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Book Review [Republicanism: A Theory of Freedom and Government]

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BOOK REVIEW

THE REPUBLICAN MANIFESTO

Republicanism: A Theory of Freedom and Government.
By Philip Pettit. New York, Oxford University Press, 1997.
Pp. 304. Hard Cover. \$29.95

*Reviewed by Mortimer Sellers**

The United States Constitution provides that the federation shall guarantee a “[r]epublican [f]orm of [g]overnment” to every state in the Union.¹ This makes republicanism one of the guiding principles of American law, to be imposed, by force if necessary, whenever states depart from their republican foundations. Yet despite its central position in American constitutional law, the republican guarantee has become an ideological cipher, used to mean anything or nothing and generally ignored by judges and lawyers, or misapplied by legal academics.² Now at last Philip Pettit’s new book on Republicanism examines republican government from a sound historical perspective, illuminating the republican guarantee in the light of contemporary philosophical insights, and suggesting what republican ideals require, applied to modern problems.

Pettit does not waste much space on history, because his purpose is normative, but his short first historical chapter

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1. U.S. CONST. art. IV, § 4.

2. See G. Edward White, *Reflections of the “Republican Revival”*: *Interdisciplinary Scholarship in the Legal Academy*, 6 YALE J.L. & HUMAN. 1 (1994); Daniel T. Rodgers, *Republicanism: The Career of a Concept*, 79 J. AM. HIST. 11 (1992) (critizing the use of republican terminology by law school academics).

justifies the rest of the book by explaining clearly and succinctly what republicanism is and has been through the ages.³ Recent American academic and law school discussions have sometimes implied that Aristotle,⁴ Sparta,⁵ or Athenian democracy⁶ were in some sense models of republican government in the United States and elsewhere.⁷ Pettit correctly insists that republican allusions always evoked the primordial conception of liberty, or *libertas*, of the world's first *res publica* in Rome.⁸

Republican liberty requires that governments must never intervene in private lives, except to serve the common good (*res publica*) of the people.⁹ Pettit demonstrates that republics secure liberty for their citizens as "non-domination," protecting all equally against arbitrary interference by self-interested groups, individuals or the state.¹⁰ He usefully distinguishes more recent Hobbesian conceptions of liberty as license, or the absence of restraint, from the older republican tradition of liberty through law.¹¹ This differs from simple democracy or tyranny of the majority in not being populist, homogenous, or even necessarily communitarian.¹² The state is not the servant of the people, but their trustee, acting faithfully in the interests of all.¹³

Pettit's Project

Pettit's argument begins (chapter 1) with a history of the republican conception of liberty, culminating in its greatest

3. Cf. M.N.S. SELLERS, *Republican Liberty*, THE JURISPRUDENCE OF LIBERTY (Moens and Ratnapala, eds., 1996).

4. Frank I. Michelman, *The Supreme Court 1985 Term, Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1986).

5. PAUL A. RAHE, *REPUBLICS ANCIENT AND MODERN: CLASSICAL REPUBLICANISM AND THE AMERICAN REVOLUTION* (1992).

6. MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* (1996).

7. These views probably derive from misreadings of J.G.A. POCOCK, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975).

8. M.N.S. SELLERS, *AMERICAN REPUBLICANISM: ROMAN IDEOLOGY IN THE UNITED STATES CONSTITUTION* (1994).

9. PHILIP PETTIT, *REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT*, at vii (1997).

10. *Id.* at vii.

11. *Id.* at 5.

12. *Id.* at 8.

13. *Id.* at 9.

triumph in the American Revolution. He goes on (chapter 2) to develop a philosophy of freedom as non-domination, distinguishing republican liberty from later Hobbesian constructions of freedom as non-interference. This lays the groundwork for a broader application of liberty (chapter 3) to the project of designing a state. Pettit sets out to explain (chapter 4) the egalitarian and communitarian appeal of republican political and legal institutions. Such institutions will act (chapter 5) to restrain private power, which Pettit calls "*dominium*," as well as public power (chapter 6), which Pettit calls "*imperium*." This requires certain regulating checks and balances (chapter 7) to keep the system stable, although Pettit concludes (chapter 8), that republican institutions will not be enough in themselves. To succeed they also need the support of virtue, which is to say, of embedded republican attitudes in society at large.

The project as a whole falls into two parts. First (Part I), Pettit must identify what republican freedom is. Then (Part II), having done so, he explores the political and legal institutions that secure republican government in a just and stable commonwealth, or free state. Applied to United States constitutional discourse, Part I corresponds to the Preamble and XIVth Amendment: what it is to "secure the blessings of liberty to ourselves and our posterity"¹⁴ or "deprive any person of . . . liberty."¹⁵ Part II corresponds to the body of the Constitution, guaranteeing a "republican form of government" to every state in the Union.¹⁶ Neither makes sense without the other. Republican governments secure liberty. Liberty defines republican government. This is why, as George Washington observed when he inaugurated republican government under the United States Constitution, "the sacred fire of liberty and the destiny of the republican model of government, are justly considered as deeply, perhaps as finally, staked on the experiment entrusted to the hands of the American People."¹⁷

14. U.S. CONST. preamble.

15. U.S. CONST. amend. XIV.

16. U.S. CONST. art. IV, § 4.

17. George Washington, The First Inaugural Speech (April 30, 1789), in GEORGE WASHINGTON: A COLLECTION, at 462 (W.B. Allen ed., 1988).

Republican Liberty Defined

Republican liberty, as Pettit (correctly) defines it, requires immunity from arbitrary power.¹⁸ Pettit repeats Tom Paine's definition of arbitrary state power as the power in public officials to act with themselves, "and not the *res-publica*," as their object.¹⁹ So "[e]very government that does not make the *res-publica* its whole and sole object, is not good government" and "republican government is no other than government established and conducted for the interest of the public."²⁰ Pettit considers governments arbitrary that have the power to impose their will contrary to the public good, whether or not they exercise this power. It is the lack of constraint that makes power arbitrary.²¹ Republics must be "empire[s] of laws, and not of men."²²

Law professors, judges and lawyers have tended to lose sight of the purposes of America's constitutional experiment. They casually adopt a new vocabulary of "negative" liberty first advanced (as Pettit shows) by opponents of the American Revolution.²³ This replaced the original republican conception of liberty as non-domination with a new conception of liberty as non-interference.²⁴ Such profound changes in meaning entailed corresponding changes in the law, or rather in academic and judicial perceptions of the relationship between liberty and the law.²⁵ The original sense of liberty required law for its existence, since laws create the freedoms that citizens share. As John Locke observed against Sir Robert Filmer: "the end of law is not to abolish or restrain, but to preserve and enlarge freedom," by protecting citizens against the violent impositions of their fellow human beings.²⁶

Recent liberal philosophers, rejecting Locke's viewpoint,

18. PETTIT, *supra* note 9, at 51.

19. *Id.* at 56, (quoting THOMAS PAINE, "THE RIGHTS OF MAN: PART II," reprinted in POLITICAL WRITINGS 168 (Bruce Kuklick ed., Cambridge Univ. Press 1989)).

20. *Id.* at 29-30 (cited and partially quoted in Pettit).

21. *Id.* at 55.

22. *Id.* at 39 (quoting JAMES HARRINGTON, THE COMMON WEALTH OF OCEANA AND A SYSTEM OF POLITICS 8 (J.G.A. Pocock ed., Cambridge Univ. Press 1992)).

23. PETTIT, *supra* note 9, at 35-41.

24. Cf. M.N.S. SELLERS, THE SACRED FIRE OF LIBERTY: REPUBLICANISM, LIBERALISM, AND THE LAW (1998).

25. PETTIT, *supra* note 9, at 35-41.

26. JOHN LOCKE, TWO TREATISES OF GOVERNMENT, at II.57 (1690).

have embraced the doctrine of Hobbes and Filmer, to view liberty as the absence of restraint, and all law as a "fetter" on freedom.²⁷ Pettit's book makes the interesting point that such attitudes were never widely accepted or popular until Lord North's propagandist, John Lind, introduced them to the British public as part of that government's pamphlet campaign against the United States.²⁸ Jeremy Bentham, also an opponent of the American and French revolutions, insinuated similar vocabulary into nineteenth-century liberalism,²⁹ from which it passed to contemporary liberals such as Isaiah Berlin.³⁰

Since liberty means government by laws that serve the common good, procedures for making and executing the laws necessarily determine the existence (or non-existence) of a republic. This explains the importance of constitutions and forms of government to so many republican thinkers. Republics require public discussion.³¹ There must be democratic procedures.³² But the central value of republican liberty is government for the common good, and consequent protection against the domination of others. Democracy and discussion are republican only to the extent that they protect citizens against the arbitrary will of government officials.³³ Pettit argues that actual consent by the citizens is much less important to republican government than their general ability to contest decisions of the state,³⁴ when state decisions violate the common good.³⁵

Pettit's Mistake

Nothing contributes more to understanding difficult questions of law and philosophy than to read something that is right, elegant and convincing in almost every detail, and then to look for mistakes. Not that the author will necessar-

27. *E.g.*, Isaiah Berlin, *Two Concepts of Liberty: An Inaugural Lecture*, Delivered before the Univ. of Oxford on (Oct. 1958), in *TWO CONCEPTS OF LIBERTY*, at 8 n.2 (Oxford Univ. Press 1958).

28. PETTIT, *supra* note 9, at 42-44.

29. *Id.* at 49.

30. *Id.* at 50.

31. *Id.* at 56.

32. *Id.* at 27.

33. PETTIT, *supra* note 9, at 30.

34. *Id.* at 61-63.

35. *Id.* at 68.

ily be mistaken, but disagreement reveals new areas for study, and clarifies one's own perceptions. Pettit's understanding of liberty and its republican origins cuts through the confusion of decades with short sharp strokes of erudition. His exposition of liberty in modern language is clear and correct. Yet this very clarity undermines Pettit's subsequent restatement of non-domination as a political ideal, because it reveals how much he concedes to the Benthamite doctrine of liberty as non-interference that he first set out to refute. This strikes me as a mistake. Liberty as a political ideal must begin and end with its theory of state action. Pettit digresses when he speaks of maximizing autonomy, or the right to be left alone.³⁶

This happens when Pettit makes freedom as non-domination his supreme political value.³⁷ Liberty should be supreme, but not in the sense that he implies. The confusion arises from viewing liberty as "the chiefest good of civil society."³⁸ This makes liberty seem to be a good to be sought by civil institutions, comparable to other goods protected by government, and possibly at odds with them. This cannot be true if liberty means government by laws in pursuit of the common good. Liberty is not a good but a status. Liberty is what citizens enjoy when government serves the common good. The common good must be found through some separate procedure. Liberty is not a good in itself, but a guarantee that magistrates will act to serve the public good and only to serve the public good. Liberty means independence from domination by the arbitrary will of others. To make liberty itself the measure of what is arbitrary would be meaningless circularity.

Domination happens in two ways. The state can dominate its subjects and private groups or individuals can dominate their fellow citizens. Those who accept the Hobbesian conception of liberty as non-interference will say that domination occurs in either case whenever the state or some other power imposes restrictions on individual action. Pettit insists (rightly) that states do not dominate when they restrict

36. See *id.* at 80-109. Chapter 3 is entitled "Non-domination as a Political Ideal."

37. *Id.* at 80.

38. *Id.* at 80 (quoting W.B. GWYN, *THE MEANING OF THE SEPARATION OF POWERS* 88 (1965)).

individuals through law, in pursuit of the common good. But neither do individuals, when they act lawfully. Not all influence is domination. Pettit seems to imply in his discussion of non-domination as a political ideal that restricting interference by one individual in the affairs or interests of another necessarily increases the liberty of the one protected. This is not so, unless interference violates the canons of fair cooperation or, more precisely, laws (or standards) established by republican deliberation in pursuit of the common good.

Liberal theory usually endorses autonomy as the most important good or value, insisting that individuals should control their own lives as much as possible. Benthamite vocabulary views "liberty" in this way as the unfettered pursuit of one's own private goals. Pettit would not want to say this, but he seems to imply as much when he discusses government's role in stopping private domination. Non-interference is a good. It may be a valuable good, but it is only one of many goods to be measured against the public interest. Republics study human nature to create laws in the interests of all members of society. Such laws may serve to expand autonomy from fellow citizens or the state. But they may also restrict autonomy in the service of liberty, which depends on the public good.

Liberals often argue that people should be able to do whatever they want provided that they do not "harm" one another.³⁹ Republicans believe that people should be able to do whatever they want so long as they do not violate laws (or social values) that serve the "common good." In some ways "the common good" and "harm" are equivalent terms. A Benthamite might say that so long as I have not "harmed" you, then I have not interfered with you, in any judicially cognizable way. The difference is that republican doctrine supplies techniques for determining what constitutes the common good. Liberal theory lacks any recognized measure of what will count as harm, or improper interference in the private affairs or liberty of others.

Pettit understands that republican liberty derives from the common good, but he usually does not put it this way,

39. JOHN STUART MILL, *ON LIBERTY: WITH THE SUBJECTION OF WOMEN AND CHAPTERS ON SOCIALISM*, at 13 (Stefan Collini ed., Cambridge Univ. Press 1989).

preferring to write in terms of “non-domination,” the absence of “arbitrary” power, or simply of “liberty,” unadorned. This makes it easier to forget liberty’s dependence on the common good. Without government for the common good there is no liberty. When laws advance the common good, then liberty is secure. The measure of private domination is a public determination of what should be the law. Interference in the lives of others is not domination, so long as it respects the spirit and the letter of the law. Non-interference may be a desirable and valuable good, but it is only one good among many others, to be valued through a republican calculus, reflected in the laws of the state.

Preventing Domination

Pettit would probably agree with these statements. Yet his primary rhetorical emphasis on the idea of “non-domination,” rather than the common good, obscures the necessary relationship between the legitimate private power of individuals and the legitimate public power of the state. When non-domination replaces non-interference as the freedom-lover’s ideal, the state will be more likely to step in to correct private imbalances of power in the family, the workplace and many other social institutions where traditional arrangements allow oppression of the weak by the strong.⁴⁰ Freedom as non-domination is consistent with a high level of non-arbitrary interference of the sort that laws might tolerate (or impose). Coercion does not always impede freedom in a republican system of liberty under law.⁴¹

Advancing one group’s freedom from domination means reducing another’s capacity for arbitrary interference in their lives.⁴² Of course, this requires a definition of what will count as “arbitrary.” For republicans, arbitrariness will be measured by the common good. Pettit generally prefers to write more obliquely of “expressing every citizen’s voice in society.” He insists that citizens’ views should be taken into account, and overborne only when there is some independent reason to do so.⁴³ This may be so, but only because inclusive public deliberation is the best available technique for finding or con-

40. PETTIT, *supra* note 9, at 78.

41. *Id.* at 84.

42. *Id.* at 86.

43. *Id.* at 91.

structing the common good. When voices are ignored, or overborne for private reasons, mistakes about justice will be made. Republics offer systems for making use of everyone's perceptions fairly to achieve the common goal.⁴⁴

Republican states act only to secure or create the common good of humanity. Put another way (Pettit's way) this means designing institutions to maximize people's enjoyment of freedom as non-domination.⁴⁵ Republican constitutions (by definition) prevent domination better than any available rival institutions, because they act best to serve the common good.⁴⁶ Pettit rightly insists that contemporary republicanism must protect everyone equally from domination—not just the small elite of property-owning citizens favored in late republican Rome.⁴⁷ He hopes that this idea will appeal across boundaries of race, religion, gender and the various other subcultures of modern pluralist society.⁴⁸ If not, politics must become (or remain) a simple exercise through which the strong, or the majority, impose their views on the rest.

Republican ideals assume a teleological conception of politics. The constitution's aim must be to serve the common good, through whatever structures do this best. Pettit recognizes this by showing how "rights" and other absolute prohibitions on republican governments derive their validity from the requirements of republican non-domination, applied to human nature. They are not fundamental norms themselves, but depend instead on the ultimate political imperative of preventing domination.⁴⁹

Republican constitutions prevent domination by serving the common good. Republics stop their citizens from imposing private desires on others when this would harm the common good. Pettit compares good institutions to antibodies against disease. Republican forms of government constitute liberty because they prevent the infection of domination in the state.⁵⁰ So democracy (for example) is not what makes a republic, although republican government cannot exist

44. *Id.* at 92.

45. PETTIT, *supra* note 9, at 95.

46. *Id.* at 95.

47. *Id.* at 96.

48. *Id.* at 97.

49. *Id.* at 101.

50. *Id.* at 108.

without it.⁵¹ It is just one element in the republic's inoculation against corruption and self-interest.

Republican Institutions

The first aim of republican institutions, as Pettit explains them, should be to prevent "*dominium*." By this he means domination exercised through arbitrary private power.⁵² What counts as arbitrary will depend on various contingent social circumstances, related to the common good.⁵³ Generally speaking, avoiding subjection in private life mandates a generous distribution of basic resources, to prevent dependency and the opportunities for coercion engendered by poverty and need.⁵⁴ People acting from dire necessity are not free.⁵⁵

Immunity or security against interference on an arbitrary basis confers power⁵⁶—the power of "independence."⁵⁷ Independence of this kind does not mean separation from others, as some liberal theories would imply, but rather independence in the sense of not being dependent upon any other person's naked will. Republican doctrine assumes the existence of common ground—a common good to be sought and implemented for the benefit of all members of society. Liberty is the status secured when states regulate all citizens equally in pursuit of the common good.⁵⁸

In preventing private domination or *dominium*, however, states necessarily run the risk of imposing public domination, or "*imperium*," to use Pettit's vocabulary.⁵⁹ Republics prevent *dominium* by state intervention, controlling private actions. But in defining and punishing *dominium*, state power may itself become arbitrary and exercise improper *imperium*, to the detriment of freedom. This way of talking soon becomes confusing because there is nothing inherently wrong with

51. See Mortimer Sellers, *Republican Principles in International Law*, 11 CONN. J. INT'L. L. 403 (1996). See also Mortimer Sellers, *Republican Impartiality*, 11 OXFORD J. LEGAL STUD. 273 (1991).

52. PETTIT, *supra* note 9, at 146.

53. *Id.* at 147.

54. *Id.* at 160.

55. *Id.*

56. *Id.* at 69.

57. PETTIT, *supra* note 9, at 71.

58. *Id.* at 80.

59. *Id.* at 171.

state power or with private power. The question really should be in which circumstances does *dominium* or *imperium* violate the common good? Institutions set up to curb dangerous private power run the risk of imposing arbitrary public power, unless constrained by a properly calibrated republican frame of government.

The greatest value of the republican tradition derives from centuries of discussion and experiment dedicated to determining which forms of government serve the common good best, while controlling arbitrary power. Most governments recognize their duty to serve the common good and claim to do so. Republican authors and experience long since established that this will not be possible without certain specific constitutional controls. As John Adams observed in advocating the form of government eventually adopted in the United States Constitution: "the principles and construction of free governments . . . were as well understood at the time of the neighing of the horse of Darius, as they are at this hour."⁶⁰ Pettit repeats them again: first, there must be the rule of law; second, government must maintain a separation of powers; and third, these separate powers must be controlled by structural checks and balances to prevent any single faction, including a democratic majority, from seizing control of the state.⁶¹

The rule of law condition requires republics always to act, as much as possible, through law-like decisions.⁶² Pettit does not pretend that judges or other public magistrates can or should entirely avoid the exercise of discretion, but wants discretion circumscribed to serve the public good,⁶³ and so to prevent the imposition of anyone's "inconstant, uncertain, unknown, arbitrary will."⁶⁴ The separation of powers condition—"dispersion of power"—makes it difficult for any one person or group to seize arbitrary power over others. This requires separating legislative, executive and judicial power, but also bicameralism, and other restrictions on localized

60. 1 JOHN ADAMS, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICAN at ii (London, 1787).

61. PETTIT, *supra* note 9, at 173.

62. *Id.* at 174.

63. *Id.* at 176.

64. *Id.* (quoting MARY ASTELL, THE FIRST ENGLISH FEMINIST: REFLECTIONS UPON MARRIAGE AND OTHER WRITINGS 76 (Bridget Hill ed., 1986)).

power.⁶⁵ Checks and balances—"the counter-majoritarian condition"—exist to perpetuate these restrictions and separation. Republican popular sovereignty risks threats to justice from the people or a majority. So Pettit sees it as a central purpose of the courts to protect constitutional stability against the democratic excesses and passions of the people.⁶⁶

Democracy

Republican government has always been understood to require popular sovereignty—"imperium populi"—through which all laws and magistrates depend on votes by the people.⁶⁷ No glory was greater in Rome than to have protected the "liberty and sovereignty of the people." But as Madison insisted in his tenth and fourteenth Federalist letters, republican popular sovereignty does not mean democracy.⁶⁸ The purpose of human society should be to bring each individual's private good into harmony with every other's.⁶⁹ Democratic majorities will not necessarily do this.⁷⁰ As Pettit explains it, republican institutions must harness democracy to serve the public, rather than some private good, so that public decision-making tracks the interests and ideas of all the citizens that it protects.⁷¹

Democracy, in its strictest sense, means rule by the people. Pettit would redefine republican "democracy" as the ability to contest decisions that violate one's interests. "Decision-maker's [should be] accountable to the ordinary people whom they affect"⁷²—not necessarily through elections. Pettit would wish all citizens to have the opportunity, voice and a forum in which to contest public decision-

65. PETTIT, *supra* note 9, at 177-78.

66. *Id.* at 180-81.

67. M. TULLI CICERO, PHILIPPICAE, I.iv.8 ("[D]ecrevit Sentus D. Brutum optime de re publica mereri, cum senatus auctoritatem populique Romani libertatem imperiumque defenderet.").

68. THE FEDERALIST NO. 9, at 126-27, 140-41 (James Madison, Alexander Hamilton, John Jay) (Isaac Kramnick ed., London, 1987).

69. M. TULLI CICERO, DE OFFICIIS III.vi.26. ("Ergo unum debet esse omnibus propositum, ut eadem sit utilitas unius cuiusque et universorum.").

70. M. TULLI CICERO, DE RE PUBLICA III.xxxiii.45. ("Ac nullam quidem citius negaverim esse rem publicam, quam istam, quae tota plane sit in multitudinis potestate.").

71. PETTIT, *supra* note 9, at 184.

72. *Id.* at 186.

making.⁷³ This does not mean the ability simply to assert one's interests, but rather the opportunity to participate in public deliberations that determine the general benefit of the whole community.⁷⁴ The whole community must participate in these deliberations to find solutions that truly serve everybody.⁷⁵

Here Pettit proposes to reconcile republican democracy with multiculturalism, by allocating seats in the legislature in some way that will capture the views of every significant social, cultural or hereditary faction.⁷⁶ The administrative and judicial arms of government (he suggests) should similarly embrace representatives of "the major stakeholder groupings."⁷⁷ Such provisions would seem to violate the usual republican purposes of fraternity, harmony and convergence by institutionalizing various self-interested mediating "social movements" or alliances. Pettit hopes that by allocating representation on the basis of prevailing social distinctions, he will empower important voices that might otherwise be lost to the debate.⁷⁸

Pettit's emphasis on "voice" reiterates the importance of including all citizens in the public good sought by the state. This implies broad confidence in human abilities to participate in and contribute to public debate and runs counter to Pettit's endorsement elsewhere of government by autonomous, professionally informed bodies that are "not exposed to the glare and the pressure of public debate."⁷⁹ Republicanism embraces democratic deliberation as a vehicle for finding or creating a common interest. This means that every voice should be heard and taken seriously, but not that every argument must be accepted or acted on. Pettit recognizes that reasonable people often differ, so that someone must be overruled.⁸⁰ Democratic deliberation helps citizens to make such choices well, so long as republican structures of government guide debate towards satisfying the common good. "[T]he democratic process is designed to let the requirements of rea-

73. *Id.* at 187.

74. *Id.* at 188-89.

75. *Id.* at 190-91.

76. PETTIT, *supra* note 9, at 191.

77. *Id.* at 192.

78. *Id.* at 123.

79. *Id.* at 197.

80. *Id.* at 198.

son materialize and impose themselves."⁸¹

Republican Virtue

Having adopted the republican view that public life should be organized to make decisions on the basis of reason,⁸² thus preventing any arbitrary interference in citizens' lives,⁸³ Pettit must explain how to do so, given the numerous weaknesses of human nature. He begins with the premise that people often mean well, but are also self-interested and corruptible.⁸⁴ If possible, the virtuous should be given positions of power,⁸⁵ then encouraged to behave well,⁸⁶ and punished if they do not.⁸⁷ To behave well, in this context, means debating and deciding on public questions by considering and supporting the shared interests of all members of society.⁸⁸

Carefully designed republican institutions may control democracy to some extent, in the interests of all, but they will not work without public support, in an atmosphere of virtue.⁸⁹ Even Machiavelli understood that laws need good morals to work properly, just as morals need good laws.⁹⁰ Pettit calls this republican "civility"⁹¹—the disposition of citizens from different perspectives to seek the good of society as a whole and not just their own parochial interests.⁹² The people must be made to recognize both that freedom as non-domination is desirable and how best to secure it.⁹³ Republican laws are not just sanctions, but signals of what civil life requires.⁹⁴

Fostering such virtue or civility strikes Pettit largely as a question of building group identity around shared values.⁹⁵ This identity must embrace all citizens, particularly the most

81. PETTIT, *supra* note 9, at 201.

82. *Id.* at 203.

83. *Id.* at 207.

84. *Id.* at 211, 217.

85. *Id.* at 219.

86. PETTIT, *supra* note 9, at 222.

87. *Id.* at 229.

88. *Id.* at 232-33.

89. *Id.* at 241-43.

90. *Id.* at 242 (quoting Niccolò Machiavelli).

91. PETTIT, *supra* note 9, at 245.

92. *Id.* at 249.

93. *Id.* at 252.

94. *Id.* at 253.

95. *Id.* at 257.

needy, through norms of solidarity with others, not norms of self-assertion and compromise—like those that liberals espouse.⁹⁶ Identification with others is a natural phenomenon, and it is no miracle of self-denial to do a little extra to help one's neighbors or to express humility about one's own private views in the face of public consensus.⁹⁷ Pettit's concept of non-domination does not preclude human community. Good personal relationships of love and friendship presuppose the enjoyment of freedom as non-domination among the parties involved.⁹⁸

John Adams believed, with James Harrington and his many other republican predecessors, that good orders make good men and that lost virtue, "even among highwaymen," could be replaced "by setting one rogue to watch another" until "the knaves themselves may, in time, become honest men by the struggle."⁹⁹ Pettit is less sanguine, but endorses republican forms of government just the same. Livy considered Rome fortunate not to have achieved her republic before a real sense of community had time to grow, and the people were fit to be free.¹⁰⁰ Pettit recognizes this sense of community as an essential condition of republican government, but also among its most important products. Cicero put it first and best when he described republics as communities built around a shared sense of justice and the common good.¹⁰¹ Republics need this common purpose to survive.

The Republican Manifesto

Let me repeat the central points of the republican manifesto, as Pettit presents them in his much-needed restatement and elaboration of the old republican tradition. Usefully summarized at the end of the book, Pettit's argument has two parts, considering (I) the principles and (II) the forms of republican government. As to principles, Pettit (1) reasserts the republican conception of liberty as protection

96. PETTIT, *supra* note 9, at 259.

97. *Id.* at 260.

98. *Id.* at 268.

99. 3 JOHN ADAMS, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICAN at 505 (London, 1787).

100. TITUS LIVIUS, AB URBE CONDITA 2.1.

101. M. TULLIUS CICERO, DE RE PUBLICA I.xxv.39 ("[R]epublica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus.").

against arbitrary interference with the choices of a free person. He then (2) endorses law as capable of offering such protection. Interference (3) is arbitrary when it is controlled by the *arbitrium*—private will or judgment—of the decision-maker. Pettit believes (4) that freedom as non-domination will best be secured through centralized political action by the state. This means (5) that states should seek to extend the range of citizens' undominated choice, and particularly (6) the choices of the most vulnerable members of society.

The forms of republican government that Pettit advocates to implement his ideal of freedom as non-domination will be "dynamic" as he puts it, because circumstances, interests and ideas change over time. Even so, certain basic structures will be necessary to prevent (private) *dominium* or the (public) *imperium* of the state. These include (1) the rule of law; (2) the dispersion or separation of powers; and (3) strong protections against overbearing democratic majorities; so that (4) those subject to the state can contest its decisions, without imposing their own arbitrary desires on others. Pettit suggests (5) that public opinion can be an important constraint on malfeasance by those in positions of authority, but only (6) if the people themselves can be made to internalize the republican values of the state. Pettit also makes several other important arguments, which I omit here because they respond to critics of republicanism, or seek to situate his views in broader philosophical debates.

For lawyers unfamiliar with the republican tradition Pettit's bifurcated account convincingly presents both the purposes (Part I) and essential structural requirements (Part II) of republican constitutions such as those of the United States. He departs from tradition in Part I, while perhaps improving on it, by seeking to expand the "range" of citizens' undominated choice by creating more opportunities for the underprivileged, and in Part II by replacing voting with "contestation" as the essence of popular sovereignty.

For the uninitiated lawyer, this book's only weakness, if it has one, lies in where it begins—with the republican definition of liberty as security against the arbitrary will of another. This definition is important, correct and the basis of liberty as protected by the United States Constitution, but it is meaningless without an antecedent conception of what will count as "arbitrary." For republicans, as Pettit recognizes,

arbitrary power is power unconstrained by the public good. The central purpose of republican government is service to the common good. Not to say so immediately at the beginning of this monograph on republicanism risks misleading the numerous readers Pettit deserves to have, who will (and should) turn to his book for their first introduction to the republican ideas, and the underlying political and legal philosophy of the United States Constitution. Without a fuller explanation of the purpose of republican government, such readers may not fully grasp what should count as "domination," or what is a republic, or liberty, or how one can find them.

So what are the fundamentals of republican government as understood by Adams, Madison, and the framers of the United States Constitution? Republican government requires "equal laws" made by "common consent" for the "general interest" or "public good" of the people.¹⁰² "The great question therefore is, what combination of powers in society, or what form of government, will compel the formation of good and equal laws, an impartial execution, and faithful interpretation of them, so that the citizens may constantly enjoy the benefit of them, and be sure of their continuance."¹⁰³ First, there should be the rule of law, and division of government between the executive, senate and popular assembly, as in republican Rome.¹⁰⁴ But American republicans also endorsed the separation of powers, checks and balances, independent judges with life tenure, and representation (rather than direct participation) of the people in the legislature.¹⁰⁵ Without these "republican" protections the Constitution's framers believed there could be no republic or liberty, which is to say no security in one's life, liberty or property against the depredations of others or the state.¹⁰⁶

This list differs from Pettit's only in putting the common good first, as the basis of the "*res publica*," or public interest, and so of liberty. The old Roman "*libertas*" indicated the

102. ADAMS, *supra* note 60, at 123.

103. *Id.* at 128.

104. *Id.* at 14.

105. THE FEDERALIST NO. 9, at 199 (Alexander Hamilton) (Isaac Kramnick ed., 1987).

106. 3 JOHN ADAMS, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICAN at 505 (London, 1787).

status of a free citizen in a free state or "republic." Republican liberty signified restraint and protection by laws made for the common good, through popular sovereignty, in a mixed and balanced constitution. Put another way, this means that "liberty consists only in being subject to no man's will,"¹⁰⁷ being subject to nothing but the law.¹⁰⁸

Philip Pettit has done lawyers an immense service by providing them with a lucid, accurate presentation of the old republican conception of liberty, coupled with his own sophisticated, convincing exposition of how republican ideas might apply to contemporary jurisprudence and political science. My discussion here has concentrated on the first half of his project, which clears away decades of confusion. The second half should prove equally important, because it inaugurates a new era of republican legal thought. Pettit's work begins to explore how republican ideals and forms of government may be realized at the end of the twentieth century. No challenge is more important or difficult than to find common values in today's divided world. Pettit points the way to solutions, and lays the foundation for new structures of liberty and a modern science of the soul.

107. ALGERNON SIDNEY, 3 DISCOURSES CONCERNING GOVERNMENT 402 (Thomas G. West ed., 1990) (1698).

108. ALGERNON SIDNEY, 1 DISCOURSES CONCERNING GOVERNMENT 17 (Thomas G. West ed., 1990) (1698).