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## On the Source, Site, and Modes of Domination

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## On the Source, Site, and Modes of Domination

### Abstract:

*This article seeks to examine how domination manifests in social relationships and institutions. It does this by examining two debates in republican literature. The first of which is whether domination requires institutionalisation? This addresses the source of domination. The second debate is on the nature of arbitrary power. This raises questions about the site of domination. It will be argued that the source of domination can be personally or socially constituted and that the site can be interactional or systemic. This yields four modes of domination that can be used to examine social institutions and relationships.*

This paper is interested in two conceptual puzzles about how domination manifests in society. The common theme of contemporary republicanism is that someone is dominated if she is subjected to arbitrary power. Drawing on this tradition in political thought, domination will be understood in the following terms:

- A social relationship is dominating if X, an agent, possesses the capacity to arbitrarily interfere in the choices available to Y, a dependent agent.

This conception of domination is often broken into distinct clauses to better clarify its content. Pettit (1997, p. 52), for example, breaks it into three clauses. Lovett (2010, p. 120) has broken down this conception of domination into five necessary conditions that are jointly sufficient. Following Pettit and Lovett, the above conception will be broken into four conditions. The first is that this conception of domination is directed at social relationships, understood in the Weberian sense of strategic interdependence; the actions of agents are, to some extent, dependent on the actions of other agents (Lovett 2010, p. 35). Second, the social relationship must be characterised by an asymmetry of power between agents, which allows one agent to interfere in the choices available to another. Third, this asymmetry must be sufficient to produce dependency on the part of the weaker agent; dependency does not necessarily entail the complete inability to exit the social relationship, but only that the cost of doing so would be unreasonably high (Lovett 2010, p. 38-41). Fourth and finally, the power the stronger agent possesses must be arbitrary, insofar as the dependent agent cannot check the stronger agent. If a social relationship is characterised by these three features then it can be considered dominating.

This paper will engage in descriptive analysis of domination rather than moral analysis. It mainly addresses the question “What is domination?” rather than the question “Is domination wrong?” This does not imply that domination has no moral relevance or even that it is not always wrong, it merely identifies that these are two distinct questions. This paper is primarily interested in two debates in the republican literature that will have a strong influence on how domination can be used to examine social relationships and institutions. A descriptive conception of domination is preferable as a starting point, because it seems necessary to know what exactly we are discussing before we can assess its morality.

The first debate focuses on the relationship between domination and institutionalisation. It is fundamentally about the source of domination. In the initial conception, domination is interactional, in that it obtains between two agents. It is also structural as it is predicated on the asymmetry, dependence, and arbitrariness that

exist between agents, the structure of their relationship, rather than psychological disposition of agents (Lovett 2010, p. 43-7). This, however, raises concerns about the ubiquity of domination; if the mere capacity for arbitrary interference is sufficient then domination may be found everywhere, be ineradicable, and not particularly useful in examining social institutions. This would also trivialise attempts to minimise domination. There are three positions in this debate. The first claims that institutionalisation is a necessary condition (Richardson 2002, p. 208-9, Bohman 2007, p. 23-30, 54-5, 92-7, Bohman 2008, p. 208-9). The second claims institutions can be a source of domination, but they are not a necessary condition for domination (Pettit 1997, p. 12-13, Maynor 2003, p. 146-9, Laborde 2009, p. 56-8, Pettit 2012, p. 44). The third argues that institutions can support dominating social relationships but are secondary agents of domination (Lovett 2010, p. 36-8, 48-9, Pettit 2012, p. 63-4).

The second debate addresses a controversy between Pettit and Lovett over the nature of arbitrary power. It is about the site of domination. Pettit (1997, p. 55-8, 2008), along with the majority of republicans, argues that power is arbitrary when it is not compelled to track the interests of those subjected to it or, as he has alternatively put it, when it is alien. Lovett and List, on the other hand, claim arbitrariness exists only when actions are not externally constrained by impartial rules or a “rule of law condition” (List 2006, Lovett 2009, p. 821, Lovett 2010, p. 111-19). This is of great interest since the difference between being dominated and being free is determined by arbitrariness. The republican tradition is distinguished by the claim that a citizen of a free state is not dominated even if she is subjected to a greater level of interference than her counterparts living in a despotic state, because a free state exercises non-arbitrary power (Pettit 1997, Skinner 1998, Maynor 2003, List 2006, p. 209, Lovett and Pettit 2009, p. 22-5, Skinner 2010, p. 99-102). It is, therefore, necessary to have a clear understanding of what arbitrariness is in order to be able to assess whether a social relationship or institution is dominating.

These debates need to be addressed, because how they are answered will fundamentally influence how we examine social relationships and institutions and, if we are so committed, how to alleviate domination. The debates on the source and site of domination can identify different modes of domination. This is a neglected but important element of the republicanism, because if certain modes are overlooked then domination will continue to subvert human freedom. I will use reflective equilibrium to test the positions in these debates against the considered judgement that slavery is the paradigmatic case of domination (Rawls 1999, p. 17-19, 42-5, Rawls 2001, p. 29-30). The favoured description of domination must be able to capture the salient features of slavery. If this is not the case then the conception of domination must provide compelling reasons to revise the considered judgement on slavery or else be discarded.

The considered judgement on slavery is appropriate; it features in the historical and contemporary republican literature as the primary example of domination. Cicero (2001, p. 57-8) expressed doubts that the unskilled labourers could be reliable citizens since they were under their employer’s power in the same way that a slave is under his master’s power. Skinner (1998, p. 59-70, 2002) has shown the influence of the *Digest of Justinian*’s definition of a slave and the Roman historians in shaping the conception of freedom in Anglophone political thought in the seventeenth and eighteenth centuries. The current republican revival has continued the use of slavery as the primary example of domination. Slavery has featured

prominently as the means to illustrate the difference between freedom as non-interference and freedom as non-domination; a slave may avoid interference because her owner is slothful or kind, but she can never be considered free since she is always liable to inference from her master (Pettit 1997, p. 31-5, Viroli 2002, p. 8-9, Maynor 2003, p. 36-7, Skinner 2008, p. 96-7, Laborde 2009, p. 57, Lovett 2009, p. 281, Lovett and Pettit 2009, p. 14, Lovett 2010, p. 154-6). Slavery is the common thread that is woven through historical and contemporary republican literature, which makes it a stable point for this study of domination.

The paper will be organised into three parts. The following two sections will each address the debates on the source and site of domination. The final section will summarise and clarify four general modes of domination.

### *On the Source of Domination*

The first debate addresses the relationship between domination and social institutions. The initial conception of domination is interactional; it obtains when one agent possesses the capacity for interference in the choices available to a dependent agent. However, a minority within the republican tradition have argued that this conception of domination does not fully capture the “normative” element of domination (Richardson 2002, p. 33-34, Bohman 2007, p. 8-9, ch. 2). This is an unconventional use of the term “normative.” It does not refer to the morality of domination, but to the status and power of agents in social relationships. The normativity of domination is the capacity to put another agent under an obligation to obey by virtue of arbitrary power. To put it another way, it arbitrarily establishes the *norms* of a social relationship. The argument of these theorists is more stringent than bare normativity. It is not the product of a simple act of arbitrary power, but requires the support of legitimate or recognised social institutions. Hart’s (1994, p. 82-91) distinction between being obliged and having an obligation helps to clarify this point. The gunman who draws a pistol on a passerby and demands his wallet obliges compliance through the menace of his arms. The legislator puts the citizen under an obligation to obey a new law because her power is derived from a social institution that is deemed legitimate. In the case of domination, we can distinguish between the condition of the gunman’s victim and the slave. It is true that the gunman has arbitrary power over his victim, but it is not domination because the victim does not have a duty to obey. The slave, by comparison, is subjected to the arbitrary power of his master and is under an obligation to obey since slavery is a recognised social institution. The slave lacks the normative power to challenge the obligations his owner places upon him and is dominated. The gunman, no matter how dangerous, cannot impose an obligation and therefore his victim is not dominated. This institutional-normative conception of domination is useful as it exposes the normative component of domination, which can be understood as the capacity to impose social relationships and set their status without reference to the dominated agent’s interests (Richardson 2002, p. 34, Bohman 2007, p. 95, Bohman 2008, p. 197-9).

The institutional-normative theorists assert that the initial conception concedes too much to the understanding of liberty as non-interference and, as a result, it trivialises the condition of the slave by conflating it with simple instances of arbitrary power that do not operate under the “colours of right” (Richardson 2002, p. 34). The institutional-normative account they offer is the power and authority to change the status of an individual by arbitrarily assigning their rights and duties (Hayward 2000,

p. 162, Richardson 2002, p. 34, Bohman 2008, p. 198). To put it another way, the rules of the social institution are structured in such a way that enables the agent of domination to place those subjected to their power under an obligation to obey and leaves them without the capacity to adjust or challenge their status (Bohman 2007, p. 54-5). Dominating agents may act with impunity since the subject of domination lacks the power to challenge the rules of the social relationship.

That the power of a dominating agent can be institutionally determined is not a novel claim. Pettit's distinction between *dominium* and *imperium*, which itself is drawn from the Roman historians and moralists, has an element of this. The former indicates domination between private agents, such as the gunman over his victim, whereas the latter denotes domination of a private agent by an agent of the state, such as a tax collector over the subject of an absolute monarch (Pettit 1997, p. 13). Moreover, in his recent work Pettit has written about "structural domination" to refer to when social practices such as culture or the economy can support dominating social relationships (Pettit 2012, p. 63, Pettit 2014, p. 53). This appears to support the idea that there are two sources of dominating power: personal and social. Laborde has provided a sharper distinction with "agent-relative" and "systemic" domination. Agent-relative domination obtains when arbitrary power is determined by the personal attributes of the dominating agent (strength, wealth, intelligence, etc.), whereas systemic domination obtains when arbitrary power is derived from an institutionalised set of rules and customs. Therefore, the gunman's power is derived from his personal attributes, while the slave-owner's power is mostly determined by the social institution of slavery (Laborde 2009, p. 57). Thus, this interpretation of domination does not require the power-bearing agent to be a representative of the state, but to have the support of background social institutions. The use of social institutions in this paper is comparable with how Rawls referred to the family as a social institution; it is defined by the congealed practices of individual families (Rawls 1999, p. 7-8). To put it another way a social institution defines the rules of a game, while the constituent agents are the game's players (Havel 1991, p. 136-41, Pogge 2010, p. 15). A social institution does not need official state recognition to exist. For example, women would be subjected to systemic domination in a society where informal patriarchy, not codified in law, arbitrarily determined their normative status. If this is the case, then the normative element of domination can be unshackled from the state and use to refer to the use of power to create the rules of a social relationship. The source of domination can be personally or socially constituted.

This, however, is not universally affirmed. Lovett appears to reject the notion that there is something distinct or independent about social institutions. The master-slave relationship is encompassed in the interactional relationship between the two agents. The background social institution of slavery may intensify the master's capacity to dominate the slave, but it is not constitutive of that relationship. If slavery were prohibited but the slave-owner still possessed sufficient power to keep the former slave under her control it would not fundamentally alter the master-slave relationship (Lovett 2010, p. 36-8, 48-9). Social institutions, therefore, are best conceived as secondary agents that support interactional relationships of domination, but are not intrinsic to the primary relationship between agent and subject. This distinction between primary and secondary agents of domination is drawn from Onora O'Neill's (2001, p. 181) account primary agents of justice and secondary agents of justice. In the case of informal patriarchy, Lovett would assert that the agent-relative power of men dominates women, though perhaps it is supplemented by informal

patriarchy, but at its root there is nothing different between the gunman and the patriarch.

There are three positions in this debate. The first asserts that domination is strictly institutional-normative: a social relationship is dominating if X, an agent, possesses the *institutionally constituted* capacity to arbitrarily interfere in the choices available to Y, a dependent agent. The second asserts that a social relationship is dominating if X, an agent, possesses the *personally or socially constituted* capacity to arbitrarily interfere in the choices available to Y, a dependent agent. The third claims that the initial conception of domination is essentially correct, though social institutions may often provide support as secondary agents.

The first claim that domination must be determined against an institutional background is too strong. It would produce a conception of domination that would be incoherent. The claim of Richardson and Bohman is that interactional domination is trivial because it does not properly capture the level of normative disempowerment within relationships of domination. However, they premise their notion of domination on official recognition. The slave is dominated because the social institution of slavery is supported by the state in a way that leaves it impossible for the slave to contest the terms of the social institution. However, this would mean that *de facto* slavery could not be considered dominating; by *de facto* slavery I refer to relationships that are sufficiently similar to slavery, save for legal recognition. Instances of what Joel Quirk (2006) has called “contemporary forms of slavery” do not meet the strict normative understanding of domination. It would exclude trafficked persons who are caught in debt-bondage as the price for being smuggled into another country or children and women who are sold and degraded in the sex trade. If the normative conception of domination cannot recognise social relationships and institutions that are indistinguishable from slavery but for official recognition, then the charge of triviality can be more properly lodged against it rather than the personal or mixed conception of domination. If the exercise of private power is sufficient to replicate the master-slave relationship without official sanction, the quasi-slave-owner has the power to determine the status of the quasi-slave in the way that concerns normative theorists. It is unclear why the absence of the “colours of right” would make the person in illegal debt-bondage any less dominated. Consequently, the position that makes normative power synonymous with official institutionalisation does not capture our considered judgements on slavery and runs the risk of trivialising unofficial forms of domination.

If the normative conception is detached from institutionalisation it is more plausible, but it becomes unclear how it is different from interactional accounts of domination. I will refer to domination that is formally or informally constituted by background social institutions as “social” domination, rather than Laborde’s term “systemic domination.” This is because systemic domination will be used in the debate on the site of domination. Pettit (2006, p. 278-9, 2008, 2014, p. 23, 63-4) endorses a social-normative understanding of domination and stresses the importance being an empowered free citizen. He claims that dominating agents do not have to track the interests of those under their power. The only way that this would be impossible is if weaker members of social relationships were sufficiently empowered to ensure their interests were being tracked and to check arbitrary interference. This requires normative power that is not premised on being able to live a particular conception of the good-life, but simply as a counter-measure to domination.

This is what underwrites the notion of “antipower” that Pettit (1996, p. 588-95) used in his early work and has let fall into disuse. Although Pettit was correct to abandon the concept of antipower as a synonym for freedom, it helps to bring out the normative element of domination and non-domination. A person has antipower when they are able “command non-interference” this is a normative power since it is based on the capacity to resist an external agent imposing a social relationship with arbitrary duties and rights (Pettit 1996, p. 589-90). Pettit associates anti-power with traditional rule of law and the regulation of power, but importantly identifies welfare policies as providing an important source of anti-power. The common thread between these three conditions is that by enhancing antipower it enables agents to resist the arbitrary imposition of rights or duties (Pettit 1996, p. 590-2). The core of this argument exists in his recent writings on social justice, where he acknowledges that if people are not suitably resourced they cannot check invasive power (Pettit 2012, p. 69-70, Pettit 2014, p. 33-8).

The importance of antipower has also been noted by institutional-normative theorists like Bohman, who notes the importance of citizens having a voice in determining the content of their rights and duties (Bohman 2008, p. 199). This is a salient point and one that can be generalised to the theory of non-domination in a way that is detached from official institutionalisation. If non-domination requires the normative power to check arbitrary interference, then domination must also be defined in normative terms as the absence of the ability to check arbitrary interference. Therefore, the background conditions that establish the terms of the social relationship and the status of the agents are intrinsic to the conception of domination.

This normative approach should not be confused with a moralised conception of domination. John Christman’s (1998, p. 203) critique of Pettit makes the mistake of conflating the two. He claims that non-domination is understood as the absence of “unjust” interference and, therefore, domination must be considered “unjust” interference. However, this is not only a normative conception of domination but also a moralised one. Whether interference is just or unjust appeals to a moral criterion that allows such judgements to be made. Consequently, this would trouble a conception of domination by making it subsidiary to external values (Carter 2008, p. 64-6, 81). It would not be domination or non-domination that does the work in republican theory but an external conception of the good. Christopher McMahon (2005, p. 72) claims that non-domination is a “normative power.” It is not simply living as one “ought” to live, but having the ability “to make one’s life in the way it ought to be.” However, this notion of normative domination is still unnecessarily moralised. It relies upon being prevented from living as one “ought” to live. It is not necessary to include the moralised “ought” in a description of domination. It is sufficient to say that normative empowerment is a state where agents have the power to negotiate or contest the rules of the social relationships. This can be determined without reference to any external conception how one “ought” to live or the morality of the rules of the social relationship.

This applies to both interactional and social instances of domination. The gunman thought experiment clarifies this assertion and has been put forward by Skinner as an example of domination (Skinner 2008, p. 95). A gunman stops a passer-by and makes the demand “your money or your life.” This, however, occurs in circumstances that are akin to the state of nature. In these circumstances, it would



seem that a social-normative conception would have little to offer, as there are no background social institutions to either prohibit or sanction the actions of the gunman. This seems to be a clear case of domination as the victim is clearly in the power of the gunman. However, it is useful because it exposes a shortcoming in the institutional-normative argument that can be used to reconcile these two accounts. In this case, the gunman does exercise normative power insofar as he establishes the status of agents in a social relationship and assigns the passer-by a position in which he cannot dispute or exit the social relationship without incurring unreasonable exit costs. Skinner gestures towards this when he claims that the gunman removes the choice of carrying on unmolested from the victim. (Skinner 2008, p. 95-6) However, it's not simply a matter of removing choices but also employing arbitrary power to establish the victim's inferior status in the relationship. This is normative element in the gunman case. The use of arbitrary normative power is distinct from arbitrary interactional power that the gunman has once the relationship is established.

This lends credence to Laborde's distinction between agent-relative and systemic forms of domination, but it also brings out a further distinction about the source and site of arbitrary power. The gunman case is an agent-relative instance of domination in which the gunman exercises normative arbitrary power to establish the social relationship that the passer-by cannot contest or exit. The gunman also possesses interactional arbitrary power within the relationship, in that the adherence to the rule "your money or your life" is dependent on the gunman's will; he may let a defiant passer-by go without shooting or he may shoot a compliant passer-by. In the case of legal slavery the normative power that establishes the social relationship is located in the social institution of slavery, but the slave-owner holds interactional arbitrary power. In this case normative power can be described as social as opposed to personal. Lovett's interactional understanding of domination does not hold up to scrutiny. The social institution of slavery does not simply support the slave-master, but is the source of the interactional power of the slave-owner. If slavery was abolished but the slave-owner continued to dominate her former slaves by keeping them in chains, then this would be a new dominating social relationship. This is because the slave-owner is now serving as the normative source and the interactional site arbitrary power.

This is the most important insight that can be drawn from the institutional-normative conception of domination. Domination is often characterised by normative and interactional power. This claim is qualified because while all instances must be normative in some sense, even the gunman case, there is the possibility that the exercise of arbitrary normative power to establish a social relationship is sufficient to establish domination even if it does not produce interactional arbitrary power. This issue will be taken up in the next part of the paper.

To clarify, domination is always normative insofar as it is characterised by the use of power to set up the rules or norms of a social relationship in a way that cannot be contested by the agent subjected to domination. The mistake that is made by theorists of institutional-normative domination like Richardson and Bohman is to tie this normative power to official institutions. The source of normative power may be social, thought of in a broader sense than official recognition, or it may personal. However, Lovett's neglect of institutional sources obscures an important distinction about the site of domination.

The concern about triviality and ubiquity may linger; if the mere capacity for arbitrary interference is sufficient for domination to obtain then it will be found everywhere and be ineradicable. The concern about triviality has already been addressed, there are forms of domination, such as informal slavery, which are not institutionalised but are non-trivial. The claim that domination would be endemic in society if it were not conceptually predicated on institutional sanction is contingent on the belief that persons would not be in a situation of mutual uncertainty. Persons may operate with the reasonable belief that they have the capacity to check attempts at arbitrary interference by other persons. Pettit (1997, p. 94-5) mentions this in his discussion of ways in which domination could be minimised without the state. The problem with individualistic pursuits of non-domination is that they would create a security dilemma. If one agent improves their antipower, other agents may interpret this as a threat and so on. The establishment of a free state ensure a relatively equal or reciprocal distribution of antipower. It may be true that arbitrary interference can never completely be eliminated, but it can be minimised. The ubiquity complaint is premised on the notion that domination is a black and white issue rather than a matter of intensity. The threat of being robbed is a fact that may never be able to be eliminated, but it is a less intense form of domination and one that would not undermine the capacity of persons to formulate and pursue a life plan, whereas the slave's plans are perpetually subject to her master's permission (Pettit 1997, p. 74-7). The belief that domination should be fully eliminated places unrealistic demands on republican theory; this is why the goal is the minimisation of domination rather than its total eradication (Lovett 2010, p. 173-79).

This section has argued that all domination is normative insofar as it arbitrarily determines the status of agents. However, the source of normative power may come from individual agents, as was the case with the gunman, or social, as is the case with slavery. The institutional-normative reading of domination is too narrow, as it excludes social-normative forms of domination, such as informal slavery, whereas the interactional reading of Lovett is too broad, in that it cannot differentiate the sources of domination. The conception of domination will be modified to reflect this: a social relationship is dominating if X, an agent, possesses the *personally or socially constituted* capacity to arbitrarily interfere in the choices available to Y, a dependent agent.

### *On the Site of Domination*

This part of the paper will address a disagreement between Pettit and Lovett over the meaning of arbitrary power and whether domination can be systemic. They both put forward accounts of arbitrariness that attempt to avoid the debate over subjective and objective interests. Initially Pettit (1997, p. 55) claimed that power is arbitrary when it is not compelled to track the "relevant" interests of those subjected to it. The use of "relevant," "avowed", and "avowable" interests subjected Pettit to the charge that he was employing a moralised or unstable conception of domination, depending on whether interests were considered objective or subjective (Christman 1998, Richardson 2002, Larmore 2004, MacMahon 2005, Carter 2008, Lovett 2010). This line of criticism, however, misses the core of republicanism's commitment to non-domination. It can maintain an agnostic position on interests; what it is concerned with are constraints on power. Pettit (2006, p. 276) clarified this when he wrote that by avowable interests he meant "avowal-ready" not "avowal-worthy." The former speaks to normative empowerment, while the latter is a moralised conception of

interests. Non-arbitrary power is constrained by those subjected to it when it allows them to ensure that their avowal-ready interests are being tracked. This position was clarified in Pettit's (2008, p. 106) use of "alien control" as a synonym for domination. An agent is subjected to alien control when their choices are subject to the control of another agent over whom they have no power. Substantively this does not add to Pettit's existing notion of arbitrariness but merely clarifies it in a way that sets aside the debate on interests by focusing on the important of power and control. Lovett, on the other hand, has argued that non-arbitrariness only requires the presence of publically known and impartially enforced rules. It does not require those subjected to it to exercise control over these rules. The two conceptions of arbitrariness can be understood in the following terms:

- A<sub>1</sub>: Power is arbitrary when it is not subjected to external control by the agents affected by it.
- A<sub>2</sub>: Power is arbitrary when it is not subjected to external control.

It will be argued that A<sub>2</sub> is not plausible given the distinction between source and site of domination. It will be shown that Lovett's notion of non-arbitrariness is not sensitive to the use of normative arbitrary power to establish social domination. This develops Pettit's notion of alien control by confirming the possibility of systemic domination. It is true that Pettit(2012, p. 43) has made reference to "structural domination" in his most recent work insofar as he has made brief remarks that background social institutions may vitiate choice in a way that is similar to invasion. However, he tends to argue that structural sources of domination only serve as support for interactional domination between agents (Pettit 2012, p. 63, 126, Pettit 2014, p. 53). This is also distinct from Laborde's understanding of systemic domination as it refers to the site of domination and is contrasted with interactional domination.

The account of arbitrariness put forward by Pettit claims that power is arbitrary or alien when it is not compelled to track the interests of the agents subjected to it. However, this is not a moralised account. It may be that the act of arbitrary interference is in the "substantive" interests of those subjected to it; what matters is the absence of control over its exercise by those subjected to it. Therefore, the agent with the capacity of interference needs to be forced to track the interests of those subjected to it in order for it to be considered non-arbitrary or non-alien (Pettit 1997, p. 55). If an agent can check interference they cannot be said to depend on the leave of another agent. (Pettit 1997, p. 55-8, Maynor 2003, p. 38-9). The standard example of this in the republican tradition is that if the state is suitably invigilated by the people, via democratic elections for example, it cannot exercise arbitrary power or alien control. This can require agents to delegate some of their powers to a proxy or deputy, such as a member of parliament, but power ultimately lies with them. The individual citizen will have the sufficient command of antipower to ensure that they are not subjected to domination by private persons or government officials. The central claim for Pettit is that power is rendered non-arbitrary when it is subject to external control by those subjected to it.

Lovett agrees that an account of non-arbitrary power demands reliable external constraints that are agnostic about the nature of interests, but claims that it does not necessarily have to be constrained by those subjected to it. In order for power to be non-arbitrary, it does not need to be compelled to track interests by those whom it affects,

but merely provide agents with a secure status. This is dependent on two conditions being satisfied: the first is that the rules must be publicly known so that those subjected to them know where they stand; second, these rules must be impartially administered (Lovett 2010, p. 115). This makes power non-arbitrary because it is not contingent on the will of the power-bearing agent (MacMahon 2005, p. 69 fn.4). It may be helpful to think of this as third-party invigilation. The ability to check interference is held by an impartial agent and exercised on behalf of the subject of interference. However, these are not deputised or proxy agents. They hold power in their own right. They are only required to ensure that the rules are properly enforced. This claim appears to be compatible with the considered judgement on slavery. The slave is subjected to arbitrary power insofar as she cannot ever be sure of her status with her owner, as every action she takes is by her master's leave. Her master's power over her is not subjected to external constraint. The actions of an agent who knows the rules of the game and is confident that they will be impartially enforced are not predicated on the leave of another agent.

On its face this is a coherent explanation of arbitrariness and one that seems to be in line with our considered judgements about domination, at least as far as it appeals to a distinction between the condition of the slave and the condition of the subject of regularly administered rules. However, it has a potential problem insofar as it would allow for certain forms of institutional discrimination to be compatible with non-domination. It would allow an idealised version of apartheid South Africa, where the white minority codifies the discriminatory laws pertaining to the black and coloured populations and sets up an independent judiciary to ensure that these laws are impartially enforced. The discriminated population has their status enshrined in law and protected by an effective, impartial legal system. In these circumstances the subjects of institutional discrimination are not in a situation of perpetual uncertainty because they can be sure that laws will be administered impartially, unlike slaves who must forever be wary of their master's changing moods.

It does not seem to be farfetched to assume that many people would hold the intuition that an apartheid regime, even in an ideal form, would be dominating. The only way a group of people could be denied access to political power, employment and educational opportunities, and certain public spaces like parks and beaches is through the exercise of arbitrary power. Lovett attempts to soothe this worry by making two claims. The first is that domination should not be the only concept that we use to assess social relationships and institutions. It may be that institutional discrimination is not dominating but that it is unfair. Indeed, trying to make domination a catch-all term would limit its incisiveness. Secondly, the alternative would make democracy the analytic antithesis of domination. This, in his opinion, would trivialise the argument that democracy is the best course to minimise domination by making it a forgone conclusion (Lovett 2010, p. 117-8). Therefore, we should revise our intuitions with the knowledge that there are other tools for moral criticism and acknowledge that, while domination is not the antithesis of democracy, democracy is perhaps the best solution to domination. Yet despite these claims, this argument is unpersuasive.

Lovett's argument is framed against the way arbitrariness was formulated by Pettit, which has been taken up by other republican theorists and critics, as a matter of tracking interests. However, recently Pettit (2008, esp. p. 106-8, 110-4) has reinterpreted arbitrariness as "alien control." A person is subjected to alien control

when she is unable to counter or redirect interference. This discards references to “tracking interests” and replaces it with normative empowerment within social relationships. This is not moralised, but premised on the imbalances of power rather than how power ought to be utilised (Pettit 2008, p. 116-7). However, the member of Lovett’s discriminated group does not seem to be under alien control. If a member of the privileged community infringes on the publically known rules of the social relationship the members of the discriminated group can check or redirect this power by appealing to the justice system. The impartial enforcement of the rules appears to empower the discriminated group. They may not enjoy equality but, since their activities are not dependent on the leave of an identifiable agent, they are not subjected to alien control.

Yet, this is only because Pettit’s notion of alien control has been conceptualised as interactional and does not address the use of arbitrary or alien power to establish these relationships and broader social institutions. In his attempt to show that his conception of domination is not based on moralised notions of interests, Pettit has obscured the normative element of domination. This has deprived him of a great resource in his debate with Lovett as the similarity between the slave and the discriminated minority is evident at the systemic level. He has briefly speculated that the vitiating of choice, through the denial of resources may amount to a “structural form of invasion” (Pettit 2012, p. 43). Yet, apart from a few asides he remains focussed on interactional forms of domination. So this is not so much a break from Pettit’s idea of domination, but an elaboration on the site of domination.

Lovett’s notion of arbitrariness insensitive to the use of power that establishes social relationships. The subjects of discrimination have had their status under the law defined through the use of arbitrary normative power. The administration of the law may be non-arbitrary, but the normative background in which these laws were generated is arbitrary insofar as those subjected to the rules are not involved in formulating them or lack the ability to challenge them. It may be that the subjects of institutional discrimination are not subjected to the same level of uncertainty as a slave, but their choices have been subjected to the same type of modification. Pettit claims that alien control alters the choices available to those subjected to it by reducing their ability to make deliberative choices, it may remove specific options that would be available or it may replace one option with another. The discriminated group has had their sphere of choice circumscribed and perhaps their capacity to make deliberative choices reduced by the discriminatory regime (Pettit 2008, p. 106-7). Alternatively, we could use Pettit’s more recent terms and say that systemic domination constitutes an invasion of the choices available to the discriminated group, but only appears to vitiate choice (Pettit 2012, p. 35-44). The laws that establish the available choices for the members of the subjected group are made available only by the leave of the empowered group. In this sense, the members of the discriminated group are exposed to systemic domination without interactional domination.

This can be clarified by returning to the gunman thought experiment. As before the gunman stops the passer-by and establishes the rule “your money or your life.” However, the uncertainty of the passer-by is removed by the presence of an accomplice. The gunman explains that if he violates his rule, by shooting the passer-by after being given the wallet, the accomplice will bludgeon the gunman with a rubber cosh. As the rules of the social relationship are public and the accomplice is

independent, the passer-by can plan with reasonable confidence. By Lovett's account, there is no domination in this case. Yet, this does not take into account the initial use of normative arbitrary power to establish the status of the passer-by. It seems strange to claim that the accomplice's scrutiny of the gunman's actions remedies this. After all, the accomplice is an accessory to the initial use of power. The fact that the accomplice in the gunman case and the legal system in the institutional discrimination case are functionally separate from the gunman and the legislature does not mean they are not part of a broader system of social institutions that are characterised by domination. This simple instance of personally constituted systemic domination shows why third party invigilation cannot be considered sufficient for non-arbitrariness to obtain.

The discriminated majority case is an example of socially constituted systemic domination, but one that does not produce interactional arbitrary power. The exercise of arbitrary power at the systemic level establishes social institutions that the majority cannot revise or dispute, even if they are not subjected to interactional arbitrary power in the social relationships nested within these institutions. The notion of systemic domination has been resisted in republican theory, but does not need to be. Until recently, Pettit (1997, p. 52, 79) predicated his conception of domination as necessarily requiring an agent, be it individual or corporate, and not a network, system, or "whatever." This is a matter of stipulation, as it does not have an explicit justification. However, Lovett provides one; domination requires an agent because it requires someone to be able to have interactional arbitrary power over another person. He asks us to imagine an island where slavery is institutionalised. However, one night the slave-owners experience a revelation that it is immoral to own another person and abandon the island never to return. The slavery law remains on the books but without any owners it does not make sense to say that the slaves remain dominated as no one has the capacity to interfere with the choices available to them (Lovett 2010, p. 48-9). Even Laborde's (2009, p. 57) systemic domination is predicated on agents, such as transnational corporations, being given systemic advantages that allow them to exercise interactional arbitrary power. There is a general presumption that the site of domination must be interactional. Indeed, even Pettit's recent thoughts on structural domination seem to require an agent exercising arbitrary power (Pettit 2012, p. 63, Pettit 2014, p. 53).

Yet, the exercise of arbitrary power at the systemic level does not appear relevantly distinct. It is exercised in a way that cannot be checked or redirected and limits the choices available to those subjected to it. Pettit (2008, p. 113) asserts that alien control undermines the "can do assumptions" of those subjected to it. The slave is aware that he cannot go to the market without his master's leave. Systemic arbitrary power accomplishes the same thing. The victim of the gunman and his accomplice may operate with more certainty than the slave, but he cannot carry on his way without being robbed or shot. Likewise, the member of the discriminated group may have a zone of non-alien control, but it is circumscribed by the exercise of arbitrary power at a systemic level. For example, a state may have an established religion and prohibit members of other sects from attending the most prestigious universities. These laws are publically known and impartially enforced. If a student from an independent church is denied admission, it is not the result of the use of interactional arbitrary power by a bigoted admissions officer. The admissions officer is playing by the rules. Systemic domination requires the support of agents to be maintained, but this does not mean that these agents are exercising arbitrary power. Yet, clearly the

choices available to the minority student have been arbitrarily circumscribed in a comparable way to that of the slave.

This shows why Pettit should not have been so quick to drop antipower in his analysis of domination. Antipower is not just directed at checking interactional arbitrary power between persons, but it requires agents be able to challenge how their status is determined (Pettit 1996, p. 594-5, Bohman 2008, p. 199). Lovett's conception of non-arbitrariness is flawed because while the discriminated minority may have a zone of existential predictability, they lack antipower. This can be seen by using Pettit's eyeball test; a person is not dominated when she is "able to look the other in the eye" secure that she enjoys her rights without another's leave (Pettit 1997, p. 60-1, Pettit 2012, p. 84-5). The discriminated majority must fail this test because they are aware that no matter how proofed they are against interactional domination, their choices have been systemically circumscribed in a way that they cannot dispute. They are known to be inferior in society.

A truculent critic might object that systemic domination is a misleading term and the apartheid example is an instance of group domination; the privileged group has employed the law to dominate the disadvantaged group. Systemic domination implies that it is the system that dominates rather than the group, but the law only functions when it is employed by people. Systemic and interactional modes of domination refer to the site of domination, not the agent. In the latter's case the site of domination is the interaction between two agents in which one has the capacity to arbitrarily interfere with the choices available to a dependent agent, as is the case with a master and a slave. The apartheid example is devoid of this interactional domination, as the members of the advantaged group must conform to the letter of the law. The university administrator who enforces discriminatory rules is not a dominating agent, as she does not exercise interactional arbitrary power, but is an agent of domination, as she supports systemic domination. A dominating agent would be able to exercise arbitrary judgement in who is admitted into the university, while an agent of domination is only in a position to enforce rules derived from the use of systemic domination.

The question of whether a system can dominate without agents is interesting, but slightly outside the scope of this paper. However, if the reader will indulge a rather fanciful thought experiment, I will hazard a tentative answer. In this case the laws that govern the apartheid regime are externally given by a legislator who then promptly dies. The laws are impartially enforced, not by the privileged group, but by a series of automatons; they enforce the law impartially and cannot be reprogrammed. In this case all groups have no influence over their status, even though one group is privileged they cannot be said to dominate the others since they do not have systemic or interactional arbitrary power. They do not even act as agents of domination. The automatons cannot be said to dominate since they are not agents, but only machines with no will of their own. The legislator cannot be said to dominate after the laying down the law since he is dead and has no agency. It seems at least possible that this would be an instance of "pure" systemic domination. However, given the remote possibility of automaton-enforced apartheid, it does not seem a particularly pressing issue for a conception of domination in the present day.

Lovett's (2010, p. 48) dismissal of Václav Havel's claim that communism was a system in which all persons dominated each other misses the importance of systemic

domination. Havel (1991, p. 136-8) provides the example of a greengrocer who puts up a Marxist slogan in the shop he manages, knowing that if he does not he will be fired. In doing so, he endorses the “rules of the game” which enables its continuation and, indeed, its existence (Havel 1991, p. 136-8). The shopkeeper and the admissions officers both act in a way that, while non-arbitrary, supports a system that arbitrarily limits the “can do assumptions” of some of its participants. Therefore, it must be admitted that systemic domination, where no agent possesses the capacity for interactional arbitrary interference, is a conceptual possibility. This understanding of institutional domination is similar to Valentini’s (2011, p. 137-41) defence of systemic coercion, in which a system of rules can be considered coercive if it foreseeably and avoidably places non-trivial constraints on some agent’s freedom. This distinction between systemic coercion and domination is that the latter requires the system to be imposed arbitrarily and be outside of the control over those subjected to it. The imposition of a free state, to use a classic example, would not be an instance of systemic domination since it would be controlled by those subjected to it.

Lovett’s account is unpersuasive since it does not capture the possibility of the socially constituted arbitrary power being used to establish relationships that are not characterised by interactional arbitrary power. Consequently, the notion of arbitrariness that seems most plausible is A<sub>1</sub>: power is arbitrary when it is not subjected to external control by the agents affected by it. This endorses Pettit’s understanding of alien control, but requires it to be extended beyond an interactional understanding to address systemic domination. It modifies Pettit’s alien control by reviving his old notion of antipower to explicate the systemic dimension. Therefore, the initial conception of domination must be further modified to accommodate this distinct site: a social relationship *or institution* is dominating if X, an agent, possesses the capacity to arbitrarily interfere, *either interactionally or systemically*, in the choices available to Y, a dependent agent. In the case of X in circumstances of systemic domination, the agent or agents in question are the ones that shape the systemic background using arbitrary power. It does not refer to the agents that then enforce the systemic background.

### *Conclusion*

This paper has developed the conception of domination derived from the republican tradition. It has stressed the importance of the source and site of domination. Domination is inherently normative, in a non-moralised way, in that it requires the exercise of power that determines the status of agents within a social relationship. Normative power can be personally or socially constituted. It was shown that the site of domination can be interactional or systemic. This produces a general conception of domination that can be understood in the following terms:

- A social relationship *or institution* is dominating if X, an agent, possesses the *personally or socially constituted* capacity to arbitrarily interfere, *either interactionally or systemically*, in the choices available to Y, a dependent agent.

Domination can therefore manifest in four general modes:

- i. Domination can be *personally constituted* and *interactionally* arbitrary. The example of this is the isolated gunman case.



- ii. Domination can be *personally constituted* and *systemically* arbitrary. The example of this is the abetted gunman case.
- iii. Domination can be *socially constituted* and *interactionally* arbitrary. The example of this is slavery.
- iv. Domination can be *socially constituted* and *systemically* arbitrary. The example of this is the discriminatory regime with publically known and impartially enforced laws

These four patterns of domination are useful because they provide templates that can be used to assess the character of social institutions and relationships.

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