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Abstract Proposed as an alternative political philosophy to liberalism, contemporary republicanism articulates a systematic theory of freedom as non-domination. Does it make sense, however, to think about the difference between liberals and republicans along the lines of freedom? This article answers in the negative, maintaining that the distinction is purchased at the cost of misdescribing liberal theory. Focusing on the work of Quentin Skinner and Philip Pettit, I maintain that the mischaracterization takes place at two levels. The first is the link that is drawn between Thomas Hobbes and classical and contemporary liberals. The second has to do with republicans' refusal to acknowledge the normative framework in which liberal freedom takes root and is made politically defensible. This framework, I argue, comprises a constellation of other concepts, such as consent, publicity and the rule of law, that are part and parcel of liberal freedom. Once these features are taken into consideration, what emerges is a view of liberalism that means something less than being free from any and all constraints, but which also means something more than being free from actual interference.

Key words freedom · liberalism · Philip Pettit · John Rawls · republicanism · Quentin Skinner

Introduction

The revival of interest in republicanism is admirable. Proposed as an alternative and reformative political ideal, contemporary republicanism begins with a critique of liberalism's vision of freedom. Although the idea of republicanism can be traced back to Aristotle or Cicero, in its most recent incarnation the term finds its way into the historical scholarship of scholars such as J. G. A. Pocock, Gordon Wood and Quentin Skinner.¹ Still others such as Adrian Oldfield, Michael Sandel, Philip Pettit and Maurizio Viroli have not been content with mere historical

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reconstructions and have aimed for more systematic and, indeed, normative presentations.² Despite the charge that republicanism has historically ignored the plurality of human ends and projects to which liberalism is more attentive, these scholars attempt to make republicanism applicable to the demands of contemporary pluralistic democracies.³ More importantly, however, republicans argue that liberalism provides as its theoretical underpinning an insufficient standard on which to organize and assess political life.

One prominent strand of this revival – the view that can be found in the writings of Skinner and Pettit – focuses specifically on liberalism’s commitment to negative liberty. As Isaiah Berlin classically described it, negative liberty denotes the ‘area in which a man can act unobstructed by others’.⁴ Although this view of freedom is often associated with Berlin’s famous essay, republicans still find its strongest and perhaps original formulation in Thomas Hobbes’ *Leviathan*. There Hobbes observed that ‘liberty or freedom signifieth properly the absence of opposition’.⁵ For republicans, it is this conception of freedom as the absence of interference or constraint that achieved currency among classical and contemporary liberals.

Yet, they maintain that this view is inadequate. As Pettit argues, liberalism ‘assumes that there is nothing inherently oppressive about some people having dominating power over others, provided they do not exercise that power and are not likely to exercise it’.⁶ ‘This relative indifference to power’, he continues, makes liberals ‘tolerant of relationships’ based on domination.⁷ Any concerns they may have to alleviate poverty and to provide for security are not, as republicans argue, due specifically to their concern for freedom, but are rather based on some values to which they independently subscribe such as ‘equality, or welfare, or utility’.⁸ For Pettit, however, freedom as ‘non-domination’ is not simply one value among many, but the ‘supreme political value’ from which all else follows.⁹ Even when Maurizio Viroli tells us he will challenge ‘the conventional view . . . that republicanism is an alternative to liberalism’, he nonetheless argues that freedom as non-interference is a poor attempt at capturing the republican ideal.¹⁰

My concern in this article is to reconstruct republicanism as it is formulated and defended by two of its most influential advocates – Skinner¹¹ and Pettit – with a view to fleshing out its primary criticism of liberalism. The distinction between liberalism and republicanism is sharply drawn in their works; both these thinkers believe that there is something philosophical and, indeed, political at stake in this debate. The thesis I propose to defend is that republicans’ construction of the difference between themselves and liberals is misconceived. To be sure, a number of scholars have worried about the distinction in passing or about the viability of republicanism as an alternative to liberalism.¹² Yet

few attend, as I do here, to the details of the charge against liberals or articulate precisely where republicans go wrong. If my reading is viable, as I believe it is, then we should either rearticulate the source of our intellectual excitement about republicanism or abandon our commitment to the tradition altogether.¹³

In order to make good on my argument, I show how republicans caricature liberalism's understanding of freedom. For if, as Jeremy Waldron suggests, liberals or republicans never have 'anything like complete control over the use of [the] terminology' they employ,¹⁴ then there is always the possibility of misunderstanding by critics outside the liberal tradition. The republican critique of liberalism, I argue, involves just this problem, one exemplified by the mistaken connection republicans draw between liberalism and Hobbes. Once this link is severed, the distinction between freedom as non-interference and freedom as non-domination dissolves altogether, and with it the presumption that liberals are unable to address the specific worries that republicans advance.

The republican critique

It is worth beginning, as republicans do, with Berlin's classic distinction between negative and positive liberty. For Berlin, negative liberty is characterized by an absence of constraint or obstruction in the pursuit of possible action.¹⁵ Negative liberty is most often, although not exclusively, associated with liberalism. (Why this is so, I shall explain in a moment.) In contrast, positive freedom is identified with self-mastery or rational self-direction.¹⁶ Indeed, for Berlin, it is this positive conception that he sees as being most susceptible to perversion, and therefore a precursor to authoritarianism when applied in the realm of politics.¹⁷ And many classical accounts of republicanism, especially that which is associated with civic humanism, employ this positive notion of freedom. This view, as Rawls referred to it, is 'sometimes stated as the view that man is a social, even a political, animal whose essential nature is most fully realized in a democratic society where there is widespread and vigorous participation in political life'.¹⁸ On this account, one's identity as a republican and a human being is bound up with realizing a distinctive essence that can only be realized through one's participatory activities.

Contemporary republicanism grows out of discontent with the basic distinction, on the one hand, and the negative conception that they believe has achieved hegemonic status among liberals, on the other.¹⁹ This negative conception of freedom is viewed as a *constitutive* element of liberalism; it is a conceptual framework in which political structures and discourses are organized and assessed.²⁰ But from their perspective this general distinction prematurely abandons a different and older way

of conceiving of freedom. More precisely, the distinction obscures a form of republicanism that is distinctively Roman, and which finds modern articulation in thinkers like Machiavelli and 17th-century English thinkers. This view of republicanism, or so they argue, does not imply a strong connection between human essence and political participation.

What, then, is this third account that they refer to in describing freedom as non-domination? The example to which republicans consistently turn is that of the relationship between master and slave. For thinkers like Cicero, Machiavelli and Harrington when individuals and states were not free they were essentially in a condition of slavery. As Skinner writes of these thinkers:

They assume that what it means to speak of a loss of liberty in the case of a body politic must be the same as in the case of an individual person. And they go on to argue – in the clearest proclamation of their classical allegiances – that what it means for an individual person to suffer a loss of liberty is for that person to be made a slave.²¹

On this account, to be free means that one does not ‘live at the mercy of another . . . in a manner that leaves you vulnerable to some ill that the other is in a position to arbitrarily impose’.²² The use of the word ‘arbitrary’ is important for republicans both in the classical and in the contemporary sense; it denotes one’s ability to act freely without the possibility of interference at will. When individuals are free from arbitrary interference, they are also free from ‘coercion of the body, as in restraint or obstructions; coercion of the will, as in punishment or the threat of punishment’.²³ When individuals live in a state that is guided by their will – that is, where the laws are the result of self-governing agents and apply equally to all – it is considered to be free from arbitrary caprice. As Harrington argued in his 1656 work, *The Commonwealth of Oceana*, the citizens of Lucca enjoyed a freedom that the citizens of Constantinople did not because in the former the laws were ‘framed by every private man unto no other end . . . than to protect the liberty of every private man, which by that means comes to be the liberty of the commonwealth’.²⁴ This is how a commonwealth ‘comes to be an empire of laws and not of men’.²⁵

Here we begin to see the precise difference that republicans identify between themselves and liberals. To capture this difference, let us examine more closely the master–slave example. Under liberalism, republicans argue, one’s freedom is threatened where there is actual interference.²⁶ But what this means is that in the liberal view one could be dominated without being interfered with.²⁷ Consider Pettit’s formulation of the matter: ‘I may be dominated by another – for example, to go to the extreme case, I may be the slave of another – without actually being interfered with in any of my choices. It may just happen that my master

is of a kindly and non-interfering disposition.²⁸ I take this example to denote relationships among liberal citizens, as well as between citizens and the state. This seems an accurate reading, for as Pettit tells us the master–slave relationship need not be as extreme, and, in fact, can happen in less extreme forms such as in the case of the battered wife and exploited employee.²⁹

According to republicans, then, liberals are quite comfortable with the fact that people may find themselves in a position where others have dominating power over them; in fact, they assume ‘that there is nothing inherently oppressive about some people having dominating power over others, provided they do not exercise that power and are not likely to exercise it’.³⁰ But this view should strike us as troubling because the security of one’s freedom is precarious. It means that the ‘power-victim acts in the relevant area by the leave, explicit or implicit, of the power-bearer; it means that they live at the mercy of that person, that they are in the position of a dependent or debtor or something of that kind’.³¹ For republicans it is not ‘force or the coercive threat of it’ as such that constrains freedom, but the very existence of an arbitrary power, whether it acts or not.³²

Republicans are quite clear on the precarious conditions under which liberal citizens *must* live. Consider, for example, the conclusion they draw from their commitment to freedom as non-domination:

To enjoy the same non-interference with the security of non-domination is to satisfy that condition plus a further modal condition: it is also not to be interfered with in those possible worlds where the attitudes of powerful agents vary, or my ingratiating capacities are lessened, or my native cunning is not what it was, and so on. It is to remain resiliently possessed of non-interference across this range of possible worlds, as well as in the worlds originally considered.³³

In other words, citizens under a liberal regime live without peace of mind. They are in a condition of perpetual uncertainty regarding the security of their freedom in the present, but, more significantly, this insecurity figures in how they conceive of their future worlds. The term ‘future world’ or ‘possible world’ need not carry any metaphysical baggage; it merely denotes the way in which insecurity functions in how individuals conceive of their potential life-options and -choices. One’s freedom is always contingently possessed, even at this imaginative level, because there is uncertainty as to when arbitrary interference may occur.³⁴ This means that, unlike in a republican regime, a political society based on liberalism leaves its citizens in a state of psychological discomfort that is embodied in ‘a high level of anxiety’ precisely because the overarching principle does less to constrain individuals and institutions from engaging in domination.³⁵ Freedom as non-domination, however, requires much

more and so contrasts sharply with liberal freedom. It 'requires us to reduce the capacities for arbitrary interference to which a person is exposed, while freedom as non-interference requires us to minimize the person's expectation of interference as such'.³⁶

In using the master–slave example with an emphasis on 'arbitrary' as the normative litmus test for liberalism, republicans can argue that while there are situations in which one is being dominated without interference, one can equally be interfered with without being dominated. Here, and in contrast to liberals, republicans provide what they believe is an appropriate description of the relationship between law, authority and freedom. For example, republicans are willing to accept forms of non-dominating interference, while maintaining that liberals must find freedom to be offended by any and all constraints including, but not limited to, the law.³⁷ They argue this point by drawing a connection between Hobbes and perhaps the most important contemporary advocate of liberalism, John Rawls. As Skinner writes: 'Rawls explicitly announces his agreement with Hobbes with what he calls "Hobbes' thesis"'.³⁸ Pettit goes further when he argues: 'John Rawls manifests a concern for liberty as non-interference, for example, when he writes: "liberty can be restricted only for the sake of liberty." Rawls' assumption is that law always represents a restriction of liberty, and reveals a conception that is directly continuous with that of Hobbes and Bentham.'³⁹ As such, law must always appear as a necessary constraint and this view places freedom and authority in constant tension.

Republicans avoid this problem by distilling from their vision of freedom a robust conception of democratic will-formation. When the interests and opinions of those affected are considered in the promulgation of the law, it is non-arbitrary and therefore consistent with what freedom demands.⁴⁰ This is why republicans oppose not force or the coercive threat of it as such, but only the arbitrary use of force or coercion that can be found, for instance, in a monarchy that is above the law or political officials that have discretionary power.⁴¹ In focusing as they do on domination as the threat to freedom, and making non-arbitrary law the solution, republicans reconcile freedom and law: 'Republicans do not say that while the law coerces people and thereby reduces their liberty, it compensates for the damage done by preventing more interference than it represents.'⁴²

With this in the background, we can address more directly whether this way of thinking about the difference between these two traditions is fruitful or accurate. On my reading, this account of freedom as non-interference does not fit well with the description of liberalism we *typically* think of when that term comes to mind. The problem comes into focus by first attending to the connection republicans draw between liberalism and Hobbes. Once this connection is severed we are positioned to see that liberalism's conception of freedom is not opposed to all forms

of interference; in fact, there is a normative framework in which liberal freedom takes root and is made politically defensible. This normative dimension to which I am referring places emphasis on consent, publicity and the rule of law. In fact, liberalism's conceptual framework requires, as Jeremy Waldron observes, that 'a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it; the consent or agreement of these people is a condition of its being morally permissible to enforce the order against them'.⁴³ These are not features to which liberals must independently subscribe, but are considered to be part and parcel of their identity as liberals.

Liberalism and freedom: Part I

On beginning with Hobbes

In order to see where the republican criticism goes awry, we must distinguish between two elements in the concept of negative liberty that are obscured. Here I mean the *descriptive* and *normative* elements.⁴⁴ The first element is essentially a description of freedom. This is what republicans typically associate with Hobbes. 'Liberty', writes Hobbes, 'is understood, according to the proper signification of the word, the absence of externall Impediments'.⁴⁵ In this sense, freedom is explained by the lack of obstacles that stand in our way of satisfying some want or desire. Hobbes defines freedom as such because, for him, everything is reducible to matter in motion. Anything which blocks or restrains matter from moving is, *ipso facto*, a restriction of freedom. This is largely why, for him, freedom exists in the 'silence of the laws' rather than when they are active.⁴⁶ Indeed, for Hobbes, freedom is compatible with fear or domination.⁴⁷ This is possible because fear or domination works in such a way that it influences one to acquire an obeying rather than a disobeying will, and as a result any act that follows is free to the extent that it acts in accord with the will acquired. The result is that the fear-inspiring and dominating character of absolute sovereignty can sit quite comfortably with freedom. As Berlin writes on just this point: 'It is that liberty in this sense is not incompatible with some kinds of autocracy, or at any rate with the absence of self-government'.⁴⁸

As the discussion above implies, there are a variety of political uses to which this definition might be put, of which Hobbes' account is but one. Negative liberty as a definition simply tells us descriptively the options that are open and closed as a result of obstructions. Charles Taylor makes a similar point regarding Hobbes when he says:

But the Hobbesian scheme . . . allow[s] only for purely quantitative judgments. On the toughest-minded version of his conception, where Hobbes seems to be about to define liberty in terms of the absence of physical

obstacles, one is presented with the vertiginous prospect of human freedom being measurable in the same way as the degrees of freedom of some physical object, say a lever.⁴⁹

Taylor's point here is that in the Hobbesian scheme a person's freedom is indexed to the number of obstacles that lie in the path of projects and ends that person might pursue. Presumably, when obstacles increase, a person is rendered less free than she or he would have been were those obstacles absent. Why individuals would be willing to live in a society based on this view of freedom is inevitably predicated on an account about how a decrease in freedom in x leads to an increase of freedom in y , prompting one to engage in cost benefit analysis. After all, on one prominent reading of Hobbes, isn't this why we agree to leave the state of nature?

But this discussion of freedom can be cast differently when it is couched within a normative framework. That is to say, properly speaking, liberals are not simply concerned with liberty understood merely as a property of an isolated self, but rather as a fundamental feature of social and political life. In fact, liberalism's conception of freedom is intrinsically linked to 'psychological security and personal independence for all, legal impartiality within a single system of laws applied equally to all and collective self-rule through elected government and uncensored discussion'.⁵⁰ And it is the presence of these features, and the practical possibilities they entail, which separates Hobbes from liberals. We should critically examine any narrative that draws a neat and continuous connection between liberalism and Hobbes on the issue of freedom.⁵¹

Even Rawls, to take the favorite liberal theorist to which republicans refer, is quite clear that the social contract tradition which he follows is that of Locke, Rousseau and Kant. As he says, 'for all its greatness, Hobbes' *Leviathan* raises special problems'.⁵² But why would Rawls distinguish himself from Hobbes? In the footnote where Rawls makes this claim he cites J. W. Gough's *The Social Contract* – a book that provides the answer. And one of the primary points that emerge in Gough's classic work is that Hobbes should be distinguished, in particular, from Locke and Kant in that for these two, individuals never compromise freedom under political society as long as the laws emanate from them. It is through such laws that freedom is realized.⁵³

These formulations are mere hints – a prelude of sorts – of what is to come. But when the line between Hobbes and liberalism is severed or found to be dubious, we are forced to inquire into what liberalism demands by way of securing liberty. Indeed, I maintain that liberalism's ideal of liberty is motivated by a concern to *chasten* and *discipline* the purely descriptive account of negative freedom above. Here we begin to see what it means to speak about the normative dimension of liberalism.

Negative liberty for liberals reconsidered

What, then, precisely does negative liberty mean for liberals? We might begin with a general observation that S. I. Benn and W. L. Weinstein observe about freedom-talk: 'Questions of freedom as that concept has been used in political discourse, do not arise on every occasion that a man is frustrated by some impediment or external constraint.'⁵⁴ At a trivial level we can speak of taxes and traffic lights constraining our freedom. But it strikes many of us as strange when we make freedom an object of debate regarding such topics. We might think that a person who would raise the issue of freedom regarding the necessity or lack thereof of traffic lights and taxes simply does not know how to use the vocabulary. When liberals therefore speak of freedom, they mean something *less* than being free from any and all constraints. But they also mean something *more* than being free from actual interference.

This way of thinking about freedom under liberalism contains much more. To be sure, what makes a regime legitimate under liberalism is that it is grounded in the consent of its citizens or that it takes sufficient account of those who will be affected by its actions. This is a hallmark of liberalism that we find in thinkers as diverse as Locke, Constant, Dewey and most recently Rawls, just to name a few.⁵⁵ So it is not only that the interference embodied in, for instance, police enforcement, juridical punishment and, more generally, the law, is legitimized by the consent of individuals, but that persons are reasonably clear that legitimacy is understood in just this way. The concern that liberals have is not simply with the area in which I am controlled, *pace* republicans, but also with the source of control itself. As Dewey argues on this point, the emergence of liberalism represented an 'effort in the first place to counteract the forces that have so largely determined the possession of rule by accidental and irrelevant factors'.⁵⁶ Constant captures the point much earlier when he remarks: 'For each of them it is the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals.'⁵⁷

What is being expressed here might be considered the *sine qua non* of liberalism and one of its distinctive conceptual qualities: legitimizing political institutions and actions are ontologically linked to the will of those over whom such institutions function. Consent does not come in the form of the empty, 'We agree', but 'We agree to *x*, *y*, or *z*', or that if given the opportunity we could be expected to agree. Consent is therefore conceptually linked to the belief that the principles and laws that order and structure society should be made public. This means that laws are subject to examination and contestation based on their ability to secure one's freedom from coercive interference by others. Republicans

rightly notice that liberals organize their institutions based on an agreement that will protect the freedom of individuals, but they simply ignore this larger conceptual framework, which leads to a mischaracterization of the liberal position.

But this language of consent, some will say, seems out of date. Consent seems to misdescribe what actually takes place in politics, even politics within a liberal democratic community. Consent-talk seems to deny the fact that we are always already committed, at the level of a political regime, before we can ever give or rescind our approval, and so may never genuinely be acting from a reflective will. There is some truth to both these claims. But the notion of consent to which liberalism appeals is not, properly speaking, a function of every political decision, but more of an idealization. It says that the conditions of political life are to be evaluated by the extent to which citizens would agree 'were they reasonable and committed to the principle of equal respect for persons'.⁵⁸ This is the moral authority to which we appeal as liberals that, in many ways, prefigures any principles or laws that we ultimately come to give ourselves. This holds out the possibility of mitigating the extent to which we may be acting under false consciousness, for example.⁵⁹

Nor does this account imply that where consent is present conflict must no longer exist. As Dewey remarks: 'Differences of opinion in the sense of differences of judgment as to the course which it is best to follow, the policy which it is best to try out, will still exist.'⁶⁰ But there are two reasons why this does not yet defeat the moral ideal of liberalism. The first is that conflict, as Dewey understands, is often a feature of just one area of the political landscape, indicating that there will often be uncontested terrain or ground of shared beliefs on which we stand when engaging conflict. Second, and more importantly, power always exists for liberals within a space of conditionality. This simply means that any proposal can potentially be subject to future contestability. That we hold in reserve the power to contest indicates that the legitimacy of decision-making hinges on the extent to which citizens do not feel permanently bound by those decisions in light of new and different political changes. The fallibilism of Deweyan pragmatism, born as it is from a commitment to experimentalism, merely makes explicit what was already at work in liberalism.

Up until this point, I have merely severed the connection between Hobbes and the liberal conception of freedom. I have indicated in general terms that freedom for liberals bears a close affinity to the republican view largely because it is fundamentally tied to two other elements – namely, consent and publicity. As a result, I have also gestured to the fact that law need not be a constraint on freedom for liberals. In the next part, I want to fill out the character of this description by first reconsidering the master–slave relationship, and then the battered-wife

example. Each of these examples will provide texture to the argument above regarding liberalism's understanding of freedom.

Liberalism and freedom: Part II

Reconsidering the master–slave example under liberalism

When republicans use the master–slave example what they mean is not that liberals would tolerate a regime characterized by possession and ownership of human subjects. They are not arguing that for liberalism citizens are the property of the state. Their claim is a bit more modest. For republicans, the emphasis on freedom as actual interference means that liberals will tolerate domination where that often involves no actual interference. Viewed from the perspective of the relationship between state agencies and citizens, the example says that the former possesses recognized discretionary power against citizens that can be used at any – unspecified – moment. This means that state agencies can act according to their own judgment irrespective of the interests and desires of citizens.

The reason republicans are unable to see that liberalism is capable of responding to this situation above is that they fail to understand the conceptual link between the security of political liberty on the one hand, and the implied relationship between consent and what Rawls calls 'publicity' on the other.⁶¹ Publicity (also referred to as transparency) demands that the principles by which we propose to govern ourselves are placed before the public's eye. But more importantly, it refers to the convincing character of reasons that justify political decisions or, more generally, validate practices and institutions. Since republicans consider Rawls to be the most recent spokesperson in contemporary times of the form of liberalism they criticize, it is worth focusing on him, appealing to other liberals as needed. As Rawls writes on this issue of transparency:

In saying that institutions, and therefore the basic structure of society, is a public system of rules, I mean then that everyone engaged in it knows what he would know if these rules and his participation in the activity they define were the result of an agreement. *A person taking part in an institution knows what the rules demand of him and of the others. He also knows that the others know this and that they know that he knows this, and so on.*⁶²

Rawls, like so many liberals, is very much concerned to protect politics generally, but also to keep the mechanism of legitimacy from being shrouded in mystery.⁶³ They live under the seductive memory of when kings or priests worked clandestinely in governing the demos. As this passage suggests, liberal regimes achieve legitimacy because their principles are subject to reflection and scrutiny by those over whom such principles apply. Rawls implies as much when he says:

I shall rely upon the fact that for an agreement to be valid, the parties must be able to honor it under all relevant and foreseeable circumstances. There must be a rational assurance that one can carry through. . . . Not only do the parties protect their basic rights but they insure themselves against the worst eventualities. They run no chance of having to acquiesce in a loss of freedom over the course of their life for the sake of greater good enjoyed by others, an undertaking that in actual circumstances they might not be able to keep.⁶⁴

Where those principles seem grossly insufficient – that is, if accepting them indicates that they would lead to terrible injustices or the possibility of such injustices being committed against people without the possibility of redress – they will no doubt fall on deaf ears. After all, it is precisely because of publicity that Rawls believes that the principle of utility, once scrutinized, will be revealed as an insufficient standard upon which to organize society.⁶⁵

The substantive reason behind the issue of publicity – one that is also at work in the call for greater participation by citizens – returns us to our example of the discretionary power of state agencies. Publicity ensures that laws, and, indeed, the actions of institutions and agents, will be judged in light of the interests of those who will be affected by such actions. In fact, Locke speaks along these lines when he observes that

. . . men found it necessary to examine more carefully the origin and rights of government; and to find out ways to restrain the exorbitances, and prevent the abuses of that power which they having entrusted in another's hands only for their own good, they found was made use of to hurt them.⁶⁶

This notion of examination is what allows us to bar some forms of interference as illegitimate, but to equally authorize other forms of *potential* interference – i.e. political enforcement and juridical punishment – as legitimate. To argue, then, that state agencies under liberalism possess discretionary power is really to miss the demand that political liberty and consent places on institutions. As Rawls says, laws are just when 'they establish a basis for legitimate expectations. They constitute grounds upon which persons can rely on one another and rightly object when their expectations are not fulfilled. If the bases of these claims are unsure, so are the boundaries of men's liberties.'⁶⁷

As with the issue of discretionary power, the point is not whether such power exists in liberal societies; I have no doubt that it does. Rather, the question is whether an appeal can be made in the name of political liberty as a source of protection. And as Locke and Rawls highlight, no relationship that makes our freedom precarious, that places us at the arbitrary mercy of another, is justified. Individuals find themselves in just this position when the basis for legitimate expectation is uncertain. Such relationships undermine the very freedom that justifies the

existence of political society in the first instance. Were we to apply this ideal of consent and its connection to the priority of political liberty to many institutions, *pace* republicans, we would most certainly discover, on the liberal view, that they are seriously wanting. Rawls makes the same point in that part of *A Theory of Justice* entitled 'The Priority of Liberty Defined', when he writes that 'existing institutions are to be judged in light of this conception [*of political liberty*] and held to be unjust to the extent that they depart from it'.⁶⁸

What is at work here is that publicity encodes – in a temporal sense – a form of trust among citizens. We presume that because the formation of laws is based, at some earlier time, on having gauged the opinions and interests of individuals like us, we can feel confident in our status under the exercise of those laws. To say that we can feel secure is simply to highlight that we take ourselves to stand on equal footing with agents that exercise political power. We do not feel that somehow they are above the law, unsusceptible to how and when it functions. To the extent that publicity encodes trust in a temporal sense, we become concerned with avoiding not only the extent to which we may be susceptible to domination, but also the extent to which our own actions may dominate others. For what I take myself to be publicizing is not merely the laws themselves, but my distinct interests that I want the laws to reflect. If such interests are going to be heard and taken seriously and therefore embodied in laws, it will be largely because they are sensitive to the interests and claims of others.

From what has been said regarding the master–slave example, laws are not just given, fixed and ready-made, but they are subject to reflection and inspection. In order for the master–slave example to carry the force that republicans attribute to it, however, not only would we have to ignore the primacy given to political liberty and its relationship to consent as I explained, but also the issue of transparency itself would have to be removed from liberalism's lexicon altogether. Yet, with the possibility of inspection and contestation of principles that lead to undesirable institutions and policies, liberalism would seem empty and impotent. Would it even be appropriate to identify such a political system as liberal?

If we follow Locke and Rawls on the matter, as I think we should, then we must answer in the negative. The ability to examine and to contest the principles that are placed before the public's eye remains a foundational element, without which liberalism appears unintelligible.⁶⁹ This is what I meant earlier when I said that citizens of a liberal regime do not just consent, but what they consent to must first be given specificity. This process of examination and contestation presupposes not passive but active will-formation that is capable of assessing and affirming principles and laws that are reasonable enough to organize and

govern the society in which we live.⁷⁰ The concept of publicity is therefore important because it helps to justify certain interferences or it places brakes on actions, and it allows agents to justify the very existence of one regime as opposed to another. Without publicity and the participatory activity it implies, says Rawls, 'even the most well-designed political institutions will fall into the hands of those who seek to *dominate and impose their will through the state apparatus either for the sake of power or military glory . . .*'.⁷¹ For this reason, Rawls continues, there is 'no fundamental opposition' between liberalism and the republicanism we associate with Machiavelli.⁷² The implication is clear: what we are thus enjoined to say about liberalism's conception of freedom cannot be divorced from the other elements that liberals would want to discuss when the issue of freedom becomes an object of debate.

Reconsidering the battered-wife example under liberalism

In contrast to the master–slave example, the battered-wife example refers to the relationship that might obtain between citizens within a liberal regime. As Pettit writes, the battered wife reveals a woman 'who finds herself in a position where her husband can beat her at will, and without any possibility of redress'.⁷³ The issue here is not whether liberalism can respond to this problem, but whether we can derive a response from liberalism's commitment to freedom proper. Given what has been said thus far, however, we can recast the concern. The example questions the extent to which the link between political liberty, consent and transparency extends into the private arena.

On the face of it, the battered-wife example does not seem to work for republicans largely because it presupposes actual interference. In this case, liberals can sufficiently respond in the name of freedom without problem. Let us, however, cast the example in the republicans' favor. Let us suppose that the abusive husband stays his hand, as it were. To see the force of this example, we have to see what republicans are implying about the institution of marriage in the context of liberal regimes. If I understand the logic of the example, the claim is that under a liberal regime the act of marriage, for example, nullifies the act of consent, thus making women subordinate to their male counterparts. The implication, however, is that on the liberal view, women essentially forgo any future use of the act of consent and by implication their freedom beyond the single act of marriage. As such, women exist under the arbitrary sway of their husbands whether or not they are abusive.

This way of construing the issue is odd, but if taken seriously undermines the importance of consent and its relationship to the priority of political liberty. Although John Stuart Mill is not a contract theorist as are Locke or Rawls, he nonetheless captures the reason why freedom

from arbitrary interference is not relinquished through consent, using precisely the example of slavery. One that gives himself over as a slave, Mill highlights,

. . . abdicates his liberty; he foregoes any future use of it beyond the single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. He is no longer free; but is thenceforth in a position which has no longer the presumption in its favor, that would be afforded by his voluntarily remaining in it. The principle of freedom cannot require that he should be free not to be free. It is not freedom, to be allowed to alienate his freedom.⁷⁴

As in the case of Mill, liberals can also refer to the master–slave example to show that freedom from the coercive power among citizens is crucial if freedom itself is to be resiliently (rather than contingently) possessed in all relationships.

The premium placed on consent in liberal theory therefore rests on a commitment to equal liberty for all against arbitrary interference, and can never be superseded by an act that would rob an individual of that same liberty. Thus, for example, liberalism would be incoherent if it championed the freedom of individuals while at the same time tolerating that married women might easily live at the mercy of their husbands, unable to enlist the service of legal enforcement agencies of the state in the name of freedom.⁷⁵ As Mill explains, a regime so structured is less concerned with liberty and more interested in *unconditional* power:

The almost despotic power of husbands over wives need not be enlarged upon here, because nothing more is needed for the complete removal of the evil, than that wives should have the same rights, and should receive the protection of law in the same manner, as all other persons; and because, on this subject, the defenders of established injustice do not avail themselves of the *plea of liberty, but stand forth openly as the champions of power*.⁷⁶

It is worth highlighting Mill's point that the inequality sustained between the sexes is inspired not by a plea for liberty, but on behalf of power. To see this as somehow possible given liberals' commitment to political freedom is to connect liberalism once more to Hobbes, and this effectively nullifies the way in which liberals understand consent and its relationship to freedom.

To accept that one's actions may be constrained, at least descriptively, in an effort to secure the freedom of another (as in the example of the battered wife) brings us to the republicans' final claim that because of liberalism's conception of freedom, anything can appear as a constraint, thus making the person less free than she or he was before. On the liberal view, however, the existence of law ought not to be viewed in this way.⁷⁷ Waldron characterizes the issue best when he says: 'The question has to be whether liberty – in any sense in which liberty is

thought to be important – is attacked or undermined whenever a rule of social conduct is enforced.⁷⁸ I take Waldron's use of the word 'important' to mean what I have tried to clarify above, namely, that while we might imagine the husband, to stick with our example, having fewer choices now that he is restrained from beating his wife, this is irrelevant from the standpoint of political liberty. The intuition behind political liberty is the following: certain actions are serious and, indeed, dangerous enough to warrant the interference of the state, without construing that interference as an infringement on liberty. In such cases, we do not speak of the state in terms of coercive force. This is precisely why criminals are understood as forfeiting their freedom, implying that what imprisonment does is restrain license. In other words, there is a prima facie case for interference to prevent the husband from exercising what liberals would rightly call an illegitimate use of freedom.⁷⁹ This is the point that Locke sought to capture with his famous distinction between license and freedom.⁸⁰ In this respect, illegitimate use of freedom is determined in light of the interests of those who are governed. This is, after all, what it means to take the issue of consent and transparency seriously.

For liberals, then, it seems that a commitment to the rule of law is not merely implied, but presupposed within the very discourse of their governing framework. The laws of the state are authorized to interfere through the mechanism of consent when circumstances demand, and where interference is warranted and legitimized, political liberty retains its integrity. That the laws most certainly constrain one's range of available options when viewed from the purely descriptive perspective of negative freedom is true; after all, no one can do whatever he or she desires in political society if it is to function.⁸¹ This point can be conceded to republicans. But that seems, on the liberal view, to be trivial from the standpoint of political liberty. When Rawls asserts, for example, that 'liberty can be restricted only for the sake of liberty', he should be understood as saying that illegitimate freedom can be restricted for the sake of legitimate freedom, and not as Pettit and Skinner construe him.⁸² Rawls clarifies this point when he remarks that, 'one who complies with the announced rules need never fear an infringement of his liberty'.⁸³ The thought, then, that law necessarily offends our political liberty does not make much sense precisely because it is the law that helps secure its existence in the first instance. The merit of the republican argument loses much of its fire. This, of course, makes republicans and liberals look very similar on the issue of freedom.⁸⁴ As Waldron writes on the reconciliation between law and political liberty: 'Since it is possible for an individual to *choose* to live under a social order, to *agree* to abide by its restraints, and therefore to use his powers as a free agent to commit himself for the future, the enforcement of such an order does not

necessarily mean that freedom' as non-interference is being infringed.⁸⁵ A failure to acknowledge this point on the part of republicans is possible because they rest their argument on a false dichotomy from the outset.

Conclusion

Some will object that I have committed precisely the error of which I accuse republicans. After all, I am suggesting that republicans give us a distorted picture of liberalism by beginning with Hobbes. But some would easily say that I have equally offered an imprecise picture by lumping thinkers together without care or concern for their differences. After all, John Dewey often sounds as if he would agree with republicans in their reading of the liberal tradition.⁸⁶ Berlin would not include Kant among the other liberals I selected, largely because Kant was understood to be a proponent of positive liberty.⁸⁷ So at best my account seems ideal but distorted, and at worst simply mistaken.

I am not ready to say we should agree with this line of argument. While there are different ways of understanding the tradition, it does not follow that all ways are equally informative. But I suspect that this does not mean we can simply forgo historical criteria for appropriately assessing thinkers. Nevertheless, I want to suggest that my account is more compelling than that offered by republicans because it takes seriously the bits and pieces of thinkers' conclusions that have been consolidated into a picture of liberalism. It may not be compelling from the standpoint of assessing any one thinker, but it is the tradition we find ourselves living and to which we appeal. Recall, I said that the picture of liberalism that republicans paint does not fit with our ordinary understanding of that term. And I have tried to suggest that most of us would want to say that the question of freedom does not emerge in all cases in which a person is constrained. If we take this basic claim as our beginning point, then, we find a richer understanding of the tradition of liberalism waiting for us and, as a result, a good set of standards by which to guide us in the future.

Of course, this is not to dismiss republicanism altogether, but rather to suggest that the best way to understand the differences between that tradition and liberalism does not rest with the concept of freedom. Perhaps a more fruitful ground on which to explore the distinction between these two traditions is a concept that has found no place throughout the primary parts of this article – namely, virtue. Indeed, while Stephen Macedo, William Galston and, most recently, Peter Berkowitz indicate that liberalism has sufficient virtues to sustain the very rights and privileges it cherishes, it is unclear whether a liberal regime can consistently generate those virtues.⁸⁸ This may well leave

liberals groping after something more – something that republican regimes are known for having in ample supply, namely, those characteristics of mind and character that aid human beings in performing the tasks political life demands. For if there is any distance (and there most certainly is) between liberalism's noble principle and the actual institutional arrangements that follow, it lies in the character of those individuals that stand behind those institutions. This suggests that it may be more useful for understanding liberalism's weaknesses and republicanism's strengths, to explore more closely those dispositions and characteristics that are needed to ensure that a free and self-governing people remains so constituted. But for the moment, liberalism, in the sense which Pettit and Skinner challenge, meets the challenge quite successfully.⁸⁹

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Notes

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- 1 Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, NC: University of North Carolina Press, 1969); J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975); Quentin Skinner, 'Machiavelli on the Maintenance of Liberty', *Politics* 18 (1983): 3–15; Quentin Skinner, 'The Idea of Negative Liberty: Philosophical and Historical Perspectives', in *Philosophy in History*, ed. Richard Rorty, Jerome Schneewind and Quentin Skinner (New York: Cambridge University Press, 1984), pp. 193–221; Quentin Skinner, 'The Paradoxes of Political Liberty', in *The Tanner Lectures on Human Values*, vol. III, ed. S. McMurrin (New York: Cambridge University Press, 1986), pp. 225–50; Quentin Skinner, 'The Republican Ideal of Political Liberty', in *Machiavelli and Republicanism*, ed. Gisela Bock, Quentin Skinner and Maurizio Viroli (New York: Cambridge University Press, 1990), pp. 293–310; Quentin Skinner, 'On Justice, the Common Good and the Priority of Liberty', in *Dimensions of Radical Democracy: Pluralism, Citizenship, Community*, ed. Chantal Mouffe (New York: Verso, 1992), pp. 211–25; Quentin Skinner, *Liberty Before Liberalism* (New York: Cambridge University Press, 1998); Quentin Skinner, 'Classical Liberty and the Coming of the English Civil War', in *Republicanism: A Shared European Heritage*,

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- vol. II, ed. Martin Van Gelderen and Quentin Skinner (New York: Cambridge University Press, 2002), pp. 9–28; Iseult Honohan, *Civic Republicanism* (New York: Routledge, 2002).
- 2 Adrian Oldfield, *Citizenship and Community: Civic Republicanism and the Modern World* (New York: Routledge, 1990), pts I and II; Michael Sandel, *Democracy's Discontents: America in Search of a Public Philosophy* (Cambridge, MA: Harvard University Press, 1996); Philip Pettit, *Republicanism: A Theory of Freedom and Government* (New York: Oxford University Press, 1997); Maurizio Viroli, *Republicanism* (New York: Hill and Wang, 2002).
 - 3 In this regard, Shelley Burt points out that the attempt to make republicanism compatible with pluralism is characteristic of 'instrumental' rather than 'Aristotelian' republicanism; see Shelley Burt, 'The Politics of Virtue Today: a Critique and a Proposal', *American Political Science Review* 87 (1993): 360–8 (360).
 - 4 Isaiah Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (New York: Oxford University Press, 1969[1958]), p. 122; cf. Gerald MacCallum, 'Negative and Positive Liberty', in *Liberty*, ed. David Miller (New York: Oxford University Press, 1993), pp. 100–23 (102).
 - 5 Thomas Hobbes, *Leviathan* (New York: Penguin, 1968[1651]), p. 261.
 - 6 Pettit, *Republicanism*, p. 9.
 - 7 *ibid.*
 - 8 *ibid.*, p. 81.
 - 9 *ibid.*, p. 80.
 - 10 Viroli, *Republicanism*, pp. 6, 10, 61.
 - 11 Skinner has developed and modified his account of republicanism in a number of different articles since the early 1980s. For the most part he has used the language of freedom as non-interference, arguing that liberals and republicans agree on what freedom is but disagree on what conditions are needed to maintain it (Skinner, 'Machiavelli', pp. 3–15; Skinner, 'Negative Liberty', pp. 193–221). This argument has been effectively challenged; see Alan Patten, 'The Republican Critique of Liberalism', *British Journal of Political Science* 26(1) (1996): 25–44. Most recently, however, Skinner has argued, along with Pettit, that what is at issue between republicans and liberals is a completely different conception of freedom altogether (Skinner, *Liberty*, p. 70, n. 27, p. 37 n. 114; Skinner, 'Classical Liberty', pp. 9–28). For that reason, it is safe to argue that Skinner's and Pettit's views are the same and any differences are of no important consequence for purposes of this article unless otherwise noted. For the most part I will refer to the most recent of Skinner's writings.
 - 12 For those that have considered the distinction in passing see: Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago, IL: University of Chicago Press, 1995), p. 28; Charles Larmore, *The Morals of Modernity* (New York: Cambridge University Press, 1997), p. 124, n. 3; Duncan Ivison, *The Self at Liberty* (Ithaca, NY: Cornell University Press, 1997), pp. 77, 80; Roger Boesche, 'Thinking About Freedom', *Political Theory* 26 (1998): 855–73 (861–5). For those that question the viability of republicanism as an alternative to liberalism see:

Jeffrey Isaac, 'Liberalism and Republicanism', *History of Political Thought* 9 (1988): 349–77; John Charvet, 'Quentin Skinner on the Idea of Freedom', *Studies in Political Thought* 2 (1993): 5–16; Patten, 'The Republican Critique', pp. 25–44. In pursuing this line of inquiry, I bracket whether contemporary republicans have accurately described the tradition to which they belong from a historical perspective. For at least two recent accounts that cast doubt on the description of the tradition and whether it ought to be distinguished from liberalism see: Vickie B. Sullivan, *Machiavelli, Hobbes, and the Formation of a Liberal Republicanism in England* (New York: Cambridge University Press, 2004), pp. 1–27; Annie Mitchell, 'A Liberal Republican "Cato"', *American Journal of Political Science* 48 (2004): 588–603.

- 13 In a very different way, John McCormick encourages us to resist the revival of republicanism. As he writes in a passage worth quoting: 'Scholars of republican political thought associated with the Cambridge School . . . often use insights derived from their historical and theoretical research in an attempt to inform, enhance, and broaden contemporary political theory and practice. They admirably show us what contemporary liberal democracy, whatever commonalities it shares with republicanism, lacks in contrast with the latter tradition: for example, the expression of a non-xenophobic patriotism, attention to the common good, emphasis on duties as opposed to rights, and the importance of more substantive political participation. However, on the basis of what follows, I implore these scholars to desist in such endeavors. Because of the traditional oligarchic tendencies of republicanism I plead with them, and those influenced by them, to reconsider the use of the term and cease in the attempt to supplement contemporary democracy with insights from that tradition. I am convinced that republicanism, unless reconstructed almost beyond the point of recognition, can only reinforce what is worst about contemporary liberal democracy: the free hand that socioeconomic and political elites enjoy at the expense of the general populace'. See John McCormick, 'Machiavelli Against Republicanism: On the Cambridge School's "Guicciardinian Moments"', *Political Theory* 31 (2003): 615–43 (616–17). I am not willing to go this far with McCormick largely because it reifies republicanism in ways that ignore historical developments within the tradition.
- 14 Jeremy Waldron, 'Theoretical Foundations of Liberalism', *Philosophical Quarterly* 37 (1987): 127–50 (127).
- 15 Berlin, 'Two Concepts', pp. 121–2.
- 16 *ibid.*, p. 131.
- 17 *ibid.*, pp. 141–61. He makes a similar point about negative liberty, although without extensive discussion. And to be fair to the characterization, Berlin's point is not that positive liberty is necessarily totalitarian or hostile to liberal politics, but rather that the theory has promoted ideals that have been put to ill-liberal ends. For a recent argument on the incoherence of positive liberty see: Eric Nelson, 'Liberty: One Concept Too Many', *Political Theory* 33 (2005): 58–78.
- 18 John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), p. 206.

- 19 Skinner, *Liberty*, p. x; Skinner, 'Machiavelli', p. 4; Skinner, 'Negative Liberty', p. 197; Pettit, *Republicanism*, pp. 19–22.
- 20 Pettit, *Republicanism*, pp. 1, 130–5; Skinner, *Liberty*, pp. 101–20.
- 21 Skinner, *Liberty*, p. 36; Skinner, 'Classical Liberty', pp. 9–11; Pettit, *Republicanism*, pp. 31–5.
- 22 Pettit, *Republicanism*, p. 5; Skinner, *Liberty*, p. 70.
- 23 Skinner, *Liberty*, p. 53.
- 24 James Harrington, *The Commonwealth of Oceana, and a System of Politics*, ed. J. G. A. Pocock (New York: Cambridge University Press, 1992[1656]), p. 20.
- 25 *ibid.*, pp. 20–1.
- 26 Pettit, *Republicanism*, pp. 41, 63–4, 84.
- 27 *ibid.*, pp. 50–7; Skinner, 'Political Liberty', p. 84.
- 28 Pettit, *Republicanism*, p. 22.
- 29 *ibid.*, pp. 5, 87. Indeed, Viroli uses these examples, once again, to emphasize precisely the distinction between republicanism and liberalism he intended to reject. See Viroli, *Republicanism*, ch. 2.
- 30 Pettit, *Republicanism*, p. 9; Skinner, *Liberty*, p. 119.
- 31 Pettit, *Republicanism*, p. 63.
- 32 Skinner, *Liberty*, p. 84; Pettit, *Republicanism*, p. 85.
- 33 Pettit, *Republicanism*, pp. 69–70, n. 6.
- 34 *ibid.*, p. 85; Skinner, *Liberty*, pp. 84–5.
- 35 Pettit, *Republicanism*, p. 85.
- 36 *ibid.*
- 37 *ibid.*, pp. 65–6.
- 38 Skinner, 'Machiavelli', p. 4; Skinner, 'Negative Liberty', p. 195; Pettit, *Republicanism*, p. 50.
- 39 Pettit, *Republicanism*, p. 50; Skinner, 'Machiavelli', pp. 11–12.
- 40 Pettit, *Republicanism*, pp. 35–41, 84–5, 174–7, 290–2.
- 41 Here a difference emerges between Skinner and Pettit. Skinner argues that republicans do not 'wish to deny that the exercise of force or the coercive threat of it must be listed among the forms of constraint that interfere with individual liberty'. He goes on to say that 'Pettit imputes to defenders of "republican" freedom the view that, since it is only arbitrary domination that limits individual liberty, the act of obeying a law to which you have given your consent is "entirely consistent with freedom." The writers I am discussing never deal in such paradoxes. For them the difference between the rule of law and government by personal prerogative is not that the former leaves you in full possession of your liberty while the latter does not; it is rather that the former only coerces you while the latter additionally leave you in a state of dependence' (Skinner, *Liberty*, p. 83, n. 54; cf. Pettit, *Republicanism*, pp. 66, 55, 56, n. 3). However, in his essay, 'Machiavelli on the Maintenance of Liberty', Skinner says that for Machiavelli 'the law can – and must – be used to force us to be free' (Skinner, 'Machiavelli', p. 10). This expresses agreement with Pettit in that the force of law is not a constraint on one's freedom but rather allows for freedom to exist; cf. Philip Pettit, 'Keeping Republican Freedom Simple: On a Difference with Quentin Skinner', *Political Theory* 30 (2002): 339–56. Perhaps this

difference here has less to do with an evolution of Skinner's thoughts than with the differences between English republicans whom Skinner is primarily concerned with in the first text and Machiavelli who is central to the essay just cited.

- 42 Pettit, *Republicanism*, p. 35.
- 43 Waldron, 'Liberalism', p. 140. In one of her classic works, Carole Pateman worries that 'contemporary consent theory presents our institutions as if they were actually as consent demands, as if they were actually constituted through the free agreement of equal persons': Carole Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory* (New York: Blackwell, 1989), p. 83. Pateman makes this point by highlighting that 'even a fairly cursory reflection on the empirical evidence about voting behavior casts immediate doubt on the simple identification of consent with liberal-democratic voting' (Pateman, *Disorder*, p. 65). The problem with Pateman's criticism is that she misunderstands the relationship between theory and practice. The point Waldron is making along with other contemporary consent theorists, as I will highlight, is not whether consent actually happens through voting or some other mechanism, but whether the laws that organize society can be represented as laws to which rational agents would agree. When framed in this light, liberal regimes provide ground for contesting 'arrangements or institutions inasmuch as one can show that it has not secured, or perhaps could not secure, the consent of the people': Waldron, 'Liberalism', p. 140.
- 44 For more on this distinction see the following works: William Connolly, *The Terms of Political Discourse*, 2nd edn (New York: Oxford University Press, 1983), pp. 22–34, 198; cf. Stephen Toulmin and Kurt Baier, 'On Describing', in *Ordinary Language*, ed. Charles Caton (Chicago, IL: University of Illinois Press, 1953), pp. 20–46.
- 45 Hobbes, *Leviathan*, p. 189.
- 46 Of course, in chapter 21 of *Leviathan*, Hobbes has a discussion of the 'Liberty of Subjects' in which agents retain certain self-defense rights against the sovereign. However, this is an issue that is never taken into prominent consideration when republicans connect Hobbes' views of freedom to liberalism; Hobbes, *Leviathan*, pp. 261–74. For a good discussion of Hobbes' notion of the liberty of the subjects see Jean Hampton, *Hobbes and the Social Contract Tradition* (New York: Cambridge University Press, 1986), pp. 198–207, 239–55.
- 47 Hobbes, *Leviathan*, pp. 227, 262.
- 48 Berlin, 'Two Concepts', p. 129.
- 49 Charles Taylor, 'What's Wrong With Negative Liberty', in *Liberty*, ed. David Miller (New York: Oxford University Press, 1993), pp. 141–62.
- 50 Holmes, *Passion and Constraint*, p. 16.
- 51 Judith Shklar, 'Liberalism of Fear', in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge, MA: Harvard University Press, 1989), p. 24; cf. Holmes, *Passion and Constraint*, pp. 3, 69.
- 52 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 10, n. 4.
- 53 J. W. Gough, *The Social Contract: A Critical Study of Its Development* (New York: Oxford University Press, 1957), pp. 140, 182–3.

- 54 S. I. Benn and W. L. Weinstein, 'Being Free to Act, and Being a Free Man', *Mind* 80 (1971): 194–211; cf. David Miller, 'Constraints on Freedom', *Ethics* 94 (1983): 66–86 (70).
- 55 John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Haven, CT: Yale University Press, 2003[1690]), pp. 171–5; Benjamin Constant, 'The Liberty of the Ancients Compared with that of the Moderns', in *Political Writings*, ed. Biancamaria Fontana (New York: Cambridge University Press, 1988[1819]), pp. 326–7; John Dewey, *The Public and Its Problems*, in *Later Works, 1925–1953*, vol. 2, ed. Jo Ann Boydston (Carbondale: Southern Illinois University Press, 1988 [1927]) and 'Democracy and Educational Administration', in *Later Works, 1925–1953*, vol. 11, ed. Jo Ann Boydston (Carbondale: Southern Illinois University Press, 1991[1937]), p. 220; Rawls, *Theory of Justice*, p. 11.
- 56 Dewey, *Public and Its Problems*, p. 287; Dewey, 'Democracy', pp. 224–5.
- 57 Constant, 'Liberty of the Ancients', p. 310.
- 58 Charles Larmore, 'The Moral Basis of Political Liberalism', *The Journal of Philosophy* 96 (1999): 599–625 (611).
- 59 This is precisely why, *pace* Raymond Geuss, the idealization is relevant; it implies that there is no permanent closure on institutional arrangements, laws and policies that govern us. At the existential level, this orients citizens to their political world in a way that differs from those living under authoritarian regimes; cf. Raymond Geuss, 'Liberalism and Its Discontents', *Political Theory* 30 (2002): 320–38 (329).
- 60 Dewey, *Public and Its Problems*, p. 326. Obviously, Dewey parts company with Dworkin's conflict-aversion thesis – a claim that does not take seriously the ways in which freedom and equality may conflict. See Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000), ch. 3.
- 61 Rawls, *Theory of Justice*, pp. 177–82.
- 62 *ibid.*, pp. 55–66 (emphasis added); cf. 580–1.
- 63 Locke, *Two Treatises*, pp. 149–51; Immanuel Kant, 'An Answer to the Question: "What Is Enlightenment?"', in *Political Writings*, ed. Hans Reiss, trans. N. B. Nisbet (New York: Cambridge University Press, 1970[1784]), pp. 55–6; Dewey, *Public and Its Problems*, chs 1–3. Indeed, Larmore provides further clarification in that a commitment to transparency generates two additional constitutive principles – namely, the value of dialogue and equal respect; see Larmore, *Morals of Modernity*, pp. 134–44, and 'Political Liberalism', pp. 599–625.
- 64 Rawls, *Theory of Justice*, pp. 177–6.
- 65 *ibid.*, pp. 177–83.
- 66 Locke, *Two Treatises*, p. 149.
- 67 Rawls, *Theory of Justice*, p. 235.
- 68 *ibid.*, p. 246 (emphasis added).
- 69 Cf. Ronald Dworkin, 'Liberalism', in *Public and Private Morality*, ed. Stuart Hampshire (New York: Cambridge University Press, 1978), pp. 113–43 especially p. 116, n. 1.
- 70 Thus Rawls writes: '[W]hen the basic structure of society is publicly known to satisfy its principles for an extended period of time, those subject to these arrangements tend to develop a desire to act in accordance with these

- principles and to do their part in institutions which exemplify them'; Rawls, *Theory of Justice*, p. 177.
- 71 Rawls, *Political Liberalism*, p. 205 (emphasis added).
- 72 *ibid.*, p. 205, cf. n. 37.
- 73 Pettit, *Republicanism*, p. 5.
- 74 John Stuart Mill, *On Liberty*, ed. Stefan Collini (New York: Cambridge University Press, 1989[1859]), p. 103.
- 75 Cf. Larmore, 'Political Liberalism', p. 607.
- 76 Mill, *On Liberty*, p. 105 (emphasis added). Berlin was thus inaccurate when he said that for Mill, 'The despot who leaves his subjects a wide area of liberty may be unjust, or encourage the wildest inequalities, care little for order, or virtue, or knowledge; but provided he does not curb their liberty, or at least curbs it less than many other regimes, he meets with Mill's specification' (Berlin, 'Two Concepts', p. 129). Of course, I do not mean to suggest that the subordination of women was not historically defended under the banner of liberal principles. Indeed, republican principles share a similar history. But the point is whether or not liberalism has, as part of its commitment to freedom as non-interference, the ability to address the battered-wife example proffered by republicans.
- 77 Larmore says that Mill does not fit into this category and that he expresses a view of freedom that 'goes back through Bentham to Hobbes' (Larmore, *Morals of Modernity*, p. 124, n. 2). This view misunderstands Mill's principle of liberty. As Mill writes in *Utilitarianism*: 'The interest involved is that of security, to every one's feelings the most vital of all interests. Nearly all other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone, or replaced by something else; but security no human being can possibly do without; on it we depend for all our immunity from evil, and for the whole value of all and every good, beyond the passing moment; since nothing but the gratification of the instance could be of any worth to us, if we could be deprived of anything the next instant by whoever was momentarily stronger than ourselves'; John Stuart Mill, *Utilitarianism*, ed. H. B. Acton (New York: Dent, 1972[1863]), p. 56. John Gray rightly notes of this passage that, 'Mill conceives of security primarily in terms of reliability of established expectations. Violation of one's legal rights . . . the kind of uncertainty which accompanies both arbitrary despotism and weak government – all these are circumstances in which expectations are subject to unpredictable disappointments which in Mill's view amount to an insecurity of freedom'; John Gray, *Mill On Liberty: A Defense* (New York: Routledge, 1983), ch. 3, pp. 53–4.
- 78 Waldron, 'Liberalism', p. 133.
- 79 Thus William Connolly observes that 'the notion of a constraint, then, involves the idea of a normal range of conduct people can be expected to undertake or forgo when doing so restricts the options of others' (Connolly, *Terms*, p. 165).
- 80 Locke, *Two Treatises*, p. 102.
- 81 As Locke writes on just this point: '[F]or law, in its true notion, is not so much the limitation, as the direction of a free and intelligent agent to his

proper interest, and prescribes no farther than is for the general good of those under that law: could they be happier without it, the law, as an useless thing, would of itself vanish. . . . So that, however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, “where there is no law, there is no freedom”; *for liberty is to be free from restraint and violence from others: which cannot be where there is not law: but freedom is not, as we are told, “a liberty for every man to do what he lists”* (for who could be free, when every other man’s humour might domineer over him?) but a liberty to dispose and order as he lists his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own; Locke, *Two Treatises*, pp. 123–4 (emphasis added).

82 Rawls, *Theory of Justice*, p. 302.

83 *ibid.*, p. 241. To be sure, Rawls does refer to ‘Hobbes’ thesis’ in the section where he takes up the relationship between rule of law and liberty. However, on closer inspection, Rawls’ reference is to Hobbes’ insight concerning the tendency of agents to lack confidence in each other regarding compliance to the laws, and not to Hobbes’ conception of freedom as Skinner believes. Thus, Rawls writes, ‘the suspicion that others are not honoring their duties and obligation is increased by the fact that, in the absence of the authoritative interpretation and enforcement of the rules, it is particularly easy to find excuses for breaking them. . . . This proposition we may think of as Hobbes’ thesis’; Rawls, *Theory of Justice*, p. 240.

84 Cf. Richard Dagger, *Civic Virtues: Rights, Citizenship, and Republican Liberalism* (New York: Oxford University Press, 1997), pp. 61–80; cf. Sullivan, *Liberal Republicanism*, Introduction, ch. 7.

85 Waldron, ‘Liberalism’, p. 134; cf. Larmore, ‘Political Liberalism’.

86 John Dewey, *Liberalism and Social Action* (Amherst, NY: Prometheus Books, 2000[1935]), ch. 1.

87 Berlin, ‘Two Concepts’, pp. 147–78, 152–3.

88 Stephen Macedo, *Liberal Virtues: Citizens, Virtues and Community in Liberal Constitutionalism* (New York: Oxford University Press, 1990); William Galston, *Liberal Purposes* (New York: Cambridge University Press, 1992); Peter Berkowitz, *Virtue and the Making of Modern Liberalism* (Princeton, NJ: Princeton University Press, 1999). All three thinkers are clear that liberalism has its own distinct virtues, but for them, especially Macedo and Galston, it will often be the case that we must appeal to extra-liberal institutions or a pre-liberal ethos to ensure that those virtues are consistently generated (Macedo, *Liberal Virtues*, p. 285; cf. Galston, *Liberal Purposes*, pp. 257–89).

89 Of course the immediate question to ask, which I hope this article anticipates, is the following: who are these supposed liberals that Skinner and Pettit want to criticize? Perhaps, as Colin Bird suggested to me, they have the doctrine of economic liberalism in mind that is regularly employed in public discourse and the conventional ideology of corporate capitalism. The basic claim here is that freedom means leaving people to their own

devices and limiting the right of the state to intrude in the private transactions of 'consenting adults'. The worry over discretionary power usually has as its target not the liberal state as such, but rather the corporations whose dominating practices might receive excessive protection under a regime that affirms a vision of negative liberty. I am inclined to say that none of the thinkers with whom I am concerned, especially Rawls, is a friend of this position. Indeed, we lump them in this category at the risk of simply getting them wrong.