



The *Politics* of Non-Domination  
Towards An An-archic Critique of Neo-Republican  
Political Philosophy

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A thesis submitted to the School of Political Science and Sociology.  
In conformity with the requirements for  
Degree of Doctor of Philosophy.

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December 2019

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# Declaration of Originality

I, Liam Farrell, declare that this thesis is entirely my own work. I have not obtained a degree in this university, or elsewhere, on the basis of this work.

Liam Farrell

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Date

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# Abstract

This thesis offers an an-archic critique and analysis of Philip Pettit's approach to theorising neo-republican politics and democracy. Neo-republican political philosophy has come to dominate much of the field of contemporary anglophone political theory, claiming strong democratic credentials as well as an innovative account of power, freedom, and political legitimacy. Freedom for neo-republicanism means non-domination and it is around this theory which the entire political project is organised.

This thesis pursues two questions which relate strongly to the problem of political power, and are, to-date, neglected by the literature:

1. What is the theory of the subject of freedom as non-domination?
2. What does Pettit understand by political community as it relates to the neo-republican theory of freedom and democracy?

To this end, this thesis stages a critical encounter between Pettit's Method of political philosophy and the post-structuralist critical political theory of Jacques Rancière. Rancière's innovative account of emancipation and democracy, which is premised upon the presupposition that we are all equal, and structured around the unworking of a torsion of two logics, one of politics and equality, the other of inequality and what he calls 'the police', offers the central theoretical tools to map out the possibilities of democratic politics within the neo-republican Method.

The argument, in short, is that Pettit's neo-republicanism represents a case of political philosophy working to write over politics on philosophy's terms. Pettit's theory does so by negating that which is central to politics from a radical democratic perspective: *dissensus*, or 'antagonism'. The argument is presented through a close deconstructive reading of Pettit's corpus, which in turn paves the way to explore what an an-archic *politics* of non-domination might entail, based upon the concerted demonstration of an 'axiomatic equality'.

# Acknowledgements

All love and thanks to my comrade and companion Hasret Çetinkaya, to you I owe everything and much more.

Thanks to my brothers Joseph and Colm, and my parents Jim and Michele for their support throughout.

The myth of individuation is a powerful one, that we all must resist. As such this thesis is the product of friendships, of which there have been and continue to be many. First and foremost, thanks to my supervisor Kevin Ryan, who has displayed an enormous generosity of time, conversation, careful reading and collective study. Without his support, inspiration, and trust, this thesis would not have developed to be what it is today. For all of this I am eternally thankful.

This thanks in friendship must also be extended to Gary Hussey my academic partner in crime, as well as to Jonathan Hannon, Su-Ming Khoo, Kathy Powell, Tony Varley, Mark Haugaard, Martin Javornicky, and Tony King, along with the rest of my colleagues and comrades in the Power, Conflict and Ideologies research cluster and the School of Political Science and Sociology. From you all I have learned so much.

Arkan Akin, Conor Ryan, Jenny Gunnarsson Payne, Neil Robinson, Maura Adshead and Owen Worth, along with my comrades at *The New Pretender*, have been supportive friends and colleagues, to you all I am grateful.

Since 2017 I have enjoyed the opportunity to work on several projects, workshops, and conferences with comrades in critical theory and radical politics from CAPPE at the University of Brighton. Mark Devenney and Clare Woodford have provided inspiration and encouragement in the work which has constituted a large part of this thesis, they have both been invaluable and improper examples.

[...] what is called “political philosophy” might well be the set of reflective operations where philosophy tries to rid itself of politics, to suppress a scandal in thinking proper to the exercise of politics.

Jacques Rancière, *Disagreement*

Disagreement is not only an object of my theorization. It is also its method. Addressing an author or a concept first means to me setting the stage for a disagreement, testing an operator of difference. This also means that my theoretical operations are always aimed at reframing the configuration of a problem.

Jacques Rancière, *The Thinking of Dissensus: Politics and Aesthetics*.

[...] the constitutive nature of antagonism entails asserting the contingent nature of all objectivity and this, in turn, means that any objectivity is a threatened objectivity. If, in spite of this, an objectivity manages to partially affirm itself, it is only by repressing that which threatens it. To study the conditions of existence of a given social identity, then, is to study the power mechanisms making it possible.

Without power, there would be no objectivity at all.

Ernesto Laclau, *New Reflections on the Revolution of Our Time*

In every generation there are sceptics who see discussion as war by other means but the very notoriety that such views produce for their defenders – the, the notoriety enjoyed by today’s postmodernists – testifies to the fact that few give the views serious credence. They may serve well as these for idle dialectic but they are not assumptions by which people are willing to conduct their lives.

Philip Pettit, *A Theory of Freedom*



# §1 Beginning

## 1.1 To begin with disappointment

Beginning, is always difficult. Perhaps it has something to do with the nature of ‘action’ and the fact that beginnings always happen in the flow of things, in a world in which we are born into, in all of its contingency and fundamental ambivalence to our arrival (Arendt, 1998 [1958], p. 9). For Hannah Arendt (1998) and Jacques Rancière (1999) both, the experience from which they begin, each in their own way, is a disappointment in political philosophy itself. Such a shared disappointment can be located in political philosophy’s dual role as a practice of reasoning about politics, and as the discourse which seeks to examine the question of ‘what does it mean to act politically?’ – as a power-ridden and potentially political and creative act in and of itself. As we are reminded by Critchley (2008), philosophy and politics both begin in disappointment, disappointment in the here and now, disappointment in the conventional modes of thinking, or even disappointment in an everyday situation we experience to be unjust or as a wrong.

For Arendt, there is something of an oxymoronic quality to the idea of a political philosopher, a label she rejected, insofar as the discipline of philosophy, weighed down with the burdens of tradition, had sought to think the question of ‘man’ as a singular being, as opposed to ‘men’ and the plurality and uncertainty that was constitutive of political life (Arendt, 1998, p. 4, 1994, p. 4; Cavarero, 2002). Central to politics, though more often than not, marginal for philosophy or theory, then, are the problems of uncertainty and the fact of the radical contingency of social objectivity. ‘Beginning’ for Arendt, however, is not a philosophical operation, but a political one, and the difference is crucial, in that the latter is a mode of performing that is concerned with

speech and action, among and between a plurality of persons, with all of the vulnerability and exposure that such an appearance entails. Furthermore, beginning is tied in Arendt's phenomenology of politics with the introduction of an 'Archê' to political community, signalling both 'beginning' and 'rule'. To this question of the 'Archê' and political community we shall return in due course.

For Rancière (a critical reader of Arendt) however, disappointment is not affirmed as a necessary or final relation between philosophy and politics. Rather, *'the disappointment'*, or claim with which I opened this text, is for Rancière 'a might be', a distinct possibility, perhaps a tendency, or even 'a hypothesis', just like that of 'axiomatic equality' (a point to which I return in more detail below – see section 1.5),<sup>1</sup> in need of demonstration or better still, in need of refutation. In Rancière's approach, as he invites us to think with him about the relation between philosophy and politics, are those exemplary political philosophers who stand as paradigmatic markers for the so-called 'return of political philosophy:' John Rawls and Jürgen Habermas. The 'return' of political philosophy is supposed to have been rendered possible by the 'retreat of the social', the end of ideology, the death of Marxism and utopia, and the finally rediscovered 'original purity' of politics (Rancière, 1999, p. vii). As Rancière queries, with such a return of political philosophy, have we thus seen a return of politics (properly understood)? Writing in the early to mid-1990's, Rancière, saw no reason to affirm such a second coming. With the triumph of the radical centre, the re-election of Mitterand, and the surrender of the economy to the neo-liberals, there was a near perfect consensus over that which had come to be taken as the stuff of politics, both in France, and across the liberal-democratic regimes of Europe and North America (Rancière, 1995). There was no alternative. The return of political philosophy saw the consolidation of the proper place for deliberation and discussion in liberal democratic societies, made possible, then, by the fact that there was little left to

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<sup>1</sup> The assertion of 'axiomatic equality' is a central element of Rancière's account of democratic political subjectivization. For Rancière, the process of emancipation is that of equality. Equality as a process then is the 'verification' (or what I would call the demonstration) of a primordial equality of all people. Such is the lesson of Rancière's (1991) reading of the radical pedagogue Joseph Jacotot in *The Ignorant Schoolmaster*. As Rancière writes: 'It is true that we don't know that men are equal. We are saying that they *might* be. This is our opinion, and we are trying, along with those who think as we do, to verify it. But we know that this *might* is the very thing that makes a society of humans possible' (1991, p. 73). I favour the phrasing 'demonstration' of equality over that of 'verification', so as to avoid the confusion with 'the principle of verification' in the work of A.J. Ayer, the logical positivists, as well the Popperian paradigm. For more on Ayer's concepts of strong and weak verification, see A.J. Ayer (1990) *Language, Truth, and Logic*. See also Karl Popper (2002) *The Logic of Scientific Discovery* on falsification.

deliberate over. Rancière, thus, took as his task in that conjuncture of post-politics (both theoretical and material), the reconstruction of the rationality of political speech on politics terms, contra the proffered rationality situations instituted by political philosophy. At stake was the antagonistic juxtaposition of the rationality of politics *qua* disagreement, with the philosophical regulation of the rationality situation of politics, in which the latter came to be equated with the rationality of philosophical discourse, and represented either through the concepts of consensus, ideal speech or the positing of the ‘true essence’ of politics (Rancière, 1999, p. xii). Political philosophy in its contemporary guise, it must be demonstrated, might in fact be the erasure of politics. It is upon this basis, of demonstration (and perhaps even refutation) that I proceed in the course of this thesis, as I critically engage with one of the most accomplished and compelling contemporary Anglophone political Philosophers, namely Philip Pettit.

## 1.2 The task of neo-republican philosophy

This thesis is concerned with the neo-republican political philosophy of Philip Pettit. More specifically, its object is the logic of non-domination, which is the very process of struggle against manifest forms of domination. For Pettit: ‘every philosophy of the good society starts with an account of the canonical complaint that the state should help to put right’ (2012, p. 1). Pettit’s understanding of the disappointments which motivate political philosophical reflection turn largely around two types of complaint: on the first count, ‘personal afflictions’ such as ‘misery, poverty, and inequality’, can be a central motivation to political thought and action; on the second, social failures such as division or disorder are the ideal object of political philosophical reflection (2012, p. 1). Whilst the first set of problems, we are told, are appealing objects for political rectification, they are, Pettit tells us, ultimately “too demanding” politically speaking; thus in following the trend of liberal democratic political theoretical debates over the role of government in relation to such concerns, Pettit deems it wise to focus simply on remedying social failures that relate to the planning of state and civil society institutions, a task which it is more likely to achieve political consensus (Pettit, 2012, p. 1).

Already we can see a divergence between the politics of a post-Arendtian position like that of Rancière and the neo-republican Pettit. Whilst Rancière begins with the an-

archic (an-Archê) question of emancipatory politics as making visible ‘the poor’,<sup>2</sup> this is precisely what Pettit turns his back on, the dimension of struggle for emancipation, and instead, turns his attention to transforming structural forms of un-freedom, as the route out of domination – on a scalar basis at least.<sup>3</sup> This will be the task of neo-republican political philosophy: a theory of freedom and government. While this may well serve reasonably well as a way of figuring a theory of freedom, a question posed in the thesis concerns the way it constricts the scope of *politics*. As such I re-activate the initial question of Pettit’s *Republicanism* – that is ‘an exploration of what a neo-republican politics would involve’ (1997a, p. 51) – assuming, with Pettit, that the politics of non-domination ought to be central to democratic regimes, and, contra Pettit, that politics and government are not necessarily synonymous with one another, nor is democracy synonymous or coincidental with the liberal ideal of a democratic regime.

If political philosophy is supposed to be concerned with thinking about and understanding *politics*, Pettit’s neo-republicanism is a source of disappointment in contemporary political thought in so far as it represents an aristocratic theory of freedom and is held ‘captive by a picture’ (Wittgenstein, 2009, §115; Owen, 2003, p. 85) of democracy *as government*. Such a picture of democracy is devoid, for the most part, of anything meaningful to say about those ‘wrongs’ dismissed earlier as ‘personal afflictions’.<sup>4</sup> Such wrongs, however, are founded in deeply structural inequalities, both social and economic, and are always political, even when (pragmatically) depoliticised. Pettit, in fact dismisses the urgency of such wrongs, not out of an impossibility of rectification, but in the name of that which is ‘politically feasible’ (2012, p. 1). This

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<sup>2</sup> By ‘the poor’, I am not referring here, necessarily, to those experiencing the poverty which might constitute the personal afflictions Pettit dismisses as such, but rather adopting Rancière’s conceptual language which casts ‘the poor’ as ‘the plebs’, the *demos*, artisans, common people, proletarians, masses, the part that has no part, those who count but are mis-counted/dis-counted by the police order of which they are subject. For more on this non-sociological figure of ‘the poor’ see Martin Breugh (2013) *The Plebian Experience*, especially pp. 91 – 97; see also Rancière (2012) *Proletarian Nights: The Workers’ Dream in Nineteenth-Century France*.

<sup>3</sup> Domination, for Pettit, is not an ‘on-off condition’ as such, even though freedom as non-domination is a status concept. This stands on my reading as something of a paradox in his neo-republican account. Pettit insists in an essay entitled *The Domination Complaint*, that domination is something ‘to which a person may be subject at a higher or lower degree of intensity’ (2005, p. 94). To this question of intensity, I shall return in Chapter three.

<sup>4</sup> ‘Wrongs’ here, is again, a borrowing from the Rancièrian grammar, and refers not to ‘any theatre of “victimization.” It belongs to the original structure of all politics. Wrong is simply the mode of subjectification in which the assertion of equality takes its political shape’ (Rancière, 1999, p. 39)

disappointment arises, not least, in spite of the radical normative potential at stake in the neo-Roman conception of freedom (Skinner, 1984a) that Pettit re-articulates (1997a, 2012). Long-time critic John P. McCormick (2011, 2019) argues that despite the fact that ‘Pettit successfully preserves and advances the arguments, and reinforces the egalitarian and emancipatory potential of his original normative vision’, his theory of democracy still tends towards the aristocratic as opposed to democratic tendency in the republican tradition (McCormick, 2011, pp. 141-169). *The claim of this thesis* is a stronger one however, which is to say that the very Method and procedure of Pettit’s political philosophy, structures out the question of emancipatory democratic politics. And thus a hypothesis emerges, a claim in need of demonstration, an object for critique and deeper discursive analysis: *is Pettit’s influential theory a case of political philosophy ridding itself of politics in favour of government, and if so, does that in turn tell us something important about political philosophy more generally?*

### 1.3 Conjunctural thinking

Beginning in the sense of *action*, happens *in media res*, always in the cut and thrust of the world in which we appear, the world into which we are born (Arendt, 2005, p. 113). The activity of political theorising, insofar as it too entails action through speech and words, stakes our appearance amongst others and in the midst of politics. It is no different to beginning. Machiavelli, a theorist whose writings resides at the very centre of the neo-republican project’s first articulation (Skinner, 1978, 1983), knew this truth instinctively, writing always ‘in’ and never ‘over the conjuncture’ in which he found himself (Althusser, 2010). Such a conjuncture-embedded approach to theorising politics, belongs not only to the republican tradition emerging from the ancient world of republican Rome, but also to the project of radical democracy. As we saw earlier, for Rancière theorising the revival of political philosophy and its relation to politics in *Disagreement*, the conjuncture in which that text was forged was one of a post-political consensus over the then apparent hegemony of liberal democratic capitalist regimes and their principles, a consensus which provided the empirical conditions of possibility for the Habermasian and Rawlsian paradigms to take hold of the terrain of political theorising. As Ray Geuss (2019a, 2019b) in recent articles marking the ninetieth birthday of Habermas has argued however, in a somewhat scandalously polemical fashion, the political developments of the post-2008 crisis era such as Brexit, the rise

of populisms of the left and right, and the election of authoritarian (or borderline neo-fascist leaders) in the figures of Bolsonaro, Trump, Salvini and others, have all shown that the political project of procedural democracy based on idealised forms of communication, are not only inadequate, but redundant. Such a critique is not new, but to be found in Chantal Mouffe's critique of the 'rationalists' and deliberative democrats (2005a). By privileging consensus and thus denying 'the political' *qua* antagonism, as well as a negation of the democratic paradox (of which I will say more later), the advocates of consensus (in their regulation of the rationality situation of political speech) provide the conditions of possibility for democratic and political energies or 'passions' – which are not accommodated within procedural forms of liberal democracy – to be co-opted and rechannelled towards right-wing and neo-fascist identities and projects (2005b).

At stake no longer is the political theoretical task of rethinking and radicalising democratic practices, but instead the defence and argument for democracy in and of itself as a political ideal. Such a project has been taken up by many in recent years, including Mouffe (2018) who has shifted her focus from the need for agonistic democratic practices towards the need to affirm that sovereignty resides in the hands of the people, and the task of constructing a left-populist project. Wendy Brown, too, in her study of neo-liberalism's assault and destruction of the *demos*, has sought to argue that the task of political theorists and progressive activists alike, is no longer the defence of liberal democracy, but the need to make the case for 'bare democracy', and the defence of *homo politicus* in the onslaught of neo-liberalism's bio-political project of the creation of *homo oeconomicus* in every one of us (Brown, 2015). Brown writes: 'the term "democracy" contains nothing beyond the principle that the *demos* rules, although as the only political form permitting us all to share in the powers by which we are governed, it affords without guaranteeing the possibility that power will be wielded on behalf of the many, rather than the few, that all might be regarded as ends, rather than means, and that all may have a political voice. This is the bare promise of bare democracy' (2015, pp. 202-203).

It is within this conjuncture, or at least this is my argument, that we should read – and read carefully – Philip Pettit's neo-republican theory of democracy and government. The 'motivational capacities' of any such political philosophy and conception of 'the good society', must arise from its ability to speak substantively to

the political conjuncture in which its readers are located, and the issues with which they too are concerned; it must rethink the relationship between theory and praxis, such that we make manifest the possible futures disclosed to us through theory (Cooke, 2004, 2006). Whilst Pettit offers an account of democracy which in many ways speaks to the concerns of contemporary democrats, it falls short in a multiplicity of ways in confronting not only the bio-political dimensions of the liberal-democratic police orders in which we live, but also in how it figures and defends some notion of ‘bare democracy’ within increasingly complex societies. It begs the question, perhaps, as to what Pettit understands politics to be?

#### 1.4 Two questions and a comment on Method

Arising out of this initial framing of what is at stake in Pettit’s concept of non-domination, this thesis begins its exploration with what are, seemingly, two rather simple and straightforward questions: first, what is the concept of *political community* that can be distilled from the principle of republican freedom as non-domination? And second, though not unrelated, *who* or *what* is *the subject of non-domination*? Whilst the above sketch sets the bounds of these questions to a greater or lesser degree, the question of what precisely is ‘politics’ according to Pettit and neo-republican philosophy needs to be examined in greater detail. Is the neo-republican theory of politics democratic? Are we dealing here with a nominal “democracy” or something more substantive? What are the theoretical grounds of Pettit’s subject? And perhaps, most significantly with respect to the axiom of non-domination: is there a distinction we can draw between politics and government in the work of the neo-republicans, of which Pettit’s work is paradigmatic?

What the above outlined pair of questions point to, however, is the ‘Method’ of the political theorist.<sup>5</sup> ‘Method’ etymologically understood, as in the ancient Greek *methodos*, means not simply a quest for knowledge, or system of investigation, but a combination of *meta-* and *bodos*, implying a ‘path’. In other words, a Method is a path (Gasché, 1986, p. 121). This is not a path built by others that one simply follows, that is predetermined, but the path which a thinker constructs, that any thinker needs to

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<sup>5</sup> ‘Method’ spelled with an uppercase ‘M’ refers throughout this thesis to *Methodos* as a ‘path’. In the instances in which I refer to ‘method’, it should be taken to refer purely to the everyday social scientific sense of the word.

construct in order to know where one is, ‘to figure out the characteristics of the territory you are going through, the places it allows you to go’ (Rancière, 2009a, p. 114). But more importantly, what such a path entails is the articulation of the objects that populate the route; objects which, for better or worse, oblige you to move in certain ways, ‘markers that can help you, [as well as] the obstacles that get in the way’ (Rancière, 2009a, p. 114). As Etxabe notes: ‘a [M]ethod thus enables us who wish to trace it to move within the apperceptive sensorium of another human being and inhabit their ways of seeing and judging reality’ (2018, p. 18). Such Methods are fundamental to any articulatory and discursive exercise, not least a political theory.<sup>6</sup>

Through examining Pettit’s Method, the ways in which he populates his theoretical horizon, the roads he takes, the rocks he seeks shelter behind, and the things he renders invisible or unseen, we thus examine the very systematic way in which idealities are materially produced through his rhetorical constitution of a neo-republican imagination. As such we can see the ways in which spaces for political action are distributed, or written over, and how the constitution of neo-republican subjects are mediated through his texts. Political philosophies are not simply linguistic exercises or language-games devoid of materiality, they are aesthetic constructs each containing an ‘Archê’, which distributes subjects and objects, each a World that is constituted through language, and thus political philosophies are political rationalities that govern those subjects they produce (cf. Foucault, 1980, pp. 109-133). Ideas and language are always material realities, as they take over bodies, ‘giving them a map of the visible and orientations for moving’ around in the territory in which they find themselves (Rancière, 2009a, p. 114).

## 1.5 A critical encounter and radical potential

In light of the above outlined précis of Pettit’s account of *freedom as non-domination*, and the concomitant case for the emancipatory and normative-analytic potential of the same, the question which emerges is why read Pettit alongside Rancière and through a post-structuralist lens? The potential answers to such a query are numerous and can be articulated in a plurality of distinct yet essentially commensurate ways. As much of

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<sup>6</sup> By articulation, I borrow from the work of Ernesto Laclau and Chantal Mouffe, in which they refer to the same as ‘any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice’ (2001 [1985], p. 105).



the early part of the thesis will be a close reading of Pettit's Method, and by way of sketching an outline of the reading principle I bring to bear on this material – which is indebted to Rancière, or more specifically, the way he responds to disappointment by using this to open out a horizon of radical (im)possibility – this section will provide an initial outline of Rancière's theoretical approach to thinking the relation between philosophy and politics, as well as dissensus and consensus, *politics* and *the police*.

To begin, perhaps the most obvious point, around which a critical encounter between these two distinct styles of reasoning ought to be staged, is at the level of shared signifiers and brute politics. As we noted above, the radical potential of neo-republicanism resides in the first instance in its egalitarianism when it comes to the centrality of non-domination (cf. McCormick, 2019). As Pettit has argued, the ideal of non-domination must strive for a structurally egalitarian position in relation to the intensity and distribution of non-dominated status within the republic (1997a, pp. 113-117). In this sense, for the neo-republicans, equality is a 'universal' status, and intimately bound to the primary political good of non-domination. In this sense, within the normative horizon of the neo-republican imagination, we can speak of a universal equality of citizens enjoying non-domination.

It is upon this first terrain, that the encounter with post-structuralism and Rancière can be staged; that is around the shared signifier of 'equality' taken by each to be universal or axiomatic – though in very different ways. It is upon this homonymic character of the concepts of equality, non-domination, or even justice that we can stage precisely what Rancière calls *disagreement*. To this determined kind of speech situation, in which the logic of politics is rendered at its most visible we shall return later. For now however, the critical approach taken here, in staging this critical encounter with Pettit's work, reveals something of the account of politics which is embedded in the problematisation of neo-republicanism undertaken in this chapter as well as in the hypothesis which is informative of the questions posed by this thesis. *Disagreement* on this account, does not imply a conflict between two opposing claims, it is not the conflict between 'one who says white and another says black', but rather the interval which emerges in speech, when one says white, as does another, and yet they do not understand the same thing by it (Rancière, 1999, p. x). This is not an antagonism which arises from the imprecise nature of language and words, but rather it is the conflict and contest which is not to be eradicated or resolved through explanation and oriented

towards understanding, it ‘occurs wherever contention over what speaking means constitutes the very rationality of the speech situation’ (Rancière, 1999, p. xi). As such, at stake in *disagreement* is not the words alone, but the situation, the *mise-en-scène*, of the utterance of such words, and the dispute over the object of the dialogue, as well as an antagonistic conflict over ‘the capacity of those who are making an object of it’ (Rancière, 1999, p. xii).

For anyone familiar with the work of Jacques Rancière, this staging is more than obvious. For those readers who are not so familiar, central to Rancière’s interventions on politics has been the positing of an ‘axiomatic equality’, which provides an emancipatory and destructive force in the face of regimes of hierarchy, and discipline. Rancière develops this account of ‘axiomatic equality’ following his encounter with the nineteenth century theorist of intellectual emancipation Joseph Jacotot. According to Rancière, Jacotot’s lesson (and we should not forget that he was paid to teach, and thus to assume the inequality that typically structures the teacher/student relationship) was an ‘intellectual adventure’. Responding to constraints that prevented him from activating the typical hierarchical relation that operates within the classroom – he spoke French but no Flemish; his students spoke Flemish but no French – Jacotot found himself playing the part of the ‘ignorant schoolmaster’, i.e. he had to teach what he did not know, and did so by becoming the facilitator of his students’ capacity to teach themselves and learn from each other. For Rancière, this was a moment of collective intellectual emancipation, and the exercise of intelligence is not to be located in the teacher-student relationship which presupposes a teacher in possession of knowledge and an ignorant student, but rather Jacotot’s experience of ‘universal teaching’ from a position of the ignorant schoolmaster, displayed how differences between people emerge only through their differing dispositions towards using their equal intelligence. Jacotot writes: ‘It’s precisely because we are all equal by nature that we must all be unequal by circumstances’ (Rancière, 1991, p. 88). It is through this principle of the axiomatic character of the equality of intelligence in Jacotot’s pedagogy that Rancière locates the potential emancipatory moment latent in all social relations as he writes: ‘emancipation is the consciousness of that equality, of that reciprocity that alone permits intelligence to be realized by verification. What stultifies the common people is not the lack of instruction, but the belief in the inferiority of their intelligence’ (Rancière, 1991, p. 39). Emancipation then has an aesthetic quality and lies in the

possibility to demonstrate the presupposed equality of what Jacotot called equality of intelligences, or what Rancière re-describes as the equality of all speaking subjects.

The question which Rancière's interventions ask is: *what would political life and democracy look like if we assumed as a starting point, in need of demonstration, that all persons are equal?*<sup>7</sup> To put it otherwise, what would happen to our view of democratic politics if we were to assert a lost primordial equality that we seek to re-establish through action? On such a basis, it is the very process of 'the verification of the equality of any speaking being with any other speaking being' (1992, p. 59), that is the substance of politics for Rancière, the process of emancipation, the staging of equality. As Rancière writes: 'Equality is not a value to which one appeals; it is a universal that must be supposed, verified, and demonstrated in each case' (1992, p. 60).

In order to draw out Rancière's understanding of axiomatic equality in its fullest, we first need to examine his usage of the terms 'politics' and 'police', as they are by no means conventional. Politics for Rancière is a rare phenomenon, a form of concerted action that challenges the existing social order, through the staking of a claim by a group of those who are the 'part of no part', and are thus not presently recognised fully as speaking beings by the social order (1999, p. 30). That is to say that politics 'makes visible' that which 'had no business being seen' (Rancière, 1999, p. 30). As such, we might say that politics is by necessity antagonistic (Devenney, 2011), and does not happen simply because the poor oppose the rich, but rather because politics is the activity that 'causes the poor to exist as an entity' (Rancière, 1999, p. 11). There is politics because of a wrong, a sedimentation of a system of domination, which writes over the very contingency of any 'logic of the Archè'. Counter-posed to the ruptural activity of politics, for Rancière, is the logic of 'the police'. 'The police', a play on the ancient Greek concept of the *polis* and the modern concept of policing, is the 'system of distribution and legitimization'. The police, for Rancière, ought to be read in a non-pejorative sense. Similar to Foucault's account of disciplinary power and police science (*polizeiwissenschaft*), the police is, 'essentially, the law, generally implicit, that defines a party's share or lack of it' (Rancière, 1999, pp. 28-29):

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<sup>7</sup> Rancière puts this question more specifically in two places in *The Ignorant Schoolmaster* (1991) in the following terms: 1) 'What interests us is the exploration of the powers of any man when he judges himself equal to everyone else and judges everyone else equal to him' (pp. 56-57); 2) 'But our problem isn't proving that all intelligence is equal. It's seeing what can be done under that supposition. And for this, it's enough for us that the opinion be possible – that is, that no opposing truth be proved' (p. 46).

The police is thus first an order of bodies that defines the allocation of ways of doing, ways of being, and ways of seeing, and sees that those bodies are assigned by name to a particular place and task; it is an order of the visible and the sayable that sees that a particular activity is visible and another is not, that this speech is understood as discourse and another as noise. (Rancière, 1999, p. 29)

As such it is the police order, with which, politics is antagonistic, and yet whilst politics acts upon the police making it more egalitarian, more receptive to the expansion of its limits, the police is also constitutive of the capacity for politics to emerge, and thus conditions and shapes the very possibility or impossibility of political action (Rancière, 1999, p. 33; Woodford, 2015).

Politics at its essence then, for Rancière, is *dissensus*. It stands as antagonistic to any form of *consensus*. Here, it is worth recalling that consensus in Latin combines two words: *con-* (com), with/together; and *-sensus* from the Latin *sentire*: to feel, to hear, to sense, drawing us to sensibility and the sensible, a proper order. And is juxtaposed to its opposite dissensus which similarly in Latin brings together: *dis-*, and *-sensus*. *Dis*, meaning ‘apart, asunder, in a different direction, between, or lack of, not’. We might say, then if politics is to be located in its opposition to *consensus*, politics *qua* dissensus is improper, it is fugitive, and it is concerned with the disturbance of the police order in the name of equality. Such a manoeuvre is fundamentally *aesthetic*, insofar as it refers to ‘a certain distribution of the sensible’, or more specifically its disruption (Rancière, 2009b, p. 1, 3). This disruption is *dissensus*. In drawing out the aesthetic character of dissensus, Rancière understands such a practice (equivalent with *disagreement*), not so much as a conflict, but a perturbation of the normal relation between a sense which is given by the police order, and a sense made by the subject undergoing emancipation. In Platonism, which establishes a distribution of the sensible as a unity, there is never dissensus, only disruption of the partitioned senses of knowledge and desire, which if perturbed, is only so through the positing of the worse against the better, of desire against knowledge (ibid., p. 3). However, for Rancière, *disagreement* and *dissensus* only exist when that opposition and partitioning of the senses, which in Plato is also the partitioning of the classes of the city, is neutralised and a third sense is brought into play: ‘a supplement that brings a more radical way of understanding’ division and conflict (ibid.).

Rancière's understanding of *dissensus* proceeds however in aesthetic as opposed to ethical terms in its interpretation of the supplement or excess which stages a division between world and world. By an ethical understanding of dissensus (and this is pertinent to our critique of Pettit in chapters four, five, and six), we need to return to the etymology of the concept of ethics, in the ancient Greek term *ēthos*, meaning first *abode*, before later coming to refer to the way of being specific to, and suitable for, such a location within the social. Ethical law can take potentially two forms. First, as a law of the inside, the *ēthos* performs a distribution of the sensible in accordance with common capacities, and alternative capacities, locates subjects in the appropriate positions, with their necessary parts. Second, as a law of the outside, ethical community in order to maintain consensus internally, conjures a figure of the outsider (as in Aristotle), which stands as an immeasurable and unsubstitutable presence for the ethical order, producing a point of dissensus which is heteronomous to that ethical community (Rancière, 2009b, pp. 4-5).

*Dissensus* understood in the aesthetic terms of *disagreement*, as a form of emancipation, and the demonstration of the contingent nature of inequality and its possibility only in equality which precedes it, refuses the technologies of distribution at work in an ethical community. The aesthetic dimension of politics as *dissensus* dismantles ethical legality, appearing not as the Other, or the immeasurable, but by reconfiguring the sensible through a 'redistribution of the same and the different, the division of the same and the dismissal of difference' (ibid., p. 5). By staging a conflict of sorts, that exceeds the 'consensual distribution' of 'the police', *dissensus* neutralises difference (the source of inequality) through the emergence of the part with no part, demonstrating their equality, not as a heteronomous figure, but as an 'aesthetic heterotopy' (ibid.). By 'heterotopy' here, Rancière points to an particular way of giving form to the other, a *heteron*, which nonetheless does not presuppose the constitution of an outside at an ontological level of analysis, as is the case in ethical conceptions of community found in Aristotle and even Pettit, but rather, as the *demos*, that part of no part, which is not rendered outside of the whole, but that element of the whole which is aesthetically produced as non-speaking (see Rancière, 2010b).

To assert the universality of equality, or to suggest that equality is axiomatic and thus the primordial state of justice that is wronged by any given police order, by any distribution of parts, is to say that the possibility of any symmetrical relationship of

power is practically impossible within any order of the police, within any regime which has organised itself around a logic of counting (counting citizens as the basis of an established community). And, still, there is nothing outside of the police. The police order, then, is an order of law, and a sedimented horizon of tacit knowledge about that which is proper, legitimated, and inside. The assertion of axiomatic equality plays a deconstructive role, pointing to the underlying contingency of any social arrangement and the necessary processes by which it is constituted through acts of exclusion, of miscounting, and the differential allocation of value to lives, that is to say: discounting. *Dissensus*, we might say, is the giving presence to two Worlds in one (Rancière, 2010, pp. 37-40). It is the saying of 'equality' by one, and 'equality' by another, and yet not reaching a *consensus* as to what is at stake.

In the essay 'The Subject and Power', Michel Foucault writes of how the objective of his work since the early 1960s had not been the study of power *per se*, but the historico-philosophical analysis of the different modes by which 'human beings are made subjects' (1982, p. 777). This study has focused, Foucault claims, on the ways in which subjects have been objectivised through 'dividing practices', and the multifarious ways in which power operating through forms of knowledge (power/knowledge) is constitutive of social order ('the police') and those subject positions within it (Foucault, 1982, p. 777). As Hayward and Lukes (2008) have suggested, post-structuralists like Foucault have drawn our attention to something 'not thematized in the post-war power debates in Anglo-American political and social science', namely: the 'normalizing power of constructed social identities' (2008, p. 5). Post-structuralist thought, however, Hayward and Lukes claim, has itself largely neglected many of the normative concerns that animated those earlier Anglophone debates, especially in the field of political theory. Pettit's work, heavily influenced (as we shall see in later chapters) by these debates in post-war English-speaking political science is emblematic of the deficiencies of its inherited Method. Rooted in a methodological individualism, neo-republicanism's theory of power and domination has had little, if anything, to say about the productive role of power in the formation of the subject of its normative account. Against Hayward and Lukes, however, I resist the claim that post-structuralists in general have had little success in articulating a 'coherent normative

account of the grounds on which one might criticize particular power relations' (Hayward and Lukes, 2008, p. 5). Radical democrats such as Laclau and Mouffe, as well as Rancière, have consistently managed to provide such a normative perspective, in a non-foundational way, whilst further extending the analytical power of post-structuralism in the study of power. Their failure has simply been to not provide the kinds of "grounds" which their Anglophone political theorist colleagues expect to see.

## 1.6 Two 'Worlds'

What emerges then, from this cursory encounter between two theorists of equality and domination then, is not only a potential binary, a potential opposition and conflict over shared words: equality and domination. But, rather, what we see is a distinction between two aesthetic regimes, two distinct styles of reasoning about politics and power, which revolve around two distinct approaches to the question of contingency. Whilst for Rancière the assertion of axiomatic equality stands as a marker for the radical contingency of all police orders, and their unequal distribution of parts, in Pettit, a rather weak notion of contingency as "chance" is at play (see Pettit, 2007). Such an observation opens up a plurality of lines for critique, which this thesis pursues. However, I want to mark off one further point in advance of commencing such a critical task. Whilst arguably Pettit's neo-republicanism stands as an idealized police order, or at least that would be a tempting way to read him,<sup>8</sup> my intention here is not to establish a binary opposition between Rancière and Pettit. Such would be the obvious line to pursue for many readers of Rancière, who like Todd May, assume a form of *pure politics* in opposition to the contagion of police orders is possible. This is not the Rancière that I have read or defend, and thus I seek to pursue a more nuanced approach.

On my reading, Rancière is not a naïve anarchist, but a theorist of those an-archic moments that make politics possible (Rancière et al., 2008, p. 175). In his 2008 text *The Political Thought of Jacques Rancière – Creating Equality*, Todd May has sought to utilise

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<sup>8</sup> Here I am reminded of López Lerma and Etxabe's approach to thinking with Rancière about the law. They describe their project as not looking to uncover 'law *in* Rancière', but rather 'law *through* Rancière' (López Lerma and Etxabe, 2018, p. 2). This approach to reading Rancière is one I share, and arguably offers more creative avenues for political and legal thinking.

Rancière's reflections on politics to articulate a post-structuralist theory of anarchism,<sup>9</sup> in which he presents 'politics' in Rancière's formulation as radically in opposition to any 'police' order: "The expression of equality brings disharmony; it is an act of *dissensus* from current social order. Therefore, democratic politics is directly opposed to policing" (May, 2008, p. 43). Whilst Rancière states in the *Ten Theses on Politics*, that politics is in opposition to policing, politics always arises from within and acts upon the police, as a twisting of two logics, which to a greater or lesser extent require one another. As Chambers's (2011) has noted, this tension arises from the ambiguity of the *Ten Theses*' translation into English, and points to the very impurity of politics, as a critique of Arendt and the idea of politics as a way of life (Rancière, 2011, p. 6). Asserting the axiomatic character of equality as a normative foundation or ontological grounds for politics (May, 2008, pp. 128-129), Todd May reads Rancière alongside Foucault, and in so doing redefines Rancière's 'equality' not as an object of verification, but as a substantive political goal in opposition to police orders. Such a reading, as Chambers (2011) and Woodford (2017) have noted, seeks to take up the possibility of a 'pure politics' that is not in constant twisting and torsion with police orders. This on my reading is a patent misconstrual of Rancière's writings on politics. It is a utopianism which is neither useful, nor an affirmation of any axiomatic equality as a deconstructive presence within orders of inequality.

My strategy is one committed to the project of radical democracy (Laclau and Mouffe (2001 [1985]) and the examination of the intersection between the politics of equality and the logics of domination. As such, I see immense value in thinking with Pettit and the neo-republicans. Criticism can never be total, as total criticism would be a rejection of any value. Rather, we engage in criticism because we see something of value, worthy of respect and something potentially emancipatory within a given text. Any deficiencies found within the interventions on politics, by any subject, are always interesting for both theoretical and very practical political reasons.

It is upon this basis, that what I take from Rancière is a practical lesson in thinking about politics, and thus, I take up the spirit of his writings to strategise non-domination. Through the juxtaposition in a heightened form between two logics – the logic of equality/politics and the logic of the police – Rancière provides us with a set

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<sup>9</sup> For an earlier account of Todd May's poststructuralist anarchism, see *The Political Philosophy of Post-Structuralist Anarchism*, 1994, especially chapter 5.



of practical tools for thinking and reading about politics and democracy. Reading Pettit through these twisting and intersecting logics I begin to explore the two aforementioned questions about the nature of the political community and the subject of non-domination. I do not read Rancière and the post-Arendtians and post-structuralists in opposition to Pettit, but rather as a resource for identifying, and strategising about spaces of egalitarian democratic politics within the neo-republican imagination. It is pertinent to remember here, that the contemporary liberal democratic state, as we know it, is not simply a police order, but rather a ‘hybrid’ of the two aforementioned logics. Whilst maintaining a recognition of the ‘capacity of the whole’, to exercise democratic powers through the democratic struggles of the nineteenth and twentieth centuries, it is also an ‘oligarchical machine’ that tends towards the privatisation of space (Rancière et al., 2008, p. 183). As such the state – whilst not the sole site of political struggle (an insight worthy of maintaining to the fore – especially the independence of politics from the state) – is nonetheless as we learned from Gramsci a terrain of political struggle.<sup>10</sup> It is not a terrain on which the people struggle to take power, but rather a terrain on which the people struggle to ‘affirm the power accrued to the people on all terrains’, producing the effects of the ‘redefinition of rights’ and the transformation of institutions with the potential of pointing towards new forms of action (Rancière et al., 2008, p. 183).

To echo my favourite Austrian anti-philosopher, and his writing in the *Tractatus Logico-Philosophicus*, I approach Rancière’s lessons in the manner Wittgenstein asked us to read his propositions on the nature of language and logic. Wittgenstein wrote: ‘my propositions serve as elucidations in the following way: anyone who understands me eventually recognizes them as nonsensical, when he has used them – as steps – to climb beyond them. (He must, so to speak, throw away the ladder after he has climbed up it)’ (Wittgenstein, 2010 [1922], p.90, §6.54). As such, the Rancière which appears within the bounds of this thesis, is *my Rancière*, and the name of a pushing and pulling relationship which is not always as faithful to the written work of the philosopher of an-Archê, but always improper and egalitarian, precisely in his spirit. All the while, the

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<sup>10</sup> Here I am thinking of Antonio Gramsci’s account of ‘the war of position’, within complex of ‘civil society’, see *Selections from the Prison Notebooks*, p. 243. I depart from Gramsci’s conception of politics as *hegemonia* or hegemony however, in any schema thinking with Rancière’s account of politics hegemony is an apparatus of the police, and thus not necessarily politics as such, as the politics of hegemony is premised upon the institution of an alternative regime, an alternative order of inequality, with a more or less clear inside/outside.

core object of this text will be the politics of non-domination and the struggle for a more radically democratic conception of political action.

In light of my reading of Rancière's two logics as in a relation of torsion and struggle as outlined briefly above, this thesis will thereby depart from many Rancièrian's in so far as it takes seriously the need to study police orders. With Woodford (2017, p. 12), this thesis argues that 'to strategise "politics" is also to strategise "police"', to think politically about those very 'conditions under which "politics" may be more likely to emerge is to also consider those under which it is less likely to do so'. On this basis, whilst I take Rancière's lessons in terms of thinking politically about non-domination, I also take seriously the need for a sustained analysis of power relations in the kinds of police orders subjects live under, and those police orders that are the products of political theoretical texts. Such an approach is consistent with my post-structuralist approach to rethinking non-domination with Pettit, and the potential spaces of democratic politics within the attendant theory of non-domination as citizenship within Pettit's imagined juridico-political account of neo-republican community.

### 1.7 The governmentalisation of the state

The theoretical analysis of power as it pertains to the problem of political community in contemporary political philosophy, in the continental tradition at least, reaches its most substantial and provocative account with the paradigm of bio-politics. In Foucault's lectures on *Security, Territory, Population* (Foucault, 2007) and *The Birth of Biopolitics* (Foucault, 2010) at the Collège de France in 1977-78 and 1978-79 respectively, as well as the final section of *The History of Sexuality, Volume 1* (1978), the concept of the bio-political emerges through a genealogical study of power and subjectivity in the 'West' since the classical age. Foucault charts, in these studies, the transformation of sovereign power, as 'the right to decide life and death', which he locates as derivative of the *patria potestas* of the father of Roman families, in the 'right to "dispose" of the life of his children and his slaves; just as he had given life to them, so he could take it away' (Foucault, 1978, p. 135; Agamben, 2000, p. 5; Mbembe, 2003).

Such a model of power formalised by classical theoreticians, was circumscribed except for cases in which the sovereign acted in defence of sovereign power. What Foucault takes from these analyses is an older practice of sovereign power that expresses itself over life through a decision to kill or not kill, that is an indirect power

over life and death (1978, p. 136), a means of deduction, ‘a subtraction mechanism’, ‘a right to appropriate’ not only life, but also wealth, goods, services, time and bodies (ibid.). However, with the advent of modernity these mechanisms of power have undergone a transformation from a logic of “deduction” as dominant, to deduction as but one form of power among others, ‘working to incite, reinforce, control, monitor, optimise, and organise the forces under it’ (ibid.). This power marks a tendency which paralleled the ‘right of death’, or as Foucault claims, ‘at least a tendency to align itself with the exigencies of a life-administering power and to define itself accordingly’. In sum, ‘this death that was based on the right of the sovereign is now manifested as simply the reverse of the right of the social body to ensure, maintain, or develop its life’ (Foucault, 1978, p. 136). We might say that the right to *take* life or *let* live was substituted by a power to give life, help it to grow, or to *disallow* life to the end of death. With the rapid development of various sites and techniques of discipline, barracks, schools, universities etc., Foucault traced the emergence of *policing practices* concerned with the ‘problems of birthrate, longevity, public health, housing, and migration’ (1978, p. 140). He asserts: ‘hence there was an explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations, marking the beginning of the era of “bio-power”’ (ibid.). At stake is what Foucault calls ‘the governmentalization of the state’ (2007, p. 109). For Foucault the idea of government as bio-politics, gives a greater urgency to political philosophy to conceive of some basis or foundations for sovereignty, as well as the practical to hone and perfect disciplines of power. What thus emerges according to Foucault in the late eighteenth century, is a triangle of power: ‘sovereignty, discipline, and governmental management, which has population as its main target and apparatuses of security [broadly conceived] as its essential mechanism’ (Foucault, 2007, pp. 107-108).

It is against this backdrop of bio-power and the transformation of sovereign power, that arguably, any contemporary political theory of non-domination and freedom must assert itself. For Miguel Vatter (2014a) only a republican politics coupled with an affirmative bio-politics can stand as an adequate defence against neo-liberal governmentality and the policing character of bio-politics. Foucault too, it seems, saw strategic use in returning to the failed grammar of republican politics (Vatter, 2014b). Vatter specifies what he means by a republican politics by presenting it as ‘the rule of law based on the power of the people that brings to an end the government of human

beings over each other’, which can resist the worst excesses of neoliberalism and its weaponisation of bio-politics to the end of the destruction of civil society (Vatter, 2014a, p. 5). Taking up Foucault’s stressing of the distinction between ‘the people’ and population, Vatter reads Foucault’s claim to the presence of an ‘innate right’ to be a member of the people, and to thus have civil and political rights, as a distinctively republican tendency within Foucault’s critique of neo-liberal bio-politics (Vatter, 2014b, pp. 181-184).

As Vatter correctly points out, the grammar of political life inherited from the bio-political conjuncture crystallises in the distinction between politics and government, where the latter, within the Foucauldian paradigm is equated with the practices of governance and their attendant governmentality that form the material substance of bio-politics (Vatter, 2014a, p. 1; Foucault, 1979). Whilst the facticity of bio-power is not the object of this thesis, it nonetheless forms the backdrop and reoccurring theme of many of the chapters that follow. My approach here is to rhetorically displace the concept of bio-politics which in essence constitutes not a form of politics, but a technology of police order, and utilise the theoretical resources of studies on ‘bio-power’ to extricate and examine the traces of power which are unconsciously constitutive elements of Pettit’s theory of government. Such a theory of government in Foucauldian terms constitutes a nascent political rationality and is concerned, as all police orders are, with the management of the subjects it projects forth.

If Pettit’s theory of freedom and government contains, as I argue, traces of the technologies and techniques of bio-power, it does so, not consciously, but rather because such *dispositifs* of power are naturalised elements of the liberal democratic imaginary (Mehta, 1990) in which we find ourselves in the present conjuncture, and thus social facts in Pettit’s engagement with the institutional forms of government he is familiar. What this points to, for me, is once again Pettit’s understanding, or lack thereof, of contingency, particularly as it pertains in its deepest sense to all forms of social objectivity. For Pettit, we might suggest, obdurate contingencies cease to be contingent elements within his account of power and the social.

## 1.8 The argument

Having now set the stage, the *mis-en-scène*, for the critical encounter *qua disagreement* with the Method of Pettit’s neo-republicanism to play out, the analysis of such a Method

commences more fully in chapter two, *An Archaeology of Freedom as Non-Domination*. In that chapter I do much of the heavy lifting, in terms of the emergence and development of the Method, concepts, and context of Pettit's neo-republicanism. At stake therein, is the uncovering of the ruling Archê of neo-republican politics, the ideal of freedom as non-domination. Sketching the beginning of the journey of non-domination, chapter two through its study of the conditions of emergence and possibility of non-domination opens up the conceptual space required for a deeper analysis of the questions of the subject, political community, and the hypothesis with which this first chapter commenced.

Chapter three, entitled *Figuring non-domination*, takes up the question of the subject of non-domination, along with the problem of power. In this chapter I examine in painstaking detail the way in which Pettit's deficient understanding of power, both over and under theorises the subject of his social ontology. Such an analysis brings me into contact with two figures located at the margins of Pettit's Method. Remaindered by freedom as non-domination, 'the child', and the figure that Pettit describes as 'some other categories of person', representing the immeasurable Other to non-domination, point to the problems of *rationality* and *speech* for ethical conceptions of community, and the introduction of bio-politics to the neo-republican frame. At stake more generally are the intersubjective dimensions of non-domination and the politics of *voice*.

Having gone some way to theorising Pettit's neo-republican latent understanding of the subject, in chapters four, five, and six I address the question of political community through the problem of populism. I do so, as the politics of populism not only stand as the one kind of politics Pettit goes to the greatest lengths to suppress and write out of his Method, but further, from a radical democratic perspective the question of 'populism' gets to core of many of the most integral debates and issues in democratic theory and political community. I argue that in order to approach any theory of politics the concept and practice of antagonism must be centre stage. Chapter four traces the 'antagonistic' dimension of neo-republican democracy, in the form of the practices of contestation that Pettit locates at the heart of neo-republican justice and political legitimacy, and in the service of freedom as non-domination. Such an analysis raises the question of 'tyranny of the majority' and further points to the ways in which Pettit's dialogic-cum-deliberative figuring of contestation works to place

limits upon the scope, character and location of emergence of political voice within neo-republican democracy.

Chapter five continues the analysis commenced in the previous chapter, focusing more directly on neo-republican democratic theory and the concept of ‘popular control’ which establishes the product of legislative process as non-dominating. Popular control, bringing together popular influence and direction, provides the basis of Pettit’s dual-aspect theory of democracy. Premised upon a logic of ‘the norm of norms’, this theory of democracy further raises substantial questions about the possibility of *dissensus* within such a political community. Popular control as such, provides a neo-republican alternative to strong conceptions of popular sovereignty, and further foreclose upon populist forms of political action.

Chapter six returns to the problem and possibility of populism with greater emphasis as it critically interrogates Pettit’s account of constituent power, ‘the people’ and neo-republicanism’s radical democratic deception. Following a comparative analysis between Pettit, Habermas, and Mouffe, this chapter takes up the work of Agamben, Rancière, and Laclau to demonstrate the depoliticising and dominating aspects of neo-republican political community. My argument in short is that, on Pettit’s account, politics presupposes the pre-constitutedness of ‘the people’ on whose terms democratic laws are made. That is, under conditions in which a miscount is not conceivable – conditions posterior to politics as understood in Rancièrian terms. Within such a neo-republican political imagination, the emergence of new demands, new identities, new bodies seeking inclusion within the political community – founded upon the principle of non-domination – are foreclosed upon, and ‘the people’ is rendered static as a sociological fact.

Chapter seven examines the *politics of non-domination* from an explicitly an-archic perspective, rounding off the preceding analysis and reflecting upon the possibilities of a critical political theory of non-domination. Examining the utopian dimensions of Pettit’s Method, this chapter argues against such utopianism, taking up a critical relation to Pettit’s project with an eye towards a performative radically democratic politics of non-domination which fully embraces the messiness of the world, and the possibilities of becoming something else through our collective struggle in this world.

## 1.9 A note on the Threshold

Within the interstices of each of the above charted chapters appear short Threshold chapters which mediate the tempo of the analysis that follows. They provide a space to step outside of the analysis of Pettit's Method, only to return with greater purpose. The choice of theorising these interstitial reflections relates in part to the conception of politics which animates this thesis.

The agents of politics on my an-archic understanding are those figures who reside within the margins and thresholds of 'the police' and its configuring of the sensible. A 'threshold' in Walter Benjamin's philosophical writings refers to a space of indeterminacy, a porous border region between objects and objectivities. As a space of transition, the threshold is a zone of both inside and outside. Less a topographical concept, the threshold is a space of indistinction and indifference (Benjamin, 1999, p. 836). A threshold is 'typically low', it can be stepped over, stumbled upon, or one can stop right on it (Thomä, 2019, p. 4). As an entrance, a point of entry, a threshold invites us to step from one world, one temporality, one modality of practice, into another. We may do so to seek refuge and relief, to become reinvigorated, reenergised, having found space to take stock, gain perspective and some critical distance from the other side. It is these very purposes that such intermediary moments of intervention, reflection, and critique provide within the logic of the argument that follows.

## Threshold

The Method of the political theorist is one of forging (in both senses of the word) a path. As established in the previous chapter our examination of the Method of Pettit pertains to the investigation of two central and organising questions: first, how are we to understand, and then re-conceptualise, the concept of *political community* within neo-republican discourse; and second, what is *the subject* of non-domination. A study in Method, as understood here, is equally a study in a priori discursive elements of a theory (in a non-Kantian sense), or otherwise put, a study of the very conditions of (im)possibility by which Pettit's neo-republican theory of freedom and democratic government can ultimately be articulated, received, and understood.<sup>1</sup> Stepping out of the text momentarily in this threshold moment, I want to reflect on what an archaeology of freedom as non-domination might look like.

Archaeology, in French *archéologie*, directly from Latin, and in ancient Greek, *arkhaiologia*, brings together two words: the Latin word *archae-*, from Greek *arkhaios*, tied to the root word *arkhē* or *archē*, meaning, as we saw in the chapter one, 'beginning', 'rule', and 'govern', (see Homer on Agamemnon: *arkhēin*, to walk at the head, implying others walk behind); and *-ology*, from ancient Greek *logia*, rooted in the concept of *legein*, meaning 'to speak' and derived as *logos*, meaning 'reason' or 'speech/discourse'. Such an archaeology entails the study of the *reason of the Archē*, or, the logic of the rule which governs the political community to put it in Arendtian terms.<sup>2</sup> 'Non-domination', I seek to argue, stands as the Archē of neo-republican political community, and thus the study of its role in the Method of the philosopher, is one of an exploration and uncovering of a historically and theoretically sedimented Archē. This Archē distributes both subjects and objects along the path of neo-republican political community. At stake then, is a critical approach to political philosophy, where

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<sup>1</sup> On my reading, a study of 'Method' constitutes a quasi-transcendental analysis of a given practice/discourse/aesthetic. With its distant roots in the transcendental turn in philosophy inaugurated by Immanuel Kant, such a quasi-transcendental approach departs from the idea of a cognitive and a-historical a priori. Method then, points to the historical and power ridden structuration of a field of meaning which precedes the possibility of factual immediacy. My reading here, though more capacious, is influenced by the work of Ernesto Laclau (1995), as well as Rodolphe Gasché (1986), though principally I draw from Jacques Rancière's (2009a) essay 'A few remarks on the method of Jacques Rancière'. I have also in mind the work of Michel Foucault, not least *The Archaeology of Knowledge* (2010b), and his remarks on the role of the author in an essay entitled: 'The Discourse on Language'.

<sup>2</sup> For an excellent and non-orthodox account of the concept of an *Archē* in Arendt's work see Patchen Markell (2006).



critique is derived from the radical contingency of any Archê, and materialises in the name: *an-archic*.

The concept of ‘archaeology’ as an approach or method to philosophical analysis has in recent years gained a wide circulation with a variety of interpretations and applications in the field of continental political philosophy. It is most often associated, however, with the work of two political philosophers of the post-war period in particular: Michel Foucault and Giorgio Agamben.

In the work of Foucault, the concept of ‘archaeology’ as the name of his practice in the works preceding *Discipline and Punish* (1977), needs to be understood in relation to his understanding of the category of ‘discourse’. In those early works, Foucault was primarily concerned with the historical study of ‘discourses’ or ‘ways of speaking’ or ‘enunciative modalities’ or positions that divide (as in ‘dividing practice’) subjects qualified to speak the ‘truth’ of such discourse from others who are the objects of said discourse (2010b, p. 193), such as ‘clinical discourse’ or ‘psychiatric discourse’. What Foucault was attempting to analytically approach were ‘the groups of statements that belong to a single system of formation,’ that is a system of power/knowledge (ibid., p. 107). These forms of knowledge however are not at a remove from their contexts of action, and as such, Foucault understands ‘discursive practices’ to be the name of that activity in which speaking is doing (ibid., p. 209). On this basis, ‘discursive practices’ operate in accordance with the ‘rules’ specific to the ‘discourses’ from which they emanate. ‘Archaeology’, thus, names the practice of philosophical analysis of discourses and their traces, aiming to show ‘how the prohibitions, exclusions, limitations, values, freedoms, and transgressions’ of a given practice in ‘all [of] its manifestations, verbal or otherwise, are linked to a particular discursive practice’ (ibid., p. 193). On this account found in the work of Foucault the ancient Greek concept of ‘Archê’ is interpreted as ‘the rule’ which governs a practice and its study takes the name ‘L’archéologie du savoir.’

By contrast, for Agamben, whose work is deeply influenced by his encounter with the writings of Foucault, the method of ‘archaeology’ takes up the concept of ‘Archê’ in its valence as ‘origin’ or source, and names the entire practice of his work. In *The Signature of All Things* (2009, p. 89) Agamben writes of how archaeology refers to ‘a practice which in any historical investigation has to do not with origins but with the moments of a phenomenon’s arising and must therefore engage anew the sources and

tradition'. Agamben understands his method, then, less as the uncovering of an original structure in history but the historico-philosophical analysis of the present and its possible transformation through the past. The object of his analyses has been the many 'apparatus's' of power that structure the present (the ban, the state of exception, the anthropological machine), and 'archaeology' has grasped not for their origins in history, but their emergence as a diachronically consistent presence in the politics and culture of 'the West'.

The relation between these three variations on the method of 'archaeology' is one of a 'family resemblance' (cf. Wittgenstein, 2009), as each places the emphasis on divergent interpretations of the concept of the 'Archê'.

The critical practice of philosophy in the broadest sense, is not, however, an idea of philosophy as an edifice to be constructed such that it distributes parts and principles, nor as a historical tradition theorising its own limits. Rather, it is a more accidental activity that has no justification for its own existence, nor a space proper to its practice. Such a view is shared with Rancière, for whom philosophy is a homonym, a signifier which is indeterminate, polyvalent, and thus a site of potential disagreement (Rancière, 1999). Philosophy as such, and specifically in its co-articulation with the discourse of politics, sits in the critical juncture between distinct and materially separable practices. Residing at the threshold of such 'discourses' (Laclau and Mouffe, 2001, p. 105) or practices, 'philosophy' is, as anglophone analytical philosophers might call it, an 'essentially contested concept', arising at the intersection of distinct and oft-competing 'language games' (Connolly, 1993; Gallie, 1956; Haugaard, 2010).

Disagreement, in Rancière's terms, entails a conflict, a conflict between one who says *philosophy*, and another who says *philosophy* too. In Wittgensteinian fashion, we might say, philosophy arises due to linguistic confusion (Wittgenstein, 2009, p. 22, §38), though the route out of the challenge of the homonym, in our terms, shall not be theoretical purification and clarification as within analytical philosophical discourse, but rather through the activity of *politics*. In this sense the critical practice of philosophy is deeply political, it 'considers that every homonymy arranges a space of thought and action, and that the problem is neither therefore to eliminate the prestige of homonymy, not to take names back to a radical indetermination, but to deploy the intervals which put the homonymy to work' (Rancière, 2010, p. 218). Critical political philosophy is an activity of de-classification, it is anarchic (an-Archê), egalitarian (in

the axiomatic manner outlined in chapter one), and seeks to undermine any attempt at policing domains and language. The end is not deconstruction for the sake of deconstruction, nor does it seek an act of decision in a terrain of undecidability (cf. Derrida, 2001; Laclau, 1990), but rather ‘to think the lines according to which boundaries and passages are constructed, according to which they are conceivable and modifiable’ (Rancière, 2010, p. 218). If a Method is nothing more than a path, this style of reasoning, is one of negating so-called theoretical aporias, (Latin *Aporia*, or *Aporos* in Ancient Greek, from the two words *a-* without; and *-poros*, passage: ‘without passage’), of their de-articulation, and the re-articulation of passages, of turns made along the path (See Norris, 1991, p. 49). Critical political philosophy, as a process of inquiry which is also a practice that takes particular forms – such as the textual form of this thesis – aims to take all ‘arguments, narratives, testimonies, investigations and metaphors [...] as the equal inventions of a common capacity in a common language’.<sup>3</sup> As Rancière argues, such a practice of ‘engaging in critique of [...] instituted divisions, then, paves the way for renewing our interrogations into what we are able to think and to do’ (Rancière, 2010, p. 218.)

It is only through such an analysis, I argue, can we start to approach the theoretico-political problems of *political community* and *the subject* as they relate to neo-republican democracy in earnest.

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<sup>3</sup> When Rancière speaks of ‘languages’ here, he does so at a level of analysis of a higher order than Pettit, where this homonym within Rancière’s discourse gets closer to the realm of that which is ‘shared’ in Pettit’s ‘shared assumptions’, so as to enable conversation, with some limits, but in a non-directional manner.

## §2 An Archaeology of Freedom as non-domination

### 2.1 Introduction

This chapter proceeds in its analysis of the archaeology of non-domination in two parts. Beginning with a critical exploration of Pettit’s methodology in a very literal and conventional sense, it maps out his account of the role of “political philosophy” or “political theory.” I use these two terms interchangeably throughout this thesis, as philosophy and theory both have their etymological roots in the concept of *theōriā* or vision in ancient Greek, and more particularly in Plato’s philosophy, in which such vision is otherworldly, singular, universal and a stable order of objects and ideas conceived of and apprehensible only in the mind’s eye (Cavarero, 2002, p. 506). As such, though I recognise the presence of arguments as to their practical differences, both political theory and political philosophy are susceptible to the same critique on my account, of subjecting the political to the logic of the philosophical. I understand here, the political with Arendt (2005, p. 93), Laclau (1990, p. 31) and Brown (2005, pp. 75-77), as characterised by plurality, unevenness, power, as well as being deeply historical and thus radically contingent.

The chapter subsequently turns to an archaeological analysis of the emergence of republican freedom in Pettit’s work, and later the emergence of non-domination as a distinct grammar of such freedom with the publication of *Republicanism* (1997a). Following an exegesis of the character of domination, and then freedom from domination, the chapter conducts an initial exegesis of Pettit’s schema, the relationship between the core concepts of ‘domination’ and ‘freedom’, as well as concepts such as, ‘arbitrariness’, ‘interests’, and ‘citizenship’.

## 2.2 Pettit's methodological foundations

In commencing this analysis, it is instructive to turn to Pettit's reflections upon his own methodological foundations, and the role of the political philosopher. Such a task is central, not only to highlight the challenges in reconstructing the neo-republican account of politics, but, what's more, to bring to our attention the very techniques by which he secures such an account from politics itself. This may at first seem like something of an excursus, however, it is significant in gaining a greater understanding of Pettit's Method. Pettit's explication of the same is situated within an attendant account of the conversational aspect of politics. Within the context of 'today's advanced democracies' – a horizon within which Pettit limits his analysis to – the normative ideas that are the stuff of political life, constitute larger structures, which Pettit calls 'languages', that act like currents 'that whirl and eddy around prominent policy-making issues' (1997a, p. 1). Such 'languages', of which republicanism is an example, are 'discourses' with certain shared assumptions, that are internally capacious, and simultaneously open and constraining, so as to enable conversation without giving any clear direction to that conversation (Pettit, 1997a, p. 2). Pettit is adamant that such languages are non-ideological insofar as they maintain enough scope for those operating within them to stage disagreement and debate 'on matters of detailed policy' (ibid.). The non-ideological character of the languages of political debate is, however, only the case to the extent that they exist within a naturalised horizon or ordering of power relations, where such contingent acts of power are rendered common-sensical and beyond contestation (cf. Foucault, 1994a, pp. 361-365).<sup>1</sup> The 'disagreement' Pettit writes of in relation to 'matters of detailed policy' does not take the strong form of disagreement we find in Rancière's work, but rather a dispute of a lower order which does not challenge the durability or coherence of the 'structure', 'language' or 'discourse' which facilitates its emergence as a speech act. Pettit's 'linguistic' understanding of a discourse here, is at once both a *means* and *medium*, by and through which agents can intersubjectively produce norms of democratic life, as well as debate matters (practical and theoretical) with an eye towards problem resolution with recourse to a shared grammar of reasons and concepts (cf. Habermas, 1984, 1996). As

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<sup>1</sup> One need not look much further than Mark Fisher's (2009) account in *Capitalist Realism* of the naturalisation of capitalism within contemporary political discourse, to the effect that one can more easily imagine the end of the world, than a minor alteration in the logic of capitalism, to see a clear example of such a ruse of power.

Pettit writes, invoking to some extent the work of Tim Scanlon (1998): ‘to discourse is to reason and, in particular, to reason together with others’ (Pettit, 2001, p. 67). What is central here, is the double characterisation Pettit offers of his own enterprise. Neo-republicanism is posited as a *language* or *medium* of political critique and legitimation, but equally, Pettit’s understanding of ‘language’, and its articulated equivalent ‘discourse’, plays a second and instrumental role, as the means through which political interests (in a generalised form) are produced and set to work.<sup>2</sup>

The world Pettit conjures as post-ideological, is equally one which is post-hegemonic or post-political (cf. Mouffe, 2005a, pp. 108-128; 2005b, p. 48-50). Such languages of political debate, Pettit suggests, nonetheless share certain idioms, not least that of freedom, yet ‘they are sufficiently distinct to be cast as rival systems for the political *criticism and legitimation of institutional arrangements*’ (1997a, p. 2, emphasis mine).

Within such a post-ideological, and arguably rather *finalistic* (Cooke, 2004, p. 414), political imaginary, Pettit proceeds to outline the role of the political philosopher and the task of such a normative approach to theorising. This takes the form, on the one hand, of the examination of such languages of discussion and legitimation, critiquing the assumptions of such languages of politics, and testing for their coherence; whilst on the other, the role of the political philosopher is to search for new terms to frame such debates, and ultimately to develop new languages of political discussion. As Pettit, rather non-rationally and somewhat a-historically, proposes:

It holds out the possibility of making the language in which you choose to discuss political issues truly your own. You can become aware of the presuppositions it carries, and mould them to your own mind, rather than being carried along in a medium of debate and thought that commits you in ways that systematically escape notice (1997a, pp. 2-3)

Speaking in terms of ‘excitement’, Pettit sees a practice of mastery at stake here, both in terms of the ‘medium’ of the language of politics, and over oneself and one’s thoughts too, such that the thoughts of others don’t come to control you (Pettit, 1997a, p. 3). Languages and discourses of politics as sketched above, we must assume, are

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<sup>2</sup> The significance of this understanding of republicanism as a language or ‘discourse’ framed in post-Habermasian terms will be seen to a greater extent in chapter 5 in relation to the neo-republican account of democracy as an instrument/procedure of non-domination and will-formation. Again, more on this later.

generated in part, or in some instances, by the hand of the political philosopher.<sup>3</sup> The political philosopher however, is not granted any privileged speaking rights in the *agora* of politics by Pettit, they are simply ‘part of a conversational cascade’; however, I cannot help but read here in his account of mastery over political discourse and the self, the somewhat Platonic assumption of a privileged access to the truth through the exercises of their logos, on the part of the political philosopher (cf. Foucault, 2011).

Such a search for truth in the abstractions of an analytical philosophical method however, are simultaneously supplemented and undermined by Pettit’s practice in which he co-articulates historical and philosophical arguments, where the latter are privileged, and a certain cynicism or tactical editing-out is at stake in the appeal to the former. The more pragmatic and modest role Pettit attributes to the political philosopher in the cut and thrust of political debate is shared by the critical practice of philosophy undertaken here, though differences, as noted earlier, still arise.

### 2.3 Tradition and republican freedom

Pettit’s project, as he puts it, is one of reminding his colleagues in political philosophy and beyond, ‘of a sort of grievance, and a sort of ideal, that has not been given enough attention in contemporary debates’, namely ‘the language of freedom as non-domination’, and which connects with ‘the long, republican tradition of thought’, to which he credits significant influence in shaping the ‘most important institutions and constitutions that we associate with democracy’ (1997a, p. 4). However the presence of this tradition within his work, is scattered, anecdotal, ‘breezy’ (Pettit, 1997a, p. 10) and an object of suspicion for many well versed in the history of political philosophy.<sup>4</sup> This is a criticism of which Pettit is more than aware, and to which he responds: ‘all that I strictly need to claim is that the representation of freedom [...] [at stake here], is found in many historical authors, that it is a distinctive and challenging conception of the ideal, and that it is worthy of consideration in contemporary political philosophy’ (1997a, p. 10); adding further that ‘if historians of ideas find it misleading, then they should regard the more substantive historical suggestions as simplifications that are

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<sup>3</sup> I raise this point here, not simply because it is abundantly clear from the text that such is the case, but further to note a tension and slippage in need of further examination/exploration in chapter 5 in the context of the neo-republican account of democratic proceduralism in relation to the generation of ‘relevant interests,’ or in more traditional Rousseauvean terms: ‘will-formation.’

<sup>4</sup> See for example: McCormick, 2011; Skinner, 1998, 2008a; and, de Dijn, 2018.

justified only by the colour that they give to my philosophical claims’ (1997a, p. 11). Pettit’s rationale for this co-articulation of the historical and philosophical, is driven, he confesses, by an attempt to ‘be more widely acceptable’, through a trading on the ‘credentials’ of those historical spectres, which were once political philosophers, and now haunt his rendering of the ‘tradition’. Otherwise put, Pettit draws upon the cultural capital of ‘writers admired on all sides of politics’, asserting, what’s more, ‘the existence of a historical pedigree for an approach taken in political philosophy is bound to give the approach more intellectual plausibility’ (Pettit, 2012, p. 19).

Retreating into a defence that proceeds along the lines that his arguments contained therein should be judged by philosophical and not historical criteria (2012, p. 20), Pettit is the articulating agent of a set of rhetorical ploys which conceal a subtle ruse of power that is worth noting. Through a cynical distancing from the historical character of the “tradition” to which he appeals for normative ballast, Pettit places constraints upon the conditions under which the experiential phenomenon of politics enters into the account reconstructed in the later parts of this chapter. Negating the phenomenological, and reducing the historical character of the slogans, tropes, images and texts that he cites, to nothing more than ‘simplifications’<sup>5</sup> that give ‘colour’ to his philosophical claims (1997a, p.11), Pettit structures out the contexts, hegemonic struggles, and the violence of such simplifications from the Whiggish world he conjures and projects forth throughout his work.

Appealing to the abductive methodological device developed by Rawls (1971, pp. 48-53) known as ‘reflective equilibrium’, Pettit retroductively mediates between philosophical hypotheses, and our shared ‘empirical’ assumptions, or idioms (many of which are to be found in the guise of the republican tradition he retrospectively articulates throughout his work) about ideals such as freedom, which carry certain ‘implications’ for specific cases (Pettit, 2012, p. 20). The driving force behind such an apparatus, is the logic of ‘coherence’ and ‘reconciliation’ between the ‘rival demands’ of idiom or perceived doxa and those demands of a more conceptual philosophical register (Pettit, 2012, p. 20 n. 21). This, combined with the ‘parapolitical’ manoeuvre

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<sup>5</sup> When Pettit draws upon the term ‘simplification’ here, he does so from the repertoire of theoretical bracketing techniques deployed in the pages of Rawls’ *A Theory of Justice* (1971). See only how Rawls mobilises the idea of a simplification as part of his own Method in his discussion of moral theory, especially pp. 52–53. Through the use of ‘simplifications’ Rawls dismisses the challenges of the inherent complexity of the social in relation to moral judgment, for if one was to reside in complexity for too long, such moral theoretical exercises would improve faulty, and the subject of ‘grave defects’.



*par excellence* (Rancière, 1999, pp. 73-75), of curtailing politics to its ‘conversational’ aspect, and specifically a conversation about ‘policy matters’ and institutional design, Pettit commences a process of theorising politics, in which the phenomenon of politics is written over by philosophical discussions of what ‘it is reasonable to expect of a decent state and a decent civil society’, all the while trapped within a circular relation of regime legitimation and policy critique (Pettit, 1997a, p. 4).<sup>6</sup> By parapolitics, I refer here to what Rancière describes as one of three potential modes through which philosophy places limits upon the concept of politics, the others being *archipolitics* and *metapolitics*.<sup>7</sup> In this, the second modality of his analysis, the parapolitical philosopher, like Aristotle, and de Tocqueville after him, to name but two, gives ‘coherence to the republican body,’ through the institutionalisation of politics, that is to say the reduction of the political to the institutional.<sup>8</sup> Such an operation takes as its task the concealing

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<sup>6</sup> The language of ‘decency’ here is interesting in relation to the propriety of neo-republican politics to which I shall return in the final three chapters of this thesis.

<sup>7</sup> In *Disagreement* Rancière elaborates three modes of foreclosure or sublimation by which philosophy captures and contains politics. Whilst the second mode, parapolitics, is expounded below in relation to Pettit’s political theory, the first and third modes, archipolitics and metapolitics respectively are worthy of explanation here. Archipolitics, finds its roots in Plato’s politics, and through the positing of a just and ordered polis such that the division of demos does not appear. Plato’s political philosophy conceives of a polis in which there is order, where disputes do not arise: ‘archipolitics, as formulated by Plato, thus amounts to full achievement of *phusis* as *nomos* – which presupposes eliminating certain elements of the polemical apparatus of politics [...] the result is the total elimination of politics as a specific activity’ (Rancière, 1999, p. 70). Metapolitics in distinction, arises from the assertion of a “truth” of politics, not as a divinely given order, but a claim to the falseness of politics. ‘Metapolitics is the discourse on the falseness of politics that splits every political manifestation of dispute, in order to prove its ignorance of its own truth by marking, every time, the gap between names and things, the gap between enunciation of some logos of the people, of man or of the citizenry and the account that is made of this, the gap that reveals a fundamental injustice, itself identical with a constitutive lie’ (ibid., p. 82). As Woodford (2017, p. 63) brilliantly explains: ‘for metapolitics, hidden behind any social order is the true struggle of politics. As a result, the metapolitical task of political philosophy is to reveal the social as false and unveil the reality behind. This either leads to a nihilistic reading whereby philosophers will reveal to us that since society is simply struggle there is no point acting, or it leads back to archipolitics through which philosophy aims to construct an ideal society, free of dissensus, in which all are represented fairly through a liberal system of rights and freedoms.’

<sup>8</sup> Such a critique is entirely consistent with the stated definition of the task of the political philosopher in Pettit’s first major work on neo-republican freedom, *The Common Mind*. In that text Pettit leans on John Plemenatz’s (1960, p. 37) understanding of political theory, not as a descriptive discipline, but one engaged in ‘systematic thinking about the purposes of government’. Pettit, referring to Rawls (1978), writes: ‘Political theory is a normative discipline, designed to let us evaluate rather than explain; [...] We are to identify the purposes of government – more strictly, the proper purposes of government – so that we can decide on which arrangements it is best for a government to foster in a society: which basic constitution it is best to establish and which procedures or outcomes it is best to prescribe in the day-to-day operation of the society’ (1993a, p. 284). This concern with proper procedure and prescription, places Pettit squarely in the Aristotelian tradition of political philosophy, and that strain of thinking about politics, in which politics proper is sublimated in the name of *good government*, and the management of the polis.

of the division of the people, the very potentiality of a democratic politics (Rancière, 1999, p. 75).

This technique of sublimation, will come into sharper focus and also become more salient as my analysis of Pettit's political philosophy unfolds henceforth. What appears pertinent to my argument here, I argue, however, is the way in which Pettit's methodological starting point, is already structuring out precisely the very questions which would be able to penetrate to the phenomenological reality of domination and politics themselves. What's more, the figure of the political philosopher as conceived by Pettit, and outlined above, is I argue, strikingly (*a*)political in character. At a remove from the affective and experiential phenomenon of politics, Pettit's political philosopher operates (as the below analysis will demonstrate quite clearly), in an overtly rationalistic and non-affectable manner, in which the *decision* concerning the identification between republicanism and liberalism, is rendered more banal than the choice between still or sparkling water.<sup>9</sup> The distance here between the presumed mode of subjectivity of Pettit's philosopher, and the upright, self-interested, rational, free and moral subject which sits behind Rawls' 'veil of ignorance', is but an inch, and their relation is asymptotic. Simultaneously political and apolitical, in so far as there is a coincidence of decision (*qua* sovereign articulation), and a fundamental retreat from the realm of plurality and struggle.

#### 2.4 The ontological claims of neo-republicanism

In the preface to Pettit's *Republicanism* (1997a) he reminds us of the origins of his work on republican freedom, namely in his previous, though understudied text *The Common Mind* (1993a), which was largely a work of social ontology. In that text, Pettit hones his signature mode of explication, which I call *oppositional elucidation*, as he stages a set of debates between a number of idealisations, between individualism and collectivism, atomism and holism, contract-centred and value-centred and institution-centred thought etc. In so doing he reduces a number of positions in analytical philosophy to

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<sup>9</sup> This decision between liberalism and republicanism, as Foucault demonstrates of Marx's critique of political economy and its relation to the liberal political economists, may stir up a 'few waves and caused a few surface ripples', 'but they are no more than storms in a children's paddling pool' (Foucault, 1994, p. 285). At any deeper level than the surface of politics, in its everyday practice, there is no real discontinuity.

their most base elements, for the purposes of conceptual mastery, in a field rather devoid of life and the activity of politics itself.

In the book *Republicanism*, Pettit summarises the argument of that earlier text in terms of two claims about social philosophy. Firstly, that such a philosophy must adhere to an anti-collectivism, which assuming a methodological individualism, nonetheless rejects the idea of individuals as the ‘playthings of aggregate social forces’, arguing in short that individuals ‘are not numbers in a game of historical chance, not pawns in a march to historical destiny’ (Pettit, 1997a, p. vii). Secondly, whilst upholding a methodological individualism, he argues in favour of a *minimal* holism or anti-atomism, suggesting in short, that ‘the notion of the solitary individual is essentially bogus’ (1997a, p. vii). Here, Pettit equates atomism with an ‘extreme position, according to which it is possible for a human being to develop all the capacities characteristic of our kind in total isolation from her fellows, if she indeed has any fellows’ (1993a, pp. 111-112). I take Pettit’s point here to be a cognitive one, as he asserts ‘people depend on one another, and in more than a causal way, for the very activity to think; they are essentially social creatures’ (1997a, p. vii). At stake for Pettit, on my reading, is the projection of an ontological dependency, though not necessarily one carrying any attendant political or ethical claim to a normative dependency as such. Understanding a clear division of labour between social and political philosophy, Pettit nonetheless mobilises these ontological claims in the final chapter of *The Common Mind* (TCM) towards the task of the latter mode of theorising. To such an end, Pettit’s conclusion, typical of his device of *oppositional elucidation*, is that such philosophical conclusions ought to motivate us towards a republican position as opposed to a liberal one (1997a, p. vii). The precise manner in which this argument is cashed out in *TCM*, takes the following form.

Identifying strongly with the prevailing ‘Western’ culture and modes of political theorising,<sup>10</sup> Pettit equates what he calls “Western” values, as though the meaning of ‘Western’ (not to mention an accompanying collection of ‘values’) can and does exist, with a more or less uncritical relationship to a liberal conception of politics: ‘if we start out with a liberal view of politics – the sort of view that is dominant in contemporary Western culture – then the espousal of holistic individualism facilitates a move towards

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<sup>10</sup> I take this explicit identification to be a not-so-subtle refusal of what he calls “post-modern” criticism. See the preface to *The Common Mind* (1993) for his hyper-defensive critique.

a perspective that I describe as republican; this involves a radicalisation of liberalism rather than an out-right rejection' (1993a, p. 285). On this account, 'most people, certainly most people in the West, have something of a liberal in them', and this base line liberalism, is in fact a commitment to 'the value of negative liberty' (Pettit, 1993a, pp. 308-309). Pettit's wager in this early work is that through an encounter with the social holism of the republican view of liberty, most liberals will concede according to the force of the better argument, in this case the holistic individualist critique of atomism, and thus abandon the latter view, and move towards a republican account of liberty and government.

Pettit's wager, however, is grounded in what he describes as a 'concealed indeterminacy' in the received account of negative liberty, to which we 'moderns' supposedly adhere. The discourse of 'the liberty of the moderns' as opposed to that of the 'ancients' is gifted to the tradition of political philosophy by Benjamin Constant (1988), and maps, more or less accurately, on to the distinction between negative and positive liberty in Isaiah Berlin's account. Pettit (1997a, p. 18) writes:

Constant's modern liberty is Berlin's negative liberty, and his ancient liberty – the liberty of belonging to a democratically self-governing community – is the most prominent variety of Berlin's positive conception. Modern liberty is being left to the rule of your own private will, ancient liberty is sharing in the rule of a public, democratically determined will. The modern ideal is characteristically liberal the ancient characteristically populist.<sup>11</sup>

This concealed indeterminacy in negative liberty, we are told, has two potential determinations: one liberal, the other republican, yet both 'traditions offer different conceptions of one and the same concept of negative liberty' (Pettit 1993a, p. 309). This latter claim only makes sense however, if one is to understand negative liberty at its most fundamental, not simply in the terms outlined by Isaiah Berlin (2002 [1958]), but rather in light of those proffered by Gerard MacCallum in his essay 'Negative and

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<sup>11</sup> By populist here, Pettit is invoking the work of William H. Riker (1982) *Liberalism against Populism*, to argue that majority rule based upon a collective-will is a "populist" understanding of democracy which ought to be countered by a more liberal interpretation of the latter ideal. Populism and Pettit's critique of the same shall serve as an entry point for a critical encounter with non-domination on the terrain of democratic theory in the second part of this thesis. For now, my comment was simply to offer some indication of the usage of populism in relation to the liberty of the ancients as they are equivalently articulated here by Pettit. Gerry Mackie, in his significant contribution to the political science of democracy *Democracy Defended* (2003, p. 418) argues that Riker's name 'populism' refers quite simply to what we might otherwise call 'democracy.' More on this in chapter four.

Positive Freedom' (1967) some near decade later. Before turning to MacCallum, let us first reconstruct Berlin's argument in the essay 'Two Concepts of Liberty'.

## 2.5 Negative liberty, a homonym

For Berlin, there are but two central senses in which we speak of political freedom or liberty, one 'negative,' the other 'positive'. By negative liberty, Berlin refers to those accounts of liberty which seek to address the question: 'what is the area within which the subject – a person or 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?' (Berlin, 2002, p. 169). Similarly, positive notions of freedom can be said to be responses to the query 'what, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?' (ibid.). Providing greater exegesis of each of these ways of thinking about liberty, Berlin turns first to the 'negative,' in which such an appellation is not appraisive, but points to the absence or negativity at the heart of such accounts of liberty, namely, the absence of interference or coercion (ibid.). On this account, 'I am normally said to be free to the degree to which no man or body of men interferes with my activity' (ibid.). Recalling the initial question to which negative theories of liberty are a response, political liberty is precisely the 'area in which a man can act unobstructed by others' (ibid.), that is to say, liberty is that realm in which one is free from coercion. Coercion requires the 'deliberate interference of other human beings within the area in which I could otherwise act', such that a 'mere incapacity' to attain a desired goal does not entail a lack of political freedom. A vaguely spatial understanding of freedom, liberty as such entails an absence of interference or coercion, the presence of a capacity, and further, it is a scalar concept which measures the width of freedom in relation to the scope of the area of non-interference: 'the wider the area of non-interference the wider my freedom' (ibid., p. 170).

Berlin historicises negative liberty, placing it in the work of 'classical English political philosophers', noting how, for such writers, liberty understood in this way would always be conditioned, curtailed in the interest of other values such as justice, happiness, equality, and security etc. Negative liberty, shall be limited by law, but only insofar as such was necessary to create a desirable form of association on the one hand, and to the extent that there continued 'to exist a certain minimum area of personal freedom which must on no account be violated' (Berlin, 2002, p. 171). At stake then,

is the protection of a private sphere, sufficiently wide in scope, so as to allow the individual to develop 'his natural faculties which alone makes it possible to pursue, and even to conceive, the various ends which men hold good or right or sacred' (ibid). The pursuit of liberty then, is the struggle over the drawing of the frontier between that which is public (the realm of coercion and interference) and that which is private (the space of liberty). Liberty in this negative sense, cares little about the form of government in which one finds oneself, so long as there is an absence of interference felt. As Berlin puts it: 'freedom in this sense is not, at any rate logically, connected with democracy or self-government' (2002, p. 177). Whilst such a form of government may help to protect civil liberties and freedom's cause, there is nevertheless no necessary causal relationship between democracy and freedom. For Berlin, the question of 'who governs me?' is a distinct matter to that of 'how far does government interfere with me?': such is the gap between positive and negative liberty, respectively (ibid.). In condensed terms, if freedom in its negative sense is freedom-from, in positive terms, freedom entails a freedom-to. This however, is something of a false start for Berlin in isolating a positive account of liberty. Essential to the idea of a freedom-to is a structural indeterminacy as to what precisely the '-to' (of freedom-to) refers. Ultimately Berlin arrives at a position by which positive liberty is equated with, *freedom to do X, where X is human nature and is normative by necessity*. As such, if we are left with a positive liberty to be the realisation of one's essential self, then we can immediately see that there will be as many differing and competing accounts of positive freedom as there are accounts of the moral and metaphysical character of human nature. This 'self-realisation' aspect of positive liberty, as we shall see, is somewhat lost on Pettit.

## 2.6 Non-interference: liberal and republican

In this earlier work Pettit has not yet taken up the slogan of non-domination, and still presents republican liberty in terms of non-interference. The actual substance of the ideal of non-interference is presented here as still being up for debate. It too, is sufficiently indeterminate. Turning back to MacCallum's (1967) now almost forgotten essay on negative liberty, Pettit works through this indeterminacy by retracing the steps of the former's triadic conceptualisation of all "modern" concepts of liberty. For MacCallum (1967) negative liberty is the only coherent sense in which one can think of liberty, and Pettit likewise after him (1993) takes negative liberty to have by nature

a triadic structure, which entails a freedom *of, from* and, *to*, that is the ‘freedom *of* individual persons, *from* the interference of others, *to* perform independent activities: to exercise the traditional liberties’. The question of interference, as parsed in MacCallum’s terms, Pettit suggests, can be cashed out further in two distinct determinations, stressing the ambiguity in the term ‘negative’. In its liberal rendering, such a freedom *from* interference is simply absence of interference. On a more republican reading however, that *from* is more capacious and requires that one is rendered ‘secure from interference’; ‘the emphasis’ as Pettit puts it, ‘is not on escaping damage but rather on not being fragile’ (1993a, p. 310). Such ‘rectitudinal’ tones (Cavarero, 2016), however, do his argument little service, but reveal the character of the subject his theory presupposes (more on this later).

The argument of this last chapter of *TCM* is in short, that if one is a ‘radical political theorist’<sup>12</sup> who ‘embraces the value of negative liberty as a criterion of political assessment’, and further holds true to the doctrine of atomism, reason requires that one will be ‘bound to go for the liberal rather than the republican conception of negative liberty’ (Pettit, 1993a, p. 316). Republican freedom then is an alternative account of negative liberty to the prevailing liberal one, associated with Berlin (2002), in so far as the latter entails a commitment to the atomist conception of the person, and thus an alternative framing of the potential determinations of non-interference. This however, as will be seen below, is based on a misconstrual of Berlin’s account, both in terms of its presentation of negative, as well as positive freedom.<sup>13</sup> Holding

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<sup>12</sup> By ‘radical’, here I take Pettit to place the atomist political theorist beyond the pale of what the former takes to be the sensible, arguing all the more for the logic and doxic character of his republican take on negative liberty (read here: the “virtue” of neo-republicanism). Whilst I broadly concur with Pettit that the ontological projection of an atomist account of the subject is one which is ideological in character in the strict sense in which Ernesto Laclau and Chantal Mouffe (2001 [1985]) understand ideology – in terms of non-contingent closure; I nonetheless seek to point out the ways in which Pettit rhetorically polices doxa, or the regime of consensus (cf. Rancière, 2010), and does so through a vague language of “radicalism”, placing quite clear limits upon that which is conceived to be do-able and say-able in the discursive field of political theorising.

<sup>13</sup> For an good account of Berlin’s actual argument see Quentin Skinner’s 2002 invited *Isaiah Berlin* lecture (Skinner, 2002). Pettit’s misconstrual of positive liberty, is based in his association of the same with questions of ‘who governs’, as opposed to Berlin’s emphasis on discourses of liberty founded in theories of ‘self-realisation’. On this point, Skinner (2002) is excellent, see esp. pp. 238 – 240. The error in terms of negative liberty, is to assume in the first instance that Berlin was an atomist; however, from the contents of the ‘Two Concepts of Liberty’ essay I see no basis for this assumption; in the second instance, Berlin’s account of negativity liberty is less libertarian than Pettit presents, and in fact for Berlin, a value pluralist (unlike the monist Pettit), liberalism does not entail a prioritisation of liberty over other values, as Pettit implies in *TCM*. This mis-reading of Berlin in terms of negative liberty, is not carried over in *Republicanism*, though the misunderstanding of positive liberty is.

strong to the “truth” of his holistic individualism however, Pettit argues in summation ‘that once the republican conception of liberty comes into view, the assumption of atomism is the main stumbling block that is likely to stop the liberal from approving of that conception’ (1993a, p. 316). The atomist view construes negative liberty in ‘non-social’ terms, in which ‘its finest flowering, [...] is in the freedom of the heath’, and the freedom of the isolated and solitary individual; in contrast, republican liberty is immanently social, and amounts to what Pettit calls ‘the freedom of the city’, only making sense in the presence of others within society (1993a, p. 316). Underpinning Pettit’s rhetoric here, is a deeply held, yet unstated view that the atomist position is a radically ideological one, which, I concur, is not sociologically coherent. Pettit’s claim is that, most (left-of-centre) liberals, once they follow his reasoning, will see that the position they hold is in fact a republican one. What is telling, at even this early stage in Pettit’s work, is the way in which he wrestles republican discourse away from its association with positive accounts of liberty, and the ideal of collective self-determination (cf. Pettit, 1993a, p. 311). At stake here is something decidedly more liberal – to this point I shall return in later chapters.

## 2.7 Non-domination: a third concept

Pettit’s signature rhetorical device of *oppositional elucidation* does not surrender the dialectic power of the debates between negative and positive liberty, as he presents his first full account of freedom as non-domination in *Republicanism*. Arguing not simply for the normative priority of negative over positive freedom, Pettit restages the interval established by the homonymic quality of “negative liberty”, seeking to disarticulate the received interpretation of the same. In its place, Pettit has sought to proffer a philosophical rendering of a ‘third concept of liberty’, which had previously been uncovered from the archives of political philosophy by the historian of the Cambridge School, Quentin Skinner. This ‘third concept’, the republican theory of freedom as non-domination, Pettit asserts, is anterior to liberalism, as well as the very terms of that ill-serving debate inaugurated by Berlin (Pettit, 1997a, pp. 17-19). For Skinner, such a presentation of non-domination, or non-dependency as he has preferred to describe it (1998, p. 83), as distinctively republican, is nothing short of ‘unhistorical’ (Skinner, 2008a, p. ix). Whilst certainly a view of freedom held by all who identified politically with republicanism and the critique of monarchic power, it is also an understanding,



Skinner maintains, ‘espoused by a number of political writers – for example, John Locke – who would have been shocked to hear themselves described as republican in their political allegiances’<sup>14</sup> (2008a, p. ix, n. 5; see also Skinner, 2008b. p. 84). Skinner, rather, labels such a way of thinking about freedom as ‘neo-Roman’, tracing it back to classical antiquity and the Roman Republic of Cicero’s *De Officiis* and Livy’s history of the same Republic, only to be later enshrined in the *Digest of Justinian* (the codex of Roman Law). Re-emerging after the fall of the Roman republic in the political discourse of the city-republics of Renaissance Italy, the political theory of liberty as non-domination is found at its most comprehensive and powerful in the *Discourses on the first Decade of Titus Livy* of Niccolò Machiavelli (see: Skinner, 1978, 1983, 1990).<sup>15</sup> It was Skinner who first raised to our renewed attention this ‘third’, or ‘neo-Roman’ way of conceiving freedom in the context of Machiavelli’s writings on the same, not only as a supplementary concept, but a superior one in two contexts. First, in that of the two options presented by Berlin (Skinner, 1984a, 1984b), and second, in terms of a challenging alternative to the concepts of liberty and citizenship at stake in Rawls’ (1971) *Theory of Justice* (see Skinner, 1983, 1993). Departing from Pocock’s more Arendtian (and thus positive vision of freedom, to use Pettit’s terms) rendering of republican freedom in *The Machiavellian Moment* (Pocock, 1975), Skinner, both with and against Pocock, traces the influence of this Machiavellian idea of freedom through the writings of James Harrington (1977), and as central to the debates of the English civil war, the American war of independence, and the Commonwealth-men tradition in English political discourse and theory (Skinner, 1998). The neo-Roman view of freedom is also to be located in the founding texts of English Common law, namely the *Magna Carta* and Bracton’s *De legibus et consuetudinibus Angliae* (see Skinner, 2008a, p. xi).

Whilst for Pettit, Berlin’s essay on liberty was ill-serving for political theory due to its effect of concealing ‘from view the philosophical validity and historical reality’ of this third way of thinking about freedom (Pettit, 1997a, p. 19, 21), Skinner however, has argued otherwise. Whilst in agreement with Pettit, that the neo-Roman/neo-republican view of freedom is negative in character, he departs from the view that it is

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<sup>14</sup> Algernon Sidney could equally be included in the non-identifying category.

<sup>15</sup> For a powerful and well-argued critique of Skinner’s (and by default in this case Pettit’s) rendering of Machiavelli’s politics see John McCormick (2011, esp. pp. 8-11).

also accommodating of certain elements of what Pettit takes to be positive liberty, more specifically, ‘the institutional requirements of freedom’ (1997a, p. 19). Skinner, has suggested that Pettit misunderstands Berlin’s ‘positive liberty’, construing it to entail a demand for ‘autonomy’, as opposed to Berlin’s actual framing of the same in terms of ‘self-realisation’, or ‘self-perfection’ (Skinner, 2002, p. 255). Arguing for a wholly negative understanding of neo-Roman or republican liberty, Skinner nonetheless points out, that Berlin did in fact entertain such a third concept, if only in the abstract, in terms of the ‘search for status’ and recognition (Berlin, 2002, p. 200-204), but only to then dismiss such a theory, insofar as he understood it to be incapable of being given a coherent presentation, not least in absence of active coercion attributable to a single agent (see Skinner, 2002, p. 256). Such a difference between Pettit and Skinner is largely down to a methodological tension between the discourse of the genealogical historian and the discourse of the normative political philosopher. Whilst Skinner, the genealogist, approaches past uses of concepts in order to demonstrate their contingency, and to show how things could always have been otherwise; Pettit, the political philosopher, engages with the history of philosophy in order to gain new concepts, to trade on the cultural capital of such historical uses, and to, ultimately, hegemonise ‘floating signifiers’<sup>16</sup> such as ‘freedom’ for political purposes (Skinner, 1998, pp. 112-113; Pettit, 1997a, p. 3). At stake is the difference between ‘self-awareness’ geared towards transformation and, ‘self-justification’, whose end is conceptual mastery (Rorty, 1984, pp. 51-55). Skinner, unburdened by the desire to present an institutional model of government organised around the ideal of non-domination, need not concern himself with a discussion of the more ‘positive’ elements of liberty, as Pettit does. For Skinner, it is sufficient to point to both the role of law, and to stress the vital role of political participation in maintaining liberty; for Pettit, such participation is less important, as we shall see in later chapters, and thus, the positive, or what Constant (1988) calls ‘the liberty of the ancients’, becomes necessary to sublimate, to contain (more on this later).

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<sup>16</sup> In Laclau and Mouffe’s (2001 [1985]) *Hegemony and Socialist Strategy*, there is a distinction made between ‘elements’ and ‘moments’ within a discourse, each referring to differing statuses of the signifier in its articulatory relation to a discourse. Whilst ‘moments’ within a discourse refer to signifiers such as ‘freedom’ or ‘justice’ which have been given a fixed meaning on a contingent and contestable basis through the practice of articulation. ‘Elements’ refer to those signifiers which have not yet been incorporated or given a fixed or ‘hegemonic’ meaning following a crisis and dislocation. According to this logic, such signifier’s are ‘floating’ (Laclau and Mouffe, 2001 [1985], p. 105).

Skinner and Pettit are united however, in stressing the novelty of the ideal of freedom as non-domination in being capable of detecting a form of power inimical to liberty which remains undetected by purely non-interference based accounts of the same: the arbitrary capacity to interfere. What's more, both Pettit and Skinner, would share the view that the social view of republican, or neo-Roman freedom they promote, stands as a decidedly more compelling view of freedom founded in civil and political rights, i.e. positive law, as opposed to some account of natural rights founded in natural law.<sup>17</sup> This natural rights based account of freedom is the (post-) Hobbesian or Benthamite view which ultimately displaced or, even, re-articulated republican liberty in the nineteenth century, and which serves as the alternative mode of thinking freedom, in Pettit's operation of reciprocal, if not, *oppositional elucidation*: the liberal ideal of freedom as non-interference.<sup>18</sup>

## 2.8 Domination defined

As we saw in our previous discussion of republican freedom's first appearance by the pen of Pettit in *TCM*, such a concept of freedom was framed in terms of being rendered 'secure from interference'. The conceptual shift from playing on the indeterminacy of 'non-interference', to the deployment of the grammar of 'non-domination', expands the theoretical-analytical, as well as the political scope of Pettit's work on republican freedom. Freedom as non-domination is a status concept, and an experience of security one acquires through the membership of a political community, such that they 'live in the presence of other people and [...], by virtue of social design, none of those others dominate them' (Pettit, 1997a, p. 67). As such, the free person is secure from interference, but only that of a certain kind, for to live with others under the law, one will always experience interference. It is in the distinction between interference and domination that the strength of Pettit's account can be found, and serves as the basis for a rather compelling normative ideal. For what remains of this chapter, I shall seek to expand upon the concept of non-domination as the freedom from a certain form of interference, before concluding on a critical note apropos the

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<sup>17</sup> For a compelling account of the politics of natural and positive rights in relation to contemporary post-Rawlsian and post-Habermasian political and legal theory, see Ingram (1994).

<sup>18</sup> For a comprehensive and instructive account of the genealogy of negative liberty as non-interference see Skinner's work on Hobbes and Republican Liberty (2008a).

historical and sociological experience of republican freedom and the tradition of politics from which it emerges.

In our everyday doxa, to experience domination<sup>19</sup> is the worst political evil, short of fully fledged totalitarianism, and those crimes of an ‘ontological’ variety, exemplified by the phenomenon of the lager, which Cavarero (2011) so eloquently describes as acts of ‘horrorism’. To speak of freedom then, in terms of the absence of, and security from, domination, is to speak of a political end, that is not only normatively desirable, but also, we might say, rather urgent. Of course, in slogan form, *freedom as non-domination*, nonetheless stands as abundantly indeterminate. Needless to say, in order to grasp what is meant by freedom in this rendering, it is first necessary to understand what precisely is meant by *domination* in this instance. At its most fundamental, this multi-layered conception of domination entails a subject experiencing interference on, what Pettit terms, an ‘arbitrary’ basis. That is to say, domination is a relational dynamic, in which ‘the dominating party can interfere on an arbitrary basis with the choices of the dominated: can interfere, in particular, on the basis of an interest or an opinion that need not be shared by the person affected’, and can do so with impunity (Pettit, 1997a, p. 22). As such, domination stands as a distinct and more profound evil relative to interference, in which one can experience interference without necessarily being dominated. More specifically, to be dominated, is to have a master, a *dominus*, and central to the republican and neo-republican discourses of domination is the figural relationship between a master and a slave, which – as will be discussed in more detail later – exceeds its metaphoric use in more ways than one.

The paradigmatic case of domination, for republicans and neo-republicans alike, is the status of being a slave, as opposed to being free. Figuring both sides of the relation in terms of a legally instituted status, what is revealed in this relation of arbitrary power, is not simply the act of interference, but the capacity to interfere, as a threat to liberty. Such a relation is thematised throughout the republican tradition Pettit retrospectively conjures, and can be seen for example when Algernon Sidney, writing in the 1680’s, and projecting a possessive individualist (Macpherson, 1962, p. 3) claim, argues: ‘liberty solely consists in an independency upon the will of another, and by the name

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<sup>19</sup> For a compelling etymological account of the concept of ‘domination’ see Gulshan Khan, 2019, p. 395 and Frank Lovett, 2010, Appendix I..

of slave we understand a man, who can neither dispose of his person or goods, but enjoys all at the will of his master' (Sidney, 1990, p. 17). This opposition between republican liberty and slavery is also there to be read in volume two of *Cato's Letters*, where, according to Trenchard and Gordon:

Liberty is, to live upon one's own Terms; Slavery is, to live at the mere Mercy of another; and a Life of Slavery is, to those who can bear it, a continual State of Uncertainty and Wretchedness, often an Apprehension of Violence, often the lingering Dread of a violent Death. (1723, p. 77)

At stake in the opposition between freedom and slavery, is the dependency upon, and vulnerability to, the arbitrary will of another, a *dominus*, a master. Its valence, at a metaphoric level, can be felt if one thinks only of the power dynamic of an absentee master in relation to their slave. One can immediately see how domination, in fact, involves something more than interference on an arbitrary basis; it persists as un-freedom in the *absence* of interference, as it is the subjection to the will of a master (public or private) that renders the agent un-free, even if the master does not exercise their rights of interference. Domination need not require interference, and interference is not always dominating. Non-dominating interference refers here to the functions of what we might call, with Rancière (1999, p. 28), 'the police', and this includes those operations of power over the subjects of a given political community by the law, and forms of paternalistic state power that acts, in, and according to the members of the community's interest (more in this in due course).

Beyond this thematic and cursory description, Pettit offers a more analytical definition of domination in the following schematic terms. Domination is always a relationship, such that agent A dominates agent B to the extent that A has the capacity to interfere with B, that they do so on an arbitrary basis, and that such arbitrary interference by A over B relates to certain choices that B would otherwise be in a position to make (Pettit, 1997a, p. 52). Such interference crucially, must have a worsening effect on B's circumstances, and has to be more or less intentional on the part of the *dominus*, the interferer, agent A. Interference here is capaciously understood in distinction to Hobbes' (1996, p. 145) focus on impediments or obstructions to movement, and thus, for Pettit, includes coercion of the body as in Hobbes, but extends the concept of coercion to that of the 'will' too. Coercion of the will, Pettit suggests, takes the form of punishment, or the threat thereof, an under the category of

interference, he also includes forms of manipulation, agenda setting, as well as ‘the rigging of the consequences of people’s actions’ (1997a, p. 53). Normativising a rationalism in politics, Pettit interestingly extends the scope of potential domination and thus arbitrary interference to the operations of political power over subjectivity, as arbitrary interference is equated equally with ‘the deceptive or non-rational shaping of people’s beliefs or desires’ (ibid.). Schematic as such a definition is, Pettit emphasises the contextual dimension of practices when it comes to determining the line between forms of arbitrary/dominating interference, and interference more generally.

Interference, on Pettit’s account, is ‘un-moralised’, and culturally specific (ibid., p. 54). The claim, in short, is that to determine the presence of interference by agent A over agent B, is not to causally infer that ‘any particular moral offence has occurred’, but just that agent A coerced agent B in some manner (ibid.). Coercion is not the dominating factor here, but rather interference on an arbitrary basis is. As such, the normative valence of a claim to interference resides not in its coercive aspect, but in its arbitrariness. Otherwise put, domination entails the capacity for, or manifestation of, arbitrary operations of power-over the subject that would claim to be dominated. In *On the Peoples Terms* Pettit (2012) moves from a language of interference to one of invasion and vitiation, in which invasion is that form of interference in which the would-be-dominated agents control over their exercise of free choice is usurped by a dominating agent. Vitiation on the other hand, entails interference in the form of a limitation of choice through imposition of obstacles. For now it suffices, for our immediate purposes to remain with the language of interference more generally.

## 2.9 Arbitrariness and domination

At this point, it is necessary to examine precisely what Pettit understands by arbitrariness, and how this relates to the status and experiences of both freedom and domination. Domination as we have seen, in a slogan form at least, is equated with arbitrary forms of interference, or more helpfully, what I prefer to describe more sociologically, as *arbitrary power-over* by an agent (individual or corporate). Pettit defines arbitrariness in the following terms: ‘An act is perpetrated on an arbitrary basis, we can say, if it is subject to the *arbitrium*, the decision or judgment, of the agent; the agent was in a position to choose it or not choose it, at their pleasure’ (Pettit, 1997a, p. 55). Arbitrariness then, in poststructuralist parlance, involves an act of decision upon a

terrain of undecidability (see Laclau 2007 [1996], pp. 73-79), and one cannot help but think here about the act of 'sovereign decision', which Carl Schmitt theorises in relation to the state of exception. For Schmitt, quite simply, 'the sovereign is he who decides', under conditions in which the very act of decision is not derivative from the norm or established legal order (Schmitt, 1985, p. 5). Analogously, an arbitrary act of interference, according to Pettit, thus implies, that the decision to interfere is one which 'is chosen or rejected without reference to the interests or opinions of those affected', such that 'the choice is not forced to track what the interests of those others require according to their own judgments' (Pettit, 1997a, p. 55). Embedded in this definition, as discerning readers will have already noted, is that inverted substance of freedom as non-domination. An act of interference by the state, by an employer, or a neighbour etc., will be non-dominating, though still paternalistic, insofar as it is 'forced to track the interests and ideas of the persons suffering the interference' (ibid.).

Private domination often takes the form for Pettit of 'bending the knee', or 'tugging your forelock', and is identified through what he (2012, p. 72) calls the 'eyeball test'. The 'eyeball test' for Pettit goes something like this: in any given situation, has the agent adequate protection, and, resources so as to make their own choices and to look others in the eye, without fear or deference? If not, then there is an asymmetry of power at work, and private domination is at stake. Those who are free from domination can in turn walk tall, safe in the knowledge they are free by status both objectively and subjectively (ibid., p. 84). That is to say that there is *common knowledge* of their freedom between both the would-be-dominated party and the would-be-dominator (1997a, pp. 58-61). Accordingly, Pettit posits through this negative measure an account of non-domination as a symmetrical intersubjective power relation between agents; an account somewhat equivalent with the 'ideal speech situation' in the *discourse ethics* of Jürgen Habermas (1998). Moving from the private to the public realm, and reminiscent of the later Frankfurt School's deliberative turn, Pettit conceives of politics as a space of justifications in so far as interference, primarily by the law, ceases to be arbitrary and dominating as long as it tracks the interests and ideas of the interfered-with agent.

As to what constitutes the interests and ideas of a person, and the tracking of the same entails will be the subject of later chapters. For now, it is relevant to note that Pettit places considerable emphasis on non-dominating interference respecting a

limited number of the interests of the agent, citizen, subject. He writes that the interfering agency, be it an individual or the state, need not track all the interests of agent B, but should be ‘at least forced to track the relevant ones’ (ibid.). Mobilising the *res-publica* of neo-republicanism, Pettit understands by ‘relevant interests’, those particularisms, or particular interests and ideas of individual agents, which coincide with a universal interest of the political community and its constituent members. Shifting the discourse to one specifically of state interference, Pettit explains: ‘my relevant interests and ideas will be those that are shared in common with others, not those that treat me as exceptional, since the state is meant to serve others as well as me’ (ibid., pp. 55-56). From Jean-Jacques Rousseau’s (1999, p. 66) ‘general will’, we are not much more than a creatively liberal redescription away, minus the absolutist conception of sovereignty, of course (more on this later).

## 2.10 The empire of law and the struggle of citizens

The centrality of law to the neo-republican account of freedom must not be understated; the law serves a dual function within such an account that it is necessary, at this point, to elaborate on to some extent. Operationalising the *elucidatory opposition* between the (neo)liberal (libertarian) account of freedom as non-interference and its republican counterpart, non-domination, the role of law in this latter account becomes clear. Whilst for straw-man/ideal-type models named ‘non-interference’ by Pettit, the law is inimical to freedom because it curtails the range of un-inhibited choice between available options for the already free subject. On a republican account, freedom is not anterior to, but constituted by the presence of the law. For Pettit and the neo-republicans, the law’s interference in the subject’s choices, is not only a means of securing one’s freedom through the regulation of the behaviour of social agents, but further, it is constitutive of that very freedom as a legal status, as citizenship, within a republican community of a juridico-political nature. As Pettit writes: ‘citizenship is a status that exists, of necessity, only under a suitable regime of law’ (1997a, p. 36); and such a view has historical precedence within the tradition of neo-republicanism, emerging directly from the political culture of the late Roman republic. Such is evidenced in the legal and political articulation of *libertas* as coterminous with *civitas* (Wirszubski, 1968, p. 3).



Implied in the idea of a non-dominating form of interference, then, is the argument that one can experience interference, and yet not suffer any loss of freedom. This, as we have already noted, is exemplified by the law, though not uncritically, and it is to this critical relation between republican freedom and law that we now turn to examine. In order for the law to be a ‘non-mastering interferer’, and thus non-dominating, it must be, as Pettit argues: ‘properly constituted law’ (1997a, p. 35). ‘By properly constituted’, Pettit refers to a system of law which ‘answers systematically to people’s general interests and ideas’ (ibid.), i.e., it tracks the interests of those it governs. Freedom in the republican tradition, is a status – citizenship – that exists in opposition to domination/slavery, and exists solely under a suitable legal and constitutional regime, a regime that conforms to the people’s ideal image of law, a law that governs on the people’s terms. As Pettit summarises: ‘as the laws create the authority that rulers enjoy, so the laws create the freedom that citizens share’ (1997a, p. 36). Whilst liberals and ‘modernists’ understand the relation of law and liberty such that coercive law reduces liberty, only to compensate such a loss through the prevention of an even greater loss at the hands of more malign agents, republicans like Pettit understand the role of law as constitutive of liberty as such. Framing liberty in this way, Pettit thus undermines any discourse of compensation from the outset through a refusal of the very axioms of *natural right* discourse that the former view, which he calls liberal, holds as central (ibid., pp. 35-36). Republican freedom is established through positive law: in the absence of law there is no freedom, only the contingent possibility of non-interference.

To be a citizen is to be free, according to the (neo)republican account, insofar as one is a citizen of a free republic. That is to say, the law is only constructive of liberty, so long as it respects the common interests and ideas of those it rules, and thus conforms to the image of an ideal law. What is at stake for (neo)republican’s such as Pettit, is that the law is non-dominating, and to such an end, laws must not become the instrument of any arbitrary will, be it that of an individual, or any one group. As Pettit summarises: ‘when the laws become the instruments of will, according to the tradition, then we have a regime – say, the despotic regime of the absolute king – in which the citizens become slaves and are entirely deprived of their freedom’ (1997a, p. 36). Citizens under instrumentalised laws are rendered victims of *dominium*, and subject to the *imperium* of the government. Republican freedom then, is the status of being

citizen, under laws which track the common interests of citizens, such that they live, under an ‘empire of laws not of men’ (Harrington, 1977, p. 161). For republicans such as Harrington, and neo-republicans like Pettit, the relation between the non-dominating laws that constitute the republic and also create freedom, entails that those very conditions under which a citizen can be understood as free, are equally those conditions by which the city or state is said to be free too. Citizens are free insofar as they live *sui juris*: that is under their own jurisdiction, in the double sense of the term (Pettit, 2016, p. 7): free to act in accordance with their own will, in possession of themselves, and within the context of a community in which their ‘relevant interests’ are tracked by their political representatives, and thus governed on their own terms. The relative indeterminacy of both of these claims is politically significant, and will form the substance of the analysis that follows in the subsequent chapters.

## 2.11 Conclusion

I began this chapter with the hermeneutic metaphor of the journey of non-domination and the study of the Method of the political philosopher. A Method is a path, and thus, sedimented and naturalised, over time the route of this path has grown over, become covered in sand and obscured from immediate view. The Method of non-domination has long been in need of excavation, and, as such, the task of this chapter has been framed as archaeological. By archaeological, I mean, the chapter has sought to uncover the conditions of emergence and possibility of the Archê of neo-republicanism, the figure of non-domination.

Taking more literally the question of Method, I began the chapter with an exploration of Pettit’s own reflections on the question of method and the task of the political philosopher. Drawing out his rhetorical techniques, the philosophical aporias and avenues he constructs, as well as the assumptions that underpin his account of politics in relation to political philosophy, I understood the political in political philosophy to pertain to the institutional government of the social. On Pettit’s account, the game of political theory or political philosophy, is one of policy, institutional, and regime-type critique and legitimation. Political theory, on Pettit’s analytical account, is a project of the normative defence and support of the continuing centrality and presence of the oligarchic liberal democratic state, and its attendant institutions. In the course of this engagement with Pettit’s methodological reflections, over the last two

chapters, I offered an initial account of an emerging alternative approach to political philosophy, which I name ‘critical political philosophy’, or ‘critical political theory’, which is based upon the staging of disagreement within the text of political philosophy (and in this case, within the text of neo-republicanism). This staging of disagreement, I hope is now clear, takes a very specific form. At the beginning this chapter I noted that Pettit embraces disagreement within languages of politics as he assembled his own language game. The form of disagreement I am invoking here and throughout this thesis however, takes on a stronger form, and thus in so doing seeks to break the boundaries of his enclosed sensorium, thereby reactivating precisely that which is foreclosed upon by his own Method of political theorising. This alternative ‘critical’ approach has no interest in the normative defence of the state, or any other institutionalised form of inequality, for that matter, and rather, begins from a position of axiomatic equality: it is an-archic and disruptive of attempts at closure and the policing of domains of the social or of language.

This chapter then turned to Pettit’s work on the theme of republican freedom, noting the slow (theoretical) birth of freedom as non-domination and its relation to the liberal concept of freedom as non-interference. Non-domination, as we have seen, is a status concept of freedom, as the immunity from arbitrary forms of power-over, be it in the form of invasion (usurpation) or vitiating. At its core, we might conclude, the struggle for republican freedom is equally the struggle for citizenship, to be a member of a political community in which one is rendered free through and under the rule of law. Central to this story, is that such a law conforms to the ideal image of law, held by the people it governs. Non-domination, we might conclude preliminarily, is a *contingently articulated social relation and a legal status which is politically instituted between persons and enshrined by the law in a notionally democratic juridico-political community.*

Having now sketched the beginning of the journey of non-domination, we are one step closer to being able to address in more explicit terms, the questions of community and the subject with which we commenced. To this end, we shall delve deeper in the next chapter, as we examine the subjective and intersubjective dimensions of the politics of non-domination on Pettit’s account.

## Threshold

Returning critically to the freedom-slavery opposition that animates the specificity of non-domination, it operates as a metaphor within the space of Pettit's Method, yet it harbours a performative power, which is also an historical spectre that haunts and exceeds its elucidatory intention.

Freedom, in the republican tradition, is, as we have seen, unanimously cast as the opposite of slavery. This is not simply, however, an opposition conjured in order to reveal its relational essence, but rather, it is a set of legal statuses inseparable from the beginning of this so-called tradition, and the history of post-Hellenistic culture. The neo-republicans, in articulating such a tradition, begin their story in the Roman Republic, during its later stage, and find the roots of their theory of freedom as non-domination in the texts of the Roman legal system (Wirszubski, 1968). In the *Digest of Justinian* a codex of Roman Law, and a chapter entitled *On Human Status* (*De statu hominum*), we find not only the figuring of this relation between slavery and freedom in legal terms, but rather as an ontological, or ontopolitical (Connolly, 1995, p. 1) claim: 'the chief distinction in the law of persons is that all men are either free or else are slaves' (*Digest*, 1985, 1.5.3, p. 15).<sup>1</sup> As we have learned from Pettit, this understanding of freedom figures the 'free-man' as living *sui juris*, in both senses of the term, and thus being 'in their own power', and not like the slave, who lives 'in the *potestas* of their master' (*Digest*, 1985, 1.6.4,1, p. 18).<sup>2</sup> At stake here is precisely the model of sovereign power Foucault describes in the first volume of the *History of Sexuality*, as *patria potestas* and took the form of the 'power of life and death', in which the sovereign decision lay in the hands of the father of the Roman family, the free-man, the citizen (Foucault, 1978, pp. 135-136). What is most essential to note, however, is the extent of the power allocated legally to the 'free-man', whose gendered form here is no coincidence, and whose relation to its opposite, the slave, is that of a master: 'For we can observe that equally among all nations masters have had the power of life or death over slaves' (*Digest*, 1985, 1.6.1, p. 18). The 'slave' and its location within the *oikos*, here stands as what Staten (1984) refers to as 'the constitutive outside' of freedom as non-domination, and sociologically understood is a marker for the reproductive labour,

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<sup>1</sup> 'Summa itaque de iure personarum divisio haec est, quod omnes homines aut liberi sunt aut servi?'

<sup>2</sup> 'in potestate sunt servi dominorum'

performed by women (who are not slaves, but experience a different form of dis-possession), which sustains the possibility of action in the polis itself (Arendt, 1998 [1958]; Zerilli, 1995). Labour, which is gendered and racialised, is relegated to the *oikos*, the home economy and performed by women, slaves and other non-citizens, so as to support that life of the polis, the life of the citizen.

What precisely is at stake however, in my arguing that such a relation, codified in Roman law, is ontological – or an ‘ontopolitical’ interpretation – is not to assert a metaphysical and a-historical truth, but rather something fundamentally more material and violent. By the ontopolitical, I refer to a category of interpretation, which carries with it a set of ‘fundamentals about necessities and possibilities of human being’ (Connolly, 1995, p. 1). This frame of apprehension (Butler, 2016), is never outside of power, and is constitutive of the human as a category within the horizon of the police order. The framing of the relationship between the ‘free-man’ and ‘slave’, within the police order partially captured by Justinian’s *Digest*, is an integral feature of the ontonomic (onta- pertaining to Being, or really existing things, and -nomos, the Greek for positive law, order, ordering of space, the taking of land; see Schmitt, 2003, p. 45) complex, which the concept of ‘police order’ aesthetically captures (Rancière, 2010, p. 36). Here the political community, stands as what Mark Devenney (2011, 2020) calls a hegemonic or ‘proprietary order’, an overlapping and overdetermined complex, that articulates together and polices that which is proper: proper behaviour, the legal order, ways of being, language, sex, gender, race, reproduction, education and property relations. Gendered and exclusionary, this originary account of the neo-republican or neo-Roman ‘human’, as either free or slave, includes within the latter category, all who are not male citizens of the Roman Republic. At stake in this relation then, to take up the same distinction in the grammar of the ancient Greeks, is a bio-political fracture, and the difference between naked life or *zōē*, and, qualified or political life, *bios* (Agamben, 2000, p. 3).

The work of Hannah Arendt gives some historical context to this bio-political fracture, when in *The Origins of Totalitarianism*, she writes: ‘Slavery’s fundamental offense against human rights was not that it took liberty away, but that it excluded a certain category of people even from the possibility of fighting for freedom – a fight possible under tyranny, and even under the desperate conditions of modern terror (but not under any conditions of concentration-camp life). Slavery’s crime against humanity

did not begin when one people defeated and enslaved its enemies, but when slavery became an institution in which some men were “born” free and others slave, when it was forgotten that it was man who had deprived his fellow-men of freedom, and when the sanction for the crime was attributed to nature’ (Arendt, 2017 [1951], pp. 387-389). It seems the ‘freedom of the ancients’ and the ‘freedom of the moderns’ correspond to quite distinct constitutive outsides in the form of slavery – one contingent and reversible (“but for the (mis)fortunes of war our status could be reversed...”), and the other anchored in the notion of human essence (slaves as inferior beings, closer to the brute animal than the properly human).

As we learn from Orlando Patterson, ‘freedom began its career as a social value in the desperate yearning of the slave to negate what, for him or her, and for non-slaves [free-men], was a peculiarly inhuman condition’ (1991, p. 9). This is a historical fact which is well known by Pettit and Skinner, who write how ‘the history of liberty is the history of enslavement and emancipation’ (Pettit, 1997a, p. 33), and how ‘to study the cause of liberty and its loss is inevitably to study the history of the various European countries which have passed from a state of popular freedom into the slavery of absolutism’ (Skinner, 1974, p. 117). Here between these two citations, exists the ambiguity and tension, which Pettit and the neo-republicans ride, between the freedom/slavery dualism and the ideal of a free republic, which is not dominated by another political community. Leaving aside, momentarily, the matter of a free republic, a fantastical projection of international relations discourse, and returning to the experience of political domination, as Patterson argues quite compellingly, the raising of liberty as a political ideal has, in fact, ‘never been divorced from [...] its primordial, servile source’, and thus to take a blinkered perspective on liberty, made possible by figuring freedom through the philosophical tradition of Platonic Ideas. This uncritical relation to the ideal of freedom, historically and philosophically, springs from the overemphasis of the legal element of freedom, as a status, as citizenship, as well as a failure to understand by Whiggish historians and political philosophers, precisely the condition of slavery (Patterson, 1991, p. 9).

Quite simply, Pettit and neo-republicans, through their analytical abstraction and historical simplification, speak of slavery from a position in which, and with terms that betray the same, they have never known, nor will they ever risk knowing, what it is to experience domination: they will never experience being a slave (see Markell, 2012, p.

11-13). Slavery is never produced in a vacuum, it is a politically articulated, relational subject position, which is integral to a given juridico-political and de facto propertied order, or political community, which entails the overdetermination of all property relations, forms of propriety, behaviour, ways of being, that are sustained by, and thus sustain in itself, the presence of slaves within that community. Slavery properly understood is a form a social death (Patterson, 1991, p. 10), in which a political community exposes persons, who they deem already dead, to untold violence within the midst of the community.

Stepping back from this genealogical examination, and looking towards the implications of this continued duality between freedom and slavery in our contemporary world, in which the ownership of persons is a less visible, though increasingly actual, feature of most police orders, and which persists through the differential exposure of some lives (*bias*), over others (*zōē*), to violence, exclusion, and domination (cf. Butler, 2016 [2009], p. 25). In order to extend the limits of this archaeology of non-domination, let us turn back to the historical dimension of the neo-republican tradition, and explore it in its violent and un-censored form.

Earlier, it was noted how, for a figure like Harrington, the very conditions of possibility for a free citizen, were equally those conditions which made it possible to speak for a free republic (1977, p. 161). Such a republic, was, like its citizens, independent of the arbitrary power of others deemed fully free, yet, sociologically and historically speaking, still nonetheless dependent upon the labour of slaves and non-citizens, the very ‘constitutive outside’ of republican freedom itself. For a republic to be free, that is, it is contained within that thought, the continuing presence of un-free nations and peoples, whose unfreedom is equally constitutive of the non-dominated status of the free republic. Pettit, stresses throughout his work, the historical dimension of the political philosophy he names republican. However the contexts and political struggles out of which that republican philosophy was generated are not vacuums, and thus not epiphenomenal of the production of that philosophy in and of itself. The political context in which Harrington’s major work of political philosophy, *The Commonwealth of Oceana* (1977 [1656]), was produced and sought to intervene into, is instructive as to the material implications of the republican theory he espoused, and those very questions raised above, specifically in relation to the differential allocation of ‘humanity’ by the dualism of ‘free-man’ and ‘slave’. Published in 1656, at the height

of the Commonwealth of England, Scotland, and Ireland, when the two islands were ruled as a republic, Harrington's *Oceana* was a model philosophy of a utopian Republic, in which *Oceana* was but a metaphor for the England of his time, and contained a dedication to Oliver Cromwell, the then serving Lord Protector of the same Commonwealth.

In an opening prelude which one must assume was written not long after Cromwell's military campaign in Ireland, Harrington offers a policy proposal as to what could be done with Ireland (renamed 'Panopea', in relation to England named 'Oceana'). As Seamus Deane, a post-modern Irish republican, describes it: 'Oceana's policy for Ireland is simple and brutal; the policy of genocide begun in the 1590's should have been completed and the island planted, not with Britons, but with Jews. Thus at one stroke, a burden on the English treasury would be removed, the country would become prosperous and the "Jewish problem" solved' (Deane, 2015, p. 139). As is evident, at stake in the ontopolitical distinction made between free-men and those deemed not fully human, is the colonial logic and discursive 'racialisation' of peoples (Foucault, 2004, p. 255), which renders it possible to manage populations as one arranges the flowers in one's garden,<sup>3</sup> or sums of money in a ledger. Central too, to personhood and freedom in Harrington's account, is a specific relation to property and the possession of land. I quote Harrington at length:

Panopea, the soft mother of a slothful and pusillanimous people, is a neighbour island, anciently subjected by the arms of Oceana; since almost depopulated for shaking the yoke, and at length replanted with a new race. But (through what virtues of the soil, or vice of the air soever it be) they come to denigrate; wherefore seeing it is neither likely to yield men fit for arms, nor necessary should it, it had been the interest of Oceana so to have disposed of this province, being both rich in the nature of the soil and full of commodious ports for trade, that it might have been ordered for the best in relation unto her purse. Which in my

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<sup>3</sup> Think only of Zygmunt Bauman's figuring of the bio-political in *Modernity and Ambivalence* (1991). In that text Bauman understands the emergence with modernity of a new orientation of the State as no longer that of 'game-keeper,' but of 'the gardener.' Taking up this image of the 'gardening state,' first conceived in his earlier work *Legislators and Interpreters* (1987), Bauman writes how: '...the genocidal potency that the grand vision of perfect and rationalised society reveals when conjoined with the awesome powers of the modern state...the imagery of the social ideal standing ahead of social reality and pulling it forward...the vision of society as pliable raw material to be moulded and brought into proper shape by architects armed with a proper design...the image of society incapable, if left to its own course, of either improving itself or even comprehending what the improvement would look like...the concept of knowledge as power, reason as the judge of reality and an authority entitled to dictate and enforce the *ought* over the *is*' (1991, pp. 36-7)



opinion (if it had been thought upon in time) might have been best done by planting it with Jews, allowing them their own rites and laws, for that would have brought them suddenly, from all parts of the world, and in sufficient numbers; and though the Jews be now altogether for merchandise, yet in the land of Canaan (since their exile from whence they have not been landlords) they were altogether for agriculture; and there is no cause why a man should doubt but, having a fruitful country and good ports too, they would be good at both. (Harrington, 1977, p. 159).

Politics is based on the fact of human plurality. God created *man*, but *men* are a human, earthly product, the product of human nature. Because philosophy and theology are always concerned with *man*, because all of their pronouncements would be correct if there were only one or two men or only identical men, they have no valid philosophical answer to the question: What is politics?

Hannah Arendt *The Promise of Politics*

[...] one individual is subject to the right of another, or dependent upon him, for as long as he is subject to the other's power; and possessed of his own right, or free, in so far as he can repel all force, take what vengeance he pleases for harm done to him, and, to speak generally, live as his own nature and judgment dictate.

Baruch de Spinoza *Tractatus Politicus*

## §3 Figuring non-domination

### 3.1 Introduction

Freedom as non-domination is a contingently articulated social relation which arises *between* persons and is enshrined by the law in a juridico-political community.

As such, the questions of the subject, intersubjectivity and political community converge around the nodal point of non-domination, and thus are in need of further examination in relation to their appearance within the Method of Pettit's neo-republican politics. Whilst freedom as non-interference, as elaborated upon previously, is an ideal of freedom which is best found upon the heath, and only to be brought to actuality through a trade-off between the scope of political interference in the public sphere, and freedom within the private realm (Berlin, 2002), freedom as non-domination is an entirely social or civic concept of freedom which only makes sense under conditions of an unwilled adjacency with others. As such, the experience of freedom on republican terms entails the status of being a citizen, a subject of a juridico-political order, and further implies a holistic approach such as that proffered by Pettit (1993a, 1997), in which freedom depends on a set of intersubjective relations which are constitutive, and sustaining of that very same freedom. What is proposed in this chapter – and this informs the discussion to follow – is that the relational dynamics of freedom as non-domination are seen to be saturated in and encircled by power, such that the questions of subject and community cease to possess the transparency and neutrality that they are presupposed to have within Pettit's Method.

The ideal of non-domination, as seen in chapter 2, is best captured at the micro or 'private' level through the thought experiment of the so-called 'eyeball test'. At stake in reducing relations of domination to this interpersonal level of analysis, is precisely

to draw out the intersubjective aspects of non-domination in Pettit's terminology. The 'eyeball test', as Pettit's favoured example or metaphor for explaining (non) domination, highlights not only the 'structural' conditions, but also the existential dimensions of freedom as non-domination, all the while maintaining a consistency with his commitment to a methodological individualism.<sup>1</sup> The eyeball test is a measure of the individual's liberty and proceeds as follows:

They can look others in the eye without reason for the fear of deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best. [...]  
The satisfaction of the test would mean for each person that others were unable, in the received phrase, to interfere at will and with impunity in their affairs.  
(Pettit, 2012, p. 84)

Experiencing non-domination would require the presence of legal protections, a culture of rights, and social norms, as well as common knowledge of those resources, such that, one can speak their mind, and give their voice to that which the other may not want to hear. At this basic and interpersonal level, freedom as non-domination is a relational dynamic, a relation of power in which *power meets 'antipower'*, to put it in Pettit's theoretical grammar (Pettit, 1996).<sup>2</sup> What emerges from this brief redescription of the already explicated 'eye-ball test' however, is the space to broaden our understanding of power. In this chapter I argue that the relationship between non-domination and power, is not reducible to the agentic level of 'intersubjective' or interpersonal power, as conceived by Pettit's agent-centred and methodological individualist theory of power. Rather, non-domination, as a social relation, is embedded in a larger set of power relations which pertain to the constitution of those very same subjects, their subject positions, as well the police orders in which they are located and constituted. What's more, at stake in non-domination as a relation of power, is perhaps, one of the oldest problems in political philosophy, namely the problem of voice or *logos*. Through a stronger conception of intersubjectivity, and a deepening of our exploration of such intersubjective dimensions of non-domination,

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<sup>1</sup> For an interesting and comprehensive critical analysis of methodological individualism in social theory see Steven Lukes (1968). See also Weber (1968, Vol 1.) for the now 'classic' statement.

<sup>2</sup> What is revealed here is that the scene of equality in power relations is not a 'flat' power relation in which there is nothing at stake other than the exchange of viewpoints or arguments between people presumed to have an equal legal status, but a facing off between the powerful and the not-so-powerful person, who nonetheless need not fear speaking their mind, as they are adequately protected.

this chapter not only starts to uncover the question of the subject of non-domination, but also points to the problem of political community as it is presupposed in the neo-republican Method of Pettit.

In chapter 2, I sought to provide an initial exegesis of neo-republican freedom, and the conditions of (im)possibility that underpin its emergence at the hand of Pettit. In this chapter I continue to offer a reconstructive reading of Pettit's Method with a renewed emphasis on the social relational components of the same, not least the ways in which Pettit figures the subject of non-domination, the subject's formation in relation to the Archê of non-domination, and the thick intersubjective dimensions of neo-republican government and freedom, such that the subject is never figured outside of relations to others, or 'the arts of government' (Cruikshank, 1999).

To some extent, the question of the subject of non-domination has already been raised in chapter 2 and the subsequent threshold reflections, insofar as we assert with some confidence that the subject of non-domination is the citizen-subject presented in the (neo-)republican tradition which can be traced back to the Roman republic and its legal codex *The Digest of Justinian*. At a superficial level this is certainly so, however, neo-republicans concerned primarily with the evil of domination, ought to consider a little more closely the question of (always potentially dominating) power as it pertains to the subject that they assume to be central to their theory of "politics".

Whilst citizenship is regularly offered by democratic and reformist discourse as a solution to many forms of domination, both within and beyond the bounds of neo-republicanism, we must not lose sight of how citizens are brought into being, and how such a solution to political problems, is more fundamentally a strategy of government (Cruikshank, 1999, p. 1). By government in this sense, Cruikshank refers not to *the* government as an elected entity which is the legislative focal point of state power, but rather, what Michel Foucault called "the conduct of conduct", 'forms of action and relations of power that aim to guide and shape (rather than force, control, or dominate) the actions of others' (Cruikshank, 1999, p. 4). As such, the citizen is both an effect and an instrument of disciplinary (anatomo-) and bio-political power, not just a

participant in politics (or not, as the case may be). It is in light of this post-structuralist understanding of power that my analysis proceeds.<sup>3</sup>

Through the extension of the study of Pettit's Method as developed above, this chapter argues that Pettit's figuring of non-domination at the levels of the subject, intersubjectivity and voice, is implicitly part of a larger project of de-politicisation, which might be explained initially as the (un)conscious reproduction of a set of power dynamics pertaining to subject constitution/formation in liberal democratic or "modern" political communities. It is precisely this point of power, and the naturalisation of relations of inequality/power, that I want to highlight as my exegesis and analysis of Pettit's figuring of non-domination in this chapter works towards a demonstration of the hypothesis generated in chapter 1, namely: that political philosophy as a practice serves to sublimate that which is proper to politics. This chapter commences with an analysis of Pettit's (re)presentation of (non-)domination through the dramatic example of the relationship between husband and wife Torvald and Nora Helmer in Henrik Ibsen's play *A Doll's House*. Through a layered analysis of this scene as it appears in Pettit's work, this chapter draws out two major threads for further analysis in relation to non-domination and intersubjectivity. First, the question of power. Second, the problem of voice. Following this reading, I proceed to critically explain Pettit's theory of power. The chapter then examines the 'philosophical' or ontological theory of intersubjective agency, before it takes up the two themes of power and voice through an analysis of Pettit's (theoretically self-limiting) discussion of non-domination and subject formation through the figure of childhood. What emerges from this analysis is the presence of a set of remainders from Pettit's account of politics, which reveals the deeper problem of the operations of power at the hands of the political philosopher, as well as the exclusionary logic of neo-republican political community. At stake in Pettit's figuring of non-domination is a pervasive logocentrism which differentially allocates voice and power to potential political subjects, whilst refusing to recognise those political demands which do not conform with Pettit's politics of non-domination.

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<sup>3</sup> For a general statement on the theoretical account of power that underpins the analysis in this thesis, see Foucault (1979, pp. 92 – 102), Butler (1995, 2016), and Laclau and Mouffe (2001 [1985] chapter 3). The specificities of these accounts of power are developed throughout the thesis as appropriate.

### 3.2 Who has dominating power? Ibsen's lesson, Pettit's missed opportunity

In *Just Freedom* (2014) Pettit explains the novelty and power of understanding freedom in terms of non-domination through the use of a dramatic example. Pettit recounts the plot of Ibsen's *A Doll's House*, and focuses particularly on the relationship between the protagonists, the Helmers, namely, Torvald, who is a young and successful banker, and his wife Nora. In the context of nineteenth-century Norwegian law, Torvald is granted substantial power over Nora's life. Torvald, however, dotes on Nora, denying her nothing except the macaroon's which he has banned from the house rather paternalistically, as he decides that they are bad for her teeth. Nora, on a day to day basis, nonetheless, is free to do as she wishes, she has *carte blanche*. Nora, as Pettit remarks, 'has all the latitude that a woman in late nineteenth-century Europe could have wished for' (2014, p. xiv), however, she nonetheless 'is the doll in a doll's house, not a free woman'. Whilst Nora might be said to be free in liberal terms, as Torvald does not interfere with or manipulate her, nor does he place prohibitions or penalties in her way, by neo-republican standards, Nora nonetheless has a master, a husband who legally has the right to interfere in her choices, and whose approval she must maintain through a self-censoring of her own actions. Pettit writes:

the absence of interference that Nora enjoys is not enough for freedom in this sense, since it only comes about by Torvald's grace and favour. In order to enjoy freedom you must have the ability to avoid interference even if others take against you, and this is precisely what Nora lacks. If Torvald took against her and withdrew his goodwill, then she would no longer enjoy non-interference at his hands. Thus, as things stand, she is indebted to him for the latitude of choice that she enjoys. She is subject to his will, by virtue of his legal and cultural power, and it is only her good fortune, not the status of being a free woman, that explains why she escapes his intrusion in her life. (Pettit, 2014, p. xv)

What renders Nora unfree is precisely her status as dominated; she experiences subjection to the arbitrary will of another, in this case Torvald. Freedom would require the absence of this subjection, safeguards against arbitrary interference in her choices, as well as legal protections and resources which prevent any such interference. Pettit continues to highlight how this state of domination experienced by Nora, as well as by many of us in our daily lives, is based in the lack of 'social and political arrangements',

which protect us from ‘depending on the whim of another’, who can act with impunity and on an arbitrary basis (Pettit, 2015, p. xvi). Freedom then, as it emerges through this iteration, is read positively from the above negative account, as independence from the will of others. As we can see here, there are clear equivalences drawn between the status of Nora and that of the slave with an “absent” or “benevolent master”, as discussed in chapter 2. This example, however, further highlights the gendered history of freedom as non-domination within the tradition of (neo) republicanism Pettit conjures, and the exclusionary power tied to conceiving of freedom in terms of citizenship and as a status concept. Khan (2019, p. 396) has argued however, that this example, whilst offering important insights into the forms of power that structure many scenarios of domination, nonetheless shows the limits of Pettit’s methodological individualism when it comes to thinking about dominating forms of power. Blind to forms of structural power, Pettit’s ‘methodologically individualist approach where it is “agents” who are the bearers of arbitrary power, or conversely who can be agents of freedom’, places severe limits on his analytical capacities to identify relations of domination in which the arbitrary power resides not in the hands of an individual agent, but ‘larger social structures’ (Khan, 2019, p. 396).<sup>4</sup> At stake here is precisely Pettit’s agent-centric conception of power.<sup>5</sup>

### 3.3 Intersubjectivity and power in Pettit’s Method

I think it is worth taking some time to reflect explicitly on Pettit’s understanding of what is perhaps the most important and contested concept in social and political theory, namely the concept of power. At its most fundamental level, Pettit’s understanding of power is rooted in a reworking of Robert Dahl’s agent centred account of power (Pettit, 2008). For Dahl, power in its most straightforward definition is the following relation between agents A and B: agent A has power to the extent that they can make agent B do something that agent B wouldn’t otherwise have chosen to do (Dahl, 1957). That is, A has power over B by making B do something that A wanted them to do, but that B otherwise would not have done. For Pettit, this understanding,

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<sup>4</sup> By larger social structures, Khan refers to norms, practices and processes, ‘that sustain entrenched relations of subordination and hierarchy that are reproduced through seemingly innocuous everyday practices and forms of socialisation embedded in institutions’ (Khan, p. 406, n.6).

<sup>5</sup> For a compelling analysis of the limits of an agent-centric conception of power see Hayward and Lukes discussion of *The Grapes of Wrath* in ‘Nobody to Shoot?’ (Hayward and Lukes, 2008).



filtered through his neo-republican account of freedom as non-domination, reemerges in terms of domination being the primary form of power, and freedom as a form of antipower. Domination is arbitrary power, if power is understood as interference in my exercise of my choices (some, not necessarily all). As Pettit writes: ‘one agent dominates another if and only if he or she has a certain power over that other: in particular the power to interfere in the affairs of the other and to inflict a certain damage’ (1996, p. 578). Freedom as non-domination, thus, is the status of being protected from domination, and thus constitutes antipower. As a negative concept of liberty, it is not premised upon the agents doing anything to be free, but simply I have anti-power to the extent that there exists legal and social structures which prevent another agent from interfering in my exercise of choices on an arbitrary basis. Arbitrary interference is simply those forms of interference which do not track my interests. On the point of negativity in relation to a theory of freedom, Pettit argues: ‘The account is negative in leaving my own achievements out of the picture and focusing on eliminating a danger from others’ (1996, p. 578). Pettit’s taking up Dahl’s account of power, however, is not uncritical, as he develops the latter’s theory insofar as Dahl’s understanding of power is limited to punctual, and isolated instances in time, in which power is exercised. Pettit extends the view of power to include instances of agent A’s power over B, to include the following cases:

A manipulated B’s mindset, thereby reducing B’s capacity for deliberation; A imposes a sure or probabilistic block, real and/or purported, on B’s not x-ing; A imposes a sure or probabilistic burden, real and/or purported on B’s not x-ing; A misinforms B about the blocks and burdens in place, to get B to x. (Pettit, 2008c, p. 70)

Thus broadening the scope of forms of interference, or power in Dahl’s terms, whilst nonetheless retaining an agent-centred view.

Fundamental to this understanding of power then, is the idea that power as domination can only be exercised by another agent. ‘While the dominating party will always be an agent’, Pettit argues, ‘it cannot just be a system, or network, or whatever’, it must be an agent (1996, p. 578). An agent of domination for Pettit, may be personal, corporate, or even collective – think only of the domination which Pettit dreads most in democratic politics: the tyranny of the majority (Pettit, 1996, p. 578, 1997a, p. 8).<sup>6</sup> A

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<sup>6</sup> To this question of ‘tyranny of the majority’ I shall return in chapters four and five.

dominated agent, or an agent of antipower, can only ever be personal or collective, never corporate. What's more, the subject of non-domination, is in possession of antipower to the extent that they are not dominated, but this is not a power they wield, but the presence of legal protections and other resources which protect them from power as domination.<sup>7</sup> Freedom, or antipower, resides in one's independence from the will of a master. 'Antipower' Pettit writes, 'is what comes into being as the [dominating] power of some over others [...] is actively reduced and eliminated' (1996, p. 588). Antipower or freedom's power resides in the common knowledge element of freedom as non-domination, such that the common knowledge of agents freedom and thus anti-power through legal protections and other resources constitutes a form of counter-power which in a scenario of agent A seeking to dominate agent B (in possession of anti-power), the anti-power of agent B constrains the available choices of agent A, such that the choice to interfere with agent B is no longer an available option for agent A.

Summarised quite neatly by Pettit, what is at stake here is how: 'if institutions get rid of certain forms of domination without putting any new forms of domination in their place [...] then we may say that they promote anti-power' (1996, p. 588). Antipower, as a by-product or effect of freedom as non-domination, represents the control the subject of non-domination enjoys in relation to their future, their destiny, due to the protections established by the law which prevents domination, and this control granted by the status of freedom as non-domination too is a form of power: 'the power of the agent to make things happen' (Pettit, 1996, p. 589). Such antipower is granted, secured, and maintained through not only the rule-of-law, but financial regulation, the regulation of information, through welfare state led initiatives of empowering 'certain people,' through universal education, universal access to transport and communication, social security, legal aid and medical care, and any other similar formal state measures, as well as the informal institutions of civil society, which will reduce the subject's exposure to the 'mercies' of those in positions of authority (Pettit, 1996, pp 591-592).

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<sup>7</sup> It appears, that even in this earlier work in Pettit's oeuvre, in Pettit's republic there is no 'concerted power' (in the Arendtian or Butlerian sense). The 'people' do not have power, they only have anti-power, and as we shall see in chapters four, five and the Threshold which marks the space between them, individuated forms of 'control.'

Pettit has resisted any analysis of structural power, insisting that unfreedom resides in interpersonal relations of power, and he does so for two reasons. The first reason Pettit states himself, as he argues that by including structural forms of power as dominating would mean that ‘we lose the distinction between securing people against the natural effects of chance and incapacity and securing them against the thing that they may try to do to one another’ (1997a, pp. 52-53). Central for Pettit, then, is ‘the agentic relationship between two individuals’ (Khan, 2019, p. 398). Whilst social structures may facilitate domination, it is nonetheless agents who exercise domination. While such agents may make the most of the sites of potential domination opened up by social structures, and their ‘unintended consequences’, social structures nonetheless are only facilitative of domination by agents (individual or corporate), over ‘vulnerability classes’ created by social structures, which he argues are the product of spontaneously emerging norms, conventions, markets, and organisational arrangements via the unintended consequences of individual social action (Haugaard and Pettit, 2017, p. 26).

Underpinning Lukes’ writings on power, and I argue the same must be at a subterranean level shaping Pettit’s concerns here, is the line from Spinoza quoted at the beginning of this chapter, which appears time and time again in his attempts to carve a line between power and domination. Lukes writes: ‘I suggest that one way to capture this is to see the concept of domination as adding to the notion of power over others the further claim that those subject to it are rendered *less free*, in Spinoza’s phrase, *to live as their nature and judgment dictate*’ (Lukes, 2005, p. 114). This view of Lukes’s, further stands as an unmovable object in his capacity to take seriously the radical and genealogical analyses of power found in the work of Michel Foucault. That unmovable object, I argue is an essentialist conception of human nature, which requires that in order to theorise domination, the theorist, in this case Lukes, but equally Pettit, must have a both a theory of human nature and an account of the person’s interests (cf. Lukes, 2005, p. 73). To this conundrum Lukes poses the following question, to which post-structuralist theorists of power must answer with a resounding ‘yes!’: ‘Should they lead us to conclude that we are all subjected subjects, “constituted” by power, that the modern individual is the “effect” of power, that power needs to be “de-faced”, that rationality is “context dependent” and “penetrated” by power, that power cannot be based on rational consent – in short, that after Foucault it no longer makes sense to

speak, with Spinoza, of the very possibility of people being more or less free from others' power to live as their own nature and judgement dictate?' (Lukes, 2005, p. 107).

The second reason is that if freedom is secured through the structural power of the law, then, the picture becomes a lot more challenging to speak about non-arbitrary law, as both non-dominating, and constitutive of freedom. If we grant that the emergence of norms or the law arises through and in relation to structural forms of hegemonic power, the possibility of securing such law from arbitrariness, from the trace of decision, becomes more or less impossible. As we have learned from Laclau and Mouffe (2001) hegemony is the instantiation of exclusionary power in the constitution of objectivity with a terrain of undecidability: hegemony will always be more or less arbitrary. This is precisely the limit of understanding freedom and power, as Lukes does, in terms of 'interests', real or otherwise.

These limits to Pettit's Method however are not inseparable from the individualism which underpins such a Method, and its agent-centred understanding of power. The problem with agent-centred understandings of power was first raised in the mid 1970's by Lukes in his critique of the post-war Anglophone power debates in American political and social science, not least his challenge to Bachrach and Baratz (1962). Whilst Bachrach and Baratz sought to challenge the rather thin normative defence of the governing powers of American society proffered by Dahl's work on power, through the extension of such a pluralist theory of power to include not only decision making but also non-decision making as a potential exercise of power, they none the less maintained a view of power that was agent centred. By focusing on cases of non-decision making as well as observable exercises of power *qua* decision making, Bachrach and Baratz raised important issues of power's exercise in practices of agenda setting and the 'mobilisation of bias,' giving attention to the ways in which power is tied up in the redefining of the '*boundaries of what is to count as a political issue*' (Lukes, 2005, p. 23, emphasis mine).<sup>8</sup> The problem, as Lukes has pointed to, with Bachrach and Baratz's extension of Dahl's view, is very much tied to this agent-centric view of power, rooted in their methodological individualism (2005, p. 26). As Lukes observes: 'the bias of the system is not sustained simply by a series of individually chosen acts,

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<sup>8</sup> Such an account found in Bachrach and Baratz resonates very clearly with Pettit's earlier formulation of power in terms of 'A imposes a sure or probabilistic burden, real and/or purported on B's not X-ing; A misinforms B about the blocks and burdens in place, to get B to x.'

but also, most importantly, by the socially constructed and culturally patterned behaviour of groups, and practices of institutions [...]’ (2005, p. 26). It is such forms of power, which are insidiously rooted in that which we take to be natural, such as our conception of our interests, which Lukes identifies as the third dimension of power, the power over the formation of desires, interests, and beliefs prior to the emergence of any observable conflict and the detection of power. What emerges from the power debates chronicled, in part, above, is the possibility of forms of domination which are not located in the action or inaction of an agent, but in the non-agentic control of desire and thought by conventions, norms, and pre-scripted patterns of behaviour. Lukes of course, pulls back from this strong structuralist position in the second edition of *Power: A Radical View* (2005), arguing that if we are to have a concept of power that can address ‘practical’, ‘moral’, and ‘evaluative’ contexts of power, when it comes to the question of morality and thus politics, in the analysis of power as an observable phenomenon, the question of where does power lie, is equally a question of who can be held ‘responsible’ for an exercise of power (Lukes, 2005, p. 66). It is precisely this concern with ‘responsibility’ and the need, for the purposes of moral analysis of power, that will lead Lukes to dismiss Foucault’s theory of subject constitution as nothing more than a theory of socialisation: ‘Foucault’s view of power dissolves’ (Lukes, 2005, p. 97).

Pettit’s response to the problem of structural power, as noted in the first reason immediately above, is largely unsatisfactory, however, not simply because he unconvincingly reduces structural power to the ‘non-agentic’ power of contingency, where agency is assumed, in this instance, to reside only in the individual as an agent. But further, because Pettit, in so doing, naturalises and depoliticises as almost axiomatic, those inequalities and asymmetries of power ‘that take the systemic forms of subordination, such as the unequal distribution of wealth in society, or the processes of normalisation that leave some individuals and groups in positions of privileged and superior status and others in a subordinate or inferior position’ (Khan, 2019, p. 396). These are critiques of Pettit’s account which resonate with many Marxist and feminist scholars (Freidman, 2008), as well as more ‘critical republicans’ (Laborde, 2008), who have emphasised the systemic forms of domination rooted in the patriarchal norms which structure the entire discursive field of the social. These forms of domination rooted in arbitrary power escape the reach of the law as the means to address such

inequalities of power, despite Pettit's efforts to structure out the challenges posed by structural forms of power in *OPT* precisely in this legal manner (see Pettit, 2012: p. 62). *Thus, the questions of "interests," the subject of non-domination and the problem of intersubjectivity are in need of greater examination and elaboration, as we seek to deepen our understanding and analysis of non-domination.*

### 3.4 (Non)Domination and intersubjectivity

In order to develop this line of thought, perhaps it is helpful at this point to pause, and pivot back to the first iteration of the scene between Nora and Helmer Torvald in *Republicanism*. In this first iteration, though much briefer than the second (discussed above), Pettit embeds the scene in a landscape of generalised patriarchy and paternalism, discussing the possibility of the common knowledge of a scenario of domination that is 'un-moralised', and thus "purely descriptive". Domination need not be anything 'on a par in any way with slavery' and may be taken somewhat for granted as a form of natural superiority. Assuming momentarily the position of those who do the dominating, Pettit suggests, that the *dominus* may never consider 'that the parties they dominate may bristle under the yoke' (1997a, p. 60). Torvald Helmer, we are told, 'is clearly aware of dominating Nora, his wife, and indeed clearly believes that this domination is good for her. But he is absolutely blind to the fact that this domination could come to seem irksome and demeaning to Nora herself' (ibid.). At a purely descriptive/sociological register, Pettit is pointing here to a set of power relations which are dominating, but not politicised as such, that is, not articulated in a manner in which the asymmetrical relationship of power is named as a scenario of domination by the subjects within the relation, either the dominated or the dominator. Common knowledge and conscious awareness of a scenario of domination then is a prerequisite for the phenomenon of domination. As Pettit brings to a close his use of Ibsen's play, without closing the discussion at hand, he asserts: 'the lesson is that, even where domination exists and is recognised, it may not be seen for what it is when the dominated parties cannot speak for themselves' (ibid.). Non-domination, we might deduce, must require a moment of realisation on the part of the dominated that they are so under the yoke of a *dominus*. A subjective and intersubjective recognition of this asymmetry is crucial for a struggle for freedom as non-domination to emerge, as Pettit

argues: 'the master-slave scenario will materialize, and the asymmetry between the two sides will be a communicative as well as an objective reality' (ibid., p. 61).

This claim by Pettit, seems to me to be more or less true of most relations of domination, in the specific sense in which he defines the same, and is consistent with his conceptualisation of legitimacy in terms of contestation, as opposed to consent. As Laclau and Mouffe have argued, relations of subordination are an axiomatic feature of any hierarchical social order, in which an 'agent is subjected to the decisions of another' (Laclau and Mouffe, 2001, p. 153). For Laclau and Mouffe there must be a moment of political articulation of such relations of subordination as 'oppressive', as antagonistic to ones perceived interests, in order for these relations to become intersubjectively understood as relations of 'domination' once they have been antagonistically articulated as illegitimate and unjust (Laclau and Mouffe, 2001, p. 159). What is more, Pettit here opens up some new avenues of analysis and discussion, which revolve around the question of voice, but also the emancipatory potential of this subjective and intersubjective realisation of domination, as the relation transitions from an objective or sociological reality, to a communicative and thus potentially politicised reality. Freedom as non-domination has long been associated, for republicans with both subjective and intersubjective status, 'with a feeling of independence and immunity', and a shared recognition that as a subject of non-domination 'you are a person in your own legal and social right' (Pettit, 1997a, p. 71; Wirszubski 1968, p. 159). It is precisely in this immunity and independence that Pettit locates the benefits of freedom as non-domination as a status that one can enjoy in the presence of others.

Mobilising again the technique of oppositional elucidation, Pettit returns to the diverging conceptualisations of negative liberty, non-interference and non-domination, reminding us how the freedom associated with the former, with the account of freedom as the absence of interference by others, is a freedom which rests entirely on contingency, and the chance or good luck one might enjoy in not being interfered with. Non-interference is a theory of freedom which promotes the continued vulnerability of subjects to non-freedom, with no presence of a structural defence against interference. Under these terms, freedom in large part is dependent upon the subject's ability to strategise, to manage the anxiety that such a vulnerability to interference produces, and to, in the end, enjoy the fleeting warmth of the light

shone on earth by the Goddess Fortuna. As Pettit, quite compellingly argues against the ideal of freedom as non-interference:

To suffer the reality or expectation of arbitrary interference is not only to have to endure a high level of uncertainty. It is also to have to keep an eye on the powerful, anticipating what they will expect of you and trying to please them, or anticipating where they will be and trying to stay out of their way; it is to have strategic deference and anticipation forced upon you at every point. (Pettit, 1997a, p. 86)

Pettit suggests however, that under an account of freedom as non-domination, in which one enjoys a status of ‘immunity’ and ‘independence’, the need for strategy is fundamentally minimal (Pettit, 1997a, p. 87), the anxiety associated with the uncertainty of one’s position with regards to interference is reduced radically, and that subjects are granted the ability to plan for the future with relative ease and security. This subjective and intersubjective knowledge of one’s freedom, Pettit writes, ‘goes with the possibility of their seeing themselves as non-vulnerable in that way and as possessed of a comparable social standing with the other. They can look the other in the eye; they do not have to bow and scrape’ (Pettit, 1997a, p. 87). The status of freedom then on the republican account, is constitutive of, and in fact provides the very conditions of possibility for the subject’s full development of their capacities, and in that sense stands for Pettit, as what Rawls (1971) refers to as a ‘primary good’.

For Pettit, quite simply put, to be dominated is to be hindered in one’s pursuit of their personhood to the fullest extent that they can achieve, due to the necessity of strategy and the psychological weight of the subjective experience of being positioned in a subordinate status in relation to others. Freedom as non-domination becomes a prerequisite for, and the condition of (im)possibility of personhood, and this is what Pettit understands to be primary about the good of neo-republican freedom. Central to this configuring of freedom, domination and personhood, is the question of voice. According to Pettit:

To be a person is to be a voice that cannot properly be ignored, a voice which speaks to issues raised in common with others and which speaks with a certain authority: enough authority, certainly, for discord with that voice to give others reason to pause and think [...]. To be treated properly as a person, then, is to be treated as a voice that cannot be dismissed without independent reason: to be taken as someone worth listening to. (Pettit, 1997a, p. 91)



A dominated subject has no voice, they will be ‘presumed to lack an independent voice’, and thus their claims will be ignored by those in positions of power (Pettit, 1997a, p. 91). Likened to the status of a ‘precocious’ child, the dominated will be seen as ‘attention-seekers,’ they may receive attention and respect, but they will not ‘command’ it (ibid.). It is on this basis that Pettit asserts the universal appeal for investment in freedom as non-domination by subjects, as ‘everyone [...] will want to be treated properly as a person, as a voice that cannot be generally ignored [...] every such person has reason to want freedom as non-domination’ (ibid.).

### 3.5 From free person to free citizen: agency as ‘discursive control’

Underpinning Pettit’s argument here, and his Method more broadly, with regards to freedom as non-domination and personhood, is a theory of agency, developed in *A Theory of Freedom* (hence forth *ATF*) which operates at a level of abstraction beyond the ontic level of the political claim’s made in works such as *Republicanism* and *OPT*. Such a philosophical or ‘psychological’ theory (as Pettit names it) of agency nonetheless provides, for want of a better word, the ontological conditions of (im)possibility for his conceptualisation of civic freedom. It is in consideration of this *philosophical* work by Pettit, that the question of ‘personhood’ and the intersubjective elements of Pettit’s political theory can be fleshed out in greater detail. Here we need to momentarily draw an analytical distinction between political freedom which we have understood in terms of non-domination, and a philosophical conception of freedom, or agency, as the ‘free-person’ which though analytically separable, as we shall see in the practice of Pettit’s political theoretical writings, converge and fuse. As such, our focus here on the ontological problem of agency is primordial to any discussion of freedom as non-domination at the ontic level of republican politics, if indeed such a division is possible to maintain. At its most basic level, Pettit’s understanding of freedom is to be located in terms of personal moral responsibility. A free-willing-agent is an agent who can be said to be capable of being held responsible for that which is under their control (Pettit, 2001, p. 65).

Pettit thus understands control in terms of what he calls ‘discursive control’, which is the philosophical condition of possibility for freedom as non-domination as ‘personhood’ and in possession of ‘voice’ that Pettit developed in *Republicanism* (1997a, p. 91)

and I explicated above.<sup>9</sup> Discursive control operates at the ‘philosophical’ level as a theory of the free person, and Pettit accounts for its emergence in the following terms:

We stand in a variety of relationships to others, each of them characterised by its own distinctive pattern of power and vulnerability, authority and liability, and by the reflection of this pattern in the assumptions shared in common among the parties. The question with which the theory of freedom as discursive control begins bears on whether any sort of relationship is particularly suited to the freedom of the person. (Pettit, 2001, p. 66)

This relationship which Pettit thinks is constitutive of such a freedom he locates in the activity of ‘discursing’, the back and forth of conversation, with the express task of reasoning ‘together with others’, in ‘the attempt to resolve a problem by reference to what all parties regard as inferentially relevant considerations or reasons’, where that problem may be theoretical or practical (2001, p. 67). In this activity of reasoning together, there is, for Pettit, an acknowledgment by all parties of the common problem at hand, and the practice of such reason presupposes at a tacit level that any such resolution will be agreed on in common. The presupposition of any discursive encounter, we might say, is the prevailing character of “the unforced force of the better argument” (Habermas, 1998, p. 37) and that such an encounter is governed by the logic of an axiomatic symmetry of power relations between discursing subjects when it comes to the ‘decision-making influence’ subjects have on one another in the drive towards consensus (Pettit, 2001, pp. 68 – 69). At its root, Pettit’s conception of ‘influence’, is embedded in a deeply rationalist conception of a discursive space, in which being influenced is a matter of the subject’s decision to be so moved: ‘if we are moved by others, then, we will only be moved in a way that we would want to be moved; we will ourselves retain discursive determination of where these movements take us’ (ibid., p. 70). Affective/rhetorical forms of persuasion and influence are precluded from the realm of domination-free, or even power-free communication (Dryzek 2000, p. 167, 2005, p. 224; Mouffe, 2005b, p. 24). Such a claim is fundamental, however, for Pettit to maintain his conception of personal freedom as responsibility. As to precisely how far a remove we are here from the ‘ideal speech situation’ of

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<sup>9</sup> As Eva Erman (2010) has explained, ‘freedom as discursive control’ constitutes the philosophical counterpart to the political theoretical concept of non-domination in so far as they are ‘analogous and mutually supportive’.

Habermas's discourse-based method of political theory, is interesting, politically and theoretically, and a problematic which we will encounter again in chapter six.

In order to be a fully free person, meaning 'fully fit to be held responsible for what they decide and do', they must have discursive control (Pettit, 2001, p. 70). The subject of discursive control, on Pettit's account, must possess both the 'ratiocinative'<sup>10</sup> capacity to engage in discourse through reason and the 'relational capacity' to access the space of discourse in which they can practice such a capacity under 'discourse-friendly' conditions. This, Pettit calls 'discursive power' or 'discursive status', and again, here, through the language of status and the articulation of conditions for 'enjoying' discursive control, Pettit creates an inside/outside dynamic of distinction between the free-person and the infra-person,<sup>11</sup> who is not yet, or may never be said to be free. With these two elements of discursive control, Pettit argues that the capacity to reason is not sufficient for freedom, but further that the subject with such a ratiocinative capacity must exercise this reason in a context of social relationships in which the other practitioners of reason recognise the subject as a person who is fit to participate in practical discourse (Pettit, 2001, p. 79, 103). At stake then, is a recognition, which arises in the intersubjective dynamic of common knowledge discussed earlier, where the person is taken to be a voice 'that cannot properly be ignored, a voice which speaks to issues raised in common with others and which speaks with a certain authority' (Pettit, 1997a, p. 91). Such a *recognition* of the subject's ratiocinative capacity by others within a given discursive space, is *required* in order for the subject to 'avoid being subjugated to relationships of arbitrary power' (Erman, 2010, p. 37). The more the 'person' exercises this ratiocinative capacity in discourse with others over time, the 'more the

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<sup>10</sup> 'Ratiocinative', here, refers quite simply to the ability of the subject to reason with themselves and others, such that they can make up their own mind on the basis of reasons given and discovered through discourse with others, or through their independent development of their own reasoning capabilities in given areas of discourse.

<sup>11</sup> My concern here with the problem of the infra-person or more accurately the "infra-human", within Pettit's account resides in a sensitivity to the language Pettit uses to describe those who do not conform to the idealisations he ascribes to a 'free-self' and the ways in which this discourse of 'discursive control' is tied to an individuating responsabilisation of the human in which a failure to meet such idealisations is tantamount to the continued exclusion of a subset of human beings from not only politics, but the space of appearance in which they would be treated as equal and free persons by virtue of their humanity. Take for example the following passage in which Pettit describes the reaction to a person within a 'discursive' space who does not meet the threshold of a 'free self', and my point here is the de-humanising language at play: 'Such a person, we must suppose, will be bedevilled by obsession, or compulsion, or chronic weakness of will, [...] And with anyone subject to such **pathologies** we will naturally say that, [...] they are not fully fit to be held responsible', that is to be free, in either a philosophical or political sense (Pettit, 2001, p. 87, emphasis mine). How close Pettit's account is from Rousseau's *those who must be forced to be free*, is interesting to note.

relational capacity in question [will] be recognised as a matter of common awareness’, and thus the stronger it will become (Pettit, 2001, p. 71).

As is now clear, Pettit’s conception of freedom is premised upon an intersubjective account of agency, in which this freedom from domination is only possible due to the subject being free in relation to others and through relations with others. As Erman (2010, p. 38) has argued quite compellingly however, this status concept of freedom arises not only through the absence of interference on an arbitrary basis, but through this intersubjective account of agency, in which the agent, in order to be free, still must play a part in constituting this freedom. The part they must play, is the exercise of reason in a plurality of spheres, such that they demonstrate their authority and command the treatment as a competent social agent with discursive control and capable of being held responsible. Otherwise put, the agent gains recognition as a discursive subject through the exercise of their reason through discourse with others. One might begin to suggest on this basis that at stake is a positive, as opposed to negative, account of liberty, thus running in the face of the claims Pettit has made elsewhere to the fundamental negativity of freedom as non-domination. Pettit, nonetheless, maintains the negativity of freedom as non-domination, arguing that freedom pertains only to that which occurs outside the agent and with regards only to their relations with others (see Pettit, 2003; Erman, 2010). Freedom then places a large emphasis upon the relational element of discursive control, assuming as a pre-political given, that the intrapersonal aspect of the ratiocinative capacities of the agent is already available; it is, we might say, an ontological fundament of Pettit’s account, which is naturalised and assumed of all adult agents (though as we will see below, on closer inspection it turns out that this applies to only those who qualify as persons deemed competent to participate in the game of ratiocinative discourse). In the adult agent-subject of non-domination there is no necessary link between the ratiocinative and relational aspects of discursive control, except for their contingent co-articulation or, from Pettit’s perspective, coincidence, in order to say that the agent possesses the status of non-domination. The claim, then, is that ‘the ability to reason is a precondition for and makes possible the access to proper discursive relations’, where the ‘the agent can now become free via the interpersonal dimension’ (Erman, 2010, p. 38). It is on this thin intersubjective basis that the theory of non-domination, premised upon the possession of discursive control, maintains its commitment to a negative

conception of liberty (ibid.). As such, Pettit, places great emphasis upon the role of recognition in establishing one's freedom as non-domination, yet any substantive account of recognition and its relation to power is fundamentally absent from his work. I shall return critically to this problem of recognition in the final section of this chapter.

Taking a step back from the critical exegesis of Pettit's Method momentarily, I argue that from the above discussion two potential lines of thought emerge which are worthy of greater consideration. The first pertains to the question of *voice* and its attendant politics – a politics of recognition – at both a deeply material and meta-theoretical level. The second line of flight relates to the emphasis Pettit places upon the (im)possibility of responsibility in relation to freedom as non-domination. The demand to be held responsible is inseparable in Pettit's account from the problem of a moral community. To be responsible, is to be given over to the demands and expectations of a community (see Strawson, 1974, pp. 1-20), moral or otherwise, and accountable to such a community, and its mores, in order to maintain one's relational capacity as integral to freedom. On my post-structuralist understanding, at stake in a conception of *responsibility* and community in this thick *moral* sense, is the placing of limits upon the subject's political demands, and action, through the policing power of intersubjective relations naturalised into the police order in question (cf. Nietzsche, 1969, Essay II). These are not, however, unrelated problems politically or theoretically, and coincide in the political problem of the character, scope and form of the political demand, from which quarter it emerges, in which 'voice' it is spoken, and what precisely does it insist upon figuring as the nodal object of political contest. Here again, we detect along the path of neo-republicanism the philosophical suppression of antagonism, and the writing over politics in the name of non-domination. But first, let us examine more closely the question of power as it pertains to the character of the subject's ratiocinative capacity and voice.

### 3.6 (Re)constructing neo-republicanism's theory of subject-formation

In pursuit of the above-mentioned line of critique and reflection such that its exegesis, on the first reading, emerges more or less consistent with a generous reading of Pettit's texts, let us focus in further on the question of the subject of non-domination and its intersubjective formation according to Pettit's Method. For the most part in his explicitly political theoretical work, Pettit has been at pains to state that his reflections

on non-domination are restricted to the theorisation of the freedom of ‘able-minded’ adults, deciding for the purposes of schematic efficiency to not address the problem of freedom from arbitrary power in cases pertaining to ‘children or those suffering, permanently or temporarily, from cognitive or associated limitations or ailments’ such as those persons who are ‘intellectually disabled’ (Pettit, 2014, p. 79, 217 n. 39). However, this is not entirely true. In two places within his writings, Pettit addresses the figure of the child and its socialisation, in passages which are deeply revealing of the character of freedom as non-domination with regards to the questions of subject and political community. By reading these two passages intertextually, we can start to see more clearly the problems of power, intersubjectivity and community more clearly. At stake here, is precisely the question raised earlier in relation to Lukes and how he dismisses Foucault’s work on power through the assertion that Foucault was merely trading in ‘sociological commonplaces’ – that ‘individuals are socialised...orientated to roles and practices that are culturally and socially given; they internalise these and may experience them as freely chosen’ (Lukes, 2005, p. 97). Apart from the somewhat obvious issue that this assumes a pre-formed self or subject who is doing the ‘internalising’ and ‘experiencing’, in my post-structuralist reading of Pettit, this is also a significant type of decision that operates on the basis of doxa operational in the discipline of sociology, i.e. the academic discipline tends to discipline the scope of inquiry by depoliticising the modes of power that come into focus if we shift our gaze from centre to margin, thereby paying close attention to how children are subject to disciplinary power, biopower, governmentality, subjectivation. That is as a discipline and an apparatus that attempts to govern the life process known to us as ‘child development’.

In much liberal and anglophone analytic political theory, the history of Western political thought, as well as, liberal democratic culture more broadly, there has been an historical tendency to figure children at the centre of any conception of political community, as either ‘incomplete and incompetent political actors’ or worse ‘as remnants of an animalistic past that threatens the ordered life of the *polis*’ (Faulkner, 2011, pp. 51-52). Within the texts of political theory, scholars such as Faulkner have argued, children occupy something of a paradoxical position in relation to citizenship, as their ascribed traits of acting upon immediate desires and partaking in unruly speech, are mobilised as idealisations against which good citizenship is defined, and ‘an ideal,

that through good citizenship, we protect' (2011, p. 53). These deficiencies in the figure of the child are put down to their, as of yet, incomplete socialisation by parents and teachers into the appropriate or proper modes of conduct, whilst simultaneously, it is precisely on the basis of children's 'social naivety', children are often treasured as refreshing in their impropriety. Ryan has argued, from a perspective situated within the theoretical discourse of Agamben and what the former calls technologies of biosocial power, the figure of the child co-habits the "thresholds" and "zones of indistinction" that Agamben locates in the originary, or ontological, bio-political fracture, between *zōē* ("bare" or naked life) and *bios* (qualified life). As such, childhood stands as a point of rupture between the past and the future, between death and life, animality and humanity, *phusis* and *nomos*, that is within the thresholds that constitute zones of indeterminacy between each of these dualisms (Ryan 2014a, p. 267). Ryan's claim in its essence, is that, 'it is through attempts to govern this indeterminacy that modern Western childhood has been constituted as a particular zone of intensity within the wider field of biopolitics, and to grasp this intensity [...] it is necessary to attend to the centrality of the imagination in staging biopolitical strategies, that is, the ways in which childhood is deployed both as a technical project and as an imaginary projection', both in policy, but equally within the discourses of political philosophy which bolster and underpin our contemporary liberal democratic orders (Ryan, 2014a, p. 267). By way of illustration, Ryan takes up the imaginary projection of what Faulkner (2011) names the 'the fantasy of childhood innocence', in which the association of the childhood with innocence and vulnerability, serves as a now well established way in which visions of mastery are projected forth into the world, as a 'way of constituting and confronting the unruly remainders – in particular libidinal desires and appetites – that are to be mastered', both theoretically and materially in the moulding of docile child bodies (Ryan, 2014a, p. 268). In this positioning of children with the game of power/knowledge as vulnerable and innocent, in need of formation, the figure of the child is rendered '*not yet* sufficiently rational, capable, or moral', and thus must be 'acted upon by those who would protect the innocence of children' (ibid.). As Cruikshank has argued, 'citizens are not born; they are made', through the operationalisation of social scientific knowledge, in the guise of programs, education, and 'strategies for governing, shaping, and guiding those who are held to exhibit some

specified lack', be they children, the unemployed, or homeless etc., (Cruikshank, 1999, p. 3).

The first occasion in which Pettit raises the status of children and non-domination is in a short passage in *Republicanism* in which he highlights how there may be exceptional cases in a neo-republican state and society in which it would be warranted for higher levels of interference to be exercised over some persons in order to maintain the intensity of their freedom as non-domination. These exceptional cases pertain, he argues, to children and 'perhaps some other categories of people' (Pettit, 1997a, p. 119). By 'other categories of people', I take Pettit to be referring here to those persons who fall outside of the game of ratiocinative discourse by virtue of their differential embodiment and cognitive capacities to those established through forms of power/knowledge as the "norm" in scientific and moral discourses (Foucault, 1980). Methodologically bracketing these 'other categories of people', Pettit argues that children, in order to 'enjoy' as adults the non-domination a republic can confer, 'must be subjected to the disciplines inherent, as any parent knows, in fostering education and development' (Pettit, 1997a, p. 119). This is not to say that parents and guardians can exercise unlimited arbitrary power over children during this process of becoming, but rather that they should 'enjoy the standard intensity of non-domination', and any interference they experience ought to be of the non-arbitrary kind. Whilst children will experience a 'reduction in the extent of undominated choice', this interference in their exercise of agency shall be non-dominating insofar as it tracks their interests (ibid. p. 120). As Pettit suggests:

While giving parents and teachers special powers over children, then, as the law gives the authorities power over ordinary adults, the disciplines would not give them any right of interference. Parents and teachers would be subject to such constraints, and exposed to such possibilities of sanction, that two things, ideally, are assured: first, they will seek to advance the relevant interests of the children; and second, that they will seek to promote those interests *by non-idiosyncratic lights*. Parents and teachers would be allowed to exercise considerable interference in the lives of children, in other words, but the interference would be designed to track the children's interests *according to standard ideas*, and it would not constitute a form of domination' (Pettit, 1997a, p. 120, emphasis mine)

Interference by parents and teachers over children is non-dominating when conducted in accordance with 'standard ideas' and 'by non-idiosyncratic lights', yet these standard



ideas are fundamentally embedded in historical relations of power/knowledge, that are hegemonically produced, and oriented towards the project of governing conduct. These operations of power constitutive of the subject of non-domination, however, are imperceptible to Pettit due to his slim agent-centred view of power (cf. Khan, 2019).

Before, circling around to the second location within Pettit's body of work in which we can examine the intersubjective formation of subjects of non-domination in greater specificity, I want to first rest for a moment with Pettit's Method, and to consider its relation to the Method of political theory more generally within the discursive field of anglophone political theory, taking two examples from classical English republicanism/liberalism, first from Locke, and second from Mill.

In *The Second Treatise on Government* Locke performs a similar split to that found in the work of Pettit, separating out the categories of 'children' as well as 'lunatics and ideots', to be 'never set free from the government of their parents' (Locke, 1980 [1690], Chapter VI, §. 60). 'Madmen' are destined to remain in such a state of permissible domination, for they 'cannot possibly have the use of right reason to guide themselves', and thus dependent upon the reason of their 'tutors' (ibid.). Whilst the child, is 'free by his father's title, by his father's understanding, which is govern him till he hath it of his own' (ibid., §. 61). But all of this betrays something more in Locke's political theory than a concern for the protection of children and 'lunatics.' As Uday Mehta (1990) has shown, the exclusion of children draws upon another argument in the *Second Treatise* which takes consent as a fundamental basis or foundation for the legitimacy of political authority. Consent, Locke argues, requires acting in accordance with the laws of nature, and to know these laws requires reason (Locke, 1980 [1690], Chapter VI, §. 57, 59). But what does Locke take to constitute the ability to reason? The answer to such a question Mehta locates in Locke's essay *Thoughts Concerning Education*, a text in which he states the purpose of education is to "[weave] habits into the very principles" of a child's nature even if the only means to ensure this result involves instilling "fear and awe", including that special fear of a father "who may perhaps disinherit" a child' (Mehta, 1990, p. 437). Reasoning, on Locke's account, is dependent upon the selection of an appropriate tutor or governor whose brief toward the pupil is:

To form a young Gentleman, as he should be, 'tis fit his *Governor* should himself be well-bred, understand the Ways of Carriage, and Measures of Civility in all the

Variety of Persons, Times and Places; and keep his Pupil, as much as his age requires, constantly to the Observation of them. This is an Art not to be learnt, nor taught by books. Nothing can give it but good Company, and the Observation joyn'd together ... Breeding is that, which sets a Gloss upon all his other good qualities, and renders them useful to him, in procuring him the Esteem and Good Will of all that comes near. (Locke quoted in Mehta, 1990, p. 437)

Breeding as it appears here, is crucial for Locke, entailing an assimilation into the observed police order of said society. Throughout Locke's writings the role of conventions is easily overlooked, but nonetheless play a crucially determining role in the conduct of political subjects, and their formation. As Faulkner describes: 'Locke's child is... an apt synecdoche for humanity, a part representing the whole in its essence as pure and untainted by inscrutable, unworldly truths'. As humanity's *tabula rasa*, Locke's child represents a future 'free of the weight of millennia of superstition and ignorance' (Faulkner, 2011, p. 69). The language of 'civility', 'gentlemen', 'breeding', 'inheritance', and 'good Company' all derive their precise relational identity from a cultural context and from the very fabric of a police order which at that time entailed the continuing defence of slavery, colonialism and patriarchy. Here the very strategies of liberal exclusion which Mehta opposes enter into their fullest clarity. Mehta compellingly concludes: 'they [the values listed above] refer to a constellation of social practices riddled with a hierarchical and exclusionary destiny. They draw on and encourage conceptions of human beings that are far from abstract and universal and in which the anthropological minimum is buried under a thick set of social inscriptions and signals' (1990, p. 438). The implications of such a historically less than universal inclusivity, is that the terrain of social credentials in which the liberal theory applies

is a terrain that the natural individual equipped with universal capacities must negotiate before these capacities assume the form necessary for political inclusion. In this, they circumscribe and order the particular form that the universalistic foundations of Lockian liberalism assume. It is a form that can and historically has left an exclusionary imprint in the concrete instantiation of liberal practices. (Mehta, 1990, pp. 438-439)

This question of childhood and 'other categories of persons' takes on an entirely more explicitly racialised figuring however, in the writings of J.S. Mill. As Ryan has

argued in relation to the political theory of liberty of Mill, the figure of the child in relation to liberty, is such that the child in its as of yet incomplete development into full personhood, represents something of an origins story for the political community of Mill's liberty as non-interference, in which freedom is constituted at the threshold of domination (Ryan, 2014a, p. 268). Comparable, but by no means consistent with Pettit, Mill's account bounds liberty through the exclusion of not only children, but also to 'barbarians', who according to Mill are to be found in 'backward states of society in which the race itself may be considered as in its nonage' (Mill, quoted in Ryan, 2014a, p. 269). Under conditions in which the threshold of the human is not met, then benevolent "despotism" is recommended as "a legitimate mode of government", with the aim of improving those who are unfortunate to be rendered subject to it. Ryan's aim is not a moral critique of Mill's writings, but rather how Mill through the concept of 'anteriority', articulates such an exception to freedom as non-interference. Mill's claim is that the ideal of liberty "has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion" (Mill, quoted in Ryan, 2014a, p. 269). It is on this basis that a bio-political fracture in Mill's discourse is located, and Ryan drawing once more on Agamben, writes: 'life is split and divided – children and barbarians can utter sounds and communicate, but the life they embody is not (yet) capable of comprehending the kind of "language" that articulates reason and law, that distinguishes the just from the unjust, and which makes possible a properly political life' (2014a, p. 269). The biopolitical fracture, which takes place at the level of the onto-epistemological figuring of life itself, is performed through the concept of anteriority, nonetheless includes whilst it excludes, as 'that which is cast outside remains at the centre of civilised life as its constitutive condition of possibility', (Ryan, 2014a, p. 269); and thus the "anthropological machine" functions through its animalising of the not (yet) human, 'by isolating the nonhuman within the human' (Agamben, 2004, p. 37, quoted in Ryan, 2014a, p. 269).

As the figure of 'child' and 'barbarian' are rendered equivalent within Mill's discourse to a greater or lesser extent, as life each understood to be emerging from 'animal existence', but not yet fully part of civilised humanity, the child finds itself in this *zone of indistinction*, in the threshold, slowly becoming *bios*, as its naked body acquires the clothing of 'language and reason', and thus is anterior to 'the liberty bestowed upon

those who have mastered their animal nature’ (Ryan, 2014a, p. 270). Whilst on Mill’s account childhood is a temporary state of subjection to the interference of parents and adults, this soft despotism, is formative, as in Mill’s words: “the existing generation is master both of the training and the entire circumstances of the generation to come” (Mill quoted in Ryan, 2014a, p. 270). What Ryan takes from this is precisely how the political philosopher, in this case Mill, frames liberty ‘as a task or technical undertaking, and the purpose of this machine is to govern life as it extends into the future’ (Ryan, 2014a, p. 270). What’s more, the dominating character of this operation of biosocial power lies not simply in the exercise of sovereign forms of power over the child-subject of liberalism due to their exception from the nomos of the community as non-interference, but ‘it is despotic too because it is anchored in a stock of social knowledge which, though historically constituted, has sedimented in culture and consciousness so that it becomes *true* knowledge, and the idea of anteriority is a very particular type of truth’, in the case of Mill’s political philosophy, emanating from the discourses of natural science, eugenics, the mass racialisation of populations, and the capture of life by power in modernity (Ryan, 2014a, p. 270).

There are some minor differences to be traced however between Mill and Pettit on the question of the limits of inclusion in the political community of non-domination. Whilst Mill advocates a form of soft-despotism in relation to the exceptions to non-interference, Pettit’s understanding the concept of liberty in terms of non-domination as opposed to non-interference already has built into his account of freedom space for acts of interference by constituted power and figures of non-dominating authority. Mill and Pettit both still nonetheless authorise a political paternalism with regards to children and other subjects who lack the capacities and capabilities of normative projections of the ‘fully human’ in Mills terms, or of ‘personhood’, as it appears in Pettit’s nomenclature. A bio-political fracture takes place within the text of Pettit’s Method, though nowhere near as clear cut as the distinction drawn in Mill. Through his positing of strong criteria around the ratiocinative capacities of the adult agent-subject which can be claimed to be first philosophically, and, then politically, a free-person, Pettit nonetheless figures the subject anterior to full enjoyment of non-domination as a free-person under conditions in which they are exposed to the forms of power at work in Agamben’s “anthropological machine”, which I maintain, despite Pettit’s limited conception of power, is a site of domination in its arbitrariness. Whilst

the child, however, is in a state of ‘developmental’ becoming and ‘improvement’, and thus its exposure to heightened intensities of power is temporary and formative, the ‘some other categories of people’ to which Pettit refers, do not experience this relation of becoming to neo-republican time. Rather, those who are differentially embodied and cognitively capable with reference to the pre-scripted and thus prescriptive norms of cognition and ratiocinative capacities, are left outside of neo-republican time, forever exposed to the paternalistic operations of power in which their so-called interests are tracked in accordance with ‘standard ideas’. At stake in Pettit’s categorisation of citizens in the figures of ‘the child’ and the ‘other categories,’ is no simple descriptive move or the ‘verdict of facts’, but an act of making a ‘classificatory decision’ which condenses those rendered incapable from the full ‘enjoyment’ of freedom as non-domination into a single entity that pose ‘dangers to the rest of society’ and its enjoyment of freedom (Bauman, 1998, pp. 67-68). Such a gesture is an ‘exercise in *value-choice* and *evaluation*’ (ibid., p. 68).

Pettit, like Mill, I argue further, through his bringing together of these two figures found within the thresholds of republican community, operationalises this example at an aesthetic level to defend paternalistic power over its subjects under the guise of non-domination. This does not present problems for Pettit, as seen in the quote above; for him we are all always in relations of power-over wielded by the law and social norms, though this need not constitute domination. The inbuilt paternalism of Pettit’s theory of freedom and government reveals itself, permitting the law to act in an interfering manner on the basis that it tracks the interests of its citizen-subjects. As I have argued in chapter one, with a little help from Rancière, political philosophy as conventionally practiced has the effect of engaging in a project of the normative defence of the continuing centrality of the state and its paternalistic use of “normative and legitimate” power over its citizen-subjects. What is further revealed in the discussion of children in relation to interference, is not the justification of that interference on the part of the parents, but the justification of the law as an interferer on the basis of a political logic built into the very Method of political philosophers such as Pettit, which sees the superiority of the political philosopher (as theorised in chapter two) as the rational, and unencumbered subject who articulates and maintains order, through the sublimation and writing over of the contingency, plurality, and struggle within the power ridden field of politics. What is more, such a paternalism

extends to the bounding and foreclosing upon the world of possibilities which exceed the sensible within the neo-republican police order. As Markell puts it: ‘it is one thing to be treated like a piece of property, and quite another to be treated, say, like a child; and not just in having the protective hand of a parent interfere with your conduct for your own good, but also and more insidiously in having the world ordered in ways that narrow the field of situations in which any conduct on your part might be called for’ (2008, p. 12). At stake, as Markell notes, is not only a matter of whose judgment counts in terms of the public or common interest, but further at play here is an active attempt to depoliticise certain issues and voices in the name of non-domination.

### 3.7 The politics of voice: ratiocinative capacities and the possession of *logos*

The second site in Pettit’s body of work in which the question of freedom in relation to children is to be located is in the context of his discussion of the development of ratiocinative capacities and discourse in *ATF*. It is in this context that we can offer some greater specificity to Pettit’s understanding of the “free” status of agents anterior to full freedom as non-domination, in this case explicitly with regards to children. As we have noted above, for Pettit the question of freedom as non-domination cannot be separated out from the philosophical problem of responsibility. In order to be a subject of non-domination, one must possess the fitness to be responsible. The link between freedom and responsibility for that which one does and has done, is, for Pettit, intuitive, primary, and necessary, for ‘there is no sense in the thought that while someone did something freely, still they cannot be held responsible for it’ (Pettit, 2001, p. 18). Such a responsibility Pettit argues must be noted before the exercise of a choice by the agent and further:

The agent must have knowledge of the options, must have the resources to evaluate them and must be able to respond to the evaluation formed. The agent must be a self such that it is possible for them to see what is done as something done in their name and something they can endorse as theirs. And the agent must be a person such that what they do is not subject to the pressure or coercion of others. (Pettit, 2001, p. 19)

This responsibility (that is freedom), Pettit claims, applies only to those capable of being fit to be held responsible, and not those whom we might otherwise treat as if they are so fit. What Pettit has in mind here is the case of our treatment of children as participants in the discursive sense, yet we rarely treat them as participants who ought to be held to the same degree as responsibility as we would fully ‘developed’ discourse-partners. As Pettit notes: ‘we often treat others as fit to be held responsible, when in truth they do not actually display this fitness, because of the effect this will have on their performance’ (2001, p. 16). In other words, discoursing agents admit access to discourse-friendly social relationships in order to ‘induct’ them into the practice of discourse, to develop their ratiocinative capacities, to demonstrate good discursive practices etc., yet, these children, and other developing discursive subjects (who need to ‘improve’, and ‘become better able to satisfy its [the practices] demands’) are not yet fit to be held responsible. They are not yet responsible, and thus are not yet (free) persons. However, their admittance subjects them to an intersubjective exchange in which they are non-coercively influenced and thus treated as ‘developmentally fit to be free/responsible’, in a limited and contingent sense (Pettit, 2001, p. 16).

Pettit’s claim is that with ‘exercise’ the agents ratiocinative capacities will strengthen, both through ‘learning and habituation’, and further, ‘the more that a person is involved in the exercise of discourse with others, the more will the relational capacity in question be recognised as a matter of common awareness’ (ibid., p. 71). At stake then, in the ascribed ‘developmental fitness’ of children is an access to a discourse-friendly set of social relations with others, such that through the practice of their ratiocinative capacities and the inductive influence of others they come to learn how to be responsible, and those others come to recognise them as worthy participants in discourse as free persons with the ability to command respect and authority as a voice that ought to be heard. As the raw material of republican citizenship, childhood is prefigurative of such citizenship in so far as it is framed as ‘developmental’ and thus a site of bio-political ‘improvement’ (cf. Harney, 2018, p. 101).<sup>12</sup> Children, thus, are not yet responsible-free persons, but they are nonetheless presumed persons, ‘in the extended sense that they share a common nature – our nature as humans – with those

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<sup>12</sup> With respect to recent trends (in the wake of the UN Convention on the Rights of the Child) recognising children as ‘young citizens’ (albeit without bestowing the same rights as adult citizens), Joanne Faulkner makes the observation that this generates a paradox whereby children are simultaneously already citizens and the raw material of citizenship (2011, p. 16).

who can' be held responsible (Pettit, 2001, p. 80). It is on this basis that children and other developing subjects are to be found under conditions of non-dominating interference and influence on a large scale, whilst still said to "enjoy" all the benefits of freedom as non-domination at an intensity on par with that enjoyed by 'free-persons' (cf. Pettit, 1997a, pp. 119-120).

At the intersubjective level of analysis and in the context of social ontology, that level at which non-domination is a contingently articulated social relation which arises *between* persons, as well as being enshrined by the law in a juridico-political community, the emphasis on 'common awareness' as it pertains to voice is fundamental. Admittance and incorporation into a discursively active group for an agent, Pettit suggests, must meet the bar set by two common assumptions. First, that, it must be a matter of common assumption of all members that the new discourse-partner meet the standards that would allow them to participate. Second, that in meeting assumption one, they then through common assumption are granted discursive control in the relevant group of discoursing-partners.<sup>13</sup> Here, the question of voice is central to this intersubjective game of recognition, as Pettit writes: 'the person has a voice that has some claim to be given a hearing, and an ear that can give an effective hearing to the voices of others' (2001, p. 72). At stake here then is the public recognition<sup>14</sup> of the agent as a discursive-partner and as a 'locus of discursive authority' within that group (ibid.).

The problem of voice in "Western" metaphysics and the canon of political philosophy can be traced back to Aristotle's political anthropology and the association of the political nature of 'man' with his capacity to speak. Voice or *phone* in the long history of political philosophy has more often than not been linked to the idea of speech or *logos*, however this synonymous articulation of voice and speech has not always been so. Whilst for Aristotle humans were *zoon politikon*, 'political animals', or better, 'animals of the polis', precisely because their natural community is the polis, what distinguishes them from the bees of the apiary is their possession of speech

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<sup>13</sup> The differentiation of discursive groups points to the distinct conditions and habitual practices of different language-games of social practice at the level of social ontology, with their own logos and rationality. As Pettit remarks: 'no one will be incorporated in every discursive group that operates in a society, of course; no one would be competent to join every group, since the knowledge required for many groups will be quite specialized' (Pettit, 2001, p. 72).

<sup>14</sup> What Pettit has in mind here when it comes to recognition is something akin to the account of the same presented by Axel Honneth (1996) in *The Struggle for Recognition*.



(Cavarero, 2005, p. 183). Distinct to voice, as a phonic capacity to ‘express pleasure or pain,’ speech, in the Aristotelian schema is the capacity to give indication to ‘what is just and what is unjust’, to communicate truths about good and evil, and other matters of politics shared in common (Rancière, 1999, pp. 1-2). ‘Man, as a political animal, perceives the just and, through logos, signifies it’ (Cavarero, 2005, p. 184); “man” is not political simply because he speaks, argues Aristotle, but because he speaks of things that belong to the political community, the polis. Speech, thus, has logos, reason, whilst voice is nothing but ‘the phonic articulation of a groan’ (Rancière, 1999, p. 2). Logos/speech is that which is common, but it is not what makes a political community. Rather speech is functional to politics, through giving signification to the core discursive elements of the community.

As Cavarero has argued, this line of thinking about the relation between speech and politics has had substantial appeal for many contemporary political philosophers, not least Habermas, whom in spite of the substantially different social ontologies underpinning their projects in comparison to that of Aristotle (the ontology of the state and the ontology of the polis, respectively), have nonetheless found a basis for thinking political community in the absence of ‘natural bonds’ which can maintain the understanding of the modern individual as self-sufficient and autonomous. The problem which arises through this ontological link between language and politics in modern theories of speech and politics, is that by privileging speech, what one can trace historically, is the creation of an inside/outside dynamic of the political community. That is premised upon the capacity to exercise speech, not voice, and thus through a whole set of morphological changes, speech becomes proper, logocentric, and we see the emergence of a long tradition of “modern” accounts of politics, including that of Pettit, which are deeply Eurocentric and tied to hegemonic (and thus exclusionary) practices of reason and discourse. Voice has thus become synonymous with speech, with logos, reason, and this coincidence has resulted in “voice” becoming a site of political power in which the basis of inclusion within the political community is based upon a logocentric conception of political discourse and ratiocinative capacities. However, as we have seen, possession of *logos* is only part of Pettit’s account. What matters equally, is the presence of recognition by the community’s other

discursive partners,<sup>15</sup> with which, through the coincidence of both ratiocinative and relational capacities, the subject is granted discursive control and the status of free-person. Here we see, contra Cavarero and Arendt, the emergence of *politics*, not conceived as speech amongst equals, but as a torsion with the order of inequality, the police, in the antagonistic verification of equality. As Rancière describes in *Disagreement* (1999, pp. 22-23): ‘The logos is never simply speech, because it is always indissolubly the *account* that is made of this speech: the account by which a sonorous emission is understood as speech, capable of enunciating what is just, whereas some other emission is merely perceived as a noise signalling pleasure or pain, consent or revolt’. Let us now turn to the question of how this bears down on Pettit’s privileging of ‘voice’.

### 3.8 Recognition, misrecognition and the relational politics of ratiocinative capacities

Turning back to the example leveraged by Pettit from Ibsen, namely the injustice at stake between Nora and Torvald, there is something more to the story, than the short rendering Pettit offers. Whilst, consistent with Pettit’s account, Torvald never understood his domination of Nora to be perceived as irksome to her, diverging from Pettit’s exegesis, this fact was not due to a lack of Nora’s articulation of her grievance as such. Throughout the play Nora articulates her dissatisfaction with her treatment, only to find herself without speech (in Aristotelian terms), and phenomenologically experiencing her protestations as noise, voice, as phonic registrations of dissatisfaction, much to Torvald’s inability to comprehend. Nora finds herself infantilised, and in the absence of the common knowledge, or better yet, recognition of her ratiocinative capacities, she is denied relational capacity in the discourse of the management of her own life. Due to the structurally patriarchal and gendered hegemonic forms of power sedimented in the police order in which she is situated, and the intersubjectively mediated forms of power/knowledge and logos through which her and her husband Torvald were formed as subjects, she is relegated to a status in which she is deemed inferior as a result of her (in)ability to articulate political demands in the voice which

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<sup>15</sup> The problem of recognition, however, is not at a remove from that of *logos*, and it is through the logos that recognition is granted.

is granted the status of *logos*. As such, the demands Nora stakes are summarily ignored, taken up as noise, and Nora is left with only one course of political action left. She exits the scene, the doll's house, the home, and with a slam of the door, and Torvald's life.

As Butler has argued, recognition of a political demand, or a life as life for that matter, is always embedded in an epistemological frame through which we might apprehend or fail to apprehend such a demand, or life, as precisely that. At stake is an issue of framing, which is equally an operation of power (Butler, 2016 [2009], p. 1). The problem of framing, as Butler notes, however, is also a problem which we might take as ontological, as those frames are often determinate of that precisely what a demand or a life is in the first instance, and as such, we find ourselves confronted with the coincidence of ontology and epistemology, and the production of the norms which regulate the emergence of demands and life within the parameters of the 'onto-epistemological' (Silva, 2007). As such, if recognition is a matter of the politics of community, it always is situated within a terrain in which the apprehension of a life as a life, or a demand as a political demand, is further delimited, bounded, and foreclosed upon through operations of power at the onto-epistemological register (Butler, 2016, pp. 4-5).

The reliance upon ratiocinative capacities, the ability to speak, the possession of *logos*, the capacity to engage in reason-giving discourse as the basis of a political demand, as the marker of humanity, we might say, is to give over to an onto-epistemological operation of power the division between a life that counts, a free-person, the human, and the infra-human, that life which does not matter, before the moment of recognition, that relational capacity enters the stage. To establish the 'universal' basis for recognition before the moment at which one understands recognition to enter the scene, and to decide 'that some notion of "personhood" will determine the scope and meaning of recognisability', is to project forth a 'normative ideal as a pre-existing condition of analysis', much to the effect of saying 'we have, in effect, already "recognised" everything we need to know about recognition' (Butler, 2016, p. 6). Whilst such a norm's power, may not in effect lead to the refusal of attributing personhood to a given human in a *de facto* sense, Butler's concern is that with such a frame of recognition established in advance of the task of recognition, such norms may nonetheless operate so as to make some lives 'decidedly more difficult

to recognise' (ibid.). At stake then, at the level of onto-epistemological speculation, where any ontological account can never be anything other than speculative, is an operation of power over the frames of apprehension, the intelligibility of lives or political demands, such that norms of recognisability are established in order to 'prepare the way for recognition', and 'schemas of intelligibility', frames of what counts as a (free-)person / of personhood, 'produce norms of recognisability' (Butler, 2016, p. 7). In the materiality of historical forms of onto-epistemological configurations of the human and inhuman, as Gilroy reminds us, discussions of the politics of recognition, 'have been impoverished by their failure to reckon with the systematic misrecognition involved in the workings of racial styles of thought' (Gilroy, 2014, p. 38). The limits to the apprehension of lives and political demands, established in an onto-political register, not only render the emergence of new political demands inaudible, without logos, as the phonic articulations of a groan, but what's more, render those lives which do not enter the hegemonically established frames of recognisability exposed with greater ease to the arbitrary forms of power which we associate with and beyond Pettit as manifest domination.

### 3.9 Conclusion

The preceding analysis, I think, raises some substantial tensions in the account of non-domination developed in the course of Pettit's voluminous writings in the field of social ontology and political philosophy. My interest in Pettit's political theory resides in his figuring of political liberty with the status of citizenship, and the political potential I see in the struggle against domination, rooted, to a large extent in the struggle for membership of a juridico-political community which is governed in principle on the terms of its people. This account, at a cursory and rhetorical level, has seemed, to my eye to be potentially quite a solid premise upon which to build and struggle for a radically democratic social order, with strong egalitarian principles. The social dimension of this account of freedom, emphasising its relational component, is compelling, insofar as freedom is something we have with and receive from others, in our plurality, as opposed to a retreat into isolation. So far, so good. The tension I locate however is the compatibility, or consistency between this way of thinking about freedom at a political level, and the account of free-person which Pettit presents as underpinning such an account of non-domination. Pettit's assumption of the taken-

for-grantedness of the ratiocinative capacities of ‘able-minded’ adult agents (cf. Pettit, 2014, p. 79), however, through its presentation as a universal figuring of the subject, is not beyond relations of power at the level of onto-epistemology (Butler, 2016, Gilroy, 2014, Foucault, 1979, Ryan, 2014a), and raises serious questions for me when it comes to the problem of domination. These concerns I have sought to highlight through an analysis of the figures of the child and ‘some other categories of people’ (cf. Pettit, 1997a, p. 119), both of which stand as Pettit’s ‘immeasurable Other’, the supplement which haunts his ethical community (cf. Rancière, 2009b). These problems and tropes are not unique to Pettit’s Method, and their history in the canon of anglophone political philosophy and “Western” metaphysics more broadly, raises serious concerns when one considers a potential move from Pettit’s schematics into the materiality of politics, in all its uneven, power-ridden contingency and violence. Pettit insists upon an agentic account of power and domination in which structural phenomena are facilitative of, but not dominating in and of themselves. However, should the theorist adopt a broader conceptualisation of arbitrariness, which extends into the discourse of neo-republicanism’s own constitution at the level of its Method, one might argue that Pettit as an agent with discursive control over the Method of non-domination (as theorised in chapter two), is complicit in forms of arbitrary power which precede the moments of recognition constitutive of non-domination within the scene of discoursing partners in the civic republic prefigured by the Method itself. Within the will towards a general theory of freedom, ‘in the classical, comprehensive mould exemplified by Thomas Hobbes in the seventeenth century, and Immanuel Kant in the eighteenth, as well as by their contemporaries and immediate successors’ (Pettit, 2001, p. 1), think only here of Rousseau’s *Emile*, or Mill’s *On Liberty*, (cf. Ryan 2014a; Faulkner, 2011) Pettit has, rather (un)consciously introduced into the Method of non-domination, the very possibility of forms of domination which extend beyond the sensory limits of his own imagination.

## Threshold

All life is precarious. Precariousness implies the sociality of human life, ‘the fact that one’s life is always in some sense in the hands of the other’ (Butler, 2016 [2009], p. 14). Precarity, however, is not a straightforwardly existential truth, but rather, due to the fact that our social being sees us already dispossessed of any understanding of having property-in-our-self (Locke), or of being an upright, atomised individual (Hobbes), rather, ‘each of us could find ourselves subject to deprivation, injury, illness, debilitation, or death by virtue of events or processes outside of our control’ (Butler, 2015, pp. 20-21). This is not to say that such an exposure is a matter of contingency, as the neo-republicans know well, as they criticise liberals for leaving the absence of arbitrary interference down to a contingent matter of luck. Precarity is a politically induced condition in which due to the differential distribution of ‘grievability’ and parts, the unequal valuing of lives, ‘certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence and death’ (Butler, 2016 [2009], p. 25). At stake in such claims of human sociality and its political organisation by ‘the police’, is a view that everyone is dependent upon social relations, not only with other persons, but infrastructural supports, and modalities of bio-political power which are constitutive of how persons and populations appear in the world, as an “I” or a “we”, and as an “I” or “we” who can act in alliance, and thus in concert with others.

As Butler reminds us, though dependency is ‘not the same as a condition of subjugation’ (or domination), it ‘can easily become one’ (2015, p. 21). It is precisely to this ethico-political problem of dependency and domination, to which neo-republican freedom as non-domination speaks. Recall in chapter one, we noted how freedom for the neo-Romans entailed the absence of relations of dependency (Skinner, 1998). Equating domination with dependency is an equivocal gesture on the part of contemporary republicans, which carries with it forms of domination with regard to which contemporary feminists and radical democrats have raised concerns (see Maxwell, 2019). As Friedman (2008) has noted, the correlation between dependency and domination has a long history in political philosophy and in the material world of consigning women and their action to the private sphere – caring for dependents and dependent upon their husbands. This line of thought has appeared most clearly in Arendt’s tripartite division of the *vita activa* in *The Human Condition*, in which freedom

as action as non-domination is the property of male citizens, the condition of possibility of which is their independence from the realm of the household or *oikos* (Arendt, 1998 [1958]).

For neo-Roman republicans the form of dependency which is foregrounded in their imaginary and writings is a relation between ‘the people’ and a tyrannical sovereign whose good will and benevolence they are dependent upon in order to live. Such a configuring of the dependency relation gives rise to a politics of freedom which is predicated upon an independence from power, from social relations which shape and condition human action – for the founders of the American republic, this was largely a freedom of economy and enslavement.

Lida Maxwell in her recent essay on ‘Democratic Dependency’, offers a compelling queer and feminist analysis of Pettit’s attentiveness to dependency, and the ways in which in the struggle for non-domination, in order to be ‘an independent republican citizen, an individual must render themselves dependent’ (Maxwell, 2019, p. 82). However, such a dependence takes the form of a trust in the ‘civility of others’, and in the ‘impersonal reason, law or social norms of civility that ensure that individual dependence on others does not compromise their independence in making choices’ (ibid.). Maxwell’s argument therein takes up the question as to why Pettit sees it as being preferable for citizens to be dependent upon the institutions, procedures, and technologies of power of the state, but not on the very people with whom they form an alliance in the struggle for non-domination. At stake in any such hierarchical organisation of dependence is the attendant effects of ‘privatisation’ and ‘isolation’ of those populations struggling in and through dependence against domination: ‘women and queers’ (Maxwell, 2019, p. 85). How? Through the social norms, permitted discourses, and disciplinary technologies of power which ‘screen’ who gets to participate in public discourse and politics. In attempting to *police* dependency, ‘by setting criteria for what is proper and improper, free and unfree’ (Maxwell, 2019, p. 86), the Method of neo-republicanism reinstates those very terms of discourse that marginalise groups and populations privatised and isolated precisely because of their interdependence in the scene of politically induced precarity.

As Butler argues so compellingly, the struggle against precarity and domination, is not a particular struggle of one marginalised and excluded group or population, but rather it is a struggle which takes the form of an alliance: we are but one group exposed

to precarity and its attendant violence. What is more, the alliance is not only a social form which struggle takes, but in a sense prefigures that form of sociality which is simultaneously envisioned *and* enacted through the alliance of bodies acting in concert, after the revolution (understood in a minor key). Butler writes: ‘To be a participant in politics, to become part of concerted and collective action, one needs not only to make the claim for equality (equal rights, equal treatment), but to act and petition within the terms of equality, as an actor on equal standing with others. In that way the communities that assemble on the street start to enact another idea of equality, freedom, and justice than the one that they oppose’ (2015, p. 52). This struggle as an expression of an ‘axiomatic equality’ which deconstructs all borders, all forms of division, differentiation and inequality carries with it an ethical obligation of sorts, a claim to the very *inter*dependency of every ‘I’ who exists only in a relation to a ‘You’ which it cannot name. In the context of neo-liberal globalisation and the transnational character of the police orders which regulate bodies and capital within and across borders, such obligations, rooted in the very infrastructural dimensions of our (inter)dependency as subjects, are extended to those voices which we have not yet heard, and do not know yet, when they will emerge.

Pettit, in spite of his gestures towards relationality and ‘ontological dependency’, nonetheless sees the struggle against precarity, for freedom as non-domination to entail a struggle for security from that which is Other. As examined in the preceding chapter (chapter three), the ethical character of Pettit’s conception of community is assembled through the logic of an Archê – an Archê moreover that secures the boundaries of freedom as non-domination through a power relation that takes the form of in/exclusion. Precisely what is lost therein, in Pettit’s Method is captured neatly by Butler, one last time, as she writes: ‘The opposite of precarity is not security, but, rather, the struggle for an egalitarian social and political order in which a livable interdependency becomes possible – it would be at once the condition of our self-governing as a democracy, and its sustained form would be one of the obligatory aims of the very governance.’ (Butler, 2015, p. 69).



## §4 The Populism Problem: Arbitrium Ultimatus

### 4.1 Introduction

In this chapter I seek to demonstrate how the ideal of non-domination, as an ideal of freedom, as well as justice, in conjunction with being a ‘Method’ preoccupied with theoretical totalisation, each contribute to establishing the foundations, or perhaps more accurately put, the articulation of the starting point for a neo-republican theory of democracy. Neo-republican democracy on Pettit’s account arises in response to two sets of considerations, the first relating to the question of social justice, the second to the problem of legitimacy within a coercive state. Whilst the question of social justice is concerned with horizontal social relations, or the ways in which citizens relate to each other, and the state’s role in fostering such relations, the question of political legitimacy seeks to address the appropriate relations between the state and its citizen subjects, who are also legal subjects, with both questions uniting around the task of maximising the non-domination of citizens. What further brings these two rather abstract and forcefully separated (for analytical purposes) questions, relating to power and intersubjectivity, into the same frame, is their co-imbrication in the problem which Pettit deems to be the ‘ultimate form of arbitrariness’. Such an ultimate arbitrariness is a repackaging of the liberal concern with a potential *tyranny of the majority*. This concern, however, is no recent addition to our theoretical explorations of freedom as non-domination, but rather, it has been with us since the start, taking relief in the shadows of the development of non-domination as a distinctively neo-republican ideal in opposition to ‘positive’ and liberal ‘negative accounts’ of liberty. Crowded out of previous discussions, the concern with a (potential) tyranny of the majority, has taken many guises throughout Pettit’s oeuvre, such that the problem with majoritarian

political action, as often associated with a ‘folk paradigm’ (Fraser, 2003, p. 11) of politics rooted in the democratic revolutions and the myth of ‘popular sovereignty’,<sup>1</sup> has taken other guises in tropes such as ‘positive liberty’, ‘direct democracy’, ‘populism’, and ‘communitarianism’ (of which more below). At stake then, in Pettit’s concerns about maximising non-domination, and his cultivation of a theoretical armature which encases and projects non-domination, is not simply an ethical account of political community (Rancière, 2009b, p. 9), but also of political action, that is to say, what it means to act politically in relation to neo-republican freedom.

Neo-republican politics, as Pettit understands it, traces a line between two poles of freedom, and their attendant practices of the same, namely, a liberal negative account, and a positive account, articulating its difference from both, through its centring of ‘popular control’ and its relation to practices of contestation, over the ideals of ‘consent’ and ‘consensus’ as the basis of a regime and its legitimacy. ‘Consensus’ here as taken from the ethical discourse of analytical political philosophy (as explained in chapter one) is a lower order concept than the ‘logic of *consensus*’, as it has been deployed in our aesthetic grammar drawn from Rancière. When Pettit speaks of ‘contestation’ and ‘consensus’, in the context of his theory of ‘control,’ we must ask, what does his figuring of contestation encompass and permit? To what extent are such practices of contestation encased by an unacknowledged *consensus* of a higher order to the forms of ‘consensus’ against which he contrasts ‘contestation’ in the text of his analytic theory? What forms of pre-judgment as to who can participate in politics and

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<sup>1</sup> A folk paradigm as opposed to a philosophical or scientific paradigm is more intimately linked to ‘present day struggles’ in civil society (Fraser, 2003: pp. 11). ‘Tacitly presupposed by social movements and political actors, folk paradigms are sets of linked assumptions about the causes of and remedies for injustice’ (Fraser, 2003: p. 11). There exists, according to Fraser a plurality of folk paradigms on politics each with a distinctive perspective and remedies for social justice etc.; that is to say, each paradigm has a ‘different conception of collectivities that suffer “injustice”’ (Fraser, 2003, p. 14). Kevin Olson puts the category of ‘folk paradigm’ to work in a slightly different way. Taking a deep problematising line Olson queries why we are still enchanted by ideas like “the power of the people” reminding us of the very socially constructed nature of such an idea in the first place: ‘these ideas have become such a common place that we forget they are creatures of our own invention’ (Olson, 2016, p.5). Olson thus argues that the power of the people functions as a folk paradigm of political belief: ‘It is a set of shared ideas about how politics ought to be conducted and on what it ought to be based’ (ibid., p. 6). Such a folk paradigm, we might say, is largely unquestioned and widely circulated, having a disproportionate influence on our politics, tied to its deep naturalisation. As Olson argues: ‘In this sense, such beliefs have an important function. They structure our relations with one another, organise cooperative endeavours, and provide us with a shared body of knowledge about the social world. These beliefs have both factual and normative content: they postulate a meaningful collectivity that we refer to as “the people,” endowing it with particular forms of power’ (2016, p. 6).

in what forms can that participation take, create a higher order *consensus* which, to use Pettit's own grammar (see Pettit, 1997a, pp. 212-215), 'screens' and thus regulates political participation? From what location and in which voice can contestation emerge and find hearing? These questions point to the intersection of the aesthetic and politics, and further, raises the question as to what is or is not taken as *sensible* (understood in both valences of the word).

One may be mistaken and perhaps even surprised upon an initial reading of Pettit, that his account of neo-republican democracy is potentially quite radically democratic and thus attentive to the dissensual dimension of politics. When it comes to the question of contestation for neo-republicans, as Pettit puts it in *OPT*: 'Democratic life, as it is sometimes put, has to have an agonistic – better perhaps, an *antagonistic* – character' (Pettit, 2012, p. 226, emphasis mine). Following Pettit's Method, and his concerted effort at co-opting and thus resignifying the grammars of agonistic and radical democratic accounts of politics,<sup>2</sup> we might note how a number of related concepts converge here around the problem of political action, namely those of 'contestation,' 'democracy,' 'populism,' and 'agonism' or 'antagonism'. It is within the topography bounded by these concepts that the neo-republican account of political community and action is to be located, and thus, this chapter seeks to critically map out that terrain, in order to understand more precisely the relationship between the logic of non-domination, and the neo-republican account of political action. In order to fully draw out Pettit's politics and the scope of his understanding of contestation, I take the concept of 'populism' as an entry point into his Method, precisely for the reason that this is the form of politics he works hardest to disavow.

To raise the problem of *populism* is, at its most fundamental, to penetrate to the core of debates about "popular control" and contestation in democratic theory, insofar as these are also debates about the character of, and the *enunciatory location* from which political demands emerge. To this end, over the course of the next three chapters, I juxtapose Pettit's critique of populism with recent post-structuralist examinations of the *politics* of populism, namely, Jacques Rancière's meta-theoretical concerns with the

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<sup>2</sup> By agonistic or radical democratic accounts of democracy, I refer here to the work of contemporary theorists such as Arendt, Mouffe, Connolly, Honig, and Tully, as well as Laclau, Rancière, and Butler. For a comprehensive account of contemporary agonistic democratic theory see Wenman (2015 [2013]) not least for an interesting account of the differences between agonistic and radical democratic tendencies see the same volume especially chapter two.

critique of populism, and Ernesto Laclau's *formal* account of populism. Reading Pettit's theoretical pre-considerations for a neo-republican account of democracy sideways through his efforts to foreclose upon populist republicanism, this chapter begins to demonstrate the sublimating role of the philosophical ideal of non-domination when it comes to the activity of democratic politics. This chapter, through an examination of the practice of contestation and its imbrication in questions of influence, direction and control, as well as social justice and political legitimacy, moves towards a critique of Pettit's ochlophobia<sup>3</sup> and paves the way for a substantive analysis of neo-republican democracy in the subsequent chapter. My concern, in short here and in chapters five and six, shall be with the intervals which emerge through the homonymic and 'floating' quality of the signifiers 'antagonism', 'contestation', and 'democracy', proceeding as the Method and logic of the critical practice of political philosophy outlined earlier requires.<sup>4</sup>

## 4.2 Democracy and populism in the neo-republican story

Throughout Pettit's writings, as we have seen, he has sought to carve out and elucidate the specificity of his republican ideal of negative freedom as non-domination through its opposition to a liberal theory of freedom as non-interference. Such is a story that has now been well rehearsed. This oppositional elucidation of non-domination, however, has not only been staged in opposition to its fellow negative theory, but also in its distinction from a positive account of politics and liberty, which too has carried the name of republicanism. The story of republicanism which we have reconstructed from Pettit's oeuvre thus far has been one which is neo-Roman in character, and, within contemporary debates, framed as neo-republican. Republican thought, however, as stressed by the likes of Honohan (2002), is an internally capacious set of traditions, with a plurality of constitutive genealogies, each colouring the political projects they promote somewhat differently. Pettit, whose Method is, more often than not, one of conceptual mastery and the reduction of theoretical difference to binary

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<sup>3</sup> Ochlophobia, a fear of the multitude/people/mob, from the Ancient Greek, via Polybius, *okhlos* meaning "mob" or "populace," and suggesting a moving mass, also seen in *okhlokratia*, *okhlos-* and *-kratos* (power, rule) suggesting "mob rule." Appears later in French c.1560s *ochlocratie* meaning democracy of the lowest grade, rule by the common people, those who move from root \*wogh-lo-, "to go."

<sup>4</sup> In the short Threshold preceding chapter two.

oppositions, however, (re)presents these diverging genealogies in terms of the neo-Roman story which he favours, and its opposition to a civic republican account. In his most recent works (Pettit, 2012, 2013), and in opposition to his variously named Atlantic, or Commonwealth or even Italian-Florentine neo-republicanism, Pettit articulates a competing account of republican politics which is variously described as ‘Continental’ or even ‘Franco-Prussian’. Whilst in the former case, Pettit stresses the significance of the centrality of a figure such as Machiavelli as well as the later English Commonwealthman tradition and the founding of the American republic, the latter similarly derives its name from the significance of Rousseau and Kant’s writings on popular sovereignty and republican freedom. It is through such an opposition with ‘Continental’ republicanism, that Pettit articulates neo-republican democracy’s normative desirability and political valence.

Long before the language of republicanism in the plural, Atlantic or Continental, however, Pettit in *Republicanism* (1997a) marks the distinctiveness of his neo-republicanism in opposition, once again, to what he describes as a ‘communitarian’ and ‘populist’ view of the tradition, which he associates with the theory and influence of Hannah Arendt. This view, as far as one can make out from Pettit’s brief critique, is *communitarian* insofar as it takes the homogeneity of the polis as a requirement for political participation, and further, *populist* in that it takes popular political participation to be a good in and of itself (Pettit, 1997a, p. 8).<sup>5</sup> The point of distinction here is made by Pettit in relation to the status of democracy in neo-republican theory, primarily, in order to disassociate such an approach from any comprehensive or strong conception of political participation. Pettit argues: ‘democratic 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’ (1997a, p. 8). This “positive” conception that Pettit associates with Arendt, and in one move condenses into a (normatively) negatively charged equivalence with populism/communitarianism/direct democracy/and an account of *freedom as human nature* (*qua* Berlin’s ‘positive liberty’), conceals more than it

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<sup>5</sup> When Pettit dismisses here civic or continental republicanism as being at their root communitarian, I understand him to be approaching something akin to Habermas’ characterisation of contemporary republicanism as an ‘ethical-political’ community, in which deliberation is based upon a ‘culturally established background consensus’ (see Habermas, 1994, p. 6).

reveals in terms of the specificity of such a view of politics. Nonetheless the normative and argumentative move it makes suffices to make the complaint in quite clear, yet contestable, terms. The complaint at its root, is as follows: ‘such an approach represents the people in their collective presence as master and the state as servant’ (Pettit, 1997a, p. 8).

On Pettit’s terms, direct democracy as he associates it with populist republicanism, would be detrimental to good government, and represents what he takes to be ‘the ultimate form of arbitrariness: the tyranny of the majority’ (1997a, p. 8). This naming of the ‘ultimate form of arbitrariness’ is of central concern to us here, however, let us first continue with Pettit’s critique. Pettit’s concern with the priority of political participation, points now, on my reading, to a deep concern for neo-republicans about the very possibility of the politicisation of status and character of the state, and its ordering of parts, positions, and propert(y/ies). Politics is contained within practices of augmentation in the context of a de-politicised *consensus* (in the Rancièrian sense), where practices antagonistic to that distribution of the senses and parts are immediately foreclosed upon. The alternative view, which Pettit favours, is a conception of the people as ‘trustor’ and the state as ‘trustee’, under which conditions the latter would call upon the people to entrust their concerted power to the ‘state to ensure a dispensation of non-arbitrary rule’, and thus, produce and protect the freedom of the people (1997a, p. 8). Democracy, thus, in neo-republican terms plays a purely instrumental role in securing, in both sense of the word, freedom as non-domination. When it comes to seriously considering democratic participation, which he strangely equates with populism, Pettit asserts, ‘such a participatory ideal is not feasible in the modern world, and in any case the prospect of each being subject to the will of all is scarcely attractive’ (1997a, p. 81). As to what Pettit means by ‘populism’ here, is by no means clear to this reader,<sup>6</sup> not least from our present conjuncture’s understanding of

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<sup>6</sup> In chapter two, I noted how Pettit makes use of the label ‘populist’ to characterise ‘ancient’ forms of liberty in relation to Constant’s distinction between modern and ancient forms of liberty. I further noted there, that Pettit’s reference to populism drew support in the form of a citation of a political scientist, William H. Riker, and his book *Liberalism against Populism* (1982). Riker’s view of populism, like most of political science on the topic, suffers from a radical indeterminacy and ambiguity in its articulation and application, playing a largely polemical or denigrated role in bolstering a defence of a depoliticised liberalism. This citation on the part of Pettit brings us no closer to understanding his view of, or concern about populist politics, other than to mark his disapproval of the same, and its need to be contained and written out of a field of political possibility in relation to the maintenance of neo-republican freedom: non-domination. Riker’s book, a work of political science, trading on the guise of the neutrality that such a name ‘science’ provides, is a master work in what Rancièrre calls ‘the hatred of democracy’. As

populist politics, which we might describe as a populist scene. But at a fundamental level, what I take to be at stake in Pettit's denunciatory remarks is a suspicion of collective or 'concerted action', and a deep-rooted commitment to the sanctity of the individual against 'the will' of others, even when the individual is firmly placed within the process of collective political action.

### 4.3 Problematising theoretical anti-populism

The indeterminacy of Pettit's negative use of the term 'populism' is of less significance for our immediate purposes here. What is at stake more centrally is the role the concept of 'populism' plays in the relational articulation of its inverse, neo-republican democracy, and the attendant critique of popular sovereignty. Populism, we might say, represents something like the 'constitutive outside' of neo-republican democracy for Pettit's Method (Staten, 1984, p. 24; Laclau, 1990, p. 9). Populism as a concept of politics and political theory, as Rancière notes, has had a somewhat perverse history, with those he refers to as 'the clerics' of the Republic hoping that 'under this name they will be able to lump together every form of dissent in relation to the prevailing consensus' (Rancière, 2014, p. 80; see also Laclau, 2005a). This dissent, Rancière argues, is as much that of 'democratic affirmation' as it is the 'religious or racial fanaticism' of the far-right movements we have encountered since the twentieth century (Rancière, 2014, p. 80). What troubles Rancière, and also Laclau (2005a, p. x) is the way in which the concept presents itself in political and theoretical/philosophical debate as a convenient name, a name moreover that disguises a contradiction or antagonism between 'popular legitimacy and expert legitimacy', that is, between those

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Gerry Mackie puts it, in his equally "scientific" *Democracy Defended* (2003, p. 418), 'What does Riker mean by *populism*? In his theory, it is some version of the notion first theoretically articulated by Rousseau, that the legitimacy of the state is founded in the will of the people ([Riker]1982, 11). What the rest of the world calls democracy Riker calls populism [...]. Such a claim on Riker's part, means that he can continue to identify as a democrat, even though 'he rejects the idea that government should respond to what its citizens judge best' (Mackie, 2003, p. 418). What Riker betrays here, is a common conception of democracy within liberal thought, which operates as follows: by redefining the association of the practice of democracy as conceived within a broad paradigm that we might minimally associate with Rousseau, and associating that practice with the pejoratively connotated concept of populism, Riker effects a paradiastolic redescription which now relinquishes the name democracy from its practice, such that it becomes an appraisive and commendatory name for practices of government which we find satisfactory in relation to a non-specified set of institutional arrangements. In this instance, as Mackie concludes: 'Riker's *liberalism*', which he takes to be "democratic" in the appraisive sense, 'however, unwittingly resembles what is pejoratively called plebiscitarianism – possibly tyrannical rule justified by merely formal opportunities for electoral rejection' (2003, p. 418).

who are entitled by class, pedigree, or autochthony to rule and those who are not (Rancière, 2014, p. 80). In each denunciation of ‘populism’ resides the possibility, through rhetorical displacement, to perform a discrediting of the claim of the power (*potentia*) of the *populus*. That is, through a simultaneous masking and revealing of the desire of those harbingers of oligarchic power (*potestas*), politicians and political theorists alike, express a commitment ‘to govern without the people’, or otherwise put, ‘without any dividing of the people: to govern without politics’ (Rancière, 2014, p. 80). To denounce populism is to privilege the logic of the police. In the work of Laclau (2005a), we find this point developed further, as he traces the imbrications of social scientific knowledge, the socio-logical (socio-logos), and the onto-epistemological as well as the field of political philosophy/theory in the joint and co-dependent dismissal of populism. At stake for Laclau, beyond the ‘relegation of a peripheral set of phenomena’ such as populism ‘to the margins of social explanation’, is a more fundamental problem of politics by liberal, rationalist, methodologically individualist, and “scientific” modes of analysis. At work in such a ‘disdainful rejection’, Laclau notes, echoing Rancière, is ‘the dismissal of politics *tout court*, and the assertion that the management of community is the concern of an administrative power whose source of legitimacy is a proper knowledge of what a “good” community is’ (Laclau, 2005a, p. x). Populism, Laclau reminds us, has always historically been ‘linked to a dangerous excess, which puts the clear-cut moulds of rational community into question’, if such a rational community was ever to have truly existed (Laclau 2005a, p. x).

As an initial approximation of why it matters to bring non-domination and populism within the same analytical frame, Rancière presents us above with a claim in need of demonstration, that is, a totalising critique with polemical intent, demanding to be demonstrated otherwise, or not. It is, as we might say, *over to us* to demonstrate that when we speak of ‘populism’, that we do so in terms of democratic affirmation and *dissensus*, and not as a strategy of de-politicisation tied to the logic of the police. As Laclau (2005a, p. 19) summarises, the discourse of populism in political theoretical debate, has not simply ‘demoted’ populism, but further populism has:

also been denigrated. Its dismissal has been part of the discursive construction of a certain normality, of an ascetic political universe from which its dangerous logics had to be excluded. [...] the basic strategies of the anti-populist onslaught are inscribed in another, wider debate, which was the *grande peur* of the



nineteenth-century social sciences: the whole discussion concerning ‘mass psychology.’ This debate, which is paradigmatic for [the present] theme, can to a large extent be seen as a history of the constitution and dissolution of a social frontier separating the normal from the pathological.

What is at stake in this analysis most directly, is a body of social scientific knowledge – saturated in power – which cast the emergence of collectivities, populist movements and crowds on the streets as a source of anxiety and distrust for “those who know”, figures such as Pettit, who seek good government, and the “protection” of the rationality and independence of the individual.

In the rather forced alignment of participation, populism, and majoritarian tyranny in Pettit’s work, we encounter the substance of the politics of non-domination. By tying democracy to non-domination in this way, we shall see that at its core, Pettit’s Method seeks to foreclose upon particular modalities of democratic action that are in excess of the police order of neo-republican freedom. It is incumbent upon the an-archic critic of Pettit at this point to address in precise terms how Pettit’s emphasis on a theory ‘control’ serves to (dis)figure ‘contestation’. To this end, what is required is an explanation of his concerns with majoritarian tyranny, how these concerns relate to his theorisation of political legitimacy as ‘control’, and how these two problems are ultimately tied to a prioritisation of the ideal of non-domination over the activity of politics itself. Non-domination emerges here, we might say, as an Archê which regulates the scope of ‘contestation’ or antagonism, and thus of politics proper.

#### 4.4 The deliberative (dis)figuring of contestation

The relationship between freedom, democracy and contestation in Pettit’s Method has undergone a process of refinement since its initial appearance in *Republicanism* in the late 1990s such that the role of contestation has taken a few *aspectively* different presentations over the past twenty years. In its first iteration the question of contestation is a matter of *political form* directed precisely towards the problem of maintaining non-domination under conditions of substantive, if not intense, interference in citizens lives by a coercive state, a state which produces such political freedom in the first instance. What I want to track in this chapter is how Pettit’s earlier rendering of ‘contestation’ becomes a more politically domesticated ‘popular control’

that bears very little similarity to the practice of *populism* as understood by radical democrats and antagonism *qua* contestation properly understood.

As opposed to theories of consent as the basis of the non-arbitrariness of state interference as in liberal theory, in which agents contract into, or consent to the state's interference, on the republican account Pettit proposes, non-arbitrariness is maintained through the possibility of contesting the state's decisions (Pettit, 1997a, p. 63). As Pettit writes: 'it must always be possible for people in the society, no matter what corner they occupy, to contest the assumption that the guiding interests and ideas really are shared and, if the challenge proves sustainable, to alter the pattern of state activity' (Pettit, 1997a, p. 63). The substance of the political forms<sup>7</sup> which Pettit further develops in the same text, build upon this claim to consider how to arrange things such that the presence of arbitrary wills within the state's apparatus (narrowly understood) are minimised. Pettit sees two ways in which political form can rise to this challenge of maintaining freedom as non-domination. First, through constitutional provisions which adhere to three conditions (discussed below). Second, through the aforementioned possibility of contestation.

This view of political form and constitutionalism takes its lead from F.W. Maitland's historical description and normative suggestion based upon that precedent, that 'the exercise of arbitrary power is least possible, not in a democracy, but in a very complicated form of government' (Maitland, 1981, pp. 84-85 quoted in Pettit, 1997a, p. 174). On this basis Pettit articulates the three conditions of republican constitutionalism, which serve to reduce the possibility of arbitrary wills leading to the domination of the citizenry (see Pettit, 1997a, p. 172-183). First, the constitution must be organised in terms of an 'empire of law', in which those laws are consistent, intelligible to all, a matter of common knowledge and universal to its subjects. The second condition, straightforwardly, argues for a dispersion of power (*potestas*) within and among the institutions of government, so as to prevent any concentration of power *qua* will based upon individual or sectional interests that could be deemed to be a source of domination. This second condition is equally named the desire for a 'mixed constitution'. The third and final condition that Pettit sees as securing the non-arbitrariness of the constitution, is the provision of counter-majoritarian technologies

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<sup>7</sup> By 'political forms' I refer here to the institutional, procedural and regulated practices of politics, which are given shape through Pettit's Method.

of power within the institutions, so as to prevent legal change on a 'populist' model, in which the will of the majority of the people is the only factor required for the institution and augmentation of the law (1997a, p. 180). By slowing the process of legal change and removing majoritarian tyranny from the legislative process, the arbitrariness associated with majority decision-making is circumvented and is thus protective of minorities, obdurate and contingent alike.

The role of democracy and contestability provides the second formal guarantor of freedom and arises from the imperfect nature of even the best designed legislative processes. Even under perfect conditions as established under a constitution which meets the three above mentioned elements, there remains many potential sites for arbitrary power to be exercised on the part of legislators, administrators, members of the judiciary etc., who may act based upon their own or sectional interests. In order to protect freedom as non-domination, Pettit argues it is necessary to find some way to ensure that public decision-making tracks and continues to track the interests of those citizens over which it rules. As we saw briefly above, Pettit sees the contestability of decisions as the route out of this quandary. He thus writes: 'it is only if I can effectively contest any such interference – it is only if I can force it to account to my relevant interests and ideas – that the interference is not arbitrary and the interferer not dominating' (1997a, p. 185). It is on this contestatory model that Pettit's earliest account of the nature of neo-republican democracy is based, and in which a 'government will be democratic, a government will represent a form of rule that is controlled by the people, to the extent that the people individually and collectively enjoy a permanent possibility of contesting what government decides' (1997a, p. 185). This fundamental view, still in need of further specification, nonetheless provides the core starting point of Pettit's neo-republican democracy as it evolves through the 2000s, culminating in the more liberal view espoused in OPT.

The preconditions of Pettit's republican view of a contestatory democracy assume an understanding of democracy that is embedded in a deliberative paradigm, in which all forms of decision-making as the outcome of deliberative processes of reason-giving and dialogue, are a matter of debate (Pettit, 1997a, p. 188). Deliberation is open to all free-persons and citizens, so long as they are capable of engaging in such deliberation as agents, and willing to partake in 'conversational challenge' (*ibid.*, p. 90). The benefit

of framing and figuring democratic decision-making in such ideal terms is summarised by Pettit as follows:

It would mean that every site of decision-making, legislative, administrative, and judicial, there are procedures in place which identify the considerations relevant to the decision, thereby enabling citizens to raise the question as to whether they are the appropriate considerations to play that role. And it would mean that there are procedures in place which enable citizens to make a judgment on whether the relevant considerations actually determined the outcome: the decisions must be made under transparency, under threat of scrutiny, under freedom of information, and so on. (Pettit, 1997a, p. 188)

Under such deliberative conditions, contestation starts to take on a discursive (in the linguistic sense) guise, procedurally mediated, “rationally” argued, and based upon shared reason and reasons. Such procedures and avenues for contestation must provide the means to ‘state a grievance and demand satisfaction’, and can take the form of ‘writing to your Member of Parliament, the capacity to require an ombudsman to make an inquiry, the right to appeal against a judicial decision to a higher court’, as well as the always present forms of complaint such as protest, demonstration and rights of association (Pettit, 1997a, p. 193). In *Republicanism* (1997a), Pettit also goes as far to say that social movements actively organising in civil society improve the effectiveness of contestation, though this claim is not re-iterated in much of the subsequent representations of his theory of democracy. What’s more, the view of social movements in Pettit’s work is very much one of movements as an apparatus of the police order, or a *governing* logic, in which they are of the character of the ‘consumer movement’ as opposed to more radical movements, who further, play the role of an ‘initial clearing-house’ for complaints, keeping ‘the channels of complaint free of noise’ (1997a, p. 193). This tendency on Pettit’s part to view social movements in terms reminiscent of the discourse of the ‘third-way’, as being beyond-left-and-right, and as auxiliaries of the apparatus of *the police* (to a greater or lesser extent), is a point of concern, as I understand Pettit here to be playing a game of absorption when it comes to non-republican political projects. By this latter point I have in mind those sections<sup>8</sup> in *Republicanism* (1997a) in which he rearticulates the projects of feminism, socialism, and ecologism in the grammar of non-domination and republican politics in a theoretically imperialist

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<sup>8</sup> See *Republicanism* (Pettit, 1997a), especially chapter 5.

manner. Ecumenicism on the part of the Patrician, looks a lot like epistemic colonisation and co-optation of struggles to the Plebs.

Having in a certain sense given voice to the people of the republic, in order for any government to uphold its side of the bargain, to ensure the non-arbitrariness of its rule, it must further listen to and be responsive to the forms of voice that emerge in the procedures of contestability, both those which are formal and informal. As Pettit says, there must be ‘a forum where contestations they [citizens] make can receive a proper hearing’ (Pettit, 1997a, p. 195). Here the relation between language and voice (as theorised in chapter 3) re-emerges, as the words ‘receive’ and ‘proper hearing’ usher forth a conception of a codified, correct and thus normative ‘language’ in which ‘contestation’ must be articulated if it is to be heard as a legitimate ‘voice’ and not just noise (cf. Rancière, 1999; Cavarero, 2005). At stake, is an aesthetic rendering of *consensus*, of what is sensible, audible and credible to the effect of regulating politics in advance of the appearance of the political subject. Pettit’s proceduralism takes priority over informal modes of contestation however, as responsiveness is tied to the modality of contestation, its character, scope and location, he writes: ‘there is no possibility of systematically ensuring such a hearing if the only procedures available involve the tumult of informal, popular protest’ (1997a, p. 196). Here, I see Pettit’s true anti-populism at work, as I shall demonstrate later, but most immediately we can see how through his Method, Pettit places conceptual as well as formal institutional and procedural limits on the democratic demands of the people, in the name of freedom as non-domination.

Through the emphasis on procedures Pettit pulls contestation into a ‘depoliticised’ space, where they can be heard away from ‘political voices’, which have ‘been gagged’, and in which a dialogic exchange of reason-giving and deliberation can take place, and a solution found (Pettit, 1997a, p. 196). The effect of a mixed constitution and its dispersal of power extends beyond the prevention of the concentration of power in the hands of arbitrarily-willing-would-be-despots to the complexification, ultimately, slowing down, and bureaucratising of the very activity of politics: democratic contestation. As Pettit summarises: ‘under the contestatory image, the democratic process is designed to let the requirements of reason materialize and impose themselves; it is not a process that gives any particular place to will’ (1997a, p. 201), be it the will of the people, or otherwise.

Through the so-called ‘gag’ on ‘political voices’, provided by reason-giving dialogic exchange, however, Pettit forecloses upon precisely those forms of speech which Rancière takes to be immanently political. Think only of the example Rancière uses in *Politics, Identification, and Subjectivization*, in which the students of the Sorbonne in May ’68 in response to the far-right and hard left attacks on the student leader Daniel Cohn-Bendit utilising both anti-German and anti-Semitic slurs, as they declared: ‘We are all German-Jews!’ For Rancière such a form of political speech which does not abide by the rules of reason, or reason giving for that matter, nonetheless constitutes through its “‘wrong’ identification’ – an identification which denied an ‘absolutely essential wrong’ – a paradigmatic example of political subjectivization, and an assertion of the ‘axiomatic equality’ that politics gives presence to within ‘the police’ (Rancière, 1992, p. 61).

#### 4.5 The risks of living *sui juris*: tyranny of the majority

Democracy is taken by neo-republicans to be facilitative of, and thus conducive to, freedom as non-domination, insofar as democracy as an appraisive name given to a set of institutions and procedures provides the means by which free citizens can live *sui juris*. To live under one’s own jurisdiction, for neo-republicans, is to live without the threat of arbitrary interference by others, and further that such freedom from dependency upon others is secured and maintained through the presence of ‘ideal’ laws, made on the people’s terms. That is to say, to live *sui juris* is to live in a juridico-political community in which your interests are represented, more or less perfectly, in the legal order of that constitutionally bound polis. There is no theoretically necessary link between freedom as non-domination and democracy. However, insofar as the neo-republican political philosopher lacks any other procedural or regulative framework through which citizens can ‘enjoy’ freedom as non-domination through their identification of their own ‘relevant interests’ in the laws which govern them, democracy is the best, and presently the only available instrument available to that same neo-republican philosopher to imagine the provision of the maximum intensity and latitude of non-domination for citizens. Insofar as the state is an unavoidable reality of the neo-republican political sensorium, and thus a dominating presence in the lives of its citizens, unless it is controlled by the citizens, in one way or another, it’s citizens will not be free from domination.

As we can see from above, the basic republican contention is that one can be free, insofar as one is un-dominated, and this is made manifest and is commensurate with living as citizens in a political community with laws that secure such freedom. Such freedom resides first, in the independence from the will of another, i.e. a master; and second, when citizens are ruled by laws of their own making. The constitution and production of freedom through the ascension to legal personhood *qua* the status of citizenship presents a unique challenge for republican theorists of freedom, a challenge which theorists of natural rights conceptions of liberty as rooted in personhood in an ontological sense do not face. Assuming however the impossibility of unanimity of decision making when it comes to the process of “democratically legislating” for such laws by every member of the community, a rather fundamental problem emerges for republicans, namely: the possibility of the tyranny of the majority.

One has to assume, therefore that even in the “most democratic” states, there will always be citizens who, for at least isolated periods of time, will be governed by laws which are imposed upon them by others. As such the question of whether such a minority of citizens can be said to experience non-domination, becomes an obdurate problem for any theory of political liberty that stresses freedom under the law. What is more, such citizens are not simply those who are cast outside of the majority due to contingencies such as race, gender, class or religion, but rather any individuals or members of a group that experiences themselves as holding opposing views and “interests” to the prevailing majority (Pettit, 2012, p. 212). In light of such a challenge as the potential of a tyranny of the majority type situation, one might argue that ‘republican freedom becomes a chimera, an ideal impossible to institutionalise’ (de Dijn, 2018, p. 64, and 2019, p. 59). ‘Tracking interests’ will always be more or less (im)perfect, more or less (in\ex)clusionary, in any (electoral) representative system. Thus, Pettit’s project of neo-republican democracy seeks to address this institutional challenge, with its focus firmly on the securing of non-domination on an egalitarian basis.

This institution-centred reading of Pettit, as most recently argued for by de Dijn (2018, 2019), represents the most generous and transparent explanation of Pettit’s worries about the potential forms of domination at the hands of a majority, a people expressing their collective will democratically, as he understands it. There is, however, a potential second line of critique which concerns itself much more with Pettit’s

Method and the sensibilities which shape the path of his neo-republicanism. Before turning back in due course to the former, historical and institutional line of analysis, let us first consider the aesthetic and *sensorious* dimensions of Pettit's Method in relation to the problem of the people/populism/tyranny of the majority, in their neo-republican articulation as equivalents. At its very core, what is at stake in putting into question Pettit's characterisation of popular democratic contestation as the highroad to domination, is to open up a site of dissensus and disagreement as to the location of the 'ultimate form of arbitrariness'. As de Dijn (2018) has noted, the concern for republicans such as Pettit over the potentially tyrannical nature of the people acting in concert, is a relatively recent concern for republican political thought. Older republicanism placed their greatest fear of domination at the feet of tyrannies of another kind, namely, of a minority, in the form of monarchs, oligarchs, aristocrats and elites. Democracy, ethically understood, from the standpoint and sensibility of this older perspective, was seen to be their surest capacity to prevent such domination. Democracy's task was to, in the words of the Australian democrat Don Chipp: 'keep the bastards honest!'; or otherwise put, 'the condition on which God hath given liberty to man is eternal vigilance'.<sup>9</sup> Thus, what emerges are two opposing views as to the greatest threat of domination, each of which turns on the way they approach the practice of democracy. For genuine "populists" (in a conventional sense) like McCormick, the threat lies in the hands of elites and the presence of material inequalities, whereas, for instrumental democrats committed to the primary good of individual non-domination like Pettit, it is both elites and the people, however such is a point of equivocation within Pettit's oeuvre.<sup>10</sup>

#### 4.6 The philosophical basis of Pettit's ochlophobia

Underpinning Pettit's institutional considerations is a set of prejudgments which push him towards the aristocratic view of democracy, when it comes to naming the 'ultimate

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<sup>9</sup> Such a warning, is the words of the Irish eighteenth century politician, barrister and Lord Mayor of Dublin, John Philpot Curran, as he took up the mayoralty in 1790.

<sup>10</sup> On this point of equivocation in Pettit's work, McCormick, having noted some development in *OPT* away from the aristocratic republicanism of earlier interventions, argues that 'Pettit's model inclines' still 'towards aristocratic rather than democratic republicanism for the following simple reason: it is designed, primarily, to forestall the danger of majority tyranny, and, only secondarily or incidentally, to address the danger that wealthy and prominent citizens will wield excessive influence over a democracy's public policy' (McCormick, 2019, p. 133). See also McCormick (2011, p. 158).



form of arbitrariness'. As McCormick notes: 'while Pettit [...] sometimes gestures to the notion that the elite prerogative is the greatest threat posed by contemporary democracy, he usually writes, especially when prescribing institutional reforms, as though majority tyranny is clearly the maximum political danger' (McCormick, 2011, p. 158). Displaying a greater wariness of the people than that which he holds towards elite power, Pettit's ochlophobia has a philosophical as well as institutionally produced basis. Pettit's, scepticism concerning the capacity of a collective agent to exercise discursive control and thus enjoy freedom as non-domination, gives rise to an understanding of collective forms of political action as inconsistent, and incapable of being held responsible. Pettit explains this through the articulation of the criteria by which a collective agent can assume the status equivalent to that of a free-person. In order to be counted as political actors, or free-agents, collectivities or groups comprising free-persons must be able to make deliberatively reached and well-reasoned judgments (Pettit, 2001, p. 110). Such groups will face a considerable challenge in meeting this demand and must institute the discipline of reason at a collective level, for fear of endorsing an inconsistent and incoherent set of propositions if reasoning is left to the individuals in a network. As we can see, a collective group, must present their demands in an internally consistent manner with a degree of coherence which stands the test of time (Pettit, 2001, p. 111). Groups of this purposive variety, must, according to Pettit, 'collectivize reason', and once collectivised, the judgments and arguments thence made must not be revised or refuted after the passing of time, for risk of undermining the group's capacity to be held responsible as a 'free-agent' (Pettit, 2001, p. 112). Such groups, however, represent for Pettit an extreme rarity, with most groups of organised and un-organised 'networks of interacting individuals' guilty of 'collective unreason' (Pettit, 2001, p. 154). The threat of the arbitrariness of populism, or democratic action, Pettit describes as *imperium*, which he equates with the fact that the 'collectivization of reason' in order to constitute a 'collective subject,' requires the subject to 'ignore' or 'override' the 'views and votes of individuals on some issues' (Pettit, 2001, p. 154). At stake once more is Pettit's articulation of a philosophical basis to assert the conditions of impossibility for democracy, and further placing limits upon contestation. Contestation, and as we shall soon see 'popular control', Pettit thus argues, must proceed on an individuated basis, and this philosophical argument against the possibility of 'collectivizing reason', further shapes what is permissible contestation in

a neo-republican democracy. This will be significant in determining for Pettit precisely who is permitted to participate and to what extent they are included in democratic decision making under deliberative conditions.

Pettit's above reflections on the challenges for 'reason' in relation to collectivities, or corporate agents, have their roots in a problem which he draws from the realm of jurisprudence in its social choice theory articulation, namely, what has become known as the 'doctrinal paradox'.<sup>11</sup> Pettit reframes what is essentially a game-theoretical problem about the aggregation of judgments made by discursive partners in a decision-making process so as to render its insight applicable to the realm of deliberative democracy.<sup>12</sup> 'The discursive dilemma', as Pettit renames it, confronts the possibility that even under almost perfect deliberative procedures, a collective set of judgments, compliant with established norms and reasons, may not be consistent, and thus result in the emergence of a collective judgment or decision to which none of the deliberating members can identify or support. As politics is conceived of in deliberative terms by Pettit, collective decisions are not the outcome of processes of bargaining or preference-voting, but rather the aggregation of individual judgments, each of which are the outcome of dialogic processes of reason giving, compliant with what Habermas (1996, p. 103) calls the 'force of the better argument' present in conditions of 'ideal speech' (Pettit, 2003b, pp. 139 – 140). This emphasis on the necessity of judgment-based decision-making is essential, as Pettit sees it, to the ideal of a contestatory democracy, insofar as contestation is rooted in being part of a 'republic of reasons', as Sunstein (1993) describes deliberative democracy. Bargaining and interest-group politics, falling outside of such a *republic of reasons*, will represent nothing more or less than 'brute force or naked preference' (Pettit, 2003b, p. 153). Contestation, as Pettit understands it, would be impossible.

To this fundamental problem for deliberative processes, Pettit sees two possible routes out of the limits set of deliberation by the so-called paradox, one more appealing to his sensibilities than the other. The first option is to ensure that collective judgments

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<sup>11</sup> For an accessible explanation of the 'doctrinal paradox' and its re-articulation by Pettit in the context of deliberative democracy, see Pettit (2003b). For an interesting essay on this theme from a more abstract perspective see List and Pettit (2002).

<sup>12</sup> For a sympathetic, yet ultimately critical commentary on the implications of the discursive dilemma/paradox for democracy which argues that the significance of the paradox is not the tension it reveals between deliberation and democracy but between deliberative democracy and the need for so-called collective consistency, see Ottonelli (2010).

are ‘maximally responsive to individual judgments’, running the risk of irrationality qua inconsistency (Pettit, 2003b, p. 138). This first option, as Pettit understands it, would prioritise the democratic over the deliberative aspect of deliberative democracy, compromising the latter. The second and preferred option for Pettit, is essentially to ‘collectivize reason’ and to privilege the rationality of collective judgments over the responsiveness to individual judgments, thus inverting the priority of democratic over the deliberative as in the first option (Pettit, 2001, p. 112, 2003b, p. 147). As to how one would go about prioritising this deliberative aspect of democratic decision-making processes, Pettit in essence constrains participation in deliberation to representatives of the wider electorate, arguing that in light of the truism of the discursive dilemma ‘the only way for the electorate as a whole to be assured of avoiding such inconsistency will be for the domain of its judgments to be limited to selecting representatives and to identifying preferred programmes of policy making’, with the latter the outcome of indirect influence (Pettit, 2003b, p. 149). The discursive dilemma that Pettit centres in his consideration of political action, is at the core of his aversion towards participatory forms of democracy in regards policy-making judgment. Only by restricting participation on issues of policy complexity can inconsistency be avoided: ‘Let it [the electorate] serve in the selection of policies and inconsistency is likely to prove inevitable’ (Pettit, 2003b, p. 149).

But, what, one might ask, is the problem with inconsistency? Leaving aside the relationship between coherence of judgment and the capacity to stand as a free agent, corporate or otherwise, Pettit’s concern with inconsistency strikes to the core of the problem of freedom as non-domination under the law. Succinctly put, inconsistency of judgments on a diachronic as well as synchronic basis, means that the collective agent at play tracks no single set of considerations or reasons, and thus what emerges is not in any way representative of the common interest of members of the political community. In order for the law to be non-arbitrary, it is common interest which must prevail in decision-making processes. As Pettit argues:

The electorate or populace that is given the participatory role envisaged would fail to be non-arbitrary in the most dramatic of ways. It would fail to achieve this desired profile, not through tracking considerations that are more special than they ought to be – not through serving just the interests of a majority or an elite – but rather through failing to track considerations of any sort. It would

represent, not a corrupt form of government, but an utterly capricious one.

(Pettit, 2003b, p. 154)

It is here through Pettit's deliberative (dis)figuring of 'contestation' as well as power (*potentia*), in terms of the people as a *constituting power*, that we can start to trace his anti-populism in its most virulent form. Anti-populism on this register is equally a suspicion, if not hatred of democracy, and the symbolic force which it carries. Pettit's fear of an 'utterly capricious' government beholden to populist/democratic irrationality *qua* inconsistency is intensified by his diagnosis of such a regime as morally as well as legally beyond challenge. The 'ethos of democracy', we are told by Pettit, grants 'the people's voice a certain morally special status' (2003b, p. 154), such that opposition or even criticism of the same, leaves the critic exposed 'to the charge of being elitist and of not having faith in the wisdom of ordinary people' (Pettit, 1999, p. 178).<sup>13</sup> This moral panic of sorts in identifying the 'ultimate form of arbitrariness' coupled with a deliberative (dis)figuring of politics, betrays a fundamental effort through the Method of neo-republicanism to continue the sublimation of the phenomenological reality of politics *qua* antagonism, that I traced throughout Pettit's use of history at the very beginning of the analysis in chapter two.

In this analysis of the conditions of (im)possibility that Pettit articulates for the emergence of "rationally acting" 'collective subjects,' the Philosopher of neo-republicanism betrays the two fundamental reasons for his anti-populism. First, the ever present forms of imperium or public domination tied to the location of freedom within the realm of a legal status of freedom and an imperfect democracy when it comes to the voice of individual citizen subjects; and second, the philosophical denigration of the political judgment/reasoning of such citizens acting in concert, through the association, more often than not, with the 'collective unreason' of citizens when they become part of a collective entity, rooted in this rationalist worry of the 'discursive dilemma' and an overtly deliberative (dis)figuring of contestation. Pettit, thus concludes, that 'it is quite possible that the people, understood collectively, should dominate the people, understood severally; the collective people can be as uncontrolled an agency, from the point of view of at least some individuals, as the divinely endorsed

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<sup>13</sup> Pettit notes: 'By a curious irony, the language of egalitarian respect for ordinary people gives a sort of moral immunity to a force that may represent the most serious threat of all to the freedom as non-domination of certain individuals' (1999, p. 178).

king' (Pettit, 1999, p. 174). Pettit here, engages in a similar move to the mass psychologists and anti-populist liberals of the nineteenth century, mobilising the power/knowledge of academic discourse against popular collective action through the positing of an equivalence between individuals and rationality, and collective agents and irrationality/inconsistency.

Establishing the demand for an account of neo-republican democracy which can maintain its legitimacy through the democratic principle, and the equality of non-domination for all citizens, Pettit centres the need to protect minority rights, and rejects majoritarianism when it comes to specificities of what republican democracy requires. Pettit writes:

The tyranny of the majority gives the lie to any suggestion that the elective mode of democratization is bound fully to ensure the friendliness of government to freedom, in particular to freedom as non-domination. Electoral democracy may account to nothing short of an "elective despotism", as James Madison described it in 1787 [...]. (Pettit, 1999, p. 176)

It is upon this set of challenges that Pettit's neo-republican account of democracy must build itself as a response, and it is through recourse to a theory of political legitimacy and social justice, that Pettit further refines these requirements.

#### 4.7 The liberal\republican demand for justice

In Rousseau's *On the Social Contract*, we find an engagement with the question of dominating law by the will of a majority.<sup>14</sup> The problem for the social contract is put by Rousseau (2011, p. 164) in the following terms:

Find a form of association that defends and protects with all common forces the person and goods of each associate, and, by means of which, each one, while uniting with all, nevertheless obeys only himself and remains as free as before.

This is the fundamental problem for which the social contract provides the solution. As is well known, the proposed solution for Rousseau, found in Book One Chapter Six, was the negation of majority or 'aggregated will', in favour of the 'general will' as that 'common interest' separate from, yet consistent with the continuing existence of

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<sup>14</sup> In de Dijn (2019) one can find several other eighteenth century republican responses to the challenge of the potential of tyranny of the majority. I choose to focus on Rousseau and Mill here, as Rousseau is one figure against which Pettit strongly articulates his opposition to, and Mill stresses the liberal dimension of the concern with self-government, to which Pettit more or less concedes.

private interests (2011, pp. 163-167). As already established, Rousseau, however, does not feature positively in Pettit's rendering of the dual republican traditions, and for reasons I discuss below. Pettit's taking up of this problem is in part down to the necessity to address the liberal critique which ultimately shaped the decline/reconfiguration of republican thought in the 18th and 19th centuries.<sup>15</sup> Such a liberal critique and performative redundancy of republicanism must be addressed by Pettit, not least if the political task of neo-republicanism as an 'excavation' of this older ideal of freedom (Laborde, 2008, p. 3), and also if its relevance is to be asserted and maintained (Kalyvas and Katznelson, 2008, p. 5).

The liberal rejection of freedom under the law is presented, in the Anglo-phone tradition, by John Stuart Mill in his essay *On Liberty* and resides in the challenge of individual liberty in the presence of a 'people' which is ambiguously constituted:

It was now perceived that such phrases as 'self-government', and 'the power of the people over themselves', do not express the true state of the case. The 'people' who exercise the power are not always the same people with those over whom it is exercised; and the 'self-government' spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, may desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power. (Mill, 2008, p. 8)

While Mill's argument can be read as engaging critically with republican thought as this pertains to the problem of a majoritarian tyranny, it also constitutes an exemplary case of what Rancière (2014) calls the 'hatred of democracy'. Mill's suspicion diagnoses, and pathologises, the rhetorical ambiguity of claims made in the name of 'the people', and their embeddedness in operations of power by the under-authorized. Such a pathologisation by Mill, ought to be read here as something of a rhetorical move, in which, through what Cavarero calls an 'emphatic forcing' (Cavarero, 2016, p. 11), he produces a figure of thought that serves as a 'constitutive outside' to liberal self-government.

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<sup>15</sup> For a critique of Skinner and Pettit's account of the decline of republicanism and the rise of liberalism historically and theoretically, see Andreas Kalyvas and Ira Katznelson (2008, pp. 4-5).

It is against the backdrop of the challenge of potential tyranny of the majority, that Pettit (2012) starts to give substance to the democratic instruments which ‘track interests’, produce non-dominating laws and ultimately form the basis of his rejection of populist politics. That is to say, the model of democracy which emerges in *OPT* ought to be read as a ‘liberal-republican’ (Miller, 2008, p. 140) response to thinking democracy, justice and political legitimacy in the shadow of the ever-present potentiality of majoritarian tyranny, while conceding to the basic premise of liberalism’s critique of democracy.

The model of democracy charted in the final chapters of *OPT* is thus built upon a republican conception of social justice and a commensurate account of political legitimacy, each of which is oriented towards the achievement and preservation of freedom as non-domination. It is necessary now, to consider in greater detail the substance of these conditions upon which Pettit constructs his account of neo-republican democracy. Assuming the necessity of a state for the maintenance and provision of non-domination, and that such a state is understood to be coercive in its association with the task to imposing an order of law within society,<sup>16</sup> Pettit claims that the questions of social justice and political legitimacy emerge as universally of interest to all citizens of that society. These two questions take the following form in Pettit’s work, and each address two distinct realms of domination: social justice concerns itself with *arbitrium* and private domination, political legitimacy with *imperium* and public domination by the state:

In asking the social justice question as to whether the state imposes a suitable order, then, the focus will be on how satisfactory the order is as a social order: as an order that shapes people’s relationship with one another. In asking the political legitimacy question as to whether the state imposes the order in an appropriate manner, the focus will be – at least in part – on how satisfactory the order is as a procedural order: as an order that shapes people’s relationships with the state itself. (Pettit, 2012, p. 76)

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<sup>16</sup> In *OPT* Pettit offers an understanding of the state as comprising of two essential features: first, the state’s role is one of coercively imposing a legal and social order, and second, that the state has a monopoly over the exercise of such coercion (Pettit, 2012, pp. 133-134). Here we are not very far from the Weberian description of the state as laying claim to a monopoly in the use of legitimate physical violence within its territory (see Weber, 2004, p. 33).

Social justice operates horizontally on an ‘expressively egalitarian’ basis where the state treats all citizens equally and, further, under which all citizens are willing to live, and relate with other citizens, on ‘equal terms’ (Pettit 2012, 78, 132).

The commitment to an ‘expressive egalitarianism’ is of crucial importance, not simply in prizing the equality of intensity of non-domination for citizens, but because such a pre-commitment plays an integral role in the practice of democracy as Pettit understands it. Namely, the expressive equality of citizens in relation to one another, and the recognition of this equality under the law by the state, establishes the conditions of (im)possibility for questions apropos the justice and legitimacy of a republican order to be raised ‘with equal validity,’ in processes of deliberation constituting what Habermas (1979, p. 1) calls ‘communicative action’ which, in this instance, is oriented towards non-domination (Pettit, 2012, p. 79). Simply put, the goal of republican justice is freedom as non-domination. Such freedom is felt at the private level through the commitment to expressive equality by all citizens such that non-domination prevails in communicative action, and further that non-domination is as we have seen in earlier chapters (a) the product of an intersubjective, or objective plus subjective awareness of this equal status, and (b) that such a status is measured in its efficacy through recourse to the criterion established by the so-called ‘eyeball test’ (Pettit, 2012, p. 84). The ‘eyeball test’ for Pettit goes something like this: in any given situation, has the agent adequate protection, and, resources so as to make their own choices and to look others in the eye, without fear or deference? If not, then there is an asymmetry of power at work, and private domination is at stake. Those who are free from domination can in turn walk tall, safe in the knowledge they are free by status both objectively and subjectively (ibid.). That is to say that there is common knowledge of their freedom between both the would-be-dominated party and the would-be-dominator (1997, pp. 58-61).

The eyeball test’s power resides in its function as a measure of social justice, as Pettit argues, the test does not require that citizens actually look one another in the eye, through recourse to their nerve and bravery, but rather, through recourse to public safeguards. In the shadow of Rawls’ hypothetical original position and his resource centred conception of justice, Pettit writes: ‘the effect of the eyeball test is to require a certain threshold of resourcing and protection that should be secured for all in the



domain of the basic liberties’ (2012, p. 85).<sup>17</sup> In establishing a minimalist, consequentialist account of republican justice, Pettit figures the ideal of non-domination as a gateway good, offering a left-of-centre theory of justice. The ‘equal enjoyment of freedom as non-domination’, corresponds to a principle of justice insofar as it commits itself to ‘the equal entrenchment of [citizens] basic liberties on the basis of public laws and norms’ (Pettit, 2012, p. 123). At its core, and of central relevance to our purposes here, is the commitment to ‘expressive equality’ when it comes to non-domination as it is co-articulated with the demands of his view of political legitimacy.

Pettit’s account is at its most appealing here, as he centres a commitment to ‘expressive equality’ for all citizens of the republic. But this equality is not material as such, but rather an equality of status before the law, and in the provision of the most basic resources contained within the Rawlsian inheritance of ‘the basic liberties’. These relations of equality thus are the horizontal relations between citizens as fostered and maintained by the neo-republican state, and as we have seen speak to the question of justice. Justice here is understood as the law, and the product of the assumed equal participation of all citizens in the democratic process of law-making. In the next chapter we shall turn more directly to the role of citizens or ‘the people’ in such a democratic process. But what concerns me here is how Pettit’s equality is already circumscribed by the political forms in which they are theorised to appear. Through the affirmation of an ‘expressive’ as opposed to ‘axiomatic’ equality (like the equality we find in the work of Rancière), Pettit’s Method maintains a theoretical commitment to inequality and exclusion, simply to be managed, improved upon, but theoretically rendered forever present. Through the negation of an axiomatic equality, which asserts that persons are already equal, yet rendered unequal through police orders of propriety – encompassing the inegalitarian distributions and allocations of parts, property/ies, logos, voice, capacities, legal status and thus rights of participation and power – the best Pettit’s Method can theoretically promise is inequality which is in the benefit of those already granted a part, already in possession of themselves and property, and the capacities to move, appear and act in the world with a voice that can be heard and a legal status that is recognised. At stake, always in the neo-republican community, is a

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<sup>17</sup> Taking up the analysis advanced in chapter three, it is pertinent to note how Pettit often makes use of the language of ‘normal human beings’ in his explication of ‘the basic liberties’ in relation to republican freedom. See for example: Pettit (2008d) *The Basic Liberties*. Here the bio-political dimensions of power are clearly at stake in the figuring of the subject of non-domination.

miscount, a discounting of the people, as a people, all people, peoples, the plebs, the underdog, those voices which we cannot yet name, but may and will come forth to stake a claim for non-domination, a demand to be heard, to know the feeling of justice.

#### 4.8 The challenge of legitimacy for neo-republican justice

If, as we have seen, the question of social justice relates to the horizontal social relations between citizens, political legitimacy vertically ensures a relation of non-domination between the law and the citizen. Whilst in most liberal accounts the problem of political legitimacy is framed in terms of consent, and with little consideration of the connection between freedom and legitimacy; neo-republicanism, however, maintains a minimalist approach to this question, and offers a powerful and straightforward alternative. Through the centring of a more robust and “rewarding” conception of freedom to that of liberal perspectives, Pettit’s neo-republicanism makes the case for a freedom-related principle of legitimacy. Pettit writes: ‘under freedom as non-domination legitimacy has a straightforward requirement: a form of popular or civic control over the state’ (Pettit, 2012, p. 131). Here the instrumental conception of democracy and its relation to non-domination enters the frame in its most fundamental contribution to republican freedom. If the object of control is that state, the position and understanding of the state is worth considering more closely.

The state in Pettit’s Method assumes the status of a ‘corporate agent’, as theorised in chapter 3. As a corporate agent, the state is ‘expected to form and avow a coherent set of purposes and judgments and to live up to them in how it behaves’ (Pettit, 2012, p. 76). As such, the state assumes a status comparable to that of a legal person and is understood to be ‘conversable in the manner of an individual human being’ (Pettit, 2012, p.133). Here we see the alignment of the account of ‘discursive control’ analysed in the previous chapter in the context of the ‘responsible’ free-person, with the state as it acts in a comparable manner as a free person, rational, willing, and capable of being held responsible for its judgments, in terms of coherence internally and over time. Only a corporate agent such as the state, has the capacity to marshal the collectivisation of reason, through the coordination of its constitutive agencies and officials, as well as to guarantee the possibility of justice through the provision of resources necessary for equal enjoyment of the basic liberties.

Assuming, as Pettit does, that the state can be legitimate without delivering on the question of justice, or capable of establishing a just order under conditions in which the state lacks legitimacy (i.e., under conditions of a benevolent dictatorship, or colonial rule), what ‘turns’ on the problem of legitimacy? For Pettit, the question of legitimacy carries with it, strong implications as to how citizens should or should not behave, and ultimately comes down to the obligations and demands for the acceptance of a regime. Under conditions in which the regime or legal order of the republic is legitimate, citizens carry a *pro tanto* obligation to accept that regime. With such an obligation, citizens who attempt to change unjust laws, must do so by ‘measures that are consistent with the regime’s remaining in place’ (Pettit, 2012, p. 137). Here ‘contestation’ emerges as central to Pettit’s account of a legitimate neo-republican democracy, but only in instances in which the question of justice, as it emerges as an equality of non-domination, is frustrated. The legitimate state requires that citizens acknowledge that the state, as a corporate agent under their ‘control’ (is representative of their interests and in pursuit of the ends of their non-domination), is the ‘appropriate arbiter and decider of legal issues’ (ibid.). As such, the role and significance attributed to ‘contestation’ in earlier iterations of neo-republican democratic politics are repackaged in a concept of ‘control’ in which practices of contestation play a subsidiary role. Citizens can contest the unjust laws of a legitimate state, but resistance and revolution, which seek to politicise the very status of the state are foreclosed upon (ibid.). Should the state lack legitimacy, Pettit argues, citizens must nonetheless approach the state as-if it were legitimate, as it is only upon this basis of assuming the immanence of the state’s legitimacy, that such legitimacy can be (re)established in the first or second instance (ibid.).

Social movements, consumer and identity-based rights groups, and even civil disobedience all have a role to play in constituting such a ‘resistive community’, though their remit is placed under considerable constraints. Take for example the case of forms of civil disobedience which tend to entail a breach of the legal order. Civil disobedience is permitted upon Pettit’s assumption that those who engage in such acts of ‘lawlessness’ do so, but only on the condition that they later submit themselves for punishment before the law which they hold to be still legitimate.<sup>18</sup> In other words, they

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<sup>18</sup> Compare with John Rawls’ discussion of ‘civil disobedience’ in *A Theory of Justice* (1971) chapter six.

uphold their political obligation to the juridico-political order (Pettit, 2012, pp. 137-138). Opposition to laws, taken to be unjust, must, under conditions of political obligation, be opposed within the legal system in order to induce and maintain legitimacy in the long term (Pettit 2012, p. 138). Central to such a quasi-proceduralism is the centrality Pettit gives to ‘mutual expectations’ of behaviour on the part of the state and citizens in order to maintain legitimacy and social order (Pettit 2012, p. 139).

Though subsumed into a deliberative conception of politics, Pettit’s promotion of contestation draws upon the same thematic in the philosophy of John Locke, constituting one more connection to the tradition of republicanism (/liberalism, as they historically undergo a particular morphology, liberalism is not a political ideology or philosophical discourse nominally until the nineteenth century) as discussed in chapter two. Pettit thematises contestation as inherited from Locke in terms of what he calls part of a ‘resistive community’, in which citizens are of a contestatory disposition towards the law and legislation, to the effect of furthering non-domination. Resistance, as it appears in Locke’s ‘Second Treatise’, serves as a bulwark against domination in instances when judicial mechanisms fail to protect individual liberty, where in such circumstances ‘revolution’ against governmental authority is a necessarily legitimate form of action. Marking a distinction between government and political society, consent and contract,<sup>19</sup> Locke’s conception of resistance *qua* revolution, sees the possibility of a political revolution which leaves unspoiled and manifestly upheld, the moral and social relations of the society over which the government subject to revolution extends its authority (Locke, 1980 [1690], p. 107, §. 211). Infringement of individual liberties (read private property) violates the relationship of ‘trust’<sup>20</sup> between ‘the people’ (trustor) and government (trustee), such that revolution resets such a wrong through the overthrow and subsequent replacement of the government, leaving intact the social contract which establishes the

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<sup>19</sup> The distinction between consent and contract as it pertains to Locke’s political philosophy is critically discussed by Brennan and Pateman (1979) and Pateman (1988) from a radical feminist perspective. Brennan and Pateman’s claim is that the contracting into what the contract theorists call ‘freedom’ is further the contracting into subordination, not least for women who are excluded from, yet included in the contract in question.

<sup>20</sup> By an infringement of ‘trust’ here, Locke must be understood as referring to ‘whenever the *legislators endeavour to take away, and destroy the property of the people, or to reduce them to slavery under arbitrary power*’ (1980 [1690], p. 111, §. 222). Under such circumstances in which ‘trust’ is breached, Locke writes: ‘they [the legislators, government] put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge, which God hath provided for all men [...]’ (ibid.)

broader moral community of the political society (Locke, 1980 [1690], p. 110, §. 220, p. 124, §. 243). Locke's view of resistance, unlike its sublimated borrowing by Pettit, appears outside of a deliberative and procedural frame, granting the potential return to a community's natural right to wield force<sup>21</sup> (violence) should such a means prove necessary to restore individual liberties and government, in which the latter fulfils its ends: non-domination (Locke, 1980 [1690], Ch. XIX). In contrast further, whilst resistance, in Locke, is a means to restore authority in light of '*great mistakes*' of government (1980 [1690], p. 113, §. 225), Pettit sees contestation playing a more everyday role in challenging legislation and the state in matters of injustice of a much lower order. None the less political antagonism is foreclosed upon through the depoliticization of the limits of government authority as well as the limits of social objectivity within the neo-republican Method. Whilst Pettit marks a distinction between contestation and resistance within his own Italian-Atlantic story of republicanism in some later work (see Pettit, 2013, p. 199), he nonetheless leaves no place for legitimate resistance in the stronger Lockean sense within a republican state, granting it conceptual space only under conditions in which the regime in question does not even meet the most minimal criteria for a republican democracy. The 'contestatory character' of neo-republican democracy is thus reduced to a virtue of the 'resistive community', re-articulating and (dis)figuring the substance of several key concepts and terms of the grammar of agonistic and radical (antagonistic) democracy.

The political legitimacy of the legal order that the state imposes is established through a conception of 'control' (influence and direction) by the people. If the problem of legitimacy is tied equally to the concern about potential *tyranny of the majority*, at stake is the query as to how can one be both free and experience government coercion simultaneously? State coercion is non-dominating under conditions in which the interference by the state is 'controlled'. Pettit's claim is that:

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<sup>21</sup> Locke refers in Ch. XIX of the 'Second Treatise' to such a return to 'natural right' when he notes: 'Whosoever therefore the *legislative* shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, *endeavour to grasp* themselves, *or put into the hands of any other, an absolute power* over the lives, liberties, and estates of the people; by this breach of trust they *forfeit the power* the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and, by the establishment of a new legislative, (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society.' I read Locke here through Benjamin's (1986) critical historical-philosophy of natural right in relation to force/power/violence (Gewalt) in his *Critique of Violence (Kritik der Gewalt)*.

The idea of controlled interference provides us with the core element of a republican theory of political legitimacy. It suggests that if the people governed by a state control the interference practiced by government – if they control the laws imposed, the policies pursued, the taxes levied – then they may not suffer domination at the hands of their rulers and may continue to enjoy their freedom in relation to the state. (Pettit, 2012, p. 153)

That is to say, through maintaining such ‘control’ the people governed by the state are not dominated, insofar as the state, under their control, governs and interferes on a non-arbitrary basis.

‘Control’, or more specifically influence, must be ‘individualized, unconditioned and efficacious’ (Pettit 2012, 179), insofar as only such a relation between the citizen and state as an apparatus of a juridico-political order, maintains the non-dominated status of the citizen in relation to that order. Influence through contestation should be ‘individualized’ so as to allow individuals to ‘challenge any problematic measures proposed or imposed by government’ (Pettit, 2012, p. 260). What is more, such influence must be ‘unconditioned’ or independent in character, through the provision, of what was earlier named, a dispersion of power through a mixed constitution. This second proviso requires that ‘government would have to be constituted out of distinct, mutually checking or contestatory parts, rather than having an absolute sovereign’ (Pettit, 2012, p. 260). Finally in order to render popular influence ‘efficacious’, neo-republican democracy requires that the political forms of the republic are designed so as to ‘guard against the electoral motives of politicians, establishing independent, indicative authorities in their place, to guard against the influence of private-interest groups by using such authorities to constrain their operation’, whilst enabling contestation of those constraining authorities by the constituting people too (Pettit, 2012, p. 260). By ‘control’ over a process, Pettit suggests one needs to have two things. First, one must have a degree of influence over the process in question, leading to a concrete and observable outcome or result.<sup>22</sup> Second, through that influence, one must ‘impose a relevant direction on the process’, once again oriented towards the aforementioned result. Whilst influence plays an important role in processes such as legislating and governing, on its own it is insufficient to warrant any discussion of

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<sup>22</sup> I point to the importance of a result, ‘observable outcome’ in order to highlight the link here between influence and power, especially as power is conceived by methodological individualists such as Pettit and Dahl, as well as by Bacharach and Baratz. Recall discussion from chapter three.

‘control’ being at stake. Rather, in order to speak of control, one must have both influence and the ability to give direction to the process. For Pettit, influence which makes a difference is all well and good, but control requires that such influence not only ‘give rise to a recognizable pattern’, it must also be a pattern that one seeks (Pettit, 2012, p. 154). As such, the difference implied in control, must be a ‘designed difference’ (ibid.). It is precisely this understanding of control as ‘popular control’ which is the nodal object of Pettit’s democratic theory, the subject of the next chapter. However, this account of control is but one of two measures which Pettit’s account of legitimacy attempts to explain away the possibility of the threat of majoritarian tyranny, and the possibility of imperium under the law. The second measure takes the form of a ‘test’ much like the ‘eye-ball test’, but this time oriented towards diagnosing public domination.

By the ‘tough-luck test’, as Pettit calls it, subjects who perceive themselves to be dominated are asked to consider the possibility, that in this singular instance of domination by a given law or legislative decision, whether or not this is a matter of tough-luck. Insisting that total domination is a sociological rarity, and the near axiomatic quality of experiencing domination to a greater or lesser extent in society, as an obdurate reality of living amongst others, Pettit’s ‘tough-luck test’ provides, in a parallel fashion to the eyeball test in the context of private domination, one part of a metric for assessing the degree to which one is dominated by an unfavourable law. If the dominated subject can say that in this singular instance, their domination is a matter of tough-luck, and that in other instances they are not dominated by decisions made, then their domination in this instance is a contingent irregularity which does not undermine their status as free. This second measure, the tough-luck test, serves to place limits upon the ‘contestation’ of unjust regimes, through the provision that partial domination is insufficient grounds to undermine the legitimacy of the regime, or your status as free from domination, insofar as such instances of partial domination are considered contingent (in the accidental sense), temporary, and simply a matter of tough-luck. Here ‘the people’s’ role is both posited and then negated simultaneously, raising further questions as to the meaning and substantive role of ‘the people’ in the slogan ‘On the People’s Terms’. Perhaps, one might infelicitously observe, for all the talk of ‘popular control’ and ‘the people’ (as a definite article), what Pettit means here is little more than a collection of individuals who identify with one another, but on the

state's terms. Pettit, in giving *form* to politics, as something akin to the law-giver which Rousseau spirits into his account of the general will, designs the *mise-en-scène* of neo-republican politics, allocating the parts, properties, the script and the stage directions of each of its actors, in advance of their appearance in the world.

#### 4.9 Conclusion

Having thus established the transfiguration of 'contestation' under a concept of 'popular control', which we have further noted to be analytically divided into two elements, influence and direction, it is now necessary to draw together the elements of this understanding of control and the role of 'the people' in such a process. The effect of such a summary and critical reconstruction is to show how contestation is effectively sublimated, and how any active role for 'the people' in the securing of their non-domination is marginalised and, as the next chapter will attest, negated from the activity of what is here called neo-republican democracy. On the basis of the discursive dilemma Pettit limits the scope of deliberation by the demos to the forum of elections of representatives, in which the latter are empowered on a trustee basis, in terms of what Pettit calls 'responsive' representation, as opposed to the indicative representation implied in plenary or direct forms of democratic deliberation (Pettit, 2009, pp. 71 – 77, 2012, pp.197 – 205). Responsive forms of representation can take either Westminster or Washington models (Pettit, 2012, p. 206), and here a connection is made to Pettit's conception of the state as 'trustee' and the people as 'trustor', as originally posited in his critique of populist republicanism (Pettit, 1997a, p. 8). The responsive form of representation embodied by 'trustee' legislators democratically elected take their lead from the metaphor of the actor as an interpreter of the interests of the people (Pettit, 1999, p. 72, 74).

Electoral democracy here then stands as an 'authoring' or 'generative' mechanism for the law in an institutionally mediated and indirect way. The individualised, unconditioned and efficacious contestation by citizens as theorised earlier supports the project of freedom as non-domination through non-arbitrary law in 'editing' and 'testing' such laws in their prospective and imposed forms, so as to ensure that the decisions made by the trustee's/representatives track the common avowable interests of 'the people', severally understood (see Pettit, 2000a, pp. 114 – 118, 2012, p. 218). The role of 'the people' in this account of influence, though not yet 'popular control',



as the *constituting* or ‘civic people’, taken severally, elect representatives, have the task of *contesting* and thus editing the laws made by their trustees who interpret their will based upon their common avowable interests as indicated through representative elections. Should they deem themselves in a minority, and suffering domination by the laws made, most likely in the majoritarian image, then they have the right to contest such laws, or deem it a matter of tough-luck, thus left to accept this instance of domination as a contingent anomaly.

The forms of contestation available as we have seen through Pettit’s writings on contestatory democracy are fundamentally deliberative in character, and institutionally mediated – more or less formally depending on the avenues most readily available and appropriate to the complaint of domination. This procedural, juridical and ultimately constrained model of contestation places severe limits upon the modalities through which the antagonistic dimension of democracy which Pettit prizes can emerge and be heard. In the *republic of reasons* contesting the law and public decision-making must follow the rationalist model presented by Pettit here, and enjoy the smiling support of the Goddess *Fortuna* in surviving the ‘clearing-house’ of social movements, the procedures of an Ombudsman, and the abundance of correspondence (largely ignored) that floods the inbox of your local Member of Parliament.

What we can trace here in Pettit’s theoretical strategy to write out populist forms of politics, is the construction of an edifice organised around two concepts, social justice and political legitimacy, which provide the substance of a theory of ‘influence’ and ‘control’, and which ultimately come to place limits upon political action, and the activity of ‘the people’. What has emerged through our analysis of Pettit’s (dis)figuring of ‘contestation’ and influence, is the denigration of concerted action by the people/a people/all people/ peoples (Butler, 2015, p. 8; Agamben, 2000, pp. 29-30; Devenney, 2020, chapter 6), as the latter presents itself as an immanent spectre, haunting the reigning notion of the political in the sensorium and Method of neo-republican democracy. The emphasis on ‘control’ being ‘individuated’, and the state’s commitment to ‘expressive equality’, are significant to our analysis here, as these two claims are central to how Pettit (dis)figures ‘contestation’ both as the antidote to majoritarian tyranny, and by which the antagonistic core of politics is sublimated through the redescription of politics exclusively in terms of deliberation and dialogue, or communicative action. Through a cumulative (dis)figuring, chronicled in the course

of this and the following chapters, the grammar of radical democracy, is systematically co-opted through recourse not only to an anti-democratic impulse, but further in reference back to forms of social scientific knowledge oriented towards the promotion and maintenance of *consensus* and disciplining. The effect as such is a conservative politics cloaked in a 'radical' language of democracy and contestation. The relation between 'control' and democracy is in need of greater specification, as well as the role of 'the people' in the realm of the political, not least as it relates to the practice of contestation and the activity of politics. To these questions I shall return in the next chapter, as I examine Pettit's dual-aspect model of democracy and the activity of *politics*.

## Threshold

The question of an, arguably, anti-democratic sublimation of antagonism through the (dis)figuring of the concept of ‘power’ is not unique to Pettit, but has a history in the recent Method of political theory, which considering Pettit’s own conception of power (not control) as examined in chapter three, is remarkably close to home. I refer here to the work of Robert Dahl (1957, 1958, 1961), who in the 1950s and 1960s in response<sup>1</sup> to the critiques staged by the so-called ‘community power theorists’<sup>2</sup> and C. Wright Mills (1956) offered a theory of power with direct implications upon the theorisation of democracy. What is it that democracy redistributes on an egalitarian basis? Power (Haugaard, 1997, p. 9). Dahl’s work, which castigated both Hunter and Mills as naïve, served not only as a “master work” of political *science*, but, ultimately, a defence of American pluralist democracy. Dahl (1957) in defining power as an exercise concept and a social relation, in which agent A has *power* over agent B, when A makes B do something they otherwise wouldn’t choose to do, separates out power from ‘power resources’ or latent power. Whilst this distinction has immense analytical value, its normative implications, in light of democracy’s egalitarian distribution of power, is that the resources of power (wealth and authority etc.) need not be equalised across society. All that a pluralist democracy requires is the more or less equal distribution of exercises of power, not the resources which make an exercise of power possible.

As Haugaard (1997, pp. 9-10) notes, democracy as understood by the likes of Dahl and his critics Bachrach and Baratz (1962), Lukes (2005, 2015), and Pettit (2008c), is a stealthily appraisive concept,<sup>3</sup> a name given to institutional arrangements which we take to be normatively desirable, generally due to their redistributive capacities of some variety, according to an egalitarian principle of varying degree of weight. This nominalist<sup>4</sup> approach to democratic politics establishes the very conditions of

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<sup>1</sup> The essay in which Dahl addresses himself directly to the critiques offered by the ‘community power theorists’ and Mills is ‘A Critique of the Ruling Elite Model’ (1958)

<sup>2</sup> The best known of the group of sociologists associated with the name the ‘community power theorists’ was Floyd Hunter (1953)

<sup>3</sup> This appraisive quality, for Haugaard at least, can be traced back to the influence of W.B. Gallie (1956) and his essay on ‘essentially contested concepts,’ in which Gallie locates the essential contestedness of the concept, in part, in the appraisive or normative character of concepts.

<sup>4</sup> The charge of nominalism is given an explicit analysis by Von der Muhll as summarises: ‘his nominalist sensitivities, together with his sympathy for the organizing behavioural premises of traditional economic theory, preclude his acceptance of theories of modern large-scale democracy in which the actions of democratic governments are presented as the enactment of a consensual popular will. Like Joseph Schumpeter before him, he sees the concept of a unified, rationally informed, disinterested,

possibility for democracy to be so defined as equality of power exercise, as seen in Dahl (1961), or as an expressive egalitarianism tied to the practice of popular control as in Pettit (2008b, 2012).<sup>5</sup> What this nominalism facilitates nonetheless, is a “democratic” politics which maintains the established forms of inequality: economic, social and political (as well, more radically put, as epistemological and ontological). This is an axiomatic feature of the political philosophy, not only of Dahl and Pettit, but also of Rawls (1979), Habermas (1996, 1998), Gutmann and Thompson (2004), Benhabib (1996), Elster (1984), Mouffe (2005a, 2005b) and Arendt (2005). One might say, it is, to a greater or lesser extent in each iteration, an embedded feature of the Method of political philosophy and theory *in universum*.

The re-definition of ‘kratos’ or power as influence is not unique to the Method of Pettit, but inherited from Dahl in part, one must assume, insofar as in that original essay by the latter theorist of American democracy (which he refers to as a form of ‘polyarchy’: from the Ancient Greek poly-, the singular of *‘polloi’* meaning ‘many’ and -archê meaning, as we have seen, ‘rule’ or ‘beginning’) and power, there is an explicit conflation of ‘power’ and ‘influence’. Dahl writes: ‘I should like to be permitted to use these terms interchangeably when it is convenient to do so, without denying or seeming to deny that for many other purposes distinctions are necessary and useful’ (1957, p. 202). As Lukes (2015) reminds us, Peter Morriss (2002) has done some work on this conceptual distinction. Morriss, having poured scorn on ‘single-minded, and simple-minded’ behaviouralists, who have ‘cavalierly collapsed terms such as “power”, “influence”, “control”, and “coercion” into one category’, goes on to argue in *Power: A Philosophical Analysis*, that whilst “power” and “influence” do overlap, [...] at their cores [they] are very different ideas, and that therefore neither is a subcategory of the other or can be replaced by it’ (2002, p. 8, 12). Tracing the etymology of ‘power’ to the ‘vulgar Latin’ *potere*, meaning ‘to be able’, and equating it with a *capacity* to do things (Morriss, 2002, p. 9, 10), Morriss, consistent with Ober’s (2008) etymologically sourced definition of ‘kratos’ as power, understands power as something of a dispositional

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operational, unambiguously articulated popular will as a will-o-the-wisp in complex societies, an artefact conjured up by populist demagogues and dictators to cover the lack of mechanisms for authentic public consultation’ (1977, p. 1095).

<sup>5</sup> Further, it is in Dahl (1957, p. 201) one finds the conditions of possibility by which Pettit can blur the concepts of power, control and influence, as Dahl renders them synonymous with one another, along with *auctoritas*, *Macht*, *Gewalt*, *imperium* and *potestas*. The overall effect is a flattening of our conceptual repertoire, such that power is rendered an all or nothing concept.

property, an ability for action (2002, p, 12-13). By contrast, ‘influence’, from the Latin *influere*, ‘to flow in’, in both noun and verb form have an exercise quality, and does relates to power as something of a (re)source from which it flows, but ultimately, it is not equivalent with ‘power’ (Morriss, 2002, pp. 9-10, Lukes 2015, p. 267).

In light of such conceptual analysis offered by Morriss, it is interesting to consider again the relationship between “power” and “influence” in Pettit’s Method. When Pettit (1996, p. 578) understands non-domination as a form of ‘antipower’, he asserts the unique contribution of neo-republican freedom as non-domination in its attentiveness to the evil of interference as an arbitrary capacity to interfere, even in the absence of its exercise (cf. the absentee Master, or the arbitrary power of a sovereign or despot). Pettit conceives of power as domination, more or less consistent with power as a capacity, not simply as influence as in Dahl (1957). Juxtapose this with his rendering of ‘kratos’ as ‘influence’ (not power), as charted in the previous chapter, we find that Pettit leaves the people to fight domination/power with nothing but influence. Placing the power they have in the hands of the law, from which their ‘influence’ in a circular fashion emanates or ‘flows’. At stake here, one might argue is a privileging of the state and its laws as the only theoretically established locus of power, further affirming Pettit’s ochlophobic tendency to limit and downplay the power of the people. This is ‘popular control’ is not ‘on the people’s terms’, but on the State’s terms, or rather on the terms of those who count most on the state to defend their place and part.

## §5 Neo-republican democracy

### 5.1 Introduction

The project of freedom as non-domination and its attendant model of neo-republican democracy marks its specificity through a particular interpretation of the concept of ‘democracy’: as deliberative, contestatory, and oriented towards the furthering of the aforementioned ideal of freedom. This is concerned ultimately with the problem of political legitimacy, which, as we have seen in the previous chapter, Pettit ties to a critique of what he calls ‘populism’, as well as the desire to negate the potentiality of a tyranny of the majority. Neo-republican democracy is based upon the perceived need to institutionalise ‘popular control’. It is only upon such a basis that the laws which produce and protect freedom are made ‘on the people’s terms’, and thus are non-arbitrary, consistent with, and conducive to an ideal of freedom as the absence of arbitrary relations of dependency or domination.

Across the literature in contemporary democratic theory the concept of ‘democracy’ itself is characterised as an ‘essentially contested concept’ (Gallie, 1956). Such a contestability at the very essence of the concept leaves open for political capture the precise meaning of the activity in question.<sup>1</sup> The nature of what is at stake in the appellation or description ‘democracy’, ultimately, thus resides, in the meaning attributed to the two words in ancient Greek which, etymologically understood, form the composite noun: δημοκρατία or *demokratia* (co-articulating two concepts: ‘demos’ and ‘kratos’). Precisely how one articulates each of these elements of the name, pertaining (a) to the subject of the practice (who are the demos?), and (b) to the activity

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<sup>1</sup> Exemplary instances of such a treatment of the concept of ‘democracy’ include Dryzek (2016), Hidalgo (2008) and Kahan (1999), to name but a few.

which such a subject undertakes, determines what is at stake in the always normative (if not prescriptive) account of ‘democracy’ that emerges. On Pettit’s Method, the *demos* is nothing more than the citizenry or ‘the people’ (constituting and constituted, more on this distinction later in the chapter), and ‘kratos’ is interpreted, as we have already seen, in terms of (discursive) ‘control’. Consistent, as well shall see, with Pettit’s (re)figuring of popular sovereignty in deliberative or intersubjective terms as a product and procedure of what Habermas calls ‘communicative action’, the activity of democracy is presented in terms of the exercise of ‘popular control’ over the government of the republic.

Throughout Pettit’s work, a rhetorical and translational displacement can be traced with regard to the concept of democracy. In the ancient Greek world, as Josiah Ober has taught us, ‘kratos’ meant power, or a capacity to do things (Ober 2008, p. 3). As presented by Pettit (2008, p. 46; 2012, p. 180), however, the undecidability of the signifier ‘power’, which is etymologically reconstructed as ‘the capacity to do things’ (Ober 2008), is supplemented with the concept of ‘control’. Through such an act of supplementarity, the original concept, due to its iterability and constitutive emptiness, is written over in a new relational articulation. As argued by Derrida, ‘the supplement supplements. It adds only to replace. It intervenes or insinuates itself in-the-place-of; if it fills, it is as if one fills a void’ (Derrida 1997, p. 145). As such, Pettit rearticulates the substance of democracy as less the ‘power of the people’ and more the ‘control by the people’ over government. However, that void, which ‘control’ fills is haunted by traces of each iteration of the supplement, and as such is vulnerable to critique, on both political and theoretical bases. It is such a critique that I shall undertake in this chapter.

Such a transformation of democracy by stealth in Pettit’s work is not without historical precedent. Indeed, it is nascent in the tradition he conjures of Roman-rooted republican thought and negates the more Hellenistic republicanisms of Arendt and Rousseau. As Pettit (1998, p. 83, emphasis mine) rather tellingly writes:

The republican tradition from Machiavelli to Madison [...] pictured Athens, rightly or wrongly, in the critical terms suggested by Polybius: as *a ship without a captain*, buffeted by *the storms of popular opinion*. They traced the Athenian problem to *excessive reliance on pure democracy* and saw the Roman republic, by contrast as a

constitution in which government was built on a *democratic foundation but was better devised to guard against problems of faction and demagoguery and tyranny.*

Republican democracy is democracy in name, but not in practice. The threat of democracy, in its unmediated form, is the threat of a polis characterised by faction, division and rule by those with no qualification to govern, meaning the plebs, or those assumed to be at the mercy of their superfluous desires (Foucault 2011, p. 200; Rancière, 2014, pp. 39-40). Whatever about intention, in effect what Pettit does is to revive the old Platonist critique of democracy, in which political truth-telling is no longer to be found in the democratic field. Rather, *parrësia* (fearless/political truth telling) is re-sutured to logos in the discourse of the philosopher, the (republican) lawgiver, who generates a discourse of unity, vision and order (Foucault 2011, pp. 200-201).

‘Popular control’, as we saw in the previous chapter, entails two analytically distinct elements, which taken, or experienced, separately do not equate to having control. The first, is a form of influence, which is individualised, unconditioned and efficacious, arising from the two practices which we take as given in our ‘established ways of conceiving of democracy’ (Pettit, 2000, p. 105). The first of these practices of influence is a form of *electoral democracy* in which the people vote to select representatives on a trustee, and thus interpretative, basis. It is through this process that their avowed common interests are communicated in the form of a mandate to those political representatives. The second way in which the people influence decision-making is through *practices of contestation*, in which the people play an editorial role in ensuring that public decision-making truly tracks the interests of ‘the people’. Such contestation, as we saw in chapter four, however, is individuated, deliberative insofar as it is tied to the testing of reason and reasons, and institutionally mediated, with its task, ultimately, to guard against domination that arises from the risks of majoritarianism embedded in the practices of electoral democracy.

The second element of popular control, after influence is materialised, is that ‘the people’ give direction to the presupposed influence. Influence-without-direction is insufficient for control to be established, however such influence-without-direction is the basis of some theories of democracy, such as that espoused by Schumpeter (Pettit, 2012, p. 241). Whilst accounts of democracy which see no role for direction, have gained large application in much empirical political science – not least due their



workable and descriptive, yet, minimalist definition – as an often *normativising* description of many regimes, an understanding of democracy which is based on popular influence alone is normatively deficient according to Pettit (2012, p. 242). This normative deficiency that extends beyond a base nominalism, Pettit argues, resides in its failure to meet the demands of the neo-republican account of political legitimacy. The legitimacy of the coercive regime of neo-republicanism requires that ‘the people’ have ‘control’ over the processes of decision-making, however as we shall see, this element of direction, is indirect, invisible, and requires little more of ‘the people’ than already presupposed in the presence and materialisation of their influence. As scholars such as Axtmann (2019) have argued, the role of ‘the people’ as a collective actor is purely symbolic, and practically discounted. They do not have power, just its derivative: control.

In this chapter, I continue the analysis commenced in chapter four, arguing that Pettit’s neo-republicanism, through its philosophically constructed ochlophobia, rooted in a methodological individualism, anthropological rationalism, and a liberal conception of the subject, leaves little role for ‘the people’ and thus for democratic *politics* in neo-republican democracy. By revisiting the concept of democracy from the critical or an-archic political philosophical perspective outlined in chapter two, I show how Pettit defends, not a view of an emancipatory democratic politics which struggles for freedom from forms of domination. Rather, neo-republican democracy stands as an oligarchic police order, which through the Method of neo-republican political philosophy, becomes the site of forms of domination which extend beyond the theoretical sensorium of neo-republicanism as a paradigmatic example of a Method of political philosophy which privileges the philosophical over the political. The problem of *populism* continues to assist in the completion of this critical analysis and provides the basis from which we can start to think the *politics* of non-domination, as opposed to the politics of *non-domination*, in chapter seven.

5.2 Giving direction to influence, the institutional possibility of ‘control’  
‘Direction’, as the second element of ‘popular control’ is for Pettit, a ‘real institutional possibility’, so long as the following two conditions are met. The first of the two conditions for ‘direction’ to materialise, is that ‘people come to support certain norms of public policy-making, whether or not this is something they intend, in virtue of

pursuing popular influence over government’ (Pettit, 2012, p. 252). That is to say in the presence of the forms of ‘influence’ described in the previous chapter, norms held by the electorate and by which policy ought to be made are generated in a spontaneous or non-intentional manner. Second, Pettit suggests that these norms will ‘come to direct public decision-making, whether or not this is something that people intend, thereby establishing a popular purpose that government serves’ (ibid.). This view of ‘control’ briefly sketched out here stands as the basis of Pettit’s ‘dual aspect model’ of democracy, and at its most basic, is how Pettit understands ‘how popular influence can impose a popular direction’ (2012, p. 252). This dual-aspect model of democracy, which neo-republicanism promotes, thus understands democratic politics, as discussed in chapter four, as operating upon two analytically distinct timescales, Pettit explains:

In day-by-day policy-making, the people exercise an equally accessible form of electoral and contestatory influence over public decision-making. And by means of doing this in the short haul, they manage over the long haul to impose an equally acceptable direction on the performance of government. (Pettit, 2012, p. 252)

As such, in terms of institutional form, little has been added to the picture of electoral and contestatory democracy developed previously. The addition of the provision of ‘direction’ to the concept of ‘control’ underpinning Pettit’s politics lies in the ‘noumenal realm’ (Forst, 2015, p. 112), that is in a ‘space of reasons’, and, thus, communicative, not strategic action. Strategic or instrumental action, which Pettit takes as action motivated by self-interest is confined to the short-haul temporality of democracy, and placed, as we have seen under significant constraints, due to its tendency towards arbitrariness and what Schmitt (2007, pp. 42-43) calls ‘the decision’.

Pettit’s dual-aspect model of democracy is entirely premised upon a set of axioms or presuppositions of his Method, not least those which pertain to the nature of deliberation within the *republic of reasons*. In order to understand Pettit’s argument about ‘direction’ it is necessary first to understand how he theorises deliberative politics and its relation to the *normative* qua norms. Deliberation as Pettit understands it, will be governed by what he terms ‘games of acceptability’, that is to say in processes of everyday deliberation over policy, reasons and considerations given by the people ought to ‘count as relevant by the lights of all’, such that any considerations adduced should help to make the policy acceptable to everyone, given shared assumptions about

the dispositions of each' (Pettit, 2012, p. 253). The relevance of considerations should accord with everyone's view as they are 'or can be brought to be' through deliberation and judgment formation that arises from the same dialogue, 'not according to everyone's views as in some sense they ought ideally to be' (ibid.). Deliberating partners in such an 'acceptability game' are required to 'treat others as equals', following the model of 'ideal speech', as 'envisaged by deliberative democrats' such as Habermas (1984) and Elster (1986) (Pettit, 2012, p. 253). Here non-domination as it pertains to private domination, as opposed to public, re-emerges in the guise of the 'acceptability game', as an ethical and regulative ideal for the practice of deliberation. The acceptability game thus relies upon the same logic of intersubjective equality proposed in the so-called 'eye-ball test', as the ethical basis for non-dominating deliberation towards norm generation.

Drawing further upon the insights gleaned from his philosophical work on discursive groups, recognition, and the forms of influence that are consistent with subjects of non-domination being in possession of 'discursive control', as theorised in chapter three, Pettit argues with regards the common relevance of considerations in deliberation the following:

Under the pressures of the acceptability game, it is inevitable that participants will generally comply with the regularity of seeking out considerations that all others, no matter what their interests or opinions, can treat as relevant in collective decision-making; else they will have little impact. And it is equally inevitable that participants will register this fact in common awareness as well as registering at the same time that any failure of compliance will attract the inhibiting derision or disapproval of others. Those who present considerations that can only carry weight with a particular subgroup will be laughed out of court. (Pettit, 2012, p. 254).

Here we can see the constraining effects of the deliberative (dis)figuring of 'contestation' at first hand, as matters of complaint or demands made against the state, will struggle for hearing should they not resonate with the considerations of the *normative* in the form of established norms. Whilst Pettit admits that participants 'may or may not be successful in gaining such acceptance for the relevance of the' given particular 'considerations in the domain addressed, certainly not on the first round', he assures us that with repetition and patience on the part of the dissenting subject, 'if the consideration really does cohere well with the existing commitments of participants,

then sooner or later it is very likely to win acceptance as a relevant coin in the currency of acceptability debates' (Pettit, 2012, p. 255). Once again, little solace for those finding themselves on the margins, remaindered by the normative force of the norm in the so-called *republic of reasons*. What is increasingly apparent is how the prioritising of 'contestation' over 'consensus' by Pettit, nonetheless, relies very strongly upon a broader *consensus*, like Habermas's 'shared background', which is distributive of reason or *logos* so that on closer inspection the republic of reason becomes a *republic of logos*.

### 5.3 Popular control and the normative

Direction, as a fundament of control, requires from these above described deliberative processes, the emergence of more specific norms. It is through the subjects of a political community's abiding to the 'norm of norms', in which they confirm for one another the 'considerations that may be expected to count as relevant by all lights' (Pettit, 2012, p. 255). These considerations over the passing of time, shall accumulate and consolidate, such that they constitute something like what Clegg (1989) calls 'obligatory passage points' of discourse, that act as points of reference through their assumed pertinence 'by everyone's lights, to issues of public policy' (Pettit, 2012, p. 255). As such, the acceptability game, as well as the norm of norms, is a power game, in which particular norms and ideas are elevated to the status of universals. The name of that game is *hegemony* (Laclau and Mouffe, 2001). The acceptability game that Pettit conjures thus provides an account of how norms of deliberation which are to operate as a constraining and directing device, at the level of elected representatives, are produced and circulated in an indirect and un-intentional fashion through the deliberations of citizens who uphold the so-called norm of norms.

Norms of deliberation and policy-making, as Pettit understands them, are contingent and historical social facts which shall never be fixed once and for all. As contingent forms of argument, such norms are open to development over time, as deliberators may innovate with existing and novel arguments and styles of deliberation that may come to gain acceptance from their deliberating partners who deem them, eventually, to be felicitous, resulting in a change in the currency of deliberation. As Pettit notes:

such innovations are likely to be triggered by changes in the dispositions of the existing membership and, of course, by changes of membership that occur at any

time and across different times. As new norms evolve in this way, others may decay and lose potential, say because they are not acceptable to some members in the changed society. (Pettit, 2012, p. 257)

The acceptability games inbuilt clause of norm abidance thus means that, citizens through their, potentially intermittent, interventions into public debate need not be entirely motivated by a commitment to the common good. It suffices that such citizens uphold the rule of acceptability, even if their motivation is self-seeking in character. Deliberation as such, need not take the form of a philosophy seminar type discussion, it may draw from the rhetorical repertoire of political argument, contemporary and historical, and in so doing, according to Pettit, nonetheless implicate and activate the sedimented norms which are the result of the acceptability game, in order to gain support and force for a given policy (Pettit, 2012, p.259).<sup>2</sup> Dissensus as a form of deliberation is entirely permitted within Pettit's understanding of such a game, presenting not a problem for policy-making processes, but an opportunity for the affirmation of norms of argument (Pettit, 2012, p. 261).

Reading a moral from this account of norm constitution, Pettit sees a *de facto* commitment of citizens to the group and nation in their compliance with the so-called acceptability game. Such a compliance is materialised to the extent that citizens voicing dissent, are read by Pettit to be expressing a form of patriotism, or civic virtue as they, by default, engage with the process of policy and procedure development (ibid.). Such a patriotism or civic virtue, Pettit wagers, will act as a bulwark against self-interest and situatedness as members of a given church, or of a particular ethnic minority, inducing them to maintain an eye towards and commitment to, the good of the 'larger community' (Pettit, 2012, p. 262): 'let patriotism prevail and there are unlikely to be divisions of the kind that would undermine the emergence of society-wide norms' (ibid.). The generation of norms as a key element of neo-republican democratic life, is further aligned with the activity of banal-patriots, such that the borders of reasonable political discourse are erected along, for want of a better word, nationalist lines, in which 'the people' as we are beginning to see more and more clearly are but an expression of the nation.

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<sup>2</sup> Compare with Dryzek's (2002, pp. 166-175) opening up of deliberation relinquishing it from the constraints of rational argument and opening it to the possibilities of rhetoric/humour/storytelling etc.

Through this deliberative-paradigm-centred-redescription, or *rational reconstruction*, Pettit draws a normative justificatory device and ideal of ‘direction,’ so as to establish the possibility of freedom as non-domination, as control over the law, in which the people’s participation in the process of their own government, requires them to do little more than they would otherwise do in any vaguely liberal democratic social order. As Pettit summarises: ‘if a regime is designed to facilitate an individualized, unconditioned and efficacious form of popular influence, as our model requires, then it is bound to give a prominent role to games of acceptability and is bound therefore to generate a range of commonly accepted norms of policy-making’ (2012, p. 260). It is on the logic of this game and its attendant protocols that Pettit sees the only possibility of contestation being an effective measure of popular control, though, as is almost always the case in Pettit’s Method, such popular control is individuated and constrained.

The so-called ‘acceptability-game’ of reasoning about norms and norm production, seems to strike a half-way position between Rawls’ (1971, pp. 136 – 142) ‘original position’ and the discourse ethics of Habermas, in which Pettit – contra Rawls hypothetical social contract model – sees the generation of norms to govern the basic structure of political life arising not from behind a ‘veil of ignorance’, but in the thrust of an idealised model of discourse. In such a scene of communicative action, Pettit’s neo-republican subjects generate norms such as a commitment to equality of influence, freedom of participation and speech, as well as commitments to the norm of equal educational access for all citizens, to name but a few (2012, pp. 262 – 264). How far we are here from the two principles of justice as fairness found in Rawls is open to debate, and not surprising given the two philosophers commitment to the procedural expression of the liberal democratic tradition, which they each avow to varying degrees of forthrightness. One wonders too, to what extent Pettit’s couching of republican justice and legitimacy in the grammar of a deliberative process of *norm acceptability*, is not akin to Rawls presentation of the ‘original position’ as something of a hypothetical elucidatory device (see Dworkin, 1973, p. 501) with the end of persuading the reader through the provisional projection of ideal-cum-pragmatic foundations of the validity and power of the emerging conception of democracy.

The precise content of such norms of republican community, as noted earlier are taken by Pettit to be a contingency of context and demands, but nonetheless, what we

glean from his discussion of deliberation under terms of acceptability, is equally an insight into the ways in which the norms of education and child-rearing discussed in chapter three have come to be formed. The language of ‘standard practices’ and ‘non-idiosyncratic lights’ found in *Republicanism* (Pettit, 1997a, p. 120) resonate in powerful ways with such a logic of ‘acceptability’ in the thrust of norm generation. Whilst, as we have seen Pettit leaves open some scope for dissensus, we nonetheless feel the force of neo-republican *consensus* qua the normative and its disciplinary power in the sculpting of the subject and the shaping of their interests, desires, and potential political demands. This is not to stray beyond the obvious at this point, but to make the case, in one way or another, that the norms which Pettit projects forth as regulative of the activities of political representatives in the legislative process, are equally disciplinary norms which move in the opposite direction too. Turned back toward the citizen, the regulatory force of the norm, constitutes a disciplinary power which limits the scope and character of democratic political demands as they emerge from life itself, in all of its abundance. Direction, thus building upon the analysis developed in chapter three and the present discussion, now begins to look more and Foucauldian (cf. Foucault, 1982) as we see the power of the Method of neo-republicanism and the pen of Pettit, blend forms of bio-power and disciplinary power converging with the subjectivation of the humans that appear in neo-republican democracy (More on this in due course).

What emerges from Pettit’s idealised theorisation of the logic of deliberation is the basis for the conception of ‘direction’, which constitutes the long-haul aspect of his dual-aspect model of republican democracy. Such a directive function is the outcome of ‘episodic’ scenes (Pettit, 2012, p. 267) of deliberation productive of norms of policy-making capable of exercising what Pettit calls ‘effective constraints’ on policy making processes (ibid., p. 265). Such ‘direction’ to policy-formation activities, undertaken by responsive trustees of ‘the people’, is taken to be substantial, and reflective of a ‘common norm-based order’ (ibid., p. 266). Consistent with Pettit’s ongoing co-option of the grammar of agonistic and radical democratic projects, ‘consensus’ is not necessary at an everyday deliberative level for this norm-based order, but rather ‘dissensus’ of this lower order status is accepted, if not promoted, not least in the cut and thrust of debate and deliberation over particular policy issues liable to divide discussants. Pettit’s claim, in such circumstances, is that, so long as any given difference of position in relation to a given issue does not throw into question, or rather, ‘offend’

against ‘any of the norms they hold in common’, not only will the participants be directed by such norms, but (re)productive of the order of norms specific to the community (2012, p. 266). Viewed in Foucauldian terms this corralling of dissensus, through the discourse of ‘offence’, ‘common norms’, and ‘deliberative community’, proves to be far more effective in suppressing political antagonism than any communitarian ring-fencing of permissible argumentation and claim making, by making negative sanction by deliberative or discursing partners seem ‘reasonable’.

At stake, for the neo-republican theory of ‘popular control’, is not a slow drawn out process of deliberation, as often associated with citizens assemblies, but rather a form of ‘deliberative regulation’ (Pettit, 2012, p. 266). On this account the everyday activities of policy makers are governed by norms of what should or should not be done, generated through ‘episodic’ forms of deliberation on an explicit basis in relation to some issues (ibid.). This norm-based regulation thus sees the wishes and values, or as Pettit calls them ‘interests’ of ‘the people’ given institutional and procedural expression, in terms of ‘institutional constraints that reflect deliberative norms’ (ibid.). Here the two moments of democratic politics, ‘contestation’, and ‘voice’, are institutionalised, reduced to procedures of government, such that:

the decisions the body [legislature] eventually reaches will have to flow along so many channels, skirt so many potential checks and obstacles, and avoid floundering on so many contestatory hazards that they are more or less bound to satisfy the requirements of deliberatively generated norms. (Pettit, 2012, p. 267)

In effect, what we have here is the fundamentals of Pettit’s re-articulation of the ideal of popular sovereignty, first glimpsed in his appropriation of Harrington’s distinction between an ‘empire of laws’ and an ‘empire of men’ (see chapter 2). Democracy as a regime of ‘popular control’, for the neo-republican Method, in sum, entails both the influence of, and direction by ‘the people’ on the formation of the law, in a social order of norms. As such, actual dissensus is further stymied by the Kafkaesque structures of ‘contestation’, ‘acceptability games’, and ‘control’ that Pettit conjures. The effect is the active and effective stultification of democratic participation by individual subjects of neo-republican democracy.



Political community, for Pettit, is the ethical community of norms enshrined in a constitution and the virtue of citizens, both dissensually produced through the activities of deliberating and contestatory citizens, as Pettit concludes:

if the emergent norms are truly effective, as they ought to be in the presence of a suitable constitution and citizenry, then they should put a directive and controlling stamp on what is collectively done in the community. (2012, p.266)

Ultimately, it is the deliberatively produced norms which rule the day, giving a procedural expression of an ‘overlapping’ and ‘conflictual consensus’ of the *commonly avowable* interests of ‘the people.’<sup>3</sup> Forget the general will, or an aggregated determination of the interests of ‘the people’ with respect to policy, Pettit’s ‘on the people’s terms’, refers in the dual-aspect model of democracy to emerge not in the moment of action qua voting for representatives, but rather along the temporality of deliberative norm formation. An activity of direction and influence which becomes ‘elusive’ and, retreats from view into the realm of everyday discourse of politics creative of a circulation of normative values against which legislators measure and take guidance from in their activity of law and policy production. ‘Popular norms’ Pettit suggests, ‘ride herd’ (like a cowboy) on processes of policy formation when things are working well, and under circumstances of ‘turbulence’ they remain beneath the surface, operating as something of an ‘intangible hand’<sup>4</sup> maintaining a ‘common stream of influence and direction’ (Pettit, 2012, pp. 268-269).

#### 5.4 Neo-republican democracy’s dual aspects

The emerging account of democracy from Pettit’s text comes to reveal itself most fully in the idea, already glimpsed, of a ‘dual aspect’ model of democracy. Deliberatively regulated regimes of the kind described above are likely to function along two distinct temporalities or timescales, Pettit tells us. The first temporality, he names the ‘short-

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<sup>3</sup> The phrase ‘conflictual consensus’ comes from the agonistic redescription of liberal democracy offered in the work of Chantal Mouffe (1999, p. 756) as something of a reinterpretation of Rawls’ ‘overlapping consensus’ (Rawls, 1999, p. 340). By ‘conflictual consensus’ Mouffe refers to a consensus somewhat akin to Pettit’s norm-abidance clause, insofar as she takes the signifiers of ‘liberty’ and ‘equality’ to stand as ideals to which all those struggling for hegemony within the institutionalised way of life that is liberal democracy must subscribe in order to not fall into the category of ‘enemy.’ The conflictual dimension of such a consensus refers precisely to the hegemonic nature of political struggle within such a broad consensus, which Mouffe takes to be the struggle over the meaning and centering of the signifiers ‘liberty’ and ‘equality’ (Mouffe, 2005a).

<sup>4</sup> See Pettit (1997a, p. 225) for an account of the ‘intangible hand’. To such an intangible hand I shall return in the Threshold following this chapter

haul', and includes all of those activities of elections and contestation which we analysed in chapter four. Along this time-scale of *fast democracy*, which is characterised by 'highly charged campaigns', of 'proposals and counter-proposals', a deliberative politics of debate and division, and contestation generate a representation of the 'commonly avowable interests' of 'the people', as well as the selection of representatives who will constitute the legislature and act to create policy in light of such interests (Pettit, 2012 p. 270).

On the long-haul, or in terms of a slow democracy, Pettit's Method identifies, in a rational-reconstructive fashion, the 'signature impact' of the dual-aspect model, by which democracy works 'as silently as gravity' to the effect of directing legislators in policy formation. Pettit's slow democracy functions such that 'participants are wittingly or unwittingly led to establish only such policies and processes as conform to the norms of argument and association that prevail amongst them' (2012, p. 270). Acknowledging the near empirical impossibility of verifying the presence of any such deliberative regulation along the slow temporality of democracy, Pettit nonetheless asserts its institutional feasibility as a mode of maintaining popular control over legislation and policy formation and implementation. This matter of deliberative regulation premised upon the long-haul of neo-republican democracy, further enshrines a passive role for the citizens of Pettit's republic, and is integral to our understanding of the relationship between the activity of politics, the norms which govern such an activity and the character as well as the scope of democratic claim making, to be analysed in comparative detail in the final half this chapter. To this end, I want to quote Pettit on 'deliberatively regulated politics,' at some length here, by way of setting up the analysis which follows. Pettit writes:

Over this long-haul, a deliberatively regulated politics will generate and regenerate a supply of publicly valorised considerations. These will serve at any particular time to keep an *indefinite* number of policies and processes *off the table*, rendering them *unthinkable* and *invisible*. And they will combine from time to time to make certain existing policies or processes suddenly seem intolerable and in urgent need of repair. (2012, p. 270, emphasis mine)

At stake, as we can see from the above, is a tendency within Pettit's work for the normative character of communication and deliberation, to not only empower, but to place limits upon the scope and location of democratic demand making. In instantiating a neo-republican distribution of the sensible, neo-republican political

community quite literally stands as a new *sensus communis* (Rancière, 2011a, p. 57), in which the limits of what are do-able and say-able, as well as the organisation of who can speak and act are established. It is ‘a community of sense’ which is most simply ‘a certain combination of sense data: forms, words, spaces rhythms and so on’ (ibid.) This above noted tendency functions not only to constrain the activity of representatives and a small elite political class, but further, to extend those limits and restrictions to the activity and claims of the *demos* too.

## 5.5 Conclusion

By way of summation, Neo-republican democracy, as it is prescribed by hand of Pettit, understands the activity of politics by ‘the people’ to proceed in the following manner. First, action by the people takes the *always individuated* form of voting and campaigning in elections, in order to elect representative who shall proceed to interpret the commonly avowable interests of ‘the people’, collectively understood, in order to make and pass laws and policies which provide those same people with forms of anti-power, producing and protecting their expressively equal enjoyment of freedom as non-domination. Such activity shall take place against a backdrop of a largely depoliticised regime, in order to protect against sectional interests, the politics of the passions, and the politicisation of the state itself. In instances in which the laws made, fail to ‘track the interests’ of the people, understood severally, those individuals experiencing the law as a Master, an arbitrary or dominating presence in their life, can then either ask themselves if this is simply a matter of tough luck, or they can contest the decision made by legislators with regards the sources of that domination, asking for the reasons for that same decision. This contestation is always to be deliberatively understood, and can proceed through the institutional procedures of appealing the law in court, lodging a complaint with an Ombudsman, or some form of social movement activity that can channel such a complaint in a manner consistent with the logic we might designate, with reference to Habermas (1979, 1984), as the logic of communicative action. In the meantime, citizens and representatives engaged in discussions about policy and good government have ‘unwittingly’ been generating through their conversations and disagreements about politics a set of norms which are shared by all discursive partners, whom they are compelled by force of Pettit’s pen to participate in terms that follow the above outlined logic of ‘acceptability’. These emergent norms thus have the

capacity to direct the policy making process, to the effect of rendering these laws legitimate, non-dominating, and thus productive of freedom. With time these norms will become so strong and have such a directive influence over policy formation processes, that contestation on an active basis is likely to become less frequent or necessary.

As such, once neo-republican government and democracy is in full flow, and working well, the role of ‘the people’ beyond electoral politics and everyday political discourse will become so passive, that their collective voice will find procedural expression in the organs of the state, that their concerted appearance is almost unnecessary. The intangible hand of the normativity of norms shall do the work of popular or democratic control, and ‘the people’ can direct their energies to other aspects of the *vita activa*: labour and capitalist consumption.<sup>5</sup> Through the corralling of dissensus, contestation and popular power through a Method steeped in the operations of disciplinary power, Pettit’s neo-republican democracy places considerable constraints on the emergence of political demands and claims. Whilst a reduced and brief description of the nature of politics under the Method of neo-republicanism, this summary account captures the thrust of Pettit’s conception of the ‘kratos’ of ‘Demokratia’. Before turning in more detail to consider the ‘demos’ element of the concept of democracy, both within Pettit’s Method, and more critically, it is now time to give greater credibility to the charge that neo-republicanism is a creative co-opting and political resignification of the grammar of agonistic and radical democracy. To this task I turn my focus in chapter six, drawing Pettit’s neo-republican theory of democracy, freedom and government into a comparative analysis with the discourse-theoretical model of deliberative democracy theorised by Jürgen Habermas, and the agonistic pluralism of Chantal Mouffe.

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<sup>5</sup> I here read, with a high degree of impropriety, Hannah Arendt’s tripartite division of human activity as developed in her work of political phenomenology *The Human Condition* (1998).

## Threshold

“Perhaps Oskar Schindler found it hard to live with the disesteem of his Jewish workers and that it was for this reason that he worked so hard to save them from the Nazi death camps. But we would surely rank his behaviour much higher than that of a less vain counterpart who did nothing for those exposed to Nazi threats’ (Brennan and Pettit, 2000, p. 87).

Contained within the above (somewhat absurd) theoretico-historical proposition made by Brennan and Pettit are a number of presuppositions or claims which underpin and complexify Pettit’s understanding of the sociological as it pertains to a number of central issues in social and political theory. It is here that we find expression of much of the non-theorised dimensions of social life that appear in his work on neo-republicanism. These dimensions include Pettit’s understanding of the subject, social norms, the basis of social relations and the regulation of behaviour within the republic. At their most fundamental, each of these ‘problems’ in social theory are reducible, as they appear here, to a relation Pettit establishes between each of them and the concept of ‘esteem’. For Brennan and Pettit (2004) the desire for esteem, along with property and power constitute the three ‘ruling passions’ of human life, proposing that each of these desires is open to social scientific (read econometric) analysis. The desire for property constitutes the object of economics, as does power for the discipline of political science, the desire for esteem, however, according to Pettit and Brennan has up until now lacked any rigorous econometric analysis. Their work in *The Economy of Esteem: An Essay on Civil and Political Society* corrects such a lacuna within the literature, as it performatively seeks to establish the field of ‘kudonomics’ (the economics of *kudos*) (2004, p. 2). At this point it is of the utmost importance to note, that what the disciplines of economics and political science share, and what the projected kudonomics will require, is the dual role of providing both normative as well as empirical analysis (Brennan and Pettit, 2004, p. 1). At stake is the very possibility of a normative science of ‘honour’, ‘esteem’ and its inverse ‘shame’ as a commodity or transactional good which regulates and thus governs social conduct in relation to a norm (cf. Pettit, 1997b). More directly put, kudonomics represents a theory of social engineering, and the design and testing of social norms.

Esteem, or 'honour' (see Pettit, 1997b), is a concept which is rooted in the metaphysical tradition of speculation over human nature, spanning as far back as Plato, re-emerging in the writings of Cicero, Aquinas, Machiavelli, as well as Locke, Hume, Rousseau, Kant and Hegel, we are told. For Brennan and Pettit, however, it is with Adam Smith and the *Theory of Moral Sentiments*, that the demand for esteem as a central human good is given its most 'forceful' expression. As Smith writes: 'Nature, when she formed man for society, endowed him with an original desire to please, and an original aversion to offend his brethren. She taught him to feel pleasure in their favourable, and pain in their unfavourable regard. She rendered their approbation most flattering and most agreeable to him for its own sake; and their disapprobation most mortifying and most offensive' (Smith, 1982, p. 116, quoted in Brennan and Pettit, 2000, p. 80, and in Pettit 1997a, p. 227). On a parallel basis the language of shame and honour appear as a form of 'antipower' against the abuse of power, in *The Federalist Papers* of the American republic, as well as many of the late eighteenth and early nineteenth century thinkers and pamphleteers of the republican tradition discussed in chapter two (see Pettit, 1997a, p. 226).

The theoretical point from which Brennan and Pettit commence (Brennan and Pettit, 1993, 2000, 2004; Pettit, 1997a, 1997b; Braithwaite and Pettit, 1990; Braithwaite, 1989), is simply that the regulation of behaviour in the republic need not be visible and material (coercive), but rather proceed in terms of a mutual invigilation which is simultaneously virtual, intangible and real in its capacity to sanction improper behaviour. Such a theory is well described by Brennan and Pettit as follows:

It is clear that under these assumptions we may sanction one another, and police one another into a given pattern of behaviour without lifting a finger. We may reward and punish each other just by being there and registering the character of one another's behaviour. And the expectation of such rewards and punishments may lead us to adjust our behaviour accordingly. The unorchestrated esteem and disesteem that we give one another may put in play forces that serve, as silently as gravity, to fix our behaviour. (2000, p. 78)

On this account, Oskar Schindler's actions were not an empathic response to the idea of a peoples destruction, an ontological crime against the world that exists between us (Cavarero, 2011), and the social and relational imbrications between the 'I' and the 'You' (Butler, 2005), but a rational calculation to not suffer a loss of esteem or honour, to feel shame for failing to act to save the lives of people whom not only contributed

to the production of his wealth, but also his subjectivity and conception of the self, born out of a relation to them as other human beings in the world.

We judge Schindler more favourably than other German industrialists who failed to act to protect their Jewish employees, Brennan and Pettit claim, because ‘most of us, [...] would think of people who are wholly indifferent to *what* any other thinks of them, when the other has the chance to scrutinize, as little short of moral monsters: we would see them as totally shameless’ (2000, p. 86). Those who actively seek esteem, which is taken to be of limited supply, even if their motivations are nothing short of instrumental to that end, are nonetheless granted favourable judgment in Pettit and Brennan’s schema, and thus seen as part of an economy, hidden (or virtual) most of the time, which exists within social life.

The rub is that due to this ‘social fact’, the norms which govern social life, including the ‘norm of norms’ embedded in the acceptability games which bind the deliberative politics of neo-republicanism are open to ‘improvement’, to being ‘shaped and channelled to better effect’ (ibid., p. 97). Cautioning that we must not be indifferent to the norms which prevail within our societies, Brennan and Pettit see the forces of esteem and disesteem, honour and shame, as potential technologies of government, insofar as they ‘may be directed towards the generation of norms that we would all take to be for the common good’ (ibid., p. 98). It is at this point that our economists of esteem offer their services in order ‘to change the world for the better’, for ‘the enterprise envisaged here holds out exciting prospects on both the theoretical and the policy-making fronts’ (ibid.).

The question of sanctions here is integral to the above discussion, and the economy of esteem points towards an ‘intangible hand’ of ‘decentralised sanction’ offering both reward and penalty as theorised above. Contrasted against the ‘iron hand’ of the state (coercive power), and the ‘invisible hand’ of the market (*qua* Adam Smith), the intangible hand of esteem operates as a ‘non-intentional sort of sanctioning’. The intangible hand of esteem and disesteem operates within a field of power relations understood here as generated by human nature, such that it can harness such ‘natural dispositions’ to the effect of policing behaviour (Brennan and Pettit, 1993, p. 206). Brennan and Pettit propose an illustrative fictional scene in which Pettit is caught in the corridor of a hotel peering through the keyhole of another person’s hotel room by a passer-by. The intangible hand of disesteem punishes such behaviour, even though

the passer-by is indifferent and inaudible in their disapproval, insofar as Pettit, now caught in the act which is normatively understood as inappropriate or shameful, experiences a virtual form of sanctioning (Brennan and Pettit, 1993, p. 197).

This form of social power begins to look all the more sinister once brought into the political field of power relations. The paradigmatic example of the intangible hand at work for Brennan and Pettit is the juridical scene of the courtroom and more specifically the backroom discussions of the jurors (1993, p. 213). In a somewhat alarming passage<sup>1</sup> we are presented with a scenario where jurors deliberations over a verdict are rationally reconstructed as a scene of the intangible hand at work: ‘the jurors are free to ask one another why they intend to vote guilty or not guilty, and so each faces the penalty of being thought silly for putting up a bad case or the reward of being thought sensible for putting up a good one’ (ibid.). At stake in such a scene, which can be read alongside the kinds of deliberative politics at the heart of Pettit’s neo-republican democracy, is a mode of power that operates silently in the background, steering the process of deliberation and constraining the scope of what can be said. Otherwise put, and to stay with the example of jurors subject to the sanctioning force of the intangible hand, we might see how deliberation is policed by a *com*-sensus produced within the space of a particular acceptability game. To speak out of turn or to say the un-sayable is to be shamed into silence.

In *Republicanism* (1997a) Pettit further draws upon this work with Brennan in order to theorise the task of ‘checking the republic’. At the core of Pettit’s concern there is the stabilisation of the republic through the identification of ways in which ‘wayward’ politicians and legislators can be kept in line. The main way in which Pettit goes about thinking such a challenge is through sanctions and screens, much like the kind detailed above. Sanctions in terms of preventing them from acting in accordance with their own self-interest through measures like the intangible hand of esteem, and through screens or filters which are meant to ‘ensure that some agents and not others will get to make certain choices’ (Pettit, 1997a, pp. 212-213). What is envisioned are practical techniques that can steer and channel political agents and deliberators to ‘behave in the manner that is socially valued’ (ibid., p. 214), first by screening out agents who are not going to support non-domination and its extension due to a lack of commitment

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<sup>1</sup> Made all the more alarming due to Pettit’s earlier work on criminal justice, see Braithwaite and Pettit (1990).



to ‘good customs and norms’ (ibid., p. 153), and second, by sanctioning those who do not comply with the norms of the political community and its procedures. The end goal Pettit argues with reference to *The Federalist*, 57, is that ‘the virtuous come to the top’ (1997a, p. 221).

Whilst the laws and constitution do much of the work of regulation, sanctioning and screening, as it relates to the problem of ‘civilizing the republic’, the intangible hand too, has a role to play according to Pettit in regulating the civility and civic virtuousness of the citizenry. Pettit goes on to suggest that republican institutions, no matter how well designed, ‘cannot walk on their own. They are dead, mechanical devices, and will gain life and momentum only if they win a place in the habits of people’s hearts [...] the laws must be embedded in a network of norms that reign effectively, independently of state coercion, in the realm of civil society’ (1997a, p. 241). The State’s task in its calibration of the intangible hand, such that it ‘flourishes’, is to create ‘a regulatory environment’, the standards and rules of which must be ‘clear to all concerned’ and that citizens ‘will voluntarily meet those standards, not just meet them under duress’ (Pettit, 1997a, p. 257). We are here deeply within the terrain of disciplinary power and the sculpting of subjectivity. Pettit understands the challenge for a neo-republican interpretation of regulatory theory to entail the transformation of the self and their processes of identification, such that they come to identify with civil norms and feel a certain fidelity to them (Pettit, 1997a, p. 254). ‘Civility involves,’ according to Pettit, ‘not just internalizing values, but also identifying with the groups whose interests are associated with those values’ (ibid., p. 257). As Pettit describes, civility carries with it inbuilt rewards and punishments, via approval or disapproval, honour or shame, which serve to ‘reinforce’ ‘patterns of sanctions’ thus stabilising civility. Ryan (2014b, p. 95) captures neatly what is at stake as he writes: ‘To borrow from Michel Foucault’s way of thinking about “government”, the intangible hand is a means of acting upon the actions of others; it is a technology of power, a way of engineering the norm-regulated associational grid of constraints and controls that Pettit calls “civility”’. Under the cloak of ‘civility’ and ‘reasonableness’, phrases which appear to most as innocuous and positive, Pettit nonetheless theoretically re-inscribes forms of power which serve to police the sensible, and to regulate the character of, and enunciatory location from which political demands are articulated and given proper hearing.

## §6 Constituent power and democracy: republican and radical

### 6.1 Introduction

The tale told thus far, and it is a tale, has been one of tremendous detail, stacked high with clauses, notes, and conditions which have the tendency to confound the reader. This highly detailed form of schematics characteristic of Pettit's Method has the remarkable effect of leaving our perception of the politics he proposes as being one of immense detail and technical complexity, such that we often lose sight of how each of the elements he theorises come together. This is not an accident of bad writing, nor the risk of reconstruction and exegesis as proven necessary here, but rather an intentional effect of the Method of neo-republicanism. Writing in a style and discourse of 'truth', characteristic of much analytic political philosophy, Pettit's account of politics participates in an interpellative project of rendering the reader and would-be republican citizen passive, as receptive of the Truth handed down, leaving little room for the experience<sup>1</sup> and knowledge of the reader to participate in the co-production of a political meaning of the text in question. As Walter Omar Kohan suggests in line with Foucault (1994b):

One can write a book under the logic of truth, in which case the author's aim is to transmit a truth he possesses to his readers. If the reader is also guided by the model of truth, he reads in order to learn a truth that he does not yet know. On the other hand, a book written under the logic of experience also affirms truths—there is no way not to do so—but the main sense of writing is not to transmit a

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<sup>1</sup> By 'experience' here, with reference to Foucault (1994b) and Kohan (2011), I read this as something of a synonym for 'politics,' as well as take 'truth' to stand in for something like the 'philosophical' in the now established oxymoron that is political *philosophy* (as opposed to *political* philosophy).

truth but to put into question the truth in which the writer is already installed.

(Kohan, 2011, p. 345).

Shifting to something of a pedagogical frame (one in which Pettit's philosophical paternalism can identify with – no doubt), Kohan reminds us how this distinction between writing from truth and writing from experience, offers up two very different relations between the 'teacher' and 'student'. Kohan's point succinctly put, is that, under conditions in which the logic of Truth is privileged, 'the teacher not only knows exactly what to teach, but she is also concerned that her students learn the *pathways*, instruments and pedagogical strategies that guide and determine her teaching' (2011, p. 346, emphasis mine; cf. the etymology of Method). On the other hand, under conditions in which the experience of thinking and theorising (as well as the experience of *politics* on its own terms) is given primacy 'the teacher not only does not want to anticipate what her students will learn, but her pedagogical method—the method, that is, through which she and her students will arrive at questioning their relationship to what they already know and think—will be constructed through the teaching process itself' (Kohan, 2011, p. 346).

At stake in this opposition, as I see it, at its most fundamental at least, is a matter of the democratic credentials of the task of theorizing, not least in the context of theorising about democracy. Pettit's philosophical discourse of 'truth', assumes a pedagogic model in which he assumes the status of what Rancière names 'the *Auctor*', the guarantor of words: 'the *auctor* is a specialist in messages, one who is able to discern meaning in the noise of the world' (Rancière, 1995, pp. 9-10). The *auctor*, however, is different from the intellectual, he exercises his rhetorical skill to 'quell squabbles; to unite the people' through the interweaving of words and power. He is someone who is able to 'augment the power of collective being', through such words in order to establish, maintain and uphold authority (Rancière, 1995, p. 10). What the *auctor* promises, Rancière argues, is the possibility to secularise politics, to place limits upon politics antagonism, and most significantly 'to remove everything in it which is not functionally ordained for maximising the chances of success for the collective being, for the simple management of the social' (*ibid.*, p. 11; see also Foucault, 2007, pp. 106-110). How does an *auctor* like Pettit diminish politics? Rancière proposes two such ways which capture something true of the Method of neo-republicanism:

1. 'to diminish politics is in one sense to reduce it to its function as a pacifying procedure between individuals and collectivity by relieving it of the weight and symbols of social division'
2. 'in another sense, it is to remove the symbols of political division in the interests of expansion, of society's inherent dynamism'

That is to say the political reduction of the social and the social reduction of the political respectively (Rancière, 1995, p. 11).

The logic of explication – which Pettit's stultifying<sup>2</sup> Method of theorising exemplifies – presupposes an inequality of intelligences, between the political philosopher who knows, and the demos in need of paternalistic instruction. Contrast this with a Method organised around storytelling in which the student or reader is taken as equally able to understand, in which as Jacotot through Rancière reminds us: equality 'is neither given nor claimed, it is practiced, it is verified' (Rancière, 1991). The experience centred practice of theorising, unlike the discourse of truth, resists the passivity of the reader, 'it presumes in its interlocutor an equality of intelligence rather than an inequality of knowledge, posits equality just as the act of explication posits inequality' (Ross, 1991, p. xxii). Stultifying in effect, this mode of theorising leaves little room for a democratic or popular power in the interpretation and participation in the activity of reading.

Resuming my analysis of Pettit's theory of democracy, it is now becoming increasingly clear that major deficiencies reside in the Method of neo-republicanism. Deficiencies, which pertain in the most elementary to the screening out of non-reasonable, discounted and de-politicised voices. The proceduralisation of democracy in an institutionalised space of appearance, leaves little scope for democracy to challenge the forms of inequality which precede the constitution of that space, nor transform its limits in a more open and pluralising manner.

What is more, this emerging account of neo-republican democracy scores low on the claim to novelty, drawing heavily upon the discourse ethics of Habermas, it falls foul of many of the same critiques as levelled by the radical democrats. I begin by tracing the continuities between Pettit's neo-republican democracy and the Habermasian discourse-theoretical approach to deliberative politics, as well as Chantal

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<sup>2</sup> See Rancière, (1991, p. 7) on the stultifying effect of explication

Mouffe's agonistic pluralism, charting along the way Pettit's ongoing sublimation of antagonism and the activity of *politics*. In this chapter, I strive to give credibility to the charge that neo-republicanism is engaged in a co-optation and resignification of many of the discursive elements of the grammar of radical democracy, further redefining the concepts of democracy, antagonism, and politics itself, all in the name of freedom as non-domination, and *libertas* as *civitas*.

Following such a comparative analysis, I return to the text of Pettit's neo-republicanism one last time, in order to draw out his understanding of 'the people' as both a constituting and constituted power, and the relation between the subject of politics, the state and democracy. In light of this exegesis of Pettit's 'six principles of political ontology' (2012), I switch frames to examine critically the problem of 'the people,' and to draw out more fully the question of populism, returning once more to Rancière and Laclau. What these post-structuralist theorists point to, is the primacy of populism to political community, and the coincidence of voice, power, and the demand, made by a political subject which appears and constitutes itself as such, only through the activity of politics itself.

## 6.2 Neo-Republicanism's radical democratic deception

The relationship between Pettit's neo-republican democracy and the grammars of both Habermas's discourse-ethics-based approach to deliberative democracy as well as the theory of agonistic democracy, have been gestured towards on more than one occasion throughout the preceding analysis. As Khan (2013) has argued quite compellingly, though starting from a slightly different perspective, the projects of Habermas, and the agonistic theory of democracy as conceived by Chantal Mouffe, despite their avowed differences at the level of political ontology, nonetheless represent but two versions of a tradition of critical republicanism that share more than either approach seem prepared to admit to at the level of actual politics. What they share, Khan argues, is a republican political imaginary, organised around the shared ideals of a democratic constitution, the value of conflict and the value of collective self-determination, as well as a commitment to the ideals of the Enlightenment and liberal democracy, liberty and equality, however interpreted (2013, p. 3).

What is at stake for all three theorists, is the need to theorise how 'existing liberal democracies might be developed in the direction of [a] critical form of republicanism'

(Khan, 2013, p. 18). By way of further developing my above claim and offering some perspective and comparative critique of Pettit's politics, I shall juxtapose and put into relief the relationship between these three theorist's approaches to democratic politics. This, I suggest, forces us to consider some of the most fundamental concepts of radical democratic politics, such as consensus/dissensus, communication, political action, antagonism, and even democracy itself, and how their appearance within Pettit's Method raises several issues for a truly egalitarian and non-domination-centred theory of democratic politics.

Thinking our way into the comparative analysis of these three theorists, Pettit's own comments on the similarities and differences between neo-republican 'deliberative regulation' and Habermas's<sup>3</sup> deliberative democracy, suggest themselves as obvious point of departure. What Pettit proposes, in his only direct reference to Habermas in *OPT*, is that neo-republicanism, like Habermas's discourse-ethics, starts from the observation: when people gather to deliberate with an eye towards determining a collective course of action, they must do so through seeking out, and appealing to, considerations that they all find to be relevant (Pettit, 2012, p. 267). Following this rather slim acknowledgement of the similarities between their respective approaches, Pettit goes on to stress where they each diverge, deciding however to give no further reference to Habermas's political theory. Noting a continuity of spirit between the two approaches, Pettit identifies two divergences or differences, which he takes as paradigmatic, and to be located at the 'foundational' and 'operational' levels of analysis.

At a foundational level, Pettit stresses the divergent ends of 'deliberative regulation' and 'deliberative democracy'. Whilst for neo-republicanism the aim of deliberation in politics is to promote political legitimacy and protect freedom as non-domination by giving people an equal share in the control of government, for deliberative democrats, the end of deliberation is the good of 'deliberation as such' (Pettit, 2012, p. 267). This view of the ends of deliberative democracy is simply attributed to Habermas on a de facto basis, but substantiated only through a citational trace, leading back to Joshua

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<sup>3</sup> 'Habermas's\ian' because Pettit's Habermas is always something more and less than the actual philosophy of Habermas, and thus productive of more or less creative and normatively appealing conclusions.

Cohen's 1989 essay on deliberative politics in the context of John Rawls political liberalism.

The divergence Pettit locates at the operational level of analysis is not unconnected to that named as foundational and lies in the emphasis a theory of 'deliberative regulation' places in the role of communicatively generated norms of policy formation. This role which the neo-republican approach limits to the 'regulation of public business,' is contrasted with the value he attributes to deliberative democrats, who he takes to prize the 'deliberative conduct of decision-making at every site and on every occasion' (Pettit, 2012, p. 268). At stake here for Pettit is the basis upon which he presents the pragmatic and non-utopian dimensions of neo-republican deliberative democracy, and stands as a theory which does not succumb to the perils of excessive deliberation, excessive democracy in any direct or active form, and maintains its desirability through its passive rendering of action by the demos. The novelty of neo-republicanisms deliberative politics of regulation, Pettit claims, is ultimately based in the importance of dissensus in the securing of liberty, marking its difference through the act of attributing the view of the primacy of consensus over dissensus to the Habermasian approach, once again, with no recourse to any substantiation of this claim (Pettit, 2012, p. 268).

The picture of Habermas's deliberative politics which emerges here from Pettit's brief comments bears a remarkable resemblance, not to that of Habermas's post-modern and Arendtian critics (see Lyotard, 1984 and Villa, 1992, 1994, 1996), but with aspects of Habermas's own critique of the political theory of Hannah Arendt (Habermas, 1977). Habermas's critique of Arendt, ultimately boils down to an interpretation of the latter's account of the social, culminating in a reading of Arendt's politics as Rousseauvian in character and nostalgic for an aristocratic Hellenism, with little relevance to the modern world of mass democracy (Habermas, 1977, pp. 13-16). At stake in all of these instances is a proclivity to misrepresent the politics of the other theorists, with an eye toward staking the novelty of each theorist's own position. This is not to say that differences are not to be found between Pettit, Habermas, Arendt and the Arendtians, but that for our immediate purposes here, at least, Pettit's claimed divergence from Habermas (and even Arendt) is overstated and mis-located. What is more, as Markell (1997) has argued convincingly, critics who, like Pettit, characterise

Habermas's politics as one of the privileging of consensus over any form of dissensus is reductive and patently incorrect.<sup>4</sup>

The neo-republican model of democracy chronicled over the last two chapters has argued for a form of popular control over the law and its formation which is not dependent upon the will of the people. Arguing against such 'populism', Pettit has provided two reasons why a political philosophy oriented towards the production and promotion of freedom as non-domination should oppose any such conception of democracy that configures the relation between the people and the state as one of a master and their servant respectively. The first such reason is that any such relation of 'direct democracy' would lead to a potential tyranny of the majority, the ultimate form of arbitrariness, leaving any minority, whose interests are not tracked by the majority will, experiencing domination. The second reason as to why we should resist such a sovereigntist view of democracy, Pettit argues, is that, having established the law as an expression of the will of the people, there remains no scope for the contestation of the law should it be experienced as dominating, not least due to the moral weight attributed to 'the people' under such a mythical discourse of legitimacy (Pettit, 2003, p. 154, 2008b, 2013, p. 192). Pettit's argument here, especially in relation to the first reason, though not unconnected to the second, is substantiated through recourse to a reworked version of Arrow's paradox (1963).<sup>5</sup> A problem developed in the field of social choice theory this paradox of aggregation appears in Pettit's work under the guise of the *discursive dilemma*. Pettit operationalises such a paradox to argue against the possibility of any aggregation of 'wills' that extend beyond the election of representatives. This is necessary Pettit argues, in order to avoid drifting into an inconsistency of outcome through a process of aggregation of preferences, which would produce a situation in which democracy would not simply track the interests of

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<sup>4</sup> Markell substantiates this reading of Habermas in greater detail and style than is possible here. His argument is powerfully made, through a reading of Habermas which moves with and against one of the latter's most careful critics and commentators: Cooke (1994). Markell argues that it is unfair to establish a strong opposition between Arendt and Habermas on their accounts of the public sphere, arguing their complementarity as opposed to their contradiction.

<sup>5</sup> For a sustained critique of Arrow's paradox, and the inferences drawn from it see Colin Hay (2007), especially chapter 3. Hay's account is significant as he traces the theoretical and historical connections between Arrow's influence in social choice theory and public choice theory, both as sources of depoliticization and complementary to the neo-liberal hollowing out of democratic regimes. For a recent and brilliant history of public choice theory and its role in the destruction of American democracy see Nancy MacLean's (2017) *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America*.



a large portion of citizens, but rather a situation in which the emerging laws would not track any set of interests at all.

Emerging from this rationalist critique of the likes of Rousseau and his fellow *populists*, Pettit articulates an account of popular control, as opposed to popular power, by which the people can individually give voice to their interests and contest public policy, thereby controlling and thus legitimating the law in a fully individuated manner (see Pettit, 2013). This legitimating process achieved through the procedures of a liberal democratic institutionalisation of control, operates along fast and slow temporalities of democracy, in which a politics of reason-giving in relation to deliberatively generated and universally acceptable/applicable norms of discussion, is rearticulated as an expression of the interests of ‘the people’, and their control over their ‘self-government’, in all relevant senses of the term. I have retraced and summarised Pettit’s neo-republican critique of more substantive or ‘pure’ forms of republican democracy, as discussed at length over the course of chapters four and five, only so as to put into relief the continuities and minor divergences between this account and the theory of law and democracy developed by Habermas.

Habermas, like Pettit, departs from the form of republicanism associated with the likes of Rousseau and Arendt (as discussed in chapter four), largely around the interpretation of popular sovereignty. Whilst for Pettit, his opposition to Rousseau’s conception of will-formation resides in the latter’s rejection of the mixed constitution which republicanism inherits from its Roman beginnings. Rousseau in favour of an indivisible model of sovereignty rooted in what Pettit refers to as a ‘communitarian’ conception of the people, argues that once the people have exercised their self-determination and sovereignty in the constitution of the body politic, they give their public selves over to the City, now ultimately dependent upon it, and its laws (Pettit, 2013, p. 187). Pettit’s worry thus, is the dependence upon the law, which Rousseau’s people experience, comes to represent a source of domination. Habermas too notes how Rousseau promotes an embodied conception of sovereignty, transposed from the body of the King (as in Bodin, and as Pettit points out also of Hobbes) to the body of the people, the ‘at first actually physically assembled’ people (Habermas, 1998, p. 250; Pettit, 2013, pp. 182-184). The implications of which, Habermas takes to be, that the sovereign people, so embodied, cannot be represented, but must exercise an immediate and collective self-determination (Habermas, 1998, p. 250). Juxtaposing this

“republican” expression of sovereignty with an ideal-typical “liberalism” that places the people’s authority in the institutions and agencies established through a constitution, Habermas carves out a third route, in which popular sovereignty can be reinterpreted in a manner that does not fall prey to the worst excesses of both ideal type “republican” and “liberal” versions of the politics.

This third route charted by Habermas takes the form of a discourse-theory model of deliberative democracy and builds upon his earlier work stretching back to the 1970s on the general theory of communicative action, and more specifically his account of discourse ethics. Rooted in this earlier work, and the ‘rational potential intrinsic in everyday communicative practices’ (Habermas, 1992, p. 442), Habermas’s theory of the public sphere and its role in democratic will-formation, takes his ‘formal pragmatics’ and imbues it with a normative force which exceeds its immanent critique of ‘instrumental rationality’ and the well-known ‘colonisation thesis’.

At its most fundamental, Habermas’s ‘universal’ or ‘formal’ pragmatics sought to identify ‘the universal presuppositions of everyday communication’ (Cooke, 1994, p. 3). As the label ‘pragmatics’ implies, Habermas’s focus was on the study of utterances or ‘speech acts’ (Austin, 1976), a unit of analysis in which he located a potential rationality that is ‘implicit in’ and premised upon ‘the validity bases of everyday speech’ (Cooke, 1994, p. 4). ‘Reaching understanding’ Habermas argues, ‘is the inherent telos of human speech’ (1984, p. 287). This potential rationality, founded upon an ‘orientation toward agreement’, Habermas called ‘communicative’, and contained within it a strong normative claim ‘with respect to the procedures that make agreement possible’, as well as a ‘weak phenomenological claim with respect to the condition of agreement itself’ (Markell, 1997, p. 391).

‘Agreement’ then, takes on the status of a ‘regulative idea’,<sup>6</sup> to be achieved under circumstances which approximate to a greater or lesser extent the ideal speech situation. However, contrary to Pettit, Habermas’s deliberative democracy is not simply a consensual activity devoid of dissensus. Markell (1997, pp. 378-379) has argued compellingly, and I thus lean on his analysis here, that ‘Habermas conceives of democratic politics as an unending process of contestation, conducted with the critical awareness that no actually existing settlement can constitute a satisfactory embodiment

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<sup>6</sup> This interpretation of Habermas ‘ideal speech situation’ and the attendant orientation towards consensus as something of a Kantian ‘regulative idea’ is drawn from Cooke (2006, p. 108).

of the regulative idea of agreement'. So much for stage setting, how precisely does Habermas' account of deliberative democracy proceed, and what is its relation to Pettit's dual-aspect model of democracy?

In a short essay entitled "Three Normative Models of Democracy",<sup>7</sup> Habermas (1994) offers a condensed and instructive overview of his account of democracy. Having established something of a comparative analysis of two ideal types of politics, one "liberal" or Lockean, and the other "republican",<sup>8</sup> Habermas builds upon these two 'traditions' in forging the aforementioned, and yet to be specified, *third route*. In the republic ideal-type model sketched therein, Habermas identifies a key truth of the tradition in its understanding of politics as the formation of public opinions and wills, not by market processes (as in liberalism), but through 'the obstinate structures of a public communication oriented to mutual understanding' (1994, p. 3). Departing from many contemporary republicans, Habermas, critical of the former's communitarian interpretation of 'public communication', offers a proceduralist account of the communicative generation of power and understanding. Noting the tendency towards something of an exclusionary and unrealistic 'substantive ethical consensus' in the communitarianism of the so-called "republican" model, Habermas proposes an alternative which locates the possibility of understanding not in the co-membership in a collective form of life, but in the pragmatics of language/communication itself.

Habermas argues that whilst ethical self-understanding shall be a key part of politics, such questions are nonetheless subordinate to moral and pragmatic questions which penetrate to the universality, and thus legitimacy, of the law under conditions of religious and ethical pluralism, i.e., laws which extend their validity beyond the ethical limits of the legal community. 'Moral questions in the narrow sense of the Kantian tradition,' Habermas suggests 'are questions of justice', and thus he concedes that in a post-conventional society 'the question having *priority* in legislative politics

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<sup>7</sup> "Three Normative Models of Democracy" appears first in the inaugural issue of the journal *Constellations* in 1994. The contents and substance of the argument therein would later appear in English in an expanded form in *Between Facts and Norms* (1996). As such, the argument of the essay serves as a radical condensation of the political theoretical argument charted in *Between Facts and Norms*. The case for a procedural interpretation of popular sovereignty contained in this short essay is given historico-philosophical expression in Appendix 1 'Popular Sovereignty as Procedure (1988)' in *Between Facts and Norms*. A slightly reworked and expanded version of the 1994 article appears as Chapter 9 of *The Inclusion of the Other* (1998), under the same title as originally published.

<sup>8</sup> We can probably say that Habermas's account of republicanism is inspired in large part by the work of Frank Michelman and also, perhaps unfairly, by his interpretation of Arendt. Michelman is cited in the 1998 version of the essay published in *The Inclusion of the Other*.

concerns how a matter can be regulated in the equal interest of all' (1994, p. 5). To this end, Habermas conceives of a deliberative politics 'that depends on a network of fairly regulated bargaining processes and of various forms of argumentation, including pragmatic, ethical and moral discourses, each of which relies on different communicative presuppositions and procedures' (Habermas, 1994, p. 6).

In the final section of the essay in question, Habermas argues against the state-centered disposition of liberals and republicans alike when it comes to the nature of society, arguing instead for a *decentred* understanding of society in which neither state nor market dominate the regulation of power relations and interplays. Contra Rousseau, and similarly to Pettit, Habermas's discourse theory places no reliance nor expectation on, and thus no role for, a collectively acting citizenry, for deliberative politics to be a success. Rather, deliberative politics' success lies in the 'institutionalization of the corresponding procedures and conditions of communication' (Habermas, 1994, p. 7).

Having 'jettisoned' the subject-object dualism inherited from the '*philosophy of consciousness*', (see Habermas, 1987b, pp. 294-326) in favour of an intersubjective account of communicative action, Habermas, suggests that the "self" of 'self-determination' disappears into forms of 'subjectless communication', regulative of discursive processes of opinion- and will-formation, assumed as such to be rational in communicative and not instrumental terms (and as such non-arbitrary). We are no longer dealing with a theoretical framework which presupposes a macro-subject as the agent of civic self-determination, in the form of the people or revolutionary class. Instead the (collective) subject as legislator is reconceived to the effect that the '*higher-level intersubjectivity*' of communication processes, in essence 'subjectless' processes, constitute spaces in which public opinion- and will-formation can take place. This subjectless production of opinion and will, occurs through the spontaneous production of norms which emerge from the intersubjective pragmatics of everyday communication about politics and policy 'within and outside the parliamentary complex' (Habermas, 1994, p. 8). Here once again, we can trace how the space between Pettit and Habermas on the question of the generation of the public will through everyday communication and bargaining processes combined, is nothing short of asymptotic.

Whereas Pettit understood popular control in terms of the coincidence of influence and direction, in which the former is the communicative generated outcome of elections and contestation (Pettit, 2012, p. 270), Habermas locates the generation of influence in the practices of ‘informal public opinion-formation’ which is later transformed into “communicative power” through elections (Habermas, 1994, p. 8). The communicatively generated power of the citizenry is transformed once more, this time post elections and bargaining processes, in the act of legislating, into “administrative power” (ibid.). On this view, once again reminiscent of Locke’s *Second Treatise*, there remains an analytical distinction between the political entity that is ‘the state’ and ‘society’, but, with the added realm of civil society, a social basis of communicative power that remains distinct from the economy and state. Identifying the important role civil society can play, both as a source of communicative power as well as *solidarity*, Habermas sees in his deliberative politics the normative pay-off of solidarity within civil society as a considerable bulwark against the colonisation of the lifeworld by the functional rationality of the system (Habermas, 1987a, p. 333, 367) qua the capitalist economy and the administrative power of the State (see Habermas 1994, p. 8; 1996, p. 299).

This reconfiguring of political relations through a discourse-theoretical frame carries considerable implications for the questions of legitimacy and popular sovereignty in Habermas’s deliberative democracy. Drawing upon the logic of communicative rationality embedded in the theory of communicative action, Habermas will attribute its normative force to the legitimacy of outcomes of will-formation. Once again, we are not far from Pettit’s neo-republicanism, only this time on the question of ‘direction’ and the agent/subject of popular government qua *to live sui juris*. As the procedures of public opinion- and will-formation serve as the mechanisms through which discursive rationalisation can proceed to make its mark upon the decisions of the administration: ‘rationalization means more than mere legitimation but less than the constitution of political power’ (Habermas, 1996, p. 300). As Habermas writes:

The power available to the administration changes its aggregate condition as soon as it emerges from a public use of reason and a communicative power which do not just monitor the exercise of political power in a belated manner but more or less *program* it as well. Notwithstanding this discursive rationalization, only the

administrative system itself can “act”. The administration is a subsystem specialized for collectively binding decisions, whereas the communicative structures of the public sphere comprise a far-flung network of sensors that in the first place react to the pressure of society-wide problematics and stimulate influential opinions. The public opinion that is worked up via democratic procedures into communicative power cannot “rule” of itself but can only point the use of administrative power in specific directions. (Habermas, 1994, p. 9, emphasis mine)

The demos- in ‘demokratia’, on Habermas’s interpretation do not “act”, but ‘program’ the administration’s “rule”. On this basis Habermas, like Pettit, assumes to have granted the law a non-dominating status, making it rationally acceptable to all citizens, capable of demonstrating its rationality, and providing citizens with adequate avenues to challenge the law, as equals before and under the law (Habermas, 1996, p. 125, 127, 135).

It is on the issue of popular sovereignty, however, that the asymptotic nature of the Habermasian and neo-republican projects reveals itself. This point brings us full circle to the critique of Rousseau noted above and the problem of the identity of the “self-” in ‘self-government’. As I have already noted, Habermas dissolves the subject of popular sovereignty into the composite and discursively generated will or consensus of subjectless communication that regulates the deliberations of elected legislators. Habermas writes in pre-emptive self-defence against the potential criticism from civic republicans that he has abandoned the idea of popular sovereignty:

This is not to denounce the intuition connected with the idea of popular sovereignty but to interpret it intersubjectively. Popular sovereignty, even if it becomes anonymous, retreats into democratic procedures and the legal implementation of their demanding communicative presuppositions only to be able to make itself felt as communicatively generated power. Strictly speaking, this power springs from the interactions among legally institutionalized will-formation and culturally mobilized publics. The latter, for their part, find a basis in the associations of civil society quite distinct from both state and economy alike. (1996, p. 301)

Habermas’s concern, not dissimilar to that of Pettit, is to establish a democratic basis for the self-organisation of the legal community as guarantor of rights, that is not at the mercy or disposal of the citizen’s will, should the latter become an instrument of

‘strategic action’ and thus the instrumentalisation of persons in the pursuit of sectional (arbitrary) interests.

Pettit, as we noted earlier, has also sought to mark the difference between neo-republicanism and discourse-theory, through the prizing of the ideal of freedom as non-domination as the ultimate end for neo-republican deliberative politics. This Pettit claims is distinct from Habermas’s discourse-theory in which deliberation appears as a good in and of itself. This, as I hope is now abundantly clear, is a remarkably short-sighted assessment of Habermas’ politics, which as Khan (2013) has argued, is clearly a form of critical republicanism. Habermas’s concern with legitimation, Khan reminds us, stems from his view that in the absence of democratic participation by citizens their liberty, which is co-original with the ideal of popular sovereignty, would be under threat from ‘paternalistic monopolies’ (Habermas, 1996, p. 318). Khan writes: ‘In Habermas’s view, paternalistic authorities are anti-democratic because they deny the addressees of the law the opportunity to be its authors, and they also make citizens ‘passive’ by conferring rights upon them [...] elite rule is illegitimate because it renders the citizen body dependent on the good will of their rulers’ (2013, p. 15). At stake for Habermas too is the kind of civic freedom captured by the ideal of non-domination, though he does not attribute to it the degree of monistic priority which the ideal receives in its neo-republican articulation.

‘Contestation’ and ‘antagonism’ are two concepts which Pettit has sought to render equivalent and deliberative throughout his neo-republican account of democracy. As such these concepts stand as interstices within his analysis which reveal the foreclosure upon the democratic potentialities of possible in various ways. As I have argued in chapter one, however, the concept of antagonism in contemporary political theory points to something much more fundamental than the possibility to procedurally challenge the decisions of the law. I argued that with the publication of Laclau and Mouffe’s *Hegemony and Socialist Strategy* (2001 [1985]), the concept of antagonism is opened up to encompass not mere ontic level conflicts, but the very moment of institution of society, a concept which gets at the ontological dimension of politics, and the ‘limit of all objectivity’ (Laclau and Mouffe, 2001, p. 122). Antagonism, thus, refers to the discursive presence of the limits, and therefore, radical contingency of all ‘social facts’, not least the objectivity attributed to hegemonic/police orders, i.e., the social.

In her single authored work following the publication of *HSS*, Mouffe has continued to assert the centrality of antagonism to politics, developing a theory of agonistic pluralism and democracy in which practices of contestation are the very stuff of democratic life. Critiquing ‘rationalist’ approaches to democracy such as the deliberative accounts of Habermas and Rawls (we can include Pettit under this name), Mouffe argues that in their privileging of consensus as an attainable outcome of deliberation, deliberativists are ‘unable to acknowledge the dimension of antagonism that the pluralism of values entails and its ineradicable character’ (2005a, p. 99). Mouffe’s concern, in short, is that such liberal-republican approaches to political theory are blind to the constitutive role played by power in all social relations, and that this kind of power operates according to the in/exclusionary logic of hegemony. Whilst Mouffe’s critique of the rationalists moves very fast, is underspecified in innumerable ways, and thus largely open to critique itself, it is nonetheless correct about the under-theorised role of power in all of their accounts. My interest here, however, does not reside in any such game of falsification, but rather in making use of Mouffe’s difference of approach in order to open up a comparative and thus critical interstices between our three critical republican theorists.

Whilst Mouffe, like Laclau and Rancière, gives ‘antagonism’ a priority at the ontological level of analysis in her account of the political – an understanding which is much more robust and fundamental than Pettit’s ontic level understanding of the concept – Mouffe nonetheless seeks to theorise a politics in which that ‘ineradicable’ antagonism is sublimated, much like that radical antagonism theorised by the poststructuralists is sublimated by Pettit. Mouffe’s sublimation of antagonism is intentional and motivated by ontic concerns about what she now takes to be the propensity towards violence. Pettit’s writing over of antagonism is non-intentional, however, arising from the Method of neo-republicanism, and its location of ‘contestation’ as ‘antagonism’ at the purely ontic level of analysis. That said, both Mouffe and Pettit are guilty of such a sublimation, due to a more fundamental concern to place limits upon the scope, enunciatory location and character of political demands.

Agonistic pluralism entails a politics of contestation and struggle for hegemony within the liberal democratic institutional framework and the social, which does not proceed by the force of the better argument, but through the mobilisation of the passions too: ‘Democratic politics cannot be limited to establishing compromises



among interests or values or to deliberation about the common good; it needs to have a real purchase on people's desires and fantasies. To be able to mobilize passions towards democratic designs, democratic politics must have a partisan character' (Mouffe, 2005b, p. 6). In the absence of a vibrant democratic politics, that celebrates the clash of interests and political positions, Mouffe argues, such could 'too easily be replaced by a confrontation between non-negotiable moral values and essentialist identities' (Mouffe, 1993, p. 6). Mouffe thus seeks a politics of 'us' and 'them' where the 'them' is understood as a respected adversary to be combated in the *agora*, rather than an enemy to be destroyed (Mouffe, 2005a, pp. 101-102).

Delineating a theoretical terrain upon which an account of agonistic democracy can emerge, Mouffe establishes a distinction between 'politics' and 'the political'. Whilst 'the political' refers to the dimension of antagonism, 'politics' indicates 'the ensemble of practices, discourses and institutions which seek to establish a certain order and organize human coexistence in conditions that are always potentially conflictual because they are affected by the dimension of "the political"' (Mouffe, 2005a, p. 101). By recognising the true nature of 'the political', conceived in this way as a marker for antagonism, Mouffe suggests we can then proceed to understand 'politics' as an activity that consists in the domestication of any hostility generated through the antagonistic clash of objectivities within the context of a pluralist yet unipolar world. By tragically equating the concept of antagonism (as theorised with Laclau) with the friend/enemy opposition that she draws from Schmitt, Mouffe (misrecognising the nature of antagonism in its initial formulation) ends up offering an account of antagonism and radical democracy that is fundamentally a conservative liberal democratic interpretation (cf. Mouffe, 2005b, pp. 14-16). 'Politics', Mouffe writes, 'is always concerned with the creation of an "us" by the determination of a "them"' (2005a, p. 101). Democratic politics, on this account, requires not the overcoming of the us/them opposition, but rather its articulation in manner conducive to, and constitutive of a pluralist democracy.

A politics of agonistic pluralism, as such, aims to articulate the "them" of the Schmittian opposition, in terms conducive to a tolerant and liberal democratic way of life, that is an 'adversary' as opposed to an opponent as an 'enemy'. The difference between these two approaches to the discursive construction of the "them", is that no longer conceived of as an enemy to be destroyed, the democratic adversary is to be

combated politically, without ever putting into question their right to participate in political struggle, to defend their political ideas in practices of contestation, nor is it to question their right to exist (cf. Mouffe, 2005a, p. 102). The adversary is a legitimate opponent, with whom we have an established 'conflictual consensus' (Mouffe, 2005a, p. 103, 2005b, p. 121) with, namely, the ethico-political principles of liberal democracy: liberty and equality. Our ideational combat, our political struggle, is one of a hegemonic contest over the meaning, priority and implementation of those shared floating signifiers *qua* liberal democratic principles.

In light of this reconceptualization of the political relation in democratic terms through the introduction of the category of the *adversary*, Mouffe argues it is necessary to complexify the concept of antagonism, through the separation of two modalities or 'forms' of articulation in which it is made manifest: *antagonistically*, or in an *agonistic* fashion. Under conditions of an antagonistic relation the "them" is an enemy to be destroyed. On the agonistic account, they, the adversaries, stand as fellow political combatants to be politically defeated. Democratic politics gains, on this agonistic account, an urgent new task: the transformation of *antagonism* into *agonism*. This requires, Mouffe argues, the provision of 'channels through which collective passions will be given ways to express themselves over issues which, while allowing enough possibility for identification, will not construct the opponent as an enemy but an adversary' (2005a, p. 103). It is only through a politics of real alternatives between left and right, the liberal tradition or the democratic tradition, socialism or neo-liberalism that such passions can be mobilised and oriented towards a democratic revival in a 'post-political' constellation (Mouffe, 2005b, pp. 48-51).

This agonistic conception of democratic politics carries with it important consequences for our understanding of, not only contestation and political communication in the public sphere, but also the question of legitimation and popular sovereignty. For rationalists like Pettit and Habermas, political communication must proceed in ideal terms through the reason of reasons, the force of the better argument and through recourse to norms which have near universal acceptance by discursive partners, leaving little space for passionate speech, rhetoric, ideology and thus libidinal identification. For Mouffe (inspired by Freud, and Lacan via Žižek), effective political contestation and debate, does not require the elimination of 'the passions' in order to render rational consensus possible, nor their relegation to the 'private sphere'. Rather,

Mouffe asserts the necessity to mobilise those manifold ways in which those ‘affective forces’ at the root of the formation of collective identities (cf. Mouffe, 2005b, pp. 24-28), come to drive and shape the political subjectivities which are constitutive of and constituted by political contestation and struggle.

So how does Mouffe imagine such passions, which tend towards forms of antagonism, can be democratically expressed? The agonistic dimension of democracy provides the answer, through the promotion of contestation in a more or less defined way. Agonistic democracy understands such a confrontation to be one staged around a plurality of conceptions of what it is to be a citizen, as social-democrats, conservatives and liberals, as well as neo-liberals, radical democrats and socialists each offer an interpretation of citizenship, liberty and equality with which members of the society can identify with to a greater or lesser extent. Each of these ‘interpretations’, associated with hegemonic political projects, has a distinct vision of the ‘common good’, and seeks to establish that positive vision as the hegemonic order within the liberal democratic state. Politics on this account, does not entail the deliberative generation of a sense of the common good with universal consensus, but rather the struggle through which a particular conception of the common good is made universal, hegemonically, through its struggle to interpellate members of the political community into its conception of the good. It is only through the competitive nature of such alternatives, and their diverse interpretations of ‘citizenship identification’, that democracy can ‘foster allegiance to its institutions’, and the passions of citizens can be mobilised around agonistic and democratic objectives, as opposed to antagonistic ones (Mouffe, 2005a, p. 104). What I take Mouffe to get right in her agonistic conception of democracy (cf. Mouffe, 2005a, p. 104) is the ways in which, in the absence of a politics of real alternatives and thus contestation which extends beyond the telos of consensus, we will and in fact have witnessed a proliferation of other forms of political subjectivity which belong to what Rancière calls the logic of the police, namely: exclusionary and thus anti-democratic forms of identity politics. The result in its extreme, according to Mouffe, and, again as we have witnessed with the election of Trump, Bolsonaro, and the victories of the forces of the far-right, is the ‘crystallisation of collective passions around issues which cannot be managed by the democratic process’ (2005a, p. 104).

Further, the idea of legitimacy as the outcome of some form of ‘rational consensus’, through the ongoing control by the people on a deliberative basis, at a remove from the operations of power, has little sense nor relevance within the terrain of power and hegemony that Mouffe conjures. Any consensus over the nature of government and established conception of the common good is nothing more than the contingent, contestable and thus provisional achievement, hegemonically bringing about a stabilisation of power relations. There may be consensus about the constitutional principles and institutions within which politics plays out, but it is a consensus internally riven by conflict over its interpretation, and established through forms of exclusion, which is not rational, but an effect of the play of forces, the mobilisation of passions, the interpellation of its subjects. It is radically contingent, politically contested, and fully aware of its exclusions. As Mouffe concludes: ‘an agonistic approach acknowledges the real nature of its frontiers and the forms of exclusion they entail, instead of trying to disguise them under the veil of rationality or morality’ (2005a, p. 105). Politics is a dangerous activity, but it also a necessary, vibrant and passionate one, which grasps the radical contingency of political community and the fragility of liberal democratic society.

From this comparative analysis of Pettit, Habermas and Mouffe, notwithstanding important theoretical differences in the approaches, can be seen a type of convergence around the emerging conceptions of politics and democracy. They are more or less similar in their critical republican re-descriptions of “real-life” liberal democratic politics. More or less, the actual practices of democratic politics they describe converge around the necessity for democratic citizens to participate in the legitimation of the law and state through democratic activities such as voting, communication in the public sphere (rational or passionate), the contestation of established laws which are taken to be dominating and exclusionary, and the priority of the people, the demos, the citizens as the constituting power. What the comparative analysis revealed however, is the potential threat to democracy itself through the elevation of rationality, and the suppression of the affective dimension of politics, as well as the overly procedural expression of political contestation, in fostering political apathy, and passivity. Such effective forms of exclusion from the thrust of politics and the paucity of meaningful avenues for citizens voices to be heard, as Mouffe has argued, are

conducive to and productive of forms of political identification which are anti-democratic and fundamentally illiberal.

What is more, Pettit's account of deliberation and norm generation, though comparable to, and inspired by Habermas' discourse theory, is nonetheless radically under-theorised in comparison to the discourse ethics approach of Habermas. The latter theory of politics and democracy carries behind it a substantive sociological and ontological analysis of communication, intersubjectivity and the law all firmly embedded within a critical theory of modern capitalist society, to which Pettit's account pales in comparison.

Under deliberative conditions, Pettit's understanding of antagonism, contestation, and communication, is, as we have now seen, impoverished in comparison to what is conceivable within Mouffe's framework. The pay-off of Pettit's approach is only that through such a radical sublimation, and privileging of an overly idealised conception of rationality, he can secure the monistic ideal of non-domination beyond any doubt. Antagonism is no longer a marker for the radical contingency of the very forms of objectivity he assumes and naturalises. Instead the concept of antagonism is co-opted, sublimated and instrumentalised as one of an assemblage of procedural devices, which, foreclose upon its phenomenological manifestation proper.

Within the set of practices encompassed by the name 'dual-aspect democracy', contestation and dissensus shall prevail to a greater or lesser extent. As to the object of such antagonistic debate and disagreement, this is framed as 'particular matters of policy' (Pettit, 2012, p. 278). Moreover, the scope of antagonistic division, which Pettit takes to be adversarial in character, and despite the apparent lack of consensus over such matters, it remains the case that the politics of non-domination shall require the ethical commitment to the upholding of the 'acceptability game' (ibid.). Democratic contestation within the institutions and the electoral processes of the public sphere shall be regulated by the reason of reasons, and generative of norms for policy making. Contestation over matters of policy, conducted in the short-term timescale of fast democracy, and cumulatively building direction of policy over the long term through norms, regulate the process of policy proposal within the present as well as future moments of fast democracy – resolving policy disputes and cutting-down on future contestation too (ibid.). At stake is contestation in order to reduce the need for future contestation, that is through rationalisation. In short: contestation appears within the

telos of consensus, and more specifically it is a consensus over what can be plausibly named ‘the common or public interest’.

Dual-aspect democracy, through its inbuilt logic of rationalisation is taken by Pettit as sufficient to generate a ‘post-social’ and ‘non-corporate’ bid to claim knowledge of any such common interest (2012, p. 278). ‘Post-social’, because it is rooted in subjectless communication processes, operating at a *higher level of intersubjectivity* that do not imply any social bond or relation that extends beyond the virtuality of everyday communication (cf. Habermas, 1984, 1994, 1996). ‘Non-corporate’, as the authorship of such a claim to speak for the people as the demos of neo-republican democracy does not require any form of *acting in concert*, nor the appearance of a collective subject (embodied or corporate) – but rather a sufficiently *individualised, unconditioned and efficacious* set of procedures by which persons subject to the law and the state can exercise ‘influence’. On this basis, the emergent policies and laws from the democratic procedures detailed above, not only make a ‘plausible claim to be in the common or public interest,’ but also to ‘begin to answer to the demands of justice’, the manifestation of expressively egalitarian distribution of freedom as non-domination within the ideal republic (Pettit, 2012, p. 278). This rationalisation is crucial for the state, not least should it perform its roles in a non-dominating way. In order for contestation to be meaningful, and serve as a source of anti-power, the state must be responsive, and open to challenge. To this end, Pettit takes the state to act under the constraints of rationality presupposed by the *reason of reasons*, and, as such, stand as ‘a conversable body that is active and answerable in the manner of a single agent’ (Pettit, 2012, p. 283; see also List and Pettit, 2011). Incoherency and inconsistency of the state thus stands as major obstacles to the provision of non-domination. Such a *vision* (θεωρίᾱ ‘thēoriā’) of neo-republican democracy, Pettit asserts, contra Rousseau and Arendt, as ‘not a utopian pipedream,’ but rather a ‘programme of reform and renovation,’ suitably realisable and imminently feasible within liberal democratic societies (2012, p. 279). To this question of the utopian dimension of neo-republican democracy I shall return in of chapter seven.

### 6.3 Pettit's "people" and the political subject of neo-republican democracy

Throughout Pettit's theory of democracy there has been much *people talk*, with little specificity provided as to the precise understanding(s) of 'the people' at play. This question is of extreme importance in addressing the identity of the *demos* in the neo-republican theory of *Demokratia*. Within contemporary political thought and discussion (as in the case of Pettit), it is taken, more or less as a given, that the ultimate political authority in any democratic regime lies with 'the people' (Canovan, 2006). Within a secular (post-theological) constellation the location of such an authority previously attributed to divinely anointed kings, raises urgent questions as to who are and what is 'the people'? Are 'the people' the nation, the whole body of citizens, a collection of individuals, or an ethnic group? Is 'the people' a concept open to sociological analysis, or purely a representative/discursive analysis? Before taking up a critical position on these questions, it is necessary one final time to consult and reconstruct Pettit's Method, and his articulation of the 'people' as he works the interstices that arises from the homonymic quality of the name in question. At stake is the very political subject of neo-republican politics.

Neo-republican democracy as we have seen, has sought to give an institutional expression to the procedures and politics required in order to extend the reach and egalitarian 'enjoyment' of freedom as non-domination. This theory of democracy gives a 'plausible' and consistent interpretation of the slogan provided by Abraham Lincoln, when he declared the government of the new American republic to be a 'government of the people, by the people, for the people'. Here once again, Pettit invokes in an indeterminate, soon to be (re)interpreted, manner the floating signifiers drawn from a writer 'admired on all sides of politics', with the express intention of bolstering such aforementioned 'plausibility' (cf. Pettit, 2012, p. 19, and the analysis provided earlier in chapter two). Giving a (re)interpretation of Lincoln's historically evacuated slogan, Pettit argues that neo-republican government is: 'for the people' in its direction in accordance with 'the people's' needs and desires; 'by the people' insofar as such direction is implemented by representatives of the citizenry; and 'of the people' as the ultimate control of said government resides with 'the people' who act in an individualised, and most importantly, unconditioned and efficacious manner in their influence of the same (Pettit, 2012, p. 280). Taking this to be the theoretical

achievement of the dual-aspect model of democracy, Pettit claims, we find in such a model the basis for a further specification and clarification of the precise manner ‘in which the *demos* or “people”, exercise *kratos*’ (Pettit, 2012, p. 282). ‘It provides’, Pettit suggests, ‘the materials for a political ontology in which the notion of the people is given more precise reference and the idea of a popular government is spelled out more properly’ (ibid.).

So who are Pettit’s ‘people’? Consistent with the historical developments of the concept of ‘the people’ as charted by the likes of Canovan (2005, 2006),<sup>9</sup> Pettit understands ‘the people’ as, simultaneously individual and collective, as ‘a plurality that govern themselves’, and as ‘a singular, corporate entity that is self-governing’ (Pettit, 2012, p. 286). Drawing on the conceptual grammar of Abbé Sieyès (2003), Pettit marks the distinction between a plural ‘constituting people’ and a singular ‘constituted people’, marking a split in ‘the people’ that appear thrice in Lincoln’s slogan. The plural people are those individuated actors who are the agents of fast-democracy, they are ‘the members of the population acting as citizens to determine how things are set up and run’ (Pettit, 2012, p. 286). The constituting people rule themselves insofar as it is their influence and direction that shape their government. As the constituting people serve as the agents of republican democracy, acting individually, they nonetheless ‘establish conditions under which it is appropriate to posit the existence of a people in a distinct, singular sense of the term’ (Pettit, 2012, p. 287). Following Rawls, and Reminiscent of Hobbes (1983, p. 151)<sup>10</sup> Pettit takes the constituted people to be the state, and the state is simply the constituted people: it is ‘the political organization of the people’ (Rawls, 1999, p. 26). The laws enacted by the state, as an expression of the will of the constituted people via the dual-aspect model of democracy, thus are enacted

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<sup>9</sup> In an excellent short essay ‘The People,’ Margaret Canovan (2006) demonstrates theoretically and historically the various ways in which the concept of ‘the people’ due to its hazy yet potent essence resides within a tension between a singular subject and a plurality or collection of individuals. Canovan (2006, p. 355) argues there that ‘the grammar of *populus*, *people*, *popolo*, and *Volk* points to a singular subject [...]’, whilst the ‘English “the people” is normally plural, meaning a collection of specific individual people.’ That said, Canovan is quick to note that there is nothing exclusively individualist in the Anglophone usage, and ‘often does refer also to an intergenerational unity of which individuals are part.’ At stake, then, for the conceptual analytical theorist is the question of whether or not ‘the people’ as the ultimate source of political authority, is a collective or collection? Canovan in Weberian spirit concludes: ‘The difficulty is that both senses seem indispensable’ (ibid.).

<sup>10</sup> In *De Cive* Hobbes writes: ‘the King is the People.’



by the people.<sup>11</sup> What marks the distinction between constituting and constituted peoples is, the people as state as constituted, are ‘the people’ in a singular voice (Pettit, 2006, p. 48, 2012, p. 287). Pettit thus concludes, the ‘demos’ are ‘the people’, the citizenry and the state, constituting and constituted, in which the latter are nothing more than representatives of the former (2012, p. 228).

In his *Six principles of political ontology*, Pettit warns against any lazy assumption that the self-government of ‘the people’, by ‘the people’ is collapsed into the constituted people. For brevity and clarity of exegesis these principles can be summarised as follows (with no loss of specificity or detail):

1. The constituting people maintain a priority over the constituted people.
2. The sovereignty of the constituted people is dependent upon the communicative power of the constituting people. The former cannot push back against the latter.
3. The constituted people’s will is un-dominating as it is always the outcome of the procedures through which the constituting people generate non-dominating laws.
4. The corporate will of the constituted people is not Rousseau’s general will, but the result of the public use of reason by the demos.
5. The constituted people is a contingent corporate entity exposed to the potentiality of being replaced.
6. Following Locke, the ultimate authority and thus popular sovereignty resides in the hands of the constituting people, not the constitution nor the constituted people. This priority of the constituting people bypasses the so called paradox of constituent power. (Pettit, 2012, pp. 289-291)

As Miguel Vatter (2015) has argued compellingly however in relation to the first of Pettit’s *six principles of political ontology*, the priority of constituting people asserted above stands in tension with the provisions of the acceptability games and the norms of norms theorised in chapter five. The source of this tension lies precisely in the dual affirmation of the constituting people as constitutive of, and reforming of the constituted people, whilst also affirming that the basis upon which the constituting

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<sup>11</sup> Here Pettit is clearly under the partial influence of the neo-Kantian legal theorist Hans Kelsen (1961, 1970). Recall also the affinities between Kelsen’s theory of sovereignty and Harrington’s ‘Empire of Laws, not of Men’, on this point see Carl Schmitt (1985, pp. 21-22).

people acts on the constituted people must be in only those ‘terms’ that the state takes to be intelligible and acceptable. The critique which I have presented up until this point converges with Vatter on this point, as he writes: ‘But such a power of opening up to others what was previously closed off to them, such a publicity-making power, cannot be merely a “noumenal” power of deliberation, for persuasion works between equals, but it is not by persuasion alone that one can make equal what is not equal’ (Vatter, 2015, p. 685). In light of this tension, one is left to assume that despite Pettit’s reconfiguring of the constitution of political community in terms of a dual-aspect democracy, what this means in effect is that the constituting people have already been counted within the broader *consensus*, of the police order. To put that in Arendtian terms, all those who need to appear politically, are assumed to have already appeared. All of the available and necessary parts have already been distributed, all those voices in need of being heard, both now and in the future have already been registered. At stake, fundamentally, is a (mis)counting of the people, and a discounting of the plebs, the proletariat, the subaltern, the people as the part of no part.

#### 6.4 Who are ‘the people’? Take two

In a short essay entitled ‘What is a People?’ Giorgio Agamben (2000) returns to the etymology of the people in modern European languages, thereby offering a somewhat more complex account of the subject of politics. Agamben begins ‘Any interpretation of the political meaning of the term *people* ought to start from the peculiar fact that [...] this term always indicates also the poor, the underprivileged, and the excluded’ (2000, p. 29). The same concept names both the constitutive political subject and those who are de facto, and often de jure excluded from politics. The Italian ‘*popolo*’, French ‘*people*’, Spanish ‘*pueblo*’, and the late Latin ‘*populus*’, all refer both to the unitary body politic and those who belong to the inferior classes. Agamben, having traced this ambiguity from the American Constitution, through Arendt, Robespierre and Bodin (the latter of whom, in *Les Six Livres de la République*, distinguishes between the *menu people* or humble folk and the *people en corps*, only to assert that the former ought to be excluded from political power, as the “people in body” is the intended proprietor of sovereignty), concludes that such ambiguity, widespread as it is, ‘cannot be accidental’ (2000, p. 31). For Agamben this ambiguity is inherent in the nature and function of the concept:

It is as if, in other words, what we call people was actually not a unitary subject but rather a dialectical oscillation between two opposite poles: on the one hand, the *People* as a whole and as an integral body politic and, on the other hand, the *people* as a subset and as fragmentary multiplicity of needy and excluded bodies; on the one hand, an inclusive concept that pretends to be without remainder while, on the other hand, an exclusive concept known to afford no hope; at one pole, the total state of the sovereign and integrated citizens and, at the other pole, the banishment – either court of miracles or camp – of the wretched, the oppressed, and the vanquished. (Agamben, 2000, p. 31)

As such the concept of the people is a polar concept that indicates in every usage, in each articulation of ‘the people’ as the political subject, a double movement of a ‘part with no part’,<sup>12</sup> and the whole of ‘the people’. Residing within the concept of ‘the people’, there is, for Agamben a fundamental split which can be traced back to what he refers to as the ‘original political structure’, the distinction between ‘naked life (*people*) and political existence (*People*), exclusion and inclusion, *zōē* and *bios*’ (ibid., p. 32).

This is ‘the fundamental bio-political fracture’ (see Agamben, 1998, pp. 63-67) in which naked life through its exclusion from the whole, is simultaneously included in the subjection to the whole of which it is not a part. Ontologizing such a fracture, Agamben’s argumentative structure, presupposes every articulation of ‘the people’ serves as both the pure source of identity, and ‘yet has to redefine itself and purify itself continuously according to exclusion, language, blood, and territory’ (2000, p. 32). It presupposes the necessity and ineradicability of this fracture prior to any synchronic articulation of ‘the people’. In modernity, and the transition from a legally sanctioned split in the concept of ‘the people’ (as in ancient Rome and distinction between the *populus* and *plebs*), ‘the people’ as a name for the entire body politic manifests in new ways the bio-political fracture Agamben diagnoses. Turning to the French Revolution, Agamben argues that with the entrusting of sovereignty indivisibly in the people, ‘the *people* become an embarrassing presence, and poverty and exclusion appear for the first time as an intolerable scandal in every sense’, becoming not simply economic and social concepts but political categories (Agamben, 2000, p. 33). It is thus, here, that we can now see and feel the full implications of the ‘classificatory decisions’ (cf. Bauman,

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<sup>12</sup> See Rancière 2004, p. 35

1998) discussed earlier in chapter three. At stake in those decisions to name and exclude the figures of ‘the child’, and ‘some other categories of persons’, is political decisions which have little to do with the age or embodiment of the citizens at hand, but rather an exclusion constructed at the core of the neo-republican project which is rooted in one’s capacity to reason (ratiocinative capacities). But this is not an appeal to reason in a cognitive sense, but the capacity to reason in a reasonable way, in accordance with ‘the norm of norms’, that is to reason within the bounds of the neo-republican police order.

What I take from Agamben’s riveting analysis here, is not some ontological claim about the bio-political necessity of the political concept of ‘the people’, but the political significance of ‘the people’ as both the constitutive political subject, and the name of those excluded from political existence through their inclusion. The fullest implications of my difference with Agamben shall become more fully transparent below. Further, I do not seek to deny the bio-politics of ‘the people’, but to rearticulate such a modality of power and exclusion in non-ontological terms. ‘The people’, names not simply the political subject of a universal community, but also the plebs, the underdog, the excluded, the source of political demands which cannot, and will not, be accommodated within the prevailing police orders in a non-antagonistic fashion. This populist politics of the plebian demand is precisely what Pettit’s theoretical ochlophobia is fearful of. It’s resolution, in light of its fully antagonistic presence, is not to be accommodated through the politics of reason giving, nor is it amenable to a politics of fast or slow democracy. In order to fully understand and develop a theoretical critique of the forms of *consensus* and anti-populism at play in the neo-republican Method, we now turn back to Rancière and Laclau, and their respective accounts of politics.

In chapter four I argued that the question of *populism*, the politics of ‘the people’, penetrates to the heart of theoretical and political debates about contestation, antagonism and sovereignty within democratic theory and practice. With the help of Rancière (2014) and Laclau (2005a) we saw how theorists and politicians alike, in defence of oligarchic power, decry and defame populist politics on the basis that political community ought to be premised upon a concept of ‘the rational community’, and an Archê, such as rationality, or a substantive conception of freedom. Political power within the republic ought, according to the anti-populists, to be exercised by

experts, by those who are capable of acting in a non-self-interested way, for the good of the non-dominating republic. The political class seek to govern without ‘the people’, to rule ‘without any dividing of the people: to govern without politics’ (cf. Rancière, 2014, p. 80). As we have seen throughout Pettit’s theory of democracy, there is no dividing of ‘the people’, government does not require the emergence of the people short of their exercise of the right to vote, and some parapolitically sanctioned contestatory gestures to keep the law in check. ‘The people’ as constituting are no ‘people’ in any concerted sense, nor is ‘the constituted people’ qua the state the people: *it is the state*. Pettit’s rationale for such a foreclosure upon populist politics, through the exorcision of figures such as Arendt, Schmitt and Agamben from his neo-republican story, is a concern over the potential tyranny of the majority: the ultimate form of arbitrariness. But this, as I have endeavoured to show over the course of the last two chapters, is no traditional story about mob-rule per se, though it is certainly that too, but rather an argument against the possibility of collective action that is consistent and rational (cf. Pettit’s appropriation of the doctrinal paradox from social choice theory). Supposedly “neutral” though immanently political, social scientific knowledge provides the basis for the denunciation and rendering impossible the concerted action of the collective people in any material and manifest form.

The catachrestic denunciation of democratic vitality as mere ‘populism’ (understood pejoratively) as detailed earlier emerges as a post-political defence of the prevailing order, with its aesthetic organisation of the sensible (*consensus*), and the foreclosing of politics as the emergence of a ‘dividing of the people’ (Rancière, 2014, p. 80). Tyranny of the majority, I want to argue, as it appears as a ravenous threat, a vicious wolf along the path of neo-republicanism, is but a deep-rooted liberal fear of the multitude (tyranny of the multitude) (Montag, 2005; Virno, 2004, pp. 21-22), or even, in the psychoanalytically informed grammar of Chantal Mouffe (2005b), tyranny of ‘the passions’. That is, a fear of the uncontained power of ‘democratic vitality’ in all of its radical contingency, a fear of the people acting as ‘a people’ or that political abundance which exceeds any given (mis)counting of ‘the people’.

At stake in any given miscount, is the understanding of ‘the people’ in terms of its constituted form, as a whole, a view which as we have learned from Agamben, always contains within it the exclusion of a part with no part, the plebs, the underdog, those whose voice does not find hearing in the deliberative processes of will formation, a

voice which is crowded out by the logic of rationalisation, the game of acceptability, and the theoretical play of rationalists who assume the reality of ideal communication (to a greater or lesser extent). It is a voice that can make sounds, but is deemed to emanate from beyond, below, and outside of the prevailing conception of *logos*. All of this begs the question of *voice* and its relation to a politics which we may affirm to be populist, and in addition, democratic.

To denounce ‘populist republicanism’ as an ideology or political philosophy in the way that Pettit does (1997a, p. 8) is to lose sight of the actuality of what populism entails. As Laclau (2005a) has argued, populism is not simply an ideology or movement, but a *logic of articulation*, a way of giving form to a set of political demands. In order to gain access to such a concept of ‘pure’ populism, theoretical analysis must begin not with the group who makes the political claim, nor with the contents of the ideology, but rather with politics itself, and a unit of analysis much more fundamental to their claim making, namely ‘the demand’.

The concept of a ‘demand’ is a rather ambiguous one in the English language, containing within itself two distinct valences or meanings. First, we might speak of a ‘demand’ that takes the form of a *request*. In the second instance, the idea of a ‘demand’ carries with it a more active and impositional meaning, approaching something akin to a *claim*. This second kind of ‘demand’ in Spanish is named *reivindicación*, however, and is a different word to the idea of a request. This dual valence of the word ‘demand’ is integral to how we might understand populism, and thus the ambiguity and undecidability between the two meanings points to two different forms of political articulation (Laclau, 2005, p. 35). By way of explanation, let’s proceed on the basis of the first kind of demand, the request. A group of concerned citizens or an individual place a request on their local government for the provision of a new service, and the request is accepted. From this scenario, according to Laclau (2005b, p. 36) three structural features can be identified:

1. A social need takes the form of a request, it cannot be satisfied by the group or individual on their own, and thus appeals to another body in which the power to make such a decision over the provision of that social need is to be located.
2. By taking the form of a request, this demand and those who articulate it do not put into question the legitimacy and established authority of the ‘decisory power’.

3. The demand is a punctual one, isolated, particular, and singular.

As such, requests of this kind do not entail any dividing of the people (the constituted people), to put it in Rancièrian terms, and is satisfied in a non-antagonistic way. This process, as Laclau puts it, operates according to *logics of difference* in which demands can be differentially accommodated within the hegemonic chain of different demands now satisfied and rendered part of the police (Laclau, 2005a, p. 73). At stake in this scenario is what Laclau describes as a '[liberal] democratic demand' (equally a neo-republican democratic demand).

In order to approach the second meaning of a demand and begin to outline the fundamental basis of a populist form of articulation, it is necessary to replay the above described scenario, only this time, the request made by the group of concerned citizens is frustrated. The social need addressed to the decisory power has been rejected, along with many other demands over a period of time, which have all, up until this point taken the form of a request. This cumulative effect of frustrated 'democratic demands' begins to produce social logics of a different kind: the failure of the power to absorb the requests and take seriously the emergence of political voices in a *differential* way leads to an *equivalential* relation to be established between all of the frustrated demands (Laclau, 2005a, p. 73). This situation calls for the demands to constitute an equivalential chain of their own, this time in opposition to the perceived legitimacy of the decisory power, and thus constituted into a unity of sorts based upon their shared opposition to the decisory power, in this instance the local government (Laclau, 2005b, p. 37). It is in this alternative form of articulation that we find the basis of a populist form of political articulation, as those who are the enunciatory subjects of this plurality of *popular demands* begin to constitute the 'people' as a potential historical agent. Whereas the subject of the request differentially absorbed into the hegemonic order is taken to be what Laclau calls a 'democratic subject', in the case of a now equivalentially organised popular demand, the subject of such a demand is much wider, and comes to be known as a 'popular subject', the people (ibid.). The emergence of a popular subject creates the very conditions which lead to 'a populist rupture', and such a mode of political subjectivity arises only through the creation of an antagonistic internal frontier within the social. That is to say in very plain terms, before the emergence of a political frontier which establishes an antagonistic relationship between those who petition for and through equality and the decisory power which refuses such an equality, there is

no political subject. As Rancière teaches us, political subjectivisation is the product of disidentification and refusal (1992, pp. 61-62). With the emergence of a populist rupture, and the creation of an internal frontier between ‘the people’ and an articulated and discursively produced enemy at the other side of the frontier, the popular subject and its equivalential chain of demands is decidedly anti-institutional in character. The construction of the other side of the frontier has historically taken the form of the following names: the ‘*ancien regime*’, ‘the oligarchy’, ‘the Establishment’ etc (Laclau, 2005b, p. 39).

If politics, in its ordinary language use, always presupposes a primordial equality of subjects (Arendt, 2005, pp.117-18), it emerges for Rancière as a process of verifying such an axiom of equality within a police order which always twists and betrays such an equality. Politics is the process of equality; it is the dissensual and antagonistic meeting point between two logics: the logic of the police and the logic of equality (Rancière, 1999, pp. 34-35). Dissensus, we might say, is the giving presence to two Worlds in one (Rancière, 2010, pp. 37-40). Politics thus arises out of the police, in that there is nothing outside of the police, ‘politics acts on the police’ (Rancière, 1999, p. 30). Politics in short is always populist in a minimal sense, as being concerned with the antagonistic constitution of ‘the people’ through processes of subjectivisation (Rancière, 2004, p. 304). However, I want to stress that from a position which extends beyond Rancière, democracy is always populist, but populism is not always democratic.

As we have learned from Rancière, the history of ‘democracy’ has been one of, not simply suspicion, but even ‘hatred’. Invented by its opponents to name a perversion in the logic of the order of things, ‘democracy’ was the activity of those unqualified to govern, and as such was a disruption to the logic of the prevailing Archê: the consensus of the oligarchy (Rancière, 2010, p. 32). The *demos* the subject of democratic politics ‘before being the name of a community, [...] is the name of a part of the community: namely, the poor’, that is those people who do not count, those with no qualification to partake in self-rule (Rancière, 2010, p. 32). It is on this basis that we must understand Rancière’s concerns with discourses of anti-populism, which are equally discourses of post-politics and thus post-democratic. On such an account, we are some distance from Pettit’s account of republican democracy if the latter is in any sense politics. But it would be lazy to assume, and thus dismiss, the same on the basis that there is no politics in Pettit’s account. Republican democracy is a feature of the



police, but this republican democratic scene is a complex of the two logics of politics and the police. Our task, as such, has been to trace the interplay of these logics. Pettit's neo-republican democracy certainly has democratic moments, yet it forecloses on politics at certain points, placing limits on democratic politics in order to maintain the given police order from radical challenges to its Archê: a juridico-political conception of freedom as non-domination and its attendant account of the subject.

Politics exists because of a miscount of the parts of the whole, as Rancière writes: 'politics does not happen just because the poor oppose the rich', rather, politics 'causes the poor to exist as an entity' (1999, p. 11), precisely through the staging of a claim in the name of equality. It is the antagonistic emergence of the part 'who have no part' (Rancière, 1999, p. 11), and it makes visible 'what had no business being seen' (ibid., p. 30). If politics proceeds in terms of equality, then the claim for equality within the order of inequality or the police is always democratic. Democracy is not a regime of governing, but a disruption of the sensory order, the consensus that precedes and sustains that very regime. Democracy is always dissensus and thus antagonistic to any given police order, the latter of which will, by necessity, be exclusionary and inegalitarian in nature.

Democracy conceived in Rancière's terms is not exclusionary, insofar as it need not perform a miscount, because it does not count. As we learn from Ober, democracy in its original meaning, need not count, unlike *monarchia* or *oligarchia*. Democracy is not an Archê or 'rule' concept and does not entail a count of those who rule: monarchy (the one), aristocracy (the excellent) and oligarchy (the few) (Ober, 2008, p. 4). As a *kratos* concept, democracy refers to an unspecified 'many', the *demos*, who can 'make things happen', as opposed to seeking to gain 'control of pre-existing constitutional authority' (Ober, 2008, p. 7). Democracy is the staging of a claim by the plebs, 'the part with no part', of their equality to exercise power, speaking for the *demos*, in the name of 'the people', as opposed to the few (Rancière, 2010, p. 33). Politics in Rancière's terms then is precisely what Ernesto Laclau understands by populism; or otherwise put, for Laclau politics is always populist (2005a).

What is integral however to this question of populism and its relation to democracy, is the process by which political subjectivisation takes form, and how the articulation of 'the people' is undertaken. For Laclau a radical democratic conception of popular subjectivity is self-aware in a transparent way of its own contingent and articulation

nature. Unlike fascist or right-wing populism(s), which are premised upon the articulation of ‘the people’, as the subject of a frustrated demand on the basis of an ethnic or cultural essence, left-wing and radical populism, is only ever conceived of as a ‘partial embodiment’ of ‘the people’, meaning it is both partisan and incomplete: it is the plebs (Laclau, 2005a, p. 166, 115). For populist ruptures to produce ‘the people’ in a democratic fashion, that is in accordance with the logic of an axiomatic equality which deconstructs any pretence at exclusion and inequality, it must bring together the two names ‘the people’ and ‘the demos’ such that they refer not only to ‘a people’, ‘the people’ or ‘some peoples’, but all people (Devenney, 2020, p. 156)

What emerges from the preceding rethinking of the relation between populism and politics, and the critical work that ‘populism’ does for the analysis offered here, can be cashed out in the following terms: first, the problem of populism for liberal–republican thought amounts to a fear of the tyranny of the majority, or more accurately put, a fear of a tyranny of the passions/multitude, that is, those forms of ‘democratic vitality’ which are not contained within the prevailing logoi of the constituted people. Second, the theorisation of politics as always populist in terms of its logic of constituting the polis, points to the problem of the constitution of the polis, and the question of ‘who are the people?’ These two strands call for an analysis of the demographic (or biopolitical) presuppositions that the republican theory of democracy entails and are equally bound together through the category of antagonism. ‘The people’ are always constituted antagonistically, insofar as this constitution is the product of the activity of politics, and the making visible of that which had no reason to be seen, the emergence of those who were dis-counted and constitutive of the multitude. The problem then of tyranny of the majority in relation to the protection of minority rights is only a problem of politics when the latter is framed, not in terms of the verification of an axiomatic equality, but rather in terms of the management of pre-constituted identities and interests within a field of politics in which all those who ought to ‘appear’ (Arendt, 1998, pp. 198-99) have already done so. On Pettit’s account, politics presupposes the pre-constitutedness of ‘the people’ on whose terms democratic laws are made. That is, under conditions in which a miscount is not conceivable – conditions posterior to politics as understood in Rancièrian terms. Within such a neo-republican political imagination, the emergence of new demands, new identities, new bodies seeking inclusion within the political community – founded upon the principle of non-

domination – are foreclosed upon, and ‘the people’ is rendered static as a sociological fact.

## 6.5 Conclusion

What emerges through this encounter with Laclau on the question of ‘populism’, and Rancière when it comes to democratic politics is how such forms of acting in concert through the granting of priority to the constituting power is always antagonistic to the established hegemonic or police order. At stake in such moments of concerted political action, is not simply a dissensus which disrupts the order of parts and accepted voices, but a moment of constitution: the constitution of political subjectivity, the constitution of the *demos*. It is on this basis that Laclau (2005a, p. x) asserts that the logic of populism is integral to the organisation of any communal space. This is not a form of struggle premised upon the affirmation of already constituted identities, nor is it circumscribed in advance by identity at all. Rather, it is a politics against precarity, against exclusion, poverty, and inequality that takes the form of ‘an alliance’ or ‘a chain of equivalence’ (Laclau, 2005b, p. 37), and seeks to expand what is meant when we say “we” (Butler, 2015, p. 66).

Contra Agamben (1998, 2000) the forms of exclusion which are in need of redress here, are not pre-political, nor are they embedded in a bio-political fracture ontologically rooted in the so-called tradition of ‘Western’ philosophy and politics. Such is a view which begins through the naturalisation of inequality, built upon the premise that there will always be a constitutive exclusion in any political community, that simply needs to be bio-politically managed. Rather, forms of exclusion are a political problem to be located in the contingent and contestable articulation of police orders which differentially allocate parts, property/ies, voice and grievability. As Butler reminds us, as she pushes against the gendered conception of the *polis* to be found in Arendt (1998) and some texts of Agamben (2005), ‘those who find themselves in positions of radical exposure to violence, without the basic political protections by forms of law, are not for that reason outside the political or deprived of all forms of agency’ (2015, p. 79). Populist forms of acting in concert, in which ‘the people’ appear to contest vocally and bodily their exclusion from the sensible, performatively establish themselves as ‘the people’, as the very source of legitimacy. ‘Where the legitimacy of the state is brought into question precisely by that way of appearing in public’, Butler

writes, 'the body itself exercises a right that is no right; in other words, it exercises a right that is being actively contested and destroyed by military force and that, in its resistance to force, articulates its way of living, showing both its precarity and its right to persist. This right is codified nowhere' (Butler, 2015, p. 83). It is a right which is not gained from elsewhere or by existing law, even if we may on occasion find support for that right in the law. But rather a right which is rooted in and only in the appearance of 'the people' acting in concert.

## Threshold

The manoeuvre of grounding political community in a philosophical ideal is integral to foundationalist thought and insists upon the inaccessibility of that ideal to contestation or political opposition. To posit any such foundation, including a theory of a subject, as post-structuralists from Rancière to Judith Butler are more than aware, is to

foreclose upon the domain of the political, and that foreclosure, installed analytically as an essential feature of the political, enforces the boundaries of the domain of the political in such a way that that enforcement is protected from political scrutiny. (Butler, 1995, p. 36)

The ruse of power at work in such a grounding is precisely what comes to the fore in Jacques Derrida's analysis and critique of structuralism in his ground-breaking essay 'Structure, sign and play in the discourses of the human sciences'. In this essay, Derrida establishes the basis of the relational ontology, for want of a better word, which underpins the work of theorists such as Rancière, Butler and Laclau, as well as examining something of a paradox internal to structuralist discourse. It is with this second point that I am most interested here, and as we learn from Derrida: structuralist discourses are premised upon two distinct, yet important claims drawn from Saussure's linguistics (1983). Firstly, structures are systems of meaning that are closed totalities containing a plurality of lower order elements which constitute the meaning of the structure. Secondly, these elements gain their meaning relationally. The creation of meaning within the structure is thus conceived of as the play of differences between those elements within the structure as generative of meaning at the level of the totality.

The paradox or problem for structuralists, however, considering the relationality of elements, and their possibility of being brought into play, was how to account for the stability of structures, and thus of meaning. The solution emerged through the operation of attributing 'a centre' to a given structure, which generally manifested through what Derrida calls a 'presence', or what might also be described as a 'fixed origin', 'Archê'. or even 'essence' (2001, p. 352). The function of the 'centre,' as Derrida points out, was to orient and thus organise the elements of the structure, so as to 'limit what we might call the play of the structure' and ensure that *play*, or contingency, does not affect the limits of the structure itself. The 'centre', in order to provide fixity, however, was conceived as escaping 'structurality' (relationality), and thus 'had to be

thought' as paradoxically both within and outside of the structure (2001, p. 352). As Derrida notes:

the concept of centred structure is in fact the concept of a play based upon a fundamental ground, a play constituted on the basis of a fundamental immobility and a reassuring certitude, which itself is beyond the reach of play. (2001, 352)

In the context of Saussure's linguistics, such a manoeuvre entails a privileging of speech (*parole*) over writing (*langue*) (Saussure, 1983, pp. 13-14), as he posits 'Man', an autonomous subject of language which pre-exists the system, as the centre (Saussure, 1974, p.90). The outcome of such a move is to blur the distinction between the signifier and signified, such that a contained *play* is rendered possible and the unruliness of *différance* is sequestered (Saussure, 1983, pp. 118-20). By centering 'Man', Saussure prioritises logos resulting in a logocentric metaphysics (Cavarero, 2002, p. 517; Derrida, 1997, p.30, p.71), which presupposes a subject of language that is both stable and pre-discursively constituted. The figuring of a stable, pre-discursive and, thus, pre-political subject, is a central move of structuralist thought (neo-republicanism included), which, as noted above from Butler, forecloses upon the realm of politics itself.

Derrida's critique of structuralist thought troubles the conception of structure as a closed totality and, thus, confronts philosophy with the claim that there is no centre, but rather a 'nonlocus in which an infinite number of sign-substitutions came into play' (Derrida, 2001, pp. 353-54). Any such encounter with a 'presence' or purportedly fixed centre of a discourse then takes on a metaphysical or theological character and presents itself as outside of *play*. The attribution of a 'centre' places limits on our encounters with contingency while also removing the constituted foundation from relationality, from human agency and from power relations, with the result that it remains beyond the reach of politics. Derrida concludes this essay with the presentation of two possibilities concerning interpretation. On the one hand, he identifies in the ethnography of Lévi-Strauss, an interpretation that seeks the 'deciphering of truth or an origin which escapes play', a new humanism perhaps. While, on the other hand, there exists the possibility of a Nietzschean affirmation of *play*, which tries to 'pass beyond man and humanism', and no longer concerns itself with any dream of a 'reassuring foundation', origins or 'the end of play'.

In ‘*Structure, sign and play*’, Derrida does not engage in the act of decision, opting instead to hold in tension these two interpretations. By holding these two interpretations in tension, Derrida maintains a view in which foundations, or an Archê, can be asserted as more or less stable and can achieve partial fixity in meaning, so long as they are taken to be both contingent and thus contestable. *Play*, then, is the encounter with contingency, and the possibility for foundations to be reiterated. Politically speaking, at stake is something akin to Laclau’s politics of hegemony, as sketched in his short essay ‘*The Impossibility of Society*’ (1990, pp. 89- 92). This holding in tension, however, nonetheless equates the activity of politics with the proffering of a contingent and contestable police order, and thus the sedimentation of inequality, the creation of consensus. If politics, properly understood is concerned with the anarchic, the activity of dissensus, it must understand its relation to *play* somewhat differently. The role of *play* must resist fixity, it must resist foundations, it must not surrender to the tension, but embrace the Nietzschean affirmation of abundance of life.

‘Non-domination’ presents itself in Pettit’s structuralist thought as a ‘centre’ which conceives of itself as outside of structurality/relationality to the rest of the elements of the neo-republican discourse. It takes on the archipolitical function of writing over politics on philosophical terms, thereby rendering non-domination a metaphysical concept which gives an (im)possible coherency to Pettit’s theoretical Method. Precisely, what the archipolitical philosopher, like Pettit, refuses to acknowledge is that political community in reality has no Archê, but rather the basis of political community is, and always will be, politics itself. In arguing for a properly political politics of non-domination then, that is democratic, and consistent with an axiom of equality, freedom as non-domination must be brought back into *play*. That is to say, non-domination must be brought back into politics, it must break with the rationalist and possessive individualist account of the subject Pettit presupposes (Pettit, 2001, p.18) and become the nodal object of politics itself. Only then can neo-republican discourse start to address itself to the question of political community in terms that can deal with the most trenchant forms of domination experienced today and the antagonistic dimension of politics proper.

## §7 The *Politics* of non-domination

### 7.1 Introduction

The analysis conducted over the preceding six chapters and accompanying thresholds has sought to render palpable and common the expression of disappointment with which this thesis began. Such a disappointment with Pettit's Method of neo-republican political philosophy provided not only the impulse driving this thesis – an impulse to read and think more carefully about the worlds conjured by political philosophers and theorists alike, in the names of freedom, reason(ableness) and contestation – but also pointed to something much more fundamental. That disappointment gave focus to, and converged upon, a disappointment which I have long held with the practice of much contemporary Anglophone political theory. At stake, and framed by power, are the forms of reasoning, theorising, and modes of subjectivity that such a practice presupposes of its participants. This thesis has sought to practice the form of political subjectivation that Rancière (1999, p. 36) describes as 'disidentification,' only in this instance, it pertains not only to the spaces usually associated with politics, but directly to the occupation of the academic space, and our occupations within that space (cf. Rancière, 2016). It was on this basis that the project undertaken here emerged through the logic of *disagreement*, the logic of axiomatic equality and thus, of politics, 'as an alteration of a normal order of things, which means a normal distribution of places and functions, identities and capacities' (Rancière, 2016).

The normal order of political philosophy/theory from which this work has sought to disidentify from, is that Method of political theorising, broadly conceived, which takes as its *telos* the defence or justification of inequality, usually through a critical or uncritical relation to the state, as a nodal point of political discourse. Judith Butler,



echoing Foucault (1978) captures quite clearly the dangers of any such political theory (or “framework”) as she writes:

The operation of state power takes place within an ontological horizon saturated by power that precedes and exceeds state power. As a result, we cannot take account of power if we always place the state at the center of its operation. The state draws upon non-statist operations of power and cannot function without a reserve of power that it has not itself organized. Further – and this is not particularly new – the state both produces and presupposes certain operations of power that work primarily through establishing a set of “ontological givens.” Among these givens are precisely notions of subject, culture, identity, and religion whose versions remain uncontested and incontestable within particular normative frameworks. So when we speak about “frameworks” in this respect, we are not simply talking about theoretical perspectives that we bring to our analysis of politics, but about modes of intelligibility that further the workings of the state and, as such, are themselves exercises of power even as they exceed the specific domain of state power. (Butler, 2016, p. 149).

In addition to Butler’s concern here, which I endorse entirely, I have sought to raise the implications for democracy and politics (which I take to be coincident) within police orders of propriety, property, biopolitics and language which analytical political theory has served to provide justification for, either in a defence of the present, or of some ideal future yet to arrive.

It is for these very reasons outlined above, that the preceding chapters have taken up the question of power as it pertains to the subject of non-domination, the practice of neo-republican contestation and democracy and the subject of neo-republican democracy. Power as conceived above by Butler and earlier by Foucault, serves as the regulatory and disciplinary forces of police orders and their distributions of parts, and takes the form of bio-power (in both anatomo-political and bio-political modes). So why bring the concepts of biopolitics and non-domination into the same analytical frame? What does thinking about Pettit’s republican account of freedom through the prism of biopolitics do for us and our understanding of the politics of non-domination.

To bring Pettit into dialogue with an account of biopolitics, and the challenge it presents for our more classical understandings of politics, is to converge upon, with great pressure, the very (im)possibility of freedom as non-domination. It is, as we have demonstrated, to raise substantial questions about the conception of the subject that

underpins Pettit's theorisation of the possibility of republican democracy, whilst further pushing us to consider anew the relationship between neo-republican political philosophy and the present. That is to say, such a confrontation inquires into the utopian dimensions of neo-republican politics (utopian in terms of both an 'ideal place' and a 'non-place') and the status of such a 'utopian theory' and the political conjuncture, which we might call our present.

The concept of non-domination as a marker or name for what is ultimately a theory of the subject, as we have seen, not only provides a ground for neo-republican political community, but further, corrals antagonism and contestation, writes over politics in its radical democratic form, and regulates the voices and enunciatory locations of political subjects in their staking of a demand within such a police order. As such, 'political philosophy, by its desire to give to the community a single foundation, is fated to have to re-identify politics and police, to cancel out politics through the gesture of founding it' (Rancière, 2010a, p. 41). Retuning to our hypothesis, then in need of demonstration, as stated in chapter one, political philosophy in its neo-republican Method is nothing more than *a case of political philosophy ridding itself of politics, precisely in favour of government*. This analysis, as I have suggested above raises a set of substantial, yet, for now final questions for us to consider when it comes to the *politics* of non-domination. By the *politics* of non-domination, as opposed to the politics of *non-domination*, I gesture towards a consideration now of non-domination on entirely radical democratic terms, in which by *politics* I am distinctly concerned with the giving presence to the dissensus and impropriety embedded in the affirmation of an axiomatic equality which makes politics (as opposed to force) thinkable, in the first instance. The substantive question(s), to which I now turn, can be framed as follows:

1. The Utopian dimensions of neo-republicanism
2. The relationship between *politics* and the police order of neo-republicanism, or otherwise put, 'the politics of the police.'
3. The status of critical political philosophy in relation to the depoliticising practice of political theory in its neo-republican form.

## 7.2 The utopian dimensions of non-domination

The concept of 'utopia' has a long history in the practice of political theorising. Within the republican tradition that Pettit conjures, the utopian character of political theory is

exemplified by the *Oceana* of James Harrington, which, although a normative fiction of an ideal Commonwealth, the conditions of possibility (which we explored in the threshold that holds the place between chapters two and three) of its utopianism is nothing more than a subtle ruse of rhetorical power to cover over and ultimately provide a normative justification for the rule of Cromwell and the short-lived English republic.

The name ‘utopia’ can be dated back to 1551 and modern Latin, meaning ‘nowhere’, and coined by Thomas More in his work of classical political philosophy of the same name. ‘Utopia’ in More’s 1516 book refers to a ‘non-place’, a society of perfect laws and political order and people, that ultimately, is not all that it seems to be. The name can be traced etymologically back further to the ancient Greek composite of two words: *ou-*, meaning ‘not’, and *topos*, meaning ‘place’. More’s ‘Utopia’, however, refers not to the place conjured as having perfect laws and social relations, but the interstices in which the reader is left, having realised that this perfect place is not so perfect. The *ou-topos* in which More leaves us, is that space of questioning, a place not unlike that which Foucault’s genealogical method creates. This idea of no-place provides one of the two meanings, or valences, we attribute to ‘utopia’ in the present epoch. The second valence, a meaning which is much closer to our everyday usage, arises by the early years of the seventeenth century, by something of a mistake, in which the u- of ‘u-topia’, was mistranslated as the Greek *eu-* taken as ‘good’. This error is compounded by the mid-nineteenth century due its relational articulation as the inverse of the name ‘distopia’.

The relationship between political theory and utopia is by no means straightforward. As Maeve Cooke (2004, p. 414) has suggested, political theorists today ‘tend to argue that a postmetaphysical approach is necessary in order to avoid the problems of “bad utopianism”, “finalism”, and “totalitarianism”’. Political theories which do fall foul of accusations of ‘finalism’ and even ‘totalitarianism’ often do so, Cooke argues, due to their ahistorical approach which projects forth an ‘image of the “good society” that stands beyond the influence of history and context’ (ibid.). Exercising some generosity to the likes of Pettit, we might conclude that this entirely ahistorical and strong utopianism in political theory is rare and existing at the margins of the mainstream of analytical political philosophy. Such a ‘non-place’ (never-place) valence of utopia may be outside of the realm of appropriate political judgment when

it comes to the Method of neo-republicanism, however this is not the end of the story. Cooke identifies another way of conceiving of utopia in what she calls ‘critical social theory’ (a short hand for the Habermasian project), which we can also read as political theory, for our purposes here. Asserting a strong ‘fallibilism’ to the (metaphysical) claims of any utopia, Cooke envisages an image of the ‘good society’ which is adequately beyond history, more or less impossible to ever reach, that ‘due to our dissatisfaction with existing social conditions, we long to inhabit’. Such a utopia nonetheless functions as a ‘regulative idea’ that situated subjects are motivated by, and can strive towards within this world (Cooke, 2004, pp. 423-425).

As noted earlier in chapter six, Pettit’s own understanding of his neo-republican democracy is, that the *vision* and project he sketches in OPT is ‘not a utopian pipedream’, but rather ‘a programme of reform and renovation’, imminently achievable within liberal democratic societies (Pettit, 2012, p. 279). In response to this assertion by Pettit, two lines of theoretical rejoinder seem pertinent. First, taking up Slavoj Žižek’s comments in *Repeating Lenin*, he argues that in an era of proliferating economic and political inequality and the *consensus* politics of ‘the Third Way’, antagonistic political demands from the margins and beyond the pale are deprived of ‘their proper political sting’ (Žižek, 2001). In such a context, Žižek proposes that ‘the true utopia is the belief that the present liberal democratic capitalist consensus could go on indefinitely, without radical changes’ (Žižek, 2001, p. 24). Whilst, I depart radically from Žižek’s ‘ultra-leftist stance’ (Laclau and Howarth, 2015, p. 271), the critique of political theory’s sublimation of antagonism seems to me to be solid, and consistent with the writing-over of politics by philosophy at the hand of Pettit’s Method as chronicled above. The present political culture characterised by ‘states of emergency’, ‘bare democracy’, the rise of the populist right and neo-fascism in the USA, India, Brazil and beyond, a conjuncture in which antagonisms of an anti-democratic variety loom large, fundamentally alters our capacity to read the project of neo-republicanism as non-utopian.

The second line of response pushes in a somewhat different theoretical perspective, insofar as Pettit’s neo-republicanism serves as a more or less immanent (re)description of the liberal democratic institutions and societies in which many of us live. The relation between the philosophy of neo-republicanism and these police orders, which the former calls upon us, the readers, to reproduce and participate in the symbolic

justification of, complicates Žižek's catachrestic use of the name 'utopia'. Instead, we must recognise the simultaneously utopian dimensions of neo-republican political community, as offering something at a remove from this place, an image of 'a better place', perhaps, or even just what Pettit conceives to be a 'good place', but nonetheless a place towards which he intends to motivate situated subjects to strive towards, from this place, this world, embedded in history, which is characterised by the very forms of bio-political and disciplinary power, antagonism, emergency, and 'bare democracy'. At stake I might suggest, is what Uday Mehta raises in his discussion of the exclusionary strategies of liberalism, a disjuncture between liberalism as a universalist and more or less inclusive political philosophy, and the history of liberalism and its relation to eugenics, colonialism and some of the worst forms of social and political exclusion experienced in the nineteenth and twentieth centuries (Mehta, 1990). It is precisely these real world contingencies that Pettit's aesthetic ordering of the world negates, covers over, ignores and sublimates through a Method of analysis and theorising which tends towards an aristocratic and proper *vision* of the nature of this contingent, power-ridden and historical experience of politics. But if this is the Method of neo-republicanism specifically, then it is also the Method of analytical political philosophy more generally.

In OPT we see how Pettit's utopianism in relation to the present states of emergency or exception in liberal democracies in the twentieth century sustains itself, namely through the subtle dismissal of those accounts of the political which render tangible the aporias within the empire of laws. In his chapter pertaining to the topic of political legitimacy within that same text, Pettit does acknowledge the possible dangers to democracy and freedom as non-domination in instances in which the state decides to suspend the functioning of democracy itself. Pettit writes: 'the difficulty posed by this observation is real but not overwhelming' (2012, p. 173). The case made against the possibility of placing trust in governments 'humouring' of their citizens, with measures of apparent, though materially empty 'popular control' has been best made in contemporary continental philosophy by the Italian political philosopher Giorgio Agamben (1998, 2000, 2005).

The 'state of exception' which Agamben genealogically traces is not only the suspension of liberal democratic institutions and law, but also the site of the bio-political fracture, the moment of decision between who is to be counted as *zōē* and as

*bios* (Agamben, 1998). Central to Agamben's (2005) examination of the figure of sovereignty and 'the political' (le politique), is the relation between violence and law and their point of unity in the politically subjective claim to crisis in the form of a *state of exception*. Arguing with and against Schmitt, Agamben wants us to see this moment of the suspension of law in order to maintain the norm, not as a figure internal to a juridical order, as argued by Schmitt (Agamben, 2005, p. 54), but rather, as a threshold, as an *anomic zone* of transgression and transivity/transition (cf. Benjamin) between juridical power and violence, and characterised internally by a radical 'undecidability' (2005, pp. 23-24, 55). For Agamben and Benjamin, contra Schmitt, violence is not simply law making and preserving, but rather there exists a form of 'pure violence,' the very condition of possibility of Justice, which destroys, suspends and deposes law (Agamben, 2005, p. 61; Benjamin, 1986): 'the difference between *pure* violence and *mythico-juridical* violence does not lie in the violence itself, but in its relation to something external'. Such purity arises from its non-instrumentality and thus separation from domination. Reminiscent of Arendt's (1998) distinction between 'work' and 'action' (cf. Nancy, 1991, pp. 2-3), the non-instrumentality of such a mode of power is such that it negates the determinacy or utopianism of instrumental modes of exertion that 'work' towards a preconceived image of the ideal. Conceived of as 'pure means' Agamben's (2000, 2005) turn to 'pure violence' which is communicative in and of itself, (cf. 'pure being') an act of communicating which is distinct from *what* you are trying to communicate stands as the only means of true political action (Agamben, 2005, p. 88), insofar as it breaks the nexus between law and violence, between life and law, or life beyond the law. Such a form of pure *antagonism* which has the capacity to disrupt and potentially move beyond *the police order*, opens up strategic possibilities for thinking the limits of justice in relation to law. But first, this claim is in need of further substantiation, as its implications raise considerable theoretical and practical questions of conceiving of 'Just' freedom and democracy as non-domination.

The substance of this view arises from a moment of reflection of *the force of law* and the now paradigmatic presence of the *state of exception* in modern liberal democratic regimes: "the state of emergency" in which we live is not the exception but the rule' (Benjamin, 2005, p. 268; Agamben, 2005, p. 6.). Specific to the state of exception then, is the suspension of law, a situation in which the norm remains in force, even when not being applied. Agamben later (re)describes such a relation in terms of the

Saussurean distinction between *langue* and *parole*, where the efficacy of the norm, in this case of law, remains a floating signifier, whose general co-ordinates endure even when devoid of its determining context (2005, pp. 36-37). So in the state of exception we see a separation of the “force of law” from the law, marking the distinction between executive and legislative power. That is to say laws made during the suspension of law, as such, maintain their authority, by appeal to the force of law. To quote Agamben (2005, pp. 38-39) in order to gain some efficiency and clarity:

[...] in extreme situations “force of law” floats as an indeterminate element that can be claimed both by the state authority and by a revolutionary organization.

The state of exception is an anomic space in which what is at stake is a force of law without law (which should therefore be written: force of ~~law~~).

Thus the force of ~~law's~~ mythical quality is rendered tangible. Separating out the very authorising force of the legal framework from the substantive content of law. As such the state of exception shows the threshold and ambiguity of *langue* and *parole*, of force of law and law, as they blur with one another, and ‘a pure violence without *logos* claims to realize an enunciation without any real reference’ (Agamben, 2005, p. 40). Further, the mythical quality of law, as it functions in Pettit’s account is partially sutured to some partial extent by the figure of popular sovereignty. For Pettit, Agamben and by extension Schmitt are ‘overwhelmed’ by the challenges posed by the capacity of States to exercise sovereign power and suspend democracy. For Pettit, this worry as we have seen, need not be so problematic, insofar as we have already seen ‘the people’ as constituted ‘are the State’. Ironically, however, Pettit once again falls back into a language of ‘the people’ as resistive of illegitimate government action, re-affirming forms of popular sovereignty which he has subsequently proceduralised to the extent that they are dis-empowered in any concerted manner. Whilst I share to some extent the suspicion of Agamben’s often catastrophic rendering of ‘the biopolitical machine’ (Agamben, 2005, p. 87), I depart from Pettit’s assumption that a neo-republican conception of the resistive community is going to break politics free from the hold of violence and the bio-political as embodied in the state of exception. Pettit’s optimism here, points to the utopian step *par excellence*, in which his analysis moves towards something of a normative fiction or regulative idea, precisely through the gesture of leaving its own conditions of existence, its own history, in its wake.

In many ways, the presence of violence as an instrumental figure within the Schmittian frame of juridical violence, though not political as such, undermines the possibility of thinking any legal framework as non-dominating, insofar as violence, conceived in this way is remarkably close to Arendt's conceptualisation of violence as opposed to power, and thus arbitrary in its nature. The question as to, 'who are the subjects of the law?', points to how the very figure of 'the people' as a point of fixity and closure in Pettit's account is thus fundamentally a violent moment, which is ultimately arbitrary in its nature and constitution.

Here we find ourselves at the edge of a paradox of democratic theory, and a point of normative ambivalence between democracy and totalitarianism, the basis of which lies in a conceptualisation of democracy as a bounded regime, and a dialogic process of negotiated outcomes through a fixed institutional arrangement. If we were to shift frames of thinking about democracy as an egalitarian form of acting in concert as opposed to a way of life (Agamben) or regime (Pettit), then we may find scope for a non-totalitarian and fundamentally egalitarian alternative way of thinking about the concept of 'politics' which is not dependent on an account of arbitrary power. Here the work of Rancière becomes of the utmost importance in moving beyond critique, and towards a politics that truly embraces life and all of its abundance.

### 7.3 The politics of *the police*, or the *politics* of the police

Turning back to my earlier discussion of Cooke's defence of utopia, this time through an explicitly an-archic lens, and the interplay between the two opposing logics of politics and the police, I want to pose the following question. What precisely is at stake, we might ask, in the political theorist's utopianism, even if it is nothing more than an impossible yet useful motivational and regulative ideal? From a Rancièrian perspective, what are we to do with Pettit's neo-republican democracy?

In chapters three, four, and five I have demonstrated that Philip Pettit's neo-republican theory of democracy and government, regardless of the problem of utopia, stands as an idealised police order, in which institutions have been designed, shares and properties have been distributed, where that which is sensible has been bounded and is bounding, and 'where everyone has been accounted for and has a designated place and name' (Arditi, 2019, p. 59). In chapter one, I argued that the concept of the police is a neutral, non-pejorative name, that does not assume that all police orders are



the same (Rancière, 1999, p. 30). Rather, with Rancière, I affirmed that ‘there is a worse and a better police’ (1999, pp. 30-31), and with Woodford (2017, p. 12) that ‘to strategise “politics” is also to strategise “police”’. That is to say, critical political philosophy/theory must think through and judge politically the very ‘conditions under which “politics” may be more likely to emerge’, and to ‘consider those [conditions] under which it is less likely to do so’ (ibid.). At stake, as argued forcefully and convincingly in recent works of critical political theory is ‘the politics of the police’ (Arditi, 2019; Chambers, 2011b; Woodford, 2015, 2017).

How one plays and places the emphasis on the above phrase is decisive, and pertinent to our stance in relation to neo-republican government. Are we to argue for a salvaged, reworked, and democratised neo-republicanism that takes the form of a politics of *the police*? Or, do we refuse utopia and think the *politics* of the police, along with a more radical plebian *politics*? Otherwise put, do we endorse Pettit’s neo-republicanism in principle, and then work to theoretically and aesthetically open up that police order in a ‘homeopathic’ manner (Arditi, 2019, p. 69)? Or, do we insist as critical political theorists on an alternative relation to the Method of analytical political philosophy which begins from a different starting point, a place of an affirmed axiomatic equality?

Our task, I want to argue is one of refusal, not legitimation when it comes to the police, and the state. Pettit’s neo-republican democracy, though largely de-politicising, does still maintain scope for sublimated politics, but politics nonetheless to emerge in the homeopathic character of the *politics* of the police Arditì describes. For example, jurisgenerative possibilities which verify and practice equality do still remain a possibility within neo-republican institutions. As Extabe (2018, pp. 23-24) argues ‘the jurisgenetic impulse would come to interrupt the logic of legalism and challenge its distributions of roles, places, subjects, and doctrines’, thus, always maintaining that gap and tension between the law and non-law.<sup>1</sup> What Extabe has in mind here is the staging of a *wrong* within the fabric of legalism, an aesthetic invention and intervention which reconfigures the legally sayable, doable, thinkable (2018, p. 24). Think only of the case described by Gordon Allport in *The Nature of Prejudice* in which a black woman was

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<sup>1</sup> As Rancière writes: ‘the juridical inscription that should set things in order ... constantly lend[s] itself to the construction of unforeseen trajectories of looking and speaking’ (2011c, p. 243).

‘a plaintiff in a case involving a restrictive covenant. The lawyer for the defense questioned her, “What is your race?” “The human race”, she replied. “And what is your skin colour?” “Natural colour”, she answered.’ (Allport, 1954 quoted in Arditì, 2019, p. 54).

Such a scene, rooted firmly in a juridical setting, marks a clear example of the kinds of politics Rancière describes. At the time of the case racism against blacks was legal in many states of the USA, but nonetheless the plaintiff demonstrated her equality with the defence lawyer in spite of the police orders distribution of an unequal and subordinate status to black bodies.<sup>2</sup>

Spaces for the *politics* of the police, are to be further found in those points in which Pettit does give power to the people, those moments of contestation and popular control that Pettit theorises, but what is at stake here is something radically short of antagonism, and insufficient in addressing, and thus undoing the most radical forms of exclusion and domination which this thesis has sought to demonstrate Pettit’s Method falls foul of. What is involved here, most clearly put, is nothing more than the kind of reformism Pettit’s liberal republicanism already permits, and the very conditions of possibility for such moments of politics, are the philosophically sanctioned inequalities of persons and their ratiocinative and relational capacities, and thinkable, only by virtue of a particular interpretation of the *impurity* of the relation between ‘politics’ and ‘the police’.

The question or possibility of the *politics* of the police, arises from a concern with the status of ‘politics’ in Rancière’s account as it pertains to those persons counted within ‘the police’ in full possession of logos from the vantage point of said police order, yet still committed to the transformation and pluralisation of the aesthetic limits of the sensible. Whilst for Rancière ‘politics’ has no place of its own, but must work at the interstices of places in which there is a minimal yet thwarted equality such as ‘the police’, ‘politics’ is dependent upon ‘the police’ and thus always impure: ‘politics acts on the police’ (1999, p. 33). ‘The police’ however, ought not to be understood in pure terms either, for ‘the police’ ‘recognises neither lack nor supplement’ (Rancière and Panagia, 2000, p. 124). ‘The police’ on its own terms, projects at the level of representations an impossible unity between ‘the order of law and the order of facts’

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<sup>2</sup> This example which Arditì finds in Allport’s text has many parallels to the case of Auguste Blanqui which Rancière uses to great effect in ‘Politics, Identification and Subjectivization’ (1992).

(Rancière, 1999, p. 112), foreclosing upon ‘politics’ in its entirety. The ever present contingency of all social objectivity, made material through the necessity of an axiomatic equality to render inequality manifest, thus introduces the impurity of ‘the police’. At stake, is the possibility, if not the reality, of forms of conflict and contestation within ‘the police’ that do not alter the limits of the sensible, but perhaps, render those limits more porous and attentive to the potential emergence of unrecognised voices. As Chambers has argued ‘we [the counted and heard] must remain committed to and concerned with the politics of the police in the sense of changing, transforming, and improving our police orders’ (2011b, p. 36). Describing such a *politics* of the police as ‘homeopathic’ in nature, Arditì describes a politics in which ‘like changes like’, where counted members of the police can act upon ‘the existing field of experience,’ tapping the generative force of those members in transforming said police orders (2019, p. 73, 76).

Whilst the transformation of police orders from within by already counted subjects may go some of the way to undoing the latent forms of domination embedded in the fabric of ‘the police,’ its disciplinary power, and some elements of its bio-political organisation of subjecthood, it does not adequately address the miscount of all ethical communities in their distribution of *logos*. What has the history of politics represented, if not the history of a struggle over who is or is not in possession of *logos*, that is the capacity to speak? ‘Politics’ from the an-archic perspective embedded in the project of radical democracy must extend further than the politics of the police, it must address the problem of the distribution of *logos*. The political community of neo-republican democracy, in its most dominating, is a site of a miscount. A miscount in which it assumes that all of those voices and bodies which ought and need to appear have already done so.

In positing the political subject of freedom as non-domination as ‘the citizen,’ the legal person who lives *sui juris*, and underpinning such an account with recourse to a metaphysical account of ‘the free person’, Pettit’s Method replays in a varied content but not form, a long history of establishing the very criteria by which exclusion from politics hinge and are thus justified. Such a strategy of exclusion is embedded in the very heart of neo-republican political community and freedom as non-domination. As Vatter and de Leeuw (2019) have argued, the fiction of legal personhood has materially real consequences within the fabric of legal orders, with the very distinction between

the 'legal person' and the 'human' inherited from Roman law (the same source as freedom as non-domination) producing, at its most fundamental, the basis for the separation of universal or natural rights (such as human rights) from the embodied fact of human and speaking life itself. As we can thus begin to trace, the *politics* of the police does little to help us exit the paradox of democracy captured most clearly in the state of exception and the onto-political rendering of inequality and exclusion presupposed by any location of politics at the level of the state, as the arbiter of inclusion and exclusion and as the central locus of sovereign power within the police.

What I have taken to be fundamental from the analysis of 'populism' undertaken over the course of chapters four and five, but most centrally in chapter six, is that the form of politics most pointedly disallowed by Pettit's Method are those moments in which democracy as the affirmation of a primordial equality of speaking beings appears, rupturing 'the police', and reconfiguring the sensible. At stake in these moments is not an ethical community of the counted, but the creation of a political community, that has no proper place (within the distribution of places and parts), and which is produced through the (performative) act of acting in its name, the emergence of democracy within a terrain of domination (Butler, 2015). Hence, the fundamental disagreement with neo-republican political philosophy emerges: Pettit says non-domination, radical democrats say non-domination, yet what separates one from the other is a difference of some magnitude: these two positions inhabit different Worlds. The difference, is that as radical democrats we ought not to accept nor sustain the artifices which naturalise inequality and constitute exclusion. It is a difference between what should be, and what could be. Police orders are, as Rancièrans say, here to stay, they are the symbolic fabric of social life between humans, and their logic of distribution, regulation, and domination (what Laclau and Mouffe call subordination) are an obdurately contingent feature of experience. As orders of 'propriety', 'the police' perform an articulating together of property (in and of persons), proper behaviour, language, voice, the legal order, as well as sex, gender, race, and reproduction, they police all that is taken to be 'proper'. As Devenney (2020) argues, at stake for politics and democracy as the giving presence to the axiomatic equality described by Rancière, is to perform 'the improper'. By impropriety, I take Devenney to refer to the antagonistic opposition to and refusal of that which 'the police' holds to be proper, thus reanimating 'the proper bounds of reason, dominant ontologies and the policing

of property, propriety and subjectivity' (2020, p. 1). This is a politics, not of mirroring 'the police', but of destabilisation, denaturalisation, and the affirmation of equality as simultaneously a presupposition, a demand and a lived method of refusal.

Through the method of *disagreement* and the conceptualisation of politics as the giving presence to an axiomatic equality, the critical political theorist manages to restore an appreciation of, and dignity to, all of those forms of political action which are otherwise occluded, ignored and discounted by proper conceptions of politics: those forms of political action in which people speak and act together in the name and on the basis of equality, that take place every day in a struggle for non-domination and thus stage an improper relation to the police order of regulation through individuation. The politics of neo-republicanism and thus non-domination as we have seen throughout the course of this thesis, has sought to regulate, contain, forestall, and foreclose upon any forms of political action which challenge the Republic's distribution of parts, places, bodies and capacities (relational and ratiocinative). Neo-republican democracy stands as a political theory of freedom-as-citizenship and government which proposes insightful and productive ways of thinking about power, legitimacy, and the law in liberal democratic societies, which differs in exciting and aspectually distinct ways from the neo-liberal political orders in which many of us presently live. Neo-republicanism has also offered philosophical accounts of agency, personhood, and communication which bolster this political theory, which co-articulated together produce and secure forms of domination, the route of which poses considerable theoretical and political challenges.

In this way neo-republican political community presents us with a dilemma as critical political theorists, namely: the negation of antagonism. As Ciaran Smyth (2018) has illustrated in relation to the field of socially engaged art practice, we must not negate what is at stake in the institutionalisation and proceduralisation of such activities as politics, a drive towards what is perceived by police orders as 'even better than the real thing'. Politics at the hands of Pettit and his ilk, is 'trying to get away from itself, to enact its own ontological self-cancellation by dissolving into the real' (Smyth, 2018, p. 79). Politics, dialogically rendered, and institutionalised into procedures in which its subjects need not appear beyond the pure minimum of instrumental democratic practices, self-cancels its role in human affairs. The politics of neo-republicanism is productive of a blank space in which antagonism, life, and the possibility of becoming

other than ourselves are foreclosed upon with recourse to the emphatic forcing of fears rooted in potential tyranny of the majority, the redistribution of property and the emergence of unruly or illiberal voices which may jeopardise freedom as produced and sustained through good laws.

To illustrate such a logic of politics self-cancellation Smyth recounts the scene from the Pink Panther television series in which

Pink panther finds himself indoors chasing a fly with a vacuum cleaner. He gets there too late every time, hoovering up the object that the fly has just vacated: first a vase, then the curtain and, next, a landscape painting. The action moves outdoors: there goes the tree, the house and the moon. On the landscape is hoovered up nothing remains but the vacuum cleaner and the Pink Panther with the fly lodged on his nose. Turning the vacuum on himself, he's engulfed along with the vacuum cleaner, which engulfs itself. (Smyth, 2018, p. 79)

What remains in this blank space of the political, taking the fly here as representative of antagonism or 'politics' and the Pink Panther as Philip Pettit's neo-republican account of popular control? Only the fly endures within the purified blank white space that remains after the Pink Panther's determination to eradicate the fly has eradicated everything *but* the fly. The same could be said of Pettit's neo-republican police order. So what exactly does the fly represent. Within the frame of Smyth's analysis, it is 'the really existing social antagonisms that the blank white space cannot endure' (Smyth, 2018, p. 79). There is no police without politics, there is no politics without the police. Here we truly grasp the utopian dimensions of Pettit's neo-republican democracy.

#### 7.4 Concluding reflection: The status of critical political philosophy

What is 'politics' if not a process of becoming, a struggle to be otherwise. Rancière's 'politics' as 'emancipation' *begins* in that very moment in which we act to bring emancipation about. 'Politics' proceeds through an act of disidentification, through which political subjects are made, in which subjectivisation takes place. But subjectivity in this political sense, refers not to a subject position within 'the police', it is not an identity, it is 'decoupling oneself from what one is *supposed* to be and of practicing what you want to *become*' (Arditi, 2019, p. 54, emphasis mine). 'Politics', as such, is an interstitial space of becoming in which equality is demonstrated and the police order is ruptured. 'Politics' occurs before 'the police' comes to dominate and to reconfigure itself, establishing a new order of the sensible, a process in which identities come to

constitute themselves in the interval between their assigned name and a new name to come: ‘politics’ is thus the beginning, and only that beginning, of the process of ‘identities in transit’ (Arditi, 2019, p. 54).

It is on this basis that I turn to Foucault in thinking the an-archic stance or orientation towards neo-republican democracy as conceived by Pettit. To adjudicate as to the status of neo-republican freedom and government in light of my above post-structuralist critique, is equally to adjudicate on the culture and politics of modernity. In his essay on Kant (among many other things) entitled ‘What is Enlightenment?’ Foucault describes a type of philosophical interrogation of which the Enlightenment serves as the conditions of (im)possibility for such an interrogation. Such an approach to study takes up the task of the problematisation of ‘man’s relation to the present, man’s historical mode of being, and the constitution of the self as an autonomous subject,’ as inherited from the event that was the Enlightenment. In a lecture, also on Kant, from the 1983 lecture course at the Collège de France, *The Government of Self and Others*, Foucault locates what he takes to be the orienting question of contemporary philosophy ‘whose birth we see precisely in the question of *Aufklärung*’. What Foucault has in mind here is not simply the transcendental question of the ‘conditions of possibility’ of truth, but rather the question: ‘What is the present? What is the present field of our experiences?’ (Foucault, 2011, p. 20). However, Foucault is at pains to stress, such an approach to philosophical inquiry does not imply an uncritical relation to the doctrines of such an event, but the reactivation of its attitude: ‘a philosophical ethos that could be described as a permanent critique of our historical era’ (Foucault, 1991, p. 42). Less an ‘analytics of truth’, but an ‘ontology of the present, of present reality, [...] of modernity, [...] of ourselves’ (Foucault, 2011, p. 21). This is the task of a critical philosophy.

‘There is no establishment of the truth without an essential position of otherness’, writes Foucault in the final lecture at the Collège de France in March 1984, shortly before his death (Foucault, 2012, p. 340). Such a conclusion appears at the culmination of two years of lectures on the genealogy of *parrēsia* or frank and fearless speech, traced from the ancient Greek world. Emerging from that genealogy, Foucault distils two figures, ways of living, and modes of practising philosophy that take up this position of otherness in distinct and antagonistic ways. One, is Platonism, which is rooted in ‘the *psukhē*, knowledge of self, work of purification, access to the other world’. The

other, is Cynicism, as embodied by Diogenes of Sinope, and its relation to life and rooted in ‘the *bios*, putting oneself to the test, reduction to animality, battle in this world against the world’ (Foucault, 2012, p. 340). The Cynic, displaying a critical relation to the world in which he belongs and cares for, betrays an ‘insolent courage’, to appear as he is, to tell the truth, and ‘in his criticism of rules, conventions, customs and habits’, he addresses himself ‘off-handedly’ and in an aggressive manner to sovereigns and those who have power (ibid., p. 339). Whilst the Platonist retreats, like Pettit’s Method, from the messiness of the world and enters the safe world of *thēoria*, the Cynic engages in the relational game of entanglement with others and the world, in a struggle for that ‘World’, understood in the Arendtian sense, as that which arises between us and generated within the relational space of the in-between, of politics (Arendt, 1998, p. 208).

Such a philosophical ethos, Foucault declares, implies at the very least ‘the refusal of what I like to call the “blackmail” of the Enlightenment’ (Foucault, 1991, p. 42). Such a ‘blackmail’, Foucault, describes as the false choice between being ‘for or against’ the Enlightenment. At stake, instead, is the refusal of such a choice, which Foucault takes to be an authoritarian and simplistic alternative between ‘you either accept the Enlightenment and remain within the tradition of its rationalism; or else you criticize the Enlightenment and then try to escape from its principles of rationality’ (Foucault, 1991, p. 43). Any attempt to deduce what is good from what is bad in such a tradition, does not escape the so-called ‘blackmail’, but simply reinforces its logic.

What is at stake for any philosophical interrogation of tradition, presented more often than not, as that good thing we do not dare to not want, is rather the taking up of an ‘analysis of ourselves’ who have been to a greater or lesser extent historically produced and determined in our actions, by that tradition. It is not that everything is bad, only that everything is dangerous. What is dangerous for the possibility of politics in the future, is precisely the foreclosure upon politics in its antagonistic dimension in the present, the foreclosure upon the very possibility in which we can be something else than what we already are.



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