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9 Republican freedom and contestatory democratization

Philip Pettit

The apparatus of the state may often have the effect of reducing violations of freedom by non-governmental agents and agencies; a standard rationale of government is precisely that it secures such a result. But even if the state reduces non-governmental violations of freedom, there is a question as to whether it itself is a source of distinct infringements. Does its possession and exercise of coercive powers mean that even if it reduces overall violations of freedom, for example, it does so by virtue of itself reducing people's freedom in certain regards? Does it mean that, however beneficent in its ultimate effects on the enjoyment of freedom, the state as such is unfriendly to freedom?

One tradition, associating democracy and freedom, suggests that democratizing government – bringing government under the control of the governed – is a means whereby the freedom-friendliness of the state can be promoted and even perfected. The idea is that, putting aside the matter of how well a state does in reducing violations of freedom by other, private agencies, a properly democratized state will necessarily be freedom-friendly: the coercive actions it takes will not offend against the freedom of those coerced, or at least not offend in the manner of coercion by a private agent or an undemocratic state.

This chapter addresses the question of whether there is anything in this thought. I take it for granted that a democratized state may or may not do better than an undemocratized one in reducing violations of liberty by other, private agents and in promoting overall freedom. I ask whether a democratized state, just in virtue of being democratized, will itself represent a lesser assault – or perhaps even no assault at all – on the liberty of its citizens.

The chapter is in three sections. The first examines the impact of construing the question, first under the modern conception of freedom as non-interference, and then under the older, republican conception of freedom as non-domination; the argument here is that only the republican conception holds out any hope for sustaining the claim that democratization can make government freedom-friendly. The second

looks at how far electoral democratization can make for friendliness towards republican freedom, emphasizing the limitations of what can be achieved along this route. Then the third section introduces the notion of contestatory democratization and argues that making a democracy contestatory as well as electoral would be bound to make government more freedom-friendly (see Pettit 1997: chap. 6; see too Pettit 1996). Government would continue to restrict the range of activity in which people can enjoy freedom – in the way natural obstacles may restrict it – but government would not tend to violate that freedom in the primary sense of violation: it would condition people's freedom, as I put the distinction, but not necessarily compromise it.

The contestatory mode of democratization that I describe relates to the electoral in the way that editorial control of a text – say, a newspaper article – relates to the control enjoyed by an author. Under electoral democracy the collective people are the authors, direct or indirect, of public decisions. Under the contestatory mode, they would enjoy the power of contesting such decisions in relatively impartial forums – though in an individual, not necessarily a collective, capacity – and they would thereby have the opportunity to edit rather than to author the laws. The contestatory mode of democratization will have interest, I hope, for people in a variety of traditions and will appeal on a number of different grounds. But my own argument for it here will be grounded entirely in how it connects with republican freedom (for a more general defense, see Pettit, forthcoming).

1 The question of democracy and freedom

Three concepts of liberty

Isaiah Berlin (1958) is famous for the distinction that he drew between two concepts of individual liberty, one negative, the other positive (see also Berlin 1969). Under the negative concept, liberty requires the absence of interference by others, where interference is understood broadly to mean any intentional form of obstruction or coercion. Under the positive concept, liberty requires a presence rather than an absence: the presence, in particular, of self-mastery. This ideal of self-mastery is variously interpreted. Sometimes it connotes the psychological ability to master passion with reason, the lower self with the higher self. At other times it is taken to mean the right to participate in the democratic self-determination of the local community; it corresponds to the liberty of the ancients that Benjamin Constant (1988) had contrasted, early in the last century, with the liberty of the moderns: in effect, with negative

liberty. This allegedly ancient liberty is sometimes given a Rousseau-esque cast under which it represents the ability to master particular inclinations with a general, socially orientated will; hence its connection with the notion of self-mastery.

I believe that Berlin's dichotomy, and indeed the narrower dichotomy with which Constant worked, both overlook the traditional republican way of thinking about liberty. The republican conception of liberty is akin to the negative one in maintaining that what liberty requires is the absence of something, not necessarily the presence. It is akin to the positive conception, however, in holding that that which must be absent has to do with mastery rather than interference. Freedom consists, not in the presence of self-mastery, and not in the absence of interference by others, but rather in the absence of mastery by others: in the absence, as I prefer to put it, of domination. Freedom just is non-domination.

One person is dominated by another, so I shall assume, to the extent that the other person has the capacity to interfere in their affairs, in particular the capacity to interfere in their affairs on an arbitrary basis. The capacity to interfere on an arbitrary basis is the sort of capacity that a master has in relation to a slave or subject. It is the capacity to interfere in a person's life without regard to their perceived interests. In the most salient case it is the capacity to interfere as the interferer's wish or judgment – their *arbitrium* – inclines them.

If freedom means non-domination, then such freedom is compromised whenever a person is exposed to the arbitrary power of another, even if that power is not used against them. Unlike freedom as non-interference, then, it is inconsistent with subjugation to another. It is inconsistent with being anyone else's slave or subject, even the slave or subject of a person who never actually interferes. That, indeed, is the primary contrast between the two ideals. A person's expectation of freedom as non-interference may be at a maximum in a situation of vulnerability to a particular, other person: that other may be an effective protector against third parties and may be benign enough never to be inclined toward interference themselves. But the person's expectation of freedom as non-domination is hardly going to be maximized under such a benevolent protectorate. Although unlikely to interfere, the protector still retains the power of interfering, and of interfering on an arbitrary basis. However improbable such arbitrary interference may be, it remains accessible to the protecting agency and so that agency represents a dominating presence in the life of the person protected: that person depends on the good will of the protector and lives, in effect, at his or her mercy.

But if freedom means non-domination, then there is also going to be a

secondary contrast with the negative concept of liberty. Freedom as non-interference is compromised by any form of interference, even the interference of an agency that is not arbitrary: an agency that is constrained to interfere only in a way that accords with the perceived interests of the person interfered with. Freedom as non-domination, however, will not be lost under such an arrangement. The person may suffer interference but so far as the interference is really constrained to track their perceived interests – so far as it does not come of an arbitrary power – to that extent it does not represent a form of domination: the interferer does not stand over them in the way a master stands over a slave or subject.

Why associate the conception of freedom as non-domination with the republican tradition (see Pettit 1997)? This is the broad tradition associated with Cicero at the time of the Roman republic; with Machiavelli – “the divine Machiavel” of the *Discourses* – and various other writers of the Renaissance Italian republics; with James Harrington, Algernon Sydney, and even “old liberals” such as John Locke, in and after the period of the English civil war and commonwealth; and with the many theorists of republic or commonwealth – with the commonwealthmen, as they were often called – in eighteenth-century England, America, and France (Pagden 1987; Pocock 1975; Raab 1965; Robbins 1959; Skinner 1978; Worden 1991). It was eighteenth-century thinkers of this republican stamp who were responsible for the publication of texts such as *Cato's Letters* and *The Federalist Papers*. They included less radical individuals such as Montesquieu and Blackstone – the author of the famous commentary on the laws of England – as well as the anti-monarchists responsible for the United States Constitution and for the various declarations emanating from revolutionary France. If they did not seek a political republic, settling instead for a constitutional monarchy, they still espoused a complex of ideas – in particular, I would argue, a conception of freedom as non-domination – that linked them with the republican tradition.

Quentin Skinner and other historians have shown that the long republican tradition did not embrace the positive concept of liberty, despite what Berlin and Constant may have suggested (Skinner 1984 and 1990). In particular, they did not embrace a concept of liberty under which being free is just being part of a self-determining democracy; they did not embrace the liberty of the ancients, as Constant described it. The important point to register is that notwithstanding later reconstructions of the tradition as Athenian in origin and as committed to one-eyed enthusiasm about democracy and participation, the tradition was essentially neo-Roman in character (Skinner 1997). It

originated in an enthusiasm for the Roman republican constitution, with its complex web of checks and balances – a web in which democratic participation was but one element – and in a distaste for the pure democracy represented in many minds by classical Athens: this was always likened, in Polybius's metaphor, to a ship without a captain, buffeted by the winds of public opinion (Sellers 1995; Pettit 1998).

But though the republican tradition did not embrace the positive concept of liberty, still it is hard to ascribe the negative concept of liberty to republican or commonwealth authors. In the broad way of thinking that is shared among such authors we find a pair of themes that reveal a conception of freedom, not as non-interference, but as non-domination (Pettit 1997; see too Skinner 1997).

The first theme is that even the non-interfering mastery of the kindly boss is sufficient to take away a person's freedom: the slave is a slave, and therefore someone unfree, no matter how gentle the yoke. As Algernon Sydney (1990 [1751]: 441) put it, “he is a slave who serves the best and gentlest man in the world, as well as he who serves the worst,” or as it was put by Richard Price (1991: 77–8) in the eighteenth century, “Individuals in private life, while held under the power of masters, cannot be denominated free, however equitably and kindly they may be treated.”

The second theme is that, even if non-interfering mastery is inimical to freedom, non-mastering interference is not: in particular, the non-mastering interference that the tradition associated – rightly or wrongly – with certain forms of law is not sufficient to compromise people's freedom. The laws of a well-constituted republic may reduce the number of choices available to a person – they may reduce the range of territory over which the person enjoys their freedom – but so far as they are not arbitrary, so far as they are required to track people's common perceived interests, they will not compromise people's freedom. They may condition the exercise of liberty in the manner of natural limitations and obstacles but they will not violate that liberty in the sense of dominating people; unlike the laws of an absolute monarch, so these authors all urge – this claim shall be illustrated later – they will not represent the presence of an arbitrary power in people's lives.¹

¹ Freedom as non-interference is compromised by interference but it is conditioned by natural obstacles: these reduce the scope for exercising the freedom. Freedom as non-domination is compromised by domination but it is conditioned by any factors that reduce the scope for exercising it without actually occasioning domination; these factors will include non-mastering forms of interference – perhaps certain forms of law – as well as natural obstacles. Theorists of freedom as non-interference recognize this distinction when they distinguish formal and effective or real freedom: the latter requires resources with which to overcome certain natural limitations as well as the absence of interference. See Van Parijs 1995.

So much by way of introducing Berlin's two concepts of liberty and the republican alternative. The question with which we are concerned here is whether there is any mode of democratization that is bound to make government more freedom-friendly. And that question, so we can now see, can bear different interpretations. This question will be discussed here under the republican interpretation only but in order to help justify that focus I shall first examine its interpretation under the negative concept of liberty. This examination will provide an important background for what follows and it will also help to show why the republican version of the question is of particular interest.

Democratization and freedom as non-interference

Suppose we interpret freedom, then, in the negative sense of non-interference. Is there any mode of democratization such that democratizing government in that way would necessarily increase its friendliness to freedom as non-interference? The received wisdom on this question is that democracy and negative freedom are quite distinct ideals and that there is no necessary connection of the kind envisaged. It may be true as a matter of contingent fact that democratic governments violate people's freedom less, say because there is less corruption and less abuse of power. But as Berlin (1969: 130) himself formulates the orthodoxy, "there is no necessary connection between individual liberty and democratic rule."

Some recent authors are more optimistic than Berlin about finding a certain connection between democratization and freedom-friendliness, in particular friendliness to freedom as non-interference. Stephen Holmes (1995: 206) has argued that any feasible mode of democratization – any mode of democratization that does not place an impossible burden on public decision-making – will have to give people the private rights associated with negative liberty, thereby taking issues of private life off the public agenda. And Jürgen Habermas (1996: 142) has urged that a proper, deliberative form of democracy is bound to give such rights to the citizenry, since they are a *sine qua non* of deliberative participation in government.

But whether or not we go along with this limited optimism, there is one striking respect in which Berlin's pronouncement remains correct. If we think of freedom as non-interference, then we have to say that all forms of coercive law themselves represent types of interference – coercion, under standard views, is a form of interference – and we have to admit that democratizing the laws does nothing in itself to reduce this particular way in which government is unfriendly to negative freedom.

The observation is important because those who first introduced the negative way of thinking about freedom did so with a particular relish in this result. They exulted in the fact that if freedom is non-interference, then all law is pro tanto an offence against freedom. This enabled them to say, as they all wished to say, that from the point of view of freedom there is no important difference between republican and arbitrary – or between democratized and undemocratized – forms of law.

Thomas Hobbes was the first important thinker to represent freedom as non-interference and he was also the first to exploit this fact. Wishing to defend the law of a more or less despotic *Leviathan* – the only guarantee, as he thought, of effective peace – his definition of liberty as non-interference enabled him to point out that freedom exists only in the silence of the laws and that the democratic form of law that we find in a republic such as Lucca is no more friendly towards freedom than the arbitrary sort that exists in a despotism such as Constantinople. "Whether a Commonwealth be Monarchical, or Popular, the Freedom is still the same" (Hobbes 1968 [1651]: 266).

Hobbes's redefinition of freedom was used to a similar, anti-democratic effect in two other important interventions in seventeenth- and eighteenth-century politics. In defending absolute monarchy, Sir Robert Filmer relied on the redefinition to make an explicit case against democracy: "there are more laws in popular estates than anywhere else, and so consequently less liberty" (Filmer 1991 [c. 1635]: 275). And John Lind, an apologist for Lord North's government, used it to justify British rule in the American colonies. Richard Price and others in the commonwealthman tradition had argued that the power of British law in America was arbitrary and dreadful because the British parliament, however benignly disposed, could act as it willed in colonial affairs. Lind countered that all law is dreadful, being inimical to freedom – freedom as non-interference – and that the Americans were no worse off than the British themselves. "Dreadful as this power may be, let me ask you, Sir, if this same power is not exercised by the same persons over all the subjects who reside in all the other parts of this same empire? – It is" (Lind 1776: 114).

The conception of freedom as non-interference first became associated with a progressive movement in the work of utilitarians such as Jeremy Bentham and William Paley. In correspondence with Lind, Bentham claimed to have discovered this way of thinking about freedom and saw it from the first as a cornerstone of his system (Long 1977: 54). Like Hobbes, he was always clear that if freedom is non-interference then every coercive law, no matter how democratic in provenance, represents in itself a violation of freedom; Bentham was content to

tolerate such violations to the extent that they made for fewer offences overall and for a higher level of aggregate utility. "As against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore . . . and in particular all laws creative of liberty, are, as far as they go, abrogative of liberty" (Bentham 1843: 503).

Whether or not Holmes and Habermas are right, then, it remains a fact that the negative conception of freedom as non-interference forces us in one important respect to say that democratization is not bound to make government more freedom-friendly. On the contrary, as was emphasized in the earliest uses of the conception, it is bound to be the case that democratization does nothing to relieve the essential enmity that exists between coercive law or government, on the one hand, and individual freedom on the other.

Democratization and freedom as non-domination

With this result in hand, let us turn now to the significance of our question when freedom is interpreted, not as non-interference, but rather as non-domination. Is there any mode of democratization available such that it is bound to make government more friendly to the freedom of people in this republican sense? Is there any form of democratization that is bound to reduce or even remove the possibility of government itself being arbitrary and dominating in its treatment of individuals?

There is no conceivable form of democratization that would be bound to reduce the interference – the violation of freedom as non-interference – inherent in coercive legislation: all coercive legislation, democratic or otherwise, is unfriendly as such to freedom as non-interference. But no parallel lesson, no similar impossibility result, goes through for democratization and freedom as non-domination. For it is not the case that all coercive laws are unfriendly as such to freedom as non-domination. On the contrary, laws will be friendly to people's freedom as non-domination – they will not themselves dominate people – so far as they are forced to track the perceived interests of those on whom they are imposed and do not represent an arbitrary form of interference. Thus democratization is bound to make government more freedom-friendly if it can increase the non-arbitrariness of legislation, adjudication, and administration.

The point has an important historical resonance. In their anti-republican arguments, Hobbes was opposed by the great republican, James Harrington; Filmer was opposed by the hero of the later

commonwealthman tradition, John Locke; and Lind was explicitly opposed, of course, to the pro-American commonwealthman, Richard Price. And these opponents uniformly insist, against the drift of their respective adversaries, that far from being inherently inimical to freedom, law – they always have coercive law in mind – is an essential part of its infrastructure. The idea is not the Benthamite theme that while law as such compromises liberty, still it may do more good than harm: it may prevent more violations than it perpetrates. The idea, rather, is that law need not exemplify the sort of thing that compromises liberty; in particular, it need not exemplify the presence of arbitrary power.

Harrington (1992 [c. 1771]: 8) sets himself squarely against the Hobbesian vision in arguing that there is a world of difference between the non-dominating empire of laws and the arbitrary empire that men may exercise over one another. Thus he sees a contrast, not a commonality, in the positions of people who live in despotic Constantinople and republican Lucca: "whereas the greatest bashaw is a tenant, as well of his head as of his estate, at the will of his lord, the meanest Lucchese that hath land is a freeholder of both, and not to be controlled but by the law" (Harrington 1992 [c. 1771]: 20).

More than thirty years later Locke sets himself equally strongly against the position of Filmer. He argues for a "freedom from Absolute, Arbitrary Power" as the essential thing in a good polity (Locke 1965 [1681]: 325), and, in explicit opposition to Filmer, he sees law as creative of freedom: "that ill deserves the Name of Confinement which serves to hedge us in only from Bogs and Precipices . . . the end of Law is not to abolish or restrain, but to preserve and enlarge Freedom" (Locke 1965 [1681]: 348).

The commonwealthmen who provided Lind's opposition are just as insistent on the theme in the century following. Price (1991: 81), Lind's avowed adversary, is particularly forthright. "Just government . . . does not infringe liberty, but establishes it. It does not take away the rights of mankind but protect(s) and confirm(s) them."

Let us take it, then, that whereas coercive law is inherently unfriendly to freedom as non-interference, it is not inherently unfriendly to freedom as non-domination. Coercive law may condition the exercise of liberty in the manner of natural limitations and obstacles, as we noted earlier, but it need not violate or compromise that liberty in the sense of dominating people. So far as law and government can be made non-arbitrary in character, to that extent they will not constitute a form of domination and will not represent a compromise of republican freedom.

This observation means that the question about democratization has real potential when freedom is interpreted in the republican way. We can

ask whether there is a mode of democratization which is bound to make government more freedom-friendly, and we can ask this with an open mind. We need not succumb to the sort of impossibility theorem on which Hobbes and Filmer and Lind were so anxious, for their different strategic reasons, to insist.

2 Electoral democratization and its limitations

The benefits of electoral democratization

Let us assume that in any society that is fit to become a polity there is a potential for certain common, perceived interests to crystallize; if there were not, then it is hard to see how political organization could serve any purpose other than the suppression of some by others.² These interests will presumably encompass unobjectionable public goods – goods from which no one can readily be excluded – such as external and internal peace, a stable framework for commercial and civic relations, a sustainable but high level of economic activity, and so on.

The assumption means that from the point of view of freedom as non-domination, it is always better to have an arrangement under which the possibility of government's being indifferent to the common, perceived interests of ordinary people is reduced or removed. Thus the great anathema in the republican tradition is the rule of a prince who is capable, if only within certain broad limits, of doing as he wills. Such a ruler is free to ignore the common, perceived interests of people in the coercive legislation and taxation to which he subjects them and so he will hold a dominating position in the society. Tom Paine's (1989 [1794]: 168) complaint against monarchy catches the point very nicely: "It means arbitrary power in an individual person; in the exercise of which, *himself*, and not the *res-publica*, is the object."

For similar reasons there is absolute resistance within the tradition to the idea of foreign or colonial government, however benign. This resistance is well expressed in Joseph Priestley's articulation of the complaint made by the American colonists against government from London. On his reading of that complaint, it is little consolation that the government may be fairly benign, taxing the Americans only for "one penny"; the problem is that this government has the power, without

² In Pettit 1997 I argue that a relevant image of the collective interests of those in any society – the common good – can be derived from the needs of providing each with the fullest enjoyment possible of freedom as non-domination. That is to say that I invoke the republican ideal of freedom, not just to derive the forms – democratic and other – that government ought to instantiate, but also to derive the goals that it ought to pursue. See Pettit forthcoming for a different approach.

being forced to look to the interests of Americans, to tax them for their "last penny."

Q. What is the great grievance that those people complain of? A. It is their being taxed by the parliament of Great Britain, the members of which are so far from taxing themselves, that they ease themselves at the same time. . . . For by the same power, by which the people of England can compel them to pay *one penny*, they may compel them to pay the *last penny* they have. (Priestley 1993: 140)

The need for government to be forced to track the common, perceived interests of citizens argues for an electoral form of democratization. Under such democratization, the occupants of certain key positions in government are determined by periodic elections that have a popular character: in general, no competent adult is excluded from participating in them – no one is prevented from standing or voting in the elections, for example, or from speaking about election issues – and no one's vote is worth more than anyone else's. And the rules whereby those in government operate – and are periodically and popularly elected – are themselves subject to popular control: they can generally be altered by popular referendum or by the determination of the popularly elected representatives.

Setting up such an electoral regime involves democratizing government – bringing it under the control of the governed – so far as the governed are given the power to choose and reject a government: in particular, to do so on the basis of its actual or expected performance in identifying and furthering collective interests. The republican argument for such a regime – and of course the regime is subject to many variations – is that it holds out a good prospect of forcing government to track the common, perceived interests of the populace. It puts government under a constraint that ought to guard against arbitrariness in that respect. Under a popular, periodic electoral system, whatever its other features, those in government will be unlikely to be re-elected if they display indifference to common, perceived interests. And in that respect there is a deep contrast with dictatorial or colonial regimes. Indeed, there is also a contrast with the sort of regime under which officers of government would be appointed by lot.

The limitations of electoral democracy

This attitude to electoral democracy may explain why the achievement of parliamentary rule, after the execution of Charles I, was much celebrated – and had, of course, been sought – by thinkers within the republican or commonwealthman tradition. Some even suggested that nothing more was needed to ensure that no one – or at least no one

among the effective citizenry of propertied, mainstream males – was dominated by government. They argued that “Kings seduced may injure the commonwealth, but that Parliaments cannot.” Why so? Because “the Parliament men are no other than our selves,” so that “their judgment is our judgment, and they that oppose the judgment of Parliament oppose their own judgment” (Morgan 1988: 64).

This line of thought, if sound, would provide an argument for thinking that electoral democratization is not just an advance over dictatorial or colonial rule, but that it is sufficient in itself to ensure that government is freedom-friendly towards electors: to ensure that the coercive actions of government do not represent, even pro tanto, an assault on the freedom of those people. Letting the alleged identity of parliament and people pass, we might cast the reasoning in the following syllogistic form.

1. People will not be dominated by a government to the extent that it is under their control.
2. Under elective democratization, direct or representative, the people effectively control the government: they govern themselves.

Conclusion. And so in such a democracy it cannot be that people are significantly dominated by government.

But the line of thought encapsulated here is not sound. The word “people” in the first premise and in the conclusion is understood differently from how “the people” is naturally taken in the second premise. “People,” without the article, refers to individuals taken severally or distributively – to individuals taken one by one – whereas “the people” with the article refers to a collectivity. Thus the syllogism is undermined by a fallacy of equivocation. For all that the reasoning shows, it is quite possible that the people, understood collectively, should dominate the people, understood severally; the collective people can be as uncontrolled an agency, from the point of view of at least some individuals, as the divinely endorsed king.

The problem with the argument can be put more pointedly. Electoral democracy may mean that government cannot be wholly indifferent to popular perceptions about common interests and that it cannot fail altogether to try and advance those interests. But it is quite consistent with electoral democracy that government should only track the perceived interests of a majority, absolute or relative, on any issue and that it should have a dominating aspect from the point of view of others.

The reasoning in the democracy syllogism did not prove to be persuasive, even in the seventeenth century. Royalists, as might be expected, argued that the collective people can be an arbitrary, even a wayward, agency: a body “in continuall alteration and change, it never

continues one minute the same, being composed of a multitude of parts, whereof divers continually decay and perish, and others renew and succeed in their places” (Morgan 1988: 61). But the point was also taken on the republican side. Thus a leader of the Levellers argued that the purpose of government was the “severall weales, safeties and freedoms” of people – the word “severall” is important – and that their protection required checking the power of the people in their collective, parliamentary incarnation (Morgan 1988: 71).

The idea here, and it became a centrepiece of commonwealthman thought, was that from the point of view of some individuals the majoritarian people could be a tyrant in the same way – if not with the same ease or over the same range – as the absolute monarch. It was well expressed in the last century in a dissertation prepared by the great historian, F. W. Maitland. Commenting on what he called the conventional theory of government, according to which the people are the only source of authority – there is no divine right of kings – he wrote: “If the conventional theory leads to an ideally perfect democracy – a state in which all that the majority wishes to be law, and nothing else, is law – then it leads to a form of government under which the arbitrary exercise of power is most certainly possible. Thus, as it progresses, the conventional theory seems to lose its title to be called the doctrine of civil liberty, for it ceases to be a protest against arbitrary forms of restraint” (Maitland 1981: 84).

The tyranny of the majority

The mistake that Maitland identifies is often characterized by saying that the elective mode of democratization, direct or representative, can lead to a tyranny of the majority. The problem is not confined to a divided society in which one and the same majority – a religious or ethnic or ideological formation – dictates to others on a wide variety of issues. The problem in question arises even in societies that are relatively homogeneous and cohesive. It consists in the fact that, constituted as an agent by electoral arrangements, the collectivity has the power to treat certain individuals in a way that does not necessarily track their perceived interests. It stands over individuals in the way a master stands over a slave or subject.

Of course every government will fail to track some of the perceived interests of citizens. For it may be presumed that from the point of view of any individual, their perceived interests would be served best of all if government made a favourable exception in how they were treated: if it taxed others but not them; if it punished others for certain crimes but

not them; and so on. The problem in the tyranny of the majority is not that this may happen: that would scarcely constitute a tyranny, given that there is no way of satisfying people's shared, perceived interest in having a common government without frustrating such special, unavowable interests.

We should distinguish between the politically avowable, perceived interests of people from their unavowable ones. The politically avowable interests are those, roughly, that are consistent with the desire to live under a shared scheme that treats no one as special (cf. Barry 1995; Scanlon 1982). They are the interests that those who are expected to give a system of government their allegiance may reasonably expect government to track. The problem with the tyranny of the majority is that government may be so constituted that in identifying or pursuing common interests, it is not forced to take account of the avowable, perceived interests of a minority. It can ignore these and be driven solely by the concerns of a majority. It can identify interests that only involve that supportive majority as common interests; it can take its cue only from the perceptions of the majority in identifying common interests; or it can pursue common interests – perhaps common, perceived, interests – in a manner that lays most of the costs of the pursuit on the minority.

The tyranny of the majority gives the lie to any suggestion that the elective mode of democratization is bound fully to ensure the friendliness of government to freedom, in particular to freedom as non-domination. Electoral democracy may amount to nothing short of an “elective despotism,” as James Madison described it in 1787 (Madison, Hamilton, and Jay 1987 [1787–8]) or an “elective dictatorship” (Hailsham 1978: 127). There are three more or less obvious ways – I do not say that they are exhaustive – in which an absolute or relative majority may form on any issue and may dominate others in the society: that is, may impose a form of treatment on those others that is indifferent to perceived interests that have just as good a call to be heeded as their own. The collectivity may tyrannize certain individuals under a regime of majoritarian interest, majoritarian passion, or majoritarian righteousness.

Majoritarian interest rules when, regardless of the cost to others, a suitable number of people find their interest directing them to vote a certain way or to support representatives who are disposed to vote that way. For an example imagine that a majority of people do not have open fires in their homes and that they vote out of environmental considerations to ban such fires, oblivious to the perceived interests of a perhaps small minority – we may suppose, a poor minority – for whom open fires are the only source of heat. I pick the example to emphasize the fact that

majoritarian interest may rule, not just in cases where self-seeking lobbies manage to carry the day – not just when factional interest groups prevail (Sunstein 1993a) – but even in cases where people are distinctively public-spirited.

Majoritarian passion rules when, regardless of long-term, aggregate effects, popular enthusiasm or outrage leads a majority of voters to adopt or demand a governmental line that imposes arbitrarily on a certain minority of individuals. For an example consider how the occurrence of heinous offences, say by offenders on parole, can lead to a progressive, often counterproductive stiffening of penal sentences and practices. In this particular case the tyranny of the majority becomes, in Montesquieu's (1989 [c. 1748]: 203) memorable phrase, a “tyranny of the avengers.”

Majoritarian righteousness rules, finally, when each voter in a referendum or election uses their vote primarily as a way of expressing their personal, often heartfelt stand on some issue of moral or religious significance: say, on whether brothels should be legal, on whether soft drugs should be allowed, or on whether abortion should be available. When people vote in this way they do not take account of the fact that often the stand in question will never be successfully implemented as a social policy and that the attempt to implement it will result in an extremely bad situation from the point of view of many people: a situation in which prostitutes become the slaves of pimps, those dependent on drugs become vulnerable to suppliers, and women who want abortions are forced to put their lives in the hands of back-street, unregulated clinics.

This last form of collective tyranny is particularly threatening, since there are grounds for arguing that in a large-scale, secret election or referendum, the most rational stance for a voter to take is to use their vote for the pleasure of expressive satisfaction. Their chance of affecting the outcome in a large-scale poll is close to zero and a secret vote does not provide an opportunity for engaging with others. Being instrumentally and socially insignificant, then, the only prospect of satisfaction that the vote may represent is the satisfaction of voting according to personal feeling and commitment (see Brennan and Lomasky 1993; Brennan and Pettit 1990).

I stress the various forms in which the tyranny of a majority may materialize in order to underscore the real danger involved and to rescue a recognition of that threat from the jading effects of the cliché. What makes the danger particularly significant is that however arbitrary the collective majoritarian will may be on any issue, it is a will which we may have real discursive difficulty in challenging and criticizing. If you

oppose that will, after all, you expose yourself to the charge of being elitist and of not having faith in the wisdom of ordinary people. By a curious irony, the language of egalitarian respect for ordinary people gives a sort of moral immunity to a force that may represent the most serious threat of all to the freedom as non-domination of certain individuals.

3 Towards contestatory democratization

The notion of contestatory democratization

We saw that so far as it is meant to show that electoral democracy will eliminate all domination, the democracy syllogism is vitiated by a fallacy of equivocation. The elimination of domination would require, not just that the people considered collectively cannot be ignored by government, but also that people considered severally or distributively cannot be ignored either. Otherwise put, it would require not just that the majority are heard in determining what common, perceived interests ought to be pursued by government, but also that relevant minorities also get a hearing: their politically avowable, perceived interests are not just ignored and flouted. So the question is whether there is any way of subjecting government to a mode of distributive or minority control in order to balance the electorally established mode of collective or majority control.

There is one salient mode of democratization under which people in the several or distributive sense would have control of government. This is the arrangement under which each would have a veto on any public decision, and each could ensure that public decisions tracked their perceived interests, or at least their avowable, perceived interests (see Buchanan and Tullock 1962). While the vetoing mode of democratization would certainly make government more friendly towards freedom as non-domination, however, it does not have more than an abstract, purely academic interest. The reason is that no vetoing scheme of things has the remotest chance of being instituted; it is a wholly infeasible mode of public decision-making.

The reason the vetoing scheme is infeasible is that it would undermine the possibility of compromise.³ Suppose that the common, perceived interests of a community clearly require a certain line of action: say, erecting a power plant, providing a needle-exchange centre for drug addicts, or closing down certain schools. There is no way of achieving

³ For an attempt to show the importance of compromise in a republican conception of deliberative democracy, see Bellamy forthcoming.

such a goal without some people faring worse than others: no one wants to have a power plant or a needle-exchange centre on their doorstep and few will want their neighborhood school to be closed down. If the common interest is to be advanced, therefore, the decision-making procedure has to allow for some people to be treated less well than others. And a vetoing scheme would hardly fit the bill, since it would enable those from every quarter to rule out anything that damaged them.

If there is to be a feasible way of subjecting government to distributive or minority control, therefore, it had better allow for the possibility that there are winners and losers in many public decisions. But won't the losers be dominated under any such decision-making procedure and won't their freedom be to that extent undermined? Not necessarily. If the procedure is impartial, in the sense of not being stacked in favour of any of the relevant, conflicting interests – if the decision is made just on the basis of what course of action would best promote the shared goal – then those who come off worse are unlucky but they are not subject to interference on an arbitrary basis: their avowable interests will be taken into account just as much as the interests of those more fortunate, in the process that leads to the decision.

There is an enormous gulf between being subject to a will that may interfere in your affairs without taking your perceived interests into account and being subject to a process such that, while it takes your interests and those of others equally into account, it may deliver a result – for reasons you can understand – that favours those others more than you (Spitz 1995: 382–3). In the first case, you must see yourself as living at the mercy of another; in the second, you can see yourself as simply unlucky. You can treat the setback you suffer as something on a par with a natural misfortune. The world, it transpires, does not enable you simultaneously to satisfy your interest in having government establish a power plant, for example, and your interest in not having that power plant near your backyard.

Is there any procedure that would empower the avowable perceived interests of individual members of the community, even those in relevant minorities, but not to the same self-defeating extreme as the vetoing proposal? The obvious candidate is a procedure that would enable people, not to veto public decisions on the basis of their avowable, perceived interests, but to call them into question on such a basis and to trigger a review; in particular, to trigger a review in a forum that they and others can all endorse as an impartial court of appeal: as a forum in which relevant interests are taken equally into account and only impartially supported decisions are upheld. I describe this alternative

arrangement, which allows of many possible variations, as a contestatory regime.

The power that people would have under a contestatory regime is weaker than a veto but still of considerable significance. It is a power of contesting public decisions on the grounds that they do not answer adequately to certain avowable, perceived interests – they do not answer adequately to perceived interests that are consistent with the desire to live under a shared, non-discriminating system of government – and that they impose arbitrarily on the bearers of those interests. The complaint is not that the bearers fare less well than others under such a decision – some are bound to lose out – but that the decision was taken in a way that did not take their interests equally into account. The assumption behind the complaint is that if those interests had been taken equally into account, then the ultimate decision would have been different.

The electoral mode of democratization represents public decisions as democratic and to that extent legitimate because they originate, however indirectly, in the collective will of the people. The people are the ultimate authors of the decisions. The contestatory mode of democratization would represent public decisions as democratic in a further sense – and to a further extent legitimate – so far as they are capable of withstanding individual contestation, in particular contestation in forums and under procedures that are acceptable to all concerned. Where the electoral mode of democratization gives the collective people an indirect power of authorship over the laws, the contestatory would give the people, considered individually, a limited and, of course, indirect power of editorship over those laws.

The feasibility of contestatory democratization

The appeal of the contestatory proposal is that, while enjoying similar attractions to the vetoing arrangement, it does not suffer the same problems of feasibility. The proposal will be more feasible than the vetoing arrangement to the extent that it empowers people in the assertion of their perceived interests but does not set them up as dictators with an individual capacity to negate any public decision.

But there is another question of feasibility that has to be raised in relation to the contestatory proposal. This is the question of whether it will ever be possible to establish procedures and fora of appeal that almost everyone can regard as impartial. Of course, there is unlikely to be any hope of finding the perfectly compelling process of appeal and review. But the crucial question is whether we can hope for the feasibility

of a process that will satisfy the following constraint: that surviving the process reinforces, and that failing the process reduces, the reasons that an ordinary individual has available for believing that a decision is consistent with taking people's avowable, perceived interests equally into account.

People will have reason to believe that a public decision is likely to be consistent with equal consideration of such interests so far as it is salient that the decision-makers and decision-testers lack the opportunity or incentive for unequal consideration and have the opportunity and incentive for equal. So the question, then, is whether any feasible contestatory regime would shift the salient opportunities and incentives in the appropriate direction. We may consider this question in relation to the familiar avenues for contestation. These include: challenging a public decision in the courts on the grounds that it is illegal or unconstitutional; challenging it before a public commission or parliamentary inquiry on the grounds that it is improper in some way; or challenging it before an administrative appeals tribunal, or complaining about it to an ombudsman, on the grounds that it is not adequately supported.

Wherever a court or inquiry or appeals board hears public challenges and reviews a decision, then that means that the opportunities and incentives shift in an appropriate direction. The striking feature about any such contestatory process is that in cases where it is activated the relevant opportunities and incentives are relatively favourable from the viewpoint of equal consideration of people's interest. It may be in such cases that the original decision-makers in the legislature or administration had the incentive and the opportunity to ignore the avowable, perceived interests of a certain minority. But it is unlikely that the reviewing agency will have the same opportunity and the same incentive.

The reviewing agency may have to do or report its business in public, for example, in which case it will probably not have the same opportunity to ignore the minority interests: it will have to consider explicitly how they are served by the decision. And it will almost always be subject to quite a different array of incentives. Where those elected to government may have an interest in securing re-election by satisfying their particular backers, for example, those involved in review will usually have quite different – if in some cases, still electoral – incentives. They may be free of self-serving interests and be all the more susceptible to considerations of fair play – this, by analogy with what we expect of juries (Abramson 1994) – or they may have an interest in enhancing their reputation as knowledgeable and even-handed among their professional

colleagues or in the community at large (Brennan and Pettit 1993; Pettit 1997: chap. 8).

The best test of whether a contestatory regime is likely to be feasible is this. Are people disposed to endorse processes of review and resolution that find against their own particular views? Are they willing to think that if a decision stands up under such a process, for example, then however unwelcome the result, it is not arbitrary from their point of view: it is not generated in any necessary part by a neglect of their avowable, perceived interests?

There are many social divides such that people on different sides may not be willing to have their rival views on certain issues decided by any independent process; if the process goes against them, and if its finding rules, then they may be unable to believe that their avowable, perceived interests were taken equally into account. In such cases, the promotion of freedom as non-domination will require us to look at possibilities of secession for one or another side, or to explore the prospect of separate jurisdictions for the different groups, or to think about a federal structure in which each gets its own territory, or to make room for rights of conscientious objection on the part of the group that is negatively affected. Or at least it will require this so far as other things are equal: so far as such emergency measures would not in other ways have more damaging effects on people's freedom as non-domination.

But many issues on which people divide are not so intractable as this. And in these cases the evidence is that, yes, people in general are often willing to think that contestatory processes that deliver unwelcome results are still fair – they do not ignore their avowable, perceived interests – and are to that extent acceptable: they do not represent the presence of an arbitrary power in their lives. According to Tyler and Mitchell (1994: 746), “research indicates that the key factor affecting the perceived legitimacy of authorities is procedural fairness. Procedural judgments have been found to be more important than either outcome favorability – whether the person won or lost – or judgments about outcome fairness” (see too Lind and Tyler 1988).

One of the most difficult of issues in contemporary democracy concerns the legalization of abortion on demand. Here Tyler and his associates found that US citizens regard the Supreme Court as legitimate in its handling of abortion decisions, and defer to those decisions in a measure that is mainly determined by whether they think that the decision-making procedures followed by the Court were fair. “Institutional legitimacy is more important than is agreement with either past Court decisions in general or past Court decisions about the specific issue of abortion” (Tyler and Mitchell 1994: 789). Nor is the effect

confined to the courts. In a recent book summarizing overall research in the area, the authors write: “people’s evaluations of group authorities, institutions, and rules have been found to be influenced primarily by procedural-justice judgments. This is found in studies of legal, political, and managerial authorities” (Tyler, Boeckmann, Smith, and Huo 1997: 83).

Historical antecedents

The notion of making a democracy contestatory is not a newfangled idea that I have just dreamt up. It has been a theme in democratic thinking right back to the seventeenth century, although it has generally been overshadowed by the emphasis on the collective, popular control of government that electoral regimes are designed to make possible.

Pasquale Pasquino (1996) has argued recently that we find in Locke a notion of popular sovereignty distinct from the model of collective control that had already figured in Hobbes. This associates popular sovereignty with the fact that government is a trust, in Locke’s (1965 [1681]) legal metaphor, and that the people – the trustors, as we might say – retain the right to resist and reject government – the trustee – in the event of that trust not being properly discharged. This model gives the notion of popular sovereignty an essentially contestatory cast, though it emphasizes only the limit possibility of contestation by resistance.

But the model of government as trustee, people as trustors, was widely invoked in the seventeenth century – it was not Locke’s invention (Gough 1950: 161) – and it was associated with more routine ways of challenging government than armed resistance. It gave the judiciary a means of calling the authorities, even authorities established by the Crown, to book: “whatever the source of their power and position, if their offices existed to perform a public service (to discharge public duties) theirs were offices of ‘trust and confidence concerning the public’” (Finn 1995: 11). And it enabled the Levellers to argue that even an elected parliament should be subject to the terms of an agreement that would enable the people to know when they could legitimately challenge their government. “Parliaments are to receive the extent of their power, and trust from those that betrust them; and therefore the people are to declare what their power and trust is, which is the intent of this Agreement” (quoted in Morgan 1988: 83).

The idea in the trust model of government is that the democratic role that enables people to ensure control over law is not their creative, law-making role, assuming they have that, but rather an oppositional one: a role, ideally, that would “give a separate and superior institutional voice

to the people, to protect them as subjects from themselves as governors" (Morgan 1988: 83). This oppositional idea has survived, side by side with the growing emphasis on popular election, down to the present day. One of its best-known expressions, of course, is the recurrent emphasis on the need for constitutional guarantees, akin to the terms of the Levellers' Agreement, whereby people can be given power over government. It is unfortunate that, far from being seen as expressive of a notion of democratic control of government (a contestatory model of control), that emphasis is sometimes presented, even by its defenders, as an anti-democratic device that is needed to guard against the control of the people (Riker 1982; see also Holmes 1988).

The oppositional idea of democratic control has survived also in other forms, as the work of political scientists and political theorists demonstrates. Political scientists have long recognized that "contestation," as Robert Dahl (1956) describes it, is just as important a feature of democracy as participation or representation (see too Lijphart 1984 and 1991). It is significant that Barrington Moore (1989: 8), for example, maintains that the defining criterion of democracy is "the existence of a legitimate and, to some extent effective, opposition." Ian Shapiro (1994 and 1996) reflects this background of analysis in his prescriptive recommendation for a democratic scheme under which the institutionalization of opposition plays an equal role with collective self-government.

In arguing for a contestatory element in the interpretation of democracy, then – in arguing, specifically, that freedom as non-domination requires a contestatory as well as an electoral mode of democratizing government – we are not defending a novel and untested notion. The idea of making government answerable to the challenges of individuals and groups has been there from the earliest formulations of democracy and is there still in most democratic practice.

But while this idea has not disappeared, it has consistently played a secondary role to the idea of putting government under popular, collective control and it has ceded to that other idea a semantic connection with the word "democracy." To our contemporary ears a democratic regime is one in which the people collectively govern themselves, whether directly or via representatives. And so to our ears any proposal to constrain government by instituting individual rights or by setting up possibilities of individual challenge – any proposal to put limits on what can be decided either by the legislature or in a referendum – looks like a trimming of the democratic sails (as in Riker 1982). This, from my perspective, is the product of a serious conceptual loss. Sensible political theorists all agree that popular, collective control needs to be restricted in various ways. What they should also recognize is that the case for this

limitation is not just pragmatic in character. It derives from the principles of democracy when democracy is interpreted in an electoral-cum-contestatory manner. It derives from the principles of democracy under the only interpretation that properly connects democracy with the requirements of individual freedom.

The significance of the contestatory turn

What, finally, is the significance for democratic theory of adopting the perspective defended here and of taking democracy – or at least democracy in the sense in which it would serve republican freedom – to have two dimensions, one electoral, the other contestatory? What is the payoff for taking the contestatory turn in democratic theory? I see two benefits and I conclude with a brief mention of these; I hope to elaborate them more fully elsewhere (see Pettit forthcoming).

The first benefit of giving democracy a contestatory as well as an electoral cast is that by doing so we can make sense of a range of features which most of us take to be desirable in any democratic regime. Consider the following list of democratic desiderata, for example:

- political control, legislative and executive, should leave people each with a sphere of autonomous decision-making: it should be limited in scope;
- political control should be exercised under the constraints of certain constitutional procedures and restrictions;
- political control should conform to a rule of law, with laws framed in general terms, not directed to named individuals;
- political control should be exercised on the basis of publicly accessible, parliamentary deliberation;
- political control should be exercised in a bicameral fashion, with each house of parliament representing distinctive interests;
- judicial functions, or at least certain ones, should be filled by statutory appointment, not by electoral means, and should be exercised without legislative or executive direction;
- some executive decision-making – for example, in drawing electoral boundaries – should be depoliticized and put in the hands of statutorily appointed officers and bodies;
- executive decisions should be generally open to inspection, justified by documented reasons, and subject, on appeal, to review by the courts or by certain statutory officers or bodies.

These desiderata may not be of equal importance and one or two may not be given much weight by some democratic theorists. But they do

figure in most political thought as features that are intimately associated with the notion of democracy. Someone who defended democracy but rejected one or more of these desiderata would certainly feel obliged to comment on the fact and to try and justify it.

This being so, it would be good to have a conception of democracy that made sense of why the features in question are generally thought to be important to the democratic ideal. And here the striking thing is that if we think of democracy as having a contestatory as well as an electoral aspect – as requiring individualized as well as collective control of government – then we can immediately explain why the features so often figure as democratic desiderata.

It would be possible to have an electoral democracy, even one that made government effectively answerable to an electorate, without having all, even perhaps any, of the features mentioned. There is no reason why electoral democracy should be limited in scope, constitutionally restricted, forced to operate by rule of law, based on public deliberation rather than private accommodation, and so on. But it would hardly be possible to have a contestatory democracy without building such features into the design. Some of the features would serve to restrict government decision-making in a way that ought to reassure the public and remove patterns that might prompt unnecessary contestation; others would help to facilitate the possibility of contestation where contestation does indeed prove to be necessary.

Consider features such as the limitation of the scope of political control; the constitutional restriction on political control; the rule of law and bicameral requirements; and the use of statutorily appointed officers and bodies in both executive and judicial or quasi-judicial roles. These all make sense as features designed to remove patterns of government that would cause public anxiety and prompt a great deal of contestation. The prospect of unlimited, unrestricted, legally particularistic and electorally hypersensitive government is a hideous specter from the point of view of anyone who wants to make government contestable. Such government would leave extraordinary scope for those in power to pursue their private goals and not take people's interests equally into account; it would open the gate to widespread domination.

Consider now the other features on the list given above: the requirements that parliamentary democracy be deliberative and that governmental decisions should be generally open to inspection, justified by documented reasons and subject, on appeal, to review by the courts or by certain statutory officers or bodies. As the first set of features are designed to remove prompts towards contestation, these features can be seen as designed to facilitate contestation itself. If democratic decisions

were just bargained accommodations between different interest groups, then there would be no ground on which ordinary people could contest them. And if governmental decisions were taken in camera or without reference to reasons, or if there were no avenues of appeal and review, then contestability would be wholly undermined.

I have been suggesting that a first benefit in the contestatory turn is that it would enable democratic theory to derive from the democratic ideal certain features that are generally seen as desiderata and that would otherwise have to be taken as exogenous constraints. The second benefit that I see in the contestatory turn I must record without documentation. This is that once the features mentioned are unified as requirements of a contestatory democracy, then we may begin to think about how they can be extended and improved in the service of promoting contestability. The contestatory turn does not merely provide us with a more encompassing grasp of the democratic ideal, it also suggests a research program of elaborating the institutional means whereby the contestatory dimension of democracy might be enhanced.

Constitutional lawyers and theorists have always given enormous attention to questions of constitutional restriction, and recently there has been a good deal of investigation among political theorists into the best means of making democracy more deliberative (Cohen 1989; Habermas 1984 and 1994; Sunstein 1993a, 1993b, and 1993c; Young 1993). But discussion of the other contestatorily justified features of democratic systems has been desultory and undirected. Everyone tends to agree that they are indeed justified but few have looked into how best they might be institutionalized and into whether they suggest further ways of developing democratic institutions. Thus, while there is widespread agreement that depoliticization of certain functions is often a good idea in government, there has been little or no discussion of how far it should be extended. Many agree that there should be a depoliticized electoral commission and perhaps a depoliticized central bank but there has been no systematic study of how depoliticization can be achieved, of when it is feasible or of when it is desirable: of when it serves contestability well, for example, without undermining electoral control (see Waldron forthcoming).

I believe that if we take the contestatory turn in thinking about democracy, then such questions should quickly present themselves as both important and tractable. They should assume the profile of a compelling research program. That research program would not be novel, given the attention devoted to related, institutional questions in the writings of theorists from Machiavelli to Montesquieu and the American founders. But it would make for a new and interesting

departure in the work of contemporary political theory, or at least contemporary political philosophy.⁴

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10 Contestatory democracy versus real freedom for all

Philippe Van Parijs

Since the mid-1970s the United States and a number of other industrialized countries have experienced a dramatic increase in income inequality and a steep fall in the standard of living for the lower layers of the income distribution. These trends are, in a plausible sense, the outcome of greater freedom. They are also, in an even more plausible sense, a deadly threat to the freedom of many. To tackle this threat, to reverse the underlying trends, democracy is essential, but not just any form of democracy. Philip Pettit's contribution to this volume is helpful, not merely because it helps clarify the conceptual relationship between freedom and democracy, but because it also makes us think about how to reshape our democracies to preserve or create as truly free a society as is possible. I warmly welcome this, as political philosophy has never been for me an idle game played for the pleasure of making subtle distinctions and smart points, but a crucial part of the urgent task of thinking up what needs to be done to make our societies and our world less unjust than they are, or even simply to avert disaster.

I fully agree with Pettit that making our democracies more contestatory is urgently required, not as an aim in itself, but in order to promote freedom. Yet I also believe that making them as contestatory as possible would, under present circumstances, handicap their pursuit of the ideal of freedom in the most defensible interpretation of that ideal. To explain, some preliminary conceptual clarification is in order.

Three distinctions

On the freedom side, Pettit's key distinction is between freedom as non-interference and freedom as non-domination, also called republican freedom. How does this distinction relate to the old (and often confusing) distinction between negative and positive freedom? How does it relate to my own favorite distinction between formal and real freedom, at which Pettit briefly hints (see footnote 1, p. 167, above). If positive freedom is interpreted (as it is by Pettit on p. 164) either as psychological