

Republicanism Across Cultures

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'Republicanism across Cultures', in Jun-Hyeok Kwak and Leigh Jenco, eds, Republicanism in Northeast Asia, Routledge, London, 2015, 15-38

Introduction

Every philosophy of the good society starts with an account of the central complaint that the state should help to put right: the evil that the society should drive out by means of political organization and initiative. If the philosophy is to be persuasive, then the complaint should attract widespread sympathy and support, being recognized as something that everyone will want to have remedied. And, of course, it should be a complaint that the state has the ability in principle to rectify, reducing or even eradicating the ill indicted.

Republican philosophy identifies a complaint that is meant to be at once popularly motivating and politically implementable. It indicts the evil of subjection to another's will — particularly in important areas of personal choice — as an ill that we all recognize and recoil from and at the same time as an ill that the state is well placed to deal with. Such subjection can be effectively corralled and reduced, if not wholly eliminated, by means of political initiative. And yet it takes only a little imagination to realize just how repellent it can be.

Think, by way of exercising such imagination, of how you would feel as a student if you depended for not failing a course on the whim of an instructor. Or as a wife if you had to rely on the mood of your husband for whether you could enjoy an unmolested day. Or as a worker if you hung on the favor of a manager for whether you retained your job. Or as someone destitute if you had to cast yourself on the mercy of others just to survive or maintain your family. Or think about how you would feel as the member of a cultural minority if you had to rely on the humor of majority groups for whether you escaped humiliation; or as an elderly person if you depended on escaping the notice of youth gangs for walking safely home; or as a citizen if you were dependent on winning the favor of some insider group for whether you or your kind ever caught the ear of government.

Already in classical, republican Rome, the evil of subjection to the will of others, whether or not such subjection led to actual interference, was identified and indicted as the iconic ill from which political organization should liberate people, in particular those in the fortunate position of citizens. It was described as the evil of being subject to a master or dominus — suffering dominatio (Lovett 2010, Appendix 1)— and was contrasted with the good of libertas or liberty. The accepted wisdom was that people could enjoy liberty, both in relation to one another and to the collectivity, only by being invested with the power and status of the civis or citizen. Being a free person became synonymous with not having anyone in the position of a dominus in your life. It was equated with being sufficiently empowered to stand on equal terms with others, as a citizen among citizens (Wirszubski 1968, Ch 1).

The idea that citizens could enjoy this equal standing in their society, and not have to hang on the benevolence of their betters, became the signature theme in the long and powerful tradition of republican thought. Familiar from its instantiation in classical Rome, the idea was re-ignited in medieval and Renaissance Italy; spread throughout Europe in the modern era, sparking the English civil war and the French revolution; and inflamed the passions of England's American colonists in the late eighteenth century, leading to the foundation of the world's first modern democracy. With citizenship becoming more and more inclusive as a category, the idea was that the state could provide for all citizens in such a measure that they would each be able to walk tall, live without shame or indignity, and look one another in the eye without any reason for fear or deference.

The recent revival of republican thought is built on this idea that there is an ideal for the state to promote — freedom understood as non-domination — that is both popularly motivating and politically implementable. Freedom in this sense is not meant to be the only value in life, or the only value that ultimately matters. The claim is merely that it is a gateway good, suited to guide the governments that people form and sustain. Let government look after the freedom of citizens in this sense, so the line goes, and it will also have to look after a plausible range of other goods and do so at a plausible level of provision. It will have to guard against

division and disorder, for example, and it will have to provide in a decent measure against misery and poverty, unfairness and inequality.

Like a growing number of others I have embraced the research program, as I think of it, of exploring the implications of republican ideas for thinking about contemporary political problems.¹ Republican theory offers a useful perspective on the three major issues in politics. In rough and ready slogans, it suggests that social justice requires citizens to be able to enjoy equal freedom as non-domination in their dealings with one another; that political justice requires them to enjoy equally shared control over the government that provides for social justice, thereby making government coercion non-dominating; and that international justice requires each people to enjoy equal freedom as non-domination in their dealings with other peoples — in effect, with other states — as well as with multi-national bodies and international agencies (Pettit 2012).

In this paper I focus on how far the republican ideal of freedom as non-domination can and should command allegiance across different cultures. Is the ideal bound to western culture, as its provenance may suggest? Or does it have a hold on the human imagination and sensibility that survives across various cultural and historical divides? I argue, in a deeply unfashionable vein, that it does command a form of universal allegiance. Or, to be more exact, I argue that freedom as non-domination has this status in its role as an ideal of social justice. Reasons of space make it impossible to extend the argument to its role as an ideal of political and international justice — as an ideal of democracy and sovereignty — but the considerations I muster should make clear how that argument would go.

The paper is in three sections. In section 1 I look at why the ideal of basic functioning capability, as advanced by Amartya Sen and Martha Nussbaum, counts as a universal ideal, albeit an ideal of a structural rather than substantive kind. In section 2 I argue that the ideal of freedom as non-domination should be considered as a structural ideal of a similar nature. And in section 3 I show that although it is more encompassing than basic functioning capability, freedom as non-domination ought to be taken to be an ideal with a universal appeal of the same kind.

1. Basic functioning capability

In an article from over a quarter of a century ago the economist and philosopher, Amartya Sen (1983), took up the question of how we should define poverty for the purpose of comparing different societies and indeed for comparing the same society at different points in time. There were two salient approaches on offer in the literature. One was to define poverty in an absolute sense as the condition of having to live below the level required for subsistence. The other was to define it in a relative way as the condition of being in the economically lowest fifth or tenth or whatever percentile in the local society.

These candidate conceptions of poverty each had a serious drawback. The absolute conception implied, outrageously, that in more affluent societies where few die of malnutrition or exposure there are no poor people and so no problem of poverty. The relative conception implied, equally outrageously, that no matter how developed or caring a society became, it could do nothing about poverty; there would always be some people nearer the economic bottom than others.

In response to the difficulties with these two conceptions, Sen proposed that we should look for a middle way. He found a middle way implicit in Adam Smith's suggestion that people are poor when they lack the necessities of life that enable them to live without shame among their fellows. 'By necessities', Smith (1976, 351-2) says, 'I understand not only the commodities which are indispensably necessary for the support of life, but what ever the custom of the country renders it indecent for creditable people, even the lowest order, to be without'. In illustrating that idea for contemporaries, he argued that leather shoes count as a necessary in his own time and place: 'The poorest creditable person of either sex would be ashamed to appear in public without them'.

Smith's observation suggests that we should define poverty in a universal, inter-cultural manner as the condition of being unable to live without a certain shame before compatriots. Yet it allows that the resources that would make someone relatively well-off in a less developed society, enabling them to live

without shame, might leave them below the poverty level in a comparatively more developed regime. Under this suggestion, poverty is defined inter-culturally but interpreted intra-culturally. It is a universal, structural evil that assumes a local content or substance as it is construed, now in the context of one society, now in the context of another.

This approach to poverty led Sen (1985) to develop the well-known ideal according to which people should each enjoy a basic functioning capability in their society (see too Nussbaum 1992; 2006). Each should have the capacity to function up to a certain threshold of adequacy in their local world, having access to the resources required for being a functioning member of the community. This is a structurally universal ideal insofar as it is defined inter-culturally as an ideal for people in any society. But it is a substantively local ideal insofar as the demands it makes — the resources it requires people to have — vary greatly across cultural contexts.

In order to be able to function properly within an indigenous community in highland Papua New Guinea you will certainly have to have access to a variety of locally valued resources. But the resources required vary greatly from those to which you must have access if you are to be able to function properly within an urban, industrialized society of the kind that most readers of this paper will inhabit. In order to function adequately within such a society, you must have access to shelter and sustenance but you must also have a degree of literacy, an ability to follow local and national news, a knowledge of your legal rights and duties, an address where you can be reached, an identity in the world of finance, employment and taxation, access to private or public transport, and so on through an open-ended range of material and institutional resources.

The fact that the structural ideal of functioning capability assumes a different content as we move from society to society, culture to culture, ought to allay the worry that if we embrace such a universal ideal we may be insensitive to cultural difference. But does it remove the worry altogether? Ought we to think that no matter what the culture of their local society, people in every society should each

have the wherewithal for functioning there? Or are there any remaining grounds for retreating from that judgment, holding that still it imposes an ethnocentric ideal — a western ideal, as it will certainly be described — on others?

To say that it is a universal ideal that people should each have a basic capability of functioning in their own society is just to say that it would be good if they had that capacity. It is not yet to say that regardless of collateral costs, for example, the local state should rely on coercion to ensure the capacity; that claim, however plausible, is bound to require further argument. And, again, it is not yet to say that the state should ensure this capacity in the unlikely event of a wholesale rejection of the ideal — say, its rejection under a system of unanimous, presumptively voluntary voting — by the members of the society. To uphold the ideal is merely to say that other things being equal it would be good — though good, period, not just good-by-our-lights — if in every society people had a basic functioning capability.

I think that there are no compelling grounds for rejecting this claim and that we ought to have no fear that it would be ethnocentric to embrace the structurally universal ideal that Sen defends. In every society there are going to be many members who do have the resources to function adequately there. And in almost every society, so we may assume, it is going to be possible for everyone to have a capability for such functioning; that possibility is implicit in the description of the ideal as a basic or adequate level of capability. So why might we not think it good that in every society people should all enjoy this capability? Why might we not think that this is at least an ideal, even if collateral costs argue against the state realizing it? The fact that the capability is connected to living without shame as a creditable person of the society, as Smith expresses the ideal, makes it almost inconceivable that we should deny its universal appeal.

Someone who denied the universal attraction of the ideal would have to think that there are some societies whose character ensures that it is not good that people there should all enjoy an equal functioning capability. But what might that character be? Presumably it must consist in the fact that members are committed in

the society to a form of hierarchy that presupposes inequality in functioning capability. Perhaps it is a patriarchal society that would be disrupted by any arrangement under which women would no longer depend on men for their basic welfare needs. Or perhaps it is a caste society that would be undone by any arrangement under which those in lower castes did not have to rely on the indulgence of those in higher.

Ought we to shrink from the ideal of equal functioning capability in thinking about such a society? We might certainly shrink from encouraging the state to impose it coercively in the event, however unlikely, that there is a widespread, voluntary acceptance of such a hierarchy amongst the people. And perhaps we ought to shrink from such postures in the event that while the relatively deprived do not endorse the hierarchy, still the collateral costs of coercive imposition would be very high. But ought we to shrink from continuing to hold that still, other things being equal, it would be good if everyone were to enjoy an equal functioning capability in the society: that, in that sense, equal functioning capability remains an ideal? Surely not.

We could shrink from embracing the ideal in this sense only if we reneged on the most fundamental commitment in political philosophy, which is endorsed in all but explicitly fascist or racist or similarly outrageous approaches. This is the commitment to the fundamental equality of human beings: the commitment to their each having a claim, however this is institutionally interpreted, to the same status as others in the eyes of the law and the state (Dworkin 1978).

This discussion teaches two important lessons, then. The first is that there is a big difference, from the point of view of cultural sensitivity, between structurally universal and substantively universal ideals. And the second is that the barest commitment to equal human status argues for recognizing the universal validity of a structural ideal like that of adequate functioning capability. I build on the first of these lessons in the next section and on the second in the third.

2. The structural character of freedom as non-domination

The ideal of equal freedom as non-domination

There are two aspects to the ideal of freedom as non-domination as it applies within a domestic polity. Whether or not there is a state in existence, it suggests that the members of the society — at the least, the adult, able-minded, more or less permanent residents — should enjoy equal freedom as non-domination in their dealings with one another, whether in individual-individual, individual-group, or group-group interaction. They should each enjoy private non-domination, as we may call it. And if there is a state that can be given the task of fostering such private non-domination — as, of course, there always will be — then it requires that in interfering coercively with its people, as in taxation, legislation and punishment, the state should be democratically controlled by them in a way that makes the interference non-dominating; it should be forced to operate on terms that the people share equally in imposing (Pettit 2012; 2014). As the people should enjoy private non-domination in their dealings with one another — for short, social justice — so they should enjoy public non-domination — political or democratic justice — in their dealings with the state.

In this paper I am concerned with the issue of how plausible it is to take freedom as non-domination to be a universal ideal of social justice. I put aside the corresponding question that arises in its role as an ideal of political justice or indeed as an ideal of international justice. The issue is how far we ought to take it to be good that people everywhere should enjoy freedom as non-domination in their relationships with their fellow citizens; how far, other things being equal, we should want every state to implement that social ideal. I argue in affirmative response that freedom as non-domination is a universal ideal in the structural sense in which functioning capability is a universal ideal.

Assume, in line with the fundamental commitment to equality, that people should have a certain equal status in society — that it would be good if they enjoyed such a status — whether this is established on the basis of received custom or coercive law. Each political philosophy will offer its own construal of what such a status requires, thereby putting forward a universal ideal of justice within a society.

It will draw on its preferred currency — utility, resources, capability or whatever — in order to give an account of what the ideal of equal status means. Since republican philosophy puts a premium on the value to people of freedom as non-domination, it is bound to argue that people everywhere should have an equal status in this regard: that it would be good if people in every society enjoyed equal freedom as non-domination.

The question before us now is whether this purportedly universal ideal should be taken to be universal in a substantive or structural sense. I argue in this section that it is a structural ideal that dictates a different content for different social or cultural contexts, resembling Sen's ideal of functioning capability in that regard. And then I argue in the next section that as a structural ideal it does indeed have universal appeal, as indeed the ideal of functioning capability has universal appeal. Short of rejecting the fundamental commitment to equality, we must agree that it would be good if people in every society enjoyed equal freedom as non-domination in their dealings with one another, under the locally most suitable interpretation of that ideal.

Interpreting equal freedom as non-domination

Whatever equal freedom as non-domination is taken to mean, it has to require that people enjoy a certain equality in their freedom to exercise certain choices. In principle people could enjoy such equality in virtue of each enjoying the un-dominated exercise of such an individually customized range of choices that none has reason to be envious of others (Dworkin 2000). But in practice there is no prospect of identifying a range of customized option-menus, one for each individual, which would satisfy such an envy test. And even if we did identify a set of menus that proved to be satisfactory at a given moment, the chances are that it would soon cease to satisfy, losing its credentials with the changing preferences of members and, of course, with changes in the membership itself.

The only scenario in which people might enjoy equal freedom as non-domination is one in which they enjoy the un-dominated exercise of the same range

of basic choices. If we are to understand the ideal envisaged in republican theory, then, we have to inquire into the choices that ought to be available in this sense to every member or citizen of the society: as we understand citizenship, to every adult, able-minded, more or less permanent resident.

In the republican tradition itself, especially as that came to be articulated in the seventeenth and eighteenth centuries, the choices that had to be available to every liber or freeman, to use the sexist language of the time, were described, in a phrase deployed by John Libourne (1646), as the fundamental or basic liberties. While these choices were often cast in his time and place as the ancient, historically sacred liberties of Englishmen, they gave institutional expression for Libourne to ‘the freeman’s freedom’; they reflected the fact that men and indeed women ‘are, and were by nature all equal and alike in power, dignity, authority, and majesty — none of them having (by nature) any authority, dominion or magisterial power, one over or above another’ (Sharp 1998).

What then are the basic liberties? What are the choices to which people must all enjoy un-dominated access if they are to count equally as free citizens: if they are to enjoy equal freedom as non-domination? I suggest that they should be equated with the choices that it is possible for people each to exercise and enjoy fully — perhaps, to anticipate latter discussion, with plausible state support — consistently with others exercising and enjoying them at the same time. The ideal of the free citizen, which is central to the republican tradition, makes this the obvious way to proceed. If people generally failed to have un-dominated access to any co-exercisable and co-enjoyable choices, then they would have less than the full range of free choice possible. And if people differed in their un-dominated access to those choices, then they would differ significantly in the range of free choice they enjoyed.

It is common to think of the basic liberties as choices that are more or less stable across different societies and un-dominated access as a form of access that amounts to the same thing in all cultures. If the basic liberties were a stable, similarly accessible set of that kind, however, then the ideal of equal, un-dominated access to those choices would constitute a substantively rather than structurally

universal ideal. It would hold out the same desideratum for every society: viz, that the members should all be able to enjoy the same level of resourcing and protection in the exercise of the same set of choices.

There are two reasons, however, why it would be a mistake to think of the demands of equal freedom as non-domination in this way. First, and most importantly, the basic liberties in any society — the choices that are co-exercisable and co-enjoyable there — are likely to be specific in important ways to that society. And second, the notion of un-dominated access is also likely to vary across social and cultural borders. I address these points in turn.

The basic liberties

When we ask about the choices that are likely to be co-exercisable and co-enjoyable in any society, we naturally take account of the fact that two choices often relate to one another in such a way that if we enjoy access to the first we enjoy access to the second, but not vice versa. If you have the freedom to speak your mind to me, then you have the freedom to tell me about your holiday plans, but not vice versa. If you have the freedom to speak your mind to any audience, then you have the freedom to speak your mind to me, but not vice versa. If everyone has the freedom to speak their mind to any audience, then you have the freedom to speak your mind to any audience, but not vice versa. And so on. The freedoms in the first category of these examples are all more general than the freedoms in the second. In seeking after the co-exercisable, co-enjoyable choices to which equally free people should have the same un-dominated access, we naturally focus on the most general choices that fit those conditions. Look after the more general and the less general will look after themselves.

This strategy makes it possible to identify at a very abstract level the sorts of choices that ought to be accessible to everyone. Plausible examples will include the following:

- The freedom to think what you like
- The freedom to express what you think

- The freedom to practice the religion of your choice
- The freedom to associate with those willing to associate with you
- The freedom to own certain goods and to trade in their exchange
- The freedom to change occupation and employment
- The freedom to travel within the society and settle where you will.

But while it may be useful to construct a list like this, it is liable to have the unfortunate consequence of suggesting that the same range of choices has to be accessible to all in every society. That suggestion should be rejected, however. For it turns out on a little reflection that freedoms of the kind described in these abstract categories are certain to be interpreted very differently in different cultures and societies. Almost all of them have the feature we illustrated with Sen's equal capability for functioning. They may be capable of inter-cultural definition but they need intra-cultural interpretation. The requirements they impose vary from society to society.

The basic liberties can vary in either of two ways. First, they can vary in a radical fashion that divides off nomadic from settled communities, and agricultural from industrial societies. And, second, they can vary in a less radical manner that appears in differences between otherwise quite similar dispensations, even between contemporary advanced democracies.

The more radical divide shows up in the fact that the choices that would have called to be entrenched as basic liberties in classical Rome or medieval Italy or seventeenth century England — and the choices that would call to be secured in a extremely poor countries today — are very different from the choices that we would expect to be established in a contemporary liberal and democratic regime. The technology and affluence of advanced societies makes it possible for people to be able to co-exercise with enjoyment a much richer range of choices from those that would be available elsewhere. This is true for two reasons. First, everyone in such a society can do things, and can be secured in the choice of doing them, that would be unavailable to them elsewhere; think of how we can travel in an advanced society, or express ourselves, or win employment. And second, those who are limited in

their capacities can be enabled in an advanced society to exercise choices that would be unavailable elsewhere: think of the impact of eyeglasses or hearing aids or wheel chairs or various prosthetic devices.

As functioning capability means something different in radically different cultures, then, so freedom as a person and the basic liberties with which it is associated is also bound to mean something very different across such divides. The idea of having freedom as non-domination in dealing with others may be a universally intelligible and attractive ideal — more on this in the next section — but it requires freedom in the exercise of quite different varieties of choice in radically different societies. The Roman commoner, the medieval burgher, the modern yeoman and a contemporary professional might each pass in their own society as enjoying the freedom of a person. But the choices we should expect to be established for each may differ quite deeply across those divides.

Not only may the basic liberties vary radically insofar as different cultures offer different possibilities of action and relationship. They may also vary less radically across quite similar societies, even societies as similar as contemporary advanced democracies. There are three sources of this less radical variation, all of which turn on the fact that the basic liberties depend for their articulation on the introduction of conventions that are bound to vary across political divides.

The first source of variation is that many basic liberties are co-exercisable only because they are defined by culturally variable rules. The outstanding example is provided by the liberties of ownership and exchange. No society can offer its members the choice of appropriating whatever natural or manufactured goods happen to appeal to them, since resources are scarce and in seeking to lay hold of what they want, people would be driven into violent conflict with one another. It makes sense therefore for the society to introduce rules of property that create a related co-exercisable liberty that enables people to appropriate whatever they like under the proviso that they abide by the local rules of ownership and exchange. Such rules would mean, in the words of the song, that the cowboy and the farmer can be friends, living under a regime that allows them each to pursue their different

uses of the land.² But rules of property can vary dramatically, creating quite different liberties. They differ across societies in how far they establish public or communal as distinct from private ownership; in what restrictions they impose on the use and exchange of private property; and in the extent to which they create proportional or progressive taxation regimes on income or on wealth (Murphy and Nagel 2004).

To argue that the rules of property may vary in this manner is to take a very different line from the traditional conservative and libertarian argument that there are natural property rights that ought to be respected in every society. It may be universally good, and in that sense a matter of natural right, that there should be a non-discriminating property regime in every society. But it is nonsense to suggest that, as a constraint of nature, there is just one legitimate way of distinguishing private, communal and public property; one legitimate set of titles to private property, whether titles of production, exchange or inheritance; one legitimate set of usage rights that go with owning something; and one legitimate form of taxation that ought to apply to property holdings and exchanges. Every society is liable to establish its own way of doing things and what republicans emphasize is just the need, as a matter of facilitating freedom as non-domination, to put some one regime in place.

The cause of freedom as non-domination may argue against the formation of certain property conventions, of course, on the grounds that they allow a degree of poverty or inequality that fosters domination. But in all likelihood there are many different sets of conventions that are consistent with that cause. This being so, it should be clear that in arguing for a universal liberty in the sphere of property, we are not committed to a single style and size for all societies. What we are recommending is merely that each society should come up with some rules that allow for individuals to have the same freedom of choice in this domain. While the rules that ought to be implemented should not create imbalances of a potentially dominating sort, they may be as various as the local traditions and customs that they will naturally mirror.

What goes for freedom of ownership goes in other areas too. As there are differences in the conventions governing property rights, so there are great differences across societies in conventions bearing, for example, on rights of way, rights of residence, rights of privacy, rights of speech, rights of association, and so on. There may be considerations that argue against some such conventions on the basis of the needs of non-domination but it is very likely that most variations are not determinately better or worse than others. Thus we may expect to find differences in the conventions adopted, and the liberties established, even between quite similar and equally commendable societies.

Not only are there going to be culturally variable rules needed to establish certain co-exercisable liberties, even across similar societies. A second source of variation across similar societies is that there are also going to be culturally variable rules required for making certain co-exercisable liberties co-enjoyable: making it possible for people to enjoy those liberties, even when all or many exercise them at once. Taking an example from Herbert Hart (1973, 543), consider the case where people each have a choice of addressing a group at will: say, a group comprising their fellow citizens. It will be clearly possible for them each to address the group and to do so at the same time, so that co-exercisability is not a problem. But if all or even just a number speak at once, no one will be heard and everyone will be frustrated. The example is artificial but it illustrates a general problem. Everyone may wish to address the group but if everyone addresses it at once then no one is going to be happy. In the same way, everyone may wish to own a gun but if everyone owns a gun then, plausibly, no one is defensively better off. And again, everyone may wish to drive into the city center but if everyone does this at the same time then the point of driving there may be undermined.³

Societies will be able to get over such problems by introducing rules that give people options that are close to the original, problematic options but that still meet the constraint of being co-enjoyable. Thus the problem illustrated by the case of speaking to a large group can be solved under rules such as Robert's rules of order. These allow people to take turns in speaking, dictating a pattern under which they

can each make proposals, suggest amendments to the proposals of others, and debate and vote on the various issues that arise in their discussion. As such rules might resolve the debating predicament, similar rules might resolve other problems too. For example, people might be given the rule-dependent option of owning guns on condition of passing certain, perhaps quite demanding tests; or of using free or cheap parking facilities and taking public transport into city centers; or of speaking their mind on any issue except when it amounts to hate speech and threatens public order. But the rules that get over such problems are very likely to vary between different societies, so that the basic liberties established in relevant areas will almost certainly assume quite different forms in different contexts.

A third source of variation in basic liberties, even across broadly similar societies, derives from the fact that in many areas of complex choice there is bound to be a problem in definitively establishing, in the abstract, choices such that their exercise by some is not going to impact on the exercise of those choices by others or on the enjoyment that others derive from that exercise. There is bound to be a problem in finding a set that precludes all such negative interactions (Sen 1970; Dietrich and List 2008). Should people who live along a river have the basic liberty of using the water as they wish? In an agricultural society it may seem that they should each have this liberty. But the issue becomes more complex once there are possible ways of using the river — say, ways of using it in industrial production — that are going to impact negatively on the extent to which the downstream water remains usable for agricultural purposes.

This sort of issue is typically resolved in contemporary societies by the courts. The law of torts allows plaintiffs to appeal to the courts for case-by-case judgments on whether someone should be allowed to exercise such a choice and, if allowed, whether they should be required to adopt precautions against damage to others. The Hand test, named after the U.S. Judge, Learned Hand, offers useful guidance in the area. The idea, roughly, is that if the expected cost of effective precautions to some agent, A, is less than the expected cost to others of A's making the choice without any particular care, then the choice should only be allowed when

relevant precautions are in place. Applied to the river case, it would require those upstream to make use of the river only under limitations or conditions that involve a lower expected cost for them than the cost to others of their not being subject to such constraints.

The problem of complexity illustrated in this example argues that in general every society will need to establish in law — not just in the law of torts but also in criminal law, contract law and constitutional law — a way of handling different problems as they arise, leaving room for the sort of judicial intervention, or even legislative or constitutional amendment, that would interpret and revise the basic liberties so as to reduce unwanted interactions (Zucca 2007). The necessity of subjecting any system of basic liberties to such dynamic, case-driven adjustment means that two similar societies, even societies that begin from the same specification of basic liberties, are likely to come apart in the course of their development. The basic liberties will come to be interpreted differently in each.

Not only do our three factors explain why variation in the interpretation of the basic liberties is possible across quite similar societies. The differences between otherwise quite close societies in the cultural expectations people bring to bear on public matters mean that variation is inevitable. In one society, there may be a very lax view of the background tests that gun owners should pass; in the other, the tests may be so strict that most citizens are given no access to guns. In one society people may take a very tolerant view, and in the other a very strict view, of how far offensive speech is damaging and should be restricted. And so on.

The considerations rehearsed in this discussion show that equal freedom as non-domination is bound to mean significantly different things in different social contexts, even in contexts that differ in the relatively small ways that distinguish contemporary, advanced societies. But not only is it likely to mean different things as a result of variation in the basic liberties that it requires people to be able to access without domination. It is also going to mean different things as a result of differences in what is thought to be necessary for un-dominated access.

Un-dominated access

People's access to certain choices will be un-dominated to the extent that they are able to make them without being exposed to a capacity for interference — in particular, of course, interference that is not licensed by the interferee — on the part of others. I take this to mean, first, that they must have the wherewithal to take any of the option in a relevant choice — they must have the personal capacity, perhaps with plausible state support, to make the choice; and, second, that they must not be exposed to a capacity for interference on the part of another.

The first of these requirements, according to which people must have the wherewithal or capacity to choose any option in a relevant choice, runs counter to the weaker view suggested, for example, by Isaiah Berlin (1969) when he says: 'Mere incapacity to attain a goal is not lack of political liberty' (p.122). But the stronger view defended is more attractive, for two reasons. First, any serious incapacity is likely to expose you to domination, since it may require you to depend on others — and so to be subject to their power of interference — for obtaining the resources you need. And second, there is a paradox involved in holding that you can be free to do something, yet lack the resources and capacity required to do it.

The paradox arises on the assumption, endorsed on all sides, that if you are free to do something or not to do it — say, to move elsewhere or stay put — then you are fit to be held responsible for how you choose. Suppose you self-ascribe un-dominated access to the options in a certain choice. That means that you must self-ascribe the freedom to take one or another option and the fitness to be held responsible for whatever option you choose. But you could not ascribe to yourself the fitness to be held responsible for whatever you choose, if you think that you do not have the personal wherewithal or capacity for realizing one or another option. Therefore in self-ascribing un-dominated access to the options in the choice, and so freedom to choose as you wish, you must take yourself to enjoy that wherewithal or capacity (Pettit 2012).

Assume that un-dominated access in a certain choice requires personal capacity, therefore, and that in a society where the range of the basic liberties is more or less fixed, people must have the wherewithal to make those choices. Turning now to the second requirement mentioned, how are we to determine whether or not people are exposed to a power of interference on the part of others that would make their access to the relevant options a dominated form of access?

Exposure to a power of interference on another's part comes in degrees in at least two distinct dimensions. You may be exposed to a power on the part of another to interfere in a more serious or a less serious way, and in a wider or a narrower range of choice. And equally you may be exposed to a power on the part of others that itself comes in degrees: the others may be able to interfere with lesser or greater difficulty, for example, or at lesser or greater peril to themselves.

How much exposure to a capacity for interference is going to mean that people are dominated? Or, putting the matter the other way around, how much protection is going to be required in order for them to enjoy the basic liberties without domination? The question is pressing because it is never going to be possible to eradicate altogether the power of others to interfere in someone's choices.

I drew on the notion of the free citizen — in traditional language, the liber or freeman — in introducing the basic liberties as choices that all could co-exercise and at the same time co-enjoy. It was precisely such choices that the free citizen who is celebrated in the republican tradition was expected to be able to access. We can draw again on the image of the free citizen in addressing the question as to what level of protection is going to be enough to give people un-dominated access to such choices.

In the received republican image, free persons can walk tall, and look others in the eye. They do not depend on anyone's grace or favor for being able to choose their mode of life. And they relate to one another in a shared, mutually reinforcing consciousness of enjoying this independence. Thus, in the established terms of

republican denigration, they do not have to bow or scrape, toady or kowtow, fawn or flatter; they do not have to placate any others with beguiling smiles or mincing steps. In short, they do not have to live on their wits, whether out of fear or deference. They are their own men and women and however deeply they bind themselves to one another, as in love or friendship or trust, they do so voluntarily, reaching out to one another from positions of relatively equal strength.⁴

The free-person image suggests that in order to enjoy freedom in the exercise of the basic liberties, people should have a publicly established and acknowledged status in relation to others; only this could enable them to walk tall and look others in the eye. Within the sphere of those liberties people ought to be protected on a public basis — and if necessary, resourced — against the incursions of others. They ought to enjoy objective safeguards that apply regardless of the will of others as to how they should choose in that domain. And it ought to be a matter of shared awareness in the society that they are so guarded. They should have an undominated status both in the objective and the subjective or inter-subjective sense of status.

The public safeguards required for the enjoyment of such status are traditionally taken to include the laws that provide in a saliently equal manner for the entrenchment of people's liberties. But given that universally beneficial laws are likely to be supported by attitudes of approval for compliance and disapproval for non-compliance, the safeguards are also bound to include associated norms or morals. Norms in this sense are rules of behavior such that, as a matter of public awareness, most members conform to them, most expect others to approve of conformity or disapprove of non-conformity, and most are policed into conformity by this expectation about what will attract approval and disapproval.⁵

Corresponding to the coercive effect of laws against fraud or violence or murder, we might expect to find norms that occasion a complementary, approbative effect, deterring potential offenders by holding out the prospect of communal disapproval. Machiavelli (1965) remarks in Discourses 1.18 on the importance of having norms available to support the laws in this way: 'just as good morals, if they are to be

maintained, have need of the laws, so the laws, if they are to be observed, have need of good morals'.⁶

But what is enough by way of public safeguards in order to ensure or help ensure that people are not dominated in the exercise of the basic liberties? The free-person image suggests that they should be safeguarded to the point where people satisfy what we might call the eyeball test. They can look others in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best.

The eyeball test does not require that people should be able look one another in the eye, regardless of their personal lack of nerve. It says that they should have no reason — no good reason — for losing their nerve. What it requires, in other words, is that they have the capacity to look one another in the eye in the absence of factors like timidity or cowardice. The reference to such personal shortcomings is essential, since no public safeguards can compensate for differences between individual personalities and for variations in people's capacity to deal with the overbearing assumptions of others.

But there is no cross-cultural standard of timidity or cowardice or anything of that kind. What counts as reasonable fearlessness, as distinct from excessive fearfulness or indeed excessive recklessness, is more or less bound to vary from society to society. People who live with different levels of vulnerability, natural or social, tend to be inured in different degrees to various threats and dangers. People who live under different regimes of honor and expectation will vary in how far it seems reasonable or rational to place trust in others, taking them to be sensitive enough to legal or normative sanctions to ensure that interference is not on the cards. And when people vary across societies in how far they are taken to be likely to offend against others, they will also vary in the habits of mind they develop and in the threshold at which they find timidity a prudent attitude to adopt.

The eyeball test for when people enjoy un-dominated access to their basic liberties implies, then, that what is needed for non-domination may vary across cultures and societies. Suppose that a society is one where the benchmark of security is low, the basis for mutual trust is high, and the general presumption is that others are unlikely to wish you harm. In that society it will be much easier to provide safeguards sufficient to enable people to pass the eyeball test than in a society where standards for security against risk are high, or the belief in trustworthiness low, or the presumption about others less flattering.

Not only does the eyeball test serve to determine the level of resourcing and protection required for un-dominated access. In passing I should also note that it doubles in another role, which is to determine what I described earlier as plausible state support for those who otherwise would not have a personal capacity to exercise certain choices. Should those who require wheel chairs be enabled, if necessary, to purchase them, for example, and should they be facilitated by ramps in public and other buildings? Would such assistance count as plausible state aid? How such a question is to be answered will depend, in the spirit of the republican approach, on whether such provision is necessary in order for people to pass the eyeball test.

Time to sum up. As the image of the free person offers direction on the range of choices that free persons ought to be able to access, so it provides guidance on how far those choices ought to be secured if people are to enjoy un-dominated access to them. And as the direction it offers on the range of choices implies that the basic liberties are going to be interpreted differently in different cultures, so the guidance it provides on the security required for un-dominated access suggests that what is enough in one society for such security may not be enough in another. Not only does the interpretation of the basic liberties vary across societies, so does the interpretation of what un-dominated access to those liberties requires.

4. The universal appeal of this structural ideal

The argument needed

In arguing for the universal appeal of the structural ideal of basic functional capability, we relied on two premises. One is the assumption that people are fundamentally equal in the sense that they each have a claim, however this is institutionally interpreted, to the same status as others in the eyes of the law and the state. The adult, able-minded and more or less permanent residents of any society deserve to be treated as equals by the collectively supported policies under which they live, where it is understood that being treated as equals can be differently interpreted in different cultures. They are each obliged, to put the assumption in another key, not to claim a special status in relation to their fellow citizens, whether on grounds of ethnicity or religion or gender or any such divide. No one is privileged in the way in which the nobility and the clergy claimed to be privileged in pre-revolutionary France.

The second premise on which we relied in arguing for the universal appeal of functioning capability is that the ideal of equal status requires that people each have the resources needed for being able to function at a basic level in their society. There is room for interpretation of what exactly equal status requires, as we just mentioned, and there is also room for interpretation of what is required for functioning capability. But no matter how those interpretations go, so we assumed, the equal status of the members of any society demands that they each have the basic capability of functioning in their society. The very characterization of the capability as basic, as we mentioned, suggests that this has to be so.

By the first of these two assumptions, the members of any society ought to have equal status in their relationships with one another: there is no denying that this is a good for all. By the second, equal status argues that it would be good if all could enjoy a basic functioning capability. And so the conclusion follows that the members of any society ought each to enjoy a basic functioning capability. It is good from any perspective — good, period — that in every society people should all be furnished with a basic capability of functioning there.

The argument offers a model for arguing that not only should people enjoy an equal capability of this kind, they ought also to enjoy un-dominated access to the

basic liberties. If we are to be able to establish the universal appeal of our republican ideal, then we must be able to show that un-dominated access to the basic liberties is on a par in importance with basic functioning capability.

Any argument in support of the universal value of freedom as non-domination is entitled to make use of the first premise that appears in the other argument: the premise that equal status, however it should be interpreted, is a good for the people of every society. So the question is whether we can endorse a counterpart of the second premise, arguing that equal status should be interpreted in freedom terms. The question is whether equal status argues in any society for equal freedom as non-domination, ruling out variations in people's un-dominated access to the basic liberties. If we can argue that equal status does support equal freedom as non-domination, then we will be able to make a case for the republican ideal that is parallel to the argument for the universal appeal of the ideal of basic functioning capability. We will be able to re-use the first premise of that argument and we will be able to introduce a counterpart of the second.

The argument outlined

How to show that equal status supports equal freedom as non-domination? First we must show that such equal freedom is feasible or possible, at least under the assumption that scarcity is not extreme: there is no bar, under such circumstances of justice, as John Rawls (1971) describes them, to people's all enjoying such equal freedom. And then we must show that such equal status argues that that possibility should be realized.

The possibility claim does not raise a problem. The ideal of freedom as non-domination is defined in such a way that there is no bar to all the members of a society enjoying it, at least under the circumstances of justice. It requires universal access to liberties that, by stipulation, are such that all can exercise and enjoy them at the same time. And it requires a form of access that is un-dominated in such a sense that, short of great poverty or division, everyone can have un-dominated access to the basic liberties. Here the main point to register is that under the eyeball

test, differences of psychology or differences of personal power — wealth or fame or connection — need not undermine the un-dominated access of the less well off.

That test implies that if your personal timidity affects your capacity to look others in the eye, still that doesn't mean you fail the eyeball test and suffer domination: the test requires only that you do not have good reason for fear or deference, not that you do not succumb out of weakness to such attitudes. And the test implies equally that having fewer resources and protections than others — say, as a result of enjoying below-average wealth — need not mean that you lack un-dominated access. Excessive differences of wealth and power may jeopardize the freedom as non-domination of the less well off, as we noted, and be objectionable on that count. But, assuming that they are not allowed to be excessive, they are consistent with everyone's enjoying un-dominated access to the basic liberties.

If freedom as non-domination, like a basic functioning capability, is feasible or possible for everyone in a society, then the question is whether their equal status argues for the value of everyone's enjoying it. We held in the case of basic functioning capability that insofar as such capability is required for individuals to live without shame as creditable people, it is inconceivable that we should ascribe equal status to persons and yet hold that in some societies it would not be good for everyone to have this capability. The only motive for thinking this would be the recognition that some societies are patriarchal or sectarian or whatever. But this would not be a good reason for maintaining that view, since patriarchy and sectarianism are inconsistent with ascribing an equal status to all human beings.

This argument for ascribing universal appeal to the ideal of basic functioning capability suggests a parallel argument for ascribing universal appeal to the ideal of freedom as non-domination. Assuming that people are of equal status, it is not only hard to deny that it would be good in every society that all the members should enjoy a basic functioning capacity there; it is hard in the same measure to deny that it would be good that all of the members should enjoy un-dominated access to the same basic liberties. For just as the lack of basic functioning capability would

undermine people's capacity to live without shame as creditable people, so the lack of freedom as non-domination would have the same potentially demeaning effect.

The ideal of freedom as non-domination is richer, it is true, than the ideal of basic functioning ability. People could hardly count as un-dominated — that is, free in the realm of co-exercisable and co-enjoyable choices — while not enjoying a basic functioning capability in their society. But people could strictly enjoy a basic functioning capability without enjoying such freedom as non-domination. They might enjoy that capability as a result of the beneficence of a patron and indeed all might enjoy it as a result of the beneficence of a single potentate or despot. But freedom as non-domination requires the absence of a power of interference on the part of others and would rule against any scenario in which some have to hang in this way on the goodwill of others. Where basic functioning capability might seem to be available just because the wealthy or powerful happen to be well-disposed towards the poor and powerless — just because the strong happen not to be disposed to interfere but rather to assist — freedom as non-domination requires a more robust provision against interference.

But this difference of strength between the demands of the two ideals does not undermine the claim that the argument available with capability carries over to freedom as non-domination. To enjoy a basic functioning capability just by virtue of the indulgence of another would not be, in Smith's terms, to be able to live without shame as a creditable person. Thus the very consideration at the origin of the case for functioning capability argues equally for requiring that that capability should be robust enough to ensure that enjoying it means enjoying freedom as non-domination. For this reason, indeed, I have argued elsewhere that a charitable interpretation of the ideal of basic functioning capability should lead us to take it as an ideal of a fundamentally republican kind (Pettit 2001).⁷

By this line of reasoning, then, the ideal of freedom as non-domination — the ideal of having an un-dominated status in relation to others — can claim a universal appeal on the same grounds as the ideal of basic functioning capability. Like that other ideal it is structural in character: it can be defined inter-culturally but is only

interpretable intra-culturally. And like that other ideal its appeal is as universally compelling as the claim that people in every society should be treated as equals by their state: the claim that in that sense they enjoy equal status. In each case it is supported by the fact that anyone who failed to enjoy the ideal would be unable to live without shame among their peers.

It should not be surprising that the appeal of both values should be supported by a recognition of the horror of public shame. For just as having a basic functioning capacity is related to assuming a decent position in relation to others in your society, so the same is true of freedom as non-domination. Where the standard conception of freedom as non-interference suggests that you might be free in the absence of all other human beings — in a solitary state of nature — the conception of freedom as non-domination presupposes that there are other people around and identifies freedom with a publicly entrenched status in relation to those others. Freedom in this sense consists in having a level of public resourcing and protection sufficient by local standards to ensure that you do not have to depend on the goodwill of others to live your own life as you wish: to exercise the basic liberties available in the society.

The ideal of having such a free status, like the ideal of having a capability of functioning adequately in your society, turns at bottom on the ideal of commanding the recognition and respect of your peers. Consistently with your enjoying the status of an un-dominated, free person, others may seek to influence you in various ways, trying to persuade you of their views, attempting to secure your assistance, or wanting to coopt you into a joint enterprise. But in seeking such influence they are constrained to acknowledge the inaccessibility — and, given the protective law and customs in place, the inadmissibility — of any modes of influence that would impose their will without your license. Thus they are forced to abjure or renounce the unlicensed removal, replacement or misrepresentation of your options in the sphere of the basic liberties. They have no choice but to put aside, and acknowledge putting aside, the use of force or penalty, coercion, deception or manipulation — but not of course teasing or joking or cajoling — in seeking to make you more amenable from

their point of view. They are so constrained by the protective field of law and norm that surrounds you that they can hope to influence you only by overt appeal to considerations that you are manifestly in a position to accept or reject: only by engaging you in conversation and co-reasoning.

Cast in this way, the ideal of freedom as non-domination is a natural generalization of the ideal of functioning capability. It gives an interpersonal cast to the status associated with basic functioning capability, linking it with the capacity to command the respect of others. And it deepens the capability at the origin of such interpersonal status, arguing that it must be robust across variations in what you prefer to do and in what others prefer that you do; it must not depend on the indulgence of the powerful. Both forms of generalization are attractive and both argue for crediting republican freedom with the same universal appeal that functioning capability can claim.

Conclusion

It has become unfashionable to argue in political theory for the universal claims of any ideal, the suggestion being that to attempt such an argument is a sign of ethnocentric insensitivity or even a colonial or imperial mentality. But this is absurd. We are a young species with little to divide us at the genetic level and with a universally shared competence in language and in the exercise of conversation and co-reasoning that language facilitates. There is much diversity among human cultures, of course — that is what lends color to our civilizations — but it pales beside the fact that all of us, no matter what our tradition, are addressive and addressable agents. We are conversable creatures and each of us can savor the status we enjoy when, as a matter of shared recognition, others are constrained and committed to abjure any influence over our choices that is not mediated by persuasion and not premised on our acceptance.

The appeal of non-domination as an ideal of social justice is precisely that, tailored to the conditions of our local culture and society, it would give each of us this great boon in relation to one another. Those with a special interest in the

positions of power their local culture gives them may wish to argue that non-domination is not an indigenous value in their society but rather something imposed upon them from outside. But this should not deceive us. There may be variation over time and place in the artistic and religious, the intellectual and the philosophical, expressions of human experience. It is this sort of variation, after all, that requires the ideal of non-domination to assume a structural rather than a substantive cast. But there is neither a geography nor a history in our deepest, interpersonal needs. And nothing is deeper than our need to be able to command the respect of others, in particular the respect that ensures us a publicly acknowledged realm of ability and authority. This, by our argument, is nothing more or less than the need for freedom: the need to enjoy non-domination in the range of the basic liberties.⁸

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¹ On the republican research program see (Lovett and Pettit 2009). The recent republican movement began from the historical work of Quentin Skinner (1978) on the medieval foundations of modern political thought, and from his subsequent articles in the 1980's on figures like Machiavelli who wrote within the republican tradition identified by John Pocock (1975). An up-to-date list of English works in contemporary republican thinking should include these books: (Pettit 1997; Skinner 1998; Brugger 1999; Honohan 2002; Viroli 2002; Maynor 2003; Lovett 2010; Marti and Pettit 2010; MacGilvray 2011); these collections of papers: (Van Gelderen and Skinner 2002; Weinstock and Nadeau 2004; Honohan and Jennings 2006; Laborde and Maynor 2007; Besson and Marti 2008; Niederbeger and Schink 2012); and a number of studies that deploy the conception of freedom as non-domination, broadly understood: (Braithwaite and Pettit 1990; Richardson 2002; Slaughter 2005; Bellamy 2007; Bohman 2007; Laborde 2008; White and Leighton 2008).

² The farmer and the cowboy will be familiar from Rogers and Hammerstein's musical, Oklahoma, but the predicament they exemplify was already a matter of human experience in clashes between farming and foraging peoples, some as early as the fifth millennium BCE; see (Morris 2010, 112-14, 127-28, 271).

³ In these cases, as in the case of speaking to the group, it is generally true: first, that everyone has a reason to pursue the activity if no one else does; and second, that everyone prefers that no one pursue it to everyone's pursuing it. But it is worth noting that in some of the cases, unlike the group case, a third clause is satisfied too: everyone may have a reason—a new reason—to pursue the activity if others all do so. Setting virtue aside, no one will relish being the only person without a gun in a gun-toting society. This makes these particular examples into cases of a broadly free-riding character (Pettit 1986). In these cases people each have a reason for pursuing the activity even if all others do — they will not want to be made a sucker, as it is sometimes said — but that reason is not the consideration that originally gave the choice its appeal.

⁴ Presented in this way, the image of free persons may seem to be silent on the political front, implying nothing about people's political rights or responsibilities. But the presentation is adequate for our purposes, since we are abstracting in this discussion from the relation between citizens and government.

⁵ The definition follows (Pettit 1990; Brennan and Pettit 2004, Part III) with one amendment: it says that a norm is a regularity such that almost everyone expects others to approve of conformity rather than, in the older formulation, that it is a regularity such that almost everyone approves of conformity. The change allows us to recognize as norms regularities that, unbeknownst to people, do not actually attract general approval (Prentice and Miller 1993); for a fuller discussion of this possibility see (Pettit 2008). While I do not offer a defense for defining norms in this way, it should be noted that it fits extremely well, particularly in the way it connects norms and approval, with the understanding of norms in the larger literature (Hart 1961; Winch 1963; Coleman 1990; Sober and Wilson 1998; Elster 1999; Shapiro 2011).

⁶ See too (Tyler 1990).

⁷ For further important considerations on the nature of freedom as non-domination, and on its connection with Sen's ideal, see (List 2004; 2006)

⁸ I was enormously assisted in my thinking about the topics of this paper by participating in a workshop at the University of Korea in May 2012, which was organized by Professors Gil-Sung Park and Jun-Hyeok Kwak. I am indebted to the comments of the other participants, especially Professor Kwak, on a draft of this paper.