

## CONTESTATORY DEMOCRACY VERSUS REAL FREEDOM

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

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

### **Three distinctions**

On the freedom side, Pettit's key distinction is between freedom as non-interference and freedom as non-domination, also called republican freedom. How does this distinction relate to the old (and often confusing) distinction between negative and positive freedom? How does it relate to my own favourite distinction

between formal and real freedom, at which Pettit briefly hints (fn1). If positive freedom is interpreted (as it is by Pettit on p. 3) either as psychological self-mastery or as political participation, it definitely lies outside the scope of both Pettit's and my distinction. Both of these rather operate within the domain of negative freedom, broadly understood as not being prevented from doing what one may wish to do. But they differ in the cut they make between different characterizations of what counts as freedom-restricting.

Though a variety of negative freedom in the broad sense just stated, republican freedom is crucially distinct from negative freedom in the narrower sense of absence of interference, i.e. absence of intentional coercion or obstruction. Republican freedom is the absence of domination, i.e. the capacity to interfere in an arbitrary way, or "in a manner that is not constrained to track the interests and judgements of the interferee" (Pettit, 4). There can be domination without interference (when the capacity is left unused) and there can be interference without domination (when it is not arbitrary).

Republican freedom, so defined, is not strictly more demanding than formal freedom, characterized along standard libertarian lines as the existence of a consistent and well enforced system of property rights which incorporates universal self-ownership. This is not because any law is coercive and "coercion, under standard views, is a form of interference" (Pettit, 7). Property-rights-protecting legislation is not formal-freedom-restricting even if it is, in this plausible sense, coercive. The reason is rather that there can conceivably be non-arbitrary, and hence non-dominating, government interference in breach of the citizens' self-ownership, for example in the form of conscription for the defence of the republic. The extent to which a concern with republican freedom will fall short of guaranteeing formal freedom to all is crucially dependent on what counts as non-arbitrary power, or power that is "forced to track the interests and judgements of those on whom they are imposed" (Pettit, 10). And so is a fortiori the extent to which the promotion of republican freedom can be relied upon to give citizens, at the highest level enjoyable by all, the real freedom – the actual possibility, encompassing the means and not just the right – to do what they may wish to do.<sup>1</sup> Conversely, no degree of formal or real freedom for all citizens entails, by definition, that they enjoy republican freedom.

**Convergence ?**

In the light of these distinctions, it is clear that the ideal of freedom is conceptually different, depending on whether it is interpreted in terms of republican freedom for all or in terms of real freedom for all (in a sense that incorporates but does not reduce to formal freedom). But this conceptual distinction would be of negligible practical importance if a strong convergence could safely be expected between the requirements of the ideal under both interpretations. Whether this is the case hinges on substantive implications of the key criterion of "non-arbitrary power" which enters the definition of republican freedom. The quickest way of spelling them out is to turn to the link Pettit's central thesis establishes between republican freedom and contestatory democracy.

When freedom is understood as non-domination, democracy, understood as collective rule, is neither necessarily inimical to freedom, nor necessarily freedom-friendly. But it can be made more freedom-friendly as a matter of necessity, according to Pettit, by being shaped on a contestatory model. The latter is one of two models of democracy that could block, or at least sharply reduce, the possibility of an elective democracy degenerating into collective tyranny, arbitrary power exercised by the collectivity over its members. The first and most straightforward of these models is unanimitarian democracy, which gives each citizen a veto on any public decision. But this model is of purely academic interest: "The contrariness of human nature makes it infeasible in any familiar sort of society", because it would "enable individuals to block public decisions at will and [...] undermine the possibility of a stable political order" (17, 20).

The second model, contestatory democracy, does not share this defect. It consists in "enabling people, not to veto public decisions on the basis of their legitimate interests and judgements, but to call them into question and to trigger a review [...] of a sort that they themselves can endorse as a final decision-making procedure". This model is far more feasible than the first one to the extent that, in actual fact, "people are often happy to accept decisions [...] on the grounds that their point of view was represented in the decision-making or decision-testing process and that process is unobjectionable". But like the unanimitarian model, it "would mean that people can force government to take due account of their legitimate interests and judgments and would guard against governmental domination" (17-19). Democracy is here defined not as government by the people (collectively) but as contestability by the people (distributively) and therefore as intrinsically freedom-friendly if freedom is defined as the absence of arbitrary power, which it is in the essence of contestability to undermine.<sup>2</sup>

In the final section of his contribution, Pettit describes a number of illustrative features of how a contestatory model would work in practice. One crucial feature is deliberation (as opposed to bargaining): public decisions "must be taken or at least justified on a deliberative basis. It has to be clear what the supporting reasons are supposed to be and it has to be clear how any decision taken is meant to be justified by those reasons." (26) To make contestation possible, legislation must take place in a context of debate to which all sides are represented, and only those reasons which are acceptable in such a debate can be recognized as relevant.

Pettit is not explicit about the set of socio-economic institutions that would be likely to emerge from such a process. But other theorists of deliberative democracy (e.g. Cohen 1996, Gutmann & Thompson 1996) have allowed themselves to sketch the substantive principles that can be expected to systematically underlie the resulting legislation. Unsurprisingly, the tracking of both the interests and the opinions of all turns out to plausibly lead, in a pluralist society, to liberal-egalitarian principles involving both a strong protection of fundamental liberties and a strongly egalitarian (be it maximin) distribution of the means each is given to pursue her conception of the good life. Once the notion of an acceptable or compelling reason is duly specified and a number of uncontroversial empirical facts are taken into account, it seems that any well-functioning contestatory democracy should gently converge on a set of institutions that will express adequate concern for all its citizens' formal and real freedom, and the contestatory model of democracy should therefore be just about as congenial to the real-libertarian as to the republican-libertarian.

### **A trade off ?**

This expectation of a convergence is comforting, but it should not blind us to the possibility of a conflict between the optimal realization of republican freedom and the pursuit of the greatest real freedom for all. Let me illustrate this possibility with one example, that is particularly close, for reasons that will soon be obvious, to some of my current concerns. Pettit (18) mentions that there are cases in which contestatory democracy will hardly be less paralyzing than giving everyone a veto: "There are many social divides such that people on different sides will not be willing to have their rival views on certain issues decided by any independent body. [...] In such cases, it will be necessary to look at possibilities of secession for one or another side, or to explore the prospect of separate jurisdictions for the different groups, or to think about a federal structure in which each gets its own territory [...]." In particular,

in a linguistically heterogeneous polity, with limited or sometimes no knowledge of each other's language, there is a strong fear that the weaker voices will not be heard, that the debates and arguments that hold sway in the minority-language areas will simply be ignored.

In recent negotiations on the future shape of the European Union's institutions, this was for example one of the reasons given by the Swedish government in favour of maintaining a veto right at the Council of Ministers for each member state, however small its population: the purpose is not, it was argued, that minority interests should enjoy absolute protection but that arguments be heard (see Gustavsson 1997). As such a veto right is often paralyzing, some alternatives have been proposed that would precisely exemplify the move from a unanimitarian to a contestatory model, in the sense of enabling member states "not to veto public decisions on the basis of their legitimate interests and judgments, but to call them into question on such a basis and to trigger a review" (Pettit, 17). For example, the "alarm bell mechanism", which is already used in some federal systems, would enable a member state to get a decision suspended and reconsidered on another occasion when it can plausibly argue that some of its vital interests are at stake (see Dehousse 1994: 121-23).<sup>3</sup>

Yet, in the light of the recent experience of a multi-lingual country such as my own, Belgium, it is overwhelmingly clear to me that a smoothly running contestatory democracy is far more difficult to achieve in a linguistically heterogeneous polity: the screening of proposals and arguments so that they are acceptable to every citizen, not just to those who happen to speak the speaker's language, the ability to get one's voice heard, to effectively scrutinize legislative and administrative processes and the disposition to accept verdicts as impartial are all systematically weakened in such a context. Republican freedom, therefore, is far safer in a unilingual republic, and if it were the overarching aim, I could not think of any persuasive argument in favour of preserving or developing multi-linguistic states such as Belgium or the European Union.

But republican freedom is not the overarching aim. In my view, it is just an important means, not to something other than freedom, but to a conception of justice as maximin real freedom. And this aim may justify getting along with less republican freedom than could be durably achieved. In my example, dismantling the Belgian federal state so as to enable each of its linguistically more homogeneous components to achieve greater republican freedom, would mean splitting up a common social security system that redistributes massively from richer to poorer

areas. It would also mean conferring to the components a fiscal autonomy that would soon lead (for reasons exacerbated by the peculiar geographical situation of largely francophone Brussels surrounded by Flemish territory) to cut-throat fiscal competition and hence also far lower redistribution within each of the components. For the sake of real freedom for all, or any other substantive principle of justice, the scales at which one locates the democratic process, contestatory or otherwise, are of crucial importance. Nothing guarantees that the scales that such a conception of justice recommends that we select are also the ones that are optimal for the sake of republican freedom. When there is a conflict – as I believe there is in my example – the choice of scales should be made with a view to the sustainable achievement of justice, while doing one's best, on each of the selected scales, to make democracy as contestatory as possible.

### **Struggles ahead**

Let us return on this background to the growing inequalities which I mentioned at the very beginning. Should we simply accept them as the necessary correlates of economic freedom or of efficient incentive structures? I militantly believe that our concern for freedom, properly interpreted, should make us resist this pitiful shrinking of the agenda. We do not need to claim that reducing inequality would not affect incentives. There are strong efficiency-based arguments in favour of more equality, but many of them stress the effect on overall capacities (to become or remain healthy and skilled) rather than on incentives.<sup>4</sup> Moreover, even if there were a net cost in terms of overall growth, this would not need to make a fairer distribution of resources unachievable. Making democracy more contestatory is certainly part of the answer, for example, especially in the U.S., by making the voices of the poor less inaudible compared to wealthy campaign sponsors.<sup>5</sup> Once the effects of this massive wealth bias will be under check, one can reasonably hope, for the sake of a fairer distribution of real freedom, that the US political system will have acquired the capacity to react to the crisis of the welfare state, not through running it down, through making it ever stingier and more selective, but through universalizing its provisions, for example as regards health care and child benefits.

But making democracy more contestatory, promoting republican freedom for all, is not enough. The growth of factor income inequality in advanced democracies is a deep-rooted trend. I am not sure much can or should be done to reverse it. But I do believe that much can and should be done to prevent this gross inequality from

translating into net inequality, post-tax-and-transfer inequality in standards of living (in a broad sense that encompasses not only consumption, but also security, environmental quality and participation in social and economic life). However, how much this "much" is crucially depends on the democratic capacity to get hold of an increasingly concentrated economic rent in order to permanently distribute it widely across the whole population, not only in cash but also in the form of expenditure on education, public health, the environment, etc.. This in turn depends on the extent to which the payers and recipients of this economic rent are able to play off against each other the redistributive politics. The easier and cheaper it is to move a commodity, a business, a deposit, a highly skilled worker's work place or residence, from one jurisdiction to another, the weaker the grip of the democratic will, contestatory or otherwise, on the resources that can help make freedom more real for all. In a context in which technological and institutional impediments to mobility keep melting, this prompts a strong case for limiting the fiscal autonomy of individual states in existing federations and for scaling down the fiscal autonomy of the nation-states in order to build up a supranational redistributive authority.

This sounds most freedom-unfriendly in at least three ways. It would bridle the collective freedom of each state. It would diminish the richer people's freedom to protect their wealth and incomes from what they regard as confiscatory taxation. And it would arguably depress the overall level of republican freedom, as important decision-making powers are moved away from the people's contestatory reach to a more centralized, less accountable level. Yet it is for the sake of freedom that we should move that way as fast as we can, for the sake of freedom as tangible, real freedom for all, the only freedom that matters to justice as such and for which the other freedoms I have discussed are sheer means.

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<sup>1</sup> This rough characterization will suffice for present purposes. For a detailed discussion of real freedom and its metric, see Van Parijs (1995: chapters 2-4), Barry (1996), Vallentyne (1997), etc.

<sup>2</sup> I interpret the necessity of this connection as a conceptual rather than factual one. Pettit emphasizes the conceptual possibility of domination by private agents (and hence republican unfreedom) even under a fully contestatory democracy. But can anything establish the presence of political domination (and hence of politically generated republican unfreedom) apart from the observation of a departure from the procedures of contestatory democracy ?

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<sup>3</sup> Since 1970, Belgium's Constitution gives each linguistic community the power to force reconsideration of a decision if three quarters of its parliamentary representation find it detrimental to its interests. (See Karmis & Gagnon 1996: 457-8.)

<sup>4</sup> See e.g. Glyn & Miliband eds (1993) and Bowles & Gintis (1996).

<sup>5</sup> The liberty-based constitutional argument that has so far blocked any attempt to impose significant limits on campaign spending provides a crystal-clear example of how a totally implausible notion of freedom can undermine the prospects of a free society, and there is now plenty of good argument around (e.g. Dworkin 1996 and Okin 1996), it seems to me, to blow up the constitutional blockage.