

## **Social Justice and the Distribution of Republican Freedom**

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**Abstract:** A republican theory of social justice specifies how republican freedom should be distributed. The goal of this paper is to assess the plausibility of two recently proposed principles of republican social justice: an aggregative maximizing principle defended by Philip Pettit in *Republicanism* and a sufficiency principle of republican social justice offered by Pettit in *On the People's Terms*. The maximizing principle must be rejected because it permits under-protecting vulnerable members of society in favor of increasing the freedom of the powerful. The sufficiency principle avoids the most basic objection to the maximizing principle, but it is at best an incomplete theory of social justice. Social justice requires principle(s) for determining the justice of distributions above the sufficiency threshold and republican theory does not determine which principle(s) should govern distributions above the threshold. Republicans must decide whether they will incorporate an independent commitment to equality within their theory of social justice.

**Keywords:** equality, freedom, social justice, republicanism

Freedom-based accounts of social justice must address (at least) two important questions. The first asks which ideal of freedom the state should secure or promote. The second asks how freedom should be distributed among the members of a political community. Republican theorists have recently claimed to offer distinctive and attractive answers to both questions. In answer to the first question, republicans hold that the state ought to aim to secure freedom as

non-domination. On this view, political freedom consists in independence from the will, arbitrary power, or sway of others. In this paper, I am concerned with the question of the distribution of republican freedom. A republican principle of social justice specifies how republican freedom should be distributed among the members of the political community. The goal of this paper is to assess the plausibility of some principles of republican social justice recently proposed by Philip Pettit.

No theorist has done more to develop a republican theory of social justice than Pettit. In *Republicanism: A Theory of Freedom and Government*, Pettit argued that the goal of republican policy should be to maximize expected freedom as non-domination. He claimed, however, that policies designed to maximize non-domination tend to produce an equal distribution of republican freedom. This is an attractive claim. It seems to capture two important desiderata for a political society, namely that we should have as much freedom as possible and that freedom should be distributed equally.<sup>1</sup>

Since the publication of *Republicanism*, Pettit has modified his view. He now holds that a republican theory of social justice will seek to promote a form of equal freedom as non-domination. He understands this to mean that a republican state will seek to secure equal freedom in a set of choices understood as basic liberties. To set the degree of freedom that the state must secure, Pettit appeals to a sufficiency principle. If the state secures the freedom of each citizen in a broad range of basic choices to a sufficient degree, then each will equally enjoy the status of a free person (Pettit, 2012: 81, 85, 88).

This paper engages with Pettit's republican account of social justice.<sup>2</sup> It defends two main claims. The first claim is that the maximizing principle defended by Pettit in *Republicanism* must be rejected because it permits under-protecting vulnerable members of society in favor of

increasing the freedom of the already powerful. The second claim is that the sufficiency principle that Pettit currently defends is at best an incomplete theory of social justice. This is because an adequate theory of social justice must be concerned with inequalities in freedom above the equal status threshold set by the sufficiency principle. Republicanism does not determine which principle(s) should govern distributions above the equal status threshold and thus does not determine which, if any, inequalities above the status threshold are acceptable from the point of view of justice. Republican theorists of social justice must thus decide on a principle or principles to govern inequalities above the threshold. More generally, they must decide whether and to what extent they will embrace an egalitarian theory of social justice.

The paper has three parts. In Part I, I provide a brief introduction to the republican conception of freedom as defended by Pettit. In Part II, I discuss and reject the maximizing principle. In Part III, I examine Pettit's sufficiency principle. I argue that the principle fails to provide a complete account of the demands of social justice.

### **I. Freedom as Non-domination**

On the republican view, freedom is defined as the absence of domination (Pettit, 1997: 51). The crucial feature of this theory is that it regards domination rather than active interference as the central hindrance to freedom. Pettit analyzes domination as external or "alien" control over an agent's capacity for choice. Domination is the power or control that other agents may have or exercise over a person's capacity for choice (Pettit, 2008: 106).

As Pettit sees it, domination may occur without any interference on the part of the dominating agent. To take a standard example, a woman in a patriarchal society may suffer no interference from her husband in her pursuit of her own goals and purposes. Perhaps he is

benevolent, or merely too lazy or disinterested to interfere. Because she is still exposed to his power, however, she lacks an important kind of freedom. Were his disposition or desires to change, he would be able to interfere in the choices that she is in the position to make. As such, she is subject to his will.

In recent work, Pettit situates this analysis of non-domination within a broader account of freedom of choice (2012). In order to be free in a particular choice, you must be able and know that you are able to take each of the options in the option set that characterizes it.<sup>3</sup> Your freedom in a particular choice can be hindered in one of two ways. First, your choice may be hindered by lack of the resources required to take the option you prefer (Pettit, 2012: 36-37).<sup>4</sup> Pettit refers to this as *vitiating*. Your freedom in a particular choice is *vitiated* if and only if illness, disability, or lack of resources removes or reduces your capacity to choose one or more of the options. Second, another agent, in virtue of having power over you, may be in the position to influence or even determine which option you select (Pettit, 2012: 38). You may, in this sense, be subject to the will of another. Your freedom in a particular choice is *invaded* if and only if you are subject to the will of another in making that choice.

This leads to the central idea that freedom in a choice requires both absence of vitiating factors and absence of domination (Pettit, 2012: 41-42). Thus, in order to ensure an agent's freedom in a particular choice, we must ensure that her capacity to make that choice is not vitiating (where this may require us to "resource" her choice to make up for any vitiating) and not invaded (where this requires that she be protected from the uncontrolled power of others).

With this brief sketch of Pettit's account of non-domination and its relation to freedom of choice in the background, we can now turn to the distribution question. Two brief notes are in order however. First, Pettit's recent situation of the account of republican freedom in the context

of a conception of freedom of choice marks a shift away from the purely relational conception of freedom that he defended in his earlier work. Whether republican freedom should be elucidated in relation to freedom of choice is controversial. In this paper, I am going to assume that republican freedom should be understood, as Pettit now thinks of it, in terms of resources for choice and protection against invasion by other agents. I want to explore the implications of understanding freedom in this way for the republican theory of social justice.

Second, it is worth pausing to make a general point about the relationship between republicanism and equality. This point is that republicanism is not an intrinsically egalitarian view of politics and the social order. Historically of course, republicans have not even been committed to universal formal equality. A crucial feature of Pettit's republicanism is his rejection of the anti-egalitarianism of historical republicanism (1997: 48-49). In *Republicanism*, Pettit endorsed a universal requirement of that each person should count for one and none for more than one. In *On the People's Terms*, he endorses a basic constraint of "expressive equality" understood as the idea that each is entitled to equal concern and respect (Pettit, 1997: 110-111; 2012: 78).<sup>5</sup> A republican theory that is committed to such a minimal but universal requirement of equality need not be committed to egalitarianism as a substantive principle of social justice however. As a conceptual matter, for example, a republican theorist could consistently hold a meritocratic view according to which the distribution of non-domination should reflect the presence or absence of certain virtues or moral qualities. Such a view might hold that independent status should only be secured for those who do or would display a virtue of independence or self-reliance.<sup>6</sup> A system according to which independence is to be secured or distributed in accordance with merit (whether merit is measured in terms of self-reliance or some other value) is consistent with the assumption that each is to count for one and none for more

than one or that each is entitled to equal concern and respect. It does not treat some persons as less valuable than others in some arbitrary way. However, this scheme allows for an unequal distribution of freedom as non-domination. The point here is that equality is a moral consideration that is external to republicanism. A conception of social justice need not be egalitarian to count as republican.

## **II. Against the Maximizing Principle**

In *Republicanism*, Pettit defended a maximizing answer to the distribution question. On his version of this principle, the state ought to pursue policies aimed at maximizing expected non-domination (Pettit, 1997: 102). Although Pettit now defends an egalitarian answer to the distribution question, he has not explained his reason for abandoning the maximizing principle.<sup>7</sup> The arguments he developed in favor of that position are interesting in their own right and it remains a live option in the literature (Lovett, 2010: 159).

A basic objection to the maximizing principle is that it permits intuitively unjust inequalities in freedom. For example, it permits abandoning the vulnerable. A policy of abandoning the vulnerable would leave some members of a population unprotected from domination when doing so would permit countervailing increases in the level of non-domination enjoyed by other members of the population (Pettit, 1997: 111-112).

Here is a plausible example. Imagine that you are in charge of policing in a large city. Since you have limited resources you have to decide where to focus police presence. In considering this problem, the following two possibilities present themselves. You can increase police presence in a large, relatively peaceful, middle-class neighborhood. By doing so, you will be able to reduce police response times on breaking and entering and domestic dispute calls by

one hour. By hypothesis, this increases the degree of non-domination enjoyed by all the inhabitants of this neighborhood since it decreases the ability of thieves, domestic abusers and other dangerous persons to exercise unconstrained control over the inhabitants of the neighborhood and over their victims. Alternatively, you can forgo increased police presence in the middle-class neighborhood and increase police presence in an area of town where violent crime is more likely, an area frequented by street sex workers. By increasing police presence in the neighborhood where the street sex trade takes place, you can significantly increase protection for a small but highly vulnerable population.<sup>8</sup>

In a case like this, the large increase in non-domination enjoyed by each member of this small population will not outweigh the relatively small increase in non-domination enjoyed by each member of a much larger population in the middle-class neighborhood. Even if increasing the power of the middle class residents further reduces the power of the sex workers, the size of the groups involved in this case are such that this reduction will be outweighed by the increase to the middle class. Thus the maximizing principle will recommend that we increase police protection in the middle-class neighborhood, rather than in the area where the sex trade is located. This case thus provides a strong intuitive challenge to the egalitarian credentials of the maximizing principle.

### *2.1. Factoring in the relativity and declining marginal productivity of power*

To address this familiar problem that maximizing domination may require objectionable inequalities in distribution, Pettit appealed to two important claims about the relation between non-domination and power. The first is that a person's degree of non-domination is a function of her power relative to the power of others. The second is that power is subject to diminishing

marginal productivity. Together these points support the claim that egalitarian policies are more likely than non-egalitarian policies to maximize non-domination. If so, it may turn out that the policy of abandoning the vulnerable is not selected by the maximizing principle after all.

Power enables an agent to resist and deter others who might seek to exercise power over her, so increases in power increase freedom as non-domination. It follows from this that one important way in which a policy can affect an agent's degree of freedom is by augmenting or diminishing her power or resources. This is complicated by the fact that an agent's capacity to effectively resist and deter others will vary depending on the degree of power possessed by everyone else with whom she may come into contact. Thus the extent to which an increase in power translates into an increase in freedom is relative to the degree of power possessed by others (Pettit, 1997: 113-114).

To illustrate, consider again the example of policing and sex work. Persons who engage in street sex work are surely among the least powerful and therefore most vulnerable members of many current societies. Such sex workers possess a low degree of freedom as non-domination because they are not capable of resisting force, fraud, and coercion by johns, pimps, and police. It is because their power ratio in relation to these others is so skewed that they are vulnerable and subject to domination. Pettit's claim that empowering the vulnerable will typically do better in maximizing non-domination than providing additional power to those who already enjoy a fairly high degree of power. Thus maximizing policies will typically move the distribution of non-domination in the direction of equality rather than away from it.

The claim that empowering the vulnerable will typically maximize non-domination is supported by Pettit's claim that power is subject to diminishing marginal productivity. For an agent who enjoys a fairly high degree of power and thus is able to easily resist dominating



encroachment by others, an additional increment of power may increase her freedom very little or not at all. On the other hand, an agent with a very low degree of power may find that the addition of an equivalent increment of power has a significant impact on her ability to resist and deter dominating interference.

These two claims both appear to imply that the goal of maximizing non-domination is likely to require egalitarian policies. This is because, in most circumstances, any attempt to increase an agent's degree of non-domination by increasing her power is also going to diminish another person's power. It is unlikely, Pettit argued, that the increase in the advantaged person's power will compensate for the decrease in the other party's power and so unlikely that an inegalitarian policy will maximize non-domination. This becomes even more unlikely once we take note of the diminishing marginal productivity of power. It follows that the most efficient way to increase overall non-domination is typically to increase the power of the most vulnerable. Thus it is likely that maximizing policies will move us towards equality in the distribution of non-domination. If these arguments are correct, then the goal of maximizing non-domination will require us to target our efforts toward increasing the power of the vulnerable rather than toward securing further increases in power and security for those who already enjoy a high degree of power.

Unfortunately, incorporating these considerations still won't secure the intuitively correct result in the example of the policing policy given above. It seems likely that the slight increase in non-domination afforded to the many residents of the middle-class neighborhood will outweigh the loss of freedom of those in the high crime neighborhood even when the diminishing marginal utility and relativity of power are taken into account. If this is correct, then the best way to maximize non-domination in the policing policy choice is to pursue the non-egalitarian

distribution. Thus there is at least some reason to think that inegalitarian policies will be part of an overall scheme designed to maximize non-domination. Moreover, even if these cases are rare, it seems intuitively unacceptable as a requirement of social justice that we ought to maximize non-domination at the expense of the most vulnerable.

### *2.2 Is abandoning the vulnerable a form of domination?*

On the assumption that the policing policy is not ruled out even when we account for the relational character and declining marginal productivity of power, Pettit's argument contains a further claim that that may help to show that that such policies would not be recommended by a maximizing principle. The policy itself may be a form of domination and so its adoption may be unlikely to maximize non-domination (Pettit, 1997: 112).

If the power to implement a policy that selects some citizens to be left unprotected is available to an official in charge of policing strategies, then, Pettit argued, she herself exercises a power of uncontrolled interference in their lives. Pettit claimed that the official thus dominates all of the citizens and not just those who are abandoned. Since any measurement of the degree of freedom achieved by this policy must take into account the fact that the policy reduces the freedom of all citizens, it becomes plausible to suppose that some other more egalitarian policy of protection will be more likely to maximize non-domination (Pettit, 1997: 112).

The first problem with this argument is that even if the policy of abandoning the vulnerable dominates the vulnerable, it is less plausible to claim that it dominates all the citizens. Those citizens who are relatively well-resourced and protected will not experience a reduction in freedom merely due to the fact that the state has the power to arbitrarily abandon other citizens. It isn't clear, for example, that the fact that public officials exercised more or less uncontrolled

arbitrary power over African Americans in the Jim Crow south meant that they exercised uncontrolled power over the white citizens in their jurisdiction as well.<sup>9</sup>

The second problem is that, depending on how one understands the concept of domination, the policy of abandoning the vulnerable may not turn out to dominate any of the citizens, even the vulnerable ones. For example, on the conception of domination that Pettit defended in *Republicanism*, abandoning the vulnerable will probably not count as domination. In that work, Pettit analyzed domination as a power of interference that is not constrained to track the common interests of the persons suffering the interference according to their own understanding of those interests. On this understanding, a policy of abandoning the vulnerable would not dominate any of the citizens insofar as it is constrained to track the common and commonly recognized interests of all of them. Each citizen has an interest in the security of the person and the policy is designed to maximize the fulfillment of that interest. As such it need not be dominating no matter how unequal the degree of protection it provides to the unlucky vulnerable citizens (Pettit, 1997: 55).

Pettit's more recent analysis of domination may provide a better basis for the claim that the policy of abandoning the vulnerable is an instance of domination.<sup>10</sup> Pettit now understands domination in terms of an uncontrolled power of interference. On this view, an act or policy is dominating if it is not controlled by the targets of the interference (or if it can materialize on terms that they do not control) (Pettit, 2012: 58-59). This understanding of domination may do better in licensing the claim that the policy of abandoning the vulnerable counts as domination. Although the policy is constrained by the goal of maximizing protection, the citizens themselves do not control the power that the official exercises over them. As such, the policy is an instance of domination.

However, the price of accepting this account is high for the theorist who wants to defend the idea that the goal of republican social justice should be to maximize non-domination. This is because it introduces a significant constraint on the maximization of non-domination. To see this, consider Pettit's account of how such control over state interference must be secured. It would not be realistic to require that each individual exercise personal control over the state interference that she faces. Rather what must be required, according to Pettit, is that each individual have "an equal share in a system of joint control (Pettit, 2012: 168)." This requires, first, that each person have access to equal influence over government and, second, that each person have equal share in determining the direction of government policy.

The requirement of equal access to influence does not rule out the policy of abandoning the vulnerable since, on Pettit's view, it can be satisfied by a system of majoritarian voting (Pettit, 2012: 168). The policing policy could clearly be endorsed by majoritarian vote. So if the policy is to be ruled out as a potential instance of domination, it must be on the basis of the requirement that each have an equal share in determining the direction of government. Pettit interprets this requirement in terms of a further constraint on government. On this constraint, a policy must be such that each person who is willing to live on equal terms with others is disposed to find it acceptable (Pettit, 2012: 169).<sup>11</sup>

Assume then that republicanism requires the satisfaction of a constraint of equal acceptability in policy choices. On this view, the policy of abandoning the vulnerable is ruled out if those affected by it would reject it as an unacceptable use of state power. In the example of the policing policy, introduced above, we would no longer be required merely to weigh up the gain in non-domination that is achieved by allocating the police to the middle class neighborhood against the loss in freedom that is represented by leaving the more vulnerable citizens

unprotected. Rather we would have to assess the costs and benefits (in the currency of non-domination) only of policies that are acceptable to all citizens. This is to say that republicanism imposes a significant constraint on the maximization of non-domination. The unconstrained maximization view that Pettit defended in republicanism would be excluded by the constraint of equal acceptability.<sup>12</sup>

To take this view would be to hold that republican social justice requires constrained rather than unconstrained maximization. On this account, we would maximize freedom as non-domination subject to the constraint that we do so only in ways that are mutually acceptable. Perhaps this is a better way of interpreting republican social justice than the unconstrained maximizing principle originally advocated by Pettit.

However, interpreting the principle in this way suggests a fairly natural path to Pettit's more recent account of republican social justice. This is because we will have to ask which exercises of power are acceptable and which are not. Content will have to be given to the idea of mutual acceptability. One natural way to fill out the idea would be to suggest that persons who see themselves as equals would endorse policies that are consistent with that equal status and reject policies that are inconsistent with it. On this view, we suppose that an exercise of power is mutually acceptable only if it is consistent with everyone's status as a free person. On the natural assumption that equal status is secured by securing some level of protection against domination, this leads us, more or less naturally towards a sufficiency constrained maximization principle according to which the goal of republican policy ought to be to maximize non-domination constrained only by the requirement that any policy choice must be consistent with the equal status of all affected.

### 2.3. *An objection*

One objection to the line of argument advanced so far can be drawn from the work of Frank Lovett. Lovett correctly points out that any distributive principle of social justice will have counterintuitive implications in certain cases or under certain circumstances. The maximizing principle may get the intuitively wrong result in some cases, but equality and sufficiency principles are also notoriously vulnerable to objections from counterintuitive cases. Lovett argues that we ought to go with the principle that works best in the most likely scenarios and this is likely to be the principle that recommends maximizing non-domination (or minimizing domination) (2010: 175-177).<sup>13</sup>

This line of response might be convincing if there were no other considerations that could be identified to favor one principle over another. However, in Pettit's more recent work, he has identified a relevant moral consideration that speaks in favor of the sufficiency principle over the maximizing principle. This is the consideration of status. The sufficiency principle, as we shall see below, allows us to account for the important role in human life of the concern for equal status in a way that the maximizing principle appears not to be able to do. This is one strong reason to prefer the sufficiency view, other things being equal. I now turn to a discussion of the equal freedom sufficiency principle defended by Pettit in *On the People's Terms*.

### **III. Equal Freedom and Social Justice**

The previous section aimed to illustrate the failure of the maximizing principle to deliver on its egalitarian promise. The argument up to this point does not show that the republican theory of social justice must be substantively egalitarian. What the argument does show is that if republicans want a plausibly egalitarian theory, then the principles of republican social justice

must incorporate distributive as well as aggregative concerns. That aggregative principles will often produce egalitarian outcomes is not sufficient to recommend them as principles of social justice.

In *On the People's Terms*, however, Pettit argues that republican social justice should appeal to a conception of equal status. Pettit argues that if each person is sufficiently secure in a set of effective basic liberties, then each will equally possess the status of a free person. A significant strength of this view is that it can easily deal with the problem of abandoning the vulnerable. However, the sufficiency view does permit certain inequalities in the distribution of freedom. Thus it is important to ask how well it captures our considered judgments regarding the requirements of social justice. In this section, I argue that Pettit's principle does not provide a complete theory of social justice. I begin by providing a characterization of the sufficiency principle (3.1.) and the level of protection it requires (3.2.). I then turn to the inequalities in freedom that Pettit's principle permits (3.3.). I argue that a plausible principle of social justice cannot be indifferent to inequalities above the threshold set by the sufficiency principle (3.4.). Having shown that inequalities above the level of the sufficiency threshold are relevant to social justice, I argue that republican theory does not determine which principle should govern distributions above the threshold (3.5.). Republican social justice could endorse a sufficiency-constrained meritocratic principle rather than an egalitarian one. Thus, republican theorists must decide whether they will incorporate an independent commitment to equality within their theory of social justice.

### *3.1. Pettit's Equal Freedom Principle*

Pettit casts his answer to the distribution question as an answer to the question of "what would be broadly required for the members of a society to enjoy equal freedom as non-

domination in relation to one another (2012: 21-22).” In other words, it is the question of the necessary conditions of equal freedom as non-domination. The answer to that question is that each must have sufficient resources and security against domination so that she enjoys equal status as against others. Pettit thus casts his account of equal freedom explicitly in sufficientarian terms (2012: 88).

But Pettit’s answer more specifically is that for each permanent resident of a society, there must be a range of choices in which she is effectively free at least to a certain degree. These choices are designated as basic liberties. Where an agent fails to be effectively able to take one of the options in the option set that characterizes the choice, she fails to be free in that choice. In this case, it may be possible to provide resources to ensure that she is able to select the option that she prefers. In doing so (where necessary), we establish a range of opportunities in which the agent is effectively free. This is the agent’s freedom of opportunity. According to Pettit, the range of choices that should be entrenched as basic liberties must be as broad as possible, consistent with the requirement that the same set can be secured for each person.

Then, further, she must enjoy a level of security against domination that ensures that she is able to exercise control in making those choices. The level of security that the agent must enjoy (as well as the level of resourcing she should receive if necessary to ensure her freedom of choice in the basic liberties) is the same for each member of the society and is set using a heuristic that Pettit refers to as the eyeball test. The eyeball test is an intuitive test of the level of resources and protection required for any agent to be able “to look others in the eye without reason for the fear or deference that a power of interference might inspire (Pettit, 2012: 84).” This test identifies a threshold level of resources and protection against domination that is sufficient to remove any need for rational fear or deference. The theory requires that we provide



each agent with resources and protections that ensure that she does not fall below the threshold identified by this test. We ensure that she is not subject to control by others in making the choices characterized as basic liberties. In securing the agent at that level of protection over the range of basic liberties, we ensure her the status of a free person. We provide her, according to Pettit, with equal freedom as non-domination.

Before addressing the kinds of inequalities permitted by Pettit's conception of social justice, a note about the structure of sufficiency principles is in order. Paula Casal has distinguished two distinct theses that might be expressed by a sufficiency principle (2007: 297). The positive sufficiency thesis holds that people should be at or above the designated threshold of sufficiency. In the sense relevant here, the positive thesis would thus affirm the importance of ensuring that nobody falls below the threshold required for equal status. The negative sufficiency thesis holds that other kinds of distributional requirements are irrelevant. Although some defenders of sufficiency principles hold both theses, it is possible to affirm the positive thesis without affirming the negative one.

In the version that concerns us here, the negative thesis would hold that inequalities above the threshold are irrelevant *from the point of view of social justice* unless they threaten to push someone below the equal status threshold.<sup>14</sup> Call this the social-justice version of the negative sufficiency thesis. The social-justice version of the negative sufficiency thesis does not deny that that inequalities might be relevant from some other point of view, such as that of the general happiness or the common good. It only holds that social justice is indifferent to such inequalities. Pettit is apparently committed to the social-justice version of the negative sufficiency thesis.<sup>15</sup> Part of his reason for being this commitment might be that this makes the

demands of justice suitably modest (Pettit, 2012: 126).<sup>16</sup> My goal in what follows is to show that the social-justice version of the negative sufficiency thesis should be rejected.

Some republican thinkers might wish to reject the social-justice version of the negative sufficiency thesis in favor of the sufficiency constrained maximization principle discussed at the conclusion of Part II above. Their view would differ from Pettit's view (as I interpret it) in holding that maximizing non-domination is a requirement of social justice, rather than (as I think Pettit sees it) a moral goal external to social justice. My argument will also suggest that this principle is unsatisfactory. As I will try to show below, social justice requires sensitivity to distributive as well as aggregative concerns above the sufficiency threshold.

### *3.2. Does the eyeball test permit meaningful inequalities in freedom?*

The eyeball test is presented by Pettit as the standard or heuristic for determining the level of resourcing and protection required for equal freedom. But the demands of the eyeball test are not entirely clear. What is the level of resourcing and security that should be secured for all on the basis of the eyeball test?

Defenders of sufficiency principles typically advocate a fairly low threshold of sufficiency. The eyeball test may likewise set a low threshold for state protection. Take the employer/employee relationship for example. What protections are required in order for someone not to have to fear or defer to her employer? It seems clear that if her employer can fire her arbitrarily and at whim, then she has reason for deference and fear with respect to the employer. The test would surely require protection against such uncontrolled power (and so surely speaks against employment at will) (Pettit, 1997: 62).<sup>17</sup> If there are effective legal protections and remedies against that sort of power and effective rules against such harmful practices as

workplace discrimination and sexual harassment, one might question whether there is anything more that the state ought to provide in this respect. As this example shows, the requirements of the eyeball test may not turn out to be very robust.

On the other hand, the eyeball test might be interpreted robustly to support a demand that the level of protection be set at the point at which an increased level of protection will not provide any further benefit in terms of non-domination. If, as seems reasonable, protection is subject to diminishing marginal returns, then, above some level, increased levels of protection will cease to increase individual freedom. It will then no longer be rational to provide for further protection. To motivate this robust interpretation, one would have to argue that equal status can be achieved for all only if each person's level of protection is set at the point at which further protection is redundant.

In principle, however, it does not seem that the level of protection set by the eyeball test will necessarily coincide with the point at which further levels of protection become otiose. First, the eyeball test is meant to identify that point beyond which fear or deference towards others is irrational (Pettit, 2012: 85). Since it can clearly be irrational to fear or defer to others even when one is not fully protected from their power, it ought to be possible for the two points to diverge in principle. Second, Pettit suggests that some persons may enjoy a level of security against domination that puts them above the equal person threshold in virtue of possessing greater private resources (2012: 88). If the threshold for protection picked out by the eyeball test was identical to the point at which increased protection makes no rational difference, then levels of security above the threshold would not be possible. One could not be more secure than those at the threshold, since increasing protections would have no effect. Third, it is intuitively implausible to think that the eyeball test requires that protection be set at the point at which

further protection would cease to be effective. Consider again, the example of employer/employee relations. Intuitively, I need not fear my employer so long as I am protected from being fired at will, discriminated against or otherwise harassed, by effective laws and norms. I might nevertheless find it rational to try to get a higher level of protection should it be possible. I might want to get tenure, for example, or to negotiate an agreement under which my employer will be required to pay me a year's salary should s/he decide to terminate my employment. Although such an agreement is not otiose, it is implausible to think that such an increase in protection is required in order for me to enjoy equal status as against others. Thus it is reasonable to assume that the level of protection required by the eyeball test is low enough to leave open the possibility that it may be rational to want increased protection.

What is true for levels of protection is also true for levels of resources. It is implausible that the eyeball test would require that each person receive a level of resources such that it would not be rational to desire more. For example, consider the choice to procreate. It seems implausible to think that access to resources such as IVF or other infertility treatments are required in order for persons to be able to meet the requirement of the eyeball test. One can meet the requirement of the eyeball test even though one lacks the same choice to procreate that others enjoy. But it may nevertheless be rational for persons who could make use of such resources to want such resources to be available to them. Thus, it is also reasonable to assume that the level of resourcing required by the eyeball test is low enough to leave open the possibility that it may be rational to want increased resources for choice.

I thus conclude that the eyeball test requires a level of protection and resources that is low enough for it to be rational to want more.<sup>18</sup> This opens up the possibility that there can be

meaningful inequalities in freedom that are permitted by Pettit's sufficiency principle. These would be inequalities above the sufficiency threshold.

### *3.3. Inequalities above the Sufficiency Threshold*

Let us now turn to consider the kinds of inequalities in freedom above the sufficiency threshold that Pettit's principle permits. Spelling these out strengthens the case, which I make in the next section, for the relevance to social justice of distributive concerns above the equal status threshold.<sup>19</sup>

Which sorts of inequalities are possible in accordance with Pettit's republican principle? The theory leaves open several possibilities. First, it permits inequalities in freedom above the threshold due to private resources. Such inequalities might consist either in some enjoying a greater range of choice or a higher level of security than others. Pettit regards such inequalities as compatible with the requirements of equal status and thus as compatible with justice except when they threaten to push others below the equal status threshold (Pettit, 2012: 88). Similarly, although Pettit doesn't discuss this, his theory apparently leaves open the possibility of publicly secured inequalities in choice above the threshold. It could be argued, for example, that the state may or ought to secure an unequal distribution above the equal status threshold. For example, one could advocate a sufficiency-constrained meritocratic principle. On this principle, the state may secure a higher level of resources or security for those who display virtues of independence, self-reliance, citizenship or whatever, so long as doing so is compatible with keeping everyone above the threshold of equal person status. On this view, the republican theory of social justice would be non-egalitarian in an important way. It would judge the justice of distributions in terms of whether that distribution mapped onto patterns of virtue. Whether such a principle is

consistent with or required by social justice seems, on its face, to be an important question, but Pettit's eyeball test provides no basis for an answer.

Second, the theory leaves open the possibility that some agents will enjoy greater richness of choice than others. Even if all agents are free in the same range of choices, some may have far more options within those choices than others. The richness of a particular choice, as I define that idea here, is a function of the number of valuable options it contains. A choice that consists in more valuable options than another is relatively richer, while one that consists in fewer valuable options than another is relatively impoverished. A simple example will illustrate this. If my breakfast choice consists of three options (granola, eggs, and bagel) and your breakfast choice consists of five options (granola, eggs, bagel, oatmeal and pancakes), then your breakfast choice is richer than mine. We may each be free in the choice of what to have for breakfast, but your choice is plausibly more valuable, at least in many normal circumstances.

To say that richness of choice matters, is not to deny that there may be some upper bound beyond which further options are not desirable, nor is it to say that it is always rational to want more options rather than less. But any account of social justice that focused on resources for securing certain basic choices and ignored the problem of richness of choice would be blind to an important variable in degrees of freedom between agents.

It is not entirely clear how Pettit would deal with the problem of the richness of choice. There seem to be three ways of dealing with this problem. First, one could hold that inequalities in richness of choice are irrelevant from the point of view of justice no matter how significant those inequalities may be. This is not a plausible position. It is not plausible to say that two agents have equal liberty of choice if the choice of the first consists in only two valuable options while the choice of the second consists in five or ten or twenty valuable options. Second, one

could hold that in order to secure justice we must secure a sufficient level of richness of choice for each agent and for each basic liberty of that agent. This would extend the sufficiency principle to cover richness of choice. If we took this view, we would hold that inequalities in richness of choice above the threshold are compatible with justice. Finally, we could hold that justice requires that each enjoy substantive equality in richness of choice. Presumably Pettit might want to adopt something like the sufficiency view on the richness of choice.

The possibility of inequalities in the richness of choice (even within the basic liberties) as well as in the range of choices that are available to various individuals above the threshold, suggests that questions of distribution above the threshold are relevant from the point of view of justice. In the next section, I make the case for that claim.

#### *3.4. Are Inequalities Above the Threshold Relevant for Social Justice?*

As noted above, Pettit is committed to the social-justice version of the negative sufficiency thesis. This is the claim that inequalities in freedom above the status threshold are irrelevant from the point of view of social justice unless they threaten to push someone below the equal status threshold. This section will argue that this thesis is untenable. Inequalities above the threshold are relevant to social justice even when they do not threaten to push anyone below the equal status threshold identified by the eyeball test.

The sufficiency principle with its accompanying conception of status freedom is indifferent between an equal distribution at the threshold and equal distributions above the threshold. Let us assume a situation in which each citizen is at the equal status threshold. Suppose now that it becomes possible to raise everyone equally 10 units above the threshold, expanding each person's freedom but preserving an equal distribution. To avoid extraneous

considerations, assume that this increase can be had for free. Ought we to increase each person's freedom? Pettit's account apparently commits him to claim that raising people above the threshold in this way does not increase their status freedom. Strictly speaking his principle does not recommend the increase *as a matter of justice* although it may recommend it for consequentialist reasons.

Consider a slightly different scenario, in which there is an unequal distribution above the threshold. Suppose that half the citizens are at the threshold while half are 10 units above the threshold. Assume that the inequality is not significant from the point of view of equal status. It does not threaten to push anyone below the status threshold. If we could bring those individuals currently at the threshold up 10 units for free, ought we to do so? Pettit's account seems to commit him to saying that there is no requirement of justice to increase the freedom of the individuals who have less in order to equalize the distribution. Finally, regarding both scenarios, Pettit might say that it would be morally desirable to increase everyone's freedom, but that this is not a requirement of justice. There is something to be said for that, but there is also something to be said on the other side of the matter.

However, the plausibility of the negative thesis, understood as the claim that inequalities above the threshold do not matter from the point of view of justice, is diminished by cases in which the freedom of some is reduced in order to create greater gains in freedom for others. Consider the following case, adapted from a case proposed by Dale Dorsey (2014: 47; Shields, 2012: 104). Suppose that A is ten units above the equal status threshold. By lowering her degree of freedom to the threshold or just above it, we could achieve tiny increases in freedom for a large number of people who are already much further above the sufficiency threshold than A. Even if the gains to the better off will outweigh the loss to A, it is implausible to think that



reducing A's freedom in order to achieve greater gains for others who are better off is just. It is also implausible to think that the question of whether reducing A's freedom for this purpose is acceptable is not a question of justice.

A concrete example may help to make the case that tradeoffs of the sort envisioned in this case can be unjust even if they do not violate the eyeball test. Suppose that we are considering whether or not to institute a system of user fees for access to public parks. These user fees will be high enough to make the parks inaccessible to those at the lower end of the income scale, but they will make it easier to find an open tennis court and easier to enjoy solitary wilderness hikes for those who can afford them. Although loss of access to public parks reduces the freedom of those at the bottom of the scale, it seems unlikely that it would push them below the equal status threshold. They can still look the wealthy park users in the eye without fear or deference. But it seems highly implausible to think that the question of whether or not to charge user fees is only an aggregative question and not a distributive one. Those who will be de facto excluded from the park by the user fees would not be making a mistake if they lodged the complaint that the system of user fees would be unjust in excluding them from a resource which ought to be accessible to all. They would not be making a mistake in arguing that more crowded trails and longer waits for tennis courts may be the price of treating everyone fairly.

Thus there is a strong case against the social justice version of the negative sufficiency thesis. It is not a plausible candidate for a principle of social justice. This is because inequalities above the equal status threshold are (at least sometimes) relevant to social justice even when they do not threaten to push anyone below the equal status threshold.

These considerations also ground my rejection of sufficiency constrained consequentialism. On this view, the state should, as a matter of justice, prefer to bring about that

distribution that contains the greatest degree of freedom constrained only by the requirement of securing sufficiency. I reject this view for the reason that the state ought not to be indifferent to the distribution of freedom above the threshold as well as to the aggregate level of freedom overall.

### *3.5. Why republicanism is an incomplete theory of social justice*

If inequalities above the equal status threshold are (at least sometimes) relevant to social justice independently of whether they threaten to deprive someone of equal status, then a conception of republican social justice will require principles to determine which inequalities of that sort above the threshold (if any) are acceptable.

Here it seems to me that republican theory is silent. It does not determine any distinctive answer to the question of whether or not a distribution above the threshold is unjust. A republican might take an egalitarian line on this question, claiming that justice requires the state to aim to secure an egalitarian distribution of freedom above the threshold, but she could also endorse a non-egalitarian view consistently with her republican commitments. She could, for example, endorse the sufficiency constrained meritocratic principle. Whether or not she endorses one or another of these principles must be determined by philosophical considerations that are independent of her commitment to freedom as non-domination.

Consider, for example, the sufficiency constrained meritocratic principle (or SCM). The general claim of a sufficiency constrained meritocratic answer to the distribution question is that the state may or ought to secure a greater degree of freedom (either in terms of resources or security) for the virtuous than for the less virtuous. The meritocratic principle can be either wide or narrow in scope. That is, it can be held to govern all distributive questions above the threshold

or to apply only in some cases. It can also be targeted to track virtue of character overall or some virtues in particular (perhaps virtues identified as civic or social virtues).

The view that meritocratic considerations ought to govern all distributional questions above the threshold strikes me as highly implausible, but it is hard to see how republicanism provides a basis to object to a wide scope meritocracy of this sort. By hypothesis, the inequality secured by the principle does not threaten to put anyone below the threshold required by the sufficiency principle and so cannot threaten to result in anyone losing their status as a free person.<sup>20</sup> Were the inequality to have that effect, it would not be justified. Despite the inequality, each person above the threshold can still look all others in the eye without reason for fear or deference. So republicans cannot reject SCM on principled grounds arising from the republican commitment to equal status.

Perhaps the defender of the sufficiency principle could nevertheless reject SCM for empirical reasons. She could argue that no such unequal distribution could in fact satisfy the sufficiency requirement. In the actual world, any publicly secured meritocratic distribution would either result in some falling below the threshold now or would do so in the future. This seems implausible as a claim about the short-term effects of such a principle, although the matter probably depends on how high the sufficiency principle sets the threshold as well as on the abundance of resources. There is, however, something to the idea that the long-term effects of such inequalities would be unacceptable. The effects of inequalities tend to compound into the future, so establishing such an inequality might result in unacceptable domination in the future.

However, there is a problem with this strategy for rejecting SCM. The empirical case against the SCM principle seems to provide only weak support for the claim that there is no distribution in accordance with SCM that would leave all parties at or above the threshold.

Insofar as such a distribution could be established (and its effects for the future domination controlled), republicans who wield the empirical objection would seem to have no grounds to reject SCM. I can see no other ground besides this empirical case that republicans could appeal to as a basis for rejecting SCM.

Nevertheless, it seems to me highly implausible to think that a meritocratic principle should govern all inequalities above the threshold. This is not to deny that there is a sense of justice in which justice requires that each should have what is in accordance with what is merited. But it seems implausible to think that it is for this that social justice requires us to strive. This is because social justice concerns the question of the distribution that should be publicly secured by the state. It seems to me that a much more egalitarian theory should apply in the context of social justice. My goal here, however, is not to argue for that claim, but rather to point out that it does not follow from republican theory. The claim that social justice requires egalitarian distributions above the threshold is a consequence of a commitment to equality, not of a commitment to republican social justice.

### **Conclusion**

This paper has argued for two main claims. First, a maximizing principle of republican social justice must be rejected because it permits abandoning the vulnerable. Second, social justice must be concerned with inequalities in freedom in ways that are not adequately captured by the sufficiency principle that Pettit currently defends. The republican theory as currently formulated by Pettit does not determine an answer to the question of which principle(s) should govern distributions above the equal status threshold. As such, the republican theory of social justice is incomplete and must be supplemented by other kinds of considerations. In particular,

republican theorists of social justice must decide whether and to what extent they wish to be egalitarians.

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<sup>1</sup> More recently, Frank Lovett has claimed that a republican theory of social justice should aim to minimize domination (Lovett, 2010: 157-189).

<sup>2</sup> Pettit did not cast his claims about the distribution of republican freedom in terms of a theory of social justice in his early work on this topic, but he has explicitly done so in recent work (2012: 77). He distinguishes this aspect of the account from its theory of political legitimacy.

<sup>3</sup> Pettit defines a choice as a set of mutually exclusive, jointly exhaustive options.

<sup>4</sup> Pettit distinguishes three kinds of resources: personal, natural and social. Freedom in many choices will require access to all three types of resources.

<sup>5</sup> It is not clear whether these two conceptions of formal equality differ significantly in his view.

<sup>6</sup> The meritocratic proposal discussed here avoids the problematic anti-egalitarianism of the republican tradition, but I doubt that many will find it particularly attractive.

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<sup>7</sup> The reason presumably has to do with his concern to incorporate a notion of free-personhood and status into the account. A clue to his thinking here can be garnered from his discussion in (2012: 5), where he identifies the idea of equal freedom as non-domination as one of the “core ideas” of the republican tradition.

<sup>8</sup> For the purposes of the example, I assume that assigning more police to the dangerous neighborhood does not simply worsen the situation of the sex workers.

<sup>9</sup> Thanks to an anonymous reviewer from this journal for this point and the example.

<sup>10</sup> Although it is not clear that it can get the result that the policy dominates all the citizens, rather than (at most) the vulnerable ones.

<sup>11</sup> Acceptability here is taken non-normatively however, i.e. Pettit is interested in what people will actually be disposed to accept, rather than what they as reasonable persons ought to accept or would accept under ideal conditions (Pettit, 2012: 170, n. 34).

<sup>12</sup> An alternative view would say that sometimes it can be necessary to violate the requirement of equal acceptability in order to promote the greatest overall sum total of non-domination.

<sup>13</sup> Interestingly one of Lovett’s main arguments in favor of the minimization principle appears to rest on some important empirical assumptions. Lovett argues that (1) because resources for reducing domination are scarce and (2) because it is easier to reduce severe domination than it is to reduce relatively mild domination, the recommendation of the equality principle and the sufficiency principle will converge with that of the minimization principle for the foreseeable future. (2010: 176-177). Moreover, Lovett argues that the recommendations of these principles are not likely to diverge soon, since (3) new forms of domination are continually emerging. (2012: 177). I suspect that Lovett’s convergence thesis is false – this is apparently shown by the policing policy example. However, the disagreement here comes down practically speaking to an

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empirical one on the conditions under which we are acting and choosing policies and I will not attempt to resolve this disagreement here.

<sup>14</sup> One can still hold that distributions can be judged better or worse by aggregative criteria (Shields, 2012: 104). Thus Pettit can hold that between distributions of freedom that put everyone above the threshold, the distribution with the greatest total of freedom is preferable. This fits well with his general consequentialist framework and it might be most accurate to regard him as espousing a sufficiency-constrained consequentialist principle (Pettit, 2012: 82). It is important to note though that securing sufficiency is the only requirement of social justice on his stated view. Aggregative considerations may be important but are not requirements of justice.

<sup>15</sup> My interpretation of Pettit is derived from passages like the following. “That each is required to enjoy this threshold of free undominated choice is consistent with some people having such private resources of power and wealth that they enjoy free undominated choice in a yet greater range and with yet greater security. That is why the approach can be cast as sufficientarian.” (Pettit: 2012: 88). My interpretation of his view is that ensuring that everyone is at or above the equal status threshold is what matters from the point of view of social justice (at least in circumstances where this is possible). How freedom is distributed above the threshold matters only when it impacts equal status. It may also matter for other (moral) reasons as well, but those reasons are not reasons of justice.

<sup>16</sup> Pettit emphasizes however that he does not intend the demands of his theory to be too modest.

<sup>17</sup> The eyeball test would seem to demand much lower levels of protection in markets where demand for labor exceeds supply than in markets where jobs are scarce.

<sup>18</sup> I thus leave aside the more basic (and serious) worry that the eyeball test is too indeterminate to provide any guidance on the requirements of justice.

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<sup>19</sup> It should not matter in principle where the sufficiency threshold for equal status is set, as long as it is possible for further increases in resources and protections above the threshold to increase an agent's freedom. However, the lower the threshold is set, the more pressing the question about the justice of distributions above the threshold will be.

<sup>20</sup> One objection to SCM may be quickly put aside. This is that any attempt to secure (and maintain) a distribution in accordance with SCM would involve unacceptable implementation costs or unacceptable violations of privacy. These may be important concerns, but they are not relevant to the question of whether such a distribution is philosophically acceptable in principle.

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