

# From Neo-Republicanism to Critical Republicanism

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Does neo-republicanism offer a promising alternative to dominant liberal approaches in political philosophy? Does it tie in with the radical strands of the republican tradition? Or is it, ultimately, geared towards defending the status quo? Neo-republicanism, as developed most systematically by Philip Pettit, has quickly risen to become one of the most widely discussed paradigms in contemporary political thought. Its core idea of (non-)domination, originally framed as a theory of freedom, has been taken up in various other contexts, most notably as the basis for an account of social justice.<sup>1</sup> Yet, its credentials as a resource for a comprehensive critique of social relations remain contested. While some see its power-critical thrust as a welcome amendment to the distributive focus of liberal debates on justice,<sup>2</sup> others criticize its narrow conception of power<sup>3</sup> or its elitist<sup>4</sup> and anti-democratic<sup>5</sup> leaning. Against this background, my aim in this chapter is twofold. On the one hand, I argue that Pettit's neo-republicanism does have a powerful critical potential, too easily dismissed by some of his critics. On the other hand, I aim to show how this critical potential can be strengthened by reconceptualizing his theory of domination from a perspective inspired by the Kantian line of republican thought and contemporary Frankfurt School-style critical theory. This will pave the way for developing what I call *critical republicanism*.<sup>6</sup>

The assertion that neo-republicanism resonates with critical theory as put forward by the Frankfurt School, broadly conceived, has been noted before. Both Cécile Laborde and James Bohman have pointed out that the emphasis of

<sup>1</sup> See, for instance, Frank Lovett, *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010).

<sup>2</sup> See, for instance, Michael J. Thompson, 'The Limits of Liberalism: A Republican Theory of Social Justice', *International Journal of Ethics* 7, nos 3–4 (2011), pp. 1–21.

<sup>3</sup> Patchen Markell, 'The Insufficiency of Domination', *Political Theory* 36, no. 1 (2008), pp. 9–36.

<sup>4</sup> John McCormick, *Machiavellian Democracy* (Cambridge: Cambridge University Press, 2011), chap. 6.

<sup>5</sup> Nadia Urbinati, 'Competing for Liberty: The Republican Critique of Democracy', *American Political Science Review* 106, no. 3 (2012), pp. 607–21.

<sup>6</sup> For a more extensive account, see Dorothea Gädeke, *Politik der Beherrschung. Eine kritische Theorie externer Demokratieförderung* (Berlin: Suhrkamp, 2017).

republicanism on actual institutionalized practices that realize non-domination can be reinterpreted as a methodological demand in terms of a practice-oriented critical theory.<sup>7</sup> Following this methodological reading, a critical republicanism is less interested in articulating ideal principles. Instead, it starts from given historically and socially situated social practices, analyses the existing relations of domination inherent in these practices, politicizes them by revealing how they are socially produced and reproduced, and finally indicates how they might be transformed. However, in order to guide such a critical analysis of existing forms of domination, critical republican theory needs to provide, on the one hand, conceptual tools for critical social analysis, most notably a suitable conception of power. On the other hand, it needs to be reflexive with regard to the underlying normative ideal in order to be able to apply it critically to itself. My aim is to show how these requirements can be met so as to lay the theoretical basis for a critical republicanism.

Note that I do not mean to suggest that this is the only way to recover a critical potential within the republican tradition; the contributions to this volume show ample evidence of radical thought within other strands of the republican tradition. Nor do I provide an independent justification for the project of developing the critical potential inherent within republicanism. I merely want to show that Pettit's account of republicanism does indeed bear an important critical thrust and how it can be strengthened by bringing it in conversation with another line of republican thought. This will not only help uncover the radical potential of republicanism by providing a more compelling basis for a critique of existing power relations, including, most notably, social forms of domination in the economic or cultural realm. It will, or so I will argue, also help solve some conceptual problems of Pettit's own account that risk weakening its claim to distinctiveness.

Starting from the three most important building blocks of Pettit's account of domination, its normative core, its conception of domination, and its institutional implications, I will show for each why it provides an appealing starting point for this endeavour, why it nevertheless falls short of meeting these requirements, and how it can be refined towards a critical republicanism that satisfies them. First, I will highlight the discourse-theoretical core of Pettit's account of domination and argue that this discourse-theoretical dimension needs to be strengthened in order to account for the requirement of reflexivity. I reinterpret Pettit's idea of a discursive status, which the ideal of non-domination is meant to protect, in terms of normative authority (1). Second, I will turn to the conception of domination as

<sup>7</sup> Cécile Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy* (Oxford: Oxford University Press, 2008), chap. 1; James Bohman, 'Critical Theory, Republicanism, and the Priority of Injustice: Transnational Republicanism as Non-Ideal Theory', *Journal of Social Philosophy* 43, no. 2 (2012), pp. 97–112.

arbitrary power. I will argue that its power-critical content needs to be sharpened by conceiving of domination as a structurally constituted form of power, both in an interpersonal and a systemic sense (2.1). Moreover, I propose reinterpreting the notion of arbitrariness in a discourse-theoretical way so as to capture the reflexive dimension of normative authority (2.2). Finally, I will briefly sketch why this modified account of domination implies rethinking the institutions of non-domination along the lines of a Kantian model of republicanism, based on a functional separation of powers and popular sovereignty rather than the mixed constitution and contestatory citizenry, which Pettit advocates (3).

## 1. Discourse Theory and the Normative Core of Domination

Let me start with a fundamental question that is rarely asked: what is the normative core of the notion of domination? Neo-republican accounts of domination often start from paradigm cases, most notably slavery, and articulate a conception of domination that is able to capture them.<sup>8</sup> However, in order to conceptualize domination in a way that allows for the analysis of new, non-paradigmatic cases, we need to have a sense of what it is that is problematic about the relationship between the enslaved person and the master. I will first suggest a reading of Pettit, which draws on his theory of free will as discursive control in order to highlight the discourse-theoretical core of his account of domination. In a second step, I will show that this discourse-theoretical dimension has to be strengthened by reinterpreting the discursive status that lies at the core of Pettit's account of domination in terms of normative authority.

Pettit himself develops his conception of non-domination in close engagement with the liberal ideal of free choice as non-interference.<sup>9</sup> In comparison to non-interference, non-domination is less demanding in that it only refers to *arbitrary* interference; non-arbitrary interference may condition non-domination but does not compromise it. At the same time, non-domination is more demanding than non-interference because it covers not just actual (arbitrary) interference, but also the mere *capacity* to interfere. As Pettit emphasizes, this means that over and beyond the direct restriction of choice, domination also accounts for the problems of (1) the uncertainty and inability to make plans, (2) the resulting incentive to servility, and (3) the asymmetry in social standing that domination brings about.<sup>10</sup>

Most of Pettit's critics have concentrated on the first aspect, most notably the libertarian critics. They regard Pettit's emphasis on a mere capacity to

<sup>8</sup> See Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), pp. 31–5.

<sup>9</sup> Ibid., chaps 1 and 2.

<sup>10</sup> Ibid., pp. 85–9.

interfere as a point about the probability of interference that simply highlights the conditions for minimizing the chance of actual constraints. From this point of view, non-domination is not a distinct normative ideal; it is simply resilient non-interference.<sup>11</sup> In response to the libertarian reading, one may point to the emphasis Pettit has put on the fact that domination is not merely based on a concern about the direct restriction of choice. Rather, it also draws attention to indirect restrictions on choice that are mediated through the effects of domination on the psyche of the dominated. The uncertainty that domination brings about induces a distinct kind of deferential or slavish mentality that leads to self-censorship.<sup>12</sup> However, this psychological reading is just as misleading as the libertarian one because it also reduces the normative core of domination to the protection of a realm of free choice against externally induced constraints; it merely emphasizes that these constraints may work in a mediated way. From this perspective, the paradigmatic case of slavery is problematic because the enslaved suffer restrictions of choice, whether directly or indirectly. What both interpretations ignore is the third aspect Pettit emphasizes: the asymmetry in standing.

The crucial importance of this third aspect comes to the fore when Pettit's theory of domination is read against the background of his theory of free will.<sup>13</sup> It reveals that his notion of domination is based on a discourse-theoretical reconstruction of basic practical norms that we need to presuppose when engaging in discursive practices. For Pettit, we are discursive, conversable beings, that is, beings who are able to give and to take reasons for thinking or acting in a certain way. As such, we are liable to have our judgements and actions held to relevant standards and are able to adjust accordingly. This is what it means to be treated as a free and responsible person. As conversable beings, we understand ourselves as having this capacity to be moved by reasons, even when we fail to exercise it and, hence, we also need to ascribe it to others with whom we engage discursively. The ascription of discursive control, however, implies certain practical norms, as it rules out social relations that undermine our capacity to be moved by reasons.

<sup>11</sup> See Ian Carter, *A Measure of Freedom* (Oxford: Oxford University Press, 1999), chap. 8; John Ferejohn, 'Pettit's Republic', *Monist* 84, no. 1 (2001), pp. 77–97; Matthew H. Kramer, 'Liberty and Domination', in *Republicanism and Political Theory*, eds. Cécile Laborde and John Maynor (Oxford: Blackwell, 2008), pp. 44–50; but also Rainer Forst, 'A Kantian Republican Conception of Justice as Nondomination', in *Republican Democracy: Liberty, Law and Politics*, eds. Andreas Niederberger and Philipp Schink (Edinburgh: Edinburgh University Press, 2013), p. 161.

<sup>12</sup> Pettit, *Republicanism*, pp. 86f; see also Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998), pp. 84–96. Both emphasize however that servile attitudes are not necessary for domination (Philip Pettit, 'Keeping Republican Freedom Simple: On a Difference with Quentin Skinner', *Political Theory* 30, no. 3 (2002), p. 349; Quentin Skinner, 'Freedom as the Absence of Arbitrary Power', *Republicanism and Political Theory*, eds. Cécile Laborde and John Maynor (Oxford: Blackwell, 2008), pp. 93f).

<sup>13</sup> See, for the following, Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Oxford: Oxford University Press, 2001).

Hence, there is an ethic of commanding respect as a conversable interlocutor inscribed into our discursive practices.<sup>14</sup>

It is this discursive status of commanding respect which, arguably, provides the normative core of Pettit's conception of domination. Domination undermines what we as participants in discursive practices necessarily presuppose, namely that we all enjoy discursive control.<sup>15</sup> Someone who is dominated will 'no longer have the sort of voice that can be reliably forthright'; he will be 'under suspicion of playing to the audience of the powerful and never having anything worthwhile to say in his own right'.<sup>16</sup> Being at the mercy of others, he will not be taken seriously as a credible speaker who warrants hearing. He may still be treated as if he was; however, any discursive standing will merely be granted by the powerful as a gift. He will not be able to command attention and respect. This is why the mere dependency on the will of others matters, over and beyond a restriction of choice: it occasions an asymmetry in standing. As Pettit puts it: 'domination is an evil for individual human beings, restricting the extent to which they can relate to one another as persons in the common space of reasons: restricting the extent, in effect, to which they can live in a relationship of mutual respect'.<sup>17</sup>

Highlighting this discourse-theoretical core of Pettit's notion of domination shows that the issues of whether someone who is dominated actually suffers interference or whether she actually self-censors her behaviour are not essential; what matters is that, in all the choices she makes, she depends on the goodwill of the powerful and therefore is not considered to be a trustworthy interlocutor in her own right. This is why Pettit emphasizes that the 'terrible evil brought about by domination, over and beyond the evil of restricting choice, and inducing a distinctive uncertainty, is that it deprives a person of the ability to command attention and respect and so of his or her standing among persons'.<sup>18</sup> In other words: the paradigmatic case of slavery is not merely problematic in terms of restrictions of choice, whether directly or mediated. Rather, the enslaved person is not recognized, as Pettit puts it, as a 'voice worth hearing and an ear worth addressing'<sup>19</sup> and is thus denied the discursive status of commanding respect as a person.

The discourse-theoretical core of Pettit's account of domination seems far more appealing to a critical approach than the libertarian focus on free choice, as it draws attention to the interpersonal conditions of making choices in the first place. However, Pettit does not fully develop the critical potential of a

<sup>14</sup> See Philip Pettit, 'Joining the Dots', in *Common Minds: Themes from the Philosophy of Philip Pettit*, eds. Geoffrey Brennan, Robert Goodin, Frank Jackson, and Michael Smith (Oxford: Clarendon Press, 2007), pp. 279–84.

<sup>15</sup> Note that domination only refers to the interpersonal conditions of discursive control, not the intrapersonal ones, see Pettit, *Theory of Freedom*, p. 127.

<sup>16</sup> Philip Pettit, 'The Domination Complaint', in *Political Exclusion and Domination*, Nomos XLVI, eds. Melissa Williams and Stephen Macedo (New York: New York University Press, 2005), p. 103.

<sup>17</sup> Philip Pettit, 'A Republican Law of Peoples', *European Journal of Political Theory* 9, no. 1 (2010), p. 76.

<sup>18</sup> Pettit, 'Keeping Republican Freedom Simple', p. 351.

<sup>19</sup> *Ibid.*, p. 350.

discourse-theoretical approach to domination. In fact, the distinct appeal of discourse theory lies in its reflexivity: it does not merely flesh out normative ideals but rather applies them critically to itself. And it is precisely this reflexive dimension that needs to be strengthened.

Discursive control is based on the idea of agents who display practical rationality. Conversable agents are able to be moved by reasons and, as such, they are responsible agents, liable to be held to relevant standards such as evidential norms or consistency. But, the idea of discursive control does not extend to challenging these standards themselves; they are taken as given. The discursive status is the status of addressees of norms and standards, but not the status of their authors. In other words: Pettit's account of domination is based on a discourse theory of practical rationality, but not on a discourse theory of practical justification.

On such a stronger account of discourse theory, as developed by Habermas,<sup>20</sup> the discursive status that we ascribe to one another is not just a reconstruction of presuppositions of our discursive practices; at the same time, it is also taken to articulate the conditions for testing and justifying the validity of norms more generally. The idea is that '[o]nly those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.'<sup>21</sup> In other words: individual agents are not only considered as free and responsible persons vis-à-vis their own actions, that is, as conversable persons who are capable of reflecting on their intentional attitudes, to hold them to standards of rationality with regard to other intentional attitudes or given norms and to adjust accordingly. A discourse theory of practical justification also extends to the reflection on the validity of standards and norms and thus thinks of persons as free and responsible vis-à-vis the very norms in question. It conceives of persons as addressees and as authors of the norms to which they are subjected.

To be fair, Pettit obviously asks a different question. He develops the notion of discursive control in the context of a theory of free will. Discursive status is not meant to identify the conditions of normative validity, but merely to specify under what conditions we are fit to be held responsible. This is why he is concerned with practical rationality, not with practical justification. However, for a theory of non-domination, the dimension of questioning and justifying validity claims of standards to which one is held is of crucial importance: being subjected to norms whose validity we cannot challenge means that we lack a fundamental

<sup>20</sup> Jürgen Habermas, 'Discourse Ethics: Notes on a Program of Philosophical Justification', in *Moral Consciousness and Communicative Action*, trans. Shierry Weber Nicholsen and Christian Lenhardt (Cambridge, MA: MIT Press, 1990), pp. 43–115; Jürgen Habermas, 'Remarks on Discourse Ethics', in *Justification and Application: Remarks on Discourse Ethics*, trans. Ciaran P. Cronin (Cambridge, MA: MIT Press, 2001), pp. 19–112; see also Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, trans. Jeffrey Flynn (New York: Columbia University Press, 2012).

<sup>21</sup> Habermas, 'Remarks on Discourse Ethics', p. 66.

discursive power, namely the power to shape and interpret our relations to others and thus our own normative status.<sup>22</sup> It means that we are denied what I propose calling *normative authority*. Normative authority requires not only being taken seriously as someone who reports facts about the objective world and avows beliefs and desires or makes a pledge and thus speaks authoritatively about oneself.<sup>23</sup> It also extends to the third kind of validity claim that we raise, following Habermas, when communicating with others, namely the claim to normative rightness and thus to the decidedly intersubjective world of justification.<sup>24</sup>

The fact that this dimension of normative authority matters can easily be shown with regard to the paradigmatic case of slavery. The condition of the enslaved is neither problematic merely in virtue of possible restrictions of choice that he faces, whether direct or mediated, as the libertarian reading of Pettit claims. Nor does the fact that, given his dependence on the master, the enslaved is not taken seriously as a conversable person who can register and adapt to certain standards exhaust the problem of slavery, as the discourse-theoretical reading of Pettit suggests. Rather, the enslaved person is denied the normative power to challenge the rules of their interaction. In other words: the discretionary power of the master not only denies him the status as a legal person who is a responsible addressee of legal norms; he is also denied the status as a moral and political author of norms to which he is subjected.<sup>25</sup>

Hence, I propose conceiving of the normative core of the notion of domination in terms of the denial of the status of normative authority, instead of as the status of discursive control. This account retains Pettit's idea that the claim against domination is reconstructed on the basis of normative presuppositions of discursive practices. However, it does not merely refer to the social conditions under which we can act as credible speakers and exercise practical rationality. Rather, it conceives of these presuppositions as conditions for challenging and justifying any claim to normative rightness. This means that the claim against domination is reflexively applied to the validity claims of practical norms themselves. This reflexivity of a discourse theory of practical justification is not just important for capturing the core of what is wrong about slavery. It also applies to political philosophy itself.<sup>26</sup> Any normative theory is itself part of the very power structures it seeks to

<sup>22</sup> See James Bohman, *Democracy across Borders: From Dêmos to Dêmoi* (Cambridge, MA: MIT Press, 2007), p. 96 for a similar line of critique.

<sup>23</sup> Cf. Philip Pettit, *The Birth of Ethics: Reconstructing the Role and Nature of Morality* (Oxford: Oxford University Press, 2018).

<sup>24</sup> Jürgen Habermas, *The Theory of Communicative Action*, vol. 1: *Reason and the Rationalization of Society*, trans. Thomas McCarthy (Boston, MA: Beacon Press, 1984), p. 99; see also Forst, *Right to Justification*.

<sup>25</sup> A similar view is defended by Nikolas Kirby 'Revising Republican Liberty: What Is the Difference Between a Disinterested Gentle Giant and a Deterred Criminal?', *Res Publica* 22, no. 4 (2016), pp. 369–86, though he frames it in freedom theoretic rather than discourse and power-theoretic terms.

<sup>26</sup> See Rainer Forst, *Justification and Critique: Towards a Critical Theory of Politics*, trans. Ciaran Cronin (Cambridge: Polity, 2014), pp. 1–6.



unravel and criticize. Hence, the ideal of non-domination cannot simply be taken for granted as a normative value. Rather, it provides an account of the conditions under which justifications may generate a justified claim to normative validity—and in turn, a standard of critique for challenging the validity claims of given norms—including those articulated and defended by normative theory itself.

## 2. Rethinking the Conception of Domination as Arbitrary Power

Domination, I have argued, undermines the status of normative authority. Hence, a conception of domination contains two main elements: an account of power that captures the idea of a negation of a person's status, and an account of the conditions under which this kind of power undermines normative authority. I will first argue that the relevant kind of power is a structurally constituted one (2.1). This conception better captures the idea that domination is a violation of status, strengthens its critical potential, and avoids some conceptual ambiguities which plague Pettit's account. Second, I reinterpret Pettit's conception of arbitrariness in discourse-theoretical terms in order to capture the reflexive dimension of normative authority (2.2).

### 2.1. Power and the Structural Dimension of Domination

The idea that the notion of domination describes the negation of a person's status means that domination cannot be reduced to the mere exercise of power in discrete interactions, because a status refers to the fundamental structure of social relations. Pettit seeks to capture this idea with a dispositional account of power. In his classic definition, domination is characterized by the 'capacity to interfere...on an arbitrary basis...in certain choices that the other is in a position to make.'<sup>27</sup> While interference refers to the exercise of power in particular interactions, domination describes a dispositional property of the powerful agent, which she may or may not actualize. This means that the powerful agent does not need to exercise her power; the mere capacity to do so is sufficient to constitute a power asymmetry in the relevant sense. As Pettit emphasizes, even if the master does not interfere, the enslaved is still dominated, as the master could interfere whenever she wishes.<sup>28</sup>

At first sight, such a dispositional conception of power resonates well with the status-related, interpersonal quality of domination. It describes domination as a social relation that is characterized by unequal access to resources of power.

<sup>27</sup> Pettit, *Republicanism*, p. 52.

<sup>28</sup> *Ibid.*, pp. 31–5.



Everyone who lacks the relevant resources to resist the powerful is prone to interference in the same way—and thus equally subjected to the power of the dominator. In other words, individuals suffer from domination in virtue of certain vulnerability markers, which they share with others. In that sense, domination refers to a ‘vulnerability class,’ even though, ultimately, it is individuals who are dominated, not the group as such.<sup>29</sup> Moreover, as Pettit emphasizes, domination is not necessarily intended; it may be ‘unwilled,’ such as in ‘relationships of inalienable asymmetrical power, as with the husband over the wife in a sexist culture, the employer over employees in an unregulated economy, the professor over students in a traditional college.’<sup>30</sup> How the dominator chooses to use her powers is, of course, a matter of her intentional actions. But the social reality of domination is not; it is a matter of the position of power within which she finds herself. Thus, Pettit’s conception of domination has an important structural dimension often overlooked in recent debates on structural domination:<sup>31</sup> it casts domination as a systematic phenomenon that is not reducible to discrete interactions between particular individuals, but rather refers to their standing vis-à-vis each other.

However, one reason why it may have been overlooked is that Pettit’s account of power ultimately fails to fully capture the status-based nature of domination. It remains unclear as to how to account for the social reality of domination beyond interference without drawing on discrete actions. Either Pettit’s account implies that anything that the dominator *could* do to others constitutes domination. However, this counterfactual reading of dispositional power, based on possible actions of the dominator, implies too wide a notion of domination, as it conceives of any capacity to interfere causally in the space of actions of others as actual domination. As Richardson has pointed out, the mere presence of a kidnapper in our neighbourhood does not imply that we are all dominated.<sup>32</sup> Or, alternatively, the social reality of domination without interference is located in anticipating reactions of the dominated. Their attempt to escape interference through pre-emptive obedience may be seen as a manifestation of domination. This reading

<sup>29</sup> Ibid., p. 122. For an account of the domination of groups, see Dorothea Gädeke, ‘On the Domination of States: Towards an Inclusive Republican Law of Peoples,’ *Global Justice: Theory, Practice, Rhetoric* 9, no. 1 (2016), pp. 1–27.

<sup>30</sup> Philip Pettit, *On the People’s Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), p. 62. His earlier emphasis on intentionality refers to interference, not to the capacity to interfere, i.e. domination (see Pettit, *Republicanism*, pp. 52 and 79; Pettit, ‘The Domination Complaint’, p. 93), a point that has often been misunderstood (see for such a misreading: Ferejohn, ‘Pettit’s Republic’, p. 87; Kramer, ‘Liberty and Domination’, p. 39f; Mark Rigstad, ‘Republicanism and Geopolitical Domination’, *Journal of Political Power* 4, no. 2 (2011), pp. 279–300; Amy Allen, ‘Domination in Global Politics: A Critique of Pettit’s Neo-Republican Model’, in *Domination and Global Political Justice: Conceptual, Historical and Institutional Perspectives*, eds. Barbara Buckinx, Jonathan Trejo-Mathys, and Timothy Waligore (New York: Routledge, 2015), pp. 122ff).

<sup>31</sup> See, for instance, Allen, ‘Domination in Global Politics.’

<sup>32</sup> Henry Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002), p. 34.

focuses on actions of the less powerful as manifestations of the dominator's power. Yet, it proves too narrow, since it makes the social reality of domination depend on the subjective perception of threats of interference and corresponding reactions. But an enslaved person who proudly refuses to please his master in order to keep her good-willed will nevertheless remain dominated.<sup>33</sup>

The problem is that both interpretations of Pettit's account of dominating power focus on particular actions, whether they are possible actions of the dominator or actual actions of the dominated person. Implicitly, they are based on an interventional model of power<sup>34</sup> that conceives of power as a causal nexus on the interactional level—even though they each only look at one side of such a nexus. But, if, as I have argued, the notion of domination refers to the negation of a status that would, were it realized, fundamentally restructure the power relation as a relation between equals, such an interventional model of power is misleading. It falsely suggests that the social reality of domination can be analysed as an interactional phenomenon. Thus, it misses what the dispositional account of power was meant to capture: the asymmetrical structure of interpersonal relations that denies some persons the fundamental status as a normative authority.

Pettit's dispositional account of power is not able to fully grasp this dimension because it does not specify the source of the capacity to interfere. Hence, I propose modifying his account in two respects.<sup>35</sup> First, I maintain that interpersonal domination is best understood as a structurally constituted form of power. Second, I propose distinguishing two kinds of dominating power: *interpersonal* and *systemic* domination. Both kinds are structurally constituted; however, while interpersonal domination refers to a direct relation between dominator and dominated, systemic domination describes a mediated, impersonal form of domination. In order to explain what I mean by structurally constituted, let me go back to the paradigmatic case of slavery.

Interestingly, the case of slavery, widely referred to as *the* paradigmatic case of domination in neo-republican debates, is a form of power that is constituted through a legal institution.<sup>36</sup> The power of the master to extract labour, to sell her slave, or to abuse him physically or mentally is not based on her own personal resources. Rather, it is based on legal norms that systematically empower the

<sup>33</sup> These interpretations reflect the two interpretations of the normative core of domination discussed above. One reason for why Pettit's account of domination has been interpreted in terms of free choice rather than as a status-based account of the free person is precisely his ambiguous conception of power.

<sup>34</sup> Thomas E. Wartenberg, *The Forms of Power: From Domination to Transformation* (Philadelphia, PA: Temple University Press, 1990), p. 65.

<sup>35</sup> For a more detailed elaboration of this argument, see Dorothea Gädeke, 'Does a Mugger Dominate? Episodic Power and the Structural Dimension of Domination', *Journal of Political Philosophy* Early view, <https://doi.org/10.1111/jopp.12202>, 10 Sep. 2019).

<sup>36</sup> See also Alex Gourevitch, 'Labor Republicanism and the Transformation of Work', *Political Theory* 41, no. 4 (2013), pp. 601f.

slaveholder, while systematically disempowering the enslaved person. In fact, the enslaved may well outclass the slave owner in terms of physical strength, or intellectual wit. The reason why he still remains a slave is because of the legally entrenched power of ownership that his master holds. In other words: the slave master's capacity to interfere with her slave is a legally constituted capacity. It is only through the legal institution of slavery that personal resources of power are transformed into the basis of a relationship of domination.

This structure of the paradigmatic case of slavery is telling. It does not merely describe *any* capacity to interfere with the choices of another person. Rather, the capacity of the slave master to interfere with the enslaved is itself a *robust* one, in the sense that it is a durable capacity that is constituted and reproduced by norms and practices which create the very positions of power and disempowerment that we refer to as slavery. These norms do not necessarily have to be legal ones. Domination may also be based on informal social structures; in fact, often legal and informal norms work together in constituting dominating power structures. Just think of racial bias in law enforcement, as in the United States. Even though, legally speaking, Black male citizens enjoy the same rights as any other citizens, they are constantly subject to the possibility of police violence, as they are considered more likely to be criminals than other citizens. In such an interpretive scheme, merely raising their hands as a sign of peaceful surrender may be taken as a sign of the expected move to reach for a weapon—and thus serve as a pretext for the police to shoot in 'self-defence'. Just as in the paradigmatic case of slavery, this capacity of the police to interfere arbitrarily is constituted by social norms and practices, both formal and informal, that create asymmetric positions of empowerment and disempowerment and thus deny some persons equal standing.

Note that thinking of dominating power as structurally constituted in this sense is conceptually narrower than Pettit's conception. It does not include the mere opportunistic capacity to interfere that arises as happenstance and vanishes once the circumstances change. (Think of a mugger in a park, for instance, who merely seizes the rare occasion of no one else being around for mugging me.)<sup>37</sup> Instead, it limits the notion of interpersonal domination to a structurally constituted capacity. This narrow view of what counts as domination, however, is not a downside but rather a merit of my account. First, it solves the conceptual ambiguities about the social reality of domination over and beyond actual interference. Thinking of domination as structurally constituted means that the social reality of dominating power over and beyond its exercise lies neither in *any* potential action of the domination, nor in anticipatory reactions of the dominated, but rather in the power structure that puts the dominator and the dominated into asymmetrical

<sup>37</sup> See Gädeke, 'Does a Mugger Dominate?' for a detailed discussion of this case and Pettit's broad conception of domination that incorporates opportunistic, as well as robust, capacities to interfere.

positions to one another. Whether or not a mere capacity to interfere does indeed constitute domination depends on whether it is based on a system of social norms and practices that systematically empower some while disempowering others. Thus, my account unambiguously captures the idea that, at its core, domination is about a denial of status and refers to the asymmetric structure of interpersonal relations, independent of particular interactions.

Second, and more importantly in the context of this chapter, it is only by narrowing the conception of domination to cases of structurally constituted power that the critical potential of the notion can be brought to bear. If the notion of domination is to serve as a concept of critical social analysis, it needs to be able to distinguish systematic forms of denial of status from mere opportunistic crime. Losing sight of this difference means that a theory of domination loses its power-critical bite. Instead of disclosing how systematic injustices, like racism or sexism, structure social realities, a broad account that includes any capacity to interfere analyses instances of racism and sexism in parallel terms to mere insulated crime—and thus runs the risk of not merely missing, but rather disguising and naturalizing the true character of society. Hence, for a critical republicanism, it is crucial to cash out domination in a structurally informed way that highlights the social production and reproduction of dominating power rather than attributing it to misbehaviour of particular individuals.

In fact, with regard to analytical scope, the conception of domination as a structurally constituted form of power is broader than Pettit's in at least two respects. First, thinking of interpersonal domination in terms of a structurally constituted capacity to interfere means that the bilateral picture often used to analyse domination is misleading. Interpersonal domination is a relation between two or more identifiable persons who stand in asymmetrical positions of power to one another. These positions of power, however, are themselves co-constituted and reproduced by countless other agents who reaffirm common interpretations of, for instance, Black people as dangerous by acting upon them or implicitly accepting them. Hence, interpersonal domination is not a dyadic but a triadic relation between dominator, dominated, and what Wartenberg calls *peripheral agents*.<sup>38</sup> They sustain and reproduce aligned social practices that constitute the power of the dominator. Any critical social analysis of relations of domination will need to take this dimension of how domination is socially produced and reproduced into account. It requires a contextual analysis of the power structures—especially the positions of power and disempowerment created by it—and the dynamics of their persistence in order to unravel how dominating power pervades society rather than construing it as an anomaly perpetrated by individual wrongdoers.

<sup>38</sup> Wartenberg, *Forms of Power*, pp. 144f.

Second, such a critical social analysis of domination will also have to go beyond interpersonal relations of power. *Interpersonal domination* is characterized by the structurally constituted, actual capacity of the dominating agent to interfere with the dominated. It is a relation of power between two (or more) persons who stand in direct relation to one another. The structural perspective on domination, however, not only looks at the social source of the dominator's power; it also draws attention to the systematic and socially produced *disempowerment* of the dominated. They are rendered powerless by the very same social norms and practices that constitute others as powerful. This disempowerment persists even when they do not stand in any direct relation to a particular dominator. Think of free Blacks in antebellum United States. They do not have a particular master in their lives who could interfere at any time. However, they are subjected to norms, both social and legal, that posit them as inferior, as dangerous, as people of lesser moral worth and limited rational capacities. And thus, they do not enjoy an equal status even though, in an interpersonal sense, they are only potentially, but not actually, interpersonally dominated. I propose to call this form of domination *systemic domination*. Systemic domination is impersonal but not agentless. It is based on a system of norms and practices which is reproduced by countless individuals in their everyday actions. But these agents play the role of peripheral agents: they are not themselves dominators in an interpersonal sense because they do not have an actual robust capacity to interfere with the dominated.

I have argued that, for a critical republicanism, it is crucial to be able to analyse the social production and reproduction of dominating power from a decidedly structural perspective, both with regard to interpersonal and systemic domination. Before moving on, let me quickly point out that this view differs from other recent discussions of what is often called 'structural domination' in at least two respects. First, I argue that domination is structurally constituted. In this sense, even interpersonal domination has a structural dimension so that the term 'structural domination' as opposed to interpersonal domination is misleading. Note, however, that my point is not that domination *may* be enabled by structures;<sup>39</sup> rather, it is always constituted by structures. This holds for systemic, as well as for interpersonal, domination. Second, what I call systemic domination is not independent of interpersonal domination. In fact, systemic and interpersonal domination are constituted through the very same social structures. Systemic domination does not mean that the system as such dominates, mysteriously, over and beyond the agents acting within it.<sup>40</sup> The impersonal, systemic form of domination emanates from the daily interactions of countless peripheral agents who do not themselves dominate a particular individual, but who reproduce

<sup>39</sup> This is how Pettit uses the term 'structural domination', *On the People's Terms*, p. 63.

<sup>40</sup> This view is suggested by Clarissa Rile Hayward, *De-Facing Power* (Cambridge: Cambridge University Press, 2000).

disempowering norms and practices that also constitute interpersonal domination. Neither does it mean that everyone subjected to this system is dominated, including those who hold powerful positions within it, such as white men or capitalists.<sup>41</sup> Systemic domination refers to systematic disempowerment not to mere subjection to a system. Even though systematic disempowerment renders one vulnerable to interpersonal domination (and, in this interpersonal sense, is *potentially* dominating), it also matters in its own right.

## 2.2. Arbitrariness and the Reflexive Dimension of Non-Domination

I have argued that the idea of domination as a denial of status is best conceived of in terms of a structurally constituted form of power. However, not all asymmetrical power structures constitute domination; only those in which the status as normative authorities is denied. This is what the second element of a conception of domination needs to capture. In neo-republican theory, it is fleshed out in terms of the dependence on someone's will and, that is, in terms of arbitrariness. Pettit defends a structural notion of arbitrariness.<sup>42</sup> Whether or not a relation of power is arbitrary does not depend on how the powerful act or what consequences they bring about. Rather, it is defined in terms of the constraints—or rather, the lack of constraints—that the powerful face and, thus, on structural features of their relation to the dominated.

In order to systematize the broad debate on the neo-republican conception of arbitrariness, I distinguish two ways of thinking about (non-)arbitrariness. *Formal* accounts of non-arbitrariness maintain that mere formal constraints on power suffice to secure its non-arbitrariness as they bind the power holder to certain rules and thus constrain how she can use her power.<sup>43</sup> This view, however, implies that racist rules, such as under Apartheid in South Africa, which deny status to some, may be non-arbitrary—and thus non-dominating—as long as they effectively constrain power holders. Most neo-republicans, including Pettit, therefore defend a *material* account of non-arbitrariness that specifies what kind of constraints may secure non-arbitrariness with regard to their content.

There are three distinct ways to cash out such a material account of (non-) arbitrariness, objectivist, subjectivist, and intersubjectivist.<sup>44</sup> In *objectivist* approaches, power is arbitrary when it is not forced to promote true interests or

<sup>41</sup> For such a view see Albenaz Azmanova, 'Relational, Structural and Systemic Forms of Domination: The "Right to Justification" Confronting Three Types of Domination', *Journal of Political Power* 11, no. 1 (2018), pp. 68–78.

<sup>42</sup> See Pettit, *Republicanism*, p. 55.

<sup>43</sup> For a purely formal conception of arbitrariness, see Lovett, *General Theory of Domination and Justice*, pp. 112–19.

<sup>44</sup> See Richardson, *Democratic Autonomy*, pp. 37–55.

the common good, objectively defined. Such an account, however, faces the charge of paternalism, as those subject to power are not able to challenge this putatively objective criterion. *Subjectivist* accounts are based on what those subject to power themselves conceive of as arbitrary. Yet, this view entails a status quo bias because domination can only be identified as such once those involved consider the power relation to be arbitrary themselves. Thus, subjective accounts disregard the important fact that, given their socialization into a system of domination or psychological mechanisms of coping with their situation, the dominated may not be aware of the condition within which they find themselves. In other words: while objectivist accounts are not reflexive enough, subjectivist accounts are not critical enough. Pettit's solution to this problem is an *intersubjective* account of arbitrariness. This seems to be a promising approach if the notion of domination is to avoid the problems of objectivist and subjectivist accounts in order to remain both reflexive and critical. However, his conception of arbitrariness proves not intersubjective enough, as it were. As a result, it fails to shun both the risk of paternalism and that of a status quo bias.

Pettit argues that power is arbitrary when it is not forced to track the avowable interests of those subjected.<sup>45</sup> Avowable interests are neither objectively defined, nor subjectively given preferences. They are interests which the agent is ready to defend as her own and, thus, to submit to intersubjective standards of rationality. In this sense, they are rationally refined interests, where rationally refined refers to an intersubjective procedure of testing for practical rationality. One might think that his conception of arbitrariness also comprises a stronger, deliberative notion of mutually justifiable interests.<sup>46</sup> After all, Pettit distinguishes between domination among private persons (*dominium*) and the domination of citizens by their state (*imperium*). While in the private realm, arbitrariness is tied to the absence of procedures that track the avowable interests of those subject to power; in the public realm, these interests are further qualified as *common* avowable interests.<sup>47</sup> They are interests based on 'co-operatively admissible considerations', that is, on reasons 'that anyone in discourse with others about what they should jointly or collectively provide can adduce without embarrassment as relevant matters to take into account'.<sup>48</sup> Note, however, that co-operatively admissible

<sup>45</sup> In reaction to critics, who reduced Pettit's account of arbitrariness to either purely formal or moralized (objectivist or subjectivist) accounts of arbitrariness, Pettit recently reformulated the criterion of arbitrariness in terms of 'uncontrolled interference', Pettit, *On the People's Terms*, p. 58. This rearticulation, however, does not imply a substantial modification of his account.

<sup>46</sup> For such a reading, see John Christman, 'Philip Pettit, Republicanism: A Theory of Freedom and Government', *Ethics* 109, no. 1 (1998), pp. 202–6; Henry Richardson, 'Republicanism and Democratic Justice', *Politics, Philosophy and Economics* 5, no. 2 (2006), pp. 175–200; Christopher McMahon, 'The Indeterminacy of Republican Policy', *Philosophy and Public Affairs* 33, no. 1 (2005) pp. 67–93.

<sup>47</sup> For this distinction, see Philip Pettit, 'The Determinacy of Republican Policy: A Reply to McMahon', *Philosophy and Public Affairs* 34, no. 3 (2006), p. 280.

<sup>48</sup> Pettit, *Theory of Freedom*, p. 156.



considerations are not good reasons in the demanding sense of mutually acceptable reasons. They merely identify an interest as rational against the background of a given set of common goals; all considerations, which are consistent with these goals, qualify as co-operatively admissible. Thus, it is actual rational interests and not good reasons, which are fundamental for the identification of arbitrariness and domination, in the private, as well as in the public, realm.

This interpretation is in line with Pettit's account of the normative core of domination that the notion of arbitrariness is meant to capture. However, just like the discursive status, his conception of arbitrariness proves insufficiently inter-subjective. On the one hand, it threatens to collapse into a subjectivist account of arbitrariness because it fails to specify procedural criteria that could serve as a basis for demanding collective action against domination. Where, to take Pettit's example, a widely shared religious belief supports the domination of women by their husbands, a state may not do anything about it so long as there is no common interest in addressing this kind of domination; otherwise, it would itself dominate.<sup>49</sup> Thus, we may identify traditional marriage as an instance of private domination; but Pettit's account leaves open the question of under which circumstances it has to be reduced through political action.<sup>50</sup> The problem of an unauthorized state may provide, as Pettit puts it, 'ground for republican complaints against the status quo'.<sup>51</sup> But it remains unclear on which basis such a protest should be voiced when, in a public sense, no arbitrariness is at play. Pointing to private domination as such does not seem to constitute sufficient grounds for collective action, as long as no corresponding common interest emerges.

On the other hand, Pettit's conception also risks falling prey to the problems of objectivist accounts. He conceives of the avowability of interests in terms of their rational consistency with a set of given common or private goals and standards. Markell criticizes that this implies that social power, which is directed at turning given, subjective, arbitrary interests into rational, non-arbitrary ones, does not count as domination itself. Thus, Pettit's account remains peculiarly uncritical of classic civilizatory justifications of imperialism that draw precisely on the concern about improving the allegedly uneducated, irrational imperial subjects.<sup>52</sup>

The deeper problem behind Markell's concern about paternalism is that Pettit's conception of arbitrariness reflects his account of the discursive status as the core of the notion of domination—and thus also its lack of reflexivity: it does not take into account that the very power to challenge given standards and expectations is crucial for the idea of non-arbitrariness. As Bohman emphasizes, non-arbitrariness does not merely refer to securing and defining a certain realm of choice: 'rather

<sup>49</sup> Pettit, 'The Determinacy of Republican Policy', pp. 282f.

<sup>50</sup> For this line of criticism, see also M. Victoria Costa, 'Freedom as Non-Domination, Normativity, and Indeterminacy', *Journal of Value Inquiry* 41, no. 2–4 (2007), p. 305.

<sup>51</sup> Pettit, 'The Determinacy of Republican Policy', p. 283.

<sup>52</sup> Markell, 'The Insufficiency of Domination', p. 16.

than the capacity to control others and resist having obligations imposed by another's will, it must be the power over the content of one's obligations and statuses.<sup>53</sup> Bohman refers precisely to what I have called *normative authority*. Pettit's conception of non-arbitrariness is obviously geared towards accounting for his rather thin idea of a discursive status. However, an account of domination that is sensitive to the normative authority of participants *and* remains critical vis-à-vis the status quo needs to strengthen the intersubjective dimension of the conception of arbitrariness. It requires a discourse-theoretical approach that accords the normative authority over what counts as non-arbitrary to those subjected, while still formulating procedural criteria as a standard for critique.

Such a discourse-theoretical conception of arbitrariness has been fleshed out by Rainer Forst. On his view, '[a]rbitrary rule or domination appears where persons are subjected to actions, norms or institutions without adequate justification, while the authority to determine what a "good" justification is rests with those subjected'.<sup>54</sup> From this perspective, arbitrariness is not a matter of a lack of structural guarantees for the consideration of certain interests. Rather, the issue of arbitrariness hinges on procedures for challenging and exchanging reasons. Hence, it is reasons, not interests, that serve as the basis of his conception of arbitrariness. In order to be able to distinguish between good and bad reasons, Forst identifies two procedural criteria, generality and reciprocity, that he develops recursively based on the validity claims of moral and political norms.<sup>55</sup> Given that such norms claim to be valid generally and reciprocally, they need to be justifiable in general and reciprocal terms. Otherwise, they will be deemed arbitrary, as their validity claims cannot be challenged by those who are subjected to them.

Forst's stronger, procedural intersubjectivist account approaches the question of arbitrariness in a reflexive way: every claim to general and reciprocal validity needs to live up to this claim within actual, general, and reciprocal practices of justification. This account captures the idea of domination as the denial of normative authority. It conceives of arbitrary power as power, which is itself not justifiable to those subjected to it, either because there simply are no procedures of general and reciprocal justification in place, or because the actual processes and results such procedures wield are rejectable on general or reciprocal terms. Thus, it resolves the problem of paternalism, as it entrusts the people themselves with the justification of non-arbitrary power. And yet, it also avoids the status quo bias Pettit's conception faces. While Pettit does not specify any criteria that distinguish between actually shared interests and relevant common interests, the

<sup>53</sup> Bohman, *Democracy across Borders*, p. 96.

<sup>54</sup> Forst, 'A Kantian Republican Conception of Justice as Non-Domination,' p. 155.

<sup>55</sup> Forst, *Right to Justification*, pp. 19f for moral norms and pp. 173–7 for political norms. Forst understands these criteria negatively: they refer to the reciprocal and general rejectability of reasons, not their acceptability. They provide a basis for sorting out those reasons that do not meet the criteria without anticipating a consensus on which reasons will prove to best meet them.

procedural criteria of generality and reciprocity provide a standard to which actually shared reasons can be held. In other words: the discourse-theoretical notion of arbitrariness is both critical and reflexive.

The criteria of generality and reciprocity can be further specified in a way that points towards the kind of institutions required in order to set up practices of justification. On the one hand, they show in what sense mere constraints on power secure non-arbitrariness in a merely formal sense. Applied to the form of norms, generality and reciprocity require that norms be general in that they apply to all and not particular persons (*formal generality*) and reciprocal in that they accord the same claims and obligations to everyone (*formal reciprocity*). On the other hand, they also provide the criterion for material non-arbitrariness. Non-arbitrary norms or decisions need to be based on reasons that cannot be generally and reciprocally rejected. Thus, they are required to be justified through procedures in which all those who are subjected to the norm in question enjoy equal chances to take part (*material generality*) and in which no one projects his or her own view on others or claims to speak in their interest (*material reciprocity*). In other words: the requirement of non-arbitrariness in a formal sense calls for a rule of law, while non-arbitrariness in a material sense points towards a form of self-legislation. To conclude, I will briefly highlight two institutional implications of my modified account of domination with regard to these crucial elements of realizing non-domination.

### 3. Kantian Institutional Implications

Structurally constituted forms of power require collective action to be transformed. They cannot be changed by individual agents alone for the simple reason that they are embedded in broader social structures, which are constituted and reproduced by a wide array of peripheral agents. Hence, realizing non-domination means establishing institutions that may fundamentally restructure the relations between persons by protecting their equal status. These institutions, however, must not become a source of domination themselves. They need to provide the possibility of addressing dominating power structures in a non-arbitrary way, both in a formal as well as in a material sense. To achieve this goal, Pettit proposes two institutional measures that he takes to be central to the Italian-Atlantic tradition of republicanism: the *mixed constitution* and the *contestatory citizenry*.<sup>56</sup> While the former is meant to guarantee a core aspect of the rule of law and thus formal non-arbitrariness, the latter points towards a particular conception of

<sup>56</sup> Philip Pettit, 'Two Republican Traditions', in *Republican Democracy: Liberty, Law and Politics*, eds. Andreas Niederberger and Philipp Schink (Edinburgh: Edinburgh University Press, 2013), p. 171; Pettit, *On the People's Terms*, pp. 220–9; see also Pettit, *Republicanism*, chap. 6.

democracy as a way of securing non-arbitrariness in a material sense. However, as I will suggest, both aspects need to be reconceived from the perspective of a more radically democratic, Kantian or Rousseauian line of republicanism so as to account for the modified conception of domination sketched above.<sup>57</sup>

The Roman idea of a mixed constitution that Pettit puts forward as a guarantee for the rule of law is based on the idea of dispersing power so as to avoid undue concentrations of power that would open the door to personal manipulations.<sup>58</sup> The division of power allows for mechanisms of checks and balances, as various centres of power compete with one another. In this sense, the mixed constitution 'requires separation of powers, a sharing of powers and a balancing of powers'.<sup>59</sup> Pettit also conceives of the separation of the legislative, the executive, and the judiciary along these lines. In spite of being charged with different functions, the relation between the three branches of government is primarily characterized through the horizontal competition and mutual control between them. The mechanism that is supposed to secure formal arbitrariness is not the functional differentiation as such, but rather the division into rivalling centres of power.

However, against the background of the modified conception of domination as sketched above, it seems doubtful as to whether the mixed constitution, with its central idea of a division and balance of power, may contribute to establishing an institutionalized practice of non-domination. First, a mere balance of power is unable to address structural sources of domination. It remains contingent on the fragile balance between centres of power—without ever questioning the sources of those powers. In the Ancient republics, the mixed constitution referred to a balance of power between the three constitutional models, i.e. monarchy, aristocracy, and democracy, each of which was supposed to represent one social group among the population. In trying to balance these social groups, it left the social divisions on which society was based entirely unchanged. It is no coincidence that the idea of conceiving of the separation of powers along the lines of a mere balance of powers was a key idea in seventeenth- and eighteenth-century post-revolutionary England, where the model of a 'balanced constitution' tried precisely to appease revolutionary claims inspired by a functionalist separation of powers by integrating them in the inherited model of the mixed constitution.<sup>60</sup>

Second, the ideal of a horizontal balance of power remains itself arbitrary in a very important sense. It requires checks and balances between different centres of power, including the three branches of government, who control each other. That, however, implies compromising a crucial mechanism for securing formal

<sup>57</sup> In what follows I will concentrate on a Kantian account as that fits directly with my argument about normative authority.

<sup>58</sup> See Pettit, *On the People's Terms*, p. 223; Pettit, *Republicanism*, p. 178.

<sup>59</sup> Pettit, *On the People's Terms*, p. 221.

<sup>60</sup> See M. J. C. Vile, *Constitutionalism and the Separation of Powers*, 2nd ed. (Indianapolis, IN: Liberty Fund, 1998), chap. 3.

generality: the strict separation between the application of the law in particular cases and the formulation of general norms. If all branches control each other, holding each other in check, the distinction between these different kinds of reasoning cannot be upheld. Mixing the rationale of formulating general and reciprocal laws with that of applying them to particular cases means precisely jeopardizing formal generality.

Securing formal non-arbitrariness, in contrast, requires a vertical, *functional separation of powers* as advocated in the Kantian or Rousseauian line of republicanism.<sup>61</sup> In this more radically democratic model (linked to the notion of popular sovereignty that I will come back to in a moment), which played a key role in the American, the French, and the Haitian revolutions,<sup>62</sup> the executive and the judiciary are strictly bound to a mere application of general norms to particular cases, as they are not authorized to make general rules. The legislative power, in turn, is supreme in that it alone formulates the law. However, it is limited to this function and may not apply the law; otherwise, particularistic reasoning would threaten the generality of the law. Therefore, the three branches may not check each other or share and mix their powers; rather, their tasks remain strictly separate. Only then can the generality of the law be preserved and non-arbitrariness in a formal sense secured.

The defence of a functional separation of powers, in turn, is closely linked to the second institutional implication I would like to highlight. It refers to material non-arbitrariness, that is to how the content of the law is determined—and thus to democracy, broadly speaking. Pettit's account of democracy has famously highlighted the crucial role of contestation.<sup>63</sup> For a critical approach, this emphasis on contestation is important because it assigns the citizens a decisively critical role and draws attention to the importance of opening up spaces for protest, as well as of a citizenry that is committed to protest. This is what the notion of a 'contestatory citizenry' emphasizes.<sup>64</sup> Interestingly, Pettit maintains that this crucial role of citizens does not imply a 'romantic idea of participatory,

<sup>61</sup> Immanuel Kant, *Toward Perpetual Peace*, 8: 349–53; Immanuel Kant, *Metaphysics of Morals*, 6: 313–18 (references to volume and page number refer to the Prussian Academy Edition of Kant's *Gesammelte Schriften*, I have used the translation in *Practical Philosophy (The Cambridge Edition of the Works of Immanuel Kant)*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996)). For a discourse-theoretical interpretation of this rationale, see Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996), chap. 4.3; and for a systematic discussion of the two models, see Peter Niesen, 'Volk-von-Teufeln-Republikanismus: Zur Frage nach den moralischen Ressourcen der liberalen Demokratie', in *Die Öffentlichkeit der Vernunft und die Vernunft der Öffentlichkeit: Festschrift für Jürgen Habermas*, eds. Lutz Wingert and Klaus Günther (Frankfurt am Main: Suhrkamp, 2001), pp. 568–604.

<sup>62</sup> See Vile, *Constitutionalism and the Separation of Powers*, chaps 6 and 7.

<sup>63</sup> Pettit, *Republicanism*, pp. 183–205; Philip Pettit, 'Democracy, Electoral and Contestatory', in *Designing Democratic Institutions*, Nomos XLII, eds. Ian Shapiro and Stephen Macedo (New York: New York University Press, 2000), pp. 105–44.

<sup>64</sup> Pettit, *On the People's Terms*, pp. 225–9.

Rousseuvian engagement.<sup>65</sup> Rather, it is the representative system that provides the key for securing material non-arbitrariness. It is the representatives who, incentivized through elections, are to look for relevant common interests of the citizens and to generate corresponding policy proposals.<sup>66</sup> The contestatory citizenry merely plays the role of watchdogs who may trigger a review of this process if the suggestions of representatives go wrong.<sup>67</sup>

This somewhat modest, indirect account of contestatory democracy is perfectly in line with Pettit's notion of the discursive status and the corresponding conception of arbitrariness; after all, all that matters is to make sure that public power is forced to track the avowable interests of those subjected. However, from the perspective of the reflexive, discourse-theoretical account of domination as proposed above, Pettit's view falls short of securing non-domination in a material sense. In fact, it risks condoning paternalistic forms of domination: the less people can participate, the more arbitrary a power structure is because generally and reciprocally non-rejectable reasons can only be identified within actual practices of general and reciprocal justification. Hence, it is through bottom-up general and reciprocal participation, not through representation as such (combined with contestation), that arbitrary forms of power can be overcome. In other words, the status as normative authorities requires more than merely being able to defend a sphere of individual freedom of choice; the addressees of the law also have to be able to see themselves as authors of the law.<sup>68</sup> That means a critical republican needs to draw on the more radical, Kantian-Rousseauian notion of *popular sovereignty* that is closely connected to the idea of a functional separation of powers.

Pettit rejects both; he sees popular sovereignty and the functional, hierarchical separation of powers as evoking an absolutism in the tradition of Bodin and Hobbes that calls for a supreme and uncontestable power.<sup>69</sup> But, as Maus has highlighted, in the Kantian line of republicanism, the ideas of popular sovereignty and functional separation of powers are notions in legal, not in political, theory.<sup>70</sup> Popular sovereignty does not refer to unlimited political power but rather to the exercise of legislative power by the people. It is precisely this legislative function which is supreme—and limited because legislative power only refers to the formulation of general norms, not to their application. This is why it is indivisible and inalienable. It has to remain with the people as a whole and cannot be delegated to the executive or judiciary because they are charged with applying the law

<sup>65</sup> Ibid., p. 227.

<sup>66</sup> Philip Pettit, 'Democracy, Electoral and Contestatory', p. 125.

<sup>67</sup> Philip Pettit, 'Republican Freedom and Contestatory Democratization', in *Democracy's Value*, eds. Ian Shapiro and Casiano Hacker-Cordón (Cambridge: Cambridge University Press, 1999), pp. 179f; Pettit, 'Democracy, Electoral and Contestatory', pp. 117ff.

<sup>68</sup> Habermas, *Between Facts and Norms*, p. 120.

<sup>69</sup> See Pettit, 'Two Republican Traditions'.

<sup>70</sup> See, for this point, Ingeborg Maus, *Zur Aufklärung der Demokratietheorie: Rechts- und demokratietheoretische Überlegungen im Anschluß an Kant* (Frankfurt am Main: Suhrkamp, 1992); Ingeborg Maus, *Über Volkssouveränität: Elemente einer Demokratietheorie* (Berlin: Suhrkamp, 2011) chap. 4.

and thus concerned with particular cases rather than formulating general rules. Note that this emphasis on popular sovereignty as a legislative power does not rule out representative systems; nor does it speak against a multilevel form of legislation of a federal kind. It may be realized in various institutional forms. However, it does speak against any institutional arrangement that severs the direct link between the legislative power and its social basis.

Given the discourse-theoretical underpinnings of my account of domination, this idea of popular sovereignty is to be cashed out in a participatory and deliberative sense.<sup>71</sup> Contestatory mechanisms certainly remain crucial, but they also have to be reconceived in a participatory way. If they are to secure the normative authority of all those subject to public power, the mere power to trigger a review is not sufficient. As Bohman has emphasized, contestatory power needs to include the power to initiate new deliberations and, thus, to politicize matters that have not been on the agenda at all.<sup>72</sup> Otherwise, certain power relations can be shielded from critical challenges and thus, by definition, remain arbitrary. In other words, both participation and contestation have to be understood in a reflexive way. The institutional implications I have highlighted, the functional separation of powers and popular sovereignty, do not provide an institutional blueprint. A practice of non-domination based on these ideas requires not so much a particular model of democracy, but rather a reflexive process of democratization, and that means creating conditions for continuously challenging the claim to non-arbitrariness.<sup>73</sup>

#### 4. Conclusion: Towards a Critical Republicanism

To conclude, let me briefly summarize my argument. I showed that, with regard to all three most important elements of a republican theory of non-domination, its normative core, the conception of domination, and its institutional implications, Pettit's neo-republicanism provides appealing critical potential, though it has to be modified in order to fully develop it. First, the discourse-theoretical underpinnings of Pettit's theory of non-domination tie in nicely with a critical approach. However, the discourse-theoretical aspect needs to be strengthened so as to include not just a discourse theory of practical rationality, but also the reflexive dimension of practical justification. Second, the notion of domination articulates a crucial concern with a systematic kind of power asymmetry. However, developing this power-critical potential requires, on the one hand, highlighting

<sup>71</sup> See Gädeke, *Politik der Beherrschung*, chap. 6, for a more a detailed account.

<sup>72</sup> See Bohman, *Democracy across Borders*, pp. 53f.

<sup>73</sup> Cf. *ibid.*, p. 36; Bohman, however, emphasizes the democratic perspective, whereas I emphasize the perspective of non-domination.



the structurally constituted nature of both interpersonal and systemic domination. Such a structural analysis of dominating power may not only resolve a certain tension in Pettit's own account; it also strengthens its critical potential because it provides the conceptual tools for critical social analysis, which is geared towards understanding social conditions and relations on a more structural and systemic level rather than merely in social interactions. On the other hand, the conception of arbitrariness needs to reflect the reflexive dimension of what I called normative authority. Pettit is right in suggesting an intersubjective conception, but it needs to be reinterpreted in a discourse-theoretical way in terms of general and reciprocal justification, so as to provide criteria for critically assessing given interests. Finally, Pettit's conception of democracy opens up space for disagreement and protest, which is an important part of any critical approach that aims to transform social power. Yet, the rule-of-law component requires a strict separation instead of a mere balancing of powers, so as to reflect the structural dimension of domination while the model of contestatory democracy needs to be transformed into a more participatory approach that can account for the reflexive conception of arbitrariness.

By calling this approach 'critical republicanism,' I do not claim to do full justice to the Frankfurt School's Critical Theory, with its ambition to provide a comprehensive social theory, critique of reason, and philosophy of history. Neither do I claim to provide the best interpretation of the republican tradition. My interest is primarily systematic, not historical. I consider critical republicanism, as sketched above, to be republican, not only because it starts from Pettit's neo-republicanism and its central concern with domination, conceived of as relations of arbitrary power; it also draws on the more radical, Kantian republican tradition, with its emphasis on normative authority, popular sovereignty, and the separation of powers that has, reinterpreted intersubjectively, crucially influenced discourse theory. At the same time, critical republicanism is critical in the broad methodological sense of pursuing a double objective; a social analytical and a normative one. It aims to analyse relations of domination in actual political and social struggles, drawing particular attention to their structural and systemic dimension in order to reveal how they are socially produced and reproduced and to identify unrealized potentials of overcoming them. Thus, it aims for a normative reflection that is socially and historically contextualized and motivated by the striving for emancipation from dominating forms of power.<sup>74</sup> In this endeavour it is guided by the awareness that political philosophy itself is socially situated—and thus part of potentially dominating power structures. This is why it seeks to identify normative resources to transcend relations of domination without passing over the normative authority of those engaged in these

<sup>74</sup> Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), p. 5.

practices. And as such, it seems well suited to tying in with the more radical strands of republicanism in order to provide the conceptual tools for a critique of contemporary forms of dominating power, whether in the political, the economic, or the cultural realm.<sup>75</sup>

<sup>75</sup> A first draft of this chapter was presented at the 'Critical Normativities Seminar Series' (2014) and the international conference 'Meanings of (Non-)Domination' (2015), both at Goethe-Universität Frankfurt, the 'International Colloquium on Justice, Democracy and Political Emotions' at Universidade Federal de Pernambuco (2015), and at the international conference 'The Future of Republicanism' at York University (2017). I am grateful to the audiences for helpful comments. Special thanks to Bruno Leipold and Stuart White for their critical reading of the manuscript.