

**“Libertarian (Un-)Freedom Revisited: How Nozick Can Rescue Republicanism From The  
Problem Of Political Trust”**

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### Abstract

Many authors have critiqued Phillip Pettit's republican conception of freedom as non-domination (F=ND). I argue that the result of those critiques should *not* be any of the following (1) accept List and Valentini's conception of freedom as independence (F=Ind) as a preferred alternative; (2) rely on trust in group agents via democracy or civic virtue as a means of defending F=ND; (3) revert to the traditionally accepted account of liberal freedom as the actual absence of interference. Instead, I argue that when the concerns of Pettit's critics are addressed, what we are left with is a conception of freedom compatible with the implicit definition given in Nozick's *Anarchy, State & Utopia* (ASU). I attempt to articulate a conceptual structure of liberty that is preferable to the rival views presented, and that is compatible with Nozick's larger body of work beyond ASU. The positive view that is defended is that when comparing the structure of rights and freedoms in Nozick's larger body of work against Pettit's conception of Freedom as non-domination, the former is preferable. This is precisely because Nozick's conception does not lead us to rely upon the "knock-on" effect of personal trust in government that republicanism requires in order to generate a state that maximizes freedom for all, but instead is able to generate a state exclusively from relations of mutually-beneficial exchange - relations that are themselves dependent solely on acts of impersonal trust - without violating any individual's rights.

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## §1. Introduction

In their 2016 paper “Freedom as Independence,” Christian List and Laura Valentini (“LV”) present a comprehensive and influential taxonomy of four conceptions of negative liberty:

<i>Freedom</i>	Non-moralized	moralized
Non-robust	Liberal freedom (1) Freedom = actual absence of relevant constraints	moralized liberal freedom (2) Freedom = actual absence of <i>unjust/wrongful</i> relevant constraints
Robust	Freedom as independence (3) Freedom = robust absence of relevant constraints	Republican freedom (and its cousins) (4) Freedom = robust absence of <b>arbitrary</b> relevant constraints (= absence of

They present Robert Nozick as defending (2), Philip Pettit as defending (4), while themselves defending (3). To illustrate, imagine a murderer named Buffalo Bill (BB) who we know will be caught in the future, but who as of yet remains hidden in a secret lair. BB did the crime, and he will certainly do the time; we’re aware that BB’s crimes were heinous and that his conviction and imprisonment will be non-arbitrary. In LV’s view, both Nozick (2) and Pettit (4) are committed to saying that BB is free both before and after he is caught and imprisoned, while LV (3) would tell us that he is unfree both before and after. Moreover, Nozick must additionally claim that even if BB had not committed the crime but was being framed by his nemesis Dr. Lecter, he would be free until the moment he was captured and imprisoned (an instance of wrongful/arbitrary constraint). In the absence of actual constraints, this innocent BB would be free according to (2) even if unbeknownst to him, a well-publicized warrant for his arrest would lead to his inevitable capture the moment he stepped foot in public. Seemingly, LV have reduced (2) and (4) to absurdity.

In reply, I argue that in *On The People's Terms*, Pettit (2012) refutes (4) by removing the arbitrariness clause from his definition of freedom. Likewise, I argue that across Nozick's larger body of work, a non-moralized conception of freedom emerges that takes nearby possible worlds into account, in contrast with Cohen's (1995) characterization of his view.<sup>i</sup> In this way, I wish to show that in fact, Nozick and Pettit endorse versions of (3), in that freedom requires *at least* the absence of interference (both arbitrary and non-arbitrary) in actual and nearby possible worlds.

The objection that liberal theories of negative freedom are sufficient to account for the relevant cases of domination that republicanism attempts to address is taken up elsewhere.<sup>ii</sup> Where Pettit and Nozick's views *do not* correspond, I contend, is in 1) the role they assign to interpersonal trust as a freedom-maximizing mechanism, 2) each theory's emphasis on trust in individuals versus trust in group agents as a means of generating and maintaining non-dominating institutions, and 3) in how explicit each author is in outlining their particular conception of liberty and how far the concept of robustness extends. On this closer reading, Nozick's variant of liberal freedom is able to account for the relevant cases of domination, and in a choice between republicanism and Nozickian libertarianism, the systematic incentivization of interpersonal acts of trust in the latter (amongst other considerations explored herein) should lead us to select it as the superior conception of freedom - both as an end and as a means. This is precisely because Nozick's conception does not lead us to rely upon the "knock-on" effect of personal trust in government that republicanism requires in order to generate a state that maximizes freedom for all, but instead is able to generate a state exclusively from relations of mutually-beneficial exchange - relations that are themselves dependent solely on acts of impersonal trust - thereby avoiding violations of individual freedom and rights according to the structure of dependency between the two detailed herein.

## §2. Pettit's Conception: Freedom as Non-Domination

I begin by placing Pettit's conception in relation to adjacent theories of negative liberty, clarifying some of the key terms he employs in its' development and explicating the theoretical commitments that will allow me to contrast it with LV's characterization.

Phillip Pettit develops his republican theory in *On The People's Terms* (2012) (*OPT*) by focussing on freedom of choice, in contrast with the traditional republican focus on freedom of the person. Domination holds when one lacks the power to choose an option, especially in relation to social powers that would guarantee its being realized. Whereas other thinkers have been primarily concerned with defending either positive or negative freedom since Isaiah Berlin presented the distinction in his *Two Concepts of Liberty*<sup>iii</sup>, Pettit's conception of freedom as non-domination (F=ND) is meant to serve as a kind of "third way". While nonetheless a negative conception - in that positive freedom is often characterized as "freedom to...", whereas negative freedom is associated with "freedom from..." - F=ND is freedom from *invasive* constraints on choice in particular. Invasive constraints are those limiting factors that stem from the interference of others that one cannot control, and not from vitiating facts of nature.

To clarify, *vitiating* for Pettit is any constraint on choice emerging from something other than the will of another (e.g. poor weather constrains our freedom to make plans for a picnic). In contrast, *interference* is the actual constraint of one's freedom of choice by an agent (ie. an externally-controlled will is the source of constraint). For Pettit, choice replacement, manipulation, and incentivization of an option are all forms of interference upon freedom in a choice, and such interference can run both ways in the face of domination (i.e., the subjected agent can interfere by use of these methods as a remedy against domination, or the subjecting agent can interfere in this way in a dominating way when these forms of interference are uncontrolled by the subjected agent). Interference becomes invasion, therefore, when one chooses in subjection to another's will. Pettit stipulates that invasion is both necessary and sufficient for domination, and then goes on to define

*domination* as the exposure to another's power of uncontrolled<sup>iv</sup> interference. Therefore, when domination is scaled up to address the question of political legitimacy, one can be said to be free in a reasonably democratic society so long as interference by another's will (e.g. the state's) is controlled by measures that the potentially dominated agent can take (e.g. voting, civil disobedience) to avoid invasion, and no interference is "knocked-on" by my attempt at choice satisfaction.

Additionally, if F=ND is to hold, the relevant form of interference must be "cognitively off the menu" (CotM). Therefore, certain cognitive facts must be true of the disposition of the agent in question in order to secure their freedom, which Pettit believes can be measured by the "eyeball test". If two individuals, for example, can look one another in the eye "without reason for fear or deference", then these individuals stand in a relation where domination does not hold. Similarly, interference being CotM depends on the doxastic condition of the agents in question. However, Pettit is somewhat unclear about how the standard applies. I return to this ambiguity in my comparison between Nozick and Pettit's views.

While F=ND is dependent upon cognitive facts about the agents that stand in a given relation, these considerations sometimes come into conflict with Pettit's robustness requirement. To illustrate, imagine that BB adapts his preferences so as to prefer remaining imprisoned after he has been wrongly convicted for the crime that Dr. Lecter in fact committed. Imagine further that BB is treated well in prison, and is granted considerable leeway in his choices of what to do with his time. If all the options that BB would choose in nearby possible worlds are available to him, and he can therefore look his captors in the eye without reason for fear or deference (he doesn't fear them because they would not interfere with any option he would choose), is BB free according to the eyeball test? In other words, does F=ND hold when interference with *only those options I prefer* is CotM? Pettit is not entirely clear on this point. On one hand, he agrees with Berlin and explicitly rejects Hobbes' view of freedom as preference-satisfaction. In order for F=ND to hold, BB would need to be able to select all options - for example, leaving the prison - and not just the options he

prefers. On the other hand, the mere possibility of BB's one day preferring that the guards beat him viciously does not seem to have any bearing on his status as non-dominated. If the guards are committed to internal constraints that would prevent them from ever beating BB even if he would prefer it, then F=ND appears to be committed to counting BB as unfree on the basis of this anti-Hobbesian robust preference-satisfaction view (X is free iff all choices in nearby possible worlds are available, not just those X prefers). Therefore, there appears to be, once again, an implicit yet vague standard of probability at work in the background of Pettit's theory.<sup>v</sup> Not only is the probability of the relevant form of interference important to specify, but the probability of my preferences changing is relevant to whether the standard of said interference being CotM is achieved, and whether domination is eliminated in a relation where it would otherwise hold.

Pettit's rejection of his account as moralized depends on distinguishing it from the preference-satisfaction (Hobbes) and liberal (Berlin) views. Pettit notes in *OPT*<sup>vi</sup> that even contrasting views of negative liberty may adopt an arbitrariness clause *without* endorsing a particular moral standard that justifies some instances of interference as non-restrictive of freedom. Instead, if what is meant by "arbitrariness" is taken to indicate the lack of control that an agent has over the power that interferes with her, then a value-independent description of the facts that hold regarding that control can account for the unfreedom of the agent in question. In this way, it is apparent that the question of whether or not BB is free from domination would not rest on a moral justification of his being interfered with. Instead, to determine whether or not BB is unfree according to F=ND, we need to assess whether or not he has access to a check on the interference of those who imprisoned him; not whether by the lights of some moral standard, there were normative grounds that could justify his detainment. If assent or dissent to a moral claim such as "those who commit heinous crimes ought to be met with imprisonment" were irrelevant to the classification of BB as either free or unfree so long as BB had a check on the power with those who imprisoned him, then it becomes clear that the term "moralized" does not apply to Pettit's account. Regardless of whether



or not BB *ought* to be imprisoned, the question of whether or not he is dominated turns on his having a say in the process of justice which led to him being imprisoned. This, I take it, is sufficient for rejecting the classification of Pettit's view as moralized. However, Pettit's discussion of the role that democratic channels play in rendering a BB-like agent undominated may prove to be insufficient for classifying him as free in light of LV's critique, and especially in contrast with Nozick's view, and I take up those authors in the following two sections.

### §3. Nozick's Conception

The association between the Berlinian liberal conception of freedom as the absence of interference *tout court* and Nozick's view is understandable given that libertarianism more broadly is often paired with *laissez-faire* economics and a "live-and-let-live" social morality. However, because Nozick's political philosophy begins with the claim (borrowed from Locke) that "[i]ndividuals have rights and there are some things that no person or group may do to them (without violating their rights)"<sup>vii</sup>, his argument proceeds on the basis of a conception of rights as delineating a moral space around each person that cannot be crossed without justification, rather than granting a central role to a value like liberty or freedom as the name libertarianism implies. Nonetheless, while critics<sup>viii</sup> have often attempted to argue that *ASU* offers no justification for said rights, there is some confusion on the matter that can be resolved by examining Nozick's allusions to freedom in *ASU* and other works.

Firstly, within *ASU* there is in fact a justification given for the claim about rights, but the claim is later qualified and made "softer" by adding the further stipulation that rights violations (or "boundary-crossings") are not impermissible in the absolute sense, in that compensatory actions (especially payments or transfers of holdings) can offset the effects of otherwise rights-violating forms of interference. The justification that is given for individuals having rights (once we understand them to be "inalienable" in this softer sense allowing for compensation) is made on the

basis of each individual being a setter of their own ends. Nozick often employs novel methods to demonstrate what is meant by this notion, at one point going so far as to list a wide variety of famous but varied personalities and asking what, if anything, we can imagine these persons having in common<sup>ix</sup>. The objective of this thought experiment is to connect this notion of individuals as distinct setters of ends to what Nozick refers to as the “separateness of persons”. Any action that serves as an affront to this separateness - this fact about individuals that makes the diversity of their self-directed plans for their own lives so varied and multifaceted - is an impermissible moral boundary-crossing. In this way, it becomes clear that freedom must play a role in the justification of rights, in the sense that Nozick invokes the ability to determine our own goals, directions and values for ourselves in his justification of both metaphysical free will (the freedom to make non-determined choices) and social freedom (the liberty to exercise that metaphysical freedom without interference from - or with - others in ways that would violate our - or their - rights).

While Pettit briefly mentions his own commitment to a conversibility standard for metaphysical free will and LV are careful to avoid the subject altogether<sup>x</sup>, Nozick’s theory of rights and what follows from it is largely dependent upon his argument against determinist theories of choice in metaphysics<sup>xi</sup>. In order to make his case for the anti-determinist position he endorses, Nozick points to the reflexive nature of a person’s act of assigning weights or values to options when making a choice. Consequently, he rejects the determinist objection that there is no way to differentiate between freely willed choices and completely random ones without making reference to the causal chain (which, once identified, can explain away all choices as wholly determined) that has led to the choice being made. If individuals are self-originating determinators of value, however, it may very well be that the choices they make are at times arbitrary, but nonetheless non-random. For Nozick, there may be influences on the reasons we have for assigning weights to certain options when faced with a choice, but to say that those influences are *fully and at all times* the cause of those choices is to ignore the unique feature that appears in many of our choices - that feature being the

fact that we believe that the option we select is consistent with a vision we have for how we want our lives to be. Therein lies the connection between the metaphysical conception of freedom that defended in *Philosophical Explanations*<sup>xii</sup> and the justification for rights that is often overlooked by critics of *ASU*. Individuals are originators of value insofar as their decisions constitute acts of weighting the chosen option in a set - and those weights are reflective of the deliberation that is (as far as we know) unique to human individual persons as the kinds of agents that make choices consistent with a vision of what kind of life they wish to lead, or what kind of person they wish to be or become. Rights, therefore, are claims that an individual has against others not to act in a way that would count as an affront to the capacity to make choices consistent with that vision, which is the central freedom that Nozick is focussed upon across his works. Consequently, when another person's interference *is in fact* consistent with the ends we set for ourselves, it need not count as a violation of our rights. From this, Nozick develops his account of compensatory justice, which allows for boundary violations so long as either 1. consent for said interference can be gotten ahead of time or 2. compensation can be paid to the violated party at a rate that would have been agreed upon had the establishment of prior negotiation for consent been possible.

With recourse to this more thorough understanding of Nozick's view, and recalling the earlier example, it is apparent that Nozick would classify BB as unfree regardless of whether his imprisonment was justified. Instead, the question of whether BB did in fact commit the crime or was framed would inform our view of whether his arrest constituted a violation of BB's rights. Whether BB was free before the arrest was made (ie. before any *actual* interference took place) is less clear. Thus far what has been said is sufficient for rejecting Nozick's account as moralized, but insufficient for demonstrating it to be robust. Later I demonstrate that for Nozick, the probability or risk of a rights violation is crucial to his account of permissible acts in *ASU*, and his robust understanding of boundary-crossings renders his conception of freedom robust as well.

#### §4. Nozick and Pettit: Robust, Non-moralized conceptions

In what sense is Nozick's view a moralized conception of liberty? LV's 2016 paper defending F=Ind does not contain an in-depth analysis of Nozick's view, but instead makes reference to G.A. Cohen's critique of Nozick and relies on his characterization of Nozick throughout. Cohen himself, notes in a footnote in *Self-Ownership Freedom and Equality* (1995)<sup>xiii</sup> claimed that the term caused confusion and led him to adopt "rights-based definition of freedom" in its place. Cohen challenges this definition of freedom that he takes to be implicit from the section of *ASU* entitled "How Liberty Upsets Patterns"<sup>xiv</sup>. The kind of liberty at issue in that section of *ASU* is the freedom of consenting parties to contract by interacting freely in the market, making transactions of holdings in exchange for goods and services they value without the interference of a state that imposes a particular patterned distribution so as to interrupt or disrupt any such consensual acts on the part of trading agents. Freedom in this context, then, is the freedom to dispose of one's property in an exchange in a manner that corresponds with the ends that one sets for oneself. Nozick contrasts this with having one's property rights violated by a state that coercively appropriates a portion of that property in order to dispense of it in a manner that corresponds with the ends set by that state (if a state is the kind of agent that can be said to collectively set ends for itself) or, more intelligibly, by individual agents acting on behalf of that state. This market-based liberty argument leads Cohen to adopt the view that Nozick's is a "rights-based" conception of freedom, meaning that to answer the question of whether someone is free, it must first be determined whether their rights have been violated. LV take this to mean that Nozick is conceptually committed to asking whether a prisoner's rights have been violated in order to determine if that prisoner is free. Therefore, if the prisoner has violated another person's rights and been interfered with on the basis of that justification, then all things being equal, that prisoner is in fact free. The conclusion is a *reductio ad absurdum*. How can the fact that the interference with the prisoner was not made on a morally arbitrary basis be grounds for saying that he is free to leave the prison anytime he wishes? LV conclude that it cannot, but in so

doing they make a number of conceptual errors. Firstly, they confuse metaphysical freedom with the kind of market-freedom critiqued by Cohen. Additionally, Cohen and LV invert the relation between freedom and rights in Nozick so as to make this critique of arbitrariness appear conceptually clear. In my earlier summary of Nozick's view, I demonstrated how Nozick's is not a "rights-based" conception of freedom, but instead a "freedom-based conception of rights". Here I now attempt to address the former confusion regarding metaphysical freedom.

Nozick is not committed to saying that the prisoner in the aforementioned example is free to walk. Instead, his conception of liberty in the market can be demonstrated to be consistent with the view that freedom is in fact the robust absence of constraints *tout-court*. I spell out the three-clause structure of dependency within that conception as follows, with each clause providing the basis of justification for the next:

- I. Metaphysical freedom is a property of individuals insofar as one's choices assign weights to options that one takes to be consistent with what one envisions for oneself or one's life. (The Metaphysical Freedom Clause)
- II. Rights are the moral boundaries that surround a person's metaphysical freedom. These rights are dependent upon metaphysical freedom in the following two ways: 1) X's rights are violated by Y when Y's actions constitute an affront to X's metaphysical freedom (ie. in a way that interferes with X's choosing in a manner consistent with what X envisions for herself or her life). 2) if what X envisions for her life requires choices that are themselves an affront to Y's metaphysical freedom, Y does not violate X's rights by interfering with X's metaphysical freedom to choose in this way. (The Rights Clause)
- III. If Y replaces a choice A that X would have freely made in the metaphysical sense with a choice B that X would not reject in favour of A (ie. B is equally or more consistent with X's vision of her life or herself), then Y's interference with X's

metaphysical freedom to choose A is not a violation of X's rights. (The Compensatory Consent Clause)

It is clear on the basis of (I) that Nozick would count the prisoner as metaphysically unfree. On the basis of (II-2), it will be possible for Nozick to claim that the prisoner is unfree and that his rights have not been violated. Nevertheless, given the use of the terms “liberty” and “freedom” that Nozick employs in his critique of patterned distributions, it may appear that Cohen is right to say that Nozick is employing a rights-based conception of freedom, even if this conception itself depends upon a metaphysical-freedom-based conception of rights. While this view does not hold in all cases given that there are permissible violations of market-freedom for Nozick that don't involve violations of rights<sup>xv</sup>, it is nonetheless consistent with Cohen's claim to say that if the following structure of conceptual dependency holds - market-freedom depends on rights, which in turn depend on metaphysical freedom - then the prisoner in LV's example is unfree in the metaphysical sense despite his rights not being violated.

So much for freedom being moralized for Nozick in the sense described by LV. However, it is an important question whether the prisoner's market-freedom - the kind of freedom that Nozick takes to be upset by patterned distributions - is itself violated, and whether this makes *that* conception of freedom moralized in the relevant sense. For this to be the case, it would need to be shown that rights-violations are both necessary and sufficient for market-unfreedom. However, Nozick himself, in virtue of the Compensatory Consent Premise in (III) is denying that rights violations are sufficient for market-unfreedom. Consider the passage in which Nozick allows that a state with a sufficiently extensive history of rights violations may require a correspondingly large redistributive apparatus in order to make good on the promise of compensatory justice<sup>xvi</sup>. In this way, a certain degree of market unfreedom (according to Nozick's own conception) would be *required* for the non-violation of rights on the basis of (III). Therefore it cannot be that rights-violations are coextensive with instances of market-unfreedom, but that instances of market-

unfreedom are only of concern when they involve the violation of rights. It could still be the case that market-freedom is moralized in the following way, however:

**Moralized Market-Freedom** = A person has freedom in the market **iff** their rights have not been violated.

But this we can allow, as it does not have the absurd result that a person is metaphysically free despite being imprisoned just because that imprisonment was morally justifiable. Instead, it merely implies that the absence of relevant rights-violations is required for freedom to contract and transact in a marketplace of private property and exchanges of holdings.

Nozick himself does not distinguish in this way between market freedom and metaphysical freedom explicitly within *ASU*, but rather implies a conception of market-freedom in *ASU*'s "Liberty Upsets Patterns" that is dependent upon rights in the manner discussed, and separately defines metaphysical freedom in *Philosophical Explanations*, and these two conceptions form the basis of our characterization of Nozick thus far. However, there is a more explicit account given in *ASU* regarding the *voluntariness* of exchange, that Cohen takes to be synonymous with the measure of *freedom* in an exchange, and which maps neatly onto the explicit conception of F=ND in Pettit. About the voluntariness of exchange, Nozick says the following:

*"Some readers will object to my speaking frequently of voluntary exchanges on the grounds that some actions (for example, workers accepting a wage position) are not really voluntary because one party faces severely limited options, with all the others being much worse than the one he chooses. Whether a person's actions are voluntary depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary. (I may voluntarily walk to someplace I would prefer to fly to unaided.) Other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did."*<sup>xvii</sup>

Setting aside, for now, questions of whether freedom and voluntariness are conceptually co-extensive, the final sentence of this passage implies that Nozick would take a justly imprisoned BB

to be accepting his condition voluntarily, regardless of how much he resists attempts at arrest and detainment. Is this in itself evidence of an absurd result in Nozick's thinking? In a social-contractarian framework dependent upon *implicit* consent of members, it certainly would be. If one's consent to the rule of law is merely implicit, and one's breaking the law leads to imprisonment against one's will, then one may have reasonable grounds for claiming that their imprisonment is non-voluntary. However, if the Dominant Protective Association (DPA) - the precursor of the state in *ASU* - is a private association that requires voluntary consent from customers for its establishment, then any person constrained in this way by the DPA will have ostensibly consented to the contract explicitly which forbids the action that leads to their imprisonment. Would their imprisonment then, in this sense, be part of a voluntary exchange? Given that the structure of the DPA is based on an exchange of holdings for protection within a contractual agreement, it is hard to see how the prisoner could complain that the provision of protection of his rights in exchange for his non-violation of the contract was a non-voluntary one. The question of whether he, in turn, accepts his sentence voluntarily seems to have implications not for the voluntariness of the exchange, but for the question - once again - of his metaphysical freedom. Nonetheless, there appears to be no contradiction in saying that Nozick would accept that the prisoner is unfree to exit his detainment, but that he voluntarily exchanged his refraining from violating the rights of others for protection by the DPA.

Another point of interest in the quote above is the manner in which it maps onto Pettit's discussion of vitiating and invasion in OPT. Pettit would not agree that a choice is free (see: "voluntary") so long as interference with that choice did not violate anyone's *rights* per se, or at least would not state this part of his conception of freedom in this exact way. However, there is an obvious parallel to be drawn between that claim and the permissiveness that Pettit grants to certain forms of non-dominating interference within his account; whether a person's actions are limited by the will of another or by facts of nature is for Nozick part of what determines whether a reduction



in a person's freedom constitutes a violation of their rights. For Pettit, this distinction is what allows us to differentiate between instances of vitiating and interference. However, the core difference is that Pettit will not grant that whatever one had a right to do is a permissible limitation on another's freedom, whereas Nozick allows this by postulating that either consent or compensation is required in order to avoid a violation of rights when one's actions limit another person's freedom. For Pettit, it is neither compensation nor consent, but an agent X's *ability to interfere* as a check on another agent Y's power that determines the permissibility of Y's interfering with X. This is the central point that allows Pettit, in my view, to escape the critique of LV. By centralizing checks on the interference of the powerful as the means by which a vulnerable agent avoids domination, Pettit avoids the moralization critique by altering the requirement against arbitrariness so as to effectively replace it with the requirement for checks on power. In so doing, Pettit ensures that his conception robustly protects against arbitrary interference in a non-moralized way by requiring that a given agent have the requisite power to rebuke interference by the powerful *here and now* rather than focussing on the vulnerable agent's power in nearby possible worlds. This is not to say that Pettit's F=ND is non-robust, but it turns the question of robustness on the powerful, and ensures that we do not count as free some agent who merely holds a check on the interference of a more powerful agent *so long as they continue to act as they currently do* but instead requires that that check on interference be sufficient to account for what the powerful agent may choose to do in nearby possible worlds. To relate it back to our example of BB, Pettit would not in fact count BB as metaphysically free after he is imprisoned for a heinous crime he did commit, but would say 1) that his imprisonment constitutes a check on his power to interfere with future victims - a check that they control in virtue of being citizens in a democracy - we assume - in which they have a say in the laws that govern them and 2) that BB himself being a citizen of such a society ensures that he, in some meaningful sense, checks the power that constrains him now by allowing him to participate in the rules that govern its exercise. What is curious, however, is that this democratic requirement would seem to grant that regardless of

whether BB himself explicitly consented to the laws that set out the punishments for the crimes he committed, he is not dominated by the interference of those who imprison him. Of course, Pettit will grant that BB's being unable to leave the prison is itself a form of unfreedom, but that his mere ability to participate in the civil society that generated the constraints he is under now renders him socially free and therefore not dominated.

In my introduction, I claimed that both Pettit and Nozick endorse a non-moralized, robust conception of freedom. Thus far, I've defended the notion that both views are not moralized in the way that LV claim they are. While LV already ascribe robustness to Pettit's conception, I alluded to Carter's critique and the way in which this may elucidate what is meant by referring to Nozick's view as robust. It appears that up to this point, Nozick's conception does not fit neatly into (3), despite the fact that in *Coercion*<sup>xviii</sup>, he makes reference to freedom's relation to what must hold in nearby possible worlds. This lack of neatness stems from the fact that the important focus of robustness for LV is on the potential for interference in nearby possible worlds to generate a condition of *unfreedom* in a relation where freedom would otherwise hold. On one reading then, in order to demonstrate that Nozick endorses a form of (3) it would need to be shown that likewise he is committed to the notion that individuals are meaningfully unfree in conditions where they are not interfered with actually, but could be in nearby possible worlds. Because Nozick does not make this case explicitly with reference to freedom, this task is not possible. Alternatively, so long as Nozick's view is able to account for the objectionable features of the cases that LV allude to in order to justify the robustness requirement in (3), we can demonstrate that Nozick's view is meaningfully robust. Thankfully, Carter and Shnayderman in their 2018 paper *The Impossibility of "Freedom as Independence"*<sup>xix</sup> make the case that the traditional liberal view of freedom is already, in a sense, robust. So long as one can assess unfreedom claims as relative rather than binary states of affairs (ie. one is, to a greater or lesser extent free given x), then the views that LV count as non-robust are in fact able to account for considerations of what holds in conditions other than those that hold at present or

“actually”. This means that if BB is not currently being detained or imprisoned, then it is still possible for the liberal and libertarian views to count him as *relatively* less free than someone for whom an arrest is not imminent. Depending on how probable the given form of interference is, then, Carter claims that the liberal view can assign degrees of freedom to the condition or agent in question. Because of the dependency structure of rights upon freedom sketched above, Nozick’s view can be shown to be robust in a way that is compatible with Carter’s conception of the liberal view, given ASU’s discussion of risks and rights.

In *ASU*, Nozick considers a challenge to the natural rights theory being coupled with the compensatory model of justice. If any violation of a person’s rights is to at the very least require compensation, then what of those risky actions that do not actually lead to the violation of any person’s rights? He considers the following options:

- “1. The action is prohibited and punishable, even if compensation is paid for any boundary crossing, or if it turns out to have crossed no boundary.
2. The action is permitted provided compensation is paid to those persons whose boundaries actually are crossed.
3. The action is permitted provided compensation is paid to all those persons who undergo a risk of a boundary crossing, whether or not it turns out that their boundary actually is crossed.”<sup>xx</sup>

Without wholeheartedly endorsing 3, Nozick is importantly committed to rejecting 2 on the grounds that actions risking rights violations themselves produce an actual negative effect, namely fear in those whose rights may be violated next. This is an important observation that neither Carter nor LV are particularly focussed upon in their debate about robustness. On one hand, Carter’s narrowly probabilistic view cannot account for the kind of unfreedom experienced by those who are unsure of the probability of their being subject to interference, or where objective facts about the probability of a given interference are unknown or fuzzy. On the other hand, LV’s conception of

robustness when applied to Nozick's compensatory model would have the *mere possibility* of a rights violation count as grounds for compensation, or for forbidding the risky action entirely. Nozick's compensatory model is able to honour a form of robust non-violation of rights, while not forbidding all risky acts. Instead, it turns the question of risk on its head by requiring that those affected by the possibility of interference in the form of boundary-crossings by risky actors be required to compensate those potential boundary-crossers for their being forbidden from performing the risky act. In this sense, Nozick's conception of rights (once again, grounded by considerations of metaphysical freedom) is robust in a way that avoids LV's critique, but not subject to the same problem as Carter's that requires an exact and objective measure of probability of said interference occurring. Instead, a given agent can be said to be free from boundary-crossings to the extent that they successfully negotiate with risky actors for their refraining from those activities they fear. BB's freedom is therefore more or less robust in proportion with the degree of compensation he - and presumably others who live under the same state - pay to the DPA to refrain from imprisoning individuals without sufficient consideration of the risks. In the scenario where BB is being framed, therefore, he would be free in the robust sense if he lived under a state that took this possibility into consideration and did not imprison BB without a thorough analysis of the evidence. Once again, Nozick may still justifiably claim that BB is free in a metaphysical sense before any actual interference occurs (the robustness of Nozick's metaphysical definition of freedom is as of yet undetermined by what has been said so far), but the robustness of BB's non-violation of rights is dependent on the degree to which he and others are willing to compensate the DPA for the increased security they gain by living under a state that does not take such risks by arresting clients on the basis of insufficient evidence. It is consistent with Nozick's view, then, to say that the non-violation of rights (which is related to both metaphysical freedom and market-freedom in the manner described in the previous sections) is robust in a sense that parallels LV's use of the term.

One curious distinction between the two views is that instead of relying on the intuitive measure of consent as Nozick does, Pettit attempts to shield against discrepancies in power that colour or distort otherwise consensual agreements by ensuring that a check on the more powerful agent is available to the less powerful agent. In so doing, the check must constitute a form of interference that tracks the orthonomic will of the less powerful agent. On one hand, this leaves Pettit's conception vulnerable to less charitable interpretations that correctly ask who is to determine when someone is acting according to their higher-order will or when "they successfully exercise conversability across the normal human range" - and how this may allow, to return to our example, a state that imprisons BB when framed by Dr. Lecter to claim that BB is nonetheless free, so long as their interference with him may have been assented to had his higher-order will been functional. On the other hand, this requirement that there be checks on the invasive interference of more powerful agents within the control of less powerful agents - checks that themselves constitute instances of interference - is meant as a bulwark against potentially exploitative consented-to agreements, but is exactly the requirement that leads to the conceptual "impossibility problem" that Simpson points to in his 2017 critique.

### §5. The Impossibility Problem, Potential Exits

Thomas Simpson is not convinced that wide-scale F=ND could hold within the framework Pettit has constructed<sup>xxi</sup>. This is because Pettit must rely on checks between the agents standing in dyadic or triadic relations involving disparities in power. Consider a dyadic relation like the state and its people: either the state is powerful enough to dominate its people or the reverse is true. In neither case does it appear that freedom holds as a given group agent is dominated one way or the other. Alternatively, consider a triadic relation like the state, the people (forming a sufficiently contestatory citizenry) and a given individual living under both. While each group agent may claim to place checks on the other's power to interfere with the individual, one must be more powerful than the

other and therefore render the protection of the weaker one ineffective should the more powerful agent choose to interfere with the individual. Leaving four-way, five-way, etc. relations aside, it becomes clear that for Pettit's conception of F=ND in *OPT*, domination is a matter of turtles all the way down. Simpson's "exit strategy" from this impossibility problem, characterized as a dilemma, is to look to the classical Republican tradition's conception of civic virtue as the solution. If an individual wishes to be free from domination, their best hope is to trust in the civic virtue of their fellow citizens, assuming that that trust is rational.<sup>xxii</sup> This leads Simpson to conclude that republicanism must reject F=ND so long as it is conceptually committed to rejecting internal constraints (or *re*-straints such as the virtuous restraint of a citizenry) as a possible control on the interference of powerful agents.

### §6. The Role of Trust for Pettit and Nozick

In determining whether or not domination holds in a given relation within Pettit's framework, it is possible that any of the following options is sufficient for putting interference CotM in a domination-eliminative way:

- (I) Neither agent had considered the possibility of the interference in question.
- (II) The given form of interference rests below an unspecified threshold of probability so as to count as CotM.
- (III) The agent more vulnerable to the other's interference has reason to trust that they will not be interfered with in this way.

Firstly, (I) is untenable because it rests upon a *fully* dispositional account entirely dependent upon subjective facts that hold between individuals. Pettit's F=ND in *OPT* is clearly not such an account.<sup>xxiii</sup> For instance, Pettit makes reference to something he refers to as "invigilation" - the condition in which a powerful agent X "stands guard" over a range of options that a less powerful agent Y can choose from. Neither agent may ever consider the possibility of X interfering,

Regardless, it is the fact that Y lacks the power to protect against this possibility that renders her dominated.

Many authors have pointed to the problem of probabilifying interference in Pettit's argument<sup>xxiv</sup> by noting that (II) would be an untenable view for the republican to defend. On one hand, Pettit explicitly defends the idea in *Republicanism* (1997) that an agent is unfree regardless of how improbable the given form of interference may be, so long as it is possible. If the conception of F=ND in OPT wishes to uphold that view, then it cannot try to sneak probability in through the back door, as it were, by invoking a clause like in (II) where a given interference being cognitively off the menu is simply a claim made about the likelihood of that interference occurring. Resultantly, (II) would be entirely inconsistent with Pettit's claim that the mere *possibility* of the relevant form of interference is sufficient for domination. I take (III), then, to be the view operating in the background of "Republican Theory and Political Trust" with respect to the trust that citizens must place in the government, offering Pettit a possible means of exit from Simpson's dilemma in the following way.

In "Republican Theory and Political Trust", Pettit distinguishes between two kinds of trust: impersonal and personal, and defends the notion that individuals have no choice but to invest those in government with trust in the personal sense<sup>xxv</sup>. He illustrates the difference with the example of a bureaucrat at a traffic centre who I rely on to give me the proper information when planning a trip. I trust the agent at the traffic centre in the impersonal sense when I rely on regulations and constraints that threaten them with punishment or dismissal should they fail to provide me with accurate information. I trust them in the personal sense only insofar as I believe that my reliance on them acts as an incentive for their behaving in such a trustworthy manner. Simpson refers to the literature on trust when he discusses a similar distinction that is made between rational-cognitivist trust and interpersonal-non-cognitivist trust - in which the former view considers trust to be properly responsive to the reasons I have for trusting the trustworthy and not trusting the

untrustworthy, whereas the latter view takes trust to be responsive to the reasons I have for respecting or disrespecting another person.<sup>xxvi</sup> There is an important distinction to be made, then, between the kind of trust that “knocks-on” a motivation in the trusted to behave in a trustworthy manner, and the kind of trust that amounts to an estimate of the probability that another agent will act in the way we hope they will. Pettit is crucially committed to the notion that it is this personal sense of trust that the people place in their government, and that when coupled (counter-intuitively) with a healthy distrust of government, this has the effect of eliminating domination between individuals, the citizenry and the state. The key distinction then between Pettit’s view of domination between individuals and his view of individuals standing in relation to the state turns on the question of freedom of exit. In direct contrast with Simpson’s assertion that our living on a state-bound planet constrains us to the impossibility of republican freedom, Pettit believes that “the alternatives are to trust or distrust those in government” and that such trust - when it invokes a trustworthiness-response in the powerful - is crucial for eliminating domination between the state and the individuals who live under it. However, it is important to note that Nozick’s *ASU* begins from its outset by questioning this very assumption and proceeds by imagining a state built up out of relations in which no such reliance on enforcement of the agreements which lead to the state's establishment is required.

The Nozickian picture is preferable to Pettit’s in part because it attempts to avoid altogether the fatalist conclusion that we must either trust or distrust those in government in a personal sense. Instead, the state is built up out of relations of mutually-beneficial exchange - instances in which an individual who can offer protective services values what another individual can offer more than they value the withholding of that protection. Out of these small agreements, a series of conglomerates known as protective agencies grow to provide these services to clients and compete for their patronage. Once these battles have been resolved and a given territory contains mostly clients of a single protective agency, Nozick refers to it as a DPA and compares this kind of institution to a



state. One crucial difference between a state and a DPA is the requirement that private enforcement of rights be outlawed in a given territory. This requirement is often taken for granted under states that claim to have a monopoly on the use of force, but Nozick grants that it would be a serious challenge to his view if there were no rights-based argument that would allow a DPA to enforce such a ban on personal protection. If non-clients of a DPA who live in its territory free-ride off of the public goods of reduced crime, increased safety and rule of law, there would seem to be a property-rights based case for forcing non-clients to pay for such benefits. In a famous example, however, Nozick relates this free-rider problem to the case of a person who is expected to pay for a radio service that broadcasts in her neighbourhood<sup>xxvii</sup>. Should this accidental client of the radio station be forced to pay for the benefits she receives of hearing these broadcasts despite never choosing herself to receive them? Nozick believes she should not and that by the same logic, the public goods mentioned previously should not generate an enforced compensation requirement either. Nonetheless, private enforcement of rights being permitted under a state-like apparatus means different systems of laws governing disputes, contracts and property rights within the same territory. This could cause conflicts when there is no agreed-upon standard for resolving disputes between clients and non-clients of the DPA, considering that non-clients have not consented to the regulations set out in contracts between the DPA and its members. A DPA then becomes something very much resembling a state when it takes the final step of preventing non-clients in their territory from enforcing their rights claims, and can only do so in a just manner according to Nozick's compensatory schema by negotiating with non-members for the agreed-upon amount of compensation they would accept in exchange for refraining from private enforcement.

In this way it becomes difficult to see why the kind of personal trust in government that Pettit believes is domination-eliminative in the state-citizenry relation would be necessary within a Nozickian framework. If the state is built out of agreements of mutually-beneficial exchange wherein no person was required to accept state rule without explicit consent or compensation, then

where does personal trust play a role in political legitimacy? It is true that after the establishment of a state-like DPA, clients will be required to *trust* that protection is rendered to them in exchange for an agreed-upon transfer of holdings. But this kind of trust is of the very impersonal, rational kind that Pettit describes in his example of the traffic centre; clients of the DPA who do not receive the services owed to them contractually are (1) unlikely to run into such problems if the protective association in question emerged out of competition for the patronage of clients - competition which would have forced the protective association to provide more reliable and affordable protection than other competing agencies and (2) free to become non-members and be compensated according to how likely they would be to privately enforce their own rights, or to exit to the territory of a more reliable DPA and become clients there instead. In neither case is the individual agent forced to either trust or distrust government due to freedom of exit being made meaningless and shallow by the fact that one lives on a state-bound planet. Rather, it is this competition for the patronage of paying members that incentivizes DPAs in Nozick's framework to offer a market-viable rights-protection package where Pettit's state or contestatory citizenry must be trusted to refrain from domination. When defined as the absence of interference in nearby possible worlds that is subject to checks that I control, F=ND would require that the stronger of two checks be selected for when presented with two forms of control on the interference of the state. The incentivization of trustworthiness "knocked-on" by my personal trust being placed in agents of the state<sup>xxviii</sup> would appear to be a weaker check than the state being forced to compete for the customers that make up its citizenry. The republican may reply - and in fact Pettit does in *Republican Theory and Political Trust* - that personal trust in government is not the only factor which serves as a check on the state, and that a healthy distrust of government is meant to counteract the power of the state over its people. Once again, there are only two options if this is true: such "distrust" manifests as a sufficiently contestatory citizenry that is powerful enough to dominate the state and therefore also any individual or citizen living under it, or it is not so powerful and distrust of

government becomes like the empty threats of a parent of an unruly child they are too sheepish to punish. Arriving once again at Simpson's impossibility problem, we can see that personal trust in government can serve as an exit from the dilemma, but that when Nozick's checks on state power are added to the menu so to speak, we would be wise to select them over Pettit's as the less risky option. Given that Pettit cannot count as free any citizen who is possibly interfered with by a state, "knock-on" effects of personal trust in government are unlikely to secure  $F=ND$  for individuals on a wide-scale. The Nozickian conception's flexibility in attributing greater or lesser degrees of freedom to individuals, plus its emphasis on the client-service provider relation as a state-building mechanism and more reliable method for keeping state power in check ensures that it will maximize a robust, non-moralized freedom in a way that  $F=ND$  cannot.

### §7. Possible Objection, Conclusion

One possible objection to the argument for the superiority of Nozick's theory for helping individuals escape domination by the state may be to say that Nozick's framework merely shifts the burden of trust onto inter-individual-agential relations. If Pettit and Simpson are committed to the idea that we have no choice but to trust or distrust one or another group agent given that we live on a state-bound planet, then Nozick's framework affording individuals the opportunity of exit and of shaping the supply of state-like protective services according to their demands may turn out to be a pyrrhic victory of sorts. This is because the individual instances of mutually-beneficial-exchange that lead to the formation of states may themselves be bound to discrepancies in power which would be dominating, if not for some personal-trust-like domination-eliminative mechanism at play. If in the republican framework the state must be trustworthy enough that its interfering with me is  $CotM$ , then it would seem that Nozick's framework is depending on there being agents (those who form proto-protective-agencies to exchange their protective services for something else they value that others own) who are powerful enough to dominate individuals, but also trustworthy enough not to

interfere in rights-violating ways. Unlike the objection that Nozick's framework requires the presence of a trustworthy state in order to defend the property rights of those living in a DPA-bound planet, the objection to the possibility of a world where powerful individuals refrain from violating the property rights of those who own things they want is a serious challenge to the history laid out in Nozick's state-of-nature argument. In a sense, *ASU* does not get off the ground theoretically without the Lockean assumption that individuals own things in the state of nature and that such proto-property-rights are respected at least to the extent that a marketplace of protection can operate before a state emerges. This poses an interesting challenge for Nozick and *ASU*, but not for the purposes of the thesis being defended here. For our purposes, only the following two claims must be true: 1. that in response to such a challenge, no matter the amount of rights violation that took place historically, a given state can reorient itself to compensate for that history of boundary-crossings; and 2. that given a choice between the competitive, market-based approach to state protection and the state-bound fatalist personal trust perspective, a robust and non-moralized conception of freedom would encourage us to favour the former over the latter. I believe that what has been said here is sufficient to defend both of these claims. The positive view that has been defended is that when comparing the structure of rights and freedoms in Nozick's larger body of work against Pettit's conception of Freedom as non-domination, the former is preferable. This is precisely because Nozick's conception does not lead us to rely upon the "knock-on" effect of personal trust in government that republicanism requires in order to generate a state that maximizes freedom for all, but instead is able to generate a state exclusively from relations of mutually-beneficial exchange - relations that are themselves dependent solely on acts of impersonal trust - and which thereby avoid violations of individual freedom by respecting the moral boundaries of persons as expressed by rights.

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Notes

<sup>i</sup> As pointed out by Brennan (2018)

<sup>ii</sup> see Carter (2008), Kramer (2008), Fricker (2013)

<sup>iii</sup> Berlin, Isaiah. 1958. *Two concepts of liberty: an inaugural lecture delivered before the University of Oxford on 31 October 1958*. Oxford: Clarendon Press.

<sup>iv</sup> Meaning that either the agent in question has the resources to guard against interference, or is guarded by another agent against the relevant form of interference. Pettit, Philip. 2012. *On The People's Terms: A Republican Theory and Model of Democracy*. Cambridge: Cambridge University Press, 296

<sup>v</sup> This isn't to say that Pettit avoids the issue of probability entirely in OPT, although he does mention that those issues are generally skirted in the book (pp. 35). The claim here is merely that no explicit standard of probability is given for determining which forms of interference count as "cognitively off the menu".

<sup>vi</sup> Pettit, Philip. 2012. *On The People's Terms: A Republican Theory and Model of Democracy*. Cambridge: Cambridge University Press, 58

<sup>vii</sup> Nozick, Robert. 1974. *Anarchy, State, and Utopia*. Vol. 7. Basic Books, ix

<sup>viii</sup> Nagel, Thomas. *Libertarianism without Foundations, A Review of Anarchy State and Utopia by Robert Nozick*. The Yale Law Journal 85, no. 1 (1975): 136–49. <https://doi.org/10.2307/795521>.

<sup>ix</sup> Nozick, Robert. 1974. *Anarchy, State, and Utopia*. Vol. 7. Basic Books, 310

<sup>x</sup> List, Christian, and Laura Valentini. 2016. "Freedom as Independence." *Ethics* 126 (4): 1046

<sup>xi</sup> As pointed out by Flikshuh (2007)

<sup>xii</sup> Nozick, Robert. 1981. *Philosophical explanations*. Cambridge, Mass: Harvard University Press, 291-317

<sup>9</sup> Cohen, G.A. 1995. *Self-Ownership, Freedom, and Equality: Studies in Marxism and Social Theory*. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511521270. Pp. 62

<sup>xiv</sup> Nozick, Robert. 1974. *Anarchy, State, and Utopia*. Vol. 7. Basic Books, 160

<sup>xv</sup> See the discussions of the distinction between compensatory payments made by the non-redistributive state and the "reasons" that render a similar system of payments redistributive (pp. 27 and pp. 114, *ASU*).

<sup>xvi</sup> Nozick, *Anarchy*, Pp. 231.

<sup>xvii</sup> *Ibid*, 262.

<sup>xviii</sup> Nozick, Robert. 1969. "Coercion." In *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, edited by White Morgenbesser, 440--72. St Martin's Press.

<sup>xix</sup> Carter, Ian, and Ronen Shnayderman. "The Impossibility of "Freedom as Independence"." *Political Studies Review* 17, no. 2 (2018): 136-46. doi:10.1177/1478929918771452

<sup>xx</sup> Nozick, Robert. 1974. *Anarchy, State, and Utopia*. Vol. 7. Basic Books, 75-76

<sup>xxi</sup> Simpson, Thomas W. 2017. "The Impossibility of Republican Freedom." *Philosophy and Public Affairs* 45 (1): 27–53.

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xxiv Carter & Shnayderman (2018), Gaus (2003)

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xxvii Nozick, Robert. 1974. *Anarchy, State, and Utopia*. Vol. 7. Basic Books, 93

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