

**LIBERAL VERSUS REPUBLICAN  
NOTIONS OF LIBERTY:**

**Marital “Surnaming” and Equal Citizenship  
for Women in Canada and Quebec**

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The idea that women and their offspring are the property of the male ‘head of the household’ is not only considered obsolete in industrialized countries of the twenty-first century, but moreover, it smacks of an ideology of patriarchal familialism that is counterintuitive to the individualistic notions of citizenship that have captured the minds of most liberal/social democracies, including Canada<sup>1</sup> and Quebec<sup>2</sup>. In the following discussion, I will outline the basic traditions of liberalism and republicanism as they relate to “liberty” in order to advance a defence of the republican notion of liberty as non-domination as the more useful concept in terms of the rights and liberties of the female citizen. Drawing heavily upon the analysis of Philip Petit, I will first compare each tradition’s theory of “liberty”, and their relationship to the concepts of domination and oppression, or conversely, to the values of liberty and social justice. Thereafter, I will discuss the implications of the respective definitions of liberty in terms of feminist commitments to promoting laws that take women’s realities seriously, and therefore, in terms of their utility in countering the discriminatory impact of systemic heterosexism, racism and other forms of oppression in society. In order to fully demonstrate this latter point, in the final section I will apply the liberal and republican notions of liberty to the context of marital naming policies in Canada and Quebec.

When engaging with this topic, a set of reservations arise from the fact that mainstream (or malestream) political philosophy has fairly consistently contributed, either by design or by sexist omission, to the exclusion, marginalization and subjugation of women.

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<sup>1</sup> When using the term Canada, I am referring to the laws and culture of primarily English-speaking Canada, and the multicultural groups who identify with English-speaking culture in Canada.

<sup>2</sup> Conversely, when using the term Quebec, I am referring to the laws and culture of primarily French-speaking Quebec, and the multicultural groups who identify with French-speaking Québécois culture.

While I will be endorsing a republican notion of liberty, it is important to note that theorists of republicanism have been no exception to this androcentric rule. That said, Pettit's analysis in *Republicanism: A Theory of Freedom and Government* (1997) does represent a gem in terms of its incorporation of issues of social and economic injustice, gender and racial inequality, and a meaningful commitment to non-domination as a guiding principle for the foundation of a society. In this regard, he restores some hope that the application of old political philosophy tools by new, more informed actors might prove a worthy endeavour.<sup>3</sup>

In the following discussion, I will attempt to draw important parallels between the contemporary commitment of feminist political and legal theory to the elimination of women's oppression, and the concept exposed in the republican theory of liberty as non-domination, as I suspect that these intellectual traditions may have the potential of being strategic allies, if strange bedfellows, against the influence of neo-liberal revisionism of the notion of citizenship and attempts to return to a formalistic interpretation of our rights as male and female members of the Canadian and Québécois polities (see *Introduction*, Cossman and Fudge, 2002). Ultimately, I hope to demonstrate two main conclusions. First, I will defend my assertion that the liberal notion of "liberty as non-interference" as reflected in English-speaking Canada's legal framework of choice of last names, is tolerant of the domination of female citizens by male citizens via the institution of

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<sup>3</sup> I must identify one reservation to this statement in that Pettit's analysis in Chapter 6 seems to shy away from his initial arguments in order to leave room for market-based relations and the logic of capitalism. It is unclear to me, therefore, whether he is arguing in favour of using the law to reduce the presence of domination within the private sector also, or whether his argument maintains the public/private divide after all, and constitutes an attempt to structure only those relations between the state and the citizen and between citizens themselves, with no regulation of the relations involving other types of legal entities (such as companies, corporations) and citizens.

marriage, and therefore perpetuates women's oppression. Secondly, I will argue that the Quebec model of birth name permanence reflects the superior republican notion of "liberty as non-domination" and that liberty as non-domination is the only framework that meets the challenge posited by feminists in favour of laws that promote equality and social justice for both male and female citizens. In conclusion, I will suggest that the republican definition of liberty as non-domination may be a useful tool for feminists in the context of our commitments to the elimination of women's subjugation within the family and society, and in terms of the assertion of women's right to full citizenship, both in spirit and in name.

### **LIBERAL VERSUS REPUBLICAN NOTIONS OF LIBERTY**

For a thorough exposition of the strengths inherent in the republican notion of liberty as non-domination as compared with the liberal notion of liberty as non-interference, I will refer to Philip Pettit's important work entitled, *Republicanism: A Theory of Liberty and Government* (1997). Pettit begins by outlining the two most prevalent definitions by which political philosophers have come to understand the concept of liberty as that of negative liberty and positive liberty (Pettit, 1997: 17). Pettit traces the wider context of the debates surrounding the notion of 'liberty' and the highly political move by Isaiah Berlin to follow in the Lindian tradition in linking *positive* liberty with the ancients, citing continental romantics such as Herder, Rousseau, Kant and Hegel, and conversely, in celebrating the modern commitment to *negative* liberty and its links to classical English and French enlightenment philosophers such as Hobbes, Bentham, Mill, Montesquieu and de Tocqueville, or American heroes such as Jefferson and Paine (Pettit,

1997: 18). Berlin's strategic 'drawing of lines' between supporters of ancient versus modern notions of freedom largely depended upon Benjamin Constant's famous essay entitled, "The Liberty of the Ancients and Liberty of the Moderns" and led to what Pettit views as a simplistic and dichotomous understanding of the concept of "liberty". Not only did these works contribute significantly to the establishment of liberalism as the mainstay of modern democracies, but more importantly, Pettit lays the critique that it has led to a limited understanding of the concept of "liberty" to two readings: 1) positive liberty as 'mastery over the self', or 2) negative liberty as 'the absence of interference'. Pettit argues that this dichotomy has led to the triumph of negative liberty and the widespread adoption of the idea that liberty, in the tradition epitomized by Hobbes, should be construed as existing where there is an absence of interference or coercion from the state (Pettit, 1997: 41). As such, depending on the liberal interpretation being promoted, all laws could be viewed as limiting the liberty of the individual, and the goal of the liberal state would be to refrain from interfering in the decisions or choices of its citizens to the extent possible. Pettit argues that the consequences of the dominance of negative liberty as a guiding concept for democracy is that political philosophers have been distracted from the possibilities of other, more viable, and indeed more meaningful notions of liberty. In particular, Pettit argues that Berlin's limited taxonomy of liberty leaves room for a third conception of liberty, namely, that of the republican notion of liberty as non-domination.

## **Liberty as Non-Domination**

Pettit traces the republican concept of liberty as non-domination to such philosophers as Cicero, Machiavelli, and in the modern tradition, to people such as Harrington, Montesquieu, and de Tocqueville. In order to understand this form of liberty we must first define the notion of domination. In order to establish the notion that the concept of freedom espoused by a wide variety of philosophers was in fact “freedom as non-domination”, and not “freedom as non-interference”, Pettit returns to the definitions of the citizen and the slave, *liber* and *servus*. He notes that these terms referred to the condition of liberty that related to one’s status as a citizen who, unlike that of the slave, was someone who could not suffer from the arbitrary interference of another (Pettit, 1997: 31-32). He notes,

*This opposition between slavery or servitude on the one hand and freedom on the other is probably the single most characteristic feature of the long rhetoric of liberty to which the experience of the Roman republic gave rise. It is significant, because slavery is essentially characterized by domination, not by actual interference.*

Pettit traces the centrality of “domination” and “unfreedom” in discussions on liberty throughout the centuries. In the late 1600s, Algernon Sydney stated that “he is a slave who serves the best and gentlest man in the world, as well as he who serves the worst”, and Richard Price chimes in a century later by asserting, “Individuals in private life, while held under the power of masters, cannot be denominated free, however equitably and kindly they may be treated” (Pettit, 1997: 34-5). Clearly, according to Pettit, any meaningful discussion of liberty, and any political theory of government that aims to protect individual freedom, must engage with and take the concept of domination seriously. According to Pettit, domination can be understood through the relationship of

master to slave or master to servant, wherein the dominating party can interfere on an arbitrary basis with the choices of the dominated (Pettit, 1997: 22). The middle ground of the republican option of liberty as non-domination becomes clear when we imagine a variety of situations. Hypothetically speaking, Pettit observes that one could be in a master-servant relationship and yet not suffer interference should the goodwill and altruism of the master be such that the servant is allowed an autonomy of action. Distinguishing the conditions of liberty from non-interference, Pettit makes the point that domination can exist as long as someone has the *ability* to interfere arbitrarily in one's affairs, regardless of whether they in fact interfere in practice. He therefore designs a test to verify under what conditions one could claim to be enjoying both a state of "non-interference" and "non-domination" in order to demonstrate his point that only a theory of liberty as non-domination as the foundation of government protects individuals from experiencing both kinds of evil: 1) arbitrary interference from the state and 2) domination. Whereas domination-without-interference becomes apparent when considering the non-interfering master, the possibility for interference-without-domination comes to light when we insist upon the rejection of interference that is *arbitrary*, or namely, of interference that allows for the arbitrary intrusion in our lives by the state.

Marking an important distinction with the liberal view that any interference from the state constitutes an infringement upon one's liberty, Pettit notes that this perspective leaves room for a more sophisticated role for the rule of law, in as far as the law does not create a relationship of domination, nor interfere arbitrarily in the lives of citizens. Countering Hobbes' basic assertion that all law entails coercion and is therefore a limit to liberty, the

republican view would conversely be that “properly constituted law is constitutive of liberty” (Pettit, 1997: 35). Although the law will interfere in the lives of its citizens, and is coercive, it may only interfere to promote non-domination when pursuing the common interests of the polity, and when sanctioned by the citizenry through the democratic process. The notion of liberty as non-domination therefore has the potential to far exceed the minimal conditions tolerated by negative liberty. It does not simplistically “describe” the presence or absence of interference, but rather, it attempts to define what would constitute “interference” and the grounds upon which interference may or may not be considered legitimate or consistent with the political foundations of respect for the autonomy and dignity of each citizen. Pettit asserts that non-domination is a form of power and “represents a control that a person enjoys in relation to their own destiny”, or, namely, it “involves a sort of immunity or security against interference on an arbitrary basis, and not the mere absence of such interference” (Pettit, 1997: 69). In a political arrangement that is genuinely based on non-domination, Pettit argues that each individual would be powerful in terms of shaping their own lives, because they would not have to depend on luck or the benevolence of others in order to avoid the kinds of arbitrary exercises of power that is possible under a system based on liberty as non-interference.

### **Liberty as Non-Interference**

As Pettit argues, the notion of liberty as non-interference “first appeared in the writings of authoritarians like Hobbes and Filmer and then achieved a certain popularity in the tracts of Tories who were opposed to American independence” (Pettit, 1997: 45). The credibility of the idea of “liberty as non-interference”, however, came with the writings



of Jeremy Bentham, and namely in his assertion that: “As against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore...and in particular all laws creative of liberty, are ‘as far as they go’ abrogative of liberty” (Bentham, quoted in Pettit, 1997:45). Moreover, William Paley actively promoted the idea that restraint of any kind, even that imposed by law, constituted an invasion of personal liberty. Conjuring up images of the Oakes Test<sup>4</sup>, Paley argued that 1) any law should minimize restraint to the extent possible, 2) that all restraints required some over-riding public advantage which 3) must be proven by the legislature, and finally 4) that any law not meeting these criteria should be repealed (Pettit, 1997:46). Paley argued in favour of liberty as non-interference over liberty as non-domination and lays down three central arguments to discredit the republican notion of liberty. First, he argues that the republican notion of liberty as non-domination sees liberty as security against arbitrary interference, and as such it confuses the means with the ends. He states, “they describe not so much liberty itself, as the safeguards and preservatives of liberty” (quoted in Pettit, 1997:46). Secondly, Paley suggests that defining liberty as non-interference is somehow more scientific, and does away with inflammatory talk of slavery and oppression. Rather he argues that non-interference can allow for a discussion of “liberty” as it is realized in degrees along a spectrum. Finally, and most disappointingly from the perspective of commitments to social justice, Paley puts forth the defeatist notion that liberty as non-domination does not somehow represent a realistic goal. He states:

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<sup>4</sup> *R. v. Oakes*, [1986] 1 S.C.R.103. The Oakes Test is used by the Supreme Court of Canada to evaluate the constitutionality of laws that may constitute a limit to individual freedom by using Section 1 of the *Canadian Charter of Rights and Freedoms*, which states that the rights and freedoms identified in the Charter may be subject to only such reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society.

*[T]hose definitions of liberty ought to be rejected, which, by making that essential to civil freedom which is unattainable in experience, inflame expectations that can never be gratified, and disturb the public content with complaints, which no wisdom or benevolence of government can remove.*(Paley quoted in Pettit, 1997:47)

Indeed, one can imagine Kant rolling over in his grave at the thought that our moral philosophy might be influenced, nay reduced to, the realities of our empirical, and therefore highly contextual, world. If the idea that crafting a society wherein relations of domination are minimized, if not eliminated, is somehow not feasible, this calls into question the role of utopic thinking, and the *raison d'être* of political philosophy's attempts to construct the ideal regime and/or the best system of government for the preservation of the integrity of human life in community. As Skinner has astutely observed,

*One legitimate aspiration of moral and political theory is surely to show us what lines of action we are committed to undertaking by the values we profess to accept. It may well be massively inconvenient to suggest that, if we truly value individual freedom, this commits us to establishing political equality as a substantive ideal. If this is true, however, what this insight offers us is not a critique of our principles as unduly demanding in practice; rather it offers us a critique of our practice as insufficiently attentive to our principles.*(Skinner, 1998: 78-9)

Pettit likewise notes that our inability as a society to implement the principle of non-domination in a substantive fashion has little to do with any inherent flaws in the principle itself, but rather, has only to do with the unwillingness of political leaders to be accountable to this principle in the actual establishment and structuring of political institutions that govern the power relationships between various actors within society. In the following section, I will argue that there is a lack of political will to counter the fact

that the current Canadian laws on marital naming (among others beyond the scope of this paper) are tolerant of women's domination by men.

### **MARITAL NAMING IN CANADA AND QUEBEC**

Every set of philosophical discussions in time represent, encapsulate, and ultimately expose the various power dynamics or relations between different political interests in time. Without heading towards a conspiracy theory, nor implying that elites, the state, or the dominant economic class works, or are even capable of working consciously to achieve agreed-upon ends, it is nonetheless useful to put the interventions of various actors on the subject of political arrangements, and therefore power, into context because they carry implicit or explicit messages, likely have a target audience in mind, and/or may contribute to unintended consequences. To be aware of the historical context, then, is to deepen our ability to critique the messages in circulation and verify the internal validity of their arguments against the concepts of social justice, substantive equality, and the concrete political, economic and legal structures that could lead to a society absent of oppression, and which is based on the republican notion of liberty as non-domination. As will be made explicit in my discussion of marital naming, the messages and motivations behind patronymy had concrete goals over the course of history that continue to be linked to the legal framework of choice used in contemporary Canada; knowing this can help us debunk the myth of gender neutrality in the law, and the myth of free choice for marrying male and female individuals within which it is couched.

The reason that I have chosen to discuss the institution of marriage relates to the fact that it persists as an ongoing phenomena and mode of social organization; this should not, however, be read as the unqualified support for the institution. Rather, I remain very sympathetic to Carole Pateman's analysis of the sexual contract (1988) and the ways in which the institution of marriage has historically been used to enslave women. Moreover, there is increasing evidence that marriage, and particularly divorce, in Canada and Quebec, continue to serve as a venue wherein patriarchy and patrilineality find protection to the detriment of women's equality interests (Côté and Cross 2003). Nonetheless, it seems unproductive at this juncture to throw out the baby with the bathwater given that, as the fight for same-sex marriage proceeds with grand enthusiasm, it seems highly unlikely that we will see the abolition of the institution of marriage in favour of other arrangements in the near future (see Law Commission of Canada, 2001). Although I am sympathetic to the feminist position that we shall not find justice in the law by virtue of the fact that we are attempting to mobilize the "Masters Tools", as we work in favour of a widespread re-organization of familial and conjugal relationships based upon equality and women's right to autonomy, reform of the current laws that define marriage must, it would seem, continue as an important feminist challenge given the serious implications they have upon our attempts to reduce the influence of private and public patriarchy upon the lives of Québécois and Canadian women.

### **Liberty as "Non-Interference": The Liberal Framework of Choice in Canada**

Since the late twentieth-century, Canadian men and women outside of Quebec have had the option upon marriage of either retaining their birth name, or changing their last name

to that of their spouse, and in some provinces, the additional options of adopting a new hyphenated name, or even an entirely new name (McCaughan, 1977:44). In all circumstances other than marriage, individuals who wish to change their name must personally underwrite the administrative costs, and pay for the right to effectuate a legal name change through the respective province's *Change of Name Act*. Canadian women mobilized in favour of these legal changes in order to counter the widespread administrative and institutional resistance that continued to prevent women from using their birth name after marriage. Social attitudes continued to link marriage to a patriarchal and patrilineal family union founded upon the legal doctrine of coverture<sup>5</sup> and the social custom of patroynymy that had adopted in 17<sup>th</sup> century England after women were barred from inheriting property (Dickenson, 1997: 82). To convey the message that married women had the right to retain their individuality and use their birth name after marrying, the 'framework of choice' was instituted in the late 70s and 80s in Canadian provinces outside of Quebec. What are the implications of this law in practice?

While arguably more conservative than Canadian society, interestingly, a 1994 American survey showed that fully 98% of women changed their names upon marriage and only a mere 2% of women retained their birth names, and that women who retain their birth name tend to be younger, are highly educated, and earned higher incomes than women who used their husband's name exclusively (Fowler and Fuehrer, 1997: 315). In Britain,

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<sup>5</sup> Blackstone articulated the common-law doctrine of coverture in *The Lawes Resolutions on Woman's Rights* (1632) as follows: "The very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection and cover, she performs everything; and is called in our law-French a *feme covert*, *faemina viro co-operta*; and is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture" (quoted in Dickenson, 1997: 83).

according to a 1991 survey, over 90% of brides still took their husband's name (Goodman, 1991: 35). Statistics Canada does not produce data on last name changes across Canada; conversations with their staff indicated that the standardized vital statistics form required for provincial marriage registrations does not track the occurrence, nor did the researcher with whom I spoke see the relevance of gathering this data. A literature review of the social and legal trends in Canadian society (Chambers, 1997; Dumont et al, 1982; Lynn, 1980; McCaughan, 1977; Mungall 1977; Oderkirk, 1992; Sloss, 1985; Snell, 1991) and American society (Daum 1974; Lamber, 1973; Lebell, 1988; Kanowitz, 1969, 1973; Lassiter, 1984; Schroeder, 1986: Stannard, 1973, 1977, 1984) as well as Canadian (Boivin, 1985; Brière, 1982; Embleton and King, 1984) and American research on attitudes to birth name retention and/or the meaning of naming in the context of marriage (Foss and Edson, 1989; Fowler and Fuehrer, 1997; Kline et al 1996; Scheuble and Johnson, 1993) all hint at the fact that the vast majority of British, American, and Canadian women in the 21<sup>st</sup> century still take their husbands names in marriage, and cite either custom or negative attitudes of other people towards "maiden name" retention as their reason (Embleton and King, 1984: 14).

### **Theoretical Implications**

What are the implications of this fact in terms of women's status as citizens and their ability to enjoy liberty as non-domination? In order to make explicit the specific nature of "unfreedom" that, I argue, women experience with respect to marital naming, I will refer to an article by Ann Cudd wherein she defines oppression as naming a special kind of harm done to groups of persons by other groups of persons. While not completely

synonymous, domination and oppression both expose the vulnerable conditions or unfree status of certain groups of individuals who may suffer from the arbitrary interference of other actors in their life decisions. Cudd's definition of oppression is useful because it uncovers the role of coercion, or in Pettit's terms, non-legitimate interference, in women's choice of names, and the reality that this constitutes the arbitrary interference of significant others in the decisions of female citizens. Building the link to Pettit's analysis of the citizen and the slave, it theoretically exposes the common denominator between oppression and domination as being a status of "unfreedom" or "slavery" given that the law simultaneously asserts a message of non-interference by the state, and effectively places women in a state of *possible* domination by significant others as a result of the gender-neutral framework of choice.

Specifically then, Cudd argues that oppression must involve some sort of physical or psychological harm, though it need not be recognized as harm by the ones who are oppressed. Few women who change their name will acknowledge that they have done so as a result of social pressure (Mickelsen, 1988: 34; Lebell, 1988: 33). Second, it applies to groups who are identifiable independently of their oppressed status, whereby individual members of the group suffer by virtue of their membership in that group. Third, oppression implies that some persons benefit, or think that they benefit from the oppression of the other group, and finally, the oppression must involve some coercion or force because the existence of coercion negates the voluntariness of an individual's choice. Coercion is not simply the absence of all choice, but a lack of the right kind of choices, namely those that are truly voluntary. Rejoining the notion of unfreedom

articulated by Pettit, Cudd states that coerced persons often feel compelled to act as they do because they understand the unacceptability of the other options being presented. This last point in Cudd's definition sheds light on the fact that morally, coercion constitutes a *prima facie* wrong because it violates justice and the autonomy of each individual to freely determine their destiny. (Cudd, 1994: 24-27). Returning to the master/servant analogy used by Pettit, clearly, we can see the links between Cudd's definition of oppression, and the assertions by Pettit that one must be protected from the arbitrary exercise of power and the ability of other actors (through various forms of coercion) to interfere in our choices. Does the law in Canada provide women with a real choice regarding their last names after marriage, or does it simply permit the coercion of Canadian women by their partners and society as to their appropriate role as "wives"?

Although many American studies have demonstrated a link between the persistence of attitudes linked to traditional gender roles and the continued dominance of patronymy, there are few Canadian studies that document the attitudes and factors associated with Canadian women's decisions to change their names. Nonetheless, one small study by Embleton and King does expose the subtle coercion or investigative questioning of marrying women that can serve to push women towards the traditional roles that maintain the patriarchal and patrilineal family structure. Some examples of the assumptions and attitudes expressed by friends and family of the respondents regarding their decision to keep or change their name in marriage are as follows:

"Don't you love your husband? If you really loved him you would be proud to bear his name"; "But what will you call the children? It would be odd if your name were different from theirs, and hyphenation is impractical"; "But



marriage will turn you into a new person, and you should show this by having a new name”; “That’s just selfish”; “What does it matter anyway—any name is as good as any other, so use his”; “People will think that you are just living together”; “People will think your husband is weak”; “People will stereotype you as one of those feminist extremists”; “A common surname bounds a family together”; “But it’s always been done that way”.

In identifying coercion as the arbitrary influence of others in one’s life choices, it becomes apparent the extent to which the social pressure exposed in the aforementioned comments can work to prevent women from freely choosing to retain their birth name. Indeed, for many women, their “choice” to take their husband’s name stems more from the unacceptability or risks associated with the other options being presented and the image of themselves as women and wives that this might project, such as a lack of commitment to family, a lack of a state-recognized relationship, a lack of love for one’s husband, a lack of concern for one’s children, selfishness, strident feminist views, and/or a marriage to a weak man. Although this study dates from 1984 and may invite the critique that attitudes have evolved since that time, as identified earlier, more recent American studies reflect the persistence of these views. Indeed, a study of thousands of couples (married and unmarried, heterosexual, gay and lesbian) confirmed the importance of gender to the American concept of marriage. Philip Blumstein and Pepper Schwartz’s findings in *American Couples* reveal the ways in which current family law and traditional expectations of marriage influence the attitudes, expectations, and behaviour of married couples. They conclude by asserting that, while the more egalitarian two-paycheque marriage is “emerging” in contemporary society, “the force of the previous tradition still guides the behavior of most modern marriages” (cited in Okin, 1989: 140). Moreover, as late as 1998, McGill sociologist Peta Tancred noted the return to conservatism and family

values as a factor in Canadian women changing their names. She stated, “There is a fear that we have destroyed the family. This fits with a desire to rebuild it” (Nolen, 1998: C5). By taking responsibility for the preservation of the (patriarchal) “family unit”, and by demonstrating this commitment by taking their husband’s names, many young women are assuming the primary responsibility for the success of the “family project” in the face of rising divorce rates. In so doing, they also contribute to the perspective of women as “wives of” male citizens first and foremost, and as public-sphere citizens in their own right only secondarily.

Denying or turning a blind eye to the legacy of coverture and patronymy, the Canadian legal framework promotes a gender neutral, or gender-blind view of society as though to suggest that women and men will in fact equally benefit from the ways in which the law protects the “choice” of marrying men and women with respect to the use of their birth name after marriage. By attempting to minimize the “interference” of the state in this “private” decision, the liberal framework of choice in fact legally *invents* the premise for the arbitrary meddling of other individuals in the decisions and choices of marrying women by virtue of its implicit recognition of the custom of patronymy, and therefore the possibility that one’s name should or could change upon marriage. It effectively invites diverse individuals, significant others, and public actors into every woman’s personal process of self-definition upon the announcement of marriage, thereby making self-mastery, liberty as non-domination, and self-determination more difficult for women to experience and realize. Conversely, the existence of “a legal choice” is completely benign for all but a minute number of men, given that society does not expect nor ask a

man to alter his public name and identity to match his marital status. Despite great strides in developing women's confidence and empowerment, most women remain uncertain as to their right to keep their names and therefore engage in conversations with their fiancés, their family members, and their friends in an attempt to negotiate an acceptable decision regarding their "married name" (Kline et al, 1996: 605). Consequently, despite the fact that women's identities are no longer defined solely in relation to marriage and family, that married women fought for the legal right to retain their birth names, and that marriage laws in Canada allow for the persistence of two individual identities after marriage, the reality remains that the vast majority of marrying women in Canada feel pressured to choose their husband's names as a result of their social networks (McCaughan, 1977: 44). In fact, only a small minority of women are situated in a socio-economic situation (high level of education, professional employment, economic independence vis-à-vis their husbands) that supports their choice to retain their birth name after marriage (Fowler and Fuehrer, 1997: 318-9). As a result, it would seem that only a small minority of women are able to determine their destiny as full citizens and affirm their liberty with respect to their choice of name when faced with coercive messages from a significant other, his family, and/or society at large.

### **Liberty as Non-Domination: The Quebec Model of Birth Name Permanence**

One notable exception to the Anglo-American trend of providing choice for name changes upon marriage can be found in Quebec. Historically, the civil law tradition provided that the legal last name of any individual was the last name given at birth, and therefore if a woman sued a company or a person, or bought land, she did so under her

own name (Mungall, 1977: 5). As a result of the influence of common law used across Canada, as Brière notes, the social practice of taking a husband's name, in practice, achieved the force of law (Brière, 1982: 10-11). Increasingly high divorce rates, the bureaucratic costs of customary name changes, and the reality that a significant percentage of Québécois were opting for common law relations (Belliveau, 1994) brought the full spectrum of family law considerations, as well as the custom of patronymy under review in the late 1970s and early 1980s. Supported by women's groups in Quebec (Fédération des femmes du Québec, 1979 : 9, cited in Boivin, 1985 : 208 ; see also, Brière, 1975: 471). with the Civil Code Revision Office basing its preferred framework on the principle of the permanence of the last name and the equality of both parties (Boivin, 1985: 119), the Quebec government legislated in 1981 that wherever a legal relation is involved, married women have not only the right but the *obligation* to use only their own last name (An Act to Establish a New Civil Code and to Reform Family Law, 1980, s. 7). Recognized as daring by William Johnson (1980), the change to Quebec's family law effectively eliminated women's obligation to negotiate their name within the matrimonial relationship. From the perspective of political theory, the legal changes made by the Quebec government in 1981 link the loss of women's birth names, the names under which they have established their legal personhood with the state, to the loss of their freedom as citizens in a community, and therefore of their civil and political right, or equality as individuals within the social contract. Fully aware of the ways in which the custom of patronymy contributed to the domination of wives by husbands, the persistence of the "framework of choice" in Quebec was recognized as inconsistent with a genuine commitment to the (feminist) values of substantive equality,

and I would argue, of the (republican) value of liberty as non-domination. Recognizing the effect of the “framework of choice” in making women subject to the arbitrary interference of other individuals in society, Boivin praises the law for having effectively eliminated the possibility for “emotional blackmail by the new spouse, or even by the community,” (1985: 203) as is at the heart of the republican notion of freedom as non-domination.

## CONCLUSION

What is of particular interest for feminists in Pettit’s analysis of the republican notion of liberty as non-domination can be located in his assertion that ‘freedom as non-domination’ can serve as the antidote to many evils within society that infringe upon the liberty of different actors, by virtue of its ability to simultaneously advance the two sister principles of democratic governance: equality and community. Although primarily grounded in primarily liberal notions of citizenship, I would like to suggest that in Canada we have in fact endorsed the republican notion of non-domination at least in part, thanks to the important work of feminists who mobilized for the adoption of substantive equality into Section 15 of the *Charter of Rights and Freedoms*. Consciously rejecting the American approach whereby positive discrimination is considered an undue constraint upon the (white, male heterosexual) individual (see Young, 1990: 194; Livingston, 1979: 33), *Section 15* explicitly protects affirmative action measures that are designed to counter the historical effects of systemic discrimination in order to restore the inclusion of marginalized groups listed therein, and work to counter the effects of their previous, and to varying degrees ongoing state of domination or unfreedom. Despite this

partially improved framework of non-domination, one must immediately observe the limits of the Charter in that it only applies to government and governmental bodies, and thus allows economic actors and individual citizens the “liberty” to compete with one another for dominance in both the market and the family; as such, it explicitly chooses to allow for relationships of dominance to develop among different actors in society, and as seen above, this manifests itself within the marriage relationship as a result of the framework of choice embedded in Canadian laws on marital naming.

In the previous discussion, I hope to have achieved several things. As a feminist committed to the elimination of power differentials that have contributed to the marginalization of certain groups, including women, I have attempted to articulate what I see as the usefulness of the republican notion of liberty as non-domination. To demonstrate this point, I chose the issue of marital naming given the presence of both a liberal and a republican framework of law in the societies of Canada and Quebec. Through this analysis, I hope to have demonstrated the ways in which the framework of choice often serves to simply mask coerced choices, particularly when involving parties who are from historically privileged and oppressed groups, as is the case for the power dynamics that play out between heterosexual men and women who marry. Most importantly, I hope to have shown that, not only at an individual level, but also in terms of the persistence of patriarchy in influencing the ways in which we organize ourselves as a society collectively, the level of responsibility that the state is willing to assume to create the conditions for the full liberty of its female citizenry has very practical ramifications, namely with respect to women’s ability to resist the social pressures

towards patronymy and maintain the integrity of their birth names after marriage. For me, this issue exemplifies the extent to which liberty as non-interference fails women, and allows for the arbitrary exercise of private male power over wives, and by extension, sustains the dominated status of all female citizens, be they heterosexual or lesbian. In other words, the issue of marital naming highlights the power differentials that the liberal framework of non-interference masks, and is particularly effective in exposing the theoretical superiority and usefulness of the concept of liberty as non-domination.

As with my attention to the various historical figures who entered into the debates on liberal versus republican notions of liberty over time, it is crucial that we be aware of the neo-liberal, neo-conservative, and so-called post-feminist messages that are used to distort contemporary conversations on the topic of the family, the names of women, the role of naming children, as well as other key issues that strike at the heart of the persistence of arbitrary, gendered power differentials and the ways in which they play out in private and public relationships between male and female citizens. Not only do these discourses and legal frameworks contradict the values expressed in the *Charter of Rights and Freedoms*, they serve to prevent women's enjoyment of substantive equality and the kind of liberty espoused by the republican and feminist political theories that have found expression in the Canadian Constitution for over twenty years. If I have been successful in the previous pages, I hope to have demonstrated the utility of the republican notion of liberty as non-domination as an important theoretical tool for feminists, as well as the importance of reclaiming it from malestream political theory. In so doing, we may be better equipped to expose the liberal rhetoric that contents itself with confining the liberty

of its citizens to the simplistic notion of “non-interference by the state”, and therefore be better situated to challenge the ways in which this position claims to protect the liberty of its citizens *in theory*, all-the-while allowing private patriarchy and other power structures to continue undisturbed *in practice*.



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