

I. Introduction to the Problem

One of the primary concerns in Isaiah Berlin's delineation between two concepts of liberty, negative and positive, is to ensure that at least a minimum area of personal freedom is always maintained.¹ This negative liberty establishes an area where individuals are free from deliberate interference or coercion. This permits individual to pursue their personal ends and ideals. A plurality of ends and ideals in society is possible. However, we understand that there must be some restrictions on freedom for personal freedom to subsist. In a state of absolute unrestricted freedom, the freedom of the weak would be suppressed by the strong, a state of natural freedom that would lead to social chaos. Ultimate liberty is curtailed by law, which supports social cohesion and confirms an area of personal freedom. While law restricts liberty, it is a necessary restriction. The extent of the laws restrictions must be limited. If left unlimited, freedom again disappears. Thus a balance must be found between restrictive laws and personal liberty.

Neo-Republicans have a different understanding of the role of law in society.² These Republicans advocate a revival of classical Republican themes, and argue that personal liberty can only be guaranteed in a free state and requires institutional cultivation of civic virtue and political participation. They argue that the above-mentioned role of law, a role usually defended by negative liberal theorists, is inadequate in maintaining liberty. Laws don't just preserve liberty by coercing and preventing

¹ Berlin, I. *Four Essays on Liberty*. Oxford: Oxford University Press, 1970.

² My readings of Republican theory will concentrate primarily on the works of Quentin Skinner and Philip Pettit.

individuals from interfering with our personal liberty. Laws preserve liberty by coercing each of us to act in a particular way, “laws can—and must—force us to be free” (Skinner 1983, p, 215). The law is deployed to coerce citizens to promote the public interest virtuously, which enables the preservation of personal liberty. The potential for plurality of ends and ideals is preserved. For Republicans, active citizenship is not a good in itself, but contributes to maintain a free society, allowing for the realization of negative liberty. It is not constitutive Republicanism, but instrumental.

Republican theorists return to the historical record in order to challenge the assumption, as articulated by Berlin and Charles Taylor, that to support any theory connecting the concept of individual liberty with civic virtue and political participation, one must give substance to an account of objective human flourishing. Objective human flourishing, or *eudaimonia*, is related to the Aristotelian idea of humans as moral, rational beings with true ends and purposes. This, of course, would constitute a positive account of liberty. Instead, Republicans such as Quentin Skinner and Philip Pettit use a historical approach to demonstrate that the ideas of negative liberty and cultivation of civic virtue are not incoherent.

Republicanism strives to alter and clarify our understanding of liberty by claiming that civic virtue and participation is necessary to provide institutional assurances for liberties maintenance. The Republican’s propositions create difficulties. How are requirements of civic virtue and political participation consistent with a negative orientation towards liberty? I will attempt to address the broader claims posited by Republicanism by examining their arguments on a specific topic, the proper role of law in society. My attention concerning the proper rule of law in society will be divided into

two questions. First, when laws entail coercion to do something, specifically to develop a proper sense of civic virtue, are Republican theorists able to maintain individual autonomy? Second, do laws need to promote civic virtue in order to ensure personal freedom?

II. Method for Examining the Problem

Skinner, one of the first theorists to try to revive a Republican oriented theory of liberty, justifies his historical method on the grounds that it serves to enlarge our range of beliefs and conceptions available for analysis.³ Initially, a historical approach must attempt to recapture the content of an argument. This requires giving an account of what the philosopher is doing, “what sort of conclusions, what course of action he was supporting or defending” (Skinner 1984, p. 201). It is important to examine aspects of historical philosophy that do appear to be immediately relevant to the current state of affairs. The intention of a historical approach is not to look into the past in order to reflect our own beliefs and assumptions back, as if looking in a mirror. By considering more obscure aspects, we are less likely to be able to unconsciously project our beliefs onto the work. The historical approach enlarges our perspective and challenges us to reconsider our current beliefs.

Extending the conclusions of a historical approach to an argument of contemporary relevance is a difficult task, and has left Republican theorists prone to

³ Skinner, “The Idea of Negative Liberty: Philosophical and Historical Perspectives’, in Richard Rorty et al eds., *Philosophy in History* (Cambridge: Cambridge University Press, 1984), pp. 193-221.

criticisms of strategic re-interpretations and modifications.⁴ In order to evaluate the claim that a system of law requires coercion of citizens in order to cultivate their civic virtue, I will employ a hybridized method of re-constructivism⁵ and reflective equilibrium.⁶ The purpose of a re-constructive analysis is to establish consistent and coherent uses of concepts, this will entail examining the primary theorists to infer consistent and coherent concepts. A re-construction articulates and clarifies the main principles of a conception. Re-constructive approaches traditionally base their process on everyday, or common, language. I am consciously deviating from this practice by re-constructing concepts based on the significant literature. Using an ‘everyday’ method would immediately challenge a Republican historical method in a way that would prevent us from evaluating the content of the ideas. My intent in using a re-constructive approach is to determine plausible internal consistency and coherency in arguments. Evaluation of the concepts occurs in the second methodological step, that of a reflective equilibrium.

More concretely, to answer the first question posed in the above section, I will begin by attempting to re-construct a Republican concept of the coercive role of law. If a concept is found to be consistent and comprehensive, then the answer to the first question is yes, a conception of coercive law that maintains personal freedom is plausible. Beyond adding variety to our range of conceptions of laws, such a conclusion will not have a substantive effect on our ideas of liberty. I will then turn to the second question posed above, concerning the necessity of laws that cultivate civic virtue in-order to maintain

⁴ Charvet, John. ‘Quentin Skinner on the Idea of Freedom’, *Studies in Political Thought*, 2 (1993), 5-16 and P.A. Rahe. ‘Quentin Skinner’s “Third Way”’, *Review of Politics* Vol. 62 No. 2 (2000).

⁵ Oppenheim, Felix. *Political Conceptions: A Reconstruction*. Oxford: Basil Blackwell, 1981.

⁶ Rawls, *Theory of Justice* 46-53

personal liberty. This question will be addressed by subjecting the re-constructed conception of Republican law to a process of reflective equilibrium. Even this iteration of Republican freedom may be too broad to reasonably evaluate given the constraints of the project. I propose to further narrow the range by considering two topics of law commonly considered in the literature, laws of conscription and family laws. This will allow me to evaluate and compare the necessity of Republican concepts of coercive law in regards to the arguments that are directly critical of coercion and the concepts of law from the more traditional negative theorists.

III. Expected Results and Thresholds

I anticipate that I will be able to infer a consistent and coherent argument of Republican law that maintains personal liberty, but that this will not be enough to establish the necessity of coercive laws cultivating civic virtue. Because the first component will rely on a method re-construction, it will be easy to reject or confirm my hypothesis based on internal consistency and coherence. Because the second component is subject to a method of reflective equilibrium, it is more difficult to establish strict guidelines for confirming or rejecting my hypothesis. A reflective equilibrium approach is usually associated with an understanding that a theory is wrong somewhere, the reflective equilibrium is a process that helps determine how wrong a theory is and where is the theory is wrong (Rawls 52). However, the Republican theory makes this process easier with its absolute condition of necessity. This creates a burden for the Republican theorists to demonstrate that such laws are absolutely necessary, anything less provides grounds for dismissal. This high, self-imposed threshold is the basis of my skepticism towards the Republican endeavor.