

REVIEW

Hayek's Market Republicanism: The Limits of Liberty

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Hayek's Market Republicanism: The Limits of Liberty by Sean Irving, London: Routledge, 2020.

In the roughly two decades since his passing, the works of Friedrich Hayek retain a significant impression upon the social sciences. There are intellectual histories dealing with Hayek's career and its legacies. In addition, studies apply conceptual and methodological premises, as enunciated by Hayek, in several novel ways. Indeed, "Hayekian" insights have been devoted to an impressive range of economic, political, and social questions. A good example of the depth and versatility of engagement with Hayek's work is the *Cosmos + Taxis* (vol. 7: 5 + 6) symposium on Peter Boettke's book, *F. A. Hayek: Economics, Political Philosophy and Social Philosophy*.¹

A great share of literature concerning Hayek's own efforts, and the intellectual variations represented as Hayekian thought, have been written by scholars inspired by classical liberal commitments and insights that Hayek himself propounded. There are, of course, numerous critics of differing ideological and philosophical persuasions, actively producing research which problematise Hayek's postures on economics, epistemology, law, philosophy, or political science. A recent example of critical reception to certain aspects of Hayek scholarship is the recent title, *Hayek's Market Republicanism: The Limits of Liberty*, written by intellectual historian and philosopher Sean Irving, of the University of Essex.

The central objective of Irving's work is to encourage those with an interest in Hayek to reappraise his status as a classical liberal. The proposition is that Hayek's scholarly endeavours were more subtle than projecting the desire to minimise interference against the voluntary projects of individuals. Irving discerns a reliance by Hayek upon another tradition, tracing as far back to Roman-era political philosophy. It is here we find freedom grounded not in the non-interference condition of negative liberty but, rather, upon relational *non-domination* between individuals and groups. Building upon the Roman heritage, the strand of freedom attributed to Hayek, by Irving, is labelled as "neo-republicanism."²

I briefly digress at this point to describe the central tenets of neo-republicanism for those unacquainted with this philosophical system. For Philip Pettit and other neo-republican scholars, freedom consists in the secure enjoyment of conditions of non-domination. Non-domination, in turn, is attributed to an absence of arbitrary or unrestrained

power (Lovett 2018). Although much of the neo-republican literature focuses upon guaranteeing non-domination politically, such as through celebrating and promoting widespread democratic participation, the desire to eliminate domineering relationships extends to non-political actors and their diverse situations. The refusal to accept arbitrary power as a normative standard of freedom extends to, for example, contemporary workplaces (e.g., González-Ricoy 2014; O’Shea 2019). Social scientists have adopted, or refined, neo-republican insights to ruminate upon cultural-social concerns such as the treatment of women (e.g., Costa 2013; Halldenius 2015) and minorities (e.g., Fine 2014; Costa 2019).

What is the difference between neo-republican freedom and notions of freedom more familiar with classical liberals, such as negative liberty? An illustration of the distinction can be made in respect of relationships between masters and slaves, which, incidentally, Hayek explored in *The Constitution of Liberty*. Consider the case of a “kindly” master of a slave, who abstains from ordering the slave to work, meting out physical punishment, imposing curfews and other limits upon movement, disallowing personal relationships, and similar restrictions upon agency and choice. Under this hypothetical scenario the question arises: is the slave still unfree?

Slavery is a particularly odious case of unfreedom for both classical liberal proponents of negative liberty and neo-republican proponents of liberty as non-domination. However, in the case of the “kindly” master scenario, the master is not directly interfering with the slave. Thus, it might be claimed that under the negative liberty criteria of non-interference, the slave is, for all intents and purposes, free. For Pettit and other neo-republicans, however, non-interference is an insufficient indication of freedom—the slave remains in a state of relational vulnerability, to be arbitrarily subjected to the whims of the master. Under this scenario, “[t]he master has the power and right to arbitrarily interfere with the slave at will and may do so with impunity. … the slave remains unfree because the master has this power and right. So Pettit claims that to be free requires that a person not be subject to such domination” (J. Brennan 2021).

No doctrine is exempt from scrutiny, and neo-republicanism has proven controversial. Certain critics have accused the neo-republicans of effectively endorsing a degree of policy paternalism. Such paternalism not only connotes significant interferences with the lives of others, but appears to sit most uneasily with the neo-republican aversion toward domineering relations. In their defense of the non-interference dimension of freedom, Geoffrey Brennan and Loren Lomasky (2006) argue that “[t]o downplay the negative moral significance of interference with people’s preferences is to countenance interference for the sake of other values, including people’s own good.” Sean Irving acknowledges this critique when stating that a “difference between the negative conception of freedom as non-interference and the republican insistence on non-domination is that the latter does not regard all interference as contrary to individual liberty” (p. 70). This argumentative pivot is not a new one, having also been deployed in defending negative liberty against paternalistic interferences in the name of positive liberty—the latter viewed as a form of “self-mastery” cultivated by individuals acting of their own free will (Berlin 1969).

Other critics of neo-republicanism have argued that domination is not a fitting criterion for understanding freedom. Dowding (2011) contends that neo-republican freedom lacks practicability because there would always be a coalitional set of persons seeking to dominate over any one of us, at any given time and in any given context. The presence of coalitions that may dominate others implies that no one can ever be free in the neo-republican sense. Similarly, Simpson (2017) questions the political coherence of neo-republican freedom. If other citizen-voters possess the power—by dint of voting, protest, civil disobedience, or even revolution—to contain the dominance of political actors, the same-said citizen-voters must also have powers, at least potentially, to dominate other types of actors.

Certain classical liberals have also critically engaged with neo-republicanism on the economic front. Gerald Gaus reckons that neo-republican thinking is antithetical to market processes, insofar as they entail interferences leading to the effective domination of some economic agents. Pettit (1997) observes that to deliberately undercut prices offered by market rivals counts as coercive interference (even if not morally wrongful). Gaus claims neo-republicans also regard this as a form of domination. To wit, “[u]nless checked, Pettit alleges, differential success at accumulating resources always involves domination. The wealthy al-

ways *could* use their resources to interfere with others. ... The market is much closer to a realm of domination than it is one of freedom" (Gaus 2003, p. 68). The underlying Pettitian desire for economic "security from interference," as described by Gaus (*ibid.*), is also critiqued by Geoffrey Brennan (2018), the latter suggesting that interferences, which may result in losses experienced by a given agent, need not qualify as harms in an interdependent economic order.

Notwithstanding debates surrounding the philosophical credibility of neo-republican thought, Sean Irving suggests Friedrich Hayek actively engaged with the insight that liberty is non-domination. For readers of this journal, the contributions of market process and economic coordination toward Hayek's system of thought is well understood. The institutional underpinnings of the competitive and open market domain incentivises heterogeneous agents to draw upon their localised, and oft-tacit, economic knowledge in a mutually beneficial manner. Indeed, the market process is crucial in apprehending discoveries concerning methods of production and exchange. The benefits of productive coordination and material prosperity arising from the market defies those who fall for the "synoptic delusion" that, somehow, it is possible to holistically alter or reconstruct the economic means to fit some preconceived criteria (e.g., equality of outcomes).

Irving considers that Hayek's economic view is shaped by a neo-republican concern against relations of domination and subjection. In this context, "Hayek adopts non-domination because it complements his epistemic economics, according to which the existence of arbitrary power alone compromises economic coordination and exerts a deleterious effect on the use of knowledge." (p. 61). What is interesting about Irving's interpretation is that he supposes that Hayek's commitment to non-domination was subordinated to a foundational project dedicated to promoting market-oriented economic freedom. The view that "liberty is realised or frustrated in the market, rather than in the rest of economic life, led Hayek to frame his writing on liberty with reference, almost exclusively, to threats to market freedom, rather than more broadly conceived economic freedom" (p. 4). Expressing the key issue more bluntly, "the market is the arena in which liberty is realised. Market freedom is freedom" (p. 67).

Framing Hayek's thought in this way can readily explain his decades-long focus upon the institutional architecture of public governance. Consistent with the neo-republican commitment that "individual freedom requires a legal status that shields them from the arbitrary, and thus dominating, power of others" (p. 61), Hayek made a compelling case for the rule of law. This stance arguably finds its most elaborate treatment in Hayek's 1960 tract, *The Constitution of Liberty*, as well as in his three-volume 1970s project, *Law, Legislation and Liberty*. Irving helpfully reminds us that Hayek's concern with the rule of law—with its necessity of abstractly and generically applied law to prevent arbitrary, and discriminatory, political conduct—was a longstanding one (also S. Ealy 2010). For example, a BBC radio broadcast in 1956 finds Hayek indicating that the rationale for the rule of law rests in the desire "to prevent arbitrary coercion. After all, a man is free if he need not obey the arbitrary will of any other person" (p. 68).

As Hayek stated, a key problem underlining coercion is that the coerced are effectively reduced to being a tool in the hands of the coercers (Hayek [1960] 2011). A policy implication of this stance—undoubtedly informed by the quest to limit "patternless projections of authority" (Ratnapala 2003, p. 16)—is the need to control fiscal, legislative, and regulatory conduct on the part of political agents. It should be recognised that Hayek's perspectives are a component of the age-old liberal sensitivity toward the functional working rules for political life. As Irving lays out in his book, the need to maintain the rule of law also resonated with ordo-liberals such as Walter Eucken and Franz Böhm. Key ordo-liberals were associates, and intellectual fellow-travelers, of Hayek. Hayek's legal-political philosophy also inspired the subsequent development of constitutional political economy, as starkly testified by Buchanan and Congleton's ([1998] 2003) project to embed "generality norms" in constitutional formulation.

In a paper forthcoming in *Public Choice*, Jan Schnellenbach (2021) correctly suggests there are costs associated with discretionary policymaking. Those costs include the heightened risks of some privileged actors dominating others within the economic environment. Consistent with the market republicanism of Robert Taylor (2017), entry barriers and other market closures prevent the competition deemed necessary to constrain exploitation on the part of dominant economic actors. Contrasting Pettit's views about

competition, as summarised previously, competitive and open markets are *necessary* conditions to uphold freedom as non-domination. As a prominent *ordo-liberal* figure once said, competition is “the greatest and most ingenious instrument of disempowerment in history” (Böhm 1961, p. 22). Irving states such observations appear to resonate with Hayek’s theoretical understandings: “the efficient use of knowledge requires that plans can be formulated under stable conditions. This is undermined when there is uncertainty regarding the possibility of interference by another party, for Hayek primarily the state” (p. 69).

Liberals would regard the insights described above to be as relevant as ever. Modern political systems are practically becoming rife with discriminatory treatments, contributing to the abrogation of freedoms and rights felt by citizen-voters. This trend has been fueled by the provision of differential policy concessions by legislators and bureaucrats, which, in turn, reduces the relative costs of rent-seeking behaviour by sectional interests. Many of the political activities alluded to here are rhetorically supported by a range of “non-logical” justifications (Wagner 2016) referring to distributional imperatives, national prestige prerogatives, public safety concerns, and so on.

In *Hayek’s Market Republicanism*, Irving indicates that Hayek valorised limitations upon political action by presenting the dangers associated with so-called “unlimited democracy.” The concept of unlimited democracy may be described as one in which constitutional and related conditions carry limited, if any, political weight, and thus the only effective restraint upon governmental activity is located in the political interpretation of concerns harboured by the majority of citizen-voters. Irving not only points out that, for Hayek, unlimited democracy “was the very essence of *imperium*” (p. 83), but that the desire for rule-ordered approaches increasingly led Hayek toward a stridently antiseptic disposition toward political discretion. In Irving’s view this is reflected in Hayek’s (1976) proposal for the “denationalisation of money” through privately-issued currencies, as well as his advocacy for a “model constitution” separating law- and legislation-making functions of government (Hayek 1979). The spectre of Hayek’s engagement with the authoritarian Portuguese, Indonesian, and Chilean regimes of Salazar, Suharto, and Pinochet, respectively, also loom large in Irving’s treatment of the political issues.

The project of impugning unseemly, even ugly, motives behind intellectual concerns appears to have assumed growing popularity in recent years. Some of the great figures of classical liberal scholarship have been among those targeted by such ventures in the “hermeneutics of suspicion” (Boettke 2019). Even accounting for historical circumstances, such as the Cold War-era desire to prevent additional nation-state “dominoes” falling under the spell of communism, it is my view that dalliances with political authoritarians are fundament missteps for any liberal to make. The loss of life and liberty under authoritarian regimes (including restraints upon public assembly, protest, and speech), and the *non-robustness* of promised transitions from authoritarian to liberal-democratic political regimes, stand as key rationales to reject this obnoxious form of political authority.

Hayek’s distinction between law and legislation is important, and I agree that the concepts are conflated on an all-too-regular basis in political discourse and rule-making. To appreciate the qualitative contrast between law and legislation is to appreciate, as many liberals do, that political actors enact legislation which routinely embeds discrimination within the fiscal, regulatory, and similarly enforced relations between citizen and state. Accordingly, reform suggestions to help clarify the distinction in the context of political operations remain useful. Furthermore, it should be said it is not inherently anti-democratic to outline reforms aimed at suppressing political domination—appreciating, of course, that any given proposal feeds into the “informational set” of democratic discussion amongst all interested parties.

A proponent of Hayek’s model constitution may submit that his reform may be at least theoretically feasible, say in political jurisdictions with existing bicameral parliamentary arrangements. This reflects a political assumption that one of the two chambers is already conceived as a “house of review,” vetting governmental legislation. Implementing the Hayek model would necessitate converting this review function into one focused upon enacting laws regulating the conduct and performance of government. As for the specifics of Hayek’s reform proposal, it has some major problems (Müller 2015). Age restrictions upon the

membership of Hayek's law-making chamber (the Legislative Assembly)—as well as age-related franchise restrictions on the part of those who may elect representatives to the chamber—would be an unwarranted step in key respects. Implementation of this proposal would spell a reversal of the modern trend toward democratisation. Furthermore, the precedence of age-related fiscal and regulatory policy discrimination in actually-existing, and ageing, societies may not necessarily augur well for the idea that the restrictive election of mature persons safeguards freedom as non-domination. Constitutional reform must avoid disenfranchisement if it is to have any hope of implementation, let alone preventing a backdoor to new and egregious forms of arbitrariness contrary to the underlying aims of the reform.

Hayek's own arguments for liberal democracy are often forgotten. A key benefit of democratic political action is that general elections facilitate the peaceful turnover of legislators, and potentially governments, an occurrence far from assured under an authoritarian regime: “[d]emocracy is the only method of peaceful change that man has yet discovered” (Hayek [1960] 2011, p. 172). Associated with the prospect of peaceful change in the occupation of political offices is that liberal democracies generate a vast repository of political information, chiefly by enabling democratic participation to foster the formulation and registration of public opinion. As similarly emphasised by Buchanan (1954), changes in political preferences may aptly reflect dynamic choices made under majoritarian voting systems, with the turnover of political candidates and parties serving as an additional hedge against persistent domination. The arguments outlined here may be largely cast in an instrumentalist, rather than moralist, light. Nonetheless, these claims do underline key facets of the democratic process which warrant support amongst liberal adherents. Indeed, for Hayek ([1960] 2011, p. 525) himself, “the advantages of democracy as a method of peaceful change and of political education seem to be so great compared with those of any other system that I can have no sympathy with the anti-democratic strain.”

It is possible to adopt Hayekian premises to further the affirmative case for democracy. The reason of liberal-democratic rules is to harness spontaneous ordering processes wherein discussion and engagement amongst multiple persons reveals opinions over aspects of public interest (diZerega 1989). But it cannot be presumed that the preferences of a numerical, yet temporal, *majority* of citizen-voters would necessarily equate with that of *all* citizen-voters. “Any democracy must balance responsiveness to the will of the majority against protection for fundamental rights of individuals,” say Munger and Munger (2015, p. 38). Rules are seen as necessary to help protect minorities from domination, and to provide them with a realistic opportunity to engage with majorities as well as conducting peaceful inter-group political persuasion. From a Hayekian perspective, a democracy with appropriate checks and balances is seen as a constituent feature of economic, political, and social freedom as non-domination.

What is underappreciated by the critics of liberalism is that the rules of economic-sociopolitical order are not necessarily fixed. As indicated by Schnellenbach (2021) the specification of rules still leaves much open for democratic discussion, and interpretation, amongst dignified equals regarding how we are to politically live together. The space for ongoing democratic input into rule specification is not only informed by uncertainties regarding the potential effects of rules, as Schellenbach indicates. The availability of non-voting avenues for expression will also shape democratic rule-craft. An extensive model of democracy provides scope for multiple individual and group engagements with respect to collective problems, and their potential solutions, through local townhall meetings, media engagement, and social movement activism, alongside voting and political representation (Lavoie 1993; Novak 2021a).

Sean Irving contends that Hayek's scholarship centres upon the primacy of freedom within the market sphere. Political activity is to be instrumentally subordinated to the imperative of economic prosperity within the market, necessitating a rules-based order to minimise the possibility of governmental domination over economic affairs. In other words, “[i]ndividuals would be able to plan their actions in the market, making use of their own personal knowledge, in a stable legal environment assured that the state would not step in and frustrate their efforts” (p. 7). For neo-republicans, both public *and* private powers “are consistently recognised as potential sources of domination that can threaten personal independence. There is an appreciation that arbitrary rule of a more immediate, even intimate, type than that which we associate with

the power of the state can manifest itself horizontally in the relationships between individuals in society as well as vertically between the individual and the representatives of state power" (p. 74). However, Irving alleges that Hayek prioritises political domination over all other forms: "[i]n Hayek's work, however, there is little concern for the danger of *dominium*" (Ibid.).

If the Irving claim concerning Hayek's priority of *imperium*, to the exclusion of *dominium*, is true, the implications are significant. It would leave a significant gap with regard to understanding how private sector corporations and other non-state collectives, as well as individuals outside of their political capacities, come to relationally dominate others. Indeed, it is suggested in *Hayek's Market Republicanism* that "Hayek was quite happy to allow commands to prevail throughout the productive sectors of the economy, most overtly within the private firm, as he did not regard this as compromising the epistemic functioning of the market" (Ibid.). Although one might agree that Hayek accorded significant attention to political strains of domination—given his academic background and the totalitarian troubles of the era in which he lived—he did not neglect private power.

Consider the potential for commercial, for-profit enterprises to dominate economic settings, which has been expressed as a concern amongst certain liberal and "liberal-adjacent" scholars alike (e.g., Ellerman 1990, 2020; Cornuelle 1991; Anderson 2017). As conceded by Irving in several passages of his book, Hayek's earlier career was particularly noted for his animosity toward private monopolies, as well as the ruinous impacts of various restraints of trade upon competition (e.g., Hayek 1948). These inclinations aligned closely with the *ordo-liberal* position favouring competition policy, which in turn is aimed at preventing abuses of market power by private sector actors. Whilst it is true that he later expressed doubts over the effectiveness of competition policy, Hayek continued to say that eliminating policy-induced economic discriminations (for example, in the field of intellectual property and taxation) were justifiable as anti-monopoly measures (Hayek [1960] 2011, pp. 381-382).

An intriguing aspect of Hayek's engagement with the implications of corporate activity is his concern over class estrangement between employees and entrepreneurs, and other agents who operate independently in the market domain. In Hayek's own words, "[t]he dominant conceptions will be those of the great majority, who are members of hierarchic organizations and who are largely unaware of the kind of problems and views that determine the relations between the separate units within which they work (Ibid., p. 187). A lack of awareness or concern about the issues affecting independent operators is seen to likely translate into public policies wherein the perspectives of the independent are dominated by those engaged in formal employment relations. The concerns levelled by Hayek might be said to add to Adam Smith's ([1776] 1999) concern that task repetition, associated with a finely-grained division of labour, encourages a sense of mental torpor, or inactivity, affecting individual character and judgement.

Hayek also had occasion to consider the position of civil societal organisations, which dedicate much of their time to provide assistance (financially, or in kind) to people in need of care and support. Specifically, he raised the prospect of civil society as a viable alternative to governmental service provision and financial aid. In reference to the work of Richard Cornuelle, Hayek stated: "[t]o develop this independent sector and its capacities is in many fields the only way to ward off the danger of complete *domination* of social life by government" (Hayek 1979, p. 51, emphasis added). Whilst some have indicated Hayek could have delved into the relevant issues with greater detail (e.g., Garnett 2011), subsequent generations of liberal scholars have adopted *Hayekian* insights to deepen our understanding of critical issues affecting the health of civil society (e.g., L. Ealy 2005; Boettke and Coyne 2008; Storr et al. 2015; Novak 2021b). Those insights may be called upon to reinforce the significance of organisational diversity, together with the need for enhanced capacities for self-governance, within civil society, with each posing as counterpoints to governmental encroachment over the more personal, and intimate, aspects of our lives.

In his book Irving reflects, and with some detail, Hayek's concerns about "para-governmental" bodies maintaining a relatively tight degree of entanglement with governmental authorities. In addition to referencing trade associations and professional organisations, Hayek increasingly waxed lyrical about the legis-

lative and economic policy privileges attained by labour unions. The influence of unions upon inflationary pressures was concerning enough for Hayek, although he also criticised the terms and conditions of legislative edicts which, *inter alia*, compel union membership as a condition of employment within certain industries. Whilst it may be argued that Hayek's "identification of *dominium* to the unions was his own political choice" (p. 76), it is, nevertheless, another example of Hayek's concern with forms of dominating non-public power.

The continuing interest in and, indeed, relevance of Hayek's work to the social sciences rests, in no small measure, upon his efforts as a combinatorial scholar. By this, I mean that Hayek adventurously drew upon insights from several disciplines—such as economics, law, political science, philosophy, and psychology—to reframe and reorient liberalism during a tumultuous twentieth century. A reflection of that intellectual versatility comes in the shape of Sean Irving's assessment of Hayek as a serious thinker about conceptions of liberty as non-domination—even if, as Irving recognises, Hayek never formally embraced the neo-republican term. In this context, others have found similar traces of neo-republican thinking in Hayek's vast *oeuvre* (e.g., Trantidis and Cowen 2020; Zwolinski 2020).

Irving pays a significant degree of attention to Hayek's concerns about the effects of unlimited democracy. Critics of Hayek, and of modern liberalism more generally, have made great mileage from Hayek's engagements with authoritarian figures, as well as some of the strident speeches and opinion editorials which especially appeared in his later years. However, in recognition of liberalism as a living, and evolving, doctrine of ideological, moral, political, and philosophical dispositions, it cannot be said the words of any given individual, in times past, are sacrosanct and, thus, immune from scrutiny. *Hayekian* scholars, and I count myself as among that sizeable group, can build upon Hayek's core insights—such as the interpretation, and desirability, of competitive markets, and constitutional government, as institutional instantiations of non-domination—and, where necessary, revise them. As my previous remarks suggest, I consider it eminently possible to apply Hayek's ideas in presenting an affirmative account of democracy, an inherently *liberal* proposition for public governance.

Hayek studied law as a young man, so it is unsurprising that he would spend a fair amount of time reflecting upon the relationships between law, legislation, and liberty. A certain focus upon questions of *imperium* also fits with Hayek's concerns over growth in the scale and scope of governmental activity during the twentieth century. I would heartily agree that we need, in Irving's words, to "develop Hayek's concept of liberty to its full and proper extent, paying proper attention to *dominium* as well as *imperium*" (p. 78). I would add a counter to the effect that Hayek's scholarship, and the ingenious ideas he laid out, do not preclude the development of a more extensive narrative trained upon the baleful effects of non-market, non-state domination in our lives. Again, this is another arena for research for Hayekian scholars to engage, and one which I anticipate would generate significant intellectual dividends.

Having achieved so much over the past few centuries to transition the underlying logics of our economies, polities, and societies from status to contract, liberals fear that the tide has been turning out on freedom in recent years. This vexing situation demands intellectual projects and advocacy initiatives that embrace a recalibration and reinvigoration of key commitments and thought processes. Whilst Sean Irving's *Hayek's Market Republicanism* does not hit every note about Hayek sweetly, understanding the neo-republican basis of Friedrich Hayek's scholarly range potentially provides crucial guidance for the revival of liberalism in times ahead.

NOTES

- 1 Disclaimer: I was the guest editor for that special issue.
- 2 Unless otherwise specified, I will refer to the doctrine of freedom-as-non-domination as neo-republicanism throughout this review. Present-day exponents of this strand of philosophical thought include Philip Pettit, Quentin Skinner, and Frank Lovett.

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