Republican Political Legitimacy in a Pluralist World Order: What Role for Constitutionalism?

Terry Macdonald, University of Melbourne

Introduction

The call for world government – defined as a political order within which all of humanity shares some form of common political authority – is sometimes interpreted as a demand for legislative, executive, and adjudicative authorities with global jurisdictions, ruling directly over the whole population of the world. Such a vision of global political order is widely rejected on the grounds that global authorities of this kind could not accommodate global social pluralism – that is, pluralism in moral and religious doctrines, social affinities and identifications, and material conditions and constraints – without degeneration into tyranny, dysfunctional governance, or both. But the idea of a common global political authority also admits of a second, more minimal, conception of global political order – in which the world population shares not common legislative, executive, and adjudicative authorities, but rather a shared framework of constitutional norms that *set the terms on which these direct powers of political rule can be legitimately exercised*.

My aim in this paper is to assess the project of world government in this second more minimal conception: *world government as embodied in the shared authority of a global constitution*. More specifically, my aim is to investigate whether and how a global constitution could perform its intended authoritative function – of setting the terms on which global public power can be legitimately exercised – under conditions of global political pluralism.

How we assess the prospects for achieving political legitimacy through a global constitutional order depends crucially on what assumptions we make at the outset about the character of public power and how it achieves political legitimacy in more general terms. In this paper I draw upon a *republican* theoretical framework for conceptualising the character of public power and the sources of its legitimacy. I adopt a republican framework here for two main reasons. First, the republican tradition has developed a clear account of the role of constitutional norms in generating political legitimacy, and thus contains clear resources for understanding and assessing the project of global constitutionalism. Second, the republican tradition is strongly connected to – and overlaps in salient areas with – both liberal and democratic normative theories of political legitimacy; as such, assessments of constitutionalism made within the republican framework will have resonance also in liberal and democratic theories of global political legitimacy. We can say, in other words, that a republican assessment has a certain ecumenical quality within the theory of political legitimacy, as far as the assessment of constitutionalism is concerned.

In what follows I begin by setting out republican conceptions of public power and political legitimacy, which can provide a normative framework for the assessment of the role of global constitutional norms that is to follow. Here I present a republican conception of political legitimacy centred on a *functional* (as distinct from institutional) account of the ideal of non-domination. I then consider whether and how the development of global constitutional norms could strengthen global political legitimacy understood in these republican terms. My central argument is that under present conditions of global social pluralism a framework of republican political institutions must also adopt a loose and pluralist character, in which constitutional norms do not play the role of regulating an *institutional structure of public power*. Rather, constitutional norms play the role of regulating the *dynamic political relationships* between two different kinds of political agencies within the global political order: agencies of public power, and the various agencies of 'antipower' that are affected by, and help to support and limit the exercise of, public power.

Public Power and Political Legitimacy in Republican Theory: A Functional Account

The republican political ideal demands the minimization of power within social relationships that takes a particular pernicious form – generally referred to as 'arbitrary', or 'alien' – in which control is exercised by one actor over another without the subject of control endorsing its justifiability, or having effective political avenues available to contest it.[1] This political ideal of 'non-domination' shifts the focus of normative political analysis away from *the structure of institutions that distribute social goods*, which has been the subject of recent theories of social justice, and towards *the character of power relationships* among individuals and groups within a social order, which is the proper subject of the theory of political legitimacy.[2]

How, then, is the ideal of non-domination specified as a framework for achieving legitimacy in the exercise of public power? It is common for republican political ideals to be articulated in terms that identify it with certain structural institutional features – and sometimes also domestic and foreign policies – of constitutional sovereign *states*. That is, it is sometimes thought that the republican political ideal simply *consists in* a commitment to a set of political institutions – including a set of constitutional norms defining and limiting agents of public power within a social order, alongside other institutional mechanisms such as the rule of law, the separation of powers, federalism, and so on.[3] If we were to understand the republican political ideal of non-domination as

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[1] See PETTIT, P. 1999. *Republicanism: a theory of freedom and government,* Oxford, Oxford University Press. PETTIT, P. 2010. A Republican Law of Peoples. *European Journal of Political Theory,* 9**,** 70-94.

[2] There is much more that could be said here about the relationship between the concepts of justice and legitimacy, and whether the republican political ideal of non-domination is better construed as embodying a normative standard of justice or of political legitimacy. For the present purposes, however, I will not digress on these conceptual matters, but will simply assume that non-domination can be understood as a standard of political legitimacy, defined as a normative standard for deeming some agent of public power to be worthy of support. I say more about these matters in the book manuscript in progress *Global Political Legitimacy: Institutions, Publics, and Problems.*

[3] Phillip Pettit characterises non-domination as 'institutionally constituted' in PETTIT, P. 1999. *Republicanism: a theory of freedom and government,* Oxford, Oxford University Press. 106-7.

constituted by this designated set of institutions, then the question of whether a republican ideal of political legitimacy supports a commitment to a global constitution would not be an open question to be investigated here. If we want to utilize the republican ideal as a standard for *evaluating* alternative institutional models for the global political sphere, or for devising new institutional principles and mechanisms adapted to the contextual demands of the contemporary global political order, then we need to formulate the ideal instead in terms that are abstracted from (not regarded as constituted by) state-level institutional models, so that we have some critical tools with which to devise and evaluate institutional alternatives to statism.

A promising starting point for such a theoretical reformulation of the ideal of non-domination is Philip Pettit's idea of 'antipower',[4] understood as a set of active social forces that serve to counteract, contain, and regulate 'public' political power. The concept of antipower (along with its counterpart of public power) is promising for these purposes, since it is abstracted from any specific statist institutional forms. This idea of antipower is prominent only in one of Pettit's early essays on republicanism, and there its sociological character is a little mysterious; it is unclear whether it is best understood as a type of *institution*, a kind of institutional *function*, or a form of social *agency*. In Pettit's subsequent writing on the republican ideal, talk of antipower is largely abandoned in favour of talk of non-domination as an institutionally constituted political good.

In what follows here, however, I proceed with the view that the earlier concept of antipower is in fact a very useful one for thinking about the problems of institution building in pursuit of political legitimacy, if it is put to work in the right kind of way. More specifically, I propose that antipower can be most helpfully understood as *a form of social agency with a special political function* (partially but not wholly constituted by the right kind of political institutions) – and that alongside the partner concept of *public power* can form the basis of a functional conception of non-domination that can usefully guide prescriptions for institution building within the global political domain.

It is my contention that *public power and antipower* denote special functional forms of group agency within a political order. We can understand these as performing not only the general functions characteristic of agency itself,[5] but also the more specialized functions of advancing common goods (in the case of public power) and counteracting the choice-constraining effects of public power with participatory and countervailing collective political action (in the case of antipower). When operating appropriately in conjunction, it is my claim that these together perform the overarching function that constitutes the political good of non-domination, and thus confers legitimacy on the exercise of public power.

To explain these claims in more detail, it will help to begin by characterizing the political good of non-domination – and the functions of public power and

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[4] PETTIT, P. 1996. Freedom as Antipower. *Ethics,* 106**,** 576-604.
[5] For a functional account of group agency see LIST, C., AND PHILIP PETTIT 2011. *Group Agency: The Possibility, Design, and Status of Corporate Agents,* Oxford, Oxford University Press.

antipower that together constitute it – in pragmatic terms: as a good in virtue of serving as a *functional remedy* for a particular (characteristically 'political') *social problem*. This problem arises from the parallel operation of two basic roles in which individuals encounter and engage with powerful group agents in the course of their social lives. The first of these roles is that of *participants*, or 'members', in group agencies.[6] The participation characteristic of membership here can take the form either of participation in the creation and authorization of a group agent with specified functions and powers, or direct participation in the decision-making and action of the group agent at an operational level – or both. Here, individuals encounter group agency from the 'inside', so to speak, via involvement in the formation of collective intentions and actions – that is, the channelling of individual interests into the articulation and pursuit of common goals.[7]

The second of these roles is that of *subjects* of group agents. In this capacity individuals are affected and constrained by the power of a group agent, whose intentions and actions (as previously established) will have some degree of autonomy from those of individuals – including individual members as well as non-members. While the autonomy of the intentions and actions of group agents from those of non-member individuals is straightforwardly evident, the sense in which they are autonomous from those of member individuals is more complex, and depends on the fuller philosophical account of how a group agent can come to acquire its functional autonomy from its individual members. It is beyond the scope of this paper to account for this autonomy, since this would necessitate delving into complex philosophical problems of preference aggregation and group rationality that would divert us from the main problems being addressed; but since these issues have been dealt with rigorously elsewhere,[8] I simply assume this autonomy for the present purposes. What is important to emphasise here is that when in the role of subjects, individuals encounter group agents from the 'outside', so to speak – in the sense that they find themselves affected by decisions and actions that they have not as individuals intended.

In some political contexts an individual will engage with a powerful group agent in both roles at once. To illustrate this with the familiar example of a closed and ideally constituted democratic state, an individual will engage with the agency of the state in both roles: as participant, in the role of democratic citizen participating in the authorization and (to a lesser extent) the collective decision-making of the group agent of the state; and as subject to the significant powers the state possesses to execute its decisions. In other contexts, the roles of participant and subject can come apart. To take again the example of the group agency of the state, an individual can be (and often is) *subject* to state power

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[6] I talk about 'members' and 'participants' here in roughly the senses in which List and Pettit describe group membership, in Ibid., pp. 35-6.
[7] Viewing non-domination is a political ideal in this pragmatic sense is distinct from the consequentialist sense in which Pettit characterises it as a political ideal – namely, as 'a value that the state ought to try and advance'. (PETTIT, P. 1999. *Republicanism: a theory of freedom and government*, Oxford, Oxford University Press., p. 92)
[8] An account of this is elaborated in LIST, C., AND PHILIP PETTIT 2011. *Group Agency: The Possibility, Design, and Status of Corporate Agents,* Oxford, Oxford University Press., papers two and three.

without also being incorporated as a participant in the collective decision-making and action of the state as group agent. This can be the case either for legal citizens or non-citizens, depending on the forms of political participation in state decision-making that are available, and the extent to which the interests of either are represented in state decision-making, in a particular context. Individuals can also encounter powerful group agents of other (non-state) types – such as economic corporations, and non-profit 'civil society' actors of various kinds – in roles of either participant or subject (or both), and these relationships also form an important part of the social order in which individuals live.

The basic political problem that results from the parallel operation of these two kinds of roles is the following. On the one hand, participation in the creation, authorization and operation of functionally effective group agencies can produce many benefits for the individuals involved. The goods that can be produced for individuals by acting collectively to authorize or directly operate group agents can vary according to individuals' preferences and circumstances, but important examples of such goods are the provision of physical security, the production and distribution of new social goods, or (as in the case of an ideal republican state agency) the promotion of the political good of non-domination itself. As a result, there are good reasons for individuals to continue to choose to create and enable group agents to advance their goals, and thus there are good reasons too for rejecting any political ideal that recommends forms of political 'non-intervention' that are incompatible with the persistence of robust forms of collective action and agency within the social order.

On the other hand, however, the creation and maintenance of powerful agencies brings the persistent risk that the group agents which individuals have constituted to advance their common goals will become alienated from, and fail to act effectively in pursuit of, the common goals that motivated their creation. When this happens, individual members will interact with group agents less in the role of active participants, and more in the role of affected subjects. Moreover, creating group agents with significant powers also increases the degree of affectedness and constraint to which *non-members*, along with members, risk subjection.

The political problem, then, is how to achieve two goals in conjunction: first, enabling groups of individuals to act collectively in order more effectively to pursue the goods that they share and strive for in common with others; while second, minimizing the extent to which individuals will need to interact with and relate to these group agents in the capacity of affected subjects, as distinct from active participants.[9] The political purpose to which the republican ideal of non-

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[9] There are many ways of formulating moral arguments in favour of the view that this kind of function constitutes a moral 'good'. Pettit articulates a sophisticated consequentialist defence of his conception of nondomination in his PETTIT, P. 1999. *Republicanism: a theory of freedom and government,* Oxford, Oxford University Press. I also believe that a robust defence of my conception of non-domination can be mounted on the basis of a commitment to an appropriately formulated conception of individual autonomy (which incorporates a recognition of the ways in which individual autonomy can be exercised not only independently but also collectively). Within the scope of this paper, however, I cannot present or defend a full account of the moral value attached to this political function; instead, I just note that I assume that the moral attractiveness of the republican ideal depends upon a successful account of this kind being available.

domination is directed is that of preserving the functions of effective collective agencies within a social order, while enabling individuals to participate in these collective agencies as far as possible *as insiders rather than outsiders* – that is, as participants whose individuals goals are channeled in some way into the articulation and pursuit of the goals of powerful groups.

This view of the political problem to which the republican ideal is offered as a remedy provides the basis for the specific functional account of non-domination that I want to present here, in which non-domination is constituted by the *functions of public power and antipower*, performed in conjunction by distinct political agencies within a social order. Here public power and anti-power are conceived as *distinct functional types of political agency*, defined in terms of the differentiated functions that they perform in instantiating the republican ideal of non-domination.

Public power, on this republican conception, is that which functions to advance goals shared in common by a group's participants, through the creation of agencies with some special set of powers and competencies. When they are fully developed, agencies of public power will incorporate some mechanisms for the authorization (by group members) of some specialized set of individuals to act on behalf of the wider group as representatives. They will also generally incorporate some accompanying set of material and organizational structures, which function to support and facilitate the effective action in pursuit of collective goals by the group's representatives.

The character of such mechanisms and structures will vary according to the scale, complexity, and content of the goals being advanced in a given case. But examples of such structures include: material infrastructures such as those for processing and communicating complex forms of information, or for transporting products and people; organizational systems for strategically cultivating, coordinating, and deploying relevant individual skills and expertise; and underlying both of these, strategic distributions of material resources across the locations and populations where these structures are embedded, to enable the individuals occupying roles and performing tasks within these structures to do so effectively. Republicans have conventionally viewed the state as the paradigmatically 'public' political agent, since the state most straightforwardly fits the picture of this general functional account (though as I will discuss later in this paper, the state may not be the only kind of agent that qualifies as public in contemporary global politics).

The special political powers constituted through such mechanisms and structures enable public political agencies to advance participants' goals more effectively than the set of individual group members could achieve acting independently. But these special powers also possess a special capacity to threaten individuals – both members and non-members – with arbitrary or alien forms of control. It is in response to this feature of public power that the functional demand for agencies of antipower arises. Agencies of *antipower* function as a kind of countervailing political force within the social order – balancing against the force of public power, and countering the threat of its dominating control.

Since agencies of antipower are not burdened with the functional demand to supply any concrete social goods to the group (as are agencies of public power), they do not need to be constituted (as do agencies of public power) as specialized and structurally empowered elites acting merely 'on behalf' or 'in the name' of a group with shared goals. Instead, agencies of antipower are constituted to perform quite different functions: *formulating and articulating the content of the group's common goods*, through facilitating group dialogue, reasoning, and public communication; and *channeling these understandings into the decision-making processes of agents of public power* through some effective and public means.[10] As Pettit puts it, '[t]he promotion of freedom as non-domination requires ... that something be done to ensure that public decision-making tracks the interests and the ideas of those citizens whom it affects';[11] in response to this demand, antipower is comprised of the various social agencies that function to ensure (to the greatest possible degree) that the interests and ideas of those subjected by public power remain alive and active in the formulation of public political decisions.

Although strongly empowered individual agents may in some circumstances function as important agents of anti-power, in most cases *collective* forms of political agency will be required to perform the functions of antipower effectively – in counteracting the threat of domination emanating from large-scale, complex, and well-resourced agencies of public power. Democratic 'publics' or 'demoi'[12] will be among the strongest sources of antipower, where such agencies can be successfully constituted through the establishment of mechanisms for democratic deliberation and social choice. Democratic agencies have particular strength because they are (in virtue of the democratic norms that shape their constitution) strongly participatory and egalitarian. But other kinds of social agencies can also perform the functions of antipower, albeit in more partial ways.

Of particular importance in this latter category are publicly-oriented (albeit not fully participatory or egalitarian) group agencies constituted within what is often called the sphere of 'civil society' – in particular those advocacy groups that contribute to collective social dialogues in which common goals are explored and articulated, as well as engaging directly (through contestatory or collaborative processes) with agents of public power to channel these goals into public decision-making. Less publicly-oriented groups within 'civil society' – what are now often called 'interest groups', and which are linked to what James Madison

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[10] By 'channeling' here, I mean to allow for means that involve both collaboration with and contestation of public power, and also for varying forms and degrees of institutionalisation. Pettit emphasizes the importance of contestation, in elaborating his account of what it means for power to be non-arbitrary (Ibid., p.184) but it is important to recognise that in some cases agents of public power might in fact be welcoming of this input, and in such cases collaborative rather than contestatory means for channeling ideas and interests into public decision-making processes may play an important role in discharging the general function of antipower.

[11] Pettit Ibid., p.184.

[12] See BOHMAN, J. 2007. *Democracy across Borders: From Demos to Demoi*, Cambridge, Massachusetts, MIT Press, for an important republican discussion of the pluralism of democratic 'demoi' in contemporary global politics.

called 'factions'[13] – can also perform some more limited functions of antipower, in particular in situations where conflicting interest groups or factions are sufficiently evenly matched in social power that they can counter each other's attempts to capture public political agencies as instruments for their factional interests.[14]

The Role and Limits of Constitutional Design in Creating and Legitimating Global Public Power

So far I have described the political functions that must be performed by agencies of public power and antipower operating in conjunction within the social order, in order for the ideal of non-domination to be instantiated. With an understanding of these functions in hand, we can begin to consider whether and how the development of *global constitutional norms* could strengthen global political legitimacy understood in these republican terms – as a means of promoting non-domination functionally understood. In this section, my aim is to highlight some important *limitations of constitutional design as a means of determining the institutional structure of public power* (the conventional understanding of the role of constitutional norms in generating legitimacy), with a view to arguing in the next section that the role accorded to constitutional norms under present conditions of global social pluralism should be conceived in rather different terms.

The best way of getting at an understanding of the scope and limits of what a project of constitutionalism could be expected to achieve is to raise a more general question about *the role and limits of institutions* in constituting the functional agencies of public power and antipower. This question is crucial since the way constitutional norms work is to regulate the structure of an underlying institutional scheme: *constitutional norms can only regulate the structure of agencies of public power and antipower, that is, to the extent that these are themselves institutionally constituted.* As such, the only effect that constitutional norms can have on the structure and function of agencies of public power and antipower is by shaping the institutions within the wider institutional scheme that play a role in constituting these agencies.

We must aim, then, to develop a clear understanding of the scope of what institutions can be expected to achieve and transform within the global social order, and (conversely) the range of non-institutional facts that must be accommodated and adjusted for in a process of institutional design. If it is the case – as I will argue – that the social agencies functioning as antipower cannot be wholly constituted through the structures of political institutions, but rather are constituted also in part by some set of independent *non-institutional* social facts, then the character of these independent facts must be clearly identified and adjusted for in assessments of what regulative roles constitutional norms can be expected to perform within a political order.

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[13] HAMILTON, A., MADISON, J., JAY, J. & ROSSITER, C. L. 1961. *The Federalist papers,* New York, New American Library.

[14] A Madisonian separation of powers is a familiar institutional means of harnessing and augmenting this more general social function of antipower that can be discharged through interactions among competing interest groups. See Ibid.

It is my claim that although agencies of public power and antipower cannot function effectively without institutions of the right kinds in place to enable and promote their functioning, we cannot regard public power or antipower as *wholly* institutionally constituted. Rather, they are constituted in part also by contextually variable and sometimes quickly shifting *non-institutional* facts (of kinds that I will specify), which lie beyond the scope of effective strategic institutional control, and to which republican institution builders must be responsive if they are to succeed in creating functionally effective agencies of antipower in a given context.

Let us consider first the dimensions in which agencies of public power and antipower *are* institutionally constituted. First, in the constitution of a group agent in general, the roles played by individuals can be variable, depending very much on the particular goals that the group agent is pursuing, and the relevant features of the environment in which it acts. List and Pettit note this variability:

> When a group of individuals form an agent, they may relate to one another in a more or less coordinate manner, with each playing a similar role. Alternatively, they may be divided up into different subgroups, each with its distinctive tasks. In either case their relations with one another may involve a hierarchy or a more or less egalitarian arrangement.[15]

When the goals being pursued or the environment in which they are being pursued (or both) are complex, then group agents will usually need to be constituted with correspondingly complex divisions of labour among individuals – to develop expert understandings of various different elements of the goals being pursued and of the environment of action, and to perform different specialized tasks in the overall complex processes of pursuing strategies to pursue goals, and carrying these strategies out. Institutions are often crucial to constituting group agents, insofar as they operate to define these differentiated roles within the group, and to allocate such roles to different individuals through suitable rules and procedures. Institutions can also play a crucial role in constituting group agents insofar as they embody structures through which various social resources are distributed, and as such they can operate to help allocate the necessary resources to individuals in different roles to enable them to perform their specialized functions effectively.

For agencies of public power, institutions articulate the complex webs of *organizational norms and rules* that are required to facilitate the production, distribution, and mobilization of resources, as well as the cultivation and deployment of expertise, that are necessary to perform functions of government or governance in particular environments and issue-areas. In the case of states, these constitute the various roles and institutional powers within the functional domains of legislative, executive, and judicial public power. In the case of non-state forms of public power – those engaged in forms of what is commonly called 'governance' activity – the range of institutionally constituted roles and rules is more contextually variable, but the role of institutions in constituting their functions is no less significant for that.

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[15] LIST, C., AND PHILIP PETTIT 2011. *Group Agency: The Possibility, Design, and Status of Corporate Agents,* Oxford, Oxford University Press., p. 32.

For agencies of antipower, institutions articulate a different set of norms and rules for participants, commensurate with the distinct functions that individuals are required to perform as participants in these group agencies. Most importantly, they articulate the norms and rules that constitute practices of collective reasoning and deliberation, through which collective goals can emerge and receive clear articulation. Institutional norms and rules can also help create clear procedures for the formation of decisive collective intentions (about what should be done by agencies of public power). Examples of these include the aggregative procedures through which democratic group decisions are sometimes produced, or procedures for authorizing certain individuals or smaller groups to make decisive judgments on behalf of the group and in the group's name, in light of the various reasons emerging as salient through collective reasoning and deliberation. (Some kinds of procedures for authorizing decision-making may count as democratic – when compliant with appropriate representative norms – while others may fall short of democratic standards but still be sufficient to enable effective functioning of the group as a collective agent.)

Although the functions of antipower will mainly need to be performed by collective agents, if they are successfully to rival and balance against the often significant powers of public political agencies, individuals can also – albeit in more limited ways – serve to engage directly with agencies of public power to counteract the force of their power, and to channel wider interests into their decision-making processes. Institutions can play a role here too in helping empower individuals to act as important agents of antipower, through allocating resources to individuals that help foster their political skills and capacities, and by creating rules and roles that offer them protections against the arbitrary exercise of power by others.[16]

But there are also significant limits to the work that institutions can do to constitute group agencies with capacities to perform functions of public power and antipower effectively. To understand the character of these limits, it is important first to understand that agencies of public power and antipower are constituted not only by structures of rules, of the kind that are put in place by institutions, but also by certain kinds of *material structures and cultural artifacts*, which help ensure that actors in given roles have the requisite knowledge, capacities, and resources to discharge their designated functions as part of the function of the whole group agent.

Important material structures in the case of public power include resources and infrastructures such as government buildings, information systems and technologies, and technologies, equipment and other resources for performing the myriad specialized tasks assigned to different agencies within governmental or governance structures. In the case of antipower, the most material structures are the material dimensions of communicative infrastructures that enable groups of individuals to reason and deliberate together. Certain basic cultural artifacts will also need to be available to enable the functioning of group agencies

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[16] Phillip Pettit emphasises the importance of institutions that he describes as protective, regulatory, and empowering, in this connection. (PETTIT, P. 1999. *Republicanism: a theory of freedom and government*, Oxford, Oxford University Press., pp. 589-90)

of both kinds – most importantly shared languages, but also some wider set of shared meanings and understandings that are pre-requisites for the recognition of common interests and goals among members of the group, and for coordinated social action in support of institutions with specified social goals.

Institutions can certainly support the development of these requisite material structures and cultural artifacts to some degree, by strategically creating and resourcing new roles and rules that are likely to encourage their development and production over time. But institutions cannot ever be expected to produce – or steer the production of – *all or even most* of the important material structures and cultural artifacts within a social order that shape the capacities of particular groups of individuals to join together as agents with particular specified functions. The simple reason for this is that a certain set of non-institutional material structures and cultural artifacts must already be in place to constitute the shared understandings of common interests and goals, and the basic capacities for collaborative and cooperative action, which are required to establish institutions in the first place.

Institutions can serve to reinforce, develop, and systematize these shared understandings and structures, and in doing so to generate the more rational and functionally effective forms of collective behaviour that meet the criteria for what we can call group agency. And the causal effects of these institutions upon their social environment can also alter, over time, the character of the material structures and cultural understandings that initially gave rise to earlier instantiations of the institutions. In doing so, they can create impetus for the groups acting through the institutions to adjust institutional goals, and accordingly reform the structure of roles and rules to function more effectively in support of the new goals. (Though the causal relationships involved in producing these effects will generally be so complex that the level of strategic control over the effects, by institutional designers, will often be low.)

But despite the undoubtedly significant and transformative effects that institutions can have on social orders, one very plain constraint will always remain: institutions cannot have goals that are independent from those held by the agents that establish them. As such, the content of those goals, and the elements of collective agency that are necessary to articulate and to pursue them through institutions, embody those elements of the social order that institutions cannot aim to transform, but rather must take as givens – starting points – for any institution building project.

These general arguments have significant implications for our understandings of what can be done (and what cannot be done) via global institution building, to create and strengthen the functions of antipower, in its relationship with public power, at the global level. What is called for in the design of republican political institutions for global politics is a strong responsiveness to material structures and cultural artifacts of relevant kinds that shape and limit the potentialities for agencies of public power and antipower to develop and function effectively. Republican institutions can be built with the aim of nurturing and strengthening embryonic agencies of public power and antipower, by creating roles and rules and allocating resources in helpful ways. But they cannot aim to design

institutions to constitute agencies of public power and antipower with the expectation that the project of institution building is one of devising blueprints for social order – as though starting, like the design project of an architect or engineer may sometimes do, with a blank page and an empty lot.

What role for constitutions in the context of global political pluralism?

With the general approach to republican institution building that is recommended by the arguments I have presented so far in hand, we are now in a position to consider what prescriptions follow for more concrete contemporary dilemmas of global institutional development and design – and more specifically, for questions about the role that constitutional norms can play within them. The primary institutional problem is that of identifying what strategies can best steer global institutional development in ways that are likely to strengthen agencies of antipower in their domination-combating functions – and the secondary question is what role constitutional norms can play in strengthening these strategies. In order to identify these strategies, we must address the following two questions.

First, what agencies of public power and antipower currently exist at the level of global politics (in fully developed or embryonic functional forms), of the kind that could provide the sociological materials for institutions to go to work on, with the goal of strengthening functions of antipower in its relationship with public power? Second, what kinds of institutions will be effective in strengthening the functions of agencies of antipower in relation to public power in these existing structural forms, in different contexts within the contemporary global social order – and will these be strengthened by the development of an overarching constitutional structure to unify their operation? These are both very large questions, and it is not possible within the constraints of this paper to answer them in anything approaching a comprehensive way; but some general and illustrative observations can be presented in relation to each.

To begin, let us consider the present structure of global public power. Traditionally, republicans have linked the concept of public power to the specific institutional structures associated with statehood. State institutions have been thought of as uniquely – sometimes even by definition – 'political' and 'public'. In parallel to this, other institutional forms – such as markets, corporations, processes of economic 'production', institutionalised 'supply chains', 'civil associations', 'social movements', NGOs, and so on – have been presumed to be 'private'. But once we adopt a *functional rather than an institutional* understanding of republican public power – as I have argued here that we should do – it becomes clear that states are no longer the only kind of agencies that perform the functions characteristic of public power. More specifically, states are no longer the only agencies that possess significant powers to advance important shared goals within those groups in the name of which they act, as well as to constrain the choices of affected populations.

Under existing conditions of globalization, the reality now is that non-state actors such as Multinational Corporations (MNCs), Non-Governmental Organisations (NGOs), and hybrid institutional actors constituted by both state and non-state actors, now wield many of these forms of decision-making power

(in fields of law-making, economic development, public service-provision, and so on), alongside a plurality of states. It is beyond the scope of the present paper to document these various and significant forms of non-state power, but much work of this kind has been done, in significant empirical detail, within existing literatures.[17] As I have discussed in more depth elsewhere, the structure of public power within the existing global order can be characterised as *pluralist* – by which I mean that public power is exercised by myriad separate state, inter-governmental, and non-state agents operating at multiple and overlapping jurisdictional levels, rather than unified through any one supreme global political authority or hierarchy of constitutional principles.[18]

As I argued above, a crucial question for global institution builders confronted with these plural agencies of public power must be: how malleable are these configurations of public power – and to what extent, and over what kind of timeframe, are we likely to be stuck with them in roughly this form? It will certainly be possible to reconfigure the structure and functions of these agencies of public power to some degree – through various strategies of public institution building and reform. However, the sheer complexity of the causal relationships that combine to generate the functions of public power that are discharged through these agencies is so high that strategic interventions to alter the structure of these agencies can only realistically be achieved partially, incrementally, and over very long timeframes. Recall that agencies of public power are constituted not only by institutions but also complex configurations of functionally effective material technologies and infrastructures, structural resource distributions, concentrations of relevant information and expertise, and the shared background cultural understandings that enable the many individuals that participate in these complex group agencies to recognise shared interests and goals and coordinate their communication and action in pursuit of them.

Effective strategic interventions to change the structure and functions of agencies of public power can only occur to the extent that is possible for political actors to grasp the complex empirical detail of how the various constitutive elements interact to create the relevant functions, as well as what interventions would be effective in bringing about the relevant changes. Performing these feats would require the capacity not only to acquire and analyze vast quantities of

[17] STRANGE, S. 2000. The Declining Authority of States. *In:* HELD, D., & MCGREW, A. G. (ed.) *The Global Transformations Reader: An Introduction to the Globalization Debate.*; HELD, D. 1995a. *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance,* Cambridge, Polity Press.; CUTLER, A. C., HAUFLER, V. & PORTER, T. 1999. *Private authority and international affairs,* Albany, State University of New York Press.; KRISCH, N. 2011. *Beyond Constitutionalism: The Pluralist Structure of Postnational Law,* Oxford, Oxford University Press.; MACDONALD, T. 2008. *Global Stakeholder Democracy: Power and Representation Beyond Liberal States,* Oxford, Oxford University Press.

[18] MACDONALD, K. T. M. 2010. Democracy in a Pluralist Global Order: Corporate Power and Stakeholder Representation. *Ethics & International Affairs,* 24, 19-43.; MACDONALD, T. 2008. *Global Stakeholder Democracy: Power and Representation Beyond Liberal States,* Oxford, Oxford University Press.; CERNY, P. 2006. Plurality, Pluralism and Power: Elements of Pluralist Analysis in an Age of Globalization. *In:* EISFELD, R. (ed.) *Pluralism: Developments in the Theory and Practice of Democracy* Opladen and Farmington Hills: Barbara Budrich Publishers, on behalf of the International Political Science Association, Research Committee No. 16 [Socio-Political Pluralism].; CERNY, P. 1999. Globalization and the Erosion of Democracy. *European Journal of Political Research,* 35, 1-26.

information, but also to undertake enormous creative and imaginative leaps of strategic innovation, at the levels of both technological and organizational design, of a kind that I assume it is unrealistic to expect either of affected populations (mobilizing to transform public power via organized agencies of antipower), or of 'expert' institutional designers, working with philosophical and social scientific tools. If this assumption is a reasonable one, then it follows that global institution builders should limit their ambitions with respect to the extent to which the global order can be transformed through political projects of institutional design.[19]

Let us turn next, then, to examine the character of agencies of antipower within the existing global order. The existing configuration of agencies of antipower within the global political order is – just like the configuration of agencies of public power – pluralist in character. Parallel to the idea of pluralism in relation to public power, this pluralism means that the functions of antipower are performed by myriad separate social agencies comprised of different (though sometimes overlapping) population groups, operating within multiple distinct (though sometimes overlapping) issue areas, and engaging with various (again, sometimes overlapping) sets of public political agencies. (Pluralism in the domain of antipower is contrasted with the kind of unified 'demos' that is tasked with performing these functions within some variants of democratic thought.) The social agencies that work to challenge and counteract public political power – and to channel wider and shared social interests into its decision-making processes – include the following.

Most straightforwardly, democratically constituted groups within established states (traditional democratic 'demoi'), or other national or subnational groups constituted as group agents through the requisite (albeit not fully democratic) communicative and decision-making structures, can function as sources of antipower in relation to global as well as domestic agencies of public power, when they mobilize in direct political engagement with agents of public power operating in the global domain – whether corporations, other states, or international or non-governmental public actors. Sometimes – in states where public agencies are strongly representative – these nationally bounded and sub-national group agents can channel their goals and apply pressure on external public actors through delegating state agencies to do so on their behalf through instruments of foreign policy. But where states are less representative, or when domestic constituencies are more divided, these groups sometimes find or create alternative conduits for channeling their goals into public global decision-making – such as delegations of individual parliamentarians, representatives of political parties, or representatives of domestically constituted advocacy groups.

Myriad transnational advocacy groups – most prominently international NGOs, but also looser campaign coalition groups, and more specialised transnational

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[19] This modesty of transformative ambition that I am advocating is, I believe, shared by Phillip Pettit in his PETTIT, P. 2010. A Republican Law of Peoples. *European Journal of Political Theory,* 9**,** 70-94., insofar as he begins by accepting as given the prominence of states as public political actors within the international system. I depart from him only in insisting that a proper responsiveness to existing social facts requires us to recognise a range of non-state actors, also, as agents of public power within a contemporary republican order.

agencies such as international trade unions – also operate alongside these domestically constituted groups. These perform functions of antipower by channelling a wide range of goals and interests shared in common by populations across state boundaries into the decision-making processes of powerful public actors such as corporations and International Organizations. Their strength and success in doing so is widely variable across different issue areas, and across different relationships and cases of political engagement. But the general character of their functions as agencies of antipower within the global political order are nonetheless readily recognizable.

As in the case of public power, a crucial question for global institution builders confronted with these existing plural agencies is: how will attempts to reconfigure and strengthen these agencies of antipower via institution building projects be constrained by the background material and cultural structures that partially constitute them? The character of these constraints can be inferred from the highly uneven patterns in which existing agencies of public power have developed. Functionally effective agencies of antipower do not match or track the configurations of objective interests that groups within the global order may share in common. Rather, their development has tended to track the various pre-existing material and cultural structures (communicative and other social infrastructures, resource distributions, shared cultural understandings, and so on) that are required to enable groups with common interests to recognize and articulate shared goals, and to advance them collectively through political action.

More concretely, this means that antipower has tended to develop in ways that build on existing established infrastructures within civil society – established trade unions, community associations, domestic political parties and lobby groups, etc – and it tends to be stronger within issue areas, and in relation to interest groups, who have better access to the relevant resources, infrastructures, and so on. The uneven development of public power against these varying background conditions can thus be adduced in support of the more general claim that the constraints on institution building projects are real and significant, and must be adequately accommodated in the development of republican institutional prescriptions.

These constraints do not mean, however, that the development of republican institutions cannot serve to reconfigure and strengthen existing global agencies of antipower in any significant ways. Rather, what follows is that institution building projects must proceed with a clear understanding of these constraints, so that these can be suitably adjusted for within institutional models – thus enabling these institutions to be strategically targeted and designed to strengthen the functions of antipower as effectively as possible under prevailing background conditions. How, then, can this be done? And what contribution might be made by constitutional norms and processes within the wider institution building project?

At the most general level, we can say that the constraints on how far and how readily existing configurations of public power and antipower can be altered through strategic institutional interventions are sufficient to conclude that – at least in the forseeable future – both public power and antipower are likely to

retain a broadly *pluralist* structure. As a result, republican institutional interventions must begin with an acceptance of this political pluralism, and tailor institutional proposals to this reality.

The concrete implications of these arguments for the kinds of institutions that are likely to help strengthen global political legitimacy will be highly contextually variable. As such, a fully satisfying elaboration of the practical implications of the theoretical arguments I have presented here would require detailed examination of specific institutional problems and cases, of a kind that is beyond the scope of the present paper. For the present purposes, it will have to suffice to present some cursory and illustrative observations about the implications of these arguments on some familiar recent controversies about global institutional design.

Here I focus for illustrative purposes on institutional dilemmas concerning the appropriate interpretation and application of norms of democracy and accountability, since questions about the contributions to be made by constitutional norms in the project of strengthening global political legitimacy arise here perhaps most prominently. Through this analysis I aim to show that although constitutional norms cannot be expected to play a significant role in shaping the institutional structure of global public power, they can nonetheless play the more limited role of helping regulate the *dynamic political relationships* between agencies of public power and antipower within the global order, by setting principled terms for the interpretation and application of norms of democracy and accountability that operate to regulate these political relationships.

One significant application of these arguments is to dilemmas concerning the design and development of democratic institutions beyond the level of the state – in particular, how the 'boundaries' of democratic decision-making institutions should be delineated. While many powerful and important arguments have been advanced in favour of developing certain 'cosmopolitan' democratic institutions,[20] adapting many institutional features of state-based democratic practices to a global context, the arguments presented here suggest that at least some institutional features of an emerging global democratic order should be developed to reflect the pluralism of the existing structures of public power and antipower. The pluralist model requires that democratic boundaries should be determined by locating existing agencies of political power within the global social order, and then working towards their incremental democratic co-optation and control by strengthening and expanding the functions of existing agencies of antipower – in accordance with democratic norms of inclusion, representation, and so on.[21]

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[20] HELD, D. 1995b. *Democracy and the global order: from the modern state to cosmopolitan governance,* Cambridge, Polity.; ARCHIBUGI, D. 2008. *The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy,* Princeton, Princeton University Press.

[21] MACDONALD, T. 2008. *Global Stakeholder Democracy: Power and Representation Beyond Liberal States,* Oxford, Oxford University Press.; MACDONALD, K. T. M. 2010. Democracy in a Pluralist Global Order: Corporate Power and Stakeholder Representation. *Ethics & International Affairs,* 24**,** 19-43.; BOHMAN, J. 2007. *Democracy across Borders: From Demos to Demoi,* Cambridge, Massachusetts, MIT Press.

Constitutional norms can play an important role here in articulating normative principles of legitimacy to draw upon in specifying criteria for designating some powerful agency as 'public' and in need of democratic control, as well as criteria of inclusion for admitting some individual or group to the democratic decision-making constituency. Where necessary, constitutional norms may also be useful in specifying suitable political or adjudicative procedures for interpreting and applying these normative principles in particular cases. But the role of constitutional norms should not – as on standard state-based models of democratic political legitimacy – extend to specifying the roles, identities, and structures of all agencies of democratic public power, or designating rigid criteria for membership (such as territorial ones) that could not responsively adjust to achieve alignment with constitutionally non-mandated shifts in the structure of public power.

The arguments presented here about the limits of institutional design in constituting agencies of public power and antipower have some further implications for dilemmas about appropriate policies of democracy promotion and democratic interventionism in international politics. The dilemmas here concern the extent to which policy interventions to promote democracy – ranging from military intervention to promote 'regime change' and the establishment of democratic institutions, through to less coercive but similarly 'top-down' and strongly 'institutional' approaches to democracy promotion, focused on establishing and strengthening the operation of democratic constitutions – are likely to be successful.

Since agencies of antipower are constituted not only by the right institutions, but also by congenial background material structures and cultural artifacts which cannot in turn be wholly reconfigured through strategic institutional interventions, projects to bring about democratic 'regime change' or to strengthen democratic practices in areas of weakness cannot disregard these structures but must find ways to build institutions that can function within the constraints that they impose in particular contexts. Once we recognize democratic antipower as a form of social agency – not a mere institutional structure of a kind that could be entrenched through the forceful imposition of a new political constitution – it is easier to see why democracy can rarely be imposed from outside a social order, through external institution building interventions.

Policies for the promotion of democracy in international affairs, then, should aim at locating existing agencies of antipower, and nourishing and cultivating their growth, through strategies that are more developmental and incrementalist in character. Constitutional norms can be helpful here in articulating normative principles of legitimacy to draw upon in making assessments about which individual and group agents should be accorded assistance in order to promote non-domination and strengthen political legitimacy, but this is a much more minimal role than constitutional norms are sometimes accorded in political projects of this kind.

A final set of institutional dilemmas on which these theoretical arguments may have some bearing is concerns the broader question: what responsibilities

should powerful non-state actors, such as powerful international NGOs and multinational corporations, have for strengthening political legitimacy through promoting non-domination? And how should their responsibilities be differentiated from the responsibilities of this kind accorded to states? This general question translates into a range of more specific dilemmas concerning the public status and political responsibilities of powerful non-state actors. These include current and ongoing debates about whether and how international law should accord any responsibilities for upholding human rights standards,[22] and familiar debates about the forms of social and political 'accountability' and 'legitimacy' that should be demanded from powerful corporations and NGOs.[23] Whereas it has been traditional to argue that public responsibilities for promoting non-domination (through human rights protections, the establishment of accountability practices, and so on) fall exclusively upon states, the arguments that I have presented here about the status of powerful non-state actors as agencies of public power lends support to the view that they too should be accorded strong public responsibilities and held firmly to account in discharging them.

Constitutional norms can play an important role here in articulating normative principles of legitimacy to draw upon in specifying criteria for designating some powerful agency as 'public' and as such bearers of special public responsibilities in principle, as well as for evaluating what the specific content of these responsibilities ought to be for different non-state actors, given the particular impacts and capacities of the actors and the vulnerabilities of those subject to them in different political contexts. But given especially that the public power of these non-state groups is often exercised through instruments other than the exercise of rule-making authority – for example, through decision-making about how important social goods and resources are to be produced and distributed across populations – these are not forms of public power that can readily be regulated through the rule-based institutional devices associated with constitutionalism.

Conclusions

In this paper I have elaborated an account of non-domination as an ideal of political legitimacy that combines normative individualism with a recognition of the functional reality and political significance of group agents within the social world inhabited by individuals. On this reading of the republican ideal, non-domination is *valued for* the goods that individuals enjoy in virtue of it, but *consists in* a particular functional configuration of the relationships of power between individuals and group agencies within the social order. It is constituted by the dual functions of public power and anti-power, operating together to combat the alien or arbitrary control of individuals by agents (sometimes individuals but most importantly powerful groups) within the social order.

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[22] RUGGIE, J. 2006. Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. *UN Coc E/CN.4/2006/97.*

[23] MACDONALD, T. 2008. *Global Stakeholder Democracy: Power and Representation Beyond Liberal States,* Oxford, Oxford University Press.; EDWARDS, M., HULME, D. & SAVE THE CHILDREN FUND (GREAT BRITAIN) 1995. *Non-governmental organisations : performance and accountability : beyond the magic bullet,* London, Earthscan.

If we are willing to adopt this broad normative framework for understanding the demands of political legitimacy (or some closely related liberal or democratic variant), then we must recognize important implications for our understandings of the concrete institutional projects that we ought to advance at the international level as instruments for strengthening political legitimacy – and in particular for our assessments of the contributions to be made by global constitutional structures. Strategically formulated institutional projects can do a certain amount to make existing agencies of public power more effective and to expand and reform some of their functions. They can also contribute to strengthening agencies of anti-power, by allocating resources, creating institutional channels for communication, establishing procedures for joint decision-making, and so on. But institution building projects must always be structured around, and engaged with the contextual particularities of, the agencies of public power and antipower that already exist within the global social order, and are embedded in those background material and cultural structures that are beyond the scope of strategically rational institutional control.

While constitutional norms can be useful in galvanizing and strengthening a collective focus on shared normative aims and values, it does not follow that political legitimacy would be strengthened by attempts to codify constitutionally and then impose politically a rationally devised design blueprint for global order. Instead, those with power and a will to strengthen global political legitimacy should direct energies and resources towards developing those organically emergent political agencies ('publics', public political movements, and more formal organized groups) that display capacities and motivations to oppose dominating power and hold it to account. It should be expected that the structure of public power and these oppositional agencies of antipower will be dynamic and shifting, and constitutional projects must be limited in their ambitions in accordance with the need to accommodate this. The normative commitments to giving this assistance, and to the understandings of political legitimacy that motivate it, can nonetheless remain firm and stable, and can be strengthened by public articulation through the institutional instrument of a world constitution.

 On this agent-centric formulation of the ideal of non-domination, as a framework for thinking about global political legitimacy, we may think then that the appropriate metaphor for republican institution-building is not the objectifying one of institutional or constitutional *design* – which implies a practical focus on institutional engineering and architecture. Rather, it is the organic one of *cultivating institutional growth* – albeit within the galvanizing and disciplining framework of a shared set of constitutionally articulated normative commitments. Overall, this should be taken to encourage an approach towards institution building that is characterized by an attitude of developmental nurturing towards existing political agents, rather than one of structurally oriented and interventionist institutional control.