

On Rainer Forst's Kantian Republicanism

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One of the great pleasures of belonging to the philosophical community is the joy of exchange and discussion with intellectual colleagues and friends. And among those pleasures that I have enjoyed one of the greatest has been the opportunity to converse with Rainer Forst. I am delighted to be able to join with others in contributing to this volume in his honor.

Forst has been to the fore in sketching a Kantian form of republican theory. His particular version of this Kantian theory, which is developed on the basis of a commitment to the right to justification, offers a refreshing, critical reinterpretation of the standard neo-republican program. In this paper I look at three claims that characterize his Kantian approach and explore how far it diverges from the more standard view. I focus in particular on his version of Kantian republicanism and on my version of neo-republicanism; apologies to the many other authors this focus forces me to ignore.¹

There are three core claims that Forst makes in developing his Kantian view.

1. Persons are equal in the sense of each enjoying a right to justification for how others treat them.
2. This right is satisfied only insofar people enjoy equality in the power of demanding actively that their relationships with one another be justified to them in a general manner.
3. The fundamental requirement of justice, therefore, is that there should be a basic structure—a democratic arrangement—that enables people each to seek such justification.

I consider these in turn over the three sections of the paper, looking in each case at how far they can be endorsed within neo-republicanism, as I present it. Then in a short conclusion I mention one feature in which the two approaches may come clearly apart. For

¹ Forst's Kantian republicanism is distinctive in emphasizing justice rather than the freedom as independence—in effect, republican freedom as non-domination—that Kant himself prioritizes. Mine is perhaps distinctive in highlighting the freedom of the person rather than the freedom of choice; it resembles Quentin Skinner's (1998) but contrasts somewhat with Frank Lovett's (2022).

reasons of space, I downplay questions about the political or democratic institutions that republicanism would support, and ignore almost completely questions about the socio-economic institutions it ought to recommend; these questions bulk large in my own work but do not figure much in his (Pettit 1997; 2012; 2014).

1. Persons are equal in the sense of each enjoying a right to justification for how others treat them.

Forst thinks of his first principle as essentially Kantian in character, asserting as it does that the autonomy of the person and their claim to respect is the first commitment of republican theory. ‘I call it “Kantian” republicanism’, he says, ‘because the autonomy of persons to be both authors and addressees of the law, which holds in the moral realm as well as in the legal and political spheres, with proper modification, is the basic idea’ (Forst 2013). He believes that ‘an idea of autonomy and respect’ is implicit in my own approach but holds that there is a tension between this idea and my emphasis, first, on ‘a non-Kantian notion of freedom of choice’ and, second, on a ‘consequentialist understanding’ of the theory.

I think that he is right in thinking that I agree with him in starting from the idea of autonomous, equal persons. But I introduce that idea in a rather different way, starting from what I describe as the traditional republican ideal of the free person—the *liber* or freeman or *citoyen*(nne)—as someone who can walk tall and claim a place as the equal of others in the society. While that is an ideal for human beings rather than an image of their essential nature, it presupposes that those for whom it is held out as an ideal must be fit to claim and enjoy it; in effect, it presupposes that each is an agent deserving as an autonomous being of respect as the equal of others. I have no difficulty in thinking of that presupposition as a principle articulated by Kant and well formulated in Forst’s assertion that people each enjoy a right to justification.²

² Of course, traditional republicans often thought of those outside the male, propertied mainstream as less than fully autonomous in this sense. But then Kant himself failed on that count and as we abstract away from his culturally specific blind spots in speaking of the Kantian or neo-Kantian view, so we may do so in speaking of the republican or neo-republican approach.

But what of the suggestion that my commitment on this front is in tension with my emphasis on choice, and in particular on the idea of a choice that is free insofar as it is undominated: free to the extent that no one can interfere on a discretionary or arbitrary basis in the choice? While I gave perhaps too large a role to choice in my book on *Republicanism* (Pettit 1997), I later came to realize that the idea of the free person is the primary ideal in the tradition, and that it is important that certain choices be free mainly insofar as that is needed to ensure the freedom of the persons making those choices. But even in that book, I took the conception of freedom as non-domination to require that no one be ‘able to interfere on an arbitrary basis—at their pleasure—in the choices of the free person’ (271).

How does the freedom of the person relate to freedom of choice in my own reading of the republican approach? If persons are to be equally free then it is important that they should be adequately secured to an equal level in an adequate and equal range of choices: the range of the fundamental liberties, as they came to be known in the tradition (Lilburne 1646). That is a point reflected in Kant, of course, to the extent that what he thinks interpersonal freedom requires is ‘independence from being constrained by another’s power of choice, insofar as it can coexist with the freedom of every other in accordance with universal law’ (Kant 1996, 393).³

What, finally, of Forst’s suggestion that I cannot accommodate the idea within the sort of consequentialist perspective that I adopt? Consequentialism holds that the right actions to take, and the right institutions to establish, is ultimately a function of whether they best serve the good overall. But on my own view, mutual respect is the most prominent good that human beings, as conversable creatures, can give one another (Pettit 2021). It requires them to renounce treatment of a kind that breaches the norms built into the social practice of conversive exchange.⁴ And it requires them to do this robustly over a large range of possible scenarios, not just when that treatment happens to be

³ I vary the translation by taking ‘Willkür’ in Kant’s usage to be better rendered as ‘power of choice’ rather than just ‘choice’.

⁴ On the approach at which I gesture here, the conversable, respect-apt person satisfies something close to Forst’s (2012, 2011) image: ‘a conception of the person as a being who both gives and demands reasons and is therefore in this sense autonomous’.

independently congenial; in that sense, respect is a good that makes very robust demands (Pettit 2015).

Once it is understood in that way, endorsing respect on a teleological basis comes close to adopting it in Forst's deontological manner, although it leaves one difference in place. He rejects the consequentialist reading on the grounds that having 'a categorical right' to justification—having the 'moral-political status' it requires—can hardly be 'explained in non-deontological terms', because it is hard to 'imagine a value that could trump that right and status' (Forst 2013). In making this comment, he rightly assumes that if respect is cherished as a good, then there are likely to be some situations when other goods might trump it. But why is that a problem? Whether it is a good or a right, we might rule that the demand to respect someone, say to avoid killing them, should be overridden in the case of a 'catastrophic moral horror', to use Robert Nozick's (1974) phrase: say, in the event that that was the only way of saving the lives of millions.

2. This right is satisfied only insofar people enjoy equality in the power of demanding actively that their relationships with one another be justified to them in a general manner.

In this principle, Forst (2013) emphasizes that his right to justification is not the sort of claim that others can satisfy for a person, without their engagement. It gives each person 'the status of an active agent of justification', where this requires that they are prepared to assert their right, demanding justification from others when that is necessary: when it is not independently forthcoming. Thus, he says, that 'no political or social relations should exist that cannot be adequately justified toward those involved'. It is not enough that one side treat another, whether directly or via the established institutions, in a manner that it judges to be justifiable; 'it has to justify itself discursively' to those on the other side.

Putting this point in other terms, Forst (2012, 209-10) casts the right to justification as 'the right ... not be treated in any manner for which adequate reasons cannot be provided', where the persons affected 'decide about the "adequacy" of these reasons in concrete dialogue with others'. While people may differ in their precise formulation of those reasons across cultures, he acknowledges, still there is an abstract constraint that they have to satisfy everywhere. They must be 'reasons that can be reciprocally and

generally justified—or better, which cannot be rejected—without violating the respect for others as beings with their own perspectives, needs, and interests’.

By contrast with this aspect of Kantian republicanism, Forst thinks that the version of the theory that I endorse takes the demand for justification—the demand in my terms for respect as a free person—to be passive rather than active, negative rather than positive. According to my account of republicanism, he says, the institutions supported are designed primarily to provide ‘a sheltering mechanism for individual liberty’ (Forst 2013). The charge is that people achieve the undominated status of free persons merely in virtue of living under institutions that secure ‘freedom of choice of persons against arbitrary interference’. Those who enjoy this status do so, according to the allegation, as the passive beneficiaries of such institutions, not as agents engaged in shaping them.

In a recent account of broadly the view I have long maintained, I characterize a free person as follows. ‘An individual will be a free person amongst others just in case they can enjoy freedom as non-domination in an adequate, equal breadth of choice in virtue of an adequate, equal depth of safeguarding or security’ (Pettit 2024). On the face of it, this characterization does seem to invite the charge that I neglect the activity that he associates with the right to justification. But I think the charge misfires.

In giving this account of the free person, as in a range of earlier presentations, I address the question of what might count as an adequate depth of security across an adequate breadth of choice and the answer I give suggests that here too Forst and I are not far apart. My answer is that free persons should be sufficiently secured in a sufficient range of choice to satisfy the eyeball test: to be able to look others in the eye without good reason for fear or deference due to a power of interference enjoyed by others.

The eyeball test invites us naturally to think that it is only the subjects of the institutions that resource and protect them who can say whether they have good reason not to be fearful of, or deferential towards, those who are wealthier, or better connected, or more privileged within their society. And if by the judgment of the weaker, there is good reason for such fear or deference, then that calls by their lights—and presumably by their testimony—for amendments that would reduce the wealth or privilege that others are

allowed to enjoy. That it is their lights and testimony that have importance parallels Forst's claim that it is they who should be the addressees of justification, and they who should be able to demand rectification.

If this response does not seem to require a sufficient degree of active involvement on the part of citizens—a degree similar to that prescribed in Forst's Kantian republicanism—then there is more to add. But the more to add takes us to his third core claim, to which we turn in a moment. Before we turn to that claim, however, it is worth commenting on the use of the notion of arbitrariness, and the related notion of domination, that figures centrally in each of our accounts.

'Arbitrary rule or domination', according to Forst (2013), 'appears where persons are subjected to actions, norms or institutions without adequate justification'. This use of the term 'arbitrary' makes it explicitly value-laden insofar as people with different evaluative views—say, about what counts as adequate justification—will not be able to agree on whether the interference that someone suffers at the hands of another, or of their state, is arbitrary or not. By contrast with this usage, I have always argued, first, that a form of interference is arbitrary just insofar as it is subject to the will of the interferer; and, second, that one agent dominates another in a choice when they enjoy a power of arbitrary interference in that choice: and this, regardless of whether or not they exercise that power. By this account people of quite different evaluative perspectives may be able to agree on whether or not the interference that one agent may perpetrate in the choice of another is arbitrary, and so on whether or not they dominate that person in that choice.

Does this difference in the conceptualization of arbitrariness make for a big divide between the two versions of republicanism? I do not think so, it is only a difference in how the word 'arbitrary' is used. On Forst's usage, a power of interference involves arbitrariness insofar as it cannot be justified to the interferee; on mine, it involves arbitrariness insofar as it puts the will of the interferer in dominating control of how the interferee chooses. But Forst holds, and I would agree, that the reason a power of interference is unjustifiable in such a case, is that it puts the interferer in charge. Thus, we differ only on whether the word 'arbitrariness' should refer to the unjustifiability of the power, as in his usage, or to the dominating character that makes the power unjustifiable,

as in mine. For all that this difference implies, our positions may be just notational variants of one and the same theory.

3. The fundamental requirement of justice, therefore, is that there should be a basic structure—a democratic arrangement—that enables people each to seek such justification.

Forst takes justice fundamentally to require, not that goods be distributed in this or that manner amongst people, but that people enjoy the right to justification in relation to one another: that they have a status that enables them to make effective demands on how others should treat them, whether directly or under the institutions that they sustain. ‘The primary demand of justice is not that human beings should obtain certain goods but that they should be agents equipped with equal rights within a social context – whether national or transnational – who can raise specific claims to goods on this basis’ (Forst and others 2014, 13). Or, as he puts it elsewhere, ‘they should enjoy equal rights to take part in the social and political order of justification in which the conditions under which goods are produced and distributed are determined’ (Forst 2013).

This fundamental requirement of justice amounts in practice to a requirement that there be democratic institutions in place that allow people to assert their equal rights in determining the socio-economic conditions under which they live. ‘Democracy is the only appropriate, though never fully appropriate, political expression of the basic right to justification and of mutual respect between persons’ (Forst 2012, 186). But the requirements of justice are not restricted to a requirement that a suitable democracy be in place; full or maximal justice requires that democracy be used to introduce suitably justified socio-economic conditions. ‘The task of fundamental justice is the construction of a basic structure of justification, the task of maximal justice the construction of a fully justified basic structure’ (Forst 2012, 119). Elaborating on this second task, he says: ‘Democratic procedures must determine which goods are to be allocated to whom, by whom, on what scale, and for what reasons’ (Forst 2012, 120).

Forst (2013) takes democracy, at its best, to be an arrangement under which people ‘have real opportunities to codetermine the institutions of this structure in a reciprocal and general manner’. Thus, he agrees with Habermas, albeit on his own grounds, that in ‘a

democratic, political order’, ‘citizens are simultaneously authors and addressees of the law’ (Forst 2012, 220). But he does not take the democratic authorship of the laws to require anything like a cooperative effort like that of the law-makers in a Rousseauvian assembly, for he argues in a variety of contexts that the laws need not reflect a consensus—even a majoritarian consensus—on the part of citizens.

His view is rather that the laws should pass not attract the objection of any reasonable citizen: ‘my discourse-theoretical view is not based on the idea of consensus but on that of reasonable non-rejectability’ (Forst 2018). The relevant criteria, he says, are reciprocity and generality, where the first requires that ‘no one may make a normative claim that he or she denies to others’ or ‘project his or her own perspective, values, interests, or needs onto others’, and the second that the reasons invoked in decision-making should be ‘shareable by all affected persons, given their (reciprocally) legitimate interests and claims’. Thus, he concludes, ‘even where no consensus – or, classically speaking, “general will” – can be found, these criteria help to filter out reasons that are reciprocally and generally rejectable’.

In line with this view, he suggests elsewhere that Kantian republicanism can endorse something like Rawls’s difference principle, acknowledging the right of the least privileged in a society to challenge laws that would undermine their equal right to justification. As he puts the point, ‘all social and economic arrangements have to be justifiable to all subjected to them as equal participants, which gives a qualified veto-right to the worst off in cases in which their basic standing as equals is violated’ (Forst 2013).

His image of democratic institutions assumes even sharper definition in his comments on my own assumption that democracy operates on many channels, including via the elections in which people collectively choose the legislators who author the law and via acts of contestation in which they act individually or in groups, directly or indirectly, to challenge and try to edit the laws proposed by legislators. ‘I would argue’, he says, ‘that editorial and authorial control should be combined in thinking innovatively about the process of law-making itself. Practices of contestation by persons or groups whose legitimate claims have been overlooked should be incorporated into the political process rather than placed outside of it’ (Forst 2013). I can only enthuse.

Notwithstanding these passing claims on the form of democratic arrangements, Forst principally emphasizes the role of democracy in which work. This, as we have seen, is to implement the fundamental requirement of justice in enabling people to establish a justified basic structure. How does the neo-republican approach account of the role of democracy compare with this?

It differs in the letter, I would say, but not in the spirit. As I present neo-republican theory, it first identifies the socio-economic conditions under which people can count as free, undominated persons in relation to one another: that is, as persons adequately and equally secured in an adequate and equal range of choices. But it then raises the question as to how the institutions or laws that secure individuals against one another in this way are to be established and maintained. And it makes a negative and a positive point in response (Pettit 1997; 2012; 2014).

The negative point is that the laws cannot be put and kept in place by a powerful individual or elite, and still serve the purpose of guarding people against domination. The fact that the laws and institutions would give people that interpersonal security only if the individual or elite in power continued to be benevolent means that people would not have any political security. They would live at the mercy of the political power in their lives.

The positive point is that the only way of guarding citizens against political domination is by enabling them to determine the shape of the laws and institutions under which they live. Assuming that the state is necessary to provide people with interpersonal security, the only way for people to enjoy a similar security overall—in particular, the only way for them to enjoy political security against the maker of their laws—is for them to share in control over the law-maker or law-makers. And of course, they must share equally in the system that gives them such joint control; otherwise, those at a disadvantage would be dominated by others.

The upshot is a further specification of the ideal of a free person. Persons will be free, so we now see, only insofar as two conditions are fulfilled: on the interpersonal front, they are adequately and equally resourced and protected in their fundamental liberties by the laws and institutions under which they live; and on the political front, they share in an

adequate and equal system of control over the power that can make and unmake those laws and institutions. They enjoy private freedom as non-domination on the first front, as I put it early on (Pettit 1997), and public freedom as non-domination on the second.

It should be clear from these remarks that Forst and I give broadly the same role to democracy. By Forst's account, it is required to institutionalize the right to justification, guarding people against a power of arbitrary or unjustified interference on the part of others. By mine, it is required to ensure that the institutions that guard people against a power of arbitrary or discretionary interference on the part of other citizens do not give such a power to those in charge of those institutions. Suppose, as argued earlier, that what makes a power arbitrary in the sense of unjustified is that it is arbitrary in the sense of mediating an alien discretionary will. It will then follow, so it seems to me, that our differences on the role of democracy are presentational rather than substantive.

Conclusion

Rainer Forst's representation of republicanism gives center place to the notion of justice, understood in terms of the right to justification, and mine gives center place to the notion of freedom, understood in the sense of non-domination. But as my remarks in this essay suggest, they are still remarkably convergent. The convergence derives from the fact that what makes for injustice on his account is precisely the same element that is highlighted in mine: viz., that people are subject to an alien will and in that sense dominated and unfree.

In conclusion, however, it may be worth mentioning one issue, not clearly addressed by either of us, on which we may come apart. Let the mention of it be an invitation to further exchange.

Democracy, by the account we each endorse, will not only guard against a dominating government, giving people the resources and opportunities needed to exercise control over what laws it introduces and how it imposes them. Inevitably, democracy will also guide government in selecting the further resources and opportunities needed if people are to enjoy a right of justification against one another or, in my terms, to be able to look one another in the eye without reason for fear or deference. But does democracy

select those arrangements because they promise to have that effect? Or do they have that effect because they are democratically selected? I strongly go with the first answer, but I suspect that Rainer is attracted to the second. Much may hang on this difference between us, if indeed it obtains. But that is matter for another time.

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