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## Preserving Republican Freedom: A Reply to Simpson

In his paper, "The Impossibility of Republican Freedom," Thomas Simpson tries to show that the republican conception of freedom as nondomination is self-defeating.<sup>1</sup> The core idea, briefly, is that it supports two inconsistent requirements: one, that individuals be robustly protected by the law against interference; and two, that the people, working as a team, control the state that makes and applies that law, else the state will itself dominate them. Those requirements are said to be inconsistent insofar as the ability of the people to control the state entails that they have dominating control over every individual.

Although this claim constitutes Simpson's more specific charge against republican theory, he also uses it to support a more general charge that the theory implies domination is inescapable, originating from a range of groups and not just from the people as a whole. The idea is that we are each surrounded by sets of others such that any of those sets, working as a team, could collectively interfere with us, regardless of legal protection. In virtue of claiming that individuals operate as a team to control the state, so the argument goes, republicans must concede, not just that the popular team dominates every individual, but that any in an open range of potential teams does so as well.

If Simpson is correct, republicanism would be in deep trouble: there is no point in advocating a political ideal that is inescapably frustrated.

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1. Thomas W. Simpson, "The Impossibility of Republican Freedom," *Philosophy and Public Affairs* 45 (2017): 27–53. Among the many works contributing to the republican theory Simpson attacks are Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997), *On the People's Terms* (Cambridge: Cambridge University Press, 2012), and *Just Freedom* (New York: Norton, 2014); Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998); and Frank Lovett, *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010). See also the papers collected in Cécile Laborde and John Maynor, eds., *Republicanism and Political Theory* (Malden, MA: Blackwell Publishing, 2008).

Fortunately, we believe Simpson's argument fails, and we take the opportunity provided by this reply to show why.

Section 1 briefly reviews the standard republican conception of freedom as nondomination, clearing up a few common misunderstandings along the way. Section 2 reconstructs Simpson's argument with the aim of highlighting the precise point on which the alleged impossibility turns. Finally, section 3 explains why the argument fails in light of a proper understanding of republican ideas.

## 1. REPUBLICAN THEORY

### A. *Freedom of choice*

Republicanism is a public philosophy or political doctrine committed to the central value of freedom from domination. The standard republican view holds that

F: A is free to  $\phi$  or not to  $\phi$  to the extent that no B has the uncontrolled ability to interfere voluntarily in A's choice.

Here we deliberately adopt relatively neutral language so as to deemphasize familiar debates not relevant to the present discussion. A and B are assumed to be either individuals or suitably organized groups. Examples of interference might include physically preventing someone from exercising one or another option, penalizing her for doing so, threatening her with such penalties, or deceiving her with respect to the availability or value of her options.

Our definition is formally agnostic as to the possible basis for some individual's or group's ability to interfere with the choices of an agent in these or other ways. In most circumstances, however, such abilities undoubtedly reflect the advantages some individuals or groups enjoy under background social structures. Insofar as that is true, those structures may be said in a derived sense to dominate those who are negatively affected by them: they facilitate the domination of those individuals in the more basic sense of the term.<sup>2</sup>

2. From the formal property of the republican account that domination *need not* have a structural basis apparently arises the misconception that republicans believe domination is "dyadic" in the sense that it *does not* have a structural basis. No republican holds such a naive view. For further discussion, see Lovett, *A General Theory*, pp. 40–49; Pettit, *On the People's Terms*, pp. 63–64, and *Just Freedom*, pp. 52–54.

To the extent that some B does have the uncontrolled ability to interfere voluntarily in a range of A's options, A experiences domination. Though not presently at issue, we should add that anyone attracted to the republican viewpoint will hold that the absence of domination is a good—if not invariably, then at least in the sphere of the basic liberties (more on this in a moment).<sup>3</sup> Given that domination ordinarily has its basis in background social structures, many people other than B may share moral responsibility for A's being deprived of that good, but in the following discussion, we focus on the role of the dominator, B.

We have not yet discussed the meaning of “uncontrolled” in our statement of the republican view. Republicans differ somewhat in how they understand the conditions for suitable control—that is, the sort of control that would actually serve to reduce or eliminate domination. For example, some republicans hold that control must be exercised directly or indirectly by A herself, whereas others hold that B might be suitably controlled by others who make common cause with A or by appropriately designed legal or constitutional constraints. There is widespread agreement, however, that the control must robustly protect A against interference: that is, protect them across possible variations in A's own preference in the choice and, more importantly, across possible variations in B's preference as to how A should choose. It will not be enough, for example, if A is protected only to the extent that B is unlikely to want to interfere; even if B is unlikely to interfere, say because of being benevolent, B will dominate A in virtue of having the unimpaired, unhindered ability to interfere.

This distinctively republican claim about the robustness with which A must enjoy noninterference is often mistaken for a neglect of probability. It is certainly true, according to the approach, that regardless of the probability of variation, A must be protected against any powerful B in scenarios where B's preferences (or indeed A's preferences) vary. But that does not mean the approach is hostile to probability as such. For one thing, it is important that nondomination (i.e., robust noninterference) should be as probable as possible: that social structures should be designed, for example, so as to maximize the expected nondomination A enjoys. And because

3. The usual view is that it is good for reasons related to A's well-being. In contrast to that view, however, Kantian republicans such as Rainer Forst offer deontological grounds for the value of freedom from domination: see “A Kantian Republican Conception of Justice as Nondomination,” in *Republican Democracy: Liberty, Law, and Politics*, eds. Andreas Niederberger and Philipp Schink (Edinburgh: Edinburgh University Press, 2013), pp. 154–68.

it is going to be impossible to block interference altogether under scenarios where B has the power to interfere in A's choice, it is important that the protections available should make the probability of noninterference in each of those scenarios as high as possible, regardless of the probability of that scenario itself. Protecting A against B's interfering with a given choice will always amount to increasing the probability that no matter how inclined, B will not interfere with A.

What level of protection is desirable, given that total protection is impossible? Arguably, enough to ensure that by the most demanding local criteria A can relate to any B—in the interpersonal case, can look B in the eye—without any reason for fear or deference or at least without any reason that derives from B's ability to interfere in her choice. This “eyeball test” gives a rough and ready criterion of when someone is protected enough in a choice not to suffer domination and, on the republican approach, a loss of freedom.<sup>4</sup>

### B. *Freedom of the person*

We have introduced the republican notion of freedom as nondomination in a particular choice. But the republican approach emphasizes that what is important is that each individual in society should enjoy freedom *as a person*, not just freedom in this or that particular choice. To enjoy freedom as a person, on a plausible interpretation, is to enjoy a suitable level of protection equal with that provided for others under a shared law. And it will be to enjoy that equal protection specifically in those choices (identified by law as the basic liberties) that everyone can exercise and enjoy at the same time as others: in other words, access to each basic liberty should remain open no matter how many others are exercising those liberties at the same time. The basic liberties, so understood, must not be restricted unnecessarily but may vary in legal specification across differences in culture or technology. They will include familiar liberties like those of speech, association, residence, employment, ownership, and exchange.

The various aspects of our brisk review can be fleshed out with two familiar illustrations: antebellum slavery in the American south and 19th

4. Pettit, *On The People's Terms*, p. 47. Those who pass the test “can look others in the eye without reasons for the fear or deference that a power of interference might inspire,” *ibid.* p. 84. Cf., Pettit, *Just Freedom*, p. xxvi.

century Anglo-American marriage institutions. Although there were certainly some limited controls on both slave masters and husbands, nevertheless both retained a considerable range of discretion to use or threaten to use violence or physical restraint in interfering with the choices of their slaves and wives. Notice that in both cases, the *basis* for their having these abilities was largely provided by a broad constellation of laws, practices, and customs. For example, northerners who enforced the Fugitive Slave Act helped maintain the institution of slavery, much as employers who as a matter of custom would not hire women increased the dependency of women on marriage. Thus, the moral and ethical responsibility for domination in both cases was widely, although perhaps quite unevenly, shared.

One significant consequence of the structural character of domination is considerable variation in specific cases. Not every slave master necessarily benefited all things considered from owning slaves, nor every husband from having power over his wife. Although no one had to own slaves, and no one had to marry, those who chose to be slave owners or husbands often held ambivalent or even conflicted views about their position of dominance. There were kindly masters and husbands as well as ruthless or cruel ones.

Intuitively, however, none of these local variations detract from the fact that slaves and wives were subject to domination. The republican conception of freedom explains why. It may be true that the kindly master or husband will not wish to interfere with his slave or wife, but the slave or wife will enjoy that noninterference only so long as the master or husband remains well disposed. And that means, in effect, that they will be able to exercise those freedoms only with the permission of the master or husband: they will be subject to his will in the sense of depending for the exercise of their freedom on his remaining well disposed. The subject of a kindly master or husband may be better off than the subject of a cruel one but will suffer domination in the same sense.

## 2. THE CASE AGAINST REPUBLICAN THEORY

So much for the review of standard republican theory. In this section, we aim to reconstruct Simpson's critique. In order to do this, however, we need first to explain why republicans invoke the notion of popular control of the state, and second to indicate the modes in which popular and, more generally, collective control might be achieved.

### A. *Invoking popular control*

For the most part, a well-ordered republic secures our freedom from domination in everyday interactions with fellow citizens through the rule of law and basic public welfare provisions, and it will be the state that more or less inevitably provides these services under modern conditions. But in doing this, of course, the state exercises a capacity to interfere with our choices. What ensures, then, that the state does not compromise our freedom? The republican answer is: the fact that its interference is subject to *popular control*. We the people must control the state, preventing it from becoming a dominating agent. Ideally, we must relate to it collectively in such a way that none of us individually has reason to fear or defer to the authorities because of their powers of interference.

The possibility of popular control is thus central to the republican project. But how should we understand the nature of that control? There are three salient ways in which a collection of individuals may have the ability to do something together that those same individuals would not have on their own, and it will be useful to look at each of these in turn.

### B. *Three modes of collective control*

The simplest way is through the cumulative impact of many individual actions. In the marketplace, for example, no one consumer has the ability to affect the prices of goods, but the cumulative impact of their various purchasing decisions, even in the absence of deliberate coordination, does have this effect. The collective ability to affect prices is thus *distributed* among consumers, whom we may regard as a mere multitude, in Hobbes's word, not a genuine group agent.

Group agency represents a second and much stronger way a collection of individuals may have abilities as a group that they do not have on their own. To constitute a genuine group agent, the individuals must have organized their internal affairs so as to ensure the formation of more or less reliable common judgments about how things stand, the maintenance of more or less coherent common purposes, and the coordination of their efforts in pursuing those purposes according to those judgments.<sup>5</sup> Corporations, for example, usually have hierarchical decision-making structures

5. See Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011).

to ensure this profile and can hold out the prospect of promotion or termination to motivate employees to fall in line.

Obviously, group agents will have many abilities that their members would not have on their own. Indeed, any corporate agent, like any individual, may be said to have an enduring will of its own: an ability to make decisions in some open-ended, if restricted range of situations on the basis of both of the purposes it maintains across those situations and of the representations it forms about how best to realize those purposes in different cases. The range of situations for which a corporate agent is equipped to deal will vary with different organizations: a commercial corporation will be organized to form decisions on matters very different, for example, than those that will concern a church, a political party, or a tennis club. And of course the range will be more restricted for any corporate body than it is for individual human beings.

As already indicated, we take the state to be a group agent rather than a multitude of individuals. But what about the people? Do they count as a full-fledged group agent, or are they a mere multitude?

On the one hand, it is not plausible to regard the people, even the people in a democracy, as a group agent, because nothing reliably ensures consistency in their judgments or purposes nor are their diverse efforts reliably coordinated. In multiparty democracies, for example, the people are often deeply divided on many political issues and thus operate to some extent at cross-purposes.

But, on the other hand, neither are the people a mere multitude, in which the collective ability to control the state is distributed the way market power is distributed among consumers. While it is true that consumers affect prices in aggregate, they do so without endorsing or acquiescing in any sort of joint purpose. In contrast, and despite espousing rival party aims, the people in a democracy do have joint purposes. They would not take part in relevant processes, after all—say, campaigning or voting, protesting, or appealing to the courts—unless they acquiesced, however reluctantly, in the overarching goal of playing by the democratic rules. Despite their rival aims, they have a shared overarching goal in the same sense that rival players in tennis or a chess match have a shared goal.

Thus, the ability of the people to control the state specifically so as to secure their freedom must be something between the mere distributed abilities of a multitude and the corporate abilities of a group agent. But what might this be? The question forces us to identify a third mode under which a collection of individuals can have an ability to do something together that they would not have on their own.

An example in the economic sphere of something intermediate between a multitude of consumers and an organized corporation is a consumer boycott. Here a number of individual consumers coordinate their purchasing decisions so as to have a deliberate impact in a specific direction. But they do not on that account constitute a genuine group agent. Where the members of a group agent act jointly to establish decision-making procedures enabling them to work together across an open-ended variety of situations, the participants in a boycott do not. They act jointly only for a limited purpose or set of purposes—in this case, to deny custom to an individual or corporate producer—on which they happen to converge in a given situation or limited range of situations. Unlike an individual or group agent, they do not have an enduring will. At most they may be said to have an episodic will: a power of making one or more choices in a highly restricted range of situations where their judgments and purposes happen to converge.

Simpson calls such collections of individuals, intermediate between multitudes and groups agents, *teams*, and we will follow his usage.<sup>6</sup> In addition to actual group agents and actual teams, we recognize, like him, that there are *potential group agents* and *potential teams*. These are collections of individuals that might potentially form themselves into group agents on the one side, teams on the other, even if they do not actually do so.

### C. Simpson's argument

With these observations in place, we are in a position to restate Simpson's argument for the specific charge that the people have a role in republican theory that enables them to dominate individuals, and the general charge that this means that many other potential teams will have a similar capacity for domination.<sup>7</sup> We do so first in a step-wise fashion and then expand

6. Simpson, "Impossibility," p. 40. The joint action exemplified by a team has been variously analyzed by authors such as Michael Bratman, Margaret Gilbert, John Searle, and Raimo Tuomela, but we need not attend to nuances of their analyses here.

7. While our paper focuses on the critique as developed by Simpson, that critique is closely related to "the coalition problem" posed for republican theory in Keith Dowding, "Republican Freedom, Rights, and the Coalition Problem," *Politics, Philosophy, and Economics* 10 (2011): 301–22. Some analogous points are also raised in Christian List and Laura Valentini, "Freedom as Independence," *Ethics* 126 (2016): 1043–74; and in Niko Kolodny, "Being Under the Power of Others," in *Republicanism and the Future of Democracy*, eds. Yiftah Elizar and Geneviève Roussetière (Cambridge: Cambridge University Press, 2019). The main points we make against Simpson will also count against these other critiques.



on it in the discussion that follows. The argument breaks down into the following steps.

- (1) To secure republican freedom, the ability of an individual, group agent, or team to interfere voluntarily in our choices must be externally controlled.
- (2) The state is a group agent, with considerable abilities to interfere in our individual choices.
- (3) If the abilities of the state to interfere in our choices are to be externally controlled, then it must be by the people themselves.<sup>8</sup>
- (4) If the people have the ability to control the state, then it is an ability they have as a potential team.
- (5) To ascribe this ability to the people is to presuppose that potential teams in general have genuine abilities.
- (6) Among the abilities of many potential teams, including the people, is the ability, legal protections notwithstanding, to interfere in various choices of individuals.
- (7) But to have this ability is to dominate those individuals.
- (8) Thus, domination, whether by the people as a whole or by any other potential team, is inescapable.
- (9) This domination might seem preventable only if the individuals who would otherwise form the relevant potential teams were to display self-restraint.
- (10) But self-restraint is not an external form of control, and so republican freedom is impossible.

We have no problems with steps 1, 2, and 3, which articulate republican commitments. What gets the argument going against republicanism is the claim in step 4 that the people must exercise control over the state as a potential, and not an actual, team. Why so?

We may assume that the democratic state is controlled by the people, operating as an actual team, insofar as they follow ordinary democratic practice. In conducting political debates, in going to the polls, and in other democratic initiatives, the people team up to control the composition and direction of government. But what prevents the state from going rogue, so

8. For the purposes of this discussion, we leave aside the possibility that states might be externally controlled by international institutions.

to speak, disregarding or transforming the democratic order to suit its purposes? And who is to control the state in that case?

Here too it must be the people who exercise control—this time, at a second level—by holding out the prospect of, or perhaps even threatening, constitutional resistance. The people will exercise this sort of control, however, only as a potential team. Because reasonably functioning democracies do not often trigger constitutional resistance, there will not be routine arrangements in place to channel such resistance. Thus, if we want to say that the people have the ability to control the state in this second way, it seems to follow we must be willing to count the abilities of potential teams as genuine abilities.<sup>9</sup> For the moment, then, we let step 4 pass.

In the next section, we critique the crucial step 5, denying that all potential teams have the abilities Simpson ascribes to them. However, we are happy to concede (step 6) that if potential teams always have those abilities, then many of them—and certainly the people as a whole—will have the ability to interfere in people's choices, regardless of legal protections. And we are willing to accept (step 7) that this would mean that those teams dominate people and (step 8) that domination would therefore be inescapable. Equally, we are happy to concede steps 9 and 10, agreeing that virtuous self-restraint would not remove domination.<sup>10</sup>

#### D. *Potential dominating teams*

Before moving on to our critique of step 5 in the final section, it may be useful if we describe some scenarios to illustrate the sort of problems Simpson thinks it would raise. We offer three scenarios: the second and third appear explicitly in his discussion, and the first we have added for completeness:

*Coordinated masters:* There are three masters and a slave. No one master is strong enough to interfere in the slave's choices, but any two can

9. This is how Simpson, "Impossibility," pp. 30–31, frames the issue, and for present purposes we adopt his framing. With suitable reworking, it might be put in terms of the dual-aspect model of democracy in Pettit's *On The People's Terms*, pp. 252–92.

10. Thus, it is not enough to counter the domination of the powerful that, in Kolodny's words, they are "resolutely disposed to refrain" from exercising their power of interference: Kolodny takes this to be sufficient to counter "hierarchy or subordination." See Niko Kolodny, "Rule over None II: Social Equality and the Justification of Democracy," *Philosophy and Public Affairs* 42 (2014): 287–336, at p. 295 and 293, respectively.

do so by coordinating their efforts. Master<sub>1</sub> and master<sub>2</sub> coordinate their efforts, while master<sub>3</sub> is benevolent and does not.

*Nearly coordinated masters:* There are three masters and a slave. No one master is strong enough to interfere in the slave's choices, but any two can do so by coordinating their efforts. Master<sub>1</sub> is ready to coordinate with either master<sub>2</sub> or master<sub>3</sub>, but the latter are both benevolent and do not.

*Uncoordinated masters:* There are three masters and a slave. No one master is strong enough to interfere in the slave's choices, but any two can do so by coordinating their efforts. All three masters are benevolent.

Any combination of two masters in these scenarios constitutes a potential team with the ability to dominate the slave. In *coordinating masters*, master<sub>1</sub> and master<sub>2</sub> constitute an actual team for this purpose, and it is obvious that the slave is dominated in this scenario. What about the other two scenarios? Simpson's argument implies that republicans must hold that the slave is dominated in both of them.

The argument goes like this. In each case, there is a potential team and, because republicans think that the potential team constituted by the people can have genuine abilities, they must ascribe genuine abilities to each of these potential teams also: the *nearly coordinated masters* in one case, the *uncoordinated masters* in the other. Specifically, they must ascribe the ability to interfere at will with the slave. And that means that each group dominates the slave in virtue of its ability as a potential team.

Simpson further supports his reasoning by observing that in the latter two scenarios, the slave has good reasons to ingratiate himself with all three masters, much as he does in the first scenario.<sup>11</sup> Put another way, all three scenarios fail to meet the eyeball test: in none of them can the slave look his masters in the eye without reason for fear or deference.

According to Simpson, republicans must therefore concede that domination is inescapable: so long as we live in society with others, we are surrounded by potential teams, including the people as a whole, that have

11. Simpson, "Impossibility," pp. 32-33.

the ability voluntarily to interfere in our choices.<sup>12</sup> The suggestion is that even as you enter your local café to get a coffee, the customers there might on some whim or fancy suddenly team up to violently eject you, and the only thing preventing them from doing so, according to step 9, is self-restraint—their inner sense that terrorizing strangers is not the sort of thing decent people generally do. But because mere self-restraint does not count on the republican view as sufficient control, the café customers dominate you as a potential team. This conclusion would render republican freedom impossible and make a nonsense of republican claims.

This completes our reconstruction of Simpson's argument. Next we begin our response.

### 3. REBUTTING THE CASE

What must republicans do if they are to resist Simpson's charges? Simpson assumes they would have to argue that the abilities of potential teams are not genuine abilities and thus no threat to our freedom. And he holds they cannot maintain this line given their claim that the people control the state through their ability to act as a potential team in constitutional resistance.

But there is an alternative line republican theorists can and should take in response to his critique which, drawing on points made in the previous section, we defend here. They can argue that potential teams are not all of a kind and specifically that potential teams have abilities only when and to the extent that special conditions are satisfied. This argument will serve republican purposes insofar as the following two claims are sound: first, that the special conditions enabling the people to control the government in constitutional resistance do not enable them to interfere with random individuals; and second, that the special conditions that would allow other potential teams to interfere with random individuals are satisfied only in circumstances that republicans would have independent reason to decry.

#### *A. Domination by individuals, group agents, and teams*

Before introducing this argument, we need to remind ourselves of some general features about the ways in which domination may occur. In the model of domination inspired by the master-slave relationship, not only is

12. Simpson, "Impossibility," pp. 40–41.

it the case that the slave is denied robust noninterference, it is also the case that the master enjoys a robust ability to interfere with the slave's choices. His will operate across a broad range of situations: it is an enduring will, as we put it earlier. And that will can operate across more or less all the scenarios in which the slave faces a choice: in each such situation, the master is capable of interfering in how the slave chooses.

But, to turn to a second possibility, domination may also occur when the will of the dominator is contingently rather than robustly powerful. That happens, for example, in the opportunistic domination enjoyed by the armed mugger who finds you alone at night in a park; it is only in that particular situation that the mugger has power over you, whether it is exercised against you or not.<sup>13</sup>

Just as domination may be contingent rather than robust, so something similar is going to be true of a third scenario, where the domination is imposed by a group agent. Like an individual, the group agent has an enduring, if not an equally wide-ranging, will; and it may dominate you in your position as a member of that group or indeed as an outsider to the group. But unlike the master's will in relation to the slave, this will is unlikely to range across all those situations in which you have a choice. (The only exception will be the total institution, so called.) Thus, the domination that such a corporate body enjoys will be contingent on your making choices that fall within the range of its will.

A fourth possibility of domination involves teams rather than group agents. Earlier we noted that a team, as distinct from a group agent, does not have an enduring will. This, it turns out, makes the domination it can practice particularly contingent. The team has only what we described as an episodic will—a will that covers a limited range or set of situations. And such a will can dominate you only if it happens that the situations covered bear on one or more of your choices. Thus, if the boycotting group successfully targets you as a producer, it will certainly have the ability as an actual team to interfere in your choices about where to sell your products. But that group, considered as a team actually organized to boycott, will not have the ability to affect your other choices: it does not have a will that extends to those choices.

13. For an opposing point of view, see Dorthea Gâdeke, "Against Interactional Domination." Paper presented at a conference on republicanism (Charles University, Prague, November 2017).

These observations raise the question as to whether domination can occur under a fifth possibility, where the allegedly dominating entity is only a potential group agent or team. We concentrate on the case of the potential team, because that is the relevant case for our purposes. The question is whether a potential team is bound, however, episodically and contingently, to have a will of the kind required for domination. We argue that normally it does not have a will of even this episodic kind, because it is not suitably equipped to act.

*B. Equipping potential teams to act*

Suppose A jogs along the same route through the city park near her home every evening. Suppose further that many people live near the route, and that any two of them acting together could successfully attack A during one of her evening runs but that none of them, acting alone, would be able to do so (perhaps because, in the latter case, A could escape and report her assailant to the police).

Now consider any random pair of individuals, B and C, living nearby, and ask whether they as a potential team dominate A. Specifically, consider whether they do so on the assumption, favorable to Simpson's case, that they each want to attack A and are willing to do so by coordinating with one another.<sup>14</sup> Do they have the ability as a potential team to attack her successfully? And do they for that reason dominate her?

We say, not. The reason is that for two people like B and C to be able to coordinate successfully, further conditions must be satisfied beyond that of each wanting to coordinate in an attack on A. First, they must each be aware that they do each want to do this and be aware that they are each aware of that fact. Arguably, indeed, they must each be aware of this awareness in turn and so on to higher levels: they must each share in a common or mutual awareness, as it is put, of wanting to coordinate in an attack on A.<sup>15</sup> And second, there must be a strategy that is salient to each—and so plausibly available to them as a matter of common awareness—for getting together to launch an attack. There must be a

14. This is the "can do together" test as described by Simpson in "Impossibility," at p. 40.

15. On common awareness see David Lewis, *Convention* (Cambridge, MA: Harvard University Press, 1969). At higher levels, all that need be required for common awareness is that neither party is disposed to reject the belief required at that level.

specific meeting time and place along A's route, for instance, that they might converge on as a place from which to attack.

It is only if B and C satisfy these special conditions that they will be in a position to team up in forming a will either to interfere with A or not. But we cannot expect the conditions to be satisfied for random pairs of individuals like B and C under normal circumstances. And we cannot even expect that it will be feasible for either member in such a random pair to test the water as to whether the other is willing to join in an attack, for in a generally healthy society, doing so would expose them to a considerable risk of isolating themselves. Thus, would-be muggers like B and C will likely remain in ignorance of one another's desires and be unable to establish a strategy for acting together against A. And, this being obvious on all sides, A will feel no need to ingratiate herself with all the possible pairs of muggers living by the park: she will have no difficulty looking any one of them in the eye without reason for fear or deference.

None of this is to deny, of course, that specific individuals might overcome these barriers to cooperation in specific cases by communicating to one another their mutual wish to attack runners in the park, and by agreeing to meet up at a particular time and place for that purpose. But such individuals would then constitute an actual team, not merely a potential one, and no one denies that actual teams—in effect, gangs—may have the ability to dominate others. To ensure A's safety against such gangs, enabling her to pass the eyeball test, it will probably be necessary for A to enjoy effective legal protection against them, whatever form that takes.

These observations suggest that in order for B and C to interfere as a team with A, enacting a hostile episodic will, they must satisfy three conditions: first, they must each desire that they together interfere; second, they must be aware in common of their mutual desire; and, third, they must be aware in common of a strategy whereby they can act on that desire. Consistently with being a potential team each of whom wishes to attack A, as in the first condition, they may lack the ability to interfere with A if they fail the special awareness and strategy requirements, mentioned in the second and third conditions. They may have the potential for interference and domination in that case—it may be possible for them to become a dominating presence—but they will not actually have the ability to interfere and so will not actually dominate A.

In order for potential teams to dominate A, they must be poised to interfere with her should they wish to do so. And that means that they

must satisfy the special conditions of awareness and strategy in such a way that did they form a shared wish to act together against A, they would be aware in common of that desire and of a strategy for satisfying it or, at the least, of a strategy for getting together to form such a strategy. Those conditions being satisfied, they would have the capacity, just as things are, to interfere with A. As we might put it, they would be a *capable* team—in particular, a team capable of interference—not just any old potential team: not just an arbitrary collection of individuals that might possibly develop the capacity to interfere.

*C. Responding to Simpson's general charge*

We are now in a position to respond to each of Simpson's charges. Consider first the general charge that any potential team can exercise domination over an individual. As this charge is implausible in the example of the runner, so it is implausible in the sorts of cases that Simpson envisages.

Consider his examples of the nearly coordinated and uncoordinated masters, as distinct from the masters who actually coordinate to interfere with a slave. It should be apparent now that crucial facts are omitted from the descriptions of those scenarios. On our analysis, the masters in the two cases would dominate the slave if the only reason for their not interfering was the lack of a shared wish to do so: that is, if the special awareness and strategy conditions making joint interference possible were already fulfilled and they had the capacity, should they wish, to interfere as a team. While they would not yet be an actual team in that scenario, they would not be merely a potential team either: they would be a capable team. And in that case the slave would certainly be unable to look those masters in the eye without reason for fear or deference: the masters would have a capacity for interference, not just the potential to develop such a capacity.

But for all that Simpson's descriptions of the scenarios imply, the awareness and strategy conditions might not be satisfied. If they are not, the masters will not have the capacity to interfere, and thus not constitute a capable team holding sway over the slave. Thus, it is false to claim, as he does, that necessarily the nearly coordinated and uncoordinated masters dominate the slave.

Given that only a few masters are involved in such an unusual case, however, it might be very easy for any two of them to bring about



satisfaction of the awareness and strategy conditions. And so the slave might very well have reason for fear or deference towards each of them. Despite the fact that the masters lack an established ability to team up in interference, any defiance by the slave might prompt them to realize the conditions needed for that ability. And so the slave might seem to fail the eyeball test, not being able to look either of them in the eye without reason for fear or deference.

Is this an objection to the line we have taken? Not by our understanding of the eyeball test. The test suggests, as we put it, that someone, A, will avoid domination by an agent, B, if they do not have “any reason” for fear or deference “that derives from B’s ability to interfere in their choice.” But that is consistent with A’s having a reason for fear or deference that derives from another source: say, from B’s having a deciding vote on whether they are to be given a salary raise. In the case on hand, the source of the fear or deference that the slave may well feel is not the actual ability of a team of masters to interfere, but the probability of their taking steps to form such an ability: the probability of a change that would make it the case that the slave is dominated. (As argued earlier, this involves probability of a kind that is naturally of concern to republicans)

The eyeball test, as our original formulation makes clear, is not meant to be an unconditional test for whether an agent B has the capacity to interfere in A’s choice. Rather it is a conditional test for whether A is sufficiently protected against B, if it is independently granted that B has the capacity to interfere with A. For an analogue, think of the test for whether a child has recovered from measles: that its facial spots have disappeared. This is not an unconditional test for whether the child had measles and has now recovered—the spots might have had another source—but a conditional test for whether, if the child had the measles, it has now recovered.

We may conclude that the general charge made by Simpson does not hold across all the cases he imagines and does not undermine republican theory. There may be cases where potential teams that lack the capacity for interference are within such easy reach of realizing the awareness and strategy conditions for having that capacity that it is rational for anyone who would be exposed to such interference to feel fear and deference. But even teams of that kind do not dominate anyone. And, still more clearly, no potential teams that are not within easy reach of realizing the required conditions can dominate anyone.

All of that said, of course, it is undoubtedly the case that there are potential teams for which the awareness and strategy conditions are already fulfilled. And it is undoubtedly the case, that such teams may dominate particular individuals.

Suppose you are the member of an ethnic minority in a racist society, say an African-American in a southern state in the early 20th century. You enter a café to get a coffee, perhaps one that isn't formally restricted to whites. There are exclusively white customers there, and it is a matter of common awareness among them that if any one tells you to get out, the others will not object, and that if you disobey, they will join with the first person in forcing you to leave. In such a situation, it is absolutely clear that the customers have the capacity as a team to interfere with you—to eject you from the café—and, having that capacity, that they dominate you whether or not they do actually interfere.

Happily, for the possibility of combating domination, however, government can play a significant role in preventing circumstances like these, by raising the barriers to cooperation. In fact, Simpson says so himself:

[I]n prosperous, stable parts of the world ... [life] has become both individualized and institutionalized, so that spontaneous joint action is not seen often and not readily imagined. ... [But in] the relatively recent past and in the majority of the world, where these trends are less pronounced, spontaneous group action was and is a salient possibility. ... While the situation of Dalits in India is an example, minorities in the West attest that the capacity for such action is depressingly present too. It is a triumph of governance when this is unlikely.<sup>16</sup>

Republicans will have no hesitation agreeing with this passage. It is indeed a triumph of governance when a society is so organized as to render the dangers of spontaneous violence uncommon: doing so enhances our freedom from domination.

#### *D. Responding to Simpson's specific charge*

Let us turn now to Simpson's specific charge that if republican theorists give the people as a whole a role in controlling government, then they must admit that the people dominate each and every individual in the

16. Simpson, "Impossibility," p. 47.

society, being capable of interfering at will in anyone's life. The people will control a democratic government at a first level insofar as they or a good number of them take part in campaigning and voting at the polls and use the courts and other such channels of contestation to challenge government. And they will control it at a second level insofar as they have an ability, however rarely exercised, to resort to constitutional resistance should the government offend against democracy.

The people will possess this ability to resist government, and exercise the second sort of control, insofar as it is a matter of common awareness in the society that should the government act abusively, then any individual protester or a group of protestors may expect to have the active or passive backing of many others in pursuing the protest. Can we expect those awareness and strategy conditions to be met in suitably democratic societies?

They may not be satisfied in autocratic democracies where the authorities intimidate citizens and are likely to strike back at anyone who brings or supports a constitutional challenge, whether in the courts, via parliament, in the media or on the streets. And they may not be satisfied in apathetic democracies where people are so indifferent to politics—so bought off, in an old image, by bread and circuses—that they are unlikely to care about constitutional abuses and unlikely to join any who protest against such abuses. But they may well be satisfied in any democracies where institutions and norms guard against government intimidation and citizen indifference.

Is it unrealistic to expect that contemporary democracies can be like this? We hope not. In many of our democracies, there are deep traditions of putting the powers of government in many hands, to cite Madison's picture of the mixed constitution, thereby guarding against intimidation. And in many of them, there are civic groups that invigilate government, under commonly accepted norms, and are poised to blow the whistle on any form of abuse. Let institutions and norms of these kinds be in place, and it is possible, even plausible, that the awareness and strategy conditions needed for the people to be a team capable of acting against constitutional abuse will be realized.<sup>17</sup> This will be especially so with democracies where there is a shared memory and celebration of successful protest and resistance. Such memories will provide blueprints for popular action in the event of constitutional abuse.

17. In a society like this, ideally, resistance to constitutional abuse will be "a permanent possibility:" the citizens will be "resistance-prone and the government resistance-averse." Pettit, *On the People's Terms*, p. 174.

But now for the specific charge that Simpson brings. Suppose the people have this ability to guard against undemocratic behavior by the government. Doesn't that mean that they must also have the capacity to interfere with any member of the society, and that they will constitute a potential team that dominates every single person? If the people are a capable team on the one front, in other words, won't they be a capable team on the other?

Absolutely not. The people may be poised in a democratic society to act against an unconstitutional government, given that it is a matter of common awareness that protesters against such a government are likely to be backed by others and given that there are civic groups with the capacity to organize strategies of resistance. But there is no basis for thinking that the same is necessarily true when it comes to acting against a particular individual or subgroup, interfering in their basic liberties.

On the contrary, indeed, the very factors that make resistance to constitutional abuse feasible are likely to make it difficult or impossible for people to take action at will against a random individual. If people are poised to act against constitutional abuse, subscribing to appropriate norms and organized in appropriate civic groups, then any attempt by someone to mobilize for action against a particular individual or individuals is not only unlikely to attract the support of others; it is even likely to attract their condemnation and opposition. The fact that the people are a capable team on the constitutional front—a capable, not a merely potential, team—is likely to make them a merely potential team on the other: a team that is incapable of action against a random individual.

If you live in a robustly democratic society, then you will have no more reason to fear the people at large than you have to fear the strangers you encounter on entering your local café, or the people who happen to live near the route where you regularly run. The people may be a team that is capable of countering undemocratic behavior on the part of government without being capable of ganging up on any individual. That team may have the ability to counter democratic abuses, so that whether or not to counter such abuses falls within the domain of its episodic will, but that does not mean that it has an ability to pick on an individual at random and decide to interfere in that person's life. It does not mean that the people as a whole have a will to which individuals are subject in anything like the manner that slaves are subject to a master.

## 4. CONCLUSION

Simpson's charges against republican theory are very well crafted. Let the people have the power necessary to guard as a team against the public domination of the state, so the more specific charge goes, and they will have sufficient power to exercise private domination over individuals. And, to go to the general version, that feature in virtue of which the people have such a dominating power—viz., that they are a potential team—belongs to an open range of sets of individuals in any society, so that republican theory not only holds by inconsistent claims; it hails an ideal that is ubiquitously violated in society.

Well crafted though the charges are, however, they clearly fail. Not just any potential team satisfies the awareness and strategy conditions necessary for having a power of acting together—necessary for being a capable team—and so necessary for having a dominating power of interfering at will with a random individual. Thus, the general charge fails. And the satisfaction of the awareness and strategy conditions that enable the people to combat constitutional abuse, making them a capable team on that front, does not enable them to interfere at will in the affairs of an individual, exercising domination over that person. On the contrary, the traditions and norms that might enable the people to act as a team in resisting an abusive government ought to make it difficult for them, even perhaps impossible, to act against any random individual at will; on that front, they will remain a merely potential team, not a capable one.