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Arbitrary power and the limits of control

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ABSTRACT

Republican freedom is said to require institutions denying anyone the power to interfere with people contrary to their shared interests regardless of the likelihood of such power being exercised. This paper identifies two constraints on this insistence on institutional protection. First, maintaining institutional constraints is costly and will serve people's interests only insofar as they reduce the probability of interference. And second, republicans do not support attempts to control individuals' behaviour expected to make unwanted behaviour more, not less, likely. These limits of institutional control reveal a fundamental concern with reducing the probability of interference, not with eliminating arbitrary power.

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1. Introduction

An essential component of the republican contribution to political theory is the emphasis on the importance of institutions denying anyone arbitrary power over others. Institutions should promote citizens' common, or shared, interests, which involves protecting them against ending up in precarious positions where they are vulnerable to the interference of some more powerful agent. These institutions 'constitute' the republican ideal of freedom as non-domination (Pettit 1997, p. 81). Freedom, Pettit (1997, p. 107) explains, 'comes into existence simultaneously with the appearance of the appropriate institutions'.[1] Also other contemporary republican theorists maintain that liberty cannot exist without certain protective institutions (Sellers 1997, List 2006, Lovett 2023). Crucially, these institutions are said to make people free not by reducing the probability of people interfering with each other, but instead by denying people the arbitrary, or uncontrolled, power to interfere with others as it pleases them.[2] They thus protect individuals from ending up under others' control and thereby ensure their independence.[3]

This is said to make republican freedom significantly different from negative freedom, according to which you are free to perform any action no other agent prevents you from performing – that is, no one makes it physically impossible for you to perform the action.[4] This means you are either free or unfree to perform any particular action. Your overall negative freedom is, at least in part, a function of how many possible combinations of conjunctively exercisable, or compossible, actions you have (Carter 1999).

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Another agent makes you less free by preventing you from doing a particular action in conjunction with another action. If they prevent you from doing *x* if you do *y*, they reduce your overall freedom by denying you all sets of otherwise compossible actions containing both *x* and *y*. And at any time, the measurement is sensitive to the probability of experiencing such prevention at a future time (Carter 1999, pp. 233–245, Kramer 2003, pp. 174–178). All else being equal, you are considered freer if the probability of another preventing you from doing *y* if you do *x* is low than if it is high.

Republicans criticize this focus on probability. For Pettit (2011, 2012, pp. 64–69), it means an agent, A, can have a considerable degree of negative freedom despite being dominated by another agent, B, who thus makes A unfree in the republican sense. B may be unlikely to interfere with A despite having the arbitrary power to do so, perhaps merely because B is in a good mood or is for whatever other reason friendly towards A. The probability of B's interference may be very low, and her negative impact on A's freedom therefore minimal, despite B having the unconstrained power to interfere with A at will.[5] By understanding freedom to be constituted by protective institutions denying B such power, however, B's internal dispositions towards A can have no impact on A's freedom. Freedom instead requires protection offered by external constraints denying B the power to interfere independently of the probability of B's interference.

Several commentators have rejected the republican freedom ideal for being impossibly demanding, since reliance on others' goodwill in a society is unavoidable and ubiquitous (Carter 2008, p. 71, Carter and Shnayderman 2019, pp. 139–140, Dowding 2011, Gaus 2003, pp. 69–74, Goodin and Jackson 2007, Kramer 2003, pp. 138–139, 2008, p. 45, Simpson 2017). But I develop a different, and so far unexplored, challenge to the republican protection requirement. A focus on particular institutions as constitutive of the ideal rather than instrumentally valuable for reducing the probability of interference has undesirable implications republicans are themselves unwilling to accept. Specifically, I identify two limits on institutional protection against arbitrary power, and I show how these restrictions make the republican concern with institutional protection inseparable from a concern with reducing the probability of interference.

First, the republican focus on promoting common interests involves a constraint on what measures can be taken to enhance institutional protection. This is at least so on Pettit's liberal understanding of republicanism, which is meant as a normative theory suitable for a modern pluralistic society.[6] Promoting common interests, as Pettit and other republicans understand them, will come with restrictions on the extent to which institutions can permissibly protect people against unwanted interference. Protective measures are costly, and their costs, I argue, will be compatible with these common interests only insofar as they actually make people less inclined to interfere with each other.

The second limit on institutional control appears when we observe that institutional constraints can make unwanted behaviour more, not less, likely. Republicans assume people will become corrupt, or non-compliant, in the absence of institutions punishing their non-compliance (Pettit 1997, p. 211, Machiavelli 2003, p. 28). A growing body of empirical evidence, however, shows that designing institutions based on such a view can make people less likely to act for the good of others (e.g. Frey 1997a, Bowles 2016). Trusting people to act virtuously therefore seems, at least in some cases, to be the best strategy for motivating good behaviour. We shall see that also Pettit (1997): ch. 8) recommends partly relying on trust and individuals' virtue for these reasons. But reliance

on trust rather than on institutional constraints appears to be exactly what republicans object to. It may be a wise strategy for organizing a well-ordered society, but endorsing it weakens the republican commitment to institutional control and elimination of arbitrary power regardless of its impact on individuals' inclination to exercise that power.

I begin in Section 2 by introducing the concept of republican freedom with a particular focus on its protection requirement. In Section 3, I show how republicans' concern with common interests restricts the promotion of institutional protection, and how this restriction is based on a measure of the probability of interference. In Section 4, I turn to the other limit of institutional control by showing how it can, counter-intuitively, make interference more, not less, likely. In Section 5, I consider how republicans, and Pettit especially, try to incorporate this limit of control into their theory. They cannot do so, however, without revealing a fundamental concern with reducing the probability of interference.

2. Institutional protection

Republicans consider a person, A, free insofar as he is not dominated by some other agent, B. And to be dominated is to be subject to B's arbitrary power to treat A in whatever way she pleases without concern for A's interests. How B actually treats A is irrelevant for the power B has over A. The power asymmetry means A depends on B's goodwill towards him. In such a vulnerable and inferior position, republicans do not consider A to be a free person. Being free in the republican sense is to be institutionally protected against ending up in such a precarious position. Institutions must be in place to deny people arbitrary power over others.

Importantly, only institutionally imposed *external* constraints on people's behaviour are considered relevant for freedom as non-domination. A person's internal constraints, such as a moral conviction not to do wrong, are irrelevant. Pettit (2012, p. 183) says, for example, that 'mere morality' offers nothing in terms of protection against another's arbitrary power. And Lovett and Pettit (2019, P. 372) maintain that 'virtuous self-restraint would not remove domination'. B may be internally constrained from interfering with A, but B can at any time change her favourable, or perhaps indifferent, disposition towards A. In the absence of external institutional constraints, A is therefore vulnerable to B suddenly changing her attitude towards him. Only with institutionalized external constraints in place is A therefore said to be in a position where he can relate to B as an equal without having to act deferentially so as to maintain her goodwill towards him.[7]

How much protection is needed to ensure that people enjoy this status as free persons? Republicans have been keen to emphasize that the required level of protection is not specified by their impact on the probability of interference (Pettit 2008a, 2011, Skinner 2008, pp. 96–97). External constraints can reduce this probability, but so can internal constraints. The probability of A being interfered with depends in part on how B happens to be disposed towards A. The probability may be low simply because of B's friendliness or moral convictions. But B can still dominate A, since domination concerns the power an agent has over another. B can choose, as a matter of goodwill, not to interfere with A, though she can easily do so. Republicans therefore focus on A's capacity to interfere. Institutions must make interference 'inaccessible', which does not mean making interference improbable but rather not within the agent's power. The institutions that

constitute freedom make sure that people experience no interference in any 'readily accessible' world (Pettit 1997, p. 24). Possible worlds are defined by different profiles of people's preferences. In case someone's preferences change so that she becomes inclined to interfere, institutions must be there to ensure that no interference occurs.

This requirement of robust protection against interference is presented as a distinctive component of republicanism, and others, especially influential liberal writers, are said to fail to appreciate its importance (Pettit 2012, pp. 108–109). These liberals, we are told, focus on the probability of interference, and consequently fail to appreciate the important distinction between internal and external constraints. They do not offer people adequate protection against ending up in vulnerable positions, where they must act carefully in accordance with the will of a more powerful agent to avoid interference. Republicans, on the other hand, claim to demand robust institutions that protect individuals from such vulnerability.

Many critics have concluded that this protection requirement makes republican freedom impossible (Carter 2008, p. 71, Carter and Shnayderman 2019, pp. 139–140, Dowding 2011, Gaus 2003, pp. 69–74, Goodin and Jackson 2007, Kramer 2003, pp. 138–139, 2008, p. 45, Simpson 2017). If being free to perform an action, *x*, requires not just that no one prevents you from doing *x*, but that constraints are in place so that no one can prevent you from doing *x*, then you can never be free to do anything whatsoever. There is no way institutions can protect you from interference regardless of how others may be disposed towards you. We can make laws against certain types of interference, but there is no way of making sure that no one will break these laws. The inaccessibility condition therefore appears unsatisfiable.

Pettit (1997, p. 214) acknowledges that 'few obstacles are absolute – most just raise the costs, and therefore the penalty, attaching to an attempt to act in the manner prohibited'. This is what the institutions said to constitute freedom do. What makes A unfree with respect to B is therefore not simply B's power to interfere, but more precisely B's 'power of relatively costless interference' (Pettit 2011, p. 708). Interference with another without concern for his interests need not be made impossible, but such interference cannot happen with impunity in a nearby possible world (Pettit 1997, p. 22, Skinner 1998, p. 72). Punishment, Pettit (2007, p. 715) says, should occur with sufficient probability so that unpenalized interference becomes 'a contingent occurrence, not an event that reveals a systematic vulnerability'. It must be known that actions undermining others' interests are generally penalized. This level of protection is understood to enable people to pass Pettit's (2012, p. 47) 'eyeball test', which requires that they can 'look one another in the eye without reason for fear or deference'. They will then 'have no good reason to be anxious' (Pettit 2012, p. 71).

Ingham and Lovett (2019), similarly, argue that institutions should make the threat of punishment sufficient for making the threat of interference 'ignorable'. A does not know whether B is inclined to interfere with him if she expects to do so with impunity. But with sufficient institutional protection, A can ignore the possible type of B that would be inclined to interfere with him in the absence of such protection. By taking it to be common knowledge that everyone knows about a high probability of punishment, and that everyone knows that everyone else knows about this, people can be expected to refrain from impermissible interference and to feel protected enough to ignore rather than worry about becoming victims of such treatment.

3. Common interests

Republicans' concern with institutional protection must be understood alongside their focus on promoting common interests. Institutional protection is costly, and there will therefore be a limit to how much protection is in citizens' common interests. Surveillance cameras, a vigilant citizenry, and random police checks are ways of making people more compliant. But republicans will object to such measures insofar as they conflict with citizens' common interests.

For Pettit (2001, pp. 156–160), common interests are interests people can avow in public without embarrassment because they are held by everyone in the society. These are not interests one might think citizens ought to have, Pettit stresses, but rather interests they actually have. This partly explains why Pettit (1997), p. 234) says the level of protection freedom requires cannot be determined prior to 'empirical investigation'. Citizens' shared interest in protection will vary from one society to another, and we therefore cannot specify abstractly how robust the protection must be. This makes republicanism 'compatible with modern pluralistic forms of society', in Pettit's (1997, p. 8) view, since the relevant set of interests are the interests shared in such societies. It is 'neutral', he says, in the sense that it allows people in a diverse society to pursue their various conceptions of the good without promoting one at the expense of another (Pettit 1997, p. 120).

Some consider Pettit's neutrality to be closely connected to that of Rawlsian political liberalism (Moen 2022, 2024). Pettit (2001, p. 157, fn. 1) also says his account of common interests 'owes much in particular to the interpretation of Rawlsian contractualism'. Rawls takes the common interests promoted by a legitimate government to be the interests shared by citizens of a modern pluralistic society. And both Rawls and Pettit find these interests to include a special concern for the basic liberties. Free citizens can relate to each other as equals due to their institutionally protected ability to effectively exercise the basic liberties.[8]

On the matter of protecting the common interests, however, Pettit claims his republicanism is more demanding than is Rawlsian liberalism. He particularly points out that republicans, unlike Rawls, are concerned with providing the protection and resources individuals need to robustly enjoy the basic liberties (Pettit 2012, pp. 107–109). Pettit (2012), p. 11) acknowledges that liberals typically endorse the same formal institutions as republicans, such as a separation of powers,[9] but he says liberals do not appreciate the importance of citizens putting pressure on their government by being ready to contest decision making perceived to compromise their common interests (Pettit 2012, p. 11). Pettit does not mention that Rawls (2001, pp. 117–118, 142, Rawls 2005, pp. 194–195) explicitly stresses the importance of such 'political virtues' in order to ensure that institutions satisfy the principles of justice, which first of all requires that citizens enjoy the institutional protection and resourcing they need to effectively exercise the basic liberties. In these pages, Rawls indeed endorses what he calls 'classical republicanism', which he, like Pettit, understands to require citizens' active participation rather than reliance on powerholders' goodwill (esp. Rawls 2001, p. 144).

But republicans might argue that Rawls, and arguably Pettit, do not go far enough in requiring such activity for the sake of protection against political misrule. Lovett and Whitfield (2016), p. 129) understand the republican concern with political participation

to be too demanding for liberal neutrality and impartiality, which they take to require that 'public policies, institutions, and so forth be justifiable to all persons, regardless of their conception of the good, provided they are ready and willing to engage in social cooperation with others on fair terms'. Republicanism, on their view, only satisfies a weaker 'principle of toleration', which requires that 'no special disadvantages' be imposed on 'any worthwhile conception of the good' (Lovett and Whitfield 2016, p. -124).[10] This enables republicans to promote politically active ways of life outside the bounds of liberal neutrality. Lovett and Whitfield (2016, p. 127) particularly mention compulsory voting, subsidies for political activities, and education and policies 'designed to inculcate a patriotic love of republican institutions'.[11]

But the concern with common interests still implies a limit on how much republicans can demand from citizens. There will be ways of creating more politically active citizens that can invigilate political powerholders in ways that would intolerably compromise many people's ability to pursue their conceptions of the good. We can give children a comprehensive civics education and prepare them for a political life of constant vigilance and contestation. But there are limits on the extent to which such measures would receive wide support in a modern society, where citizens hold a diverse range of conceptions of the good. Pettit indeed goes far in allowing individuals to decide for themselves how much popular control republican freedom requires. If citizens could have objected to how their government acted but did not, that makes them no less free because, he says, 'you and your fellows have only yourselves to blame' (Pettit 2012, p. 178).

Pettit (2012, p. 95) says people cannot be allowed to make choices that will make some superior to others. But they may, apparently, make decisions that allow powerholders better chances of getting away with behaviour contrary to common interests. People will indeed likely prefer one another to devote only limited time to politics and more to delivering desired goods and services (Brennan and Lomasky 2006, pp. 233–234). Insofar as an account of common interests is sensitive to these concerns, it will restrict attempts to make citizens conform to such a political life. The view consistent with the republican emphasis on protection and elimination of arbitrary power would be that if citizens make decisions that make them more ignorant of how powerholders use their power, and therefore more vulnerable to power abuse, then they make themselves less free than they could have been.

The more protection republican freedom demands, the more demanding it will be on individual citizens. And since republican freedom also requires that institutions promote citizens' common interests, the extent to which they can ensure such protection will depend on what they can demand of citizens without compromising their common interests. People like to feel safe, but they might not want surveillance cameras on every street corner, an intrusive police force, and compulsory education designed to create a politically active citizenry at the expense of many reasonable conceptions of the good. Establishing and maintaining protective institutions also depends on citizens devoting time and resources. The cost of institutional protection thus falls in various ways on citizens. There will therefore be a limit to how much protection is in their common interest.

But support for formal state institutions is no doubt likely in our society as it is. It is also likely that this support will depend on these institutions effectively reducing the

probability of interference. We can see the connection between common interests and probability of interference by considering a case where establishing formal institutions makes interference no less probable. In Kramer's (2003, pp. 140–141, Kramer 2008, pp. 47–48) example, a giant has the power to make himself a tyrant capable of interfering with anyone in his village as it pleases him. Fortunately, however, the giant has no interest in interfering with anyone; he just wants to be left alone, secluded from society. The probability of the giant interfering is 'effectively zero', Kramer explains. But since the giant can easily interfere with anyone in the village, he nonetheless seems to make the villagers unfree in the republican sense.

To maintain that republican freedom is about the elimination of arbitrary power and not about reducing probability of interference, republicans must consider the necessity of institutional constraints on the giant independently of how likely he is to interfere with other villagers. Skinner (2008) commits to this view by declaring the villagers to be effectively enslaved because of the lack of protection against the giant. Pettit (2012, pp. 181–184) implicitly follows this line when he says freedom requires state protection even in Kant's Kingdom of Ends, where everyone treats everyone else respectfully with a firm moral commitment to never interfere with another without concern for their interests. We have also seen that Pettit considers reliance on such internal constraints to be insufficient.

But this focus strictly on external constraints seems inconsistent with Pettit's 'eyeball test' for determining whether a person is free. It seems plausible that people share an interest in being able to 'look one another in the eye without reason for fear or deference' (Pettit 2012, p. 47). But power asymmetry itself does not imply a failure to satisfy this test. Assuming that people will have some inclination towards using the power contrary to others' interests, there will be good reason to act deferentially towards the powerholder. But unless there is a certain probability of the power being used against them, it is not clear why one cannot look the more powerful person 'in the eye without fear and deference'. As Kolodny (2023): ch. 23) has recently noted, power asymmetry does not mean one submits to another's power. Kolodny (2023), pp. 273–274) indeed uses Kramer's gentle-giant case to suggest the villagers will not relate to the more powerful giant as inferiors, and will therefore remain free from domination, because they have no reason to submit to his power.

Ingham and Lovett's (2019) 'ignorability' requirement also seems to entail that power asymmetries are not themselves problematic, since the villagers in Kramer's example seem to have good reason for living without worrying about the giant's interference. But they suggest a different understanding in a case where men have the arbitrary power to deny their wives' opportunities to seek employment outside the home (Lovett and Ingham 2022, pp. 237–240). Even if they are committed to never intervene, and the probability of their doing is for that reason very low, perhaps even zero, Lovett and Ingham still think these men dominate their wives.[12] The type of husband inclined to intervene is not considered ignorable due to the absence of external constraints on his capacity to do so.

One problem Lovett and Ingham (2022, p. 238) sees with this non-ignorability is that 'the employer would need to consult with her husband' before hiring a woman. This is because the husband's commitment to non-interference is not common knowledge, requiring that everyone knows that the husband will not interfere and

that everyone knows that everyone knows this. External constraints will contribute to this common knowledge and ensure social coordination giving women easier access to employment outside the home. External constraints on this benevolent husband would therefore, in Ingham and Lovett's (2019, pp. 779–780) view, be 'practically consequential'.

But if that is so, then this institutional arrangement has a negative impact on the woman's negative freedom caused at least by those maintaining it and whoever else delays the woman's opportunity to start working. As Jafarov and Huseynli (2022, pp. -226–230) point out, the husband, by not prevent his wife from seeking employment, does not make her unfree, but the potential employers do make her unfree by denying her employment. To make this a case not about negative unfreedom and the probability of interference, we must therefore assume not only that the probability of the husbands interfering is zero, but also that potential employers have no good reason to seek permission from husbands before hiring their wives. In this case, it seems social norms against husbands' interference have very likely developed, and these norms can plausibly be said to constitute external constraints on the husbands. It then seems implausible to say they dominate their wives. But if non-domination strictly demands formal constraints, then the women are dominated also in this case. And non-domination would then require institutional constraints even when it provides no one any opportunities they otherwise would have had.

This modification of Lovett and Ingham's example makes it very similar to the gentle-giant case, where imposing restrictions on the giant would only deny him opportunities without giving the villagers any opportunity they did not already have. In fact, the cost of establishing and maintaining the constraints would likely involve a loss of opportunities for the villagers. Lovett (2022, pp. 67–68) addresses Kramer's gentle giant example by saying that republicans require protection also in that case because the villagers cannot see the giant's psychological states and therefore cannot ignore the threat of his interference. This alters Kramer's presentation of the case significantly and probably makes it more realistic. But by doing so, it confirms that it is how the power is expected to affect behaviour that is troubling, not the power itself.[13]

In cases where someone's power has absolutely no negative impact on anyone else's opportunity set and formal constraints would only deny people opportunities, it seems unlikely that these constraints would be in people's common interests. And they would clearly conflict with an account of common interests sensitive to the plurality of modern society, like Pettit's. For restrictive institutions not to be objectionable to citizens, they have to offer them meaningful protection. And it is unclear why citizens would endorse institutions that only deny them opportunities without ensuring other opportunities – that is, if they do not serve their overall negative freedom. Respect for common interests therefore implies a restriction on the republican requirement of institutional protection and on the republican concern with eliminating arbitrary power.

4. 'Machiavelli's mistake'

The other limit of control follows from the observation that institutional protection can be counter-productive. If attempts to control people's behaviour will make them more, not less, likely to behave in undesirable ways, it seems wise to instead rely on trust, despite

the vulnerability that comes with it. We shall see in the next section that Pettit sometimes recommends reliance on trust, but that appears incompatible with his insistence on robust institutional protection.

'[T]he view generally adopted within the republican tradition', Pettit (1997, p. 211) explains, is that humans are naturally 'corruptible' (see also Pettit 2012, p. 247). If given the opportunity to act against common interests with impunity, they will do so to serve personal or factional interests. Institutions must therefore be in place to constrain people to behave in accordance with common interests. Machiavelli (2003), p. 28), a key figure in the republican tradition, expresses this view when he says law makers in a republic should take for granted that without legal constraints, people 'will always act according to the wickedness of their nature'. Without fear of punishment, he expects people to lose motivation for serving the good of their society and instead pursue selfish ends.

This view is closely related to the key assumption in neo-classical economics that cooperation and compliance with contractual obligations depend on third-party enforcement. Strauss (1988, p. 49) indeed considers what he calls 'economism' to be 'Machiavellianism come of age'. Prominent economists also understand people to be less likely to break the law the more likely they are to be punished for doing so.[14] This 'deterrence argument' is also expressed by thinkers in the republican tradition (e.g. Blackstone 1978).

This view implies what Bowles (2016, p. 22) calls the 'separability assumption', according to which law-induced and morality-induced motivations are additively separable, so that attempts to stimulate either one will have no impact on the other. So, on this view, punishment for not acting virtuously can only make people more likely to act virtuously. Pettit (2012, p. 183) expresses this view when he says the state should be introduced as 'a second line of defence' even in the Kingdom of Ends, where people will in any case act virtuously. The state is crucial, in Pettit's view, because this additional layer of protection liberates individuals from dependence on others.

But is the separability assumption sound? Bowles (2014, p. 268) calls it 'Machiavelli's mistake'.[15] Punitive incentives and moral motivations are not additively separable. One might not add to the other. A common observation in behavioural studies is that performance and behaviour vary non-monotonically with incentives. More severe and probable punishment, or greater and more probable reward, does not correlate with more compliance. People may perform better when there is no punishment or reward than when such a tangible incentive has been introduced. Such incentives can 'crowd out' people's intrinsic motivations for good behaviour (Frey 1997a, Bowles 2016). The crowding-out effect can make people's performance worse than it would have been had the incentives not been introduced.

Summing up the relevant literature, Bowles (2008) identifies four reasons for why the separability assumption is false. First, incentives frame a decision problem so as to suggest that self-interested behaviour is appropriate. A much-cited example of this effect is Gneezy and Rustichini's (2000) study of ten day-care centres in Haifa, Israel. In response to the problem of parents picking up their children late, six of the day-care centres introduced a fine, while the other four did not. The surprising result was a steady increase in late pick-ups over the first three-four weeks at the day-care centres with the fine, before the number stabilized at a level almost twice that of the average in the control group. Gneezy and Rustichini's explanation is that parents treated the fine as a price for

coming late, and paying the price made it acceptable to be late. They no longer felt morally obligated to be on time.

Second, incentives affect long-term preference formation. In Gneezy and Rustichini's (2000) study, the parents' behaviour did not significantly change after the fine was removed. And in some cases where the incentive had the desired effect, the performance level dropped after the incentive was removed below the performance level of people who had never been given the incentive (Falkinger *et al.* 2000). It also seems intuitive that people become less willing to do something for free if they have become accustomed to being paid to do it.

Third, incentives compromise individuals' sense of autonomy. External constraints can, as Frey (1997a, pp. 16–17) summarizes, impair people's sense of self-determination, self-esteem, and possibility of expression. This can lower their performance level. Deci *et al.* (1999) find that rewards can undermine people's self-regulation, thus making them feel less responsible for motivating themselves. They may then become less inclined to do something they were already intrinsically motivated to do. A typical explanation for the crowding-out effect is that externally imposed incentives give people the feeling of being controlled by others, which, of course, usually is the intention behind the incentives. Falk and Kosfeld (2006) take this to reveal what they fittingly call 'the hidden costs of control'.

In their principal – agent experiment, Falk and Kosfeld (2006) found that agents were more likely to act in their principals' interest when principals chose to trust them rather than restrict their choices. The principals' beliefs about their agents, Falk and Kosfeld (2006, 1622) argue, produce a 'self-fulfilling prophecy of distrust'. Agents who were controlled also reported beliefs in their principals having lower expectations of them than did agents who were not controlled. They felt less trusted and more restricted to make their own choices. And the less an agent believed the principal expected from them, the less willing was the agent to perform in the principal's interest. Falk and Kosfeld (2006, pp. 1626–1628) also find that these results carry over from the lab into realistic workplace scenarios, where all workers indicating a high or very high level of work motivation experience more trust than control from their principals.

The fourth and final reason Bowles finds for rejecting the separability assumption is that incentives convey information that affects behaviour. Incentives reveal information about the nature of the task the principal wants the agent to perform, as well as what the principal thinks about the agent. Extensive surveillance, for example, could suggest to people that they are not considered trustworthy. This measure for ensuring compliance might result in an adversarial relationship between legal authorities and citizens and lead to a decrease in compliance and in the willingness to assist the police in fighting crime (Tyler and Huo 2002, Sunshine and Tyler 2003). Monitoring can crowd out moral motivations to obey the law and make people less, not more, obedient (Frey 1997a, p. 82).

These points challenge the republican assumption that lack of external constraints will corrupt people. Such constraints can, in fact, crowd out moral motivations and make them less inclined to act for the common good. Machiavelli (2003), p. 141) seems mistaken, as Bowles also suggests, when he clings to the view that it is behaviour regulated by law that is persistently unerroneous. Treating people as knaves might actually be what makes them behave as knaves. To avoid undesired social behaviour, we may therefore sometimes be better off relying on people's goodwill rather than on the threat of legal punishment.

But while Machiavelli and later republicans seem to be wrong to assume humans are naturally corruptible, this may not affect their view of external constraints, since they in any case will not rely on internal constraints. We have seen that Pettit expresses this view when he downplays the significance of moral convictions. But it is problematic to rely only on external incentives, and not on moral commitment. One problem is monitoring. People will find ways of breaking rules undetected, and without moral commitment to rule following, they will take these opportunities. We have also seen that there is a limit to how much monitoring is in people's common interest. And more surveillance, as just noted, can lead to less compliance and willingness to assist in rule enforcement.

Another problem is that rules are often not specific enough to say exactly how individuals are to follow them. They leave individuals some room for interpretation, and without moral motivations, they will interpret the rules to their own advantage. Frey (1997a, pp. 46–47), for example, warns about crowding out politicians' sense of civic duty, and adds that intrinsic motivations are especially important in politics and law, where monitoring performance is notoriously difficult. Ostrom (2000) also points out that external constraints can crowd out civic virtue. Frey (1997b) finds that tax compliance is higher in countries where citizens are permitted to declare their own taxes and their tax statements are assumed to be correct. On the other hand, tax evasion is higher in countries where there is less trust and tax administration is large and expensive. By trusting tax payers' moral convictions, Frey argues, governments can motivate high tax compliance at low monitoring costs.[16]

But in some cases, monitoring and external constraints seem advisable. Frey's (1997a: ch. 11) empirical evidence suggests that monetary rewards and punishment can weaken people's moral motivation for virtuous behaviour, but they often succeed in motivating desired behaviour once they exceed a certain size. In experiments and field studies, Gneezy *et al.* (2004) find that compared to no reward, small monetary rewards tend to worsen performance. But they also find that sufficiently large monetary rewards are likely to improve performance.[17] Effects of monetary incentives are context-dependent. While accepted and effective some places, they might be condemned and counterproductive other places. Pricing for resource allocation has, for example, been shown to be more acceptable in the United States than in Europe and Japan (Frey 1997a, p. 64). And American workers have been found to be more accepting of the price system than are European and Japanese workers (Beer *et al.* 1984, p. 116, Aoki 1990). We might also note that in public goods experiments, where access to the good is not conditional on cooperation, subjects have been found to be more cooperative when they were assured that defectors would be punished (Shinada and Yamagishi 2007).

So, it clearly seems advisable to sometimes rely on external constraints. But the republican view that we should *always* rely on external constraints is challenged by the observation that internal constraints are often more effective at motivating desired behaviour, and that external constraints may even be counter-productive.

5. Intangible constraints

The crowding-out effect thus appears to pose a considerable problem for the republican view of institutional protection and external constraints. But in what seems a straight-forward contradiction with his separability assumption, Pettit

accepts the crowding-out effect and even the ways of responding to it recommended by Bowles (2016), Frey (1997a), Ostrom (2000), and others identifying the phenomenon. Without discussing the tension with his strict focus on external constraints, Pettit (1997): chs. 7–8, Pettit 2012, p. 247) says the republic needs institutions that constrain knaves without crowding out the virtuous motivation of knights. He also cites Frey's work on the crowding-out effect approvingly (Brennan and Pettit 2005, p. 272).

Designing incentives on the assumption that people are knaves, he says, can negatively affect the compliance of people who would have complied in their absence. Such incentives 'communicate an unflattering image of the motivation and commitment of all the agents to whom they apply; to the naturally compliant they may even seem to be downright insulting' (Pettit 1997, pp. 217–218). The incentives, he says, can 'alienate and demoralize the naturally compliant' (Pettit 1997, p. 218). But he does not address the tension with his view of the state as a 'second line of defence'. As with the limitation of common interests, we shall see that Pettit again sacrifices a distinctly republican view for the sake of reducing the probability of interference.

Pettit (1997, p. 266) thinks 'there is only so much that institutional safeguards can effect in combating domination. Ultimately the republic has to rely on safeguards that are less tangible in nature'. He says 'the best hope of furthering the republican ideal is certainly to do whatever can be done in the heavy materials of institutional protection, but also to build with other, less cumbersome fabrics' (Pettit 1997, p. 266). He especially has civic virtue and trust in mind (see also Lovett 2022, p. 208).[18] Giving government officials the feeling of being trusted rather than constantly monitored, Pettit (1997, pp. 268–269) says, can motivate them to act in accordance with common interests.

But a key part of trusting someone is to allow them opportunities to act in ways you do not want them to act. Trust leaves you vulnerable to being let down and does nothing to protect citizens against the abuse of political power in the robust way that republicans require. Pettit (1997, p. 266) also admits that trust and civic virtue 'offer less satisfying images of solidity and security'. We have to accept vulnerability, he says. 'People must be willing to accept the fact of often having to be vulnerable to others, and often having to trust themselves to the civility of those others not to do them harm', Pettit (1997, p. 266) says.

In light of the behavioural studies referred to above, this may be a sensible approach. But taking it is to weaken the focus on external constraints to counter arbitrary power. It is to recommend such constraints only to the extent that they will actually make citizens less inclined to interference with each other and to abuse of political power. What makes the approach sensible is that it reduces the probability of such unwanted behaviour. Trust might lower the probability of government officials exercising their power contrary to the common good, but it does not make such power abuse less accessible. And it appears to fit awkwardly with the republican view of people as naturally corruptible, since it means accepting that external constraints cause, and not just prevent, corruption.

The likely response is that the trustor desires the trustee's good opinion, and the trustee's decision to give it or not constitutes an external constraint on the trustor (Pettit 1995). The trustor controls the trustee as the latter behaves so as to gain the former's approval. This is how trust can motivate a powerholder to serve society and not let citizens' down. If A trusts B, then B will be more motivated to act in A's interest than if

A had not showed B that he trusts her. People's power to disapprove of each other's actions can thus constitute an external constraint, albeit an intangible or informal one.

So, sometimes the appropriate institutional measure is formal, other times it is informal. Pettit consequently denies that the republican ideal is categorically dependent on formal institutions and the coercive force of the law. He appears to follow Frye (2018) in thinking social norms can be sufficient for non-domination, though he considers it implausible that such informal institutions can by themselves suffice in our actual society. As he says rhetorically, 'no one can seriously believe that those influences are sufficient on their own to guard against corruptibility' (Pettit 1997, p. 211). Lovett (2022, p. 97, fn. 71), similarly, says he is 'happy to agree in principle' with Frye's view, but adds that 'we probably need the counterweight of coercive law' for adequate security against violence and physical restraint.

But while the nature of modern society may be such that formal institutions are necessary for non-domination, we now see that they are not categorically necessary for this republican ideal. And by taking the crowding-out effect seriously, Pettit cannot so easily consider state institutions a 'second line of defence'. If this line of defence undermines other, less tangible lines of protection, we may be better off relying only on informal institutions, like trust and virtue.

Republican freedom must therefore be understood to not necessarily require institutional protection making power abuse 'inaccessible', but instead whatever institutional arrangement – formal or informal – that proves to most effectively ensure that power can be expected to be exercised in accordance with common interests. Formal institutions are justified insofar as they serve this purpose. If they crowd out citizens' virtue to an extent that they actually weaken protection against misrule, they are not justified. So, while we need protective institutions, which ones are justified, and to what extent, is determined by a more fundamental concern with expected impact on individuals' behaviour. And with a liberal account of common interests, like Pettit's, this concern will especially be about individuals' inclination to interfere with each other. Negative freedom thus features as a more fundamental value in republicans' considerations of what institutions they take to be constitutive of freedom as non-domination.[19]

6. Conclusion

Republicans argue for institutions denying groups and individuals arbitrary power over others. These institutions, they argue, must be in place regardless of the probability of power being used to interfere in the lives of other citizens. This is because internal constraints, including people's moral commitments, have an impact on this probability, and these constraints are compatible with arbitrary power. A can remain vulnerable to B's arbitrary power, while B's internal constraints makes it unlikely that she will interfere with A. We are therefore told only external constraints can eliminate arbitrary power and make people free from domination.

We have seen, however, that there are limits to how far republicans go to ensure protection against arbitrary power. First, republicans are focused on promoting citizens' common interests, and this concern constrains their efforts to reduce arbitrary power. Institutional protection is costly, and citizens will not deem protective measures to be in their common interests unless they effectively reduce the probability of them

experiencing interference conflicting with their common interests. Respect for common interest thus constrains efforts to eliminate arbitrary power.

Second, the republican restriction on arbitrary power is also limited by the possibility of external constraints crowding out individuals' moral motivations for socially desired behaviour. Pettit is aware of this issue and says republicans should rely on trust and virtue when formal constraints would have a crowding-out effect. Pettit therefore accepts the need for some vulnerability to unconstrained, arbitrary power. The perhaps more significant point, however, is that the choice between formal or informal measures to ensure compliance must then be based on the more fundamental concern of making people behave in accordance with common interests. This deeper concern, then, is not with power as such but with how it is expected to be exercised.

Republicans can continue to hold that freedom, as Pettit (1997, p. 107) says, 'comes into existence simultaneously with the appearance of the appropriate institutions'. But this freedom ideal itself offers us little in terms of normative guidance. That guidance instead comes from the more fundamental concern determining which institutions are appropriate. And we have seen that this is a concern with how individuals behave towards each other, and especially with reducing the probability of their interfering with one another. With a different, less liberal understanding of people's common interests with little concern for individuals' negative freedom, republicans would have different grounds on which to evaluate the appropriateness of institutions. But the normative insight would still not be provided by the republican freedom ideal, but rather by whatever basic concern is promoted by the institutions understood to constitute republican freedom.

Notes

1. Pettit develops his republican theory in a large number of works, but the book-length treatments are Pettit (1997, 2012, 2014).
2. Pettit used to refer to this type of power as 'arbitrary', but he gives two reasons for why he now prefers to call it 'uncontrolled' (Pettit 2012, p. 58). First, he wants to avoid the connotations 'arbitrary' has with behaviour not constrained by established rules. An act of interference can conform to such rules but still be uncontrolled, Pettit says, if the rules do not serve the interests of those bound by them. Second, Pettit now prefers 'uncontrolled' because it, unlike 'arbitrary', avoids connotations with morally wrong or objectionable. Most commentators, however, argue that Pettit's distinction between arbitrary and non-arbitrary is based on moral considerations (Kramer 2008, p. 41, List and Valentini 2016, pp. 1058–-1066, McMahon 2005, pp. 69–70, Moen 2023a, Waldron 2007, pp. 151–154). The term 'arbitrary' also remains common in the literature on republican freedom (e.g. List and Valentini 2016).
3. This is thus an understanding of republican freedom as a relation between agents. The arguments in this paper are therefore not aimed at systemic, or structural, accounts of domination and non-domination recently defended by, for example, Gädeke (2020) and Sandven (2020).
4. This understanding negative freedom is held by Carter (1999) and Steiner (1994), who understand you to be unfree to do some action, *x*, if and only if some other agent physically prevents you from doing *x*. And you free to do *x*, on their account, as long as no one makes you unfree to do *x*. Kramer (2003) accepts this view of unfreedom but takes freedom to require not just absence of agential prevention but also ability. On his account, then, you are

neither free nor unfree to do *x* when you are merely unable but not prevented by another agent from doing *x*.

5. To avoid ambiguity and awkward formulations, I consistently use a male pronoun for the dominated agent or agent interfered with, and a female pronoun for the dominating or interfering agent.
6. Pettit (2012, p. 11, fn. 8) himself says his theory can be labelled 'republican liberalism or liberal republicanism'.
7. On this point, Pettit (2011) argues that republican freedom is superior to negative freedom because the latter implies that A can make himself freer by ingratiating himself with B, thus reducing the probability of B's interference. This is a mistake, however, since A's ingratiation wins him no freedom (from interference) he did not already have. A always has the freedom to do *x* at a particular time as long as he first acts deferentially towards B. The correct interpretation is therefore that B makes A unfree to do *x* when A does not show the required deference towards B, not that A gains a freedom by acting in this way. We capture the problematic nature of the relationship when we further note that since B will prevent A from performing *x* if A does not act deferentially, B reduces A's overall negative freedom by denying him the opportunity to do *x* in conjunction with not acting deferentially.
8. Pettit (2008b, p. 220, 2012, p. 103) says the basic liberties at least include freedoms of expression, association, thought, and movement, freedoms of assembly, religious practice, personal property, and employment, as well as political liberties to take part in public life as a political candidate, voter, or critic.
9. While Pettit (2012, pp. 5–6) considers this separation of powers a 'core idea' of republicanism, Lovett (2022, p. 8) argues that only some writers in the republican tradition have defended it, while others have opposed it.
10. Lovett and Whitfield (2016, p. 125) explain that conceptions that are not 'worthwhile' have 'no possible benefit for those who hold them' or 'militate against whatever prior values underlie our commitment to neutrality'.
11. A firm emphasis on political participation can also make for a republican critique of liberalism (Moen 2023b).
12. Following Pettit (2012, p. 62), Lovett and Ingham note that domination is a power asymmetry insensitive to whether the more powerful party desires the power imbalance.
13. Lovett (2022), p. 68, fn. 110) also says republicanism is a public philosophy and therefore need not deal with hypothetical cases like the gentle-giant example. But that also suggests we need not concern ourselves with cases where the probability of any husband interfering with his wife's decision to seek employment outside the home is zero despite all husbands having the power to do so at will.
14. Classic examples include Becker (1968), Stigler (1970), and Tullock (1974).
15. Bowles here refers to the title of a book manuscript he later published under the title 'The Moral Economy' (Bowles 2016).
16. See Frey (1997a) for more cases where strict law enforcement reduces individuals' intrinsic motivation to comply.
17. Falk and Kosfeld (2006) also find in their experiment that the proportion of agents who respond positively to the principals' control increases (from 20 to 37 percent), and the proportion who respond negatively decreases (from 64 to 42 percent), as the cost of non-compliance increases. But note that the proportion of agents in the latter category remains higher than in the former.
18. It should be noted that formal constraints can also 'crowd in' virtue, especially if they are perceived as supportive rather than controlling (Frey 1997a, p. 18). Machiavelli (2003, p. 30) sees a synergy between good laws and good values, as good laws educate people; it informs how they are to behave also in areas the law cannot reach. Pettit (2012, pp. 128–129), similarly, points out that law enforcement can stimulate good norms.
19. For further elaboration on negative freedom as a more fundamental value than republican freedom, see Moen (2023a).

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