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Rescuing Positive Freedom from Neo-Republican Attack

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I. Introduction

Neo-republicanism, advocated by Quentin Skinner and Philip Pettit, among others, entails a conception of freedom as non-domination. It also employs a matrix that distinguishes between concepts of positive freedom and negative freedom, which was developed by Isaiah Berlin, whose 1958 lecture still resonates in contemporary political philosophy—and Neo-Republicans have not been immune to it.¹

As is commonplace in philosophical discussion, the enormous influence of Berlin's matrix has not led to its wide acceptance. On the contrary: its influence has for the most part resulted in increasingly sophisticated attempts to overcome or correct the distinction he makes. This matrix has influenced both those who adopt it and those who reject it, the latter being the case in Neo-republicanism.

This influence is patent in Pettit's work. The Berlinian matrix is used by Pettit for two different purposes. First, it serves to show there is a third ideal of freedom that contains elements of both negative and positive freedom. It is an ideal that has remained hidden by the defective dichotomy of Berlin's matrix but can nevertheless be perceived when using it. The Berlinian matrix helps Pettit to show that freedom as non-domination is an ideal that is distinguishable from the concepts of freedom Berlin identifies. Second, the matrix is used by Pettit to highlight that the ideal of non-domination is morally more attractive or desirable. Pettit compares freedom as non-domination to other ideals of freedom present in Berlin's matrix, and concludes that this ideal allows for a better accommodation of our moral intuitions. Freedom as non-domination is more attractive than the negative conception defended by Berlin—freedom as non-interference—or the type of positive freedom Berlin opposed: freedom as political participation or Populism.

It is no coincidence that Populism was chosen as the type of positive freedom from which freedom as non-domination must be distinguished and which must be

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¹ Isaiah Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty*(1969).

seen as morally more attractive. Historically, Populism has been identified with Republicanism, and this has contributed to keeping freedom as non-domination from being identified as a distinguishable ideal. Furthermore, Populism is a conception of freedom close to the republican alternative Pettit wishes to defend, as shown by the fact that some republican thinkers such as Rousseau are among the ancestors of Populism. Given its closeness to Republicanism, Populism must be shown to be morally less attractive than freedom as non-domination.

This paper attempts to show that a tension exists between these two objectives. If a conception of freedom as non-domination is distinguishable from those of freedom as non-interference and freedom as political participation, but nonetheless possesses elements of both, Pettit's argument that it is morally superior is no longer effective. In order for freedom as non-domination to share some common element with positive freedom, the latter must include a requirement of control over political institutions. However, once positive freedom is thus identified, a new type of positive freedom emerges: freedom as institutional control. Compared with this new conception of positive freedom, which departs from populist freedom as political participation, freedom as non-domination appears to have no advantage. Moreover, freedom as Institutional Control appears to be morally superior to Freedom as non-domination because it allows moral intuitions to be better accommodated.

This paper is structured into three sections. First, I will make a stylized presentation of the Berlinian matrix and freedom as non-domination as Pettit understands it. I aim to show that if one intends to present non-domination as a conception with elements borrowed from positive freedom, then it is necessary to understand positive freedom in terms of control—indeed Pettit has begun to present freedom as non-domination in terms of control. Once positive freedom is thus understood, a new type of positive freedom, hidden until now, emerges. Second, I will show why Pettit's reasoning that freedom as non-domination is morally more attractive than populist positive freedom does not apply to this new type of positive freedom. Pettit has been successful in presenting a distinguishable conception of freedom as non-domination, but he has not offered any arguments to show that it is morally preferable to the type of positive freedom I present. Third, in section IV I will explain why freedom as institutional control is morally preferable to freedom as non-domination.

In order for Pettit to maintain that the conception of freedom as non-domination is distinguishable from Berlin's positive and negative freedom because it possesses elements of both, he must use a conception of positive freedom as control. When compared with one of the possible types of this conception, freedom as non-domination does not appear to be morally preferable. On one hand, none of the arguments Pettit—or Berlin for that matter—makes against Populism are applicable to freedom as institutional control. On the other, freedom as institutional control avoids some of the counterintuitive consequences that occur in the conception of freedom Pettit defends.

II. Positive, negative and republican freedom

According to Berlin, negative freedom inspires the question ‘...what is the area within which the subject—the person or a group of persons—is or should be left to do or be what he is able to do or be, without interference by other persons...?’² Positive freedom, on the other hand, asks ‘...what, or who, is the source of control or interference that can determine someone to do, or be, this rather than that...?’³ In the negative conception, freedom ‘...means liberty *from*; [the] absence of interference...’⁴ In the positive conception, freedom consists in ‘...being one’s own master...’⁵ This idea of freedom derives from the ‘...desire to be governed by myself, or at any rate to participate in the process by which my life is to be controlled...’ In this sense it is not ‘...freedom from, but freedom to...’⁶

Pettit characterizes Berlin’s freedom as non-interference as an improved version of Hobbes’s conception of freedom as non-frustration. For Hobbes freedom of choice demands only that there are no obstacles—whether natural or resulting from the deliberate interference of another agent—for the agent to carry out a preferred option.⁷ Berlin disagrees on two counts. First, he claims that only interference resulting from deliberate action of an agent counts as a transgression against freedom.⁸ Second, for Berlin freedom has a modal nature. For someone to be free there must be no deliberate obstacles—that is, interference—impeding the preferred option in the actual world and in possible nearby worlds where the agent’s preferences are different and even opposite. According to this reconstruction by Pettit of Berlin’s position, ‘(y)ou are free in the actual world not just in virtue of its being a world without interference but also in virtue of its being a world where certain features mean that you would not suffer interference even if you chose other than you actually did.’⁹

According to Berlin’s argument against Freedom as Non-Frustration, it seems counterintuitive to state that someone can become free just by extinguishing the desire to take courses of action in which there are interferences. If being free simply consists of doing anything one desires without suffering interference from others, one way of achieving freedom would be to eliminate all those wishes that cannot be satisfied due to third party interference. If the opposite of freedom is frustration, one can avoid frustration and achieve freedom simply by accommodating one’s own desires rather than eliminating the interferences.¹⁰

² Ibid 121–122.

³ Ibid 122.

⁴ Ibid 127.

⁵ Ibid 131.

⁶ Ibid 122.

⁷ Philip Pettit, ‘The Instability of Freedom as Noninterference: The Case of Isaiah Berlin’ (2011) 121 *Ethics* 693, 697.

⁸ Berlin, above n 1, 122. This is a point Pettit agrees with (Pettit, above n 7, 694).

⁹ Pettit, above n 7, 701.

¹⁰ Ibid 699.

Pettit does not believe Berlin's freedom as non-interference is morally attractive. Protection from third-party interference should extend not just to the scenarios where people are friendly and have no desire to interfere in others' choices, but also to those scenarios where such a desire does exist. Protection from interference must be robust in relation to both the protected party's preferences and desires, extending to scenarios in which it has other preferences than the current ones, and the potential interfering parties, extending to scenarios involving the desire or preference to interfere. While freedom as non-interference is robust in the former, so too is freedom as non-domination in the latter.¹¹

Pettit's argument against freedom as non-interference is similar to Berlin's argument against freedom as non-frustration. If being free consists only of not being subject to interference, the way to freedom is counterintuitive. It consists of ingratiating oneself with whoever has the power of interference so that he or she will behave in a friendly manner and not exercise the power he or she wields. If the subject does indeed manage to gain the goodwill of the power holder, the likelihood of interference would be minimal and, according to the conception defended by Berlin, the subject should be considered free. Nevertheless, it is highly counterintuitive to claim, for example, that a woman subjected to her friendly husband's arbitrary power or the employee subjected to her friendly employer are free merely because they are unlikely to suffer any type of interference. Even though a master is friendly, he continues to be a master.¹² To be free is to be protected from the interference of third parties, even in scenarios in which they are not friendly.¹³

Furthermore, for Pettit the likelihood of interference must be low through the presence of institutional mechanisms. According to Pettit 'I cannot escape domination without the presence of protective institutions that testify to my non-domination. But I can escape interference, I can escape even the likelihood of interference, without the presence of such eloquent devices...'¹⁴ Not only is it important for interference to be unlikely, but also that citizens be aware and confident that it is thus. This is why institutional reassurance is indispensable. Additionally, Pettit thinks that freedom is a kind of social status we enjoy in the presence of other individuals. Unlike freedom as non-interference, it cannot be reached merely because there are no other individuals; it requires the existence of others and the presence of institutional mechanisms that limit their power of interference.¹⁵

¹¹ Ibid 710.

¹² Philip Pettit, *Republicanism: A Theory of Freedom and Government* (1997) 123.

¹³ To be free within an option, it is not sufficient for the alternatives to be available to the agent: '...the anti-ingratiation assumption is that you will certainly not be free if it remains just a matter of will or taste or favor, as it will remain in the wake of the most successful ingratiation, that I leave the options open and up to you.' (Pettit, above n 7, 705.)

¹⁴ Pettit, above n 12, 72.

¹⁵ Ibid 83.

The institutional mechanisms that provide protection against interference from others must be under the control of the potentially controlled party. Citizens are free when institutions set up barriers against others' interference, and these barriers are under the control of the protected agents themselves. This follows from the characterization Pettit offers of non-domination in terms of control. According to this definition, 'Someone, A, will be dominated in a certain choice by another agent or agency, B, to the extent that B has a power of interfering in the choice that is not itself controlled by A... I mean that it is not exercised on terms imposed by A: it is not exercised in a direction or according to a pattern that A has the influence to determine...' ¹⁶ Thus, if agent A's capacity to interfere with another B is controlled by a third agent, C—who prevents this capacity from being exercised—A is dominated insofar as he or she is subject to B's uncontrolled power. ¹⁷

Although Pettit characterizes the control citizens must possess over the State apparatus in great detail, I am only in a position to outline it briefly here. An agent has control over another when the former is capable of influencing the latter's course of action to make it go in a particular direction. Control is a type of influence directed at an objective. Pettit also describes the kind of features that must be involved in the control citizens exert over the State apparatus in order for it to be considered to be truly under popular control.

This control must be individualized, unconditioned and efficacious. It is individualized when every citizen possesses an equal capacity for control. ¹⁸ It is unconditioned when the influence each citizen is able to exert does not depend on another's will. Lastly, it is efficacious when it is as effective enough to act on the direction of collective decisions so that when a decision is taken and a citizen opposes it, he or she sees this merely as bad luck and not as the imposition of someone else's will. ¹⁹

The institutional design that makes this kind of control possible has, for the most part, a number of features. For influence to have a definite direction, the decision-making system must be a representative deliberative democracy. It must be a mixed government in which government agencies control each other reciprocally,

¹⁶ Philip Pettit, *On The People's Terms* (2012) 50.

¹⁷ Pettit makes this point clear when he says that '(o)ne agent will count as controlling another only insofar as the influence exercised leads to the required result independently of the will of the controlled agent, or indeed of any third party' (ibid 170). He later adds '(s)uppose that you, A, are said to control what another person, B, does because B obeys your instructions... Imagine now that the correlation between your instructions or wishes and B's actions... is contingent... on my requiring B to humour you... If the correlation depends on my will, then it is I who has power over B, not you' (ibid 170–171).

¹⁸ For this to occur, there must be a system of popular influence to which all citizens can gain access under equal conditions, and the direction in which the influence is exercised must be equally acceptable to all.

¹⁹ Pettit, above n 16, 166–179.

preventing any one from taking on a dominant role. Lastly, there must be a contestatory citizenry whose main task is to evaluate collective decisions.²⁰

Thus, Pettit presents his conception of freedom as non-domination by showing its similarities to and differences from Berlin's negative freedom.²¹ These agreements and disagreements are located at both normative and institutional levels, and Pettit defends a version of Republicanism at both levels.

Normative Republicanism adopts a new ideal of freedom with features that both distinguish it from and make it akin to freedom as non-interference. Like the latter, this perspective considers that for citizens to be free it is not necessary for them to carry out certain actions or develop certain character traits. It specifically distances itself from freedom as personal control, whereby an individual is free when his or her lower parts are controlled by his or her higher parts, and collective control, whereby individuals are free when they take part in the political life of a political community which is in turn self-governing.²² Citizens are free merely because they are protected from uncontrolled power of interference, be it private or public. In this sense, freedom as non-domination is as negative as freedom as non-interference. It differs from Berlinian freedom in terms of the extent of protection—it must include scenarios in which others wish to interfere—and protection mechanisms, which must be institutional and under the control of those being protected.

The Institutional Republicanism that Pettit proposes is a mixed system of government, with a representative deliberative democracy and a contestatory citizenry. This institutional design is in part different from that proposed by defenders of freedom as non-interference. A mixed constitution requires a rule of law and a constitutional order in which citizens enjoy equal liberties and powers and no individual or body has exclusive control over the law. A contestatory citizenry requires the willingness of citizens to invigilate the workings of public institutions.²³

A contrast with Berlin's positive freedom can be made using its two types: individual self-mastery and collective, or political, self-mastery. According to the

²⁰ Pettit's Institutional Republicanism is, naturally, much more complex and sophisticated than what I have described in this paragraph. However, for the purposes of this paper, further detail is not called for.

²¹ The issue of whether freedom as non-domination is a type of negative freedom, or a third type of freedom that differs from both positive and negative freedom, is contested. Quentin Skinner, for example, appears to swing between both positions. In *The Paradoxes of Political Liberty*, he maintains that republican thinkers 'work with a purely negative view of liberty' (Quentin Skinner, 'The Paradoxes of Liberty', in Stephen Darwall (ed), *Equal Freedom* (1995) 35). Nonetheless, in *A Third Concept of Liberty* he states that republican freedom is a third concept of freedom (Quentin Skinner, 'A Third Concept of Liberty' (2002)117 *Proceedings of the British Academy* 237, 261).

²² Pettit, above n 12, 17–18.

²³ Pettit, above n 16, 5. Nevertheless, Pettit warns us that these institutional disagreements must not be exaggerated (at 11).

positive conception of freedom as individual self-mastery, agents are free when they achieve ‘...control or mastery of themselves...’²⁴, thus becoming able to master their lower selves. In contrast, in Freedom as Non-Domination an agent is free when no one exercises control or mastery over him or her. Anyone who values freedom as individual self-mastery must, according to Pettit, also value the conception of Freedom as Non-Domination because ‘...there can hardly be any meaningful form of self-mastery without non-domination...’²⁵ One necessary, though insufficient, condition for agents to have control or mastery over themselves is for other agents not to have control over them. Thus, freedom as non-domination consists of the absence of control by other individuals.

According to the second variety of positive freedom, freedom is equivalent to having collective control or mastery over State institutions. For freedom as non-domination, on the other hand, a necessary, though insufficient, condition for someone to be free is for no State institutions to subject him or her to an arbitrary power. For this to be the case, institutions must ‘... track the interests and ideas of ordinary people...’²⁶ In the most recent presentation of the theory, non-arbitrariness of power exercised by State institutions is defined in terms of control.²⁷ Institutions do not exercise arbitrary power when they are not a controlling power, and this occurs when individuals have control over them. Thus, for freedom as non-domination, having control over State institutions is not equivalent to freedom—as occurs in the second variety of positive freedom—but is rather just a means for such institutions not to exert a controlling power over individuals.

Starting with the first presentations of his theory, Pettit has reconstructed Berlin’s notion of positive freedom using the idea of control. His aim was to bring out the element it had in common with freedom as non-domination. He stated that ‘...positive liberty, according to Berlin, requires more than the absence of interference...it requires the agent to take an active part in gaining control or mastery of themselves...’²⁸ Once he achieved this, he characterised freedom as non-domination using the same notion the first variety of positive freedom made

²⁴ Pettit, above n 12, 16.

²⁵ Ibid 82.

²⁶ Ibid 11.

²⁷ In his recent presentation of the theory, Pettit stated, ‘I shall make little or no use of the “arbitrary”, preferring to speak of uncontrolled interference’ (Pettit, above n 16, 58). This, in turn, leads to the conclusion that Pettit now characterises the second type of positive freedom in terms of control. In his initial presentations, Pettit claims that for an institutional framework not to be arbitrary, it must ‘track the interests and ideas of ordinary people’, which must attract those who have a positive conception of positive freedom because ‘this is the idea that lies behind the positive, populist notion of freedom as democratic self-mastery’ (Pettit, above n 16, 11). Yet if the idea that institutions must ‘track the interests and ideas of ordinary people’ is now translated in terms of individuals controlling institutions, we must conclude that for Pettit the idea of institutional control is what lies behind the positive notion of freedom as collective self-mastery.

²⁸ Pettit, above n 12, 17.

reference to. For freedom as non-Domination ‘...freedom consists in an absence...but in an absence of mastery by others’²⁹, in other words, an absence of control by others. Lastly, he characterized the institutional framework that made it possible to avoid this evil using the same notion of control he made reference to in the second type of positive freedom. In order for an institutional framework to not become a dominating agent, it must be under citizen control.

Pettit contrasts his theory with the second type of positive freedom. He specifically takes the populist conception, whose origin Pettit dates back to Rousseau, as an adversary. Pettit disagrees with both the Rousseauian conception and the populist conception that stems from it. Nevertheless, these discrepancies are different in nature. While Rousseau was a republican at the normative level who, like Pettit, conceived freedom as equivalent to non-domination, populists oppose Normative Republicanism because they adopt a positive conception of freedom. Pettit’s discrepancies with Rousseau refer to which institutional design is apt for ensuring citizens are not dominated. His discrepancies with populists are, instead, normative.

Pettit disagrees with Rousseau at an institutional level only. Unlike the French philosopher, he does not believe that it is possible to guarantee freedom as non-domination for citizens without a mixed constitution and contestatory citizenry. Rousseau opposed a mixed constitution because he claimed that every State should have an absolute sovereign, which in a republican system should be the assembly of all the citizens. Nor did he think the citizenry should be contestatory. On one hand, he demanded far more from the citizenry than a vigilant attitude; every citizen was to take part in the legislative assembly, and should do so bearing the general interest in mind. On the other hand, he allowed the citizenry less; because all of them had authored the legislation, none could be authorized to challenge it. A contestatory citizenry, for Rousseau, made no sense. Pettit disagrees and states that ‘(i)n an extraordinary reversal of received ideas, the cause of freedom as non-domination, from which Rousseau starts, is now linked with a new, communitarian form of the very absolutism that republican doctrine had always challenged. The people or community gets to be sacralized, as it assumes the role of the popular, incontestable sovereign, incapable of doing wrong to its own members.’³⁰

Like Pettit, Rousseau adopted a negative conception of freedom as non-domination, and both philosophers are considered to be normative republicans. Nevertheless, Rousseau distanced himself from Institutional Republicanism, unlike Pettit, because he believed that the way of guaranteeing freedom as non-domination is political participation, specifically by taking part in the general legislative assembly. Pettit clarifies the different levels at which agreements and disagreements with Rousseau are to be found:

But while Rousseau and Kant kept faith, in their different ways,
with the republican conception of freedom as nondomination,

²⁹ Ibid 22.

³⁰ Pettit, above n 16, 15.

and with the commitment to the equal freedom of citizens, they broke with that tradition on the two institutional ideals by which I characterized it. In place of the mixed constitution, they hailed the idea of a popular or representative sovereign. And in place of the contestatory citizenry, they installed the idea of a people whose primary job was to participate in the creation and sustenance of that sovereign assembly...³¹

The populists' manoeuvre, which has led them from a negative conception of freedom as non-domination to a positive conception of freedom as participation, has consisted in adopting the institutional design proposed by Rousseau as his normative conception of freedom.³² Political participation, which for Rousseau was just a means of guaranteeing freedom, is, for the populists, equivalent to freedom. Consequently, enjoying the guarantees and protections granted by an institutional framework—as indicated by negative freedom—is not enough to be free; it is necessary to actually take part in configuring it. Citizens are free insofar as they are self-legislators.³³ Freedom '...is nothing more or less than the possession or the exercise of the right to participate in popular decision-making.'³⁴

In terms of the place occupied by participation in the negative conception of Freedom as Non-Domination, the contrast could not be greater. According to the republican conception, '(d)emocratic participation may be essential to the republic, but that is because it is necessary for promoting the enjoyment of freedom as non-domination, not because of its independent attractions: not because freedom, as a positive conception would suggest, is nothing more or less than the right of democratic participation.'³⁵ Here, no discrepancy is made between Pettit's Neo-Republicanism and Rousseau's Communitarian Republicanism.

The populist conception of freedom has two elements that need to be distinguished from each other. First, it claims that freedom consists in citizens exercising control over public institutions, which confers its positive character. This distinguishes it from freedom as non-domination, in which citizens have control over public institutions merely to prevent being under alien control. Control is not in itself valuable; it is only valuable as a tool to guarantee that one is not under the control of, or being dominated by, others. Second, it identifies control with effective political participation in a system of direct democracy. It identifies freedom with control, and control with a particular institutional design. What is a mere institutional design to Rousseau becomes a normative conception of freedom to populists.

³¹ Philip Pettit, 'Two Republican Traditions', in Andreas Niederberger and Philipp Schink (eds), *Republican Democracy: Liberty Law and Politics* (2013) 179.

³² Pettit considers that collapsing both levels leaves Populism at a disadvantage before Republicanism: Pettit, above n 12, 109.

³³ According to populists, 'liberty consists in nothing more or less than democratic self-rule' (ibid 27).

³⁴ Pettit, above n 16, 16.

³⁵ Pettit, above n 12, 8.

The first element in the populist conception—which is shared by all positive conceptions of freedom—is what allows Pettit to link freedom as non-domination to Berlin’s varieties of positive freedom. Both he and Pettit characterize positive freedom in terms of control, whether over people themselves or political institutions.³⁶ What Berlin’s positive freedom and freedom as non-domination have in common is now patently clear: both conceptions of freedom make reference to the same notion of control.

The elements Freedom as Non-Domination takes from negative and positive freedom types should by now be clear. From negative freedom, Pettit takes the idea that citizens are free because they are protected from an evil, not because they have to do something or be somebody. From positive freedom, he takes the terms in which both the evil to be avoided and the way of avoiding it are characterised. Being free means being protected from the controlling power of others. A citizen is not free when he has controlling power, but rather when others do not have controlling power over him. The means used to reach this end must bring together two characteristics. First, there must be institutions that place barriers on uncontrolled power of interference from other agents. Second, institutions must be under the control of the individuals they protect.

Ultimately, freedom as non-domination, like negative freedom, characterises freedom as the absence of an evil. However, the terms in which this evil is characterised are taken from the first type of positive freedom. Additionally, the terms in which the manner of avoiding it is characterised—using an institutional framework controlled by the citizenry—are taken from the second type of positive freedom.

Pettit has been successful in presenting Institutional Republicanism based on an ideal of freedom as non-domination that is distinguishable from freedom as non-interference and freedom as political participation, although it incorporates elements of both these types. However, in characterizing non-domination and positive freedom in terms of control, he makes it possible to visualize a new type of positive freedom. Like populism, this conception equates freedom with control, however, it does not equate control with direct democracy, but rather with the Institutional Republicanism proposed by Pettit.

This non-populist type of positive freedom does to Pettit’s view what the populists did to Rousseau’s: it adopts Pettitian Institutional Republicanism—his notion of mixed constitution and contestatory citizenry—as a normative conception

³⁶ Berlin distinguishes both varieties of positive freedom from his conception of negative freedom: Berlin, above n 1, 134. The introduction of freedom as non-domination is as an attempt to overcome Berlin’s dichotomy by introducing a new kind of negative freedom. There have been other attempts to reach the same objective by introducing new varieties of positive freedom. Such was the case of John Christman. According to him, positive freedom has to do with the causal process of generating preferences and not with its content: John Christman, ‘Liberalism and Individual Positive Freedom’ (1991) 101 *Ethics* 343; and John Christman, ‘Saving Positive Freedom’ (2005) 33 *Political Theory* 79.

of freedom. Being free is equivalent to being in control of public institutions, and being in control is equivalent to the existence of a republican institutional order. For this new variety of positive freedom, freedom is equivalent to citizen control exercised through the institutional design proposed by Institutional Republicanism. Freedom is conceived as institutional control.

In no way does this positive freedom as institutional control conflict with Pettit's Republicanism at the institutional level. Both value citizen control achieved by a mixed constitution, a representative democracy system of a deliberative nature and a contestatory citizenry. However, they are normatively divergent conceptions. Although both conceptions value control, they do so for different reasons. Freedom as non-domination values control as an instrument for reaching freedom, while the new type of freedom as institutional control values it for being equivalent to freedom.

To demonstrate that freedom as institutional control is a distinguishable normative ideal, it may be useful to show how it compares with Pettit's Republicanism, Rousseau's Communitarian Republicanism, and Populism. At the institutional level, it agrees with Pettit and disagrees with Rousseau and Populism. It is a type of Institutional Republicanism at variance with Republicanism—in terms of both its varieties—at the normative level: it considers freedom to be equivalent to citizen control. Possessing institutional control is not just a means to avoid the evil of others possessing it. Here it agrees with Populism in terms of freedom being equivalent to control, but disagrees with the idea that control is equivalent to participation.

Although this new type of positive freedom is distinguishable from both Populism and the Republicanism defended by Pettit, it does include elements that are common to all of them. It agrees at the normative level with Populism in terms of equating freedom with control over public institutions, and it agrees with Pettit's Republicanism at the institutional level in claiming that exercising this control is equivalent to being placed in an institutional framework endowed with a mixed constitution, a deliberative representative democracy and a contestatory citizenry.

Pettit accuses Berlin of having posed a false dichotomy between freedom as non-interference and positive freedom, alleging that there is a form of negative freedom that is distinguishable from non-interference. The same accusation can be made, however, against Pettit. He has posed a false dichotomy between freedom as non-domination and freedom as political participation, overlooking the fact that there is a distinguishable form of positive freedom as institutional control.

In order to avoid making the same mistake I attribute to Pettit, it is necessary to bear in mind that there are other types of freedom as control, which are different from the one I have just presented. The type I refer to equates control with an institutional design, specifically the one presented by Pettit.³⁷ Another way of conceiving freedom as control does not equate it with a particular institutional

³⁷ Varieties of this conception can be developed if the institutional design considered to be equivalent to the existence of control is altered.

design, but rather establishes a merely instrumental relationship between institutions and control. Institutional design is a means to attain control. Here, freedom is equated with the existence of control, but this control is not equated with any institutional order.

I have chosen to focus on the first version because I believe it is the one that poses the more difficult challenge of responding to freedom as non-domination. The fact that it combines elements of Institutional Republicanism with a normative conception of positive freedom makes it a difficult adversary for Institutional Republicanism to defeat. Proof of this is that none of the criticisms Pettit directs at Populism appears to apply to it. The next section is devoted to expounding this point.

III. The immunity of freedom as institutional control from republican criticism

Pettit's criticism of Populism has revolved around showing that it is not plausible to conceive of freedom as being equivalent to political participation. The focus so far has been on showing the inadequacy of the second element of the populist conception—that which distinguishes it from other varieties of positive freedom—without remarking on the first shared element. To address this, it shall suffice to review his objections to freedom as democratic participation, which basically can be reduced to two adjectives: impracticable and undesirable.³⁸

Two arguments can be offered to show the impracticability of freedom as democratic participation. Both reveal that a direct democracy in which decisions are taken by the majority is incapable of creating a coherent body of norms. The first argument goes back to Stuart Mill and Kant, and points out that it would be impossible in a modern society with a numerous populations to bring together all the individuals in order to adopt the plurality of decisions required to manage the huge State apparatus.³⁹ This argument points out how difficult it would be to bring all the inhabitants of a State territory together into a single assembly, and how difficult it would be to adopt any legislative decision. Thus, a populist's commitment with direct democracy makes its positive conception of freedom impracticable under the current circumstances.

Unlike the first, the second argument citing impracticability is not directed at showing how hard it would be the adoption of any body of norms; instead it shows how hard it would be for this body to be coherent. The argument was developed by

³⁸ Pettit, above n 12, 81.

³⁹ This accusation of impracticability must be distinguished from a similar one formulated by civic humanism. It claims that the values associated with the political community cannot be carried out in the modern State, among other reasons because of its size. What is impracticable in this case is not collective decision making but the practice of civic virtues: Gerald Cohen, *Lectures on the History of Moral and Political Philosophy* (edited by Jonathan Wolff) (2014) 64.

Pettit in different works and has been called ‘the discursive dilemma’.⁴⁰ This dilemma refers to the fact that ‘...majority voting on interconnected propositions may lead to inconsistent group judgments even when individual judgments are fully consistent...’⁴¹ This fact, linked to Pettit’s conception that every group agent is ‘...a system that has representational and motivational states such that in favourable conditions, within feasible limits, it acts for the satisfaction of its motivations according to its representations...’⁴² leads to the conclusion that a group cannot become a collective agent if its attitudes (beliefs and desires) are a majority function—or any simple function—of its members’ attitudes.⁴³ A group who adopts a majority rule of decision will necessarily be subject to the appearance of incoherent beliefs and attitudes, which will prevent the group from guiding its actions, thus compromising its character as an agent.

The undesirability of freedom as democratic participation is, in turn, demonstrated on the basis of two reasons. First, there is the possibility of it degenerating into a tyranny of the majority. In a direct democracy in which decisions are adopted by the majority, every citizen may become part of a minority subjected to the majority’s uncontrolled power of interference. That is why, according to Pettit, ‘...direct democracy may often be a very bad thing, since it may ensure the ultimate form of arbitrariness...’⁴⁴ The minority is thus subjected to a power of interference over which it exercises no control. The right to participate does not guarantee that collective decisions and the power of interference they confer will not come under the control of individuals other than those subjected to the interfering power.⁴⁵ Direct democracy is undesirable because political participation in the process of developing collective norms does not ensure that citizens gain control over the power of interference wielded by State institutions. To put it as a slogan: the problem lies in the fact that participation does not guarantee control.

The second reason Populism is undesirable is because it leads to a downplaying of citizens’ freedom in their private lives by equating freedom with

⁴⁰ This discursive dilemma is a generalization of Lewis Kornhauser and Lawrence Sager’s ‘doctrinal paradox’: Lewis Kornhauser and Lawrence Sager, ‘Unpacking the Court’ (1986) 96 *Yale Law Journal* 82; and Lewis Kornhauser and Lawrence Sager, ‘The One and The Many’ (1993) 81 *California Law Review*.

⁴¹ Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (2011) 46.

⁴² *Ibid* 20.

⁴³ According to Pettit and List, in order to treat a group as an agent it is necessary to detect ‘certain higher-level relations between its responses, actions, and environment. These will support the claim that the organism has goals that it seeks to realize through its actions, keeping track of relevant changes in the environment. That is, the organism acts for the satisfaction of its goals according to its representation of the environment’ (*ibid*, 12). To achieve this, it is necessary for the group to show a certain degree of coherence and rationality (*ibid* 24).

⁴⁴ Pettit, above n 12, 8.

⁴⁵ *Ibid* 31.

participation in public life. According to Pettit, while Republicanism ‘...hails the enjoyment of a publicly protected freedom in the domain of private life – a freedom, in the republican picture, that enables you to stand equal with others, not depending on anyone’s grace or favor – this new vision tends to downplay private life in favor of public engagement.’⁴⁶

Populism is blind to the problem of horizontal domination as it is only interested in citizens’ participation in public institutions. Republican Freedom as Non-Domination, on the other hand, considers that what holds primordial value is the absence of horizontal domination, that is, to be able to go ahead with one’s private life without uncontrolled interference from other citizens. Vertical non-domination becomes valuable only insofar as it guarantees that the public institutions whose main function is to avoid horizontal domination do not themselves become a dominating power. The primal evil that Republicanism attempts to avoid is precisely that to which populism is blind: horizontal domination.

There is another way of seeing the problem using language introduced by Pettit in his later works. According to Pettit, legitimacy refers to the standards of correctness applied to the relations existing between citizens and their State. Criteria of justice, on the contrary, apply to the relationships among the citizens themselves.⁴⁷ For populism, only the value of legitimacy exists. To put it another way, any legitimate agreement—once it has been voted for directly by the majority—is just. For freedom as non-domination, however, it is justice that is primordial. The legitimate State is just a tool to guarantee justice. Justice does not collapse in legitimacy. It is possible for political legitimacy to exist alongside social injustice and *vice versa*. Thus, the final goal is to find a balance that maximizes the degree of non-domination.⁴⁸

Based on the above, it is clear that none of these criticisms apply to freedom as institutional control. Populism provides two equivalences: freedom is equated with control over public institutions, and control over public institutions is equated with an institutional design that demands citizen participation in a direct democracy. Equating freedom with control over institutions gives it its positive character. Equating that control with participation in a specific institutional order gives it its populist character. Pettit’s criticisms have mostly been directed at showing that the institutional design that confers participation rights in a direct democracy is neither practicable nor desirable. None of these arguments, however, make any claim against equating freedom with control or equating control with an institutional design that differs from direct democracy. That is to say, none of these arguments attacks the element that makes the populist conception a positive conception of freedom.

⁴⁶ Pettit, above n 16, 18.

⁴⁷ Ibid 3.

⁴⁸ The distinction between legitimacy and justice was not present in *Republicanism*. However, the ideas of vertical and horizontal domination, and the idea that a balance had to be struck, were extensively discussed: Pettit, above n 12, 112.

Pettit formulates objections against the populist variety of positive freedom that focus on how impracticable and undesirable its proposed institutional design is. However, his conception appears to weaken before the new type of positive freedom I have presented, whereby freedom is equated with the institutional design he proposes. This variety of positive freedom turns the institutional portion of Pettit's theory against its normative portion. The more convincing and attractive the republican control-centred institutional design is, the more non-domination as a normative ideal is threatened.

Some might object that I have moved too fast. To be precise, they might point out that freedom as control over public institutions adopts an institutional design that is only partly similar to the republican design, the reason being that while republican institutional design ensures the absence of horizontal or vertical domination, and institutional design must therefore allow a citizen to control the power of interference of other citizens and the State, the institutional design that proposes freedom as control over public institutions only ensures the control citizens exert over the State. While the conception of freedom as institutional control claims that freedom is equivalent to a legitimate institutional design—with institutions controlled by the citizenry—republican institutions founded on non-domination are additionally just because citizens are also protected against other citizens' uncontrolled power of interference.

If this were the case, then the positive conception of freedom as institutional control would be undesirable for the same reasons that Populism is. Both downplay the importance of justice and only focus on the legitimacy of public institutions. For Populism, the only thing that matters is to take part in State institutions; for freedom as institutional control, however, the aim would be directional, individualized, unconditioned, and successful influence over State institutions.

I do not think this objection is available to Pettit given the way he has defined domination in terms of control in order to contrast it with freedom as non-interference. Unlike freedom as non-interference, freedom as non-domination not only emphasizes the existence of barriers and protection against interfering power, but additionally maintains that this protection be under the control of those being protected. However, if this were so, an illegitimate State that blocks private interference would possess no degree of justice. The reason is that for there to be justice with no horizontal domination, two things must occur: there must be mechanisms that prevent private interference and these mechanisms must be under the control of the individuals they protect. This second requirement is not satisfied when the State is illegitimate; there cannot be justice without political legitimacy.

Pettit seems to accept this conclusion when he states that '(l)et legitimacy fail, therefore—let the government be a law unto itself—and we will be vulnerable both in relation to the state *and in relation to our fellow citizens...*'⁴⁹ The former is obvious, and the latter follows from his notion of horizontal domination. We are horizontally free only when our fellow citizens lack an uncontrolled power of

⁴⁹ Pettit, above n 16, 24 (italics added).

interference. For that to be possible, we need adequate and robust institutional safeguards. But if such safeguards escape our ultimate control, they would be precarious. They would be as reliable as ‘the will of the government that establishes and maintains them.’⁵⁰ If we interpret “robustness” here as a synonym of “reliability” and as the opposite of precariousness, it would turn out that, by definition, any case of political illegitimacy (the absence of citizens’ ultimate control and therefore of reliable safeguards) would amount to a case of social injustice.⁵¹

What Pettit fails to realize is that according to his definition of domination, the inverse relation is also true: that is, the existence of legitimacy is sufficient for the order to be just. If citizens exercise control over State institutions they also exercise it over the private power of interference. To better illustrate this point, let us imagine a legitimate State that possesses all the barriers that Pettit has in mind to prevent private citizens from having any power of interference. No vertical or horizontal domination is present here. Let us suppose that the citizens of this legitimate State decide to remove the barriers that prevent interference from private citizens, reserving the power to re-establish them if the very citizens exerting control over the State should decide to do so. This new power of interference every citizen has over the rest should not count as domination, according to Pettit’s definition, because it is a power over which all citizens have control. This power of interference only exists because the citizens affected have allowed it and can stop it from being allowed any time they choose.

If every time there is justice there must also be political legitimacy, and *vice versa*, it would seem that legitimacy alone is sufficient to satisfy the conditions of Freedom as Non-Domination. To attain freedom as non-domination, citizens need only exercise control over public institutions. No possible divergence between freedom as institutional control and freedom as non-domination exists at an institutional level. In both cases, citizenry exercising a directing influence on legitimate public institutions is sufficient. Freedom as non-domination cannot claim any superiority over freedom as institutional control in terms of either justice or legitimacy.

One criticism that Pettit directs at Populism appears to apply to freedom as institutional control. Unlike the previously mentioned objections, this criticism is not founded on a distinctive characteristic of Populism, but rather applies to all the conceptions that equate freedom to an institutional design. Such conceptions, Pettit claims, lack the potential to criticise any institutional arrangement—freedom being defined as an institutional arrangement—and the fact that it makes citizens free

⁵⁰ Ibid.

⁵¹ The objection developed in this and the following paragraphs—based on the idea of non-domination—are part of the critical paper *On the People’s Terms*, which I am currently drafting with José Luis Martí.

cannot be argued in favour of the preferred institutional framework because freedom consists of this very same institutional framework.⁵²

The first observation seems misleading, given that a conception that equates freedom with an institutional arrangement makes it possible to criticise any other institutional design for being inadequate. The second observation may or may not be accurate depending on how the idea of defining freedom in terms of an institutional arrangement is understood. If this simply means stipulating that freedom is defined by an institutional arrangement, then the objection is accurate. Stating that this arrangement makes citizens free adds nothing. It is equivalent to indicating that this institutional arrangement is what it is. If, on the other hand, reasons are put forward to demonstrate that freedom is constituted by this institutional arrangement, the objection is unfounded. In this case, claiming that the institutional arrangement makes citizens free is equivalent to claiming that this is the only way in which they constitute free subjects.

If one accepts freedom as non-domination, the statement that an institutional framework makes citizens free is informative and provides reasons in favour of the institutional framework. It specifically claims that this institutional framework *is one of many possible ways* in which citizens may constitute subjects over whom no one has any control or arbitrary power of interference. The same occurs if one accepts freedom as institutional control, with the difference that the statement now conveys the fact that this institutional framework *is the only way* to constitute citizens as free subjects with individualised, unconditioned and effective control over the institutional framework.⁵³

IV. The superiority of freedom as institutional control

So far, the argument I have put forward has been merely defensive. Its aim has been to show that freedom as institutional control is immune to republican criticism. Henceforth, I wish to put forward an argument in favour of the moral superiority of this conception of freedom. In short, my argument attempts to show that freedom as non-domination is not in equilibrium with our moral intuition. Specifically, conceiving freedom this way leads to conclusions that are at odds with certain intuitions in terms of political legitimacy.

⁵² Pettit, above n 12, 108–109. I am grateful to an anonymous referee for having led me to notice the need to tackle this objection.

⁵³ A similar objection to the ones posed, which Pettit also raises, is that if freedom is equivalent to an institutional framework it is logically impossible for other institutional frameworks to be superior in terms of freedom. It is hard to see how this can be considered an objection. If the conception of freedom did not allow one to rank institutional frameworks in terms of freedom, it would then be useless as an assessment criterion and, therefore, objectionable. However, if a conception places an institutional framework necessarily at the peak of the ranking, it is still enabled to assess the remaining institutional frameworks according to how close they come to the model. The institutional framework found at the top of the ranking acts as a regulating ideal that makes it possible to rank those below it.

Connecting political legitimacy with self-government is an intuition shared by both those with a republican conception of legitimacy and those who adhere to other conceptions. This is surely the case for Pettit, who makes an effort to show that the legitimate institutions his theory promotes—a kind of deliberative democracy—satisfy the three requirements stated by Abraham Lincoln on being a government *of the people, by the people, for the people*. For Pettit, ‘...under a plausible interpretation, the characterization requires that government be for the people in assuming a pattern or direction answering to people’s wishes or needs; that it be by the people in being directly or representatively implemented by the citizenry; and that it be of the people insofar as the people are in ultimate control: they do not depend on the willingness of any other agent or agency for their capacity to shape the government they live under...’⁵⁴

Pettit is correct in maintaining that one particular fact should count in favour of the conception of political legitimacy: it accommodates our intuition that an institutional framework is legitimate if it satisfies the three requirements mentioned above. It is almost peacefully accepted that our moral conceptions should be assessed by how they allow us to balance our moral intuitions.⁵⁵ However, in order for our conceptions to balance our intuitions, something else must be true: it is not enough for them to allow us to draw conclusions in keeping with our intuitions, they must also not lead us to conclusions that conflict with them. This latter requirement is not met by the conception of freedom as non-domination proposed by Pettit. Adopting this conception of freedom leads to consequences that are not in keeping with our intuitions in relation to legitimacy. Specifically, it allows us to conclude that an institutional framework may be legitimate even if it is not configured according to a pattern or direction answering to people’s wishes or needs, if it is not implemented by the citizenry, or if the people do not exercise ultimate control over it.

A similar institutional framework is one Pettit calls ‘an impersonal, will-independent regime of protection.’⁵⁶ This system is a type of regime under no one’s control,⁵⁷ which establishes barriers against private interference. In this framework there is no horizontal domination because no individual has uncontrolled power of interference over others, nor is there vertical domination; the institutional framework cannot be a controlling power since no one has control over it. In other words, the framework is optimal in terms of justice and legitimacy, even if the people have no control whatsoever over the institutional framework.

⁵⁴ Pettit, above n 16, 280.

⁵⁵ Pettit undoubtedly accepts the test of reflexive equilibrium. He points out expressly, ‘I want to show, in John Rawls’s (1971) phrase, that republican political philosophy does well on the test of reflective equilibrium. It has institutional implications that prove, at least on reflective consideration, to equilibrate with our firmer intuitions’ (Pettit, above n 12, 130).

⁵⁶ Pettit, above n 16, 134.

⁵⁷ It might be a consuetudinary regime, for example.

It is absurd to claim that an institutional framework is legitimate when it does not allow citizens to exercise control, therefore there must be something wrong with a conception of freedom that allows such a conclusion to be drawn. To put it another way, this conception of freedom does not allow us to accommodate our shared intuition that a framework is legitimate if it satisfies the requirement of being *of the people, by the people and for the people*. It does not accommodate our basic intuitive reasoning that there can be no legitimacy without some kind of self-government.

Anyone inhabiting such a will-independent regime of protection is a slave without a master, not a free citizen. For citizens to find themselves forcibly subjected to an institutional framework that determines their life expectations, rights, resources and opportunities without them having any control over it likens them to slaves. The fact that this institutional framework is not only beyond an individual's control but additionally beyond anyone's control means that such an individual has no master. Freedom as non-domination—and its defective way of understanding political legitimacy—leads to the false conclusion that a slave without a master is a free citizen.

Although Pettit thinks that this regime of impersonal protection is not feasible, this cannot be invoked as a defence of his conception of freedom as non-domination. Counterintuitive consequences produced by a conception of freedom, regardless of any their counterfactual character, must inevitably count against it.

The problems that this conclusion carries with it go beyond the fact that it is not in equilibrium with our moral intuitions. To claim that this institutional framework of impersonal protection is legitimate in freedom as non-domination—as Pettit does—is inconsistent with the definition of domination he puts forward. This impersonal regime sets up barriers against the power of interference of others, but these barriers are not under the control of the agents being protected. It prevents uncontrolled interference of others without granting control over the power of interference to the protected individual. This regime deprives citizens of control over their power of interference without granting control to another. This is possible so long as the mechanisms of protection are not established by any agent, whether collective or individual.

This is no minor problem: in the latest presentation of his theory, Pettit appears to have included two different ways of understanding the arbitrary power of interference. Both interpretations are present in the specialized literature and, in an attempt to accommodate them, Pettit seems to have fallen prey to inconsistency. He has definitively abandoned the welfare interpretation—both the subjective and objective types—that he seemed to subscribe to in earlier presentations.⁵⁸ However,

⁵⁸ As Frank Lovett points out, the first presentations of Pettit's vision contained elements that allowed it to be interpreted as value-laden and a version of the objective interests account. According to Lovett,

Although he (Pettit) described 'the identification of a certain sort of state action as arbitrary' as 'an essentially political

he now sways between a procedural interpretation, according to which the only requirement is that the exercise of power should be controlled by impersonal norms, and a democratic interpretation that requires power to be under the control of the people affected.

The fact that Pettit now claims that an impersonal system of protection, and not one depending on will, instantiates the ideal of non-domination seems to indicate that he leans towards a procedural interpretation such as that defended by Frank Lovett.⁵⁹ He also claims that there is domination when citizens do not exercise an individualized and directed influence on public institutions, which seems to place him on the side of those who have given a democratic interpretation of the ideal of non-domination.⁶⁰

matter,' he also indicated that he meant this in the sense of politics being a 'heuristic' device for determining the relevant 'issue of fact' [quoting Pettit, above n 12, 56–57]. And what is the relevant issue of fact? Apparently, it is what 'interests and ideas' people share 'in common with others' [ibid 55]. Without further elaboration, this might seem to imply a hidden assumption regarding some sort of objective account of the common good, though it was not intended as such. (Frank Lovett, 'What Count as Arbitrary Power?' (2012) 5 (1) *Journal of Political Power* 137, 144.)

This objective interest account of arbitrary power received heavy criticism. One of the critics, Charles Larmore, has held that if an objective interpretation of the individual good was given, and if it was indicated that the power was arbitrary when it was not exercised to respect or promote this good, then it runs the risk of defending a kind of perfectionist State. Republican freedom would be equivalent to pursuing what is objectively good. (Charles Larmore, 'Liberal and Republican Conceptions of Freedom', in Daniel Weinstein and Christine Nadeau (eds), *Republicanism: History, Theory and Practice* (2004).)

If, on the other hand, a subjective interpretation of the individual good is given, we reach the counterintuitive conclusion that 'we would apparently be able to render a person subject to domination simply by convincing him that his relevant interests were not being respected, even if this were not true.' (Frank Lovett, *A General Theory of Domination and Justice* (2010) 116.)

⁵⁹ According to this interpretation, power can be limited by norms that are common knowledge to all citizens (Frank Lovett, 'Domination: A Preliminary Analysis' (2001) 84 *The Monist* 98). Social power is arbitrary 'to the extent that its potential exercise is not externally constrained by effective rules, procedures, or goals that are common knowledge to all persons or groups concerned' (Lovett, *A General Theory of Domination and Justice*, above n 58, 97).

⁶⁰ According to the democratic interpretation, 'social power is arbitrary unless it is compelled to track the affected persons' or groups' ideas about their interests as expressed through suitably designed deliberative procedures' (Lovett, *A General Theory of Domination and Justice*, above n 58, 116). Among those who have defended this interpretation are John Maynor, *Republicanism in the Modern World* (2003); and Richard Bellamy, *Political Constitutionalism: A Republican Defense of the Constitutionality of Democracy* (2007).

Pettit thinks freedom as non-domination could be satisfied by ‘an impersonal, will-independent regime of protection’, showing quite simply that there is a latent inconsistency in his theory. The technical notion of domination he has offered in terms of control by the people affected—that is, individualized control—is at odds with his statement that a framework in which power is controlled merely by impersonal norms would guarantee non-domination.

None of these problems appear if one adopts the conception of freedom as institutional control. First, this conception is not subject to the inconsistency mentioned above. Popular control over government institutions is not only a sufficient condition of legitimacy, according to Pettit, but it is also a necessary condition—contrary to what Pettit is committed to claiming based on his statement that there is no vertical domination in an impersonal institutional framework.

Furthermore, the fact that freedom is equivalent to citizens exercising control over public institutions makes it possible to avoid the counterintuitive conclusion Pettit is dragged toward. The superiority of the conception of freedom as institutional control over freedom as non-domination stems from evidence that this paper has attempted to reveal. What makes it possible for freedom as non-domination to partially accommodate our intuitions in relation to political legitimacy is borrowed from the second type of positive freedom as collective self-government or control over public institutions. However, the exercise of this control is valued as freedom as non-domination only insofar as a means of avoiding horizontal domination. Thus, if horizontal domination can be avoided without resorting to an institutional framework that allows for political self-government, it ceases to have any value. When this is possible, political legitimacy is separate from self-government, which appears counterintuitive.

For freedom as institutional control, the value of self-government is not circumstantial. Ultimately, this is what makes it possible to accommodate our moral intuition while avoiding the consequential problematic conclusion that an institutional framework over which no citizen has any kind of control is legitimate.

V. Conclusion

Pettit has been successful in presenting Normative Republicanism as being committed to a distinguishable ideal of freedom as non-domination. This conception of freedom has elements in common with Berlin’s negative and positive conceptions of freedom. Citizens are free because they are protected against an evil and not because they do something or are someone. Nonetheless, this evil is characterized by the terms used in positive freedom: to be free is to be protected from the uncontrolled power of others.

This way of characterizing freedom as non-domination helps to identify the central element of the conception of positive freedom according to Pettit. According to positive freedom, one is free when he or she has control. This form of conceiving positive freedom cannot be abandoned by Pettit if he wants to maintain that freedom as non-domination shares certain elements with positive freedom.

Pettit has focused his criticism on the populist type of positive freedom that equates the existence of citizen control with political participation in a system of direct democracy. His criticism has revolved around the impracticable and undesirable nature of this institutional framework. This has contributed to foreclosing other varieties of positive freedom that do not equate control with political participation or direct democracy.

In the face of one of these types of positive freedom—according to which republican institutions that grant control to the citizenry are equivalent to freedom—none of the criticism Pettit levels on populism is effective. The fact that Pettit has focused his criticism on populist institutional design, and the fact that this variety of positive freedom equates freedom with republican institutions, determines that none of his criticism applies to freedom as institutional control.

Furthermore, freedom as institutional control appears more attractive than freedom as non-domination. First, in comparing freedom as non-domination with freedom as institutional control, the tension within Pettit's own theory becomes clear. Pettit has placed growing emphasis on citizen control by offering a democratic interpretation of it. This makes his conception indistinguishable at an institutional level from that defended by freedom as institutional control, draining it of power. Concurrently, however, he appears to lean towards a merely procedural interpretation of control, which serves to distance his view from freedom as institutional control at the cost of being inconsistent. No similar tension appears at the heart of freedom as institutional control.

Additionally, in adopting freedom as non-domination, one is led to the counterintuitive conclusion that an institutional framework can be legitimate even when it is applied to those with no kind of control over it whatsoever. In contrast, freedom as institutional control maintains that a framework is legitimate only when individuals exercise individualized, unconditioned and efficacious control over it.

The paper's long-term scope is to show that Pettit's presentation of freedom as non-domination has contributed to foreclosing other types of positive freedom that do not equate control with political participation, or political participation with direct democracy. As a consequence, the discussion inaugurated by Pettit's seminal work has been biased against positive conceptions of freedom. I present the conception of freedom as institutional control in order to denounce and correct this bias by calling attention to types of positive freedom that have until now gone unnoticed.

Once freedom as non-domination is compared to one of these types of positive freedom—freedom as institutional control—two conclusions may be drawn. First, it is possible to see that freedom as institutional control is immune to the attacks Pettit has levelled against the populist version of positive freedom. Second, freedom as institutional control accommodates our moral intuitions better by sidestepping the counterintuitive conclusions we are led to with freedom as non-domination.