

PHILIP PETTIT

## The Determinacy of Republican Policy: A Reply to McMahon

In “The Indeterminacy of Republican Policy,” Christopher McMahon challenges my claim that the republican goal of promoting or maximizing freedom as nondomination, even taken on its own, can give the polity a reasonably determinate policy profile. He holds that “in some policy contexts, at least, supplementation is required if determinate conclusions about policy are to be obtained.”<sup>1</sup> I argue that he is mistaken about this.

My argument is in three sections. I first try to show that under his version of republican theory, which I summarize in a dozen or so points, it does indeed follow that policy is indeterminate. In the second section, I identify the main ways in which this version departs from mine. Finally I present my own version in a more positive light, showing why it is proof against his sort of challenge. My presentation of the theory repeats a number of familiar points but also makes observations on some novel consequences; this is necessary in order to combat McMahon’s interesting challenge.

### I. MCMAHON’S VERSION OF REPUBLICANISM

As McMahon interprets republican theory, and in particular my characterization of the theory,<sup>2</sup> it is indeterminate on some crucial issues of

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1. Christopher McMahon, “The Indeterminacy of Republican Policy,” *Philosophy & Public Affairs* 33 (2005): 67–93, at p. 89. All parenthetical references in the text are to this article.

2. He relies in particular on two sources: Philip Pettit, *Republicanism: A Theory of Freedom and Government*, pb ed. (Oxford: Oxford University Press, 1999); and Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge and New York: Polity and Oxford University Press, 2001).

policy. In this section I reconstruct his version of republicanism in a sequence of propositions, showing how it leads to indeterminacy. In order to reduce difficulties of interpretation, I will formulate the propositions, as far as possible, in his own words.

(1) Republican theory requires the promotion or maximization of freedom as nondomination.

(2) “An individual enjoys freedom as nondomination if and only if he is ‘more or less saliently immune to interference on an arbitrary basis’” (p. 67).<sup>3</sup>

(3) Whether an act of interference is arbitrary or not “must itself be understood in normative terms” (p. 70); immunity to interference, according to McMahon, is a “normative power, the power to make happen something that ought to happen” (pp. 69–70).

(4) Whereas arbitrary interference is normatively objectionable or unlicensed, “nonarbitrary interference is interference that has the appropriate normative license” (p. 70).

(5) What gives a form of interference the license in virtue of which it counts as nonarbitrary? Republican theory explicitly claims that government interference “has the appropriate license if it tracks the common avowable interests of the citizens” (p. 70).<sup>4</sup> These are the common interests that citizens are disposed to avow, not those they ought to avow; “avowable” means avowal-ready, as we might say, not avowal-worthy.<sup>5</sup>

(6) Generalizing from that claim, any form of interference will be nonarbitrary, whether perpetrated by government or by private parties, if it is “justifiable by reference to the common avowable interests” (p. 79).

(7) There is a problem, however, about applying such a criterion of nonarbitrariness. This is that there will often be disagreement about the

3. The quotation is from the preface to *Republicanism: A Theory of Freedom and Government*, p. vii. For the record, I prefer to define freedom as nondomination using a formulation that, unlike “if and only if,” allows for degrees of freedom: “insofar as” or “to the extent that” or something of the kind.

4. Strictly, McMahon should say, not “tracks,” but “is forced to track”; this is an important aspect of my understanding of republicanism, since tracking could occur fortuitously, not as a result of social constraints.

5. I set aside the question of how to understand common interests, since this is not an issue that divides McMahon and me; in any case, the argument of the article ought to go through under different accounts of common interests. For more, see Philip Pettit, *A Theory of Freedom*, chap. 7.

behaviors and “the policies that are justifiable by reference to the common avowable interests” (p. 72).

(8) The solution to this problem is to establish “some decision-making procedure capable of resolving such disagreements” (p. 72). The procedure adopted should be one whose employment in resolving disagreements is itself “justified by reference to the common avowable interests” (p. 73).

(9) A central task for government will be to ensure that such a procedure is available. “In a republican polity citizens who believe that they are being interfered with in an arbitrary way by other citizens will have the same recourse they have when they are being interfered with in an arbitrary way by the government. They will be able to contest the treatment they are receiving by appeal to a government decision-making procedure” (p. 79).

(10) The outcome of this “contestatory procedure” will fix what ought to happen in cases of disagreement about the requirements of common avowable interests; it “determines how interaction ought to unfold. In particular, it determines what constitutes arbitrary interference” (p. 79).

(11) But now another problem looms. In “most cases,” differences over the requirements of common avowable interests will be in the “zone of reasonable disagreement.” What the contestatory procedure dictates, then, will define what it is to be nonarbitrary; it will not “purport to track the truth,” as it might do with argumentatively resolvable differences, and will constitute an authoritative ruling (p. 79).

(12) In cases of reasonable disagreement, then, “once a government, which itself avoids domination, resolves a dispute among citizens, its decision becomes the standard by which the domination of citizens by each other is determined. Interference that is licensed by this decision is not arbitrary” (pp. 79–80), and interference that is not licensed is arbitrary.

(13) In this sort of case, therefore, “the concept of nondomination cannot by itself provide determinate guidance concerning the policies that ought to be adopted.” What government says is nonarbitrary will be, by the very fact, nonarbitrary. “Any decision that is made by the requisite procedure will promote nondomination” (p. 80).

This conclusion would greatly reduce the interest of republican theory as a generator of policy unless, as McMahon notes, it is supplemented by

some other value besides that of freedom as nondomination; this appears to be the remedy that he himself would favor. Whatever treatment a nonarbitrary government decides to allow in the zone of reasonable disagreement is bound to count as nonarbitrary and nondominating; so long as government follows a suitable procedure in reaching its decision, it cannot get things wrong. As the toss of a fair coin may determine, as a matter of pure procedure,<sup>6</sup> that the selected outcome is fair, so government fiat in the zone of reasonable disagreement will determine as a matter of pure procedure that a favored practice or policy is nonarbitrary. The goal of promoting nondomination cannot be invoked, then, to give advice to government on what policy it should adopt in the area, or to provide a basis for complaint about what government does: “any actions, and therefore any interference, licensed by its decision will not be arbitrary” (p. 83). Republican theory will be reduced, by its own strictures, to silence; it will be self-stultifying, if not self-defeating.

## II. THREE POINTS OF DISAGREEMENT

The first point at which this account departs from republican theory, as I characterize it, is in characterizing arbitrariness in normative terms. This characterization means that whether an act of interference is arbitrary or nonarbitrary can be reliably agreed upon only among those who share the same normative viewpoint. I argue explicitly, however, that the notions of interference and of arbitrariness can be explicated in non-normative terms and that those with different evaluative views can expect in principle to be able to agree about whether arbitrary interference and domination are present or absent; their disagreement can be restricted to the issue of how good or bad this is. To quote from the book that McMahon uses as his main source: “As the facts of the matter, including facts about local culture and context, determine whether a certain act counts as interference, so the facts of the matter determine whether a certain act of interference counts as arbitrary.”<sup>7</sup>

In that book, and elsewhere, I take nonarbitrary interference to be a sort of interference that is controlled by the interfeeree in the sense that the interferer is forced to track the avowable interests of the interfeeree: that is, the avowal-ready interests of the interfeeree; the interests that the

6. On “pure procedural” justice see John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971). McMahon does not mention this analogue.

7. Pettit, *Republicanism*, p. 57.

interferee is disposed to avow. The interferer is in a constrained position akin to that of Ulysses' sailors,<sup>8</sup> when they keep him bound to the mast.<sup>9</sup> Arbitrary interference by someone with certain others differs in precisely this regard; such interference, by contrast with the nonarbitrary sort, "is not forced to track what the interests of those others require according to their own judgments."<sup>10</sup> The question of whether domination occurs in a given case, then, does not depend on whether the interference possible or perpetrated enjoys a normative license; it depends on the factual question of whether the interference is subject to suitable controls.

This takes me to a second point of disagreement with McMahan, bearing on the arbitrariness of government interference in particular. He says that in most cases, those in the zone of reasonable disagreement, government interference that is licensed under suitable procedures will by that very fact count as nonarbitrary; it will be nonarbitrary, as we might say, in virtue of being licensed. I see things exactly the other way around, as discussion of the first point of disagreement should make clear. Take a certain form of government interference such as the imposition of taxes. If this is forced to track the common avowable interests of citizens in a given regime, then it is controlled by those citizens as a group and, to make a plausible factual determination, counts as nonarbitrary. Given it is nonarbitrary in that factual sense, it is likely to be licensed under suitable procedures. It will be licensed because it is nonarbitrary, however, rather than being nonarbitrary because it is licensed. My position here is the reverse of that which McMahan imputes to me.

The third point of disagreement turns on the relationship between government interference in people's lives and interference by private parties. McMahan takes the basis for nonarbitrariness in public and private interference to be the same, arguing that any form of interference, private or public, will be nonarbitrary so far as it tracks or is forced to track common avowable interests. But this, in my view, is seriously mistaken. Whether a form of interference is nonarbitrary depends on the

8. Pettit, *A Theory of Freedom*, p. 45.

9. Ironically, having an interest in nonarbitrariness, so understood, is very close to having an interest in something that McMahan recommends as a supplementary value for republicanism; dropping what he takes to be the normative idea of the arbitrary, he describes this as "an interest in not being vulnerable to interference from fellow citizens" (p. 86) or "an interest in control" (p. 88).

10. Pettit, *Republicanism*, p. 55.

factual question as to whether it is controlled by the avowal-ready interests of the interferee; that is the first point discussed above. A public act of interference will be nonarbitrary so far as it is forced to track the common avowal-ready interests of the citizenry; that is the second point discussed. But what, consistently with these points, will make a private act of interference nonarbitrary? Not, clearly, the fact that it is forced to track the common avowable interests of the citizenry; that is relevant only in the public case. Rather, the fact that it is forced to track the avowal-ready interests of that particular person. The basis for nonarbitrariness is different in the two cases, contrary to what McMahan suggests.

His position on these three points of difference shapes the rest of the argument that McMahan develops, in particular the crucial idea that in cases of reasonable disagreement state determinations will provide a pure procedural criterion—this is my way of putting it, not his—for identifying nonarbitrary interference. Go his way on the three points mentioned and I think that his conclusion will be inescapable and republican theory will be subject to a serious, self-stultifying problem. Go my way, however, and that problem will disappear or diminish. I concede that there may be other difficulties in the way of developing a comprehensive, neo-republican viewpoint; I think of the approach as a research program, after all, not a matter of blind belief. But I do not regard the difficulty raised by McMahan as an insurmountable block.

### III. MY VERSION OF REPUBLICANISM

In order to bear out this point, it may be useful to provide a reconstruction of my own point of view, in parallel to the reconstruction offered of McMahan's. I conclude with a presentation that highlights some crucial propositions.<sup>11</sup>

(1) Republican theory requires the promotion or maximization of freedom as nondomination.

(2) One party, X, interferes on an arbitrary basis with another party, Y, to the extent that the interference is not forced to track Y's avowable interests. And one party, X, dominates another party, Y, to the extent that

11. In the first ten propositions or so, I articulate points that are fairly explicit in chapter 2 of *Republicanism*, which is McMahan's main source. The remaining propositions spell out some consequences that are relevant to his challenge.

X is able to interfere on such an arbitrary basis with Y; this ability will come in degrees, depending on the difficulties and costs that X faces in the event of trying to interfere with Y.

(3) People will enjoy freedom as nondomination, then, to the extent that no one else is able to interfere with them on an arbitrary basis; whatever basic ability others may have is curtailed by the difficulties or costs that they face.

(4) Domination in a society overall might be reduced under a distribution of resources whereby people were able to protect themselves against arbitrary interference, or to impose retaliatory costs on arbitrary interferers. This would reduce the ability of each to interfere on an arbitrary basis with others, although it might waste a lot of effort in an arms race for protective and retaliatory resources.

(5) Domination overall is likely to be more economically and usefully reduced if there is a distinct, nondominating agency—presumptively, the republican state—that successfully establishes a suitable range of empowered choice for all, reducing the capacity of others to interfere in anyone's region of empowerment: in effect, disempowering choices that would threaten that privileged zone.

(6) The empowerment envisaged here may take the form of protecting the empowered choices or of providing choosers with resources of self-protection and retaliation; and the disempowerment may take the form of prohibiting hostile choices on pain of penalty, or of rendering them more hazardous or costly in other ways.

(7) Yet how can a distinct agency like the state act nonarbitrarily in enforcing the borders of empowered and disempowered choice? It will do so, plausibly, just to the extent that it is forced to track the common avowal-ready interests of citizens in establishing and policing those borders. It will rule out measures that offend against those interests and among the measures that conform equally well—in the normal case there may be many such candidates—it will select the winner on the basis of procedures that conform to common avowal-ready interests.<sup>12</sup>

12. Notice that arbitrary policies are ruled out at a first stage, but that many candidates may remain in place under this initial constraint. Another constraint applies at a second stage in the selection of a winning candidate: the selection must be made under a procedure that is itself nonarbitrary. Depending on the case, this procedure may involve a parliamentary vote, a popular referendum, referral to an independent commission, or whatever.

(8) There are problems, however, that will affect the performance of any republican polity. To begin with, no real-world regime will infallibly track all and only the common avowable interests of the citizens; the best designed republic may perpetrate public domination or may fail to prevent private domination. No doubt, institutional design can be gradually improved so as to rectify such failures but no political institutions are likely to achieve a perfect score. Call this the *problem of the imperfect state*.

(9) Even if the state is perfect in itself, tracking all and only the common avowable interests of citizens, there may be regions of generally empowered choice in which certain parties still manage to dominate others. This may be because there is nothing effective or because there is nothing nonarbitrary and authorized—nothing answering to the common avowal-ready interests of citizens—that the state can do to prevent such private domination. We may call these, respectively, the *problem of the ineffective state* and the *problem of the unauthorized state*.

(10) The problem of the ineffective state will be familiar. Take domestic abuse, for example. If formal intervention can worsen this problem, as is sometimes alleged, then the only hope of improvement may lie with initiatives in civil rather than political society; these can be supported by the state but cannot be implemented by it.

(11) The problem of the unauthorized state arises when the state cannot claim to track common avowal-ready interests in seeking to reduce what by many lights, including the state's own, may be seen as forms of private domination. This problem may appear for any of a number of more specific reasons.

(12) One reason is that while there is a common avowable interest in reducing some form of private domination, other things being equal, it may not be in the common avowable interest overall to reduce it; things may not always be equal. Suppose an unregulated workplace creates local problems of domination. There may still be side benefits attached to such a workplace, including benefits in prosperity and overall non-domination, and these may give the state reason not to regulate.

(13) Another reason is that the local culture may be such that people do not have a common interest in the reduction of some form of private domination, or at least not a common interest they are disposed to avow. An example might arise where a widely shared religious belief argues for arrangements under which women are subject to domination by their



husbands, and people are not disposed to avow a common interest in reducing that sort of domination. Here, as in the previous case, the state is not authorized to act.

(14) Yet a further reason why the state may not be able to interfere nonarbitrarily in order to reduce some form of private domination is that, whatever its own views, there is disagreement, perhaps even reasonable disagreement, about whether there really is domination involved; about whether the state can act effectively against it; or about whether it is in the common avowable interest, or the common avowable interest overall, to reduce it.

(15) The problems of the imperfect, the ineffective, and the unauthorized state show that no matter what the political rulings in a society, and no matter what the political successes, there is always likely to be independent ground for republican complaints against the status quo. There is always likely to be a basis for contesting the policies implemented by the state, or the policies supported by the citizenry, on the grounds that they facilitate unnecessary domination. Republican complaint cannot be silenced just by political fiat; republican theory is not exposed to the self-stultifying indeterminacy that McMahon alleges.