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# Re(Public)an Reasons: A Republican Theory of Legitimacy and Justification

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RE(PUBLIC)AN REASONS: TOWARD A REPUBLICAN THEORY OF  
LEGITIMACY AND JUSTIFICATION

by

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A DISSERTATION

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RE(PUBLIC)AN REASONS: TOWARD A REPUBLICAN THEORY OF  
LEGITIMACY AND JUSTIFICATION

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University of Nebraska, 2015

Adviser: Joseph Mendola

There is a kind of power no one should have over anyone else, even if they don't do anything with this power, or even if they only use this power for good. The republican tradition of political philosophy calls this kind of power *domination*. Here, I develop a theory of domination, and use this theory to advance our understanding of political legitimacy and justification.

My account of domination refines recent neo-republican attempts to identify dominating social power with the capacity to interfere arbitrarily with the choices of others. I argue that this capacity is not sufficient for domination. Instead, domination requires that one agent possess "impositional" power over someone else: power enough to make their refusal to cooperate more costly than cooperation across a wide range of forms that cooperation might take. But not all impositional power is domination; impositional power is domination to the extent that those wielding it do so in "deliberative isolation"—in accord only with their own sense of what's best.

The nature of domination, what it takes to minimize it, and its connection to deficits in political values like freedom and equality, are the subject of Chapter 2. The remainder of the dissertation uses the results of that chapter to construct a non-voluntarist alternative to the standard liberal account of how to reconcile political power with freedom and equality. Chapters 3 and 4 show how consent—actual or hypothetical—is not necessary to legitimize political power. What is necessary is that such power enable us to fulfil our duties against dominating others, while remaining accountable to us so that the state does not itself become a source of domination. How duties against domination can legitimize states is the primary subject of Chapter 3. Chapter 4 turns to the question of what we owe our fellow citizens as we cooperate together in the task of holding the state accountable. The answer to this question amounts to a repurposing and reformulation of public reason liberalism.

For Sarah. For Everything.

## ACKNOWLEDGMENTS

The roots of this dissertation wind back to two seminars led by Prof. Joe Mendola in the fall of 2004 and the fall of 2006. The first introduced me to John Rawls and the public reason tradition of contemporary liberalism. The second introduced me to Philip Pettit and the tradition of contemporary republicanism. My understanding of the former was sharpened considerably in a 2007 seminar of Prof. Mark van Roojen's. Both Joe and Mark have reassured me at key moments along the way that I'm actually decent at philosophical work. Without such encouragement, I would have had far less confidence that I was up to completing this project. Though he has little interest in the primary areas of my research, Prof. Al Casullo has also been a source of such encouragement. I am also deeply indebted to my fellow graduate students at UN-L, especially Steve Swartzler and Cullen Gatten, to whom I very often turned for guidance as I started into the world of contemporary political philosophy. It would be difficult to overstate the benefit I've received as well from the friendship and conversation of Brent Braga, Mark Decker, Tim Loughlin, Sruthi Rothenfluch, and Virendra Tripathi.

Thanks to Prof. Patrick Jones for agreeing to be the "outside" member of my committee. I think all political philosophers should write with the knowledge that someone with Patrick's passion for social justice will read. I know it's done me good. Thanks also to Prof. John Brunero for agreeing to join the committee of someone he (as of this moment) has never met.

Chapter 2 is very much better than it would have been thanks to an avalanche of remarks and suggestions from two anonymous reviewers at *Ethics* and many of the editors at that same journal—in particular Henry Richardson and Rainer Forst. Chapter 4 is a rather distant descendant of papers I gave at Northwestern University’s Society for the Theory of Ethics and Politics in 2009 and 2011. Conversations with the organizers of these conferences, Kyla Ebels-Duggan and Jon Garthoff, were especially helpful. On both occasions, I was the beneficiary of excellent commentaries first from Seth Meyer and then from Carlos Pereira di Salvo. Chapter 2’s origins are in a conversation with Seth and Mark Schranz. Mark’s company and conversation at several conferences of the International Society for Social Philosophy have been just as enjoyable as beneficial.

After 2010, I’ve worked on this dissertation away from the steady society of other philosophers. As a consequence, many people who had no especial interest in the subjects of my research have patiently endured my attempts to talk out and clarify many of my central ideas. Foremost, of course, is my spouse, Sarah Fowler McCammon. Having daily access to an intellect like hers has been of incalculable value. I have been the recipient of kind indulgence from many others, especially Chris Barker, Merle Domer, Keven Drew, Jonathan Hansen, Ben Johnson, Emily McClanahan, and Bekah Zeimetz.

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## CHAPTER 1

## AN INTRODUCTION

Whatever else happens here, I want to do three things. First, I'm going to offer a new theory of domination. When I say "new" I don't mean "entirely new". In fact, it might be better to say that I'm going to offer a refurbished theory of domination. Mine is a theory recognizably indebted to theories that have come before, supremely from Philip Pettit and Frank Lovett. But both Pettit's and Lovett's theories of domination don't give us what we need from a theory of domination. (Part of my theory is a theory of what we need.) Even so, my theory obviously belongs to an evolutionary—I hope—lineage, with Pettit's and Lovett's back up the ancestral line a bit.

After I offer a new theory of domination, I'm going to do two things with it. The first thing (the second of the aforementioned three things) is apply it to the question of political legitimacy. At its most basic, here's what I take that question to be: Why should we go along with states? States usually claim that we *owe* them our cooperation, and if it's not forthcoming they can force it out of us. Is a state ever right about that? For the representatives of the classical social contract tradition—Hobbes, Locke, Rousseau—the looming option behind one possible response to this question was anarchism: i.e. that states are never right that we owe them what they claim.<sup>1</sup> Chapter 3 is my response to the looming option.

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<sup>1</sup> The anarchist was the looming threat to the classic social contractarians, I should say, when it wasn't the monarchist.

The second thing (the third of the aforementioned three) is to apply my theory of domination to another set of questions that is often discussed nowadays under the heading of political legitimacy. This set of questions also comes from the social contract tradition, but from that supreme generalizer and carrier “to a higher level of abstraction the traditional conception of the social contract”: Rawls, of course. For the late Rawls in particular—and by “late” I mean after “Kantian Constructivism in Moral Theory” (1980) but especially after “Justice as Fairness: Political Not Metaphysical” (1985)—this set of questions is about the connection between the legitimate use of political power and *public* justification or justification via *public* reasons. In chapter 4 I’ll try to show how to extract an attractive conception of public justification from anti-domination commitments.

So there are three things I want to do, and I’ll try to do them in chapters 2-4. Here in this introductory chapter I’ll sketch the primary motivations and leading ideas that figure in the attempt. This will involve (§1) an introductory stroll through neo-republican ideas about domination, which will position us to see (§2) the connections between theorizing domination and theorizing legitimacy. This done, (§3) I’ll sketch the state of play with regard to liberal approaches to legitimacy and public justification, where they’ve gone awry, and then (in §4) what I intend to do about this.

§1 I said above that my first task is to offer a new or at least refurbished theory of domination. What I have to say about domination, and the way I put my conception of domination to work figuring out problems of political legitimacy, makes me a republican. Or so it seems to me. I don’t have a theory of what it takes to be a republican, but here’s why I think I am one. First, I think the first virtue of social institutions is how well they

reduce domination.<sup>2</sup> Too, I believe that ecumenically lauded political values like freedom and equality are misunderstood unless we come to terms with the ways domination undermines both. Now, I will not provide much direct argument for either of these claims in what follows; but perhaps the best way to see domination's connection to deficits in freedom and equality is just to understand what domination is. The second chapter tries to advance such understanding. If, in the aftermath, you don't see how freedom and equality wane as domination waxes, I'm not sure I have more compelling arguments to offer. Happily, if you *do* see how freedom and equality decrease as domination increases, that goes a long way toward making good my claim that the primary normative measure of social arrangements is their ability to contain domination. Once we've worried all we need to worry about domination, I suspect we will have worried all we need to about freedom and equality as well.

The attempt to unite [or reunite] central political values with the absence of domination is most of what the recent revival of republican political theory has been about. Most importantly, the reunion has meant tying freedom or political liberty to the absence of domination. Pettit, with Quinten Skinner,<sup>3</sup> began to argue in the mid-90s that traditional liberal notions of freedom cannot account for commonsense about who is and is not free. Such traditional liberal accounts identify freedom with the mere absence of interference: e.g. Berlin (1969, 7), who claimed that I enjoy freedom or political liberty “to the degree” that “no human being interferes with my activity.”<sup>4</sup> If this is right,

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<sup>2</sup> This is not necessarily a disagreement with Rawls (1971). Perhaps the justice of social institutions is measurable in terms of how well they prevent domination.

<sup>3</sup> Not that Pettit and Skinner speak with one voice, of course. Richard Dagger (2008) offers a helpful and concise adjudication of their differences. For a helpful introduction to the history of republican political thought, see Ferejohn (2013).

<sup>4</sup> Berlin here follows luminaries like Hobbes (1994, 79) and Mill (2002, 14).

freedom should be measured by actual non-interference.<sup>5</sup> But some agents who enjoy lots of non-interference are not free. Suppose I happen to be a slave with a master who is sufficiently kind that he leaves me alone (Pettit 1997, 22-23). I may enjoy lots of non-interference, perhaps as much as many people who are not slaves; but it's odd to say I count as free because of all this non-interference. After all, I *am* a slave. To be a slave, say republicans, is paradigmatically to be unfree. Freedom requires the absence of masters, not just that the ones I have leave me alone. It follows, say neo-republicans, that instead of cashing out unfreedom in terms of interference, we should identify the slave's lack of freedom with his dominated condition.

I believe the republican revival would have been worth it only to highlight likely conceptual connections between freedom and domination's absence. I hope that some of my own arguments in what follows help us to see more about how promoting or respecting political values like freedom requires attention to domination. I hope even more to convince you that there are good reasons to think domination and its absence have profound moral and political significance independent of efforts to tie domination—analytically or otherwise—to other values. Why? Because of what attention to domination enables us to see and say about social power.

Some kinds of social power—and by “social power” I mean, roughly, the power of one agent over another—are innocent. If I make the best apple pie in all the land, that will give me some power over apple pie lovers. It's hard to see what could be wrong with that. If a bully would beat up his classmates, except that he's afraid of going to the principal's office, the principal has some kind of power over him, but that looks like a

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<sup>5</sup> For a mostly sympathetic and detailed treatment of Berlin on liberty, see Pettit (2011).

good thing. But decent people tend to think some kinds of social power are guilty: the power of masters over slaves; the power of despots, tyrants, gang leaders, unchecked bullies, men within patriarchy, Caucasians in places like the American South and South Africa under apartheid<sup>6</sup>—all have (or have had) power nobody ought to have. It's not like we just want enlightened and gentle slave masters, tyrants, bullies, gang leaders, and patriarchs. We'd prefer a world without any at all. If you must have (e.g.) a slave master, you'd rather have a gentle one, of course; but better not to have one, if "not having one" is on the menu.

This guilty form of social power just is domination. Tyrants, slave masters, et al, are dominators. Dominating is what they have in common. It's what's wrong with them, whatever else is wrong with them. And what's so wrong with domination? For starters, whatever else it may have to do with deficits in other political values, to be dominated by someone is to experience a dangerous and damaging form of vulnerability. Pettit says this about the phenomenology, and I think he's right:

Think of how you feel when your welfare depends on the decision of others and you have no come-back against that decision. You are in a position where you will sink or swim, depending on their say-so. And you have no physical or legal recourse, no recourse even in a network of mutual friends, against them. You are in their hands. (2003)

That's toward the extreme of what domination feels like from the inside. To feel your domination is to feel that you're at the mercy of someone else. When they're around, you better not speak out of turn. You better remember your place.

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<sup>6</sup> Not to suggest that such days are all gone by – not by a long shot.

But you don't have to feel it to be dominated. To those who have lived long under domination, their subordination may seem natural. I am unfortunately well positioned to offer an example. Most of my upbringing took place under the influence of an especially extreme sect of Protestant fundamentalism. The leader of this sect had a sexual predilection for very young women. He was good at convincing parents to allow their daughters to work under his direct supervision, where he would eventually abuse them. Because of his carefully cultivated reputation for extreme holiness, the vast majority of his victims could not see his abuse for what it was until deep into their adult lives. At the time, it seemed to most of them that any fault must be theirs, not his. That his victims could not recognize the guiltiness of his power is no indication of its innocence. Obviously, the opposite is true. His domination's invisibility to its victims and those who should have protected them only makes it worse.

Whether or not victims of domination recognize it, when *A* avoidably puts *B* in a position to "sink or swim" according to *A*'s whims, *A* harms *B*. I think this is plausible on a commonsense understanding of harm, but retains its plausibility on more precise renderings. Suppose we say *A* harms *B* just in case *A* causes *B* to be in a non-comparatively bad state, where states are non-comparatively bad when they don't depend for their badness on what state *B* was in antecedently. To become vulnerable to *A*'s whims looks non-comparatively bad to me: no matter what your situation at  $t_1$ , it is a bad-making feature of your situation at  $t_2$  that you are now dominated. This is not to say that someone might not be better off overall because some *A* comes to dominate them. Imagine *B* avoids starvation only by becoming *A*'s slave: they are better off overall insofar as avoiding starvation is better than starving, but this is consistent with saying that

they are worse off insofar as they are now dominated. The new master may leave them better off *qua* not starving, but they are harmed *qua* now dominated.

Or suppose we opt instead for a conception of harm according to which *A* harms *B* just in case *A* causes *B* to be in a state such that *B* is merely worse off in some way for being in that state. Again, it seems to me that if *A* causes *B* to be deeply vulnerable to *A*'s power when *B* was not antecedently vulnerable, it is very plausible to think *A* has harmed *B*, especially when we keep in mind the point just made about how being harmed in one way is consistent with being better off all things considered. For those who aren't inclined to rest easy with the natural language sense of "harm", I hope the above is some evidence that linking *A*'s causation of *B*'s domination with a harm to *B* by *A* is robust against different conceptions of harm.<sup>7</sup>

So, to dominate someone looks like a way of harming them. What's more, to be dominated is a harm that facilitates further harms. While it's true that more or less enlightened dominators may use their power for good—e.g. a slave master might provide for the education of his slaves or, perhaps, prevent aggression among his slaves—the possibility that dominating power can bring some weal with its intrinsic woes changes nothing about its intimate connection to further harms beyond the harm of domination itself. This is easy to understand. Take most any example of interpersonal wrongdoing. Whatever your pet example, it's a good bet that the intensity of *A*'s domination of *B* will

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<sup>7</sup> The conceptions of *harm* here are adapted slightly from Judith Thomsen's (2010). See also Hanser (2008). There are of course difficulties in parsing the metaphysics of comparative vs. non-comparative badness. My point is just that if you're inclined to think of harm in this way, there is an accessible story about how domination counts as a harm. It's important to see too that *B* might have a legitimate complaint of domination over against *A* even if *A* did not bring it about that *B* is dominated by *A*. Suppose *A* inherited slave *B*. Plausibly, *A* still dominates *B*; furthermore, if it is possible for *A* to release *B* from *B*'s dominated condition, *A* is culpable for not doing so.

be directly proportionate to the ease with which *A* can wrong *B* in this way. It's no accident that we associate the relation of masters to slaves with easy (or much easier) killing, assault, rape, and other obvious forms of interpersonal wrong.

This puts us right on the doorstep of what I think is the signal benefit of theorizing domination. Domination is a way of harming or wronging someone just by having a certain power over them. Other forms in interpersonal wrong may follow, but they need not. Attention to domination makes visible the harms and wrongs that may accompany certain kinds of power independently of *particular uses of power*. To say that *A* dominates *B* is to object to the *kind* of power *A* has independently of how *A* uses it. That *A* has power enough that *B* is vulnerable to their whims morally disfigures *A*'s power, even if all their whims are innocent. This is why I think that even if nobody thought opposing domination had anything to do with promoting freedom, equality, and other values, that theorizing domination helps us to see what's wrong with certain power relations *as such* is reason enough to do it.

My job in chapter 2 is to present a conception of domination that makes sense of its moral seriousness, even independently of its connection to deficits in other values, and enables a general normative critique of social power. Here's how I hope it works. I show that paradigmatic dominators—the power holders most of us will be inclined to agree possess dominating power if anybody does—have power with a common *structure*. In essence, what explains why a slave master dominates is the same as what explains why a despot or a tyrant dominates. Once we're clear(er) about what this structure is, we can examine less paradigmatically dominating varieties of social power to see if they share this structure. If they do, that's reason to think they're morally objectionable for some of



the same reasons.<sup>8</sup> The anti-domination approach to political legitimacy and justification I present in chapters 3 and 4 is an application of chapter 2 mostly in the sense that I try to show how less obviously objectionable social relationships share the structure of paradigmatic domination.

§2 I trust it's obvious by now why thinking about domination might be vital to correct thinking about political legitimacy. Above, I said that tyrants, despots, slave masters, patriarchs, politically successful white supremacists, et al., are all dominators. Here's what else they are: obvious instances of illicit rule. If you want to tell the right story about political legitimacy, and thus show that at least some exercises of power are morally permissible or morally required, this looks like a given: you need to show that such exercises don't share the common structure of domination's prime exemplars. That's just to say, to justify the exercise of power, you must show that it doesn't instantiate domination, whatever else you want to say about it. In the same way, if you want to vindicate a principle or set of principles to guide such exercises of power, you need to show that the principle or principles won't permit domination.

Thinking about domination leads us headfirst into thinking about political legitimacy, and I think it also shows us as good an answer as any about why we *should* worry about political legitimacy. Our paradigms of illicit rule—slave masters, despots, tyrants, patriarchs—all are very powerful and try to leverage this power into rule over

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<sup>8</sup> Not all of course—a loving relationship between a patriarch and his relatively powerless spouse will obviously have virtues the relationship between a master and his slave lacks, even if both instantiate domination. A willingness to recognize a common structure of dominating social relationships has made republican theorists unpopular in the past. Pettit argues that liberal notions of freedom as non-interference became more influential than republican alternatives in part because the most vocal theorists refused to admit that they might be dominating their spouses. See Pettit (1997).

others. But states<sup>9</sup> are also very powerful and try to leverage their power into rule. Most of us are inclined to think that there are significant differences between paradigmatic dominators and at least contemporary democratic states. But are these inclinations sound? If it's true that some states aren't tyrannies, if it's true that some wielders of political power aren't despots, what makes that true? I'll take it for granted that nobody thinks paradigmatic dominators *should* have the kind of power they have. (And, again, what *kind* of power it is will be addressed in the next chapter.) But if they shouldn't, nobody should. If it turns out that the power possessed by a state is structurally identical to the power of our paradigms, we should denounce it.

But this talk about states and their power shouldn't be allowed to obscure something very important: states have never had a monopoly on social power. Perhaps only the state claims a monopoly on a certain kind of social power—the kind backed up officially with guns—but you don't have to have guns to have dominating power. Besides, only one of our prime exemplars directly represents a state: the tyrant or despot. Slave masters, bullies, gang leaders, patriarchal husbands, and we might add dictatorial employers, are all non-state entities. These power-holders don't typically have armies at their beck (except indirectly if they enjoy the patronage of states),<sup>10</sup> but the power they wield has frequently been no less onerous. In many cases non-state power holders are better positioned to inflict misery because they are more intimately involved in the workaday lives of their subjects. States have far-flung concerns sufficient to distract them

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<sup>9</sup> I will observe the standard distinction between states and governments, where the former endure over changes in the latter; so, there may be a change of government, as after the election of a new executive or when one political party achieved parliamentary ascendancy, but no change in what state this executive or political party governs.

<sup>10</sup> And this function of the state as a power source for non-state dominators must be born in mind.

from the factory floor, the field, and the home; not so the boss, the master, the husband.

Feminist and other critics of liberalism have pointed out how the tradition has sometimes shown a blinkered disregard for the power exercised by non-state entities.<sup>11</sup> My focus here will be on the forms of political legitimacy and justification, but most of what I have to say about political power generalizes easily to the evaluation of other forms of power than that held by states. In fact, my account of political legitimacy is embedded in a broader story about what it takes to restrict non-political forms of power. The task of justifying political power shouldn't be separated from the need to justify non-political power relations, and it isn't here.

§3 I've provided some preliminary reasons to care about domination and to think that attention to domination might be necessary to right thinking about political legitimacy. But there are also reasons to think that the current state of liberal theorizing about political legitimacy makes attention to domination especially necessary.

Questions about political legitimacy are questions for the liberal tradition—and at least in part for the neo-republican tradition too—because of the tension between two claims.<sup>12</sup> How can it be true that (a) a state can legitimately do what states do (even the decent ones) and (b) the citizens of that state are no less free and equal than they would be without it? What do states do? First, as we've seen, they brandish political power, which as Rawls put it, “is always coercive power backed by the government's use of sanctions” (1996, 136). Further, states typically claim that they have the *right* to rule and that citizens have a duty to obey. Why does this bundle of facts about what states do need

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<sup>11</sup> Okin's (1991) is one of the original and more important of such critiques.

<sup>12</sup> I join both Gaus (2011) and Enoch (2013) in setting up the problem this way.

to be reconciled with (b)? Because, (b) presumes that any claim of any state to rule is addressed to persons who are legitimate claimants to freedom and equality, over against each other and anyone who might act in the name of the state. Any claim to rule a person so conceived is problematic.

We understand (b) in the light of an insight that emerges—however dimly—in Enlightenment political philosophy. After centuries of refining the insight, we can say it like this: No human being has a natural right to rule any other human being. There is no true sorting of humans into natural kinds of “ruler” and “ruled”. The exercise of political power is never justified “Just because that’s the way of things”. For post-Enlightenment political philosophy, what’s “natural” is the freedom and equality of human beings. It is the subjugation of one human by another that interrupts the natural order; therefore, the burden of justification is exactly here. To show that rule is justified, it must be shown that there is a morally permissible way one person could come to rule another. From the perspective of the ruled, there must be a morally permissible way to “exit the state of nature” and enter the political condition, with its hierarchy of rulers and ruled.

The social contract tradition offers the most sustained, explicit attempt to show how a state could have legitimate political power even though it has no natural right to such. We all know that social contractarians tried to reconcile (a) and (b) by appeal to consent. If free and equal persons are ruled only because they have consented to be ruled, if the duties incumbent on them are self-imposed, aren’t they just as free within the state that rules them as without? In Rousseau’s slogan, each (presumptively male) person, by “joining forces” voluntarily with a state, “may still obey himself alone, and remain as free as before” (1988, 92).

Of course, specifying any sense in which most residents of any state have consented to its rule turned out to be extremely difficult. By most lights, it turned out to be impossible. By now, almost everybody agrees that traditional social contract theory is a non-starter—unless you want to end up with the conclusion that no state is legitimate.<sup>13</sup> As a consequence, social contractarian accounts of legitimacy spent most of the 19<sup>th</sup> and half of the 20<sup>th</sup> Century well beneath ascendant varieties of utilitarianism and perfectionism.

When liberalism turned again to questions of legitimacy in social contractarian terms, it was primarily because of what is now known as John Rawls' "political turn". Consider the standard Rawlsian line on the legitimate use of political power, what Rawls calls in *Political Liberalism* "the liberal principle of legitimacy":

Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.

Interpreting precisely what Rawls himself means by this is difficult. I won't try to join the effort here. What matters is that Rawls is mostly responsible for spawning a contemporary movement that theorizes the legitimacy of political power by surrogating particular forms of "acceptability" for actual acceptance.<sup>14</sup> As Nagel puts it, the

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<sup>13</sup> That the central claims of social contract theory—particularly its Lockean variety—is true, and that an attenuated form of anarchism is the upshot, is perhaps the central theme of A. John Simmons' work. See Simmons (2001, 122).

<sup>14</sup> Maffettone's summary remark about the relation of public justification to consent in the latter Rawls demonstrates rather than removes the interpretive difficulties: "The justification that Rawls is thinking of is public justification . . . and starts from the assumption that citizens share fundamental ideas about politics. Hence, the citizens' consent to the public culture of liberal democracy ends up being the basis of the Rawlsian rationale. From this perspective, political obligation is based on the consent of all citizens. In Rawls' case,

motivation for this approach is that we need to “realise some of the values of voluntary participation in a system of institutions that is unavoidably compulsory” (1991, 33). Again, this is the need to reconcile the claims of typical states with the freedom and equality of their subjects. The idea is (very, very broadly) that because the right kind of voluntary participation would or could be motivated by the right kind of reasons—public ones—it’s not so bad if we strong-arm you into participation even when there’s no actual volunteering, only justification by appeal to such reasons.

What are they like, these public reasons? Across the spectrum of contested formulations, public reasons are supposed to be in some sense accessible reasons; accessible even in the face of reasonable pluralism.<sup>15</sup> They must be accessible insofar as they are reasons all citizens “have” or “can see the reason giving force of” or “can accept”. While Rawls deploys notions like acceptability and reasonable endorsement only as necessary conditions for legitimacy, it’s common enough for his descendants to speak of accessible reasons as both necessary and sufficient that the Stanford Encyclopedia entry for “Public Justification” uses the following “master principle” to categorize “the family of liberal public reason political theories”:

A coercive law  $L$  is justified in a public  $P$  if and only if each member  $i$  of  $P$  has sufficient reason(s)  $R_i$  to endorse  $L$ .<sup>16</sup>

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this is not a question of an effective consent, but of virtual consent based on reasons that depend on the social contract” (2010, 12).

<sup>15</sup> Says Rawls: “[The fact of reasonable pluralism] is the fact of profound and irreconcilable differences in citizens’ reasonable conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life” (2001, 3).

<sup>16</sup> Vallier and D’Agostino (2013). In Vallier’s own view, this principle holds not just of laws, but of all coercive acts: “A coercive action  $C$  is justified if and only if each and every member of the public  $P$  has (a) conclusive reason(s)  $R$  to endorse  $C$ ” (2011, 262). This strikes me as somewhat perverse. Suppose you tackled a slave master before he could set about whipping one of his slaves. Now, I have no doubt that we can come up with a sensible rendering of “member of the public  $P$ ” such that no member would regard this coercion-via-tackle as unjustified. The trouble is that Vallier’s analysis directs our attention away from

According to “the family”, public justifications proceed in terms of what reasons the public “has” and are thus accessible to them, but not only so. They must be accessible in the face of “reasonable pluralism”. We must not look to a day when all decent and intelligent citizens will have the same reasons in virtue of having the same basic “comprehensive doctrine” or “conception of the good”. Rawls popularized at least, and perhaps originated, this way of talking about the plurality of more or less systematic religious and secular ways of thinking and acting, understanding and ordering values, we see in contemporary democratic societies: Roman Catholicism is such a comprehensive doctrine; so are forms of Kantianism thoroughgoing enough to include a vision of what life is best for humans.<sup>17</sup> There are obviously many others. I’ll generally prefer to call them “worldviews”.

Rawlsian liberalism, with the broader tradition of what I’ll call “public reason liberalism”, has been dogged from the beginning by the enormous difficulties born of trying to make accessibility work while honoring persistent pluralism. If you think it’s a fact that decent, intelligent people, reasoning freely about matters of ultimate concern, will persistently disagree about such matters and so be generally unable to recognize the same considerations as reasons, how can it be that all citizens have reason to accept the ways their governments are empowered to coerce them? Why shouldn’t we think that the same forces that produce dissensus on pretty much all matters religious, philosophical, and moral will somehow be at peace and stillness when it comes to the political?

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what’s really relevant, it seems to me, and toward what’s epiphenomenal. It may be true that you can justify such coercion to suitably specified members of the public, but so what? That can’t be the rock bottom explanation of what makes this bit of coercion justified. Whatever the true story is about what makes it okay to coercively tackle you in this case, shouldn’t it have something directly to do with the harm you thereby prevented to the unwitting slave? That question is meant to be rhetorical.

<sup>17</sup> As far as I can tell, Rawls first uses this language at (1985, 408).

We shouldn't expect anything like that, and the leading lights of public reason liberalism don't really expect us to. And so we have an approximately 30-year old tradition that acknowledges real world dissensus about the political, but tries to show how, in the sense that really matters to the justification of political arrangements, it can still be true that "all" citizens "have" reasons to accept a recognizably liberal polity.

Alright then, how can it be true that despite the fact that real citizens of actual democracies don't recognize the same considerations as giving them reasons to do or think much of anything, it's still true that they all have reasons to comply with the laws characteristic of a recognizably liberal polity? The most popular way of answering this question in the public reason tradition has been to think about the reasons all citizens have by concentrating on the reasons some subset of citizens understand that they have.<sup>18</sup> Rawls was fond of saying that political justification is addressed to "reasonable" citizens.<sup>19</sup> That's just to say that political arrangements are justified when all reasonable citizens accept them. When we discover what reasons all reasonable citizens realize they have, we've got a window into what reasons the unreasonable citizens have too, though they don't realize it. There's obviously something attractive about this move. If we interpret "reasons had by all citizens" as "reasons all those of voting age in the United

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<sup>18</sup> As to those outside this subset—those who think of the political relation not as between free equals but as between friend on the one side and foes on the other, between those who are "of a particular religious or secular community" as opposed to "those who are not", those who see politics as "a relentless struggle to win the world for the whole truth" (1997, 574)—political liberalism does "not engage" such.

<sup>19</sup> As in his criterion of reciprocity, when has an appeal to the reasonable, as Rawls admits, "at both ends"—we must "reasonably think" that the terms of cooperation we offer to other citizens are such that they can "reasonably accept" them (1996, xlv). The second appeal to reasonableness sometimes replaces the "acceptable to their common human reason" language in the "liberal principle of legitimacy" quoted above. See also (1997, 578), where Rawls says that "political power is proper only when we sincerely believe that the reasons we would offer . . . are sufficient, and we also reasonably think that other citizens might reasonably accept those reasons." I won't venture a guess here as to whether these various formulations are equivalent.



States at present think they have”, not even the most decent state can be justified. There are citizens, as we all know, who think they have reason to deny freedom of speech to those they despise, along with the standard set of liberal rights and freedoms, and so would deny that they have reason to respect this freedom. But who cares, right? At any rate, it’s plausible to think no one should care about what reasons people like that think they have enough to let them veto laws protecting freedom of speech, etc. The fact that reasonable citizens accept laws protecting freedom of speech shows us that unreasonable citizens have reason to accept laws protecting freedom of speech too. They would see that they do if they were reasonable.

For such and related reasons, when public reason liberals don’t just focus on “the reasonable”, it’s common to try and unearth the reasons of the unreasonable by reflecting on the reasons of idealized, hypothetical citizens, scrubbed of the too common prejudices, ignorance, irrationality, etc., of their actual-world counterparts. Once we know what reasons idealized citizens see that they have, we can get a grip on what public reasons there are, and we can set those public reasons to work demonstrating the justice of real-world polities.

Not surprisingly, there’s disagreement in the public reason tradition about what idealized citizens look like. Do idealized citizens look like the occupants of Rawls’ Original Position? If so, doesn’t that mean that public reason is radically unitary, so that (surprisingly) a view that started with the frank acknowledgement of worldview diversity now ends up telling us that public reasons are just those considerations recognized as such behind the veil of ignorance, where all such diversity has been rendered invisible?<sup>20</sup>

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<sup>20</sup> Gaus emphasizes this problem at (2011, 38)

That's an odd result. Should we think instead that idealized citizens look like Gerald Gaus' "Members of the Public" (2011, 276), who are designed to resemble their real-world counterparts much more closely, and recognize the plurality of worldviews amongst themselves? Should we expect that idealized citizens would reason via consensus, so that what one recognizes as a reason will also be recognized by all other idealized citizens?<sup>21</sup> Should we allow instead that members of the public may arrive at mutually acceptable laws from diverse pathways, converging from separate points of view?<sup>22</sup>

It's not a surprise that formulating exactly what kind of reasons are suitably public is very hard to do. But even without the debate about how to sort public from non-public reasons, the approach to legitimacy that necessitates public reasons in the first place is deeply troubled. The best reasons to think so were first pointed out, or at least brought to the fore, by John Simmons in his seminal paper "Justification and Legitimacy".<sup>23</sup> Political *legitimacy*, Simmons argues, is not the same as political *justification*. The *justification* of political power is the demonstration that it has morally good-making features, and this is never enough to show that the power in question is *legitimate*.

[The] general quality or virtues of a state (i.e. those features of it appealed to in its justification) are one thing; the nature of its rights over any particular subject (i.e. that in which its legitimacy with respect to that subject consists) are quite another thing. The legitimacy of a state with

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<sup>21</sup> Quong (2011, Chapter 9).

<sup>22</sup> Gaus (2011, 263-292), Vallier (2011)

<sup>23</sup> Simmons (1999).

respect to you and the state's other moral qualities are simply independent variables . . . (2001, 136).

Simmons argues that even if *B* may reasonably be expected to endorse the “principles and ideals” or “reasons” that undergird *A*'s coercion of *B*, it's not easy to see how that's even relevant to whether *A*'s coercion is legitimate. The fact that compliance would be an excellent idea, that it's morally praiseworthy, that it's rationally required, that *B* would comply if *B* were reasonable—none of the above tells us whether *A*'s coercion of *B* is morally permissible. In most other contexts, this is common sense. Imagine that *B* wants to save for retirement, but *B* has no financial acumen at all. Imagine that *A* has all kinds of acumen, and proceeds to give *B* a series of directives about how best to achieve financial security in *B*'s twilight years. But *B* has an irrational dislike for *A* and has no time for *A*'s advice. As a consequence, *B* shows an unheeded *A* the door. That *B* shouldn't refuse to follow excellent advice based on an irrational dislike and thus thwart *B*'s own goals looks very much to me like a principle everyone “as free and equal may reasonably be expected to share in the light of principles and ideals acceptable to their common human reason”, but it's plausible to think that this has nothing much to do with the shape of *B*'s duties to *A* or *A*'s rights to coerce *B*.<sup>24</sup>

Given the assumption of our mutual freedom and equality, I think we should be puzzled by the idea that you could come to have an enforceable power to create duties for me—and so have the powers typically claimed by states—just because it would be deeply sensible for me to treat you in that way, that an idealized version of myself would so treat you, that I'm unreasonable to refuse, etc. If what we want is an explanation for how some

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<sup>24</sup> Huemer makes the same point at (2013, 44).

A could come to have legitimate coercive power over some *B*, especially in the light of the free co-equality of *A* and *B*, the standard approach of public reason liberalism seems wrong-footed.<sup>25</sup>

§4 Even if Simmons is correct about the distinction between legitimacy and justification, and even if public reasons—on any rendering—can’t show that political power is legitimate, it might yet be that we need public reasons to talk about when particular uses of state power are *justified*. Here, I believe, the public reason tradition is much better positioned to help us out. There is something “luminously undeniable”, something “fundamentally right (even beautiful)”, as David Schmitz once said (2006, 196), about Rawls’ insistence that we should think of society as a system of cooperation between free equals. What it takes to show that the terms of such a system do justice to each participant are, I’ll eventually argue, public reasons. Crucially, public reasons are not a standalone answer to the question, When may a particular person rightly be forced to participate in that system. This is just another way of stating the lesson of Simmons’ legitimacy/justification distinction. One of the central problems with public reason liberals is that they’ve tried to put public reasons to work on both sides of this distinction, when public reasons aren’t suited for this kind of work. That you would submit to a particular state if you were reasonable cannot show that it’s morally impermissible for you to resist it; however, once we have shown on other grounds that it’s morally

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<sup>25</sup> Of course, it would be unreasonable to resist coercive power you’d promised not to resist, but in explanations like that, it seems to me that what justifies the coercive power is your promise, not the unreasonableness of breaking it, or something like that.

impermissible for you to resist a particular state, we may turn to the question of what you would accept if you were reasonable to see how that state should be organized.

I was drawn into political philosophy in the first place by the appeal of public reason liberalism. All of my arguments in what follows were originally born of the desire to defend and refine that tradition. What first piqued my interest in neo-republicanism was the affinity between republican talk about “arbitrary interference”—interference, as Pettit says, that isn’t forced to track “the ideas” or “judgment” or “world-view” of the interferee (1997, 55-56)—and Rawlsian insistence on the public justification of power. My interest in accounts of legitimacy that don’t depend on idealized or hypothetical acceptance emerged initially from my dissatisfaction with liberal accounts of legitimacy that do,<sup>26</sup> and then by the desire to construct an account of legitimacy that allowed public reasons the theoretic role to which they’re best suited.

This is not to say that the arguments I develop in chapters 2 and 3 are of interest only to those who worry about getting public reason right. I think insights drawn from the public reason tradition are the best way to advance the “substantivist” understanding of non-arbitrary social power I defend in chapter 2, but my arguments there don’t require that it’s the only way. In chapter 3 I argue that all states deserve our resistance to the extent that their power isn’t accountable to the *demos*, and I think the public reason tradition offers vital guidance for what this accountability should look like; but, again, you could agree with me about the need for accountability and disagree that it has much to do with public reason.

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<sup>26</sup> Initially because of Simmons (1979).

Having said this, if you do care for the fortunes of the public reason tradition, I think my somewhat hedgehogish anti-domination commitments show why we shouldn't resist a state organized as a cooperative scheme accountable to public reason *and* why the terms of that cooperative scheme are precisely those we can justify by appeal only to public reasons. Chapter 3 gives the former by applying republican insights to a less influential stream of Rawls-inflected legitimacy theory: Natural Duty theories. Chapter 4 gives the latter by showing how the commitment not to impose our worldviews via the state (what I call "liberal restraint") follows from commitments to non-arbitrary power, and how we might use public reasons to show that power is not arbitrary. All depend for normative steam on the arguments of chapter 2: the reasons I offer for accepting states under certain circumstances, the reasons I offer for observing liberal restraint and doing the work of political justification via public reasons, are essentially reasons to oppose the social phenomenon I try to sort out next.

## CHAPTER 2

## THE STRUCTURE OF DOMINATION

Sometimes dictators are benevolent. Sometimes masters are kind and gentle to their slaves. John Adams was a pretty good husband to Abigail Adams. But it seems like there's something very wrong with being a dictator or a master or a husband with the power that John Adams had over Abigail Adams in late 18<sup>th</sup> Century America. A theory of domination tries to pinpoint what's distinctive about dictatorship and mastery and patriarchy, and what is distinctively wrong with such—even the benevolent, kind, gentle, and pretty good varieties.

There has been a lot of thinking about domination over the last twenty or so years. As I mentioned briefly in the previous chapter, this is due largely to the efforts of republican political philosophers, who have used domination and its absence—*nondomination*—as the primary moving part in their conceptions of freedom.<sup>27</sup> Concern with domination figures prominently also in some responses to the general focus on distributive justice after Rawls (1971): Iris Young's *Justice and the Politics of Difference* (1990) being the locus classicus.<sup>28</sup> Perhaps because domination has appeared primarily in a supporting role for the analysis of other concepts, conceptualizing domination itself is still a more-or-less nascent endeavor.<sup>29</sup>

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<sup>27</sup> See Laborde (2008), Laborde and Maynor (2008), Lovett (2010), Lovett (2012), Maynor (2003), Pettit (1996), Pettit (1997), Pettit (1999), Pettit (2001), Pettit (2005), Pettit (2008), Pettit (2012), Richardson (2002), Skinner (1998), and Skinner (2008).

<sup>28</sup> Hampton (2008) picks up this theme as well, though she tends to speak of *mastery* rather than domination.

<sup>29</sup> Frank Lovett's *A General Theory of Domination and Justice* (2010) remains the only book-length treatment of domination from an analytically oriented philosopher.

Accounts of domination need at least two movements. First, domination is a subset of a social phenomenon with—at least more or less—unobjectionable varieties. Maybe this social phenomenon is power; maybe it's the capacity to interfere with choice; maybe something else. Whatever it is, it's plausible to think it's not always bad. Sometimes it's perfectly alright to have power over someone else; sometimes there's nothing wrong with the capacity to interfere with someone's choices. Obviously, if you want to go after your neighbor with a meat-axe, it's a good thing if someone has enough power to interfere with you. The first task of a theory of domination is to specify exactly what this broader social phenomenon is.

Next we need to figure out what gives domination its negative moral valence, and thus sets it apart from that broader social phenomenon. Republicans usually say that what makes domination morally problematic is its arbitrariness. Frank Lovett claims that domination is instantiated in a social relationship between A and B only if A is permitted to exercise power over B arbitrarily (2010, 120). Philip Pettit, until recently<sup>30</sup>, claimed that domination is a capacity for arbitrary interference. Marilyn Friedman calls it “arbitrary interference in someone's choices...” (2008, 265). If that's right, and arbitrariness is the difference maker between forms of social power that aren't domination and those that are, we need a story about what arbitrariness is.

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<sup>30</sup>Pettit (2012, 58) now prefers to say that domination is manifest in interference “uncontrolled” by the subject of the interference, though he explicitly claims that this is merely a terminological shift.



Such are the two essential tasks of conceptualizing domination. I offer here what I think are important course-corrections for recent attempts to complete them. In §1 I set out two constraints on a conception of domination that can do the work I think we need it to do. In §2 I look at the problem of “cheap domination.” This is the problem of identifying ordinary, innocuous social interactions with anything we call *domination*, and I think it afflicts the most influential accounts of domination on offer nowadays—in particular Pettit’s and Lovett’s. The solution to the cheap domination problem, I’ll argue, is my account of what sort of power domination requires. I call it “impositional” power. Then, in §3, I consider the nature of arbitrariness. Here, I tie the arbitrariness of power to its “deliberative isolation.” I’ll try to show that thinking about arbitrariness in this way unites the most compelling of Lovett’s and Pettit’s claims about arbitrary power. I wrap things up in §4 with a brief word about how my arguments relate to contemporary republican theories of political freedom.

§1     What do we want from a conception of domination and how would we know when we’ve got it? The following arguments aim to live up to two adequacy constraints. First, just having the concept of domination puts us in a position to recognize certain paradigms/primary exemplars of domination. These paradigms have already been introduced above: mastery, dictatorship, traditional husbanding, etc. Historically, republican political theorists have thought that the relation of masters to slaves is especially emblematic of the dominated

condition—if anybody ever dominates anyone, masters dominate slaves.<sup>31</sup> A primary point of theorizing domination is to clarify what’s amiss in these paradigms. It follows that there’s reason to think something’s wrong with a conception according to which clear instances of slavery or despotism or feudal overlording or traditional husbanding don’t count as domination. For example, if we say that *A* dominates *B* only if *A*’s power over *B* leaves *B* worse off overall than they would be otherwise,<sup>32</sup> we commit ourselves to the claim that sufficiently beneficent masters don’t dominate their slaves. But this is a mistake if slaves are paradigmatic victims of domination. Thus the first constraint: an adequate account won’t strand us on a conception of domination too far from the concept.<sup>33</sup>

The second constraint is grounded in the idea that domination is morally wrong or unjust. We talk about dictators and slave masters and such as morally bad insofar as they are dictators and slave masters.<sup>34</sup> People often complain when they are dominated; they regard themselves as victims. They often blame their dominators. In Strawsonian terms, they feel reactive attitudes of indignation and resentment toward them.<sup>35</sup> Now people complain about all kinds of things, and we

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<sup>31</sup> For a summary of Roman contributions to the republican tradition, see Sellers (1995).

<sup>32</sup> Lovett dispatches this view in (2010, 44-47).

<sup>33</sup> I’m working with the concept/conception distinction familiar from Hart (1994: 159-163) and Rawls (1971: 5-6, 8-11).

<sup>34</sup> We don’t talk about traditional husbands in this way quite as much. We’ll get there. Also, I don’t mean to suggest that being a dominator is enough to make you morally bad all things considered. For example, John Adams was probably a very decent person overall. We might say instead that masters and tyrants are paradigms of morally bad *roles* which might be filled by persons of varying moral goodness and badness. Thanks to an anonymous referee at *Ethics* for pressing me for clarification here.

<sup>35</sup> See Strawson (1962). Ian Shapiro is probably foremost among contemporary theorists of domination in emphasizing its seriousness, but even he is willing to say that some forms of domination are “trivial” (2012, 332). I agree that some instances of domination are far worse than others, but talk of trivial domination makes me uneasy, if by “trivial” we mean something like “not complaint-worthy”.

don't always think their complaints are legitimate; but lots of us *do* think that subjects of dictators and masters and patriarchal husbands have appropriate attitudes of indignation and resentment toward them. That's why I think a useful conception of domination needs to give us a sense of why domination is morally serious. We want to know why victims of domination have grounds for legitimate complaint. Too, our conception should be consistent with the claim that we have a *pro tanto* obligation not to dominate others. If our account of domination says that lots of morally unserious or clearly permissible forms of human interaction instantiate domination, I think we should get another one.<sup>36</sup>

When I say I think we need an account of domination that doesn't leave us with the result that many innocent forms of human interaction are actually domination, I don't mean that we should trump for an essentially moralized account of domination. For example, Eva Kittay defines domination as "the exercise of power over another against her best interests and for purposes that have no moral legitimacy" (1999, 33-34). Maybe it will turn out that we can't do any better, but if we end up with a conception like this, we obviously won't be able to recognize instances of domination without applying a more-or-less fully worked out account of moral legitimacy. It seems preferable to me to work up a conception of domination that those with different ideas (or no ideas) about moral legitimacy can agree to, rather like a Kantian might agree that a particular action

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<sup>36</sup> If you go along with me in thinking we should avoid a conception on which dominating someone can be innocent, you'll probably want to agree with me too that whatever it is a paid dominator/dominatrix does to their clients, it's only "domination," or else calling it domination is just one of those uses of the word in English my theory isn't meant to cover.

maximizes utility without agreeing that it's morally permissible to perform the action.

So much for what we want. Before we see how much we can get, it makes sense to take stock of what we already have: the essential parts of earlier attempts to characterize domination. For starters, we've already come across the idea that domination is a variety of social power. The nature of power and of social power in particular are obviously complex, but I'll work here with an essentially Hobbesian view of the former, and an essentially Weberian view of the latter. Power in general, said Hobbes, is an agent's "present means to obtain" what they perceive as worth having (2004, 50). Such "present means" are wildly diverse: money, physical strength, guile, beauty, charm, guns, etc. *Social* power is just the "present means" to get what we want, when getting what we want requires interaction with other agents (and usually their cooperation). How much social power an agent has is measured, said Weber, by "the probability that [they] will be in a position to carry out [their] will despite resistance" from the relevant others (1978: 53). I'm happy to agree with Lovett that domination manifests strategic relatedness between agents, where *A* and *B* are strategically related just in case what it's rational for *A* to do "depends in part" on what *B* does (2010, 34). I think Lovett is certainly correct that an imbalance of power between *A* and *B* is a necessary condition on domination (2010, 120). How *much* social power, how *great* the imbalance of power must be for domination to occur, is a matter of considerable import. We'll come back to that. But for now we're right up against Pettit's preferred idiolect. Pettit usually prefers talk about *interference with choice*

to talk about power as such; but talk about social power leads naturally to talk about interference with choice. Why? To exercise social power over someone requires the means to overcome their resistance. But having the means to overcome their resistance requires the means to raise the cost of that resistance. But when *A* raises the costs of *B*'s resistance to *A*'s projects and plans, *A* interferes with *B*'s choices by worsening *B*'s choice situation.

Interference with choice, on Pettit's taxonomy, takes three broad forms: I can interfere with your choices by removing potential objects of choice, by replacing them, and by misrepresenting them. Suppose I blow up your bicycle. I just removed the option of riding your bike. Suppose instead I knife your rear tire. I just replaced the option of riding your bike with another option: riding your bike after you replace or repair the rear tire. Both examples involve objective removal and/or replacement of options—really, out there in the world, options have been removed or replaced. Misrepresentation of options is cognitive rather than objective: e.g. I lie to you and say that somebody switched your bike seat for one made of black licorice, and you hate that stuff. In this case, if you believe me, options have been removed or replaced only in your head; but the interference is real enough.

One of Pettit's central contentions, and perhaps the vital center of contemporary republicanism, is that the *capacity* for a certain kind of interference with choice, not necessarily any actual interference, is sufficient for domination. Dominators may find you generally pleasing; they may leave you alone. If you're used to subjugation, you may learn your subjugator "by heart" and not require any

active interference. Domination, in such cases, is manifest by *invigilation*, not interference.<sup>37</sup> If I invigilate your choices, I stand ready to interfere even if I don't.

Marilyn Friedman (2008) and Ian Shapiro (2012) have challenged this element of republicanism. Friedman wonders how it can be appropriate to minimize the *capacity* of some to interfere with others. After all, aren't such capacities all over the place? "Big and strong people can physically overpower weak people. Smart people can outwit those with less intelligence" (2008, 251). If we think, as Pettit certainly does, that the state should minimize such capacities, won't this mean punishing people merely for being strong and smart when others aren't?

A more complete answer to Friedman will take us through the end of the next section, but this much can be said right now. Minimizing the *capacity* to interfere need not involve limiting the extent to which someone is strong or smart. What matters is what you can use your strength or smarts to do without penalty. When Pettit and others say that you shouldn't have the capacity to interfere, they mean that significant costs are attached to using your powers in certain ways: in the relevant sense, however physically strong you may be, you won't have the capacity to beat people up so long as you can't go and knock someone around without running a considerable risk of imprisonment. It will be true that you have

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<sup>37</sup> Frankfurt's (1969) demon is another fine example of invigilation.

the capacity in some other sense to beat people up, but you won't have the capacity to do so without serious sanctions.<sup>38</sup>

But both Friedman and Shapiro have a deeper worry. Even if we confront capacities only as suggested above, why think that domination can be housed in mere capacities at all? Instead, Friedman says we should concern ourselves only with “actual or attempted arbitrary interference” (2008, 252).<sup>39</sup> Likewise, Shapiro recommends that we shift our attention from “having the capacity for arbitrary interference in the lives of others”. Says he: “having [the] capacity does not itself constitute domination; rather it creates the potential for domination”, which is manifest in the illicit use of power.<sup>40</sup>

Here's why I think we should disagree with Shapiro and Friedman: it's a straightforward matter to construct variants of our paradigms that don't involve any “actual or attempted” interference, or the use of actual power in illicit ways. For example, imagine you're married to a sufficiently enlightened husband in 18th Century America.<sup>41</sup> He might grant you complete autonomy, treating you day by day with sweet respect. None of that looks like power turned to illegitimate purpose. But do we really want to say that this husband does not

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<sup>38</sup> I think clarifying Pettit's concern for capacities in this way helps with Friedman's concern that limiting the “capacity to act in ways that harm” is also to limit the “open, adaptable capacity” of caretakers to “help another person”: “the capacity to clean someone's wound,” she points out, “is also the capacity to infect it” (2008, 253-254). When we limit potentially dominating capacities, as I understand Pettit, we attach costs only to infecting wounds, not to cleaning them.

<sup>39</sup> Here, Friedman follows Kittay (1999, 33-34).

<sup>40</sup> Shapiro offers no argument except what he takes to be everybody's intuitions about whether a bully known to his classmates to beat up only black children dominates the white children as well just because he's strong enough to (2012, 324). This is an interesting case, but my intuitions about it are much wobblier than Shapiro seems to think they will be. I have questions like, is there adult supervision? By racists? Is the bully penalized by third parties only if he attacks white children? If, after such questions are answered, it turns out that the white children are at the mercy of the bully, I'm inclined to stick by my guns and say they're dominated too.

<sup>41</sup> Pettit has deployed similar examples on several occasions.

dominate you? You are nigh completely at his mercy if in any of a thousand ways you cease to please him, or if he turns to drinking, or a nastier sort of religious fundamentalism.<sup>42</sup> We can imagine similar cases with “enlightened” or indolent slave masters. Imagine a master who lived with his slaves on a secluded island, so there was no question of escape and coercive force to prevent such was never necessary. Imagine that he left his slaves alone except to prevent violence. Does he cease to be a master? Preventing violence looks like a generally legitimate purpose. But there is something strange about the idea that someone could cease to be a master, and his subjects to be slaves, just because of an inner commitment only to use his power in certain ways. (Lovett puts it starkly: “To have a master—good, bad, or indifferent—is to be dominated.”) If you agree, you’ve got reason to think that domination involves a certain kind of power, not just illicit use of power. This is just to say that domination is about how social relationships are structured, to use Lovett’s language, rather than what outcomes they have—like whether or not one party actually uses their power illicitly. Exactly what this structure is concerns me for the rest of the paper.

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<sup>42</sup> As I understand Shapiro, he would say that the wife in this case is subject to possible domination, but is not actually dominated. Even so, he sometimes talks like living with the possibility of domination gives you a real complaint from the perspective of justice (2012, 324). An editor at *Ethics* suggested that a distinction between dominating *positions* and dominating *acts* might be the best approach to such cases. Then we could say that the man in this case holds a dominating position but does not actually dominate. That’s an attractive suggestion, but I’m moved by the argument of this paragraph to resist it. If you’re inclined to accept the distinction, you’re welcome to think of the chapter’s remainder as an account of what it takes to occupy a dominant position. At any rate, I think apt indignation should be aimed at those who occupy dominant positions as well as active dominators, if the occupiers pass up the chance to abandon their position.



§2 Here's what we've got so far: in the main, *A* can't dominate *B* unless *A* and *B* are in a strategic relationship, so that what it's rational for *B* to do is contingent to some degree on what *A* does; *A* can't dominate *B* unless *A* has social power over *B*, so that *A* can get *B* to go along with *A*'s plans even if *B* would prefer not to; *A*'s domination of *B* is a function of the power *A* has, not what *A* does with it. All this is arm-in-arm with the main lines of contemporary republican theorizing about domination. But here I have to part ways. Both Lovett's and Pettit's way of characterizing domination allows a great many ordinary, apparently blameless social interactions to count as domination. Of course, I'm not the first to worry about this. We've already noted Friedman's concern that Pettit's conception of domination is too wide-scope; Shapiro too complains about Pettit's failure to "[attend] to the nature or the importance" (2012, 321) of the choices dominators might interfere with.

Before we get to my own fix, we need a preliminary tour through what Pettit and Lovett have to say about what makes domination an unacceptable form of social power—a subject I will address more thoroughly in §3.

It's agreed all around that whatever else domination is, it involves "social power wielded according to the will or pleasure of the power holder" (Lovett, 2010: 112)—this is the famed "arbitrariness" of domination. Lovett and Pettit disagree about what arbitrariness is: Lovett has dubbed the split a difference between his "proceduralism" and Pettit's "substantivism". The former identifies arbitrary power with "social power . . . that is not reliably constrained by effective rules, procedures, or goals that are common knowledge to all persons or groups

concerned (2010: 96, 112 and 2012: 139). Lovett highlights two elements here: arbitrary power lacks “reliable” and “effective” constraint. If it’s widely known that police searches and seizures require a warrant, and the issue of warrants is subject to judicial review, and the reviewing judge just happens to be impervious to bribes, police power is to that extent effectively limited; when *all* the judges who do the reviewing are famously impervious to bribes, the limits are also reliable. The great value of procedural non-arbitrariness, according to Lovett, is that power so checked is predictable power. *A* may possess more social power than *B*, but if this power is subject to procedural constraints, *B* is in a position to know just how *A* will wield *A*’s power. This reduces the extent to which *B* must curry *A*’s favor, and increases *B*’s ability to form plans and act on them.

And what of the substantive account? Its heart is the idea that non-arbitrary power is accountable to those under its sway. The “substance” which Lovett opposes to “procedure” is just “the subjected groups’ or persons’ ideas about their interests” (2012, 115).<sup>43</sup> For substantivism, therefore, the presence or absence of arbitrariness is measured by who has a say in when interference is justified: power is arbitrary to the extent that those subject to it don’t have a say in how it’s wielded—even if it’s wielded only in accord with widely recognized procedures.<sup>44</sup>

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<sup>43</sup> Dividing up conceptions of arbitrariness as Lovett does—“proceduralism” vs. “substantivism”—is perhaps infelicitous, given that Pettit’s way of guaranteeing substantive non-arbitrariness is through broadly democratic procedures. Given that I will interact with Lovett at length in what follows, I will stick with his labels.

<sup>44</sup> For a selection of Pettit’s various formulations of arbitrariness, see (1997, 55-56). Bellamy (2007, 58), Forst (2013), Friedman (2008, 265), Laborde (2008, 152-156), Maynor (2003, 37), Richardson (2002, 47-52), and Young (1990, 37) also endorse some form of substantivism.

But here's the trouble: when we combine either the procedural or substantive account of arbitrariness with what Lovett and Pettit say about the nature of social power or of interference, we get what I referred to above as "cheap domination". To review, domination is supposed to be morally serious. If an account of domination says that many ordinary, apparently innocent human interactions are instances of domination, that's a reason to reject it—at least as an accounting of what dominated agents have legitimate cause to complain about.

Let's start with Lovett. According to his conception of domination

(D1) When *A* and *B* (i) are both social actors (ii) engaged in a social relationship with each other, *A* dominates *B* to the extent that (iii) *B* is dependent on this social relationship to some degree, (iv) *A* has more power over *B* than *B* has over *A*, and (v) their social relationship is structured so that *A* can exercise arbitrary power over *B*. (2010, 120)<sup>45</sup>

The purpose of (i) is to rule out the possibility of domination without agents (i.e. domination by social structures alone); (ii) we encountered above as the claim that strategic relatedness between two agents is a necessary condition on either dominating the other; the "dependence" mentioned in (iii) is a function of *B*'s perception of exit costs from the social relationship with *A*; condition (iv) obtains when *A* has at least some capacity to overcome *B*'s resistance to cooperation with *A*'s *B*-including plans. Condition (v), should be interpreted along proceduralist lines.

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<sup>45</sup> This is modified very slightly from Lovett, but not in any way that alters its content.

How do we get from (D1) to false positives of the “cheap domination” variety? Like this. Imagine you own a beautiful swimming pool, the only one for a hundred miles. I live nearby. We’re acquainted and generally friendly, but not so close that you allow me to use your swimming pool any old time. But I just love swimming in beautiful swimming pools—not a pathological love, mind you, but I really, really love a good swim in such environs. I approach and ask for regular access. Given that you don’t especially care if from henceforth we continue strangers, I can’t depend on your mere liking for access. Suppose you grant it for charity’s sake.

Now, it’s clear enough that we’re both social actors in this case. We’re also engaged in a social relationship with each other: given that you’ve granted me access to your pool, what it makes sense for me to do going forward depends in some measure on what you do. You might ask me to pick up your dry cleaning on the way to the pool. This changes my practical context, so that what it’s rational for me to do depends in part on your request that I pick up your dry cleaning. (If I don’t, who knows how you might take that.) Am I dependent on this social relationship? Given my love of swimming in beautiful swimming pools, and that you own the only one for miles, I will likely perceive the exit costs as relatively high (and Lovett requires only that my dependence be “to some degree”). Do you have more power over me than I have over you? Why not? You have a beautiful swimming pool that I want to swim in; I don’t have anything you especially want. Am I exposed to your will in the sense that matters to Lovett?

Are there common knowledge rules and procedures that constrain you in granting or withholding my access to the pool? We can just stipulate that there aren't.

If (D1) is an adequate conception of domination, it apparently follows that you dominate me. But I can't see that you do. This becomes clear once we ask whether there's anything about my relation to you that might ground a legitimate complaint. You don't owe me pool access. If you denied me access at any moment, for whatever reason, you're within your rights. That you can get me to run the occasional errand looks innocuous. I can always refuse to pick up your dry cleaning; I just can't refuse without the risk of souring your spirits. Now, if I was a swimming pool junkie, and you made me a kind of servant on pain of losing my pool-privileges, that starts to look like domination.<sup>46</sup> But that's not what's happening. I just like pools, and you've let me use yours out of the goodness of your heart. I'm "dependent on a social relationship in which some other person or group wields arbitrary power over me", but am I dominated? Not if domination picks out a morally problematic form of social power.

Conjuring similar trouble is straightforward for something closer to Pettit's conception of domination, reconstructed along Lovettian lines:

(D2) When *A* and *B* (i) are both social actors (ii) engaged in a social relationship with each other, *A* dominates *B* to the extent that (iii) *A* may interfere with *B*'s choices by removing, replacing, or misrepresenting options otherwise available to *B*, and (iv) in a manner *B* does not control.

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<sup>46</sup> I'll try to explain why that's true below.

As we've seen already, Pettit claims that we go about interfering with choices by removing, replacing, or misrepresenting the options of other agents. But such interference doesn't count as domination, on Pettit's account, unless it's a form of *invasion*. What does the invading is just other wills: "I can impose my will on you in a choice between *X*, *Y* and *Z* by taking steps, uncontrolled by you, that change the cognitive or objective profile of the options" (2012, 59).

Does (D2) let us say that the pool owner doesn't dominate the would-be swimmer? I don't see how. Clearly, the owner can remove the option of a swim at any time. Furthermore, the owner can replace the option "visit the pool" with "visit the pool only after picking up the dry cleaning on pain of souring the owner's charitable spirits". The would-be swimmer doesn't control the owner's power of removal or replacement. So, the pool owner apparently dominates on (D2).

Pettit admits "we may not think that invasions of that type ought always to be prohibited in a free society." That's true. What's also true is that invasions of this type have no obvious connection to the aptness of reactive attitudes like resentment and indignation. Again, if what we want from a conception of domination is an explanation of what victims of domination have to complain about, it's hard not to see Pettit's conception as rather prodigal. His version of domination is ubiquitous. Anytime you're sitting in a café they may be down to a few napkins, straws, empty chairs, electrical outlets to charge devices, etc. You will thus have a capacity to interfere with the choices of your fellow patrons that they do not control, insofar as you may appropriate said napkins, straws, chairs,

and outlets before they are able to do so. But that's just normal life. It's not domination.<sup>47</sup>

If you agree that the pool owner doesn't dominate our would-be swimmer, and you agree that masters and despots and traditional husbands dominate their subjects, what's the difference? (And we've already seen that the difference doesn't look like one of arbitrariness vs. non-arbitrariness. The fact that the pool owner can deny access to the pool in accord with their whims looks unobjectionable.) If just any kind of power—e.g. the kind the pool owner has—isn't suited to domination, what kind of power must *A* have over *B* in order to dominate *B*?

To begin, the most obvious difference between paradigm dominators and small-time power holders like our pool owner is what they can do if you cross them. Go along to get along with a tyrant or a slave master or a traditional husband, or else you'll get a beating and maybe worse; go along to get along with the local pool owner, or . . . well, you may lose your pool privileges. The latter is obviously far less severe a fate. This suggests that we might banish the specter of cheap domination just by insisting that dominators have enough power to enforce their will with severe penalties, according to some widely applicable metric for severity. Shapiro's appeal to "basic interests" supplies such a metric, and a very plausible one. "[V]ulnerability to domination is operationalized" he claims,

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<sup>47</sup> We should keep in mind that Pettit makes a distinction between dominated *choices* and dominated *persons*, as opposed to free choices and free persons. The focus of his moral concern is on dominated vs. free persons; as a consequence, it's open to him to say that the pool owner in this case dominates a range of your choices, but does not dominate *you*, though in a real sense you are a victim of domination and she is the dominating party.

“principally by reference to the notion of basic interests. People have basic interests in the security, nutrition, health, and education needed to develop into, and live as, a normal adult” (2012, 294). Such interests are especially vital because, unless they are secured, it will be very difficult to “function adequately and responsibly in the prevailing economic, technological, and institutional system, governed as a democracy, over the course of their lives” (2001, 85-86). Along similar lines, Cécile Laborde claims that “domination refers” to power structures and inter-personal relationships that “significantly threaten or deny basic capabilities” and “basic interests” (2013, 284).<sup>48</sup> That seems generally right to me. If *A* can compromise *B*’s basic interests or capabilities along these lines, and in accord with *A*’s whims, *A* will almost always be able to dominate *B*.

Why not stop here? Why not conclude that for *A* to dominate *B*, *A* must have sufficient power to compromise *B*’s basic interests and leave it at that? It may be true (and I think it is) that this gives us a very high degree of extensional adequacy. Furthermore, an account like Shapiro’s or Laborde’s rules out domination-on-the-cheap: nobody has a basic interest in swimming in nice pools, and your access to nice pools, in any but the most fanciful scenario, will have nothing to do with your ability to function “adequately and responsibly” as a democratic citizen. Also, if we want to know what institutional arrangements most effectively minimize domination, I think that a focus on basic interests is the

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<sup>48</sup> At the bottom of such talk is Sen’s (1983, 1985) and Nussbaum’s (1992)<sup>48</sup> work on “basic functioning capabilities”. Similar use could be made of the capacities represented by Rawls’ primary goods (1971) or Pettit’s “basic liberties” (2008, 2012).



best course.<sup>49</sup> But even if a basic interests account is enough for practical politics, there are reasons to try and be more comprehensive for theoretical purposes. Why? Because it's plausible to think a capacity to compromise basic interests [even on an arbitrary basis] is sometimes neither necessary nor sufficient for domination.

The case of our aforementioned swimming pool junkie may be one where domination doesn't require that a power-holder be positioned to compromise basic interests. If the swimmer's lust for well-apportioned pools is sufficiently pathological, the pool owner who grants them occasional access may be able to wield considerable power—perhaps enough to dominate them—but I doubt many would say that anybody has a basic interest in being able to swim in a pool, no matter how pathological their impulse to do so. There are obvious real-world parallels. If I'm addicted to hard drugs, and you control my access to them, you are probably in a position to dominate me; but whatever interest we have in the use of recreational drugs is not plausibly basic. Shapiro offers another “not necessary” case, suggesting that someone who threatens to out a closeted gay person, or expose someone's secret affair, might be able to dominate them without compromising their basic interests (2012, 294).<sup>50</sup>

There may be “not sufficient” cases too. It's probably impossible to dominate a human being answering to Aristotle's description of someone with the

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<sup>49</sup> Indeed, you can think of the remainder of this section as an attempt to provide further theoretical underpinnings for such an emphasis on basic interests.

<sup>50</sup> I'm actually not sure I follow him here. We might think an interest in sexual privacy *is* basic. And to be clear, I don't think that the existence of such “not necessary” cases is a problem with Shapiro's conception of domination: he claims only that domination is “operationalized . . . *principally* by reference to the notion basic interests” [italics mine]. I'm just more interested than he is about what's going on in cases where domination isn't operationalized like that.

excessive vice beyond courage: “a sort of madman, or someone immune to pain, if he feared nothing, not even an earthquake or stormwaters” (2002, 134). Even arbitrary power sufficient to compromise their basic interests wouldn’t be enough to dominate someone truly without fear. The insanely fearless cannot be ruled. They can be shot or starved or whatever, but you can’t bend them to your will. And someone who cannot be bent to the will of another, I’m inclined to say, cannot be dominated.

Where are we? We’ve seen that power suited to domination often corresponds to power sufficient to compromise basic interests, but not always. Now, if we could find some feature or features that the “power sufficient to compromise basic interests” cases have in common with the “but not always” cases, we’d be getting somewhere. And I think there are such feature[s] to be found.

To spot them, let’s back up a bit and recall the Weberian notion that *A*’s social power over *B* is a function of *A*’s ability to secure *B*’s cooperation even when *B* would rather do otherwise.<sup>51</sup> How do you secure cooperation in that way? Well, you try to make cooperation more attractive than non-cooperation by attaching costs to the latter higher than the costs of the former. Obviously, the fact that cooperation has lower costs than non-cooperation contributes to the case that cooperation is practically rational.

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<sup>51</sup> I don’t think I need a full-blown theory of cooperation. As I’m using the term, handing over your wallet at the highwayman’s demand, allowing your hand to remain in your lover’s when they grasp it under the table, and passing the potatoes to a diner across the boarding house table all count as cooperation. If you’ve got a feel for what such examples have in common, you’ve got enough for my purposes: essentially, anytime you go along with what someone else wants you to do, you’re cooperating.

Now, small-time power holders have only a modest ability to attach costs to non-cooperation. Think again of a choice between cooperation and non-cooperation with our pool owner. Let  $x$  stand in for cooperating;  $\neg x$  for not cooperating. Let  $C_x$  represent the costs/risks associated with  $x$ ing;  $C_{\neg x}$  the costs/risks associated with  $\neg x$ ing. When the would-be swimmer's love for the owner's pool is within a range consistent with sanity,  $C_{\neg x} > C_x$  only for a rather constricted range of substitutions for  $x$ . Why? Because the pool owner's ability to attach costs to the swimmer's non-cooperation is only her ability to take away the latter's pool privileges. Assuming the sanity of the swimmer, this will be a higher cost than a few substitution instances for  $x$ : the swimmer is likely to think that  $x$ ings like "Pick up the owner's dry-cleaning upon their request" are lower-cost than  $\neg x$ ing and souring the owner's spirits. But again, assuming a relatively normal psychology in our swimmer, it's easy for the owner to overdraw her stores of social power. If the owner asks the swimmer to do all the owner's laundry as needed, it is highly likely that  $C_x > C_{\neg x}$ , despite the swimmer's well-documented pool preferences.

You can see how we go on from here. When the choice is cooperating/not-cooperating with one of our paradigm dominators, the set of plausible substitutions instances for  $x$  where  $C_{\neg x} > C_x$  explodes outward: if  $C_{\neg x}$  is death or a beating or the condemnation of society,  $C_{\neg x} > C_x$  for a very wide range of possible  $x$ ings. Even if  $C_x$  is very high—say working in the fields every day harvesting a master's crops instead of pursuing the vocation of your choice—that's still lower than the costs slave masters have usually been empowered to

place on recalcitrance. Most any instance where some  $A$  is empowered to compromise  $B$ 's basic interests will have a similar structure, and this is the reason Shapiro's and Laborde's insistence on the centrality of basic interests has so much going for it. If  $C \neg x$  involves the compromise of basic interests,  $Cx$  will be lower, again, across a very wide range of possible substitutions for  $x$ . Take a plausibly basic interest like that in gainful employment. If a boss can take your job on a whim, and jobs are scarce, cooperation with that boss might involve staying after work every day of the week, or passing up the chance to file a complaint about the boss's persistent sexual harassment, etc., and staying on and passing up will often be less costly for you than losing your job.

And what about cases where  $A$  is plausibly well-positioned to dominate  $B$ , but they don't have power over basic interests? What about unscrupulous drug dealers, or Shapiro's blackmailers? The same dynamic is at work. The threat of losing access to (e.g.) heroin affects an addict in the same way that the threat of losing food, shelter, employment, physical safety, et al., affects persons happily sans addiction. What effect is this? If a dealer can cut off an addict's access to heroin, that dealer will be able to attach penalties to the addict's non-cooperation with almost anything the dealer asks that are worse, from the addict's perspective, than cooperation would be. Likewise, blackmailers get their power from the same ability to make  $\neg x$ ing costlier than a great many ways to  $x$ . If you're afflicted with a pathological attachment to lovely pools, unscrupulous pool owners may be able to do the same: given your pathology, losing pool access might be so high-cost from your perspective than even substitutions for  $x$  like "Do all the owner's

laundry all the time, as per their request” or “Provide free childcare for their toddlers” might be comparatively low-cost. In such a case, it will be considerably harder for the pool owner to overdraw her stores of power.<sup>52</sup>

A bit of additional terminology surfaced in the last paragraph: costs “from the perspective” of the one subject to social power. Is this the right measure for the costs of  $x$ ing/ $\neg x$ ing? I think it is, and I think the case of Aristotle’s madman shows us why. The madman can’t be dominated. Why not? Because, from their perspective, whatever costs you attach to  $\neg x$ ing, however enormous from some third-personal frame of reference, are lower than  $x$ ing. You can bend normal people to your will, (e.g.) when you can compromise their basic interests, because given an ordinary psychology—and thus an ordinary perspective—non-cooperation can be made too costly to be borne. But if Aristotle’s madman is at least conceivable, that pushes us some way toward the view that the appropriate metric for  $Cx/C\neg x$  is the perspective of the agent on the receiving end of power.

It looks like paradigm dominators, with other agents sufficiently empowered to compromise basic interests, have this in common with agents empowered because of more unusual circumstances (subjects possessed of the desire to protect secrets, addictions, or pathological pool-love) to wield significant social power: all can attach costs to non-cooperation higher than the costs of cooperation for a wide range of forms cooperation might take. Small-time power-

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<sup>52</sup> You might think that domination is less severe in some such cases than it is in the case of ecumenically recognizable basic interests, given that it is at least sometimes, with rehabilitation or therapy, possible to change your perspective on the costs (e.g.) a dealer can impose so that they lose their power, while it’s doubtful that anyone can be rehabilitated so that they cease to care whether they are beaten or starved. You might think this, and if you do, I think you’re right.

holders—the operatives of “cheap domination” cases—can attach costs to non-cooperation higher than the costs of cooperation for only a narrow range of possible cooperatings.

We wanted a principled way of sorting power enough to dominate from power not enough, and we’ve got at least the beginnings of one. The obvious question now is “How wide a range is wide enough?” or “How narrow a range is too narrow?” Of course, it’s doubtful that we can answer these questions quantitatively, at least with any precision. I suspect we’re asking the wrong sort of question to expect such. The difference between power enough and power not enough to dominate looks to me like the difference between stamina sufficient and stamina insufficient to run a marathon.<sup>53</sup> But we can say this: when an agent’s ability to raise the costs of non-cooperation is high enough so that cooperation, over a sufficiently wide range of ways to cooperate, is comparatively lower-cost, certain things will tend to be true about that agent, her power, and those subject to it. To the extent that these “certain things” obtain, we will have good reason to conclude that we’re in the presence of dominating power.

For starters, Scott Anderson has recently pointed out that at least the most potent forms of coercive power—power backed by the threat of physical violence being foremost—are “suited to stop a person from pursuing her aims regardless of her motives or reasons” (2010, 28).<sup>54</sup> Obviously, we’re concerned with dominators, not coercers as such, but there’s something instructive here. Some

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<sup>53</sup> There may even be what Timothy Williamson (2000, 18) calls a “buffer zone” between power enough and power not enough such that within this zone, *A* might have power enough to dominate but could not be known to have such power.

<sup>54</sup> So long, we might add, as we’re talking about ordinary folks, not Aristotelian madmen.

kinds of social power draw the attention of the power-holder to the “motives or reasons” of possible cooperators: when the pool owner thinks about how to wield her power over the (non-pathological) would-be swimmer, she will have to deliberate a bit about how much the swimmer wants to swim in her pool. Do they want to enough that they’ll cooperate if asked to get the dry cleaning? This kind of deliberation is prompted by the narrowness of the range of things the pool owner can render  $C\neg x > Cx$ , as noted above. But sufficiently empowered agents don’t have this problem. Their power decreases or even eliminates the extent to which they must pay attention to some  $B$ ’s “motives or reasons”. If  $A$  is empowered to assault  $B$ , or cut them off from a substance they’re dependent on, or fire them from the only job they can get,  $A$  won’t have to think much about what else  $B$  wants or how much. When it comes to the contents and arrangement of  $B$ ’s motivational set,  $A$  will barely have to look.<sup>55</sup> Although  $B$ ’s perspective is the relevant metric for what counts as high or low costs, sufficiently empowered  $A$ ’s won’t need to take much consideration of this perspective.

From here on out, I will refer to this kind of power as a *power of imposition or impositional power*. Whatever  $A$ ’s will for  $B$ , if  $A$  can compromise  $B$ ’s basic interests, or cut  $B$  off from that thing  $B$  most wants (for however terrible reasons), or expose  $B$ ’s most closely guarded secrets to the world, inter al.,  $A$  may indulge in a rational assurance that their chances of successfully imposing that will on  $B$  are high.<sup>56</sup> Lesser power-holders can only place their will before the

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<sup>55</sup> Such talk originates, as far as I know, with Bernard Williams (1981). I don’t mean to endorse any substantive view of reasons by using language like this.

<sup>56</sup> Suppose a pool owner lives amongst pool junkies. Is mere geographical proximity enough to dominate them? Enough to give the junkies legitimate complaint? I don’t think so. Here’s why:

relevant *B* as one option among others, others which may very well be lower-cost from *B*'s perspective. Such *A*'s may have power sufficient for effective attraction and strong negotiation, but it stretches languages to think they can impose.

To have impositional power is obviously a feature of *A*, but other indicators that such power is present occur in the affected *B*. According to Pettit, nondomination requires that “people should securely enjoy resources and protections to the point where . . . they can look others in the eye”. We can repurpose this as a measure for when *A* can make  $C_{\neg x} > C_x$  for a sufficiently wide range of possible  $x$  to enable domination: in brief, that the range of  $x$  for which *A* can make  $C_{\neg x} > C_x$  is suited to domination when, even in the absence of unusual temerity in *B*, it tends to be the case that *B* cannot “look [*A*] in the eye without reason for fear or deference” (2012, 105). Many—maybe most—forms of social power aren't like this. Unless I have a very strange psychology, it won't affect my capacity to hold my head high if you can interfere with my choice situation and set the conditions under which I have access to your pool according to what seems best to you. On the other hand, if you've threatened to tell the world my dearest secret, I should probably not walk too tall when you're around.

I think what's already been placed beneath the ægis of impositional powers captures most of what's going on with domination-suited power; but we should introduce one more complication. A power of imposition has the following additional feature: it is not effaced by the threat of use. Consider. It might be that

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just living near you isn't enough to put us in a social relationship. The junkies have a complaint only if the pool owner tries to get into a situation where they can adjust the junkies' practical context: e.g. granting pool access knowing that this will put them under the owner's thumb.



our friendship means a great deal to you. You might be willing to go through quite a lot to maintain it. Does this mean I am well positioned to dominate you? After all, you might be willing to cooperate with me in all kinds of ways so that we stay pals. Here's why I may not dominate you even so. Obviously, if I start asking you to do all kinds of things, holding over you the explicit or implicit threat that our friendship depends on it, I'll start to weaken the very currency of my power.<sup>57</sup> Power suited to domination seems different in kind. If I dominate you, threatening to raise the costs of your non-cooperation will have no effect on your willingness to accept those costs. In sum, impositional power is declarable: it's a form of power that dares speak its name.

At last let's put all of the above together as an alternative to (D1) and (D2). Keeping as much of Lovett as we can:

(D3) When *A* and *B* (i) are both social actors (ii) engaged in a social relationship with each other, *A* dominates *B* to the extent that (iii) *A* has impositional power over *B*, and (iv) *A* can exercise this power over *B* in an arbitrary manner.<sup>58</sup>

Some forms of impositional power ought always to be minimized. We ought to do our best to attach steep costs to attempts to undermine someone's mental health,

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<sup>57</sup> I think sometimes lovers and "friends" do dominate. Sometimes lover *A* will hold ending the relationship over the head of lover *B* to secure *B*'s cooperation, even openly. When *B* is psychologically constituted so that *A*'s behavior does not loosen *A*'s power over them, we often think that something is wrong with the relationship. We resent *A* for the power they wield over *B*, and think *B* has a legitimate complaint against *A*. This is all reason to think a [perhaps low-grade] variety of domination is at work.

<sup>58</sup> I think we can fold Lovett's treatment of dependence into our measure of *A*'s power. If *A* has power over *B* in the sense of (iii), that's just to say that *B*'s exit costs are high: *A* can penalize *B*'s attempts to exit *A*'s sphere of influence—that is, *A* can replace "try to exit *A*'s sphere of influence" with (e.g.) "try-and-be-roughed-up".

access to nourishment, shelter, necessary medical care, etc. But I don't see any reason to deny that some forms of impositional power—power enough to inflict physical harm, access to employment, free association, transportation (et al.)—may rightly be possessed and exercised. Impositional power amounts to domination only when it's arbitrary.<sup>59</sup>

§3 That someone has impositional power, and can wield it as they please (according to their *arbitrium* in classical republican parlance), looks a lot more like legitimate grounds for resentment and indignation than the mere fact that they have any sort of discretionary power over you. Hopefully you agree. It remains to figure out the nature of arbitrariness itself. What's going on in condition (iv) of (D3)? This figuring will take us beyond (D3).

As noted, there's disagreement among theorists of domination about arbitrary power. Lovett endorses proceduralism, which identifies it with “social power . . . that is not reliably constrained by effective rules, procedures, or goals that are common knowledge to all persons or groups concerned (2010: 96, 112; 2012: 139). Most everybody else<sup>60</sup> endorses some variety of substantivism: that power is arbitrary to the extent that those subject to it don't have any say in how it gets wielded. Lovett has recently argued that all variants of substantivism are deficient, and that we should see procedural constraints as not just necessary but sufficient for non-arbitrariness. A central claim of this section is that he's wrong

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<sup>59</sup> Thanks to an anonymous referee for pressing me for important clarifications/expansions about (D3, iii) and the supporting arguments.

<sup>60</sup> See note 24 above.

about this, but there's a way to acknowledge his central insights while preserving commitment to a variety of substantivism.

Lovett's argument against substantivism starts with our intuitions about the following case:

Suppose that for various historical, economic, and cultural reasons, one group in some society manages to acquire a preponderance of social power, which it wields over the other groups in that society directly and without constraint, much to its own benefit. Since the subordinate groups are in no position to challenge directly the preeminence of the powerful group, they instead demand only that the various rights and privileges of the latter be written down, codified, and impartially enforced by independent judges. In time, let us suppose, the powerful group accedes to this demand, on the view that since the rules will be designed to benefit them, after all, there will be no significant cost in their doing so. (2012, 147)

Lovett makes the following claims about this case. (a) Substantive accounts of arbitrariness can't fund the intuition that the domination of the subordinate group is reduced by the new arrangements in their society. Why? Because the reforms don't require the powerful group to give any say at all to the subordinate group. But, (b) the subordinate group is, in fact, less dominated post the powerful group's accedence to their demands. Why? Because, "the introduction of externally effective constraints on the holders of power itself constitutes a reduction of domination, and something to be desired" (2012, 147). Finally, (c)

the nasty elements of the subordinate group's situation should be explained by deficits in political values other than nondomination.

All of this is puzzling. Regarding (a), while it's true that the reforms don't require giving the subordinate group a say, the reforms are themselves a response to that group's "demand" and so represent some conformity to their judgments, however minimal. This looks like reason for substantivists to agree with (b): that domination is, in fact, reduced by the reforms, and so a reason to think (a) is false. Thus, even if we agree with Lovett that arbitrary power is reduced in his case, it's not clear that we need to abandon substantivism in order to do so. With this in mind, we could adjust the case so the reforms were enacted without prompting from the subordinated group. That's a way things could go, and it looks more like a problem for substantivism because it's an apparent reduction in the arbitrariness of power without an increase in the say-so of the subjected.

Let's grant that Lovett is right about our intuitions. Let's grant that a satisfactory account of arbitrary power must support these intuitions. But whether or not we think the subordinate group is less subject to arbitrary power post the procedural reforms Lovett describes, it's far from clear that (c) is true, and none of their continuing woes are domination-complaints. Doubts about (c) are just doubts about whether the procedural account provides sufficient conditions for fully non-arbitrary power, even if it tells us one way to reduce power's arbitrariness. Maybe we can sharpen these doubts with the following bit of counterfactual history:

In 1853, in an effort to stave off a civil war, the slaveholders of the American south decided to shape up. In future, no more brutality; sufficiently uncooperative slaves would be brought before a judge, tried in accord with widely publicized laws and, if convicted, punished humanely—perhaps with imprisonment during their off hours. These reforms are known all around amongst the concerned parties, and the arrangement is externally constrained by an effective legal system allowing the slaves to contest violations. Onesimus is a slave under these conditions. He wants to leave his life as a field hand and receive medical training. But Onesimus’ master needs field hands, not doctors; when asked, he turns Onesimus down. When Onesimus subsequently refuses to do his work in the field, his master has him arrested and charged with insubordination. He is convicted and a judge sentences him to spend his off-hours in a correctional facility for six months.

All parties to debates about domination I know of, including Lovett, agree that having a master is enough to put you under arbitrary power. But it really seems like the words “master” and “slave” in the above case are entirely consistent with their ordinary use. Onesimus’ master is constrained in certain ways. But are such constraints, however necessary, also sufficient to render the master’s power non-arbitrary? Lovett is committed to an affirmative answer: he is perfectly explicit that, according to his proceduralism, so long as power is constrained by “various provisions [that] are carefully instantiated in public laws and institutions

rigorously adhered to by all parties” (2012, 141), that’s both necessary and sufficient for non-arbitrariness. Now, I can’t see how Onesimus’ sad condition fails to involve such laws, institutions, and adherence. But I also cannot see why anyone would deny that Onesimus has a master, and is thus subject to arbitrary power and domination. Consequently, it looks like proceduralism is at loggerheads with the first of our adequacy conditions on an account of domination: proceduralists apparently must look squarely at one of our paradigms and declare: “That isn’t domination”.<sup>61</sup>

Where does this leave us? It really seems like Lovett’s subordinate group is less exposed to arbitrary power post procedural reforms than ante. We can say the same about Onesimus. But it also really looks like Onesimus is still exposed to arbitrary power despite procedural reforms. What we need is a way of talking about arbitrary power that explains all of this at once.

I think there is a way. Even if arbitrary power decreases due to the procedural reforms Lovett favors, this does not entail that the procedural reforms are explanatorily basic. We can still ask why such reforms reduce arbitrary power. Given the way the case is described, it looks like, ante-reforms, individual members of the powerful group could oppress the subordinate group according to their whims. There was no third party to whom a member of the subordinate group could appeal. But once “the various rights and privileges of the

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<sup>61</sup> Lovett comes very near to admitting all this at (2010, 101), where he grants the possibility of “rigorously legal systems of discrimination” that nevertheless display “genuine procedural non-arbitrariness”. Furthermore, there’s additional trouble for Lovett if you want to link domination to political freedom. If proceduralism provides both necessary and sufficient conditions for the absence of arbitrary power, and the absence of arbitrary power is both necessary and sufficient for political freedom, Onesimus counts as a free man in this case. That strikes me as deeply counter-intuitive.

[empowered]” are “written down, codified, and impartially enforced by independent judges” a standard other than the whims of individual members of the privileged class exists. If  $A$  is a member of the powerful group and  $B$  is a member of the subordinate group, the procedural reforms decrease the extent to which some  $A$  could exercise their considerable power over  $B$  while consulting only  $A$ 's sense of what was best. (Otherwise, it's difficult to see the function of the “independent judges”.)

From now on, I'll refer to the extent that  $A$  can exercise power over  $B$  while consulting only  $A$ 's sense of what is best as the extent that they can exercise their power in *deliberative isolation*. How do we tell when power is wielded in deliberative isolation? At an extreme, power is isolated in this way when an empowered person isn't accountable to anyone else with regard to how their power will be used. If the empowered  $A$  thinks  $r$  is a good reason for  $B$  to  $\phi$ ,  $A$  need not reflect at all about whether anybody else thinks so.

I think degrees of deliberative isolation explain why Lovett is right about the reduction of domination in his case, but also why there's reason to doubt that there's no domination at all in the case he describes and in Onesimus'. Let's think about the latter first. It's very plausible to think that Onesimus is exposed to arbitrary power, and so dominated, even in the presence of “effective rules, procedures, or goals that are common knowledge to all persons or groups concerned” because it is still true that his master has impositional power over him, and his master can wield this power without accountability to any other sense of practical reason than his own. Of course, it's also true that Onesimus' master is

limited in ways he was not before: he can no longer *punish* Onesimus from a position of deliberative isolation. It might have seemed best to him for Onesimus to be sold down the river or beaten because of his intransigence; now he must content himself with Onesimus' six months of off-hours in a correctional facility. In Lovett's case and mine we can see how arbitrary power can be reduced without accountability to the subjugated parties, but we are also positioned to say that a considerable amount of arbitrary power remains. Both reduction and remainder are explained in terms of deliberatively isolated power.

At last, let's update (D3) with the conception of arbitrariness that's emerged so far.

(D4) When *A* and *B* (i) are both social actors (ii) engaged in a social relationship with each other, *A* dominates *B* to the extent that (iii) *A* has impositional power over *B*, and (iv) to the extent that *A* can wield this power from a position of deliberative isolation.

Of course, just like impositional power comes in degrees, *A* might be more or less deliberatively isolated, as when *A* need only consult someone who agrees with *A* about almost everything before wielding *A*'s power over *B*. Also, notice that (D4, iv) is entirely consistent with *A*'s actually taking *B*'s sense of applicable practical reasons into account: what matters is that they do so only insofar as they think it's best. Slave masters and despots and traditional husbands might regularly consult their slaves and subjects and wives, but they remain deliberatively isolated from



them because the decision to give any weight to what they hear is entirely their own.<sup>62</sup>

In (D4) we have a conception of domination that doesn't depend on the claim that *A*'s arbitrary power over *B* cannot be reduced without increasing accountability to those under its sway, and so isn't vulnerable to the objection embodied by Lovett's case. But (D4) is obviously limited. It applies only to individual social actors: particular *As* who dominate particular *Bs*. Furthermore, it tells us how to track the intensity of arbitrary power—by the extent of its deliberative isolation—but it doesn't tell us what power looks like when it's fully non-arbitrary. Now, that's not necessarily a problem. After all, you don't need to know what it takes to be wealthy in order to know what poverty is or how to reduce it. In the same way, admitting the possibility that *B* may be made less subject to arbitrary power without making that power more accountable to *B* is compatible with the claim that we can't *eliminate* the extent to which *B* is subject to arbitrary power without making that power accountable to *B*.

But can we ever minimize the extent to which some *B* is subject to arbitrary power without making that power accountable to *B*, at least in some way? Perhaps. Ensuring that a young child is not subject to arbitrary power may be more a matter of ensuring that their caregivers are accountable to third party advocates for that child's well-being, rather than to the child herself. We might want to say something similar about how to protect the sufficiently mentally disabled from arbitrary power. But these are obviously exceptional cases, and

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<sup>62</sup> Thus I disagree with Friedman's claim that domination requires that power be wielded "contrary to the ideas or judgment of the one who is subjected to it" (2008, 261).

even here we need to tread carefully. Our interactions with children or the mentally challenged should seek to develop and honor what deliberative capacities they have. What minimizing domination looks like in such exceptional cases is more than I can do here.<sup>63</sup> As it is, I won't be able to say a great deal even about the non-exceptional cases.

But what about them? (And from henceforth any reference to a potentially dominated *B* will assume that the *B* is at least ordinarily “deliberatively able”.) There's good reason to think that some kind of substantivism holds here. As we just noted, (D4) addresses only the domination of one individual by another. As a result, it's somewhat uninteresting as a way to evaluate real world power relations. In the real world, dominators usually go in packs. Suppose we can reduce (and I think we can, however marginally) the extent to which some individual—call them *A*<sub>1</sub>—has arbitrary power over *B* by making *A*<sub>1</sub> accountable to someone who thinks pretty much just like *A*<sub>1</sub> does—call them *A*<sub>2</sub>. Even if *A*<sub>2</sub> didn't have power over *B* before, they can come to have power over *B* by having some degree of control over *A*<sub>1</sub>'s power over *B*. I don't see any way around the following: If *A*<sub>1</sub> has power over *B*, and *A*<sub>1</sub>'s power over *B* is held accountable to/controlled by/subject to the evaluation of *A*<sub>2</sub>, then *A*<sub>2</sub> also has power over *B*. Furthermore, I don't see any reason to deny that if *A*<sub>1</sub>'s power over *B* is suited to domination, *A*<sub>2</sub>'s control over this power make *A*<sub>2</sub>'s power suited to domination as well. Think about it this way, if *B* had reason to keep *A*<sub>1</sub> sweet, *B* now has reason

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<sup>63</sup> For a more complete reckoning with how to protect children from domination, see Howard (2010).

to keep  $A_2$  sweet too.<sup>64</sup> But then we can ask what it would take to minimize the deliberative isolation of  $A_1$ 's power over  $B$  and  $A_2$ 's power over  $B$ . The isolation of  $A_1$ 's power over  $B$  is reduced by the presence of  $A_2$ . But what about the deliberative isolation of  $A_2$ 's power? It looks like  $B$ 's domination is only slightly more diffuse. Of course, what often happens in the real world is that both  $A_1$  and  $A_2$  have independent sources of power over  $B$ , and that power is accountable only to agents who share some emblem of power with the  $A$ s: e.g. whiteness, maleness, straightness, etc.

What does a conception of domination look like when adjusted to take in  $B$ 's domination by multiple agents, individually or as a collective? It's hard to see why we shouldn't go ahead and accept

(D5) Suppose  $A_1, A_2 \dots A_n$  make up the members of set  $S_A$ .

When  $S_A$  and  $B$  (i) are all social actors, the members of  $S_A$  dominate  $B$  to the extent that (ii) the members of  $S_A$  are engaged either individually or collectively in a social relationship<sup>65</sup> with  $B$ , (iii)  $S_A$  individually or collectively have impositional power over  $B$ , and (iv)  $S_A$  may wield this power from a position of deliberative isolation.<sup>66</sup>

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<sup>64</sup> Do  $A_1$  and  $A_2$  now constitute a single group agent? Perhaps, but not necessarily. The case as described could be one where each have sufficient power— $A_1$  in his own right, and  $A_2$  via their control over  $A_1$  power—to dominate as separate agents. See note 46 below.

<sup>65</sup> The members of  $S_A$  will rarely be socially related to  $B$  to the same extent. (ii) has been adjusted to reflect this. For example, because Onesimus' master oversees Onesimus' day-to-day activities directly, where the judge may never think of Onesimus again after passing sentence, it's clear that Onesimus' master is the primary locus of his domination. (D5) is consistent with this.

<sup>66</sup> I don't think the members of  $S_A$  must constitute a "group agent" in order to speak of domination by  $S_A$ . While I have agreed above that domination is only possible between agents, and while I agree that group agents may be sources of [especially intense] domination, there is a difference between domination *by a group agent* and domination by agents *identifiable in some way as a*

Given what's gone before, we have some idea of what it is for an individual member of  $S_A$  to be deliberatively isolated: such an individual  $A_n$  can wield  $A_n$ 's power in accord only with  $A_n$ 's own best lights. We can reduce that  $A_n$ 's isolation with accountability even to some  $A_{n+1}$ . But what is it for the power of  $S_A$  to be deliberatively isolated? Can it be anything but the degree to which the members of  $S_A$  need look only to other members of  $S_A$  for checks on their power? If that seems right to you—and it certainly seems like an apt description of how real-world dominators often behave<sup>67</sup>—then it looks like the only way to reduce  $S_A$ 's deliberative isolation is by introducing checks on their power from outside  $S_A$ . Suppose that check comes from some agent other than  $B$ . That might reduce the isolation of  $S_A$ 's power just like the advent of  $A_2$  reduced  $A_1$ 's. But then the question arises again, as in the case of  $A_2$ : what's to keep this outside check on  $S_A$ 's power—this  $S_{A+1}$ —from deliberative isolation? Isn't  $S_{A+1}$ , as in the case of  $A_2$  above with regard to  $A_1$ 's power, yet another with dominating power over  $B$ , and for the same reasons as  $A_2$ ? Furthermore, if  $S_A$  is populated with all those agents who have some degree of social relatedness to  $B$  and who possess

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*group*. The conditions for the latter are much less demanding than the conditions for the former. On all accounts of group agency I'm aware of, counting as a group agent requires [among other things] joint intentions and/or beliefs among the group's constituents. But members of  $S_A$  are constituted only by the fact that they are social actors, their social relatedness to  $B$ , their sufficient social power, and their deliberative isolation within  $S_A$ . The deliberative isolation of  $S_A$  requires only that members of  $S_A$  need not look to non-members for any kind of accounting for their power. This says nothing about what deliberation looks like within  $S_A$ : i.e. whether the members of  $S_A$  share intentions/beliefs/etc. In sum, while  $S_A$  might be a group agent, or might contain group agents, it need not be one for my purposes. For a helpful summary of the conditions for group agency see, Mendola (2006, 33-42). See also Pettit & List (2011). Much thanks to an anonymous referee for prompting clarification here.

<sup>67</sup> As when the power of white South Africans over black South Africans during Apartheid was checked only by rules and procedures designed exclusively by white South Africans, or when white southerners in the Jim Crow era of the American South made sure that, as much as possible, the laws governing black southerners were made only by whites.

sufficient power over  $B$  for domination, in what sense is  $S_{A+1}$  even outside of  $S_A$ ? It's hard to see how they could be, given this way of populating  $S_A$ . But if that's the case, the addition of  $S_{A+1}$  cannot decrease, much less minimize, the extent to which the power of  $S_A$  is less deliberatively isolated, and so less arbitrary. Therefore, at the end of the day, it looks like minimizing the deliberative isolation, and so the arbitrary power, of  $S_A$  requires giving  $B$  some kind of say-so about how the power of  $S_A$  will be used against  $B$ .

That “some kind of say-so” for  $B$  is necessary to minimize the arbitrariness of the domination-suitable power arrayed against  $B$  is enough to stick us with some kind of substantivism. But what kind? For the merest start, it looks like the story will have to involve what we might call deliberative sensitivity to  $B$ , but there are obviously many forms that might take, and sensitivity—like isolation—comes in degrees. The variety of substantivism I favor links sensitivity to  $B$  with  $B$ 's capacity to ensure that any power wielded over  $B$  is in accord with terms of social cooperation as justified to  $B$  as they can be given the requirement of justification to all  $B$ 's fellow cooperators, but the details will have to wait until chapters 4 and 5.

§4 To conclude: I think (D4) is the right account of what domination amounts to when we're talking about individual dominators. I think (D5) is the right account of what domination amounts to when we're talking about dominating power possessed by groups of individuals (or by individuals *qua* members of groups). For both, not just any power differential can underwrite the domination

relation. The power required for domination and the arbitrariness of dominating power are suited to each other: the arbitrariness of power is measured by its deliberative isolation, and power sufficient for imposition enables deliberative isolation. If *A* has power in the sense of (D4, iii) or (D5, iii), *A* has enough power over *B* that *A* can pay scant attention to the details of what *B* thinks are reasons to cooperate or refuse. As a consequence, *A* will be able to proceed largely on the assumption that *B* will go along with *A*'s deliberatively isolated notions of what *B* should do.

I began with two desiderata for a conception of domination. Did we get what I think we have reason to want? According to the first, we want a conception of domination that doesn't force us to say that actual, or counterfactual but recognizable, instances of mastery, or despotism, or patriarchal husbanding (et al.) aren't instances of domination. Are there cases where our concept of domination clearly applies but the conception of domination given in (D4) and (D5) cannot say so, or must say otherwise? I think we can conclude, at the very least, that (D4)/(D5) are well positioned to diagnose the domination in the most paradigmatic cases. Masters, despots, traditional husbands—all have impositional powers, and all may wield such power in more-or-less extreme deliberative isolation. Furthermore, (D5), I believe, makes lucid the ways powerful groups dominate the disempowered (as in Lovett's case). In places like the American south under Jim Crow, South Africa under Apartheid, and the many, many patriarchal societies that have existed since time immemorial, powerful groups

managed to limit their accountability to other group members, and to isolate themselves from the claims a subjected class would make on its own behalf.

I think that the results of §2 and §3 combined put us in position to say that the dominated always have a legitimate complaint against their dominators, and thus that the second adequacy constraint is satisfied. The extent to which *B* is exposed to deliberately isolated power sufficient for imposition is the extent to which *B* must live in fear of other social actors. If that's an overstatement, it must be a modest one. That other social actors [avoidably] seek and maintain such power looks like cause for apt indignation and resentment if anything ever is.

Once domination is on our moral horizon as a damning feature of social power, I think most of us will find it plausible to think of our rights and duties over against other social actors as bound up with rights and duties against domination. If domination is a name for what slave masters and patriarchs and dictators all have in common, perhaps most of us will agree right away that we should avoid social relationships structurally identical to these paradigms. After all, paradigm cases of domination are also paradigmatic failures to respect freedom and equality; therefore, if the freedom and equality of other human persons generates any rights and duties at all, rights and duties against domination must be deep in the mix.

Now, if Pettit and his fellow travelers are right, the absence of domination is both necessary and sufficient for political freedom.<sup>68</sup> If that's true, whatever

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<sup>68</sup> I admit that the account of domination offered here is not well positioned to assist the project of analyzing free choice *simpliciter* in terms of nondomination: if (D4)/(D5) are correct, the pool owner negatively affects my freedom of choice, but doesn't dominate me. However, (D4)/(D5) fit very comfortably within attempts to analyze political freedom in terms of nondomination. If, on

duties we have to promote freedom will turn out to be duties to reduce domination as well, insofar as nondomination is [at least] necessary for freedom. If we have any duties to constrain our actions by respect for the freedom of others, the same considerations apply.

Of course, that there is an analytic connection between increasing freedom and reducing domination has come in for criticism. Ian Carter (2008) and Matthew Kramer (2008) have argued that the elements of Pettit's account worth caring about can be accounted for without linking unfreedom conceptually to domination. Carter thinks that the connection is a matter of regular correlation, and thus subject to empirical confirmation.<sup>17</sup> I won't sort out the debate between Pettit and devotees of "pure negative liberty" like Carter and Kramer here. Instead, let's just grant Carter the claim that domination and unfreedom only happen to pair up consistently in the real world without the benefit of conceptual linkage. Would it follow that we have no freedom-promoting or freedom-respecting obligations to minimize domination? Why would it? If unfreedom and domination are regularly though not conceptually linked, a concern for the former will most always prompt concern for the latter. *Psychological disorders among veterans* and *post-traumatic stress disorder* are conceptually distinct. They just happen to pair up an awful lot in the real world. Despite this, anyone who wants

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Laborde's gloss of the republican approach, "I am free only if I am recognized by others as enjoying a status that protects me resiliently against arbitrary interference and guarantees my equal status as a citizen living in community with others" (2008, 2), understanding "arbitrary interference" along the lines of (D4)/(D5) binds the two sides of this conjunct even closer together. After all, it's hard to see what effect your ability to ban me as you please from using your pool has to do with "my equal status as a citizen living in community with others"; but it's easy to how your ability to impose your will on me, across a wide range of possible forms your will might take, might affect this status, and not for the better.



to address psychological disorders among veterans would be insane not to make a priority out of addressing PTSD. We might say something analogous about *diseases in the developing world* and *malaria*. In both cases, neither is necessary or sufficient for the occurrence of the other, but that hardly matters. Even if it doesn't follow from semantics that worrying about *disease in the developing world* requires *worrying about malaria*, or vice versa, this doesn't shift things very much when it comes to practicalities.

If anything, the conception of domination given by (D4)/(D5) looks like an even more intimate companion of real world unfreedom, even if conceptually distinct. Freedom, according to Carter and Kramer, is measured by the scope of an agent's "conjunctively exercisable opportunities". What opportunities are those? The scope of my conjunctively exercisable opportunities, roughly speaking, can be gauged by my ability to say truly that I can do one thing while also doing something else: e.g. I can quit my job while keeping my health insurance; I can have my cake while eating yours; I can keep my money and my life. How will the deliberately isolated capacity of one agent to exercise impositional power over another tend to restrict their conjunctively exercisable opportunities? Suppose *A* can give *B* a beating just in case *B* ceases to please *A*. In this case, *B* will be able to  $\phi$  only in conjunction with *A*'s approval, on pain of a beating; thus, the choice of  $\phi$ ing without *A*'s approval is not exercisable without increasing *B*'s risk of a beating. Using the language introduced above, *A* can reduce *B*'s conjunctively exercisable opportunities severely, given *A*'s capacity to attach costs to *B*'s non-cooperation higher than the cost of *B*'s cooperation for a wide range of possible

forms of cooperation. The wider the range of possible forms of cooperation, the more narrow the range of *B*'s conjunctively exercisable opportunities. Because my account of domination requires that this range be significantly wider than Pettit requires, it stands to reason that it will track unjust limitations of freedom much more closely.

The connection of anti-domination commitments to the basic promotion of/respect for equality is, if anything, more straightforward than the connection of the same to freedom. We all know it's common in the western tradition of political discourse to say we have an obligation to respect each other as equals—or, at least, not to contradict this out loud. I don't have anything like a fully worked out theory of what such respect requires. But we don't need much of a theory to see that, whatever else follows from basic egalitarian commitments, it's inconsistent with such commitments to think that I treat you as an equal when seeking out or maintaining impositional power I can use as I see fit. Even in the flimsy way citizens of contemporary democracies refer to each other as equals, if someone said "I am attempting to make sure he's at my mercy all the while treating him as my equal" we would suspect them of bad-faith grandiloquence if we couldn't chalk it up to joking. All told, if we have any kind of duty to respect each other as equals, we'd better eschew domination. The premises of any argument I might construct for this conclusion, it seems to me, could not be more plausible than the conclusion itself. I will let the claim shine by its own light.

## CHAPTER 3

## NATURAL DUTIES AGAINST DOMINATION

I've promised to put my account of domination to work figuring out central problems of political legitimacy and justification. These problems, to put things very generally, are about what it takes for political power to be morally in-the-clear. Now, if I've told the right story about what domination is, then I've told the right story about what social power in general looks like at its worst—even when it's not being put to the worst use. If I've told the right story about social power at its worst, then we can say something about what power in general, and political power in particular, must be like when it's morally in-the-clear. At the very least, it must not be like that: it must not share the distinguishing features of the worst kinds of social power, the power of masters and despots and patriarchs. Also, if we've got a fix on the central features of domination, we've got the beginnings of a fix on what it takes to minimize it or at least to reduce it.

This chapter applies and expands the results of the last chapter to address perhaps the most ancient and venerable question of political philosophy. The world is chockablock with states. These states are very often extremely powerful. Fair to say, states aspire to power that is paradigmatically impositional. Refusal to cooperate with the state brings with it very significant costs, up to and including the loss of life.<sup>69</sup> What could possibly legitimize so powerful an entity? (And

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<sup>69</sup> Even those [like me] who think that capital punishment is never justified might think that deadly-force from state agents (police/military) might sometimes be justified.

there's our ancient and venerable question.) Once we've started to worry about domination, and have seen the intimate connection between domination and power like the power of states, how can our response to this question be anything but "Nothing—nothing could legitimize an entity with so much power"? Nonetheless, anarchism is a minority position among political philosophers, even and especially among political philosophers who share the post-Enlightenment conviction that all political power is unnatural in the sense that no one is born to rule or to submit, and so all political power must be justified.

I'll not abandon the majority report here. My primary task in this chapter is to show how duties against domination can generate a duty to accept states, at least under certain conditions. "Accept" here has a somewhat technical meaning. To specify what it is, I'll need to take a quick tour through the usual ways of examining the moral claims of states and citizens on each other. What I mean by "accept" is best seen in relation to these usual ways.

The usual ways go along three tracks. It's standard to ask questions about the *legitimacy* of states, the *obligations* of citizens, and whether or not at least legitimate states have *authority* over citizens. A state's *legitimacy* concerns whether or not it's entitled to do what states typically do: *inter alia*, make laws, apply them, and enforce them by exercising a monopoly on certain forms of coercion within a territory. Political *obligation* concerns whether, and to what extent, the people who are born in and live out their lives in that territory (the "citizens") are morally obliged to cooperate with/support/not undermine the state as it goes about doing what it typically does. Perched between questions of

legitimacy and questions of citizen obligation are further questions of political *authority*. Questions about political authority concern whether states can put citizens under new duties by telling them what to do. Obviously, states tell us what to do: “Pay your taxes by April 15” and “Don’t drive without a license” and all the rest. Do imperatives like this alter the moral context of those they’re addressed to? In other words, are citizens bound to regard their state’s commands as duties, at least *pro tanto*?

It’s common nowadays to treat a state’s possible legitimacy, its authority, and the broader story about the obligations of that state’s citizens as at least conceptually distinct.<sup>70</sup> It seems possible that a state might be entitled to force citizens within a territory to refrain from theft and murder, and yet lack the ability to create new duties. Also, it might be that citizens have some kind of obligation to cooperate with the state, but do not have a general obligation to regard commands from the state as duties.<sup>71</sup>

Furthermore, we shouldn't confuse the legitimacy of *states* and the legitimacy of particular state actions. If some officer of the state forced you at gunpoint to stop breaking into your neighbor’s house, I'm inclined to think of this as a legitimate action by a state functionary, and so in some sense a legitimate state act. But it isn't clear that the moral legitimacy of this action tells us anything

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<sup>70</sup> See Copp (1999), particularly 10-17.

<sup>71</sup> Generally speaking, it’s plausible to think that an agent(s) entitlement to use force doesn’t track the obligations even of the other agents who are intimately involved. For example, even if I’m morally entitled to push a fat man in front of a runaway trolley because that’s the only way I can stop the trolley from mowing down a herd of schoolchildren, I doubt that the fat man in question is thereby obliged not to resist me. Furthermore, even if a representative of the most legitimate state imaginable commanded him to throw himself in front of the train, it’s not obvious that the fat man would have any obligation to obey beyond whatever moral obligation he might have to prevent disaster by extreme personal sacrifice.

about the legitimacy of the state. Here's another way of putting it: there's nothing *political* in the legitimacy of the officer's action. The officer's action may be legitimate just as it would be legitimate for a civilian to stop someone from breaking into their neighbor's house. We'll revisit this kind of case later.

If you want to talk yourself out of thinking that any actual states are legitimate, it's effective to ponder how actual states accumulated enough power to convince us that they are. Given that most states have their origins in theft, violence, and even genocide, it is difficult to consider their claims to legitimate rule without a sneer. Taking seriously most any state's claim to legitimacy requires a kind of historical myopia. We will have to adopt something like Pettit's forward-looking gloss on legitimacy as an obligation to accept a state: "The acceptance of the regime means, I propose, that attempts to change unjust laws should be restricted to measures that are consistent with the regime's remaining in place" (Pettit 2012, 137). On this conception of legitimacy, there is a logical connection between legitimacy and at least one political obligation: i.e. "the *pro tanto* conditional obligation, if you oppose the laws, to oppose them within the system" (Pettit 2013, 138). Of course, it's difficult to see what it could mean for "the system" to "remain in place" without maintaining its monopoly on powers of coercion and command far beyond an ordinary civilian's.

When I spoke above of a moral duty to accept the state, I have in mind a moral duty of Pettitian acceptance. This is obviously a weak endorsement of some actual state. It does not require that the state has admirable origins. But though I aim to demonstrate only that some of us owe tepid allegiance to some actual

states, my arguments for this claim contribute to a much more enthusiastic endorsement of possible states. The reasons some of us may have to accept some actual states are intimately related to the reasons all of us have to think that a certain kind of state, rather than any non-state alternative, is at least an element of what we might call the social ideal. If confronted somehow by the choice between a particular kind of state and any kind of anarchy, we should choose the former. Even though vanishingly few human beings are ever confronted by such a choice, this is an interesting result, if for no other reason than that anarchism has able and interesting philosophical defenders nowadays.

The primary reason I think some of us may have obligations to accept some states is that we have a duty not to enter into or maintain dominating social relationships, and state oversight makes it possible for us to discharge this duty. The primary reason only states of a certain kind have a claim on our support is that states of the wrong kind, as acknowledged above, produce domination worse than the domination a better state is necessary to overcome. But because states *of a particular kind* are necessary to keep common social relationships from becoming instances of domination, the anti-domination spirit provides strong motivation for accepting statism as a social ideal. Anarchist social arrangements lack mechanisms necessary for the prevention of several forms of domination, as I'll try to show. As a consequence, even if we have every reason to resist our particular states, and the means to do so effectively, the aim of such resistance would not be anarchy, but the establishment of the right kind of state.

Liberal luminaries like Kant, as well as republicans both paleo and neo,<sup>72</sup> have thought of our moral duties to the state as a function of our duties to each other. I'll try to advance from this precedent along three fronts. In §1 I situate my broadly republican, anti-domination first, approach within what I think is the best liberal account of political legitimacy: the tradition of *Natural Duty Theory*. There are specifically domination-centered reasons to think that this situating will require some adjustments to the tradition, and I'll spend a lot of §1 finding fault with some prime liberal exemplars. This fault-finding will unearth three primary problems: first, we need a more convincing explanation than Natural Duty theorists have yet provided for why we cannot discharge our moral duties to each other unilaterally, and thus without the aid or instrumentality of second or third parties. Second, we need an answer to the question of why the aid or instrumentality available through possible anarchist social arrangements might not be just as good as that of states. Third, we need to know why we don't have a duty to accept regimes that make it possible for us to fulfill our duties to each other but are otherwise even paradigmatically oppressive. The remainder of the paper will be organized around these problems. In §2 I'll use my theory of domination to

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<sup>72</sup> Pettit's general approach to legitimacy is revisionary. He argues that our individual states don't owe us a justification for the bare fact that they have enormous power over us given that, in their absence, some other state—an equally enormous power—would take over. The idea seems to be that if *some* enormous power must hold you in thrall as a matter of cold, unavoidable, social fact, then the reality that a particular enormous power holds you in thrall need not be justified. Thus, he concludes, legitimacy is all about demonstrating that the particular enormous power that holds us in thrall is subject to proper democratic controls (2012, chapter 3). I'm troubled by this approach. In brief, the fact that Barb will inevitably treat you in a certain way, even if Abe abstains, strikes me as completely independent of whether Abe may treat you in that way. Perhaps Abe is somewhat less blameworthy in such cases, but morally in the clear? At any rate, I think we can say something interesting, and something motivated by specifically anti-domination commitments, about legitimacy conceived of more traditionally.



show how a duty against domination generates duties to second or third parties who prevent us from having certain forms of power—forms of power that we cannot be rid of unilaterally.<sup>73</sup> My primary engagement with the anarchist tradition happens in §3, where I examine the possibility that second or third party checks on domination could emerge without state instrumentality. As far as I know, contemporary anarchism has yet to reckon with important republican insights. If nothing else, I'll try to show why they need to do so. In §4, I address the Natural Duty tradition's inability to explain why we don't have duties to oppressors, and provide a fix from my conception of domination.

§1 Once you adopt a certain conception of human persons, worries about state power are unavoidable. This conception is fairly ubiquitous in the liberal tradition, even if Simmons (2002, viii) calls it specifically "Lockean". The central commitments of this perspective are "(1) that all persons, whenever and wherever born, begin their moral lives . . . with a substantial body of moral rights and duties, and (2) that the rights in question centrally include, and perhaps add up to no more than, a broad right of self-government or independence (both from other persons and groups and from states)" (2002, vii). However we work out the details, accepting this conception obliges us to tell some kind of story about why

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<sup>73</sup> It's worth pointing out too that my approach involves much leaner commitments than Pettit's recent republican account of political legitimacy. Pettit's arguments depend on the claim that we cannot redistribute the material resources necessary to guarantee his republican vision of social justice without a state. Now, I'm deeply sympathetic to his vision of social justice, and inclined to agree that full non-domination requires what he thinks it does; but I will work here with a much more modest account of our duties to reduce domination, one that does not require a fully worked out account of non-domination or its institutional conditions. In fact, I will rely on not much beyond what I expounded in the previous chapter.

state attempts to govern citizens don't make a hash of our "self-government or independence"—obliges us, that is, on pain of anarchism. Given that *all* of us are born with a "broad right of self-government", and are thus by nature equal and free, how can it possibly be okay for states to govern us?

The most famous answers to this question comes from the voluntarist strain of social contractarianism: voluntarist because grounded in various appeals to the will of the governed. How can we be morally required to go along with the subjugating attempts of states, even though we're natural self-governors? Easy. We contractually oblige ourselves to do so via consent. Or maybe not our actual consent, but at least our implicit consent as manifest in our continued residence in said states. Or maybe not our implicit consent, but at least our hypothetical consent: we would actually consent if fully informed and rational and that's as good as real world consent.<sup>74</sup>

Nowadays all such visions and revisions of legitimacy through consent are on the outs. There are still eminent theorists who bind legitimacy (even analytically) to consent—Simmons being the most eminent—but this is only to show that there are no legitimate states and/or cannot be. Voluntarism as a premise in arguments for other conclusions than anarchism has few devotees.<sup>75</sup>

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<sup>74</sup> Locke (2005) is of course the most famous representative of this voluntarist strain; see also Simmons (1993), in particular chapters 3-4, and Simmons (1999). Its most famous critic is, of course, Hume (1994, 164-182).

<sup>75</sup> For a helpful taxonomy of anarchisms, see Simmons' "Philosophical Anarchism" in (2001b). Simmons uses "philosophical anarchism" as a tag for his own view (2001b, 102-103). What does it take to be a philosophical anarchist? At least, Simmons claims, you must believe that all existing states are illegitimate. *Philosophical* anarchism differs from standard anarchism, says Simmons, insofar as philosophical anarchists don't think the fact of state illegitimacy has much practical upshot: i.e. state illegitimacy doesn't entail anything about an obligation to try and interfere with the operations of said states. Michael Huemer's anarchism, which I'll consider briefly below, is

Besides, voluntarism—at least understood as the general claim that consent is a necessary condition on legitimate power/authority or an obligation to submit—is vulnerable to counterexamples. Jonathan Quong offers a case where *A* and *B* both witness a traffic accident. *A* is a doctor and *B* has no medical training. Several victims of the accident are badly hurt. Now, suppose *A* says “Apply pressure to the wound here!” It’s very plausible to think *B* has some kind of duty to cooperate. Furthermore, it’s even plausible that *B* should not resist certain forms of coercion from *A*. If *B* was dazed from shock, and so hesitated to follow *A*’s directions, *A* might justifiably grab *B*’s hand and force *B* to place it on a wound just so.<sup>76</sup> This looks a lot like a case where legitimate coercion/authority comes apart from consent. At least sometimes, *A* can come to have authority over *B*, in the sense that if *A* commands *B* to “ $\phi$ !” *A* should  $\phi$ , even though *B* has not consented to *A*’s authority. Also, *A*’s use of limited force looks permissible whatever *A*’s antecedent relation to *B*, contractual or otherwise.<sup>77</sup>

Of course, there is some sense in which *B* *ought* to consent to *A*’s coercion/authority, but why? It seems like the answer to this question, and not the consent itself, is the source of *A*’s authority/legitimacy. Quong claims that the answer is *B*’s duties to the accident victims, and the instrumental connection between Dr. *A*’s commands/coercion and the fulfillment of these duties: “One way

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much more closely allied to practicalities. Huemer is much more inclined to think that we should work toward anarchism as social ideal.

<sup>76</sup> See (2011, 127).

<sup>77</sup> Here’s a reasonable precisification of Quong’s NDT. For action  $\phi$ , agents *A* and *B*, and context *c*: If *B* has a duty to  $\phi$ , and *B* is more likely to  $\phi$  in *c* if *B* submits to *A*’s commands/coercion, then *A* has a moral right in *c* that *B* treat *A*’s commands as enforceable *pro tanto* obligations, and thus *A* has authority in *c* over *B*.

to establish that a person has legitimate authority over another person involves showing that the alleged subject is likely better to fulfil the duties of justice he is under if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to directly fulfil the duties he is under himself" (2011, 127).<sup>78</sup> But if Dr. A can come to have authority and license to coerce in this way, why not other entities? Why not states?

Quong's arguments motivate one variant of the Natural Duty Tradition of theorizing political legitimacy, authority, and obligation.<sup>79</sup> Natural Duty Theories connect our duties to a state with that state's instrumental role toward the fulfilment of other moral, "natural" duties. When is a duty "natural"? The best way to understand the "naturalness" of a duty is probably through a quick *via negativa*: duties are natural when they don't come from promises you made or contracts you signed or jobs you accepted, or through any other transactions or role-assumptions. Suppose we have a duty to aid the victims of car crashes, at least when they are immediately to hand. If we have such a duty, what explains that isn't some promise we made to aid accident victims so situated, or that we

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<sup>78</sup> This is an obvious descendent of Raz's "Normal Justification Thesis", according to which "the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly" (1986, 53). Whatever its merits as an account of practical authority, I tend to think that the Normal Justification Thesis is hopeless as a theory of legitimate *power*. The financial adviser case on page 27 above is good reason to think as much. Quong's shift of language to "duties of justice" is in part a response to just these sorts of cases.

<sup>79</sup> What I'm calling NDT sometimes goes by other names. Quong calls it "instrumentalism" because his focus is authority—although he clearly means to justify coercion as well. When the focus is on political authority rather than legitimacy/obligation, the "instrumentalism" handle is more common; when the focus is legitimacy/obligation, NDT is more the standard moniker, as far as I can tell.

joined a club the purpose of which is to aid such, etc. Wherever that duty comes from, its origins are deeper; certainly pre-institutional.<sup>80</sup>

We can extract from Quong's case a sense of how to structure a plausible Natural Duty theory. (a) It has got to give an account of what natural duty (or duties) is (are) in play. In Quong's case, it's a natural duty to aid those in terrible need when we are uniquely well positioned to do so, or something like that. Could the same duty fund any duties to the state? What other duties might? (b) The theory must give an account of the potential authority's or legitimate coercer's instrumental link to the fulfillment of the duty/duties. In Quong's case the authority/legitimacy comes from the fact that Dr. A is the only one on the scene who knows what to do, so her legitimacy/authority comes from some amalgam of proximity and expertise. Does the state play an analogous role for any duty we have? (c) Finally, the theory must tell us what particular duties are generated by an authority's/coercer's instrumental link to our natural duties. Obviously, Dr. A's instrumental role toward the discharge of *B*'s duties can lend authority only to certain commands. *B* would seem to have only the Dr. A-regarding duties suited to Dr. A's instrumental role. If Dr. A suddenly commanded, "Take off your pants and do a dance" *B* would have no duty at all to heed or comply. If A suddenly tried to force *B* to do jumping-jacks, *B* would no longer have any duty not to resist. So, if we can locate some natural duty of ours, and a role for the state to play in the fulfillment of that duty, we still have to specify how that translates into state-ward duties.

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<sup>80</sup> See Rawls (1971, 114-115).

Christopher Wellman's version of NDT is perhaps the closest analog to Quong's case. Wellman thinks we can extract a duty to obey the law, along with the legitimacy of state coercion, from natural "Samaritan" rights and duties. Samaritan rights permit Samaritans—those trying to rescue others from significant peril—to coerce others insofar as this coercion is necessary to the rescue: e.g. Dr. *A*'s permission to force *B* to put pressure on the wound.<sup>81</sup> Samaritan duties require us to accept "moral duties", even when they are "unilaterally foisted upon us" by Samaritans, provided we are "in extreme circumstances, when others are sufficiently imperiled and we can help them at no unreasonable cost to ourselves" (2005, 31): e.g. *B*'s duty to comply with Dr. *A*'s command, "Apply pressure to the wound here!"

Supposing all this is true, how do we get legitimate state coercion and a duty to comply with the state from the existence of Samaritan rights and duties? Wellman thinks that at least decent and broadly democratic states "rescue" us from the horrors of lawless existence in a state of nature. This is a "vital benefit" and "cannot be secured by any other, non-coercive means" (2005, 23). Thus, states have a Samaritan right to force us to abide by the law given that this rescues those within a particular territory from the state of nature, provided that such force doesn't go beyond "reasonable" limits. The citizens of that territory have a Samaritan duty to support the state's rescue efforts via obedience and compliance, again, within reasonable limits.

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<sup>81</sup> See Wellman (2005, 21-34).

There are a number of questionable elements here. Obviously, there is the question of whether rescuing the occupants of a particular territory from the state of nature counts as a properly Samaritan endeavor. If the state of nature isn't as bad as Wellman envisions, that undermines his case for the permissibility of coercive Samaritan intervention by states. Even if life without states is undesirable in some respects, would it be undesirable in the ways that justify coercive remedies? Think about how bad things would have to get at your next-door neighbors' to justify you in forcing other neighbors to join you in a coercive intervention. Things would have to get pretty bad, by my reckoning; otherwise, it's plausible that you shouldn't charge next door and get involved yourself, much less force other neighbors to assist you. Is life without a state bad enough to legitimize a massive Samaritan rescue?

I don't know who would deny that medical emergencies can generate Samaritan rights and duties. However, there's a long and respectable anarchist tradition that denies the need for the kind of rescue Wellman has in mind. Among many possible exemplars of this tradition, take Michael Huemer's recent portrayal of anarchist social arrangements in *The Problem of Political Authority*. He argues at length that subscriber-funded protection and arbitration agencies are an effective and morally superior alternative to the protection and arbitration services now [purportedly] provided by states. As will become clear, I find many aspects of Huemer's account deeply problematic, and intend to make trouble for him later in this chapter if I can, but he—and other anarchist fellow travelers—has succeeded I think in showing that anarchic social arrangements need not be a

horror analogous to bleeding out unaided on the side of the road, or roasting alive in a burning building, while those who might have rescued you stand idly by. Remember, things have to be awfully, obviously bad at the neighbor's house to justify coercive intervention. Even a fairly high degree of dysfunction won't justify it. Wellman may have shown that the state of nature would likely involve a fairly high degree of dysfunction, but I'm not convinced he's shown, contra Huemer and other anarchists, that it must be awfully, obviously bad and so worthy of the kind of intervention states represent. Returning to Quong's case, instead of Dr. *A* forcibly directing *B* to stop someone from bleeding out, Wellman's Samaritan state might be more like some *A* forcing *B* to get out of their car and help *A* put out the roadside engine fire of a random stranger. No doubt it's bad for the random stranger to have an engine fire. Perhaps there's even some sense in which *B* should offer to help, if it's not too much trouble. But it's implausible to think *A* has any Samaritan right to use force in this case, or that *B* has any Samaritan duties to comply.

The other contemporary mainstream of NDT doesn't connect duties to the state with duties of mutual aid or rescue, but instead to "natural duties of justice"—as Rawls' put it in *A Theory of Justice*. Here, he claims we have a natural duty to "comply with and do our share in [reasonably] just institutions when they exist and apply to us" and "to assist in the establishment of just arrangements when they do not exist" (1971, 114-115).

Much contemporary discussion of NDT has been a response to these claims, though Rawls' own post-*Theory* discussions of legitimacy were



constructed from another vocabulary entirely—as I’ve noted and will discuss further in the next chapter. Probably the most influential response is Simmons’ in *Moral Principles and Political Obligations*. Here, and in subsequent work, Simmons pressed two<sup>82</sup> worries against Rawlsian NDTs. First, there’s the worry about what Simmons called *particularity*<sup>83</sup> (what Jeremy Waldron later called ‘special allegiance’).<sup>84</sup> Here’s the marrow: how can a general duty to act justly and promote justice generate duties of support and compliance with a particular state? This state instead of that one? Simmons summarizes:

Just Swedish political institutions merit support as much as, and for the same reason as do, just political institutions in the United Kingdom. But because this is true, it is difficult to see how a natural duty could ever bind citizens especially to their own particular laws of domestic institutions. (2005, 166)

Second, there’s a worry about what conditions specify when “just institutions . . . apply to us”. Waldron calls this the application problem.<sup>85</sup> The two objections are intimately related. Maybe the best way to put it is to say that the application problem comes from one way of addressing the particularity problem. One reason we might have special obligations to the [approximately just] political institutions

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<sup>82</sup> Ostensibly two, I should say: they’re treated as two in the literature. They seem to me deeply similar.

<sup>83</sup> See Simmons (1979, 31-35; 155-156).

<sup>84</sup> Dworkin (1986, XXX) presents a version of the particularity objection too.

<sup>85</sup> Waldron has a nice summary of the difficulty with Rawls’ version of Natural Duty theory: “The Rawlsian theory offers no account, or a plainly inadequate account, of the existence of political and legal institutions. The problem is that if we try to articulate a satisfactory account of “application,” we tend to end up abandoning what is distinctive about the natural duty account. The temptation is to say that an institution “applies” to me only if I have voluntarily brought myself under its auspices, or to impose some other similar condition (such as the receipt of benefits) or any inference from the justice of the institution to a duty of obedience” (1993, 7).

we're born to, as opposed to "Swedish" institutions, is because the former, unlike the latter "apply" to us. We need to figure out a story about why particular political institutions apply to us, and not others; then we'll have an answer to the particularity problem too. At any rate, I will focus on the application problem, and consider the particularity problem solved if we've got a workable solution to the application problem.

Waldron's own version of NDT, and his approach to the application problem, is distinctively Kantian. Where Wellman talks about the lawlessness of the state of nature like it's a threat from parties undisclosed or undiscovered, for Kant I am always in a position to know at least one threatening party in the state of nature: *me*. However dead-set I might be against behaving with hostility toward those around me, however determined I might be to avoid actively wronging them, it's still true, Kant claims, that I am a "permanent threat" to them, and wrong them just "by coexist[ing]" in a lawless condition (1970, 98). With a stereotypical lack of concern for the empirical—"It is not from experience that we learn of the maxim of violence in human beings"—Kant claims:

[H]owever well-disposed and law-abiding human beings might be, it still lies a priori in the rational idea of such a condition [i.e. in the state of nature] that before a public lawful condition is established individual human beings . . . can never be secure against violence from one another, since each has his own right to do what seems right and good to it and not to be dependent upon another's opinion about this. (1996, 455-456)

Thus, “the postulate of public right”...

[W]hen you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition (1996, 451-452)

It should be clear enough that Kant offers here a version of NDT. We have, he thinks, a natural duty not to live amongst each other as mutual threats. How can we discharge this duty? Only, says Kant, by refusing to remain in or return to the state of nature, and submitting to the coercive presence of a state.<sup>86</sup>

The trouble with Rawls’ version of NDT, says Waldron, and the advantage of Kant’s, is that the latter shows us how some individuals can become “insiders” within the purview of “range-limited” principles of justice: “An individual is within the range of a principle if it is part of the point and justification of the principle to deal with his conduct, claims, and interests along with those of any other persons it deals with” (1993, 13). For example, the citizens of the United Kingdom have duties to each other that they don’t have to the citizens of Sweden insofar as the citizens of the United Kingdom—living amongst each other as they do—are much better candidates for “living side by side” status than are the relatively far-off citizens of Sweden. So legally enforced principles can be both just and range-limited insofar as they are meant to prevent a particular people who [at least nearly] rub shoulders with each other from lawlessness and thus from living each as a threat to each. The application

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<sup>86</sup> Of course, Kant is notoriously bad when it comes to showing how this coercive presence can be prevented from becoming a threat as bad as any in the state of nature See most not (1996, 296-304), but I’m not interested here in how he works out his theory.

objection is answered by showing which political institution(s) actually plays the role of enforcing such principles: the government that keeps *A* from being a threat to *B*, and *vice versa*, “applies” to *A* and *B*. Now we can see too how a solution to particularity worries might follow from a solution to application worries: supposedly, the government of the United Kingdom plays the role for its citizens, while the government of Sweden plays this role for its citizens.

Waldron gives us more about just what this role entails. Suppose a principle like “Don’t assault someone unless it’s necessary for self-defense or to defend innocents”.<sup>87</sup> Obviously, in some sense this is not a range-limited principle. It’s plausible that everyone everywhere should follow it. Even so, some *A* might become an “insider” within the purview of this principle insofar as “an institution *L*” regulates *A*’s behavior toward some nearby *B*, who is also thereby an insider, but not *A*’s possible behavior toward some distant *C*, who is far enough removed from *A*’s powers that *A* is no threat to *C*. In order for *L* to regulate *A*’s behavior in the light of our “Don’t assault” principle—I’ll follow Waldron and call that principle “*P*<sub>1</sub>”—*L* will have to make certain demands on both insiders and outsiders to *P*<sub>1</sub>. First, *L* must “supervise and enforce” *A*’s conformity to *P*<sub>1</sub> itself: that is, demand that *A* abstain from assault except under the specified conditions. Second, *L* would have to supervise and enforce *A*’s conformity to a further principle, *P*<sub>2</sub>: “Accept the supervision of *L* with regard to the implementation of *P*<sub>1</sub>” (1993).<sup>88</sup> Finally, *L* will have to make demands on both

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<sup>87</sup> I would have called this a rule, but Waldron calls them principles and I’ll stick with his language.

<sup>88</sup> “Acceptance” might be misleading. No state can force anybody to have the cluster of mental states suggested by the word. Waldron must mean the outward trappings of acceptance.

insiders and outsiders to  $P_1$  and  $P_2$  in the form of  $P_3$ : “Do not undermine the administration of  $P_1$  by L.” (1993, 17). So  $P_3$ , unlike  $P_1$  and  $P_2$ , is a general duty owed to all institutions that promote justice.

Now, I think we can make something of the basic machinery of the Kant/Waldron approach to NDT. I agree that many of us, in the course of a normal social life, have or come to have certain duties we cannot discharge without the right sort of state, and I agree that this duty has to do with avoiding a certain kind of threat agents can pose to each other. Having said as much, three problems stand in the way of making this machinery functional.

First, the whole Kant/Waldron approach turns on the idea that individuals outside the purview of states pose some kind of essential threat to each other.

Simmons calls this the “wrongful threat premise”:

Those who refuse to sign up, denying the authority of the salient justice-enforcing institutions, wrong those around them by being threats to them. (2005, 178)

But, says Simmons, this crucial premise is false.

Being a threat to others in a way that wrongs [those around us] is an objective notion. We do not wrong others simply by virtue of their subjective *feeling* of being threatened by us (which is, perhaps, the source of the mistake). I can, conceptually, feel threatened by anything (say, the robin on my lawn), provided only that it appears dangerous to me. But the dangerous-looking man who passes me in the dark alley surely does me no moral wrong

simply because he is the object of my fear. He must actually be likely (in a special way) to harm me before he could possibly be accused of wronging me. (2005, 175)

But on any familiar “objective notion” of what it is to be a wrongful-threat to someone, it’s hard to see why we need states. If I abstain from objectively threatening behavior, why should I think I have further obligations of acceptance or support to some local state?

Second, even if we grant that individuals in the state of nature as envisioned by Kant and Waldron do pose some real threat to each other, we need to show that there’s no way to ameliorate such threats without resorting to states. If there are possible anarchic social arrangements that deal with the threats as well as states do, the argument from a natural duty not to pose a threat to those who live around you to a preference for political institutions over the state of nature won’t go through.

Third, the fact that *A* prevents some *B* from defaulting on one of *B*'s duties clearly does not always underwrite further duties of *B* to *A*. Imagine that Jay, Kay, and Ray live in a part of town where the cops don’t venture very often. Jay is 50 bucks in the debt of Kay. Jay has the money, and Kay needs the money in order to pay her own debts. Sadly, Jay won’t pay. Kay doesn’t want to get the police involved, but Kay has an especially muscular friend, Ray. When Ray hears about the situation, he shows up at Jay’s door, “Pay Kay what you owe, or else” he says, arms crossed, drumming fingers across his biceps. [Jay is not especially muscular.] Now, it may be, in Quong's language, that Jay is likely better to fulfill

the duties of justice he is under if he accepts Ray's directives as authoritatively binding and tries to follow them, rather than trying to directly fulfill the duties he is under unassisted. [Perhaps, as a matter of habit, he cannot be motivated to pay his debts.] It may be that, given the facts on the ground, Ray is the best guarantor of range-limited principles taking in both Jay and Kay. But Ray is at best over-zealous in a good cause. Vigilantes and bullies don't deserve our support.

The trouble identified here is akin to the particularity problem encountered above, only instead of exploding outward to render any decent state legitimate with regard to any particular agent, we have a possible proliferation of legitimacy within the familiar structure of individual states. So long as the actions of any fellow citizen make it more likely that I will deliver on some natural duty of mine, I must treat that citizen as an authority, and her coercive activities as justified. I think that's implausible, for reasons I will revisit below.

For the rest of this chapter, I'll address these three problems in order.

§2 The first problem with the Kant/Waldron version of NDT is the supposed implausibility of the "wrongful threat premise". If it's just not true that we have a duty not to threaten each other in any way Kant and/or Waldron have identified, it can't be that we owe support to particular states because they circumvent the threat. Simmons argues that we wrongfully threaten others only if we are "likely (in a special way) to harm" them. He doesn't offer a theory of what this "special way" amounts to, but that one agent merely feels threatened by another isn't special enough. Certainly, Simmons thinks that whatever the rights and duties

bound up in his Lockean account of moral personhood—the natural rights and duties of mutual independence and self-governance—a right not to feel threatened, or a duty not to cause the feeling of being threatened, is no part of them. So long as I don't actually point any guns at anybody, so long as I don't actually howl and rage and brandish my musculature, so long as I make no demands on anyone of the your-money-or-your-life variety, haven't I discharged whatever duties against threatening I have? But I don't need a state or any other kind of supervision to discharge such. All I have to do is comport myself in a generally peaceable way.

But what if we reinterpret the basic ideas embedded in Simmons' Lockean rights and duties through the lens of anti-domination commitments, as I claimed we should at the end of the previous chapter? If to enter into or maintain a social relationship that instantiates (D4)/(D5) is to deserve resentment and indignation, if such social relationships fail to promote or respect the central values of freedom and equality, it's very plausible to think that whatever other duties we have just in virtue of moral personhood, we have a duty to abstain from entering into or maintaining dominating social relationships; whatever our other rights, we have a right against such domination. Furthermore, if *A* has power over *B* sufficient for imposition, and *A* can put this power to work in deliberative isolation, this looks to me like one way for *A* to represent a threat to *B*. If I dominate you, I am a threat to you. Why? Because if I dominate you, I can attach high costs to your failure to



cooperate with me—high enough that I don't have to think very much at all about whether you'll be very motivated to go along with what I want.<sup>89</sup>

Once we've enriched our account of rights and duties with anti-domination commitments, we're in a position to see how *A* has duties to *B* that *A* cannot discharge even by studiously avoiding "threatening behavior". Here's the vital point: if we have duties against domination, we have duties not just to refrain from certain kinds of action, we have a duty to refrain from having certain kinds of power. Instead of just a duty to refrain from killing innocents, we have a duty against having an arbitrary power to kill innocents. This point generalizes to the other standard varieties of interpersonal violence and aggression. If *A* has duties against domination, *A* has not only a duty not to steal from *B*, *A* also has a duty against having the unchecked power to steal from *B*.

But how can you refrain from having an arbitrary or unchecked power to  $\phi$ ? Of course, given that we're talking about domination here, we're talking about arbitrary or unchecked impositional *power*; for simplicity's sake, though, I'll talk generally about powers.

For starters, one way to refrain from having an unchecked or arbitrary power is just not to have that power at all. We need to say a little bit about not having power in general before we can talk usefully about refraining from having power. It's possible not to have power because (and this isn't meant to be an exhaustive taxonomy) you lack either the material or the social basis of that

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<sup>89</sup> I suspect we should reject the stronger claim that anyone who is a threat to me dominates me. At any rate, I don't need to defend it here. It's enough to rescue at least an attenuated form of the "Wrongful Threat Premise" if all dominators pose threats.

power. What I mean by power's "material basis" is just whatever resource *A* possesses or controls that, in a particular context, enables *A* to have power over *B*. If Dealer *A* has heroin that Addict *B* doesn't have and wants, the heroin is the material basis of *A*'s power. For *A*, in this case, not to have the power in question might be simply for *A* not to have the heroin.

When I talk about power's social basis I mean the way that how much power one agent has depends on facts about agents around her. Another way for Dealer *A* not to have power over Addict *B* is for some third party to come along who sells better heroin more cheaply than *A*: that will decrease *A*'s power even if *A* has just as much heroin as before.<sup>90</sup> Both these cases involve what Pettit calls "option removal". *A* used to have options involving the use of power over *B*, but due to shift in the material and/or social bases of their power, these options have been removed.

Can *A* refrain from having power over *B*, where this involves the removal of options? In the above case, sure. Why? Because it's possible for *A* to alienate herself permanently from the material or social basis of her power over *B*. E.g. She can flush the heroin down the toilet. She can give the heroin to *B*. Etc. However, if *A* cannot alienate herself permanently from the basis of her power over *B*, *A* cannot remove her own options involving the use of that power. Remember, how *A* intends to use her power over *B* does not change anything

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<sup>90</sup> See Lovett (2011, 69) Another easy example of power's social as opposed to material bases is the way a particular *A*'s impositional power is often the enforcement apparatus of a state or other social group: e.g.  $S_A$  will have impositional power over *B* if *A* and *B* are members of a social group that allows *A* to have property in persons like *B*, so that *A* can depend on other members of the social group to respect if not enforce *A*'s claim to have *B* as property. In this case, *A*'s impositional power can be removed by changing the terms of cooperation in the social group so that claims to property in persons are no longer recognized.

about whether or not *A* is empowered. Suppose *A* promises to give *B* heroin whenever *B* wants it; so long as it's up to *A* whether or not this promise is kept, *A*'s power remains unaltered.<sup>91</sup>

The other way to refrain from having unchecked or arbitrary power, in the idiolect developed in the previous chapter, is to decrease the extent to which your power is exercised in deliberative isolation. Decreasing power's deliberative isolation, generally speaking, is a matter of replacing rather than removing options, and of altering the social rather than the material basis of power. Imagine that *A* has power over *B* because *B* is an elderly person living in a nursing home and *A* is *B*'s caregiver. If *B*'s family visits the home regularly to ensure that *B* receives adequate care, and stands ready to penalize inadequate care, this will go some way toward replacing the *A*'s option "neglecting *B* with impunity" with "neglecting *B* on pain of retribution from the family".<sup>92</sup> It's obvious how this reduces deliberative isolation: "treat *B* only as I see fit" gets replaced with "treat *B* in ways acceptable to the family".

Can *A* refrain from having deliberatively isolated power over *B*? As we saw in the last chapter, if *A* can do this, it's not just because *A* decides to talk to *B* or *B*'s family every once in a while out of the goodness of *A*'s heart, and weigh their counsel if it suits *A*. This is clear too from talk about *B*'s family's power to replace *A*'s options: if *A* listens to *B*'s family when it suits *A* and only when it

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<sup>91</sup> The main argument for this claim is at 40-42.

<sup>92</sup> I'm speaking loosely here of "option replacement", but obviously it will have to be a significant power—a power to replace one options with another that's attached to significant costs. "Neglect *B* and we'll all pout" doesn't attach "neglect *B*" to a sufficiently significant cost to really reduce *A*'s deliberative isolation.

suits *A*, it's clear that *B*'s family lack a real power of option replacement. Therefore, for *A* to refrain from having deliberately isolated power over *B* requires that *A* ensure that *B* or some third party acting on *B*'s behalf have a certain power over *A*. The only way to do this is for *A* to make sure that *B* or the third party in question has a power that *A* herself cannot remove. If *B* has the power to replace *A*'s options only by being invested with some power *A* herself controls, *A*'s options are not thereby replaced: it will be up to *A* to remove *B*'s power, and thus *B*'s power to replace *A*'s choices.<sup>93</sup> As with option removal, *A* can only refrain from having deliberately isolated power when *A* can insure that power is alienable from *A*'s own control—in this case, the power of second or third parties to attach costs to options otherwise available to *A*.

On the table as of now, we've got two ways to refrain from having unchecked or arbitrary power over someone else. First, you can refrain from having power by permanently alienating yourself from the material or social bases of your power. Second, you can reduce the deliberative isolation of your power, by making sure that second or third parties have a real power of option replacement. Now, what does all this tell us about whether or not we can refrain from having certain kinds of power in a state of nature? To review, suppose I have a duty not to kill innocents. Suppose I have a duty not to do violence to the persons of others. Suppose I have a duty not to steal. (Easy suppositions all, I

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<sup>93</sup> To make all this slightly more concrete, recall Pettit's case of the alcoholic and the liquor cabinet (2012, 57). In this case, *A* invests *B* with the power to control *A*'s liquor consumption by giving *B* the key to *A*'s liquor cabinet, with the instructions that *B* is to return it only after a two day notice. This decreased *A*'s deliberative isolation about the choice of when to drink only if *B* really does retain power over the key. If *B* is scared of *A*, so that *B* will cough up the key after a sufficiently impassioned plea for its return, *A*'s deliberative isolation about when to drink is functionally intact.

reckon.) I can observe those duties just be studiously abstaining from the actions in question. Good enough. But if I've got duties against domination, I have duties not to have a certain set of powers. I have a duty against having a deliberately isolated power to kill innocents; I have a duty against having a deliberately isolated power to assault you; etc. Why? Because if I can kill or assault you just according to my whims, I dominate you. If it's true that I have a duty against having those sorts of unchecked powers, is it just up to me whether or not I have them or not? That's just to say, can I abstain from such powers unilaterally? Abstaining by removing the physical and mental capacities that enable violence and theft is not a realistic option; therefore, refraining from such powers by removing their material basis is not an option.

See where this leaves us. All that remains is to alter the social basis of my power by ensuring that someone else is in place to check me. If no one is there with power enough to check me, I have an unchecked power regardless of what I choose to do with it. What matters for now is this: whether or not second or third parties around me are sufficiently empowered to check me is a fact about my social environment. It's not just a fact about me. Therefore, it's not just a fact about me whether or not I have an unchecked power "to kill, to steal, and to destroy"<sup>94</sup>. But if I have an unchecked power to kill, steal, etc., I am a threat to you. If I could refrain from being such a threat, and refuse, I am wrongfully a threat to you. That all looks like a perfectly "objective notion" of being a wrongful threat. It follows that it's not just up to me whether I am wrongfully a

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<sup>94</sup> John 10:10.

threat to you. If Simmons thinks we can't wrongfully be a threat to each other without actually aggressing, I think I've given us reason to suspect otherwise. Just having certain kinds of power is enough.

According to the “wrongful threat premise”, “Those who refuse to [submit to state supervision], denying the authority of the salient justice-enforcing institutions, wrong those around them by being threats to them.” Clearly, the “salient justice-enforcing institution”—or institution guaranteeing checks against domination—could be a state. States can provide the third-party checks on power necessary to reduce or eliminate domination in cases where agents cannot accomplish this unilaterally: e.g. states can penalize certain uses of physical strength against the weak, thus replacing an option like “Beat my child with impunity” with “Beat my child only at risk of state sanctions” by enforcing range-limited principles forbidding child abuse. It follows that submission to state supervision is one way to reduce such forms of domination. But this is not enough by itself to justify the “wrongful threat premise” as it stands and thus not enough to make NDT a workable justification of states—even an NDT equipped with heightened sensitivity to the evils of domination. If there are other ways to provide checks against domination without submitting to state oversight, we have to show why they won't do just as well. I'm about to try.

§3 Here's where we've gotten so far: attention to domination shows us that we can't always discharge our “Don't threaten” duties on our own. But the conclusion we've reached so far doesn't show a lot. Obviously, the mere presence

of second parties is usually some kind of check on our power, even in a state of nature, and the fact that we can't discharge a duty on our own obviously doesn't show that third party assists should come from a state. This is the second problem with Kant/Waldron-style NDT I identified above. Before I try to solve it, I'll bring the problem better into focus by looking at some proposed alternatives to state-based solutions. In so doing, I'll have a chance to expand what we've seen so far about the possibilities of domination-reduction.

Anarchic societies have very few real world exemplars, and such recent examples as we have are recognizable all around as pretty terrible.<sup>95</sup> Regardless, there is an interesting tradition of political theory behind the claim that anarchic social arrangements can do whatever states can do—or what states should do, anyway. What I want to know is whether or not anarchic social arrangements could provide effective checks on domination, so that we could always discharge our duties not to dominate without recourse to states. This is not, unfortunately, a question that anarchists have themselves taken up, at least with direct attention to recent republican excavation of domination and its institutional requirements.

As I pointed out at the top of the chapter, anybody worried about domination should worry about states. The power of states is almost always impositional, and so domination-ready. The claim that it's possible to live without states is thus *prima facie* attractive from an anti-domination perspective. Michael Huemer's work (2013) has the best claim to being state-of-the-art anarchism, so

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<sup>95</sup> Recognizably terrible, I should say, except to Jan Narveson, who is willing to offer Somalia as an example of a real-world anarchy, in an argument for anarchy. See Narveson (2008, 196).

I'll focus on him. As far as I know, there are no better presentations of the best case for anarchic social arrangements than his.

“We ought to reject a social system”—like states—“if and only if we can identify a superior alternative” (2013, 186), says Huemer. We evaluate alternatives, he goes on to say, against the background of some basic assumptions about human nature. (1) Human beings are approximately instrumentally rational, so that we can generally rely on them to do what best advances their goals, given their present set of beliefs. It follows that a proposed social system is clearly inferior if it assumes either that humans are not even approximately instrumentally rational, or that humans are perfectly instrumentally rational. (2) Humans tend to have “a great deal of accurate and practically relevant information about their environments and about the potential consequences of their actions” (2013, 188). (3) Humans are reliably selfish—not beyond all possibility of altruism, but we can count on humans to be selfish in a way we cannot count on them to be altruistic. (4) We should expect fairly wide variation in human beliefs, goals, motivations, and dispositions: in particular, human nature is not so uniform that we can rule out individuals who are “unusually aggressive or reckless” (2013, 195). I'm content to work within the framework of these assumptions.

Given this background, how might we expect stateless agents to confront domination? In the society Huemer imagines, guards against domination would come from one of two sources: either you're protected against domination because you're sufficiently powerful to protect yourself, or you have sufficient



resources to purchase protections against domination for yourself and/or those you care about. Safeguards against domination can be purchased from “protection agencies” and “arbitration firms”. The former would provide protection from the ineliminable minority of the aggressive and/or reckless that exist in any sufficiently large collection of humans.<sup>96</sup> Arbitration firms provide services analogous to the criminal and civil court system. The protection and arbitration services Huemer describes are not expressly intended to prevent domination, but it’s easy to see how they could. Suppose your stateless society is plagued by roving gangs of murderous thieves. Suppose you don’t have the skill or hardware to oppose them directly, threat-to-threat and force-to-force. In the absence of protection from a third party, such a gang might come to dominate you. If a gang lord demands that you hand over some chunk of your worldly goods, and you lack the skill or hardware to oppose him, they will be able to attach costs to your non-cooperation so high that handing over is the lesser of evils, and they will be checked in such demands only by their whims. Now, suppose you have sufficient resources to hire a protection agency. Assumedly, if an agency is able to attract paying customers, it must have sufficient threat-to-threat and force-to-force power to raise the costs of the gang’s attempted impositions high enough that they’ll leave you alone.

Huemer thinks that enough people would subscribe to protection/arbitration services, and those services themselves would be sufficiently well-behaved, for his stateless societies to be at least as peaceable as contemporary

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<sup>96</sup> Here, Huemer takes up some ideas first suggested by Rothbard (1978) and Friedman (1989).

western democracies.<sup>97</sup> Certainly, you don't need to assume very much about human nature to think that people will freely deploy some of their resources to purchase protection against domination if it's for sale, and purchasing it is the only way to get it. This is plausible given Huemer's modest assumptions about human nature. Let's suppose he's right. Let's suppose too that he's right in thinking that domination-preventing protection and arbitration services would be available to the poor as well as the rich, and without such a difference in quality that the rich can easily dominate the poor. In short, let's assume the best case scenario in terms of domination-prevention via individuals either having the capacity to ensure their own protection against potentially dominating forces, or having the resources to hire others to do so.

Here's how I'll proceed. I grant Huemer his admixture of modest suppositions about human nature and his [perhaps] immodest suppositions about the possibilities for effective free market distribution of protection/arbitration services. I give him the best case scenario for individuals funding their own protection against domination by others. Here's the trouble. Even Huemer's best case scenario leaves us areas of likely domination that either cannot be, or are highly unlikely to be, remedied. I'll start with a form of domination relatively few of us embody, and move on to form of domination almost all of us do.

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<sup>97</sup> Of course, we shouldn't forget that even contemporary democratic states are often very, very bad at providing protection and arbitration services: the protection services now provided to citizens in many American cities via local police departments are often turned against the most vulnerable and historically oppressed citizens, and that the arbitration offered in American courts is often brutally vindictive against the same citizens, and deeply skewed in favor of the wealthy and powerful. All this makes it reasonable to imagine that even if the life we could have with non-state alternatives is inferior in some respects to life within states, it may not so bad that coercive intervention is justified to prevent it. See Alexander (2010) and Greenwald (2011).

First consider unscrupulous employers. Modest assumptions about human nature may get you employers who are willing to purchase protection and arbitration services aimed at preventing their domination by others, but how many employers would be motivated to purchase protection and arbitration services to protect their employees from their own possible domination? Not many, I suspect. Perhaps Huemer would say that it's the employees' responsibility to purchase protection against their bosses, if they desire it, but this assumes that many employers will be willing to hire and/or continue in their employ those who have purchased such protection. Of course, unionization might be possible in some instances, but not always. Especially workers at the margins are likely to be sufficiently replaceable that employers would simply refuse to give work to any who attempted to protect themselves against their domination. They would only be protected if the employers themselves financed protection against themselves.

But for reasons we introduced above, it's far from clear that financing domination-protection against yourself is even possible. Suppose *A* hires protection agency *C* to protect *B* against *A*'s potential domination. It's hard to see how this really alienates *A* from their power. Assumedly, *C* will protect *B* just as long as *A* pays them to do so. That's how Huemer's subscription services are supposed to work. But if that's the case, *B* ultimately depends on *A* for protection against *A*. If they were at *A*'s mercy before *C* was hired, how are they substantially less so now? If *B* loses *A*'s favor, all *A* has to do is stop paying *C*, and that's the end of *B*'s protection. Perhaps the only way is for *C* to offer to prevent *A*'s domination of *B* for a onetime payment—perhaps a payment that

covers the protection of *B* from *A* until *B* exits their social relationship with *A*. That might be possible, but it's very unlikely given the operative assumptions about human nature. The higher the costs of protecting others from your domination, the more unlikely it is that many will pay.

It seems to me this employer/employee case has a structure we're likely to find repeated in an anarchic society. In some instances human nature can be relied upon to minimize domination via the mechanisms Huemer describes: most people are probably likely to protect themselves against domination as much as they can. But human nature cannot always be trusted to reduce domination. Many people, if not most, are unlikely to be nearly so careful in protecting others against their own domination. After all, as Huemer has told us, we are reliably selfish, not reliably altruistic. Then, of course, there's the conceptual and practical difficulties of auto-funding real protection against your own domination.

Here's another case where it's difficult to see how Huemer's subscription model could allow particular *As* to keep their duties against domination. Huemer is bullish about the "liberal beliefs and attitudes, particularly on the subject of violence" common among "Members of modern, Western societies" (2013, 203). However liberal standard beliefs and attitudes may be hereabouts, there remain significant amounts of domestic violence and child abuse. Again, it may be the individual parents or "heads of households" will be motivated to purchase guards against their domination by others, but how many would be motivated to purchase protections against their own domination of their children and/or domestic dependents? Obviously, many of these children/dependents will not be able to

purchase their own protection. How can a child be expected to purchase protection and arbitration services? With their allowance? Again, even if parents/household heads are inclined to purchase protection for their dependents, you run up against the same problem just raised in the employee/employer case. Given that more of us have domestic dependents than have employees, this kind of case is likely to be much more common.<sup>98</sup>

Here's another case with the same structure. It is notoriously difficult to describe the moral relation those of us now alive stand in to future generations.<sup>99</sup> What matters for my purposes is how we answer this question: Is it possible for *A* to have impositional power over *B*, when *B* is yet to be born? Given the conception of domination assembled in the previous chapter, the answer would seem to be, "No". For *A* to dominate *B*, both must be social actors: you can't be a social actor if you haven't been born. But *B* will be a social actor, on the assumption that there will be future generations of humans. What's clear is that those of us alive now certainly can alter the practical context of future generations. What it makes sense for future *B*s to do—indeed, what it is *possible* for future *B*s to do—depends in part on what we *As* do now. There is excellent reason to think that our collective choices may alter the planet so significantly that there is a literal sense in which we impose our will on future generations. Given their as-yet-unborn status, it is obviously impossible for future generations to hold

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<sup>98</sup> It is telling, I suspect, that the highest rates of domestic abuse are in locations where access to law enforcement is weakest. See Bernard (2014). Nationwide, despite the supposed advance of liberal values, the numbers are appalling. According to mainstream estimates, 1 in 4 women will be a victim of domestic violence during her lifetime. For details and references, see <http://www.ncadv.org/learn/statistics>.

<sup>99</sup> See Jamieson (2014, 144-177) for an account of these difficulties.

us accountable for the way we wield our power over them. I submit that if it isn't true that we dominate future generations because (on my conception of domination) you can't dominate someone who isn't an actual social actor—though they will be soon enough in the scheme of things—it's near enough to true that if domination is an injustice, whatever relation we stand in to future generations is also unjust, and for most of the same reasons.<sup>100</sup>

Suppose for the nonce we call our relation to future generations *domination-like*. Suppose we have a duty against standing in this domination-like relation to future generations. The same difficulties that kept Huemer's anarchic societies from providing plausible mechanisms against the forms of economic and domestic domination we canvassed in the previous paragraphs show up here. Future generations cannot protect themselves against us. Can we fund third-party agencies that would provide sufficient protection? Perhaps, in the once-for-all manner we've already considered. But again, how likely is such auto-funding given our shaky altruism even toward those now alive? "Not very" is the only plausible answer.

It looks to me that we've got at least two forms of domination, and one form of something very like domination [if it isn't actually domination], that Huemer's anarchic mechanisms for domination-reduction won't cover, at least

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<sup>100</sup> E.g. It won't be, obviously, because future generations suffer the conscious indignity of not being able to look us in the eye; but it could be because we don't treat them as free and equal. Again, I realize that it sounds odd to say that I could culpably fail to treat someone as, say, an equal when they don't exist. Even so, our treatment of those who will but do not yet exist is plausibly dictatorial: we are in danger of fundamentally altering the world to our benefit, without proper consideration of how this will affect the world in which future generations will make their own lives. For more about domination as a relation between those now alive and future generations, see Nolt (2010). For some broadly sympathetic criticism, see Jamieson (2014).

given his assumptions about human nature. Of course, all along we've been assuming the best case scenario for his anarchic mechanisms.

Suppose we don't assume the best, but still a pretty good scenario. That's to say, suppose that there are protection and arbitration services available in Huemer's anarchic society accessible to poor as well as rich, and the services accessible to the poor are good enough to render the most egregious forms of oppression—rape, murder, obvious pillage, etc—too costly for the rich to indulge in them very much. Given that there is no reason to suppose that impositonal power cannot exist without the power to rape, murder, and pillage, many possibilities for class domination will remain. If that's true, and we assume a duty against domination, it would seem incumbent on those with better protection/arbitration services to insure that they do not thereby have dominating power. But that leaves us with just the problems with auto-funding identified above.

It may very well be that it is possible in a stateless society to avoid the worst solitary-nasty-brutish-shortness of Hobbes' state of nature, or a state of nature sufficiently bad to justify Wellman's Samaritan rights and duties. We can grant all this and still have good reason to think that anarchic social arrangements will lack—perhaps even *must* lack, given reasonable expectations about our psychology—certain anti-domination mechanisms. Why? The problem arises from one of the primary attractions of anarchism: protection and arbitration services in a stateless society are funded voluntarily. If you want protection and arbitration services, you pay for them; and you get as much and as good as you

pay for. Of course, if you can't or won't or don't pay, you don't get protection and arbitration; and if you can't or won't or don't pay for better, you get worse. That's all well and good if we imagine a social world of agents who can protect themselves, or with resources they can choose to deploy for protection and arbitration, but I can see very little reason to suppose that the social world will ever be so populated. We've just seen some very likely examples. Children, domestic dependents, the very poor, workers at the margins, those yet to be born—all are often or even always unable to fund their own protection against those best positioned to dominate them; and, as I've argued, there are conceptual and practical difficulties with auto-funding protection against one's own dominating power, and these difficulties loom even larger given Huemer's own assumptions about human nature.<sup>101</sup>

In order to reduce the domination of those unable to fund their own protection, it seems that we need social institutions that do not depend on voluntary subscriptions. Such social institutions would have to maintain their existence without reliance on the good will of those whose domination they prevent. States, of course, have managed to do this, at least from time to time. The protections a state can provide against domination are funded coercively [primarily] via taxation; as a consequence, they at least have the potential to remain in place across many variations in the willingness of potential dominators to fund them. There are, so far as I can tell from anarchists' best efforts, no

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<sup>101</sup> That anarchist political philosophers mostly seem to overlook particularly domestic forms of domination is likely rooted in the same tendencies that have plagued their more mainstream liberal brethren. Again, the classic diagnosis of these tendencies is Okin (1991).



comparable mechanisms is the best imaginable stateless societies. This is not to say that anarchists may yet devise some. As I pointed out, the set of anarchist political philosophers who are attuned to the specific dangers of domination, especially as illumined by recent broadly republican insights, is now null.

What follows? If we have a natural duty against dominating others, and there are forms of domination that cannot be reduced unilaterally, and the relevant second parties cannot always protect themselves, a natural duty against domination sometimes requires the presence of third party checks on power. So we can derive a duty to accept the supervision of third parties from a duty against domination. This derivation proceeds in the manner common to ND theories. Given the fact that, for several familiar forms of social power, the third parties must be able to maintain their “checking” powers whatever the willingness of the “checked” to fund it, states look like the most viable candidate for the role of third party—or, at the very least, anarchists have yet to suggest a workable non-state alternative.

Of course, all of the above has concerned only our duty to reduce *our own* domination of others; none of the above hinges on an obligation to reduce the domination of others by third parties. If it turns out that we have a general duty to minimize domination from whatever source, we will obviously have a duty to minimize our own domination; but I assume here it’s possible to have a duty only to minimize our own domination of others. The claim that we have a duty to minimize our own domination probably has broader appeal than the claim that we have a general obligation to minimize domination. After all, it’s part of

commonsense morality that negative duties not to harm others ourselves is far stronger than our positive duties to aid—again, the sort of duties that Wellman’s account depends on. I don’t happen to endorse this bit of commonsense morality; but, obviously, assuming it here gives me less work to do. If it turns out that we have duties to aid others by reducing their domination, I can’t see how that will do anything but bolster the argument of this section.

§4 Here we are with an advance on liberal variants of NDT. Attention to domination shows how we might be a threat to our neighbors without actually aggressing, and so gives us a way to motivate the Kant/Waldron “wrongful threat premise”. We can’t always stop dominating others just by swearing off domination; third party protections are sometimes necessary. But some forms of domination cannot be reduced without states as third parties—or something so much like a state as to almost certainly deserve the name.

By way of introducing NDT, I said NDTs need (a) an account of what natural duty (or duties) is (are) in play; (b) an account of the state’s instrumental link to the fulfillment of the duty/duties.; and (c) an account of what particular duties are generated by the state’s instrumental link to our natural duties. We’re in a position now to see how anti-domination commitments fill out (a) – (c). The duty I’ve focused on, with regard to (a), is the duty to refrain from and/or exit dominating social relationships as far as we can. I don’t mean to suggest that other duties might not be most effectively discharged by specifically political institutions; but again, duties against domination seem to me to be the best

candidate for a natural duty that, across a wide range of possible worlds, cannot be met without the state's instrumentality. As to how that works—(b)—and limiting myself here to the broadest generalities, the basic idea is that states, as opposed to non-state alternatives like subscription-based protection and arbitration services, can provide checks against potential domination that do not depend on the altruistic tendencies of potential dominators. These “checks” amount to the replacement of options otherwise open to particular agents with options-with-a-cost: “discipline my child as I see fit” replaced by the state with “discipline my child as I see fit only at risk of prosecution for child abuse”.

What about (c)? What particular duties are owed to the state given (b)? Certain duties of compliance apparently come into play here. For example, if a state prevents an employer from dominating their employees by enforcing a range-limited principle against firing them at will, the employer would seem to have a duty to the state in the form of Waldron's  $P_2$ : “Accept the supervision of  $L$  with regard to the implementation” of the principle in question. *Prima facie*, this seems to entail a duty of Pettitian acceptance: it's tough to see how you could “accept the supervision of  $L$ ” while refusing to change  $L$  only in ways consistent with  $L$ 's continued existence. This suggests that the employer would also have duties in the form of  $P_3$ : “Do not undermine the administration of  $P_1$  by  $L$ .” (1993, 17).

But I say “*prima facie*” and “suggests” and “seems” for a reason. There is yet the final problem with NDT identified above: the fact that  $A$  enables  $B$  to fulfil one of  $B$ 's duties clearly does not always underwrite duties of  $B$  specifically to  $A$ .

As a consequence, the instrumental connection of political institutions to the fulfilment of our duties is a necessary but not a sufficient condition for any duty to accept them. If we have a duty to support agents or institutions anytime they make us less likely than not to dominate others, or to violate other duties we have toward such others, it's possible that we'll end up with duties to support bullies and vigilantes like the aforementioned Ray, not to mention tyrannies and dictatorships and other paradigmatically illegitimate regimes. The problem, of course, is that *A* might prevent *B* from dominating third parties while *A* dominates *B*. For example, an oddly enlightened variety of tyrant might reduce a man's domination of his wife by penalizing spousal abuse. When state agents, in this case, forced a man to stop abusing his spouse, they would be in an obvious sense doing something right, and the man in question would be obliged to go along with them, but the agents in question might just be a tyrant's goons. Tyrants and their goons don't deserve our support. If we can undermine the regime of a tyrant, we should. This means we can't get an obligation to support a state just from pointing out that state's instrumental role toward the prevention of private domination.<sup>102</sup>

There is the appearance of a puzzle here. How can it be true that the abusive husband in question is obliged to go along with the tyrant's goons and yet be entitled to undermine the tyrant's regime if he can? The answer, I think, is just that the husband should not resist any force necessary to keep him from abusing his spouse—not from tyrant's goons, the butcher, the baker, et al. Obviously, that he should not resist such coercion from agents *stopping his spousal abuse* says

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<sup>102</sup> This is a standard insight from the republican literature. *Imperium* is no better than *dominium*. See Pettit (1997, chapters 5-6).

nothing about those agents' broader entitlements. Similarly, the fact that the man should stop beating his spouse when a goon shouts "Stop beating your spouse" doesn't mean the shouting goon has political authority. Any person so shouting would have had just as much authority as the goon—the ordinary moral variety. There are no specifically political rights, duties, or obligations in play here; just basic moral rights to stop aggression, duties not to abuse one's spouse, etc.

We need a variety of NDT that doesn't legitimize vigilantes and bullies. Not surprisingly, I think the way to get one is to apply the lessons of the previous chapter about what it takes to render power non-arbitrary.

The trouble with Ray is that his musculature is constrained only by his own concern that Kay get what's coming to her, and is not accountable to Jay in any sense. It is thus a kind of impositional power exercised in deliberative isolation. Jay has no say in how Ray uses his power. This seems a promising way of capturing what's wrong with tyrants and dictators as well as vigilantes and bullies, even when they use their power for good—even to prevent other varieties of domination. All such, for good or ill, wield their power only at their own discretion, and without any accountability from those they subjugate.

That such accountability is necessary for a state's meriting our acceptance and support is natural, if we think of such support as limiting ourselves to changing the state only "within the system". Dictatorships and tyrannies cannot be changed within the system because, insofar as they constitute systems at all, they are insulated against change from those they subjugate. The deliberative isolation of a dictator or a tyrant just is one measure of how impervious they are to such

change. If the legitimacy of a state is that it merits our restraint, so that we oppose it only in ways consistent with its continued rule, a regime organized so that it cannot be changed from within but only, as it were, from above, is trivially illegitimate. It is not even entered in the legitimacy stakes. States that are even possibly legitimate must be susceptible to adjustment from those it governs. Pettit and many republican fellow travelers may or may not be right about the analytic connection between freedom, non-domination, and democracy;<sup>103</sup> but if the legitimacy of a state is that it merits adjustment-only-within-the-system, it's very plausible that there is an analytic link between legitimacy and democracy.

It follows that the success conditions for NDT identified above as (a) – (c) need to be amended. We need not only to know (a) what natural duties call for a state, (b) how the state works instrumentally to make it possible to fulfil those duties, and (c) what duties to the state follow from its instrumental role; we need also to know (d) how the state is to be held accountable so that it does not wield the power necessary to fulfil its instrumental role in deliberative isolation. It seems to me that any version of NDT—Quong's, Waldron's, Wellman's, et al.—must be amended along the lines called for by (d) in order to avoid endorsing obviously illegitimate regimes.

First, if a state really enables us not to dominate, we cannot construe its accountability to us in voluntarist terms; to prevent domination, a state must in some instances exercise power precisely when consent is withdrawn. That domestic abusers who want to dominate their families retract their consent from a

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<sup>103</sup> Such connections are perhaps the central theme of Pettit's (2012).

state does not change the fact the state in question might merit their support, and may justly prevent their abuse. The domestic abuser may be entitled to retract his support from a regime that actually prevented his familial domination but potentially used its power however it wanted; this does not entail that he is entitled to retract his support from a regime unless it does whatever he wants.

But neither should we let our non-voluntarism carry all before it. The proceduralist about non-arbitrary power might suggest that a state is properly accountable anytime its subjects can contest when it transgresses certain bounds, however those bounds are specified, even if they are specified entirely without consulting the subjugated. If you accept the central contentions of the previous chapter, you've reason enough to disagree. Remember Onesimus' case. Those in power are accountable to him insofar as he has a right to contest if he is, say, beaten instead of imprisoned for his obstinacy. If you were inclined to say he was still dominated, I think you should be inclined to say that suitable accountability is substantive accountability. But what's that? Here's the short answer: states are suitably accountable to their citizens when those citizens can effectively hold their states accountable so that state power is exercised only in ways justified according to the standards I will introduce in the next chapter. So, wait and see.

Let's sum up. The legitimacy of a state, where we conceive of legitimacy as Pettitian acceptance, is a function of whether that state (i) enables us to observe our duties against domination (and perhaps other duties), but (ii) only via power that's suitably accountable to us. To the degree that a state's instrumentality is not required for the discharge of our duties against domination (and perhaps others)

and/or to the degree that the state only does this as a function of its undomesticated power, we are morally entitled to resist that state. This funds only a modest account of our political obligations or of the state's general authority. Certainly, I don't see how to get from my arguments thus far to a general obligation to treat a state's directives as obligations, even *pro tanto*. Observing a duty not to alter a state in ways inconsistent with its continued existence is, as far as I can see, entirely consistent with all kinds of petty uncooperativeness. As a consequence, more particular questions of political obligation, like "Do I have a duty to pay my taxes?" are only partially addressed by my approach. Of course, if a state cannot function as a domination-checker without your tax dollars, you have a duty to pay up generated by your duty to accept domination-checks. In other words, if a state is instrumentally necessary to the discharge of some duty you have, and your refusal to pay taxes actually will undermine that state, you must pay your taxes. For most of us, however, who pay relatively little taxes, a duty to pay taxes would be a function of the state's legitimacy *and* (perhaps) a duty not to defect from cooperative schemes or group acts when those schemes/acts make it possible to discharge other duties we have. I don't think anything I've said here (or will say later) does much to advance the second half of that conjunction.

Do any of us live in legitimate states, even by the relatively weak standard of Pettitian legitimacy? I doubt it. I doubt it primarily because so much state power, even in democracies, is barely accountable to most of us, and not



accountable at all to the weakest of us.<sup>104</sup> Despite this, I think it's plausible that, if we have anti-domination duties, and thereby have duties to those entities instrumentally necessary to discharging those duties, we have further duties to construct such entities in the most efficient and effective way available to us, when they don't exist already. I suspect that, for most of us, the most "efficient and effective way" is through attempts to reform existing states, rather than through revolution. This is true because, as Pettit says, a "regime may still be capable of being made legitimate by being treated as if it were legitimate: that is, by being opposed only within the system" (2012, 139). Unless the overthrow of a state is the most efficient and effective way of getting to a state worthy of acceptance, we should choose other means, even if overthrow would otherwise be within our rights.

I said at the top of the chapter that my arguments here would help fund the idea that states are generally preferable to anarchy, as a social ideal. That states are preferable to anarchy as a social ideal could remain true, of course, even if we had a moral duty to seek the overthrow of every existing state. Here's how I think my arguments work as an endorsement of statism-*qua*-ideal. If it's true that states can prevent forms of domination that anarchic social arrangements cannot, and it's true that states can be suitably accountable in their domination-preventing powers, it follows that states offer our best chance of instituting our anti-domination commitments. I do not think I have shown here—or will show in what follows—that we have a good chance of achieving such a state anytime soon. I

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<sup>104</sup> Again, see Alexander (2010).

believe achieving such a state is what Rawls might have called “realistically utopian”,<sup>105</sup> but I won’t rule out here that it’s the other kind.

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<sup>105</sup> See (2001, 4).

## CHAPTER 4

## A REPUBLICAN CONCEPTION OF PUBLIC JUSTIFICATION

We worry about political legitimacy because the power of states is at apparent odds with our self-understanding as free and equal. In the previous chapter I tried to show how the legitimacy of possible states could follow from the conditions of respect for our mutual freedom and equality, provided that we understand the connection of these conditions with swearing off domination. If we have duties against domination, we can come to have duties not to undermine those institutions that make it possible for us not to dominate. Sometimes those institutions are states.

It follows that we can have duties to states even when we have not voluntarily endorsed them. Why? Because it doesn't follow from our natural freedom/equality that withholding consent delegitimizes political power in cases where that political power makes it appropriately high-cost for us to impose our will on others. However, it *does* follow from our natural freedom and equality that such power must be accountable to us. Legitimate states must, in some sense, be held accountable for the ways they prevent our domination.

There are [at least] two ways to interrogate this last claim. We could ask questions about how to design a state so that it's accountable to its citizens. Also, we could ask questions about what principles and ideals should guide citizens as they hold their states to account. I will concern myself here with the latter sort of

question. My answers are pieced together from refurbished materials drawn from the public reason tradition of liberalism—refurbished in accord with the neo-republican, anti-domination framework I’ve developed in the previous chapters.

Public reason liberalism, in all its permutations, orbits this claim: the power of the state must be acceptable to everyone who has to live under it, on some sense of “acceptable” and some sense of “everyone”. I’m not happy with this claim as it stands, mostly because I don’t think there’s a useful sense in which political power must be acceptable to everyone. Perhaps with some apparent mystery, I also don’t believe that political power must be acceptable to everyone to be publically justified. How this can be so is the subject of the final two sections of this chapter.

First I’ll rehabilitate the public reason tradition’s insistence that political power justified by appeal only to sectarian worldviews is not justified in the sense that matters. This claim, safe to say, is the element of the tradition that has provoked the most ire.<sup>106</sup> After all, it’s something like political commonsense that all we owe to other citizens is just to vote our consciences, without regard for what they might or might not think. Before I provide materials for public justification in accord with liberal restraint, it’s important to see we should bother with restraint in the first place.

I’d like my arguments in this chapter to accomplish three things. First, I want to show how a commitment to liberal restraint follows from a commitment to oppose domination; second, I want to show that it follows from anti-

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<sup>106</sup> And “ire” is the right word. For prime examples, see Robert George and Christopher Wolfe (2000), and John Finnis (2000).

domination commitments more clearly than it follows from un-refurbished liberal ones; third, I want to introduce a theory of political justification consistent with restraint. Un-refurbished liberal defenses tend to proceed along one of two tracks. The first appeals to the promotion of political values like social cooperation and civic friendship; the second appeals to a norm of respect for fellow citizens, variously expressed. Yet another defense can be assembled from one of Gerald Gaus' central arguments in *The Order of Public Reason*. In §1 I will survey these first two defenses and provide reason to think both are suspect. In §2, I'll turn to Gaus' arguments, which are considerably more sophisticated; but, while suggestive in important ways, I think they are ultimately unworkable. Then, in §3 I explain how a commitment to liberal restraint fits within anti-domination commitments. Finally, in §§4-5 I construct the outlines of a positive account of public justification by connecting public reason to the deliberative sensitivity condition on non-arbitrary power.

§1 First some review. Liberal political philosophers tend to think that only some kinds of reasons should figure in political justifications—the public ones. The details of what I think public reasons are, and how to unearth them, are to come later. For now, let's talk about the non-public ones.

It's obvious that contemporary democracies are chockablock with bundled claims about the right and the good—the bundles Rawls called “comprehensive doctrines” and I call “worldviews”.<sup>107</sup> About as obvious as the fact of various

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<sup>107</sup> In so doing, I follow Kyla Ebels-Duggan (2010: 50-71).

divergent worldviews is the fact that none of them has the market cornered on the commitment of decent and intelligent people—Rawls’ “reasonable pluralism” again. As a consequence, all worldviews in contemporary democracies are sectarian.

As a first pass, we might identify non-public reasons with considerations that count in favor of  $\phi$ ing only if a particular sectarian worldview is true. For example, that the pope<sup>108</sup> says we should  $\phi$  is not a reason to  $\phi$  unless Roman Catholic doctrine is (at least mostly) true; that we cannot universalize the maxim of not  $\phi$ ing is not a reason to  $\phi$  unless particular forms of Kantianism are true. Specifying exactly how such worldview-embedded considerations cannot figure in political justifications is a bit tricky. Christopher Eberle suggests the following:

[A] citizen in a liberal democracy ought not to support (*or reject*) any coercive law for which she enjoys only a religious justification. (2002, 14)

This is too narrow, given that there are obviously secular worldviews. *Prima facie*, it’s not clear why we should think the imposition of Kantianism is any better than the imposition of Roman Catholicism, if what we’re worried about is just the imposition of worldviews. If my reasons for supporting a law are just that it gives citizens the chance to realize their true nature as autonomous beings, a great many religious citizens will not be able to see the law as justified without abandoning their own worldviews. With this in mind, we can revise Eberle thusly:

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<sup>108</sup> *Qua* pope, of course. You don’t have to be a Roman Catholic to have a reason to put a coat on when your old friend Jorge Bergoglio mentions that it is cold outside.

A citizen in a liberal democracy ought not to support (or reject) any law for which she has only a worldview-embedded justification.

. . . where a “worldview-embedded” justification is just one that depends on considerations that count as reasons only if a particular sectarian worldview is true.

Good enough? Not quite. Think about a case where *A* supports a law because she’s is a faithful utilitarian, and she wouldn’t support the law otherwise. It just happens that the law enjoys massive support from people of all sorts, across the spectrum of other minimally decent worldviews abroad in *A*’s society. Should *A* refrain from supporting the law? The restraint principle offered above would seem to say so. But surely there’s something backward about that. Indeed, Kevin Vallier (2011) talks like once we see that there’s something backward about that, we can have done with any kind of restraint requirement at all. Once we admit the possibility that democratic citizens might *converge* on a law via separate justifications, some of which are religious and some of which are not, he maintains that we can abandon principles of restraint (2011, 275).

I think this is a mistake. Even if *A* has no reason for restraint in cases where *A* has only a worldview-embedded justification for her support for some law, *but* the whole array of other citizens have justifications of their own ready and waiting, should we think this will always be the case? Vallier seems to think that his account of public justification won’t restrict “the reasons that individuals may legitimately act upon in public political life” and won’t “[restrict] the range

of reasons citizens may use to block the passage of coercive laws” (2011, 264-265). But surely even he will have to restrict the range of reasons in cases where no convergence is to be expected. In cases where the laws *A* would support because of specifically utilitarian justifications aren’t justifiable from the perspective of a sufficiently wide range of other worldviews, even Vallier will have to hold *A* to some kind of restraint principle. He will have to tell our utilitarian she can’t just go ahead and vote her worldview. But because I agree with Vallier—and Gaus (with Valier, 2009), (2011)—that there’s nothing wrong with voting your worldview when it’s part of what Rawls would have called an “overlapping consensus” around a law,<sup>109</sup> this is the version of the restraint principle I’ll defend here:

A citizen in a liberal democracy ought not to support (or reject) any coercive law when she has good reason to believe that other citizens will not be able to regard the law as justified (or unjustified) without adopting her worldview.

Hereafter, I’ll call this principle (LR) for “liberal restraint”.<sup>110</sup>

Even refined like this, (LR) is deeply controversial. Many conscientious citizens of contemporary democracies have strong reasons to reject it. It is opposed even by some who agree that citizens should offer each other public

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<sup>109</sup> Jonathan Quong has argued that convergence accounts of public justification depend on a notion of justification not suited to public reason liberalism given its basis in a “reasonably disputed philosophical thesis” (2011, 261-273). I will return in the next chapter to the motivations underlying this critique. For now, I’ll just say that I think any debate about anything interesting depends on disputed philosophical theses; therefore, if those are unsuitable to public justification, we can just give up now.

<sup>110</sup> As far as I know, the phrase “liberal restraint” came into the literature with Eberle (2002).



reasons for policy.<sup>111</sup> Suppose I cannot even think about abortion without reference to my belief that fetal life is sacred. Is it fair to ask me to regard this belief as politically inert? Suppose I've shaped my worldview over the course of years by laborious inquiry into the deep nature of the right and the good. Why should my exercise of political power be tempered by deference to worldviews I have good reason to think are false? Perhaps most troubling of all, suppose I am underprivileged and unschooled in secular ways of thinking about morality. Is it just to ask me to observe restraints on exercising the modicum of political power I possess (tiny as it is) just because I have only ever thought of morality as a function of my religion? These are hard questions.

So, liberal restraint needs to be justified. Here is one way to go about it (the first of the aforementioned “primary tracks”): maybe the reason we should practice political justification in accord with (LR) is just because doing so promotes what Rawls called the “very great values” of achieving a society based on “fair social cooperation” (1996: 157).<sup>112</sup> According to Rawls, reasonable citizens recognize that the value of achieving this political ideal is so great that it “normally outweigh(s) whatever values” might come into conflict with it (1996: 139)—specifically, values and reasons native to unshared worldviews (1996: 168-169, 218). This way of justifying restraint depends on the idea that the promotion

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<sup>111</sup> Eberle is an opponent of liberal restraint on political justification who nonetheless endorses the idea that we should seek justification for coercion acceptable to all. It is Eberle's signal contribution to the literature to point out that a commitment to liberal justification does not necessarily entail a commitment to restraint.

<sup>112</sup> It is, of course, true that Rawls often appeals to the value of stability as a premise in arguments for restraint, but this stability is valuable only when it is stability “for the right reasons”. Which reasons are the “right” ones is a normative matter for Rawls, and ultimately entwined with the value of promoting social cooperation among free equals.

of social cooperation takes general precedence over whatever values the citizens of contemporary democracies might cherish besides. If the promotion of social cooperation comes into conflict with values I have as a devotee of some worldview or another, the promotion of social cooperation must “normally” come out on top.

But why? Now, I value what Rawls values [at least in this case], but it’s hard to see why the promotion of this value must outweigh all others, even most of the time; especially when the “others” belong to the faith of my fathers or the fruit of my laborious inquiry into the deep nature of the right and the good.<sup>113</sup> Giving so much weight to the value of social cooperation among equals seems to require devotion to a sectarian albeit liberal worldview—an unsavory result for Rawlsians.<sup>114</sup> Besides, citizens will be most tempted to abandon liberal restraint, even if they value social cooperation, when up against the very issues liberals most wish to settle by public reasons alone: e.g. the legal status of abortion, *inter alia*. It is hard to see why there is something amiss in an ordering of values favored by a devout Catholic according to which the protection of what they regard as innocent human life trumps the promotion of social cooperation, even when the same devout Catholic regards social cooperation as an important and even overriding value most of the time.

Even defenders of restraint like Kyla Ebels-Duggan urge us to recognize the outer limit of public reasoning in such cases. While liberal restraint embodies a commitment to civic values all reasonable citizens will share, she claims that

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<sup>113</sup> Michael Sandel (1996; 2005: 224-225) is especially insistent about this.

<sup>114</sup> See Wenar (1995) for an early statement of this criticism.

[There] is no reason to think in advance that (public justification) is always available. It is not available when people committed to the ideal of co-operation nevertheless have conflicting views about what justice requires. When forced to choose between fulfilling perceived obligations of justice and co-operating with their fellow citizens in policies that do not meet these obligations, reasonable people may opt for coercion. Given their commitment to the value of co-operation, they will regret that this is the best they can do (2010, 22).<sup>115</sup>

Such citizens “should admit their failure to realize an important value” but they have not “violated an obligation to their fellow citizens”.

There are good reasons to doubt that the first of the two mainstream attempts to justify liberal restraint is successful; especially if we think restraint is obligatory even (and perhaps even more) in the hardest cases of political justification. But what of the second mainstream attempt? Here the general idea is that (LR) follows from a commitment to respecting other citizens’ personhood or particular aspects of their personhood—perhaps their discursive capacity<sup>116</sup> or Rawlsian moral powers.<sup>117</sup>

Now, a commitment to respecting the personhood of fellow citizens is almost certainly a necessary condition on any serious commitment to political

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<sup>115</sup> Ebels-Duggan refers to her position as *permissive* as opposed to *strict* liberalism. As will become apparent, I disagree with her opposition of liberal restraint to “perceived obligations of justice”.

<sup>116</sup> For a specifically Kantian version of this argument, see Larmore (1999: 607-608; 2008: 148-149). For a response I find compelling, see Eberle (2002: 125).

<sup>117</sup> I.e. a sense of justice and a conception of the good. See Boettcher (2007: 223-249).

justification. Why would someone who lacked such respect care about justifying anything to fellow citizens at all? Fair enough. But there is an inferential gap between the notion that we should respect fellow citizens and (LR). How have I been disrespectful when I offer other citizens the self-same justification I have found persuasive? (Assumedly I find my own worldview a persuasive source of practical reasons.) Of course, they may not be persuaded, but so what? Why not say that I treat them with the same respect I demand for myself when I offer them the very best explanation for my position I can manage, even if it is just an application of my worldview?<sup>118</sup> Suppose I offer my fellow citizens the very best arguments I can find, even when those arguments depend on reasons they do not recognize as such. Suppose, furthermore, that I back my favored policies only after trying my best to find considerations favorable to my position within their worldviews, and am wracked with regret if I fail. It seems strange to accuse me, after all this, of a failure to respect the personhood of my fellow citizens. It is inconceivable that I would have expended so much effort on a pint glass or a mop.<sup>119</sup>

There is a more general problem for respect-based defenses of restraint. Respect for fellow citizens might actually motivate the abandonment of restraint. Why not think that the best way to respect other citizens is to encourage them to associate, advocate and vote in direct accordance with their worldviews, with the understanding that we will do the same? This seems a more direct route to honoring their discursive capacity/moral powers. In general, it is reasonable to

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<sup>118</sup> See Galston (1991).

<sup>119</sup> The central counter-argument to restraint in this paragraph is essentially Eberle's.

think that the best way to respect a capacity is to encourage its free exercise. For example, I respect the aesthetic capacities of an artist best when I refuse to interfere with her creative process, rather than when I do my best not to show her any art I do not think will move her. Analogously, we might think that respecting the capacity of fellow citizens to weigh reasons and values, or to form a conception of the good or a sense of justice, requires that I encourage them to exercise these capacities by their best lights, while I do the same. If so, perhaps all that respect requires is our sincere efforts to safeguard the inclusion of other citizens in the political process. As Jean Hampton urged in an early critique of Rawlsian liberalism, we might think that respect requires not that we rule some perspectives “politically ‘out of bounds’”, but that we try to unearth a fair “framework for discussion and decision making” that helps to reconcile the losers of political conflict—those who do not manage to get social policy to reflect their particular worldview—to the fairness of the process by which they lost, with the knowledge that such losses are but for a season, taking place as they do in “brawling and changeable” contemporary democracies. (2007, 179). If that’s true, the only necessary restraints will be to prevent the exclusion of citizens from the political process, not on reasons or worldviews as such.

§2 It’s possible to put together another interesting defense of (LR)<sup>120</sup> from Gerald Gaus recent efforts in *The Order of Public Reason: A Theory of Freedom*

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<sup>120</sup> I’m not sure Gaus himself would endorse what I construct here. His views on restraint are complicated. Regardless, I think someone who agrees with Gaus would have strong reason to favor (LR). See Wall (2013).

*and Morality in a Diverse and Bounded World* (hereafter *OPR*), and perhaps the most sophisticated to date, ranging as it does beyond the bounds of political philosophy into broader normative ethical concerns, as well as drawing from latter-day work in moral and evolutionary psychology. There is no way I can engage all this work's complexities, but the central criticisms I will discuss here don't require me to.

Gaus begins by reminding us of Rousseau's "fundamental problem":

The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while united himself with all, may still obey himself alone, and remain as free as before. (1988, 92)

Rousseau's problem is usually regarded as merely political: i.e. it is the problem of how to reconcile the state's claim to possess authority in the name of the common good with the freedom and equality of the state's supposed subjects. (This is certainly how I treated it in the introduction.) Gaus agrees that this is a political problem: "the fundamental problem of a free moral order", he says, is "whether free and equal persons can all endorse a common political order even though their private judgments about the good and justice are so often opposed" (*OPR*, 2). But Gaus believes too that the Rousseauvian problem re-occurs at the level of social morality. Whenever some *A* calls upon some *B* to observe one of "the set of social-moral rules that require or prohibit action", *A*'s call is unacceptably authoritarian unless *B* has sufficient reason to endorse the rule in question. In sum, in the realm of interpersonal morality as in politics, we have to

show that an imperative issued from one agent to another is something other than mere “bossing around”—a demand from *A* that *B*  $\phi$  just because *A* says so.

Fortunately, Gaus claims, there is a way of reconciling moral authority with mutual freedom/equality that’s built right into the practice of social morality as it has evolved in our species; or, at the very least, built into “the core claims implicit” in that social morality. These core claims represent a synthesis of sentimental and rationalist ideas about our moral natures. The sentimentalism Gaus has in mind is of the familiar Strawsonian sort: we have evolved into the sort of being that attaches “very great importance” to the reactive attitudes; the “attitudes and reactions of offended parties and beneficiaries; of such things as gratitude, resentment, forgiveness, love, and hurt feelings”. A social morality for beings like us must “sustain” these reactive attitudes. In other words, among that social morality’s core claims must be conditions for the aptness of the reactive attitudes.

When we examine these core claims, Gaus says, we find a latent commitment to what he calls the “Principle of Minimal Autonomy”. Our interaction with each other as moral beings presupposes that the aptness of *A*’s reactive attitudes toward some *B* is a function in part of whether or not *B* has the capacity to “[care] about moral requirements and so can put aside the things that she wants and, instead, conform to the rule’s requirements” (*OPR*, 203). This principle is supposed to explain why we don’t blame toddlers for destroying our personal property—at least in calmer moments upon reflection. A toddler lacks the capacity to “put aside the things she wants” in order to “[care] about moral

requirements”. ‘Round about here Gaus sees an aperture for rationalist insights. Minimal moral autonomy is an essentially affective property of agents insofar as it’s about what we have the capacity to care about. But *B*’s possession of minimal autonomy, so conceived, is not sufficient to sustain reactive attitudes directed at *B*. It must be the case as well that *B* can “evaluate the soundness of the reasons” on which she acts (*OPR*, 218). When we blame you for acting in a certain way, we presuppose that you were either aware of reasons not to act as you did, or you could have become aware of such reasons after a manageable amount of reflection.

Consider a typical citizen of Oceania [from Orwell’s *1984*], who has been restricted by Newspeak from grasping some reasons; . . . suppose her range of concepts has been so restricted that she cannot have some thoughts. Again, assume I demand that she  $\phi$ , and she wants to know why she should (assuming she can still ask this question). I say that it is the moral thing to do, but she doubts that it is; why is it the moral thing to do? Must I answer? Suppose I deny that I must give an answer. It is the moral thing to do, and that’s that. However, I know that she does not see that it is the moral thing to do, and suppose I think her lack of appreciation is quite genuine . . . If I think this, then again I cannot reasonably feel resentment or indignation that she fails to  $\phi$ . (*OPR*, 219)

According to Gaus, the judgment that indignation and resentment are inapt toward the Oceanian citizen generalizes not just to other cases where an agent’s beliefs



and values are “systematically perverted” but to a wide range of other cases where “regarding my demand that she  $\phi$ , [an agent] cannot grasp any reason that  $\phi$ -ing is obligatory for her” (*OPR*, 220). If *A* demands that *B*  $\phi$  but *B* herself is unable to see any reason to  $\phi$ , even after a reasonable amount of reflection, feelings of indignation and resentment on *A*’s part toward *B* must be inappropriate. How can it be apt for me to resent your failure to  $\phi$  when you are persistently nonplussed as to why you should  $\phi$ ? If you think it can’t be appropriate, you have reason to agree that Minimal Autonomy should be expanded to include the claim that “a moral prescription is appropriately addressed” to *B* only if *B* has “sufficient reasons to endorse the relevant rule” (*OPR*, 222). It is not enough, Gaus claims, that there *are* reasons to comply with a directive “ $\phi$ !” The addressee must *have* those reasons if we are to feel apt resentment toward their failure to act on them.

What’s the difference between the reasons there are and the reasons we have? That there is such a difference, Gaus claims, is easy to see in epistemic cases. Are there reasons to accept the most recent findings of contemporary physics? Of course. Did those reasons exist at the time of Aristotle? Sure they did. Is there any sense in which Aristotle *had* those reasons? It’s hard to see how. Given his evidence, there is just no way to tell a story about how Aristotle could come to believe the most recent findings of contemporary physics without the interposition of ecstatic visions, vertically lucky brain lesions, or other epistemically disreputable forces. Furthermore, the existence of reasons to believe

the most recent findings of contemporary physics doesn't make Aristotle blameworthy in the slightest for not *having* the reasons himself.<sup>121</sup>

But what about practical cases? Gaus considers whether or not Alaskan Eskimos in centuries gone by had reason to refrain from genocidal warfare, the point of which was to “annihilate the members of the enemy group, men, women, and children” and so prevent unending “inter-regional hostilities since survivors were always morally obligated to seek revenge” (*OPR*, 234-235). Of course, the vast majority of us think that there *are* reasons to refrain from genocide, but Gaus concludes that these Eskimos did not possess such reasons. Over against the moral status of genocide, he thinks, they are in precisely the same position as Aristotle over against contemporary physics.

To attribute a reason *to* these people, to say that they *possessed* a reason not to eliminate other people groups, while acknowledging that any justificatory force of this reason is inaccessible to them as reasoning beings is, I think, not only a misuse of language, but undermines the point of discourse about reasons and rationality (*OPR*, 235).

So why do *we* have reasons to affirm the impermissibility of genocide when Eskimo tribes of centuries past did not? According to Gaus, It must be that the imperative “Don't commit genocide!” can be addressed to “normal moral agents”

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<sup>121</sup> I will assume for the remainder of this chapter and the next that there's something to this reasons-you-have/reasons-there-are distinction. I won't attempt to figure out exactly what this something is. It seems to me that any theory of epistemic or practical reasons has got to make some sense of the phenomenon Gaus has in mind here, even if that theory ends up restricting the term “reason” to one side or the other of the have/are distinction.

nowadays and hereabouts<sup>122</sup> with the reasonable expectation that such agents can cobble together reason to comply from their “basic moral convictions, reasons to advance their values, their conceptions of the good, and their religion” (*OPR*, 255), and that the cobbling will take no more than the amount of deliberation we can expect from even a “below average” agent.

This gives us, Gaus says, two ways we might address moral claims to other human beings. We can address them from the position of “the imperious private conscience”. This happens whenever *A* asserts that *B* must  $\phi$  even though *B* cannot see any reason why she should after a respectable amount of thinking about it. In so doing, Gaus says, *A* claims that her “private judgment is authoritative over *B*” (*OPR*, 11). But addressing other “normal moral agents” in this way leaves our entrenched practice of assigning blame and responsibility without foundation. If *A*’s imperative—“ $\phi!$ ”—is addressed to *B* with only the backing of what *A* sees as reasons, *A* will be in the odd position of blaming *B* for failing to do what *B had* no reason to do, even if there *are* reasons for *B* to comply. Gaus argues instead that we allow the presuppositions of our ordinary moral practice to push us toward an anti-authoritarian stance: that we issue moral imperatives to other agents only when we have reason to believe that we are calling them to comply with their own reason—or, at least, their own reason minimally reconstructed to include what conclusive  $\phi$ -favoring considerations they would see after a modest amount of reflection. When we address other agents

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<sup>122</sup> I.e. agents who have internalized the implicit workings of our moral practice, that “there is an internal ought, and that morality involves reciprocity and mutual benefit, and the appropriateness of the moral emotions”.

in this way, we reconcile the authority of social morality with the freedom and equality of the agents it binds. Each is a “free moral person” because she is “guided by her own sense of obligation based on her own reasons” and “equal because her reasons are as definitive about what she can recognize as her obligations as mine are about what I can see as mine” (*OPR*, 223). Rousseau’s “fundamental problem” is resolved in our acquiescence to Gaus’ “Basic Principle of Public Justification”.

A moral imperative “ $\varphi!$ ” in context  $C$ , based on rule  $L$ , is an authoritative requirement of social morality only if each normal moral agent has sufficient reasons to (a) internalize rule  $L$ , (b) hold that  $L$  requires  $\Phi$ -type acts in circumstances  $C$  and (c) moral agents generally conform to  $L$  (*OPR*, 263).

(LR) might seem a straightforward application of Gaus’ conception of social morality, if that conception is sound. If  $A$  tries to get the state to coerce  $B$ , when  $A$  has good reason to believe that  $B$  will not be able to regard the law as justified without adopting  $A$ ’s worldview, it’s hard to see that as anything but the imperious private conscience at work. For the reactive attitudes to be sustained, it must be the case that  $B$  has a reason, from the perspective of  $B$ ’s own worldview, to  $\varphi$ . If  $B$  does not share  $A$ ’s worldview, and would not share it after a decent amount of reflection, and cannot see any reason to  $\varphi$  after a decent amount of reflection on the requirements of her own worldview,  $A$  will have no reason to blame  $B$  for non-compliance.

But there is a basic difficulty with the attempt to get (LR) from Guasian premises. Gaus admits that the question of what reasons people have is “often vague and always contextual” (*OPR*, 254). This vagueness plagues attempts to answer questions about when *A* can rightly regard *B* as not “having” the reasons required to see that *B* should  $\phi$ . Obviously, Aristotle is not at fault for his inability to see the reasons that justify the findings of contemporary physics. Perhaps Eskimo tribes of centuries past are not at fault for their inability to see reasons embedded in more universalistic moral ideals. But it is less plausible that differences in worldview between some *A* and some *B* are always non-culpable on both sides. Suppose *A* is a devoted utilitarian and *B* is an egoist. *A*, *qua* utilitarian, supports some law that *B*, *qua* egoist, does not. It may be that *B* cannot see the reasons *A* regards as decisive without converting to utilitarianism. But why should *A* think that *B*’s refusal to convert is non-culpable? Is it obviously irrational for *A* to think that *B* would convert if *B* thought more carefully about the idea that there are simply no differences between *B* and the rest of humanity that could justify *B* in regarding only *B*’s best interests as reason-giving? It’s hard to see why. After all, I’ve seen undergraduates, to all appearances, reject egoism after the very modest amount of deliberation it’s possible to conduct within a single 50-minute class period.

The difficulty of figuring out what addressee *B* of moral claims has sufficient reason to endorse becomes even more acute when we ask a more specific question about what reasons particular addressor *As* have at their disposal to orient their beliefs about addressee *Bs*’ reasons. Surely, the measure of whether

some *A* has reason to issue an imperative to *B* has at least as much to do with *A*'s reasons as with *B*'s. What reasons does *A* *have*? To the point, can *A* be brought to see, through a modest amount of reflection on *A*'s commitments, that *B* does not have reason to  $\phi$ ? For example, many devotees of religious worldviews have doctrinal commitments that rule out innocent non-belief. From St. Augustine:

If the feeble mind of man did not presume to resist the clear evidence of truth, but yielded it's infirmity to wholesome doctrines, as to a health giving medicine, until it obtained from God, by its faith and piety, the grace needed to heal it, they who have just ideas, and express them in suitable language, would need to use no long discourse to refute the errors of empty conjecture (1871, 48).

I think these sentiments are outrageous. But did St. Augustine *have* reason to think that addressees of his moral claims rejected those claims non-culpably? Did he have reason to think that anyone to whom he addressed some imperative—“ $\phi$ !”—would lack reason to comply if they would just open their hearts to the “clear evidence” of gospel truth? It's not remotely clear to me that he had such reasons; but then it's easy to see how he could maintain the reactive attitudes even when the agent to whom his “ $\phi$ !” is addressed will never accept the worldview required to make sense of the imperative. He would maintain that *B* *has* reasons to accept the Christian worldview—however unrecognized given *B*'s culpably lost and blind condition. All this would remain true, of course, even if the *B* in question actually had no reason to accept the Christian worldview. Plausibly, St.

Augustine himself would have no reason to think this. I think we tell much the same story about many of St. Augustine's modern day ideological descendants.

All told, it seems to me that adherents of secular and religious worldviews may not always possess reason to think that rejection of their worldview follows an appropriate level of deliberation about what reasons the rejecter has. Perhaps they believe there are simple arguments that lead some interlocutors to convert after relatively little reflection. Especially for the religious, they may have doctrinal commitments to the claim that those who reject their worldview culpably fail to deliberate properly. In either case, it's not hard to see how, from their perspective, they could discard (LR) without much worry about the continued aptness of their reactive attitudes toward those who refuse to  $\phi$  on command.

The angle of criticism contra Gaus' just explored assumes that his account of social morality and its connection to political justification is broadly correct; but I have a deeper worry. Perhaps Gaus has given us the right answer to questions about the public justification of social morality. However this may be, this is clearly nothing like the whole story about the justification of political power, when the worry about political power is its connection to coercion. Think again about Gaus' Eskimo tribes of old. Suppose he is right that the tribes in question did not possess reasons against their genocidal practice of inter-tribe warfare. Suppose this entails that indignation and blame are inappropriate toward them. What all of the above surely does not entail is any kind of duty on the part of outside parties to refrain from intervention, even by force. This strikes me as

obvious. Recall once more the meat-axe wielding neighbor of paragraphs long since passed. I may coerce the neighbor by locking him in a closet until the police arrive or threatening him with a shotgun or even shooting him. All such looks entirely permissible, however unfortunate, even if the neighbor's pathologies may prevent him from seeing reason to abstain from intra-neighborhood meat-axing. That I can bring him to see that he has reasons to leave the meat-axe at home and be reasonable is just a sort of decorative bonus, a bit of additional value I'm certainly to be congratulated if I can achieve, but nothing remotely like a condition on the permissibility of coercing him. In such cases, what justifies coercion seems primarily, if not entirely, to be a matter of what reasons there *are*, not what reasons anybody *has*. There are reasons that justify stopping genocidal warfare if we can do so without causing something worse; there are reasons that justify stopping a homicidal neighbor from killing someone. That's why coercion is justified in such cases; not what reasons are possessed by the genocidal/homicidal.<sup>123</sup>

§3 It's not like defense of liberal restraint has nothing to do with the advancement of central political values, with due respect for others, or with

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<sup>123</sup> For a similar line of criticism to the one I advance against Gaus in this paragraph, see Quong (2014). Gaus ends up saying that when it comes to psychopaths like my imagined neighbor and even the "significant number . . . within the general [noninstitutionalized] population", we have a "blameless liberty to act as we sit fit" (*OPR*, 463): i.e. to force them to abide by a social morality they cannot see as justified. Gaus is even willing to extend such talk to those "who, because of deep cultural differences, do not endorse some of our moral rules" (*OPR*, 464)—at least temporarily. (It's difficult to tell what he would have "us" do with more permanent cultural minorities.) Of course, the psychopaths and cultural others we may blamelessly coerce have no moral obligation to comply, given that our blameless coercion is not a function of justified moral authority. This is just to say that, on Gaus' reckoning, we fail to treat them as free equals.



treating others as free co-equals. It's just that the defense of liberal restraint in each of these ways needs an assist from republican insights about domination.

Let's move in the direction of understanding why by visiting an objection to Gaus' version of public reason liberalism from David Enoch. Gaus thinks we need public reasons because, according to Enoch, Gaus conflates coercing someone in the name of what they have reason to do with coercing them in the name of what I believe they have reason to do. Suppose you could address Gaus' genocidal band of ancient Eskimos. You say, "Don't commit genocide!" Suppose they won't go along and you manage to keep them from committing genocide by force. There's no need, Enoch claims, to say your coercion was justified merely by your belief that genocide is wrong, by reasons only you have, etc. What justifies the coercion is that genocide is wrong. What you do or don't believe, what reasons you do or don't possess, just doesn't need to show up at all in the coercion's justification. (2013: 159-160)

Enoch thinks this objection to Gaus generalizes to public reason liberalism. It's easy to see why it might cause trouble for those who endorse liberal restraint. *A* wants to force *B* to live in a particular way by passing a law that will penalize *B*'s attempts not to. Suppose *A* came to believe that this particular way to live is best because *A* is a Kantian. Suppose further that *A* has good reason to believe that *B* won't be able to see reason to live in this particular way unless *B* becomes a Kantian too. Still, *A* might claim that the fact that *A* is a *Kantian* and thus sees reason for *B* to live in this particular way is no part of the justification for forcing *B* so to live. The reasons for forcing *B* so to live are just

the reasons. They don't depend on *A* in any way. If *A* ceased to be a Kantian she would still want *B* to be forced so to live.<sup>124</sup> But if *A* or *A*'s reasons are not part of the justificatory picture, how can we say that *A*, or coercion in *A*'s name, is unacceptably authoritarian or illegitimate?

There's something to Enoch's line of criticism. Let's just grant that it's not necessarily authoritarian for me to issue moral imperatives to you, even if you can't see reason to accept them. Certainly, it's not necessarily wrong to coerce you in particular cases even if you can't see the reasons that coercion is justified. All well and good as far as I'm concerned. Nevertheless, when the worry isn't just about justifying particular imperatives or acts of coercion, but about justifying power relations, I think Enoch's counterargument is wrong-footed.

Recall again the tyrant's goons and the domestic abuser from the previous chapter. We noted at the time the obvious truth that the domestic abuser has a duty not to abuse, and just anyone—tyrant's goons included—has a moral right to stop the abuse if they can. Furthermore, just anyone—tyrant's goons included—says something true when they assert "You should stop this abuse!" The identity of the asserter need play no role whatsoever in the truth or aptness of this assertion. Now, we can agree with Enoch that this assertion is not impermissibly authoritarian just because the abuser it's addressed to does not, and even cannot after long deliberation, see that he has any reason to agree or comply. But, as we've noted time and again, there's something wrong with the power of tyrants and their goons even when they're only using that power in permissible ways: i.e.

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<sup>124</sup> This is Enoch's counterfactual test for whether "the reasons" are doing the justificatory work, or the fact that they're *A*'s reasons.

to stop abusers from abusing. It's fine on occasion to coerce someone in ways they cannot see as justified from their perspective on the relevant practical reasons; but tyrant's goons are up to something more.

What it takes to make it true that "You should  $\phi$ !", or what it takes to make it true that I can rightly force you to  $\phi$ , and what it takes to justify the kind of power A has over B is not the same.<sup>125</sup> It might be that A can permissibly force B to  $\phi$ , or that A says something true or apt when A says " $\phi$ !", but also be true that A stands in an immoral power relation to B.

Suppose a tyrant's goon or a slave master or another one of our paradigm dominators said, "Look, I'm very conscientious. I don't force anyone to do anything unless I know that it's right, or force them to stop doing anything unless I know they're doing wrong. The fact that I said 'Keep your promise!' or 'Don't steal!' isn't the reason I force my subjects not to break their promises or refrain from stealing. That I think it or I said it just isn't part of the justification. If I didn't exist, or if I suddenly started to approve of promise-breaking or stealing, I would want someone else to keep my subjects honest." If I've convinced you of anything about the evils of domination, you're not going to accept all that as a justification of the power relation of this goon or master to those subjected to their power. This imagined discourse from a goon or a master is just an attempt to change the subject. When we accuse them of domination, we're not accusing

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<sup>125</sup> After all, I can successfully coerce you without it being generally true that I have more power than you, much less dominating you. Suppose I manage to trip the meat-axe maniac, whereupon he smacks his head on the floor and passes out. Suppose I tie him up while he's unconscious. Suppose I managed to do this even though he is generally much stronger and wilier than I am—I just got lucky. It seems to me that I've at least played a part in successfully coercing him, but it's odd to describe me as standing in a "more powerful" relation to him.

them of forcing people to do things who didn't understand why they should; though, of course, they have a kind of power that enables them to do so.

Now we can return to the question of whether liberal restraint is justified. When a democratic citizen tries to use the state's impositional power to force other citizens to abide by a law they'd have to adopt her worldview to see as justified, is she just engaged in the permissible kind of "It's too bad you can't see the reasons" coercion Enoch has reminded us we often have to do? Or, is she acting more like the tyrant's goons? Well, how closely does this citizen's attempt to use the state's power in this way resemble the structure of dominating social power? I think there's good reason to answer this last question: "Too closely."

Recall (D5)—and I think (D5) is the appropriate metric insofar as the citizen in this case obviously must act in concert with other citizens:

Suppose  $A_1, A_2 \dots A_n$  make up the members of set  $S_A$ . When  $S_A$  and  $B$  (i) are all social actors, the members of  $S_A$  dominate  $B$  to the extent that (ii) the members of  $S_A$  are engaged either individually or collectively in a social relationship with  $B$ , (iii)  $S_A$  individually or collectively have impositional power over  $B$ , and (iv)  $S_A$  may wield this power from a position of deliberative isolation.

Citizens in a democracy are engaged in a social relationship with each other at least to this extent: when we vote or pressure our representatives, or engage in other forms of political action in pursuit of particular political outcomes, what we do affects the practical context of other citizens. In this way, what it makes sense for citizen  $B$  to do is in part a function of what  $S_A$  (populated here by  $B$ 's fellow

citizens, both actual agents of the state and of the ordinary variety) do or have done. Of course, the impositional power at work here is the state's, exercised through its agents.

And what about condition (iv)? This, again, is the famed arbitrariness condition for domination—most of the story about what makes the power of tyrant's goons, even when used to stop abusers from abusing, dominating. On the conception unpacked in chapter 2, impositional power is dominating to the extent that it's exercised in deliberative isolation. At an extreme, such power is exercised with absolute insensitivity to the deliberative capacities of those subjected to it.<sup>126</sup>

Is there any reason to think that power guided by democratic citizens couldn't instantiate (D5)? I see no reason to think so. Of course, we're imagining a scenario where there's a division of labor in  $S_A$  between those whose sense of applicable practical reason are enforced and those who actually do the enforcing; but that the guiders and wielders of power in this case are members of a democratic citizenry and not more traditional dominators is no obstacle, as far as I can tell, to a structural identity of power between the former and the latter.

Here's the argument, in summary. To dominate someone is to exercise social power sufficient for imposition over them, constrained only by what the power-wielder regards as sound practical reasons. Power wielded in this way is structurally identical to the exercise of social power in paradigmatically unjust

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<sup>126</sup> The dream of complete domination is to substitute the deliberative capacity of another human entirely by our own. See Aristotle's discussion of "natural" slaves in the *Politics* (1984: 36-41). Aristotle apparently agrees with me about mastery as involving "deliberative capacity substitution", he just thinks that some biological humans lack altogether or possess a defective deliberative capacity, and so are justly dominated.

ways (i.e., the power of masters, despots, et al.) That looks to me like excellent reason to avoid the exercise of “power wielded in this way”. Now, citizens have a joint responsibility to hold the power of the state to account so that it does not become dominating. If that’s true, then individual citizens should not seek to shape this power so that it reflects only what they regard as sound practical reasons, because so to do is simply to use the state’s impositional power to impose deliberately isolated notions of how other citizens should live. All told, in a society where no single worldview holds sway, the justification of political power by reasons that have force only if my worldview is true amounts to deliberately isolated impositional power, and so domination.<sup>127</sup>

It follows that liberal restraint is necessary not just to achieve some golden liberal vision of a well-ordered society where free equals cooperate in civic friendship, although (fingers crossed) it may very well have this effect. Restraint is necessary because otherwise we do what we can to place other citizens under essentially master-like power. The justificatory basis for restraint is not simply the promotion of liberal values among other values; restraint is necessary to prevent an injustice—at bottom, the very same injustice we reject in the paradigm case of the master/slave relation. The conscientious citizen who abandons restraint must recognize that they are (at best) in the unenviable position of opposing one injustice by promoting another, not just of maximizing one value at the expense of another, or turning with regret from valuable activities and outcomes that the

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<sup>127</sup> It’s worth pointing out that no part of my argument depends on *why* no single worldview holds sway. In particular, it’s no part of my argument that this is true because pluralism is reasonable, or because of the burdens of judgment. The explanation for why you disagree with me is, I think, independent of anti-domination reasons not to impose my will on you. So

requirements of justice will not allow us to pursue. Perhaps Ebels-Duggan is right that some citizens will be unable to abide by (LR) in good conscience and “should admit (her) failure to realize an important value”. But, contra Ebels-Duggan, this citizen *will* also have “violated an obligation to (her) fellow citizens” (2010: 22). If I have any obligations to my fellow citizens, refraining from acting as their master as far as I can looks like a very promising candidate.

And the connection between respect and restraint? The essential contribution of theorizing domination is the idea that respect for persons as free and equal requires us to refrain from attempts to dominate them. If mastery is itself an injustice, it’s clear why respect requires more than that I merely articulate the best arguments I know of for the coercive policies I favor. A master who interfered with the choices of his subjects only after making sure they understood the best arguments for his interference is only more conscientious than the typical master: he is a master no less. Suppose, as Eberle recommends, I attempt to coerce other citizens based on reasons that have force only if my worldview is true, but only after I have tried and failed to find reasons within their own worldview that favor my way of thinking. In so doing I demonstrate more respect for my fellow citizens than if had I made no attempt to canvass their worldviews for points of agreement; but insofar as I have attempted at the end of the day to wield power over them based only on what I think are sound practical reasons (after all, my canvassing failed), I have contributed to the absolute deliberative insensitivity of impositional power, and so to domination. Remember the “very strange master” of Chapter 2. He co-deliberates; he tenderly solicits counsel; but,

qua master, he forgets all of the above to interfere based only on what he thinks is best.

And why think that respect requires more than our best effort to secure for all citizens free and equal participation in the political process, as per Hampton? There is no reason to deny that a constitutional framework for maximally inclusive democratic decision-making is required by respect for fellow citizens. But eschewing domination requires something more. It may be that the most effective means of minimizing any citizen's capacity to wield the state's impositional power arbitrarily over other citizens is just to create and/or sustain a maximally inclusive framework for collective, democratic decision-making, as Hampton recommends. It may be that such a framework should not itself limit the extent to which an individual citizen seeks to express their worldview through politics. I do not necessarily grant this much, but it may be. But even if this is the best we can do for legal protections against deliberative insensitivity, we should acknowledge that the set of our moral obligations effectively/prudently enshrined in law is but a subset of our total moral obligations. Just like I am under an obligation to refrain from stealing even though it may be possible for me to do so even under an ideal legal system, I may be under an obligation of justice not to exercise impositional power over fellow citizens from a deliberative stance of absolute insensitivity even if the only way this obligation can judiciously be enforced is through constitutional safeguards ensuring fair, inclusive, democratic procedures. If my arguments above are sound, and such absolute deliberative insensitivity characterizes the paradigms of mastery, it is very plausible to think I



should abstain from such interference *simpliciter*, not just from those forms of mastery and domination that democratic institutions can effectively minimize.<sup>128</sup>

§5 Until now, I've tried to show that when *A* votes or advocates for laws, or else votes against or opposes them, based on considerations that don't have justificatory traction unless *A*'s worldview is true, that's at least attempted domination. As a consequence, we shouldn't do that. But what should we do instead? Here's another way of putting the question—At last, what does it take to show that the state's impositional power is exercised with due deliberative sensitivity? If the role of the *demos* is to hold the power of the state to account, so that the state's power isn't exercised in deliberative isolation, what standard do we hold it to? The remainder of this chapter answers such questions by working out the following claims. First, if the deliberative isolation and insensitivity of power is measured by the degree that power can be wielded only according to the wielder's sense of relevant practical reasons, deliberative sensitivity must be measured by the degree to which power cannot be wielded without due consideration for what those subject to it regard as relevant practical reasons. Second, it follows from a commitment to our mutual equality that each person has the same initial claim on deliberative sensitivity as anyone else subject to the same imposition-suited power. Third, not only do each of us have an equal claim on deliberative sensitivity insofar as we are equally subject to impositional power, we have a claim on *maximal* deliberative sensitivity consistent with the like claim

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<sup>128</sup>After all, the standard claim among devotees of liberal restraint has always been that the obligation in question is moral rather than legal. See Rawls (1996: 217).

of others. The answer to how much deliberative sensitivity is always “As much as possible”, where the measure of what is possible is the other features of due sensitivity. Finally, because our claim to maximal deliberative sensitivity must be consistent with the like claim of others, what counts as due deliberative sensitivity to me is a function not just of my own sense of relevant practical reasons, but also of the claims of others to due deliberative sensitivity. In other words, deliberative sensitivity is reciprocal. All told, if we want to ensure that the state’s impositional power is not domination, we must ensure that all those subject to it can effectively contest that power when it’s exercised without respect for their status as equal claimants to maximal deliberative sensitivity, where sensitivity is reciprocal in the sense that proper sensitivity to each is a function of proper sensitivity to all.

I think we can at least begin to assemble an attractive conception of public reason from these claims about deliberative sensitivity. In fact, for my purposes, public reasons just are the reasons we use to show each other that the state’s impositional power is exercised with due deliberative sensitivity. I’ll do what I can to advance this conception in this chapter. In sum, I suggest a change of aspect: the publicity of public reasons isn’t their acceptability to all; the publicity of public reasons is their capacity to show that justice has been done to the multiplicity of perspectives on how the state’s power should be held to account. Given that liberal visions and revisions of public reasons have generated an enormous literature, my republican engagement with the tradition is necessarily partial. I will have to be more suggestive than analytically precise.

The most challenging task for constructing a positive account of public reason is to reconcile Rawls' "fact of reasonable pluralism" (Gaus' "evaluative pluralism") with the "publicity" of public reasons. The difference between public and non-public reasons, for the public reason liberal, is that the former are "accessible" in a way that the latter are not. Gaus' account of "the reasons you have" we encountered above is just an account of what reasons are accessible to you. This insistence on accessibility is typical. Vallier, for example, says that "A coercive action *C* is justified if and only if each and every member of the public *P* has (a) conclusive reason(s) *R* to endorse *C*" (2011, 262. Italics mine). Enoch thinks endorsing accessibility is a necessary condition on counting as a public reason liberal at all: "They are all committed to some kind of accessibility requirement . . . The thought that for a state (for instance) to be legitimate, its authority must be justifiable to each of those subject to it" (forthcoming). The state of play seems to be that public reasons just are "accessible reasons" which are "reasons we all have" which exclusively figure in "justification-to" each of us.

I think we should abandon this picture, and that thinking of public justification as a case of due deliberative sensitivity shows us how. It's of course true that public reasons figure in justifications-to: you can't show that power is exercised with due deliberative sensitivity to *B* without justifying that power, in some sense, to *B*. But I think an account of public reasons is best conceived as an account of what it takes to show that *B*'s conception of practical reasons has been given suitable weight, consistent with the like claim of all others subject to the

same impositional power, not an account of reasons are accessible to *B* in the Gaussian sense of being *had* by *B*.

Of course, there is another way of thinking about justification where we just drop the “to” in “justification-to” altogether. That, I take it, is the sense a liberal perfectionist (or someone considerably more unsavory)<sup>129</sup> would recommend that we think about justification in political contexts: i.e. “Look this law or policy is justified because it maximizes our citizens’ chances of realizing their true nature as autonomous agents” or something along those lines.<sup>130</sup>

I hope it’s screamingly obvious by now why I don’t think this is an option we can take while maintaining our anti-domination *bona fides*. But I think there is another, perfectly sensible, way of thinking about “justification-to” that keeps the “to” without requiring accessibility; a way of thinking about justification that requires “some kind of engagement of the subjects as they actually are” (Enoch, forthcoming) without requiring that this engagement include reasons the subject “has” or recognizes. This way is open here in part because the normative force of public reasons, on my account, isn’t a function of their surrogacy for consent. I’m simply not trying to “realise some of the values of voluntary participation in a system of institutions that is unavoidably compulsory”. If the gold standard for permissible compulsion is what you permit via your consent, then it makes sense to think that public reasons, qua public, have normative force just because of their accessibility: i.e. they’re as close as we can get—or dare to get—to consent. But

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<sup>129</sup> Grand Inquisitors and the like.

<sup>130</sup> For this idea of justification marshalled into a critique of Rawls/Nagel varieties of political liberalism see Raz (1998).

consent is not the gold standard—or, at least, it's not the standard at work here. The standard for permissible compulsion is that the compulsion issue from a power instrumentally necessary to the discharge of your duties that yet remains accountable to you so that it does not turn that power to whatever use it pleases. Instead of surrogating for consent in a broadly voluntarist story about legitimacy, I'm trying to find out how we, the *demos*, can show each other that our attempts to shape the institutions/exercise of state power is duly sensitive to each member of the *demos*. “By appealing to public reasons” is an answer to that question. In sum, the function of public reasons in my account allows me to say things about them I doubt the standard public reason liberal can say.

To see how reasons can be offered to you, and thus become part of due *justification-to* you, without necessarily being accessible to you, let's revisit an old story from Robert Nozick. I think it shows how thinking of public reason in the way I want to has some workaday analogs, and also illumines what equal, maximal, reciprocal justification looks like in practice.

Suppose some of the people in your neighborhood (there are 365 other adults) have found a public address system and decide to institute a system of public entertainment. They post a list of names, one for each day, yours among them. On his assigned day (one can easily switch days) a person is to run the public address system, play records, give news bulletins, tell amusing stories he has heard, and so on. (1974, 93)<sup>131</sup>

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<sup>131</sup> Nozick gins up a counterexample to “fair play” conceptions of political obligation from this case. Nothing I'm concerned about turns on whether he's right about this.

To begin, notice that this cooperative scheme obviously has terms: (1) “Each of the 365 adults in the neighborhood has one day assigned out of the year to run the PA system”; (2) “Your assignment on the assigned day is to contribute to public entertainment”. Perhaps other terms would be implicit but common knowledge: (3) Given the purpose of the PA system, don’t use your assigned day to broadcast something patently un-entertaining: e.g. maybe a sermon or a reading from a textbook on tax law; (4) Don’t interfere with someone else as they go about their duties on the assigned day”. Perhaps there would be others.

Now suppose that you reject the terms of this scheme. Imagine that you reject these terms because you have made a life-long study of entertainment. You have traveled the globe and held multitudes in thrall. Furthermore, you’ve made a thoroughgoing analysis of your neighbors’ tastes and preferences in entertainment. So, you suggest alternate terms: you suggest that you be allowed to run the PA system every weekend, all weekend long. But your neighbors don’t accept your alternate terms. Everybody values a whole day at the mic more than increased quality of content. Instead, they offer you a primetime slot, 8-9pm every evening to display your gifts. You find this insulting. In the end, you drop out of the scheme altogether. “Oh well,” say all your neighbors, and decide to offer the vacant day to the highest bidder.

What lessons can we extract? First, there’s a sense in which your rejection of the proposed terms for the cooperative scheme indicates that the terms are not “justified-to” you. After all, you don’t believe they’re justified. But it seems to me there’s a sense in which the terms—both in their original form and, *a fortiori*,

your neighbors' counteroffer—are justified-to you, and so a sense in which your rejection of those terms doesn't show that they aren't. Here's the question that matters: Is there any reason to think your perspective on who should get to run the PA system hasn't made the right difference to the original/counteroffered terms? I don't think so. In other words, do either or both sets of terms do justice to you as a fellow participant in the scheme? Why not? After all, given that you have no special claim on the PA system—you didn't donate it, you don't own the land where it's situated, etc.—it's plausible to think that you aren't owed anything more than the other 364 participants in the scheme. That you won't be satisfied with any terms other than your own is not necessarily evidence that the terms offered and counter-offered by your neighbors fail to be as justified-to you as they can be given the requirement that they be justified to all. Of course, you might not think that your presence in the cooperative scheme has been duly reflected in its terms. That's unfortunate. [Not] thinking doesn't make it so.

Here's something else to notice. It might very well be that you would accept the terms if you were different somehow—if you were less of a jerk, perhaps. It might very well be that a suitably idealized version of you would accept the terms. Fine. All well and good; but epiphenomenal from the perspective of what's justified-to all in this case and even from the perspective of what's justified-to you. That the terms are justified is a function of the fact that your perspective has been taken seriously enough (if it has). What's true in near or far possible worlds populated by idealized agents doesn't seem to play any kind of constitutive, good-making role here. What reasons are had by such agents

might play an illuminating role in helping us discover what's justified in such contexts—they might be, as Rawls eventually said about his veil of ignorance, “an expository device” (1999, 19)—in fact, I think we should make a move like this. Even so how we discover what's justified and what's justified shouldn't be crossed up.

And notice: that there's an important sense in which the terms are justified to you even though you reject them doesn't show anything, really, about whether or not you may be justifiably forced to abide by the terms. Whatever kind of argument would show that force is appropriate, this isn't it. Is this a problem? I don't think so, for at least two reasons. First, I don't see why the question of whether mutually-binding terms are suitably justified to all participants cannot be interesting unless we answer it in a way that also legitimizes coercive action to enforce those terms. Thinking our account of justification must do such double-work might be tempting if we had no other way to legitimize force in such contexts, but that's as may be.<sup>132</sup> Second, as we've had cause to note before primarily via engagement with Gaus, that coercion can be justified to you does not always legitimize coercion, and that coercion can't be justified to you doesn't always show that coercion isn't legitimate. Suppose your fellow residents are completely irrational for refusing to let you run the PA system every weekend: that shows precisely nothing about whether or not you can legitimately force them to.

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<sup>132</sup> Of course, I think there is another way, as I tried to show in Chapter 3. I would say that force is inappropriate in the PA system case because you have no duty to cooperate in such a scheme that could generate duties to submit to coercive institutions.



I hope this revisiting of Nozick's old case shows us at least this: when we're trying to justify mutually-binding terms of cooperation with other members of a social group, it's not clear why we should think the terms in question are justified-to each member only if they're justified exclusively in terms of accessible reasons or reasons had by each agent. In this context, other norms embody the necessary (and I suspect jointly sufficient) conditions for justification: specifically, the norms bound up with the equality, maximality, and reciprocity conditions of due deliberative sensitivity I canvassed above. Demonstrating that a particular member's perspective has adequately been taken into account doesn't require that the member in question be in a position to see that it has; demonstrating that a particular agent's perspective has adequately been taken into account requires that we show how their perspective has made as much difference to mutually binding terms as it can (the maximality condition), where "as much as it can" is defined by the equal, reciprocal claim of all those bound by the same terms. If this is what justification requires, the reasons that figure in such justifications are reasons that there are as opposed to reasons everyone in the relevant group has. They are reasons that show that mutually binding terms do justice to the perspective of each member of a social group.<sup>133</sup> This functional

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<sup>133</sup> Now, doing justice to the perspective of each, and thus identifying what reasons there are to think justice has been done, requires careful attention to the perspective of each, and thus to the reasons *had* by each. Remember the counter-offer in the PA system example above. Obviously, its suitability as a counter-offer is in part a function of its appeal to reasons the recipient possesses in the sense that matters to Gaus: the recipient thinks his DJ expertise is reason to give more time running the PA system, and the counter-offer reflects this. But it does not follow, again, that the counter-offer is *justified-to* the addressee *only* if he recognizes it as such because of reasons he has, or even would have after diligent reflection. It is *justified-to* him because of how it takes the reasons he possesses seriously against the background of reasons possessed by others. Aiming to offer accessible reasons—reasons the addressee will recognize as such—is instrumental to the task

role—their capacity to show that mutually binding terms are equally, maximally, and reciprocally justified to each member of a social group—is what makes them public.<sup>134</sup>

§5 So far I've only considered the metaphysics of public reason: i.e. what public reasons are and what they can do. But how do we know when we're dealing in public reasons? When do we “reasonably think”<sup>135</sup> that we offer only public reasons? What evidence can we produce that we're promoting/opposing the state's power only in ways that do justice to the perspective of all those likewise subject to that power?

Here, I think, the idealization/hypotheticalization maneuvers common among public reason theorists can play a useful epistemic role. As I indicated above, thinking about what mutually-binding terms of cooperation you would accept in the nearest possible world where you aren't a jerk, or what you would accept if you weren't steadfastly committed to getting exactly what you want, may be a productive way to think about what mutually-binding terms of cooperation are justified-to you. But obviously we have to tread carefully—and far more carefully than some public reason theorists have tended to tread.

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of forging equal, maximal, reciprocal justifications; but what we forge thereby need not be justifiable in terms of what each member of the relevant group sees as reasons.

<sup>134</sup> I think it's clear that for me, public reasons—qua reasons that can figure in public justification—work via convergence rather than consensus. That's to say that a reason offered to one citizen to show that the state is being held accountable only in ways suitably justified to her might not be suited to showing the same thing to another citizen. We needn't expect the same reasons to be suited to showing every citizen that justice has been done to their perspective. This is natural, given the diversity of perspectives. For arguments against consensus views, see Vallier (2011); for arguments against convergence views, see Boettcher (2015).

<sup>135</sup> Language from Rawls' reciprocity criterion (1996, xlvii-xlix, 226-227, 381).

Of course, the most common way public reason theorists talk about you idealized, or hypothetical you, is to talk about you if you were reasonable. Now, if the unreasonable are just the obviously unreasonable—Nazis and Klansmen et al.—maybe that would be fine. But the tradition displays an alarming willingness both to define reasonableness narrowly (or to define unreasonableness broadly) and to use such narrow definitions to exclude people utterly from what Marilyn Friedman calls “the legitimation pool”—the set of those “whose consent would confirm the legitimacy” of liberal political arrangements and “whose rejection would confirm its illegitimacy” (2000, 16). For example, it’s not uncommon for public reason liberals to include the acceptance of liberal restraint as a necessary condition on reasonableness.<sup>136</sup> If that’s true, and the legitimation pool contains only the reasonable, then it’s easy to see why the legitimation pool might turn out to be a very sparsely populated place indeed.<sup>137</sup>

To see how to tread more carefully, let’s start with the most difficult case. What, on my account, does *justification-to* look like when the target is the flamingly awful: the Nazi, the Klansman, et al.? Is the whole idea of aiming

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<sup>136</sup> Enoch (forthcoming) really goes into full cry about this. For the primary targets of his wrath, see Dreben (2003, 326), Estlund (2008, 61), and Quong (2011, 235, fn 34; 240). As far as I can tell, all three are concerned only to exclude the *politically* unreasonable—i.e. those whose unreasonableness is a moral, rather than a primarily epistemic flaw. Others are happier to exclude the *philosophically* [or epistemically] unreasonable. See Herman (1996) and Larmore (1996). For discussion of this political/philosophical distinction, see Kelly & McPherson (2001).

<sup>137</sup> Quong’s (2011) “internal” conception of political justification is, I believe, similar in upshot. Money quote from Enoch: “Consider, for instance, Quong’s (2011, Chapter 10) discussion of the question whether the unreasonable should get the same citizen rights as the reasonable. I am happy to report that he answers in the positive (he thinks that the legitimacy of political arrangements doesn’t depend on justifiability to the unreasonable, but that the arrangements themselves have to accord to them equal rights, for the most part. But the mere fact that he conducts this discussion with a straight face (and that he apparently has some interlocutors on the other side of this debate) becomes unbelievable when we remember that he’s not just asking about the political rights of the Nazis and the murderous psychopaths, but also about those of Richard Arneson and Bruce Brower”.

justification in their general direction a mistake? Will it inevitably corrupt the terms of our social cooperation?

What do we owe the Klansman? The same, I think, as what we owe everybody else: a good-faith effort to show that the mutually-binding terms of cooperation are as justified as they can be to him<sup>138</sup> in the presence of all other claimants to equal, maximal, reciprocal deliberative sensitivity. Now, as I understand Klan ideology, what makes you a Klansman, among other things, is your commitment to claims like the following: Persons of color should not have any say in the terms of white “cooperation” with them—much less an equal, maximal say consistent with the like claim of others. As a consequence, when we’re trying to figure out how to do justice to the Klansman’s perspective, we might try to imagine the shape of his evaluative commitments in the nearest possible world where he accepts that all others subject to the state’s impositional power have the same status as claimants to justification. Given that he’s a Klansman, the person in this nearest possible world will not resemble his actual self very much. Not much of his theoretical and practical perspective on the world will remain. It’s possible, I suppose, that he will remain some kind of racist in this possible world; but an odd sort of racist who is committed to the status of all fellow citizens (including religious, racial, and ethnic minorities) as equal claimants to maximal, reciprocal deliberative sensitivity. Obviously, in this possible world, he’s no longer going to be agitating against the protection of voting rights for black Americans. How could he, given that the franchise is

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<sup>138</sup> Surely this is a case where we should male pronouns. Are there Klanswomen? I don’t want to know the answer to that question.

perhaps the most basic and elemental precondition of ensuring each citizen a say in how power is wielded against them? This is not the place to make many claims about what difference this odd sort of racist should make to the mutually-binding terms of cooperation with him; probably basic protection of peaceful demonstration and free expression even for his ilk.

But even for Klansmen, this is the limit of idealization/hypotheticalization: If there is good reason to think an ideal/hypothetical version of you committed to the status of all your fellow citizens as equal claimants to maximal, reciprocal justification, and purged of just those epistemic and/or moral flaws inconsistent with this commitment, would still reject proffered mutually-binding terms of social cooperation, we have good reason to think those terms aren't justified-to you; that your perspective hasn't made enough difference to the shape of those terms; that we can do better by you. Again, the terms don't count as justified because ideal/hypothetical you accepts them; they count as justified because they do justice to your equal, maximal, reciprocal claim to make a difference in those terms.<sup>139</sup>

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<sup>139</sup> Enoch (forthcoming) has a test for the theoretical fitness of idealizations: they're fit when "motivated, and furthermore, when the offered motivation is consistent with the motivations for going for the initial, non-idealized view". He thinks that the standard roles idealizations play in public reason accounts fail this test. If the initial view motivating public reason theories is just the need to reconcile our liberty and equality with the legitimacy of the state in the absence of actual consent, and idealization just shows that I would accept the state in a near possible world where I'm reasonable, there I still am, in the actual world, with my liberty and equality unreconciled with the claims of the state. Supposing without further argument the soundness of Enoch's test, and that public reason liberals tend to fail it, I think my account would pass. Idealization is motivated, on my account, by the need to figure out what remains of your perspective on how the state should wield its power once we've scrubbed away the moral and epistemic features of that perspective inconsistent with the status of others as equal claimants to deliberative sensitivity. We want to figure this out, not because power over you is legitimately exercised just when idealized you would accept it, but because we want to know how much difference your perspective should make to mutually-binding terms of cooperation. *That* looks to me like an idealization consistent with and motivated by the original view.

To the extent that you have certain beliefs, certain evaluative standards, all of which inform your understanding of how our social cooperation should be structured, there are at least two questions we must ask: first, are there among these beliefs and evaluative standards any that are simply incompatible with the status of others subject to the same power as equal claimants to justification? (This is what will render inert for justificatory purposes so much of what the Klansman would say for himself.) Second, of those beliefs and standards that remain, we can ask to what extent they can be accommodated, or to what extent they might function as a kind of lodestar toward a compromise.<sup>140</sup>

It bears emphasis that public reasons cannot justify not only (e.g.) outright denials of status like the Klansman's refusal to recognize the claims of non-whites, but also any insistence on undercutting the ability of other citizens to function as equal claimants to maximal, reciprocal justification. Enoch offers the example of a fundamentalist father who cannot see the point of teaching his daughters to read. That this father cannot see the point—and would not see the point after sufficient reflection—does not mean he has a veto against being forced to ensure his daughters' adequate education. I agree, of course. Someone who cannot read will have a terribly difficult time insisting on their status as an equal claimant on maximal, reciprocal deliberative sensitivity. Idealization efforts to discover what the fundamentalist father would look like in the nearest possible

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<sup>140</sup> I'm going to run with the astronomic metaphor here. Imagine that claimants to political justification are like heavenly bodies, each of which has a certain amount of gravitational pull. The force of their gravitational pull, for purposes of public justification, is just those elements of their worldview which are compatible with justification to others. Terms of social cooperation are justified to you when your worldview pulls or shapes the substance of the terms of our social cooperation as much as it can, given its compatibility with like justification to all.

world where he's committed to doing justice to the status of others as claimants to deliberative sensitivity will have to imagine that he can see the point of educating his daughters.

It's very important not to lose track of what's being justified at this stage of the theory. The point of justification isn't to show why coercion is permissible when instrumentally necessary to prevent domination and when properly accountable. We legitimize such coercion by direct appeal to the injustice of domination, with its connection to deficits in freedom and equality. As a consequence, some citizen's belief that they have no duties against domination will not show up on a scan of what deliberative sensitivity to that citizen requires. For this reason, I allow that idealizing the targets of public justification permits us to ask what someone would see as a reason in the nearest possible world where they accept duties against domination; but we shouldn't go too far. Citizens who believe they have duties against domination may disagree, consistent with their anti-domination commitments, about how the state best acts to check domination, and about when checks against domination are best left to non-state forces. Trying to idealize away disagreements like is likely to beg important questions.<sup>141</sup>

I hope it's clear by now why having an equal claim on maximal justification within the limits of reciprocity means that not all of us will make the

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<sup>141</sup> My answer to the question, "What are public reasons for?" is thus importantly different from the way this question is answered by public reason liberals like Gaus and Vallier. For both, the need for public justification is born of the need to legitimize coercion, rather than to minimize domination. As a consequence, coercion necessary to minimize domination appears, from their perspective, only as coercion, and coercion that can be legitimized only by public justification, rather than by the instrumental role I've allowed here [chapter 3]. This tends to prejudice their theories, I believe, in favor of elements of the status quo that instantiate domination, and prevents their theories from being really emancipatory. I will only register this objection here; substantiating it is something I intend to write more about elsewhere.

same amount of difference to the shape of justified terms of social cooperation. If it's not clear by now, here's why it means that: because larger and smaller swaths of our worldviews are compatible with the status of others as claimants to deliberative sensitivity. This is unavoidable given the justificatory project we're up to here. Even *prima facie*, an attempt to show how political power isn't exercised arbitrarily, and thus in deliberative isolation, can hardly take as justificatory input just what some particular citizen would accept as terms of cooperation in deliberative isolation from others—that's exactly the paradigm of dominating social power that's our *summum malum*.

I hope it's clear too why Friedman's legitimation pool will be much more populous on my account—where membership is measured by making a difference to what counts as justified. Certainly, however reasonable or unreasonable it may be to reject liberal restraint requirements, that's hardly enough to justify the kind of deliberative insensitivity implied by Quong when he says that what the unreasonable think is of “no normative interest” (2004, 315). Even if (e.g.) the liberal perfectionist will not or cannot (even after a respectable amount of trying) understand that they should not use the state's impositional power to force others to live by terms of social cooperation insufficiently deliberatively sensitive to them, nothing follows from this about the place of liberal perfectionists in the legitimation pool except that this particular claim of theirs cannot figure in our attempts to do justice to their perspective.



What terms of social cooperation actually turn out to be justified on my account? I think it's clear enough that my criteria for public justification, like Rawls' own "criterion of reciprocity" will be violated . . .

. . . whenever basic liberties are denied. For what reasons can both satisfy [the demand for equal, maximal, reciprocal justification] and justify denying to some persons religious liberty, holding others as slaves, imposing a property qualification on the right to vote, or denying the right of suffrage to women? [1997, 579].

And my criteria won't be violated when? I don't know. In fact, I think that it counts in favor of an account of public reasoning and public justification that we can't identify very much of what's publically justified just by specifying the rules of public reasoning. The more you know about how the game ends just by specifying the rules, the more reason we have to suspect that the game is rigged. It's a mistake to think that public reasons should eliminate disagreement or controversy in politics: the final form of justified terms of social cooperation, given the enormous diversity of the public to whom public reasons are addressed, is bound to generate enormous disagreement. It's as subject to Rawlsian burdens of judgment as anything ever is. I don't think this is a problem. Perhaps surprisingly, there's at least some reason to think Rawls didn't think this a problem. Here's a not-so-often quoted extract from the second introduction Rawls produced for *Political Liberalism*:

[My] aim is to stress that the ideal of public reason does not often lead to general agreement of views, nor should it. Citizens learn

and profit from conflict and argument, and when their arguments follow public reason, they instruct and deepen society's public culture (1996, lvii).

We should expect and welcome disagreement, as long as we're disagreeing about the right things. Disagreement about how to hold the state's power to account so that it's deliberatively sensitive to all will almost certainly continue under the best imaginable, domination-minimizing, political arrangements. That's okay.

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