

Note: this is the final pre-copy-editing MS of the article that appears as Patchen Markell, “The Insufficiency of Non-Domination,” *Political Theory* 36, no. 1 (February 2008): 9–36. © 2008 Sage Publications. The online version of record may be found at [http:// http://dx.doi.org/10.1177/0090591707310084](http://dx.doi.org/10.1177/0090591707310084)

THE INSUFFICIENCY OF NON-DOMINATION

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Final version: September 24, 2007

ABSTRACT: This essay argues that the neo-Roman republican principle of “non-domination,” as developed in the recent work of Philip Pettit, cannot serve as a single overarching political ideal, because it responds to only one of two important dimensions of concern about human agency. Through critical engagements with several aspects of Pettit’s work, ranging from his philosophical account of freedom as “discursive control” to his appropriation of the distinction between *dominium* and *imperium*, the essay argues that the idea of domination, which responds to concerns about “control,” needs to be supplemented by the idea of usurpation, which responds to questions about “involvement”; and it shows how attention to both domination and usurpation (and to the interaction between them) can shed light on such phenomena as imperialism, slavery, and democracy.

KEYWORDS: agency, democracy, imperialism, Pettit, republicanism, slavery

Finally, it should be the earnest and paramount aim of the military administration to win the confidence, respect, and affection of the inhabitants of the Philippines by assuring them in every possible way that full measure of individual rights and liberties which is the heritage of free peoples, and by proving to them that the mission of the United States is one of benevolent assimilation, substituting the mild sway of justice and right for arbitrary rule.

President William McKinley (1898)¹

The revenge of slavery consists in the fact that it transformed all political questions into problems of mastery.

Hannah Arendt (1953)²

In such recent works as *Republicanism* and *A Theory of Freedom*,³ Philip Pettit has reconstructed a neo-Roman conception of freedom as “non-domination,” offering it as a political philosophy for our times. Non-domination involves more than just being free in the moment from actual interference by other people. Instead, it involves being free in one’s ongoing relationships from even the possibility of interference by others on an arbitrary basis. Among the virtues of this neo-Roman conception of freedom, Pettit proposes, is that it captures the depth of the injustice of various forms of *unfreedom*—including especially slavery, which has been the

defining example of domination in the republican tradition—better than the liberal conception of freedom as non-interference: the theory of freedom as non-domination shows that slaves are unfree regardless of whether their masters are in fact kind or cruel, permissive or coercive, because even the slave of a non-interfering master remains dependent on his goodwill and vulnerable to his whim (R 5, 31–35). From this paradigmatic example, the illuminating power of the ideal of non-domination radiates outward toward a wide range of other unjust relationships, from the subordination of wives to their husbands’ wills, to the daily tyrannies of the bureaucratic state. Indeed, Pettit presents non-domination as the “central” and “supreme” political ideal, an “overarching value” under which a panoply of other commitments and concerns can be subsumed.⁴

This Roman revival coincides with another. Nearly a century after Kipling implored the United States to civilize its “new-caught, sullen peoples”—an undertaking that, in the Philippines, embroiled the American military in an unexpectedly bloody four-year campaign to suppress an independence movement, resulted in hundreds of thousands of civilian and military casualties, set off scandals involving the torture of prisoners and the slaughter of noncombatants, and kept the people of the Philippine archipelago subject to a Western power for decades after their liberation from Spanish rule—some scholars and pundits have begun to call upon America to take up the “burden” of empire once borne by Britain and Rome.⁵ The alarmed responses have been no less familiar, and have intensified as American fortunes in Iraq and Afghanistan have soured: some critics have portrayed American appeals to principle as masks for the domination and exploitation of the less powerful; others have warned of imperial overstretch and of the political corruption bred at home by militarism.⁶ The triumphs and disasters of the

imperium Romanum, and the rhetorical repertoires of its historians, admirers, and critics, haunt contemporary political talk.⁷

What does the ideal of non-domination illuminate, and what might it obscure, about the politics of empire? The republican rejection of arbitrary rule has long been a mainstay of anti-imperial argument.⁸ As Pettit observes, the American colonists' resistance to taxation by Parliament was often framed as a resistance to "arbitrary imposition" by an imperial government (R 34). Edmund Burke's indictment of Warren Hastings' governor-generalship of Bengal presented Hastings' embrace of "arbitrary power" as an injustice to his Indian subjects and a threat to the British constitution.⁹ Some American anti-imperialists at the turn of the twentieth century cast overseas expansion as a betrayal of the country's commitment to republican principles.¹⁰ Yet the critique of empire as seedbed of arbitrary power abroad and at home, while powerful, has its limits. These may not be readily apparent in the case of Britain's rule over its North American empire, or even in the case of Hastings' administration in Bengal, which was not yet strongly animated by the ideology of the "civilizing mission."¹¹ But in light of the subsequent history of British rule in India, which came increasingly to be devoted to the systematic "improvement" and Anglicization of its subject populations—or in the face of the republican themes sounded in President McKinley's proclamation to the people of the Philippines—it becomes less clear that the idea of *arbitrariness* captures all or even most of what should trouble us about empire.

In this essay, I do not engage extensively with the politics of American world power; and while I shall say more about why the neo-Roman concern with domination cannot provide a complete picture of the ethical and political stakes of imperialism, my main purpose is to show that this incompleteness is just one example of a more general insufficiency in the ideal of non-

domination. (In calling this ideal insufficient, I should stress, I do not mean to suggest that it is useless—indeed, I think it is a vital theoretical and political resource—but only to question Pettit’s claim that this ideal can serve as a *supreme* and *overarching* political value.¹²)

Ultimately, the insufficiency is located in the idea of “domination” itself, and the pictures of power and agency that that term carries with it.¹³ The idea of domination, as I have noted, is a generalization from the case of slavery, understood as an institution in which one human being can become the property of another, a master or *dominus*, and is thereby subjected to arbitrary power.¹⁴ But it is one thing to be treated like a piece of property, and quite another to be treated, say, like a child;¹⁵ and not just in having the protective hand of a parent interfere with your conduct for your own good, but also and more insidiously in having the world ordered in ways that narrow the field of situations in which any conduct on your part might be called for.¹⁶ These two examples give us different pictures of why agency matters, and of what threatens it. The first makes agency into a problem of *control*: what matters is that this course of action be responsive to your interests, not determined by another’s whim. The second makes agency into a question of *involvement*: whatever it is that’s happening, and however it’s being controlled, to what extent is it happening *through you*, through your activity? These dimensions of agency may be aligned: a given relationship may both subject an agent to another’s whim *and* deprive her of involvement in affairs that affect her. But the relationship between them can also be more complex, because the mechanisms that guard against arbitrariness and subject decisions to control can also displace involvement, leaving people subject to relatively predictable and perhaps even beneficial forms of power that nevertheless “stifle” and “stultify.”¹⁷ To complain of such displacement is to complain not of domination but of what I shall call *usurpation*.

In what follows, I draw out the insufficiency of non-domination and reconstruct the difference between domination and usurpation through a close, sometimes technical engagement with several different parts of Philip Pettit's recent work, including his revealingly equivocal conception of "arbitrariness," his fascinating effort to join a theory of political freedom to traditional philosophical concerns about free will, and his use of the terms *imperium* and *dominium* to capture a distinction between public and private uses of power. Precisely in his effort to stretch the concept of domination across a maximally wide range of cases of injustice, I argue, Pettit makes a series of theoretical moves that have the unintended consequence of obscuring the significance of involvement and of usurpation. By attending to this other dimension of agency, I conclude, we can sharpen our critical engagement with the politics of empire, and we can also deepen our understanding of democracy, both as an ideal and as a practice. Indeed, by relaxing Pettit's insistence on the supremacy of the ideal of non-domination, we can also refine our understanding of the very phenomenon that neo-Roman republicanism takes as its defining figure of unfreedom. Republican theory, as I have indicated, sees slavery in a very specific way: as a relationship of ownership that subjects a person to the arbitrary will of another as though that person were a thing. But that, importantly, is a view of the nature of slavery borrowed directly from the legal forms and ideologies that helped legitimate it.¹⁸ Such subjection to a master's whim surely was an important part of the experience and the indignity of enslavement, for those legal forms and ideologies had real power. But to see slavery *solely* in those terms is to miss the fact that slavery was also a form of usurpation, a world-narrowing interruption of lives and activities already under way. It is also to overlook the fact that slaves never quite became the wholly dependent instruments of their masters' wills imagined by the ideology of slavery, not because their masters were after all legally constrained to respect their

interests, but because their labor, though directed by others, nevertheless happened through them, through their activity.¹⁹ I say all this in order to emphasize that, in questioning the supremacy of the ideal of non-domination, my aim is not to downplay the importance of slavery as a paradigm case of injustice, but rather to suggest that even slavery's injustice cannot completely be understood if we insist on seeing that institution, in accordance with the aspirations and fantasies of its practitioners, as perfected caprice.²⁰ It is with that idea of caprice or arbitrariness that I begin.

The Ambiguity of “Arbitrary”

The place of the concept of arbitrariness in Pettit's theory is straightforward: it distinguishes unacceptable from acceptable powers of interference, exemplified by the power of the slaveholder and by the power of “properly constituted law” (R 35). But the concept demands close attention, because Pettit's definition of arbitrariness is equivocal in a crucial respect. On the one hand, Pettit uses the idea of arbitrariness in its ordinary sense. “When we say that an act of interference is perpetrated on an arbitrary basis,” he writes, “we imply that like any arbitrary act it is chosen or not chosen *at the agent's pleasure*” (R 55, emphasis added). The arbitrary is thus, as the *Oxford English Dictionary* suggests, something “to be decided by one's liking; dependent on will or pleasure.”²¹ Relatedly, arbitrariness also suggests a fickle or capricious will: one of the central indignities in being subjected to arbitrary power is that one is condemned to “live in uncertainty about the other's reactions and in need of keeping a weather eye open for the other's moods” (R 5).²² However, Pettit also conflates arbitrariness thus understood with a different idea: interference is arbitrary, as he puts it, when it is “chosen or rejected without

reference to the interests, or the opinions, of those affected,” or when it is “not forced to track the avowable interests of the interferee” (R 55; TF 138–390). To be sure, any act that is arbitrary in the first, ordinary sense will also be arbitrary in Pettit’s second sense, since capricious acts, by definition, aren’t “forced to track” *anything*. But the converse is not true: an act can fail to be forced to track the avowable interests of those it affects without being an expression of wholly unconstrained whim.

We can see this more clearly, and we can understand why Pettit might be motivated to conflate these definitions, by considering his own hypothetical example of the slavemaster who “proves to be entirely benign and permissive,” even “benevolent” (R 32, 64). This example is meant to show the superiority of republicanism to liberalism: liberals would have no grounds to condemn the benevolent master, who *could* interfere but doesn’t; republicans fare better, because they are concerned with the power of arbitrary interference, and not only with its exercise. Notice, however, that on the first definition of arbitrariness as whim, the republican critique of the kindly master would depend on the assumption that this master’s benignness is accidental—that he “*happens to have* inclinations that do no harm to anyone else” (R 64, see also 22, 24). If the master’s benignness were non-accidental—whether because of the exercise of a countervailing power by the slave; because of the “polic[ing]” of the master’s behavior by a “third party” (R 23); or just because the master makes himself “answerable in the court of certain considerations” for his behavior, for instance by “acknowledg[ing] a code of *noblesse oblige*,” or “aspir[ing] to be a virtuous person”—the republican would treat these constraints as genuine reductions in the domination suffered by the slave (R 64).

Of course, this might not seem to be a problem as long as we presume, as Pettit’s examples do, that what the constraints produce is systematic *benignness* or *benevolence*:

constraints of that sort render the master's action less arbitrary both on the first definition of arbitrariness (because they check the master's whim) *and* on the second (because they align the master's behavior with the interests of the slave). The trouble, however, is that the master's behavior could just as easily be guided by codes and aspirations, or regulated by law, without being forced to respect the slave's interests. Indeed, in the real world this seems a much more likely configuration: the behavior of slaveholders has been rendered systematic—indeed, even “benevolent,” at least in their own eyes—by their commitment to some combination of racial ideology and Christian paternalism; likewise, the same legal codes that have secured the power of masters over slaves have also regulated that power, both in the ancient world and in modern slave societies, though they typically served the interests of slaveholders as a class, or of third parties, not the interests of slaves.²³ Here, the two definitions of arbitrariness can be seen to come apart: between them stand a whole range of forms of principled or rule-bound subordination. In conflating these two definitions, Pettit is able to get critical leverage against *these* cases of subordination—which involve arbitrariness in the second sense but not the first—while continuing to root his condemnation of domination in the classic republican idea that people should not be condemned to “fawn or toady or flatter” in an effort to gratify the whims of others (*R 5*)—an idea closely tied to the first sense of arbitrariness but not the second.

There is one further twist, however. One reason it may be difficult to see the ambiguity in Pettit's account of arbitrariness at first glance is that Pettit's second definition of arbitrariness does not *completely* sever that term from its ordinary association with the idea of whim. Instead, that second definition tacitly draws on a tradition of thought about the dangers of capriciousness that is quite different from the republican concern with subjection to the arbitrariness *of another agent* with which Pettit began. According to this second definition, recall, power is arbitrary

when the interference it makes possible is not forced to track the interferee's interests—or, more specifically, the interferee's "common avowable interests"; that is, the interests that the interferee could "adduce without embarrassment as relevant matters to take into account" in conversation with others affected by the decision (*TF* 156; see also *R* 55–56). The qualifications "common" and "avowable" do a lot of work here.²⁴ They mark a familiar discomfort with appeals to interest, a sense that the beliefs and desires an agent happens to have cannot, on their own, constitute interests in the proper sense—interests that *count* for the purposes of determining whether that agent is being dominated—both because a person's beliefs and desires may make "inconsistent demands," and because they may make demands that no one else could recognize as valid (*R* 55–56; *TF* 156–57). In appealing to the idea of "common avowable" interests, Pettit's second definition of arbitrariness thus still expresses a concern with caprice, only here it is not the whim or caprice of the power-holder that matters, but the whim or caprice of the interferee: power is non-arbitrary when its exercise is forced to track the interferee's interests, *and* when those interests have themselves been validated, deprived of their arbitrary character by having been subjected to the standards of commonness and avowability.²⁵

By conflating the first and second definitions of arbitrariness, then, Pettit makes it possible for the idea of non-domination—freedom from arbitrary power—to get traction against a sufficiently broad range of injustices, including both rule-bound and non-rule-bound forms of subordination, to be able to stand on its own as a single, overarching political principle. In doing this, Pettit also yokes the republican concern with checking the arbitrary power of *others* to a tradition of thinking about freedom in terms of one form or another of *self*-mastery, of the government and discipline of one's own capricious will. What are the consequences of this move? What might be lost when, in seeking to account for the injustice even of rule-bound and

norm-governed subordination, we have recourse to a notion of “common allowable interest” understood as the result of a demanding process through which caprice is purified or educated toward universality? Eventually, I shall suggest that this move leaves Pettit’s republicanism with a cramped sense of what is at stake in some important instances of imperial politics, unable to respond as powerfully as it otherwise might to certain familiar justifications of imperial rule as a means of improving or civilizing imperial subjects—justifications that often draw on the same tradition of concern about the capriciousness of uneducated desires as does Pettit. I shall also suggest that the vocabulary of non-domination is similarly insufficient when it comes to such phenomena as slavery and democracy. Yet these explicitly political consequences are foreshadowed in Pettit’s philosophical account of freedom in *A Theory of Freedom*, which, as we shall now see, is itself shaped in important ways by his effort to hold together these two different versions of the problem of arbitrariness, and by his concern with the arbitrariness of one’s own beliefs and desires.

Freedom, Control, and Detachment

Philip Pettit’s *A Theory of Freedom* pairs a condensed version of the political theory of *Republicanism* with a treatment of the philosophical problem of free will. The problem of freedom, Pettit argues, is best understood as a problem about responsibility: to ask what freedom is is to ask in virtue of what quality or state we regard each other and ourselves as “fit to be held responsible,” deserving of blame and praise, punishment and reward (*TF* 12). The most straightforward answer is that I am responsible for that which is under my control; but that begs the question of what “control” involves. Pettit thus devotes the first half of the book to a

consideration of three rival accounts of “control.” Someone is in *rational* control of her action if her action is “directed” by her beliefs and desires; that is, if she does “whatever it is rational to do,” in a minimal, calculative sense, “in the light of the beliefs and desires that are present” (*TF* 35). Someone enjoys *volitional* control if she does not merely act in accordance with her beliefs and desires, but also has what Harry Frankfurt famously called a “second-order volition” to be moved by those desires, and is therefore able to identify with the resulting action, which she might otherwise experience only as a bystander (*TF* 51).²⁶ Pettit argues that neither of these first two conceptions of control, taken on its own, can respond adequately to the problem of the arbitrariness of one’s own beliefs and desires. Merely acting on the basis of the beliefs and desires we happen to have—that is, acting at our pleasure or arbitrarily—would leave us not free persons but “wantons,” another term of Frankfurt’s that suggests undisciplined children, “spoiled by over-indulgence and excessive leniency.”²⁷ Likewise, our second-order volitions might *themselves* be arbitrary—they might be “standards to which you are a slave”—and therefore incapable, on their own, of serving as anchors for self-identification (*TF* 59, 53f). Thus Pettit advances a third and final conception of freedom as control: someone is in *discursive* control if she does not only act in accordance with those beliefs and desires with which she identifies, but also does so in the context of social relationships in which she is recognized by others as a person capable of engaging in practical discourse, and is therefore not subject to forms of intersubjective influence that render her unfree (*TF* 77–79). Here, I will have little to say about the relative merits of these three conceptions, since Pettit’s argument for the third largely persuades; but just for that reason, in reconstructing some of the details of Pettit’s account we will also discover some of the limits of the general, and extraordinarily widespread, idea that agency just involves being in the right kind of control.

We can begin by noting that Pettit's theory of freedom as discursive control has two distinct elements. To be free, on this theory, a person must have the "ability" to discourse; and she must also have the "access" to discourse provided by social relationships that foster rather than impede rational conversation (*TF* 70). Pettit labels these the "ratiocinative" and "relational" aspects of discursive control: the term "ratiocinative" points to the capacity, possessed by individual human beings, to "make up one's mind on the basis of reasons" (*TF* 70, 93 n. 1); while the term "relational" points to the intersubjective status we acquire when we are enmeshed in relationships in which our partners recognize and respect that ratiocinative capacity (*TF* 72). What's the connection between a capacity to reason and the intersubjective recognition of that capacity? Pettit offers two possible answers to this question. From one point of view, what makes for discourse-friendly relations with others is that those others see and respond appropriately to the ratiocinative capacities that an individual subject already possesses, refusing to subject that person to forms of influence that bypass her ability to engage in the activity of reasoning in common. From another point of view, however, the relationship between the ratiocinative and relational dimensions of discursive control looks very different. Early in *A Theory of Freedom*, in the course of laying out the basic idea of freedom as "fitness to be held responsible," Pettit observes that "we often treat others as fit to be held responsible, when in truth they do not actually display this fitness, because of the effect this will have on their performance. It may be required in order to help others—say, children—into the practice, or it may help to encourage those already in the practice to become better able to satisfy its demands" (*TF* 16). From this "developmental" perspective, discourse-friendly social relationships play a different role: they are a crucial part of the process by which a person is *made* fit to be held responsible, rather than merely being a kind of supplemental social expression of respect for a

fitness that that person already possesses (*TF* 72). As such, notice, they respond not to the problem of the arbitrariness of the power some people have over others, but to the problem of the arbitrariness of an agent's own beliefs and desires. They help to convert wantonness into responsibility.

Having laid out this distinction between the nondevelopmental and developmental understandings of what it means to hold people responsible, Pettit goes on to insist that *only* the nondevelopmental understanding—*only* what he calls “proper” fitness to be held responsible, not “developmental” fitness—is constitutive of freedom as he understands it (*TF* 17). This is an understandable insistence: given that Pettit wants his philosophical and political accounts of freedom to be analogous and mutually supporting (*TF* 3), explicitly incorporating the developmental understanding into his philosophical conception of freedom might seem to demand that he make a parallel move in the political register; and *that* might risk eroding the *negative* character of the theory of freedom as non-domination by making self-mastery into a directly political goal.²⁸ Yet it proves impossible for Pettit to insulate his conception of freedom from this developmental understanding of responsibility, and not only because (as he concedes) it can be difficult in practice to distinguish non-developmental from developmental instances of holding-responsible (*TF* 17), but also and more deeply because the developmental understanding of fitness to be held responsible plays a crucial though unavowed role in Pettit's own defense of the theory of freedom as discursive control. To see this, and to understand its consequences, we need to consider in more detail two of the conceptual problems that drive Pettit's ascent from rational to volitional and from volitional to discursive control, which Pettit calls the “recursive” problem and the “bystander” problem.

The theory of freedom as *rational* control, remember, tells us that someone has acted freely and may be held responsible for her action just in case the action has happened under the causal control of her beliefs and desires. This account, however, treats beliefs and desires as themselves arbitrary—all that matters is that we happen to have them—and so it fails to address the intuition that, to be responsible for the action that happens under the control of my beliefs and desires, I must be responsible for *those* beliefs and desires too, and not merely passively subject to them—which in turn suggests that I must also be responsible for whatever it is that is responsible for my beliefs and desires, and so on (*TF* 10–11, 41). The resulting “indefinite regress” (*TF* 11) is the crux of the recursive problem. The theory of freedom as *volitional* control, in turn, locates the connection between the free, responsible agent and her action not merely in the phenomenon of causal influence, but also and more fundamentally in the phenomenon of identification: a free agent is one who effectively subjects her first-order beliefs and desires to a set of second-order standards; this enables her to endorse and thereby to *own* her beliefs and desires, and this experience of ownership anchors the attribution of freedom and responsibility (*TF* 49). Yet this approach brings the second problem, the bystander problem, into the foreground, for it makes the “arbitrary” assumption that an agent will experience her second-order standards *as* her own, thereby ignoring the possibility that she might relate to *these* standards “as an onlooker or bystander,” experiencing them, for instance, as the “unwelcome inheritance” of “childhood drilling” in a moral code (*TF* 53–54). In turning to the idea of discursive control, then, Pettit aims to provide a more satisfactory account of the intersubjective conditions under which people can come to identify with their actions, thereby incorporating these other two accounts of freedom within a larger structure that preserves their insights and overcomes their problems.²⁹

To explain how the idea of discursive control accomplishes this, Pettit introduces a distinction between “persons” and “personal identity” on the one hand, and “selves” and “self-identity” on the other. “Persons” and “personal identity,” for Pettit, are the more minimal of the two pairs of ideas: what makes someone the same person is just the fact that there is some sort of “deep-running, causally grounded continuity”—the precise nature of which remains mysterious—that joins up (for example) the middle-aged man with the teenager he once was, making it possible for us to call upon him to “answer for” that teenager’s doings (*TF*, 84, 82). Whatever it is that grounds personal identity, it is a brute fact, and a relatively indiscriminating one, for “as a person I can never be rid of anything done by agents—strictly, agent-slices—on my trajectory in time” (*TF* 85, 83–84). *Self*-identity, by contrast, emerges out of the reflexive, though often unintentional, process through which people “own” and “endorse” some, but only some, parts of the “mixed and incoherent legacy” that is theirs by virtue of their sheer personhood (*TF* 85).³⁰

This distinction between personal identity and self-identity parallels the distinction between rational and volitional control. Personal identity, as a sort of stickiness that inheres in our bodies and/or brains, such that we can “never be rid” of what was done by “agent-slices on our trajectory in time,” is the sort of identity that we would ascribe to agents possessed merely of rational control; self-identity, in turn, involves the reflexive endorsement and/or rejection of the various components of one’s personal identity, just as volitional control involves the reflexive endorsement or rejection of the beliefs and desires one happens to have. Given this parallel, we should also expect that the turn from personal identity to self-identity will run up against a version of the bystander problem that afflicts the theory of freedom as volitional control; and so it does. By conceiving of self-identity as a kind of *selective* endorsement or rejection of the

elements of one's personal legacy, Pettit explains, we risk imagining that the self could be infinitely flexible; that, *qua* selves, people could "hol[d] themselves aloof from what they have done and been and continually see[k] comfort in a fresh, unfreighted identity" (*TF* 86). Pettit calls this the problem of the "elusive" self, and he explains that it is in fact "nothing more or less than" the problem of the "bystander" self, the self that does not experience its doings, desires, or standards as its own, but relates to them as an alien onlooker (*TF* 88). But this, Pettit now argues, is where the turn to the idea of discursive control makes a crucial difference, for discourse places decisive limits on the elusiveness of the self:

As a person I can never be rid of anything done by agents—strictly, agent-slices—on my trajectory in time. As a self I can. But it is worth noticing that if I am to maintain discursive interactions with others, then the self in question cannot recede to the point of being a purely formal 'I', with a thin, commitment-free identity. In order to maintain discursive interactions with others, I must continue to stand by certain claims and intentions; I cannot change minute by minute, interaction by interaction. And that means that I must give my self a substantive specification; I must assume a substantive character (*TF* 85).

"If discursive control is inconsistent with the self's being elusive in this way," Pettit concludes, "then it is equally inconsistent with the self's being trapped in a bystander position. The problem is, therefore, avoided" (*TF* 88).

Notice, however, that in this picture, the idea of discourse now does much more than screen out certain kinds of social relationship that impede an agent's freedom. It also names the

intersubjective process through which agents are brought into, and kept in, a certain kind of relation to themselves: holding each other responsible for things is not only something we do in virtue of our freedom; it is also that in virtue of which we become and remain free in the first place. Despite his best efforts to marginalize it, in other words, the “developmental” sense of fitness to be held responsible turns out to be central to Pettit’s understanding of freedom. This means that it is not quite right to suggest that the turn to discourse solves the bystander problem, that “if we are moved by others [in discourse] . . . we will only be moved in a way that we would want to be moved; we will ourselves retain discursive determination of where those movements take us” (*TF* 70). Even on Pettit’s own account, our freedom is not wholly our own doing, for the imperatives that come to us through discourse in its developmental aspect—“I must continue to stand by certain claims and intentions,” “I cannot change minute by minute”—are, precisely, imperatives that we do not, *cannot*, impose on ourselves entirely on our own: that’s why the turn to discourse was needed in the first place. Pettit sidesteps this conclusion by narrowing his definition of the bystander problem, equating it with the problem of the elusive self, “the self that always distances itself from everything on its personal trajectory, receding to a point of the thinnest possible identity” (*TF* 88); but, understood more broadly as a problem of the *alienated* self—which would include the agent who experiences her own second-order standards as the “unwelcome inheritance” of “childhood drilling”—the bystander problem is not solved but *renewed* by the turn to discourse, for we acquire and maintain our status as discursive agents only through the acceptance of certain demands and requirements that we do not author.³¹

What of the other problem that Pettit set out to solve with the idea of discursive control—the recursive problem? The recursive problem, recall, is centered around the apparently infinite regress that arises out of any ascription of responsibility. As Pettit explains, however, the power

of the recursive problem as a problem depends upon the assumption that “whenever an agent is fit to be held responsible for something, then that is in virtue of that response being controlled by a *separate state or event*: a certain belief or desire, a certain habit of belief and desire formation, or whatever” (TF 98, emphasis added). If we did not think of responsibility in terms of one separate state determining the one after it, we would not be tempted into the regress of recursivity. And the idea of discursive control, Pettit says, lets us escape this temptation, because it gives us the idea that “an agent can be fit to be held responsible for something, be it an action or a belief or whatever, in virtue of being *of a certain type*—the reason-responsible type ascribed in discursive authorization—and not in virtue of any preceding event or state” (TF 98, emphasis added). When we think of freedom as a matter of *status*—as a matter of being recognized to be the *sort* of agent who is fit to be held responsible—“the regress bottoms out with the type of agent that we take the person to be” (TF 99).

The solution is brilliant; but it comes at a cost, for as Pettit himself acknowledges, it is only plausible to treat freedom and responsibility as a matter of type in this way under certain conditions. Earlier in the book, in his initial discussion of the idea of rational control, Pettit had distinguished between two ways in which an agent’s beliefs and desires might be said to control her action. They do so “actively” when they actually cause the action to materialize (TF 38). They do so “virtually” when an action conforms to what would be required by those beliefs and desires, not through direct causation, but by virtue of the existence of “standby causes that are ready to be activated in the event of things not going the way that they rationally require” (TF 39). We might be acting thoughtlessly, out of habit or routine, but “let anything go wrong . . . and the red lights go on, causing us to go into discursive alert and take discursive charge of our doings” (TF 92). Pettit mostly uses this distinction inclusively, without giving theoretical

priority to either of its terms: “active” and “virtual” control name two perfectly normal and interdependent modes of human activity. But Pettit now explains—without taking the full measure of his own claim—that his proffered solution to the recursive problem *only* works with respect to the idea of virtual control:

When an agent performs an action under the active control of certain beliefs or desires, then it may be fair to say that he or she is fit to be held responsible for the action in virtue of the controlling role played by those states, and therefore that the agent must equally be fit to be held responsible for the beliefs and desires involved. But if the agent performs the action or forms those beliefs and desires under *just the virtual control* of discursive reasons, then there is no separable event or state in virtue of which they are fit to be held responsible. They are fit to be held responsible for the action or intentional profile in virtue of being a reason-responsive type of agent (*TF* 98, emphasis added).

The most philosophically satisfactory account of freedom and responsibility, it turns out, sees us as free precisely insofar as we occupy a curiously detached position of supervision over our own activity: we can be most confident in our freedom precisely when we are prepared to intervene in the way things are going, but do not need to, and so are never exposed to the regress that would arise in any case of action under the *active* control of our beliefs and desires. Indeed, though Pettit does not make this point, such a stance might also be thought to insulate agents from some of the potentially alienating dynamics of identity-formation: to be a responsible *type* of person, to occupy a position of detached, supervisory control, adds nothing new to the “mixed and

incoherent legacy” that a person accrues just by virtue of her minimal continuity of body and mind; thus, insofar as we occupy such a supervisory position, we also stand aloof from the often painful disavowals that are required to mold that legacy into a coherent self, as well as from the always partly alien demand for constancy that comes to us through our participation in discourse.

Together, Pettit’s answers to the bystander problem and the recursive problem reveal the limits of his effort to make freedom, understood as the absence of the power of arbitrary interference, into a supreme and overarching value. To account for the injustice both of subordination to the caprice of others and of certain forms of rule-bound subordination, we have seen, Pettit is led to conflate two different senses of the term “arbitrary,” treating arbitrariness not only as a problem about the capriciousness of others, but also as a problem about the shape of an agent’s own desires; in *A Theory of Freedom*, this conflation is manifest in Pettit’s unavowed reliance on the formative power of discourse, which serves not just as a means of screening out social relations that fail to respect the discursive capacities people already have, but also as the means by which people are drawn up the developmental ladder *from* rational to volitional to discursive control. The problem here, to be clear, is not simply that Pettit has failed to render freedom pure, or to spell out conditions under which the bystander problem could be solved without remainder. The problem is that, in *pursuing* such results, he tacitly depends on a form of power that is itself not easily subject to critical scrutiny under the terms of his own overarching principle. Social power systematically oriented toward the development of certain agents’ discursive capacities is not arbitrary in the first, minimal sense, because it is guided by something other than whim; and it evades scrutiny under the second, thicker sense of arbitrariness precisely because its exercise is represented as the very thing that converts an agent’s own whims into legitimate interests. In response to this difficulty, and taking my lead

from the symptomatic way in which Pettit's solution to the recursive problem seems to promise ultimate control *over* a course of affairs at the expense of active involvement *in* it, I now want to try to reconstruct a political and theoretical vocabulary that would respond to to this distinct dimension of concern about human agency, and that could thereby serve as a supplement to the overstretched ideal of non-domination.

Domination and Usurpation

Both in *Republicanism* and in *A Theory of Freedom*, Pettit draws an important distinction between the ideas of *imperium* and *dominium*. “There are two kinds of power within any social world,” Pettit explains, “each marked in a traditional Latin tag.” One is “the *imperium* of the state, or public power”; the other is “*dominium*,” which Pettit describes as “the private power of interference” that some agents enjoy in relation to others (*TF* 152; *R* 13, 130). Pettit insists that the ideal of non-domination applies to both of these kinds of power. While the state may—indeed, must—use its *imperium* to combat the domination that can arise from particular configurations of private *dominium*, this use of state power has to be limited and controlled, lest *imperium* itself become a source of domination, subjecting citizens to an arbitrary power of interference on the part of the government rather than each other (*TF* 153; *R* 130).

Notice that the distinction between *imperium* and *dominium*, in Pettit's hands, is not quite a distinction between two *kinds* of power. Instead, it is a distinction between two *sets* of power-holders: public (states) and private (individuals). The nature of the powers these two sets of agents exercise—or, at least, the nature of the threats they pose—is the same: both are to be understood as possible sources of domination. And domination, as we already know, is to be

understood as a power of arbitrary interference, the defining example of which is slavery. So while Pettit does in one sense distinguish between *imperium* and *dominium*, in another sense he subsumes *imperium* within *dominium* by taking the latter as the paradigm of power and therefore letting it, alone, inform our sense of what might count as an abuse of power, and why. If we are interested in capturing a dimension of concern about agency to which Pettit's understanding of domination does not respond, however, then it may be worth returning to *dominium* and *imperium* to see whether they name more than just two agents of the same sort of power.

Although Pettit does not explore these Latin tags in depth, his account of *dominium* is clearly rooted in the meaning of the term in the Roman law tradition, where—as an adaptation of language originally used to refer to slaveholding—it indicates ownership of a thing, that is, a right to use and dispose of the thing at will.³² (Pettit's use of *dominium* covers more than formal legal ownership, both in the sense that someone need not literally be owned to be dominated, and also in the sense that the leverage people have over others need not consist in enforceable property rights in things in order to count as domination [R 57, 59]. But *dominium* in this broader sense is still structurally analogous to *dominium* in the technical sense of ownership: it is a kind of arbitrary control over resources, legally recognized or otherwise, that has as its corollary an arbitrary control over persons, whether formal or informal.) What about *imperium*? The use of the term *imperium* to refer to the territory under the sway of Rome—the *imperium Romanum*—was a post-republican development.³³ *Imperium* in a different sense, though, had already been a keyword of the Roman republic: it named a kind of power, thought to have been descended from the early kings of Rome, that was vested in some, though not all, magistrates, including the two consuls, the praetors, and dictators.³⁴ The term derives from *imperare*, to

command, and is commonly associated with military generalship, though *imperium* also involved legal jurisdiction and the power to issue orders of other sorts.³⁵

How should we think about the relationship between *dominium* and *imperium*? On the one hand, *imperium* clearly did not flow from or produce *dominium* directly: magistrates did not have the right of command in a province because they were its ultimate owners, nor did they acquire a property-right in a province just by virtue of their power to command. On the other hand, *imperium* might seem to be analogous to *dominium* in a more general sense, since, whatever the limits that might have been placed upon *imperium* by its constitutional context, within those limits it was nevertheless a power to command at will; that is, arbitrarily. This is right—which is why Pettit, following the Roman tradition, is right to see political authority as one possible site and source of domination. But while this possibility of arbitrariness, and the analogy to *dominium*, give us one dimension along which *imperium* might be a source or site of concern, it is not the only one. Caesar's assumption of a permanent dictatorship, Augustus's monopolization of the *imperium* that had once been spread across a range of magistracies³⁶—these were not just troubling because they subjected Roman citizens to the prospect of arbitrary interference, though they did do that. They also provoked resentment and resistance, at least among the established political classes of Rome, because they displaced active involvement in political life. In the case of *imperium*, in other words, power could be problematic not only because it was arbitrary or unchecked—not only because of the vertical relationship of control it established between commander and commanded, owner and property—but *also* if it was unduly concentrated; that is, because of the horizontal distribution of involvement it established among those who held *imperium* and those who did not.³⁷

I propose that we call this second dimension of injustice “usurpation.”³⁸ This usage has at least some precedent within the Roman republican tradition. Livy, describing the apparent weakness of the plebs at one point in their struggle to secure access to magistracies in early fourth century BCE, writes that “it seemed as though the patricians had for all time usurped possession from the plebs of an honor [*possessionemque honoris usurpati*] which for the last few years had been shared with them.”³⁹ Later, he writes of Spartan tyrants having “usurped” [*usurparunt*] the “right” [*ius*] of the city’s lawful king.⁴⁰ And Cicero, in his second speech against Servilius Rullus’s agrarian law in 63 BCE, charged that the proposed legislation would allow a part of the city to “usurp the liberties [*usurpandam libertatem*] belonging to all.”⁴¹ What is crucial about these examples is, first, that the object of usurpation is not merely a state of security from arbitrary interference, but something actively done or carried out—the usurpation of liberty, for example, is not identical to its erosion or violation—and, second, that these complaints about usurpation are not grounded in assertions of ownership (though later conceptualizations of political power as a kind of *dominium* would begin to blur this point).⁴²

In drawing this distinction—between control and domination on the one hand and involvement and usurpation on the other—I am not suggesting that we *replace* the first pair of terms with the second, nor do I claim that the two sets of terms are appropriate to completely distinct sets of social and political phenomena. To underline these points, and to illustrate how the languages of domination and usurpation might be made to work together, let me return again to some of the cases we have already discussed, beginning with imperialism. Here, rather than deny that imperialism can be a source of domination, I would insist that we must *also* conceive of imperialism as a possible source of usurpation, through which existing uses and forms of social and political activity are displaced by the world-narrowing power of imperial rule—

especially, though not exclusively, in cases where imperialism is justified and shaped by a putatively benevolent ideology of development or improvement. This insistence reflects more than just a taste for conceptual nuance. It is also rooted in a pragmatic concern about political rhetoric, and particularly about the possible unintended consequences of framing an engagement with empire *exclusively* around the problem of arbitrary power (in either sense). The exposure of the abuse of power by imperial rulers might provoke a broader skepticism about imperialism. But it might equally well provoke efforts to *strengthen* imperial power by purifying it of its arbitrary elements. This was an important part of the story of the East India Company's turn toward a policy of Anglicization after the tenure of Warren Hastings as the Governor-General of Bengal: Lord Cornwallis, one of Hastings' immediate successors, was convinced that the Company had been corrupted by its accommodation and imitation of "Asian despotism," and undertook sweeping reforms in the name of the rule of law and the security of private property, which, not incidentally, substantially widened the role of British officials in colonial administration.⁴³ Or, finally, the monolingual appeal to the idea of non-domination might provoke a reconstitution of imperial ideology around the goal of liberating people from arbitrary rule, which has been a common feature of the language of empire wherever imperial powers have been able to represent themselves as privileged carriers of republican freedom. It is precisely because I doubt that these latter two responses are always *only* insincere masks for the pursuit of self-interest that I think the language of usurpation is important: it captures the dimension of concern within which a rationally controlled, even putatively benevolent imperialism could nevertheless remain a site of significant injustice.

Or consider again the case of slavery. A recurring problem for analysts of slavery, and of other systems of subordination, is that it often seems difficult to do justice both to its oppressive

force and to what is often called the “agency of the oppressed”: emphasizing the former risks abetting the dehumanization of the subordinated; emphasizing the latter risks understating the constraints, and the injustice, to which they were subject.⁴⁴ One source of this problem lies in our tendency to treat agency (and thus also justice) as unidimensional: for every increment of genuine agency someone possesses, she is—by definition—that much less badly dominated. A somewhat different picture might emerge if we kept both domination and usurpation in view. Slaves are dominated to the extent that they are subject to a power of arbitrary interference by their masters; they are usurped to the extent that their involvement in this or that activity is interrupted or displaced. In many respects, slavery as a social form involved domination and usurpation simultaneously: the separation of family members and the disruption of kinship networks, for instance, or efforts to suppress slave literacy, were at once examples of domination *and* efforts—though only partially successful—to narrow the worlds of meaningful activity in which slaves could be involved at all.⁴⁵ Yet in at least one respect—as a system for extracting labor—slavery depended precisely on the relative *separation* of control and involvement, intensifying slaves’ participation in a wide range of forms of productive work and service even as it kept the ultimate power of direction of those activities, to a greater or lesser degree, in the hands of masters. Distinguishing control from involvement and domination from usurpation would offer a language in which to articulate the multiple dimensions of slavery’s injustice; through which to make conceptual sense of slaves’ intense participation in laboring activity as a genuine site of agency without assuming that such activity *by definition* constituted a check against their domination by their masters; and through which to frame the question of how and when such involvement *was*—contingently—translated into the kind of control that could give slaves countervailing leverage against the dominance of their masters.⁴⁶

Finally, these distinctions between control and involvement and between domination and usurpation also have important implications for the idea of democracy, understood both as an ideal and as a political phenomenon; and here, in conclusion, I shall use Pettit's work as a foil once more. Democratic politics, of course, plays a central role in Pettit's version of republicanism: it is through a combination of "electoral" and "contestatory" democratic institutions, he suggests, that citizens can best ensure that the state to which they belong does not acquire the power to interfere with their lives on an arbitrary basis. For Pettit, however, democratic politics is wholly instrumental to the supreme goal of non-domination.⁴⁷ To ascribe independent value to democratic participation, he argues, would be to lapse back into the "populist" valorization of collective autonomy or self-rule that has—understandably, from his point of view—given republicanism a bad name: this is why he has tried to recover a specifically Roman rather than Athenian version of republican political thought, concerned with freedom from domination rather than with participation per se (*R* 30, 283–86).⁴⁸ From the perspective I have been developing here, however, we can understand Pettit's suspicion toward democratic participation as, in part, a function of his constrained sense of the ways in which agency matters: if ultimate control is the only dimension of agency you recognize, then naturally any non-instrumental concern with democratic political action will sound like an appeal to a strong theory of collective autonomy. To recover a second dimension of concern with agency is, thus, also to lay the groundwork for a stronger appreciation of democratic participation, but one that does not rest on the notion of popular sovereignty.

To see how this might work, consider Pettit's recent essay entitled "Depoliticizing Democracy," in which he defends the removal of certain contested issues to the jurisdiction of appointed boards and commissions, insulated from the pressures of electoral politics, and thus

from such forces as “popular passion, aspirational morality, sectional interest.”⁴⁹ Is such depoliticization consistent with democracy? For Pettit, the answer is simple: as long as democracy is understood as an institution through which state policy is made to track the common avowable interests of its citizenry, and not as an instrument for the empowerment of the collective *will* of the people, democracy may not only permit but require such depoliticization. There is something to this argument, but—because it sees democracy one-dimensionally as an instrument of popular control—it offers no way to capture the ways in which depoliticization might be *at the same time* useful for and dangerous to democratic politics: the very mechanisms by which we effectively avoid certain forms of domination (like majoritarian tyranny) may simultaneously have the effect of undermining citizen involvement in the everyday practice of governance by presenting certain matters as the special province of experts or professionals, or by removing the conduct of depoliticized institutions from public view. Is such usurpation problematic for instrumental reasons or because participation is valuable for its own sake? Both, and inseparably. On the one hand, such ongoing involvement is one of the conditions that enables and sustains the contestatory practices that Pettit counts on as a check against the arbitrariness of state power; on the other hand, citizens may only be able to preserve such involvement insofar as they also value it for its own sake, and so are prepared to guard it against usurpation—including, paradoxically, usurpation by those institutions and officials whose role is precisely to guard citizens against the arbitrariness of their own passions and aspirations.

Finally, if the distinction between usurpation and domination, and between the two associated dimensions of concern with agency, helps us articulate the meaning of democracy as a principle, it also sheds light on the phenomenon of democratic politics, and in particular on the fraught relationship between democratic citizens and the states that act and speak in their names.

This, too, is an issue that Pettit recognizes, and which he treats by way of a discussion of the issue of collective agency. For Pettit, collective agency exists whenever purposive groups adopt decision-making procedures that “collectivize reason,” ensuring that the decisions and activities of the group as a whole exhibit rational coherence and consistency over time, rather than merely aggregating the individually coherent and consistent preferences of their members (*TF* 106–114). Groups that reason collectively in this way are genuine collective agents and subjects, which Pettit often calls “social integrates” (*TF* 113), and which can be free or unfree in the same way as individual agents (*TF* 119–21). By establishing the existence of collective agency in this way, Pettit lays the ground for his subsequent account of how the state, as an instance of such a collective agent, can act to reduce domination among its citizens, and also of how the state itself can become a source of domination.

Embedded in this account, however, is a curious equivocation about the precise status of states as collective agents, and about their relationship to their citizens. On the one hand, Pettit says, collective agents are “candidates for freedom”; they “have the capacity to function in their own right as free and responsible agents” (*TF* 115, 123). That, it would seem, is why they can do a better job of securing the conditions of freedom among their citizens than those citizens could if left to their own devices. On the other hand, however, Pettit goes on to insist that citizens themselves must “force” the state to pursue only those citizens’ own collective interest—even though that, on Pettit’s own view of freedom, is no way to treat a free agent (*TF* 159). Pettit deals with this problem by proposing that we ought to be concerned only with the freedom of individual agents: “it would represent a bizarre normative position to think that [collective subjects’] freedom as discursive control mattered in itself, and not just in virtue of the correlated freedom that individuals may enjoy” (*TF* 127). This conclusion, it turns out, rests on the fact that

collective subjects have a slightly different status from individual subjects: they “come into existence in order to serve the interest of individuals” (*TF* 126). It is worth quoting Pettit’s account of the distinctiveness of collective subjects at length:

Although social integrates have to be ascribed personality in the same way as individual human beings, it is worth emphasizing that such collective subjects differ from individuals in as many ways as they resemble them. They are not centres of perception or memory or sentience. They form their collective minds only on a restricted range of matters, to do with whatever purpose they are organized to advance. And they are artificial creatures whose responses may be governed by reason, not in the spontaneous manner that is characteristic of individual human beings, but only in a painstaking fashion. Their reasoning may be as tortuous as that of the impaired human being who has to work out reflectively, case by case, that in virtue of believing that *p* and that if *p* then *q*, he or she ought also to believe that *q*. While integrated collectivities are persons and selves in virtue of being conversable and responsible centres of judgment, intention, and action, then, they are persons and selves of a bloodless, bounded, and crudely robotic variety. The most natural way to think of them is as agents to which individuals give life by suspending their own projects, now on this occasion, now on that, in order to serve the collective point of view (*TF* 118–19).

This is a striking passage, coming in a work so self-consciously concerned with the conceptual relationship between liberty and slavery. It positions the state as something analogous to the

slave of its citizens, rationalizing its unconcern for the state's freedom in much the same way that slaveholding ideology rationalized its unconcern for the freedom of other human beings: by casting the state as intrinsically servile, fitted for obedience, participating in reason only in an inferior way⁵⁰—a “person” only in the bare, minimal sense. I say this not to defend the freedom of the state as a collective actor, but rather to suggest that this view misdescribes the relation of the state to its citizens in much the same way that slaveholders' ideology misdescribed the relation of slaves to masters. If the scandal of slavery, from the point of view of slaveholders' ideology, was that the slave turned out always to be more than just an instrumental extension of its master's will—an eventuality upon which slavery in fact depended, and which its ideology worked, incompletely, to disavow—then the scandal of the state is that it, too, always turns out to be more than the obediently robotic servant of its citizens. And in this case the scandal is doubled, for the state's disobediently active body turns out to be made of many things, including the citizens who imagine themselves its masters: its doings involve *their* lives, bodies, powers, and activities, even when those doings exceed their control.

The language of usurpation thus has a twofold significance for our thinking about democracy. It can serve as an instrument to criticize the displacement of citizen involvement in political life. But by picking out a dimension of agency that the focus on issues of control and domination tends to obscure, it can also remind democratic citizens of the ways in which they *remain* involved—implicated—in the conduct of the states to which they belong, even when that involvement is less wide or intense than they (perhaps rightly) wish it to be, and even when it does not amount to effective control over what the state does. It is especially important to hold these two functions together in the era of Abu Ghraib, in which Americans scandalized by photographs of torture abroad (as Americans were by reports of atrocities committed by United

States soldiers in the Philippines⁵¹) may be tempted to disavow those photographs, to see them as evidence only of the misconduct of a few soldiers; and in which, more broadly, the growing proportion of Americans opposed to the Iraq war may chalk that enterprise up to an abuse of power on the part of a small but powerful group of political elites. If our own ordinary activities—of paying taxes, of obedience to law, of the consumption of fossil fuel, and of a thousand other small enjoyments and routines—are conditions, though not sufficient ones, of what seems at first a distant scene of injustice, this thought should be both sobering and enabling. It means both that more has stuck to our persons than we might wish, and that, even in the face of various usurpations, we remain more active than we might fear.

Notes

AUTHOR'S NOTE: Thanks to the Franke Institute for the Humanities at the University of Chicago for a faculty fellowship that supported my initial work on this essay; and, for conversations and comments: Shadi Bartsch, Yasmin Dawood, Mary Dietz, Andrew Dilts, Andrea Frank, Jason Frank, Jill Frank, Loren Goldman, Bob Gooding-Williams, Bonnie Honig, Daniel Kapust, Timothy Kaufman-Osborne, Eric MacGilvray, Karuna Mantena, Philip Pettit, Jennifer Pitts, Neil Roberts, Iris Young, the members of my Spring 2004 seminar on "Agency," audiences at McGill University, Northwestern University, the University of Wisconsin, Madison, and the 2005 Annual Meetings of the Western and American Political Science Associations, and two anonymous referees for Political Theory.

1. Instructions to General E. S. Otis, December 21, 1898, in United States Adjutant General's Office, *Correspondence Relating to the War with Spain and Conditions Growing Out of Same* (Washington, D.C.: Government Printing Office, 1902), 859.

2. *Denktagebuch, 1950–1973*, ed. Ursula Ludz and Ingeborg Nordmann, vol. 1 (Münich: Piper, 2002), 367 (Book XV, May 1953, No. 33), my translation.

3. Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999); *A Theory of Freedom: The Psychology and Politics of Agency* (Oxford: Oxford University Press, 2001). Hereafter *R* and *TP*.

4. Philip Pettit, “The Domination Complaint,” 92, and “Reply to Bader and Vatter,” 185, both in Melissa S. Williams and Stephen Macedo, *Political Exclusion and Domination, Nomos* 46 (New York: New York University Press, 2005).

5. See e.g. Niall Ferguson, *Empire: The Rise and Demise of the British World Order and the Lessons for Global Power* (New York: Basic Books, 2004), 315–16; on the Philippine war, see Stuart Creighton Miller, “Benevolent Assimilation”: *The American Conquest of the Philippines, 1899–1903* (New Haven: Yale University Press, 1982).

6. See, e.g., Harry Harootunian, *The Empire’s New Clothes: Paradigms Lost, and Regained* (Chicago: Prickly Paradigm Press, 2004) and Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (New York: Henry Holt, 2004).

7. See most recently and most reflexively Cullen Murphy, *Are We Rome? The Fall of an Empire and the Fate of America* (Boston: Houghton Mifflin, 2007).

8. See Pettit’s brief comments about the “colonial” state at R 291.

9. Edmund Burke, “Speeches on the Impeachment of Warren Hastings,” in *The Portable Edmund Burke*, ed. Isaac Kramnick (New York: Penguin, 1999), 394ff; see also Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005), chap. 3.

10. See Robert L. Beisner, *Twelve Against Empire: The Anti-Imperialists, 1898–1900* (New York: McGraw Hill, 1968).

11. For the emergence of this ideology see Eric Stokes, *The English Utilitarians and India* (Oxford: Clarendon Press, 1959), esp. chap. 1.

12. For an analogous argument, focusing on a different insufficiency, see Henry S. Richardson, “Republicanism and Democratic Injustice,” *Politics, Philosophy, and Economics* 5, no. 2 (2006): 172–200.

13. This way of putting it reflects both my debt to, and disagreement with, Miguel Vatter’s recent argument that Pettit’s framework fails to attend to the phenomenon of “nonarbitrary” domination (“Pettit and Modern Republican Thought,” in Melissa S. Williams and Stephen Macedo, *Political Exclusion and Domination*, *Nomos* 46 [New York: New York University Press, 2005], 129). What concerns Vatter is a form of “domination” that consists in the fact of subjection to law, which the law cannot produce on its own and which must therefore be produced through a prior act of sovereign decision (126–29). Yet this characterization of the problem reproduces the idea that domination consists in a kind of arbitrariness—in this case, an arbitrary decision that stands behind the law as its condition of possibility. (Vatter’s insistence that this kind of domination is “nonarbitrary” depends on the claim that for Pettit “arbitrary power only refers to the sway that private arbitrary decisions can have over the lives of others” [128], but in fact Pettit explicitly indicates that both public and private power can be arbitrary and therefore dominating [R 130, 150]). The problem, I contend, lies in the term “domination” itself: Pettit is right to see a tight connection between domination and arbitrariness, but wrong to think that domination can capture the full range of forms of injustice; identifying the limits of Pettit’s approach therefore requires a more radical departure from the concept of domination than Vatter performs.

14. Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998), 38–40.

15. On paternalism in Roman and neo-Roman republicanism, see Daniel Kapust's excellent "Skinner, Pettit, and Livy: The Conflict of the Orders and the Ambiguity of Republican Liberty," *History of Political Thought* 25, no. 3 (Autumn 2004): 377–401.

16. The difference between these two kinds of paternalism is important. Pettit claims that republicanism outlaws something like paternalism in the first sense—a state that “fails to take account of people’s perceptions of their interests” (R 291). But paternalism in the second sense flies below the radar both of Pettit’s republicanism and of conventional liberal treatments of paternalism, which tend to focus either on cases of interference with individual choices or on the substitution of one person’s judgment for another’s.

17. The terms are taken from Tocqueville’s account of “democratic despotism” in *Democracy in America*, ed. J. P. Mayer, trans. George Lawrence (Garden City, NY: Anchor Books, 1969), 692.

18. For example, from Roman jurists’ catalogues of corporeal objects subject to ownership: “land, a slave, clothing, gold, silver, and countless others.” Gaius *Inst.* 2. 13 (Gaius, *Elements of Roman Law*, trans. Edward Poste [Oxford: Clarendon Press, 1890], 147). On the trouble with reducing slavery to the ownership of persons, see Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982).

19. On the fantasy “the slave as a perfectly responsive instrument” see Richard Friedman, “Liberty Conceived as the Opposite of Slavery,” in Bonnie Honig and David R. Mapel, eds., *Skepticism, Individuality, and Freedom: The Reluctant Liberalism of Richard Flathman* (Minneapolis: University of Minnesota Press, 2002), 175.

20. This point suggests something important about the ways in which political language carries historical legacies. The risk involved in using a political language that originated in a

hierarchical context—as the language of republicanism did—is not that it will tend to reproduce anti-egalitarianism wherever it goes, as though terms and concepts were agents of transhistorical contamination; for political languages can and have been turned against the very hierarchies, such as slavery, that their originators supported or countenanced. What remains most problematic in such languages is not that they were once used to support hierarchy; it is that they were useful in this respect *because* they tendentiously misrepresented the nature and operation of the hierarchical institutions they supported; correspondingly, the danger in trying to use such language to other ends is not that, in doing so, we will somehow be drawn back toward an endorsement of subordination, but that we will misunderstand the very phenomena we wish to criticize.

21. *Oxford English Dictionary*, 2nd ed., s. v. “arbitrary,” first sense.

22. See also the *OED*’s third sense: “derived from mere opinion or preference, not based in the nature of things; *hence*, capricious, uncertain, varying.” *Ibid.*

23. On Christian paternalism see Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon Books, 1974). On the law of slavery in Greece and Rome see T. E. J. Wiedemann, *Slavery, Greece & Rome: New Surveys in the Classics* no. 19 (Oxford: Clarendon Press, 1987), 22–29. On legal codes in British and Latin America see David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1966), chap. 8.

24. It is not always clear what kind of weight the term “avowable” bears. Often Pettit uses the term to mean “conscious or [able to be] brought to consciousness without great effort” (*TF* 156), or, as he has more recently said, “avowal-ready” (“The Determinacy of Republican Policy: A Reply to McMahon,” *Philosophy and Public Affairs* 34, no. 3 [2006]: 278–79). In this

sense “avowable” specifies that an agent’s interests are defined by what she herself is disposed to say about them. Sometimes, however, Pettit uses “avowable” to specify something like *legitimate* interests, those that “are consistent with the desire to live under a shared scheme that treats no one as special” (“Republican Freedom and Contestatory Democratization,” in Ian Shapiro and Casiano Hacker-Cordón, eds., *Democracy’s Value* [Cambridge: Cambridge University Press, 1999], 176); and he has used the verb “to avow” to mean “to commit oneself to” (“The Capacity to Have Done Otherwise,” in *Rules, Reasons, and Norms* [Cambridge: Cambridge University Press, 2002], 267–71). On the stronger sense of “avow” see also Christopher McMahon, “Nondomination and Normativity,” *Pacific Philosophical Quarterly* 88 (2007), 322.

25. On this basis Christopher McMahon has argued that Pettit’s idea of arbitrariness is “moralized,” a claim that Pettit has resisted. (McMahon, “The Indeterminacy of Republican Policy,” *Philosophy and Public Affairs* 33, no. 1 [2005]: 67–93; Pettit, “The Determinacy of Republican Policy”; McMahon, “Nondomination and Normativity.”) If to call a conception of arbitrariness “moralized” means that something is arbitrary if it is judged to be immoral through the application of independent standards of evaluation, then Pettit seems to me right that his use of “arbitrary” isn’t moralized. But Pettit’s second sense of “arbitrary” does seem moralized in a narrower way, insofar as the interests that must be tracked if interference is to be non-arbitrary are not any old interests, but have been passed through the legitimating filters of “commonness” and “avowability.” Where McMahon seems to me to go wrong is in assuming that this work of filtering out illegitimate interest-claims is equivalent to having an all-things considered moral debate about the instance of interference in question.

26. See Frankfurt, “Freedom of the Will and the Concept of a Person,” in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988).

27. *Oxford English Dictionary*, s. v. “wanton,” sense b.1. Pettit cites Frankfurt’s use of “wanton” at *TF* 52.

28. For Pettit’s characterization of the theory of freedom as non-domination as, in Berlin’s terms, “certainly negative,” see “Keeping Republican Freedom Simple: On a Difference with Quentin Skinner,” *Political Theory* 30, no. 3 (June 2002), 340; for other discussions see *R* 17–31, 51; *TF* chap. 6.

29. The foregoing account is simplified: in Pettit’s account, the recursive and bystander problems both arise in principle for all three of the candidate theories of freedom he considers (as does a third problem, the “modal” problem, which I don’t discuss here). Still, the recursive problem is in the foreground of Pettit’s critique of the theory of freedom as rational control, just as the bystander problem is in the foreground of his critique of the theory of freedom as volitional control.

30. Notably, Pettit’s use of “person” in this context runs counter to the way he uses the term in the rest of the book. Elsewhere, “person” names the third of the three sorts of thing to which “freedom” may be ascribed: theories of freedom as rational control focus on free *action*; theories of freedom as volitional control focus on the free *self*—that is, on an agent’s “relationship to their own psychology”—and theories of discursive control focus on free *personhood*, understood as a matter of an agent’s “social status.” [*TF* 4]. There, “person” is a *thicker* concept than “self,” so it comes as a surprise when Pettit presents the criterion of *personal* identity as more minimal and less discriminating than the criterion of self-identity. Yet, far from being a sign of muddled thinking, Pettit’s shifting use of the term “person” is significant

because it continues a long history of equivocation about the meaning of personhood, and of uncertainty about how to relate personhood conceived as a brute, bodily fact to personhood conceived as an intersubjectively achieved status, traces of which can be seen in, for example, the doctrine of the king's two bodies, natural and politic, or in the doubled position of slaves in Roman law, suspended between the law of things and the law of persons. (On the parallel between these doublings see Stephen M. Best, *The Fugitive's Properties: Law and the Poetics of Possession* [Chicago: University of Chicago Press, 2004]). I shall return to this theme later.

31. I owe this insight into the import of Pettit's reduction of the bystander problem to the problem of the elusive self to Loren Goldman.

32. That, at least, is the typical gloss in modern commentaries on Roman law (e.g. Thomas Collett Sandars, *The Institutes of Justinian*, 5th ed. [London: Longmans, Green, and Co., 1874], xlvii), although the classical sources never actually define *dominium* in these terms, nor offer any general definition of ownership (Barry Nicholas, *An Introduction to Roman Law* [Oxford: Clarendon Press, 1977], 154; Shael Herman, "The Uses and Abuses of Roman Law Texts," *American Journal of Comparative Law* 29, no. 4 [Autumn 1981]: 671–90). On the origins of the legal terminology see Max Kaser, *Eigentum und Besitz im älteren römischen Recht* (Köln: Böhlau-Verlag, 1956), 306ff; György Diószdi, *Ownership in Ancient and Preclassical Roman Law* (Budapest: Akadémiai Kiadó, 1970), 135–6; Orlando Patterson, *Slavery and Social Death*, 31–32.

33. Peter Jones and Keith Sidwell, eds., *The World of Rome: An Introduction to Roman Culture* (Cambridge: Cambridge University Press, 1997), 211.

34. Ibid., 83–93; Andrew Lintott, *The Constitution of the Roman Republic* (Oxford: Oxford University Press, 1999), chap. 7. On *prouincia* see Jones and Sidwell, *World of Rome*, 16.

35. Lintott, *Constitution of the Roman Republic*, 96; Jones and Sidwell, *World of Rome*, 84.

36. Jones and Sidwell, *World of Rome*, 109–111.

37. Of course, *dominium* establishes horizontal relationships between owners and non-owners too, but since *dominium* is by definition exclusive and indivisible, the very term seems to render nonsensical all questions about whether ownership in a particular object is “unduly concentrated.” With *dominium*, the horizontal axis can only become controversial if there is uncertainty about which person is really the exclusive owner of a thing.

38. If “domination” is the characteristic form of injustice threatened by *dominium*, it might be tempting to call this second sort of injustice “imperialism,” to echo *imperium*. But this would be misleading, because, unlike “domination,” in ordinary language “imperialism” has a concrete referent. Calling this dimension of injustice “imperialism” would thus falsely imply both that imperialism (in its ordinary sense) is the only or primary example of this sort of injustice, *and* that imperialism (in its ordinary sense) can only be unjust in this way and not *also* as a source of domination.

39. Livy 6.34.4 (Livy, *History of Rome*, ed. Rev. Canon Roberts [New York: Dutton, n.d.], translation modified [substituting the literal “usurped possession” for “won back,” and “honor” for “dignity”]).

40. Livy 34.32.2.

41. Cic. *Leg. agr.* 2.17–18 (*The Orations of Marcus Tullius Cicero*, trans. C. D. Yonge, vol. 2 [London: George Bell, 1909], 220); see also 2.29–35. On the law see Andrew Lintott, *Judicial Reform and Land Reform in the Roman Republic: A New Edition, with Translation and Commentary, of the Laws from Urbino* (Cambridge: Cambridge University Press, 1992), 56–57.

42. Here it is important to resist the modern association of “usurpation” with the theft of another’s property. In classical Latin, *usurpare* was not invariably negative, but often meant simply “to take into use” or “make use of” something; and *usurpatio* commonly referred to a “taking into use” or “making use” of a thing, or the use of a word or expression. (Charlton T. Lewis and Charles Short, *A Latin Dictionary* [Oxford: Clarendon Press, 1879]). *Usurpatio* could also mean an *inappropriate* “seizing” or “using”—but even in such contexts, its character as a usurpation was not necessarily rooted in a strong counter-claim of ownership in the sense of *dominium*. See the discussions of *usucapio* and *usurpatio* in Justinian *Digesta* 41.3 (*The Digest of Justinian*, English translation ed. Alan Watson [Philadelphia: University of Pennsylvania Press, 1998]) and Nicholas, *Introduction to Roman Law*, 122ff. I hope to trace some of the subsequent history of “usurpation” as a political term in future work.

43. Stokes, *English Utilitarians and India*, 3–7.

44. James Scott’s distinction between “public” and “hidden” transcripts represents one effort to negotiate this dilemma (*Domination and the Arts of Resistance: Hidden Transcripts* [New Haven: Yale University Press, 1990]). For a history that keeps the two points of view in balance, see Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Harvard University Press, 2003).

45. On the limited success of such efforts see Hahn, *A Nation Under Our Feet*, chap. 1.

46. For an analogous point about the contingent relationship between deviant practices and political resistance in contemporary politics, see Cathy J. Cohen, “Deviance as Resistance: A New Research Agenda for the Study of Black Politics,” *Du Bois Review* 1, no. 1 (2004), esp. 37–41.

47. For Pettit’s view of democracy see especially *R* 8 and chap. 6; *TF* chap. 7; “Republican Freedom and Contestatory Democratization,” in Ian Shapiro and Casiano Hacker-Cordón, eds., *Democracy’s Value* (Cambridge: Cambridge University Press, 1999); “Depoliticizing Democracy,” *Ratio Juris* 17, no. 1 (March 2004): 52–65.

48. See also his rejection of democracy understood as collective autonomy in “Depoliticizing Democracy,” 58–60. For another democratic critique of Pettit’s turn to Rome, see John P. McCormick, “Machiavelli Against Republicanism: On the Cambridge School’s ‘Guicciardinian Moments’,” *Political Theory* 31, no. 5 (October 2003): 633–636.

49. Pettit, “Depoliticizing Democracy,” esp. 58–62.

50. See e.g. Arist. *Pol.* 1.5 (1254b16–26).

51. See Welch, *Response to Imperialism*, chap. 9.

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