from the tumult of popular discussion and away, even, from the theatre of parliamentary debate. In many cases, democracy requires recourse to the relative quiet of the parliamentary, cross-party committee, or the formal bureaucratic inquiry, or the standing appeals board, or the quasi-judicial tribunal, or the autonomous, professionalized body. This lesson has been learnt in relation to at least some issues: witness the independence usually enjoyed, for example, by central banks. But it has not been learned on nearly enough fronts, and a republican philosophy would call for a radical examination of current practice.

STUDENT: What you suggest is correct and important, but still limited to democratic procedures. I want to stress the general role of tradition of rules of conduct inherited to every generation from the past in the process of cultural evolution. Thus, we can always examine a part of the whole "only in terms of that whole which we cannot entirely reconstruct and the greater part of which we must accept unexamined"³⁰. Our criticism aiming at improvement of our rules can and must proceed within a given system of such rules. We can only reform parts of a given whole, but never entirely redesign it³¹. Critical reason is all that we avail of in order to improve our rules, although there are limits to it.

PETTIT: I disagree with that. For me, the notion of democracy has an important primacy. No text and no tradition is more important than the precipitates of the local democratic process. If the institutions that are selected under the development of that process are ruled out by reference to such an impersonal authority, then the polity is not effectively tracking people's interests and ideas. The claim that the democratic process is the last court of appeal, of course, has a very different resonance here from that which it might

have in populist circles; the process envisaged is essentially one of contestation, after all, not one that necessarily involves majority decision-making. There is no suggestion that the people in some collective incarnation, or via some collective representation, are voluntaristically supreme. Under the contestatory image, the democratic process is designed to let the requirements of reason materialize and impose themselves; it is not a process that gives any particular place to will.

STUDENT: I see that tradition is unimportant for you and that it is primarily the democratic process that lets the requirements of reason materialize and impose themselves, as you put it. But this is least convincing.

PETTIT: Well, tradition does play a role, but only within the conception of a contestatory democracy. The republican image, at least in the form it assumed in the English-speaking world, tended to lay great stress on the fact that certain laws were tried and tested over a long history of challenge: they were part of an ancient and venerable constitution of freedom. This emphasis on the attractions of well-tested, long-tested law makes sense in terms of my conception of democracy. For what is important under that conception is precisely that democracy provides an environment for the selection of laws which ensures that survivors are generally satisfactory; to the extent that survivors have proved capable of withstanding the contestations made against them, they may be presumed to answer to the interests and ideas of people at large. The main contrast between the conception of democracy in which the central notion is contestability and the standard, consent-centered conceptions is precisely that mine relies on a process of selection whereas those conceptions rely on a process of design.

STUDENT: Our views really differ at this point. When one stresses the importance of cultural evolution, as I do, concrete forms and ideals of political regimes, like your – dynamic – ideal republican polity, are integrated into a more global process of collective learning³². If we admit the fallibility of all our knowledge and institutions, then their advancement presupposes that we leave room for a continuous revision of our present ideals, the republican ideal included. Contestatory democracy is certainly not the last word in politics, nor can it legitimately lay claim to the primacy that you alluded to it³³.

PETTIT: I am a democrat through and through. The primacy of contestatory democracy is quasi-absolute in my view.

STUDENT: One of the dangers of adopting such a view is sliding into populism, of course. You have referred to it before, but seemed not to recognize the magnitude of this danger. When even the longest-tested solutions of ours in the form of the most general rules forming our constitutional culture - and possibly also embedded in written constitutions - are not to be accepted without question, but are set as an object of debate and decision by an ephemeral majority, populism not only knocks on the door, but is already sitting in the living-room. I do not want that the abolition of slavery, the prohibition of folter, universal suffrage or the equal treatment of men and women form part of a democratic agenda, even an ideal republican one.

PETTIT: Nobody wants this.

STUDENT: But your republican conception allows this. As it allows very deep interventions in the market process on the part of the government in order to secure all citizens functioning capabilities. For how can the goods that you wish to be granted to everybody in a republican polity, like social, medical and judicial security, even financial security, be provided by any other way as by heavy taxation? And...

PETTIT: But taxation is an essential aspect of any property system, distinguishing it from any sort of theft...

STUDENT: But the extent of taxation will be huge in order to sustain all these goods that the republican ideal requires.

PETTIT: But I haven't pleaded for strict material equality, but merely of equality of status, operationalized by the eyeball test, I remind you.

STUDENT: But in order to maintain the equality of status that you envision, the government has to be turned into a vast redistributonal machine with the known dangers. Is this what you wish for? Besides, and independently of the arguments that the theory of public choice has produced over the last fifty years questioning the efficiency of turning any impartial government into a redistributonal organization, the moral question remains

unanswered: why is it moral that a collective agent like a government takes away the property of the wealthier members of a society and give it to the poorer? Whenever you take something away from an individual using organized violence, you must have a good moral argument. What is *your* argument?

PETTIT: Suppose that you have fewer resources and protections than your neighbour and that we, acting for the state, have a choice between conferring more on you or conferring more on the neighbour; the choice may arise with providing services, delivering subsidies or imposing taxes. If we invest in the neighbour rather than investing in you, then we are likely to do relatively well less in guarding against domination, since you are in more danger of domination and so more likely to be in a position to benefit from the extra investment. And if we invest in the neighbour rather than investing in you, then we are likely to worsen the danger of domination in absolute terms, since the neighbour is more likely to be enabled by the extra investment to dominate you or others.

The first of these effects means that investing resources or protections in the better off has diminishing marginal productivity; as it targets the better and better off, it is less and less likely to be productive – that is, less and less likely to increase non-domination. And the second of the effects means that such investment also has increasing marginal counter-productivity – that is, more and more likely to increase domination. The effects combine to give us reason for thinking that if the state seeks to promote equal freedom as non-domination – that is, to make the status of free citizenship available to all – then it will be systematically programmed to reduce material inequalities in people's resources and protections.

STUDENT: I am very surprised that you are proposing such an argument! First of all, the case for the diminishing marginal productivity of every dollar of an investment (in any project) is an argument in terms of utilities in effect, and I thought that you are not a utilitarian! What you propose is essentially nothing else than an application of welfare economics of the old type, before its Paretian reformulation that is, to the issue at hand. Now, the issue at hand is non-domination, of course, and a further puzzle to me is how utility considerations are to be applied on non-domination, as if it were a regular "good". You kept repeating that it is the other way round: freedom as non-domination is the

gateway good, but now you suddenly seem to regard utility as the fundamental value – something that you consistently rejected during our conversation. Finally, and most importantly perhaps, you have phrased your argument in terms of a "state" undertaking some "investment". The pronouncement of such a fiction of an omniscient, omnipotent and good social planner of welfare economics by you was something that I could never expect. There is no such a thing and the functioning of a real polity has nothing to do with such dangerous fictions. There are always real human beings, politicians and administrators, who will do the redistribution, no fictional "state" engaging in "investments".

PETTIT: This is a harsh criticism that I do not accept! I am not a utilitarian and the marginal productivity argument is a general argument, applicable to a wide range of issues.

STUDENT: That you do not accept this critique of mine has to do, I think, with a specific view of yours on how politics and markets interrelate and on how markets work. It is certainly not the case that *any* kind of intervention in markets is plausible and defensible only because it harmonizes with your preferred republican ideal. The market is not an organization. Neither is it a simple mechanism merely aggregating individual preferences. This is a fundamentally erroneous picture conveyed by mainstream neoclassical microeconomic theory. Since the marginalist revolution, microeconomic theory has concentrated on economic decisions and acts of choice in order to explain exchange, prices and the allocation of resources. This neoclassical analysis, even in its current game-theoretic form³⁴, only partially explains real market occurrences, however. It fails to recognize or it unduly simplifies the central role of innovation and imitation processes, and, accordingly, innovative knowledge. Markets are arenas where knowledge creation and knowledge diffusion permanently occurs, along, of course, with the allocation of resources. And markets always work within an institutional framework.

PETTIT: That markets work within institutions is a trivial claim, of course. Nobody denies that!

STUDENT: The dominant research program of economics, the social science that is supposed to focus mainly on the functioning of markets, that is, neoclassical economics, does thoroughly neglect the role of rules in the market process! This abstraction from the institutional framework within which every exchange process takes place is justified by the proponents of the neoclassical research program by their conscious attempt to provide exact economic laws that are, in turn, supposed to explain how a society overcomes the ubiquitous phenomenon of scarcity. The market is mainly viewed as an allocating machine that solves the main problems of society, that is, what to produce, how, and for whom. The solution to these problems occurs simultaneously whenever agents, who are assumed to maximize their utility, exhaust all the exchange possibilities. This is formalized in the concept of a general equilibrium. In this model, no institutional analysis seems necessary mainly because the real-world social context is eliminated and thereby gives place to a pure "universum of commodities"³⁵.

PETTIT: Be that as it may, the main issue from a republican point of view is that markets - independently on whether they are the arenas of knowledge-creation and diffusion or of resource allocation or of both – can certainly very often serve to increase domination and this is something unacceptable for a republican.

STUDENT: This is certainly the case. But only if one endorses the view that markets always work within rules and that market competition is an evolutionary process, can the problem of domination in markets be appropriately treated. This is in fact a big lacuna in the republican tradition: there is a lack of an analysis of market exchange which is somehow supposed to "run" automatically and deliver all the good things that the political sphere requires from it. The market setting is, next to the political setting, the other major domain of social interaction which must be appropriately theorized upon and normatively appraised.

PETTIT: I agree.

STUDENT: The market is an arena where human creativity is exemplified, an open-ended process where novel solutions are permanently tried out. It is creative, diverse and unique individuals who, through variation, keep the market process going and factually

fuel selection. The market is not a means towards an accomplishment of any known ends. In this it crucially differs from an organization or corporate actor, that is, a group of individuals bound by some rules designed to achieve a common objective. An organization or corporate actor is a collective unit characterized by a set of procedural rules that define the coordination of the individual members who have pooled their resources for a joint purpose³⁶. A market, on the contrary, is the institutional embodiment of exchange relationships in which individuals engage themselves while following their own, diverse aims. The rules that structure these exchange relationships are fundamentally different from the rules that structure an organization, in being abstract, general and end-independent.

The market interaction of individuals gives rise to the spontaneous emergence of prices who can coordinate the millions of plans of market participants. The price system makes use of the knowledge of the members of the society more efficiently than any other known institutional arrangement. An efficient allocation of resources, that is an allocation of resources to the uses that are more urgently needed, is an important outcome of the functioning of a price system. An efficient outcome is not to be judged as such in comparison to any ideal, non-existent setting, but in comparison to real-world settings, for example, the central planning of economic activity organized by a socialist state. Besides, the market process also gives rise to new technologies that improve the productive methods of the given society and increases its prosperity. Finally, an inequality of income distribution is also an outcome of the functioning of markets, judged according to standards developed outside the market process itself.

But there is nothing automatic in markets generating knowledge coordination and knowledge creation in a manner which will lead to increased prosperity, allocational efficiency and the rest. This depends exclusively on the appropriate general rules being in place which will allow such knowledge-creation processes to unfold. The fundamental insight is that the same individuals with the same skills and motivations will interact to generate quite different aggregate outcomes under different sets of rules, something that will also effect the level of their individual well-being, of course³⁷.

PETTIT: So, everything hinges on the level of rules, the institutions – if I may interrupt your enthusiastic account of the market process!

STUDENT: Indeed. To repeat: there is no automatism, no iron economic law that will force market powers to coordinate the knowledge of market participants, allocate the resources according to the uses that are most urgent, foster innovation and increase productivity, and affect the material well-being of everyone in a predetermined manner. The historical experience of the central planning in socialist regimes in the 20th century has taught us that such rules can be established that market exchange disappears altogether or is limited to a minimum – "the black market". The historical experience of the 19th century has shown that rules that are permissive of cartels, trusts and permanent monopolies can lead to the vanishing of competition in the market – a development which leads to inefficient resource allocation, reduces innovative activity, decreases productivity...

PETTIT: ...and most important of all, allows a huge increase of private power for the wealthy individuals and corporations.

STUDENT: Exactly. Here lies according to my view the heart of the matter: what kind of institutions are to be consciously set or allowed to prevail so that *neither government power nor private power becomes excessive*. In a setting of a central economic planning the appropriation of power becomes in fact colossal: a group of people availing of the monopoly in the use of violence additionally avails of the power to impose on every member of a society its will about the choice of profession, employment and remuneration for the supplied labour. The increase of domination on the part of the government is immense in such a setting.

PETTIT: No doubt, the loss of individual freedom is huge in a socialist state where economic activity is centrally planned.

STUDENT: When the institutional framework of a market process is very permissive, however, an agglomeration of private economic power will be the result. Laissez-faire economic liberals consistently underestimate this danger, and believe that markets should be left entirely free, by which what they normally have in mind is that the legal

framework should systematically favor business interests. Now, entrepreneurs cause the endogenous transition of market structures in a process of creative destruction as Schumpeter pointedly described it³⁸. Competition is a process of "moves and responses"³⁹, an innovation-imitation process⁴⁰. The temporary creation of market power positions through innovation is a component of the competitive process, and short-run monopoly profits are important stimuli to innovation, without which the entire process would come to a standstill. Market competition leads, thus, to a permanent forming, shifting and erosion of market power⁴¹. However, market and competition are two distinct phenomena. There is no necessity that competition will always prevail in markets. The contrary is the case, as the historical record shows. And it took centuries to collectively learn that the institutional framework should be amended so that *competitive* markets emerge and are sustained – and private economic power thus effectively limited. Antitrust legislation was born, an important North American invention.

PETTIT: Which one do you have in mind?

STUDENT: Canada passed a Dominion antitrust statute in 1889, and the United States adopted the Sherman Act in 1890 which declared trusts illegal and outlawed monopolization of trade and attempts to monopolize. That the problem of combatting excessive economic power was the target of the new legislation is evident in the phrase of Senator Sherman expressed during the debate in the Senate before passing the Act named after him: "If we will not endure a king as a political power we should not endure a king over the production, transportation, and sale of any of the necessaries of life. If we would not submit to an emperor we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity"⁴².

The German history is especially illuminating for our case. The *Reichsgericht* (Royal Court) in its famous decision of February 4, 1897 has granted a permission to the "Sächsischer – Holzstofffabrikantenverband" to build a cartel. The court decided that the freedom to build a cartel was part of the freedom to form a contract – *Vertragsfreiheit* was judged to include *Kartellfreiheit*. This has led to the emergence of 385 cartels in 1905⁴³ and about 3000 in the year 1925⁴⁴. Germany had become the *Land der Kartelle* (the *Country of Cartels*), and it was only in 1958, after many years of public discussion

and under the influence of the Allies, that the first antitrust legislation was enacted in West Germany – the "Gesetz gegen Wettbewerbsbeschränkungen" (GWB).

PETTIT: This is very interesting.

STUDENT: The case of antitrust legislation exemplifies, I hope, the thrust of my argument. The passing of the Sherman Act in 1890, the decision of the *Reichsgericht* in 1897 and the passing of GWB in 1958 in Germany were all problem solving attempts of a local character. They were *local* decisions which have produced *global* outcomes in a long process, the most important being that nearly every country in the world today, with only a few exceptions, has antitrust laws. Introducing and changing such laws is a tedious process involving making two steps forward and one step back. If we want to judge as *reasonable* the choices of introducing the Sherman Act and the GWB juxtaposing these choices to the decision of the *Reichsgericht*, we have an exemplification of the *rationality of rules as they evolve*. What seemed like minor changes in the rules, have had a huge impact solving to a great degree the problem of private economic power by legally imposing on every market participant the discipline of competition. "[Die] Konkurrenz [ist] das großartigste und genialste Entmachtungsinstrument der Geschichte" was the verdict of Franz Böhm, the co-founder of the Freiburg School in Germany: "Competition is the most magnificent and most ingenious instrument of deprivation of power in history"⁴⁵.

PETTIT: Microsoft, Google and the other hugely influential corporations of the modern global markets must fear the sanctions of the antitrust laws for their anti-competitive practices. I agree. But, whom do they fear? Government agencies, national and supra-national, like the European Commission.

STUDENT: Imagine how different the global market would look like, if antitrust legislation were absent. And it is important to stress, of course, that this legislation covers a series of business practices like cartel-building, predatory pricing, monopolization etc. which intend to switch off competition. We are not talking about problems of fraud and corruption like, for example, the cases of Siemens or Volkswagen, which are solved by other, distinct, kinds of legislation. We see, thus, that the more general problem is the one

of keeping the *right equilibrium of public and private power*. The government is needed to enforce antitrust and the other kinds of economic legislation, so that the accumulation of private power - which is inevitable and desirable to a certain degree in an evolutionary market where innovations constantly take place - remains restricted. But government's power to set and sustain the institutional framework should also be limited. *The market is an arena of freedom* – this is something that is not always recognized and cannot be stressed enough. The crucial difference is that even when corporations become very wealthy and influential, they do not avail of the means and legitimacy to exert physical violence, at least not directly and systematically. Politics, on the contrary, is primarily the arena where groups of people lay claim to the legitimate use of physical force for themselves⁴⁶, so that freedom is *ipso facto* endangered more than in markets. When looking for the appropriate equilibrium between public and private power, this must always be kept in mind.

PETTIT: This is an important thought, though historically, of course, private economic power has been so huge that it could very well avail of means of production of violence applied to further increase of its influence: just think of the case of Belgian Congo, for example...

STUDENT: ... and the ruthless system of economic exploitation of the indigenous Congolese by Leopold's Congo Free State. There is nothing automatic in attaining the appropriate equilibrium between private and public power – this is what Congo and countless other historical examples show.

PETTIT: Eternal vigilance is required to keep accumulation of power limited and freedom as non-domination alive. And one should always keep in mind that although markets are hugely important in social life, people in the modern world mainly interact within organizations. An elaborate account of group agency is required to understand organizational behavior, something that I have been thinking about a lot lately.

STUDENT: Securing non-domination in organizations is also very important. I can see that it can take very different forms in economic organizations like corporations, political organizations like political parties or educational organizations like universities. But here,

as in all other social arenas, the general rules arranging social interaction within organizations will embed many different values, not only freedom, I think. The general point is that every given institutional arrangement will encapsulate the solutions to the problems that have emerged in the environment of social groups as they have evolved spontaneously in a long historical process. This institutional framework will be further amended by new decisions in a never ending process of the human endeavour to cope with new problems in a non-ergodic world. Our task cannot be to simply accept the given institutional framework, because it embeds the accumulated knowledge of the past, however. This would be a fatalistic stance. Why should we simply accept the outcomes of the process of cultural evolution?

PETTIT: We should not.

STUDENT: But then, what is at our disposal in our efforts to amend and improve them? Reason. But what we call "reason" or "rationality" comes through in the mind and in the institutions; it has an individual and a collective manifestation. The fundamental issue is that reason in its critical and constructive function evolves among two mirrors, the mind of the individual and the rules and institutions that it has created. We must acknowledge that both in theory and in praxis reason is not only in the mind, but also in the world. It is neither completely autonomous nor completely heteronomous. It is neither omnipotent nor powerless. It is in any case all that we have to improve our condition.

JOHN GOICURIA: Please, excuse my interruption. Professor Pettit, the President is back in town and ...

PRESIDENT: Philip, good to see you!

PETTIT: Very nice to see you. I have a guest from Europe, so I have asked to get the president's table not knowing you are in town. I hope you don't mind!

PRESIDENT: Of course not! I can easily sit at another table. And my apologies for interfering into your discussion!

ENDNOTES

¹ Lovett (2010, Appendix I).

² Kant (1764/2005, p. 11).

³ Berlin (1958/2002, p. 169).

⁴ Berlin (1958/2002, pp. 173f.).

⁵ Berlin (1958, 2002, p. 178).

⁶ Epictetus, *Enchiridion*, Chapter 1, 1-2: "There are things which are within our control, and there are things which are beyond our control. Within our control are opinion, pursuit, desire, aversion, and, in one word, whatever affairs are our own. Beyond our control are body, property, reputation, office, and, in one word, whatever are not properly our own affairs. Now, the things within our control are by nature free, unrestricted, unhindered; but those beyond our control are weak, slavish, restrained, alien".

⁷ Russell (1940, p. 251).

⁸ See Dewey (1936/1946, p. 111f.): "Well, in the first place, liberty is not just an idea, an abstract principle. It is power, effective power to do specific things. There is no such thing as liberty in general; liberty so to speak, at large. If one wants to know what the condition of liberty is at a given time, one has to examine what persons *can* do and what they *cannot* do. The moment one examines the question from the standpoint of effective action, it becomes evident that the demand for liberty is a demand for power, either for possession of powers of action not already possessed or for retention and expansion of powers already possessed."

⁹ See Hayek (1960, p. 17): "Yet, though freedom and wealth are both good things which most of us desire and though we often need both to obtain what we wish, they still remain different. Whether or not I am my own master and can follow my own choice and whether the possibilities from which I must choose are many or few are two entirely different questions. The courtier living in the lap of luxury but at the beck and call of his prince may be much less free than a poor peasant or artisan, less able to live his own life and to choose his own opportunities for usefulness. Similarly, the general in charge of an army or the director of a large construction project may wield enormous powers which in some respects may be quite uncontrollable, and yet may well be less free, more liable to have to change all his intentions and plans at a word from a superior, less able to change his own life or to decide what to him is most important, than the poorest farmer or shepherd."

See also Berlin (1958/2002, p. 171f.): "It is true that to offer political rights, or safeguards against intervention by the State, to men who are half-naked, illiterate, underfed and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, an increase in their freedom. What is freedom to those who cannot make use of it? Without adequate conditions for the use of freedom, what is the value of freedom? First things come first: there are situations in which – to use a saying satirically attributed to the nihilists by Dostoevsky – boots are superior to Pushkin; individual freedom is not everyone's primary need. For freedom is not the mere absence of frustration of whatever kind; this would inflate the meaning of the word until it meant

too much or too little. The Egyptian peasant needs clothes or medicine before, and more than, personal liberty, but the minimum freedom that he needs today, and the greater degree of freedom that he may need tomorrow, is not some species of freedom peculiar to him, but identical with that of professors, artists and millionaires."

¹⁰ Sen (1985) and Nussbaum (2006).

¹¹ Hayek (1960, p. 18).

¹² Berlin (1958/2002, p. 172).

¹³ Buchanan (1975).

¹⁴ Fukuyama (2011, 2014).

¹⁵ Barker (1918, p. 50f).

¹⁶ Buchanan and Tullock (1962).

¹⁷ Hume (1748/1985, p. 475).

¹⁸ See Shapiro (1990, p. 266): "Democracy as I describe it is better thought of as an ethic of opposition than a system of government".

¹⁹ Sunstein (1993a, 1993b).

²⁰ Skinner (1996, p. 15f.)

²¹ Schmitt (2005, p. 5).

²² Locke (1690/ 1960, II.149).

²³ Ferguson (1767/1995, p. 160).

²⁴ See Weingast (1993, 1997), Ordeshook (1992) and Voigt (1999).

²⁵ See Hayek (1960, p. 206): "[The rule of law] will be effective only in so far as the legislator feels bound by it. In a democracy this means that it will not prevail unless it forms part of the moral tradition of the community, a common ideal shared and unquestioningly accepted by the majority."

See also Weingast (1993, p. 305): "[A] society [that] is characterized by the rule of law has two interrelated characteristics. First, it possesses institutions that limit and define the legitimate boundaries of the state action. Second, these institutions are themselves maintained in part by a set of shared beliefs among citizens who react against the state when the latter attempts to transgress the boundaries defined by those institutions."

²⁶ Moody-Adams (2015, p. 591).

²⁷ Albert (1968/1985, p. 224).

²⁸ Sen (2006, p. 216ff.).

²⁹ Rawls (1971).

³⁰ Hayek (1976, p 25).

³¹ Popper (1945); Marcuse vs. Popper (1971).

³² Sterelny (2012).

³³ Polanyi, Michael (1951, p. 199): "The conceptions by the light of which men will judge our ideas in a thousand years – or perhaps even in fifty years – are beyond our guess. If a library of the year 3000 came into our hands to-day, we could not understand its contents. How should we consciously determine a future which is, by its very nature, beyond our comprehension? Such preemption reveals only the narrowness of an outlook uninformed by humility."

³⁴ Kreps (2013).

³⁵ Boulding (1958, pp. 32ff.).

³⁶ Coleman (1990).

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- ³⁷ Brennan and Buchanan (1985, p. 1).
³⁸ Schumpeter (1911/1983 and 1942, chapter 7).
³⁹ Arndt (1952), Clark (1954 and 1961).
⁴⁰ Hoppmann (1988).
⁴¹ Arndt (1981).
⁴² 21 Congressional Record - Senate 2457 (March 21, 1890).
⁴³ Eucken (1952/1990, p. 170)
⁴⁴ Metzner (1926, p. 16).
⁴⁵ Böhm (1960, p. 22).
⁴⁶ Weber (1919/1994, p. 36) and (1922/1972, p. 29).

BIBLIOGRAPHY

Albert, Hans (1968/1985): *Treatise on Critical Reason*, Princeton: Princeton University Press.

Arndt, Helmut (1952): *Schöpferischer Wettbewerb und klassenlose Gesellschaft*, Berlin: Duncker & Humblot.

Arndt, Helmut (1981): "Macht und Wettbewerb", in: (eds.): Cox, Helmut, Jens, Uwe and Markert, Kurt: *Handbuch des Wettbewerbs*, München: Vahlen, pp. 49-78.

Barker, Ernest (1918): *Greek Political Theory. Plato and his Predecessors*, London and New York: Methuen.

Berlin, Isaiah (1958/2002): "Two Concepts of Liberty", in: Berlin, Isaiah: *Liberty*, (ed.): Henry Hardy, Oxford: Oxford University Press, pp. 166-217.

Böhm, Franz (1960): *Reden und Schriften über die Ordnung einer freien Gesellschaft, einer freien Wirtschaft und über die Wiedergutmachung*, (ed.): In Gemeinschaft mit Freunden und Schülern herausgegeben von Ernst-Joachim Mestmäcker, Karlsruhe: C. F. Müller.

Boulding, Kenneth (1958): *The Skills of the Economist*, Cleveland: Howard Allen.

Brennan, Geoffrey and James Buchanan (1985): *The Reason of Rules – Constitutional Political Economy*, Cambridge: Cambridge University Press.

Buchanan, James (1975): *The Limits of Liberty. Between Anarchy and Leviathan*, Chicago: The University of Chicago Press.

Buchanan, James and Tullock, Gordon (1962): *The Calculus of Consent*, Michigan, Ann Arbor: The University of Michigan Press.

Bougas, Tassos (2002): "Κριτική: Λόγος και Πάθος", in: *Νεύσις*, vol. 11, pp. 2-32.

Clark, John Maurice (1954): "Competition and the Objectives of Government Policy", in: Chamberlin, Edward H. *Monopoly and Competition and their Regulation*, London: McMillan, pp. 317-337.

Clark, John Maurice (1961): *Competition as a Dynamic Process*, Washington, D.C.: The Brookings Institute.

Coleman, James (1990): *Foundations of Social Theory*, Cambridge, Mass.: Harvard University Press.

Congressional Record - Senate 2457 (March 21, 1890).

Dewey, John (1935/1946): "Liberty and Social Control", in: *Social Frontier* (November 1935) and reprinted in: *Problems of Men*, New York: Philosophical Library, pp. 111-125.

Epictetus: *Enchiridion*.

Eucken, Walter (1952/1990): *Grundsätze der Wirtschaftspolitik*, 6. Auflage, Tübingen: J.C.B.Mohr (Paul Siebeck).

Ferguson, Adam (1767/1995): *An Essay on the History of Civil Society*, Cambridge: Cambridge University Press.

Fukuyama, Francis (2011): *The Origins of Political Order: From Prehuman Times to the French Revolution*, New York: Farrar, Straus and Giroux.

Fukuyama, Francis (2014): *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*, New York: Farrar, Straus and Giroux.

Hayek, Friedrich A. von (1960): *The Constitution of Liberty*, London and New York: Routledge.

Hayek, Friedrich A. von (1976): *Law, Legislation and Liberty, Vol. 2: The Mirage of Social Justice*, London: Routledge and Kegan Paul.

Hoppmann, Erich (1988): *Wirtschaftsordnung und Wettbewerb*, Baden-Baden: Nomos Verlagsgesellschaft.

Hume, David (1748/1985): *Essays. Moral, Political, and Literary*, Indianapolis: LibertyClassics.

Kant, Immanuel (1764/2005): *Notes and Fragments*, (ed.) Paul Guyer, Cambridge: Cambridge University Press.

Kreps, David (2013): *Microeconomic Foundations I. Choice and Competitive Markets*, Princeton: Princeton University Press.

Locke, John (1690/1960): *Two Treatises of Government*, Cambridge: Cambridge University Press.

Lovett, Frank (2010): *Justice as Non-domination*, Oxford: Oxford University Press.

Marcuse, Herbert/Karl Popper (1971): *Revolution oder Reform? Herbert Marcuse und Karl Popper. Eine Konfrontation*, München: Kösel Verlag.

Metzner, Max (1926): *Kartelle und Kartellpolitik*, Berlin: Carl Heymann Verlag.

Moody-Adams, Michele (2015): "Diversity and Disagreement" in: *International Encyclopedia of Social and Behavioral Sciences*, 2nd edition, pp. 589-594.

Nussbaum, Martha (2006): *Frontiers of Justice*, Cambridge, MA: Harvard University Press.

Ordeshook, Peter C. (1992): "Constitutional Stability", in: *Constitutional Political Economy*, vol. 3, pp. 137-175.

Polanyi, Michael (1951): *The Logic of Liberty*, London: Routledge & Kegan Paul.

Popper, Karl (1945): *The Open Society and its Enemies*, London: Routledge & Kegan Paul.

Rawls, John (1971): *A Theory of Justice*, Cambridge, Mass.: Harvard University Press.

Russell, Bertrand (1940): "Freedom and Government", in: (ed.) Ruth Nandan Anshen: *Freedom: Its Meaning*, New York: Harcourt, Brace and Company, pp. 249-265.

Schmitt, Carl (2005): *Political Theology. Four Chapters on the Concept of Sovereignty*, Chicago: University of Chicago Press.

Schumpeter, Joseph Alois (1911/1983): *Theory of Economic Development*, New Brunswick, N.J.: Transaction Publishers.

Schumpeter, Joseph Alois (1942): *Capitalism, Socialism and Democracy*, New York: Harper.

Sen, Amartya (1985): *Commodities and Capabilities*, Amsterdam: North-Holland.

Sen, Amartya (2006): "What Do We Want from a Theory of Justice?", in: *The Journal of Philosophy*, vol. 103, pp. 215-238.

Shapiro, Ian (1990): *Political Criticism*, Berkeley: University of California Press.

Skinner, Quentin (1993): *Reason and Rhetoric in the Philosophy of Hobbes*, Cambridge: Cambridge University Press.

Sterelny, Kim (2012): *The Evolved Apprentice: How Evolution Made Humans Unique*, Cambridge, Mass.: The MIT Press.

Sunstein, Cass (1993a): *The Partial Constitution*, Cambridge, Mass.: Harvard University Press.

Sunstein, Cass (1993b): *Democracy and the Problem of Free Speech*, New York: Free Press.

Voigt, Stefan (1999): *Explaining Constitutional Change*, Cheltenham and Northampton: Edward Elgar.

Weber, Max (1919/1994): *Politik als Beruf*, Tübingen: J.C.B. Mohr (Paul Siebeck).

Weber, Max (1922/1972): *Wirtschaft und Gesellschaft*, 5th edition, Tübingen: J.C.B. Mohr (Paul Siebeck).

Weingast, Barry (1993): "Constitutions as Generous Structures: The Political Foundations of Secure Markets", in: *Journal of Institutional and Theoretical Economics*, vol. 149, pp. 286-311.

Weingast, Barry (1997): "The Political Foundations of Democracy and the Rule of Law", in: *American Political Science Review*, vol. 91, pp. 245-263.