**The Disappearance of Republican Liberty: what is the difference between a disinterested gentle giant and a deterred criminal?**

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**Abstract**

This paper develops a new objection to the republican conception of liberty expounded by Phillip Pettit and Quentin Skinner.

This objection rises against the background of a recent exchange between Pettit and Skinner, and two contemporary ‘negative liberty theorists’, Ian Carter and Matthew Kramer. The latter pair, armed with a reformulated conception of negative liberty, argue that the republican conception of liberty, *qua* ‘the absence of alien control’ fails to define any form of ‘unfreedom’ that is not fully analysable within the framework of negative liberty *qua* ‘the absence of interference’. Pettit and Skinner, however, mount a seemingly successful defence against this attack. They emphasise that, whilst negative liberty can only be attentive to the degree and probability of interference by another, republican liberty is attentive to the reason *why* such a degree or probability exists, that is, the discretion of another. It is the mere state of being at the mercy of such discretion, rather than the probability of its exercise which the republican takes issue with. The republican conception, therefore, appears to be genuinely distinct from the negative conception and gives rise to an extensional difference in the instances of ‘unfreedom’ it envisions as demonstrated in the limit case of the ‘Gentle Giant’ discussed below.

The position put forward in this paper, however, is that Pettit and Skinner’s riposte to Carter and Kramer only serves to give rise to a new objection. This objection is that the riposte itself is inconsistent with another, more necessary, part of the republican theory concerned with the promotion of republican liberty through deterrence mechanisms, such as criminal punishment. In short, Pettit and Skinner cannot both hold, as they must, that deterrence mechanisms increase republican liberty by decreasing the probability of interference and, at the same time, maintain their current response to Carter and Kramer, which avers analysing republican liberty in terms of such probabilities.

Since republicans cannot relinquish the former claim on pains of absurdity, they must relinquish the latter. In doing so, the republican conception loses its claim to be a distinct conception of liberty (at least insofar as it claims to define any species of unfreedom beyond that defined by negative liberty). However, I shall conclude by noting that Pettit and Skinner’s riposte to Carter and Kramer still shows that the negative conception of liberty fails to take account of *something* important in cases of alien control independent of the probability of interference. I shall finish by suggesting that this *something* is better understood as being a matter of equality rather liberty.

**Introduction**

This paper develops a new objection to the republican conception of liberty expounded by Phillip Pettit and Quentin Skinner.[[1]](#footnote-1)

This objection rises against the background of a recent exchange between Pettit and Skinner, and two contemporary ‘negative liberty theorists’, Ian Carter and Matthew Kramer.[[2]](#footnote-2) The latter pair, armed with a reformulated conception of negative liberty, argue that the republican conception of liberty, *qua* ‘the absence of alien control’ fails to define any form of ‘unfreedom’ that is not fully analysable within the framework of negative liberty *qua* ‘the absence of interference’. Pettit and Skinner, however, mount a seemingly successful defence against this attack. They emphasise that, whilst negative liberty can only be attentive to the degree and probability of interference by another, republican liberty is attentive to the reason *why* such a degree or probability exists, that is, the discretion of another. It is the mere state of being at the mercy of such discretion, rather than the probability of its exercise which the republican takes issue with. The republican conception, therefore, appears to be genuinely distinct from the negative conception and gives rise to an extensional difference in the instances of ‘unfreedom’ it envisions as demonstrated in the limit case of the ‘Gentle Giant’ discussed below.

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Since republicans cannot relinquish the former claim on pains of absurdity, they must relinquish the latter. In doing so, the republican conception loses its claim to be a distinct conception of liberty (at least insofar as it claims to define any species of unfreedom beyond that defined by negative liberty).[[3]](#footnote-3) However, I shall conclude by noting that Pettit and Skinner’s riposte to Carter and Kramer still shows that the negative conception of liberty fails to take account of *something* important in cases of alien control independent of the probability of interference. I shall finish by suggesting that this *something* is better understood as being a matter of equality rather liberty.

This paper first sets out the most recent formulation of the republican position as articulated by Pettit (and condoned by Skinner), with some emendations that I take to strengthen its case. Secondly, I lay out the debate that frames my own objection, articulating first, Carter and Kramer’s claim that their reformulated conception of negative liberty undermines the alleged distinctiveness of the republican conception, and then Pettit and Skinner’s response. Finally, I press my own objection followed by the Conclusion.

1. **Republican liberty as absence of alien control**

For a long period Pettit and Skinner have sought to encapsulate the republican conception of liberty as ‘non-domination’.[[4]](#footnote-4) However, Pettit has recently reformulated the conception as the ‘absence of alien control’.[[5]](#footnote-5) Whilst Pettit claims that this new formulation ‘does not fundamentally depart’ from the old formulation, he asserts that it serves better in ‘displaying the connections between liberty and associated notions.’[[6]](#footnote-6)

Pettit re-articulates republican liberty as the ‘absence of alien control’ by means of three axioms and four theorems.

* 1. *First Axiom*

The first axiom is that ‘real personal choice’ is a necessary condition of having republican liberty. An agent has ‘real personal choice’ at any one point in time, if and only if, they have multiple options (eg. *x*, *y*, *z*) that are ‘choosable’. In other words, the agent can think ‘I can just do that, or I can just refuse to do that; what I do in this choice is up to me.’[[7]](#footnote-7)

As a precondition of this axiom, we must adopt a ‘first person’ point of view in order to articulate the reality of the agent’s choice between multiple options. This is in contrast to adopting a ‘third person’ point of view, where a reduction or elimination of ‘agency’ is implied, in favour of some naturalised account of human action by means of neural systems or psychological dispositions or the like. Such a view may leave unknown, or known only in probabilistic terms, what a person will do because we may not have complete information as to how the physical universe will pan out, but it does assume that such an action will be fully causally determined, excluding the possibility of real personal choice.

Further, the republican theorist is also committed to a ‘second’ person point of view from which we consider not simply ourselves to have real person choice, or in any situation only one person as an agent, but also others interacting with that agent (i.e. ‘aliens’). Thus, from this second person point of view we can consider the relation between multiple agents, and their choices, not simply one agent and the entire naturalised universe.

* 1. *Second Axiom*

Pettit’s second axiom defines the possibility of ‘alien control’, that is, unchecked control by one agent over another. Defining ‘control’ first, and then ‘alien’:

(1) Agent A, will effect *control*, alien or non-alien, over agent B, if (a) A has desires over how B chooses on specific occasions or in general; (b) A acts on those desires *inter alia* ‘seeking a certain pattern’ in B’s choices; and, (c) ‘A’s presence’ means that at least ‘the probability of B’s taking the desired pattern … is raised beyond the level it would have had in A’s absence.’[[8]](#footnote-8)

(2) The control effected by agent A over agent B may be *alien* in one of three ways, (a) by reducing the cognitive ability of B to choose between the options available to her, (b) by removing at least one of the options previously available to be B (that is, making that option impossible) or (c) by significantly changing one option such that the result is, in effect, the replacement of the previous option with a different option. ‘Significant’ change to an option arises where the change affects the value of a feature of the option for the agent.

I would argue that this elucidation of the second axiom should be clarified in one respect and emended in two others.

First, as a point of clarification, with respect to (1)(a) it is only necessary for the presence of alien control that A’s relevant desire is ‘over’ or ‘about’ B’s choice(s) in the broadest possible sense that ‘A has such a desire over B’ if the fulfilment of such a desire has any consequence for B’s choice set.

This clarification is needed in order to frame, as an example of alien control, what Pettit himself calls the ‘limit case’. Here, ‘A is disposed … to let B choose however B wishes’.[[9]](#footnote-9) In this case, A may not even have a desire *about* B’s choices, that is, that B can choose however B wishes. Rather, it is minimally sufficient that B has another desire about something else *in virtu* of which B is allowed to choose however B wishes. For example, A may simply desire to take no notice of B and her choices at all. Such a desire is still ‘over’ or ‘about’ B’s choices in the relevant sense, however, insofar as this desire has a consequence for B’s choice set. In this case, the consequence is that B can choose however B wishes. Pettit must accept this clarification on pains of self-contradiction in his treatment of the all-important Gentle Giant example, discussed below.

Secondly, *contra* (1)(b) it is not necessary that A ‘acts’ on her desires to affect B’s choices. In fact, it would seem to be the entire thrust of the republican position that A need not do so, but only be *capable* of so acting. This is something Pettit appears to accept, despite his explicit formulation, when he describes the possibility of alien control *via* invigilation, whereby A does not act because B is, of their own accord, already behaving in a manner consistent with A’s desires.[[10]](#footnote-10)

Thirdly, *contra* (1)(c), it is unhelpful at this stage, having made the first/second/third person distinction, for Pettit to re-introduce a probabilistic account of control. It would be more consistent if Pettit maintains that A’s presence either effects the impossibility of an option (see, (2)(b)), or affects the costs and benefits available to B, determined by B’s own valuation, that follow from the particular possible options left open to B (see (2)(c)[[11]](#footnote-11)). In this way, not only do we avoid reintroducing the third person point of view, but we also avoid excluding, as an example of alien control, where B is decided upon a certain option regardless of any cost which A may bring to bear.

* 1. *Third Axiom*

Our clarification and two emendations with respect to the second axiom also allow us to improve upon Pettit’s articulation of his third axiom.

According to Pettit, if B comes to be able to control what A does, (or, as I would add, is capable of doing), then to that extent A’s control over B diminishes, perhaps even disappears.[[12]](#footnote-12) This statement is fine as far as it goes. The problem, however, is that Pettit elucidates this axiom in terms of B’s ability to reduce the *probability* of A’s interfering with B, once again reintroducing the third person point of view. We should retain instead the talk of costs and benefits, at least with respect to alien control of type (2)(c), such that B gains control over A to the extent that she can increase the costs for A of interfering with B, thus decreasing or eliminating A’s desire to interfere with B (given the consequences).

* 1. *Four Theorems*

Pettit argues that four theorems follow from these three axioms: (1) alien control may materialise with interference; (2) alien control may materialise without interference; (3) non-alien control may materialise without interference; and (4) non-alien control may materialise with interference. Since the negative conception of liberty can be understood, in short, as the absence of interference, its differentiation from the republican conception of liberty turns upon (2) and (4).

The debate I shall now turn to concentrates exclusively upon (2). As such, it is only concerned with whether or not republican liberty picks out instances of *unfreedom* beyond those picked out by the negative conception. It, therefore, leaves open questions as to whether, on the basis of (4), republican liberty picks out instances of *freedom* beyond those picked out by another conception of liberty whether that be negative or positive.

1. **Does a new reformulated conception of negative liberty undermine the claim that republican liberty is a distinct conception?**

Although differing in other respects, Carter and Kramer are mutually responsible for a new reformulation of the negative conception of liberty *qua* non-interference.[[13]](#footnote-13) Under their reformulation, interference is understood as the removal of at least one option from the choice set of an agent, B, and liberty as non-interference is understood to be inversely related to the quantity (and on Kramer’s view, quality) of options removed from the choice set of that agent, B, by another agent, A. Following Hillel Steiner, the removal of an option is effected if and only if that option is made impossible.[[14]](#footnote-14) The mere costs of an option have no bearing upon its impossibility.

This *prima facie* coarse claim, however, is complemented by the ability to finely parse options as conjunctive possibilities. Thus the highwayman’s threat ‘Your money or your life!’ really does leave us free to keep our money, or keep our life. However, our overall liberty, as an aggregation of all our options, is decreased insofar as the previously possible option—keeping-our-money and-our-life—is now removed as impossible.

With this reformulation in place, Carter and Kramer join issue with the republican theorists on whether or not Theorem (2), that is, ‘alien control may materialise without interference’, holds true.

Theorem (2) (or its previous formulations) has always been the cornerstone of the republican conception of liberty. It asserts, *contra* the negative conception, that an agent’s liberty can be diminished without any interference whatsoever. As Skinner states, ‘the mere presence of arbitrary power…is taken to have the effect of restricting your freedom of action.’[[15]](#footnote-15) The manifest image of such unfreedom is the position of the slave with respect to the master, the former living dependent upon the license or pleasure of the latter.[[16]](#footnote-16) The slave may never actually suffer interference from their master, perhaps because the master is so benign or the desires of the master and slave are so congruent, but according to the republican conception this makes no difference to the liberty of the slave. Their liberty remains constrained as far as the interference the master chooses to or *not to* introduce. They remain under the master’s alien control.

Carter and Kramer challenge Theorem (2), however, by arguing that such instances of alien control actually do manifest forms of *interference*, and thus can be successfully analysed within the framework of negative liberty alone. The relevant forms of interference follow from the deferential and obsequious life that a slave must live under the master’s power. It follows that the slave is interfered with because a certain set of options have been removed from the slave’s option set. What is made impossible for the slave is her taking conjunctive options such as *x-and-not-currying-favour-with-the-master* or *x-and-not-acting-deferentially towards-the-master*.

Carter and Kramer conclude that the ‘unfreedom’ that the slave suffers really reduces to the removal of these options from her option set, that is, from a loss of negative liberty. The putative republican conception fails to define any species of unfreedom that ‘goes beyond the negative-liberty approach in any significant way.’[[17]](#footnote-17)

1. **The Republican Reply**

The core of the republican reply to this attack is to reassert the *extensional* difference between the republican and negative conceptions, even assuming Kramer and Carter’s reformulation.[[18]](#footnote-18) This reply succeeds if republicans can identify a counter example where there is a loss of republican liberty with no corresponding loss of negative liberty.

The example that has become the decisive battleground in the literature is the ‘Gentle Giant’, who is so well physically and mentally endowed that she could coerce her entire village into obeying her will. However, her natural ‘character traits’ entail that she is not predisposed to using her powers. In fact, she wants nothing more than to live by herself leaving the village completely alone. In sum, whilst on the one hand the Gentle Giant has unlimited alien control over the villagers, on the other hand, no options are removed from their option sets. They do not even have to act deferentially or obsequiously towards the Giant.

According to the negative conception of liberty this decrease, perhaps elimination, of the chance of interference due to the ‘character traits’ of the Gentle Giant creates an exactly proportional increase in liberty for the villagers. Kramer and Carter embrace this implication, but assert that it must also hold true for the republican conception as well.

Pettit and Skinner reply, however, that it does not. Both Pettit and Skinner press a distinction between (a) the impossibility of interference by the Gentle Giant, by reason of being rendered incapable by some psychological condition; and (b) the mere unlikelihood of interference by the Gentle Giant by reason of her ‘disposition and inclinations’,[[19]](#footnote-19) or ‘a non-disabling, endogenous feature’ such as ‘attitudes or habits’.[[20]](#footnote-20)

In the former case, Pettit and Skinner assert, it is simply incorrect to say that the Gentle Giant has any relevant power at all, and thus the republican can consistently hold an increase in liberty for the villagers. Let us accept this, as should the negative liberty theorist.

In the latter case, however, *contra* the negative conception of liberty, Pettit and Skinner assert that the liberty of the villagers is not enlarged because they still live at the mercy of the Giant’s subjective dispositions. The relevant loss of liberty, however, does not flow from the difference that this may have on how the villagers lead their lives (there may be none since the chance of being interfered with is virtually nil). The relevant loss of liberty lies in their existential state *simpliciter*.[[21]](#footnote-21)

This loss of liberty shows up whenever the villagers asks themselves *why* they can take any option they choose. *Ceteris paribus*,without the presence of the gentle giant, each villager could say of any option, ‘I can just do that, or I can just refuse to do that; what I do in this choice is up to me.’ Living at the mercy of the Gentle Giant, however, their choices are not simply ‘up to them’. No matter how derivatively, the choice is also up to the Gentle Giant. Republican liberty is freedom from this existential state. It is freedom from having to rely upon the choices of others, no matter how reliable they may end up being.

The negative liberty theorist may concede this existential position but fail to see its relevance to liberty *per se*. After all, this existential position in itself does not limit the villager’s options sets at all. Surely, given any set of options, one is equally free *vis-à-vis* these options, independent of why those options are available to us? This riposte, however, is really just asking ‘where is the necessary interference created by the existential position of alien control?’ The answer is, of course, ‘none’. But this implicitly concedes the republican’s point: freedom from alien-control (or domination) is not freedom from interference. The presence of alien-control is a different test of (un)freedom, and it does not need, in fact *it must not*, be justified as the proper test of (un)freedom by reference to the alternative test of non-interference.

The only way for the negative liberty theorists to undermine the republican position, therefore, is to attack its internal consistency. This is precisely the form of new objection that I elucidate in the next section.

1. **A Problem for the Republicans**

There is a fundamental problem for the republicans, which hitherto has not been voiced. This problem is how to square the proposition that alien control is not decreased by the subjective dispositions of the ‘master’ to not interfere, with the claim elsewhere in republican theory that deterrence does decrease alien control. As I shall show, the very operative feature of deterrence is the creation of subjective dispositions in people to not interfere. The republican theorist, therefore, appears to be inconsistent in holding that subjective dispositions to not interfere sometimes decrease (or even neutralise) alien control and at other times do not.

According to both Pettit and Skinner, we can neutralise alien control by increasing the costs for any agent if they interfere with another, for example, by instituting criminal laws and credible threats of punishment for breaking those laws.[[22]](#footnote-22) Thus whilst it is physically possible for us to break many of those laws and thus interfere with others, the republican assumes that the associated punishments for doing so *at least proportionally* *decrease*, if not eliminate, the alien control of others *because* the costs for interfering would be so high.

So far so good, it first appears for the republican, as we are assuming that this is exactly what the Gentle Giant does not encounter: no costs are stipulated for interfering with the villagers, ‘if the giant *could* interfere at will and with impunity, then the community remains in [her] power.’[[23]](#footnote-23)

Yet, when we unpack the concept of ‘cost’, at least as it is being used in this debate, we reveal that it simply turns upon the agent’s valuation of that feature of the conjunctive option, which itself is a function of the agent’s subjective dispositions. On this analysis, the Gentle Giant is actually *deterred* from interfering because the costs of interfering are too high (for example, she would breach her own morals or would find it a waste of time or would not want to upset the inhabitants).

In other words, a deterrent is only a deterrent because someone disvalues that option *vis-à-vis* the alternatives, and someone only disvalues such options on the basis of their subjective dispositions. This is the same in both the case of a putative criminal and the Gentle Giant. So why then, can it be said that the former case represents an example where republican liberty is expanded, and the latter where it is not affected at all? In both situations interference is physically possible, and in both situations it is only the agent’s subjective evaluation of the particular consequences that flow from the act, that determine the decision to refrain from so acting. Why not consider, therefore, the Giant’s decision to be as genuinely deterred by costs as we do the pensive, would-be, criminal? Admittedly, these costs may not seem as serious, nor their subjective evaluation as immutable, as the cost of going to gaol for assault, but nonetheless this appears to be *only a matter of degree*. The republican, however, needs a *principled distinction*, if they are to see the costs *qua* punishments introduced by the criminal justice system as liberty increasing, but the costs *qua* subjective ‘dispositions’ as completely liberty insensitive.

Without such a principled distinction, Pettit and Skinner are left with the following dilemma: either concede that without rendering crimes *impossible* to perform, the deterrence introduced by the criminal justice system does not increase the republican liberty of citizens one jot; or follow the negative conception and admit that a subjective disinclination by the Gentle Giant to interfere with the villagers reflects her deterrence by some cost (even if it is only an opportunity cost) that differs from other liberty enhancing deterrents, such as criminal punishment, only by a matter of degree. In this way, the republican conception would be forced to collapse back into the negative conception of liberty.

Pettit and Skinner offer no such principled distinction. In fact, both make it worse by often discussing deterrence, such as criminal sanctions, as enhancing liberty by affecting the *probabilities* of agents choosing to commit crimes.[[24]](#footnote-24) Once this articulation is adopted, it becomes even more difficult to see how they can resist a parallel probabilistic analysis of the Gentle Giant’s situation. It has led Skinner to say things that are just blatantly false. For example, having considered the Gentle Giant case, he subsequently states ‘what basically distinguishes the life of slaves according to the republican tradition is that they are condemned to a life of complete uncertainty.’[[25]](#footnote-25) However, the whole point of the Giant example is that the villagers can be at least *reasonably* certain that the Giant is not going to interfere with them. Well at least, they can gauge the degree of certainty upon the very same assumptions about the mutability of subjective inclinations as both Skinner and Pettit accept that we can use to gauge the degree of certainty to which a would-be criminal will be responsive to any deterrent. Once again, there is no principled distinction.

1. **Conclusion**

In order to answer their negative liberty critics, Pettit and Skinner have tried to clarify their position in the following manner. Republican liberty is still fundamentally opposed to the disproportionate power of some individuals, like our fictional Gentle Giant. However, the threat to liberty that such individuals pose is not reducible to the probability of their interfering with others. This might even be nil. Rather, it is the mere existential fact that such individuals have the power to so decide whether to interfere or not; *that* is the mark of republican unfreedom. Living in such unfreedom, people can never say that their own choices to act are merely ‘up to them’. In an important sense, those choices are always also up to the powerful individuals who allow those choices to take place.

There is something here that the republicans have got right. *Ceteris paribus* there is something unjust about a situation where we can only choose how we wish because other more powerful people have deigned to let us – even if the chance of their interfering is nil. However, the force of the objection that I have mounted is that this ‘something’ cannot be a form of republican unfreedom. The republican can only so describe such a situation as a state of unfreedom at the unbearable cost of giving up any account of how deterrence can increase republican freedom.

The republicans, therefore, must give up their clarified position. Without it we can only interpret the republican conception in the probabilistic terms that are reducible to the framework of negative liberty. The republican conception collapses, indistinct from the negative conception.[[26]](#footnote-26)

At this point, however, we might feel somewhat unsatisfied. The existential state that the clarified republican conception sought to classify as ‘unfreedom’ still remains, although now left unclassified in any morally negative terms. What exactly is unjust about a situation such as that of the Gentle Giant, if it is not a breach of ‘republican’ liberty?

I would suggest that the answer is actually quite simple. The Gentle Giant example demonstrates a situation of dramatic *inequality* in power. The Gentle Giant has greater power than anyone else to decide how things are, including whether or not people shall be interfered with. The problem with the Gentle Giant is not one that he diminishes liberty, but rather that he has unequal power to determine the range of (negative) liberty which other people can enjoy. Such an injustice all but disappears, however, in the case of the deterred criminal, not because all power to interfere with others disappears but because *ceteris paribus* her powers to interfere, and the consequences that would follow, are far more equal.

Arguably, it is this implicit concern with *equality* of power that actually drives the republican theory not any unique theory of freedom. After all, the master—slave relationship is just as plausibly taken as the ultimate exemplar of inequality of power as it is taken as an exemplar unfreedom. The possibility of interpreting republicanism as a distinct theory of equality, however, is left for another day.

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1. See, Pettit, (1997), (2008); and Skinner, (1996), (2006), (2008). [↑](#footnote-ref-1)
2. See, Carter, (1999), (2008); Kramer, (2003), (2008). [↑](#footnote-ref-2)
3. See Section 1.4, below. [↑](#footnote-ref-3)
4. Pettit, (1997), Skinner, (2006). [↑](#footnote-ref-4)
5. Skinner does not object to the change, (2008). [↑](#footnote-ref-5)
6. Pettit, (2008), 102. [↑](#footnote-ref-6)
7. Pettit, (2008), 103. [↑](#footnote-ref-7)
8. *ibid.* 106. [↑](#footnote-ref-8)
9. *ibid*, 113. [↑](#footnote-ref-9)
10. *ibid,*112. [↑](#footnote-ref-10)
11. 2(a) will lead to either. [↑](#footnote-ref-11)
12. Pettit, (2008), 108. [↑](#footnote-ref-12)
13. Carter, (1999); Kramer, (2003). [↑](#footnote-ref-13)
14. Steiner, (2006). [↑](#footnote-ref-14)
15. Skinner, (2008), 90. [↑](#footnote-ref-15)
16. *ibid.* 89. [↑](#footnote-ref-16)
17. Kramer, last page. [↑](#footnote-ref-17)
18. *ibid.* 95. [↑](#footnote-ref-18)
19. *ibid.* 97. [↑](#footnote-ref-19)
20. Pettit, (2008), 123-4. [↑](#footnote-ref-20)
21. Skinner, … [↑](#footnote-ref-21)
22. Pettit, (1997), 67. [↑](#footnote-ref-22)
23. Skinner, (2008), 96. [↑](#footnote-ref-23)
24. *ibid.* 98; Pettit, (2008), 106. [↑](#footnote-ref-24)
25. Skinner, (2008), 98. [↑](#footnote-ref-25)
26. Putting aside Theorem (4), of course. [↑](#footnote-ref-26)