

To appear in *Critical Review of International Social and Political Philosophy*, 18, 2015, pp. 669-78.

Republican Justice

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You might have thought that after spending the last quarter of a century developing and defending the neo-Roman model of republicanism, Philip Pettit would have pretty much exhausted what he had to say on the topic. If so, think again. *On the People's Terms* (henceforth OPT) doesn't just make refinements concerning matters of detail – though it does that too, at numerous points, to great effect. In addition, it restates the republican model in a genuinely new and exciting way. Central to this restatement is a focus on two key questions: the question of what is required as a matter of *justice* on the one hand; and what is required as a matter of *legitimacy* on the other.¹ My focus here will be Pettit's republican account of justice. I shall very briefly outline the account (section I), raise several objections to it (sections II-IV), and conclude by considering what *kind* of account of justice it is supposed to be (section V).

I

According to Pettit, justice concerns the relationships among citizens: their relationships as employer and employee; teacher and student; husband and wife; and so on.² This is in contrast to legitimacy, which concerns the relationship between citizens and the state. The republican account of justice holds that there is ultimately just one value that a society, in order to be just, must realize, namely, freedom as non-domination. To be free in this sense means that no other agent has the power to interfere in one's choices in a way that one does not

¹ Pettit takes these to be independent. What is required as a matter of justice leaves open the possibility that the state that realizes it is itself thoroughly illegitimate (think of benign despotism). And what is required as a matter of legitimacy leaves open the possibility that a state that is legitimate nonetheless does a pretty dreadful job of achieving justice (think of a state that is incompetent or subject to internal or external obstacles of various kinds).

² Citizens are taken to include, not only those who have formal citizenship, but all those sane adults who are more or less settled in the state in question and also certain groups (OPT: 75).

oneself control.³ So, republican justice requires that social and political institutions be arranged simply in such a way as to realise citizens' freedom as non-domination in their relationships with one another.

This is vague on three counts. First, what is the appropriate *domain* of realization such that justice requires the realization of freedom of choice within that domain? Second, what is the appropriate *manner* of realization? And third, what is the appropriate *standard* of realization?

In order to answer these questions, Pettit proposes an ingenious hypothetical device that he calls "the eyeball test". The eyeball test involves imagining what would be required in order for people to be able to "look others in the eye," without having "to bow or scrape, toady or kowtow, fawn or flatter" (OPT: 82). Deploying the eyeball test suggests answers to each of the three key questions.

First, take the domain of realization question. Intuitively, there are various choices such that we must clearly be non-dominated in those choices in order to pass the eyeball test. For example, we must be able to make up our own minds about matters of fundamental value, express our convictions in public and in private, associate with whom we wish, move freely within the society in which we live, change occupations, and so on. On the other side, there are choices whose protection is clearly not required – and in some cases not permitted – by the eyeball test, such as the choice to engage in extravagant purchases, to violently attack others for fun, to use any land according to one's wishes, and so on. Pettit suggests that the domain of realization just is the domain of the so-called "fundamental liberties". This is the domain where, as Pettit puts it, "all can operate at once ... without getting in one another's way" (OPT: 83).⁴

³ Thus, one can be dominated and hence unfree in a choice even if one is never interfered with at all in that choice, since it suffices for a relation of domination to obtain that another agent has the power to interfere in the choice in a way that one doesn't control. And one can be free in a choice even if another agent interferes in that choice so long as one controls the interference.

⁴ More precisely, it encompasses choices that satisfy two formal constraints that Pettit calls the "co-exercisability" constraint and the "co-satisfiability" constraint, respectively. The co-exercisability constraint requires that each citizen's exercising the freedom to make the relevant choice is compatible with all the other citizens' also exercising that freedom (OPT: 94). The co-satisfiability constraint requires that each citizen's exercising the freedom to make the relevant choice is compatible with her exercising all the other freedoms (OPT: 98). So, the domain of realization includes all and only those choices that are covered by the fundamental liberties, that is, all and only those choices that are co-exercisable and co-satisfiable.

Second, the manner of realization required by republican justice involves citizens having, as Pettit puts it, “a publicly established and acknowledged status in relation to others” (OPT: 83). This means having objective safeguards against non-domination that are themselves a matter of intersubjective awareness. And, in particular, it requires protection of the fundamental liberties in the form of systems of public laws and norms.

Third, the standard of realization that republican justice requires is in one sense *egalitarian* and in another sense *sufficientarian*. It is egalitarian “in the currency of free or undominated status;” it requires that each citizen must possess an equal status as non-dominated (OPT: 88). It is sufficientarian “in the currency of free or undominated choice”; it requires that each citizen has the resources and protection to ensure that she meets “a certain threshold ... of free or undominated choice” within the domain of the fundamental liberties, namely whatever threshold is required to meet the eyeball test (OPT: 88). In this respect, the account is quite different from, say, a kind of egalitarianism that would require absolute equalization of undominated choice.⁵

Here, then, in essence, is the republican account of justice: Justice requires that there are laws and norms such that each citizen has the resources and protection to meet the threshold of freedom of undominated choice within the domain of the fundamental liberties that is sufficient to ensure that they possess an equal status as non-dominated. I shall now raise several objections to this account.

II

As noted above, Pettit’s account of justice holds that there is, ultimately, just one value that a society, in order to be just, must realize, namely, non-domination. This doesn’t imply that there is only one ultimate value (or even that freedom as non-domination is itself an ultimate value). And it doesn’t imply that justice can be achieved without realizing other values. But it does imply that justice in

⁵ Such equalization is neither sufficient nor necessary for republican justice. It is not sufficient since a state could satisfy the egalitarian standard by providing an equally miserable level of resources and protection, and hence undominated choice, for all citizens – a level far below the level required for the eyeball test. And it is not necessary since varying levels of resources and protection and hence undominated choice are perfectly compatible with a state being just so long as all citizens have at least the level of undominated choice to meet the eyeball test.

particular requires the realization of other values only insofar as and because their realization contributes towards the realization of non-domination.

Is this plausible? Here is a test: Take some value the instantiation of which you regard as integral to a just society and consider whether a society that is just by the lights of Pettit's republican account of justice will instantiate it to the requisite extent. For a wide range of plausible candidate values, Pettit's republican account does admirably. Consider protection against exploitation. Plausibly, protecting against exploitation is integral to a just society. And it would seem that Pettit's republican account can explain why. Exploitation plausibly involves interfering in a way that the other, given her subordinated position, cannot control. So a society that is just by republican lights – one in which each individual has the resources and protection to meet the threshold of undominated choice – will plausibly be one that affords the strong few opportunities for exploiting the weak.

What is not so clear is that this is going to work for *all* values. Take substantive fairness. Plausibly this is integral to a just society. Is a society that is just by republican lights guaranteed to be one that is sufficiently substantively fair? As Pettit himself acknowledges, a society that is just by republican lights is “consistent with differences of private wealth and power and with corresponding differences in resources and protections” (OPT: 90). Suppose, then, that I am pretty rich and you are just barely above the level of resources required by republican justice. And suppose that the explanation for our different material positions is just this: My grandparents were filthy rich and yours were paupers. So, even after quite a lot of my resources have channeled towards those like you to ensure that you are also above the requisite threshold of undominated choice, there remain non-trivial differences in our material positions – differences that we have done nothing to deserve. Our society seems to be unfair. And to that extent it seems to be unjust. Pettit's republican account can't explain this.

Pettit offers two responses. The first is to point to certain empirical effects that mean that, in practice, the discrepancies in material resources that are compatible with republican justice can't be too great. Given these empirical effects, it's not compatible with republican justice that I am, say, filthy rich and

you are just are just barely above the level of resources required by republican justice (OPT: 90-1). Suppose that Pettit is right about this. This means that *enormous* undeserved discrepancies aren't compatible with republican justice. But the discrepancies don't need to be enormous in order for them to be unfair insofar as they are wholly undeserved; and to that extent they seem unjust.

Pettit's second response is to insist that accounts of justice that require the elimination of unfairness beyond that required by the republican account "often seem like moral fantasies: manuals for how God ought to have ordained the order of things – or manuals for how we ought to rectify God's failures – rather than real-world manifestos for what the state should do in regulating the affairs of its citizens" (OPT: 126). Is this right? My claim was simply that avoiding domination may not be *all* that justice requires. Justice might require, in addition, avoiding certain kinds of unfairness. In the case I described, this could potentially be achieved by having a somewhat higher level of inheritance tax. That doesn't sound like a moral fantasy to me.

III

Pettit's account of justice is a kind of hybrid account inasmuch it combines an egalitarian standard in the currency of undominated status and a sufficientarian standard in the currency of undominated choice. Is this combination plausible? It will be plausible only insofar as there is some threshold of undominated choice such that each citizen's meeting that threshold is sufficient and necessary to ensure that each citizen has equality of undominated status. I confess to being skeptical.⁶

The problem is particularly acute if we interpret Pettit's egalitarian standard as requiring simply that all citizens possess equal undominated status. The problem is that there is more than one way of realizing this egalitarian standard. One way of realizing it is for each citizen to be absolutely free from domination. Another is for each citizen to possess absolutely no freedom as non-domination. So, even if a) for any particular realization of the egalitarian

⁶ There is not to say that there is anything problematic about such hybrid theories in general. For example, given the well-known phenomenon of diminishing marginal returns, one might be a maximizing utilitarian in the currency of well-being and a non-utilitarian (say, an egalitarian) in the currency of material resources.

standard, there is some threshold of undominated choice such that each citizen's meeting that threshold suffices to realize the egalitarian standard, it plainly does not follow that b) there is some threshold of undominated choice such that, for any particular realization of the egalitarian standard, each citizen's meeting the threshold suffices to realize the egalitarian standard.⁷

There are other (more plausible) interpretations of the egalitarian standard. But it is not clear that any of these interpretations is such that satisfying the sufficientarian standard is sufficient to realize it. One such interpretation holds that justice requires *maximizing* citizens' equal level of undominated status. In other words, each citizen must be as free from domination as possible consistent with each other citizen being equally free from domination. The problem is that for any threshold of undominated choice, even if each citizen is above the threshold, there may remain *discrepancies* among citizens concerning their overall level of undominated choice – say, discrepancies in the level of protection afforded to them by labour law depending on whether they are full-time or casual workers. Surely such discrepancies imply a departure from the egalitarian standard of strict equality of undominated status. Those who enjoy a greater level of protection under labour law *ipso facto* have a less dominated status than those who enjoy lesser protection, even if both are above the threshold of undominated choice.

Pettit might respond by insisting that this objection ignores the fact that undominated status is an on/off matter: one either has or lacks undominated status depending on whether one meets or fails to meet the threshold of undominated choice.

This response is not persuasive. We can talk if we like of undominated status as an on/off matter. But since undominated status is explained in terms of undominated choice and undominated choice is not purely an on/off matter, then surely undominated status is not *purely* an on/off matter either. Thus, for example, if I possess resources and protection that make it the case that I have greater freedom of choice across a wider domain of relevant choices than you, surely I have a “less dominated status” than you. Perhaps we both have sufficient

⁷ To draw the inference from (a) to (b) would be to commit a simple quantifier shift fallacy.

undominated choice to have the status of “free” rather than “unfree”. But this plainly doesn’t mean that we have the status of being *equally free*.⁸

IV

As noted above, Pettit’s republican account of justice assigns a crucial role to the eyeball test in helping to identify the domain, manner, and standard of realization that justice requires. Is it up to the task? I want to focus, in particular, on whether the eyeball test really leads in the sufficientarian republican direction that Pettit wants.

First, it might be questioned whether the eyeball test leads to sufficientarianism as opposed to egalitarianism in the currency of undominated choice. On the one hand, one might argue that meeting some threshold of undominated choice isn’t *sufficient* to meet the eyeball test. Suppose that given judicious lawmaking and ingenious norm-shaping, each citizen is above Pettit’s threshold. But some citizens (say, wealthy white males who occupy positions of economic power) have considerably greater resources and protection than others and hence considerably greater undominated choice. If so, then we might say that, at best, this *approximates* satisfaction of the eyeball test. On the other hand, it might be argued that meeting a threshold of undominated choice isn’t *necessary* to meet the eyeball test. Suppose that each of us is (perhaps far below) Pettit’s threshold but that each of us is subject to a *comparable* level of domination by others. Perhaps we are dominated in different choices: some are dominated in choices in the sphere of the workplace but not in the domain of the home; others vice versa. Under these circumstances, we might say that we are indeed able to look one another in the eye – not from a lofty position but from an equally subordinated one.

Second, it might be questioned whether the eyeball test leads towards protection against the evil of domination as opposed to protection against certain

⁸ Consider an analogy. Suppose that we want to ensure simply that each citizen meets a certain minimum threshold of wealth. We can, if we like, describe our aim as being to ensure that everyone has the status of being “affluent”, where being affluent just is meeting the threshold of wealth. But it’s not right to say that we have the egalitarian aim of making everyone *equally* affluent. For, even if ensuring that each citizen meets the threshold of wealth that suffices for ensuring that each citizen is “affluent” rather than “not affluent”, it is plainly not sufficient for ensuring that each citizen is “equally affluent”. That’s because some of those who are above the threshold may be “more affluent” than others.

psychological evils that are commonly *associated* with domination, such as the feeling of humiliation or the feeling that one lacks self worth. Clearly, where there is domination, there will typically be these psychological evils too, and vice versa. But not necessarily. For one, we can have these negative feelings even when we are not dominated – as when members of some despised minority who are nonetheless afforded sufficient legal protection to be free have internalized the negative regard in which they are held by the majority. For another, we can be dominated without having these negative feelings. Think of a social context where all those who are dominated happen to have a particularly robust self-conception – perhaps precisely *because* of being subject to ongoing domination.

Third, it might be questioned whether the eyeball test really leads towards republicanism at all. It is potentially instructive in this context to note that the eyeball test bears a striking resemblance to Stephan Darwall’s idea that certain moral claims or political proposals, in order to be valid, must respect the demands of what he calls “the second-person standpoint”. This is “the perspective that you and I take up when we make and acknowledge claims on one another’s conduct and will” (Darwall 2006, p. 3). Certain claims and proposals are manifestly at odds with the second-person standpoint inasmuch as they fail to accord others the requisite standing as individuals who possess second-personal authority. And Darwall argues that the normative theory that seems best-placed to vindicate the centrality of the second-personal standpoint is some kind of contractualism. Darwall himself is a Kantian and favours a broadly Scanlonian model of contractualism according to which morality and justice require laws and norms to which no citizen could reasonably object. But other versions of contractualism might be thought to do even better – say Habermas’s discourse ethics or the related “deliberative” version of contractualism that I have myself defended (Southwood 2010). The idea would be that the eyeball test is satisfied by a system of laws and norms that appropriately respects our shared authority as deliberative agents.

V

I have been raising certain objections to the content of Pettit’s republican account of justice. But I want to conclude in a constructive vein by saying

something about what *kind* of account of justice it is supposed to be. There are a number of ways in which accounts of justice may differ in kind. I want to focus here on two in particular.

First, accounts of justice may be *merely evaluative* or *prescriptive*. Merely evaluative accounts merely evaluate states and societies in terms of whether they are “just” or “unjust” or “how just” they are. Prescriptive accounts, by contrast, make claims about what a state “ought to do” as a matter of justice. Unfortunately, we use the term “justice requires” both to evaluate and to prescribe. But it is very plausible that these are fundamentally different in at least the following respect: It is no objection to a claim that deploys an evaluative concept of justice that it is not feasible to achieve it. Whereas, plausibly, it *is* an objection to a claim that deploys a prescriptive concept of justice that it is not feasible to achieve it (see Brennan and Southwood 2007).⁹

Second, accounts of justice may be either *deliberative* or *non-deliberative*. Deliberative accounts of justice are supposed to aid the everyday deliberation of states and governments concerning what policies to implement, laws to legislate, and institutions to create and reform (see Southwood forthcoming). Non-deliberative accounts are supposed to play some other role: for example, criticizing states’ performance in respect of justice. But there is no presumption that the state or government is supposed to be consciously deploying the account in its deliberations.

I submit that Pettit’s account of justice is a *prescriptive* and *deliberative* account. It is prescriptive rather than merely evaluative since it is difficult, otherwise, to make sense of how centrally feasibility considerations figure as trumps, not just in this book, but in his corpus as a whole. And it is deliberative rather than non-deliberative since Pettit clearly regards it as an integral part of the job description of his republican account of justice that it can figure as an

⁹ Take the claim that justice requires absolute equalization of freedom of opportunity. If this is supposed to be a prescriptive claim – something like “the state ought as a matter of justice to achieve absolute equalization of freedom of opportunity” – it seems false on the grounds that it is not feasible for the state to achieve absolute equalization of freedom of opportunity. But if it is a merely evaluative claim, then it may be true. Pablo Gilabert offers a nice explanation of why this is so. Merely evaluative claims at most imply *conditional* prescriptive claims of the following kind: if there is some agent for whom it is feasible to achieve absolute equalization of freedom of opportunity, then the agent ought to do so (Gilabert 2011).

implementable “real-world manifesto for what the state should do in regulating the affairs of its citizens” (OPT: 126).

If I am right, then Pettit is engaged in a quite different kind of normative enterprise to that of many of his fellow political philosophers. For example, G.A. Cohen’s egalitarianism is clearly supposed to be a merely evaluative account of justice (Cohen 2007).¹⁰ Similarly, Rawls’s two principles are clearly supposed to be either merely evaluative or at least prescriptive-but-non-deliberative (Rawls 1971).

This interpretation of Pettit is also suggestive of certain possible strategies for responding to the three objections that I raised above. Take the objection that Pettit’s republican account cannot adequately account for the importance of certain values such as substantive fairness. If Pettit’s account of justice is supposed to be prescriptive rather than merely evaluative, then he can concede that a society in which there is substantive unfairness is to that extent unjust. For his account is addressed to the different question of what the state *ought to do* about it. If Pettit’s account is deliberative rather than non-deliberative, then it is supposed to be guiding the everyday deliberation of the state and government; and he might argue that a monistic principle is to be preferred to a plurality of principles that may conflict.

Or take the objection that Pettit’s account is an uncomfortable hybrid since realizing the sufficientarian standard is not sufficient for realizing the egalitarian standard. This is indeed a problem insofar as both standards are supposed to be parts of a unified deliberative account of justice. But Pettit might argue that the deliberative account is straightforwardly sufficientarian and that the egalitarian standard constitutes a merely evaluative or a prescriptive-but-non-deliberative part of his overall account of justice.

Finally, take the objection that deploying the eyeball test leads in a non-sufficientarian or even a non-republican direction. Here, again, we have a possible response. Suppose that the alternatives envisaged (egalitarianism in the currency of undominated choice, the prevention of psychological evils commonly though not necessarily associated with domination, and some kind of

¹⁰ Indeed, Cohen explicitly concedes that all fundamental principles of justice have the form of conditionals: If the state or some other agent can X, then the state ought as a matter of justice to X (Cohen 2007, pp. 250-4).

contractualism) better satisfy the eyeball test. Suppose, moreover, that they are satisfactory as merely evaluative or prescriptive-but-non-deliberative accounts of justice. Clearly it doesn't follow that they are satisfactory as deliberative accounts. Thus, Pettit might argue that the only account that is capable of meeting the eyeball test while also appropriately guiding the everyday deliberation of the state is sufficientarian republicanism.

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