

A CRITIQUE OF THE REPUBLICAN CONCEPTION OF FREEDOM

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Abstract

In this thesis I argue against the republican conception of freedom. According to this conception, an agent is free if and only if she is not dominated by other agents. An agent is dominated just when and because others have capacities to interfere, intentionally and on an arbitrary basis, in certain choices that she is in a position to make. I first argue against the republican claim that it is only the arbitrary interference that infringes freedom. I show that there is no principal way of distinguishing arbitrary from non-arbitrary interference and that, even if there is, making such distinction is undesirable given that it presents a form of moralization of the concept of freedom. I then tackle the republican idea that the mere possibility of arbitrary interference is sufficient for unfreedom to occur. I argue that this view is mistaken and that we should instead accept the view the agent's freedom is directly and negatively proportional to the probability of someone else's interference in her actions.

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Introduction

“We shall probably all agree”, T. H. Greene once said, “that freedom, rightly understood, is the greatest of all blessings; that its attainment is the true end of all our effort as citizens.” (Greene 2006: 21). Whether we all agree with this claim or not, it is certainly true that most people think about freedom as about good of profound value.¹ No doubt we believe that there are some cases where sacrificing our freedom for the sake of achieving some other good would be permissible or even required but we can, nevertheless, hardly perceive our lives as meaningful without our choices and actions being appreciably free. Although, on intuitive level, it is easy to differentiate free from unfree situations, providing a clear conceptual understanding of what freedom consists in is a rather difficult task.

More than fifty years ago, Sir Isaiah Berlin published a famous essay in which he made a distinction between two ways of thinking about freedom, present in ordinary language as well as throughout the history of philosophy (see Berlin 2002b). Berlin claims that we often speak about freedom as about the absence of obstacles, constraints, barriers, or impediments on our actions or choices. We are free to the extent that someone or something does not interfere with our activity. But we also believe, Berlin observes, that freedom is a power or a capacity to do something on our own, to realize ourselves in a certain way, and to master our lives according to reasons and motives we take as our own. To be free is to have a control on our own destiny and in our own interests without the influence of external or internal constraints. The former notion of freedom Berlin names negative and the latter positive.

¹ I will use the terms ‘freedom’ and ‘liberty’ interchangeably hereinafter.

Given definitions are very rough. Greater precision would, however, require complete accounts of negative and positive freedom, which cannot be done at this place. Usually but not exclusively, negative freedom is understood as absence of external humanly-imposed constraints (Berlin 2002b: 169). I am free if no other agent or body of agents is preventing me from doing what I would otherwise do. If, for example, someone locks me in the room so that I cannot get out, I am negatively unfree to do so. Positive freedom, on the other hand, is even vaguer concept. On one influential account, we are positively free if we are able to act on those second-order desires that represent our nature as rational persons (Frankfurt 1971: 10).² For example, if I am a drug addict and cannot leave the room because there is enough heroin in it to get me high for days even though, by staying inside, I will miss the appointment I care very much about, I am positively unfree to get out from the room.

The most challenging response to Berlin's distinction was given by Gerald MacCallum, who argued that there is only one concept of freedom, represented in the formula 'X (an agent) is free from Y (preventing condition) to do or become Z' (MacCallum 1967: 314). Take freedom of religion as an example. This is a freedom of an individual or a community from state interference to teach, practice, worship, and to observe some religious beliefs. Berlin's dichotomy between negative and positive freedom, MacCallum argues, is too simplistic. In order to understand what freedom is we need not focus on outlying the correct version of negative and positive freedom. We need not ask whether freedom of religion is negative or positive. Our only task is to provide a clear account of the variables X, Y, and Z (MacCallum 1967: 320). Whether MacCallum's analysis of freedom as a triadic relation is exhaustive with regard to all intelligible conceptions of negative and positive freedom is debatable. Furthermore, sometimes the third variable seems

² This account links positive freedom very closely to the ownership-based conceptions of free will. For a different understanding of positive freedom, relating it to the notion of autonomy, see Christman 1991 and 2005.

superfluous to include in the description of the situation. A prisoner might be struggling against his chains without, consciously or unconsciously, aiming at any further state or any ulterior aim apart from the freedom from these chains (Berlin 2002b: 36, n. 1).

The first wave of debates about freedom in contemporary political philosophy was about the issue whether negative or positive freedom is the true freedom. Berlin famously argued that, since positive freedom connects one's freedom with one's desires analytically, it gives free room to various understandings of which desires are higher and relevant. Suppose these are the desires that reflect our rational nature, which we can take as underlying our 'true' self. But if we are more positively free whenever we act upon rational desires, then coercive acts of other people with the intention to make us more rational will not abridge our freedom. This idea is not only counterintuitive but a justification of paternalistic and authoritarian infringements of freedom for the sake of alleged enhancement of the same (Berlin 2002b: 179–80). Berlin's argument is often said to be a slippery slope given that some conceptions of positive freedom can avoid the burden of authoritarianism. Moreover, giving up on positive freedom would mean falsely denying that overcoming our internal psychological fetters and trying to reach self-realization is an important way of achieving individual freedom (see Taylor 2006).

The focal issue of the second wave was providing the correct analysis of constraints imposed on agent's actions or choices. Two schools of thought are engaged in the debate: the liberal and the republican. They both assume MacCallum's scheme as given (trying to give an account of the variable Y) but also utilize the distinction between negative and positive freedom, without denying that either of the two is less true freedom than the other. Since the emphasis is put on the nature of constraints, the debate can be said to address freedom conceived in a broadly negative way (see Kramer 2003: 2; Pettit 1997: 51; Pettit 2003: 387).

Liberals, whose tradition goes back at least to Hobbes, define freedom as the absence of external impediments on agent's actions.³ Whether interferer's actions should be intentional or morally responsible in order to count as freedom-restricting or any human constraint whatsoever is sufficient to abridge freedom are issues on which liberals disagree. We can leave them aside until the next chapter, in which the liberal conception of freedom will be expounded in greater detail.⁴ At this point, it should be noted that what makes the liberal conception of freedom unique is the common belief, shared by many liberals, that agent is unfree to perform some action if and only if some other agent renders that action physically impossible to occur (see Berlin 2002b; Steiner 1994; Carter 1999; Kramer 2003). Freedom, according to liberals, is a state of physical unpreventedness by other agents' interference in your actions.

Liberal view was forcefully challenged in a series of publications by Philip Pettit and Quentin Skinner at the end of the last decade (the most representative of which are Pettit 1997 and Skinner 1998). Pettit and Skinner are the most vocal representatives of civic republicanism (or simply, republicanism), an influential view in contemporary political philosophy that traces its origins and inspirations from classical republican authors such as Cicero, Machiavelli, Milton, James Harrington, Algernon Sidney, Montesquieu, and Paine.⁵ Republicanism is a coherent set of views about different important issues in political philosophy, ranging from distributive social justice, political obligation, and the proper form of government and political institutions to the issues of civic virtue, political participation, and corruption. However, the most important value for republicans is the value of political or social freedom and the ultimate aim of the republican

³ The liberal view is sometimes called 'pure negative freedom' (see Carter 2008: 61).

⁴ I distinguish between concepts and conceptions (see Hart 1994: 159–63; cf. Rawls 1999: 5). The concept of freedom is the abstract notion of freedom as such, merely formal or definitional. Conceptions of freedom are accounts providing necessary and sufficient conditions for something to count as freedom. In other words, conceptions are various rules or principles for sorting out instances of freedom from those that are not.

⁵ I will not address the historical continuity of republicanism because I am primarily interested in examining the soundness of the republican view rather than its glorious history. For a detailed history of republicanism, including the conception of freedom, see Skinner 1998 and Pettit 1997: chap. 1.

state is the promotion of that freedom (Pettit 1997: chap. 3). Providing a distinct conception of freedom is, therefore, absolutely central for republicans.

Contrary to liberals, republicans define freedom as the absence of domination, where to dominate another means to have a capacity to interfere, intentionally and on an arbitrary basis, in certain choices that the agent is in a position to make (Pettit 1997:52). Liberals believe that absence of human-made interference is sufficient to render someone free. Republicans deny this. First, republicans hold that not all constraints abridge freedom but only the arbitrary ones. Imposition of just laws and policies, for instance, does not make citizens unfree. Second, even if there is no actual interference in agent's actions, republicans claim, her freedom can be restricted if some other agent or a group of agents has the capacity to interfere into her actions (see Pettit 1997: 63–4). Benevolent absolute monarch who rules by an enlightened law is still a threat to liberty of its lieges by the mere fact that he can change his mind and become a tyrant whenever he pleases. Since the liberal conception does not recognize these subtleties and since all of its assets are incorporated in the republican conception, republicans conclude that their conception is superior to the liberal.

In this thesis, I provide a critique of the republican conception of freedom. I argue that all the new things that republicanism brings into our understanding of the nature of social freedom are counterintuitive or backed up by unsound arguments and that all other old things can be expressed in a much simpler way via the liberal view. My argument proceeds as follows. In the first chapter, I give a detailed description of both conceptions and their implications. In the second chapter, I argue against the republican claim that it is only the arbitrary interference that infringes freedom. I specifically argue that there is no principal way of distinguishing arbitrary from non-arbitrary interference and that, even if there is, this is undesirable given that it presents

a form of moralization of the concept of freedom. Finally, in the third chapter, I argue against the republican idea that the mere possibility of arbitrary interference is sufficient for unfreedom to occur. I argue that this view as well as the liberal straw-man it attacks (according to which, the only interferences that matter are the actually imposed ones) are both implausible and that we should instead accept a probabilist middle-ground.

At the end, I want to comment briefly on the methodology I use here. I commit myself to the method of reflective equilibrium (see Rawls 1999: 40–46). This method is coherentist in its aim and consists in working back and forth among our common-sense intuitions about particular issues or cases and the principles and accounts relating to and explaining those issues or cases, criticizing and revising any of the two whenever necessary in order to come up with the coherent set of beliefs about the issue in question. The method gives particular strength to the ordinary intuitive convictions, taking them as a starting point in the justificatory process. The plausibility of the proposed principles or theories is then assessed by setting them against these intuitive convictions.

Some philosophers have argued against the reflective equilibrium claiming that common-sense moral intuitions cannot be used to support or rebut any moral theory unless there are independent reasons to take these intuitions as themselves credible (Hare 1981: 12; Singer 1974). Personally, I hold the opposite view. But even if this were true with regard to moral intuitions, it is certainly false when we take into consideration our semantic intuitions, as it is the case in any descriptive analysis. Since providing the true account of freedom is not a normative but a descriptive endeavor, the right way to assess the plausibility of different conceptions of freedom is to test them against intuitive judgments about freedom we express in ordinary language, that is, against what we take as an intuitive understanding of the meaning of concept of freedom (see

Carter 1999: 17–8; Kramer 2003: 2; Pettit 1997: 12). The method of reflective equilibrium, thus, seems to be the most proper justificatory tool in assessing any conception of freedom.

Chapter 1: Two Conceptions of Freedom

This chapter is devoted to a detailed description of the liberal and the republican conception of freedom. The liberal conception understands freedom as the absence of constraints, so everything depends on the proper definition of constraints. Most liberals believe that an agent is free to the extent that no humanly-imposed constraints make the performance of interfered party's actions physically impossible. Republicans, instead, argue that freedom is not the absence of constraints liberals find relevant but only the absence of the constraints imposed arbitrarily. They, moreover, claim that unfreedom might occur even if no actual interference is present but the interferer has the mere capacity to interfere into someone's choices. I will examine further each of these claims in turn.

1.1 Freedom as Non-Interference

As it was mentioned in the introduction, liberals define freedom as the absence of constraints or interferences on agent's actions. A person is free to act in a particular way if and only if she is unprevented from acting in that way, whether she endeavors to act in that way or not. A person is unfree to act in some way if and only if she is directly or indirectly prevented from acting in that way, whether she endeavors to act in that way or not (Kramer 2003: 3; Steiner 2006: 123).

Definition of freedom reflects the liberal belief that freedom is an 'opportunity concept' rather than an 'exercise concept'. Freedom, according to liberals, is about the possible actions that someone is in a position to make rather than about the actions that are actually performed.

Reformulating Berlin's famous metaphor of open doors, we can say that liberal freedom is about the doors which are open to agent rather than about which doors are open or about how one goes through them (Carter 2008: 62). Since they take as an initial assumption the claim that freedom is a function of opportunities open to agent within a particular context, liberals unsurprisingly infer that if someone is prevented from achieving one or more opportunities in some particular case, that person is rendered unfree with respect to those opportunities (that is, with respect to the actions that those opportunities denote in the opportunity-set). One might ask at this place what the nature of preventedness should look like in order to render someone's action unfree. Should the preventive constraints be of human or natural kind, or both? Are threats or menaces by their nature freedom-restricting or is it only the physical impossibility of doing something that renders us unfree?

In order to answer these questions we need to make a distinction between the sources and the types of constraints (Carter 1999: 222). The sources of constraints refer to the causal history of interference and they are of two general kind: they are either human or natural. Liberals are unanimous in the opinion that natural forces cannot reduce our freedom to act (Miller 1983: 69–70; Carter 1999: 221; Kramer 2003: 6). The reason is that freedom is a social relation occurring between persons or groups of persons and can be restricted only by the constraints initiated by persons.⁶ Bearing in mind our linguistic intuitions, it is more accurate to describe someone obstructed by a natural obstacle or impediment as unable to perform a desired action rather than saying that she is unfree to do it. For example, if I am obstructed to cross the bridge because the

⁶ For the sake of simplicity I use the terms human and person as synonyms here which might commit me to a sort of speciesism. Depending on our account of personhood, it might be the case that some animals count as persons while some human beings do not (see Singer 1993: 110–17). Needless to say, this position is controversial and, if it were true, it would imply with regard to the question examined here that constraints imposed by some animals are freedom-restricting and that actions of some humans do not render us unfree. Since my aim in this work is not to present a defense of a full-fledged liberal conception of freedom but only to outline the most characteristic and, in my opinion, plausible version of it, we can leave the controversy at this stage.

river flooded it due to heavy rainfall, I am unable but not unfree to cross it. Anyone suggesting the opposite would fail to properly distinguish inability from unfreedom.

Even though liberals agree that only humanly-imposed constraints limit freedom, they are divided on the question whether all constraints arising from human actions are freedom-limiting or not. Friedrich Hayek, for instance, claims that freedom is the absence of coercion and coercion is intentional interference in one's affairs (see Hayek 1960: chap. 1). Since, according to Hayek, coercion can occur only as a consequence of a deliberate action of the interferer, only those kinds of humanly-imposed actions are considered as freedom-restricting. Hayek uses this contention to reach the conclusion that the rule of law (and, consequently, a liberal political order consisting of such rules) is not coercive and, thus, does not limit freedom since it does not deliberately direct one's actions but only conditions them (see Hayek 1960: 142–3).

Characterization of legal actions as intrinsically unintentional is obviously disputable but we need not be concerned with it here. Even if Hayek is right about this, he is certainly wrong in claiming that unintentional actions cannot render the interfered party unfree. For imagine that, while walking down the hall, I drop my keys that hit the secret button hidden on the floor. The button activates a mechanism that locks the nearby door in which, unbeknownst to me, someone is present. It seems very counterintuitive to say that this person is not unfree to leave the room just because she was obstructed to do so by an unintentional action of another agent.

Similar problems arise for another well-known liberal account, defended by David Miller (see Miller 1983). According to Miller, the only freedom-limiting constraints are those imposed by the actions of morally responsible agents. Morally irresponsible behavior, on Miller's view, regardless of how encroaching it might appear on the first sight, cannot limit anyone's freedom. But consider a case where our intuitions suggest the contrary. Suppose that, without checking

whether there is anyone in the room, I lock the door. Unfortunately for you, you were inside and, being unable to get out, you have to spend the night there. Since my action was done from negligence and on the basis of limited information and since I did not have any intention to lock you up in the room, my behavior can be credibly described as morally irresponsible. But it hardly follows that, because I was morally irresponsible, you are any less unfree to leave the room. I will turn to the counterintuitiveness of Miller's view, although in a different context, later.

We have seen that there is no common liberal understanding of the sources of freedom-restricting constraints and that the most plausible solution is the one that considers a person free as long as no other person or persons interfere in her actions, intentionally or non-intentionally and responsibly or non-responsibly preventing her to act. Any humanly-imposed constraint, in other words, should count as freedom-restricting. However, although liberals hold very different opinions about the sources of freedom-restricting constraints, they are undivided in the opinion pertaining to the types of those constraints. The belief that it is only the physical impossibility of doing something that renders us unfree is the essence of the liberal conception of freedom (see Carter 1999: 219; Kramer 2003: 18; Steiner 2006: 126). By physical impossibility liberals mean the physical state of preventedness to act in a particular way due to the circumstances created by the obstructions of other agents. For instance, if I lock you in the room or hypnotize you so that you cannot get out, the fact that your locomotion is limited by the walls of the room implies that you are physically impossible, and therefore unfree, to leave the room.

That physical impossibility of doing something is a sufficient condition for being unfree to do so is far from being self-evident. To many people it appears that, apart from the physical impossibility, there has to be some other type of constraint that can render us unfree. The first thing that comes to most people's mind is threats. There is an old political joke describing an

imaginary conversation between a Dutchman and a Czech before the fall of the Iron Curtain and about housing problems in their respective countries (Carter 1999: 219). The Dutchman says that housing problems are vast in his country but he then admits that in Czechoslovakia they must be even greater given the fact that Czechs do not have freedom of speech to complain about them. The Czech replies that in Czechoslovakia they have freedom of speech and are actually allowed to say absolutely everything they like. He then adds in a witty way that the only difference from Dutch is that Czechs do not have their freedom after the speech. The joke works because most people share the intuition that Czechs were in no way free to say what they had wanted. They were threatened by the sanctions of their real-socialist government and so they could not exercise full freedom of speech. However, since liberals hold that physical impossibility of acting is the only thing that renders people unfree, they will not take the previous story as a joke but as the right description of the situation. As a matter of fact, they must say that governmental sanctions did not make it physically impossible for Czechs to express themselves and that they were hence free to do it.

This view was famously defended by Hobbes and some Hobbes-inspired contemporary liberals such as Hillel Steiner (see Steiner 1994: 22–32). Hobbes believed that if a highwayman approaches you demanding ‘Your money or your life’, since you are not physically prevented from doing either of the two as long as the highwayman does not materialize his threat, your freedom to keep your money and your life remains unchanged. The deadly threat just makes it less desirable and very costly for you to do so. But there is no reason to think, Hobbes believed, that coercive threats or any other display of superiority that may impose great cost for an agent and that otherwise does not render her performing of some action physically impossible, presents a constraint on her freedom.

Steiner claims that the reason why your freedom is unabridged when you are confronted with threats such as this one is because your opportunity-set remains unchanged with respect to the actions you might perform. Before the highwayman approaches you, you prefer keeping your money to handing it over and after you face the credible threat, you prefer handing your money over to keeping it. The threat only reverses your preference ordering concerning the actions open to you (Steiner 1994: 25). And making something less preferable or desirable does not, by the widely-shared presupposition, restricts freedom of action. Denying this assumption would mean positing an analytic dependence between agent's freedom and her mental states, in particular, her desires.

In order to see why that would be objectionable suppose we accept that someone is free to the extent that she is not prevented by others to do what she desires to do. It would then follow that this person can increase her freedom by suppressing those desires the fulfillment of which is prevented by others, which is an obviously mistaken view (Berlin 2002a: 31; Steiner 1994: 10). Since threats bring about the change in the relative desirability of doing an action than of doing some other one but do not make it physically impossible to act in either way and since the fulfillment of desires should not be taken into account when assessing one's freedom, Steiner concludes that threats cannot be said to undermine freedom.

Steiner presents another argument against treating threats as freedom-restricting. It is the argument from comparison of threats and offers. Steiner notices that what threats and offers have in common is that they both reverse the preference ordering concerning the performance or the refrainment of the certain action you wanted to do or not to do. The difference is that acceding to an offer is more desired than acceding to a treat, given that the former in general leave you better off and the latter worse off than before the intervention. But this particular fact is irrelevant to the

question of their effectiveness. For it is an empirical truism that offers are not more resistible or less impelling than threats and this is the difference that matters when interferee's behavior after the intervention is assessed (Steiner 1994: 25–6). So, Steiner concludes, if threats limit freedom then offers do too. But since we do not normally think that offers restrict freedom, we should not think the same of threats.

Steiner's conclusion is revisionary with regard to the common-sense understanding of the nature of threats. We believe that, if anything, detrimental threats to our lives render us unfree to do any other action than the life-preserving one. Is there any way for liberals to accommodate this intuition with their general belief that the only interference that renders us unfree is the one that makes our actions physically impossible to occur? Most liberals now accept an ingenious solution proposed by Ian Carter (see Carter 1999: 226–8; cf. Kramer 2003: 39). Carter notices that our semantic intuitions concerning freedom abridgement are sensitive to whether we think of our particular freedoms or of our overall freedom as being abridged. Confronted with a credible threat, we are still in a position to exercise our particular liberties separately but we are prevented from exercising various combinations of these specific liberties. Our particular freedoms remain unhampered but our overall freedom is *pro tanto* reduced. The latter reduction occurs in a sense that we are no longer free to exercise the conjunction of actions that have been made exclusive by the threat. For example, when a highwayman approaches you asking for 'Your money or your life' you are free to keep your money and free to keep your life but you are not free to keep your money and your life. The conjunctive option of keeping-your-money-and-keeping-your-life has been excluded from your opportunity-set due to the fact that the highwayman made it physically impossible for you to perform it.

According to the new liberal view of the constraint-types, thus, your particular freedoms to do the things stressed by the presence of threats remain unchanged. If it is the case that before you encountered the threat you were free to do these things, the mere presence of a threat does not render you any less free to do them. This is because particular freedoms are not a matter of degree; you are either free or not free to do something (Carter 1999: 228). However, the threat (if it is credible and if one has reason to assume its effective carrying out) reduces the degree of your overall freedom to the level that you are no longer free to perform certain combinations of some of these compossible actions. Similarly, offers only describe increase in overall freedom by making the number of compossible actions available to the agent bigger (Carter 1999: 231).

The reduction in overall freedom occurs not only after the threat is executed but also if there is a significant probability that the threat will be executed if the recipient of the threat fails to comply with the demands imposed by the threatener. This is a widely shared liberal idea about the measurement of the degree of overall freedom reduction. Most liberals hold that degree of someone's overall freedom is negatively and directly proportional to interferer's probability of actually interfering in his or her actions in a sense of making those actions physically impossible to perform (see Carter 2008: 189–91; Kramer 2003: 76–91, 174–8). How exactly is this degree to be calculated and which probabilities should matter, I will discuss in the third chapter.

Having said all this, it is possible to state the liberal conception of freedom in a nutshell in the following way: freedom is the absence of interference, that is, the absence of probable humanly-caused constraints on one's actions that make these actions physically impossible to occur. From now on, I will use this definition as the representative one of the liberal conception of freedom, improving it when necessary.

1.2 Freedom as Non-Domination

Liberals think of freedom as of the negation of interference. Republicans, instead, define it as the negation of domination. By domination, republicans mean the capacity or power of the interferer to interfere, more or less intentionally and on an arbitrary basis, into some or all of the choices that the interferee is in a position to carry out, thereby rendering the interferee worse off (Pettit 1997: 52). An agent is, thus, free if and only if she is independent upon the arbitrary interference of the dominating party. The dominating party, in particular, can be an individual or a collective but cannot be a non-human, natural, factor or a human biological or inability of some other kind. Together with liberals, republicans believe that freedom is essentially a power-relation between two or more individuals, that is, essentially a social relation (Pettit 1997: 53; Lovett 2010: 36).

Two deviations from the liberal view as expounded above are vivid on the first glance. First, republicans accept Miller's view that non-intentional interference, such as the accidental interference or the interference done from negligence, cannot render the interferee unfree. The only sources of freedom-restricting constraints are the ones arising from relatively intentional actions. Second, besides the conduct that makes it physically impossible for one to perform the desired action, republicans argue that threats, manipulation, and deception are valid constraint-types too (Pettit 1997: 53). These two deviations are, however, only of secondary importance. Given the arguments against them presented above, I will leave them at this stage.

What fundamentally distinguishes republican conception of freedom from the liberal one is the idea that the absence of interference is neither necessary nor sufficient for the existence of freedom. It is not necessary because there can be interference without domination (Pettit 1997: 65). This is possible, republicans believe, because arbitrary interference reduces freedom while

non-arbitrary does not. What, then, makes the act of interference arbitrary? There is no common republican answer to this question. One of the main tasks of the next chapter will be to examine all possible answers and show their deficiencies. Preliminary, however, one can think of arbitrary interference as of the interference where the interfered party is subject to the *arbitrum*, that is, the decision or the judgment that the interferer was in a position to chose or not to chose, at his will or pleasure (Pettit 1997: 55). Typical is the example of slave-holder in ancient times who has the full control over the lives of his slaves without fear of retaliation. Since he can do whatever he likes to his slaves, including taking their lives and severely coercing their bodies, slave-owner's interference is an archetype of arbitrary interference (see Pettit 1997: 84).

Arbitrary interference is, thus, an interference ruled by the interests of the interferer. With reference to the interfered party, we can say that arbitrary interfering means failing to take into account the relevant interest, or opinions, of the affected. And similarly, if the relevant interests are tracked during the course of interference, then the act of interference was non-arbitrary. Such interference is ruled by the interest of the interferee. Interests are relevant if they are shared in common with others, do not treat the affected party as exceptional, and do not subject others to arbitrary interference. Relevant interests, then, need not necessarily correspond to agent's actual preferences.

Consider the well-known tale of Ulysses who demanded his sailors to tie him to the mast so that he could not be bewildered by the voice of the Sirens and act inappropriately. Ulysses had an interest, shared in common by all reasonable people, to stay alive and he knew that, once he hears voices of the Sirens, he will go temporarily insane, dive into the water and drown. By tying him to the mast, Ulysses's sailors tracked his relevant interests and not his actual preference to

be liberated once the boat was passing near the Sirens. Their interference was non-arbitrary and, in the eyes of the republicans, did not abridge Ulysses' freedom.

Similarly to the story of Ulysses, the state can use its power to track the common relevant interests of its citizens and interfere into their freedom without dominating them. Lawful taxation or just imprisonment, for example, are instances of interference but not of domination in citizens' life choices and cannot be taken as constraints that restrict their freedom (see Pettit 1997: 55–6). Policies of a just legal system track the relevant avowable interests of the citizens because they are not subjective expressions of one person's will or a small group's decision (like in despotic or totalitarian systems) but an enterprise made legitimate through the reasonable consent of all. For every citizen has an interest in security or in receiving the benefits of social cooperation and so he or she has an interest in the state imposing taxes or punishing legal offenders. Citizens will have these interests even if their actual preferences are different. For instance, I might agree that my relevant interest is that state punishes criminal behavior but also desire not to go to jail if I am myself a criminal. It is the interests that people share in common and not the individual actual interest that are relevant for non-arbitrary tracking.

We have seen that republicans believe that subjection to the just laws does not represent the loss of freedom. This is a significantly different claim from the one that liberals make since the latter believe that every interference, whether arbitrary or not, reduces freedom. As Bentham, an early representative of the liberal conception of freedom, writes: "All coercive laws, and in particular all laws creative of liberty, are as far as they go abrogative of liberty" (Bentham 1843: 917). Since liberals count any legal interference as freedom-limiting and republicans deny this, republican freedom is harder to lose than the liberal one (Pettit 2006a: 227). Republicans see this

difference as an advantage of their view. Whether they are justified in making that claim, it will be answered in the following chapter.

There is another important difference from the liberal conception. Republicans also claim that absence of interference is not sufficient for the existence of freedom since domination can occur without interference (Pettit 1997: 63). It is enough that the interferer has the capacity to dominate in the affairs of the interferee. He need not actually interfere in order for interferee's freedom to be undermined. Imagine an open-minded slaveholder—something like St. Clare from *Uncle Tom's Cabin*—who treats his slaves with respect, letting them make personal choices and lead their lives in line with their conceptions of the good. The slaveholder obviously does not interfere in the choices of his slaves but it would be mistaken to conclude, republicans believe, that the contended slaves are free. The slaveholder is not exercising his capacity to interfere on an arbitrary basis, but that does not mean that he could not do it. There is a sense then in which republican freedom can be easier to lose than its liberal counterpart.

What matters, in republican's view, is not that a subjugator interferes in the subjugated's choices or that he is going to do so in future but that he has this capacity, that is, that he could do it (Pettit 1997: 64). What exactly is meant by a capacity to interfere is an important question I will turn to later. Stated in this manner, the second major difference between the liberal and the republican freedom seems to spring from them being grounded on two different modal claims. Republicans often claim that liberals believe that agent is free to the extent that no one actually interferes in her actions (see Pettit 2006a: 230). They then attack the liberal straw-man by devising examples of agents intuitively considered to be unfree even though they suffer no actual interference. As it was suggested before, one of the distinct features of the liberal conception of freedom is the idea that someone's overall freedom is reduced to the extent that there is a

significant probability that his actions will be rendered physically impossible to perform. Any other depiction of the liberal view would be inaccurate. In the third chapter, I will argue that both liberal and republican conceptions depend on probabilistic judgments of overall freedom, which makes them much closer than it is usually assumed.

Domination occurs if and only if the potential interferer has the capacity for interference and his interference is arbitrary. Once these two conditions are satisfied, republicans assume that the interferer and the interferee as well as the bystanders around them will be cognizant that domination is happening (Pettit 1997: 58–61). The facts of domination and non-domination are open and transparent to the parties involved in those relations and to many of their fellows in a sense that they know what the distribution of power and freedom is and they know that all others know the same thing, and so on. In other words, republican freedoms and unfreedoms are matters of common knowledge. Republicans consider this as a plausible empirical assumption given that majority of the people, by their nature, aspire to know whether they are unfettered by arbitrary interference, fall under the domination of others, or are dominators themselves.

For republicans, therefore, an agent is free if and only if she is not subject to arbitrary interference of others and no one with whom she may come into contact has the capacity for such interference. And, consequently, an agent is unfree if she suffers or there is a possibility that she might suffer arbitrary interference from another agent. These claims are descriptive and they make the core of the republican conception of freedom. Republicans, however, also propose a number of normative strategies for achieving freedom.⁷ Notably, they affirm the strategy of the reciprocal power and the strategy of constitutional provision (Pettit 1997: 67). The former consist in making the resources of the dominator and the dominating party more equal so that those who suffered domination become able to resist it further on. The latter, favored strategy, proposes the

⁷ Unless they are liberal perfectionists, liberals are not committed to the view that freedom should be promoted tout court.

involvement of a constitutional authority—whether executive, judicial, or otherwise—that will deprive the potential dominators of their power to interfere arbitrarily into the affairs of others. The main line of my argument in subsequent chapters attacks the descriptive component of the republican conception. However, as it will become clear later, these normative claims will serve to highlight some of the mistaken implications of the descriptive component.

In this chapter, I examined the essentials of the liberal and the republican conception of freedom. I argued that liberal conception is a family of views connected by the shared belief that freedom is the absence of humanly-caused interference and that we are free if there is a sound probability that someone else will render our actions physically impossible to occur. I also argued that the best way to understand the republican conception is to see it as a conjunction of two claims: first, that freedom is abridged only by the acts of interference done on an arbitrary basis and second, that even if no one is threatened by such acts but there is a possibility that they might be done due to someone's capacity to dominate others, freedom of the potential victims is curtailed. In the next two chapters, I will criticize each of these claims in turn.

Chapter 2: The Arbitrariness Thesis

In this chapter, I will examine the plausibility of the republican idea that it is not any constraint on agent's actions, but only the arbitrary one, that counts as freedom-restricting. I will first point out several difficulties in setting up a clear definition of arbitrary interference. After that, I will argue that, even with the credible definition in hand, taking the absence of specifically arbitrary constraints as a necessary condition for freedom is undesirable because it moralizes the concept of freedom by tying it inextricably to the concept of well-being and the rule of law. In order for this twofold critique to be expounded, I find it necessary to set out the reasons why republicans believe arbitrary interference to be crucial for freedom.

2.1 *The Arbitrariness Thesis*

As suggested in the previous chapter, the first point of departure between liberal and republican authors is their strikingly different understanding of the function of arbitrariness as a property of constraints. Whereas liberals believe that someone's freedom is encroached whether her actions have been interfered with or not, republicans controversially claim that non-arbitrary constraints cannot undermine anyone's freedom. It is only the interference on an arbitrary basis, republicans believe, that can be said to properly limit one's freedom. I call this *the arbitrariness thesis*.

The arbitrariness thesis has a widespread support among contemporary republicans. For example, Pettit claims that freedom is the absence of domination, where domination is a social relation between the interferer and the interferee in which the former has the capacity to interfere

into the choices of the latter and is doing so on an arbitrary basis (Pettit 1997: 52). Arbitrary interference, thus, is one of the necessary conditions for unfreedom to occur. Lovett similarly holds that someone's freedom is undermined whenever she is subjected to domination, that is to say, whenever some other person wields arbitrary power over her (Lovett 2010: 119). Finally, although in his early works Skinner accepted the liberal view of interference (see Skinner 1997: 83, n. 54), he nowadays endorses the mentioned republican position. In one of his recent pieces, Skinner writes that, for republicans, "the fundamental affront of liberty is the mere existence of arbitrary power." (Skinner 2008: 96)

Republicans, then, concur that arbitrariness is a crucial property for correct understanding of freedom because it helps us to determine which constraints are freedom-restricting and which are not. However, while republicans are unanimous about the importance of arbitrariness, there is no consensus about the nature of this property. In general, republicans agree that interference is arbitrary if it is wielded according to the will, decisions, or pleasure of the dominating party. But this is somewhat ambiguous and open to two possible interpretations we might call procedural and substantive (see Pettit 1997: 55–6; Lovett 2010: 112–3).

According to the procedural interpretation, interference is arbitrary to the extent that it is not externally and effectively constrained by rules, procedures, and goals commonly known to all persons concerned. Non-arbitrariness, to put it roughly, is identified with the presence of the rule of law. According to the substantial interpretation, instead, interference is considered as arbitrary to the extent that it does not reflect the relevant interests of the concerned parties. One exercises the arbitrary power if she shows no regard for the interests or opinions of the people affected by her actions.

In the next two sections I will show that neither procedural nor substantive interpretation provides a plausible account of what arbitrary interference is. Given that this notion is crucial for republican conception of freedom, failing to define it properly is a significant hindrance for the republican view.

2.2 Freedom and Well-Being

I will start with the substantive interpretation since most republicans happen to accept it as their official view. In this interpretation, there is almost an analytic relation between agent's freedom and her well-being (or her interests). Interference is non-arbitrary if it tracks the relevant interests of potential interferees and arbitrary to the extent that it fails to do so. Which interests should be taken as relevant? The answer to this question necessarily depends on the account of well-being we find most plausible. The debate about the nature of well-being is complex and I will not tackle it here in greater detail. My aim is to show that, regardless of the account of well-being republicans accept, defining arbitrary interference in the line with the substantive interpretation has counterintuitive implications.

Republicans accepting the substantive interpretation of arbitrariness can be divided into two groups, corresponding to the well-known division of theories of well-being into subjective and objective (see Sumner 1996: 27). Subjectivists believe that well-being is ultimately related to agent's mental states. Objectivists deny this. They believe that well-being consists in goods that are valuable as such. These goods may be attached to agent's mental states but their value does not stem from this fact. Let us examine both of these theories in turn.

There are two types of subjectivists. The first are the ones who believe that well-being is exclusively about agent's qualitative mental states. More precisely, they hold that well-being is happiness and happiness is nothing more than the qualitative state of feeling happy. This state is usually measured hedonistically, as a positive balance of pleasure over pain. Since subjectivists of this kind believe that our well-being is promoted just when we experience some enjoyment, they are usually called hedonists. If we are hedonists who accept the substantive interpretation of arbitrariness, we will believe that interference is arbitrary if and only if it does not track the happiness of affected parties. This is a legitimate view, even though none of the contemporary republicans accept it. There are several reasons why.

First of all, hedonism as a theory of well-being suffers from a familiar objection that it is simply false to believe that there is one common quality of enjoyableness present in all activities we actually enjoy. Reflection and introspection make it clear that activities so diverse such as eating, reading, copulating, creating, helping, and many others we enjoy doing hardly share a common property of enjoyableness. If this were the case, we would not be able to rank these pleasures in the way we usually do (Griffin 1986: 8). Hedonists might respond that we are able to rank these pleasures because of the different amount of enjoyment present in the activities we are ranking. The reply does not work because it overlooks the fact that some preferences are basic. Sometimes we want certain things more than others not because they contain the greater amount of enjoyment than the latter but because we want them, period. Catholic priests prefer to live in celibacy even though marriage or relationship is more enjoyable.

Secondly, hedonists believe that the reason why certain things make our lives go better is because we find those things pleasurable. As long as pleasurable experiences are present, causes of those pleasures are in themselves irrelevant for our well-being. This cannot be our real view.

Consider the following example. A is intelligent, courageous, kind, successful in her career, and loved by all of her acquaintances. She lives the life of real accomplishment and understanding. B is, instead, a person whose brain is by his will manipulated by a machine that produces whatever pleasurable experiences he wants (Nozick 1974: 42–3). B has chosen the program that gives him introspectively indiscernible experiences from those A has. Whenever A has a personal success, B feels the same. If A is loved, B is in the same qualitative state. Since they have experientially identical lives, hedonism concludes that A and B have the same well-being. We find this hard to believe. B cannot have the same well-being as A because his life is bogus. He only feels as if he is successful or loved. But actually, he is neither of the two. Hedonists are wrong because they believe that enjoyment is all that matters for well-being. However, what we primarily want is to do certain things and be certain kind of persons, not just to feel as if we are doing those things or being those kinds of persons.

Thirdly, even if the previous two objections are wrong and hedonism is the true theory of well-being, it hardly helps us to understand what arbitrary interference is. Recall that if we define the relevant interests hedonistically, arbitrary interference comes to be interference that does not reflect the happiness of potential interferees. But this definition deviates from our common sense intuitions. Arbitrary encroachment of someone's liberty has nothing to do with the fact whether she finds enjoyment in it. Imagine a masochist who, as a member of some racial minority, finds great pleasure in being subjugated by racists. Even if he enjoys when racists insult or physically attack him, this does not render their interference any less arbitrary. As a matter of fact, we think of racism as of a clearest example of domination.

We can now turn to the other type of subjectivists about well-being. These people believe that well-being is all about agent's representational mental states, in particular, about her desires

or preferences. Well-being consists in the satisfaction or fulfillment of that person's preferences. Since this view equates well-being with welfare, it can be called welfarism. In the conjunction with the substantial interpretation of arbitrariness, welfarism implies that interference is arbitrary just in the case it fails to reflect interferee's preferences. Which preferences should the interferer track in order for his infringement not to be arbitrary?

The simplest response is that he should track agent's actual preferences because these are the preferences the satisfaction of which promotes one's well-being. The problem with this reply is in the particular version of welfarism it relies on. Well-being cannot be the fulfillment of our actual preferences since some of them are based on mistaken information, others are illegitimate, some are just irrational or crazy (Griffin 1984: 10; see Rawls 1999: 380). The satisfaction of my preference to have a hamburger which was, unbeknownst to me, poisoned few minutes before can hardly improve my well-being in any respect.

Similarly, reflecting interferee's actual preferences is neither a necessary nor a sufficient condition for interference to count as non-arbitrary. It is not necessary because someone's actual preference might be to be subjugated. Fulfilling this preference would not render the interference non-arbitrary. Previously given example of a masochist who wants to be racially discriminated illustrates such a situation. On the other hand, it is not sufficient because non-arbitrariness cannot be determined solely on the basis of the fact whether the interferer tracks the interferee's actual preferences or not. If this were the case, one would be able to make any interference arbitrary by convincing potential interferees that her actual preferences failed to be properly tracked, even if the contrary were true (Lovett 2010: 115; cf. Maynor 2003: 39; Ferejohn 2001).

Since the account of well-being as the satisfaction of actual preferences fails, welfarists try to save their view by presenting well-being as the satisfaction of counterfactual preferences,

that is, the preferences that we would have if we had been informed better. Better information, according to the general assumption, means that the agent has no false beliefs, that she has all the relevant true beliefs, and that she deliberates correctly (Smith 2004: 20). Obviously, promoting one's well-being, according to this view, consists in sometimes failing to fulfill her actual desires and sometimes even fulfilling desires contrary to her current ones.

Consider again the example of the tied Ulysses (Pettit 2001: 139–40). When he hears the voice of the Sirens, Ulysses has a strong desire to be unbound and to jump into the sea. Knowing that he will be bewildered by the singing of the Sirens as soon as he hears them, Ulysses' sailors refuse to unbind him. They know that, if Ulysses had properly realized the consequences of him being free at that moment, he would face certain death. Ulysses' actual preference might be to be free, but his informed preference is to stay alive. Deciding to leave him tied to the mast, sailors respect Ulysses' informed preference, thereby promoting his well-being.

This version of welfarism seems to comply nicely with some of our intuitions regarding the arbitrary interference. On this view, interference is arbitrary just in case it fails to track the informed preferences of the affected parties. The case of the masochist described above cannot serve as a valid counterexample. His actual desire might be to be subjugated on the basis of his race, but his informed desire must be different. Racial domination in this case would count as a clear example of arbitrary interference. Similarly, some standard republican examples of non-arbitrary interference can be easily accounted by this view. Recall that, according to Pettit, lawful taxation and just imprisonment are instances of interference but not of domination (Pettit 1997: 55–6). When a prisoner is detained on just grounds, his freedom is not undermined by this fact. The particular interference is non-arbitrary. Actual-preference welfarism cannot help us here. Majority of the people do not prefer to go to prison, even if they are well aware that their

conviction is just. However, informed-preference welfarism suggests that, if prisoners had all the relevant information and deliberated correctly, they would realize that they have to be detained.

Unfortunately, this approach has some problems of its own. Since it takes seriously only counterfactual informed preferences, informed-preference welfarism overlooks the cases where our lives go better because we have partial or incomplete information. The view commits the so-called conditional fallacy (see Shope 1978; Johnson 1999). In general, the conditional fallacy is a fallacy that takes place when, giving a counterfactual analysis of a disposition, one overlooks, in various ways, interdependencies between the analysandum and the antecedent and consequent of the subjunctive conditional in the analysans (Johnson 1999: 54). Depending on different impacts analysans and analysandum may have on one another, the conditional fallacy may take different forms. The one that interests us here occurs when the truth of the antecedent and the consequent of the subjunctive conditional render the analysandum false.

Informed-preference welfarism can be expressed in the form of the biconditional as follows: 'X's well-being is promoted in the particular matter Y if and only if, if X was fully informed, X would prefer Y and Y would be satisfied'. The conditional fallacy occurs when 'Y' stands for an action that makes it true that X would prefer Y but X's well-being would not be fostered as a consequence of preferring Y. An example will clarify matters here (see Gibbard 1990: 20). Suppose you want to have dinner with your partner. We can assume that being with person you love always makes your life go better. Informed-preference welfarism suggests that your life will go better in this situation if and only if, if you were fully informed, you would want to dine with your partner. But if you were fully informed, you would possess some facts that would make your initial desire fade away. If you were fully informed, you would know what is going on in the innards of your partner or maybe that the food you were supposed to eat has been

prepared in unhygienic circumstances. Full information would probably make you want to cook alone and stay away from dinners with anyone but yourself. Informed-preference welfarism implies counterintuitively that, whenever you have dinner with your partner, your well-being is demoted. This cannot be the case since it is reasonable to assume exactly the opposite.

In conjunction with the substantive interpretation of arbitrariness, informed-preference welfarism entails the claim that interference is arbitrary if and only if it fails to track the informed preferences of the interferees, that is, the preferences they would have, were they fully informed when making them. There are two problems with this claim. First, it commits the same conditional fallacy. According to it, if I interrupt the dinner you have with your partner, asking for you two never to meet on dinner again (because I know that, if you were fully informed, you would do the same), I am interfering non-arbitrarily into the affairs of you and your partner. This is obviously ridiculous.

Second, the interference might be arbitrary even if it tracks the fully informed preferences of the interferee. Suppose that you and several other people are trapped in collapsing wreckage. I am a rescuer who can stop this wreckage by either saving you or those other people. If I save you, the others will be killed. However, in order to save the others I only need to chop your leg. If you were fully informed, you would realize that the lives of several other people are morally more important than your own leg. Even then, you might not consent that I chop your leg. Now according to the view in question, if I chop your leg against your will, my interference will not be arbitrary. But what could be more arbitrary than violating your bodily integrity against your consent?

There is a third version of welfarism. On this view, one's well-being is promoted if and only if the avowable preferences of all the members of community are satisfied through suitably

designed deliberative procedures. Interference is then arbitrary unless it tracks the preferences of the whole community as expressed through specific deliberative procedures (Lovett 2010: 115). Pettit, for instance, claims that interference, in order to be non-arbitrary, should track the relevant avowable interests of the interferee. These are the interests that one has in common with others and that do not position her as an exception regarding the relevant matters (see Pettit 1997: 55–6; cf. Skinner 1997: 26–7). For example, consider a person who refuses to go to prison even if he is aware that he is convicted lawfully. This person is expressing a preference that cannot be held in common with other people since, if everyone thought the same, and they were allowed not to get detained, the criminal system would lose its sense. How should we decide which preference can be held in common and which cannot?

Pettit proposes that we think of common interests as of a good collectively supported by everyone's cooperatively admissible considerations. Cooperatively admissible considerations are those that anyone in discourse with others about what they should collectively provide can offer as relevant matters to take into account (Pettit 2001: 156). To put it simply, common interests or preferences of the whole community are those that all the members of community can rationally agree upon. Since they will always be better off by agreeing to impose some interferences (e.g. the existence of the criminal system or taxation), community members will necessarily sacrifice some of their actual preferences. The idea lying behind this view is that it is almost impossible that people will impose arbitrary interference on themselves once their actual preferences are strained through these deliberative procedures.

So although I might have an actual preference never to go to prison or pay my taxes, what matters is the common interest based on everyone's preference to have a stable criminal and tax system. When the state interferes in my affairs regarding these matters, the interference is non-

arbitrary and my freedom is not restrained. On the other hand, when a highwayman demands my money or my life, he violates not only my own actual or informed preference not to be robbed but a common interest in security shared and endorsed by everyone. Pettit's democratic-based welfarism, thus, seems fruitful in explaining some common republican examples of interference without domination and delineating them from the cases of clear domination. Nevertheless, it has two big flaws.

First, democratic-based welfarism takes arbitrariness to be all-or-nothing concept. If the state does not track the preferences of the community as expressed through suitable deliberative procedures, its interference is arbitrary. The level of arbitrariness in the state will always remain the same regardless of the policy implemented, unless the policy tracks the desirable preferences of the community. But imagine a society in which, for whatever reason, one social group came to dominate all the others (Lovett 2010: 116). The disadvantaged groups are unable to overthrow the domination of the ruling group, so they insist that the latter codifies its various rights and privileges. Suppose that, after some time, the ruling group accepts to do so, seeing no significant costs for itself in it.

Now according to the democratic-based welfarism, the levels of arbitrary interference, before and after the codification, are the same. This is because the ruling group is not obliged to use the newly introduces rules to track the preferences the disadvantage groups would express through suitably designed deliberative procedures. However, it is obvious that, with respect to arbitrariness, the circumstances went through a significant change. Disadvantaged groups now know where they stand. The level of arbitrary interference in their lives is still quite high, but they can at least live their lives following the new rules. This is a huge experiential difference, democratic-based welfarism cannot account for (Lovett 2010: 116).

Second, democratic-based welfarism structures the absence of arbitrary interference as almost analytically dependent upon democratic procedures. In order to determine whether some particular interference is arbitrary or not, we need to see whether it tracks the preferences of the community as articulated through suitable deliberative procedures. Republicans are not alone in endorsing this view. It seems very natural to assume that arbitrary interference and democracy reside on the opposite sides of the spectrum. Iris Young, for example, defines domination as a contrapositive to democracy and public deliberation. Domination is, Yong writes, “institutional conditions which inhibit or prevent people from participating in determining their actions or the conditions of their actions”. And contrary, she believes, “social and political democracy is the opposite of domination.” (Young 1998: 38)

However, posing a strong connection between arbitrary interference and democracy will necessarily make the definition of either concept circular. Once the presence of the institutions of deliberative democracy is defined as the absence of institutional arbitrary interference, arbitrary interference cannot be defined as a lack of democracy without begging the question. Proposed relation might be useful if we want to promote democracy by reducing domination or vice versa but not as an analytical tool for elucidating the two concepts.

Democratic-based welfarists might respond that their real view is that the relation between arbitrary interference and democracy is rather empirical than logical. They might argue that is it not unreasonable to assume that democratic institutions are the ones most likely to track the common avowable interests of its citizens, thereby reducing the arbitrary interference (Lovett 2010: 212–3). Suppose that democratic-based welfarists present us with the data which indicate statistically significant correlation between democracy and the absence of arbitrary interference.

Although their general project would then be down to earth, it would certainly have more sense. But there would still be two problems with it.

First, in order to conduct the research that would confirm this correlation, democratic-based welfarists need to have a definition of collectively avowable interests for otherwise they would not know what their variable consists in. However, the only definition open to them is the one that suggests an analytic link between democracy and the absence of arbitrary interference, by characterizing the collectively avowable interests as the preferences of community expressed through suitable deliberative procedures. Second, even if they succeed to get the desired data without having a clear definition of collectively avowable interests in hand, advocates of this version of welfarism would give up a crucial part of their view by conducting the research. After all, democratic-based welfarism is attractive because it tries to put forward a plausible criterion for distinguishing arbitrary from non-arbitrary interference and not because it reiterates the well-known correlation.

Substantive interpretation of arbitrariness entails counterintuitive and implausible results when combined with subjectivist accounts of well-being. Perhaps it will have more success with objectivist accounts. Objectivists believe that our well-being is promoted if we have the things that are objectively good and lack those that are objectively bad. It does not matter whether we want to have the good things or to avoid the bad ones (Parfit 1984: 493). Our lives go better if, for instance, we are healthier, more knowledgeable, have true friends or a genuine professional success, regardless of whether we want these things or find pleasure in them. If we accept this account of well-being, we will believe that interference is arbitrary just in case it fails to bring objective goods to the interfered party.

Unfortunately, objectivist explanation is insufficient for delineating arbitrary from non-arbitrary interference. One can bring about the good that would, in a particular situation or on an overall scale, make interferee's life go better and still interfere into her affairs arbitrarily. For example, I might make you stop eating junk food on the basis that this food is very bad for your health. Suppose I pull the gun at your face and demand you throw your hamburger into the trash bin. I am tracking the good that makes your life objectively better, but it would be preposterous to conclude that, because of this, my interference is non-arbitrary. Objectivism is, thus, in no way a better alternative for expounding arbitrariness than subjectivism.

2.3 Freedom and the Rule of Law

In the previous section, I argued that the substantive interpretation of arbitrariness is deeply flawed, no matter the account of well-being it relies on. Some of the flaws arise because of the problems in the theories of well-being. However, majority of the flaws are generated because of the implausibility of the substantive interpretation itself. Because of this, some republicans, such as Frank Lovett (see Lovett 2010: ch. 4), accept the procedural interpretation instead. Let us see whether this interpretation does any better in explaining the nature of arbitrary interference.

As mentioned above, according to the procedural interpretation, interference is arbitrary if and only if its potential exercise is not externally constrained by effective rules, procedures, or goals that are common knowledge to all individuals and groups concerned. Two things should be clarified here (see Lovett 2010: 98–9). First, the constraints on interference must be effective in the sense that they have to actually prevent the interference from occurring. Formal laws are not sufficient to hold back the arbitrary interference unless they are backed up by an effective

enforcement mechanism. This is an undisputable requirement commonly expressed by the belief that a law without enforcement is nothing but a cluster of words on a paper.

Second, the constraints must be external, meaning that they are not to constrain the potential interferers by changing their dispositional attitudes towards interference but to prevent them by some external institutional means. It is one thing if an employer treats his workers with due respect because he believes that he has a duty to do so and completely another thing if he is compelled to treat them well under the threat of the individual labor law, whether or not he likes doing it. Arbitrary interference is secured against only if the latter mechanism is present.

Procedural interpretation puts a clear dependence between the non-arbitrary interference and the existence of the conditions very close to the ones of the rule of law (Lovett 2010: 99; cf. Pettit 2006a: 227). As long as the state is governed by the rule of law, its interference into the affairs of the citizens will be non-arbitrary. The rule of law is a very ambiguous concept. Depending on what we mean by it here will determine whether we will count an instance of interference as non-arbitrary.

Two conceptions of the rule of law are usually distinguished in legal theory: formal and substantive (see Tamanaha 2004: 91–2). According to the formal conception, the rule of law is all about satisfying certain formal or procedural requirements such as the way in which the law was promulgated (by a proper authority or not), the clarity of the ensuing norm (was the norm sufficiently clear so that everyone can understand its content and consequences), the temporal dimension of the enacted norm (was it prospective), the publicity of the norm, and so forth. On the substantive conception, the rule of law includes the set of mentioned procedural precepts but it is primarily determined by the realization of some particular moral requirements, such as the recognition of individual rights. The difference between the two conceptions can be highlighted

by their distinct reference to the content of law. The formal conception suggests that the rule of law is established as long as the sources and the form of legality are proper. The content of the law as such is irrelevant for the rule of law. The substantive conception rejects this. The content of law and, in particular, law's congruence with the principles of justice or morality is, according to substantivists, an essential part of the rule of law.

Lovett believes that non-arbitrary interference should correspond to the existence of the formally interpreted rule of law (Lovett 2010: 117). Any interference occurring within the scope of the procedural standards that make the rule of law will count as non-arbitrary. At the first spot, this view looks highly implausible. One of the main reasons why majority of the republicans are not proceduralists regarding the definition of arbitrariness is because they share the belief that institutionalized arbitrary interference is no less arbitrary because it complies with the prescribed procedural requirements. Some of the most abrupt examples of arbitrary interference in history, such as the Nuremberg laws or the Jim Crow laws, are perfect examples of the rule of law defined formally. As one notable formalist, Joseph Raz, notes: "A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and racial persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies". Even the institute of slavery, Raz continues, may not violate the rule of law (Raz 1979: 211).

Formalist view strikes many people as preposterous. When we use the phrase the rule of law in ordinary language to describe some legal or political system we certainly do not have in mind racist or sexist regimes as the ones complying with this ideal. However, for our purposes here, it does not matter whether formalism is the right view of the rule of law or not. But if it is, then the definition of non-arbitrary interference as the interference happening in the realm of the

rule of law must be wrong. Institutionalized slavery is, after all, a favorite republican paradigm of arbitrary interference (see Pettit 1997: 31–5).

Lovett admits that the procedural interpretation combined with the formalist reading of the rule of law may generate implausible conclusions. However, the reason why this happens, he argues, is because the systems of institutional discrimination often, though not necessarily, create the social atmosphere in which one person or group wields arbitrary power over another. What makes the perceived interference arbitrary is not the discriminatory legal or political system itself (as long as it is governed by the procedural percepts of the rule of law) but the social relationship of domination and subjugation present in it (Lovett 2010: 118).

Take the first of the Nuremberg laws, the so-called Law for the Protection of German Blood and German Honor, which made marriages and extramarital relationships between Jews and Germans as well as the employment of German women in Jewish households illegal. This law was obviously discriminatory but it was not arbitrary in Lovett's sense because it satisfied the common formal requirements of the rule of law. What makes us think bad about this law is the social atmosphere it generated. The law allowed permanent interference in Jewish people's private lives. To be sure, the same law applied to Germans wanting to get into relationships with Jews, though the discrimination in the opposite direction was far more radical. The law came to be a springboard for the domination of Jewish people by the regime-sympathizing Germans.

Lovett's observation about the change in the balance of power relations once the system of institutionalized discrimination is established is hardly disputable. However, even if this were not the case and no social group were to dominate another in public life, discriminatory policies would themselves be an instance of arbitrary interference. The mere fact that certain social group is prevented from enjoying some goods of social cooperation or is forbidden to enjoy elementary

human rights is enough to render the interference arbitrary. Among other things, the Nuremberg laws had the effect of prohibiting Jews to enter into certain professions, use state hospitals, and get higher education. Imagine a person whose job application was declined only because he is a Jew. The decision would be no less arbitrary even if the company issued a written explanation of the denial, appealing to its lawfulness. This person's life prospects would still be hindered on the basis of an unjust judgment.

Since the satisfaction of procedural standards cannot be a sufficient condition for making interference non-arbitrary, republicans who are proceduralists about arbitrariness should maybe turn to the substantive conception of the rule of law. On the substantivist conception, the rule of law occurs once the procedural standards are satisfied plus the content of the law is appropriate. There are several competing versions of substantivism about how the content of the law should look like. According to one plausible view, defended by Ronald Dworkin, the rule of law is the ideal of rule by an accurate public conception of individual moral and political rights. The rule of law is established just when and because the moral and political rights of citizens are recognized in the positive law, so that they may be enforced upon the demand of the citizens through courts and other judicial institutions (Dworkin 1978: 259). The cases of institutionalized discrimination, on Dworkin's view, are strongly opposed to the rule of law since they infringe the rights citizens have with respect to one another and the state as a whole.

Suppose we accept Dworkin's substantivism or some similar view that grounds the rule of law on individual rights. If we are proceduralists about arbitrariness too, we will believe that state's interference is non-arbitrary if it does not violate citizens' moral and political rights. But this would rule out some characteristic republican examples of non-arbitrary interference. If I am imprisoned or legally forced to pay my taxes, my rights of free movement and private property

are infringed. There have to be some other reasons than the ones of rights-violation making these interferences non-arbitrary. The problem with this version of substantivism about the rule of law is its dependence on the moral facts about individuals. Defining arbitrariness through these facts gets us back to the substantivist interpretation of arbitrariness (or a view extensionally equivalent to it) with all its problems.

The sole remaining possibility for republicans accepting the procedural interpretation is to seek for a thicker substantivist view of the rule of law. Besides formal legality and rights, the rule of law needs to be primarily defined by the existence of democracy or a welfare state. This view, unquestionably, appeals to several themselves problematic moral concepts. To explain the nature of such thick substantivist conception of the rule of law, as Raz notes, “is to propound a complete social philosophy” (Raz 1979: 211). We can put these worries aside for a moment. Suppose we believe that the rule of law incorporates democratic government and that therefore any undemocratic interference is also arbitrary.

This view is even more moot than the previous one. If we define democracy procedurally, as a system of carrying out collective decisions, we face the problem of identifying the instances of collective discrimination as non-arbitrary. If, instead, we define democracy substantively, as a system securing some independent aims, such as individual rights or social justice, we are either stuck with the same problems as in the previous view or we must endorse the claim that any just interference is non-arbitrary. The latter would imply that arbitrariness, and thereby freedom, is to be derived from the concept of justice. However, as it was explained in the previous chapter, one of the main aims of the republican project is to achieve the opposite.

Similar implausible results will be generated once we try to define arbitrary interference through the absence of welfare state or any other thick concept. The procedural interpretation of arbitrariness, without any doubt, fares no better than the substantive one.

2.4 Moralized Freedom

I have argued against the substantive and the procedural interpretation of arbitrariness. In this section, I will explain that the reason why both interpretations will never work is because they moralize the concept of freedom by grounding its essential part, that of arbitrary interference, on the concept of well-being or the concept of the rule of law. I will argue that we cannot explain when and why interference is arbitrary by appealing to value-laden concepts.

Before we see why republican freedom is a moralized freedom, we need to show what it means for a conception of freedom to be moralized and why conceptualizing freedom in such a way is generally undesirable. It is useful to distinguish between two ways in which a conception of freedom can be moralized (Waldron 2007: 160; Dowding 2011: 3). First, a conception may be moralized because it depends crucially on some moral theory, or a theory of justice, or a notion of rational behavior in a sense that it is derivable from them. Second, it may be moralized with regard to some specific issues about the nature of freedom, such as putting the crucial parts of the definition of freedom to be dependent upon certain normative judgments. The common examples are conceptions that count only unjustified interference as a constraint on freedom.

Both substantive and procedural interpretations of arbitrariness are moralizing in the second way. They suggest that external constraints on agent's action, the absence of which is a necessary condition in the republican definition of freedom, are arbitrary if they track the well-

being of the interferees or they are themselves constrained by the effective state policies complying with the requirements of the rule of law. They then go on by accepting some well-known normative account of well-being or the rule of law or try to develop an independent version of the same. At any rate, in both of these interpretations, what we mean by arbitrary interference, and thus freedom, depends on the truth of our normative theories about the nature of well-being or the rule of law.

Republicans are not isolated in endorsing a moralized conception of freedom. Consider two liberal accounts that do the same. As it was mentioned in the previous chapter, Miller claims that freedom is limited only by the actions of morally responsible agents (see Miller 1983). It is only the constraints imposed by the actions for which someone can be held morally responsible that render other persons unfree. The concept of freedom, therefore, depends crucially on the notion of moral responsibility. In order to know whether someone's freedom was encroached or not, we need a separate theory with necessary and sufficient conditions of moral responsibility. Expounding such a theory in a close manner is, understandably, beyond the limits of Miller's and our project here. For the sake of illustration, we can consider intentional actions as an example of morally responsible behavior and the actions happening beyond someone's control as the one for which that person cannot be held morally responsible.

For example, imagine that, unbeknownst to him, A takes a peculiar drug that makes him interfere into other people's choices whenever he can. One day, passing by an elevator, A breaks the electronic device that opens the door of the elevator. As a consequence, B, who happened to be in the elevator, gets stuck. Imagine now a similar case. C, a colleague of D, hates D because of his success and wants to harm him. Since he knows that, if D gets stuck in the elevator, he will be late for an important business meeting, C deliberately decides to do the same thing as A. D

shares his fate with B. Now, on Miller's view, it is only D who is rendered unfree here. His freedom was encroached by C's morally responsible action. B is not unfree because he was interfered with by the action of a morally irresponsible agent. Most of us will find this very counterintuitive. We might believe that A's situation may make his actions less blameworthy but certainly not less freedom-encroaching. If B's and D's choice is hindered by the fact that they are both stuck in the elevator, why would the fact that the situation of one of them was brought about through the course of morally irresponsible actions while the other was not make any difference with regard to their unfreedom? (cf. Steiner 1994: 15)

Similar counterintuitive results stem from another moralized conception of freedom: the libertarian one. According to Nozick, for example, a person is rendered unfree only when she is interfered with the actions she has a right to do and, consequently, the interferer has no right to prevent her from doing (see Nozick 1974: 262). My freedom to do something which I have no right to do is not restricted by a rightful interference of someone else as long as that interference does not violate some of my other rights.

Take, for example, property rights. Libertarians believe that I have a moral right to my legally owned private property. In Nozick view, I am entitled to my property providing that the initial acquisition of that property was just and that in the transfer from one owner to another no injustice was committed to any party (Nozick 1974: 151). Libertarian definition of freedom conjointly with their claim about private property entails the conclusion that the protection of legitimate private property cannot abridge anyone's freedom as long as the protection does not violate someone's other rights. This view goes hand in hand with the general aim of libertarians to show that a minimal state is the only state justified because it respects individual rights and, thus, leaves everyone's freedom intact.

The view that the protection of legitimate private property cannot render anyone's unfree is implausible. Suppose I infringe your property rights by pitching my tent on your legally owned land (Cohen 2006: 167). I might do this because I just want to annoy you or even because I have no land of my own. Suppose that, after I invaded your property, the police intervene on your behalf by prohibiting me to use your land for my purposes. I now suffer a constraint on my freedom exhibited in a legal restraint to perform the action I wanted. It is natural to understand this constraint as rendering me unfree with regard to the particular action. But libertarians claim that my freedom remains unrestricted by the intervention since I did not have a right to pitch my tent in the beginning.

Definitions of freedom proposed by Miller and Nozick distort the true nature of freedom by smuggling value-laden concepts of moral responsibility and rights in it. Since this makes both of them counterintuitive, we can conclude that they are unacceptable. But this is not the only or even the most important problem here. As G. A. Cohen famously argued (see Cohen 2006; cf. Waldron 2007: 153–4), moralized conceptions of freedom are undesirable not only because they generate counterintuitive results but because they do not treat freedom as an independent ideal. By defining freedom in terms of other moral or political ideals, moralized conceptions make the justification of these ideals by appealing to the notion of freedom impossible without begging the question. This is especially problematic for those moralized conceptions that ground freedom on normative concepts that are by their very nature connected to the concept of freedom in one way or another.

For example, libertarians believe that interferences with people's use of private property are unjustified because they violate one's rights to private property and, thus, her freedom to use it. However, libertarians also claim that the protection of private property does not make the non-

owners unfree because the owners have a right to exclude others from their property and, on the contrary, the non-owners lack that right (Cohen 2006: 172). This is obviously circular. In order to hold that being prevented to use someone else's property does not abridge our freedom, we must have an account of when and why is the possession of private property justified. But we are not allowed to appeal to the concept of freedom in establishing that account. And this is exactly what libertarians do when they claim that private property promotes freedom. By the same token, once we define freedom as absence of only those constraints caused by the actions of a morally responsible agent, we can, on a pain of circularity, neither make use of the concept of freedom in the definition of morally responsible actions nor in the definition of any concept comprising the former definition.

Let us now return to the republican conception of freedom. What makes the republican conception analogous to the liberal views described above is the distinction it makes between the freedom-restricting constraints and those that are not. Since this distinction, obviously, requires a normative account of what makes a constraint freedom-restricting and since it clarifies one of the crucial concepts needed for the republican definition of freedom (that of constraints), it signifies either explicit or implicit tendency towards moralization among republicans.

Some republicans, however, deny this. Pettit, for instance, believes that the republican conception "is not essentially value-laden" (Pettit 1997: 56). Recall that, according to Pettit, the interference is arbitrary if and only if it fails to track the avowable interests of the interferee or, in other words, the interests that the interferee is disposed to avow. Now it is a fact of the matter and not a normative issue, Pettit believes, whether the state or any other power-holder succeeds to track the relevant avowable interests when it interferes in someone else's life. Whether some particular interference is subject to suitable controls so that it can be said to be nonarbitrary is an

empirical question which can be answered without appeal to any value-laden judgments (Pettit 1997: 57; cf. Pettit 2006: 278–9).

Pettit is undoubtedly right when he claims that to ask whether the relevant interests of the interferee were efficaciously tracked is to ask an empirical question. Being optimistic, one can even hope to measure such efficaciousness. However, the reason why we seek an answer to this question is because we want to understand whether the particular interference is arbitrary or not. This already presupposes that we defined arbitrary interference as the one that fails to track the relevant interests of the interferee or that is not especially efficacious in it. And this is clearly not an empirical claim. We need justifying reasons to grant support to this and any other similar claim that emphasizes the distinction between freedom-restricting and freedom-non-restricting interferences and there can be no other way to do this than through the normative argument.

There is no good reason, hence, to believe that the republican conception is unmoralized. It was suggested before that there are two problems with moralized conceptions of freedom in general: counterintuitiveness and circularity. The arbitrariness thesis implies many things we find obviously counterintuitive. Most notably, it implies that lawful imprisonment does not render the prisoner unfree due to the fact that such interference is nonarbitrary (see Pettit 1997: 56, n. 3). But most people think that, if anyone, prisoners, whether lawfully imprisoned or not, are unfree. As Berlin notes, “the fundamental sense of freedom is freedom from chains, from imprisonment, from enslavement by others” (Berlin 2002a: 48).

Republican view then seems to go against our deepest intuitions. Pettit, however, believes that, upon further reflection, this implication need not be so counterintuitive after all. We have to make a distinction, Pettit claims, between free choices and free actions, on the one hand, and free persons, on the other. Free person is the fundamental category of republican theory from which

the other two are derived (Pettit 2001: 65; cf. Pettit 2008: 103). The free person, on this view, is someone who is systematically protected and empowered against all the instances of arbitrary interference in that person's choices. In other words, someone who does not suffer domination is a free person.

However, it does not follow that if someone is a free person all of her choices will be free. There are two conditions that need to be satisfied for a choice to be free. First, the choice must be unobstructed; and second, it must be unobstructed "in virtue of the status enjoyed by the person" (Pettit 2007: 715). So even if I am a free person I might nonetheless suffer obstruction in my choices. One might ask whether obstruction consists in the domination in another choice-set or only the interference. Pettit is ambiguous between the two. At one place (Pettit 2007: 715), he claims that mere interference is enough to render one's choices unfree and, consequently, that the absence of interference (together with being a free person) is all that is needed for a choice to be free. More recently, Pettit explicitly argued that freedom of choice requires not just the absence of interference but also the absence of domination (Pettit 2008: 104).

The second interpretation is obviously unacceptable. If we define free choice as the non-dominated choice, we cannot define free person as the non-dominated person and still hold the distinction between them as relevant. If Pettit wants more than a superfluous distinction, he must accept that free choice is the non-interfered choice. The prisoner from our example would then be considered a free person with a significantly limited freedom of choice. Yet, even then, there would be some difficulties with this view. First, thinking about a prisoner as a free person, even under the proposed explanation, is still very counterintuitive. But more importantly, by defining freedom of choices as the absence of interference in them, Pettit commits himself to the claim that whenever someone's choices are interfered, whether on arbitrary or nonarbitrary basis, that

person's freedom of choices was rendered unfree (see Wendt 2011: 186). That is to say, he must reject the arbitrariness thesis. This is a too big concession to make. The arbitrariness thesis is one of the two pillars of republicanism and to abandon it is to render this view much less challenging.

Pettit appeals to another distinction: between compromising and conditioning factors of freedom (Pettit 2001: 142). As the previous one, this distinction is meant to rescue the republican conception from its original counterintuitiveness. In order to expound on the difference between the two factors, Pettit invokes its relevance for the liberal conception of freedom. Most liberals believe that while humanly imposed constraints limit freedom, natural obstacles do not, at least not in the same way as the former constraints do. Some of them (see, for example, Miller 1983: 69–70; Carter 2008: 62) believe that the reason why natural obstacles should be excluded from the set of freedom-restricting constraints is that freedom is a social relation and these obstacles are obviously not social. If I am prevented from acting in some way due to the physical disability or severe climate conditions, we should say that I am unable rather than unfree to act in that way.

Other liberals (see, for example, Kramer 2003: 42; Van Parijs 1995: 20–4), on the other hand, claim that, while humanly imposed interferences compromise freedom, natural constraints only condition it. If someone's freedom is compromised, the person is unfree. And consequently, if the person suffers no men-made interferences, she is free. However, if someone's freedom is conditioned (and uncompromised), the person is neither free nor unfree (she is 'nonfree'). Since natural impediments only condition freedom, predicates 'free' and 'unfree' do not apply to the person whose choices or actions are prevented by them. I am, for instance, neither free nor unfree to jump six meters in the air. I am nonfree and, in ordinary terms, unable to do so. Freedom is, thus, a trivalent concept (see Kramer 2003: 3).

Now Pettit argues that similarly to natural obstacles which condition the liberal freedom, non-arbitrary constraints condition the republican freedom. Arbitrary constraints triggered by the interferer that has the capacity to interfere compromise freedom in a sense that they make the interfered party unfree. But the non-arbitrary constraints only condition the interferee making her neither free nor unfree (Pettit 2001: 142). Freedom of a lawfully imprisoned person is, then, only conditioned but not compromised. If a person's is neither free nor unfree, will she be free after the conditioning factors have been removed? Pettit thinks that the answer is yes. After the removal of the conditioning factors, the agent will be not only a free person but will be free to do the things she was nonfree to do earlier, of course, provided that she suffers no compromising interference in the aftermath (see Pettit 2001: 142; cf. Wendt 2011: 189).

Pettit's solution is implausible for at least two reasons. First, Pettit provides us with no explanation of the analogy between natural obstacles and non-arbitrary constraints. Intuitively, we believe that natural obstacles actually render us unable and, thus, neither free nor unfree to do certain things. If I am congenitally deaf, the fact that I cannot enjoy Mozart does not mean that I am unfree to do so. But it seems strange to say that I am a nonfree person (and, consequently, that I am nonfree to do certain things) because I am lawfully forced to pay my taxes. Taxation, whether lawful or unlawful, renders me unfree rather than nonfree to spend my money in some other way.

Second, what makes natural obstacles specific is that they render the interferee physically impossible to perform certain actions. We can be neither interfered with nor not interfered with to act in a way that is rendered impossible by the presence of natural obstacles. That is why we are neither free nor unfree to act in that way (Wendt 2011: 189). The same is simply not true in cases of non-arbitrary interference. When such interference obtains, there is still a possibility that

I can be free or unfree in republican terms. I can be unfree in a sense that there might be other compromising factors together with the conditioning ones. One might say that the compromising factors are excluded by default. But if that is the case, then there is no possibility that I might be interfered with on an arbitrary basis by anyone having the capacity for such interference. I am then not only facing the non-arbitrary but also the non-dominating interference. And this is, by the standard republican definition, sufficient to render me free. Republicans, therefore, cannot avoid the counterintuitive implications of their account.

Finally, let us look at the circularity objection. Like many other moralized conceptions of freedom, the republican conception might also face the problem of characterizing freedom in terms of concepts which themselves can be explained only by appealing to previously worked out concept of freedom. Republicans must be sure that they do not need the notion of freedom in order to distinguish arbitrary from non-arbitrary interferences (cf. Waldron 2007: 154). They must not use the idea of freedom as non-domination either in explaining arbitrariness or any other relevant concept that will be used in the alternative definition of arbitrariness. Given the numerous difficulties with substantivist and procedural interpretations of arbitrariness mentioned in previous sections, avoiding the *pettitio* seems to be a major challenge for a consistent account of the arbitrariness thesis.

In this chapter, I argued against the arbitrariness thesis. The arbitrariness thesis is one of the two most important notions faring in the republican definition of freedom. I argued that republicans provide no sound criterion of distinguishing arbitrary from non-arbitrary interference and that, even if they succeed one day, their endeavors will be futile given the fact that the very distinction between freedom-restricting and freedom-non-restricting interferences is undesirable

because it moralizes the concept of freedom. I will now turn to the other peculiarly republican idea, that of domination without interference.

Chapter 3: The Capacity Thesis

In this chapter, I provide the answer to the question whether the mere possibility of arbitrary interference can abridge anyone's freedom. Republicans often claim that it is false to believe that one's freedom is not reduced if someone else has a capacity to dominate that person, even if he never exercises that capacity. The fact that he might do so is sufficient to render the potential interferee unfree. I argue that this claim has several unacceptable implications. I then defend the standard liberal view that a person is unfree when there is no actual interference in his actions if and only if there is a significant probability that interference might occur. But let us first see why republicans believe that mere capacity for domination reduces freedom.

3.1 *The Capacity Thesis*

The first point of departure between the liberal and the republican conception of freedom, as it was shown in the previous chapter, is their unlike stance on the question whether non-arbitrary interference presents a threat for freedom. The second point of departure stems from different answers to the question whether mere capacity for arbitrary interference, even when it is not actually exercised, reduces freedom. Liberals deny that this is the case. Republicans, on the other hand, argue that someone might still suffer domination, and thus be unfree, if there is some other person with the capacity to interfere arbitrarily into her affairs, even though he never uses this capacity. I call this *the capacity thesis*.

The capacity thesis originates from an old republican ideal that being free in republican sense is having a social status that can be achieved only if others are deprived of their arbitrary powers (Pettit 1997: 31–2; Skinner 1998: 68). The archetype of such ideal is a free citizen of a republic who is not dominated by anyone else and who is able to ‘look the powerful in the eye’. Its antithesis is the condition of a slave subjected to the will of his master. The fact that a person is exposed to the arbitrary will of another or is living at the mercy of that other is intuitively the worst imaginable case of unfreedom. And the situation does not seem to change for the better in terms of affected party’s freedom enhancement even if the dominator is benign and permissive. The dominator can change his mind at any time, so it would be mistaken to say that the interferee was beforehand free. As Skinner notices: “(Contented slaves) may appear, paradoxically, to be in full possession of their freedom, since none of their actions will ever be prevented or penalized. Such slaves nevertheless remain wholly bereft of liberty. They remain subject to the will of their masters, unable to act according to their own independent will at any time.” (Skinner 2008: 89–90) The capacity thesis, then, has a great intuitive appeal.

Can liberals account for this intuitiveness? The formidable republican accusation is that they cannot because, according to the alleged liberal view, possibility of interference, however big it is, cannot reduce the degree of overall freedom. I believe that this claim distracts us from the essence of the liberal conception. In the next sections, I will argue that not only liberals can explain how possible interferences can hinder freedom but their account is the only plausible one due to the fact that each and every republican argument in support of the same is unsound.

3.2 Actualism and Possibilism

Before we examine republican account of possible interferences in greater detail, it will be useful to present the view against which republicans are arguing. According to the so-called actualist account of freedom, freedom is the absence of any actual external constraints to action that are due to human agency (Goodin and Jackson 2007: 251). In other words, the only constraints on one's freedom that matter are the ones imposed on her in the actual world. Although republicans usually attach this claim to the liberal view, there is only one major liberal thinker in the history of philosophy that defended it, namely Thomas Hobbes. According to Hobbes, an agent is free if "he is not hindered to do what he has a will to do" (1982: § 21). One's freedom will remain still as long as no one actually gets in a way of her will or preferences. Counterfactual circumstances where one's will or preferences are otherwise as a result of interference in or foreclosure of her opportunity set are, therefore, irrelevant.

Actualism is now widely rejected among liberals. There are two strong objections to it. First, actualists commit the fallacy of inductively justifying the inductive inference. They believe that the fact that interference into one's choices has not happened so far is enough guarantee that it will not happen in the future (Goodin and Jackson 2007: 251–2). But from the fact that certain events did not occur, we cannot infer that they will never occur without begging the question or imposing dubious laws of uniformity that govern these events. I have lived in Europe so far and all swans I saw were white. But I cannot conclude that there are no non-white swans. If I had a chance to visit Australia, I would have seen that black swans also exist. The same can be said for domination. If you have not experienced it yet, it does not mean that you never will. Even if the

open-minded slaveholder has never behaved badly against his slaves, no one can know for sure that he will continue to do so.

Second, actualists are in general insensitive to even the most obvious possible but not yet actual interferences. Imagine a slaveholder who has behaved awfully to his slaves and then, for the reason of deceiving them in order to exploit their labor power more, started to behave nicely for some time. It is in fact true that slaves do not suffer any actual interference in such case, but it would be counterintuitive to say that they enjoy any real freedom. The slaveholder might abridge their overall freedom any time and, in reality, he will do so. The lives of the slaves are dependent upon the slaveholder's grace and whim and that is what renders them unfree. This fact makes it certain that actual interferences cannot be all that matters.

Since actualism does not work, republicans propose that we turn to the possibilist account of freedom, according to which freedom is the absence of any possible external obstacles to one's actions or choices. Without doubt, this position was held by Pettit and is still defended by Skinner. For example, Skinner writes that agent's unfreedom depends only upon the relation of subjugation between the interferer and the interferee, that is, in virtue of interferer's property of being superior to the interferee. It is completely irrelevant whether the interferer exercises the power over the interferee or he merely possesses that power but does not exercise it (see Skinner 2008: 98). Since republicans often deny that they hold these views, it will be useful to quote their exact words at this place. The important passage from Skinner reads:

If you live under any form of government that allows for the exercise of prerogative or discretionary powers outside the law, you will already be living as a slave. Your rulers may choose not to exercise these powers, or may exercise them only with the tenderest regard for your individual liberties. So you may in practice continue to enjoy the full range of your civil rights.

The very fact, however, that your rulers possess such arbitrary powers means that the continued enjoyment of your civil liberty remains at all times dependent on their goodwill (Skinner 1998: 70).

Similarly, in one of his recent pieces, Skinner contends that even if there is almost no probability that a slaveholder will interfere into the choices of his slaves, they will still be unfree. It is “the mere fact that their master or ruler has arbitrary power to intervene that takes away their liberty, not any particular degree of probability that these powers will ever be exercised” (Skinner 2008: 97). This is in complete concordance with Pettit’s early claims that domination can take place even if no one actually dominates another, given that the potential interferer has the capacity to do so. “Someone can be in a position to interfere with me at his pleasure”, Pettit writes, “even while it is very improbable that they will actually interfere” (Pettit 1997: 64).

What does it mean to have a capacity to interfere into another’s actions? Our assessment of possibilism will depend on how precisely we answer this question. Unfortunately, what both Pettit and Skinner provide is a descriptive analysis of potential interferer’s dispositions, attaching his possible interference to the fact that such person is a power-bearer. However, it is unclear whether the interferer needs to have this capacity in the actual world or he can count as a threat for the freedom of others even if there is a possibility that he may attain such disposition. If the latter is the case, then it is questionable whether we are talking about logical, physical, social or some other possibility. To my knowledge, the only republican attempt to deal with these issues is the modal interpretation of republican freedom outlined by Christian List (see List 2006; cf. de Bruin 2008).

List believes that the most suitable way of interpreting the possibilist claims is through the standard Lewis-Stalnaker analysis of counterfactuals (see Lewis 1973). According to this

analysis, a counterfactual conditional is true if and only if the closest possible world in which the antecedent is true is a world in which the consequent is also true. By the closest possible world we mean the world which is the most similar to the actual world in all the relevant respects. Since we are concerned with freedom and freedom is a social relation, we should take into account the subset of possible worlds portraying social facts. Following List, we can call these worlds ‘the socially possible worlds’ (List 1973: 204–5).

Now recall the possibilist explanation of the contended slave example. When a possibilist says that a slaveholder dominates his slaves because there is a possibility that he might interfere on an arbitrary basis in their choices, we should read this as a counterfactual claim saying ‘were a slaveholder to change his mind, he would interfere in his slaves’ choices’. This conditional is then true if we can identify an appropriate possible world in which the slaveholder does change his mind but that otherwise does not deviate from the actual world (in which the slaveholder is a good soul) in relevant respects. Given the nature of master-slave relationship, the world in which this happens is very close to the actual world in majority of the cases. Therefore, republicans conclude, since the slaveholder could indeed withdraw his goodwill, we cannot accept that his slaves are free even if they do not actually suffer any interference.

Analysis of possibilism through Lewis-Stalnaker semantics of counterfactuals offers a plausible reading of what Pettit and Skinner meant to say. But although such analysis gives the possibilist freedom a dose of precision, the very view is problematic for at least two reasons. First, it seems that sometimes Pettit and Skinner would like to go further and say that unfreedom is created even if the interferer has a capacity to do so in possible worlds which are more distant from the one needed to make the subjunctive conditional true. What is needed for domination is

an actual capacity to dominate in form of a disposition or a character trait, regardless of the fact that the possibility of someone exercising it is far from real.

In order to see the counterintuitiveness of this position consider a thought experiment that Kramer calls ‘The Gentle Giant’ (see Kramer 2003: 135–43). In a community not far from some hills there is a giant, stronger and more intelligent than any of his compatriots. If he wished, he could exploit and mistreat his neighbors. However, the giant has good nature and there is nothing more that he hates than someone behaving peremptorily. He even does not want to get in contact with other members of the society and decides to live alone in the nearby hills. Is freedom of these people undermined by the mere presence of such giant? The giant has natural capacity to subjugate his compatriots although he never exercises it and, most probably, never will. If having a capacity is sufficient for someone to count as an interferer, then giant’s mere existence renders his compatriots unfree. As the story is meant to show, such conclusion would misinterpret the actual state of affairs.

But suppose that Pettit and Skinner rejoin saying that the only proper way to interpret their views is the one employing Lewis-Stalnaker analysis of counterfactuals. In other words, they might argue that having a capacity to interfere is necessary but not sufficient for an agent to be considered as an interferer. What is needed is that there is a nearby possible world in which one interferes into the affairs of others. But if that is true, it has to follow that no one has ever or will ever enjoy any substantive amount of freedom. This is because there is always a nearby possible world in which any person’s actions are rendered impossible by someone else (cf. Dowding 2011: 4). Even the most enlightened rulers might become tyrants; even the most humane characters might become villains; and even the most gentlemen among husbands might start mistreating their wives. This is the fact about human nature and to recognize it we need not

go to distant worlds. The problem is that republicans cannot bite the bullet and accept that we are never free. Their ideal is a society of free and equal citizens, “able to look each other in the eye” (Pettit 1997: 71). If anyone, civic republicans believe that genuine freedom is achievable. To accept the opposite would be to give up the very basics of their worldview.

Problems with possibilism do not end here. Republicans do not want only to provide an analysis of the concept of freedom; they want to develop a theory of political reality in which all citizens enjoy the equal amount of republican freedom and in which the relations of subjugation and mastery are demolished. This includes both a development of civic virtues recognizing non-domination as an instrumental good as well as institutional arrangements securing and promoting this good (Pettit 1997:94). But if we interpret republican freedom in possibilist terms, either as the absence of any possible hindrances on agent’s actions or as the absence of those hindrances that occur in the adjacent possible worlds, then any republican policy aiming to protect citizens’ freedom against them would be impossible. Recall that, according to Pettit, “the point is not just to make arbitrary interference improbable; the point is to make it inaccessible” (Pettit 1997: 74). But there is no state, neither divine nor human, that could fulfill this requirement. This is simply because there is always a socially possible world in which a power-bearer that does not actually arbitrarily interfere in another’s actions does exactly so. Devising a policy or a set of policies with the aim of ruling out the effects of domination on these grounds would be highly utopian (Kramer 2008: 45).

Suppose that Pettit subscribes to our conclusion about the impracticability of republican policies. He may argue that, although these requirements are very hard to attain, that does not make them less true. But are these ideals even logically possible? Obviously not. There is always a nearby possible world in which an interferee is the interferer and vice versa. Every agent is, at

the same time, a possible subjugator and a subjugated party. So it is not only that the republican state that would take the plunge of obliterating possible arbitrary interferences had to have infinite resources but it would enter the absurdity of not knowing whose interference to put an end to in the first place. Since it would be impossible to disperse power relations so to make them inexistent (given the biological facts about human nature), the state could only try to devise policies so as to stop the possible interferers in their aims.⁸ If the state focuses only on those who actually enjoy arbitrary power, it will betray possibilist ideals. If, on the other hand, it decides to prevent all possible arbitrary interferences then it should exercise its upper hand on each and every citizen, which is absurd and undesirable. This is, I believe, the strongest objection to possibilism and a reason enough to reject it.

3.3 Probabilism

We have seen that liberal actualism and republican possibilism face innumerable difficulties and should not be taken as credible views on the matter. Throughout the liberal tradition, however, another view was far more influential. According to what can be called probabilism, freedom is the absence of probable external constraints to actions that are due to human agency (Goodin and Jackson 2007: 251). More precisely, probabilism is a view that a degree of someone's freedom is negatively and directly proportional to interferer's probability of actually interfering in his or her actions. If interferer's opportunity to interfere has some degree of probability of being exercised, then interferee's unfreedom is to the same degree limited (Carter 2008: 70). The degree of one's

⁸ A sympathizer of republicanism can argue at this place that normative task of the republican state is not to eradicate the capacity for arbitrary interference from each agent but to equalize the resources of all. This would, in turn, minimize the uncertainty about domination among the affected parties (Petit 1997: 85). I do not deny that this is a plausible pragmatic solution but it is far from the one of making the counterfactual domination inaccessible.

overall freedom, consequently, is measured by taking the set of compossible actions that an agent can bring about and multiplying the number assigned to that set by the probability of it being prevented and the probability of it being unprevented (Carter 1999: 190).

Liberals are not necessarily committed to the view that freedom is to be promoted by the state so they need not worry about the counterintuitive practical implications republicans face. However, they need to provide us with answer to two, similar, normative questions. First, what should be probabilist's attitude to risk-aversion? In other words, when assessing the reduction of the degree of one's overall freedom, should we say that that person has a reason for precaution if there is any probability of interferer's encroachment, or should we rather focus only on the cases where the probability is reasonably high?

Possibilism can be expressed in terms of low-risk probabilism as the claim that we should attach infinite weight of importance to the worst outcome, no matter how small the probability that that outcome will actually occur is. If there is an infinitesimal probability that someone will interfere into your actions and your overall freedom is to that degree reduced, you should think of the performance of the set of combined actions as thereby seriously prevented. As a decision-making rule, of course, this position does not make too much sense. In his famous critique of the maximin principle, John Harsanyi notices that no sane person could live her life normally while constantly trying to avoid the worst possible outcome (Harsanyi 1975: 595). If one were to act in everyday situations in accordance with this principle, she could never come out from the house because there would be always a probability that she might be run by the car, killed on the street, or hit by a meteorite. We should, hence, pay attention only to high (or the highest) probable interferences.

The second issue is an epistemic one. When measuring the degree of overall freedom reduction or enhancement, which probabilities should matter? Should we try to find the objective probability of interference or should we rather appeal to subjective estimates that interference might occur? The truth of the matter is somewhere in between. Given the fact that we live in a deterministic world, all objective probability judgments should be either one or zero. Since this is not the case, all we are left with are subjective estimates. But there cannot be purely subjective probability judgments either, since they have to be more or less rationally grounded in objective facts about the world (Goodin and Jackson 2007: 258).

The most credible way to update our beliefs about the probability of some interference in light of the new data is to use Bayes theorem, according to which the posterior probability of some new event (in our case, future interferences) given the probability of the prior event (past interferences) can be found by assuming that the previous event occurred and then calculating the probability that the new event will occur. It is important to note that it is impossible to infer subjective probabilities of other people from the propositions they utter since these propositions usually do not contain any information about probabilities. We are rather forced to observe and update our beliefs on the basis of other people's behavior (see Goodin and Jackson 2007: 257–9).

Let us now turn to the assessment of probabilism as an account of what freedom is. There are two big advantages of it in comparison to possibilism. First, probabilism does not have any counterintuitive implications. The interfered party suffers unfreedom in direct proportion to the interferer's probability of actually interfering. So in both the case of the lucky slave and the gentle giant, we just have to look at the probability that the slave will actually suffer interference or that the giant will interfere. Of course, probability judgments will always be subjective estimates on the basis of potential interferer's past and present behavior so they may differ in the

eyes of the potential interferee and an external observer. If I am the lucky slave and if my slaveholder used to interfere in my affairs in the past but left off to do so for some time, I will judge my degree of overall freedom to be much lower than it actually is, because I will give more weight to prior interferences, thinking that the probability that they might occur again is higher than it actually is. But even if the judgments about the likelihood of interferences will differ, they will not differ significantly, given the objective facts of the matter and the rational attitude to risk-aversion.

Second, probabilism is neither logically at odds nor practically demanding. It is true that for any agent, at the same time, there is a probability that she might interfere in the actions of others and that her actions will be interfered with but, contrary to possibilism, the probabilities differ here. Even if we imagine an agent whose probability of interference in actions of others is, by some strange coincidence, the same as the probability of others interfering in her actions, we can say with an ease that degrees of her freedom and unfreedom are on a par. There is nothing contradictory here. Probabilism does not take freedom as an all-or-nothing concept. Probabilism allows for degrees of freedom since it sees it as a dynamic rather than a static property. Freedom is necessarily placed in time and it varies in relation to someone's chance of actually encroaching it (see Carter 1999: 189–91; Kramer 2003: 76–91). Moreover, probabilism need not face the problem of demandingness because it probabilistically weights the range of possible worlds in which the interference occurs, taking seriously only those with high (or the highest) chance of becoming actual.

Pettit now accepts probabilism with two republican provisos: first, what matters are degrees of arbitrary or uncongenial interferences; and second, assuming the unlimited resources, state's job should be to reduce the potential interferer's capacity by removing the option of

interference from that person or at least by replacing it with an option that involves choice-inhibiting costs and penalties (Pettit 2008b: 219). I rejected the first proviso in the previous chapter so I will concentrate here on the second.

The reason why Pettit thinks that decreasing the probability of interference is insufficient for increasing the degree of interferee's overall freedom is that interferer's capacity to exercise arbitrary control over another's choices will remain even if the interference is reduced asymptotically, and freedom is the absence of that capacity. Pettit goes so far as to say that even if the probability of interference is significantly diminished though the potential interferer has left with the capacity to interfere, we cannot say that interferee is now less unfree than she was before, at least not in a content-independent sense. As he writes: "To be subject to the power of someone with a lash is to suffer the evil of alien control, regardless of the exact probabilities of the lash being applied on this or that occasion, with this or that severity" (Pettit 2008a: 124). An agent can, therefore, be free just when and because there is no one with a capacity to arbitrarily interfere in her choices.

To be sure, Pettit's new view is nothing but a low-risk probabilistic restatement of his old possibilism. Even under Pettit's assumption that resources are unlimited, it would be logically impossible to set power relations so that no agent has a capacity to interfere into another's affairs or to actualize it in practice. Satisfying this aim would mean divesting each person from his or her natural dispositions and character traits, which is absurd. One can reply that, in practice, we need not seek for such Procrustean measures. In order to stop the dominator from exercising his capacity for arbitrary interference, we need only diminish that person's probability to interfere to zero. However, as it was suggested before, this could not be done even under the most utopian scenarios. Republican ideal of setting the society free from all the prospects of domination may

be a wishful thinking but not a proposal decent enough to become an object of a philosophical debate.

In this chapter, I challenged the most important republican arguments for the capacity thesis. The capacity thesis is the second pillar of the republican conception of freedom. I argued that, stated in possibilist terms, republican view has several unacceptable implications, most notably, that no one is ever or will ever be free in the republican sense. I then presented an alternative liberal view based on probabilistic reasoning that came out to be superior in two respects. First, it has no counteractive features. And second, it better captures our intuitions about the possibility of one's freedom reduction. I conclude that the capacity thesis is intuitively plausible but that it can find its logical explanation only within liberal probabilism.

Conclusion

Civic republicanism is a very influential view in political philosophy nowadays. People endorse it for different reasons, one of which is that it gives special, and definitely central, value to social freedom and suggests its promotion. If truth to be told, this does not distinguish republicanism from some other, perfectionist, views on the matter. What makes it special is its understanding of freedom as non-domination.

In this thesis, I criticized such understanding of freedom. I presented two sets of arguments that correspond to two main theses of the republican conception of freedom: first, that non-arbitrary interference does not abridge freedom; and second, that capacity for interference, even when it is not exercised, does abridge freedom. Against the first thesis, I argued that republicans provide no sound definition of arbitrariness. Defining it with the reference to the interferee's well-being or the rule of law brings the burden of counterintuitiveness with itself. However, even if the sound definition had been found, the whole endeavor would have been doomed from the start given that such definition would moralize the concept of freedom.

I did not attack the second thesis in particular but only the republican interpretation of it. It was shown that it is mistaken to believe, as some republicans do, that the mere possibility of arbitrary interference restricts freedom and that, because of this reason, the state should strive to make any possibility of such interference inexistent. I argued that the latter claim is utopian and that the former is better apprehended if we think of the diminishment of overall freedom as corresponding to the levels of probability of interference.

That interference, arbitrary or non-arbitrary, is freedom-restricting and that the effects of interference on overall freedom are to be measured probabilistically are ideas constitutive of the liberal conception of freedom. Since my arguments indirectly confirmed that these claims are true, they can be read not only as a challenge to the republican conception of freedom but also as a defense of the liberal view. If I am right here, then not only the account of freedom as non-domination is seriously misguided and needs to be either rejected or significantly changed but all other republican claims derived from it call for fundamental reassessment.

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