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#### **ARTICLE**

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## Why More Civil Society Will Not Lead to Less Domination: Dealing with Present Day State Phobia through Michel Foucault and Neo-Republicanism

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#### **ABSTRACT**

The notion of civil society, as an ontologically distinct sphere, separated from the state thereby serves as an antidote to the sovereign power of the state. Since the 1990s, we have seen reforms and organizational structures that advances the role of the market as well as the civil society along with a voluntary sector. often with the deliberate attempt to disrupt the power of the state and to tame the Leviathan through the promotion of networks, partnerships, co-governance and collaboration. This can be understood in terms of a present day state phobia and builds on a liberal conception of negative freedom understood as non-interference. Yet if we take Foucault's theorizations of power as omnipresent as it disrupts the power/freedom dichotomy we need to find alternative ways to cope with relations of power in order to not let them deteriorate into relations of domination. I argue in this article that neo-republican ideal of non-domination can be combined with Foucault's insights on the nature of power. If correct, a continued promotion of more civil society involvement and partnerships between public and private actors provides a false insurance to diminish domination in contemporary societies.

#### **KEYWORDS**

Power; Freedom; Civil Society; State-phobia; Neorepublicanism: Domination: non-interference

## 1. Living with power while reducing domination

Civil society is a central concept in most discourses of the modern state and the organization of political power. Yet it is rarely explored as a political and contested concept in itself – a concept that holds a binary discursive function in relation to the state and thereby produces and enables specific forms of government. The idea of a civil society, as something that exists inside the state yet outside the public institutions, and is not merely a 'civil' society under government, stems from the Scottish Enlightenment philosopher Adam Ferguson (1764-1785). Civil society is in the Essay on the history of Civil Society described as a social order that enables people to self-organize according to interests and preferences. More importantly is perhaps his emphasis on the vital functions that stem from 'good persons' (Ferguson 2007). In The birth of bio-politics, Michel Foucault explicitly engages with Ferguson's Essay on the history of civil society, a text that he sees as the 'most fundamental, almost statutory text regarding the characterization of civil society' (Foucault 2008, p. 298). Rather than accepting the ontological and normative depiction of civil society, Foucault attaches this specific notion of civil society to forms of liberal government as it enables a "redistribution, or a sort of re-centering/decentering of the [liberal] governmental reason . . . (Foucault 2008, p. 311). It is the current conception, role, and organizational formation that incorporates civil society that is under investigation in this article. How then, is civil society portrayed today and what organizational (re-) forms are currently pursued, and why are those specific organizational structures of political power potentially problematic?

Civil society has been a key concept in respect to the organization and evaluation of politics and political power since the 18 century. It has come to enjoy a certain normative luster, both in political discourse in society and in normative political theories, and it is often described as a 'force' fighting for the promotion of democracy, human rights, and civil liberties in democratic as well as authoritarian regimes (Kumar 1993, Gellner 1994, Keane 1998). From this perspective, the notion of civil society, as an ontological sphere distinct from the state, serves as a binary force to the state, and the purportedly dominating and repressive power of the state.

Civil society has increasingly been put forward in theory and public debate in the West and taken to be key for advancing democratic reforms elsewhere. Since the 1990s, we have witnessed reforms and organizational structures that foster the role of the market as well as civil society and the volunteer sector as way to pluralize and find partnerships for pursuing social and political ends. This is perhaps most evident in the promotion of networks, partnerships, co-governance, and collaborative practices as models for how important political problems are to be addressed (Ferlie et al. 2011, Larsson 2015, La Cour and Andersen 2016, Cristofoli et al. 2017, 2017, Torfing and Ansell 2017). In this rather normative field of research, civil society is still predominantly understood as a privileged sphere, possessing agency and characterized by such values as communication, voluntarism, social cohesion, and democratic deliberation. Furthermore, civil society is reputedly free and exists outside the power and domination of traditional state institutions (Cohen and Arato 1999). Still, as a sphere located outside the state and the market, it is regarded as essential for a vital and functional democratic state.

There is today a variety of ideas and discourses in which civil society holds a great normative appeal as a space of deliberation, plurality, and progressive forces that becomes inherently desirable simply because the binary image it receives in relation to traditional forms of state power, which are formalistic, rigid and absolute. Social responsibility, partnership, co-governance, participation, activation, active citizenship and other such conceptions continue to further the incorporation of civil society into public rule as a means for joining and supporting the weaning sovereign power of the state. In the U.K., this specific approach to political rule is encapsulated in the concept of 'big society,' which David Cameron advanced in 2010 as he was making the case for the return of civil society, voluntarism, and activism (Scott 2010). Another example is provided by Sweden, where co-governance and collaboration have been identified as key instruments for dealing with ethnic segregation and related urban problems (Commission for a Socially Sustainable Malmö 2013).

Such reforms, together with the associated political ideas of civil society as something different, sustain a widespread 'state phobia' (Foucault 2008:76; see also Dean and Villadsen 2016). This is a liberal anti-state attitude further nurtured by the 'romantic view' that civil society is a natural and spontaneous order (Kriegel 2001, p. 10). Is this image of civil society sustainable or is it simply shielding specific forms of political power?

Michel Foucault has sometimes been presented as an unambiguous defender of civil society, perhaps because of his problematizations of the state and the fixation of legitimate sovereign power. He was during his active career particularly sensitive to diversity and marginality, aligned with local activism and bottom-up politics and often commented on ongoing political events, at times portrayed as an activist (Karlsen et al. 2015). Kasper Villadsen has argued that despite Foucault's 'political militancy', he did not support an understanding of civil society as an inherently progressive force or space (Villadsen 2016). Foucault's ambiguous approach to political activism and to civil society as a specific sphere have been a theme in the emerging Foucaulding literature since ever since his death in 1984. According to on early commentator Colin Gordon, Foucault openly disputed the idea that civil society could be based purely on progressive and normative power, countering the evils of the state. Gordon summarized Foucault's standpoint to entail 'a clear refusal, finally, to recognize in civil society - as defined by left or right - a principle of good opposable to the evil of the State' Gordon (1996), p. 263). This standpoint was difficult to accept, and was even seen as straight out offensive for British and American intellectuals. According to Villadsen, Foucault's position is not truly 'against civil society' but rather one of skepticism towards a specific ontological understanding of a clearly political and contested concept (Villadsen 2016). Flyvberg noted in a comparison between Habermas and Foucault, that the latter was a 'realist' well aware of the presence of power and conflicts in all spheres of social life. Flyvberg concludes that [w]ith the plurality that a contemporary concept for civil society must contain, conflict becomes an inevitable part of this concept (Flyvbjerg 1998, p. 229).

A goal of the present discussion is to investigate the implications of civil society understood as a location of conflicts and power rather than a civil society understood as merely a social and progressive force that sustains democratic institutions. In that sense, I follow a skeptical rather than antagonistic approach to civil society as I wish to problematize the role civil society has obtained in contemporary discourses of 'big society' and co-governance. If civil society is conceptualized as a place of conflict and a source of power and domination we might be willing to consider alternative ways to organize political power rather than continuing the decentering of political power as this potentially increases the presence of arbitrary rule.

The article is structured as follows. I begin by discussing the absence of explicit normative positions in Foucault's writings and recap his alternative account of power. The key issue is to present his dismissal of the power/freedom dichotomy as a critique of the liberal conception of freedom as it enables a sphere unmarked by relations of power, such as is supposedly the case with civil society. There is also an important difference between relations of power and relations of domination. For such reasons, Foucault maintained that relational and systematic domination is *intolerable*, arguing that we should keep domination at bay, even if power is 'everywhere.' We then explore the normative doctrine of neo-republicanism, which resides upon an understanding of freedom that differs from that which characterizes the liberal tradition. I follow Quentin Skinner in arguing that the notion of republican freedom has been sidelined by the liberal conception of freedom as non-interference. I conclude by proposing that Foucault's

insights concerning power as omnipresent in social relations reveal that efforts to circumvent the state and public political institutions by various forms of cogovernance, such as Cameron's 'big society,' are unsustainable insofar as they give rise to new forms of domination. Consequently, the neo-republican conception of freedom as non-domination, coupled with Foucault's analysis of power, provides a normative and justifiable solution for how we can live and cope with sovereign power.

## 2. Foucault's (non-)normative foundation

The fact that Foucault explicitly refrained from formulating normative principles and theories has elicited much speculation from scholars in their efforts to establish how his analysis of power could be associated with a comprehensible normative position (McClure 1995, Hanssen 2000, Golder 2015). For example, certain scholars have argued that Foucault appears to have developed an inclination towards liberalism and individual rights in his later writings (Moss 1998). Others have claimed that he instead presented a critical ethics associated with self-responsibility in his later works (Lynch 2016), while yet others have investigated his normative standpoint in respect to neoliberalism (Brown 2015:73, Behrent 2016:108 f; Zamora and Behrent 2016:1-3, Dean 2016, 2014) and his engagement with the concept of civil society (Gordon 1996, Flyvbjerg 1998, Karlsen et al. 2015, Villadsen 2016). A smaller number of scholars have examined certain connections between Foucault and Skinner as historians interested in the state. In this vein, Ryan Walter presented a 'dialogue' between Foucault and Skinner concerning their historical and conceptual treatments of the state, but concluded that these two thinkers, in spite of their shared point of departure (Machiavelli), could not be aligned since they diverge on how to methodologically approach history and, consequently, the state (Walter 2008, p. 17).

I believe that a comparison of Foucault and Skinner has more to offer on the matter of state and civil society and that we need to dig deeper than the level of methods to understand how their different approaches help us to illuminate the relationship between power, freedom and domination. Vucina Pedersen et al. approach the issue of the limits of freedom in modern society by comparing Foucault's and Skinner's accounts of the history of ideas by investigating their respective views on discourse, rationality, and agency. They note that Foucault and Skinner differ significantly in the ways they deal with these three phenomena, but observe that, in spite such differences, their historical analyses seek to question the ways in which past thoughts and practices limit contemporary forms of freedom (Vucina Pedersen et al. 2011). The authors thus maintain that

while Foucault's analytics in certain ways seem to allow us to go further than Skinner's in unsettling contemporary limits to the exercise of freedom, we need to explore further the potential for complementing the insights generated by these two forms of analyses (Vucina Pedersen et al. 2011, p. 139).

Mitchell Dean argues that Skinner's work complements Foucault's concerning the emergence of the state. He remarks that both Skinner and Foucault locate the emergence of the modern conception of the state in the period following the publication of Macheavelli's *The Prince*. Insofar as they engage in a history of the present in which the modern state and its rulers and rationalities are distinct from each other, they both engage in a geneological conceptual analysis of key political concepts (Dean 2010:104, p. 116). My view is that although these ideas are primarily concerned with methodology, they nevertheless constitute a foundation for exploring the normative connections between Foucault and Skinner as well as the wider normative tradition of neorepublicanism, of which Skinner is one of the more prominent voices. It is also in this intersection that we can discern the core problem of co-governance, namely, that the continued promotion of increased civil society involvement, including partnerships between public and private actors, enables specific and totalizing forms of power in contemporary societies.

It is noteworthy that Foucault's perhaps most explicit normative maxim regarding domination is that we should strive for a state of existence which involves practices of liberty that make it possible 'for us to play . . . games of power with as little domination as possible' (Foucault 1988, p. 298). This demands a further exploration of how Foucault distinguishes between power and domination as well as an investigation of the normative doctrine of neo-republicanism, particularly the accompanying conceptualization of freedom as non-domination rather than non-interference (Skinner 2012, Pettit 1997, p. 22).

Even though power was the key element for Foucault in analyzing social and political relations, he disavowed the notion of providing anything like a 'theory of power' (Foucault 1990, p. 82). Foucault championed the notion of analysis over theory insofar as theory appears to imply that there is a universal and unchanging perspective that permits us to identify and analyze all instances and relations of power. For example, he stated in Society Must Be Defended, a 1976 lecture series at the Collège de France, that

[G]iven that the question "What is power?" is obviously a theoretical question that would provide an answer to everything, which is just what I don't want to do - the issue is to determine what are, in their mechanisms, effects, their relations, the various power apparatuses that operate on different levels of society, in such very different domains and with so many different extensions (Foucault 2004, p. 13).

If we wish to understand the alternative and relational view of power that Foucault advanced in relation to the state we need consider how various levels, objects, and knowledge claims that come together and forms 'apparatus of security' or dispositif directed to the governance of population and its biopolitical character (Foucault 2007: 6, p. 108). The most extensive account of this relational understanding of power/freedom is presented in The History of Sexuality: The Will to Knowledge, originally published in French in 1976, in which Foucault states that

[P]ower must be understood in the first instance as the multiplicity of force relations imminent in the sphere in which they operate and which constitute their own organization; ... thus forming a chain or a system, or on the contrary, the disjunctions and contradictions which isolate them from one another; and lastly, as the strategies in which they take effect, whose general design or institutionalized crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemonies (Foucault 1990, p. 92-93).

Foucault in fact placed great emphasis upon the relational aspects of power, arguing that

it is the moving substrate of force relations [upon which power as a living organism feeds -O.L.L.] which, by virtue of their inequality, constantly engender states of power, but the latter are always local and unstable (Foucault 1990, p. 93).

This understanding of power relations implies that although such relations exist everywhere, they obtain their particular formation within a certain space and discourse and in respect to a local multiplicity. The other important point to note is that power is constantly present in all relations

not because it has the privilege of consolidating everything under its invincible unity, but because it is produced from one moment to another, at every point, or rather in every relation from one point to another. Power is everywhere, not because it embraces everything, but because it comes from everywhere (Foucault 1990, p. 93).

Such an observation disrupts the liberal power/freedom dichotomy in the sense that there is no sphere or state of existence in which the individual is 'outside' power. However, the assertion that power is omnipresent need not be alarming if we understand power as a process that involves struggle and confrontation. Moreover, although confrontation may at certain ventures transform and strengthen relations of power, it can also potentially reverse them. Foucault observes in this regard that

Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power (Foucault 1990, p. 95).

Foucault's relational approach to power thus entails that power and resistance are interlinked, and that resistance requires the freedom to act. Foucault explicitly states in a 1984 interview that

[T]here cannot be relations of power unless the subjects are free .... [I]f there were no possibility of resistance – of violent resistance, of escape, of ruse, of strategies that reverse the situation – there would be no relations of power (Foucault 1987).

It is noteworthy that Foucault's early engagement with power did not include the state or traditional sovereign power. In fact, Foucault wished to theorize power without ' ... a theory of the state as one can and must forgo an indigestible meal' (Foucault 2007, p. 76-77). Rather, by not accepting the state as a given in the subject of power, the connection between knowledge and power would enable an exploration of 'governmentalization' of the state, a sort of reversed relationship where one does not predefine the nature of the state but let it unfold as one part of the analysis (Foucault 2007:109, Jessop 2007).

Foucault provided the following two definitions of governmentality:

[B]y "governmentality" I understand the ensemble formed by the institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument (Foucault 2007, p. 108).

The term itself, power, does no more than designate a [domain] of relations which are entirely still to be analyzed, and what I have proposed to call governmentality, that is to say, the way in which one conducts the conduct of men, is no more than a proposed analytical grid for these relations of power (Foucault 2008, p. 186).

The notion of governmentality provides the important insight that state and civil society are intimately connected within the liberal approach to state governance (Foucault 2007, Lemke 2012, p. 42). This approach stands in stark contrast to the liberal tradition, which upholds the notion of freedom as non-interference and maintains that civil society comprises a sphere outside the state where freedom might flourish. The liberal dictum is that citizens experience greater freedom as the sphere of civil society expands. Let us explore how such a conception is made possible.

Contemporary liberal discourse understands the private sphere and civil society terms that derive from Cicero's societas civilis and Aristotle's koinônia politiké (Kumar 1993) - as constituting a space for autonomy and freedom from interference and intrusion by the state (Akman 2012, p. 322). This positive image of civil society, following to a large extent the Scottish Enlightenment tradition and Adam Ferguson (2007), it portrayed as a counterforce to the state. This is particularly visible in the writings of Ernest Gellner, who remarks that

Civil society is that set of diverse non-governmental institutions which is strong enough to counterbalance the state and, while not preventing the state from fulfilling its role of keeper of the peace and arbitrator between major interests, can nevertheless prevent it from dominating and atomizing the rest of society (Gellner 1994, p. 5).

Gellner evidently frames and understands civil society as a counterforce separated from the state, and it is this separation that prevents the latter from dominating social life. He thereby conceptualizes civil society as a location of complexity, choice, and dynamism that constitutes 'the nemesis of all forms of political despotism' (Keane 2004:43). Ayhan Akman, who refers to this view as the 'objectivist conception of civil society' (Akman 2012), points to two very specific postulates in this regard.

Postulate 1: Civil society comprises a set of institutions, organizations, and groups that together form an entity whose material properties (strength, size, structure, etc.) we can objectively observe and assess. These properties constitute the ontological aspect of civil society and specify its ontological autonomy as an objective entity.

Postulate 2: Civil society is the opponent and antidote to state power. Its existence and strength are thus closely related to the democratic quality of a given polity. The stronger civil society is, the better are the prospects for state democracy and the greater is the quality of democracy.

This emphasis on the ontological autonomy of civil society from the state, together with its functioning as an antidote to state power, indicate how scholars and activists have construed and theorized the relationship between civil society and democracy (Akman 2012, p. 323). This influence is particularly evident in the discourse of co-governance and 'big society,' which maintains that the involvement of civil society fosters pluralism and sound deliberation and expands the democratic sphere in society.

The liberal art of government and the management of ontological spheres within the state are explicitly questioned by Foucault in his analysis of liberalism as a specific form of governance (Foucault 2008, p. 17). He notes that liberalism, in contrast to a police regime, comprises a political rationality that maintains that the state should not govern excessively - liberalism is thus the 'art of the least possible government' (Foucault 2008, p. 28). This new art of government was initially concerned with cultivating freedom among the population as a whole in order to encourage trade, work, exchange, and the overall development of the individual, society, and the state. The relationship between state and society is thus reversed in the liberal tradition insofar as the latter demands an answer by the state to the question

Why must one govern? That is to say: what makes government necessary, and what ends must it pursue with regard to society in order to justify its own existence (Foucault 2008, p. 319)?

The liberal understanding is that civil society comprises a sphere of freedom and choice that is ontologically separate from the state. From this viewpoint, expanding the space occupied by this ontological object and allowing its representatives to enter into collaboration and partnerships with public institutions would constitute an effective means for disrupting the totalizing and dominating force of the state.

The concept of civil society had previously been used to denote states that were governed in accordance with laws, whereby they were 'civil' rather than 'barbaric.' In contrast, the notion of civil society within the liberal tradition has instead served to define a space within the state in which industrious individuals and groups could prosper by following their interests and cultivating their freedom with no intrusion or interference by the state (Akman 2012, p. 322). Foucault noted in his lectures on governmentality that the emergence of political liberalism led to the drawing of strict divisions between ontologically distinct spheres in society (Kumar 1993), but he did not support the liberal claim that civil society was an ontologically distinct sphere within the body politic that constituted a natural counterforce to state power. Foucault did in fact regard the liberal conception of civil society as a primary element of liberal governmentality. Foucault thus argues that

Civil society, is, I believe, a concept of governmental technology, or rather, it is the correlate of a technology of government, the rational measure of which must be juridically pegged to an economy understood as the process of production and exchange. . . . Homo economicus and civil society are therefore two inseparable elements (Foucault 2008, p. 296).

However, as previously noted, Foucault had an ambivalent approach to civil society yet Kaspar Villadsen concludes in his analysis of this 'relationship' that Foucault never viewed civil society as an inherently progressive force, regardless of his enthusiasm for anti-institutional and anti-rationalist political movements. More importantly, however, is the role that civil society *performs* in contemporary organizational structure of political power. Since the 1960 but certainly accelerating in speed and numbers since the 1990s, we have witnessed organizational reforms and structures that actively seeks the involvement and representation of civil society organizations into structures of co-governance. The involvement of and joint-up governance of public and private actors is the key aspect of networks, partnerships, co-governance, and collaborative governance that now serves as models for how important political problems are approached (Ferlie et al. 2011, La Cour and Andersen 2016, Cristofoli et al. 2017, Torfing and Ansell 2017). A central aspect of these organizational structures is the 'decentralization' of authority through participatory approaches and the 'classical liberal state-society distinction is thereby supplanted by the image of a multiplicity of "self-governing communities" (Prozorov 2004, p. 274). Through governance reforms, civil society and its organizations explicitly engages in political and social problems thereby giving rise to specific forms of dispositifs, or apparatus of security (Larsson 2020). Prozorov maintains in his critical engagement with governance that (co-)governance give rise to a specific type of governmentality (Prozorov 2004: 272, see also Larsson 2020). This makes possible an incorporation of civil society and its organizations into governance structures that in reality undermines the possibility of civil society serving as a 'counterforce' to the state (Prozorov 2004, p. 272). It is of course a problem that follows from the liberal distinction between the state and society, the phobia of the state and the normative appeal of civil society as a spontaneous order. Yet the forms of co-governance provide an extension of governmental power and practices into the 'social' domain through partnership arrangements. Such reforms are often seen as 'necessary', following discourses of the decline of the state and the problems attached to 'big government'. The disappearance or disruption of the overt sovereign power '... does not disable government but disables its criticism by displacing the conventional focus of criticism and making governmental practices less visible ...' (Prozorov 2004, p. 276). In fact, network governance '... appears to leave little room for critique and resistance as long as it is portrayed in a benevolent way; encapsulating knowledge and expertise, relies upon voluntary participation, and governs by means of formal autonomy, while fostering a cooperative and social subjectivity' (Larsson 2020, p. 122). According to Prozorov it is the disavowal of sovereignty and the increasing indistinction between public government and its new collaborating partners that results in "... a formation of unlimited authority, the immanent authority that is de-centred, dispersed and depersonalized, but no less total in its desire and capacity to give form to the life of the people' (Prozorov 2004: 277 emphasize added).

We will now explore a potential way to return to public political life view by considering Foucault's account of domination together with the conception of freedom as non-domination that follows from the neo-republican tradition and that runs counter to the liberal conception of freedom as non-interference.

## 3. Domination: the greater evil

Foucault claims that freedom and power are intimately connected such that one is not possible without the other. This does not mean, however, that relations of power and domination cannot and should not be critiqued. Even if Foucault deliberately distanced himself from the *Frankfurt School*, the *Enlightenment tradition*, and *Critical Theory*, his analysis of power entails a critical and thus normative foundation. Foucault stated, for example, that

When I speak of critique I do not mean a work of deconstruction, of refusal or denial, but rather an investigative work that consists in suspending as far as possibly the normative system which one refers to in order to test and evaluate it (Foucault 1984, as quoted in Lemke 2012, p. 61).

It is also important to note that Foucault holds a negative view regarding relations of domination, which are distinct from power struggles. He in fact directly associates freedom with resistance to power, arguing that relations of dominations are different in kind. States of domination comprise a specific and exceptional type of relations that are stable, hierarchical, and extremely difficult to reverse, precisely because individuals and groups have limited room for action by virtue of their 'extremely limited margins of freedom' (Foucault 1987). That is to say that when individuals and groups are trapped within relations of domination, the result

can readily become 'permanent asymmetry' (Foucault 1982). Lemke observes in this regard that

[S] tates of domination are not the primary source that makes it possible to exercise power or exploit asymmetries: on the contrary, they are the effects of governmental technologies. Technologies of government account for the systematization and stabilization of power relations that may lead to states of domination (Lemke 2012, p. 20).

Paul Patton provides important examples, however, of how resistance and critique have led to new laws and legal institutions that have successfully reversed states of domination.

The disappearance of the rights of slave-owners, like the disappearance of many of the rights which husbands formerly held over wives, or the dismantling of the forms of legal apartheid that existed in colonial countries, may be seen to be in part the effect of such changes in relations of power. The contemporary emergence of new rights such as the right of individuals to suicide, or the right to hold state officials to account for war crimes, or the right of intervention in the internal affairs of sovereign states when the basic human rights of citizens are at stake, may also reflect wider changes in social power relations (Patton 2005, p. 272).

That is to say that an absence of freedom clearly renders it difficult to reverse domination, but that is not impossible to do so. It is also important to note that domination is a state of existence that Foucault - the philosopher who wished to avoid normative prescriptions considered to be 'intolerable.' Foucault argued in this respect that

[T]he important question here ... is not whether a culture without restraints is possible or even desirable, but whether the system of constraints in which a society functions leaves individuals the liberty to transform the system . . . . [A] system of constraints becomes truly intolerable when the individuals who are affected by it don't have the means of modifying it (Foucault 1997).

But Foucault never investigated how it would be possible to design a system that would provide individuals with a degree of liberty sufficient for altering a systems of constraints. He in fact dramatically shifted his focus at the beginning of the 1980s from the state and the formation of dispositifs and the organization of power to the process and workings of power within subjects, investigating ethical issues, self-constituting logics, and care. In The Use of Pleasure, originally published in 1984 as L'Usage de plaisirs, he recalled how

I now had to undertake a third shift, in order to analyze what is termed the subject. It seemed appropriate to look for the forms and modalities of the relation to self by which the individual constitutes and recognizes himself qua subject (Foucault 2012b, p. 6).

With this new trajectory, Foucault explored sexuality, pleasure, aesthetics, relation to and care for oneself, as well as parrhesia, or speaking the truth (Foucault 2010:2012a). This new orientation substantially broke with his governmentality studies and interest in the state. Foucault's insistence upon differentiating between power and domination could nevertheless be important, and it provides the basis for the next stage of the present discussion.

Foucault explicitly states that

[W]e must distinguish the relationships of power as strategic games between liberties strategic games that result in the fact that some try to control the conduct of others - and the states of domination, which are what we ordinarily call power (Foucault 1988, p. 19).

Ian Shapiro draws a similar distinction between power and domination, remarking that

Domination obviously involves power relations, but not every exercise of power is domination. Indeed, power is frequently needed to combat domination (Shapiro 2016, p. 20).

It follows from such claims that we need to find a suitable institutional arrangement that minimizes domination, and that the key to this endeavor does not involve continued efforts to push back the limits of the state while advancing those of civil society. I suggest that the neo-republican tradition provides insights and disruptions to the *totalizing* effects of co-governance by pursuing a different conception of freedom, a freedom that is compatible with the alternative view of power that Foucault presented.

## 4. Freedom as non-domination: countering (liberal) non-interference

Neo-republicanism emerges as a normative alternative to liberalism insofar as it presents an alternative view of state-society relations by virtue of its normative principle that freedom is non-domination, not simply non-interference (Pettit 1997:66, Shnayderman 2012, Casassas and De Wispelaere 2016).

Freedom has traditionally been understood within the liberal tradition as non-interference. Skinner argues in *Liberty before Liberalism* that Thomas Hobbes deliberately sought to discredit and supplant a rival tradition of thought, represented by Roman Law, in which the concept of civil liberty was associated with the *civitas libera*, or the free state (Skinner 2012, p. 10). Briefly stated, Hobbes claimed that you were free as a subject as long as you were neither physically, nor legally coerced, whereby you remained in full possession of your freedom as a subject as long as there was no law to which you must conform.

As for other Lyberties, they depend on the silence of the Law. In cases where the Sovereign has prescribed no rule, there the Subject hath the liberty to do, or forebear, according to his own discretion (Hobbes 1994, p. 142).

Nor has Hobbes been alone in supporting this view of freedom. For example, John Lind (1737–1781), who was a pamphleteer for Lord North and a close friend of Jeremy Bentham, opposed the American colonies' proclamation of freedom with the remark that 'liberty is nothing more or less than the absence of coercion and since all laws are coercive, Americans should have no special complaints' (Lind 1776). Such a view maintains in effect that power and freedom can be compartmentalized in ontologically separate spaces within the polity, which supports the liberal understanding of negative liberty and sustains the normative appeal of co-governance. This conception of liberty has been further advanced by Isaiah Berlin in his *Two Concepts of Liberty* (Berlin 2002, Skinner 2012). Berlin proclaims that the truer and more humane ideal specifies that freedom is enjoyed as long as other people do not prevent me from doing what I want (Berlin 2002). Freedom would thus stand in contrast to coercion, which involves the deliberate interference of other people within the area in which I wish to act (Skinner 2012). Consequently, non-interference is understood as the absence of coercion by law or force, which accords with Hobbes' view of freedom (Berlin 2002).

Skinner calls into question the liberal, negative understanding of freedom as noninterference because it does not distinguish between authorities that possess a legitimate basis for ruling and those that do not. In this sense, 'how much authority is placed in anyone's hands' matters for liberals, not 'who wields authority' (Skinner 2012, p. 115). Accordingly, the concept of freedom as negative liberty is insensitive to the institutional arrangement of political power in society. For this reason, both authoritarian and democratic states are capable of threatening the natural freedom of civil society and the private quarters of family and friends.

Skinner and the neo-republican tradition regard the typically liberal conception of freedom as dangerous insofar as the absence of democratic institutions, the rule of law, and constitutional codification creates the possibility of arbitrary rule. Briefly stated, you are unfree when you are in a relation of domination by another, which comprises a relational quality that is most often present outside the legal system. Patton's examples noted above of slavery, legal apartheid, and the unfettered power of husbands over their wives have been reversed by altering the legal institutions that previously had either sanctioned or ignored these particular relations of domination between individuals (Patton 2005).

Skinner further maintains that the responsibility of the state is indeed to protect citizens from both public and private domination. There are those who claim that the state can redeem its pledge to respect and preserve the liberty of its citizens simply by ensuring that they suffer no 'unjust or unnecessary interference in the pursuit of their own chosen goals.' Skinner argues in response, however, that

[T]his can never be sufficient, since it will always be necessary for the state to ensure at the same time that its citizens do not fall into a condition of avoidable dependence on the goodwill of others. The state has a duty not merely to liberate its citizens from such personal exploitation and dependence, but to prevent its own agents, dressed in a little brief authority, from behaving arbitrarily in the course of imposing the rules that govern our common life (Skinner 2012, p. 119).

This type of protection is the aim of neo-republicanism, which is marked by a concept of domination as arbitrary rule and mastery by others, along with a conception of freedom that is something other than mere non-interference. The neo-republican tradition thereby underlies the moral principle put forward by Philip Pettit that freedom should be understood 'as the absence of mastery by others' (Pettit 1997, p. 22). Non-domination itself is thus to be regarded as the primary goal of all democratic institutional arrangements (Watkins 2015, p. 510). That is to say that 'the political and social institutions and the practices of any society should be designed so as to minimize domination' (Lovett 2010).

Pettit defines domination as a power relationship between agents that possesses an arbitrary character. He argues that

One agent dominates another if and only if they have a certain power over that other, in particular a power of interference on an arbitrary basis . . . . They have sway over the other, in the old phrase, and that sway is arbitrary (Pettit 1997, p. 52).

An act of interference is arbitrary and gives rise to domination if it is subject only to the judgment of the interfering agent, such as when a decision to interfere is taken without regard to the interests of those who are interfered with, remains unchecked, and leaves one party with little or no ability for resistance and reciprocal action. Blunt argues in this regard that the normative essence of arbitrary power becomes evident when a person is affected by power over which she has no control (Blunt 2015).

Pettit argues that domination encompasses a wide range of possible behavior, including coercion of the body, as in restraint or obstruction, and coercion of the will, as in punishment, the threat of punishment, or manipulation. He also states that it includes such covert forms of interference as agenda fixing, the deceptive or non-rational shaping of people's beliefs or desires, and rigging the consequences of people's actions (Pettit 1997, p. 53).

The ways in which the various types of institutional arrangements are organized are clearly important for limiting the possibility of domination. Democratic governance, public institutions, and democratic procedures for ensuring the influence of the citizenry, who are governed by the state and public laws, comprise necessary conditions in this regard for the realization of republican freedom (Watkins 2015, p. 512). Constitutional provisions and the rule of law have been particularly valuable in historical efforts to eliminate domination since they introduce a type of authority that enables the parties who are governed to defend themselves against those who would interfere with them arbitrarily (Pettit 2012:5, Kriegel 2001). In contrast to the liberal solution of 'less state,' including minimizing laws that 'interfere' with individual freedom, the neo-republican tradition upholds the position that constitutionalism and the rule of law together constitute the proper means for guarding individuals from arbitrary rule and domination, whether by public or private parties (Lovett 2010:218, Casassas and Jurgen 2016). In many ways, however, today's governmentalization of the state and the dispersion of public power into a wider set of civil society actors by means of networks and collaborative undertakings in fact heightens the possibility of arbitrary rule bring exercised over those citizens who are not active participants in such arrangements (Larsson 2019).

## 5. Overcoming state phobia with Foucault and neo-republicanism

The neo-republican tradition aims at the construction of political systems in which domination is minimized by means of the state, not in opposition to it (Pettit 2012, p. 25). Foucault's analytical to power as relational and omnipresent, coupled with the alternative conception of freedom presented by the neo-republican normative theory, serves to indicate that the growing involvement of civil society no longer provides a panacea for today's public problems and deficits of legitimacy. Or, it is only tenable as long as we conceive of civil society as a sphere outside the state that at is conceived as harboring societal forces fighting for and ensuring democracy, human rights, and civil liberties in both democratic and authoritarian regimes (Kumar 1993, Gellner 1994, Keane 1998). Since the 1990s, we have witnessed ever more reforms that promote the increased involvement of civil society and the volunteer sector in public decision-making and in the provision of services. Networks, partnerships, co-governance, big society, and other similar concepts apparently to possess a normative appeal as they promise to pluralize public rule and tame state domination over citizens (Ferlie *et al.* 2011, La Cour and Andersen 2016, Cristofoli *et al.* 2017, Torfing and Ansell 2017).

A main concern of the present discussion has been to illustrate that civil society as such comprises the basis of liberal governmentality while being an element of the latter as well. Still, civil society as it is understood within the liberal discourse and our everyday political vocabulary sustains the image of a sphere of freedom and a place of non-interference by the state – a place of negative liberty in Isaiah Berlin's terms. The idea

that we should try to expand such a space in order to circumvent the domination of the state has given rise to, and continues to foster, state phobia or an 'anti-political orthodoxy' (Dean and Villadsen 2016, p. 19).

Foucault introduced the notion of state phobia in his 1978-1979 lectures on biopolitics (Foucault 2008, p. 75). He remarked that although his contemporaries were critical of the universal presence and power of the state, regardless of whether it was socialist, fascist, or even liberal in character, he himself did not intend to go in that direction in his discussion

That is why I propose to analyze, or rather to take up and test this anxiety about the state, this state-phobia, which seems to me a typical feature of common themes today, not by trying to wrest from the state the secret of what it is ... but by moving outside and questioning the problem of the state, undertaking an investigation of the problem of the state, on the basis of practices of governmentality (Foucault 2008, p. 77-78).

In this sense, state phobia calls into question whether the state is the obvious, or even the most desirable, center of government (Larsson 2019). Blandine Kriegel very aptly observed, however, that the liberal tradition, together with the notion of 'society first,' holds the key to the existence of state phobia in Western societies. She observed that the state has come to be viewed 'as an inert but complex mechanism dedicated to social reproduction; its motions are all reactive, parasitic on the active forces of society' (Kriegel 2001, p. 5). This liberal anti-state attitude has been further nurtured by a 'romantic view' of civil society as a natural and spontaneous order.

The neo-republican tradition conceives of freedom as arising from non-domination and the removal of arbitrary elements in relations of power, which gives rise to the understanding that individual freedom follows from living within the parameters of the rule of law, not outside them. Kriegel argues in this regard that

The early modern jurists and doctrinarians defined a slave as a man deprived of right by virtue of being dispossessed of his right to own property and above all his own life. They held that a free man is a man who has rights, because he is subject to neither the imperium nor dominium; he is neither dominated nor subjugated, because he is a subject, a citizen, a person. Indeed, the states under the rule of law did more than bring law to feudal society or civilization to warrior communities, more than replace private wars with civil peace, more even than change might for right. They brought law to political life and bound power under a constitution (Kriegel 2001:149f).

The notion of negative liberty, existing in the absence of coercion and explicit laws in Berlin's and Hobbes' terms, cannot be defended insofar as it provides no guarantee against arbitrary forms of power outside the state and the legal space. The latter may arise either from various agents in the civil sphere, or from a combination of both public and private actors who govern by means of at times murky network arrangements in which access and accountability remain unclear (Larsson 2013). While Skinner argued that the state must be able to protect its citizens from the domination of both public institutions and private actors (Skinner 2012, p. 119), the notion that a sovereign state under the rule of law holds the key to neo-republican freedom is absent from many public and scholarly debates today (Bohman 2012, p. 110).

### 6. Conclusion

Civil society is a central concept in most discourses of the modern state and the organization of political power. This abstract concept and construct has great normative appeal and is often described as a good force fighting for the promotion of democracy, human rights, and civil liberties in democratic as well as authoritarian regimes. Civil society has increasingly been put forward in theory and public debate in the West and taken to be important for advancing democratic reforms elsewhere. Since the 1990s, we have witnessed reforms and organizational structures that builds on the notion of civil society as a binary force to the repressive and dominating power of the state, a sphere of negative freedom and intrusion of the state. The organizational forms of networks, partnerships, co-governance, and collaborative practices wish to include civil society actors in public rule, both to tame the Leviathan and to enable and facilitate governance over social and political problems. In this article, I have followed the insights of Michel Foucault's conception of civil society and power, as well as insights from the neorepublican tradition to explore civil society as a political and contested concept in itself and how a specific (liberal) conception sustains co-governance between public and private actors. However, if power and domination is not restricted to laws and institutions such as transparency, checks and balances and accountability, the organizational forms of co-governance provides an extension of governmental power and practices into the 'social' domain of civil society. The disappearance or disruption of state power does however not automatically diminish domination or increase negative freedom; rather it only disables scrutiny and transparency of public rule by making governmental practices less visible (see also Prozorov 2004, p. 276). Co-governance and networks of public and private actors, portrayed in benevolent ways because they incorporate pluralism, knowledge and expertise, they potentially enable voluntary participation yet sustain formal autonomy of the participating actors. In such ways, co-governance seems to dismantle sovereign power but instead brings about unchecked and unlimited authority that is dispersed and depersonalize. Such organization of power enables domination while sustaining notions of anti-politics and state phobia.

I have in this article argued for a return to *politics* and the potentiality in a *democratized* sovereign power as a means to escape the *totalizing* power of cogovernance and the formation of unlimited authority and power that has '... the desire and capacity to give form to the life of the people' (Prozorov 2004, p. 277). The view that Skinner, among others, defends provides a clear role for the state for managing social and political problems. The search for (re-)forms to promote co-governance runs the risk of reducing the role of the sovereign state while extending the means for arbitrary rule of networks against which there are (within the liberal discourse and conception of *freedom* and *civil society*) no reasonable ways to resist since we already are 'free' thus should have no 'special complaints'.

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